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GEORGE WYTHE,

AMERICA'S FIRST LAW PROFESSOR AND THE

TEACHER OF JEFFERSON, MARSHALL, AND CLAY

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Date May 25, 1933

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Date June 7, 1933

GEORGE WYTHE,

AMERICA'S FIRST LAW PROFESSOR AND THE

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A Thesis

Submitted to the Faculty of the Graduate

School of Emory University

by

W. Edwin Hemphill

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PREFACE

It is a surprising circumstance that no biography

of George Wythe -- not even a small "Life" -- has ever

been published. Such a treatise would be worthwhile and

valuable (to mention only one reason) for the light which

it would throw on the history of American education in

the latter half of the eighteenth century.

The study is a preliminary step, perhaps, in

that direction. Its aim is to prevent a factual and

interpretative account of George Wythe's legal profess-

sorship and of his relationships with his three greatest

pupils. An adequate consideration of the influence upon

American history which he exerted directly through them

could not be confirmed within the present scope, but in the

three chapters devoted to them we have suggested at least

the main trends which future thought on the subject will

follow.

The most complete edition of the writings of

Jefferson, that published by the Thomas Jefferson Memorial

Association, has been used throughout whenever possible;

its lacunae must be filled from a number of sources.

TABLE OF CONTENTS

(page)

PREFACE

CHAPTER

1. INTRODUCTION 3
2. THE EDUCATION OF THE EDUCATOR 7
3. HIS INSTRUCTION OF JEFFERSON 13
4. HIS PROFESSORSHIP OF LAW 37
5. Its Establishment
6. Its Priority
7. Its Nature
8. Jefferson's Opinion of It
9. Its Duration and Termination
10. HIS INSTRUCTION OF MARSHALL 68
11. HIS INSTRUCTION OF CLAY 82

APPENDIX i

BIBLIOGRAPHY vi

Chapter I - INTRODUCTION

Posterity has come to think of George Wythe (1726-

1806), when indeed it thinks at all of him, as a Virginian

eminent in three distinct respects: as a patriot and

statesman, as a lawyer and judge, and as a teacher. It is

without doubt true that his name deserves a considerable

measure of recognition for his services in each of these

phases of his career. Much disagreement might be aroused

by raising a hypothetical question as to the relative

importance of the three. This shall not now be done.

It is pertinent, however, to call attention to the

noticeable shifting of emphasis among the three which the

thought of a century or more has developed. In his own day

and for half a century after his death George Wythe seemed

notable primarily for his work in the political and legal

fields. As the perspective has enlarged through the last

fifty years, interest in Wythe has centered largely on his

contribution to these prominent activities through his

services as the instructor of many of their foremost

leaders.1

1. A review of the earlier biographical sketches, contras-

ting them with the more recently published viewpoints

of S. C. Mitchell and D. R. Anderson, should suffice

to indicate the justice of this conclusion.

In his formal professorship of law or informally in

his law office or through the medium of private tuition,

George Wythe was

the teacher of nearly all the able public men from   
Virginia who were trained during the last half of the   
eighteenth century, -- a glorious period in national   
life. How large his influence on American History one   
can only guess, when one runs over the long list of   
men who gained from him the inspiration and training   
for their leadership in American political thought.1

Such a list of those who are known to have been taught by

Wythe should include Thomas Jefferson, John Marshall, Henry

Clay, James Monroe, Spencer Roane, Henry St. George Tucker,

John Wickham, Daniel Call, William Munford, William Branch

Giles, James Innis, Archibald Stuart, George Nicholas,

James Breckinridge, Ludwell Lee, Peter Carr, John Brown,

John Coalter, Buckner Thurston, and Littleton Waller

Tazewell.2 Frequently have speculations been made that the

painter's canvas might immortalize such a group in the

classical manner; for example, a verbiose Virginian, having

spoken of Wythe as "instilling into the minds of his pupils

those principles which implied them to imitate his virtues

1. Dice Robins Anderson, "The Teacher of Jefferson and

Marshall." South Atlantic Quarterly, XV, 327.

2. Cf. esp. Lyon Gardiner Tyler, "George Wythe." Great

American Lawyers, I, 71-72. This enumeration of a score

of Wythe's more prominent pupils is presented, without

comment, for whatever the bare names may mean. It should

be stated that an occasional claim, not sufficiently

corroborated by the present investigation to be accepted,

has been found that James Madison and Edmund Randolph

might be included in the list.

and even to eclipse the splendor of his fame," exclaims in

a footnote, "What a patriotic cartoon -- a School of

Virginia greater than the School of Athens -- might the

brush of the Virginia artist depict in Wythe laying down

the law"1 in the midst of such pupils!

There is only one extant indication from Wythe's

pen that he considered the training of publicists to be an

important phase of his activities. Renewing acquaintance by

correspondence with an intimate associate in the Continen-

tal Congress he wrote:

A letter will meet with me in Williamsburg where I

have again settled, assisting, as professor of law and

police in the university there, to form such characters

as may be fit to succede those which have been orna-

mental and useful in the national councils of America.2

A less direct testimony to the same fact comes from the

pen of Wythe's favorite pupil. Directing from abroad the

education of his nephew, Peter Carr, Thomas Jefferson

counted it the highest possible blessing that his relative

could be under his master's tutelage. In answer to Wythe's

report of Carr's studies under other William and Mary

professors and under his own private tuition,3 Jefferson

1. Hugh Blair Grigsby, The Virginia Convention of 1776, 123.

2. George Wythe to John Adams, December 5, 1783, reproduced

in facsimile in Charles Francis Adams, The Works of

John Adams, III, facing 384.

3. Cf. George Wythe to Thomas Jefferson, December 13, 1786.

William and Mary College Quarterly Historical Magazine,

XX, 213. This publication will hereafter be cited as

W. & M. Coll. Quar.

wrote:

I return to you a thousand thanks for your good-

ness to my nephew. After my debt to you for whatever

I am myself, it is increasing it too much to interest

yourself for his future fortune. But I know, that to

you, a consciousness of doing good is a luxury

ineffable. You have enjoyed it already, beyond all

human measure, and that you may long live to enjoy

it, and to bless your country and friends, is...

[my] sincere prayer....1

What a compliment and what affection these sentences

convey!

Wythe's instructions, it might well be noted, were

not limited to law. He once inserted in the local newspaper

this advertisement:

I propose in October, when the next course in law and

police will commence, to open a school for reading

some of the higher Latin and Greek classics and of the

approved English poets and prose writers, and also for

exercises in Arithmetic. [Signed.] George Wythe.2

This self-imposed addition to his already numerous duties

as a state chancellor and law professor was undertaken

without thought of financial compensation from those who

availed themselves of his active philanthropy.3 Later, in

Richmond, he continued teaching as a diverting avocation.

William Munford, whom Wythe had befriended in an unusually

1. Thomas Jefferson to George Wythe, September 16, 1787,

Thomas Jefferson, The Writings of Thomas Jefferson (ed.

by Albert Ellery Bergh), VI, 300. This edition of

Jefferson will be cited henceforth as Jefferson,

Writings, without reference to its editorship.

2. W. & M. Coll. Quar., X, 274, quoting (Williamsburg)

Virginia Gazette, July, 1787.

3. Tyler, loc. cit., 70.

intimate way1, cited this characteristic of his mentor, in

the oration which he delivered at the learned chancellor's

funeral:

But the most remarkable instance of his genuine

patriotism, to which I confess I am rendered most

partial perhaps by my own experience of its effects,

was his zeal for the education of youth. Harassed as

he was with business; enveloped with perplexing papers,

and intricate suits in chancery, he yet found time for

many years, to keep a private school for the instruct-

tion of a few young men at a time, always with very

little, and often demanding no compensation.2

Some years earlier, writing of the possibility that he

might be taken under Wythe's guidance, Munford had

expressed the opinion that, if the plan reached consum-

mation, his fortune would be made:

Nothing could advance me faster in the world than

the reputation of having been educated by Mr. Wythe,

for such a man as he casts a light upon all around

him.3

There is an interesting anecdote told by Beverley

Tucker4 which serves in part to suggest that George Wythe

had the qualities which go into the making of a genius for

1. See, e. g., George Wythe Munford, The Two Parsons,

363-364.

2. The (Richmond) Enquirer, June 13, 1806.

3. William Munford to John Coalter, June 13, 1790, W. &

M. Coll. Quar., VIII, 154.

4. Nathaniel Beverley Tucker, son of Henry St. George

Tucker, was, like his father, one of Wythe's successors

In the chair of law at William and Mary.

teaching:

I have still in my mind's eye, the tall, pale, extenu-

ated old man, that I used to see walking silent and

alone before the door, and whom we boys always beheld

with a feeling akin to superstitious awe. I recollect

that once meeting me alone, he surprised me by patting

me on the head, speaking kindly to me; and then

putting his long bony finger into my hand, leading me

up into his chamber, and showing me a swarm of bees at

work in a hive which he had fitted against one of the

panes of his window.1

To a thoughtful educator of contemporary times the

study of the services of George Wythe as an educator

suggests some interesting connotations:

In this day, when... the college teacher's position,

like that of the clergyman, is being robbed of some of

its relative power by the absorption of our generation

in the task of the changers of money -- when, indeed,

the very physical limitations imposed by too meagre

financial resources on the teacher in a modern college

make impossible to him the utilization of many

privileges that adorn and develop the spirit an lend

influence to character, -- at such a time one re-reads

for inspiration the story of a struggling college

president like Robert E. Lee of Washington College,

and the story of a distinguished statesmen and jurist

like Wythe, whose chief pleasure was the training of

young men. Men like Wythe and Lee have lent a luster

to the professor's labors which men like Henry Van

Dyke and Woodrow Wilson have tried to keep bright.2

1. Beverley Tucker to B. B. Minor, date unknown, quoted in

Part by B. B. Minor, "Memoir of the Author." George

Wythe, Decisions of Cases in Virginia, by the High

Court of Chancery (2nd edition, ed. by B. B. Minor),

XXX.

2. Anderson, loc. cit., 339.

Chapter II -- THE EDUCATION OF THE EDUCATOR

There are two salient facts in the education of

George Wythe; first, that he made himself, almost solely

by his own exertions, one of the best versed scholars of

his day in general learning, having no peer among contem-

porary Virginians in the realm of classical languages

and literature; second, that there occurred in his

legal study an event which may have given bent to his

ability to foster the development of a student's talents.

Born in Elizabeth City County, Virginia, in the

year 1726, he was the second son among three children

of a respectable and wealthy parentage. His father's

estate was, upon his death in 1729, transferred by the law

of primogeniture to George's elder brother; and for some

indeterminable reason none, or at best only a very little,

of this wealth was applied to the education of the future

scholar.1 He attended the common schools, it is reported,

only long enough to learn to read and write and to apply

the very simplest rules of arithmetic2, after which his

mother took over the responsibility of his education. By

1. Tyler, loc. cit., 54.
2. The American Law Journal (ed. by John E. Hall), III, 93.

her he was initiated into the Latin language1, and with

her assistance, though she did not know the language, he

acquired the elements of Greek.2 It is said that, while he

was reading the Greek Testament, she held an English one

nearby to assist him as best she could in the translations.3

Wythe was for a time a student at William and Mary

in Williamsburg, but the loss of the college's records

forestalls the possibility of gaining any accurate know-

ledge of his schooling there. Neither the time of his

attendance nor the length of his stay can be determined.

In regard to the former, he is variously reported to have

been a student at the historic college in 1740,4 in 1735,5

and, more indefinitely, sometime between 1720 and 1735.6

It cannot even be ascertained whether Wythe pursued col-

legiate studies or was enrolled in the grammar school which

was an integral part of the college; one authority apparently

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

Patrick Henry, 65.

1. Anderson, loc. cit., 329.
2. Jefferson, Writings, I, 167.
3. George Morgan, The Life of James Monroe, 24.
4. The History of the College of William and Mary, 84
5. New England Historical and Genealogical Register, XLII,

359.

presumes without hesitation or misgiving that he was in the

college,1 while another (who is better qualified to judge

accurately on this point) affirms that he was probably a

grammar schools scholar.2

Thus, George Wythe's early educational advantages

were not nearly proportional to those which sight have been

expected. They were equally unrepresentative of his later

attainments in the acquisition of knowledge. From this

point onward the direction of his progress devolved almost

solely upon himself, and to himself must be given the

credit for his accomplishments.3

Beginning his preparation for the bar, Wythe spent

about two years, after the manner of the time, in the law

office of an uncle, Stephen Dewey, of Prince George County,

near Petersburg. This period was probably significant in

developing his genius for the training of legal aspirants.

The narrative and exposition of this episode should not be

paraphrased:

With this limited scholastic education, he was

sent [perhaps about 1743] to study law with his uncle-

in-law, Mr. Dewey, a lawyer of distinction in the

1. Anderson, loc. cit., 329.
2. Tyler, loc. cit., 54-55.
3. Cf., e.g., Jefferson, Writings, 166-167; and Thomas

Jefferson to Louis Hue Girardin, January 15, 1815,

Writings, XIV, 231.

County of Prince George. Here not much pains was

bestowed upon him; his time was chiefly devoted to

what is termed the drudgery of a lawyer's office. He

apparently made very little progress in his legal

studies. Yet it might be very fallacious to infer that

that drudgery had no connection with or influence upon

his future success. The profession of law requires

labors and sacrifices of its rotaries; and some who

have been, at the outset, drudges, have by the very

patience, perseverance, accuracy, and closeness of

observation which so called drudgery necessarily

engenders and inculcates, become its greatest

luminaries.

But the labors and toils of the student may be

lightened by the attention and judicious encouragement

of the preceptor; and no doubt Mr. Wythe profited by

his own experience under Mr. Dewey, when in after

years he so zealously devoted himself to the guidance

and instruction of candidates for the bar.1

No hint that the young law student ever took such a

philosophic view of these two years of tedium is giving in

the report that he referred in the later times to the

"neglect" with which he had been treated.2

Returning to his native section of the colony.

Wythe was licensed to practice law in minor courts on

June 18, 1745, at the age of twenty. However, he moved

against soon thereafter to Spottsylvania County, near the

town of Orange, in order that he might place his legal

career under the patronage of an eminent practitioner,

John Lewis by name. This association continued about eight

1. Minor, loc. cit., xii.
2. Tyler, loc. cit., 55.

years, during which he married Lewis' daughter or sister,

Ann, in December, 1747, only to be parted from her by her

death in August of the following year. The death of his

brother, intestate, in 1755, fixed upon him the family's

estate and called him back to the tidewater region.

Settling in Williamsburg, he was admitted at the age of

thirty to the brilliant bar of the General Court. Beginning

especially in the year, 1756, he applied himself with

indefatigable assiduity to the broad studies (ranging from

the classic literature of several languages through mathe-

matics, philosophy, and the liberal sciences to a most

profound knowledge of law) which were, as the years went

by, to give him an unrivalled reputation for erudition.1

The educational peak to which George Wythe thus

lifted himself, as it were, by his own boot-straps was

indeed remarkable. It is

certain that he . . . raised upon the original founda-

tion, whencesoever acquired, a superstructure of

ancient literature which has been rarely equalled in

this country. He was perfectly familiar with the

authors of Greece and Rome; read them with the same

ease, and quoted them with the same promptitude that

he could the authors in his native tongue.2

His application to law produced an equally notable store

of knowledge:

1. The facts reported in this paragraph are best summarized

by Tyler, loc. cit., 55-57.

1. Wirt, Patrick Henry, 66. St. George Tucker, among others,

approved Wirt's portrait of Wythe: W. & M. Coll. Quar.,

XXII, 251, 256.

Wythe, above all early statesmen, was deeply

learned in the laws; had traced all its doctrines to

their fountain heads, delighted in the year book, from

doomsday down; had Glanville, Bracton, Britton, and

Fleta bound in collects; had all the British Statutes

at full length, and was writing elaborate decisions

every day, in which, to the amazement of country court

lawyers, Horace and Aulus Gellius were sometimes

quoted as authorities.1

In the language of Wythe's contemporaries his erudition

produced emphatic references to himself as "the walking

library";2 when translated into the phraseology of a

present-day popular biography it becomes:

His head was largely filled with law, and what space

law left was enriched by the wisdom of the ages. Out of

his archaic mouth came quaint locutions pat to the hour.3

It was this well-rounded culture, combined with the bond of

a sympathetic liberality of opinion,4 which drew Dr. William

Small, the scholarly Scotch scientist, to Wythe and the two

of them to the sociable and accomplished royal governor,

Sir Francis Fauquier, in the friendship immortalized by

Jefferson's pen.5 And it was this comprehensive learning

which laid the foundation for Wythe's career as a teacher.

