

GEORGE WYTHE THE COLONIAL BRITON:  
A BIOGRAPHICAL STUDY OF THE PRE-REVOLUTIONARY  
ERA IN VIRGINIA

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by

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"No man ever left behind him a character more venerated than G. Wythe. his virtue was of the purest tint; his integrity inflexible, and his justice exact; of warm patriotism, and, devoted as he was to liberty, and the natural and equal rights of men, he might truly be called the Cato of his country, without the avarice of the Roman; for a more disinterested person never lived."

— Thomas Jefferson.

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## BIBLIOGRAPHY

## PREFACE

The story of the research by which a historical study was pursued and produced is often more captivating than the written product of the investigation. It might perhaps be deemed so of this treatise, were I to relate step by step half the recollections of the more pleasant, humorous, accidental, and miraculous episodes which I have experienced in this effort to discover and piece together the events of the first fifty years in the life of George Wythe (1726-1806).

This dissertation had a remote and unwitting origin six full years ago. In the spring of 1931 Mr. Frank L. Jones, of New York City, Vice-President of the Equitable Life Assurance Society, sponsored among Hampden-Sydney College students an essay contest on Wythe. During the course of preparing for that competition a rather puerile paper, which contained not a single original fact or thought, it occurred to me that George Wythe had as good a claim as any of his contemporaries in the golden age of Virginia leadership to the title of the "Forgotten Man". That idea — itself little more original than the research which was its spawning-ground — has undergone no material amendment despite its more recent subjection to critical comparative examination. I still believe the thought centered upon Wythe by his score of biographical homilists and by the public to be far from commensurate with the nobility of his character and the value of

his contributions to American institutions.

The research requirements for a master's degree and the willingness of my history professors at Emory University to sanction a more thorough exploration of the subject which had become my primary intellectual interest combined to promote another excursion in the Wythe field. The tangible result was a thesis on portions of Wythe's influence as an educator, written in the spring of 1933 under the descriptive title "George Wythe, America's First Law Professor and the Teacher of Jefferson, Marshall, and Clay". Since that study Wythe has never really been relegated to the back of my mind, though other academic hurdles and various employments which were professionally and financially welcome necessarily forestalled undivided attention to him during all but about ten months of the past four years..

My original intention for the present purpose was to review the entire eighty years of George Wythe's life, and the research was planned and carried out accordingly. When it had been practically completed, however, it became evident that I would suffer from a complaint rare among students of Wythe -- a superabundance of materials. I had accumulated more information than I could report satisfactorily within the allotted time. The alternative of condensation seemed as inadvisable and valueless as it was unattractive. Faced, therefore, with an insurmountable impasse which was at once my despair and my joy, I determined to make this treatise only an unfinished biography.

It is, therefore, a portrayal of the first fifty years in the career of George Wythe. Within that scope the story is virtuously all-inclusive. I am aware of having deliberately omitted only one available fact of that period about him. I have gathered in scattered places a surprisingly large collection of his correspondence and private papers, aggregating somewhat more than eighty items. Every one of these which concerns his half century of allegiance to England is herein reproduced, an overwhelming majority of them for the first time. Nevertheless, despite the new lights which they throw upon the man, I have found myself so dependent upon the testimony of other witnesses that Wythe is to be seen in these pages more as he seemed to others than as he appeared to himself.

The complete biography remains something less than half-told. By measurement in bulk, approximately forty per cent of my notes have been utilized. More information is at hand to depict Wythe's career as a progressive American republican in his last thirty years than can be mustered to chronicle his role as a loyal Briton in the half century ending in 1775; and, as one would naturally suppose, the events of the latter half of his six decades in the public eye exceed in significance those of the earlier half. The crowning aspects of his services reached their climaxes after 1775. At that date he stood upon the threshold of his highest attainments in politics and statecraft; his development as a pioneering teacher was yet to reach its zenith in his law classes at

William and Mary College; and his long judicial duties had not even begun. In only one respect is this study not merely partial. Wythe's entire experience as an attorney at law falls within my chronological boundaries.

I hope at some indefinite time in the future, if unpredictable circumstances permit, to revise this presentation of the morn of Wythe's life and to continue the narrative through his noon and twilight.

Someone has remarked wittily that the preface affords an author the opportunity to write the first book review of his work. I do not wish to avail myself of this prerogative on a comprehensive scale. However, I do think it pertinent to observe that I believe the chief merit of this study is its thoroughness in refuting the inaccuracies and misinterpretations of others and in presenting a much more detailed account than they. For the sake of comparison it may be mentioned that the longest previous biography of Wythe devoted only eleven printed pages to this portion of his life. My absorption in problems of arrangement and criticism serves, to some extent, as its own apology for the uneven readability of my writing; literary goals in a dissertation and in a published Life are naturally and necessarily different.

The first two divisions of my bibliography list materials of value in probing the whole of Wythe's life; its remaining sections are a catalogue of only those sources which were used in the present connection.

Acknowledgments to those who have signally aided me in one way or another are prompted by sincere gratitude. For the benefits of discussion and encouragement I am indebted particularly to four of the six living authors of published biographical sketches of Wythe: Dr. S. C. Mitchell, Professor of History in the University of Richmond; Dr. D. R. Anderson, President of Wesleyan College; Dr. Theodore S. Cox, Dean of the Marshall-Wythe School of Government and Citizenship in William and Mary College; and Mr. Allan D. Jones, of the Newport News bar. Mr. Oscar L. Shevmake, of the Richmond bar, who has delved deeply in Wythe lore without publishing his findings, gave me similarly the advantages of his conversation. I am indebted to Mrs. George Bryan, of Richmond, for a copy of the address made by her husband at the cornerstone ceremonies of the Wythe school building in that city. Dr. W. A. R. Goodwin, rector of the Bruton Parish Church in Williamsburg, father of the restoration first of the Wythe House there, then of all Williamsburg, was an invaluable counselor. Mrs. George P. Coleman, of Williamsburg, graciously gave me access to her extensive manuscripts of the Tucker family. Mr. David J. Mays, of the Richmond bar, shared with me a few items from his large collection of materials on Edmund Pendleton and John Taylor of Caroline. Among custodians of public depositories I am obligated for various favors especially to Mrs. Helen Bullock, Archivist, Department of Research and Education, Colonial Williamsburg, Inc.; Dr. E. G. Swem, Librarian of William and Mary College;

Dr. Julian P. Boyd, of the Pennsylvania Historical Society; Mr. Wilmer L. Hall, Librarian of the Virginia State Library; Dr. Max Farrand, Director of Research, Henry E. Huntington Library and Art Gallery; and Mr. Harry Clemons, Librarian of the University of Virginia. The Rosenbach Co., through Dr. A. S. W. Rosenbach in the New York office and Mr. Percy E. Lawler in its Philadelphia office, permitted me to transcribe the Wythe letters and documents in its possession; and the Thomas F. Madigan Co., through Mrs. Madigan in the New York office, granted leave to refer to one of its documents which contained Wythe's autograph. Dr. W. A. Montgomery, Professor of Latin in the University of Virginia, rendered help in the translation of the non-legal Latin quotations. To Mr. Frank L. Jones, Prof. Freeman H. Hart, of Hampden-Sydney College, and Mr. John L. Bruner, of the Richmond News Leader, I have been constantly grateful in my work on Wythe for an interest which six years has not decreased. Finally, I have many reasons to value the occasional guidance of Dr. T. P. Abernethy, under whose direction I have made this study. To it each of these friends has made some unique and appreciated contribution.

W. Edwin Hemphill

## Chapter I

### ORIGINS OF A CHARACTER: ARISTOCRATIC AND INTELLECTUAL HERITAGES

#### Seventeenth Century Kecoughtan

Some six or eight miles from the birthplace of George Wythe there occurred, on the last day of April, in the year 1607, the first peaceful meeting between aboriginal inhabitants of North America and permanent settlers of the race which gradually dispossessed them.

Anchors were dropped that day from the Sarah Constant, the Goodspeed, and the Discovery, in waters which their passengers named, with grateful and picturesque aptness, Cape Comfort. Captain John Smith, Captain George Percy, and their fellows of the exploring party which was sent ashore were conducted a short distance inland and given a friendly reception in an Indian village of eighteen wigwams known as Kecoughtan, meaning "great town". Perhaps this name was not as paradoxical as it seems, for legend has it that the populous Kecoughtans had been all but exterminated not many years before the arrival of the "palefaces" by some of the more western tribes of the Powhatan Confederacy, who misunderstood a prophecy that their conquerors would come from the east and took precautions with characteristic directness to eliminate the most eastern menace which they could find.

The search for a suitable location for the proposed English colony, it would seem to those who were not handicapped



by the settlers' inability to foresee the future, might well have ended at Kecoughtan's "Strawberry Bank", the fertile area adjoining Cape Comfort, between Hampton River and Mill Creek, whose few amicable natives found it quite easy to secure wild and domestic foods in bountiful quantities from nearby corn fields, forests, and waters. However, probably in fear of hostile raids by Spanish vessels (a threat which never materialized), the expedition pressed up the James River to an unhealthy and unproductive morass which it named Jamestown, an island affording little better protection from Spaniards and Indians to counterbalance the great advantage of Kecoughtan as a salubrious and fruitful site. Thus during the next three years Kecoughtan served the cause of British colonization chiefly as a place at which Captain John Smith and others travelling to and fro in the James could stop over for lodging and feasting. During the summer of 1610 the Kecoughtans were driven away forever from the locality in mysterious reprisal for the murder of a white man by members of another tribe, and some of the colonists moved in from later depopulated Jamestown — on which fact the present city of Hampton bases its claim to be the oldest continuous English-speaking settlement in the New World.<sup>1</sup>

When in 1619 the western hemisphere's first legislative assembly convened, Kecoughtan was the only plantation in

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1. Lyon G. Tyler, History of Hampton and Elizabeth City County, Virginia, 5-17; Marion L. Starkey, The First Plantation: a History of Hampton and Elizabeth City County, Virginia, 1607-1887, 7-9.

Virginia which still retained its pagan and lacked a British name. Some of its people, according to an old chronicle, "in pious frame of mind, took a spite at Kecoughtan name and said a name so heathen should not be for a people so pious as we...." Thus the first General Assembly made this the subject of the sixth petition which it sent back to England; in the words of the chronicler, "they made their grudges to old King James, and so the King a new name found, for this fine section and all around".<sup>1</sup> In honor of Princess Elizabeth, daughter of James I, rather than of the late Queen Elizabeth, the eastern end of the peninsula between the James and York rivers was henceforth known as Elizabeth City, while the former "great town" of the Kecoughtans and its neighboring waters derived later from Henry Wriothesley, Earl of Southampton, the names Hampton, Hampton River, and Hampton Roads.<sup>2</sup> But "Kecoughtan" survived in local usage and various misspellings for at least a century, and even as late as 1700 this reminder of a pre-British era crept occasionally into the official papers.<sup>3</sup>

In the original division of the colony into shires or counties Elizabeth City was recognized as one of Virginia's

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1. Quoted in Tyler, History of Hampton, 7.
  2. Princess Elizabeth (d. 1662) was Queen of Bohemia, had married an Elector of Palatine, and became the maternal grandmother of the Elector of Hanover who succeeded in the next century to the English throne as George I; Charles M. Long, Virginia County Names: Two Hundred and Seventy Years of Virginia History, 32-34. The Earl of Southampton was President of the Virginia Company of London, 1620-1625; Tyler, History of Hampton, 14.
  3. Jacob Heffelfinger, Kecoughtan Old and New, or Three Hundred Years of Elizabeth City Parish, 9.

eight governmental units. As if it had not already sufficient claims to priority, during the following year, 1634/5,<sup>1</sup> Benjamin Syms endowed the first educational institution in the New World, and in 1638 Thomas Eaton in a somewhat similar benefaction surpassed Syms' philanthropy. Through the Syms Free School and the Eaton Charity School, whose doors were open for many a decade, Elizabeth City antedated slightly the notable legacy of John Harvard.<sup>2</sup>

The steady influx of immigrants into the county increased its population before the close of the seventeenth century to about 800 people. Among them, fostered by an ideal location and by the best maritime facilities then available, a flourishing commercial life developed in conjunction

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1. Until the British adoption in 1752 of the Gregorian calendar, a revision of the less accurate Julian calendar, the new year began among English peoples late in March. Thus, according to present reckoning, February 12, 1634, was actually in the year 1635. The generally current practice of making a double notation of years in the overlapping period (e.g., March 1, 1750/1) — in preference to the more antiquated method of signifying Old Style dates as March 1, 1750 (O.S.) — has been adopted throughout these pages.
  2. Tyler, History of Hampton, 22-23; Starkey, First Plantation, 13. Governor William Berkeley, Virginia's counterpart of Charles II, was evidently quite ill-informed in one respect when he made his oft-quoted report in 1671. "But, I thank God, there are no free schools nor printing [in this colony] and I hope we shall not have [them] these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both!": William Waller Hening, ed. The Statutes at Large; being a Collection of All the Laws of Virginia . . ., II, 517. Here, as always in later pages, the italics are in the original. This collection will hereafter be cited as Hening, Statutes.

with the profitable culture of their abundant crops.<sup>1</sup>

Both phases of the county's economic life were represented among the ancestors of George Wythe — the agricultural by his father's people, the maritime by his mother's side of the family.

### The Wythes

George Wythe's paternal ancestors seem to have held a recognized position among the aristocracy of Elizabeth City County. Practically nothing is known on this side of the Atlantic of their English background, but the Wythes could hardly have represented the type of colonist typified by William Worlich, who entered the county as an indentured servant but rose to one of its seats in the House of Burgesses and became the progenitor of one of its most honorable families.<sup>2</sup> The one scrap of information which is available to controvert the possibility of a lowly Wythe family status in British society is the fact that George Wythe used a bookplate bearing a heraldic coat-of-arms — usually until the

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1. This estimate is indicated by the census of 365 tithable persons there in 1693 and of 410 in 1698 (tithables included white men between the ages of 16 and 60 and all Negro men and women): Starkey, First Plantation, 17. In 1714 the number of tithables had risen to 610: Virginia Magazine of History and Biography, II, 4. The latter source will hereafter be cited as Virginia Historical Magazine. Two years later a traveller reported that Hampton, whose brisk business made it the center of the colony's trade, consisted of about 100 houses: Tyler, History of Hampton, 31.

2. Starkey, First Plantation, 11.

American Revolution a reliable hint of gentility.<sup>1</sup>

The original Wythe immigrant, great-grandfather of George in a direct line of succession,<sup>2</sup> was Thomas Wythe, whom for clarity's sake, since his sons for three generations also bore that name, it is perhaps best to call Thomas the First. He moved into Elizabeth City County in or a few years before 1680,<sup>3</sup> probably after Bacon's Rebellion, the revolt in Virginia which preceded the American Revolution by exactly a century. He acquired a considerable acreage near the northern side of the peninsula beside Back River and established there the family estate known as "Chesterville".<sup>4</sup>

1. The New England Historical and Genealogical Register, XLI, 297; Virginia Historical Magazine, XIV, vii; William and Mary College Quarterly Historical Magazine (1st series), I, 112, 120. The last of these sources will hereafter be cited as William and Mary College Quarterly.
2. A London bricklayer by the name of Simon Withe, who was probably not kin to the Elizabeth City Wythes, entered Virginia in 1623; and a Francis Wythe, also probably not related, resided somewhere in the colony in the 1670's: H. R. McIlwaine, ed., Minutes of the Council and General Court of Colonial Virginia, 1622-1632, 1670-1676 ..., 6, 64, 213, 405. In the neighboring counties of Warwick and York dwelt for generations, contemporaneous to those of Thomas Wythe's descendants, a Wythe family of some local consequence; but no tie of blood or acquaintance is known to have existed between them: Warwick County Records; York County Records; William Carter Stubbs and Mrs. William Carter Stubbs, Descendants of Mordecai Cooke ... and Thomas Booth ...; Bishop William Meade, Old Churches, Ministers and Families of Virginia, I, 240; William and Mary College Quarterly (1st series), XIII, 175; Executive Journals of the Council of Colonial Virginia (Photostats), April 30, 1752, University of Virginia Library.
3. Lyon Gardiner Tyler, "George Wythe", in William Draper Lewis, ed., Great American Lawyers ..., I, 51.
4. Actually, it is not positively known that Thomas Wythe the First ever owned "Chesterville", which later pages will show to have been the home of his grandson, Thomas Wythe the Third; but it is a reasonable assumption that this plantation was gained originally by the immigrant Wythe.

Early recognition came to the immigrant Wythe as one of the "best people in the community".<sup>1</sup> In 1680 he sat upon the bench of the monthly county court,<sup>2</sup> whose members held the title of justices of the peace and served as judges with jurisdiction over civil and criminal litigation. In this capacity, the county's highest local office, he determined ex officio the right and the wrong of his neighbors' petty disputes in the lesser magistrate's court.<sup>3</sup> It is of interest in this connection to mention the fact that his precedent in this respect was followed, as later pages will show, by every male inhabitant of Elizabeth City County who bore the name of Wythe. Moreover, Thomas the First was almost immediately elected a burgess to represent the county in the General Assembly, taking the usual oaths of office on June 9, 1680,<sup>4</sup> and receiving 200 pounds of tobacco, the approved currency of that day, as his legislative salary.<sup>5</sup> Thomas Wythe the First,

1. Starkey, First Plantation, 29.
2. Virginia Historical Magazine, XIV, 215.
3. Tyler, "George Wythe", loc. cit., 51. For an authoritative discussion of the magistrates' courts see Philip Alexander Bruce, Institutional History of Virginia in the Seventeenth Century, I, 478-482; for a more exhaustive study of the county courts see ibid., 484-646.
4. H. R. McIlwaine, ed., Journals of the House of Burgesses of Virginia, 1659/60-1693, 120. Others of Virginia's gentry who also took the oaths that day were William Byrd, Benjamin Harrison, John Page, and George Mason.
5. Ibid., 179. He served probably only through the first of the two sessions of that Assembly. No known reason can be assigned for the apparent substitution of Thomas Jarvis in his seat for the second session: ibid., x, 122.

possibly then in late middle age, died in 1693/4; not counting grandchildren and in-laws, he was survived by his wife Ann, to whom he had probably been wed in England and whose family name is not accessibly recorded, two daughters,<sup>1</sup> and a son Thomas the Second. By his will he divided among various relatives and friends a wealth of possessions, including two indentured servants, nine Negro slaves, four hogsheads of "sweet scented tobacco", six silver spoons, linen and wearing apparel, orchard produce, horses and cattle; but his principal bequests provided for the ownership of his two moderately extensive tracts of land by Ann his wife and Thomas his grandson.<sup>2</sup> About a year and a half later the widowed Ann married Thomas Harwood,<sup>3</sup> a justice of the county court.<sup>4</sup>

1. The elder of these, possibly named Constance, married John Tomer: William and Mary College Quarterly (1st series), II, 69. The other, whose name was Ann, married not later than 1680 William Mallory (d. ca. 1720), son of Capt. Roger Mallory of New Kent County, who had settled in Elizabeth City County and was its outstanding tobacco planter; they had four children, Francis, William, Mary, and Ann: ibid., I, 196 n., II, 69; Virginia Historical Magazine, XII, 402, XIV, 215, 216, 219; Starkey, First Plantation, 26.
2. "Chesterville" was apparently devised to his wife, with his son Thomas as residuary legatee; a separate tract of 204 acres was bequeathed to Thomas his grandson: will of Thomas Wythe, proved March 19, 1693/4, Deeds, Wills, Etc., 1689-1699, 165a-166, Elizabeth City County Records.
3. Their marriage license was granted September 7, 1695: William and Mary College Quarterly (1st series), II, 210; William Armstrong Crozier, ed., Virginia County Records, VI, 81. But her bond dated November 19 and recorded on November 30 of that year, witnessed by Harwood, speaks of her as Ann Wythe: Deeds, Wills, Etc., 1689-1699, 181, Elizabeth City County Records. A patently inaccurate mixture of these facts and dates is to be found in Virginia Historical Magazine, IV, 90 n.
4. Tyler, History of Hampton, 27.

It is interesting to note that her education was so limited that she signed a legal document with the letter "A" as her mark.<sup>1</sup> Her death followed her second marriage within a few years.<sup>2</sup>

Thomas Wythe the Second, grandfather of George, was born abroad in 1670.<sup>3</sup> Like his father, he attained the position of a justice of the peace for the county;<sup>4</sup> and one report has it that he served as a municipal trustee of Hampton.<sup>5</sup> Through his thrice-married wife Ann, the Wythes became connected with many of the prominent local families. Her father, John Shepard, had been burgess for James City and Elizabeth City for a number of terms in the middle of the century,<sup>6</sup> and her brother, Baldwin (d. 1697), was a justice of the latter county with Thomas Wythe the First;<sup>7</sup> her first husband was a gentleman who went by the rather formidable name of Quintilian

1. Indenture of Ann Wythe, November 30, 1695, Deeds, Wills, Etc., 1689-1699, 181, Elizabeth City County Records.
2. Thomas Harwood, who was himself the widower of Lydia, widow of Thomas Chisman, died in 1700 and was survived by a third wife, Elizabeth Roberts: William and Mary College Quarterly (1st series), I, 96 n.
3. Tyler, "George Wythe", loc. cit., 51.
4. Letter of attorney of Ann Wythe Mallory, May 2, 1693, Deeds, Wills, Etc., 1689-1699, 115, Elizabeth City County Records.
5. Dice Robins Anderson, "The Teacher of Jefferson and Marshall", The South Atlantic Quarterly, XV (1916), 329.
6. William and Mary College Quarterly (1st series), XIII, 208.
7. Tyler, History of Hampton, 51.



Guthericke, another of the justices.<sup>1</sup>

Thomas the Second became ill and died prematurely in 1694, just a few months after his father, but not so suddenly that he had not prepared against a fatal conclusion of his illness by making provision for the disposal of his property. His will transmitted to his wife and children tobacco and Negroes; some money which was in England; a tumbler, cup, tankards, and spoons, all of silver; cattle and horses; and household possessions, among which he singled out for specific mention the large looking glass which his father had brought to "Chesterville".<sup>2</sup> A few weeks before the second marriage of the widow of Thomas the First, the more recently bereaved Ann Sheppard Guthericke Wythe, after about a year of widowhood, accepted as her third husband Rev. James Wallace, M.D.,

1. William and Mary College Quarterly (1st series), II, 69, 208. Their son William Guthericke died before 1695, and their daughter Elizabeth married in 1700 Nicholas Curle, of another respectable Elizabeth City family: ibid., V, 57. Elizabeth Guthericke Curle must have died ere many years, for Curle remarried before his death in 1714; his widow, the former Jane Wilson, had two later husbands, Capt. James Ricketts and Merritt Sweeney, both of whom were burgesses for the county: ibid., IX, 125-126.
2. Since Thomas the First had devised "Chesterville" to him only after the death of his mother, who survived him, Thomas the Second never legally inherited the family estate, though it is presumable that he lived on that plantation. To his godsons Francis Mallory, John Tomer, and William Wilson he bequeathed several lambs, and to his brother-in-law John Tomer a hat of which he evidently was proud: will of Thomas Wythe, proved September 18, 1694, Deeds, Wills, Etc., 1689-1699, 163-165, Elizabeth City County Records.

of nearby "Errol" on Back River,<sup>1</sup> sometime clerk of the county and for twenty-one years the honored rector of Elizabeth City Parish, who contested bitterly with his parishioners, the county court, and the colonial government in occasional squabbles.<sup>2</sup> Mrs. Wallace survived until her grandson, George Wythe, was fourteen years of age and bequeathed him a small legacy, signing her will with her mark in lieu of a signature.<sup>3</sup>

Her son, Thomas Wythe, father of George Wythe and the last of the line to be considered before a review of the latter's maternal heritage, succeeded to the management of "Chesterville" and of the agricultural pursuits by which the family's fortune was maintained.<sup>4</sup> To the acres which he

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1. William and Mary College Quarterly (1st series), II, 210. By Wallace (1667-1712) she bore six additional children, making her progeny the most prolific among those of all George Wythe's ancestors. Through their marriages George Wythe was more or less distantly connected with the Wallace, Armistead, Westwood, Dandridge, Roscow, Jennings, Curle, Meade, Naylor, Mason, and Ballard families of the eighteenth century: ibid., IX, 124, 130-131, XII, 177; will of Ann Wallace, recorded February, 1740/1, Wills, Etc., 1701-1904, 27, Elizabeth City County Records. In 1711 Wallace acquired 583 acres in Elizabeth City: Crozier, ed., Virginia County Records, VI, 277.
  2. Heffelfinger, Kecoughtan Old and New, 19; H. R. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, I, 309-310, II, 414-416, 432-433, 439-442.
  3. Will of Ann Wallace, proved February 1740/1, Wills, Etc., 1701-1904, 27, Elizabeth City County Records.
  4. There seems to be, as frequently happens, no legal record of his ownership of the estate, but it was almost undoubtedly handed down to him by his grandmother upon her marriage to Thomas Harwood in 1695; also, he undoubtedly retained the farm of 204 acres willed to him by Thomas Wythe the First.

possessed by inheritance he added half-ownership of a waterfront in Hampton.<sup>1</sup> As early as 1699 he was esteemed enough locally to hold a county office.<sup>2</sup> Fifteen years later he was serving in the county court,<sup>3</sup> and a few years later still an appointment came to him from Williamsburg to be Elizabeth City's sheriff.<sup>4</sup> Even more positive testimony to his local eminence is to be found in his election as a representative of his native county in the General Assembly of 1718-1720, and again in the Assembly of 1723-1726.<sup>5</sup>

Thus on the paternal side George Wythe was descended from three generations of aristocratic "gentleman farmers" who had been for almost a half century among the leading citizens of Elizabeth City County. Their lives, so far as surviving records disclose, present the rather orderly appearance characteristic of a landed gentry.

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1. William and Mary College Quarterly (1st series), V, 31; Crozier, ed., Virginia County Records, VI, 277.
  2. Virginia Historical Magazine, I, 248. On the basis of this date it appears that he could not have been born as late as 1691, as Tyler, "George Wythe", loc. cit., 51, reports.
  3. Virginia Historical Magazine, II, 4. Cf. Bruce, op. cit., I, 487.
  4. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, IV, xl.
  5. H. R. McIlwaine, ed., Journals of the House of Burgesses, 1712-1726, ix, xi, 178, 364. He took over in 1718 William Armistead's seat and in 1723 that of Anthony Armistead, by whom he had been supplanted in the 1720 election. There is no evidence that he performed more than merely yeoman service in either house: ibid., 197, 210, 227, 394, 401.

The Keiths and the Walkers

In sharp contrast to the predominately placid and agrarian life at "Chesterville" is the controversial and maritime background of the family of George Wythe's mother.

Her maternal grandfather was Rev. George Keith (ca. 1638-1716), M.A., schoolmaster, missionary of two faiths, and theological pamphleteer — whose career ran almost the entire gamut of the possible experiences of an ecclesiastical leader in an age which could not boast of religious liberty. Born in Scotland, and well educated in England, he became a member of the Society of Friends, commonly called Quakers, and married a Scotch Quakeress, Elizabeth Johnston by name. Sincerely convinced of the validity of the Society's tenets, he published a number of able books in defense of its creed, which has had few interpreters of greater ability, prominence, or contribution. Upon Robert Barclay, George Fox, and William Penn, with whom he and his wife travelled through Holland and Germany on a missionary expedition of consequence, he exercised a profound influence. For these and other activities upon which Old World governments were then accustomed to frown, he was confined for terms of greater or lesser length in prisons upon at least six separate occasions. Nor were his suggestive, almost unique beliefs on such theological problems as the Inner Light, the Lord's Supper as an agape, and the transmigration of souls deemed otherwise than heretical by orthodox Quakers.

By 1685 Keith had settled in New Jersey; four years later he had located in Philadelphia as headmaster of the present-day

William Penn Charter School. Since he was by nature rather self-assertive and contentious and because he evidently desired, perhaps even coveted, a sole leadership of the Quakers, a severe conflict among them developed around him there. It ended in a separatist movement through which a very sizable minority seceded under him from the Philadelphia Yearly Meeting and called themselves "Christian Quakers" — usually known by others as "Keithians" — and in Keith's being disowned by the London Yearly Meeting.

This expulsion from the Society of Friends was followed by several years of preaching, in Quaker garb and a rented hall, as an independent preacher in London. Such success attended these efforts that by 1700 the Bishop of London convinced himself that Keith's Quaker heresy constituted Anglican orthodoxy and ordained him a minister of the established Church of England. Under these auspices Keith attacked all Friends as relentlessly as he had previously denounced only some of them and had refuted the doctrines of Anglicanism! Yet it should not be inferred from this about-face that his convictions lacked genuineness or that his intellect lacked consistency. Occasion will be found in another connection to review some of his efforts in this new role.

To talent as a forceful religious disputant there was added in the character of George Keith a considerable adeptness in scholarly fields far removed from theology. In Oriental studies and in mathematics he attained marked proficiency; indeed, on the basis of some researches which he

made in the latter when he was about seventy years old, he toyed with the aged nautical problem of ascertaining one's position upon the high seas and introduced a new method for determining longitude.<sup>1</sup> A volume from his pen upon "mathematical and other subjects" was to be seen years later in George Wythe's library.<sup>2</sup> Lest anyone doubt that the published productions of that pen were voluminous, it may be mentioned that a printed bibliography of them covers thirty-six pages.<sup>3</sup> One of them, titled, An Exhortation and Caution to Friends concerning Buying and Keeping of Negroes (Philadelphia, 1693), has a definite claim to priority as the first Quaker pamphlet against slavery.<sup>4</sup>

Ann Keith, daughter of this versatile and open-minded Scotch savant and a grandmother of George Wythe, married

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1. This sketch of Keith is based entirely upon two serviceable articles: Alexander Gordon, "George Keith", Dictionary of National Biography, principally for the British phases; Rufus M. Jones, "George Keith", Dictionary of American Biography, chiefly for his American career.
  2. Daniel Call, "Judge Wythe", in his Reports of Cases Argued and Adjudged in the Court of Appeals of Virginia, IV (1833), xi.
  3. Joseph Smith, A Descriptive Catalogue of Friends' Books, or Books Written by ... Quakers ... Including All Writings by Authors before Joining, and by Those after Having Left the Society, Whether Adverse or not ..., II, 18-43.
  4. Stephen B. Weeks, Southern Quakers and Slavery: a Study in Institutional History (Johns Hopkins University Studies in Historical and Political Science, extra vol. XV), 198-199.

George Walker of Elizabeth City County.<sup>1</sup> He was a son of George and Elizabeth Walker, of whom practically nothing is known.<sup>2</sup> Presumably they were immigrant colonists who provided certainly no exception to the rule of respectability among George Wythe's forebears.

The younger George Walker was a resident beside Mill Creek of the "Strawberry Bank", upon which the Kecoughtans in days of yore had built their "great town", between Hampton and Old Point Comfort. That he acquired and owned somewhat notable land holdings is adequately proved by surviving county records.<sup>3</sup> He was in 1697 an official pilot of James

1. William and Mary College Quarterly (1st series), IX, 127. There is something of a mystery in the geographical question as to how Ann Keith could have married into an Elizabeth City family. A report that her father immigrated about 1690 into Hampton is almost certainly inaccurate: Call, "Judge Wythe", loc. cit., xi. Equally unlikely, though perhaps more possible, is the estimate of the date as 1684: L. S. Herrink, "George Wythe", The John F. Branch Historical Papers of Randolph-Macon College, III, (1909-1912), no.4 (1912), 283. It would be more probable that they were wed abroad and immigrated with his father's family before 1690. An Anglican preacher named George Keith was a minister in Elizabeth City parish in 1624-1625 and the owner of 100 acres of its land by patent: Heffelfinger, Kecoughtan Old and New, 14. One authority assumes that Rev. George Keith the Quaker was a grandson of this early namesake in the colony: Tyler, History of Hampton, 30.
2. As late as 1704 the senior Walker seems to have been acquiring land in the county: Crozier, ed., Virginia County Records, VI, 277. Cf. the next two footnotes.
3. As early as 1691 he shared with his brother, Jacob, a Hampton merchant, a legacy of 150 acres devised by one Thomas Oldis: William and Mary College Quarterly (1st series), IX, 84. In 1704 he (and/or his father, from whom it is often difficult to distinguish him) paid quitrents on 325 acres in Elizabeth City and on 425 acres in Princess Anne: Virginia Historical Magazine, XXX, 343, 283. And in 1703-1811 grants in his (and/or his father's) name totalling more than 265 acres in the former county are

River, whose duty it was to board vessels arriving in Hampton Roads and to take their wheels during the inland journey, lest their oceanic pilots bring them to grief in narrower and shallower confines.<sup>1</sup> In later years he is revealed as an important factor in James River maritime circles.<sup>2</sup> In response to his petition for permission to take out a patent as personal property upon a wharf which he had been pioneer enough to erect at the end of King Street in Hampton, the Council of the colony decided that, if the municipal officials did not think it prejudicial to the public piers or interest, he was entitled to its private ownership; far from viewing it as a liability, his neighbors acclaimed it as "rather an

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listed: Crozier, ed., Virginia County Records, VI, 277. A land survey and maps of the Mill Creek sector in 1725 indicate some of these acquisitions: William and Mary College Quarterly (1st series), IX, 116-188. No other record of his probable bequests there from his father is available. It was perhaps his father who protested with Anthony Armistead and Edward Mihill, both of whom were at one time or another burgesses, that the county justices made in 1694 an illegal and unjust assessment of the county and parish taxes: McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, I, 309-310.

