

GEORGE WYTHE,
AMERICA'S FIRST LAW PROFESSOR AND THE
TEACHER OF JEFFERSON, MARSHALL, AND CLAY

Approved for the Committee:

Madison L. Jack

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Accepted:

Goodrich C. White
Dean of the Graduate School

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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.

This study is a preliminary step, perhaps, in that direction. Its aim is to present a factual and interpretative account of George Wythe's legal professorship 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 confined 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.

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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, contrasting 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 verbose Virginian, having spoken of Wythe as "instilling into the minds of his pupils those principles which impelled them to imitate his virtues

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1. Dice Robins Anderson, "The Teacher of Jefferson and Marshall," South Atlantic Quarterly, IV, 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 law¹ 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 Continental 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 succeed those which have been ornamental 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, 215. This publication will hereafter be cited as W. & M. Coll. Quar.

wrote:

I return to you a thousand thanks for your goodness 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 instruction 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 consummation, 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

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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, emaciated 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 and 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 statesman 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 contemporary Virginians in the realm of the classical languages and literature; and 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 the 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 translation.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 knowledge 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 collegiate studies or was enrolled in the grammar school which was an integral part of the college; one authority apparently

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1. William Wirt, Sketches of the Life and Character of Patrick Henry, 65.
 2. Anderson, loc. cit., 329.
 3. Jefferson, Writings, I, 167.
 4. George Morgan, The Life of James Monroe, 24.
 5. The History of the College of William and Mary, 34.
 6. 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 school scholar.²

Thus, George Wythe's early educational advantages were not nearly proportional to those which might 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

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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 votaries; 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 given in the report that he referred in 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, 1746, at the age of twenty. However, he moved again 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 this year, 1756, he applied himself with indefatigable assiduity to the broad studies (ranging from the classic literature of several languages through mathematics, 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 foundation, 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:

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1. The facts reported in this paragraph are best summarized by Tyler, loc. cit., 55-57.
 2. Wirt, Patrick Henry, 66. St. George Tucker, among others, approved Wirt's portrait of Wythe: V. & M. Coll. Quar., XXII, 251, 256.

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

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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.
 2. Anonymous "Communication" published in The Enquirer, June 10, 1806.
 3. George Morgan, Patrick Henry, 82.
 4. Francis W. Hirst, Life and Letters of Thomas Jefferson, 31.
 5. 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 gleaned 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 temptations 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, 1743, 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:

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1. Thomas Jefferson to Thomas Jefferson Randolph, November 24, 1808, Writings, XII, 197. The entire first paragraph of this letter, only partially quoted, is timely.
 2. 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 years; 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 him 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 14, 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 universities¹ 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 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

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1. Philip Alexander Bruce, History of the University of Virginia, I, 28.
 2. Ibid.
 3. Tyler, loc. cit., 66.
 4. Cornelius J. Heatwole, A History of Education in Virginia, 91.
 5. 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 enlightened 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 extraordinary 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.

2. 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 acknowledgments 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 a view of its influence. 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 a 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 sway in the moulding of Jefferson's life, though not independently of Small and Wythe, before he became exclusively a student under the latter. 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 Jefferson, 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 indebtedness 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 quarree, and to the habitual conversations 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 quarree. At these dinners I have heard more good sense, more rational and philosophical conversations, 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 an 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

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1. Lyon Gardiner Tyler, Williamsburg, The Old Colonial Capital, 42.
 2. It cannot be known definitely when this association began, but it was probably after Jefferson's birthday in 1760. As a quarree it ended, of course, with Small's return to Europe, which limited its duration to two years.
 3. Nock, Jefferson, 9.
 4. 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 this association: Nock, Jefferson, 17.
 5. Charles Flinn Arrowood, Thomas Jefferson and Education in a Republic, 7.

already historic college. One of the best statements is 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. Neck, Jefferson, 17. This biographer professes to see almost "the only trace of fervency" in Jefferson's writings "when, late in life, he records his admiration" for these three men: ibid. It is interesting to note that the same biographer who protests that Jefferson exaggerated 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 the youth accepted this opening. For his kinamen, Peyton and John Randolph, sons of his great uncle, Sir John Randolph, who had both been eminent practising 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 opportunity of directing his legal studies. Under such circumstances, even when adequate consideration is given to Small's influence and to his relations with Wythe in the partie quarree, 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, though 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 again 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 Sanderson, August 31, 1820, Writings, I, 165.