1. Charles Warren, A History of the American Bar, 344,

quoting from Hugh Blair Grigsby, Discourse on the Life

and Character of Littleton Waller Tazewell.

1. Anonymous "Communication" published in The Enquirer,

June 10, 1806.

1. George Morgan, Patrick Henry, 82.
2. Francis W. Hirst, Life and Letters of Thomas Jefferson, 31.
3. Cf. post, 19 et seq.

Chapter III -- HIS INSTRUCTION OF JEFFERSON

An intimation of the latent interest in a study of

Thomas Jefferson's education may be gleamed from a letter

of advice written by him to a grandson who was sent away

to school at a tender age:

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 I did not turn off with some of

them, and become as worthless to society as they were.

I had the good fortune to become acquainted very early

with some characters of very high standing, and to

feel the incessant wish that I could ever become what

they were. Under temptation and difficulties, 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.1

George Wythe was one of the estimable gentlemen who exerted

such a wholesome influence on the youthful Jefferson.

Thomas Jefferson, it may be stated in somewhat the

conventional way, was born near the present town of

Charlottesville, Virginia, on April 2, 1745, on the land

which he later inherited and which was always his home.2

My father "placed me", says Jefferson in reminiscence of his

early education:

1. Thomas Jefferson to Thomas Jefferson Randolph, Novem-

ber 24, 1808, Writings, XIX, 197. The entire first para-

graph of this letter, only partially quoted, is timely.

1. His father's frontier residence was known as Shadwell.

at the English school at five years of age; and at the

Latin at nine, where I continued until his death [in

1757]. My teacher, Mr. Douglas, a clergyman from

Scotland, with the rudiments of the Latin and Greek

languages, taught me the French; and on the death of

my father, I went to the Reverend Mr. Maury [of

"Parson's Cause" fame], a correct classical scholar,

with whom I continued two year; and then, to wit, in

the spring of 1760, went to William and Mary college,

where I continued two years.1

And with his entrance at William and Mary there began the

portion of his education which really fitted him for the

eminent leadership which he was to show in many fields of

activity during the remaining sixty-six years of his life.

Weighing the possible advantages of continuing his

studies in Williamsburg, the youth foretold that "by going

to the College, I shall get a more universal Acquaintance,

which may hereafter be serviceable to me"2, but he could

not possibly have foreseen the nature of the friendships

which awaited his and the extent of the influence which

they, and notably one of them, exercised upon the entire

course of his subsequent career.

The honor of being first in the list of friends who

gave bent to Jefferson's mind cannot be claimed by George

Wythe. William Small, a gentleman "who had brought over

1. Jefferson, Writings, I, 3.
2. Thomas Jefferson to John Harvey, January 15, 1760,

quoted by Henry S. Randall, The Life of Thomas Jefferson,

I, 19. This letter, the earliest extant from his pen,

is also specially printed in Jefferson, Writings, XX,

just back of the index.

from his native Scotland an uncommon share of the learning

which had conferred such celebrity on its universities"1

and who was now a professor in the Virginia college, left

an indelible impress upon the new student. Relatively little

is known concerning Small. He is looked upon as a remarkable

figure "not only for his knowledge of the sciences, rare in

Virginia at that time, but also for his ability to impart

it."2 He had been an intimate friend of Erasmus Darwin, the

English scientist who was Charles Darwin's grandfather, and

of Watt, the inventor of the steam engine.3 To William and

Mary he made two notable contributions: he introduced the

lecture system of instruction, being thus the first

educator to adopt lectures in lieu of the formal recitation

from textbooks in an American college,4 and he popularized

for the first time in the study of natural science, making a

trip to England especially for the purpose of purchasing

for the college an extensive scientific apparatus.5 To the

1. Phillip Alexander Bruce, History of the University of

Virginia, I, 28.

1. Ibid.
2. Tyler, loc. cit., 66.
3. Cornelius J. Heatwole, A History of Education in

Virginia, 91.

1. Tyler, loc. cit., 67.

influence of Small, his first mentor, Jefferson penned

many years later two glowing tributes:

Dr. Small was . . . to me as a father. To his enligh-

tened and affectionate guidance of my studies at

college, I am indebted for everything.

He was Professor of Mathematics at William and

Mary, and, for some time, was in the philosophical

chair. He first introduced into both schools rational

and elevated courses of study, and, from an extra-

ordinary conjunction of eloquence and logic, was

enabled to communicate them to the students with great

effect.1

It was my great good fortune, and what probably fixed

the destinies of my life, that Dr. William Small of

Scotland, was then Professor of Mathematics, a man

profound in most of the useful branches of science,

with a happy talent of communication, correct and

gentlemanly manners, and an enlarged and liberal mind.

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 conversation I got my first

views of the expansion of science, and of the system

of things in which we are placed.2

Thus for two years Small seems to have considered Jefferson

as his protégé and to have contributed largely to the

liberal education and training of the future statesman.

Yet the eulogistic tone in which Jefferson referred to

Small prompts a suspicion of overstatement, and at least

one authority professes to find some of "that exaggeration

with which generous minds are prone to regard the services

1. Thomas Jefferson to Louis Hue Girardin, January 15,

1815, Writings, XIV, 231.

1. Jefferson, Writings, I, 3.

of early benefactors."1 It may be admitted that Jefferson's

praise is extravagant, however, without jeopardizing the

essential truth embodied in his commendations. Proper

allowance having been made for the fervency of Jefferson's

tender nature, these acknowledgements may be accepted as

wholly just.

The arresting clause, "It was my great good

fortune, and what probably fixed the destinies of my life,"

is at first rather unintelligible. One rather wonders in

what connection it was meant to be taken, and an empty

feeling arises that the following sentence or two does not

justify such a strong opinion. But within a few additional

lines Jefferson seems to reveal the thought which elicited

such an impressive tribute to Small when he tells of the

professor's influence in placing him under Wythe's

tutelage. He relates that Small

returned to Europe in 1762, having previously 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.2

It is in the atmosphere of this additional viewpoint that

the statement tends to find its native context. No matter

1. Randall, Jefferson, I, 23-24
2. Jefferson, Writings, I, 3.

how potent Small's encouraging interest had been, it could

scarcely in two years have made an impression sufficiently

strong to have prompted, sixty years later, so forceful

view of its influences. It is rather in reference to the

successive instructions of Small and Wythe, covering seven

years, that Small's presence at William and Mary may be

said to have determined the course of Jefferson's life.

Small attained success in the "greatest of teacher's

purposes," one of the very recent Jeffersonian students

intimates, when "he arranged for a continued association

of the immature student with his most intimate and trusted

friend," George Wythe -- an association "which should

continue through Jefferson's most formative years."1

A second man, the accomplished royal governor,

Francis Fauquier, contributed a notable way in the

moulding of Jefferson's life, though not independently of

Small and Wythe, before he became exclusively a student

under the later. From the records which Jefferson left of

his intimate association with this trio of learned gentlemen

his biographers have built up glowing accounts of his

college days, 1760-1762, and agree without a dissenting

voice that the Jefferson of later days was a prototype of

1. Roy J. Honeywell, The Educational Work of Thomas Jeffer-

son, 4. One of the best appreciations of the relation

between Small and Jefferson is given in Albert Jay

Nock, Jefferson, 7-9.

the distinguishing characteristics of each.

Looking back at different times upon his youth,

Jefferson referred twice to the meetings of this famous

quartet. In his "Autobiography", acknowledging his indeb-

tedness to William Small, he recalled that the Scotch

educator

introduced me to the acquaintance and familiar table

of Governor Fauquier, the ablest man who had ever

filled that office. With him, and at his table, Dr.

Small, and Mr. Wythe, his amici omnium horarum, and

myself, formed a partie quarrée, and to the habitual

conversation on these occasions I owed much

instruction.1

Though stating substantially the same facts, an earlier

account in a letter to a Virginia historian deserves

partial reproduction:

He [Small] procured for me the patronage of Mr. Wythe,

and both of them, the attentions of Governor Fauquier,

the ablest man who ever filled the chair of government

here. They were inseparable friends, and at their

frequent dinners with the Governor, (after his family

had returned to England,) he admitted me always, to

make it a partie quarrée. At these dinners I have heard

more good sense, more rational and philosophical

conversation, than in all my life besides. They were

truly Attic societies.2

That Jefferson was not the only youth to be admitted to

the amiable governor's dinners is indicated by the report

that "at his table the youthful Jefferson, Page, Walker,

1. Writings, I, 3-4.
2. Thomas Jefferson to Louis Hue Girardin, January 15,

1815, Writings, XIV, 231.

McClurg and other students of the college learned their

lessons in the rights of man."1 But that Jefferson, at the

age of seventeen,2 should be accepted on what seems to have

been equal plane in the society of Fauquier, then fifty-

six, of Small, probably over forty-five,3 and of Wythe,

now thirty-four, is a curious fact which may indeed

occasion surprise.4

Had William and Mary offered to the youth who had

come down from the western hills "no other facilities for

the acquisition of culture than the intimate society of

these three men," he could not well "have escaped a liberal

education."5 Abundant indications suggest that he

strengthened native endowments and absorbed guiding

principles from the opportunity thus afforded him at the

1. Lyon Gardiner Tyler, Williamsburg, The Old Colonial

Capitol, 42.

1. It cannot be known definitely when this association

began, but it was probably after Jefferson's birthday in

1760. As a quarrée it ended, of course, with Small's

return to Europe, which limited its duration to two years.

1. Nock, Jefferson, 9.
2. Randall, Jefferson, I, 30-31. Aside from the elements of

luck, genius, or destiny, one explanation is that, like

some other men of his period, notably Franklin, he seems

to have been born with a certain maturity which made him

at home in the association: Nock, Jefferson, 17.

1. Charles Flinn Arrowood, Thomas Jefferson and Education

in a Republic, 7.

already historic college. One of the best statements in this:

There, from Small he learned of that vast field of

natural science, in which he was to continue to feel

so keen an interest until the end; from Wythe, of those

great principles of jurisprudence which were to enable

him to become one of the foremost of American social

and political reformers; and from Fauquier, of the arts

of government as well as the graces of courtly bearing

and the charms of urbane conversation. Such familiar

and constant intercourse must have deeply confirmed

those aptitudes which he, as a college youth, had

brought down to Williamsburg from his mountain home:

love of science, appreciation of literature and law,

and a relish for intellectual companionship.1

Thenceforward, in the words of a recent interpreter, Jefferson

remained always the disciple of the cultivated man of

science, the scholarly lawyer, and the experienced man

of the world...Indeed, there is hardly a line of

his activity that can not be run back to one or another

of these men.2

But Jefferson's college days could not last forever;

he completed his studies at William and Mary in 1762 in his

twentieth year, relatively a very learned youth. Thereupon

his instructions under the Scotch professor and his social

contacts with the English courtier were supplanted, almost

wholly, by the study of law in the office of George Wythe.

1. Bruce, History of the University of Virginia, I, 29.
2. Nock, Jefferson, 17. This biographer professes to see

almost "the only race of fervency" in Jefferson's

writings "When, late in his life, he records his admiration"

for these three men: ibid. It is interesting to note that

the same biographer who protests that Jefferson exag-

gerated Small's influence thinks that his account of his

intimacy with Fauquier is a conservative understatement:

Randall, Jefferson, I, 31.

In spite of the services of William Small in

attempting to place Jefferson under the tutelage of Wythe,

it seems rather curious that he youth accepted this

opening. For his kinsmen, Peyton and John Randolph, sons of

his great uncle, Sir John Randolph, who had both been

eminent practicing attorneys in Williamsburg when Wythe

secured his license and who had each held the honorable

position of attorney-general of the colony, were on

friendly terms with him and would have welcomed the oppor-

tunity of directing his legal studies. Under such circum-

stances, even when adequate consideration is given to

Small's influence and to his relations with Wythe in the

partie quarrée, one rather wonders at Jefferson's choice

and is inclined to accept favorably, though not without

reservation, the viewpoint that his choice was a creditable

testimony to the younger lawyer's talent for teaching.1

Jefferson never recorded details of his five years

as a law student, thought he left no lack of evidence as to

his regard for his instructor in the legal science. Having

related his admission to the dinners at "The Palace", home

of the royal governors, he summarized the following years

in this fashion:

1. Randall, Jefferson, I, 30, and Tyler, loc. cit., 67.

Cf. Thomas Jefferson to Thomas Jefferson Randolph,

November 24, 1808, Writings XII, 197.

Mr. Wythe continued to be my faithful and beloved

mentor in youth, and my most affectionate friend

through life. In 1767, he led me into the practice of

the law at the bar of the General court, at which I

continued until the Revolution shut up the courts

of justice.1

With similar brevity he spoke against of his legal education:

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

death, my most affectionate friend.2

Other sources, however, are somewhat more illuminating.

Jefferson's college days ended in December, 1762,

and he returned to Shadwell, not plunging immediately into

work in Wythe's office. But on his mentor's advice he

included in his baggage a copy of that famous treatise

upon which so many Virginia lawyers were first nurtured,

Coke upon Littleton. It is related that he

Journeyed leisurely, as was his wont, spending two or

three days at one friend's house, a week at another,

Christmas at a third. Meanwhile, Coke lay in his

trunk untouched, but his silk stockings, his silk

garters and silk-lined coat were in constant use...

Between dancing, fiddling and love-making, the young

gentleman found little time for the grave study of

the law.3

On Christmas Day he wrote to his college chum, John Page,

1. Jefferson, Writings, I, 4.
2. Thomas Jefferson to John Snaderson, August 31, 1820,

Writings, I, 165.

1. Eugene L. Didier, "Thomas Jefferson as a Lawyer",

Green Bag, XV, 153.

in a delightfully frivolous vein of his fears that his

study of law would be hindered by vivid recollections of

the gay social life of the colony's capitol, and more

especially of the Miss Rebecca Burwell with whom he had

recently fallen in love:

. . . there is so lively an image of her 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 Coke this winter; for God knows I have not

seen him since I packed him up in my truck 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 in-

quietudes 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 began to whine a little under this 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, perfumes most, embroiders most, and

talks most nonsense, is most admired. Thought to be

candid, there are some who have too much 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

To what extent Jefferson did absorb Coke in that winter we

do not know

1. Thomas Jefferson to John Page, December 5, 1762,

Writings, IV, 3-4.

Jefferson formulated a tentative plan of returning

to Williamsburg in May, 1763. It failed to materialize.1

But during the summer he could write definitely, "I expect

to be in Williamsburg by the first of October, if not

sooner.2 His purposes in moving again to the capitol

seem to have been "to attend the General Court and to

consult . . . Wythe on some points of law which sorely

perplexed his love-distracted mind."3 Perhaps the most

important result of this visit, from the point of view of

his legal studies, was the elimination of law's engaging

rival in Jefferson's interests. He dreamed, youth-like, of

European travels,4 and made some sort of conditional

proposal to his favored Belinda.5 For whatever reasons, she

declined his attentions, marrying another and becoming in

time the mother-in-law of John Marshall. It seems almost

certain that this misfortune in Cupid's realm had a

wholesome reaction on Jefferson's legal studies, stimulating

1. Thomas Jefferson to John Page, January 20, 1763,

Writings, IV, 7.

1. Thomas Jefferson to John Page, July 15, 1763, Writings,

IV, 11.

1. Didier, loc. cit., 153. To Page Jefferson wrote from

Williamsburg, October 7, 1763, "The court is now at

hand, which I must attend constantly, so that unless

you come to town, there is little probability of my

meeting with you anywhere else": Writings, IV, 12.

1. Thomas Jefferson to John Page, January 20 and July 15,

1763, Writings, IV, 7-8, 8-10.