1. William and Mary College Quarterly (1st series), XVIII, 290; Tyler's Quarterly Historical and Genealogical Magazine, III, 287. The latter of these sources will hereafter be cited as Tyler's Quarterly Magazine. But in William and Mary College Quarterly (1st series), IX, 127, it is indicated that it was his father who held this position. The office of pilots for Tidewater rivers had been created by legislation in 1661: Starkey, First Plantation, 14.
2. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, I, 381, 236, 315, III, 189, 190, 245, 458, 546.



advantage to the said Town."<sup>1</sup>

Moreover, then as now, Old Point Comfort was Virginia's preeminently strategic place of defense against invasion, and Walker was a public servant in various capacities during the war of the early eighteenth century in guarding against possible forays by French ships.<sup>2</sup> In the twenties (and perhaps for a longer period), under title of "Gunner and Storekeeper", he was chief commander of formidable Fort George, erstwhile predecessor of present-day Fortress Monroe.<sup>3</sup>

But George Walker was a Quaker, and that was sufficient to disqualify him from some offices in the Hampton Roads area. The oaths required by the English government of colonial officials had to be sworn, a practise prohibited to strict Quakers. Thus, because he would not relax his principles in this respect, upon the death of Nicholas Curle, Naval Officer of the Lower District of James River, Walker could be appointed to serve in Curle's stead only until a suitable permanent incumbent could be selected, and vigorous protests were raised

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1. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, III, 439, 453. This petition was supported by another from various Hampton citizens asking that it be granted: ibid., 449. For a contrary opinion cf. an earlier petition in which the people of the town protested against his wharf: Calendar of Virginia State Papers, I, 183.
  2. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, III, 206, 208-209; Virginia Historical Magazine, XXVI, 54-57; McIlwaine, ed., Journals of the House of Burgesses, 1702/3-1712, 341.
  3. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, IV, 33. Cf. Tyler, History of Hampton, 36-37.

against even his temporary performance of Curle's duties.<sup>1</sup> In his work as Naval Officer pro tempore Walker showed such "diligence and ability" that he was appointed by the Surveyor General of Customs in America official "Searcher" for the lower James of the revenue-producing cargoes of Hampton Roads traffic — a position under the Naval Office from which he was not disbarred by an oath.<sup>2</sup> In a pecuniary sense this was the emptiest of honors, devoid of financial remuneration. He might save the government a fortune by his care in exacting

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1. Lieutenant-Governor Alexander Spotswood was forced to make an explanation to British authorities in justification of his choice. His apology is convincing. "Mr. [John] Luke [Collector of customs for the same district] makes a mighty noise of my appointing a person who is a Quaker.... To w<sup>ch</sup> I beg leave to ans<sup>w</sup>r that Mr. Curle's Death was so sudden, and sundry vessels then in ye district, both to enter and Clear, that I was under necessity of making as sudden an appointment, and in regard [i.e., in consideration of the facts that] Mr. Geo. Walker was a person of the best Character, both for his Capacity and honesty, of any thereabouts, that Mr. Curle had entrusted him with his books during his Sickness, and the managem<sup>t</sup> of all his Affairs as his Executor, and that he liv'd very convenient, at the very mouth of James River, I could not think of a fitter person, untill [sic] I could otherwise supply it [i.e., the vacancy] and I wish I could have prevail'd with him to lay aside that one Silly Scruple of the word Swear, that I might still have continued him in the Office"; Alexander Spotswood to the Commissioners of the Customs, January 27, 1714/5, R. A. Brock, ed. The Official Letters of Alexander Spotswood ... (Virginia Historical Society Collections, new series, I, II), II, 105-106. Nor did Luke, who wanted the job, make the only protest, for the Burgesses charged in a later series of complaints that he had acted "contrary to [his] Instructions" in this matter: McIlwaine, ed., Journals of the House of Burgesses, 1712-1726, 230. For an abstract of Curle's will, naming Walker as an executor, cf. William and Mary College Quarterly (1st series), XXVI, 286. This was the same Nicholas Curle who had married Elizabeth Guthericke: cf. ante, 10 n.
  2. Alexander Spotswood to the Commissioners of the Customs, January 27, 1714/5, Brock, ed., Letters of Spotswood, II, 106.

duties on all products taxed by the tariff laws, but it was in vain that he petitioned for a fraction of the customs receipts sufficient to cover only the expenses of his four laborers and boat.<sup>1</sup>

A family event of consequence in George Walker's household was the return from London to America of his father-in-law, Rev. George Keith. There was a patent need in the British colonies for a more adequate corps of Anglican ministers who could be relied upon to combat the existence within her borders of certain religious faiths — particularly Quakerism — which could not have England's unstinted approval. Thus an apostolic organization was incorporated in 1701 under the Church of England with the descriptive title: Society for the Propagation of the Gospel in Foreign Parts. Engaged as its first missionary, in the next year, to travel extensively through the continental colonies of the West on an annual stipend of £200 was none other than Keith, the ex-Quaker. It was an inherently brilliant selection; who else could be more effectively competent in the task of leading the unorthodox into the established Church than a former leader in errant beliefs, now repentant of earlier heresies?

In this worthy cause Keith set forth immediately, armed with credentials assuring the lieutenant-governor of Virginia and others, whose memories of his Quaker career might be too recent, that he intended "to promote the truth amongst his old

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<sup>1</sup> McIlwaine, ed., Journals of the House of Burgesses, 1712-1714, 87.

acquaintance", especially in Pennsylvania, and that he was "in the full Orders of our Church, So that you may permit him to preach when & where you please...."<sup>1</sup> His itinerary carried him in 1703 and again in 1704 to Elizabeth City County, where he found lodging upon both occasions with his Quaker son-in-law.<sup>2</sup> Of the former visit he recorded in his official report:

... we stayed there about Ten Days, at my Daughters [sic] House at Kirketan [Kecoughtan] by James River; she is fully come off from the Quakers, and is a zealous Member of the Church of England, and brings up her Children (so many of them as are capable through Age,) in the Christian Religion, Praised be God for it.<sup>3</sup>

But since Walker retained his Quaker sympathies, his latch-key was out to members of the Society of Friends as well as to a relative from the S. P. G. F. P. One representative of the former, for example, tells of going in line of duty "to Kiquotan [Kecoughtan], where we had a meeting at our friend, George Walker's house" and reported that his "wife is one of George Keith's daughters and follows him in his apostacy and enmity".<sup>4</sup>

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1. Bishop of London to Thomas Nicholson, April 3, 1702, Virginia Historical Magazine, XXIII, 145. Cf. Bishop of London to Whom It May Concern, April 3, 1702, and W. Worcester to ?, April 21, 1702, ibid., 144-145.
  2. George Keith, A Journal of Travels from New Hampshire to Caratuck, [N.C.], On the Continent of North-America, 64-65, 81.
  3. Ibid., 65. A semi-official contemporary estimate by the Society of the value of Keith's mission may be found in the account of its secretary: David Humphreys, An Historical Account of the Incorporated Society for the Propagation of the Gospel in Foreign Parts ..., 73-80.
  4. Quoted from the journal of Thomas Story in Tyler, History of Hampton, 30.

Thus there existed in the home of George Wythe's maternal grandparents two almost irreconcilable religions. Between George Walker, Quaker, and Ann Keith Walker, Anglican, all other marital relationships may have been promptly and satisfactorily adjusted, but the impasse created by Mrs. Walker's renunciation of Quaker tenets presented a more difficult domestic problem. Perhaps it could have been best dealt with by a tacit and mutually agreeable "live and let live" — or "worship and let worship" — policy, for instances of the successful operation of similar arrangements among other couples were not a contemporary oddity; perhaps, on the other hand, it was inevitable in this case that the question must flare up rather openly and demand more than an implied answer.

In either event, Ann Keith precipitated a candid but imperfect settlement of the issue by sending in April, 1708, to Virginia's august Council at Williamsburg a petition, in which she "complained ... that George Walker her husband violently restrains her from going to Church to worship God according to the established Religion...."<sup>1</sup> The Councillors' consequent order that the two principals in the matter should appear before them a few days later prompted Walker on his part to anticipate that necessity with another petition. In this he stated the frailty of his wife's health and suggested that she might avoid the risks of a trip to Williamsburg by accepting his willingness to permit her in the future to worship as she

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1. Hullwaine, ed., Executive Journals of the Council of Colonial Virginia, III, 176.

pleased.<sup>1</sup> To the Council this proposal must have seemed a complete solution of a potentially vexatious dispute and was evidently adopted by its members (though no record of their approval is available) and communicated by them, as a sort of intermediary, to Mrs. Walker.

With this whole-hearted submission to her demand for religious freedom, the matter might have rested; but another element, probably the basic one, was injected into the controversy by Mrs. Walker's second petition to the Council, praying that she might be awarded responsibility for the religious instruction of her children. A plea of this kind was distinctly a horse of another color in the eyes of representatives of eighteenth-century British aristocracy. Accordingly, the Councillors examined Walker and satisfied themselves that he wished only an "athorety [sic] over his Childr. that properly belongs to Every Christian man" — the right "to Bring up his Childr. in whatever Christian Religion he may Be of that is privelged [sic] By our Christian Laws" — and an exclusive opportunity to direct their religious studies. Thus assured, they advised his wife that he should rightfully have this liberty, offering her only one dim hope, which hung on the old technicality as to whether or not Quakers were Christians. In a friendly letter to her they stated, "if yo[u] Can prove that he is Not a Christian and So Consequently Not within the virge [sic] of our Christian Laws then we are

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1. Petition of George Walker to the Council, April 24, 1708, Virginia Historical Magazine, XVI, 79-80.

willing" not to consider the case closed, "but wee [sic] Shuld [sic] be Glad [if] yo[u] Could Be Reconcilled" without its further continuance.<sup>1</sup>

With this dictum, though it was couched only at best in a semi-official letter of amicable, almost condescending advice Mrs. Walker's cause was lost. Yet the daughter of George Keith could be obdurate. The Council's challenge to give it a technical basis for some other decision she could not meet successfully; indeed, it is probable that she did not even try. But she could force the issue, in one final, forlorn plea, to a more formal conclusion. Thus the Council found it necessary a few days later to review the whole affair. Its decree confirmed again the victory she had gained in respect to her own church attendance. The more unprecedented question of the relative degrees of religious authority of the two parents over their children was utterly evaded through a loophole found in her petition, which did not disclose "of what age those Children are nor how far they are capable of choos[ing] [sic] a Religion for themselves".<sup>2</sup>

Consequently, this conflict between the Walkers eventuated in a partial triumph for Ann Keith — partial, it must be

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1. The Council to Mrs. George Walker, April 25, 1708, ibid., 80-81. The absence in the Council's Executive Journal of records detailing all the apparent steps of their proceeding in this dispute and the tone of friendly advice which pervades this letter indicate a desire on their part to settle in unofficially or "out of court", as the saying goes.
  2. Belknap, ed., Executive Journals of the Council of Salem, Massachusetts, III, 180-181.

admitted, because, at most, she had gained only a stalemate and, at worst, had suffered a moral defeat. Yet, if the time and place be granted, perhaps she could not have won a greater victory, for in reality she had raised a question much too advanced for her age.

There can be little doubt that both parties to this controversy accepted in good faith the incomplete verdict of the somewhat unwilling tribunal to which they had appealed and that they worked out in some manner between themselves the unsolved portion of their riddle. At least such dire possibilities as a disruption of their home was forestalled, and it continued, until Walker's death in 1732,<sup>1</sup> to serve as the chief hotel and assembly hall for Quakers in predominantly hostile Elizabeth City County. One of its guests twenty years later, recording his impressions of a four-day stay, described George Walker as "very loving and hearty to Friends, frequently having meetings at his house", and reported that "his wife ... [was] more loving than I expected. She ... in her younger days showed great dissatisfaction with Friends, but after her father's death [in 1716] the edge of that bitterness abated ...."<sup>2</sup>

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

2. Quoted from an account of Samuel Bownas in William and Mary College Quarterly (1st series), IX, 127-128, and in Tyler, History of Hampton, 32-33.



Union of the Wythe and Walker Families

Next to the oldest among the six children of George and Ann Keith Walker was a daughter named Margaret.<sup>1</sup> She was licensed in 1719 or 1720 to marry Thomas Wythe the Third,<sup>2</sup> who, it will be recalled, was George Wythe's father. By their union there was blended in the latter's heritage the landed aristocracy of the Wythes, the business interests of the Walkers, and the liberal intellectual tradition of the Keiths.

When in 1708 each of her parents sought vainly a recognized and exclusive control over her religious education, Margaret Walker was probably a very young girl. It is not known whether, in later years, she adopted the religious sect of her Quaker father or preferred against his wishes the

1. William and Mary College Quarterly (1st series), IX, 127-128, X, 205-207, XIII, 37, XVIII, 289-291, XX, 206, Virginia Historical Magazine, X, 213, XXIX, 509, and Tyler's Quarterly Magazine, III, 287-288, give considerable genealogical data on her brothers and sisters and on their relatives in the Walker, Wray, Tucker, Norton, Dewey, Taylor, Meade, Eldridge, and Call families. A failure to distinguish between the generations of her mother and of herself characterizes the account given by Call, "Judge Wythe", *loc. cit.*, xi. For further information on her brothers, George and Jacob, cf. Virginia Gazette (pub. by Rind), March 12, 1767; Virginia Historical Magazine, XIV, 347, XXII, 306; McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, IV, 141, 403, 409; Executive Journals of the Council of Colonial Virginia (Photostats), Dec. 13, 1752, April 30, 1752, April 11, 1757, University of Virginia Library.
2. William and Mary College Quarterly (1st series), I, 157; Croft, ed., Virginia County Records, IV, 89. With his father-in-law Thomas Wythe the Third was named an executor in the will of Robert Tucker, a justice of Norfolk County; Virginia Historical Magazine, IV, 360. Wythe's uncle by marriage, William Mallory, appointed him overseer of his will: *ibid.*, XIV, 219.

church of her Anglican mother; the latter was the more likely. Thus the thread of Quakerism in George Wythe's ancestry may have been a broken one. It is true, however, that George Wythe chose a rather independent course in religious affairs; possibly this attitude was derived from the influence of his maternal background. Certain it is, too, that he never experienced his grandfather's difficulty in advancing to high public offices, though in the simple habits of his old age there was to be some resemblance to the personal lives of Friends — a fact which was deemed worthy of comment upon his death.<sup>1</sup>

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1. "Communication" signed "A.B.", Virginia Gazette, and General Advertiser, June 18, 1806.

## Chapter II

### APPRENTICESHIP TO A THREEFOLD CAREER:

#### PRELIMINARIES TO SELF-EDUCATION

##### Wythe's Birthplace

Pilgrims to the numerous historical shrines of the York-James peninsula are usually unaware that their travels take them near George Wythe's birthplace. One of the Virginia State Commission on Conservation and Development's familiar highway markers a few miles west of Hampton on the road to Newport News proclaims to passers-by curious enough to stop that Wythe was born about eight miles north, but no other sign can be found in greater proximity. One who wishes to locate the spot must seek clearest available directions to a certain paved cross-road on the Yorktown highway about seven miles northwest of Hampton, drive a quarter mile northward to a tenant farmer's rural mail box which bears the name "Chester-ville", and walk eastward about 250 yards to a stately clump of tall trees.

This grove is something of a landmark amid surrounding fields, which slope very gently away from it on all sides. To the east one can discern a mile distant the visible hanger of Langley Field, United States aviation unit of defense in the Hampton Roads area. To the northeast and north, roughly a thousand yards away, lies the

northern branch of Back River. Moderately wide beside "Chesterville", it broadens considerably at Langley Field and empties directly into Chesapeake Bay about five miles farther east; above "Chesterville" it narrows rapidly into a mere creek and half-encircles that former estate on the west. In the main, the boundary line between Elizabeth City and York counties corresponds with the course of this stream.

Within the grove of trees which thus mark the site of George Wythe's nativity a pilgrim of today can find little to inspire feelings of awe and reverence. Unless his imagination is brought into play, he will scarcely catch himself involuntarily thinking of sacred grounds and of customary methods of indicating respect in its presence, such as removing one's shoes or lifting one's hat. For nothing remains but irregular heaps of crumbled brick and partial outlines of the brick foundations of the house which was "Chesterville"'s axis.<sup>1</sup>

Wythe's first home, which was of medium size, survived through two centuries or more until twenty or twenty-five years ago, when fire destroyed it completely.

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1. The facts of these paragraphs are based upon the writer's observations during a visit to "Chesterville" on November 20, 1936.
  2. It was reported to be standing in 1907 by Tyler, "George Wythe", loc. cit., 54. The flames are said locally to have started on a back porch made of wood.

Tradition says that its brick had been manufactured in England.<sup>1</sup> Little of its design is known, except that it had one of the open-hearth basement kitchens so typical of aristocratic architecture in colonial Virginia.<sup>2</sup>

To this home Thomas Wythe the Third brought his bride of 1719 or 1720, Margaret Walker, and in it their three children were born within the next ten years. The first, a son, was naturally named Thomas and thereby became the fourth Thomas Wythe of Virginia. The second upset the local Wythe precedent of single male heirs in each generation. For him the Christian name George was adopted, probably in honor of his maternal grandfather, George Walker, or of his widely known maternal great-grandfather, George Keith. The third child, a daughter, received the given name Ann, which had occurred much more frequently in her father's family than in her mother's.

#### A Scanty Classical Education

George Wythe's first twenty years — a full quarter of his life — are veiled with the mist of uncertainties or hidden entirely by want of information. All their

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1. This tradition seems to be acceptable, despite one local authority's contention that "there is no evidence that any houses in Virginia were built of imported brick": Tyler, History of Hampton, 32.
  2. Major Robert S. Hudgins, of Hampton, has owned the place for a great number of years. Through an illness on his part, efforts to have him furnish some data on it failed. For some rather indefinite information given on his authority see Starkey, First Plantation, 45. Dr. S. C. Mitchell tells the writer that he was a guest of Major Hudgins there before the fire.

available facts and probabilities can be related within brief compass.

They began in the year 1726, but no record of the exact date has survived. Yet, since it is recorded that he was in the "eighty-first year of his age" when he died, June 8, 1806,<sup>1</sup> it may be inferred that his birth occurred during the first half of that year.

Before young George had grown old enough to remember his father well, if at all, Thomas Wythe the Third died, perhaps in the year 1729.<sup>2</sup> As in the case of his own father, his death came before a normal life span had elapsed; but, unlike his father, Thomas the Third left no will. Thus Thomas the Fourth became the sole heir to his moderate wealth, for colonial Virginia laws disposed of such contingencies by bestowing all property on the oldest son, in accordance with the contemporary rule of primogeniture. Doubtless the widowed Margaret Walker Wythe and all her children continued to live at "Chester-ville", at least until Thomas the Fourth attained his majority and could legally assume its management in

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1. "George Wythe", American Law Journal (ed. by John E. Hall), III (1810), 97. Jefferson erroneously guessed the year as 1727 or 1728: Thomas Jefferson, "Notes for the Biography of George Wythe", Ms. filed under date of August 31, 1820, Jefferson Papers, Library of Congress; for his explanation of the surmise cf. Thomas Jefferson to John Sanderson, August 31, 1820, ibid.

2. Tyler, "George Wythe", loc. cit., 54, reports the year definitely as 1729, citing no authority.

person. But, no matter how generously he may have shared his heritage, other members of the family must have suffered inconveniences and have seen many a want go unfilled through the rather immutable operation of the law's unequal division of the family's wealth. A later age deemed this deep-seated discrimination in favor of the first-born to be against public policy and grossly unfair. George Wythe, who may be justly considered more or less a victim of the system, put his shoulder to the wheel in the drafting of legislation which would grant each immediate survivor a portion of the real estate in the event of an intestate death.<sup>1</sup>

Though it is possible that George Wythe received better early instruction than his more favored brother, the exclusion of his widowed mother from a major portion of his father's estate proved to be a considerable handicap to his education. In some nearby grammar school — possibly the Syms Free School or the Eaton Charity School — he learned rudiments of the three "R's".<sup>2</sup> But, more significantly, it was at his mother's knee that he obtained his introduction to the classical languages.

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1. Reference is made by this statement to his support late in 1776 of Jefferson's bill for the abolition of entails and primogeniture.
  2. "Memoirs of the Late George Wythe, Esquire", The American Gleaner, and Virginia Magazine, I, 1, reports: "for he [Wythe] has often informed the [anonymous] author of these memoirs, that he was taught at school nothing more than reading and writing English, and the five first rules of Arithmetic".

There may be some exaggeration in the description of her as "a woman of uncommon knowledge and strength of mind" which ascribes to her so intimate an acquaintance with Latin that she spoke it "fluently",<sup>1</sup> but at least she, a granddaughter of George Keith, was not as illiterate as the mother and grandmother of her husband, neither of whom could sign her own name.<sup>2</sup> Wythe himself in later years attributed to his mother his initiation in the study of the Latin language,<sup>3</sup> but she taught him only the principles of grammar and, as he said, "to read the colloquies of Corderius very imperfectly...."<sup>4</sup> Another report has been handed through somewhat more indirect channels to the effect that she assisted his translations of the New Testament in its Greek text by referring when necessity demanded to an English version,<sup>5</sup> though she probably "knew of Greek only the alphabet and how to hold the dictionary...."<sup>6</sup> Thus George Wythe's maternal

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1. Ibid. Cf. "Communication" signed "A.B.", Virginia Gazette, and General Advertiser, June 18, 1806; William and Mary College Quarterly (1st series), VI, 77.
  2. Cf. ante, 8-9, 11.
  3. William Wirt, Sketches of the Life and Character of Patrick Henry, 47.
  4. Call, "Judge Wythe", loc. cit., xi. Cf. Thomas Jefferson to L. H. Girardin, January 15, 1815, Jefferson Papers, Library of Congress.
  5. Jefferson, "Notes for the Biography of George Wythe", Jefferson Papers, Library of Congress.
  6. Anderson, "Teacher", loc. cit., 329.



heritage of intellectual activity may have partially counteracted the material deficiency of his father's intestate death.

Yet means were forthcoming from some source to cover his tuition and other expenses for a brief stay in William and Mary's halls of learning. Loss of the college records by fire forestalls any description of his study there. Indeed, it is a matter of conjecture when he enjoyed his only major formal schooling: the years 1735,<sup>1</sup> 1740,<sup>2</sup> and, more indefinitely, sometime between 1730 and 1735<sup>3</sup> are recorded. If 1740 be the correct date, he might have been enrolled in the upper school of that historic institution, for college students were often in those days less than sixteen years of age. But it seems more probable that in 1735 he supplemented his mother's teaching by attending for a short time the grammar school in Williamsburg, then an integral unit in William and Mary. Concerning this episode of Wythe's youth perhaps only two facts can be stated without qualification: the College claims him proudly as an alumnus;<sup>4</sup>

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1. New England Historical and Genealogical Register, XLII, 361.

2. W. A. R. Goodwin, Historical Sketch of Bruton Church, Williamsburg, Virginia, 44. From this or another source George Morgan, The Life of James Monroe, 24, adopts this date.

3. The History of the College of William and Mary from its Foundation, 1660, to 1874, 84.

4. E.g., William and Mary College Quarterly (1st series), VII, 3-6.

upon her walls he inscribed, in typical schoolboy fashion, a pair of durable initials — "G.W."<sup>1</sup>

In His Uncle Stephen's Law Office

From so meager an acquaintance with the foundations of classical learning George Wythe's attention was necessarily diverted to the more practical problem of professional training. The system by which he was destined to seek his livelihood in some profession or business was later described well by one of his contemporaries:

The fashion or practice then was for men of landed property here [Virginia], to dispose of their children in the following manner: they entailed all their lands on the eldest son, [and] brought up the others, according to their genius and disposition, [as] physicians, or lawyers, or merchants, or ministers of the church of England, which [vocations] commonly maintained such as were frugal and industrious.<sup>2</sup>

Through his father's death the career of Thomas Wythe the Fourth lay in the exclusive superintendence of affairs at "Chesterville". As the younger son, George Wythe's course in life was not prearranged or mapped out ahead of time for him. Necessity demanded a choice of one of the customary alternatives.

The decision — made by himself or his mother — was in favor of the law. Possibly the precedent of her maternal grandfather would have dictated a calling to the ministry, while that of her father leaned toward business occupations.

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

2. Autobiographical Sketch of John Page, Virginia Historical Register, III, 143.

But George Wythe's lot was to be cast with the legal profession. This choice is certainly the most significant fact in the earlier stages of his life, for avenues of preferment and influence in public affairs were then open to lawyers of average ability which were tacitly but effectively closed by an unconscious tradition to representatives of other pursuits. In fact, it has been a platitude in almost every age of American history that men with legal backgrounds predominate in public offices of all kinds.

The road of preparation for the bar led in colonial days through study at England's Inns of Court and Middle Temple or through an apprenticeship in the office of an American lawyer, for there was then not one law school in the New World — a situation which Wythe himself altered by becoming in due time America's first professor of law. Unable to afford the more expensive advantages of British training, Wythe availed himself of a nearer opportunity. His mother's older sister, Elizabeth Walker, had married Stephen Dewey, of Prince George County, a wealthy gentleman who was prominent there as justice of the peace and burgess.<sup>1</sup> His ability as a lawyer is attested

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1. William and Mary College Quarterly (1st series), IX, 128, XVIII, 290. For some information on his commission as justice see Executive Journals of the Council of Colonial Virginia (Photostats), April 30, 1752, June 15, 1753, University of Virginia Library. For his services as a representative of his county, with Richard Bland as his colleague, see H. R. McIlwaine, ed., Journals of the House of Burgesses of Virginia, 1752-1758, viii and passim. His wealth is indicated by land patents in other counties: McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, IV, 410. He moved to North Carolina, probably in the late fifties.

by the fact that he was a few years later one of the colony's three official examiners of candidates for the privilege of seeking admission to the practise of the county courts.<sup>1</sup>

George Wythe, when he was perhaps about fifteen years of age, went to live for a year or two in his Aunt Elizabeth's home, roughly a hundred miles inland on the south side of the James, approximately four miles below Petersburg. In his uncle's office he doubtless had access to a library of standard legal volumes; there he began his first serious reading of the law. But this typical arrangement made obligatory some compensation for its privileges. Ordinarily, the student spent long hours copying legal documents and papers and "devilling" (to use the language of a print-shop) for his patron in other tedious phases of practise. Dewey was inclined to destroy the inspiration of his library by expecting too many tasks in return for its advantages, by considering his young apprentice more a servant to ease his labors than a scholar to sit at his feet — such, at least, is the only available picture of their relationship, printed by one of Wythe's close friends in later life, who may have secured its tints from the lips of the apprentice himself. Dewey, so the story goes, "treated him with neglect, and confined him to the drudgery of his [Dewey's] office, with little, or no, attention to his instruction in

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1. Cf. entries of January 13 and February 10, 1748/9, Order Book, 1746-1754, 127, 128, Caroline County Records; entry of May 21, 1747, Order Book No.1, 196, Augusta County Records. In 1740 Dewey had qualified as king's attorney of Charles City County: William and Mary College Quarterly (1st series), IX, 128.

the general science of law". Thus George "made little progress".<sup>1</sup>

Yet, as the distinguished editor of the Southern Literary Messenger has aptly suggested, the value of this episode in Wythe's education could be easily underestimated. For the study of law is ever an essentially exacting occupation, requiring "sacrifices of its votaries", and those who apply themselves to it with utmost devotion to irksome details acquire frequently invaluable habits of accuracy, industry, and penetration. Though he may not have looked back appreciatively upon them as a pleasant experience, perhaps in Stephen Dewey's dull and routine assignments George Wythe inured himself to the ennui of thousands of legislative and legal papers which were to confront him ceaselessly in later years. Though probably unexciting, his preceptor's requirements had a certain solidity, and to this may be partially attributed his remarkable capacity for assiduous attention to matters great and small, however boring they might be. It is reasonable to infer, too, that Wythe learned by his own experience in Dewey's office a preliminary lesson in the difference between attractive and unalluring methods of teaching; he profited, no doubt, from his uncle's example when, at a later date, he was in Dewey's shoes or when, still later, he faced a formal law class.<sup>2</sup>

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

2. Benjamin B. Minor, "Memoir of the Author", George Wythe, Decisions of Cases in Virginia, by the High Court of Chancery . . . (2 nd ed.), xii.

Upon the termination of his apprenticeship in Prince George, Wythe returned to his native county for a few years of independent study in the classical languages and in law.<sup>1</sup> Though he lacked the guidance of a tutor, at "Chesterville" his time must have been largely and gloriously his own. Almost complete freedom from vexing hindrances to absorption in the printed page was his for a while. Within a few months of his twentieth birthday began the long succession of other occupations which made inroads through three score years upon his opportunities for self-instruction, but they could not stamp out the inordinate joy which George Wythe found in erudition nor curtail his insatiable hunger for the constant acquisition of more knowledge.

His mother, from whom or through whom these ingrained traits of character are supposed to have been derived, died a year or two before he attained his majority, perhaps in the year 1746.<sup>2</sup> Other changes were brought into his life at that

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

2. The sketches of Wythe's life indicate, without exception, that her death preceded his becoming of age. The exact date is given in only one obscure source: Harry Clinton Green and Mary Wolcott Green, The Pioneer Women of America, III, 234. (For their own frank estimate of the authenticity of their work see ibid., I, iv-vi.) In 1734 she preferred charges of trespass against two members of the Mallory family, but the prosecution was dropped because of the failure of plaintiff and defendants, who may have settled their differences out of court, to appear for the trial of the case: entry of November 20, 1734, [Common Law Order Book, 1731-1747,] 86, Elizabeth City County Records. In 1742/3 she was named a godmother of Martha Tucker: Virginia Historical Magazine, IV, 362. She is known definitely to have survived until George Wythe was eighteen years old: indenture of Margaret Wythe, August 15, 1744, [Common Law Order Book, 1731-1747,] 396, Elizabeth City County Records.

time, but the habit of profound study remained as a cherished characteristic of his very nature. Indeed, the education of George Wythe had barely begun.

Meantime, Ann Wythe, his sister, had married Charles Sweeney,<sup>1</sup> a member of a family long prominent in Elizabeth City County, who moved later across the James into Norfolk County.<sup>2</sup> Quite aside from this linkage of the Wythe family with more representatives of colonial Virginia's blue blood, this marriage is of a melancholy interest, for a grandson of Ann Wythe Sweeney was to play a most sinister role in George Wythe's death.<sup>3</sup>

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1. Indenture of Margaret Wythe, August 15, 1744, [Common Law Order Book, 1731-1747,] 396, Elizabeth City County Records; William and Mary College Quarterly (1st series), II, 69.
  2. William and Mary College Quarterly (1st series), VI, 228, VII, 45-46, XIII, 122, 277, XVI, 237-239, gives piecemeal much information on the Sweeney family and its relatives in the Tabb, Solater, Wilson, Curle, Ricketts, Moss, and Armistead families.
  3. For the marriages of Charles Sweeney's three daughters into the Willoughby, Claiborne, and Boush families see, in addition to citations given above, ibid., VIII, 100; Virginia Historical Magazine, XXXV, 76-77. The grandson referred to was George Wythe Sweeney, who poisoned his great-uncle; he is presumed to have been a son of their brother, Daniel Sweeney, of whom nothing is known except that he attended William and Mary in the fifties: William and Mary College Quarterly (1st series), VI, 188; ibid. (2nd series), I, 39. For Sweeney marriages in the last quarter of the century see ibid. (1st series), I, 51; Virginia Historical Magazine, XXVI, 301; Lower Norfolk County Virginia Anti-quary, IV, 171.