3. 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 in 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 trunk in Williamsburg. 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 inquietudes 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 his afflictions,) "Are not my days few? Cease then, that I may take comfort a little before I go whence I shall not return, even to the land of darkness, and the shadow of death." But the old fellows say we must read to gain knowledge, and gain knowledge to make us happy and admired. Mere jargon! Is there any such thing as happiness in this world? No. And as for admiration, I am sure the man who powders most, perfumes most, embroiders most, and talks most nonsense, is most admired. Though 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 25, 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 reason, 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

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1. Thomas Jefferson to John Page, January 20, 1763, Writings, IV, 7.
 2. Thomas Jefferson to John Page, July 15, 1763, Writings, IV, 11.
 3. 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.
 4. Thomas Jefferson to John Page, January 20 and July 15, 1763, Writings, IV, 7-8, 8-10.
 5. 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 statesman 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 entertainment 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.

2. Hirst, op. cit., 30-31.

3. Thomas Jefferson to Thomas Mann Randolph, Jr., May 30, 1790, Writings, VIII, 31.

4. Didier, loc. cit., 154, quoting an unknown source.

scoundrel", promising and affording no amusement, yet Jefferson gleaned from his pages a great store of information 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., XVI, 156.

3. Didier, loc. cit., 155.

Thus for some years he was hard at work in Wythe's office, "filling his commonplace book with abstracts and disquisitions, or attending Court, or 'devilling' for his learned friend and master".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 Briareus".²

"With such a guide, and in such a school," this biographer concludes typically, "all the rudiments of intellectual greatness could not fail 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 was 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 enthusiastically 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 Catechisms, 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 remarkably 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 cf. esp. Thomas Jefferson to ? , August 30, 1814, reprinted in Randall, Jefferson, I, 52-57.

3. 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 Anglo-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

William 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.

3. Didier, loc. cit., 153.

4. See esp. Randall, Jefferson, I, 46-57.

5. 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 investigation 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 a 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 a 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 than 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. Evidences of the advantages which his experience in jurisprudence brought to bear upon his subsequent career may be seen in nearly every 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 relation 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 to 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, v, vii-xi.

2. 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 parliamentary 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.

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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.
 3. See esp. Thomas Jefferson to George Wythe, January 22, 1797, and February 28, 1800, Writings, IX, 370; II, 335-336.
 4. 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 whom 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,

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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.
 2. 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 enjoyment of another state of being.¹

Truly were the relations between Jefferson and his teacher a "testimony to the greatness of both men."²

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1. Thomas Jefferson to William Duvall, June 14, 1806, reprinted by Anderson, loc. cit., 343.
 2. 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.

2. 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-

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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,

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1. James Barr Ames, "The Vocation of the Law Professor", in his Lectures on Legal History and Miscellaneous Legal Essays, 358.
 2. 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 sufficiently 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

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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.
 2. For a presentation of the relevant phases of the first bill see Appendix A.
 3. 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.
 4. 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.

3. W. & M. Coll. Char., 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 Politics.
 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.

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1. Robert M. Hughes to Hampton L. Carson, April 8, 1921, W. & M. Coll. Quar. (2nd series), II, 46-47.
 2. Ibid. (1st series), IV, 240 n.
 3. John Brown to William Preston, December 9, 1779, W. & M. Coll. Quar., IX, 22.
 4. Snow, op. cit., 74-76.

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 professorships 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 Establishments in Favr. of any particular Sect 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 treatise as an index of the "motive that influenced the

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1. Hampton L. Carson to Robert M. Hughes, March 31, 1921, W. & M. Coll. Quar. (2nd series), II, 44.
 2. Robert M. Hughes to Hampton L. Carson, April 8, 1921, ibid., 46.
 3. 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 Judge 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, being 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. xi; and W. G. Hammond, "American Law Schools, Past and Future" in The Southern Law Review (new series), VII, 400-429.

3. A portion of this important letter is reprinted in Appendix B.

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

law, but his schemes were nurtured for many years in 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 interest.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 winter 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 no additional lectures.³

To these 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.
3. 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 have occurred in 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 the 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

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1. Editorial in The New York Times, August 2, 1920; Parsons, loc. cit., 495.
 2. 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, Beverley Tucker, Judge Scarborough, 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 to 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 M. Hughes and Hampton L. Carson, 1921, printed in V. & 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.³ 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 constitutions adopted in America opened a field of thought to which Blackstone was a stranger, and Wythe has the honor of being the first regular commentator upon the changes brought about by the new instruments of government in American jurisprudence.¹

It may be asserted that his students profited a great deal from the valuable observations resulting from his contemplation 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

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1. Tyler, loc. cit., 68. Cf. esp. Joseph Jones to James Monroe, March 7, 1780, reprinted in Daniel C. Gilman, James Monroe, 14-15.
 2. Robert M. Hughes to Hampton L. Carson, April 8, 1921, W. & N. Coll. Quar. (2nd series), II, 47. Cf. post, 56-57.
 3. See Appendix C.