1. Thomas Jefferson to John Page, October 7, 1763, and

January 19, 1764, Writings, IV, 12, 13-14.

both his interest and industry.1 In this winter of 1763-1764

law became Jefferson's mistress in a sense in which this

designation could not previously have been used; he set

about his studies with a burning ambition to attain success

at the bar.2

However, the future statesmen was not, perhaps,

even this early in his life, without thought of a public

career, for he must (with the examples of his mentor and of

many others before him) have been cognizant of the truth

which he expressed later in a letter to a grandson, when he

wrote:

The study of the law is useful in a variety of points

of view. It qualifies a man to be useful to himself,

to his neighbors, and to the public. It is the most

certain stepping-stone to preferment in the political

line.3

To Coke's treatise, then, the disappointed lover, teeming

with enthusiasm, reapplied himself with a new zeal. He

spoke of this advanced legal primer as a work "printed in

black letter, and offering as little promise of entertain-

ment or instruction as the outside of a gold mine does of

the wealth within."4 But though Coke was a "dull old

1. Didier, loc cit., 153; David M. R. Culbreth, The

University of Virginia, 41.

1. Hirst, op. cit., 30-31.
2. Thomas Jefferson to Thomas Mann Randolph, Jr., May 30,

1790, Writings, VIII, 31.

1. Didier, loc. cit., 153, quoting an unknown source.

scoundrel", promising and affording no amusement, yet

Jefferson gleaned from his pages a great store of informa-

tion which served him well in later years.1 In addition,

Coke's principles probably played a part in moulding

Jefferson's political thought. In a general way, these

principles correspond to the republican tenets of "the

great Democrat"; and when Jefferson's party began to lose

favor, he ascribed its downfall partially to the fact that

Coke had been cast into virtual discard by the legal

profession and replaced by Blackstone's treatise, which

was characterized by Toryism rather than Whiggism.2

But, like his teacher, Jefferson held a smattering

or superficiality of knowledge in sincere aversion and was

not content until he had traced law to its original sources.

It is reported that he

read slowly, with much labor, but with some profit, the

rugged law-Latin treatise of Bracton on the ancient

laws of England, who was also, a contemporaneous

interpreter of Magna Charta. he then went back, and

perused with the deepest interest the book of King

Alfred's laws. He always read with pen in hand, made

notes, comments, and extracts.3

1. Didier, loc. cit., 154.
2. Cf. post, 43-44, 50-51, 78. Thomas Jefferson to

Horatio g. Spafford, March 17, 1814, Writings, XIV,

119-120; to John Tyler, May 26, 1810, ibid., XII,

392-393; to James Madison, February 17, 1826, ibid.,

XVV, 156,

1. Didier, loc. cit., 155.

Thus for some years he was hard at work in Wythe's office,

"filling his commonplace book with abstracts and dis-

quisitions, or attending Court, or 'devilling' for his

learned friend and mater."1 One of his biographers reports:

Here, it is said, he became thoroughly acquainted with

the civil and common law; exploring every topic, and

fathoming every principle. Here also, he is said to

have acquired that facility, neatness, and order in

business, which gave him in effect, "the hundred hands

of Briarsus".2

"With such a guide, and in such a school," this biographer

concludes typically, " all the rudiments of intellectual

greatness could not fall of being stirred into action."3

After his serious entry into Wythe's tutelage in

the winter of 1763-1764, Jefferson spent his summers at

Shadwell, thus breaking pleasantly the long routine of the

winters of study in Williamsburg.4 Concerning his life at

home during one of the later summers before he became a

licensed attorney there is an interesting story:

His most intimate friend at that time of Dabney

Carr, who had been a fellow-student at college. They

were inseparable companions. Both were students of law;

1. Hirst, op. cit., 31.
2. B.L. Rayner, Life of Thomas Jefferson, 39.
3. Ibid.
4. Culbreth, op. cit., 41. During that first winter he is

known to have remained in Williamsburg at least as late

as April 9, 1764, for he wrote to John Page on that date

from the capitol; cf. Jefferson, Writings, IV, 16.

both devoted to reading; both clever; both entusi-

astically patriotic. Two miles from Jefferson's early

home was a high mountain, upon which he afterwards

raised the stately mansion called Monticello. At the

top of this mountain, in the deep recesses of the then

virgin forest, under an ancient oak of gigantic size,

the two friends constructed a rustic seat to which

they retired every morning, and passed the day in

studying law, and in intelligent conversation. They

entered into a solemn agreement that, whoever died

first should be buried by the other beneath that old

oak. Young Carr was the first to die, and Jefferson

faithfully carried out the contract, and, long

afterwards, when Jefferson had taken up his residence

at Monticello, the spot was made the burial-place of

the family. Both friends have long since reposed

beneath the ground on which they studied together in

their early youth.1

The breadth and profundity of the studies which Jefferson

pursued under his preceptor's general supervision after he

had mastered Coke are, perhaps, best indicated by several

letters which he wrote to inquiring legal students, or in

one case to a legal teacher.2

Jefferson was inducted into the practice of law

at the bar of the General Court in 1767, at the age of

twenty-four, under the auspices of his master and friend.

When he secured his license as an attorney he was remar-

kably well prepared for a successful legal career;3 in the

1. Didier, loc. cit., 154.
2. See, e.g., Thomas Jefferson to Thomas Mann Randolph,

Jr., May 30, 1790, Writings, VIII, 31-32; to Dabney

Terrell, February 28, 1821, ibid., XV, 318-322; to Dr.

Thomas Cooper, January 16, 1814, ibid., XIV, 54-59. But

of. esp. Thomas Jefferson to ?, August 30, 1814,

reprinted in Randall, Jefferson, I. 52-57.

1. Cf. Didier, loc. cit., 153, 155, 158, and David Saville

Muzzey, Thomas Jefferson, 7.

phrasing of one narrator:

He brought with him into practice the whole body of

ancient and modern jurisprudence, text and commentary,

from its rudest monuments in Angle-Saxon, to its

latest depositories in the vernacular tongue, well

systematised in his mind, and ready for use at a

moment's warning.1

With such an educational foundation, with prominent family

connections in the profession, and under the patronage of

the eminent lawyer who, he reported2, held the first place

at the bar, it is small wonder that the able young man

gained a creditable position at the bar. His splendid

achievements in other fields have dimmed, if not destroyed,

his earlier reputation as a lawyer3, but of his busy

practice and of his fame rather as an efficient office

lawyer than as an eloquent advocate, ample testimony has

been preserved.4 The proof would very probably be much more

conclusive had not all the systematic attorney's papers and

books (with the exception of one volume lent out at the

time) been lost by fire when Shadwell burned early in 1770.5

Williams Wirt, a renowned legal figure of the next

generation, made the best summary of Jefferson's legal

1. Rayner, op. cit., 33.
2. Thomas Jefferson to Ralph Izard, July 17, 1788,

Writings, VII, 71.

1. Didier, loc. cit., 153.
2. See esp. Randall, Jefferson, I, 46-57.
3. Cf. Thomas Jefferson to John Page, February 21, 1770,

Writings, IV, 18-19.

education and attainments:

The study of the law he pursued under George Wythe; a

man of Roman stamp, in Rome's best age. Here...

following the giant steps of his master, he travelled

the whole round of the civil and common law. From the

same example he caught that untiring spirit of inves-

tigation which never left a subject till he had searched

it to the bottom. In short, Mr. Wythe placed on his head

the crown of legal preparation; and well did it become

him. Permit me, here, to correct an error which seems

to have prevailed. It has been thought that Mr.

Jefferson made no figure at the bar; but the case was

far otherwise. There are still extant, in his own fair

and neat hand, in the manner of his master, a number of

arguments which were delivered by him at the bar upon

some of the most intricate questions of the law; which

if they shall ever see the light will vindicate his

claim to the first honors of the profession.1

In 1774, the Revolutionary fever began to flare up

in the colonies. When, on that account, Virginia's courts,

including the General Court in Williamsburg, ceased to

operate, Jefferson found himself out of professional

employment. His election to the Continental Congress not

long thereafter drew him into the succession of political

duties lasting more than thirty years; and when, in 1808,

at the age of sixty-five, he retired from the presidency

and from the political arena, he did not return to legal

pursuits. From such considerations it might at first glance

appear that the future statesman had spent five years of

arduous legal preparation without gaining any other fruit

1. Didier, loc. cit., 158, quoting a speech made in

Washington, D.C., October 19, 1826.

than about six years of pleasant and lucrative practice.

Edmund Burke has been credited with the statement

that "law is one of the first and noblest of human sciences,

a science which does more to quicken and invigorate the

understanding that all other kinds of learning put

together."1 This viewpoint may be taken as an explanation

of the striking predominance of lawyers among American

political annals.2 Certain it is that Jefferson's legal

studies were not wasted. Evidence of the advantages which

his experience in jurisprudence brought to bear upon his

subsequent career may be seen in nearly everybody body of his

writings -- in his portion of the justly famous Code of

the Revisors of the Virginia statutes (1779), in his

reports of the decisions of the General Court of the state,

in his Notes on Virginia, in his diplomatic correspondence

as French ambassador, in his written opinions as a member of

Washington's cabinet, in his parliamentary manual, and in

many of the miscellaneous citations and annotations which

abound even in his general letters.3 Had his acquaintance with

law aided him in nothing other than in preparing the epochal

1. Quoted by Didier, loc. cit., 157.
2. Ibid.
3. Cf. Randall, Jefferson, I, 49-50.

reforms suggested by the committee of revisors, it could

scarcely be adjudged unprofitable. To cite a less familiar

service, the preservation of most of Virginia's earlier

statutes through the troublous Revolutionary period may be

credited to Jefferson.1 From such facts as these the closest

student of Jefferson's relations to the legal science has

concluded that his "early Studies, his practice at the bar,

and his universal reading were but a preparation for his

true vocation" to the "born statesman".2 It may not,

perhaps, be unjust to consider the years 1763-1774 as a

worthwhile apprenticeship which Jefferson served to the

profession from which statesmen most frequently emerge.

Within the compass of the present inquiry it would

be impossible to outline adequately the close bonds which

united Jefferson and Wythe during the thirty-nine years of

the preceptor's life after 1767. But since these ties cast

a direct and authentic light on Wythe's services as an

educator, a few of them must be mentioned. During years of

political transition in the state and nation, from about

1772-1778, the two men were in closer harmony of thought

and action on both the smaller and larger arenas than any

1. Cf. Thomas Jefferson to George Wythe, January 16, 1796,

Writings, IX, 319-323; and William Waller Hening,

Statutes at Large of Virginia, vii-xi.

1. Didier, loc. cit., 157.

other pair of Virginians.1 In the revision of the code the

two, pupil and master of old, were in utmost sympathy on

all changes as well as the most steadfast workers.2 Jefferson

wished others to have an opportunity similar to his own and

made his preceptor the first American professor of law,

never losing an opportunity, though he was abroad part of

the time, to speak favorably of Wythe's course at William

and Mary. During the feverish era of party formation the

two men stood shoulder to shoulder, staunch republicans;

and when, in 1800, Jefferson began to prepare his parlia-

mentary manual, he sought chiefly the advice of his aged

mentor.3 On the other hand, a hint as to Wythe's regard for

Jefferson is seen when he writes, "...I find myself

indebted further for that kind attention to me, to prove

which you never suffer an opportunity to pass unheeded."

and requests Jefferson's advice in regard to the coming

Federal Convention, supposing that he could not "be directed

so well by any other luminary."4 In his will Wythe presented

to Jefferson his valuable library and its accessories.

1. Cf., e.g., Jefferson, Writings, I, 11-12, 60-61, 167-169.
2. Bruce, History of the University of Virginia, I, 67; cf.

post.

1. See esp. Thomas Jefferson to George Wythe, January 22,

1797, and February 28, 1800, Writings, IX, 370; II, 335-336.

1. George Wythe to Thomas Jefferson, December 13, 1786,

W. & M. Coll. Quar., XX, 213, 214.

a legacie, considered abstractlie, perhaps not

deserving a place in his museum, but estimated by my

good will to him, the most valuable to him of any

thing which I have power to bestow.1

One of Jefferson's numerous grandsons, George Wythe

Jefferson, was named for the eminent jurist.2 Finally, a

letter written by Jefferson just after he had received news

of his mentor's death at the hands of an ungrateful

grand-nephew, who had hoped to hasten the receipt of his

portion of the chancellor's estate, gives a summary of the

tender feeling which ever existed between preceptor and

pupil:

Your letters of the 4th 8th inst. have been duly

received, the last announcing the death of the venerable

Mr. Wythe, than who a purer character has never

lived -- his advanced years had left us little hope of

retaining him much longer, and had his end been

brought on by the ordinary decays of time and nature,

altho' always a subject of regret, it would not have

been aggravated by the horror of his falling by the

hand of a parricide -- such an instance of depravity

has been hitherto known to us only in the fables of the

poets -- I thank you for the attention you have been so

kind as to shew in communicating to me the incidents of

a case so interesting to my affections, he was my

antient master, my earliest & best friend; and to him I

am indebted for first impressions which have had the

most salutary influence on the course of my life. I had

reserved with fondness, for the day of my retirement,

1. Minor, loc. cit., xxxvii, reprinting the will. This

bequest formed the nucleus of Jefferson's third great

library, sold to Congress about 1825 for $23,500.

1. Randall, Jefferson, I, 52.

the hope of inducing him to pass much of his time with

me, it would have been a great pleasure to recollect

with him first opinions on the new state of things

which arose soon after my acquaintance with him; to

pass in review the long period which has elapsed since

that time, and to see how far those opinions had been

affected by experience & reflection, or confirmed and

acted on with self-approbation but this may yet be the

enjoiment of another state of being.1

Truly were the relations between Jefferson and his teacher

a "testimony to the greatness of both men."2

1. Thomas Jefferson to William Duval, June 14, 1806,

Reprinted by Anderson, loc. cit., 343.

1. Anderson, loc. cit., 342.

Chapter IV -- HIS PROFESSORSHIP OF LAW

A. Its Establishment

In the latter part of the year 1779 George Wythe

became professor of law in William and Mary College.

It will be pertinent, by way of introduction, to

show that Wythe had for some years been more than an

alumnus of the institution -- had been, in fact, rather

intimately connected with the school. Of minor importance

but of interest because it is his earliest known service

in an educational way is the report that he served for two

years, in 1757 and 1758, as the guardian of one Lockey

Collier, a student in the grammar school.1 In 1758 he was

chosen by the faculty of the college as the representative

of that corporation in the House of Burgesses, succeeding

such men as Edward Barradall, Beverley Randolph, and

Peyton Randolph.2 A few years later he began a career as a

member of its Board of Visitors, analogous to the boards of

trustees common in present-day collegiate organization. The

records of his incumbency of this position are incomplete.

We know only that he was among the ten Visitors serving the

term of 1761-1763, together with Francis Fauquier, William

1. Tyler's Quarterly Historical and Genealogical Magazine,

VI, 58.

1. Tyler, loc. cit., 57.

Robinson, and Robert Carter Nicholas;1 that he was present

at a meeting of the Board on September 1, 1769;2 and that

in 1772 he was active in the same capacity with eighteen

associates, including Thomas Nelson, John Page, Carter

Braxton, Richard Bland, Dudley Digges, and Lewis Burwell.3

The length of the eminent patriot's service as a trustee

of the college during the eighteen years between 1761 and

1779 cannot be determined. It may be surmised, however,

with some possibility of accuracy that he was elected to

successive terms occasionally, and that he was, perhaps,

not a member of the Board in 1777-1779.4 Those two years

were busy times for Wythe: he served as speaker of the

House of Delegates in 1777, was appointed in the latter

portion of the year (when its judiciary was first organized

under the independent state constitution devised in the

preceding year) one of Virginia's three chancery judges,

and was much engrossed in the tedious labor of the revision

of the state's laws.

It is chiefly upon the fertile genius of Thomas

Jefferson that credit must be centered for the establish-

1. The History of the College of William and Mary, 76.
2. W.&M. Coll. Quar., XXVII, 239.
3. Ibid., II, 37.
4. Cf. Robert M. Hughes to Hampton L. Carson, April 2,

1921, W.&M. Coll. Quar. (2nd series), II, 46.

ment of America's earliest professorship of law.1 This

opportunity for the extension of Wythe's services as a

legal teacher, created as it was expressly for his

occupancy by his favorite pupil and devoted friend,2

cannot possibly be considered one of the lesser fruits of

Jefferson's own education under his direction. But the

explanation of its origin cannot be dismissed simply with

a reference to the relations between Jefferson and Wythe;

for, though their friendship unfolds much in this

connection, more complex motives will be found in less

personal considerations.