## Chapter III

### SPOTSYLVANIA AND WILLIAMSBURG: LEGAL AND LEGISLATIVE DEBUTS

#### Admission to the Bar

The responsibilities involved in the legal vocation suggest the advisability of a careful selection of candidates for the bar. Until George Wythe's generation the colonial government of Virginia evolved no lastingly satisfactory method for weeding out incapable and unworthy applicants; a number of laws were tried, only to be repealed.<sup>1</sup>

Better fortune attended the enactment by the General Assembly in 1745 of a new and final scheme to insure general quality in the profession. An official board or committee of examiners was created for the licensing of embryonic lawyers, its members to be appointed by the supreme General Court from the judges on its bench and the lawyers at its bar. To gain the requisite approval of this board one had to present to it a certificate from some inferior court vouching for "his probity, honesty, and good demeanor", to pay it a fee of twenty shillings, and to undergo as much of an examination as it thought necessary to determine his ability or ineligibility. If this question were decided affirmatively, a commission to practise in county courts was issued, for inspection by the

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1. Cf., e.g., Hening, Statutes, I, 275, 313, 419, II, 478, 498, IV, 360-361, V, 171.



justices of the peace in each county before whose tribunal the approved candidate desired to engage in suits. They alone had power to admit him to the bar of their court. If acceptable to them, he had to take the usual oaths of allegiance and to "swear, that I will truly and honestly demean myself, in the practice of an attorney, according to the best of my knowledge and ability. So help me God."<sup>1</sup>

George Wythe probably journeyed to Williamsburg to take the test of his legal knowledge at the time of the spring term of the General Court in 1746. His license was signed by Peyton Randolph, St. Lawrence Burford, Stephen Dewey, and William Nimmo.<sup>2</sup> Thereupon, within a few months of his twentieth birthday, he sought permission to practise before the justices of Elizabeth City's county court. The official minutes of their proceedings on June 18, 1746, include this entry:

George Wythe and John Wright Gent. produced Commissions to practice as Attornies whereupon they took the Oath appointed by Law and also took the Usual Oaths to his Majesty's Person and Government and Subscribed the Test & are Admitted to Plead in this Court.<sup>3</sup>

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1. Ibid., V, 345-348. For minor changes in this act during the remainder of the colonial period cf. ibid., VI, 140-142, VII, 124, 397-398, VIII, 198, 385-386.
  2. Entry of May 21, 1747, Order Book No. 1, 196, Augusta County Records. This county's record is the only one among those of several county courts to which he was admitted as a practising attorney which names his examiners. How he happened to apply to Augusta's bench will appear later.
  3. [Order Book, 1731-1747], 489, Elizabeth City County Records. It is interesting to note that, among the seven justices whom Wythe faced that day, he was more or less distantly kin to four: Herritt Sweeney, James Wallace, Jr., John Tabb, and Wilson Curle.

Thus the fledgling barrister was equipped for flight. Of his initial effort — that dreaded, momentous experience which every lawyer must undergo — nothing is known. But if neighbors in Elizabeth City became his first clientele, they had soon to seek another advocate, for Wythe moved away from his native county a second time to live during the next two years in another section of the state.

### Success in the Up-Country

To the northwest of the familiar York-James peninsula was Spotsylvania County, extending from Caroline County in the east at the fall line westward into the Piedmont. In this strange upland region George Wythe was to establish for the first time his financial independence and legal fame. Why he left Elizabeth City County is a matter of guesswork rather than of record; perhaps the likeliest conjecture is that his mother's death made a change advisable for George, who could not expect to share his older brother's home forever and should now become entirely self-supporting. Granting this necessity, why he went so far afield from "Chesterville" is more inexplicable, for he is not known to have had a single acquaintance outside of the Tidewater.

But, if some unknown contacts did not exist previously, George Wythe made friends soon in Spotsylvania. The chief of these seems to have been Zachary Lewis (1702-1765), by far

the outstanding lawyer of that section of the colony.<sup>1</sup> There is a widely circulated report that Wythe studied law under him or under his son, John Lewis (1729-1780).<sup>2</sup> This is

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1. His father, Zachary Lewis, had patented land in King and Queen County in 1694 and in King William County in 1703: William and Mary College Quarterly (1st series), IX, 259-260. He qualified as an attorney in Caroline County in 1734 and as King's attorney in 1739: Virginia Historical Magazine, XX, 203-204; he took the oaths as an attorney there again in 1746, apparently requalifying under the act of 1745: entry of August 8, 1746, Order Book, 1740-1746, 609, Caroline County Records. Cf. entry of June 14, 1746, ibid., 598, and entry of July 11, 1748, Order Book, 1746-1754, 87, ibid. In 1742 he was sworn as an attorney in Spotsylvania: entry of December 7, 1742, Orders, 1738-1749, 190, Spotsylvania County Records. He was for a number of years King's attorney in Orange County; in the official records of its court his name appears much more frequently than any other: e.g., Order Book No. 4, 1743-1746, passim, Order Book No. 5, 1747-1754, passim, Orange County Records. Cf. also Green, Pioneer Mothers of America, III, 233; John Meriwether McAllister and Lura Boulton Tandy, Genealogies of the Lewis and Kindred Families, 134.
  2. Jefferson, "Notes for the Biography of George Wythe", loc. cit., was the first to mention this, referring indefinitely to "a Mr. Lewis". [William R. Smith,] "George Wythe", John Sanderson, [ed.,] Biography of the Signers to the Declaration of Independence, 174, names John Lewis, and from him the majority of all later Wythe sketches have adopted the legend that the son was Wythe's patron. How Smith lit upon the name John is a pertinent curiosity. The authorship of the sketch published by Sanderson was long and widely attributed to Jefferson: e.g., Massachusetts Historical Society Proceedings (1st series), XV, 393; William Brotherhead, Book of the Signers (1861 ed.), iv n. Denying this report, Smith explained that he wrote that sketch from two sources, the "Notes" furnished by Jefferson and "a biographical notice of Wythe published (I think) in a Baltimore magazine of that day", which "afforded me very trifling aid": William R. Smith to John W. Forney, November 20, 1860, John A. McAllister Collection, Library Company of Philadelphia; cf. William R. Smith to John A. McAllister, November 20, 1860, ibid. The magazine to which he acknowledged indebtedness was probably Hall's American Law Journal, III, published in Philadelphia, which mentions nothing of Wythe's connection with Spotsylvania. Thus neither of Smith's sources named John Lewis. That Smith's assumption was inaccurate is indicated partially by the fact that John Lewis, who

certainly erroneous, if anything other than study through actual experience be meant by it. Instead, Wythe probably only boarded with Zachary Lewis and shared in his extensive practise.

Quite naturally, Wythe qualified as an attorney first before the Spotsylvania county court in November, 1746,<sup>1</sup> but during the following year he gained permission to plead also before the benches of nearby counties. Just how many of these admitted him as an advocate cannot be known, because the early records of some are not extant.<sup>2</sup> In the February, 1747, term

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was three years Wythe's junior, did not qualify as an attorney in Orange County until 1761: entry of May 28, 1761, Order Book No. 6, 1754-1763, 558, Orange County Records. For other information about him see Crozier, ed., Virginia County Records, I, 34, 284; McAllister and Tandy, op. cit., 60, 137. No explanation whatever can be given for the grossly inaccurate statement of two rehashes that Wythe studied under one John Jones: N. Dwight, "George Wythe", in his The Lives of the Signers of the Declaration of Independence, 267; B. J. Lossing, "George Wythe", in his Biographical Sketches of the Signers of the Declaration of American Independence, 163. Tyler, "George Wythe", loc. cit., 55, is the first authority to guess that Wythe was associated with a Lewis in practise rather than a student under him, but he, too, falls into the error of naming John Lewis rather than Zachary Lewis. The present investigation is thus the first to correct the mistake into which Smith fell. For additional information on Jefferson's relation to Sanderson's work cf. John Sanderson to Thomas Jefferson, August 19, 1820, Jefferson Papers, Library of Congress; Thomas Jefferson to John Sanderson, August 31, 1820, ibid.; Thomas Jefferson to Peter S. Duponceau, December 28, 1820, and Peter S. Duponceau to Thomas Jefferson, January 3, 1821, ibid.

1. Entry of November 4, 1746, Orders, 1738-1749, 395, Spotsylvania County Records. With Moseley Battaley he served as guardian of an orphan boy there: Crozier, ed., Virginia County Records, I, 71. Two deeds recorded there carried his signature as a witness: ibid., 176.
2. The writer thumbed through the pages of an Albemarle County order book for 1744-1748 from September, 1746, to its close without spotting Wythe's name; a similar result was obtained from an inspection of Louisa County's records.

of Caroline's county court he became eligible to practise there,<sup>1</sup> and in May the justices of Augusta County, then a vast territory extending to the Mississippi (and including most of the land in present-day West Virginia, Kentucky, Ohio, Indiana, Illinois, Michigan, and Wisconsin), admitted him to the bar at Staunton.<sup>2</sup>

The early court records of these counties, so far as they are preserved, adhere uniformly to a form of entry which hides the identity of the lawyers who argued the two sides of each suit; the report of each case opens with an anonymous statement, such as "This day Came the Pl<sup>t</sup> [plaintiff] by his Attorney ...", or "This day Came the Parties by their Attornies...." Thus nothing is disclosed concerning the business done by the separate members of the bar in these courts.

More enlightening for those who would know something of George Wythe's early success in the inferior courts are the records of Orange County, partially preserved. When Wythe was admitted to practise in Orange cannot be ascertained, for a gap occurs in the records, covering the period between June,

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1. Entry of February 13, 1746/7, Order Book, 1746-1754, 15, Caroline County Records.
  2. Entry of May 21, 1747, Order Book No.1, 196, Augusta County Records. His application there was sponsored by Gabriel Jones, the first and for some time the only lawyer living in the county: ibid.; Virginia Historical Register, III, 16-17. The writer failed to learn whether or not Zachary Lewis practised in Augusta, as he did at the other courts which Wythe entered; it is possible that Wythe acted independently in crossing the Blue Ridge.

1746, and July, 1747.<sup>1</sup> At one of the courts during this interval, however, he did undoubtedly enter the bar there. His name occurs frequently on the records thereafter in entries reading, "This day came the Pl.<sup>t</sup> by George Wythe his Attorney ..." and the like. A somewhat cursory examination reveals that, in the official chronicles of eight out of the eleven courts held during the fifteen months beginning July, 1747, Wythe's name appears in this manner under fifty-four cases.<sup>2</sup> Nor does this mean that Wythe appeared in the trials of only fifty-four suits. Anonymous reports of lawyers' presence and pleas were often made; and when a case was continued from one term to the session of the next month — a

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1. Order Book No.4, 1743-1746, Orange County Records, ends at June 28, 1746; Order Book No.5, 1747-1754, ibid., begins with July 23, 1747. The writer searched cursorily and vainly through the last hundred pages of the former volume, covering September, 1745, through June, 1746, for any mention of George Wythe.
  2. Order Book No.5, 1747-1754, 1-155, Orange County Records. A tabulation of this observation may be worthwhile.

<u>Month</u>	<u>Wythe Recorded as Attorney</u>
July, 1747	9 cases
August, 1747	24 cases
September, 1747 — no court session recorded	
October, 1747	5 cases
November, 1747	1 case
December, 1747 — no court session recorded	
January, 1747/8 — no court session recorded	
February, 1747/8	0 cases
March, 1747/8	9 cases
April, 1748 — no court session recorded	
May, 1748	3 cases
June, 1748	2 cases
July, 1748	0 cases
August, 1748	0 cases
September, 1748	1 case

situation of common occurrence, through technicalities of the law or insufficient evidence — the names of attorneys for each party were frequently not repeated in later entries.<sup>1</sup> If this statistical summary alone is not sufficient attestation of the place which Wythe held among his rivals at the Orange bar, comparison of it with that of others indicates that he plead many more cases than any other advocate there except Zachary Lewis, who, as King's attorney, was naturally the preeminent figure.<sup>2</sup> And, lest any doubt be entertained concerning the breadth of the knowledge which these cases required of the twenty-two year old lawyer, it may be observed that he was engaged in diversified phases of actions in criminal, civil, and chancery jurisdiction. They involved such matters as alleged debts, trespass, assault and battery, retailing of liquors without license, and grand jury presentments against persons who obstructed with dams the navigation of the Rappahannock River.<sup>3</sup> That he was retained as counsel for the substantial element in Orange citizenry is suggested by the fact that William Russell, one of the court's justices,

1. Cf. ibid., 19 with 40, 19 with 41, 18 with 41, etc., but contrast to this practise the occasional repetition, as in ibid., 15 and 35.
2. He had held the outstanding position for at least several years, with his brother-in-law, William Waller, in the secondary place: Order Book No. 4, 1743-1746, passim, Orange County Records. Wythe seems definitely to have displaced Waller: Order Book No. 5, 1747-1754, 1-155, ibid.
3. Order Book No. 5, 1747-1754, 1-155, Orange County Records.

was his client in more than one suit.<sup>1</sup>

On the basis of these incomplete records it is safe to picture Wythe as a very successful attorney at law during 1747 and 1748, riding the circuit of the monthly courts from Caroline County, in the western Tidewater, on the east, through Spotsylvania and Orange to Augusta, in the Shenandoah Valley, on the west. He managed to make at least one visit to Elizabeth City, however, for in May, 1748, he sold to George Wray a slave girl named Lucy for £23 5s, the court record of the transaction identifying him as "of the county of Spotsylvania, attorney at law".<sup>2</sup> Presumably, he was aided in getting his start as a practitioner by Zachary Lewis, perhaps living in Lewis' home. They must have often travelled together in the best of fellowship from courthouse to courthouse; locked horns, matched eloquence, and pitted wits against wits and argument against argument in dead earnest, upon arrival at a county seat, while upholding opposite sides of the same suit;<sup>3</sup> and ridden off together, upon adjournment,

1. Ibid., 15, 18, and passim. For references to Wythe in capacities other than that of attorney see ibid., 49, 140. He witnessed three deeds in Orange, the first two with John Lewis, the last with John Lewis and William Russell: indentures of October 22, 1747, Deed Book No.10, 532, 533, and indenture of November 27, 1747, Deed Book No.11, 25, Orange County Records.
2. Indenture of George Wythe, May 3, 1748, Deeds, Wills, Etc., 1736-1753, 282, Elizabeth City County Records. Cf. entry of that date, Order Book, 1747-1755, 33. Jones, loc. cit., 326, errs in reporting the year of this sale to be 1746. George Wray was a brother-in-law of Wythe's mother.
3. In Orange they were called upon to oppose each other in more than half of Wythe's cases: Order Book No.5, 1747-1754, 1-155, Orange County Records.



toward the next court to convene, regaling one another with mutually amusing observations, picking flaws in each other's pleas before the last bench, or plotting in silence a plan of campaign to best each other in forthcoming legal combats. Such, at least, was the relationship of some of their contemporaries in those days when law was in many respects America's most picturesque profession.

There was more, however, than the camaraderie of association at the bar to link together the lives of George Wythe and Zachary Lewis. Professional relationships were supplemented and made more personal by the marriage of the twenty-one year old attorney to a daughter of his forty-five year old patron.

Zachary Lewis had married Mary Waller (1699-1781) in the year of George Wythe's birth, under authority of a license dated January 3, 1725/6.<sup>1</sup> By their wedding Spotsylvania's two outstanding families were united, for the Wallers were as definitely stamped with the lineage and wealth of Piedmont aristocracy as the Lewises. Mary was the oldest child of Col. John Waller (d. 1753) of "Newport" and of his wife, Dorothy King. Her father had served in the first quarter of the century as sheriff, justice, and burgess of King William County before its western area had been given separate

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1. Crozier, ed., Virginia County Records, I, 84. For an abstract of Zachary Lewis' will see ibid., 22; for an abstract of a deed of his wife, giving Negroes to two of her sons after his death see ibid., 284.

identity as Spotsylvania. Her five younger brothers all became prominent.<sup>1</sup>

The oldest among ten children of Zachary and Mary Waller Lewis was a daughter, born August 30, 1726, and christened Ann.<sup>2</sup> To this scion of two very respectable families George Wythe became a courtier, and on the day after Christmas, 1747, they were licensed to wed.<sup>3</sup> Of considerable romantic interest would be any information whatever about their happiness. Unluckily, nothing is known but the fact of its premature termination, after about eight months, by Ann Lewis

1. McIlwaine, ed., Journals of the House of Burgesses, 1702-1712, ix; McIlwaine, ed., Journals of the House of Burgesses, 1712-1726, vii, x; William and Mary College Quarterly (1st series), VIII, 79, LX, 63; Horace Edwin Hayden, Virginia Genealogies, 381. For an abstract of John Waller's will see Crozier, ed., Virginia County Records, I, 13-14; for abstracts relating to his sons see ibid., passim. Of them Edmund and John became clerks of Spotsylvania County, William was a colleague of Wythe and Zachary Lewis at the bar, and Benjamin moved to Williamsburg and became a judge of the admiralty court and a burgess for a number of years.
2. Hayden, op. cit., 381; McAllister and Tandy, op. cit., 134-135. She received a legacy in 1783: Crozier, ed., Virginia County Records, I, 5; with her father, her brother John, or her sister Mary she witnessed deeds of her uncles, Edmund and John Waller: ibid., 154, 158. For some information on her brothers and sisters see ibid., 30, 38, 41; Tyler's Quarterly Magazine, IV, 439; Executive Journals of the Council of Colonial Virginia (Photostats), May 7, 1773, University of Virginia Library.
3. Virginia Historical Magazine, IV, 199. Crozier, ed., Virginia County Records, I, 5, 85, errs in prefixing her name with a "Mrs." The date is erroneously reported as 1756: Green, Pioneer Mothers of America, III, 233-235.



Wythe's death, August 8, 1748.<sup>1</sup>

Legal and Legislative Affairs, 1748-1754

So early a personal reminder that Death has no season would be a violent blow to the young husband of almost any recent bride. Perhaps George Wythe was staggered for a time after its sudden impact, weighed down with heavy, disconsolate bereavement; or perhaps he consoled himself as best he could with some reassuring philosophy from his beloved classics.

A principal tie which bound him to friends in upland Spotsylvania had been severed, but it has not been previously realized that Wythe himself recognized this fact. It has been stated without denial that he continued to reside there "some eight years after his wife's death ..."<sup>2</sup> — an assumption which every page in the remainder of this chapter will help to disprove utterly. Almost immediately after this rudest of all possible tragedies in his domestic life he returned to the Tidewater.<sup>3</sup> Possibly he moved in full

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1. Hayden, op. cit., 381. McAllister and Tandy, op. cit., 135, report her death as of the same day in 1784 — evidently a typographical error. An unfounded statement places it "some time in the later sixties": Green, Pioneer Mothers of America, III, 235.
  2. Tyler, "George Wythe", loc. cit., 55. Several other sketches, both earlier and later, agree tacitly in this inference; the others all ignore it for one reason or another.
  3. The disappearance of his name, after the September, 1748, court, from the Orange records is highly indicative in itself and proof positive when considered in conjunction with later citations. From that date to July, 1750, no mention of his name could be found: Order Book No. 5, 1747-1754, 155-269, Orange County Records. But some of the

retreat from scenes and faces which would remind him inevitably and unrelentingly of his misfortune. Or perhaps the natural desire of one whose career is launched successfully to be in the theater which affords most opportunity for advancement motivated the change.

Williamsburg, which had supplanted Jamestown as the colonial capital about the opening of the eighteenth century, was the location in Virginia which fitted this description. By no means an imposing town most of the year, it bustled during the semi-annual terms of the General Court and during the House of Burgesses' more irregular sessions with all the activities and fineries of a provincial government proudly imitating Britain's royal hierarchy. For those to whom the gates of its somewhat exclusive officialdom were not barred through want of family position, acceptable social graces, or ability, it was ambition's chief point of vantage. The easier path toward its inner circle, via the attainment of sufficient local prominence and wealth to become the representative of one's county in the House of Burgesses, George Wythe found barricaded to all intents and purposes by the

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cases in which he was an original attorney were decided in that period; one of these, for example, begun in July, 1747, or earlier, ended in November, 1748, in favor of Wythe's former client, William Russell: ibid., 158. Roger Dixon and Moseley Battaley qualified as attorneys on February 23, 1748/9 (ibid., 160), and seem to have taken Wythe's place at the Orange bar. The exact date of his removal cannot be learned; that it came before the close of the year will be demonstrated in later pages. The writer feels confident that it preceded the middle of October, 1748.

destiny which had transferred "Chester"ville's tobacco fields to Thomas Wythe the Fourth and had made of him a successful but landless lawyer. The other road was built upon the principle of bearding the lion in its den or of camping just outside the gates until one's knocks were answered by admission. The latter, though more difficult under ordinary circumstances, was the more direct and surer route to self-improvement for the able.

Wythe had not long to wait before a stepping-stone to official position was placed at his feet. The House of Burgesses convened in the second month after his wife's death, and in its organization he was appointed on October 28, 1748, clerk to its largest and most important standing committees, that of Privileges and Elections and that of Propositions and Grievances.<sup>1</sup> His task was to keep minutes of the proceedings of these committees. The former made decisions on disputed elections; the latter considered all major petitions. It was an humble but honorable position. To an attorney of twenty-two it produced enviable facilities for a liberal education in colonial legislation and for association in their recurrent meetings with the most influential members of the House. From so small an acorn as this grew the great oak of Wythe's connection with the House in one capacity or another through all but two of the remaining years before its unlamented demise at the opening of the Revolution.

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1. E. R. McIlwaine, ed., Journals of the House of Burgesses, 1742-1749, 259. Each of the other three standing committees had a separate clerk.

Thus Williamsburg became the center from which Wythe rode the circuit of the county courts in pursuit of his daily bread. In one of these, Elizabeth City, he had already been admitted to practise. Early in 1749 he qualified and took the oaths before the justices of York and Warwick counties;<sup>1</sup> probably the same preliminaries were performed in James City, possibly also in other county courts.<sup>2</sup> Surviving records, which usually bury the identity of the advocates in each suit in the noncommittal "by his Attorney" phrase already noted, disclose just enough data to hint that he built up readily a new clientele to replace that which he had abandoned. He argued three cases in the first term of the Warwick court following that in which he was admitted to its bar.<sup>3</sup> One of these is extremely typical of colonial litigation. Wythe defended one Andrew Giles in his prosecution "on a presentment by the grand jury for not frequenting his Parish Church". In his behalf Wythe secured two postponements of the trial, but his plea for a dismissal of the case brought adverse judgment from the bench, which deemed the demurrer invalid

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1. Entry of January 16, 1748/9, Judgments and Orders No.1, 1746-1752, 158, York County Records; entry of March 2, 1748/9, Minutes, 1748-1762, 7-8, Warwick County Records.
  2. James City's eighteenth-century records are not extant; geographically, his entrance into its bar is highly probable. Less likely, though quite possible, is it that he qualified too in the western courts of the York-James peninsula, New Kent and Charles City, whose records are also lost.
  3. Entries of April 6, 1749, Minutes, 1748-1762, 29-31, Warwick County Records.

and fined Giles "five Shillings or fifty Pounds of Tobacco".<sup>1</sup> A generous portion of later suits of all kinds fell to Wythe's share. His rivals in the Warwick courthouse were Miles Cary, Peter Lyons, and Robert Carter Nicholas, each of whom made in subsequent activities honored names for themselves.<sup>2</sup>

Other sources give disconnected glimpses of Wythe's business in the county courts during these years. One of his clients was John Blair (1686-1771), a Williamsburg gentleman of outstanding eminence in the colony, who kept diaries which record very briefly the fact that he saw Wythe on business four separate times in 1751.<sup>3</sup> A letter on legal matters written by Wythe in 1754 and preserved until recent years shows that he was an advocate for the Custis family of adjoining New Kent County, into which George Washington married.<sup>4</sup>

1. Ibid., 31, 38, 47, 52-53.
2. Ibid., passim; cf. Jones, "Character and Service of George Wythe", loc. cit., 327. The writer was unable to search quite as thoroughly as he desired the one extant volume of Warwick's early records. Nicholas qualified on June 7, 1750: Minutes, 1748-1762, 88, Warwick County Records.
3. Entries of March 20, 22, October 2, November 17, 1751, William and Mary College Quarterly (1st series), VII, 137, VIII, 5, VII, 146, 148, respectively; for an explanation of the apparent disregard of chronological order see ibid., VII, 153 n.
4. This letter, dated Williamsburg, April 10, 1754, to Daniel Parke Custis was advertised for sale about ten years ago by The Rosenbach Company in its 1776 Americana: a Catalogue of Autograph Letters and Documents Relating to the Declaration of Independence and the Revolutionary War, 95. To whom it was sold cannot be learned. It was the earliest production of George Wythe's pen known to the writer.

When a new House of Burgesses convened in 1752 Wythe was reappointed clerk to the committees of Privileges and Elections and of Propositions and Grievances.<sup>1</sup> A defeated candidate in the preceding election contested, as would-be burgesses were wont to do in those days, the seat which had been given to one of his recent opponents and wanted Wythe to present his side of the controversy. An apparently unprecedented question of procedure was thereby raised — could the House rightfully permit the clerk of one of its committees to serve as counsel for either party in a controversy before that committee? It was moved from the floor and ordered specifically that Wythe might defend in committee the claims of the petitioning candidate.<sup>2</sup> But this disposition of the question as it applied to one case did not prevent its recurrence in similar cases; a few days later the House found it advisable to grant to Wythe "Liberty to appear as Counsel, in any Matter of controverted Elections, that shall happen before the said Committee."<sup>3</sup>

Where Wythe made his home during these early years of his long residence in Williamsburg is not revealed. Presumably, at about twenty-five years of age, the young widower was still boarding in the homes of friends. It is true that he bought

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1. McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, 7. Wythe was again the only person to be clerk to more than one of the five standing committees.

2. Ibid., 13.

3. Ibid., 29.



a house and lot there, but he resold it so soon to the former owner that the purpose of his purchase must be considered obscure, at least, if not indeed unfathomable. On the fifteenth of December, 1752, John Palmer, a Williamsburg lawyer, received from George Wythe "of the same place Attorney at Law" the ridiculously small sum of £5 as payment in full for his property rights to the lot and home on the south side of Duke of Gloucester Street at its eastern end, opposite Capitol Square, which had been his residence.<sup>1</sup> Less than three weeks later Wythe's £5 was returned to him, and he transferred to Palmer the ownership of that well-situated property.<sup>2</sup> The financial consideration — minute enough to be entirely incommensurate to the values involved in this exchange by Wythe of cash for house and house for cash — suggests as one explanation of this equivocal transaction a desire on his part to tide Palmer over some temporary economic crisis with a loan protected by more than ample collateral.

Though he was to be for two or three more years just a landless lawyer, life in Williamsburg's pleasant legal and political circles must have proved interesting to their young newcomer. And social diversions were doubtless as plentiful

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1. Indenture of December 15, 1752, recorded December 16, 1752, Deeds Vol.V, 1741-1754, 510-512, York County Records.
  2. Indenture of January 3, 1753, recorded January 15, 1753, ibid., 522-523. At that time a large portion of Williamsburg lay within the boundaries of York instead of James City County.

as official activities, despite the solemn decision of the Council that some comedians who had arrived recently should not be granted permission to "act or exhibit any Plays or theatrical Entertainment in this Government."<sup>1</sup> Probably after an agreeable dinner and several hours of delightful conversation a diarist recorded tersely: "Mr. Wyth [sic] spent the even<sup>g</sup> here."<sup>2</sup>

#### Burgess for Williamsburg, 1754-1755

Advancement in the House of Burgesses came much sooner than might have been reasonably expected by the lowly but favored clerk whose duties required him to rub elbows in a subordinate capacity with its leaders. At the age of twenty-eight he was elevated to a position of technical equality with them.

The Burgesses who were elected in 1752 had met for three sessions before the capitulation of Col. George Washington's forces at Fort Necessity, in one of the earlier military episodes of the French and Indian War, occasioned a fourth meeting. When the people's representatives convened in 1754 to cope with this emergency, the seat of the member from the incorporated town of Williamsburg was vacant; Armistead Burwell, its occupant during the earlier sessions, had died in

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1. Executive Journals of the Council of Colonial Virginia (Photostats), June 13, 1752, University of Virginia Library.
  2. Entry of November 11, 1754, in John Blair's diary, William and Mary College Quarterly (1st series), VIII, 14.

the interim. In accordance with the formalities usual in such cases the House took steps immediately to secure the prompt election of a new representative by the qualified voters of the capital city.<sup>1</sup> Their duty of selection was probably an easy one -- nearly all the men of prominence among them were ineligible by reason of places which they held already in some branch of the government. Of available citizens George Wythe was chosen, and in the same year he took his seat as a full-fledged burgess.<sup>2</sup> Henceforth the House must look elsewhere to supply scribes for its standing committees.

This partially fortuitous promotion in the fourth session of the Assembly of 1752-1755 was followed in its four remaining terms by recognitions given within the House itself which prove that it shared Williamsburg's esteem for Wythe. His ability was apparently adequate to counteract any jealous

1. McIlwaine, Journal of the House of Burgesses, 1752-1758, 190. This action was taken on the day of convening, August 22.
2. Ibid., viii. The exact date is unknown. If the election was held without delay, he could have been one of the anonymous new burgesses who were admitted Saturday, August 24, and Monday, August 26: ibid., 193, 194. But it is possible that Williamsburg was unrepresented in the fourth session and that Wythe qualified during the later session of that year, when more unnamed members entered the House: ibid., 211, 213, 217, 219. A Virginia Almanac for the year 1755 listed him as the representative for Williamsburg in 1754: Virginia Historical Magazine, VIII, 256. Among Wythe's associates were Peyton Randolph, Landon Carter, Charles Carter, John Robinson, Richard Bland, John Page, Benjamin Harrison, Edmund Pendleton, each of whom attained great renown in the House, and his less preeminent kinsmen, uncle Stephen Dewey and uncle-in-law Benjamin Weller.

imputation that he deserved at his comparatively immature age a smaller measure of good fortune. In 1754 an appropriation of £20,000 was passed to help finance the current war against the French in the West. But such generous cooperation was circumscribed by an almost unprecedented condition: in the disbursement of these funds His Majesty's lieutenant-governor, who alone had previously superintended colonial expenditures, should act in conjunction with a special committee of directors, on which Wythe was the junior member named by the General Assembly.<sup>1</sup> When a sum twice as large was made available in the following year on the same terms, Wythe was again among those to whom the House delegated the assignment of guarding against the possibility that it might not be so expended as to render greatest aid to England's cause.<sup>2</sup> Upon a reorganization of four standing committees in 1755, to consider an accumulation of provincial business which had piled up under the exigencies of international conflict, he was given a place as the newest member of the three major subdivisions — the committees on Privileges and Elections

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1. Hening, Statutes, VI, 435-438. The upper house of the General Assembly had unanimously branded as unconstitutional a similar previous limitation upon the governor's prerogative but had deemed the exigencies of the war so urgent as to make impossible a refusal of its assent to the bill, for if its concurrence were withheld, no funds for military necessities would be available: Executive Journals of the Council of Colonial Virginia (Photostats), February 22, 1754, University of Virginia Library.

2. Hening, Statutes, VI, 521-530.

and on Propositions and Grievances, with which he was already quite familiar, and that on Courts of Justice, with which he was to become better acquainted in time.<sup>1</sup>

Attorney General Wythe, 1754

Before he had reached the age of thirty George Wythe became intimately entangled in the long series of constitutional conflicts between the House of Burgesses and England's royal government which recurred periodically until the colony of Virginia became an independent commonwealth. The first of these was the pistole fee crisis. In it he attained a rank higher and more honorable than that of a burgess -- but it was a position gained under circumstances peculiar and ticklish, literally reeking with possibilities for misinterpretation and jealousy.