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were "practically limited to governmental and criminal law"¹ was admitted by an otherwise unyielding controversialist.² An 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 this conviction.³ Lest it be thought that other testimonials to the comprehensiveness 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 M^r 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 your benevolent attention to the instruction of youth; as I understand that young gentlemen now of Philadelphia propose to finish their studies with you.⁵

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1. Robert M. Hughes to Hampton L. Carson, April 8, 1921, W. & M. Coll. Quar. (2nd series), II, 47.
 2. Hampton L. Carson to Robert M. Hughes, April 9, 1921, ibid., 48.
 3. Robert M. Hughes to the editor, August 23, 1920, The New York Times, September 1, 1920.
 4. John Brown to William Preston, February 15, 1760, W. & M. Coll. Quar., IX, 76.
 5. 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 except, 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

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1. Robert M. Hughes to the editor, August 23, 1920, The New York Times, September 1, 1920.
 2. Anderson, loc. cit., 340.
 3. Ibid., 341.
 4. 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-defensible 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 Virginia 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 . . . endeavour to improve by the Advantages of my situation, which of late have been greatly augmented; for M^r Wythe ever attentive to the improvement of his Pupils, founded two Institutions for that purpose, the first is a Meet Court, held monthly, or oftener in the place formerly occupied by the Gen^l Court in the Capitol. M^r 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 M^r Wythe Lawyer like I assure you. He has form'd us into a Legislative Body, consisting of about 40 members M^r 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 consideration those Bills drawn up by the Com^{tee} 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 a 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.

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1. John Brown to William Preston, July 6, 1780, W. & M. Coll. Quar., IX, 80.
 2. 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 remarkably modest and unassuming character of that valuable and virtuous citizen, they would have made their way in the world before this. It is a pity they should be lost to society, and such a monument of his memory be neglected. As you are entitled to it by his will (I am informed), as composing a part of his library, could you not find leisure time enough to examine it and supply some omissions which now and then are met with, I suppose from accident, or from not having time to correct and improve the whole as he intended?

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 commentators, — a good many of his own thoughts on our constitutions and the necessary changes they have begotten, with that spirit of freedom which always marked his opinions.

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 information 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 subjects 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 none 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 instruction, 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

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1. John Tyler to Thomas Jefferson, November 12, 1810, reprinted in Lyon Gardiner Tyler, The Letters and Times of the Tylers, I, 249-250.
 2. Thomas Jefferson to John Tyler, November 25, 1810, Writings (Federal Edition), XI, 158-159.

These letters show, among other things, that the manuscripts 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 transformation 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 reorgani-

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 Physicks. 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 shared his views regarding slavery he wrote:

The College of William and Mary, in Williamsburg, since the re-modeling 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:

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1. Thomas Jefferson to John Banister, October 15, 1785, Writings, V, 186.
 2. 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. Bellini [Bellini], professor of Modern Language, 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 and Termination

In their first faculty meeting the reorganized quintet of professors at William and Mary resolved, December 29, 1779, that "the Lectures in the different Schools shall commence for the ensuing year on the 17th of

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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.
 2. 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 Revolutionary 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 the town,⁴ became the headquarters of General Washington, continuing so 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.

3. Tyler, Williamsburg, The Old Colonial Capitol, 168.

4. 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.

5. 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 conversation, 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

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1. George Wythe to Thomas Jefferson, December 31, 1781, W. & M. Coll. Quar. (2nd series), VI, 337-338.
 2. W. & M. Coll. Quar., XV, 169-174, 264-269; XVI, 73-80.

system; the sessions of the modified High Court of Chancery were to be held in the capitol, Richmond.¹ This circumstance 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.