Thomas Jefferson manifested an ardent interest in

educational progress for half a century and is universally

accorded a secure and prominent place in the list of

American educators. In his work as a member of the

committee to which was delegated, late in 1776, the task

of making the state code conform to Virginia's new

constitution he formulated educational plans which were so

far in advance of the times that many years were required

to effect in a general way their acceptance. These plans,

embodied in three bills reported by the revisors in 1779,

1. James Barr Ames, "The Vocation of the Law Professor",

in his Lectures on Legal History and Miscellaneous

Legal Essays, 358.

1. Samuel C. Mitchell, "Wythe", in Encyclopedia

Americana (1924 ed.).

were, like most of the others, relegated by the legislature

to future consideration. Each bill was finally taken up by

the backward legislators in 1796, and each received adverse

action.1

The second of these bills2 proposed a complete

reorganization of William and Mary College, suggesting

radical changes in the ancient charter of the institution.3

Jefferson was planning great things for the little school,

already historic and venerable. "It is a fact not suffi-

ciently or generally understood," in the opinion of a more

recent educator, "that the first form of Jefferson's

university idea was that of transforming the College of

William and Mary into a State university."4 But Jefferson's

zeal for reform was not sufficient to secure immediate

action upon his advanced proposals by an unprogressive

legislature, which had not expected such sweeping changes as

its committee submitted. Indeed, the charter which Jefferson

desired for the college was never secured, and his interest

1. In regard to these well known facts see, e.g.,

Jefferson, Writings, I, 70-72; Honeywell, op. cit.; and

Bruce, History of the University of Virginia, I.

1. For a presentation of the relevant phases of the first

Bill see Appendix A.

1. The text of the second bill appears in Thomas Jefferson,

The Works of Thomas Jefferson (Federal Edition, ed. by

Paul Leicester Ford), II, 426-436.

1. Herbert B. Adams, The College of William and Mary, 37.

in the possibility of enlarging William and Mary into an

efficient state university was soon supplanted by other

schemes looking toward the same end.1

But, if Jefferson was impotent as a revisor to

change William and Mary's charter, he was able nevertheless

in another capacity to effect noteworthy reforms in the

institution. If its defective foundation could not be

wholly rebuilt, then such repairs as were possible must be

executed. And a thoroughgoing reformation was not

impossible within the limits of the college's faulty

constitution. Jefferson soon found himself in a position to

make some improvements. This best record which he left of

the transition to a new order of things reads:

On the 1st of June, 1779, I was appointed Governor

of the Commonwealth, and retired from the legislature.

Being elected, also, one of the Visitors of William

and Mary college, a self-electing body, I effected,

during my residence in Williamsburg that year, a change

in the organization of that institution, by abolishing

the Grammar school, and the two professorships of

Divinity and Oriental languages, and substituting a

professorship of Law and Police, one of Anatomy,

Medicine and Chemistry, and one of Modern languages....2

This transformation was formally consummated on December 4,

1779,3 by a statute of the Board of Visitors which is,

1. Cf. post, 58-59.
2. Jefferson, Writings, I, 74. For a typical statement from

another pen see James Madison to Ezra Stiles, August 27,

1780, quoted by Louis Franklin Snow, The College

Curriculum in the United States, 74.

1. W. & M. Coll. Quar., XV, 169.

perhaps, still extant.1

The personnel of the faculty which was chosen to

promote the new regime is recorded in the minutes of its

first meeting, December 29, 1779, as follows:

James Madison, President, & Professor of Natural

Philosophy and Mathematics.

George Wythe, Professor of Law and Police.

James McClurg, Professor of Anatomy and Medicine.

Robert Andrews, Professor of Moral Philosophy, the

Laws of Nature and of Nations, and of the Fine Arts.

Charles Bellini, Professor of Modern Languages.2

This was a small faculty, but, in the words of Jefferson's

tribute to George Mason's effectiveness in debate, each

of its five members was a host in himself.

To a student in the college at the time it seemed

that "William & Mary has undergone a very considerable

Revolution."3 In the light of the history of education in

America some phases of the establishment of this little

university in Williamsburg seem indeed quite significant.4

It may be mentioned summarily that to the William and Mary

of 1779-1780 is attributed America's first collegiate

professorship of law, first professorship of modern

languages, first regular system of lectures on political

economy, and (partially) the origin of the elective system.

1. Robert M. Hughes to Hampton L. Carson, April 8, 1921.

W. & M. Coll. Quar. (2nd series), II, 46-47.

1. Ibid.(1st series), IV, 240 11.
2. John Brown to William Preston, December 9, 1779,

W. & M. Coll. Quar., IX, 22.

1. Snow, op. cit., 74-75.

It has been shown that George Wythe was placed in

his legal professorship largely through the efforts of

Jefferson. It should not be supposed, however, as one

jurist presumes,1 that Jefferson was solely responsible

for the selection of Wythe, that Wythe was his personal

appointment. The first professor was elected by the same

Board of Visitors which had established the professorship.

Jefferson was admittedly its most influential member, but

it included also John Blair, James Madison, Edmund Randolph,

Thomas Nelson, and Benjamin Harrison;2 and these men must

have been in more than passive accord with Jefferson's

plans. Of this the abolition of the theological profess-

sorships is sufficient proof. A letter of Madison's to a

contemporary college president doubtless reflects the tenor

of the Board's sentiments:

. . . it is now thought that Establishment in Favr.

of any particular Seet are incompatible with ye

Freedom of a Republic, and therefore, ye Professorship

[of Divinity] is entirely dropped.3

This statement is cited in an equitable educational trea-

tise as an index of the "motive that influenced the

1. Hampton L. Carson to Robert M. Hughes, March 31, 1921.

W. & M. Coll. Quar. (2nd series), II, 44.

1. Robert M. Hughes to Hampton L. Carson, April 8, 1921.

ibid., 46.

1. James Madison to Ezra Stiles, August 27, 1780, quoted

by Snow, op. cit., 74.

reformers of whom Jefferson was chief, to reestablish the

college as a training ground for republican citizenship."1

Their selection of Wythe as professor of law was only less

appropriate to such a purpose than was Jefferson's

preference for his intimate mentor.

B. Its Priority

George Wythe deserves quite a prominent position

in the history of American legal education. His informal

instruction of Jefferson and Clay, outside the pale of

systematic schooling, would alone entitle him to honorable

recognition. His precedence as a formal professor of law

over such men as James Wilson and Chancellor James

Kent, not to mention the standard and influence of his

teaching, raises the modest figure of the Williamsburg

jurist to an educational pinnacle.

The date of its founding, 1779, fixes upon Wythe's

chair in William and Mary College the honor of having been

the first collegiate professorship of law in the United

States. It was also the second in the English-speaking

world, having antedated only by the Vinerian chair of law

at Oxford in 1758, of which Sir William Blackstone was the

1. Snow, op. cit., 75. Cf. ante, 3.

first incumbent.1 Because the significance of Wythe's

course has not been as widely recognized as might be

expected.2 a concise inquiry into the formal legal education

of the early national period is relevant.

there had been a brief and obscure professorship of

natural law as early as 1773 in King's College, later

Columbia University. When news of this fact reached

Williamsburg a century later William and Mary's president

wrote to Columbia, seeking information concerning this

potential rival of Wythe's chair. The president of the

university, finding no relation between the King's College

professorship and legal education, replied in a generous

manner, renouncing for his institution any claim to the

earliest professorship of law.3 Probably the subject-

matter of the course in natural law consisted of political

ethics rather than, in any sense, the study of law.4

In 1777 President Ezra Stiles of Yale became

interested in the possibility of instituting a chair of

1. Tyler, loc. cit., 68.
2. Two rather important sources which take no note of

Wythe's chair are James Russell Parsons, "Professional

Education" in Nicholas Murray Butler, Education in the

United States, ch. x; and V. G. Hammond, "American Law

Schools, Past and Future" in The Southern Law Review

(new series), VII, 400-429.

1. A portion of this important letter is reprinted in

Appendix B.

1. Warren, History of the American Bar, 349.

law, but his schemes were nurtured for many years in a an

absolutely barren soil.1

In 1784 the trustees of Columbia University, in a

reorganization of that school, planned three professorships

in law. In 1793 James Kent, then young and virtually

unknown, was chosen as the first professor under this plan.

He made several attempts to deliver a course of lectures,

notably in 1797, all of which failed signally, chiefly

because of a dearth of interst.2

The College of Philadelphia appointed James Wilson,

then an associate on the bench of the Supreme Court, to a

formal professorship of law in August, 1790. The three-year

course of lectures into which he plunged was interrupted in

its second year by a general indifference toward his

efforts. In the consolidation which organized the University

of Pennsylvania in 1792, Wilson's chair was continued. He

died in 1798, having delivered on additional lectures.3

To those honored names should be added that of

Henry Clay, who, though the fact seems to have escaped his

biographers, was for a few years prominently connected with

1. Warren, History of the American Bar, 341-343.
2. See esp. ibid., 350-352; Hammond, loc. cit., 402-403;

A History of Columbia University, 336.

1. See esp. Warren, History of the American Bar, 346-349;

Parsons, loc. cit., 495; Hampton L. Carson, "James

Wilson and James Iredell, A Parallel and a Contrast"

in the American Bar Association Journal, VII, 124.

the progress of legal education. he became the "youngest

full law professor, as well as the youngest senator, in

our country's history,"1 holding the first collegiate chair

of law which was not intended for undergraduates and which

had any permanency.2 "It is certainly striking," a legal

historian has written, prefacing an admirable abridgment

of this professorship's history,

that this event should shave occurred is a little

frontier town of about seventeen hundred inhabitants

* at the University of Transylvania in Lexington,

Kentucky. This institution was chartered in 1798, and

in the next year the law department was organized, with

George Nicholas as Professor of Law and Politics. On

his death, the same year, he was succeeded by James

Brown, who held the office until 1804. In that year,

Henry Clay, a young man of twenty-seven, who had been

at the Bar seven years, was appointed, and held this

professorship until 1807.3

Though it is a somewhat incidental observation, comment

must be made upon the noticeable fact that Wythe probably

influenced each of the first three professors of this law

school. George Nicholas, son of Robert Carter Nicholas,

had been a student under him at William and Mary. James

Brown, native of western Virginia and brother of John

Brown (who had been in Wythe's class in 1780 and was now

also in Kentucky), probably received impressions through

1. Ames, loc. cit., 359.
2. Warren, History of the American Bar, 353.
3. Ibid.

his brother, at least, if indeed there was no closer and

now obscure tie between himself and the chancellor. And

Henry Clay was much indebted to Wythe's guidance of his

education. A direct thread, then, links the first permanent

collegiate professorship of law for graduates with the

first law professor.

The most successful early experiment in legal

education began either in 1782 or 1784 without any

collegiate affiliation. Judge Tapping Reeve established an

independent "log college" type of law school at Litchfield,

Connecticut, which continued until 1833, producing more

than its quota of famous men. John C. Calhoun, Levi

Woodbury, and John M. Clayton are numbered among its

alumni.1 Not attaining the immediate popularity which

characterized the William and Mary professorship, this

celebrated Litchfield law school seems to have profited to

some extent by the decline of William and Mary's prestige

when its legal chair passed from the incumbency of Wythe

and of his pupil, St. George Tucker.2

1. Editorial in The New York Times, August 2, 1920;

Parsons, loc. cit., 495.

1. Tyler's Quarterly Historical and Genealogical Magazine,

II, 157. Wythe's chair, which survived until the Civil

War, was held successively by St. George Tucker, William

Nelson, Robert Nelson, James Semple, Beverly Tucker,

Judge Scarburgh, Julian Minor, and Charles Morris.

A number of interests (combined in several gross

instances with a large amount of ignorance) have prompted

an almost innumerable list of rival and conflicting claims

in priority in the field of American legal education.1 From

the historical review just given it is plain that there

must be a division of the spoils; carefully distinguished

honors must be distributed among several institutions. To

Columbia and Pennsylvania may be accorded the distinction

of having early professorships of law. To Transylvania may

be attributed the earliest permanent professorship giving

graduate legal instruction. To the Litchfield law school,

though it was devoid of any educational organization, may

be assigned the best claim to the designation of first

American law school. To William and Mary College and to

George Wythe must be awarded the honor of the first American

legal professorship.

C. Its Nature

George Wythe's chair of law is noteworthy not alone

for its priority. It derives additional significance from

1. Cf. esp. the correspondence between Robert K. Hughes and

Hampton L. Carson, 1921, printed in W. &. M. Coll. Quar.

(2nd series), II, 44-48, and the several letters to the

editor printed in The New York Times, August 9,

August 20, and September 1, 1920.

the subject-matter of his courses and from his methods of

teaching.

The subject which the first American professor of

jurisprudence presented to his pupils is characterized

best by the title municipal and constitutional law.1

Blackstone's lectures at Oxford and the later lectures of

Wilson and Kent may be said in a general way to have dealt

with the same matter, but very probably each of these

teachers approached the subject from a different angle.2

A more definitive exposition of the nature of Wythe's

course is desirable.

Blackstone's published commentaries on the English

constitutional system were used as the textbook of the

Virginian's course. From its pages his pupils were

inoculated with the general principles of law and were

taught its theory and practice.5 But Wythe was far from

being a servile copyist of Blackstone in his treatment of

law. Especially is this true in respect to the Britisher's

constitutional observations. Interested as he was in

teaching law as a part of the great science of government.

1. Tyler, loc. cit., 68.
2. Simeon E. Baldwin, The American Judiciary, 349-350.
3. W. &. M. Coll. Quar., IV, 265.

Wythe had an unusual opportunity to make this phase of his

pupils study particularly effective in the moulding of a

republican citizenry. The last few years had witnessed an

epochal development in government.

Indeed, the new system of written constitution adopted

in America opened a field of thought to which Black-

stone was a stranger, and Wythe has the honor of being

the first regular commentator upon the changes brought

about by the new instrument of government in American

jurisprudence.1

It may be asserted that his students profited a great deal

from the valuable observations resulting from his contem-

plation of this transition and that posterity has suffered

from their loss.2

The solidly legal character of Wythe's subject-

matter is best indicated by a partial list of the topics

upon which he lectured, preserved in the notebook of one

of his students.3 A contemporary lawyer thinks that his

course was much superior to that of James Wilson, judging

by the lectures which the Pennsylvanian gave in part and

which were published posthumously. The justice of his

observation that the latter contained nothing on the four

personal relations, on real estate, and on pleading, and

1. Tyler, loc. cit., 68. Cf. esp. Joseph Jones to James

Monroe, March 7, 1780, reprinted in Daniel C. Gilman,

James Monroe, 14-15.

1. Robert M. Hughes to Hampton L. Carson, April 8, 1921,

W. &. M. Coll. Quar. (2nd series), II, 47. Cf. post, 56-57.

1. See Appendix C.

were "practically limited to governmental and criminal

law"1 was admitted by an otherwise unyielding controver-

sialist.2 As examination of the editorial notes in the

first American edition of Blackstone, a result of the

experiences as professor of Wythe's pupil and immediate

successor, St. George Tucker, confirms their conviction.3

Lest it be thought that other testimonials to the compre-

hensiveness and general value of the course are wanting,

a few additional ones may be presented. A student wrote

to his guardian:

I apply closely to the Study of the Law and find

it to be a more difficult Science than I expected,

though I hope with Mr. Wythes assistance to make some

proficiency in it; those who finish this Study in a

few months either have strong natural parts or else

they know little about it.4

A political associate of the chancellor congratulated him

in this manner:

... I am happy to be informed that sensible men in

the neighboring Countries [states], entertain a proper

sense of the benefits to be derived from you

benevolent attention to the instruction of youth; as I

understand that young gentlemen now of Philadelphia

propose to finish their studies with you.5

1. Robert M. Hughes to Hampton L Carson, April 8, 1921,

W. &. M. Coll. Quar. (2nd series), II, 47.

1. Hampton L. Carsons to Robert M. Hughes, April 9, 1921,

ibid., 48.

1. Robert M. Hughes to the editor. August 23, 1920, The

New York Times, September 1, 1920.