His Majesty had delegated the choicest of the thirteen continental plums of colonial patronage to the Earl of Albemarle, who held the title of Governor General of Virginia but continued his residence in England. It was then customary among such appointees to sublet the actual supervision of a colony's affairs to one of their own favorites, who held the

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1. McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, 234-235. The membership of these groups totalled 12, 31, and 14, respectively. The fourth committee then appointed was that of Public Claims. In later terms he was one of the examiners of the engrossed bills and carried two of the House's bills to the Council for its concurrence: ibid., 291, 299, 327. One of these bills provided for the salary of the public printer, William Hunter: ibid., 327; H. R. McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1155.

title of Lieutenant-Governor and presided personally over the government of his province in the name of the King. In this capacity there arrived in Virginia during the early fifties Robert Dinwiddie (1693-1770), an administrator destined to unpopularity. Tidewater Cavaliers could find precious little in his personality and policies to attract them to his support. It is true that the French and Indian War was an important contributory factor in their inharmonious relations, for Virginia carried the major colonial burden in that conflict. But Dinwiddie's background and character were not assets in his favor — Virginians were not flattered at the elevation to their leadership of a man who had been merely "the master of a little vessel trading in the [Tidewater] rivers ..." and who possessed "neither science not just ambition...."<sup>1</sup>

His predecessors had permitted an evasion of royal tax laws to grow to proportions which he deemed serious. More vigilant or avaricious than they,<sup>2</sup> he refused to place his signature and seal upon the thousand-odd patents pending in 1752 until receipt of a pistole (a Spanish coin then in current use, worth about \$3.50) as a fee for the service of making legal the titles to lands whose surveys had been duly registered in the office of the colony's secretary. For

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1. Randolph, Manuscript History of Virginia, 100, Virginia Historical Society Library.
  2. In his vein of sophomoric patriotism Randolph probably exaggerates an alleged unworthy, personal motive behind Dinwiddie's action: ibid. Zeal and sincerity in administrative efficiency must have played a large part in prompting his scheme.

years these surveys had been recorded and actually possessed without having been entered on the quitrent rolls, by which the royal revenues were annually being defrauded of the taxes on more than a million acres. To this deliberate scheme of tax-dodging Dinwiddie proposed to put a stop; and, since unpatented lands were the property of the King by whose authority he claimed to act, he had the law on his side in his demand of a fee before their titles were confirmed.<sup>1</sup> Just to be certain of steadfast support from across the Atlantic in the reform, he took the matter up with the British Lords of Trade and received official approval of his plan, in which the members of Virginia's Council had already concurred.<sup>2</sup>

The lower house of the colonial legislature, on the other hand, wary with fear that Dinwiddie's executive proclamation might become a precedent for rigid execution through all the future of a law which had been unobserved for decades, availed itself of its earliest opportunity to register its emphatic disapproval. Late in the fall of 1753 the Burgesses addressed to the lieutenant-governor a rousing indictment of the fee as an infringement of the constitutional rights and royal declarations which prohibited the exaction of any part of a subject's property under authority other than that of an

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1. McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, xvi-xviii; R. A. Brock, ed., The Official Records of Robert Dinwiddie . . . (Virginia Historical Society Collections, new series, III-IV), I, x.

2. He communicated the Board of Trade's consent to his co-operative Council in the spring of 1753: Executive Journals of the Council of Colonial Virginia (Photostats), University of Virginia Library.

established law.<sup>1</sup> Ignoring the issue of valid law enforcement which was at the bottom of the controversy, the House thus elected wisely to fight the whole battle on the most vulnerable flank of Dinwiddie's position — the question whether or not he had a right to extort by proclamation a fee for the use of the public seal. A few days later it resolved that any person paying a pistole for a land patent should be deemed a "Betraye[r] of the Rights and Privileges of the People" and determined to send an agent to the English court as a messenger for its claims.<sup>2</sup>

When the adamant lieutenant-governor, surprised at these unexpectedly forceful attacks,<sup>3</sup> and his loyal Council gave not one inch of ground,<sup>4</sup> the Burgesses proceeded to the selection of their agent. Peyton Randolph (1721-1775), representative of corporate William and Mary College, which had a sort of "rotten borough" seat in the House, was chosen, and it was resolved that he should be paid £2500 from the public

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1. Brock, ed., Records of Dinwiddie, I, 45-47. This document contains one of the many pre-Revolutionary precedents for "no taxation without representation" in its claim that they could be legally deprived of their property only "by their own consent."
  2. McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, 155.
  3. Robert Dinwiddie to James Abercrombie, February 24, 1755, Brock, ed., Records of Dinwiddie, I, 511-512, gives a bitter and disillusioned statement of his later wish that he had never precipitated the crisis.
  4. Executive Journals of the Council of Colonial Virginia (Photocasts), December 15, 17, 19, 1753, University of Virginia Library.



treasury for his trouble. The fact that Randolph had been since 1748 His Majesty's Attorney-General made him the most promising candidate to carry an appeal to the Crown, but his duties lay in Virginia. Accordingly, the Burgesses anticipated later objections with an address to the King explaining their selection and urging that his mission should not bring down royal disfavor upon his head.<sup>1</sup>

The Council refused to concur in the resolution for salary,<sup>2</sup> and Dinwiddie took the appointment of a disloyal member of the small official family who received their commissions from the King as an unrivalled personal affront.<sup>3</sup> When Randolph approached him for permission to leave the colony, Dinwiddie pointed out the inconsistency between his intended absence and the terms of his commission and refused flatly to grant his request. But, as he stated later, Randolph "had then so far engaged in the thing that he could

1. McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, 168-169.

2. Robert Dinwiddie to James Abercrombie, April 26, 1754, Brock, ed., Records of Dinwiddie, I, 140-141. Subsequently, an extremely bitter squabble broke out on this point when the House tried desperately but unsuccessfully to force Randolph's salary through the unwilling upper house by the expedient of embodying it as a last-minute rider to an urgent military appropriation bill: cf. id. to Governor Sharpe, September 6, 1754, ibid., 303; id. to Governor Hamilton, September 6, 1754, ibid., 306-307; id. to the Lords of Trade, September 23, 1754, ibid., 328; McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, xx-xxii, 200-203.

3. Robert Dinwiddie to James Abercrombie, February 9, 1754, Brock, ed. Records of Dinwiddie, I, 72.

not recede...."<sup>1</sup> Accordingly, he sailed for London despite Dinwiddie's opposition.

As the House had foreseen, the lieutenant-governor, "wounded to the soul", thereupon adopted "personal revenge" as his "weapon" by seizing the opportunity of declaring that Randolph's office had been vacated by his departure.<sup>2</sup> In January, 1754, he appointed George Wythe to it — apparently with no intention of creating merely a pro tempore or Acting Attorney General to serve until Randolph's return.<sup>3</sup> Admitted to a hearing before the Board of Trade in April of that year, Randolph was examined not upon the purpose of his mission but as to whether or not he had abandoned his royal office. Forced thereby to fence with a disapproving Board for his own rather than the Burgesses' interests, he admitted that he did not consider himself Attorney General during his absence and

1. Entry of April 3, 1754, Board of Trade Journals (Transcripts), LXII, 86, Pennsylvania Historical Society Library.
2. Randolph, Manuscript History of Virginia, 101, Virginia Historical Society Library.
3. The Board of Trade considered on April 2, 1754, a letter from Dinwiddie dated January 29, 1754 (a copy of which has not been located), announcing this appointment: Board of Trade Journals (Transcripts), XLIII, 81, Pennsylvania Historical Society Library. The York County Records state under date of January 21, 1754, that "George Wythe, Esq., his Majesty's Atty. Gen'l. and Judge of the Court of Vice Admiralty of this Colony this day in court took the oath....": quoted in Jones, "Character and Service of George Wythe", loc. cit., 327. When the writer visited the clerk's office at Yorktown in November, 1936, the volume containing this record was apparently in a New England bindery for repairs.

implied that he expected reinstatement upon his return.<sup>1</sup> This hope received a severe setback in June with His Majesty's official pronouncement that his mission constituted a dangerous precedent for royal appointees in the colonies and that he had vacated his position irretrievably.<sup>2</sup>

The business which had brought Randolph to London was ill-fated. On it he was granted no hearing by the Board of Trade,<sup>3</sup> despite a campaign of propaganda in the newspapers which made his object the current vogue in coffee house disputations and which angered Dinwiddie extremely.<sup>4</sup> An Order in Council, dated June 21, 1754, directed a flat rejection of the Burgesses' address against the pistole fee,<sup>5</sup> but some concessions were made to the colonists by the Board of Trade's

1. Entry of April 3, 1754, Board of Trade Journals (Transcripts), XLII, 85-86, Pennsylvania Historical Society Library.
2. Entry of June 20, 1754, *ibid.*, 166-167.
3. On May 29, 1754, he made his only other appearance before the Board in support of a petition for an exemption from quitrents for ten years to settlers west of the mountains — a subject indirectly related to the pistole fee controversy — and on June 27, 1754, the Burgesses' address to the King on the latter grievance was brought from his hands before the Board by its secretary and referred by it to the King: *ibid.*, 146, 181, respectively.
4. Robert Dinwiddie to James Abercrombie, April 26, 1754, Brock, ed., *Records of Dinwiddie*, I, 139; *id.* to the Lords of Trade, October 25, 1754, *ibid.*, 363-364.
5. Entries of July 3, 4, 1754, Board of Trade Journals (Transcripts), LXII, 186-187, 190, Pennsylvania Historical Society Library.

letter of instructions to Dinwiddie pursuant thereto.

The worth to Virginia of these concessions has, perhaps, been too greatly minimized.<sup>1</sup> The Burgesses had staked their fortune in their battle with the lieutenant-governor on a protest against his somewhat arbitrary demand of a pistole for his signature and seal on land patents — their most tenable constitutional ground. This attack upon the wings of his defense was quite ineffective, for his right to extract the fee was limited only by prohibitions against its application to patents for less than 100 acres, to patents for the time-honored land bounties given those who were responsible for the immigration of new colonists, and to patents located west of the mountains, where all discouragements to settlement then met official frowns — and for such cases the fee had never been demanded. But a significant inroad was made upon his center in respect to the tacit but fundamental issue of the evasion of quitrents. Having purposely avoided an assault upon Dinwiddie's claim that the royal revenues were being defrauded, the House must have been pleasantly surprised that Dinwiddie was told to waive the fee and all arrears of quitrents on lands surveyed but unpatented before 1752. To Dinwiddie this dictum on the "Chief dispute between the People and me", as he termed it,

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1. Cf. e.g., Brock, ed., Records of Dinwiddie, I, x; McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, xx.

came as the severest of shocks.<sup>1</sup> Thus public policy as the Lords of Trade saw it awarded a partial victory to the aggrieved subjects by ignoring certain overdue taxes — a rare phenomenon in British colonial administration of that century, whose zeal for revenue was usually quite keen.

Fearful lest these concessions be deemed insufficient atonement for the affirmation of Dinwiddie's right to his pistoles, another was made in which George Wythe was directly concerned. Of no material advantage to the colony, it was nevertheless well calculated to serve as a psychological balm. The pangs of Randolph's failure to secure a denunciation of the pistole fee would be sharpened by public remorse over his personal fall from royal grace. Since official confirmation of Dinwiddie's appointment of Wythe as Attorney General, in the form of a royal commission, had not yet cleared the hurdle of red tape, bitterness over Randolph's sacrifice could be forestalled without undue difficulty by his reinstatement in office. This would constitute — so the Board of Trade and

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1. The peculiarly indefinite provisions of the Board of Trade's instructions must be gleaned from the correspondence of Dinwiddie, who decided to withhold still longer the pending patents until replies came to some specific questions: Robert Dinwiddie to the Lords of Trade, October 25, 1754, Brock, ed., Records of Dinwiddie, I, 362-363; id. to Horace Walpole, October 25, 1754, ibid., 370-371. Recorded information about the Board's consideration of these questions is rather unenlightening: entries of January 7, 10, 14, 1755, Board of Trade Journals (Transcripts), LXIII, 18, 29, 30, Pennsylvania Historical Society Library. The final arrangement is partially told in Robert Dinwiddie to James Abercrombie, June 23, 1755, Brock, ed., Records of Dinwiddie, II, 73; id. to Lord Walpole, November 9, 1756, ibid., 522.

other Englishmen must have reasoned — a comparatively harmless retreat from their earlier contention that he had forfeited his claim upon employment by His Majesty. Accordingly, to mollify and, in Dinwiddie's phraseology, to "moderate the Heats of the People, at this dangerous Time," it was urged by various British authorities that Randolph be again commissioned as the government's chief legal officer in Virginia. Before Randolph's return to the colony Dinwiddie felt that this recommendation was "very condescending" and admitted that it is "very disagreeable to me".<sup>1</sup> But after his former subordinate's arrival, docile and penitent, with many importunities signed by influential persons across the Atlantic, the lieutenant-governor accepted his apologies and saw to it that he secured a new commission.<sup>2</sup>

Thus, probably in November or December, 1754, George Wythe had to step out of the Attorney General's office, after

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1. Robert Dinwiddie to the Lords of Trade, October 25, 1754, Brock, ed., Records of Dinwiddie, I, 363-364.
  2. Id. to id., February 12, 1755, ibid., 492-493; id. to Lord Albemarle, February 12, 1755, ibid., 498; id. to James Abercrombie, February 18, 1755, ibid., 506-507; entries of April 22, May 13, July 16, 1755, Board of Trade Journals (Transcripts), LXIII, 156, 195, 263, Pennsylvania Historical Society Library. Randolph had to go through the formality of a reelection to the House from William and Mary College: McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, xxi, 223. On May 12, 1755, he reported to it his stewardship of the trust which had been delegated to him and received its unanimous appreciation: ibid., xxii, 250-251.

an incumbency there of roughly twelve months.<sup>1</sup> A nephew of Peyton Randolph has supposed that Wythe had privately intended to give up the office when Randolph's mission was completed, out of friendship for Randolph and sympathy for the Burgesses' cause. According to this view, when Dinwiddie approached Wythe with an appointment in Randolph's stead,

... as the habits of a seducing and not of a [of a not] wholly unambitious profession [law], never warped him from friendship or patriotism, he accepted the commission [appointment] with the customary professions of gratitude, not disclosing his secret and honorable determination that he would resign it to his predecessor on his [Randolph's] return.<sup>2</sup>

The premise upon which this assumption is based was undoubtedly true: Wythe was loyal in every known respect to friends and country. But it does not necessarily follow that he positively and voluntarily intrigued with Randolph to defeat Dinwiddie's aims, however thoroughly in character such action might be. Nevertheless, the hint of such a patriotic and sacrificial course must be deemed a most interesting possibility, if not indeed a probability. Granting its verity,

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1. Randolph probably arrived late in that year. The dates of the letters in the footnote immediately preceding this one indicate that some time may have elapsed before he made his peace with Dinwiddie and took office again; but it is equally possible that he was reinstated before 1755 and that there was merely a delay in Dinwiddie's correspondence. At least it has been assumed that Wythe's incumbency did not extend into 1755: William and Mary College Quarterly (1st series), X, 34, 165-166.
  2. Randolph, Manuscript History of Virginia, 101, Virginia Historical Society Library. This glowing supposition is somewhat invalidated by the two sentences which follow it: "It is possible, however, that it had been intimated to the governor from England that he [Randolph] was to be restored. Without such an instruction even this obdurate ruler would not have dared to contemn the lofty tones of the people."

Wythe was saved from the obligation to resign, with the consequent danger of having to explain a cancellation of his previous acceptance, by the commands from abroad that Randolph be given a second appointment. Doubtless it was Dinwiddie who had to face the agony of apologetic explanations.

Whether or not Wythe accepted the lieutenant-governor's appointment with professions of loyalty to one or more of the Burgesses, his position during 1754 was a treacherous one. One misstep might have turned against him the irascible Dinwiddie, whose temperament was not bettered by ill-health, and lost for him the benefits of royal patronage and of the Attorney-General's £140 annual salary. On the other hand, Virginians were quick to detect and condemn in appointees of the Crown sentiments which they considered prejudicial to their interests. In the heated atmosphere of 1754 Wythe had outwardly taken Dinwiddie's side, yet he seems to have steered safely the difficult course between a Scylla and a Charybdis. So far as is known, he received no censure from the critical tongue or caustic pen of Dinwiddie. His election late in the summer of 1754 by the freeholders of Williamsburg as their representative in the General Assembly and the assignments given him by the House during that and the following year are adequate testimony of the public's approval of his role in the pistole controversy.

#### Wythe Inherits "Chesterville"

While George Wythe had been in Spotsylvania, his older brother, Thomas Wythe the Fourth, began a career which gave



promise of emulating the examples set by his father, grandfather, and great-grandfather. In 1747 he became a justice of the Elizabeth City county court, and until the winter of 1753 he managed to attend his duties somewhat faithfully despite demands of "Chesterville" upon his time.<sup>1</sup> As had been the case with his grandfather, his death came before he reached an age at which he might reasonably expect to occupy one of Elizabeth City's seats in the House of Burgesses, in which his father and great-grandfather had sat and in which his younger brother was then representing Williamsburg. He

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1. He took the oaths as justice on June 2, 1747, and was present at the sessions of July 7 and August 4, 1747: [Order Book, 1731-1747,] 541, 545, 546, respectively, Elizabeth City County Records. A cursory but fairly thorough inspection of the pages of the succeeding volume, Order Book, 1747-1755, showed that he was present at sessions on the following days, which are tabulated with the pages on which his name occurs:

<u>Date</u>	<u>Page</u>
October 6, 1747	10
November 3, 1747	12
August 2, 1748	55
June 6, 1749	86
September 5, 1749	112
August 6, 1751	234
February 20, 1752	264
August 4, 1752	296
March 10, 1753	356
June 6, 1753	372
October 22, 1753	400

Perhaps some of the gaps in this list of dates is to be explained by the fact that he may not have been reappointed continuously in the irregular commissions. Of his commissions only one is readily available: Executive Journals of the Council of Colonial Virginia (Photostats), April 30, 1752, University of Virginia Library.

died probably early in 1755,<sup>1</sup> an intestate bachelor. In this respect it was a fortunate event for George Wythe, to whom ownership of "Chester ville" descended automatically under the primogeniture law.

The possession of property in Elizabeth City made the younger Wythe eligible to become a judge of the county court and he was appointed almost immediately its presiding justice, sitting upon its bench (instead of pleading cases before its bar as an attorney) for the first time on July 1, 1755.<sup>2</sup> In later sessions he attended the court for several years in

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1. Tyler, "George Wythe", loc. cit., 56, names that year, without citing an authority for it. It was certainly some time between October 22, 1753, and July 1, 1755. On the former date he attended a county court: Order Book, 1747-1755, 400, Elizabeth City County Records. The latter date will be explained in the next paragraph.
  2. Ibid., 492. His signature appears at the conclusion of the record for that day: ibid., 494. One of the several gaps covering short periods in the extant journals of the Council includes all of the year 1755: Executive Journals of Council of Colonial Virginia (Photostats), University of Virginia Library. It is thus impossible to learn the date of his appointment as justice. Starkey, First Plantation, 19, errs in stating the date as 1746.

this capacity.<sup>1</sup> But Wythe evidently did not establish his permanent residence at the old family estate; instead, he left the active management of its agriculture to an overseer and visited it for short periods when his business permitted. Of this strong probability the fact that he attended the county court only fifteen days out of about five times that number in four years after he took the oaths as presiding justice is almost positive proof.<sup>2</sup>

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1. A tabulation of his attendance until 1760, as noted by the writer, showing the dates of meetings at which he was present, follows. It is based upon Order Book, 1755-1760, Elizabeth City County Records, and gives page citations for his attendance and for his signatures as presiding justice.

<u>Dates</u>	<u>Pages</u>	<u>Wythe signed proceedings</u>
September 2, 1755	9	
December 2, 1755	31	34
December 12, 1755	34	
July 6, 1756	58	
August 2, 1756	64	
September 7, 1756	74	76
October 5, 1756	79	81
December 7, 1756	83	85
March 2, 1757	91	103
March 9, 1757	104	105
June 7, 1757	133	136
July 5, 1757	136	
August 2, 1757	140	
August 1, 1758	190	
December 5, 1758	199	201

Records to show his appointments do not survive; thus it is possible that he was not included in every one of the periodical commissions for the county bench during these years. But his name appears first in the list of those present every time it occurs. A similar table to show his attendance after 1760 will be included in the fifth chapter.

2. Order Book, 1755-1760, passim, Elizabeth City County Records.

Wythe had become too intimately involved in the legislative and legal life of Williamsburg to consider very seriously a personal, permanent occupancy of "Chesterville". His political ties in the capital have already been enumerated; to these an advancement in the practise of his profession was added. Some time before May of 1755 he was admitted to the colony's supreme bar as an attorney before the semi-annual General Court.<sup>1</sup> No greater badge of distinction could be attained by a lawyer in Virginia's colonial period than the reputation of success in this superior tribunal of original and appellate jurisdiction, over which it was a primary duty of the lieutenant-governor to preside and in which the members of his Council sat as ex officio judges.

Another link in the chain which bound George Wythe to residence in Williamsburg was the blossoming of social interests there into a second marriage. After several years of widowhood, probably about 1755; Wythe married Elizabeth Taliaferro,

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1. All the sketches of Wythe either ignore, evade, or falsify the time of his entrance to this court, the official records of which have never been available to scholars; when any information on the point has been given, it has been stated or implied that the date was 1756. But an earlier though indefinite date can be deductively established from the fact that Paul Carrington (1732/3-1818) received in May, 1755, a license to practise law signed by Peyton Randolph, John Randolph, and George Wythe: Alexander Brown, The Cabells and Their Kin: a Memorial Volume of History, Biography, and Genealogy, 205. Since the official board of examiners could then consist only of judges of the General Court and of members of its bar, and since Wythe was never a member of the Council, it follows indubitably that he had gained admission to its bar before May, 1755. The original act of 1745 setting up the board of examiners had been renewed in 1748 without change in that respect: Hening, ed., Statutes, VI, 140-143.

daughter of Richard and Eliza Eggleston Taliaferro.<sup>1</sup> Her father owned an estate called "Powhatan", located in James City County some four or five miles south of Williamsburg; he was a wealthy man, probably a "gentleman farmer" by vocation, an architect by avocation, and had been a judge of his county's court.<sup>2</sup> With his second bride it is possible, perhaps even likely, that he secured the use of the comfortable brick house which was for many years his home. Situated on the west side of the Palace Green, adjoining far-famed Bruton Parish Church, less than a block from Duke of Gloucester Street, with the palatial Governor's Palace two blocks distant on the north, this handsome residence was built about 1755 by Wythe's second father-in-law. Under the terms of Richard Taliaferro's will its legal title was vested in his daughter and her husband.<sup>3</sup>

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1. Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1820, Jefferson Papers, Library of Congress; Hayden, Virginia Genealogies, 382; Tyler, "George Wythe", loc. cit., 82-83, is authority for the date, for which no citation is given.
  2. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia, IV, 369, 413. In November, 1936, the writer was told in Williamsburg that "Powhatan" is now owned by a Mr. E. H. Slauson. The writer noted in passing that the name Taliaferro is one of frequent occurrence in the mid-eighteenth century records of Caroline and Spotsylvania counties, but he did not determine the relationships of these families to that in James ~~City~~ City County.
  3. Will of Richard Taliaferro, proved August 9, 1779, William and Mary College Quarterly (1st series), XII, 124-125.

But Wythe almost certainly occupied the building long before Taliaferro's death in 1779, and it is quite possible that the latter had constructed it specifically for Wythe as his daughter's dowry.

Despite such attachments as these to Williamsburg, George Wythe did not lack a substantial interest in Elizabeth City County. Early in 1756 an election of representatives in the House of Burgesses took place. The burgess chosen by Williamsburg's electorate to fill Armistead Burwell's unexpired term announced his candidacy for one of his native county's two seats, to which he was quite eligible by virtue of his legal residence and property at "Chesterville",<sup>1</sup> but he was defeated in this effort at the polls. Freeholders in Elizabeth City appeared as a whole to prefer their actual rather than technical neighbors as representatives, no matter how distinguished the latter might be, for Wythe ran no better than fourth in a race between four or more candidates. Subsequent generations would not know even this much about that election, were it not for the facts that John Tabb, burgess in the House of 1752-1755, whose votes were third largest, protested against the award of a seat to William Wager<sup>2</sup> and that the Committee on Privileges and Elections spread certain records of their

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1. John Chiswell supplanted Wythe in Williamsburg's seat: McIlwaine, ed., Journals of the House of Burgesses, 1752-1758, x. Circumstances surrounding the replacement of Wythe there could only be surmised.
  2. Tabb's petition was referred to the Committee on March 26, 1756: ibid., 339.

contest upon the printed pages of the official Journals.

As was usual in cases of contested elections in counties more or less distant from Williamsburg, the Committee appointed a commission of leading citizens to get at the bottom of the affair by examining under oath witnesses for each party on the legality of their freeholds or rights to exercise the suffrage and on any alleged irregular electioneering methods. It was not at all usual that one of the defeated candidates, George Wythe, should have been named chairman of this commission of five.<sup>1</sup> Yet, because Elizabeth City was not so very far away, it was soon agreed upon that the commission should examine only witnesses too infirm or ill to travel, the remainder to testify in person at the capital before the Committee.<sup>2</sup>

Evidence gathered by these two agencies and reported by the Committee serves as a fairly good mirror of Virginia's colonial political campaigns. Tabb had evidently charged Wager with illegally serving liquors to his intended constituents. But the testimony showed only that Wager "for many Years past hath kept an hospitable House, and freely entertained all Persons that came there...." It was his friends, who could do so with impunity, who had treated assembled voters with punch and had bought the liquor served at his

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1. Jacob Walker, a Hampton merchant and an uncle of Wythe, Robert Arnistead, Booth Arnistead, and Charles Jennings were the remaining members: ibid., 342.

2. Ibid., 344, 348.

home during the campaign. One of these explained that Wager "had assisted him in his Distress, and therefore he did treat the Freeholders at that Time", adding his intention to do the same thing "as often as M<sup>r</sup> Wager and M<sup>r</sup> Wythe, should be candidates for that County." The Committee learned, too, that at a meeting of freeholders "procured by M<sup>r</sup> Wythe who was a Candidate or his Friends" some of his backers promised that Wythe would serve as burgess without compensation and "that they would give Bond to repay any Thing that should be levied on the County for him...." Not to be outdone, Wager had offered to match these terms, which gave an unheralded wag by the name of Cary his cue to declare, "now we have got two men that will serve us for nothing, which he was glad of, as he found it very difficult to pay his Taxes...."<sup>1</sup> But, since Cary had not voted for Wager, the Committee could find nothing illegal in Wager's campaign practises. Accordingly, the result of the disputed election hinged upon the qualifications of the voters. The Committee found that seven of Wager's supporters were not freeholders and ruled out only three of Tabb's votes. By these subtractions Tabb was seated by a plurality of one over Wager, who had originally polled a three-vote lead.<sup>2</sup>

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1. Ibid., 360-361.

2. Ibid., 359-361. Later, of course, the two men had to reimburse each other partially for the expenses of their respective witnesses: ibid., 381.



Defeated in this somewhat typical campaign, George Wythe watched for two years from the outside the sessions of the Burgesses elected in 1756. That, as has been previously intimated, was the only House between 1748 and the Revolution with which he had no official connection.

The earliest available writing from Wythe's pen now known to be extant constitutes a signed order for certain merchandise, but exactly what the articles he desired were is a matter of conjecture: "an aelolipyle a receiver and wood cup for shower of Mercury to be had of Naime and Blunt mr Shermer will be so good as [to] procure for G. Wythe."<sup>1</sup>

#### The Character of a Near-Pedant

The activities and attainments of the third decade in George Wythe's life have thus been reconstructed as fully as authentic sources permit. To complete this review of those years only one consideration remains. An uncomplimentary legend, base in its implications, cannot be ignored.

Certain fictional reports have portrayed the Wythe of this period as a "wild and thoughtless youth" who yielded to the "seductions of pleasure" for nine or ten years, during which his career consisted of "dissipation and intemperance". This tradition was first promulgated obscurely in the year after his death<sup>2</sup> and was popularized and spread abroad for

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1. Ms. of George Wythe, July 10, 1755, Roberts Autograph Collection, Haverford College Library.
  2. "Memoirs of the Late George Wythe, Esquire", The American Gleaner, and Virginia Magazine, I (1807), 1-2. This account is openly didactic.

years by certain biographers of "Grub Street" caliber or less.<sup>1</sup> Significantly, no memoirs written by persons known to have been intimately acquainted with the man suggest any such traits in his character.<sup>2</sup> A full century had passed before enough thought was focussed on the theory to bring forth an

1. An extremely slavish paraphrase of the 1807 "Memoirs" adopted the account almost verbatim: "George Wythe", American Law Journal, III (1810), 93. Thence the idea was transmitted to [Smith,] "George Wythe", loc. cit., 173. Three later condensations of Smith's sketch, each of which sacrificed disproportionately other information in preference to omitting the moral of Wythe's youthful aberrations, adopted the fable: Charles A. Goodrich, "George Wythe", in his Lives of the Signers to the Declaration of Independence, 365; W. Dwight, "George Wythe", in his The Lives of the Signers of the Declaration of Independence, 267; B. J. Lossing, "George Wythe", in his Biographical Sketches of the Signers of the Declaration of American Independence, 163. Like that cited in the preceding footnote, all of these sources use the fable because of its possibilities as an instructive example. Indication of the widespread credence which unauthoritative tales of this kind may sometimes gain is given in the fact that this legend is solemnly reported as unquestioned truth in the article on Wythe in the large French biographical dictionary, Biographie Universelle.
2. Particularly, the sketch by Thomas Jefferson fails to give this hint, while the briefer portraits by Edmund Randolph in his Manuscript History of Virginia and by William Virts in his biography of Patrick Henry are in similar vein. Nor is such a statement made in the literature arising from Wythe's death, in which an aspersion of this sort would be less likely to occur unless it was used to point an instructive moral: William Munford, "Oration Pronounced at the Funeral of George Wythe", The Enquirer, June 13 and 17, 1806; anonymous "Communication", ibid., June 10, 1806; Jephtha F. Moore, "Oration on the Death of the Venerable George Wythe...", Virginia Argus, September 17, 1806; anonymous "Communication", ibid., June 10, 1806; "Communication" signed "A.B.", Virginia Gazette, and General Advertiser, June 18, 1806. But Daniel Call evidently accepted the legend; he quoted the account with apparent approval in his sketch from an early edition of the Encyclopedia Americana.

outright doubt,<sup>1</sup> and it is only in the last decade that distinct denials have been made.<sup>2</sup>

These recent defenders of Wythe's personal conduct have pointed out the probability that his distinctions in the House of Burgesses, success in the county courts, and appointment as Attorney General could not have come to a conspicuous degenerate or to any one of greater-than-average self-indulgence — and that is in itself convincing testimony against the allegation. But its details alone are inaccurate enough to puncture this fabricated story, which supplies a motive by stating that an orphaned George came by inheritance on his twenty-first birthday into the unprotected control of a sizable fortune, that he squandered it in prodigal fashion. Indubitable refutation of such assumptions has been given within this chapter in the fact that George Wythe became his father's heir, by the intestate death of his older brother, only when he was approaching the age of thirty. Wythe never possessed enough wealth to have suffered its enervating influence.

Had the legend of misspent years had any other origin than its true one, it might be a malicious slander, significant in any delineation of Wythe's character merely because some calumniator had taken the trouble to defame his reputation with a deliberate libel or aspersion. Yet no such

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1. Tyler, "George Wythe", loc. cit., 55-56.

2. Jones, "The Character and Service of George Wythe", loc. cit., 326-327.

importance should be attached to the report, for it arose from a false interpretation of remarks made most innocently by Wythe himself in his old age. Looking back from that point of vantage, it seemed to the scholarly Wythe that he had begun tardily the endless reading and application which in time had so well overcome his inferior formal schooling. "I have often heard him", the first author of the legend recalled, "pathetically lament the loss of those nine years of his life, and of the knowledge which might have been acquired by employing them, as well as those which succeeded them in study."<sup>1</sup> It is indeed probable that Wythe regretted having devoted himself to the attainment of genuine proficiency in no branch of learning other than the law until his thirtieth year. It does not follow, however, as the listener to his mild, self-reproaching remorse unfortunately supposed, that his failure before that time to become attached to general scholarship could be attributed to either idleness or intemperance. All of his talents were not criminally dissipated, and it was therefore unnecessary for him to undergo a reformation about 1756 — or, in phrases with which the unauthentic fable of his profligacy is concluded, to come to "sober reflection", to turn his back upon "unprofitable companions" and "evil associates", to give up "levities" and "youthful follies".