3. If any of the contemporary students of George Wythe's life, notably Dice E. 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 interpretation of the motives which prompted Wythe's resignation, however, it is chiefly negative and 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 formal 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 offence & press him to return: otherwise it is over with the college.²

No amplification of the suggestions given in these two sentences can be built up from any known sources. But it may be safely concluded that Wythe severed his connection

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1. William Munford to John Coalter, September 30, 1791, W. & M. Coll. Quar., VIII, 155.
 2. Thomas Jefferson to William Short, December 14, 1789, Writings (Federal Edition), VI, 23. This item in 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 disturbance 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. On 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 certainly 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 influence 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.

2. 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 courtship 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.

4. 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, LXXIV, 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 in 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 notebook, 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 unrivalled significance.

Upon his entrance at William and Mary Marshall procured for his note-taking a book of blank pages,

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1. Charles E. Martin, An Introduction to the Study of the American Constitution, 96.
 2. W. & M. Coll. Quar., IV, 236.
 3. 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.
 4. Martin, op. cit., 96.
 5. Beveridge, Marshall, I, 155.
 6. 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 jotted 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 "Nolly 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 these 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 capitol. The two successive lacunae in the steady progression of his note-taking were probably the result of absence from a meeting of the class contemporaneous 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. Unfortunately, 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 significance 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

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1. Cf. Mrs. Carrington to her sister Nancy, 1810, Atlantic Monthly, LXXXIV, 547; Flanders, op. cit., II, 301; Magruder, op. cit., 23.
 2. W. & M. Coll. Quar., IV, 236.
 3. 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 years³ may not be untrue, but its implications might be carried too far. Yet, his education was sufficient to enable him, 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] experiences 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

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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.
 2. Beveridge, Marshall, I, 174; Lawrence F. Abbott, Twelve Great Modernists, 142.
 3. Mrs. Garrinton to her sister Nancy, 1810, Atlantic Monthly, LXXXIV, 547.
 4. 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 lawyer'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

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1. William Draper Lewis, "John Marshall". Great American Lawyers, II, 325.
 2. Hardy, loc. cit., 18.
 3. 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.

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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.
 3. On the committee see Hargy, 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 basis, though probably not his most important, interpretation from the Supreme Court bench. Whereas it was long thought that his assertion of the principle 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 the history of this evolution, with references, see Caleb Perry Patterson, American Government, 120-121.

2. 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, a 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 contemporaries, 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 shows 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 proteges who attained distinction as late as the middle of the nineteenth 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 p.

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.

3. Ibid., xxxii.

4. 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 legislator 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 source 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.

3. 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 a private secretary to Wythe, for, since he had not been a necessary

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

2. 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 supernumerary.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.

3. 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 and 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.

3. 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 it 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

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1. Henry Clay to B. B. Minor, May 3, 1851, Minor, loc. cit., xxxiii. 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.
 2. Warren, A History of the American Bar, 330, and Colton, Clay, I, 21-22.
 3. 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 formal statement of gratitude, recognizing only the jurist's guidance of his education:

I conclude . . . by an acknowledgement, 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 the 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 this 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 range of legal and historical literature. But — what was equally, if not more important — in the pauses of their work and in hours of leisure, the Chancellor conversed with his young 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*, Looke'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 inclined⁴

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1. Daniel Mallory, The Life and Speeches of the Hon. Henry Clay, I, 11.
 2. Schurz, Clay, I, 6.
 3. Eges Sargent, The Life and Public Services of Henry Clay, 14.
 4. 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 influence 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 principle.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 master 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 east 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 service 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 improvement" which he had made before his removal to Kentucky. A review of his youth given in a speech made at an entertainment 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 two tender years to retain any recollection of his smiles or endearments. 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 practise 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 my 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 claims.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 protege, 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 accumulations 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.

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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.
 2. Schurz, Clay, I, 11-12.
 3. 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 biographies.

If it were not admissible on any other grounds, the developments of the preceding paragraph would alone justify an interrogation into Clay's feeling 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.

2. Ibid.

3. Cf. ante, 91.

his mentor.¹ From such considerations as these, strengthened, perhaps, by a slight personal acquaintance with the statesman, a verbiouse biographer champions the opinion in characteristic manner that "Henry Clay found a father in the chancellor" and that "the habitual connexion between them was as that of father and son, of master and pupil."² And concerning the beginning of his formal study of law under Brocke 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 acknowledgments are hereby tendered to the writer. It came very promptly in

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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 cordiality of 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 difference 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 revision 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, notwithstanding 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

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 that 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:

(subjects)	(whole)	(pages) (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

(subjects)	(whole)	(pages)	
		(fractional)	
Costs	1	1/4	
Covenant	3		
Curtsey 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 Common	9	1/6	
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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