1. John Brown to William Preston, February 15, 1780,

W. &. M. Coll. Quar., IX, 76.

1. James Curtis Ballagh, Letters of Richard Henry Lee, II, 279.

Finally, the practical nature of the course is attested by

the fact that it "was not followed by any other excerpt, of

course, in many cases a further reading in a lawyer's

office -- a practice not unknown now." 1

The methods of teaching used by America's first law

professor merit more than casual consideration. The lecture

system, introduced at the college by William Small, was the

foundation of his course. He himself instituted two

expedients to bring out the students' thought and

expression.2 One of these, the moot court, has become a

regular part of modern legal education. The other, a moot

legislature, is the more interesting and less common of the

two. Its purpose seems to have been to encourage in his

pupils a knowledge of the public questions of the day in

the state and to give them experience in legislative

affairs,3 and in keeping with this aim Wythe presided as

speaker of the house while his "nascent Solons . . . drew

original bills, revised existing laws, debated, amended,

and went through all the performances of a legislative

body."4 The bills drawn up by the Revisors provided

1. Robert M. Hughes to the editor, August 23, 1920. The

New York Times, September 1, 1920.

1. Anderson, loc. cit., 340.
2. Ibid., 341.
3. Albert J. Beveridge, The Life of John Marshall, I, 158.

This biography will hereafter be cited as Beveridge,

Marshall.

fortunately an admirable starting-point for the work of

the potential legislators. Another happy circumstance

conduced to the creation of an atmosphere of reality in

the executive of the two schemes. In the winter of 1779-

1780 the capitol of the state was removed from its

scarcely-defeasible position in Williamsburg to Richmond

at the falls of the James River. Professor Wythe was able

to secure for the use of his mock court and legislature

the courtroom of the abandoned capitol building, in which

he and other noted Virginian lawyers had in previous years

pled causes during the sessions of the General Court.1

The enthusiastic account of these innovations given by an

appreciative pupil could not be omitted:

I still . . . endeavor to improve by the Advantages

of my situation, which of late have been greatly

augmented; for Mr Wythe ever attentive to the

improvement of his Pupils, founded two Institutions

for that purpose, the first is a Moot Court, held

monthly, or oftener in the place formerly occupied by

the Gen Court in the Capitol. Mr Wythe & the other

professors sit as Judges, Our audience consists of

the most respectable of the Citizens, before whom we

plead Causes given out by Mr Wythe Lawyer like I

assure you. He has form'd us into a Legislative Body,

consisting of about 40 members Mr Wythe is speaker

to the House, & takes all possible pains to instruct

us in the Rules of Parliament We meet every

Saturday & take under our considerations those Bills

drawn up by the Comtee appointed to revise the laws,

the [which] we debate and Alter (I will not say amend)

with the greatest freedom I take an active part in

1. Tyler, loc. cit., 69.

both these Institutions & hope thereby to rub off that

natural Bashfulness which at present is extremely

prejudicial to me. These Exercises, serve not only as

the best amusement after severer studies, but are very

usefull & attended with many important advantages.1

It might be expected that a man of the law

professor's broad learning and almost universal cultural

and scientific interests might evince some concern over the

progress of the instructions of his four associates in the

faculty. That such a condition was actually true is

indicated by this extract from a letter written to him by

Jefferson in Paris:

I have reflected on your idea of wooden, or ivory

diagrams, for the geometrical demonstrations. I should

think wood as good as ivory; and that in this case, it

might add to the improvement of the young gentlemen,

that they should make the figures themselves. Being

furnished by a workman with a piece of veneer, no other

tool than a penknife and wooden rule, would be

necessary. Perhaps pasteboards, or common cards, might

be still more convenient. The difficulty is, how to

reconcile figures which must have a very sensible

breadth to our ideas of a mathematical line, which, as

it has neither breadth nor thickness, will revolt more

at these than at simple lines drawn on paper or slate.

If, after reflecting on this proposition, you would

prefer having them made here, lay your commands on me,

and they shall be executed.2

The earlier or subsequent history of this scheme cannot be

ascertained.

1. John Brown to William Preston, July 6, 1780, W. & M.

Coll. Quar., IX, 80.

1. Thomas Jefferson to George Wythe, September 16, 1787,

Writings, VI, 300.

Of the highest interest in connection with the

nature of Wythe's professorship is an exchange of letters

four years after his death between Jefferson and John

Tyler, then governor of the state:

Perhaps Mr. Ritchie, before this time, has informed

you of his having possession of Mr. Wythe's manuscript

lectures delivered at William and Mary College while he

was professor of law and politics at that place. They

are highly worthy of publication, and but for the

delicacy of sentiment and the remarkable and virtuous

before this, It is a pity they should be lost to

society, and such a monument of his memory be neglected.

As you are entitled to it by his will (I am informed),

as composing a part of his library, could you not find

leisure time enough to examine it and supply some

omissions which now and then are met with, I suppose

from accident, or from not having time to correct and

improve the whole as he intended?

Judge Roane has read them, or most of them, and is

highly pleased with them, thinks they will be very

valuable, there being so much of his own sound

reasoning upon great principles, and not a mere servile

copy of Blackstone, and other British commentator, -

a good many of his own thoughts on our constitutions

and the necessary changes they have begotten, with that

spirit of freedom which always marked his opinions.

I have not had an opportunity of reading them, which

I would have done with great delight, but these remarks

are made from Judge Roane's account of them to me, who

seemed to think, as I do, that you alone should have the

sole dominion over them, and should send them to

posterity under your patronage.

It will afford a lasting evidence to the world,

among much other, of your remembrance of the man who was

always dear to you and his country. I do not see why an

American Aristides should not be known to future ages.

Had he been a vain egotist his sentiments would have

been often seen on paper; and perhaps he erred in this

respect, as the good and great should always leave their

precepts and opinions for the benefit of mankind.

Mr. Wm. Crane gave it to Mr. Ritchie, who I suppose

got it from Mr. Duval [William Duvall], who always had

access to Mr. Wythe's library, and was much in his

confidence.1

Your favor of the 12th gave me the first informa-

tion that the lectures of my late master and friend

exist in MS. Knowing how little sensible he was of the

eminence of his own mind. I had apprehended, if he had

ever committed to writing more than their skeleton,

that possibly he might have destroyed them, as I

expect he has done a very great number of instructive

arguments delivered at the bar, and often written at

full length. I do not however conceive myself entitled

to claim them under the bequest of his library. I

presume they go, with his other papers to his executor.

But this must be immaterial, as no one could have a

wish to withhold them from the public, if in such a

form as would render them useful to them, & honorable

to himself. This I am sure they must be if tolerably

entire. His mind was too accurate, his reasoning

powers too strong, to have committed anything to paper

materially incorrect. It is unfortunate that there

should be lacunae in them. But you are mistaken, my

dear sir, in supposing I could supply them. It is now

37 years since I left the bar, and have ceased to

think on subject of law; & the constant occupation of

my mind by other concerns has obliterated from it all

but the strongest traces of the science. Others, I am

sure, can be found equal, to it, and one more so than

Judge Roane. It is not my time or trouble which I wish

to spare on this occasion. They are due, in any extent,

to the memory of one who was my second father, my

incompetence is the real obstacle: and in any other

circumstance connected with the publication, in which

I can be useful to his fame, and the public instruct-

tion, I shall be most ready to do my duty. How this

may be, I must leave to be pointed out by you, than

whom no one better knew the powers & purity of his

mind, or feels warmer zeal to render them useful after

his death.2

1. John Tyler to Thomas Jefferson, November 12, 1810,

reprinted in Lyon Gardiner Tyler. The Letters and Times

of the Tylers. I, 249-250.

1. Thomas Jefferson to John Tyler, November 25, 1810,

Writings (Federal Edition). XI, 158-159.

These letters show, among other things, that the manu-

scripts of the lectures which Professor George Wythe

delivered at William and Mary were in existence as late as

1810. Aside from the information contained in these two

letters, nothing is known of them. They have disappeared

completely, yet they may be hidden away "in an old

dust-covered box or barrel in somebody's garret or cellar."1

What a pity it is that, for whatever reason, they were not

published!

D. Jefferson's Opinion of It.

Thomas Jefferson is the connecting link between

William and Mary College and the University of Virginia.

Because, for a number of reasons, the complete transfor-

mation of the tidewater institution which was prerequisite

to its meeting his demands for an advanced type of state

university could not be accomplished, Jefferson's attention

was centered on other possibilities soon after his return

from the ambassadorship in Europe. His changed attitude

toward his alma mater may be attributed, in part, to the

failure of the state legislature to act formally on his

bill providing a new charter for the college. The reorgan-

1. Anderson, loc. cit., 340.

zation of the faculty under the old charter was an

admirable change, he thought: but, though a step in the

right direction, it was yet an insufficient advance to

make William and Mary fit into his ultimate dream. In the

Williamsburg school, then, he was vastly disappointed,

the legislature clinching forever in 1796 the surrender

of his plans for it.1

But during the eight or ten years in which there

survived a reasonable hope of the passage of his bill for

the rechartering of William and Mary Jefferson maintained

a steadfast loyalty to the reformed college. Abroad most

of this time, Jefferson kept himself in close contact with

the school through correspondence with Madison, Wythe, and

Charles Bellini and never lost an opportunity to speak

well of the Virginia institution.

In this loyalty to William and Mary there is a

distinct tribute to George Wythe's career as a teacher.

In answer to an inquiry concerning European schools

Jefferson wrote in 1785 his impressions of Rome and Geneva

as locations for study, but he took pains to point out in

some detail the disadvantages of foreign learning.2

1. Cf. ante, 39-41.
2. Thomas Jefferson to John Bannister, October 15, 1785,

Writings, V, 185-188.

Enumerating the objectives of a good education, he admitted

that "the habit of speaking the modern languages cannot be

so well acquired in America" as abroad, but he concluded

that "every other article can be as well acquired at

William and Mary college, as at any place in Europe." Then

he continued:

When college education is done with, and a young man

is to prepare himself for public life, he must cast

his eyes (for America) either on Law or Physics. For

the former, where can he apply so advantageously as

to Mr. Wythe? For the latter he must come to Europe:

the medical class of students, therefore, is the only

one which need come to Europe.1

To an Englishman who share his views regarding slavery he

wrote:

The College of William and Mary, in Williamsburg, since

the re-modelling of its plan, is the place where are

collected together all the young men of Virginia, under

preparation for public life. They are there under the

direction (most of them) of a Mr. Wythe, one of the

most virtuous of characters, and whose sentiments on

the subject of slavery are unequivocal. I am satisfied,

if you could resolve to address an exhortation to those

young men, with all that eloquence of which you are

master, that its influence on the future decision of

this important question would be great, perhaps

decisive.2

In response to a request from a South Carolinian for

information about William and Mary the absent reformer

penned an even more definitive estimate of its law chair:

1. Thomas Jefferson to John Bannister, October 15, 1785,

Writings, V, 186.

1. Thomas Jefferson to Richard Price, August 7, 1785,

ibid., 57.

I cannot but approve of your idea of sending your

eldest son, destined for the law, to Williamsburg.

The professor of Mathematics and Natural Philosophy

there, (Mr. Madison...,) is a man of great abilities,

and their apparatus is a very fine one. Mr. Ballini

[Bellini], professor of Modern Languages, is also an

excellent one. But the pride of the Institution is Mr.

Wythe, one of the Chancellors of the State, and

professor of law in the College. He is one of the

greatest men of the age, having held without competition

the first place at the bar of our general court for

twenty-five years, and always distinguished by the most

spotless virtue. He gives lectures regularly, and holds

moot courts and parliaments wherein he presides, and

the young men debate regularly in law and legislation,

learn the rules of parliamentary proceeding, and

acquire the habit of public speaking. Williamsburg is a

remarkably healthy situation, reasonably cheap, and

affords very genteel society. I know no place in the

world, while the present professors remain, where I

would so soon place a son.1

Coming from a penetrating student of both domestic and

foreign educational conditions, this is indeed high praise.2

E. Its Duration an Termination

In their first faculty meeting the reorganized

quintet of professors at William and Mary resolved,

December 29, 1799, that "the Lectures in the different

Schools shall commence for the ensuing year on the 17th of

1. Thomas Jefferson to Ralph Izard, July 17, 1788, Writings,

VII, 70-71. On the point of health conditions at

Williamsburg it should be noted that Jefferson later

made frequent references to the insalubrity of the

tidewater climate.

1. Bruce, History of the University of Virginia, I, 55.

January."1 The law professor, then, may be pictured as

facing his first group of college students in the early

days of 1780, and this he continued to do with regularity

for about ten years, during nine months each year.2

But there was one major interruption in the

ordinary repetition of his course. Things had gone along

smoothly with the revived college for about a year and a

half when the shift in the fighting zone of the Revolu-

tionary War to tidewater Virginia forced a temporary

halting of its operation. During the summer and fall of

1781 its buildings were occupied successively by the

English and French. Lord Cornwallis making President

Madison's home his headquarters for a time.3 George Wythe

was also affected by these events in a personal as well as

an official capacity: in the middle of September his home,

the finest in town,4 became the headquarters of General

Washington, continuing for some months.5 Jefferson

1. W. & M. Coll. Quar., XV, 169.
2. Vacations in the institution extended from the first of

April to the first of May and from the first of August

to the tenth of October: ibid., 173.

1. Tyler, Williamsburg, The Old Colonial Capitol, 168.
2. This handsome colonial mansion, which has survived to

the present in good condition, is now "restored" and

open to the public. The best picture of it is printed

in Marietta M. Andrews, George Washington's Country, 196.

1. St. George Tucker to ?, September 15, 1781, quoted

by Tyler, Williamsburg, The Old Colonial Capitol, 84.

sought the pleasure of entertaining Wythe at Monticello

during the period of the faculty's enforced idleness, but

a disturbance of the law professor's financial status

prevented his departure from the eastern section of the

state. The reply which he gave to his pupil's invitation

is quite interesting:

A few days after the reduction of York I returned

to Williamsburg, and accompanying mr. Madison, waited

on general Washington, with an address of the

university, among other things, desiring him to give

orders, that the college, which we found employed as

an hospital, might be evacuated so soon as it could

be done conveniently. He was very civil, and gave a

kind answer; but for that business referred us to

count de Rochambeau and general Nelson; from the

latter of whom as we saw no prospect of redress, we

made no application to the other. But some conver-

sation, which I had with general Chastellux, and a

letter, which he wrote to me, since, give me some

hopes that the college will be restored in two or

three months. During that interval, I know not a

place, at which my time would pass so happily as at

Monticello, if my presence at Chesterville were not

indispensably necessary to adjust my affairs left

there in some confusion by the manager, who hath

eloped. I can therefore only thank you for your

friendly invitation and offer.1

Just when classes were resumed at William and Mary is not

known, but Wythe's teaching was probably interrupted for a

period of eight or nine months.

Records of nearly forty-five meetings of the

William and Mary faculty, covering the period from

December, 1779, to June, 1784, have been preserved.2

1. George Wythe to Thomas Jefferson, December 31, 1781,

W. & M. Coll. Quar. (2nd series), VI, 337-338.

1. W. & M. Coll. Quar., XV, 169-174, 264-269; XVI, 73-80.

Wythe's presence is recorded in the minute of all but two

of these sessions.

The reason for the termination of Wythe's formal

professorship of law is somewhat shrouded in mystery. That

he relinquished his chair by resignation early in 1790 is

shown by the following record of a meeting of the Board

Visitors of the college:

At a Convocation of the Visitors and Governors of

William and Mary College held at the Council Chamber,

within the said College, the Eighth day of March, 1790.

The Rector laid before the Convocation the Resig-

nation of George Wythe, esquire, as Professor of Law

and Police, whereupon Resolved, that St. George

Tucker, esquire, be appointed to the said Professor-

ship and that he be allowed for the same at the rate

of One hundred and twenty pounds per annum.

FRANCIS CORBIN, rector

A copy Teste.

WILL RUSSELL, Cl.