From an abundance of authoritative evidence it is

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1. "Memoirs of the Late George Wythe, Esquire", The American Gleaner, and Virginia Magazine, I, 1-2.

positive that Wythe lived moderately, observing faithfully the rules of contemporary conventions and the dictates of his own conscience. One of his friends admitted, about six years after his death, that he had had a "natural" tendency to "instability" but recalled that it had been held in check "with a tight rein"<sup>1</sup>. Others spoke of his "truly laudable" conduct in a "private life ... spent in the practice of social virtues, and in the enjoyment of much domestic felicity ...",<sup>2</sup> described his virtue as "of the purest tint", and attributed his "general good health" to "temperance and regularity in all his habits."<sup>3</sup> To one of the very biographers who contributed to the spread of the falsehood of Wythe's alleged dissipation Thomas Jefferson had given, together with some information designed to serve as "landmarks to distinguish truth from error, in what you hear from others", assurance that "the exalted virtue of the man will also be a polar star to guide you in all matters which may touch that element of his character", adding on second thought, "but on that you will receive [sic] imputations from no man; for, as far as I know, he never had an enemy."<sup>4</sup>

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1. Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 131-132.
  2. Anonymous "Communication", Virginia Argus, June 10, 1806.
  3. Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1806, Jefferson Papers, Library of Congress.
  4. Thomas Jefferson to John Sanderson, August 31, 1820, ibid. As has been noted, Sanderson gave this letter to William R. Smith, the author of the sketch on Wythe which appeared in his collection.

It has been shown by his own admission that George Wythe neglected during his third decade some opportunities for the improvement of his scanty education. Of this fault he was never again guilty. Demands of public or private business made incessant inroads upon his time, but nothing could prevent the penetrating study of a man who developed, after his professional career had been established, that genuine love of learning for its own sake which is so essential a foundation for scholarship. The loss of hours spent less beneficially was redeemed a hundred fold within the next fifty years.<sup>1</sup> Indefatigable in his application, he became noted for a solidity and penetration which none of his contemporaries surpassed. Breadth of interest, too, characterized his self-education. In his later years he was respectfully dubbed "the walking library".<sup>2</sup> And when he died someone reflected that "there was no art or profession of which he had not a correct idea."<sup>3</sup>

First among the fields of knowledge to which Wythe turned his attention was the treasury of classical literature. Therein lay throughout a long lifetime his chief intellectual interest, and until he was about fifty years of age his unremitting diligence in self-instruction was concentrated

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1. "Memoir of the Late George Wythe, Esquire", The American Gleaner, and Virginia Magazine, I, 2.
  2. Anonymous "Communication", The Enquirer, June 10, 1806.
  3. "Communication" signed "A.B.", Virginia Gazette, and General Advertiser, June 18, 1806.

primarily on the acquisition of facts and principles recorded by the writers of ancient Greece and Rome. The handicap of inadequate formal schooling and of only preliminary grammatical study at his mother's knee meant nothing to him, though they had together been barely sufficient to let him realize how unqualified for progress he was. On his own initiative and with no other tutor than himself, he plunged deeply into a discriminating absorption in the classics.<sup>1</sup>

Rather early in this study he procured a volume of blank pages, average in size, not unlike a typical eighteenth-century lawyer's commonplace book, in which he recorded minute notes of his personal research in the etymology of Greek and Latin words. About 150 pages of this book, which has been preserved, contain his comparisons of Latin equivalents with the original Greek text of Homer's Iliad and with other Hellenic literature. No better monument to Wythe's patient burrowings in linguistics can be imagined than this private product of his explorations in the original meanings of words,

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1. Ibid.; Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 131; "Memoir of the Late George Wythe, Esquire", The American Gleaner, and Virginia Magazine, I, 2.

which he certainly never intended for the eye of posterity.<sup>1</sup>  
 By such labors he acquired a knowledge of the ancient languages which was "critically correct".<sup>2</sup>

Homer's immortal tale of the fall of Troy, however, was only a beginning. Wythe's mind ran the gamut of Greek and Latin poets, historians, and philosophers; with all of these whose writings he could obtain he became as familiar as he was with any English author, reading them with equal ease.<sup>3</sup>  
 Thomas Jefferson spoke of him later without reservation as

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1. [George Wythe, *An Etymological Praxis*], Virginia Historical Society Library. This Ms. quarto volume has no title page and is undated; but Wythe's characteristic handwriting constitutes a positive means to identification. The writer is of the opinion, on the basis of penmanship comparisons with Wythe letters, that it was definitely of a period before 1765. The last six of its unnumbered pages contain a copy of biographical sketches of John Holloway and William Hopkins, colonial Virginia lawyers who died in 1734, transcribed by some one other than Wythe from Sir John Randolph's "Breviate Book". A letter of transmittal to the Society is pasted to its front cover. "I herewith send you, the book which I promised you for your Society. It was (as I informed you) the property of the late venerable and learned Chancellor Wythe, and I believe is altogether in his hand writing [sic], although the character of the copy from 'Sir John's Breviate Book' seems to be different from that of the Greek and Latin. Much of the largest portion of the book is a Clavis *Ὀμηρου*, or Etymological Praxis, on several of the books of the Iliad, and some of the *Ἰαχιδία* which will serve in a striking manner to illustrate the great industry of that distinguished man": John Page to James E. Heath, January 3, 1834. The existence of this Ms. has been previously commented upon only by Grigsby, *Virginia Convention of 1776*, 120, who cited it as evidence that Wythe's accurate familiarity with Latin and Greek began in middle life. The two biographical sketches were reprinted in *The Virginia Historical Register*, I, 119-123.
  2. Anonymous "Communication", *The Enquirer*, June 10, 1806.
  3. *Ibid.*; Wirt, *Patrick Henry*, 47-48.



"the best Latin and Greek scholar" in Virginia,<sup>1</sup> and a contemporary who was better qualified than Jefferson to pass judgment in literary matters asserted that his attainments in the classics had rarely been equalled in all the American colonies and states.<sup>2</sup> Or, as still another contemporary put it, he labored delightedly "not only through an apprenticeship, but almost through a life in the dead languages."<sup>3</sup> A rather recent figure in the world of American letters boasted that he owned a rare 1757 edition of the odes of Anacreon, Sappho, and Alcaeus, which had once been in the library of George Wythe.<sup>4</sup> If anything, he carried too far his love of ancient scholarship, which became increasingly as he grew older his pride as well as his joy. Conversation and correspondence he naturally enriched with quotations, but there is a limit at which the foible of classical quotation borders upon pedantry pure and simple. And Wythe appears never to have hesitated to sprinkle even the most technical legal opinions and decisions with excerpts from his studies, to the utter consternation of less learned associates who could not

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1. Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1820, Jefferson Papers, Library of Congress.
  2. Wirt, Patrick Henry, 48.
  3. Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 131.
  4. John Esten Cooke, "George Wythe", Manuscript Biographies Collection, Pennsylvania Historical Society Library. Dr. Lyon G. Tyler claimed also to possess an unnamed volume or two from Wythe's library: William and Mary College Quarterly (1st series), VI, 40.

understand the aptness of their application to more modern problems without a translation into the vernacular.<sup>1</sup>

The character of Wythe partook of the nobility of ancient civilization, his manners and tastes of its lofty simplicity, as might be expected in any devotee so extremely and intimately versed in the lore of classical grandeur. Thus it was that he could be appropriately characterized as "a man of Roman stamp, in Rome's best age".<sup>2</sup> Consciously he moulded his life to fit the principles of literature and philosophy.<sup>3</sup> When

1. Outstanding examples of his delight in quotations to prove his point may be found in his published decisions as Chancellor late in his life: George Wythe, Decisions of Cases in Virginia, by the High Court of Chancery . . . Cf. Wirt, Patrick Henry, 48. With some exaggeration a popular biographer has described Wythe's head as being "largely filled with law, and what space law left was enriched with the wisdom of the ages. Out of his archaic mouth came locutions pat to the hour": Morgan, Patrick Henry, 82.
2. William Wirt, Eulogy on Thomas Jefferson and John Adams in the House of Representatives, October 19, 1826, Albert Ellery Bergh, ed., The Writings of Thomas Jefferson, XIII, xii. Cf. William C. Rives, History of the Life and Times of James Madison, II, 248-249.
3. "In literature, he [Wythe] was in some things not unlike [Samuel] Johnson; he admired nothing so much as the display of a keen discrimination of human characters, a just apprehension of the principles of modern action, and that vigorous common sense, which is the most happily applicable to the conduct of human life; he delighted in the refinements, the subtleties, the abstractions, the affectations of ancient literature; and in comparison with these, despised the grossness of modern taste, and common affairs. He seemed to think learning and science of little value, except so far as they could be made subservient to the purposes of living usefully and happily with the world upon its own terms. His favorite science taught him to look down with contempt, upon all sublunary and modern things, and to fit life to literature and philosophy, and not literature and philosophy to life": anonymous "Communication", Virginia Argus, June 10, 1806.

financial means seemed limited, the maxim that "genuine riches consisted in having few wants" was brought into play.<sup>1</sup> Out-right wit he did not inherently possess, and humor for its own sake he usually disdained,<sup>2</sup> though occasionally exhibiting it dryly or facetiously in a classical Attic form;<sup>3</sup> but he could be "elegantly keen and sarcastic in repartee".<sup>4</sup> He enjoyed the companionship of kindred spirits as much as any man can and was not laggard in contributing to the affable pleasure of temperate society.<sup>5</sup> His language was invariably chaste.<sup>6</sup> In short, his was preeminently the intellectual approach to life.

When he had reached maturity, George Wythe presented a rather prepossessing physical appearance. Of about average height, he was slender, erect, and well-proportioned, with a thoroughly Roman nose set under a prominent forehead and

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1. Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 131. Cf. "Memoir of the Late George Wythe, Esquire", The American Gleaner, and Virginia Magazine, I, 3.
  2. Anonymous "Communication", Virginia Argus, June 10, 1806.
  3. Wirt, Patrick Henry, 49.
  4. Ibid., 48. Cf. Call, "Judge Wythe", loc. cit., xiii-xiv.
  5. Anonymous "Communication", Virginia Argus, June 10, 1806; Wirt, Patrick Henry, 48-49.
  6. Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1820, Jefferson Papers, Library of Congress.

between gray eyes as the most readily distinguishable item among his engagingly blended features. A complete absence of affectation controlled courteous manners naturally urbane in both social and professional contacts.<sup>1</sup>

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1. Ibid.; Cooke, "George Wythe", Manuscript Biographies Collection, Pennsylvania Historical Society Library. An excellent portrait in the lobby of the George Wythe Hotel, Wytheville, Virginia, pictures him at an earlier age than any other -- apparently at about thirty-five. The Wythe House in Williamsburg houses a handsome Turnbull semi-profile painting of a somewhat later date. A full-profile by Longacre, originally printed in the missing issues of The American Gleaner, and Virginia Magazine, is definitely applicable only to Wythe's old age and is very widely available through engraved copies in publications and libraries. Mrs. Catherine Carter Critcher of Washington, D. C., a collateral descendant, presented to the Wythe House in 1927 an original oil painting done from the Longacre model. In the Wythe House there is also a small circular profile, giving the impression of a semi-caricature, done by the famous elder Peale with the aid of an extinct "profilograph" invention. In Wythe's last years he became stooped and thin.

## Chapter IV

### AT THE BAR OF THE GENERAL COURT; THE LEGAL EDUCATION OF JEFFERSON

#### The General Court, 1756-1765

The legal profession in Virginia, as in England's other American colonies during the seventeenth century, was a casual or struggling one. Advocates were despised or regarded with suspicion; litigation ran uniformly along channels of the simplest actions in debt and trespass; and the practise of law was frequently a mere avocation by which untrained merchants and landowners protected their commercial interests. It was only after 1700 that the bar in Virginia began to bud with learned and respected names,<sup>1</sup> and it was not until 1750 that the bud blossomed into full flower. During the quarter-century preceding the end of the colonial regime lawyers developed in Virginia's General Court who were in every respect at least equal to the best produced in other colonies, if indeed the Virginia bar of that period was not distinctly superior to any of the others.<sup>2</sup>

The preceding chapter has shown that George Wythe was

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1. Prominent among the lawyers of the first half of the century were William Byrd (1674-1743), John Clayton (1665-1737), Edward Barradall (1704-1743), Sir John Randolph (1693-1737), William Hopkins, John Holloway, and Stevens Thomson.
  2. Charles Warren, History of the American Bar, 39-40, affords an adequate summary of Virginia's colonial bar, and other pages of the same work may be read for the sake of comparison.

admitted to practise in the General Court some time before May, 1755. For two decades or more the advocacy of causes before its bench, composed of the members of the Council with the lieutenant-governor or governor as presiding judge, furnished Wythe's principal income and his chief occupation. This supreme tribunal convened in Williamsburg only twice each year, in April and October, for sessions continuing about two weeks each; but long intervals between terms were not vacations for the scholarly Wythe, who had so much success in attracting clients that months of intensive research and preparation were required for him to do justice to them all.

Thomas Jefferson, who joined Wythe at this bar in its later days, pronounced him unqualifiedly as the greatest of its members during the second of the two decades in which Wythe practised there, "taking into consideration his superior learning, correct elocution, and logical style of reasoning."<sup>1</sup> This could have hardly have been true of the ten years before 1765, for one could not leap suddenly into the leadership of such a company of legal giants. Though Wythe "soon became eminent among them", advance to priority over such colleagues could come only "in process of time."<sup>2</sup> Four men, only one of

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1. Thomas Jefferson, "Notes for the Biography of George Wythe" filed under August 31, 1820, Jefferson Papers, Library of Congress.

2. Ibid. An earlier remark from the same source suggests that Wythe entered the General Court in 1750 and gives a much stronger assertion of his leadership, stating that he had "held without competition the first place at the bar of our general court for twenty-five years....": Thomas Jefferson to Ralph Izard, July 17, 1788, Bergh, ed., Writings of Jefferson, VII, 71.

whom could have entered the General Court after Wythe, appear to have shared with him the dominance of its bar.

The titular head of the group was Attorney-General Peyton Randolph. A son of the much respected Sir John Randolph, Peyton had been educated at William and Mary, Oxford, and the Inner Temple. His appearance was extremely gentlemanly, his manners friendly to all but strangers, his nature conciliatory; his mind was sound enough and his arguments substantial enough to counterbalance fully an utter lack of the arts and graces of eloquence. His frame carried some excessive weight, and the resultant physical inertness became characteristic of his mental habits — "he was rather too indolent and careless for business, which occasioned him to get a smaller proportion of it at the bar than his abilities would otherwise have commanded." Beginning in 1748 he drew for some time a steady salary as the government's chief prosecutor, except for a year in which Wythe supplanted him; thus "he did not seem to court, nor scarcely to welcome business."<sup>1</sup>

John Randolph (b. 1727), younger brother of Peyton, was another of the principal practitioners in the General Court. The advantages of experience in the Inner Temple, following an education at William and Mary, had also been his. Like his brother, he lived in Williamsburg, but in politics he was generally more conservative and a bit less distinguished than Peyton. During a large part of the latter's tenure as Attorney

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1. Biographical Sketch of Peyton Randolph, Bergh, ed., Writings of Jefferson, XVIII, 139.

General, John Randolph served as Clerk of the House of Burgesses. And, just as the older brother has stood between Wythe and a royal commission as Attorney General in 1754, the younger brother twelve years later thwarted a recommendation of Wythe for that position by Dinwiddie's successor.<sup>1</sup>

Older than either of these was Robert Carter Nicholas (1715-1780); however, he was admitted to the bar of the General Court several years later than they, probably very soon before or after Wythe. Youthful training and reading had given Nicholas a strong predilection for the Anglican ministry, but, following attendance at William and Mary, he had chosen the law as his profession. He became a colleague of Wythe in the Warwick county bar, and probably also in other county courts. Though he had determined not to be a clergyman, he continued his deep-seated love for the established church and for absolute piety, propriety, and purity. Quite conservative in his thinking and ordinarily averse to change, he could yet advocate a most sweeping alteration once he became convinced that something different was needed. During the last decade before the Revolution he was Treasurer of Virginia, and for a number of years prior to 1765 he was a fixture as a burgess for James City County. Of a complacent temper and benevolent disposition, he was much the most religious among late colonial statesmen; a certain austerity

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1. Cf. the first section of chapter VI of this study.



was his sole handicap in public life.<sup>1</sup> He, too, lived in Williamsburg, and, though they were often associated in the same legal and political circles, rivalry never sprung up to mar or to make tense his friendship for Wythe.

Edmund Pendleton was a fourth lawyer who attained a dominant position at the bar of the General Court, and to investigators of Wythe's career he is much the most interesting colleague Wythe ever had. In all the history of Virginia there have never been two lives which presented so many striking parallels and contrasts as did those of Wythe and Pendleton. Throughout more than half a century in public service they were engaged almost incessantly in the same political, legal, and judicial activities. In a series of many issues which confronted them, however, they were rarely aligned on the same side of any question, and even in those instances they reached the same opinions by substantially diverse mental paths. Rivals for every kind of official preferment for fifty years, no genuine antipathy ever really existed between them, though each upheld tenaciously his principles against the other's attacks until the very day on which Pendleton preceded Wythe to the grave by three years. Theirs was an absolutely unique relationship, and its inherent drama was intensified by the fact that its similarities and conflicts became

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1. "But he [Nicholas] appeared to many who did not thoroughly understand him, to be haughty and austere; because they could not appreciate the preference of gravity for levity, when in conversation the sacredness of religion was involved in ridicule or language forgot its chastity": Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 125.

in time so obvious that neither they nor their contemporaries could fail to be almost painfully aware of it. Distinctly different in respect to their approach to any problem, their abilities were nevertheless markedly alike. Hence their careers were constantly placed in juxtaposition and competition with one another, and comparisons could not be wholly avoided. No one has dared to say that either was definitely greater than the other, though if either gained a slight advantage, it would appear that Pendleton had the better of their rivalry by the narrowest of margins.<sup>1</sup>

Pendleton was born on the ninth day of September, 1721, and his seniority by five years is a measure of the initial gap which Wythe had to close to gain a plane of equality with him. His ancestors, like Wythe's, immigrated about 1680, but, unlike Wythe's, they had attained neither noteworthy distinction nor moderate wealth. Pendleton was a posthumous son, and his mother remarried. When he was thirteen years old, he was therefore apprenticed for six and a half years to Benjamin Robinson, the rather irresponsible clerk of the Caroline county court.<sup>2</sup> As helper to Robinson in this capacity he had an excellent chance to study at first-hand practical phases

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1. Because of their exclusive interest in Wythe the authors of sketches about him have failed to exploit fully the potential drama of his relationship with Pendleton, and Pendleton's fewer memorialists have overlooked it. The imaginative Grigsby has given it more thought than any other previous writer: Hugh Blair Grigsby, The Virginia Convention of 1776, 125-130.
  2. Entry of March 14, 1734/5, Order Book, 1732-1740, 282, Caroline County Records.

of the legal profession. Two or three years later he became clerk of the vestry of St. Mary's Parish; his earnings as such he claimed to have devoted to the purchase of a few books, presumably law treatises, which he "read ... very diligently".<sup>1</sup> As his term of servitude to Robinson was approaching its conclusion, he gained his master's consent to enter the bar. In April, 1741, he received a license to practise after an examination by Edward Barradall,<sup>2</sup> and in the following month he was sworn as an attorney in Caroline.<sup>3</sup> A year and a half later he was admitted with Zachary Lewis to plead causes before the Spotsylvania bench.<sup>4</sup> It was probably in 1746 or 1747, at one of these two county seats, that Wythe first became acquainted with him. Pendleton had married a short time before he was quizzed by Barradall, but his first bride had died before a year elapsed, as did Ann Lewis Wythe.<sup>5</sup> A few years later Pendleton married a second time, as Wythe was to do, and each of them survived his

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1. Edmund Pendleton, "Autobiography", Richmond Enquirer, April 11, 1828. Other newspapers have printed this little reminiscence, and it may also be found in Marshall Wingfield, A History of Caroline County.
  2. Ibid.
  3. Entry of May 8, 1741, Order Book, 1740-1746, 42, Caroline County Records.
  4. Entry of December 7, 1742, Orders, 1738-1749, 190, Spotsylvania County Records.
  5. Her name was Betty Roy. For minor information about her father, Thomas Roy, see, e.g., Order Book, 1740-1746, 20, Order Book, 1746-1754, 252, 253, Caroline County Records. Married on January 21, 1741/2, she died in stillborn childbirth, November 17, 1742.

second wife by a number of years, dying without issue. In 1751 Pendleton became a judge of the Caroline court, and for many years he was its presiding justice, as Wythe was over that of Elizabeth City County. Pendleton became a Burgess for Caroline in 1752, two years earlier than Wythe's promotion to the floor of the House from his clerkships to standing committees. His entrance to the bar of the General Court, however, preceded Wythe's by almost a decade, for he became an advocate before that bench in its October session of 1745.<sup>1</sup> His success there far exceeded that of any other practitioner who lived more than a few miles from Williamsburg.

It was men like these who made the bar of the General Court so splendid and so redolent with talents. With these four most prominent members Wythe's career was more frequently entwined, but a number of lesser lights increased the brilliance of that picturesque tribunal. Only very incomplete records remain to tell a disconnected story of Wythe's first ten years in that court.

The first client known to have engaged his services there was Henry Fitzhugh of "Bedford", King George County, against whom there were, in 1756, charges alleging improper collection of militia taxes.<sup>2</sup> During one of his frequent brief visits

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1. Pendleton, "Autobiography", Richmond Enquirer, April 11, 1828. The principal sketches of Pendleton's career are: D. J. Mays, "Edmund Pendleton, 1721-1803", Virginia State Bar Association Reports, XXXVII (1925), 392-401, and T. P. Abernethy, "Edmund Pendleton", Dictionary of American Biography, XIV (1934).

2. Virginia Historical Magazine, XXI, 437.

to Elizabeth City County, Wythe wrote in the next year the following letter (which is the first from his pen now extant and available) to a client in northern Fairfax County:

Your suit ag<sup>t</sup> West is set for trial [on] the 10th day of [the] next [General] court. I have directed a subpoena to be inclosed, if m<sup>r</sup> [Edmund] Pendleton or m<sup>r</sup> [Robert Carter] Nicholas has not sent you one, for summoning your witnesses, since your adversary insists on a special verdict, in stead [sic] of the case intended to have been agreed last court. You may know of him I suppose what facts he desires to prove, and [to] which to agree.<sup>1</sup>

In 1758<sup>2</sup> and again in 1760<sup>3</sup> Wythe was co-counsel with Robert Carter Nicholas for Col. George Washington in matters relating to the latter's titles to certain tracts of land. A receipt given by Wythe in acknowledgment of payment for his services by another client indicates that he was business-like in his financial dealings: "Received Oct. 26th 1763 of mr Towles fifty shillings, my fee for defending the suit brought against

1. George Wythe to Major John West, July 14, 1757, Etting Collection, Pennsylvania Historical Society Library.
2. "Cap<sup>t</sup> M<sup>c</sup>Kenzie [handed] me y<sup>r</sup> P[avo]r, which inclosed Sundry Papers relating to y<sup>r</sup> Dispute with M<sup>r</sup> Strother. .... M<sup>r</sup> Wythe is ... out of Town, so that I can't with any exactness say when we shall have an Opportunity of giving an Award; however I'll get it done so soon as I can": Robert Carter Nicholas to George Washington, January 5, 1758, Stanislaus Murray Hamilton, ed., Letters to Washington and Accompanying Papers, II, 256.
3. Entries of April 1 and May 21, 1760, John C. Fitzpatrick, ed., The Diaries of George Washington, 1748-1799, I, 147 and 163, respectively. The latter entry reads: "Wrote to Messrs. Nicholas & With [sic] for Advice how to act in regard to [William] Clifton's Land [which I bought yesterday]. Sent the Letter by the Post."

his wife by Miller on account of Young's orphans. G. Wythe.<sup>1</sup>

The most ambiguous document found in a quest for Wythe materials is written in an unidentified hand and signed with what appears to be a bona fide Wythe autograph. It constitutes a summons for an offender against the colony's gambling law and for witnesses, directed to the sheriff of Loudoun County:

Wh[ereas] I am inform'd, that John Davis did this day suffer and permit, unlawfull, [sic] gaming in his house (being an ordinary [tavern]) contrary to the Acct [sic] of Assembly in that case made and provided --- These are therefore in his Majestie's [sic] Name to require you to summon the said John Davis immediately to appear before me or some other Justice for the said County to answer the [above] Premises [charges] Given under my hand this 10th day of September 1761 ---

George Wythe

To

The Sheriff of Loudoun  
County

Summon, James Vessell  
John Minor, Ezekial Hickman,  
Martin Armstrong  
David Davis<sup>2</sup>

Since it is not known that Wythe had any connection with this county on Virginia's northern border, and since few authentic Wythe signatures include his Christian name in full,<sup>3</sup> a belief that the owner of this manuscript is the innocent victim

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1. Receipt of George Wythe, October 26, 1763, Miscellaneous Manuscripts Collection, New York Historical Society Library.
  2. Ms. in the New York City office of The Rosenbach Company in December, 1936.
  3. Loudoun had been constituted a separate county in 1757. The only genuine Wythe autograph recalled by the writer to have been signed "George Wythe" (instead of the usual "G. Wythe") is that on the Declaration of Independence, which would be a counterfeiter's most available source.

of a crude and naive forgery seems to be tenable. It is just possible, however, that this summons furnishes a reliable and sole clue to a lost episode in Wythe's career.

A hint that Wythe met financial success in his General Court practise is given by two records of business transactions in Elizabeth City County, which show that he had enough ready cash to expand his property by rent and purchase. His inherited lands were evidently deemed insufficient by him. Probably he found that his overseer could farm profitably a substantially larger territory than "Chesterville" afforded. Thus it was that he secured in 1760 from the trustees of the Syms Free School a lease under whose terms he was to have the use of all but one of the 200 acres left for the school by the will of Benjamin Syms. In addition to an annual rental of £30 5s, Wythe contracted to supply four milch cows for the use of the school several months each year, to plant an orchard of 100 trees, and to leave in good repair any buildings which he might erect on the leased land.<sup>1</sup> How many years he maintained this lease-hold is not a matter of record. In 1763, however, he added 40 acres by patent to those in the county which he owned outright.<sup>2</sup>

During 1757 and 1758 he had served as the legal guardian of one of the county's orphans, Lockey Collier by name, who

1. Indenture of July 15, 1760, as abstracted in Starkey, First Plantation, 34, and in Virginia Historical Magazine, XVII, 322.

2. Crozier, ed., Virginia County Records, VI, 278.

had attended in 1756 the grammar school at William and Mary College.<sup>1</sup> As a refund for his services and expenses in this connection, Wythe was awarded £28 14s 11½d out of the estate which was held in trust until Collier became of age.<sup>2</sup>

So far as is known, Wythe was constantly one of the lawyers at the bar of the General Court who were chosen to compose the board of examiners for embryo attorneys. In this capacity there appeared before him early in 1760 a rather uncouth and unprepared young man, who had failed miserably in a merchandizing venture as the proprietor of a country store in upland Hanover County and had turned to the law because he might be able in that profession to secure remuneration for his ability to talk. His name was Patrick Henry. Through his application for a certificate attesting his qualifications and licensing him to practise in the county courts, Wythe undoubtedly received his first introduction to a man who was more than any other his total antithesis, and with whom he was to be upon no known occasion in anything approaching even a virtual agreement. Henry had read law for only a very short while, perhaps about six weeks, and promises of diligent future study on his part seem to have been necessary to secure the approval of some of his examiners. An impression that Wythe refused resolutely to sign his license has

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1. Tyler's Quarterly Magazine, VI, 58.

2. Entry of August 1, 1758, Order Book, 1755-1760, 190-191, Elizabeth City County Records.



prevailed without exception among Henry's biographers,<sup>1</sup> but a county court record disproves this misconception.<sup>2</sup> In his more vindictive moments Wythe may have later regretted his share in promoting young Patrick's entrance into the profession in which Henry found himself.

### Jefferson's Law Teacher

Patrick Henry was not the only young man of large later influence who travelled to Williamsburg early in the year 1760. There was another, a mere lad of about seventeen years, in whom Wythe seemed to detect a greater, more solid genius and a more congenial personality than he had found in the ill-prepared applicant whose license he signed. The name of this rather freckle-faced, red-headed, and gangling youth was Thomas Jefferson.

Born and reared just east of the Blue Ridge, farther west than Henry, Jefferson came to the capital for a longer

1. This error is traceable to the confused recollections of Jefferson fifty years or more later: enclosure of Thomas Jefferson to William Wirt, April 12, 1812, Paul Leicester Ford, ed., The Writings of Thomas Jefferson, IX, 339 n.; anecdotes of Jefferson's conversations with Webster, reprinted from the Private Correspondence of Daniel Webster in ibid., X, 327. But cf. a report of a similar conversation, in which Jefferson seems to have asserted that Wythe consented finally to sign the license: John C. Fitzpatrick, ed., Autobiography of Martin Van Buren (American Historical Association Annual Report, 1918, II), 186-187.
2. Henry qualified as an attorney in the Goochland county court on a license signed by Wythe and John Randolph: Tyler's Quarterly Magazine, IX, 97. Another of the examiner's licensees of about the same time was one Peter Hog (1703-1782) whose certificate, dated May 10, 1759, bore the signatures of Peyton Randolph, Robert Carter Nicholas, and Wythe: Brock, ed., Records of Dinwiddie, I, 470 n.; Hamilton, ed., Letters to Washington, I, 92 n.

stay and under circumstances more favorable than Henry's. His father, Peter, an outstanding colonial surveyor and a justice of Albemarle County, had died three years earlier, leaving "Shadwell" and a sizable estate, though not quite enough to assure his son of independence from the necessity of becoming a breadwinner. His mother was a first cousin of the Randolph brothers, Peyton and John, and related to other socially prominent families of the eastern Tidewater. The advantages of adequate elementary instruction had not been denied him, and for the two preceding years his teacher in the classics had been Rev. James Maury, whose name is famous as an Anglican rector and more famous as Virginia's preeminent private tutor. With this superior background he enrolled early in 1760 as a student in William and Mary.

A few weeks before Jefferson took that momentous step he argued with himself, in a letter asking for his guardian's approval, the pros and cons of further formal study, foretelling accurately that "by going to the College, I shall get a more universal Acquaintance, which may hereafter be serviceable to me...."<sup>1</sup> It was an intelligent prophecy; yet its

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1. Thomas Jefferson to John Harvey, January 14, 1760, Bergh, ed., Writings of Jefferson, IV, specially printed on an insert between 268 and 269. An interesting picture of his feelings fifty years later along the same line is given in a letter of very paternal advice to a grandson. "When I recollect that at fourteen years of age, the whole care and direction of myself was thrown on myself entirely ... and recollect the various sorts of bad company with which I associated from time to time, I am astonished [that] I did not turn off with some of them, and become as worthless to society as they were. I had the good fortune to become acquainted very early with some characters of very

fulfillment must have far exceeded his wildest dreams.

First among Jefferson's significant and intimate friends outside the circle of his classmates was Dr. William Small (d. 1775), a Scot who held from 1758 to 1764 the professorship of mathematics and chair of science, which educators then usually designated natural philosophy.<sup>1</sup> In a faculty consisting largely of clerics, Small was the outstanding member. To Virginia he brought a reputation for thorough training in the learning of European universities, an extensive and costly experimental apparatus, and a very scholarly knowledge of the exact sciences. Previously educational studies in the colony had been confined almost exclusively to history, the languages, and other subjects classified among the arts. Small popularized among curious Virginians for the first time inquiries into the higher types of mathematics, into astronomy, and into physical principles;<sup>2</sup> his influence may be detected, for example, in the exciting attempts of William and Mary students and professors late in the century to make balloons ascend by suspending a fire under their open bottoms.

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high standing, and to feel the incessant wish that I could ... 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": *id.* to Thomas Jefferson Randolph, November 24, 1808, *ibid.*, XII, 197.

1. Lyon Gardiner Tyler, Williamsburg, the Old Colonial Capital, 147, 153, 268. Jefferson was inaccurate in supposing that he returned to England in 1762: Bergh, ed., Writings of Jefferson, I, 3.
2. Tyler, "George Wythe", loc. cit., 67.

John Page, one of Jefferson's collegiate chums, fell completely under the spell of Small's enticing studies. He gloried in the subsequent renown of his illustrious professor as "the great Dr. Small, of Birmingham, the darling friend" of Erasmus Darwin, a British scientist who was Charles Darwin's grandfather, and he shifted his intellectual interest abruptly under Small's tutelage from military and naval history to mathematics and astronomy.<sup>1</sup> To American educational method Small made an epochal contribution by being the acknowledged pioneer in the introduction of formal lectures as a system of collegiate instruction and by discarding for his purposes the typical textbook recitation.<sup>2</sup>

As a student Jefferson had the utmost respect for this teacher who became the first real moulder of his character, and in later years he wrote of Small in terms of downright fervency. Describing him as "a man profound in most of the useful branches of science, with a happy talent of communication, correct and gentlemanly manners, and an enlarged and liberal mind",<sup>3</sup> Jefferson attributed to him the initiation in both the grammar school and college of "rational and

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1. Autobiographical Sketch of John Page, Virginia Historical Register, 150-151. It is also claimed that Small was an intimate friend, after his emigration from the colony, of James Watt, whom he aided in the invention of a practical steam engine: Tyler, "George Wythe", loc. cit., 66; Tyler, Williamsburg, 153. On Page's interest in astronomy see Thomas Jefferson to John Page, February 21, 1770, Bergh, ed., Writings of Jefferson, IV, 19-20.
  2. Tyler, Williamsburg, 153, 268; Cornelius J. Heatwold, A History of Education in Virginia, 91.
  3. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.

elevated courses of study", and recalled that, "from an extraordinary conjunction of eloquence and logic", he had been able to teach his students "with great effect." "Dr. Small", Jefferson affirmed, "was ... to me as a father. to [sic] his enlightened and affectionate guidance of my studies ... at College I am indebted for every thing [sic]";<sup>1</sup> and upon another occasion the grateful pupil wrote: "He, most happily for me, became soon attached to me, and made me his daily companion when not engaged in the school; and from his conversation I got my first views of the expansion of science, and of the system of things in which we are placed."<sup>2</sup>

Wythe was Small's "bosom friend";<sup>3</sup> they were "inseparable". And it was undoubtedly in reference to the fact that the professor procured for his pupil Wythe's "patronage" that Jefferson could look back upon his contact with the Scotch educator as the thing which "probably fixed the destinies of my life...."<sup>4</sup> For Jefferson graduated from the College in 1762, and Small returned to England two years later; but the young graduate's intimate association with Wythe continued for about two decades in actuality and was never interrupted in spirit until Wythe's death.

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1. Thomas Jefferson to L. H. Girardin, January 15, 1815, Jefferson Papers, Library of Congress.
  2. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.
  3. Thomas Jefferson to L. H. Girardin, January 15, 1815, Jefferson Papers, Library of Congress.
  4. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.

There was also a third man whose friendship Jefferson valued much. By Small and Wythe Jefferson was introduced to Francis Fauquier,<sup>1</sup> a "highly enlightened" official who had come to Virginia as successor to Lieutenant-Governor Dinwiddie in the same year that Small had taken over a professorship in the College. He was a man of "much greater learning and judgment" than his predecessor, whose lack of education had prompted an artificial fondness for appearing to be a patron of learning.<sup>2</sup> To Fauquier, who was a fellow of the Royal Society of England,<sup>3</sup> this role was utterly natural, not a thing to be simulated. After two or three years Fauquier's family gave up its residence in the colony, and he lived the life of a wealthy bachelor in the handsome Governor's Palace, which could thus be devoted unrestrictedly to almost any use his fancy might suggest, including informal weekly concerts by violinist Jefferson and several other amateur musicians.<sup>4</sup>

George Wythe was, in Jefferson's phrase, Fauquier's "amici omnium horarum [friend of all hours]", and another fancy of the pleasant lieutenant-governor took the form of invitations to Wythe, Small, and Jefferson for meals at the Palace. To the "habitual conversations on these occasions", Jefferson recalled with pride many years later, "I owed much

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1. Thomas Jefferson to L. H. Girardin, January 15, 1815, Jefferson Papers, Library of Congress.

2. Autobiographical Sketch of John Page, Virginia Historical Register, III, 146-147.

3. Tyler, Williamsburg, 36.

4. Thomas Jefferson to L. H. Girardin, January 15, 1815, Jefferson Papers, Library of Congress.

instruction";<sup>1</sup> again, he stated almost boastingly that these men "admitted me always to make it a *partie quarrée*" [sic] [i.e., party of four], observing in conclusion that "at these dinners I ... heard more good sense, more rational & philosophical conversations than in all my life besides. they [sic] were truly attic [sic] societies."<sup>2</sup> Yet Jefferson, then about twenty years old, was in some measure entitled to exult over his acceptance on a basis approaching equality in the society of Fauquier, then about fifty-five, of Small, then about forty-five, and of Wythe, then about thirty-five; the disparity in ages is sufficient excuse for the pardonable vanity with which the youngest of the quartet told of their social and intellectual companionship. Just how long this association continued cannot be determined, though it would seem that all four met intermittently during 1761 and 1762.<sup>3</sup> But there can be no doubt as to its benefits for the student Jefferson. Few facilities at any spot upon the globe could have equalled the opportunity for the acquisition of culture, for a liberal education, and for abstract lessons in the

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1. "Autobiography", Bergh, ed., Writings of Jefferson, I, 4.
  2. Thomas Jefferson to L. H. Girardin, January 15, 1815, Jefferson Papers, Library of Congress.
  3. Doubtless it began before the close of the year 1760 and continued without notable lapse until Jefferson's graduation late in 1762; from that date until Dr. Small's departure for England in the fall of 1764, when it was certainly broken up as a quarrée, Jefferson was away from Williamsburg several months each year. Thus, as Jefferson implied, it was primarily a habit of his period as a student in the College.

rights of man which Jefferson found in intimate acquaintance with this trio of inspiring elders. From Small, the experimental scientist, he might absorb that unquenchable thirst for practical knowledge in largely uncharted fields of natural science which was to find so many expressions in his public career and private life. Fauquier, the courtly and experienced man of the world, might instill in him the charms of cultured society, a taste for intellectual conversation, and the attributes of governmental authority properly administered. From Wythe, the self-educated but scholarly lawyer, he might derive a love of learning for its own sake, the logical method of approaching every problem with assurance that reason should prevail as the sole criterion for weighing its alternatives, and that familiarity with the great principles of jurisprudence and democracy which was to enable him to become a foremost reformer of American political and social institutions. His biographers without exception have rightfully extolled the influence of these three men upon their impressionable protege; some of them are inclined to interpret him as but a disciple of the distinctive merits of each, declaring that scarcely any phase of his exceptionally versatile interests cannot be traced to an origin in one or another of those with whom he chatted at Fauquier's table.<sup>1</sup>

All too soon Jefferson's close fellowship with Small and Fauquier was interrupted, if not disrupted, by his graduation

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1. See esp., e.g., Albert Jay Nock, Jefferson, 17, for the most direct claim to this effect.



from William and Mary late in the year 1762. But liberal tuition under Dr. Small's inquiring guidance was supplanted by the greater advantage of professional training under the capable eye of Wythe, who remained Jefferson's closest associate throughout all his formative years. In the thankful words of the young graduate himself, Small "filled up the measure of his goodness to me, by procuring for me, from his most intimate friend, George Wythe, a reception as a student of law, under his direction."<sup>1</sup> It has been remarked as curious that this opening should have been accepted by a kinsman of Peyton and John Randolph, either of whom might well have become his legal instructor.<sup>2</sup> Whatever the explanation of Jefferson's preference for Wythe, he never found cause to regret his choice — though those who think speculation on the "ifs" of history profitable might enjoy a perfect revelry of guess-work by applying their deliberations to the profound possible changes in the course of American development had Jefferson fallen directly under the influence of a conservative Randolph brain instead of Wythe's more progressive mind. For the next four or five years Wythe was to Jefferson what Stephen Dewey had been to Wythe some twenty or twenty-five years earlier; but the shoes of a legal mentor fitted Wythe

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1. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.

2. Jefferson's choice has been attributed partially to Wythe's reputation for learning and chiefly to a "talent for teaching, which was early displayed by him...": Tyler, "George Wythe", loc. cit., 67. But no available records substantiate the supposition that his ability as a teacher had become evident before 1763.

better than they had Dewey, and his more inspiring instruction met a more grateful response in Jefferson.

For a year, however, the mind of the legal aspirant was sorely distracted from serious study by thoughts of a young lady, Rebecca Burwell by name, with whom he had fallen completely in love. Wythe saw to it that he had a copy of that admirable standard treatise upon which the bar of the day was nurtured, Coke upon Littleton. After a preliminary perusal of its pages, the young graduate set out for a winter to be spent at home in digesting more thoroughly the observations of Sir Edward Coke (1552-1634). Christmas found him a day's journey from "Shadwell" and in a very despondent frame of mind. He awoke that morning to find himself the victim of several overnight misfortunes, including the theft by rats of recently purchased sheet music of half a dozen minuets for his violin. Worse still, rain had seeped through a leak in the roof of his room and drowned his watch, whereby, as he expressed it, his timekeeper "had lost her speech". His ill-luck reached absolutely catastrophic proportions when, in an attempt to rescue from its place in the wet case of his watch his picture of the fair Rebecca, he tore irreparably the thoroughly soaked paper upon which that priceless portrait had been reproduced. At a loss for any other adequate explanation, Jefferson attributed this almost unbearable series of calamities to a satanic curse upon him and eased his pain by writing to a chum, John Page, a comically pathetic description of these exaggerated mishaps and of his sad recollections of the gay friends from

whom he was separated. In a delightful vein of mock frivolity he continued, in part:

And now, although the picture be defaced, there is so lively an image of her [Rebecca Burwell] imprinted in my mind, that I shall think of her too often, I fear, for my peace of mind; and too often, I am sure, to get through old Coke this winter; for God knows I have not seen him since I packed him up in my trunk in 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, and talks most nonsense, is most admired. Though to be candid, there are some who have too much good sense to esteem such monkey-like animals as these, in whose formation, as the saying is, the tailors and barbers go halves with God Almighty; and since these are the only persons whose esteem is worth a wish, I do not know but that, upon the whole, the advice of these old fellows may be worth following.<sup>1</sup>

The youth to whom this humorous disputation was addressed confirmed an opinion that its sound conclusion was acted upon by describing Jefferson as one "who could tear himself away from his dearest friends, to fly to his studies...."<sup>2</sup> And the student himself is supposed to have hinted that concentration upon the wearisome pages of Coke's primer of the law would repay the effort of a thorough reader, by referring to it as a work "printed in black letter, and offering as little

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1. Thomas Jefferson to John Page, December 25, 1762, Bergh, ed., Writings of Jefferson, IV, 3-4.
  2. Autobiography of John Page, Virginia Historical Register, III, -151.

promise of entertainment or instruction as the outside of a gold mine does of the wealth within."<sup>1</sup>

Jefferson formulated a tentative plan for returning to Williamsburg late in the spring of 1763;<sup>2</sup> it failed to materialize. But by mid-summer he was certain that he would be in the capital again when the General Court met for its October session.<sup>3</sup> He had a report to make to Wythe on his progress in perusing Lord Coke, and of the privilege of hearing the instructive arguments of his mentor and other advocates before the colony's supreme tribunal he wished to take full advantage.<sup>4</sup> But his objects in making the trip did not exclude social interests, for he had long anticipated the visit as an opportunity to press his suit for Rebecca Burwell's hand.<sup>5</sup> En route eastward, he reflected in a letter from Richmond, "I do not like the ups and downs of a country life: today you are frolicking with a fine girl and tomorrow you are moping by yourself. Thank God! I shall shortly be where my happiness will be less interrupted." He was willing to confess high

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1. Quoted from an unnamed source by Eugene L. Didier, "Thomas Jefferson as a Lawyer", The Green Bag, XV (April, 1903), 153.
  2. Thomas Jefferson to John Page, January 20, 1763, Bergh, ed., Writings of Jefferson, IV, 7.
  3. Id. to id., July 15, 1763, ibid., 11.
  4. "The court is now at hand, which I must attend constantly, so that unless you come to town, there is little probability of my meeting with you anywhere else": id. to id., October 7, 1763, ibid., 12.
  5. Id. to id., January 20, 1763, ibid., 7; id. to id., July 15, 1763, ibid., 8-10.

hopes to his classmate, William Fleming:

... I have thought of the cleverest plan of life that can be imagined. You exchange your land for Edgehill [an estate near Jefferson's "Shadwell" in Albemarle County] or I mine for Fairfields [an estate near Fleming's]. You marry S—y P—r, I marry R—a B—l and [we'll] get ... a pair of keen horses, practise the law in the same courts, and drive about to all the dances in the country together....<sup>1</sup>

But Jefferson had romantic, youth-like dreams, too, of fitting out a sailing craft as a means to cross the Atlantic for extensive European travels, and settling down in stable domesticity was an enviable goal which could wait the satiation of his wanderlust.<sup>2</sup> Thus, when he made upon two occasions the intended preliminary overtures to his Rebecca, they constituted at best only a conditional proposal.<sup>3</sup> He had some months of anxious suspense,<sup>4</sup> and when his answer was finally received late that winter, it came in the form of gossipy assurances that the lady who had won his heart would soon be married to another suitor. With more resignation than his previous ardent letters on the subject would have led one to expect in him he wrote to Fleming the following account of his

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1. Thomas Jefferson to William Fleming, [September or very early October, 1763,] reprinted by A. S. W. Rosenbach, "Letters That We Ought to Burn", Saturday Evening Post, CCVIII (February 29, 1936), 62.
  2. Thomas Jefferson to John Page, January 20, 1763, Bergh, ed., Writings of Jefferson, IV, 7-8; id. to id., July 15, 1763, ibid., 8-10.
  3. Id. to id., October 7, 1763, ibid., 12; id. to id., January 19, 1764, ibid., 13-14. The second of these letters bore a belated account of a much earlier interview, which also occurred in October.
  4. Page was instructed to tell Rebecca, "... I think as I always did": id. to id., January 23, 1764, ibid., 16.

disappointment:

with regard to the scheme which I proposed to you some time since, I am sorry to tell you it is totally frustrated by miss R. B's marriage with Jacquelin Ambler which the people here tell me they daily expect: I say, the people here tell me so, for (can you beleive [sic] it?) I have been so abominably indolent as not to have seen her since last October; whereupon I cannot affirm that I know it from herself, though [I] am as well satisfied that it is true as if she had told me. well the Lord bless her I say! but S---y P---r is still left for you. I have given her a description of the gentleman who, as I told her, intended to make her an offer of his hand, and asked whether or not he might expect it would be accepted. She would not determine till she she saw him or his picture.... (mind that I mentioned no name to her.) you say you are determined to be married as soon as possible: and advise me to do the same. no, thank ye; I will consider of it first. many and great are the comforts of a single state, and neither of the reasons you urge can have any influence....<sup>1</sup>

By the strangest of coincidences, a daughter of Jacquelin and Rebecca Burwell Ambler so completely won some sixteen years later the affections of another of Wythe's students, John Marshall, that the distraught young man abandoned utterly the learned teachings of Prof. Wythe in the very midst of his academic course at William and Mary.<sup>2</sup> Jefferson was less lucky in love but more successful in his early study of the law.

To absorption in Coke's worthy treatise the jilted Jefferson turned as to a welcome analgesic. In a sense in which the term could not previously have been used, law became his mistress in 1764; he applied himself to the task of

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1. Thomas Jefferson to William Fleming, March 20, 1764, photostatic copy printed in Rosenbach, loc. cit., 13.
  2. Cf. Albert J. Beveridge, The Life of John Marshall, I, 148-161.

preparation for the bar with renewed interest and industry.<sup>1</sup> Probably his ambition to emulate the public career of his mentor was quickened by the almost contemporaneous collapses of his love affair and of those reveries in which he had fondly pictured himself as a wayfarer in the Old World. If so, the intention of imitating his master's outstanding example in the realm of politics became an additional incentive to untiring study, for he must have realized then that, as he expressed it later, law "is the most certain stepping-stone to preferment in the political line."<sup>2</sup>

Beginning in 1764 Jefferson usually spent his winters in Williamsburg, retiring each summer from the routine of "devil-ing" for Wythe and the tedium of stowing away in his memory or notes requisite gems of legal precedent to the less exacting, contemplative life of "Shadwell", his Albemarle County home. His closest friend in that section of the colony was his neighbor, Dabney Carr, who had attended William and Mary as one of his contemporaries. They were constant companions during the two or three hot months, and thereby hangs a heart-warming tale of the fidelity of man to man. Like Jefferson, Carr was studying law; both were mentally alert and clever, both devoted to reading. They were accustomed to go each

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1. Didier, loc. cit., 153; Francis W. Hirst, Life and Letters of Thomas Jefferson, 30-31. A pertinent but rather apocryphal literary curiosity dealing with that period is [John Esten Cooke,] The Youth of Jefferson, or a Chronicle of College Scrapes at Williamsburg, in Virginia, A.D. 1764.

2. Thomas Jefferson to Thomas Mann Randolph, Jr., May 30, 1790, Bergh, ed., Writings of Jefferson, VIII, 31.

morning to a rustic seat which they had constructed under a huge oak in a favorite and cool nook of the ancient forest, atop a small mountain some two or three miles from "Shadwell", and there to spend blissful days in meditative reading or earnest conversation. To commemorate the fellowship of those priceless hours, they entered solemnly into a compact that he who survived the other should bury the first to die under that oak which marked their haven. A few years later Carr married Jefferson's sister and was a colleague of his brother-in-law in the House of Burgesses, but he died in less than a decade, before he had been able to do much to perpetuate his name.<sup>1</sup> Jefferson, who had begun in the meantime to build upon that mountain, three or four hundred yards away, his matchless home, "Monticello", was true to the terms of their agreement; and the spot became in time also the place of his burial. To it thousands from every corner of the earth have made their pilgrimages, unaware of the faithfulness of him they honor to youthful vows with a chum that their wooded retreat should be forever hallowed with their dust as a symbol of the best in friendship.<sup>2</sup> Quite aside from the fact that the study and intelligent discussion in which Jefferson and Carr thus

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1. He is remembered as the patriot who, at Jefferson's behest, moved on the floor of the House that an inter-colonial Committee of Correspondence should be appointed for Virginia — a motion which initiated the organization of the chief Revolutionary means toward cohesion and cooperation.
  2. Most of the details of this anecdote were recorded by Didier, loc. cit., 154. Though largely neglected by Jefferson's biographers, little doubt can be entertained as to its authenticity.



indulged must have often included great legal principles, a sequel to the story of their summers together is of immense interest in Wythe's life, for when Jefferson was directing from abroad twenty years later the education of Dabney Carr's son, he counted it the highest possible earthly blessing that his nephew should be under the instruction of George Wythe.

Wythe's continued guidance and his own good sense led Jefferson after 1763 to revise drastically his jesting characterization of Lord Coke, that giant of British jurisprudence,<sup>1</sup> as a "dull old scoundrel". Coke's interpretation of the English constitution may have played a part in moulding his political thought. So far as the analogy was applicable to American institutions after 1789, he built his democratic party upon principles which correspond in a general way to Coke's; and when those principles began to lose their sway in the government of the United States, he ascribed their decline partially to the fact that Coke's textbook had been cast into virtual discard and that later legal generations had been reared upon the renowned Commentaries of Sir William Blackstone,<sup>2</sup> whose really dull lectures at Oxford on the same materials were largely unsuccessful.

1. An excellent recent American biography is that of Hastings Lyon and Herman Block, Edward Coke: Oracle of the Law; an old English account is that of Cuthbert William Johnson, The Life of Sir Edward Coke, Lord Chief Justice of England in the Reign of James I, with Memoirs of his Contemporaries.
2. Thomas Jefferson to John Tyler, May 26, 1810, Bergh, ed., Writings of Jefferson, XII, 392-393; id. to Thomas Cooper, January 16, 1814, ibid., XIV, 63; id. to Horatio G. Spafford, March 17, 1814, ibid., 119-120; id. to James Madison, February 17, 1826, ibid., XVI, 156.

But it was not upon Coke alone that Wythe fed his pupil; Jefferson progressed early to less elementary studies. Doubtless he had access to Wythe's large library, and he certainly could command enough ready cash to purchase the books which he needed most. Thus he asked of a friend the loan of a compilation of English statutory law until he could procure a copy of his own.<sup>1</sup> There could be little superficiality about training in his mentor's law office; he learned there to look down with utter contempt upon a mere smattering of knowledge. The whole range of civil and common law passed under his review, and neither he nor his teacher was content till he had traced painstakingly every principle to its remotest origin in the Roman system or in the period when good King Alfred had ruled the Saxons. Among others, he explored the formidable treatise on ancient English laws written in Latin by Bracton, a contemporaneous interpreter of Magna Charta. The whole enormous volume of early and recent British jurisprudence, as recorded in texts and commentaries, in rude ancient tongues and in the modern vernacular, became Jefferson's possession.<sup>2</sup> When circumstances later in his life afforded him

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1. Id. to John Page, January 19, 1764, ibid., IV, 14.

2. Cf. esp. the eulogy on Jefferson delivered by William Wirt before the House of Representatives, October 19, 1826, ibid., XIII, xii; Didier, loc. cit., 155. In an informative letter to a scholar of a later generation he reviewed with surprising completeness and accuracy of memory the bibliography of English law, pleading for a translation of Bracton's De Legibus Angliae to fill the greatest lacuna in American legal literature: Thomas Jefferson to Thomas Cooper, January 16, 1814, Bergh, ed., Writings of Jefferson, XIV, 54-59.

opportunities to suggest readings for other law students, he advocated courses which were, like his own, both broad and deep.<sup>1</sup> All the rudiments of intellectual ability which reposed in Jefferson's mind could scarcely have escaped stimulation under such a regimen as that to which he was subjected.

In 1767 Wythe surveyed his work with his promising pupil and pronounced it good. In that year, just as Zachary Lewis had assisted him in the practise of county courts, he introduced his protégé to that tribunal before which he then practised — in the words of the student himself, grateful because Wythe continued "to be my faithful and beloved mentor in youth, and my most affectionate friend through life", "he led me into the practice of the law at the bar of the General court...."<sup>2</sup> There for seven years he worked as a colleague of Wythe and Pendleton. The brilliance of his political career should not be permitted to overshadow his justly creditable reputation as an attorney. Eloquence he did not have, and in delivering convincing arguments he was definitely the inferior of most leaders at the bar; but in the solid

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1. See, e.g., Thomas Jefferson to Thomas Mann Randolph, Jr., May 30, 1790, Bergh, ed., Writings of Jefferson, VIII, 31-32; id. to Dabney Terrell, February 28, 1821, ibid., XV, 318-322; id. to an unknown addressee, August 30, 1814, reprinted in Henry S. Randall, The Life of Thomas Jefferson, I, 52-57.
  2. "Autobiography", Bergh, ed., Writings of Jefferson, I, 4. Cf. the similar statement made in correspondence, "I became acquainted with Mr. Wythe when he was about thirty-five years of age. He directed my studies in the law, led me into business, and continued, until [his] death my most affectionate friend": Thomas Jefferson to John Sanderson, August 31, 1820, Jefferson Papers, Library of Congress.

accomplishments of an efficient office lawyer he had very few superiors. It was not long before Wythe, who had already more than his share of hard-won fame, could bask in the reflected glory of his student's firmly established and lucrative clientele.<sup>1</sup>

That Jefferson did not relinquish under the exigencies of practise habits of thorough study is quite adequately indicated by his commonplace book, a manuscript volume of more than 300 pages which he filled with the results of his labors. Though it had long been known to exist among his preserved papers, partial appreciation of its value did not come until a dozen years ago.<sup>2</sup> Perhaps somewhat unfortunately, the date of its beginning cannot be exactly and indubitably determined. If Jefferson's memory be accepted as literally accurate after fifty years, he started to jot down its notes in 1764, upon completing his perusal of Coke's primer.<sup>3</sup> Exhaustive research

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1. Randall, Thomas Jefferson, I, 46-52; Didier, loc. cit., 153; Wirt, Eulogy on Jefferson, Bergh, ed., Writings of Jefferson, XIII, xi.
  2. The original was only recently made available for consultation; it is among the Jefferson Papers, Library of Congress. Rescued from a lengthy oblivion, it was summarized in toto and published in part, with a scholarly introduction by Gilbert Chinard, ed., The Commonplace Book of Thomas Jefferson: a Repertory of His Ideas on Government (Johns Hopkins University Studies in Romance Literatures and Languages, extra volume II).
  3. "... I promised you a sample from my common-place book, of the pious disposition of the English judges, to connive at the frauds of the clergy, a disposition which has even rendered them faithful allies in practice. When I was a student of the law, now half a century ago, after getting through Coke [upon] Littleton, whose matter cannot be abridged, I was in the habit of abridging and common-plac[ing] [sic] what I read meriting it, and of sometimes mixing my

on the question has failed to reveal any confirmation of that recollection; it can be established only that two-thirds of the volume was penned while Jefferson was a student or practitioner of law, and that nearly all of the remaining third was written in one or both of the years 1775 and 1776.<sup>1</sup> There is, however, no particular reason to doubt that Jefferson remembered well the time of the initiation of a book in the writing of which he spent countless hours. Yet, to be on the safe side, let it be assumed only that its first section was recorded some time before 1775 — it matters relatively little in the final analysis whether it was begun before or after 1767, for in either case the volume undoubtedly represents strongly Wythe's influence.

Whatever the dates of its synopses, the commonplace book shows that Jefferson, as a student or as an attorney, made a long series of abstracts from parts three and four of Lord Coke's Institutes of the Laws of England and from the reports by William Salked, George Andrews, and Robert Raymond of decisions handed down within the last hundred years by judges of the King's Bench. In his reading of these materials

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own reflections on the subject. I now enclose you the extract from these entries which I promised. They were written at a time of life when I was bold in the pursuit of knowledge, never fearing to follow truth and reason to whatever results they led, and hearding every authority which stood in their way. This must be the apology, if you find the conclusions bolder than historical facts and principles will warrant": Thomas Jefferson to Thomas Cooper, February 10, 1814, Bergh, ed., Writings of Jefferson, XIV, 85.

1. Chinard, ed., Commonplace Book of Jefferson, 4-14.

Jefferson ran the gamut of weighty opinions in complicated suits of inheritance and trespass, for masters' remuneration of their servants' misdeeds, and for debts contracted by wives without their husbands' knowledge. Extracting from these works all information which might prove serviceable to him in routine business, he wrote notes for reference on more than five hundred separate articles.<sup>1</sup> The succeeding section of the book, written between 1774 and 1777, was based, in keeping with Jefferson's growing interest in politics, upon more philosophical legal materials, including Lord Kames' fourteen Historical Law Tracts (first published in 1758), Sir John Dalrymple's Essay towards a General History of Feudal Property in Great Britain (London, 1757), and Hale's History of the Common Law (London, 1716). Studies in these works gave him confirmation for his theories regarding the natural rights of man and legal precedents for his program of a complete revision of Virginia's entire constitution and code just after the proclamation of her independence — a campaign in which Wythe was to be his closest associate and firmest ally.<sup>2</sup>

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1. Ibid., 14-16, summarizing the contents of articles 1-556. Because of his interest in the political rather than legal phases of the volume, Chinard prints only the number, title, and source of each article (with exceptions for articles 550-556) in the first half of the book: ibid., 67-95.
  2. Ibid., 16-20, summarizing articles 557-587, which are printed in ibid., 95-164. Articles 588-693, based upon Coke's reports of cases adjudged by the King's Bench during the reign of Queen Elizabeth, are summarized and printed by titles only in ibid., 20-21 and 164-167, respectively. Completing this second section of the volume are comparative historical studies before 1777 in articles 694-881, which are summarized and printed in ibid., 21-51 and 167-

Early in the year 1770 a catastrophe struck the young lawyer with the typical suddenness and destruction of fire; "Shadwell" burned, and the ruinous flames enveloped nearly all his possessions. To his friend, John Page, he wrote this pathetic account of the accident:

[News of] My late loss may perhaps have reached you by this time; I mean the loss of my mother's house by fire, and in it of every paper I had in the world, and almost every book. On a reasonable estimate I calculate the cost of the books burned to have been £200 sterling. Would to God it had been the money, then had it never cost me a sigh! To make the loss more sensible, it fell principally on my books of Common Law, of which I have but one left, at that time lent out. Of papers too of every kind I am utterly destitute. All of these, whether public or private, of business or of amusement, have perished in the flames. I had made some progress in preparing for the succeeding General Court; and having as was my custom, thrown my thoughts into the form of notes, I troubled my head no more with them. These are gone, and like the baseless fabric of a vision, leave not a trace behind. The records also, and other papers which furnished me with states of the several cases, having shared the same fate, I have no foundation whereon to set out anew. I have in vain attempted to recollect some of them; the defect sometimes of one, sometimes of more circumstances, rendering them so imperfect that I can make nothing of them. What am I to do then in April [when the court convenes]?<sup>1</sup>

To Wythe also he must have despatched the sad tidings of the severe mishap, for his mentor undertook — in a letter which is the first remnant of their long and mutually devoted correspondence to be preserved — to console him with gifts and an

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364, respectively. The remaining articles 882-905, written after 1781, are of little significance, though they contain some legal matters: ibid., 364-376.

1. Thomas Jefferson to John Page, February 21, 1770, Bergh, ed., Writings of Jefferson, IV, 18. Evidently his commonplace book was one of those which escaped the peril unscathed.

appropriate quotation from Vergil:

I send you some nectarine and apricot grafts and grapevines, the best I had; and have directed your messenger to call upon major [Richard] Taliaferro for some of his. You will also receive two of Toulis's catalogues. Mrs Wythe will send you some garden peas.

You bear your misfortune so becomingly, that, as I am convinced you will surmount the difficulties it has plunged you into, so I foresee you will hereafter reap advantages from it [in] several ways. *Durate, et vosmet rebus servate secundis* [Be strong and save yourselves for prosperity].<sup>1</sup>

Thus had George Wythe prepared Jefferson for a career at the bar and hence indirectly for his greater attainments in statecraft. During the last fifty odd years of his life Jefferson ceased to practise law, but his work in none of that series of public positions into which he was drawn at the opening of the Revolution was entirely devoid of testimonies to the value of his professional training. Had he been paid not a single shilling for his services in his seven short years at the bar, the total of his twelve years pursuit of the law could by no means be deemed a waste of time or talents. Nor had Wythe cast his pearls before swine: seldom has a teacher been rewarded with such constant adoration from his student as that which Jefferson showered upon him. Though usually far separated geographically, Wythe and Jefferson maintained uninterruptedly their fellowship in spirit; theirs was a closer harmony of thought and action than that of any other pair of Virginians in any era. Indeed, they are known to have disagreed in the least degree on only one question of

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1. George Wythe to Thomas Jefferson, March 9, 1770, Jefferson Papers, Massachusetts Historical Society Library.



public policy, and then only when Jefferson had been long absent from the continent. So similar were their views on nearly every subject that it is often impossible to determine whether the mentor or the pupil was the original father of ideas enunciated by either.

### The General Court, 1766-1775

The character of the bar of the General Court during the final decade of its colonial existence underwent comparatively few significant changes. Robert Carter Nicholas dropped out of its ranks and resigned his practise, for, as will be noted in another connection, he rescued in a self-sacrificial manner the office of Virginia's treasurer from less respected and less competent hands when a vacancy occurred in 1765. The reputations of Wythe and Pendleton, in relation to those of the two Randolphs, were constantly on the ascendancy, if there was any change at all in the ranking of its leaders; the two self-educated lawyers were more likely after 1765 to be named before their English-trained colleagues in contemporary enumerations of its personnel. But competition of members in the lower bracket was rather futile, despite occasional infusion of new blood in such talented persons as Jefferson and Patrick Henry.<sup>1</sup> Perhaps the most striking advance achieved by any of the older minor advocates was that of Thomson Mason (1733-1785), younger brother of the famous George Mason and a

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1. Henry was admitted in 1769. For an estimate of his career at that bar see Wirt, Patrick Henry, 88-95.

former practitioner in the Middle Temple.<sup>1</sup> Though not unchallenged, the position of Wythe, Pendleton, and the Randolph brothers remained impregnable.

It may well be lamented that so little is known about the activities of these men in a court which was admittedly resplendent with the colony's ablest minds. Shafts of imposing logic and darts of illogical oratory must have rent the air of that old courtroom in the capitol building as — in utmost efforts to win advantages over each other in the eyes of gallery, jury, and members of the Council sitting in their judicial capacity — those giants of the bar mustered every legal precedent and stratagem they knew. Dockets and other papers of the court, with a few scattered exceptions, have met destruction of one kind or another in subsequent years, and it never had in the modern sense of the term an official reporter to record its proceedings. After his admission to its bar, however, Jefferson took notes on some of its principal cases which illustrated litigation arising exclusively under the colony's own enactments. Found among his papers by his executor, this manuscript was posthumously published.<sup>2</sup> Eleven suits, adjudged between the sessions of October, 1768, and October, 1772, inclusive, were included in his informal, uneven notations. For two of these he did not

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1. Freeman H. Hart, "Thomson Mason", Dictionary of American Biography, XII.