Memorandum, Williamsburg, March 8, 1770 [1790]:

The above named St. George Tucker took

the oath required to be taken as a

professor of Law and Police in the

presence of us

FRANCIS CORBIN, Rector

PHILIP L. GHYMES, Visitor.1

The motives which prompted this resignation are somewhat

obscure. The legal professor had been made sole chancellor

in 1788 during a reorganization of the state's equity

1. W. & M. Coll. Quar., XVIII, 220.

system; the sessions of the modified High Court of Chancery

were to be held in the capitol, Richmond.1 This circum-

stance was linked with the ending of Wythe's career as a

college professor, his resignation being explained on the

ground that he needed to be nearer "the theatre of his

judicial duties, and more convenient to those who might

require his official services during the vacation of his

Court."2 For a century this interpretation of his action

stood unchallenged, yet more recent research cannot but

discredit the supposed accuracy of this explanation.3

The publication about thirty years ago of letters

written from Williamsburg by an intimate young friend of

the chancellor, William Munford, throws a shadow of doubt

upon the conjecture in which the published studies of the

Virginia jurist's life have assented unanimously, either

professedly or tacitly. For one of these letters shows

that Wythe did not move to Richmond until more than two

years after his elevation to the rank of sole chancellor

and until a full year and a half after the formal acceptance

1. Minor, loc. cit., xix.
2. Ibid., xxi. This justification received its earliest

statement in the American Law Journal, III, 96.

1. If any of the contemporary students of George Wythe's

life, notably Dice R. Anderson, have investigated

carefully this baffling question, at least their

researches have not been published.

of his resignation by the Visitors.1 This is a bit of

information which tends to seem quite important relative

to the case in point.

In its application to the questionable interpret-

tation of this motives which prompted Wythe's resignation,

however, it is chiefly negative an could scarcely be

considered conclusive. An authentic suggestion of other

reasons for the professor's resignation needs to be found

among the records of his time to establish finally the

inaccuracy of the now traditional motive. Just such an

intimation is the following news item contained in a

letter from Jefferson's pen, written about three months

prior to the forma presentation of the resignation:

Mr. Wythe has abandoned the college of Wm. & Mary,

disgusted with some conduct of the professors, &

particularly of the ex-professor Bracken, & perhaps

too with himself for having suffered himself to be

too much irritated with that. The visitors will try

to condemn what gave him offense & press him to

return: otherwise it is over with the college.2

No amplification of the suggestion given these two

sentences can be built up from any known source. But it

may be safely conclude that Wythe severed his connection

1. William Munford to John Coalter, September 30, 1791,

W. & M. Coll. Quar., VIII, 155.

1. Thomas Jefferson to William Short, December 14, 1789,

Writings (Federal Edition), VI, 23. This item is an

obscure and infrequently-published letter apparently

escaped attention until it was reprinted two years

ago in the W. & M. Coll. Quar. (2nd Series, XII, 287.

with the professorship of law in William and Mary College

because of some disturbances of his personal relations with

his associates there.

Wythe was awarded the LL. D. degree by William and

Mary when he surrendered his chair.1 Whether this action

was taken by the faculty or by the Board of Visitors cannot

be definitely determined. But in either case the knowledge

that troubled personal feelings existed within the faculty

suggests inevitably the ugly implication that the honorary

degree was given, consciously or unconsciously, as a

palliative to a wounded spirit. One the other hand, it may

be that the award was made in utmost sincerity. At any

rate, there is considerable justification for the facetious

opinion that George Wythe, "like Benjamin Franklin and

James Madison, honored the degree of Doctor of Laws from

William and Mary; the degree could do them no honor."2

1. Tyler, loc. cit., 71.
2. Anderson, loc. cit., 331.

Chapter V -- HIS INSTRUCTION OF MARSHALL

Excepting the relation between George Wythe and

Thomas Jefferson, the study of the law professor's

influence upon individual pupils is not more interesting in

any case than in that of John Marshall. Jefferson was

undoubtedly Wythe's favorite and for many years his most

intimate pupil. Whether Jefferson or Marshall should be

deemed his greatest pupil would be a moot question, on

which different viewpoints would certainty tend to tip the

scales first one way and then the other. To one casual

observer, for example, the chancellor's long unmarked

grave1 seemed a rebuke to "the millions who profit by his

genius and especially by his tutelage of the Expounder of

the Constitution."2 It is really worthwhile only to attempt

to discover the nature and degree of the teacher's influences

in developing the characteristic talents of the two.

John Marshall was born, September 24, 1755, in what

is now Fauquier County, Virginia, not very far from the

homes of George Washington and Thomas Jefferson. For his

earlier education he owed everything to the guidance and

1. It was only about a decade ago that Wythe's grave in the

yard of the historic St. John's Church in Richmond was

fittingly marked.

1. George Morgan, Patrick Henry, 188.

actual instruction given by his father, Thomas Marshall.1

At about the age of eighteen he delved lightly into

Blackstone, being destined for the bar, it seemed even to

himself, from his infancy.2 The outbreak of revolutionary

warfare drew him into the army. Among the soldiers he

served frequently as judge advocate, winning general

approbation by reason of his judicious temperament.3 In

the winter of 1779-1780, upon the disbanding of the

Virginia troops over which he was an under-officer, he

returned to Virginia to await the action of the state

legislature in enlisting for him a new command. The

resulting few months of residence in his native state

proved fortunate in that he met his future wife and gained

a little formal legal instruction.4

In biographical treatises on the great chief

justice an uncommonly large interest centers in his court-

ship and marriage, partially because unusually good

records of them have been preserved and partially because

of the real tenderness of his love for his wife. In the

1. James Bradley Thayer, John Marshall, 2, 4.
2. Beveridge, Marshall, I, 56.
3. Sallie E. Marshall Hardy, "Some Virginia Lawyers of the

Past and Present". Green Bag, X, 22.

1. Thayer, op. cit., 13.

present connection it is sufficient to be less diffusive

on the matter. It may be said that, while staying in

Yorktown in the spring of 1780, the young officer fell in

love with Mary Ambler, youngest daughter of Jacquelin

Ambler and Rebecca Burwell, who had "jilted" the young

Jefferson.1 This fact prompted a conviction, which, on

account of his parents' wishes, was probably already arising

in his mind, that the time had come when he must enter the

legal profession and begin to acquire an honorable station

in civil life. To the young man of twenty-five this seemed

especially necessary if he was to take a wife; and

married he would be, he had decided, whenever Mary

Ambler should be old enough [she was his junior by

about ten years] and would consent.2

The newly-reorganized William and Mary was not far distant,

and to its historic campus Marshall repaired, primarily to

enter Professor Wythe's class in jurisprudence. "Soon

after making his acquaintance," wrote one of Mary Ambler's

older sisters, "we learned with pleasure that he was

determined to attend the law studies in Williamsburg ...."3

But law, interested in it though he was, could not

1. Beveridge, Marshall, I, 148 et seq.
2. Ibid., 154.
3. Mrs. Carrington to her sister Nancy, 1810. Atlantic

Monthly, LXXXIV, 547.

supplant Miss Ambler as his mistress; and, whereas she had

contributed one motive for his beginning to study law, she

was directly the cause of the abrupt ending of his legal

studies. It all happened in this wise. Jacquelin Ambler

was made treasurer of the state in June, 1780 -- an

appointment which necessitated his removal to the new

capitol, Richmond. Taking his family with him, he made

during the journey a sojourn of two days in the college

town. There was a great ball during this interval. It was

all too much for Marshall: the "lure of Mary Ambler

became greater than that of learning to the none too

studious captain."1 A day or two after the Amblers'

departure from Williamsburg, he dropped his studies and

followed them to Richmond. This was done, too, in spite of

the fact that his previous instructions had been somewhat

fragmentary and that the expense of additional collegiate

education was not an item demanding his consideration.2

What is known, then, of the future chief justice's

abbreviated stay at the College of William and Mary?

Primarily, it seems certain that he took an

indifferent interest at everything at the college except

1. Beveridge, Marshall, I, 160-161.
2. Ibid., 161.

the law course. He participated in the debating society;1

he was elected a member of the parent chapter of Phi Beta

Kappa;2 he is said to have taken Madison's course on

natural philosophy.3 But his "first academic interest was

the law lectures."4 Of these he took somewhat careful

notes, but not a word concerning any other college activity

is to be found in his notebook.5

Notebook? Yes, the young soldier-student's note-

book, a veritable treasury of intensely interesting data,

has survived through a century and a half. It was made

available to the principal biographer of the chief justice,

who took advantage of this opportunity and gave a detailed

account of the volume.6 In relation to any inquiry into

Marshall's legal education, this notebook is, of course,

of unrivaled significance.

Upon his entrance at William and Mary Marshall

procured for his note-taking a book of blank pages,

1. Charles E. Martin, An Introduction to the Study of the

American Constitution, 96.

1. W. & M. Coll. Quar., IV, 236.
2. E. g., Allan B. Magruder, John Marshall, 23; Henry

Flanders, The Lives and Times of the Chief Justices of

the Supreme Court of the United States, II, 301. An

attempt to disprove this frequent assertion is not

conclusive: Beveridge, Marshall, I, 155.

1. Martin, op. cit., 96.
2. Beveridge, Marshall, I, 155.
3. Ibid., 155, 160, 174-176.

strongly bound in calf, measuring eight inches in height,

six in width, and more than one in thickness. It was not

a lawyer's commonplace book, alphabetically arranged, but

merely a volume of blank sheets of paper. When the law

course began Marshall prepared this notebook for the duty

of preserving his notations: at the top of a page he would

write the subject of one of the professor's lectures, as

announced; then he would leave several pages for notes;

and so he continued for each topic, throughout an entire

series of subjects in alphabetical order.1 Thus, as

America's first law professor delivered the second series

of lectures on jurisprudence ever given in the English

language, America's greatest constitutional interpreter

jetted down in an orderly manner his observations on the

various subjects.

The notes which Marshall took, as tabulated in

Appendix C, covered approximately one hundred and seventy-

five pages and were divided quite unevenly among seventy-

one of Wythe's subject-headings. On thirteen lectures he

wrote more than three full pages each, and seventeen

subjects fall within the range of two to three full pages,

inclusive.2

1. Beveridge, Marshall, I, 174-176.
2. See Appendix C.

Such are the cold, black-and-white facts concerning

the young jurist's student notebook. There is another fact,

glowing with the warmth of human interest, which could not

be overlooked. In typical schoolboy fashion Marshall wrote

his sweetheart's name in his notebook -- an evidence that

his mind was constantly distracted from even his primary

academic interest.

He had hard work, it appears, to keep his mind on the

learned words that fell from the lips of Mr. Wythe;

for on the inside cover and opposite page of the book

in which he made notes of Wythe's law lectures, we

find in John Marshall's handwriting the words, "Miss

Maria Ambler"; and again "Miss M. Ambler"; and still

again, this time upside down. "Miss M. Ambler -- J.

Marshall"; and "John Marshall, Miss Polly Am."; and

"John, Maria,"; and "John Marshall, Miss Maria"; and

"Molly Ambler"; and below this once more, "Miss M.

Ambler"; on the corner of the page where the notes of

the first lecture are recorded is again inscribed in

large, bold letters the magic word, "Ambler".1

What a task for the historian, to surmise the effect of

legal instruction upon such a preoccupied mind!

As the law course progressed Marshall filled in

partially the gaps between the captions of Wythe's lectures

with regularity as far down the alphabetical list as the

topic Jointure. There follow two subjects -- Juries,

Justice of the Peace -- under which no notes appear,

though he had left six and two blank pages, respectively.

1. Beveridge, Marshall, I, 159-160.

for the notation of observations on those matters. Under

the next pair of subjects -- Leases and Terms for Years,

Legacies -- he recorded many pages of notes, totalling

about one-sixth of all his notes in volume.1 On all the

remaining subjects he wrote nothing. The last of George

Wythe's lectures, therefore, to which Marshall listened

before his unexpected departure to Richmond was that on

Legacies. The irregularities at the last of his notes are

explained by the stop-over of the Amblers in Williamsburg

en route to the capital. The two successive lacunae in the

steady progression of his note-taking were probably the

result of absence from a meeting of the class contempo-

raneous with her visit, and the full notes on the last two

subjects (taken in the very short interval between her

departure from Williamsburg and his) were, perhaps, the

result of an eleventh-hour increase of interest in the

course.

An accurate determination of the exact length of

the period in which the great chief justice sat at Wythe's

feet would be a significant triumph of scholarship. Unfor-

tunately, such an attempt is not possible from records now

known. But the really important thing is to emphasize the

1. See Appendix C.

comparative brevity of Marshall's schooling under the law

professor, contrasting sharply with the fact that Jefferson

was under his direct influence for at least the major

portion of five years and that Clay was in somewhat similar

circumstances for four years. At most, Marshall's formal

legal studies continued not more than a few months.1 It has

been stated that his voluntary retirement from the school

occurred in June, 1800. How many weeks before this

unceremonious denouement it was that his law course began

is not at all certain. The earliest authoritative record

of his college career is the account of his election to

Phi Beta Kappa, May 18, preserved in the minutes of the

society.2 The following line of reasoning on the signi-

ficance of this event is rather, though not unreservedly,

justifiable:

This is an important date; for it fixes with reasonable

certainty the time of Marshall's entrance at William

and Mary. He was probably the oldest of all the

students; his army service made him, by far, the most

interesting and notable; his extraordinary social

qualities never failed to render him popular. It is,

therefore, certain that he was made a member of Phi

Beta Kappa without much delay. He probably entered

college about May 1.3

1. Cf. Mrs. Carrington to her sister Nancy, 1810, Atlantic

Monthly, LXXXIV, 547; Flanders, op. cit., II, 301;

Magruder, op. cit., 23.

1. W. & M. Coll. Quar., IV, 236.
2. Beveridge, Marshall, I, 158-159.

From this standpoint it may be concluded that Marshall was

under Wythe's instruction "for perhaps six weeks."1

At the time of Marshall's exit from William and

Mary he could not have been very learned in the law.2 His

relative's claim that he gained as much legal knowledge in

his short, distracted interval under Wythe as many others

could have acquired in three years 3 may not be untrue, but

its implications might be carried too far. Yet, his

education was sufficient to enable his, early in the summer

of 1780, to secure a license as a practising attorney.4

He returned to army service for a brief period but settled

down soon to a legal career. He married Mary Ambler in 1783.

Only one of the biographical accounts of the future

chief justice pauses even momentarily to weigh the

influence of his short collegiate study upon his later

life. The one authority who is exceptional in this respect

expresses his opinion thus:

His [Marshall's] experience at the College had

probably little effect on his mental development. No

one has recorded that he ever referred to Chancellor

Wythe. The latter remained throughout his life a

1. Beveridge, Marshall, I, 154. Beveridge claims for this

approximation the approval of ex-President L.G. Tyler

of William and Mary. Later treatises, e. g. Martin,

op. cit., 96, accept his estimate.

1. Beveridge, Marshall, I, 174; Lawrence F. Abbott,

Twelve Great Modernists, 142.

1. Mrs. Carrington to her sister Nancy, 1810, Atlantic

Monthly, LXXXIV, 547.

1. Magruder, op. cit., 23.

friend and follower of Jefferson. As such, he probably

had little intellectual sympathy with his other great,

but very different, pupil.1

It may be seen that there is considerable accuracy in this

judgment of Wythe's influence upon Marshall. The law

professor could not have endeared himself very lastingly

in the young lover's heart, and it must be admitted that

Marshall is a flagrant exception to the report that all of

the chancellor's "students entertained for him a veneration

that was almost a religion."2 In political thought and

party affiliation their paths split quite soon after the

permanent organization of the national government, and the

divergence between them grew constantly more acute for

fifteen years, up to the year of Wythe's death. Marshall

was always a foe of the party of Jefferson, Roane, and

Wythe; he may be considered a black sheep in the brood of

recruits to Jeffersonian principles which the latter led

safely through Blackstone's dangerous pages, filled as they

were with venom to the republican viewpoint.3

Yet, in justice, it may be shown that there are

some facts which have a positive rather than negative

bearing on the problem. In the famous Virginia Convention

1. William Draper Lewis, "John Marshall". Great American

Lawyers, II, 325.

1. Hardy, loc. cit., 18.
2. Cf. ante, 27, 43-44, 50-51.

of 1788, called to consider the proposed national

constitution, both were counted among the most potent

proponents of ratification, and Wythe presided over the

committee of the whole while Marshall won a place as one

of the best speakers in favor of adoption.1

In 1795 he was a member of the committee appointed

by the legislature to compile and publish all the state's

laws regarding lands, tenements, and hereditaments. It

consisted of George Wythe as chairman, John Marshall, John

Wickham, John Brown, and Bushrod Washington; only the last

of these men was not, in part, a product of the first's

instructions.2 Through a disagreement between the

committee and the legislature over the scope of the work,

the intended compilation, which would have been quite a

progressive step, was not completed. No hint is given that

the members of the committee were not in perfect harmony.3

But, finally, it was in the field of constitutional

interpretation that Marshall's greatest work was done. And

Wythe's influence may be traced definitely in Marshall's

celebrated decision in the case of Marbury vs. Madison,

1. See, e. g., Beveridge, Marshall, I, 317-480.
2. Bushrod Washington left William and Mary in 1778

before the chair of law was established there. His

legal training was gained in the office of James Wilson.