2. Thomas Jefferson, Reports of Cases Determined in the General Court of Virginia from 1730 to 1740 and from 1768 to 1772, v-vi.

name the lawyers for either party, but Wythe appeared as counsel for plaintiff or defendant in seven of the remaining nine cases which Jefferson thought worthy of brief memoranda; Pendleton argued in six, John Randolph in four, Thomson Mason in three. Judgment seems to have been given in favor of four of Wythe's clients and against two, with a verdict in the seventh case which awarded him the decision on one point involved in the suit and his opponents the decree on the other of its issues. In one of these trials Wythe teamed with Pendleton to defeat a cause upheld by John Randolph and Thomson Mason, but in four of them Pendleton pleaded on the side opposite to Wythe, twice with John Randolph's assistance. These four ended in two victories for Pendleton and one for Wythe, with their laurels equally divided in that on which the court handed down two verdicts.<sup>1</sup> Though it must not be forgotten that they are tabulated from reports on only a small minority of the suits in that tribunal during that period, these figures are interesting as a sample which might or might not be representative if statistics were available for all. For the sake of enriching a later comparison between the two men one other observation must be mentioned: Pendleton was sole or associate counsel in each of the two cases which Wythe lost.

His pupil's notes taken in the General Court are also of intense interest because they contain the only surviving abstracts of Wythe's legal arguments. It is unfair in some degree, as well as an insufficient comment upon the power of

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1. Ibid., 72-136.

his appeals; to wrest from its context a single plea directed by Wythe to the court, for he was not addicted to useless declamation on points lacking pertinence to that at issue and the able train of his thoughts has probably suffered through Jefferson's condensation. Even in that compressed form, however, his debates retain uncommon lucidity and strength. For example, in one of his suits he undertook to prove that slaves were not subject to inclusion in the law of entails (by which inheritance was restricted under the primogeniture principle) unless they had been definitely, legally, and inseparably annexed to an entailed tract of land. His opponents, who could not show such a connection for the slaves whose custody they sought to gain from his clients, attempted to plead that the slaves had been made to labor on that land and that their labor was therefore exercisable in it. Wythe retorted, "... this exposition of the word exercisable is superficial indeed!" Then he reminded the court vigorously that the slaves were not exclusively limited to duties in that ground, citing a definition of "exercisable" which Coke had given:

Lord Coke applies it to offices annexed or confined to a certain spot of land. Now what analogy is there between an office exercised in a certain territory, and a slave exercised in tilling the earth? Not so much as there is between such an office and a spade. The office of the keeper of the hounds is exercisable in lands; yet not being confined to any particular spot of lands, it is not entailable. So a slave may be exercised in any lands, or no lands: he may be employed in ploughing the earth, or in ploughing the ocean; or set to work in manufactures of various kinds.<sup>1</sup>

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1. Blackwell v. Wilkinson, *ibid.*, 82.

Having thrust home his point that the slaves in dispute had not been entailed, he demonstrated forcefully by a strong argumentum ab inconvenienti that they could not be so without confusing irreparably and upsetting the entire structure of an inheritance system which provided already for ownership of enough kinds of property by entails. The judges, who had been equally divided on a previous hearing of the suit, decreed for him by a vote of seven to three.<sup>1</sup>

In another of his arguments he was forced to admit that, were judgment given in favor of his client, the result would be injurious to the opposing party, but he based his unsuccessful appeal upon the maxim that the considerations of public utility should be superior to resultant harm in individual instances, citing a Roman institution named Terminalia to this effect.<sup>2</sup> In another of his suits, his client had so much the best of the issue that the court awarded him the verdict before he had had an opportunity to answer the weak arguments of opposing counsel.<sup>3</sup> In another, he was employed with Jefferson by the churchwardens and vestrymen of Upper Parish, Nansemond County, to prosecute their rector on charges of conduct unbecoming a wearer of priestly cloth and to secure the offending clergyman's dismissal. He proved by an interpretation of an act of the General Assembly that the

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1. Ibid., 83-85.

2. Bradford v. Bradford, ibid., 86.

3. Howell v. Netherland, ibid., 96.

court had ecclesiastical jurisdiction, which he supposed was sufficient to show that the court possessed the power of depriving a cleric of his position. Jefferson feared that the right of deprivation might be a non sequitur and bolstered Wythe's argument by establishing that right on other grounds. Thus they won their cause together.<sup>1</sup> Illustration may be found in still another of Wythe's cases of his tendency to marshal an almost bewildering host of authorities in support of his views. In the course of an argument which Jefferson summarized in less than five printed pages Wythe's copious references included citations or quotations from four of Virginia's legislative acts, two British statutes, two English legal commentaries, two sections of Justinian's Roman code, a decision of an English court, and Cicero's orations.<sup>2</sup>

In scattered places one can find several remnants of the multitude of letters which Wythe wrote on professional business and of legal papers which passed through his hands.

The court's usual progress in the settlement of the colonists' differences was interrupted with their own consent in 1766, for (as the next chapter will relate) nearly all Virginia's tribunals determined no cases in that year as a protest against a tax which England had levied upon legal documents. Evidence of the effect of their closure may be seen in his letter in February of that year to Richard Henry Lee, who had been trained for the bar but had preferred the life

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1. Godwin et al. y. Lunan, ibid., 96-108.

2. Carter y. Webb, ibid., 127-131.

of a planter in the northern Tidewater to that of a practitioner:

At the time I received your letter by col[onel] P[hilip]. L[udwell]. Lee I could not give it a satisfactory answer, because the officers seldom make returns of process so early in [the terms of] the court: and indeed the confusion which succeeded, with the total interruption of law proceedings, put that as well as most other matters of that sort out of my head. I am now at the secretary's office and find the second writ against J Rootes was not returned: and they will not let me have a pluries capias [a writ issued after two of the same purport have been successively issued without effect] til [sic] some thing is determined as to the stamps. The writs against Galloway were executed. One J Blackwell [posted] the bail for [his] appearance. The writ against Thornton was not executed; but a copy [of it was] left, so that we may have an attachment or a pluries capias awarded whenever we may be so happy as to see the course of judiciary business again open and free.<sup>1</sup>

Two years later he was still having difficulty with one of the same client's matters of litigation:

The protested bill of exchange you mention, drawn by mr Wm Thornton for 27-5-0 sterling, and endorsed by mr Galloway, is in my possession. The same day that I received it suit was commenced for mr Smith, who accepted the bill for the honour of the drawer. But partly by means of the stamp act, and partly by want of a sheriff in Brunswick [County] for some time, and the negligence of one who acted afterwards, it was so long before the process was returned executed that I cannot give you the satisfaction even of a conjecture when a judgment is to be expected. Mr Robb did speak to me on this subject, and desire me to prosecute the matter with expedition, and to acquaint him with the determination of it.

To this letter he added comments which show that some other affair had engaged his attention and that of Lee:

I troubled you, sir, with a letter concerning mr Kehnon's deed of trust, because mr Lee of Maryland was at so great

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1. George Wythe to Richard Henry Lee, February 14, 1766, Lee Papers, University of Virginia Library.

a distance from me, and because I thought he would be most pleased with your opinion of the creditors['] motives for signing the letter of license. That gentleman's answer, which you obliged me with, I have communicated to the trustees.<sup>1</sup>

Perhaps it was the above-mentioned "Mr Lee of Maryland" who thought highly enough of Wythe's legal opinions to refer to him six questions, written in an unidentified hand, concerning debatable points in a Marylander's will. In the blank space left under each query Wythe put down his answers, but in reply to one of them he was forced to state the law as he knew it for his own colony with an admission that "it may be otherwise in Maryland."<sup>2</sup>

George Washington continued to give Wythe the management of some of his legal affairs. In 1773 he wanted to buy from a certain William Black some lands in King William and King and Queen counties; the tract in the latter, variously called "Romonkocke" and "Woromorokey", he intended to present to a member of his wife's family, John Parke Custis. The difficulties which arose from that desire caused him much worry. Black stated his price, which Washington rejected, offering counter-proposals.<sup>3</sup> When Black accepted these terms, Washington demanded of Black that all papers which proved the legality of Black's ownership of the two properties should

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1. George Wythe to Richard Henry Lee, March 31, 1768, *ibid.*
  2. Document of George Wythe, dated August 25, 1768, Autograph Collection of the Signers of the Declaration of Independence, Yale University Library.
  3. George Washington to William Black, November 18, 1773, John C. Fitzpatrick, ed., The Writings of George Washington, III, 165.



be examined, lest he buy something from a man who had no valid claim to it:

I expect all the Papers respecting your Title to the Lands I purchased [agreed to purchase] of you will shortly be in Mr. Wythe's possession when he will be satisfied whether your Title is good or not and if he thinks you have a good title he will draw [up] a proper conveyance . . . [which you may sign to make the transaction final].<sup>1</sup>

Wythe's report on the legality of the title was sent to Washington, but in the formal manner of an impersonal legal document it avoided the use of the pronoun "you" by referring to him as "Col. Washington". It is almost wholly unintelligible, no matter how carefully it is read and reread. Under even the best of conditions abstracts tracing the validity of real estate titles are involved enough to demand real study. In the case of this summary of Black's claims information essential to an understanding of its details is lacking. But the paper illustrates forcefully the thorough research required of Wythe in one phase of his practise. For that reason — and because every available item from his pen for the period under consideration is quoted in these pages — the document is reproduced herewith:

Col. Washington seemed to be satisfied as to the King & Queen lands, which belonged to M<sup>r</sup>. Story, without inquiring into the title before the date of his Will in 1717, if the title be regularly deduced from him.

I think by the Will the estate devised to the daughter was a contingent fee, determinable by her death, without leaving issue or without having alienated, so that the estate in fee, limited upon that event by executory devise, as she survived her child, and had made no alienation, took effect, and was well

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1. Id. to id., December 6, 1773, ibid., 166.

conveyed by the deed of the 12<sup>th</sup> of April, 1750, from Charles Story to John Robinson esq<sup>r</sup>. supposing the recitals and suggestions in the deed to be true. If my opinion be wrong, and the daughter took either a pure fee simple, or a qualified fee, determinable, not upon her death without leaving, but upon her death without ever having had, issue, in that case M<sup>r</sup>. Robinson had a good title by that conveyance, if Charles Story was the daughter's heir at Law, otherwise not.

M<sup>r</sup>. Robinson, by a deed to him from Thomas Hickman and Barbara his Wife, 14<sup>th</sup> Jan<sup>y</sup> 1734 purchased 600 Acres of Land adjoining Wyatts, sold to Story; Whether this be part of the Land agreed to be sold by M<sup>r</sup>. Black to Col. Washington I know not, neither have I seen any other paper concerning it. the deed from Hickman, if he had a title, I think a good conveyance —

By act of general Assembly, [in the] 10<sup>th</sup> year of the reign of King] Geo. the 3<sup>d</sup>, some land in King and Queen County, purchased of Richard Johnson by M<sup>r</sup>. Robinson, who with others claiming under him were in possession, was vested in William Lyne and some other Gentlemen, in trust, to convey to such persons as claimed under M<sup>r</sup>. Robinson, with a saving of the Titles of all persons other than those claiming under the will of a Testator who had devised to Richard Johnson the seller: whether the part reserved by M<sup>r</sup>. Robinson be included in the Land agreed to be sold by M<sup>r</sup>. Black; Whether the testator had a good title; or whether the Trustees have conveyed to M<sup>r</sup>. Robinsons [sic] adm[inistrat]ors the part so reserved, which I think they the Adm[inistrat]ors were intitled [sic] to as a resulting trust, I can give no opinion, having seen no papers relating to these matters.

If Romonkocke be part of the 1683 acres purchased by col: Bernard Moore from M<sup>r</sup>. William Claiborne, & from M<sup>r</sup>. Robinson, who it seems derived his title from the Claibornes, as I suppose it is; and if Claibornes [sic] title be good, which I understand Col. Washington was satisfied with, and be properly deduced to Col. Moore, as, from what M<sup>r</sup>. [Bartholomew] Dandridge says of the Wills of N Claiborne the Father and Son, and from his abstracts of the conveyances from the heir and Executors of the Claibornes, to Robinson, and from Robinson to Moore, I am persuaded it is; yet I am apprehensive there is still a chasm, having in vain searched in the Secretary's office for a Conveyance from M<sup>r</sup>. Robinsons [sic] administrators, who had B. Moore's title, to M<sup>r</sup>. Black: but this unquestionably may be supplied. I have the conveyance from Carter Braxton, T. Walker, T. Jefferson and Power to W. Black which is recorded in the Secretary's Office, but, without conveyances leading to it, [it] is insignificant.

I find no deed from Col. Thomas Moore to Bernard

Moore to convey, nor any writ, in the nature of an ad quod damnum [a chancery writ for the determination of damages which might result from the grant of a certain privilege], to dock the intail [sic] of any land of the former; but I found the certificate of a survey, with a plot, of 89 acres of land belonging to Thomas Moore, said to have been made 2<sup>d</sup> of August 1765 by virtue of a writ of ad quod damnum, the writ is mislaid (for it appears one did issue) and perhaps the deed, because the fees were not paid, without which it seems such papers are never Recorded. a copy of the certificate is inclosed with this. perhaps these 89 acres are those intended to be sold with the Hill, and supposed to be an hundred; if so a description of the land may be inserted in the blank left in the conveyance, and proper steps be now taken to secure the title.

The deed from Thomas Moore and his trustees, to William Seton, conveys, not an hundred acres, but one acre only with the Hill. Col. Moore's title I know nothing of — I find no material fault in the conveyance

Col. B. Moore's title being allowed, Mr Blacks title to the 550 acres called Gooch's seems unexceptionable.<sup>1</sup>

Having thus assured himself that Washington would be purchasing lands whose titles were irrefutable, Wythe drafted a deed by which the intended transfer of ownership might be made. But Black refused to sign that conveyance until Washington complied with stipulations which he added unexpectedly to their verbal contract.<sup>2</sup> In the dilemma thus created by the recalcitrant Black, Washington turned to Wythe for advice as to his method of procedure,<sup>3</sup> and the whole tangled maze was straightened out in the space of a few months with Wythe's

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1. George Wythe to George Washington, December 15, 1773, Hamilton, ed., Letters to Washington, IV, 282-284.

2. Bartholomew Dandridge to George Washington, December 30, 1773, ibid., 297-300.

3. George Washington to George Wythe, January 17, 1774, Fitzpatrick, ed., Writings of Washington, III, 174-176.

aid.<sup>1</sup> When Custis was planning several years later a sale of that portion of the property which Washington had acquired from Black and given to him, he asked for a general warranty of the validity of his title; Washington declined to make so sweeping a commitment, but he gave assurance that he had bought the land only "after having the title fully investigated by Mr. Wythe"<sup>2</sup> — a reply which showed his perfect confidence in his lawyer. Wythe's word on that question had apparently allayed his doubts once and for all.

Another of the prominent Virginians in the northern part of the colony who is known to have been among Wythe's clients was Robert Carter of "Nomony Hall", a member of a thoroughly aristocratic family and a Councillor. As such, he was ex officio a judge in the General Court and thus in a position to know well the abilities of the lawyers at its bar. In 1772 Carter asked Wythe to secure a review by the Court of a permit granted by a county court to an applicant who desired to build a mill in a place which would injure some of Carter's property in Frederick County.<sup>3</sup> Two years later he seems to

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1. George Washington to William Black, January 17, 1774, ibid., 176-179; Bartholomew Dandridge to George Washington, February 16, 1774, Hamilton, ed., Letters to Washington, IV, 327-329; id. to id., April 2, 1774, ibid., 365-366; William Black to id., April 25, 1774, ibid., 375.
  2. George Washington to John Parke Custis, May 26, 1778, Fitzpatrick, ed., Writings of Washington, XI, 456.
  3. "Dear Wythe, A few Days ago I receiv'd a Letter dated 14<sup>th</sup> of last month, (September) subscribed John Hough, who is my Steward — part thereof is in these words 'Parson Charles Hynes Thruston in Frederick is erecting a Mill on the Line near thy Conveniency on Shenadon Tract, has

have had some trouble collecting rentals due to him from his tenants, for Wythe sent him a statement of the law's proper remedies and procedures in such cases:

Where written leases were actually executed, the landlord may either distrain [i.e., confiscate furniture or other property as security for the debt], or bring actions of debt, for the rent.

I think he may pursue the same remedy against the tenants who had not written leases, if they agreed to pay a certain rent until such leases should be made.

An ejectment is a proper, and the most easy, remedy to dispossess a tenant for breach of the condition, by non-payment of rent.

After judgment the mesne profits [those due to a landlord who is himself a tenant of his superior by one to whom he sublets his rented land] may be recovered in an action of trespass: indeed they may be recovered in the ejectment itself; but this is rarely done.

obtain'd an Order of Court to condemn & by a Jury has condemned an Acre to cut his Tail-Race through — This I apprehend is not accord[ing] to Law as the Line crosses the Stream — this Breach will greatly interfere with y<sup>e</sup> Conveniency — This Hint I thought [it] was proper to communicate — J: Hough.' The Conveniency spoken of in the above Quotation, belonging to me, is a rich tract of Land lying in Frederick County contain<sup>s</sup> about 5 thousand Acres, and a very ordinary Mill thereon — there are several Families now living on that Tract who pay Rent to me, that Part whereon the mill is erected, is not rented, [I] having often refused to rent the same, intend<sup>s</sup> to erect mills for different Purposes there. I think that a writ shou'd be issued immed:<sup>ly</sup> toward obtain:<sup>s</sup> an Enquiry, in the Gen<sup>l</sup> Court touch<sup>s</sup> the Propriety or Impropriety of the Order of Frederick Court, granting Leave for M<sup>r</sup> T-[hruston] to build a mill — I will go myself up to Frederick County next spring and if the [people of the] Neighbourhood there really want a Grist-Mill, I will order one to be built, provided the Order of Court mention'd above shall be set aside — The Indisposition of several of my Children, & three upper Serv.<sup>ts</sup> I apprehend will confine me here sometime, pray present my Compliments to L<sup>d</sup> Dunmore and all the Gentlemen Attendants, who shall attend the approach<sup>s</sup> Term [of the General Court, from which I must absent myself], I am, Dear Wythe, Your....": Robert Carter to George Wythe, October 4, 1772, Robert Carter Papers, Duke University Library.

If there be any point wherein I can give you further satisfaction, I beg you, kind Sir, to let me know it.<sup>1</sup>

Two other letters written by Wythe on professional business have been preserved. One of them indicates that he wanted to dispose in a business-like fashion of documents relating to a lawsuit which had been terminated before he could obtain a judgment:

The papers inclosed with this may perhaps be useful to you. There was, you may observe from them, a suit brought by Mr Cocke and his lady against the executors of col. Turner, which abated by the death of one plaintiff, and the marriage of the other.<sup>2</sup>

The other, addressed to an emigrant from Virginia into Orange County, North Carolina, gives counsel as to a legal problem in Wythe's native county, acknowledges receipt of a paper for use in a case before the General Court, and approves his client's course of action in the more southern colony:

I have not been to Hampton since I wrote to you. I purpose to go thither in a few days, and will then endeavour to get further information concerning mr Bloomfield's negroes [sic]. The next of kin have now a right to the administration. but it seems to me that, unless they appear here, it cannot be committed to them; neither can it I be [sic] beleive [sic] be regularly committed to another in trust for them; neither will the court, in my opinion, without a suit, compel the persons in possession to deliver the negroes [sic] to their agent. so that I would advise you, for the reason you mentioned before, to procure what is necessary to support the claim of the heir. The bill you sent me

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1. George Wythe to Robert Carter, July 2, 1774, Autograph Collection of the Signers of the Declaration of Independence, J. Pierpont Morgan Library.
  2. George Wythe to Thomas Adams, September 6, 1774, Miscellaneous Manuscripts Collection, Virginia Historical Society Library.

will enable me to form one in the suit of mr. Hamilton against Armstrong in the general court. The mode of procedure [sic] you are pursuing in Carolina seems very proper.<sup>1</sup>

Three extant petitions to the General Court throw a little additional light upon the activities of Wythe at its bar. Frederick County had a sheriff in 1765 named Jacob Hite, who was assisted voluntarily in the collection of taxes by Achilles Foster. Hite sued Foster for the whole value of the levies in one precinct of the county and secured a judgment in the local court against Foster. The latter petitioned the General Court in or about 1769 for a retrial before its bench. The body of the petition was written by Pendleton; below it contains Wythe's signature in testimony of the fact that Foster had sworn the accuracy of its allegations against Hite and against the previous trial. It pointed out enough irregularities to secure the issuance of a writ of certiorari to remove Foster's case from the inferior court to the supreme one. On the petition Wythe penned very briefly an order to that effect, which was signed by three of the judges.<sup>2</sup> One Solomon Redmon protested that a permit secured by Edward Sanford from the Westmoreland County court to build a mill endangered unlawfully his mill and begged that the order of the inferior

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1. George Wythe to Thomas Burke, August 9, 1775, Roberts Autograph Collection, Haverford College Library. A facsimile of this letter is in the New York Historical Society Library.
  2. Petition of Achilles Foster, undated, Autograph Collection of the Signers of the Declaration of Independence, Henry E. Huntington Library and Art Gallery.

court in Sanford's favor should be reversed by the General Court. At the bottom of this petition Wythe wrote and signed an opinion that the county court had been in error, and in his hand also appears above signatures of three General Court judges an order suspending by a supersedeas the execution of Sanford's permit, pending a formal rehearing in the upper tribunal.<sup>1</sup> Similar to the former of these two petitions was that made by John Randolph in 1773, by which he sought to secure a removal from Charlotte County's court to the General Court of a case in which he was sued. The writ of certiorari to effect that shift in the location of the trial was granted, but on the back of the paper is a notation in Wythe's handwriting which indicates that he had served as Randolph's attorney in the presentation of the petition:

It is agreed that the certiorari shall not be made use of if the plt will enter into a rule to refer the matter in dispute to mr Treasurer [Robert Carter Nicholas] & col Nelson with [a grant of] power to [them to] choose an umpire [a third party, in the event they could reach no decision between themselves] & make their award before the end of March

[signed] John Randolph<sup>2</sup>  
G Wythe<sup>2</sup>

Whether or not the affair was adjusted out of court in

1. Petition of Solomon Redmon, undated [ca. 1772], Ms. in the possession of the Thomas F. Madigan Co., New York, in December, 1936.
2. It is of interest to note that Randolph complained that the plaintiffs had employed the only two able lawyers eligible to practise in Charlotte and that the trial should be removed to Williamsburg to permit him to secure satisfactory counsel: petition of John Randolph, February 12, 1773, Gratz Collection, Pennsylvania Historical Society Library. The agreement quoted from the back of this document is not dated.



accordance with this offer is unknown.<sup>1</sup>

In 1771 Wythe inserted an advertisement in the stilted local newspaper, asking that a volume which had been misplaced from his legal library might be returned to him:

I MISS a third volume of BURROW'S REPORTS. Whether it was lent out I forget. Perhaps some Gentleman's servant carried it from the Capitol by mistake last October court. Whoever will let me know where it is, I shall be obliged to him for the information.

GEORGE WYTHE.<sup>2</sup>

It is probable that several young men studied like Jefferson in George Wythe's law office. Extant records, however, tell of only a few others. But because he was to become, as Jefferson did, an intimate friend and associate of Wythe, interest attaches to the experience of one of these in legal study. He was St. George Tucker, a Briton who left his home in the colony of Bermuda to attend William and Mary College in 1771.<sup>3</sup> In mid-summer of the next year his father discussed in a letter to him the possibilities of his preparation in Virginia and in England for a career at the bar. Tucker had

1. But cf. indenture of John and Peyton Randolph, February 12, 1773, Emmet Collection, New York Public Library.

2. Virginia Gazette (pub. by Rind), February 7, 1771.

3. "Mr Starke gave Papa [Henry Tucker] such a favourable account of the College in Virginia ... that I believe he has determined, shoul'd you like it, to send you there. .... he [Starke] represents it as the best Institution of the sort in America and [as being] under the particular Inspection of Lord Boudetourt [Botetourt] (the Governor) who takes great Delight with it": Elizabeth Tucker to St. George Tucker, August 19, 1770, Tucker Papers, Mrs. George P. Coleman.

evidently proposed that he should remain in Williamsburg and work under Wythe before following his father's plan of study at London in the Inns of Court. His father replied, in part:

As to the plan you propose you must be Advised by those that are more capable of doing it than myself at this Distance. a knowledge of the Civil Law as well as the Laws of Nations in some sort I believe will be Necessary and as you intend to leave the College at Christmas in order to enter upon the Study of the Common Law under M<sup>r</sup> Wythe, I wish you had said in what Manner that is to be done. Do you intend to enter upon a Clerkship with him or how? I think if you are permitted the use of his books & [if] he will give him self [sic] the trouble of regulating your studies, you ought to be as servicable [sic] to him as possible by giving him every Assistance in his business ... so that you may be helpful to him in writing while you make your self Acquainted with the Method of practice.... I shall write to England to inform myself the time it will be Necessary for you to be at the [Middle] Temple to be called to the Bar to plead in America but I think from what you represent of the Matter you will be better [off] to remain for some time in Virginia as you are like[ly] to be under so good a Tutor, for, if I am rightly informed, no care is taken of you at the Inns of Court in London. every student is to do as he pleases, besides [study for] the Comon [sic] practice in America as an Att<sup>y</sup> is quite out of the Question there. ....

I am greatly obliged to you for the Account you gave me of the proceedings in the Virg<sup>a</sup> Courts as well as for the Characters of the several Gent<sup>m</sup> of the Law, such able proficients cannot but give you great pleasure in hearing them. as well as to instruct you in the Rules & practice of their Courts. in short I think you have a very good Opportunity of Instructing your self [sic], and I am persuaded you will not lose the Opportunity of doing it. .... As you propose leaving the College at Christmas, I hope you will take care to get into a Reputable family & board at as cheap a Rate as possible I hope the sum wont [sic] Exceed 25 or 30 £ per ann. but you must do the best you can. If you are to write for M<sup>r</sup> Wythe, perhaps you will dine with him but this will depend on the terms [under which] you are to be with him.<sup>1</sup>

Though nothing survives to reveal those terms, it is possible

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1. Henry Tucker to id., August 1, 1772, ibid.

that there was a new boarder at the Wythe family table when Tucker began his law studies early in 1773 — to the immense pleasure of a father who thought that too much time had been consumed with inutile collegiate courses<sup>1</sup> and who deemed it well to caution him again to make Wythe instruct him in every practical phase of his profession.<sup>2</sup> Within about a year the pupil had been admitted to the bar of an inferior court; Wythe gave him in the spring of 1774, evidently in reply to an inquiry regarding some problem originating in actual experience, an opinion on some point of professional ethics:

I think your client ought to be informed of any error in the proceeding which he may take advantage of; nor do I see how you are restrained from giving that information by an agreement to which you were not a party, and [to which] prudently [you] have resolved not to accede. The general court, regardless of such agreements, have reversed the judgments, in all cases where the declarations have not been filed.<sup>3</sup>

To a position at the bar of the General Court beside that of his teacher Tucker was admitted on the tenth day of April, 1775.<sup>4</sup>

That month signalized better than any other, though

1. Id. to id., April 8, 1773, ibid.
2. Id. to id., April 29, 1773, ibid.
3. George Wythe to id., April 22, 1774, ibid.
4. St. George Tucker to Richard Rush, October 27, 1813, Virginia Historical Magazine, XLII, 213. Wythe seems to have continued constantly, or at least to have been often re-appointed, to be one of the examiners to whom all lawyers in the colony had to apply for a license, for the famous John Taylor of Caroline was admitted to practise in his native county in 1773 under a commission signed by Wythe and John Randolph: entry of September 9, 1773, Order Book, Caroline County Records.

Virginians were not to know of Lexington and Concord until the news had been relayed over the long and tortuous journey from Boston, the beginning of actual hostilities in the War for American Independence. Espousing the cause of a more directly oppressed northern colony, in whose fate the others felt with some justice that their own was involved, Virginia had manifested her sympathy and support by closing all her inferior courts in 1774 as a protest against the Boston Port Bill. Before the autumn of 1775 noise from staccato rifles and booming cannon reverberated in Virginia, too; the colony found itself driven to war against its governor and subsisting under the merest makeshift of a government. In the midst of such disorder adjudicated law could not reign. Thus it was that its spring term in 1775 was the last sitting of the General Court.<sup>1</sup> With that term, as later events were to prove, the career of George Wythe the lawyer ended once and for all. For the next three years he could do nothing but devote himself to the avocation of politics. Yet, when Virginia courts were reopened in 1778, he became identified again until his death with the legal profession in a new capacity, that of an honored judge in equity.

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1. St. George Tucker to Richard Rush, October 27, 1813, Virginia Historical Magazine, XLII, 213. But Lord Dunmore complained in a long letter that the court had been closed in 1774 because no lawyers would plead before it: Governor Dunmore to the Secretary of State, December 24, 1774, Virginia Papers (Bancroft Transcripts), II, New York Public Library.

Portrait of an Honest Lawyer

Two characteristics predominated as distinctive elements in the large success which attended Wythe's thirty years as a practising attorney, especially his two decades at the bar of the General Court. First, he was perhaps more learned in the law than any of his colleagues, though it was no mean attainment to equal or exceed the familiarity with its literature achieved by men like Thomson Mason and John Randolph, who were never as active as he in political affairs and had more time for scholarship.<sup>1</sup> "Under a pressure of business at the bar before the revolution, which would have monopolized the attention of others", as a friend spoke later of the work of one whose "knowledge of law ... was indeed profound!",<sup>2</sup> he must have had innumerable occasions to refer to the books which were in those days the sources of British legal principles and precedents. But, just as he managed to steal time from his practise for communing with great minds of the past through the pages of his adored classics, standard repositories of the law meant more to him than places to look for information on specific points as occasion demanded. To

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1. Hugh Blair Grigsby, Discourse on the Life and Character of the Hon. Littleton Waller Tazewell, 18, ranked Wythe "above all early statesmen" in this respect. But the same authority stated elsewhere, "In the solid learning of the law he [Wythe] stood, with the exception of Thomson Mason, almost alone": Grigsby, Virginia Convention of 1776, 121; again, "That he more thoroughly mastered the learning of his profession than any of his contemporaries, excepting Thomson Mason, seems to be conceded": ibid., 127-128.
  2. Anonymous "Communication", The Enquirer, June 10, 1806.

Wythe the earliest authorities on English law were not merely dull reference works — they were exciting tools with whose aid he might satisfy his flair for research by tracing every legal doctrine to its remotest enunciation in Roman codes or in pre-Norman Britain. Thus he delighted in Glanville's Treatise on the Laws and Customs of the Kingdom of England, published in Latin late in the twelfth century, the first commentary on the common law; in Bracton's treatise in Latin about the middle of the thirteenth century embodying much of the ancient Roman civil law; in Britton's six books, published in legal French under the sponsorship of King Edward I toward the close of the thirteenth century; and in the work known as Fleta, also published about 1290 but issued in Latin. Into these first epochal compendiums in English legal literature Wythe delved, partially for the sheer joy of mining their undervalued historical nuggets, at a time when most of his fellows were content to pursue few thoughts farther back than fifteenth-century Thomas Littleton's Tenures, a statement of England's real property laws which had furnished a hundred years or so later a point of departure for Coke's famous textbook. Moreover, he gloried in the unofficial reports in French of discussions in England's courts between members of bench and bar, three and a half centuries after Glanville, which are known as Year Books, most of which he had also in his library; and he collected, too, voluminous copies of

statutes passed by Parliament.<sup>1</sup> With such profound erudition at the command of a logical brain, it was but natural that able arguments should have emanated from his conscientious care in preparing his appeal in each case.<sup>2</sup> Yet it should not be thought that Wythe's superior storehouses of legal learning were drawn upon in a merely pedantic manner, "for in pleading", Jefferson testified, "he never indulged himself with an useless or declamatory thought or word...."<sup>3</sup> He spoke rarely with real eloquence but was nearly always impressive, by reason of his easy elocution, the methodical arrangement of his materials, and his usually unruffled urbanity in debate;<sup>4</sup> frequently, too, he showed that he was a master of pathos in appeal and of sarcasm in repartee.<sup>5</sup>

The second outstanding characteristic of Wythe the lawyer was his perfect integrity. It has been generally recognized ever since the birth of the profession that law inevitably offers its devotees as many temptations as they would find in any other occupation; no age is known to have lacked

1. Grigsby, Littleton Waller Tazewell, 18, is authority for the names given in these sentences. His information was almost undoubtedly secured in conversations with Tazewell, who lived for a time in Wythe's home: cf., e.g., ibid., 10, 80, 84-85. A readily available and non-technical summary of the above legal authorities may be found in Lyon and Block, Edward Coke, 335-345.