1. One the committee see Hardy, loc. cit., 17-18; Thomas

Jefferson to George Wythe, January 16, 1796, Writings,

IX, 319-323; Hening, Statutes at Large, I. vii-xi.

his first and basic, though probably not his most important,

interpretation from the Supreme Court bench. Whereas it was

long thought that his assertion of the principles of judicial

review was an original product of his own reasoning,

entirely without previous precedent, recent research has

shown that his application of the theory in the national

sphere was a natural outgrowth of a lengthy evolution.1

One of the most important steps in this progression was the

case of Commonwealth vs. Caton in Virginia, 1782.

Chancellor Wythe gave to the principle its most resounding

annunciation, in memorable words. They were, in part:

. . . if the whole legislature, an event to be

deprecated, should attempt to overleap the bounds,

prescribed to them by the people, I, in administering

the public justice of the country, will meet the

united powers, at my seat in this tribunal; and,

pointing to the constitution, will say, to them,

here is the limit of your authority; and, hither,

shall you go, but no further.2

To what extent, if any, the chief justice studied the

decision in Commonwealth vs. Caton is not known. But the

relation between that case and Marbury vs. Madison is the

more striking when the names of their presiding judges,

Wythe and Marshall, are linked in the role of teacher and

pupil.

1. For the best concise statement of this history of this

evolution, with references, see Caleb Perry Paterson,

American Government, 120-121.

1. 4 Call 8.

Though they were members of opposing parties,

these two great judges may have had considerable

"intellectual sympathy" in their ideas concerning the

nature of the judicial branch of the American government.

CHAPTER VI -- HIS INSTRUCTION OF CLAY

Henry Clay was the third of the trio of George

Wythe's pupils who rose to positions of indisputable

national prominence. Clay's most scholarly biographer

introduces his treatise with this interpretation of his

subject's contribution to the country's progress:

...Henry Clay had, during the long period of his

public life, covering nearly half a century, a larger

share in national legislation than any other

contemporary statesman, -- not, indeed, as an

originator of ideas and systems, but as an arranger

of measures, and as a leader of political forces.1

Clay's influence was thus quite different from that of

either Jefferson or Marshall, and the change in the sphere

of the pupil's work, if nothing else, should quicken

interest in this last inquiry into Wythe's mentorships.

But a contrast of another sort, temporal

disparity, may be said to add even greater zest to this

study of Clay's youth. The fact that Clay's dominant

leadership in national affairs continued about thirty

years after Jefferson was a discredited political figure

and more than twenty years after the last of Marshall's

most important interpretations in jurisprudence had been

recorded will be readily recognized as an observation of

1. Carl Schurz, Life of Henry Clay, I, 2. This work will

hereafter be cited as Schurz, Clay.

tremendous significance to this study. Henry Clay's death

occurred fourteen years after that of Marshall, twenty-four

years after Jefferson's, and forty-six years after that of

their common preceptor. It is not difficult to discover a

distinct recognition by a later generation of the fact that

Wythe's direct influence survived his death by half a

century, and the explanation of such a recognition will

serve admirably as an introduction to this exposition of

Henry Clay's education.

During the last decade of the eighteenth century

Wythe published the decisions of his chancery court, and

the resulting volume ranks as an interesting link in the

chain of Virginia's legal records. Half a century later

there was sufficient demand to justify republication of the

volume, under the editorship of Benjamin B. Minor, a

prominent Richmond attorney. Minor contributed a sketch of

the presiding jurist which he believed "to contain the most

that is now known of his history."1 In addition to using

the available published materials Minor sought first-hand

information from some of Wythe's associates and contem-

poraries, including Judge Beverley Tucker, a successor in

the law chair at William and Mary, and the now aged Henry

1. Minor, loc. cit. xi.

Clay, who had just returned to retirement following the

passage of the compromise proposals of 1850. Tucker, who

had been Minor's legal teacher, contributed two anecdotes

and a personal reminiscence of Wythe which Minor quoted

gratefully in a major footnote.1 The similar request of

Clay for information concerning his teacher resulted in

a letter, dated May 3, 1851, which constituted a valuable

addition to the records of Wythe's personality. Minor

reprinted it intact at the close of his sketch of Wythe's

life,2 introducing it with a statement suggesting Wythe's

lengthy influence upon national affairs through its author:

"The following letter shews that his connections with the

eminent greatness of his country are not yet severed."3

Though he was not the only one of Wythe's protégés who

attained distinction as late as the middle of the nine-

teenth century,4 Clay was by far the foremost.

Henry Clay was born on April 12, 1777, in Hanover

County, Virginia, in a region south of the James known as

1. Minor, loc. cit., xxx n.
2. Ibid., xxxii-xxxvi. In the present connection this

letter is interesting chiefly for the insight which it

gives into the relationship between its writer and

Wythe. Not presenting unknown facts, it serves the

purpose of lessening what would otherwise be a total

dependence upon Clay's biographers, none of whom

evinces an acquaintance with it.

1. Ibid., xxxii.
2. Littleton Waller Tazewell was one who died after 1850.

the "Slashes"; he was the fifth of the seven children of

John Clay, a Baptist clergyman. When Henry was a boy of

four years, his father died, leaving only a small estate.

The future legislature learned his reading, writing, and

elementary arithmetic in the neighborhood schoolhouse and

worked to help in the support of the family. His widowed

mother remarried not many years after her husband's death,

and Captain Henry Watkins, of Richmond, proved to be a

benevolent step-father to the young Henry. After the lad

had spent a year behind the counter of a Richmond store,

Watkins secured for him, in 1792, employment more congenial

and improving. This done, he moved very soon thereafter to

Kentucky, taking all the other members of the family.1

The future statesman, now a youth of fifteen, was

thus left largely to work out his own destiny, though not

in unfavorable circumstances. Clay had been given a desk

in the office of the Clerk of the High Court of Chancery,

a clerkship which was "considered a very desirable place

for a youth".2 We are told by all of Clay's biographers of

the natural manner in which the position had been obtained:

Captain Watkins had brought the weight of his friendship

1. Schurz, Clay, 2-5, 9.
2. Calvin Colton, The Life and Times of Henry Clay, I, 20.

This sources will hereafter be cited as Colton, Clay.

with Colonel Tinsley, a member of the House of Burgesses,

to bear upon the clerk of the court, Mr. Peter Tinsley,

brother of the Colonel. Though Tinsley had no vacancy at

the time, his brother's "patronizing zeal proved

irresistible, and Henry was appointed as a supernumerary."1

Not many months later, while Clay was engaged in

his duties as copyist in Tinsley's office, his connection

with George Wythe began. In his own words,

My acquaintance with the Chancellor commenced in the

year 1793, in my 16th year, when I was a clerk in the

office of the court over which he presided, and when

I think he must have passed the age of three score

years and ten.2

The venerable chancellor had occasion, in the ordinary

routine of his legal duties, to visit frequently the

offices of the clerk of his court. In this way he noticed

the presence of the additional copyist, who attracted his

attention sufficiently to prompt inquiries. Thus occurred

the fortunate accident "which is so frequently found in

the lives of young men of uncommon quality and promise":

he began "to attract the attention of persons of superior

merit."3 Wythe's interest was soon to result in the

establishment of a direct connection between the experienced

1. Schurz, Clay, I, 5.
2. Henry Clay to B. B. Minor, May 3, 1851, reprinted by

Minor, loc. cit., xxxii.

1. Schurz, Clay, I, 6.

mentor and the apt lad. It will become increasingly

evident as our study progresses that the beginning of this

association with the learned jurist was the most fruitful

single event of Clay's early life.

In 1793, or shortly earlier, George Wythe was

practically deprived of the use of his right hand. In such

a case a man of his occupation stood in dire need of a

secretary to perform the tedious routine of preparing the

reports of his cases. Wythe elected the newcomer in the

office of his court's clerk to serve him in this capacity.

Clay has written that when he

became acquainted with the chancellor his right hand

had become so affected with the rheumatism or gout,

that it was with difficulty he could write his own

name. Owing to that cause he engaged me to act as his

amanuensis and I attended him frequently, though not

every day, to serve him in that capacity for several

years.1

From other sources we learn that the indefinite "several

years" of which Clay speaks may be accurately limited to

four.2 During this period the young Henry retained

nominally his desk in Tinsley's office but was employed

a major portion of his time in the functions of private

secretary to Wythe, for, since he had not been necessary

1. Henry Clay to B. B. Minor, May 3, 1851, Minor, loc. cit.,

xxxii-xxxiii.

1. E. g., Schurz, Clay, I, 6.

addition to Tinsley's staff of assistants, the clerk of

the court had been easily persuaded to lend or give its

chancellor the services of the suprenumerary.1 Thus, in a

business sense, Clay became Wythe's amanuensis.

Informally, the promising youth, now completing his

fifteenth year, became the pupil of the able and aging

educator. The fruits of both phases of this relationship,

and especially of the second, will be of pertinence and

interest in this study.

A very tangible production which resulted from

Clay's work as Wythe's amanuensis are the reports of the

chancellor's interpretations in jurisprudence, first

published in Richmond, 1795. The young secretary prepared

the printer's copy of these decisions; on the eve of the

appearance of the second edition he recalled, "Upon his

dictation, I wrote, I believe, all the reports of cases

which it is now proposed to republish."2 To some the first

edition of Wythe's decisions seems not more significant as

a profound legal treatise than interesting as the joint

production of Wythe and Clay,3 and even a distinguished

1. Colton, Clay, I, 21.
2. Henry Clay to B. B. Minor, May 3, 1851, Minor,

loc. cit., xxxiii.

1. Colton, Clay, I, 21.

jurist shares this view.1 Henry Clay, then, is prominently

connected with the preparation of Wythe's only publication.

And thereby hangs a tale of considerable interest to

students of either Clay or Wythe. The eminent chancellor

found much delight in his intimate knowledge of the various

languages an was especially familiar with the ancient

classics. On this point Clay has recorded the following

reminiscence:

Mr. Wythe was one of the . . . most learned men in

classical lore that I ever knew. Although I did not

understand Greek, I was often highly gratified in

listening to his readings in Homer's Iliad and other

Greek authors, so beautifully did he pronounce the

language.2

But the erudite jurist's learning was evidenced in another

manner not so gratifying to the amanuensis whose formal

schooling had not advanced as far as the study of the

languages. The lengthy official documents of the chancellor

were interlarded liberally with passages from his most

admired authors.3 Thus the difficulty of his unfamiliarity

with the classic languages was added to the tedium of his

simpler work as copyist. A particular instance seems to

1. Warren, History of the American Bar, 330.
2. Henry Clay to B. B. Minor, May 3, 1851, Minor,

loc. cit., xxxiii.

1. Speaking of a folio volume of the first edition of

Wythe's reports, one of Clay's biographers gives a

common explanation of this almost pedantic practice

when he says, "It evinces the habit of Chancellor

Wythe in tracing law to the most remote sources of

antiquity...."" Colton, Clay, I, 21.

have become impressed permanently upon his memory. "I

remember," he wrote,

that is cost me a great deal of labor, not understanding

a single Greek character, to write some citations from

Greek authors, which he wished inserted in copies of

his reports sent to Mr. Jefferson, Mr. Samuel Adams, of

Boston, and to one or two other persons. I copied them

by imitating each character as I found them in the

original works.1

One of these volumes containing marginal notes in Clay's

handwriting has occasionally been located.2 And one of the

less familiar anecdotes about "the great compromiser"

reflects his experience as a youth of copying by imitation

the strange writings of Wythe's Greek authorities. It is

related that, some years later,

being at a loss in an English drawing-room for a

subject of conversation, he ventured something about

the Greeks who were then struggling for their

liberties. Discovering that none of those present was

familiar with the Hellenic classics, he ventured to

quote as a saying of Homer a few phrases which he had

copied in youth and still remembered. This gave him a

reputation for erudition that produced an offer of an

introduction to Lord Byron, which, fortunately, never

came to anything.3

Such was, for the purposes of the present inquiry, the

1. Henry Clay to B. B. Minor, May 3, 1851, Minor, loc.

cit., xxxii. This statement, when reviewed in the

light of the occasionally lengthy quotations from Greek

and Latin originals which abound throughout Wythe's

published decisions, suggests strongly the conjecture

that Wythe may have relieved the unfamiliar pen of Clay

sometimes by himself copying such extracts from his

sources into the manuscript of his reports.

1. Warren, A History of the American Bar, 330, and Colton,

Clay, I, 21-22.

1. Joseph M. Rogers, The True Henry Clay, 29.

fruit of the formal business connection between George

Wythe and Henry Clay.

During the four years of service as amanuensis

Clay's "intercourse with the learned and venerable judge

grew constantly more intimate and elevating."1 This

relationship is found to have been beneficial to the

informal pupil both in advancing his education and in

shaping his character. Abundant testimonials to this

dual influence, characteristic of Wythe (as, indeed, of

every real educator), may be produced; a few will suffice.

Clay himself has recorded a rather form statement of

gratitude, recognizing only the jurist's guidance of his

education:

I conclude . . . by an acknowledgment, demanded of me

alike by justice and feelings of gratitude, that to no

man was I more indebted, by his instructions, his

advice, and his example, for little intellectual

improvement which I made, up to the period when, in

my twenty first year, I finally left the City of

Richmond.2

Clay's many biographers, without exception, give more

definitive expositions of the results of Wythe's interest

in his pupil, as well as more extravagant praise for the

1. Schurz, Clay, I, 6.
2. Henry Clay to B. B. Minor, May 3, 1851, Minor, loc.

cit., xxxvi.

teacher. The following exhibit statements of fact and

opinion, selected almost at random, dealing with both

phases of the direction of Clay's progress:

By the opportunities for familiar intercourse with

the great man...the most salutary impressions

were received and rapid advances made in the

acquisition of knowledge.1

As he had to write much from the Chancellor's

dictation, the subject-matter of his writing, which

at first was a profound mystery to him, gradually

became a matter of intelligent interest. The

Chancellor, whose friendly feeling for the bright

youth grew warmer as their relations became more

confidential, began to direct his reading, at first

turning him to grammatical studies, and then

gradually opening to him a wider ranger of legal and

historical literature. But -- what was equally, if

not more important -- in the pauses of their work and

in the hours of leisure, the Chancellor conversed with

his youth secretary upon grave subjects, and thus

did much to direct his thoughts and to form his

principles.2

His attention was thus called to the structure of

sentences, as he wrote them down from the dictation

of his employer, and a taste for the study of

grammar was created which was noticed and encouraged

by the chancellor, upon whose recommendation he read

Harris's Hermes, Tooke's Diversions of Purley,

Bishop Lowth's Grammar, and other similar works.3

The chancellor's society and guidance were to him at

the same time a school of the classics, of belles-

lettres, of law, of history, and of every useful

department of learning to which the taste and ambition

of his young friend were inclined . . . .4

1. Daniel Mallor, The Life and Speeches of the Hon.

Henry Clay, I, 11.

1. Schurz, Clay, I, 6.
2. Epes Sargent, The Life and Public Services of Henry

Clay, 14.

1. Colton, Clay, I, 22.

The society of the venerable chancellor, on such a

mind as Henry Clay's, at that period in his life, must

have been not less hallowing and conservative in its

influences on the morals of his pupil, than inspiring

to his best feelings.1

Henry Clay could not have found a wiser and nobler

mentor . . . . There were few men in his day of larger

information and experience, and scarcely any of higher

principals.2

An excellent statement of the general result of Clay's

association with Wythe is this: that in it his "mind

received its high destination" and that it "introduced

him to a new sphere of thought and improvement."3

But the receptive pupil could not sit forever at

the feet of his mater under the guise of his amanuensis.

He must attain a less servile station in life. Nor did

Wythe cast him adrift without hope or prospect of success.

The chancellor, who had now been eminently connected with

the legal profession in Virginia almost forty years, had

encouraged his protégé's aspirations to the law and had

given him unlimited access to his library. At about the

time of Clay's twentieth birthday he filled up the measure

(adapting to new circumstances Jefferson's phrase in

reference to William Small) of his goodness to the apt

youth by securing his release from any obligation to Peter

1. Colton, Clay, I, 24.
2. Schurz, Clay, I, 6-7.
3. Colton, Clay, I, 22.

Tinsley and placing him as a more formal law student in the

office of attorney-general Robert Brooke.1 Wythe thus

assured himself, if indeed he had not already done so, of

more prominent mention in connection with the youth of the

"mill-boy of the Slashes" than that given any other

individual.2 Clay pursued legal studies in a regular or'

uninterrupted fashion for only about a year,

yet it must be certain that during his residence of

several years in the capital of Virginia, daily

cognizant of legal proceedings, and associating with

the most eminent legal gentlemen of the period, he

acquired an amount of legal information neither

inconsiderable nor unimportant.3

Near the close of the year 1797 he received his license to

practice; and a month or so later he followed his family

west and cast in his lot with that of the then relatively

undeveloped state of Kentucky.4

The story of George Wythe's guidance of Clay's

progress during five years having been fully told, there

remain yet two pertinent considerations which demand

brief attention. It will be worthwhile to attempt an

equitable evaluation of Henry Clay's education and to seek

to ascertain how he felt toward the man who had so freely

1. Colton, Clay, I, 22, 24.
2. Cf., e. g., Gamaliel Bradford, As God Made Them, 46.
3. Mallory, op. cit., I, 11.
4. Schurz, Clay, I, 8-9.

befriended him.

During his long services as a political leader, and

especially in his role as a prominent and frequent speaker

in the national legislature, the Kentucky lawyer's

education had to undergo the acid test and was occasionally

found wanting. As compared to those of such of his

contemporaries as John Quincy Adams and Daniel Webster, for

example, Clay's education was definitely humbled. That he

himself felt his inferiority in this respect is attested

by his frequent expressions of regret touching on the

point. He limited his acknowledgment of indebtedness to

Wythe by a reference to the "little intellectual improve-

ment" which he had made before his removal to Kentucky. A

review of his youth given in a speech made at an enter-

tainment in his honor, June 6, 1842, evinces somewhat the

same spirit:

In looking back upon my origin and progress through

life, I have great reason to be thankful. My father

died in 1781, leaving me an infant of too tender years

to retain any recollection of his smiles or endear-

ments. My surviving parent removed to this state in

1792, leaving me, a boy of fifteen years of age, in

the office of the high court of chancery, in the city

of Richmond, without guardian, without pecuniary means

of support, to steer my course as I might or could. A

neglected education was improved by my own irregular

exertions, without the benefit of systematic

instruction. I studied law principally in the office

of a lamented friend, the late Governor Brooke, then

attorney-general of Virginia, and also under the

auspices of the venerable and lamented Chancellor

Wythe, for whom I had acted as amanuensis. I obtained

a license to practice the profession, from the judges

of the court of appeals of Virginia, and established

myself in Lexington, in 1797, without patrons, without

the favor or countenance of the great or opulent,

without the means of paying weekly board, and in

the midst of a bar uncommonly distinguished by eminent

members.1

Similar intimations might be multiplied.2

Clay's lamentations regarding his neglected and

irregular education embody essentially the truth, but there

are two notably different interpretations of the facts.

(1) A contemporary biographer of the orator presents the

view that his unusual training was almost peerless -- "Mr.

Clay's own deprecatory allusions, here and there, to the

contrary notwithstanding."3 Though it is natural, he thinks,

to respect such modest pretensions, it is not incumbent

on the public to take the unpretending character of

superior virtue as the measure of its claim.4

Developing his argument, he continues, in part:

If any one would know how and where Henry Clay laid the

foundation of his greatness and fame, he is answered in

the facts that he was for years the pupil and companion

of Chancellor Wythe, with all the advantages of his own

aptitudes for improvement, and that the chancellor,

discovering the high promise of his protégé, was not

less ambitious to fit him for his destiny than he

himself was to attain it. Possibly Henry Clay might have

done better under the "systematic instructions" of a

university; but that is not certain . . . . The benefits

1. Quoted by Colton, Clay, I, 29.
2. Cf., e.g., ibid., 23-24.
3. Ibid., 28-29.
4. Ibid., 29.

of the private tuition of such a master, on such a

scholar, might, and probably did, far transcend the

most select advantages that could have been provided

by an ample fortune.1

(2) Without disparaging in the least the influence of

Wythe upon Clay's education, another biography of the

Kentuckian seems to find a basic defect which developed

from the irregularities of his education:

The habit he . . . had cultivated was that of rapidly

skimming over the surface of the subjects of his

study, in order to gather what knowledge was needed

for immediate employment; and as his oratorical

genius was developed early and well, he possessed the

faculty of turning every bit of information to such

advantage as to produce upon his hearers the impression

that he possessed rich accumulation behind the actual

display. Sometimes he may have thus satisfied and

deceived even himself. This superficiality remained

one of his weak points through life . . . . But that

he might have avoided grave errors as a statesman had

his early training been such as to form his mind for

more thorough thinking, and thus to lay a larger basis

for his later development, he himself seemed now and

then to feel.2

It may be seen, therefore, that perhaps Clay's disparaging

references to his education were prompted by genuine

feelings of melancholy regret.3 Yet it should be borne in

mind that even the combination of an apt scholar and an

able tutor could scarcely be expected to result in a

perfect product.

1. Colton, Clay, I, 23-24. Though it is outstandingly the

best of Clay's contemporary biographies, Colton's work

is marred throughout by a spirit of extravagant eulogy.

1. Schurz, Clay, I, 11-12.
2. Ibid., 12. This viewpoint, based on a minute though

fundamental distinction, is the type which has helped

to place Schurz's Clay among the best American bio-

graphies.

If it were not admissible on any other grounds, the

developments of the preceding paragraph would alone justify

an interrogation into Clay's feelings for his teacher. We

find him making no open statement of utter, undisguised

affection. He alluded to Wythe as a man "so pure, so

upright, so virtuous so learned, so distinguished and

beloved,"1 but the context of the sentence designates this

rather as the opinion of a group than as a personal eulogy.

Yet an unquestionable cordiality of gratitude and respect

is to be found. Commenting on a description which he had

given of the chancellor as he had known him, Clay stated,

"Even at this moment, after the lapse of more than half a

century since I last saw him, his image is distinctly

engraved on my mind."2 In his speech of 1842 in which he

summarized his youth Clay mentioned the venerable jurist

after Robert Brooke, but on that occasion he was interested

chiefly in recounting his legal beginnings. Couched in

rather formal language, the concluding sentence of his

letter to Minor shows an utmost sincerity, though not

extravagance, of feeling.3 And, finally, his second child

and oldest son, Theodore Wythe Clay, was named in part for

1. Henry Clay to B.B. Minor, May 3, 1851, Minor, loc.

cit., XXXV.

1. Ibid.
2. Cf. ante, 91.

his mentor.1 From such consideration as these, streng-

thened, perhaps, by a slight personal acquaintance with

the statesman, a verbiose biographer champions the opinion

in characteristic manner that "Henry Clay found a father

in the chancellor" and that "the habitual connexion

between them was a that of father and son, of master and

pupil."2 And concerning the beginning of his formal study

of law under Brooke it is asserted by this writer:

It is not to be supposed, however, that his intimacy

with Chancellor Wythe was suspended by this new

arrangement, which was brought about by the chancellor's

parental care. Ties, originating in such circumstances,

and strengthened by such intercourse, are not easily

dissolved. At no subsequent period of life has Mr. Clay

had any other feelings toward the chancellor than those

of a son toward a father; and once, in Congress, having

occasion to refer to his authority in a matter of fact,

a parenthesis involuntarily fell in, touchingly

expressive of his filial regard.3

In addition, the splendid contribution to the extant

knowledge of Wythe's life which Clay embodied in his letter

of May 3, 1851, disclosed some regard for his mentor, if we

may accept the judgment of the surprised Minor, who

reprinted the letter intact:

For that letter special acknowledgements are hereby

tendered to the writer. It came very promptly in

1. Rogers, op. cit., 32.
2. Colton, Clay, I, 22.
3. Ibid., 24-25. No corroboration of the incident referred

to has been found in other sources.

response to a simple request, made by one who had no

claims upon his attention save those of a cordial

respect manifested, as opportunity has offered during

an acquaintance of several years; and at a time when

it was known that the pressure of numerous engagements,

caused by a long absence from home, furnished so good

a reason for not complying with it as almost to have

prevented it from being made. The public, like

ourselves, will feel deeply indebted to that generous

disposition to pay tribute to the worthy, and that

grateful affection towards a venerable friend which

have furnished them the following sketch.1

In summary, then, Henry Clay seems never to have lost a

warm cordial feeling for the man who had moulded his

character and directed his education for five years. Though

this regard did not approach the tender affection which

characterized Jefferson's love for Wythe, yet, allowing

for the vast differences in the natures and personalities of

the two men, his feeling for his mentor matched Jefferson's

in sincerity if not in depth.

1. Minor, loc. cit., xxxii n.

Chapter VII -- CONCLUSION

George Wythe, statesman, jurist, and educator, may

be regarded as a considerable influence in American history

because of the prominent share which he had in the

education of more than a score of the most eminent political

and legal figures of the independent nation's first sixty

or seventy years.

A self-educated man, he was among the most learned

Virginians of his time, being especially well versed in

law and in the classical languages. In many other ways,

notably by virtue of his experience and character, he was

almost ideally fitted to bring out the latent talents of

his pupils.

Wythe seems to have played the most important role

in the education of Thomas Jefferson, who was deeply

indebted to him primarily for a knowledge of law which he

found very helpful throughout all his public services. They

remained the best of friends until the mentor's death in

1806, and their names must be linked together constantly in

accounts of the public affairs of that period.

Through Jefferson's influence Wythe became, in

1779, the first professor of law in America. For ten years

he taught municipal and constitutional law to William and

Mary students, introducing the moot court and training a

large republican citizenry. Jefferson's interest in the

tidewater institution was conditioned largely by his

preceptor's presence there as legal instructor.

The great interpreter of the American constitution,

John Marshall, had his only legal schooling during some

six weeks or so under Wythe at the College of William and

Mary. Marshall and Wythe were vastly different in political

opinions, except when they were both aligned prominently

with the Federalists in the Virginia Convention of 1788;

they were not bound by personal ties. But Marshall was not

a total antithesis of the Virginia chancellor; in his

decisions from the Supreme Court bench Marshall may have

felt the force of Wythe's legal viewpoints, particularly

in relation to his assertion of judicial review.

Henry Clay carried the direct influence of George

Wythe into a period a half century beyond the Virginian's

death. His preparation for life and entrance into the

legal profession were chiefly a result of the fact that

Wythe took an interest in his improvement. Clay seems to

have duly appreciated, without Jefferson's fervency, his

debt to the great Virginia mentor.

Appendix A

The first of Jefferson's three educational bills,

titled "A Bill for a More General Diffusion of Knowledge",

provided for the systematic organization of tax-supported

elementary or grammar schools, open and accessible to all.1

It is of interest in the present study only because it was

the chief subject of an impassioned letter from Jefferson

to Wythe, strikingly illustrative of its author's zeal for

educational reform as a safeguard of democracy. Under the

leadership of James Madison the state legislature was

brought to a consideration of a portion of the neglected

revisal in 1785-1786. Hoping that this bill might be taken

up, Jefferson, exiled, so to speak, from his reforms in

his native state, wrote from Paris:

I think by far the most important bill in our whole

code, is that for the diffusion of knowledge among the

people. No other sure foundation can be devised, for

the preservation of freedom and happiness. If anybody

thinks that kings, nobles, or priests are good

conservators of the public happiness, send him here.

It is the best school in the universe to cure him of

that folly. He will see, with his own eyes, that these

descriptions of men are an abandoned confederacy

against the happiness of the mass of the people. The

omnipotence of their effect cannot be better proved,

than in this country particularly, where, notwith-

standing the finest soil upon earth, the finest climate

under heaven, and a people of the most benevolent

1. The bill is reprinted in Jefferson, Writings (Federal

Edition), II, 414-426.

the most gay and amiable character of which the human

form is susceptible; where such a people, I say,

surrounded by so many blessings from nature, are

loaded with misery, by kings, nobles, and priests,

and by them alone. Preach, my dear Sir, a crusade

against ignorance; establish and improve the law for

educating the common people. Let our countrymen know,

that the people alone can protect us against these

evils, and that the tax which will be paid for this

purpose, is not more than the thousandth part of what

will be paid to kings, priests and nobles, who will

rise up among us if we leave the people in ignorance.1

1. Thomas Jefferson to George Wythe, August 13, 1786,

Writings, V, 396-397.

Appendix B

The following is a copy of the letter by which

the president of Columbia University renounced any claim

which his institution might have on the first professorship

of law in America:

You inquired in regard to the date at which a law

school was earliest established in this college . . . .

There was established a professorship of Natural Law

1773, but it does not appear from anything on record

that anything like a system of education in municipal

law, or in the preparation of young men for the bar,

was intended by the institution of the chair. By

Natural Law I understand that there is meant rather the

law that ought to be than the law that is. What the

professor actually taught I have no means of knowing,

but I should suppose that it was political ethics

rather than municipal law. The chair, however, enjoyed

but a brief existence, as it became extinct at the

disruption of the college in 1776. The first professor

of municipal law was James Kent, who was elected in

1793 and retired in 1798. He was reelected in 1823

and held office until 1847. It does not appear that any

degrees in law were conferred while Judge Kent occupied

the chair; and although the lectures of that great

jurist formed the basis of his celebrated Commentaries,

there is no matriculation book in existence showing

that regular classes were formed under him. Our earliest

law school, in the modern sense, appears to have been

that which was established in 1858 and which still

exists; having been without precedent in the degree of

its success.1

1. F. A. T. Barnard to Benjamin S. Ewell, June 16, 1887,

W. & M. Coll. Quar., IV, 265.

Appendix C

The following is a tabulation of the subjects of

George Wythe's lectures and of the length of the notes

taken on each by John Marshall in his student notebook,

as reported in Beveridge's Marshall:

(pages)

(subjects) (whole) (fractional)

Abatement 3

Accounts 2

Accord and Satisfaction 1

Actions in General 1 1/2

Actions Local and Transitory 1/4

Actions Qui Tam 1 1/4

Actions on the Case 3 1/2

Agreements 3

Annuity and Rent Charge 2

Arbitrament and Award 1 1/2

Assault and Battery 2/3

Assignment 1/2

Assumpsit 1 1/2

Attachment 1/2

Audita Querela 1/4

Authority 1/4

Bail in Civil Causes 1/2

Bail in Criminal Causes 1 2/3

Bailment 2

Bargain and Sale 1/2

Baron and Feme 4

Bastardy 3/4

Bills of Sale 1/2

Bills of Exceptions 1/2

Burglary 1

Carriers 1

Certiorari 1/2

Commitments 1/2

Condition 5 1/2

Coparceners 1 1/2

(pages)

(subjects) (whole) (fractional)

Costs 1 1/4

Covenant 3

Curtesy of England 1/2

Damages 1 1/2

Debt 1 1/2

Descent 1 1/2

Detinue 1/2

Devises 6 1/2

Disseisin 1/8

Distress 1 2/3

Dower 2

Duress 1/3

Ejectment 2 2/3

Election 2/3

Error 2 1/3

Escape in Civil Cases 1 1/5

Estates in Fee Simple 3/4

Estate for Life and Occupancy 1 4/5

Evidence 4

Execution 1 5/6

Executors and Administrators 11

Extinguishment 2/3

Extortion 1/2

Felony 3 1/6

Forcible Entry and Detainer 3/4

Forgery 3

Forfeiture 2 4/5

Fraud 3

Grants 3 3/4

Guardian 2 5/6

Heir and Ancestor 5

Idiots and Lunatics 3

Indictments 4

Infancy and Age 9 1/2

Information 1 1/5

Injunction 1 2/3

Inns and Innkeepers 2 2/3

Joint Tenants and Tenants in 9 1/6

Common

Jointure 3

Juries 6 blank pages

Justice of the Peace 2 blank pages

Leases and Terms for Years 17 2/3

Legacies 12 1/2

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