2. Cf. Grigsby, Virginia Convention of 1776, 121.

3. Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1820, Jefferson Papers, Library of Congress.

4. Ibid.

5. Wirt, Patrick Henry, 66.

confident scoffers to proclaim that there could be no such thing as an honest lawyer. The dexterous evasions of so-called Philadelphia lawyers have become in later times proverbial, but colonial Virginians were not without unwelcome examples in their courts of gross perversions of justice. Therefore, when no evil conduct was evident or imputable in the actions of an attorney, he was likely to be dubbed "the honest lawyer", and several of Wythe's contemporaries, including Robert Carter Nicholas and his brother-in-law, John Lewis of Spotsylvania, were recipients of that enviable title.<sup>1</sup>

One is thus forced to conclude, when he reads the declaration often made by Rev. Lee Massey, rector of Truro Parish in Fairfax County, proclaiming that Wythe "was the only honest lawyer he ever knew",<sup>2</sup> that the excellent clergyman did not have too broad an acquaintance among the colony's counselors. Though it could not be expected that

1. On Nicholas' professional virtue see Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 125. Norfolk was another spot which had its representatives of uprightness. "Like [James] Nimmo, he [John Nivison] was called the honest lawyer; and it was one of the sly jests of our fathers that there should be two lawyers at the same bar and in the same generation, whose claims to the title should be generally conceded by the people": Grigsby, Littleton Valler Tazewell, 32.
2. J. T. Stoddert, a grandson of Massey, made this report in a letter of unknown date to Bishop Heade: reprinted in Heade, op. cit., II, 238. Massey had retired early from the practise of law "because his 'conscience would not suffer him to make the worse appear the better reason', and to uphold wrong against right. He tried to follow in the lead of ... Wythe, to examine cases placed in his care and to accept the good and reject the bad. It proved a failure....": ibid.



the compliment would have escaped slight revision, had Massey made a complete and searching survey of Virginia's legal profession, it is quite possible that he would have found no one more justly deserving commendation than Wythe, who was "as distinguished by correctness and purity of conduct in his profession, as he was by his industry & fidelity to those who employed him".<sup>1</sup> For Wythe became conspicuous among his colleagues for his modest sincerity in avoiding the prosecution or defense of tainted cases. His contemporaries boasted that he never took part in a single suit without assuring himself that he would be representing the side which had a monopoly upon the right; that he would customarily permit himself to be retained only after questioning his applicant closely; that, if he had occasion at any time to doubt the veracity of his clients or witnesses, he insisted arbitrarily for his own protection on their swearing to an affidavit testifying to the truth of what he had been told; that, if he found he had been unwittingly deceived despite such unusual precautions into a connection with an ambiguous or questionable cause, he returned in full all fees which had been advanced to him and

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1. Jefferson, "Notes for the Biography of George Wythe", Jefferson Papers, Library of Congress. "The temptations of the law never raised a doubt on his purity....": Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 131.

abandoned it immediately.<sup>1</sup>

When Parson Mason L. Weems, author of a biography of George Washington which is famous only because he created in his imagination the well known episode of the hatchet and the cherry tree, heard of Wythe's death, he seized the opportunity to rush into print with a characteristically effusive anecdote illustrative of the last of these rules by which Wythe safeguarded his splendidly delicate sense of professional integrity:

In support of this little moral eulogy of ... Wythe — in proof, I mean, that he possessed that fervent love, which gave him so tender an interest in the comfort of another, that no money could ever tempt him to invade it; take the following anecdote of him, and most exactly (in substance at least) as I received it from the Rev. Mr. Lee Massey, a first-rate Virginia clergyman, and from early life, the intimate [friend] of Mr. Wythe.

"In the month of June, many years ago, I went," said Mr. Massey, "to dine with my friend, Bob Alexander." (Now, it may not much confuse the reader, to tell him that this same Bob Alexander, as Mr. Massey, in his familiar way, always called him, was a wealthy and worthy gentleman, living on the Potomac, and near Alexandria.) Well, "while Mrs. Alexander, like Milton's Eve, 'on hospitable thoughts intent,' was preparing an elegant dinner, Bob and I took our chairs into the piazza, which commanded a very fine prospect indeed — full in our view lay the great Potomac, the mile-wide boundary between the sister states [colonies] of Maryland and Virginia — on the Virginia side the rich bottoms lengthened out, as far as the eye could see, were covered with crops of full ripe wheat, whose yellow tops rolling in ridges before the playful breeze, reflected the beams of the sun in sudden gleams of gold,

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1. See esp. "Memoirs of the Late George Wythe, Esquire", The American Gleaner, and Virginia Gazette, I, 2-3. "I know that his probity was such, that when he acted as counsel, his opinions were the dictates of a well informed conscience, [and that] no promise of emolument could engage him to undertake a bad cause ... when he understood its real merits....": "Communication" signed "A.B.", Virginia Gazette, and General Advertiser, June 18, 1806.

brightening the day — on the Maryland side, a stately ridge of hills, high crowned with trees, formed as it were, a frowning guard to the great river, and threw its subliming shades, a striking contrast to the milder beauties of the opposite shore. Out spread [sic] between the two, lay the Potomac, whose little waves, just waked up by the young winds of summer, ran chasing each other along their sky-blue fields, often speaking their joy in bursts of snowy laughter. While thus we sat feasting on these richly varied and magnificent scenes, which the great Maker had so kindly spread before us, Bob's servant arrived from town with the newspapers, and a letter, which he handed to his master. Having hastily run it over, he exclaimed with great earnestness, 'Well, really Parson, this is strange, very strange! Why that George Wythe must certainly be either an angel or a fool.' — 'Not a fool, Bob,' said I; 'George Wythe is no fool.' — 'Well, that was never my opinion, neither, Parson; but what the plague are we to make of this confounded letter here[?] — Suppose, Parson, you read it, and give me your opinion on it.' I took it, and with great pleasure read nearly word for word, as follows:—

Robert Alexander, Esq.

Sir.— The suit wherein you were pleased to do me the honor to engage my services, was last week brought to trial, and has fully satisfied me that you were entirely in the wrong. Knowing you to be a perfectly honest man, I concluded that you have some how [sic] or other been misled. At any rate I find that I have been altogether misled in the affair, and therefore insist on washing my hands of it immediately. In so doing I trust I shall not be charged with any failure of duty to you. As your lawyer 'tis true I owe you everything — everything consistent with justice — against her, [I owe] nothing: nor can ever owe. For justice is appointed of God, the golden rule of all order throughout the universe, and therefore, as involving the greatest of all possible good to his [His] creatures, it must be of all things the dearest to Himself. He therefore, who knowingly acts against justice, is a rebel against God and a premeditated murderer of mankind. Of this crime (which worlds could not tempt me to commit) I should certainly be guilty, were I, under my present convictions, to go on with your suit. I hasten therefore to enclose you the fifty dollar note you gave me as a fee, and with it my advice, that you compromise the matter on the best terms you can.

I have just to add, that as conscience will not allow me to say anything for you, honor forbids that I should say anything against you. But, by all means, compromise, and save the costs. Adieu — wishing you

that inward sunshine, which nothing outward can darken.  
I remain, dear sir, your's [sic]

Geo. Wythe["]

For the sake of those who may wish to know whether the advice, in this extraordinary letter, was followed or not, I beg leave to add, that it was not followed. Mr. Massey told me, that his friend Bob was resolved, nolus volus [a humorous Latin corruption of nolens volens, meaning "against advice"], to go on with the suit, and therefore gave the fifty dollar note to some other gentleman of the law, who pushed the matter for him, and exactly with the success predicted by the good Mr. Wythe — the loss of his land, with all costs! "Blessed are the meek, for they shall inherit the earth."<sup>1</sup>

Possibly Weems actually heard from Massey a story such as that he relates; if so, he erred in referring to "sister states" and to a "fifty dollar note", for Wythe was an attorney only during the colonial period and was never paid a fee in dollars. Or perhaps this account is almost entirely pure fiction, with little more basis in fact than the renowned legend which he created outright to glorify Washington's inability to tell a lie. Certain it is, however, that the general tenor of Weems' tribute to an honest lawyer, though florid, is in keeping with the known characters of Massey and Wythe.

Finally, there was a trait in Wythe's character which was deemed unusual by some of those friends who have commented upon the absolute probity of his business affairs. In admirable contrast to his exalted conceptions of principle in his profession was the disinterested monetary worth which he placed upon his services. No persuasion or subterfuge, it

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1. Reprinted from The Charleston, S. C., Times, July 1, 1806, in William and Mary College Quarterly (1st series), XXV, 18-19.

was said, "could induce him to accept a fee beyond the lowest possible value of his labour";<sup>1</sup> when grateful clients attempted voluntarily to press upon him well-earned compensations in excess of his demands, he reminded them that the laborer was indeed worthy of his hire and assured them that he desired and would accept presents from no man.<sup>2</sup> Thus he showed in his law office, as elsewhere, a distinctive and total want of avarice which amounted almost to a contempt for the coin of the realm.

That characteristic -- together with a convincing denial of the assumption, which it might suggest, that relative disdain for the fruits of business might have betrayed him into unbusinesslike methods of bookkeeping -- pervaded a letter which he wrote fully seven years after his career as a lawyer had ended, at a time when his comfortable financial circumstances of the colonial period had ebbed away in Revolutionary losses and smaller incomes:

Mrs. Wythe, Sir, informed me, that you civilly [*sic*] wished me to send you my account of fees. In my book messrs Rumbold Walker and Tabb stand charged with fees for prosecuting their suits against Scott, Smith, Daniel, Dandridge, McWilliams, Littlepage's executors, Dentley, and Woodrow, and for defending them at the suit of A. Winston, amounting, with taxes for the writs in the first eight, to 26.0.0. and on your own account you stand charged with fees for prosecuting your suits against Hinge, Lewis, Willis, and three petitions for lapsed land, and Elizabeth Walker's suit against Pleasants

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1. "Communication" signed "A.B.", Virginia Gazette, and General Advertiser, June 18, 1806.
  2. "Memoirs of the Late George Wythe, Esquire", The American Gleaner, and Virginia Magazine, I, 2-3.

and Robertson, amounting, with taxes, to 20.10; and in the former credit is given for 7.10, and in the other for the like sum, amounting together to 15, received of you. Several of the suits, but which I do not recollect, were not finished, when I was taken from the bar; so that I am not intitled to, nor would I receive, the whole balance, altho [sic] I had almost as much trouble with them as if they had been finished; and I shall be content with half, or as much less as you think just, or even without any.<sup>1</sup>

How it chanced that the usually systematic Wythe had failed to keep a record to show which of these suits had been closed and which were pending could only be surmised. Likewise, how many of his accounts went unpaid for years after he "was taken from the bar" by political duties cannot be determined.

In conclusion, more must be said of the relationship between Wythe and Pendleton, his greatest rival for two decades at the bar of the General Court. Circumstances placed them more frequently than any other pair of lawyers in competition before that bench as opposing counsel, and for years afterward Virginians' talk about the memorable figures in that tribunal rarely failed to include discussion of their verbal contests in protection of their clients' interests and of their own reputations. Wythe's most effective weapons were his comprehensive knowledge and forceful logic. Through these superior advantages he was often able to overpower by the sheer weight of his attack the defenses of Pendleton, whom, posterity has adjudged, "he equalled as a common lawyer and greatly surpassed

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1. George Wythe to John Tabb, September 22, 1782, Roberts Autograph Collection, Haverford College Library.

as a civilian [civil lawyer]"<sup>1</sup>. Pendleton's most telling weapon was his greater ingenuity and agility in attack — a lance which might without a moment's warning pierce Wythe's heavy armor, draw blood, and carry the day. Through larger experience in the tricks and subtleties of debate Pendleton was more adept in making lightning shifts of offense which would expose a vulnerable flank. Wythe himself, who did not lack reason to know whereof he spoke, is supposed to have acclaimed this salient quality in his adversary in these simple, ungrudging words: "His conceptions were quick, acute and full of resource. He possessed a dexterity of address which never lost an advantage and never gave one."<sup>2</sup> In these

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1. Wirt, Patrick Henry, 66. "... Pendleton ... had studied law rather as it was to be found in the cases than as a system, and may be said rather to have known a great deal of law than to have been a master of the science, approached nearer the character of a great advocate than of a great lawyer....": Grigsby, Virginia Convention of 1776, 127.
2. Quoted from an unknown source in Wingfield, op. cit., 201. Cf. the striking similarity of that description of Pendleton with Jefferson's: "Autobiography", Bergh, ed., Writings of Jefferson, I, 54-55. The latter uses as a phrase exactly the same noun and adjectives that Wythe employed in the first of the two sentences above; each speaks of him as "cool, smooth and persuasive; his language flowing, chaste and embellished". Jefferson's characterization continued: "[he was] never vanquished: for if he lost the main battle, he returned upon you, and regained so much of it as to make it a drawn one, by dexterous manoeuvres [sic], skirmishes in detail, and the recovery of small advantages which, little singly, were important all together. You never knew when you were clear of him, but were harassed by his perseverance, until the patience was worn down of all who had less of it than himself. Add to this, that he was one of the most virtuous and benevolent of men, the kindest friend, the most amiable and pleasant of companions, which ensured [sic] a favorable reception to whatever came from him." As a preface to this description Jefferson had stated that Pendleton was, "taken all in all, ... the ablest man in debate I have ever met with."

attributes Pendleton had the one trait best calculated to get under the skin of his rival; persistently and relentlessly used, they could confuse the mind of a slower thinker and destroy the self-possession of a less adroit temperament. Wythe was inherently deficient in the very features which were Pendleton's unique gift. Once the latter had learned the secret of the power by which he could sometimes weaken the superior abilities of his foe, the plan of campaign in all their future encounters became almost a foregone conclusion:

... [Wythe] was too open and direct in his conduct, and possessed of too little management, either with regard to his own temper or those of other men, to cope with so cool and skilful an adversary. Though he was a full match for Mr. Pendleton in the powers of fair and solid reasoning, Mr. Pendleton could, whenever he pleased, and would, whenever it was necessary, tease him with quibbles, and vex him with sophistries, until he destroyed the composure of his mind, and robbed him of his strength.

Thus Wythe was a watchful Samson, wary but not crafty enough to avoid always the deft scissors of maddeningly deliberate fallacies and hairsplitting trifles, wherein Pendleton, his Delilah, had discovered the only certain method by which he could be reduced to the potency of a mere man. Yet no dishonor can attend Wythe's defeats at Pendleton's hands; the element in his being which explains his Achilles' heel serves as its own apology:

No man was ever more entirely destitute of art than Mr. Wythe. He knew nothing, even in his profession, and never would know any thing [sic] of "crooked and indirect byways". Whatever he had to do, was to be done openly, avowedly, and above-board. He would not, even



at the bar, have accepted of success on any other terms. This simplicity and integrity of character, although it sometimes exposed him to the arts and sneers of the less scrupulous, placed him before his countrymen on the ground which Cesar [Caesar] wished his wife to occupy; he was not only pure, but above all suspicion.<sup>1</sup>

On the whole, it is admitted, Wythe bore with somewhat remarkable equanimity his too frequent frustrations at the hands of his wily rival.

It should not be inferred, however, that Wythe permitted himself to submit meekly to genuine indignities. A probably authentic story is told of an incident in the General Court which afforded him ample opportunity to prove that he had, when aroused or stung, an intrepid spirit and a venomous tongue. On the day in question the court was sitting with Lord Dunmore as presiding judge. Rather parenthetically (since it is an observation which will not be substantiated until the seventh chapter is reached) it must be remarked that Governor Dunmore, whose role is that of the foremost and most notorious villain in Virginia history, was the one man known to have ever incurred Wythe's thorough and irreparable dislike. It is probable that the intemperate governor reciprocated fully, if he did not aggravate, Wythe's repugnance for him; equally probable is it that a sufficient number of the witnesses to their skirmish were aware of the feeling between them to make electric that second of suspense before its outcome was apparent. The handsome figure of Pendleton, with whom Wythe's relations were a hundred times more cordial, is

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1. Ibid., 66-67.

also an essential unit in the dramatis personae. Wythe and a colleague were on the docket that day to oppose Pendleton and a colleague in the trial of an unnamed case. But when the suit was called, Pendleton's associate counsel had not arrived. Pendleton therefore asked that the court's examination of the cause might be postponed, on the ground that there were two attorneys on the other side. Forgetting for the moment the judicial impartiality which decorum and tact demanded of him, Dunmore committed a crass impropriety by replying, "Go on, Mr. Pendleton, for you'll be a match for both of them." Before the echoes of that affront had died in the courtroom, Wythe retorted meaningly and pointedly, "With your Lordship's assistance." It was a terribly severe rebuke, whose biting sarcasm was emphasized by the exaggerated deference and mock politeness of the courtly bow which accompanied it. So completely had he deserved this virtual slap in the face that Dunmore could not afford to feel or act insulted. Spectators of that dramatic moment were delighted at the boldness and brilliance of Wythe's rejoinder.<sup>1</sup>

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1. Call, "Judge Wythe", loc. cit., xiv n.

## Chapter V

### WYTHE THE BURGESS: THROUGH THE STAMP ACT

#### Routine Service in the House of 1758-1761

The stormy administration of petulant Robert Dinwiddie was brought to a close in 1758 by his resignation on a plea of illness.<sup>1</sup> In the person of Francis Fauquier, who reached Virginia about the first of June, 1758,<sup>2</sup> there were qualities which were to make him a much more congenial lieutenant-governor, perhaps one of the most popular among all the men who ever held his office. Through a succession of crises at least as vexing as those faced by Dinwiddie he retained without notable lapse the public confidence and approval. So conciliatory was his governmental policy that mild censure

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1. He communicated to the Council in September, 1757, knowledge of its acceptance: Executive Journals of the Council of Colonial Virginia (Photostats), September 22, 1757, University of Virginia Library. To secure passage for him without delay the Council paid £300 sterling to the captain of a ship as compensation for his loss of freight revenues on 50 hogsheads of tobacco which had to be unloaded to make room for Dinwiddie: ibid., December 14, 1757. His last meeting with the Council was that of January 2, 1758: ibid. Pending the arrival of his successor, President John Blair of the Council took charge of the government: ibid., January 12, 1758.
  2. He took his oaths of office before the Council soon after his arrival: ibid., June 5, 1758. For a time Lord Loudoun was Governor. Later Jeffery Amherst held that position, his appointment being renewed with Fauquier's in 1761: entries of February 17 and March 4, 1761, Board of Trade Journals (Transcripts), LXIX, 135, 166, Pennsylvania Historical Society Library.

came to him from England rather than from the colony.<sup>1</sup> Coincident with his advent was the true beginning of George Wythe's

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1. He showed every inclination, upon several occasions of conflict between English and colonial interests, to uphold the side of the Virginians, whose sentiments were best reflected in the House of Burgesses. Reprimanded for supporting the cause of the colonists in a specific instance, he explained in his apology that his policy had been dictated by his firm belief in the wisdom of preventing discord within the General Assembly. "... I must frankly acknowledge that it has been my constant endeavors [sic] ever since I arrived in this Colony to preserve an entire harmony among all the branches of the Legislature, and this care has been extended to the Council and Burgesses to keep them in [a] good humor with each other. From the unhappy examples I heard of in some of the neighboring Colonies from the dissensions subsisting between the branches of their Legislatures, where all business was at a stand[still] and his Majesty's service and the public good obstructed: I took another measure [i.e., course] and (your Lordships will excuse me I hope for saying it) have at some times flattered myself that I have promoted his Majesty's service by pursuing this path. But I find I have gone too far, and ran into an extreme which has subjected my conduct to your Lordships' censure. Having thus truly stated the case, I rely on your Lordships' candor that you will impute it to the true cause which is a mistaken judgment [in] imagining I could best promote his Majesty's service by conniving at some improper or indecent expressions [by the House], sallies of a young people in a progress towards politeness": Francis Fauquier to the Board of Trade, November 19, 1764, Virginia Papers (Bancroft Transcripts), I, 257, New York Public Library. Two years later he confessed that, in a dilemma which had put him temporarily at odds with the Burgesses, he had been forced to resort to a bit of virtual deception. "... and at last [I] have acted out of character[,] having made use of more art, than I ever practised with them before": *id.* to the Earl of Shelburne, November 15, 1766, *ibid.*, 461. As examples of his espousal of the popular cause, it may be stated that he made no secret of his staunch opposition to the claims of the clergy in the "Parsons' Causes" and that his support of the inept Stamp Act was so lukewarm as to leave little doubt but that he would have been one of its firm opponents had he been in England or had he been perfectly free to express his opinions on it.

brilliant political career.<sup>1</sup>

In the election of new burgesses which followed Fauquier's arrival Wythe received only one vote in Elizabeth City County. The field there was unusually crowded, with eight other men as candidates, and it is to be doubted that he formally offered his name at the polls; his lone supporter, one Benjamin Lester, who did not vote for a second representative as custom required, possibly did not like the announced candidates and wasted his suffrage in a harmless gesture of personal esteem.<sup>2</sup> But Wythe's days of absence from the sessions of the House of Burgesses had ended once and for all. Peyton Randolph, formerly the representative of William and Mary College, was elected in the summer of 1758 burgess for Williamsburg, and George Wythe was chosen by the College to take Randolph's old seat.<sup>3</sup>

When the new House convened, Wythe was restored immediately to the place which he had held on the Committee of Privileges and Elections in 1754 and 1755, without loss of

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1. Tyler, "George Wythe", loc. cit., 57.

2. William Wager and John Tabb were the successful candidates by substantial majorities; Wythe did not vote: poll of election of July 11, 1758, Deeds E, 1758-1764, 8-10, Elizabeth City County Records. An inaccurate report has it that Wythe received 8 votes: William and Mary College Quarterly (1st series), VI, 11; but the same source later corrects this error: ibid., XXVI, 107-108.

3. McIlwaine, ed., Journals of the House of Burgesses, 1758-1761, viii. His predecessors in this capacity had included, besides Peyton Randolph, Edward Barradall and Beverley Randolph — all prominent lawyers: Tyler, "George Wythe", loc. cit., 57.

his claim upon the rights of seniority over members more recently appointed.<sup>1</sup> In the reorganizations of later sessions his committee appointments of 1754 to Privileges and Elections, Propositions and Grievances, and Courts of Justice were all renewed; he became thereby the only member of this House to serve on as many as three of the five standing committees.<sup>2</sup>

England was still battling France in the French and Indian War for control of the vast territory between the Alleghany Mountains and the Mississippi River. In the early years of the struggle Colonel George Washington's forced capitulation at Fort Necessity had been followed by the shocking massacre of Braddock's army, which "had terrified all but the brave"; "every coward", observed a youngster of that day, "believed and said that we were on the point of destruction."<sup>3</sup> By valiant efforts in governmental halls and offices and in the field Virginia was bearing with comparative willingness her full share of the burden of financial and military cooperation levied on her from London headquarters.<sup>4</sup> A number of the responsibilities which Wythe shared with other burgesses were related to this conflict for an inland empire.

In three sessions the House of Burgesses, acting through

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1. McIlwaine, ed., Journals of the House of Burgesses, 1758-1761, 7.
  2. Ibid., 57-58, 201-202.
  3. Autobiographical Sketch of John Page, Virginia Historical Register, III, 146.
  4. Cf. Secretary William Pitt to Francis Fauquier, December 9, 1758, Virginia Historical Magazine, XI, 5-8; id. to id., December 29, 1758, ibid., 8-9.

its Committee of the Whole, resolved upon large appropriations and delegated to special committees of its leading members, each of which included Wythe, the task of drafting a suitable bill.<sup>1</sup> Wars are likely to flood legislatures with petitions for compensation of private and public losses; Wythe was directly instrumental in disposing of several of these before this House adjourned.<sup>2</sup>

A foremost type of routine problem for any session of the House was the inevitable petitions that exceptions to meet personal conditions might be permitted in the operation of the laws providing for the ownership and descent of land. Four such pleas which the House deemed valid were assigned to Wythe, in order that he might frame bills to rectify in these instances the effect of the general rule.<sup>3</sup> He participated in the writing of several other acts, including two involving the institution of slavery,<sup>4</sup> one for the furtherance of inland navigation,<sup>5</sup> and one enlarging the city limits of

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1. McIlwaine, ed., Journals of the House of Burgesses, 1758-1761, 71, 160, 187-188.
  2. Ibid., 28, 97, 102; McIlwaine, ed., Legislative Journals of the Council, III, 1248.
  3. On the Burwell bill see McIlwaine, ed., Journals of the House of Burgesses, 1758-1761, 138, 142, 144-145, 146, 150; McIlwaine, ed., Legislative Journals of the Council, III, 1226. On the two Spotswood bills see McIlwaine, ed., Journals of the House of Burgesses, 1758-1761, 109, 115, 122, 144, 149. On the Cary bill see ibid., 214, 220, 223, 230, 240, 243; McIlwaine, ed., Legislative Journals of the Council, III, 1249, 1250.
  4. McIlwaine, ed., Journals of the House of Burgesses, 1758-1761, 22, 141.
  5. Ibid., 220.

incorporated towns.<sup>1</sup> Twice the seat for Jamestown was vacated, and Wythe was chosen by the House to request Fauquier to issue writs for new elections.<sup>2</sup> He served on committees arranging for the emission of paper currency issued to finance the war and for the auditing of the accounts of William Hunter, the public printer,<sup>3</sup> and he took his turn in determining the amount of the annual appropriation for that official.<sup>4</sup> In the preparation of a difficult act for the incorporation of the trustees of the Eaton Charity School in his native county his was the major hand.<sup>5</sup> Thus Wythe gained a very creditable number of appointments, in the first House of Burgesses through all of whose sessions he sat, both to standing committees and to the temporary committees for the drafting of bills or for other purposes — and, since the official Journals do not record debates and other actions of the individual members, such appointments are recognized as a standard index

1. Ibid., 68, 119.

2. Ibid., 135, 158-159.

3. Ibid., 9, 44.

4. Ibid., 144; McIlwaine, ed., Legislative Journals of the Council, III, 1225. Hunter (d. 1761) set aside by his will £100 to purchase mourning rings, which should be given to ten people as tokens of his friendship; among them were (in the order in which he named them) Benjamin Franklin, Wythe, Robert Carter Nicholas, William Small, Benjamin Waller, and Thomas Everard: William and Mary College Quarterly (1st series), VII, 12-13.

5. McIlwaine, ed., Journals of the House of Burgesses, 1758-1761, 73-74, 106, 120, 121; McIlwaine, ed., Legislative Journals of the Council, III, 1214. The trustees of the Syms Free School had been incorporated by similar legislation in 1753.



to the leadership of the House.

Routine Service in the House of 1761-1765

Similar routine responsibilities were heaped upon Wythe's shoulders by the House of Burgesses of 1761-1765, throughout its eight sessions.

Wythe, formerly a representative of Williamsburg and of William and Mary College, sought elsewhere for reelection in 1761 as a legislator. Peyton Randolph retained the seat for the capital city, and Mann Page supplanted Wythe in that for the College, probably being chosen after the success of his predecessor had been assured by another constituency.<sup>1</sup> He turned again to the polls of Elizabeth City County, in which he gained on May 3, 1761, by receiving more votes than any other candidate, a complete vindication of his defeat in 1756.<sup>2</sup> Thus he represented during the next four years<sup>3</sup> a county which he visited only when things were quiet and without pressure in his Williamsburg home.

His regular appointments to the Burgesses' standing committees were renewed. At first that on Privileges and

1. John P. Kennedy, ed., Journals of the House of Burgesses of Virginia, 1761-1765, 3-4.
2. Ibid., 3. William Wager was seated as his colleague, and James Wallace contested vainly Wager's claim. Among the findings of the Privileges and Elections committee in this dispute was the desire of three men (Rev. Thomas Warrington, Johnson Mallory, and John Lowry) to vote for Wythe and Wallace; Warrington alone, it was ruled, was entitled to suffrage: ibid., 9-10, 86-90, 94-96.
3. Ibid., 3, 31, 45, 63, 169, 201, 225, 313.

Elections was the only one organized, Wythe being named higher on its list than ever before, in accordance with the characteristically jealous regard for seniority.<sup>1</sup> Later this and four other standing committees were established, and Wythe was re-named to those on Privileges and Elections, Propositions and Grievances, and Courts of Justice.<sup>2</sup> In the same session he was added to the previous membership of a fourth group, the Committee of Trade.<sup>3</sup> And when all five were given a final reorganization in 1764, Wythe retained his rank on these four, and was the only burgess to serve on more than three of the five standing committees.<sup>4</sup>

In assignments to temporary committees Wythe's tasks excelled those of all but the very oldest members. He assisted in the preparation of four bills making special concessions to owners of certain lands<sup>5</sup> and of two more general laws

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1. Ibid., 8.

2. The other two were to consider Public Claims and Trade. At least three other men were also on three of the five. Wythe was listed seventh, seventh, and second, respectively, in his groups: ibid., 68-69.

3. Ibid., 146.

4. Ibid., 230-231.

5. On the Claiborne bill see ibid., 13, 22, 24; McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1266. On the Carter bill see Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 16, 17, 20, 24, 25; McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1266. On the two Hubbard bills see Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 156, 158, 161, and 327, 331, 344, 347; McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1298, and 1342, 1343.

having a significant relation to the land system.<sup>1</sup> He played the principal role in the framing and passage of a new and major edition of the perennial legislation on the part of an essentially agricultural colony to promote the growth of arts and manufactures.<sup>2</sup> Two of the bills to which he lent his hand concerned corporate municipalities.<sup>3</sup> Of a more miscellaneous nature were his connections with bills to reduce the duty on northern rum<sup>4</sup> and to oblige an individual citizen to repay certain prosecution costs,<sup>5</sup> and with committees to consider a petition that the invention of a better compass and protractor for surveyors should be rewarded with a bounty<sup>6</sup> and to arrange for repairs to the "Publick Gaol."<sup>7</sup>

In the military business of this House, too, Wythe had a full share. He was chairman of a committee appointed to draft a bill for requiring the officers of the Virginia

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1. Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 84, 160.
  2. Ibid., 110, 119, 148, 154; McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1293-1295.
  3. Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 151, 158, 357; McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1297.
  4. Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 185.
  5. Ibid., 361, 362; McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1348.
  6. Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 283.
  7. Ibid., 305.

regiment in the French and Indian War.<sup>1</sup> When Fauquier communicated to the House His Majesty's desire that this regiment should be maintained by additional provisions for a period longer than that anticipated by the Burgesses, it was resolved that Virginia's financial status would not permit a further continuance of this expense, and Wythe was one of those to whom the House delegated the duty of writing so tactful an address to the lieutenant-governor that its refusal would seem to be a pointed reaffirmation of its cooperative spirit.<sup>2</sup> To provide funds for the colony's earlier military expenditures it had been necessary to print paper currency and to declare it a legal tender, whose par value had been stabilized by a bill which Wythe had helped to draft.<sup>3</sup> But British merchants and creditors were afraid of an unstable currency and protested that these treasury notes came to them at a depreciated rate of exchange. With their objections the House could not agree. Its answer claimed that their alleged losses either were merely fancied, since remittances to England even of sterling specie, if it were available, would suffer subtractions for freight and insurance, or resulted from wholly uncontrollable factors; furthermore, all possible steps to render Virginia's public credit inviolate had been taken by the establishment of adequate

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1. Ibid., 39-41.

2. The other members of this committee were Peyton Randolph, Richard Henry Lee, Richard Bland, and Edmund Pendleton: ibid., 114-115, 124, 133.

3. Ibid., 18, 24.

funds for a gradual redemption of the paper notes. In explanation of these just contentions Wythe collaborated with several colleagues in the composition of two addresses to Fauquier,<sup>1</sup> and he aided in the preparation of an act to meet a more valid British protest on the subject.<sup>2</sup>

At the close of two of the eight sessions of this House Wythe was chairman of the committees appointed to review the accuracy of its enrolled or engrossed bills.<sup>3</sup> Finally, he was named at its close with four of his associates to publish and distribute an edition of 1,200 copies of all acts of the General Assembly currently in force<sup>4</sup> — a type of service which became a specialty of this legislator.

Thus it is seen, by the mere mechanics of the Burgesses' work, that Wythe held a creditable rank among them during the years from 1758 to 1765.

#### The Committee of Correspondence, 1759-1765

By far the best indication, however, of George Wythe's

1. Ibid., 171-173, 241.

2. Ibid., 180-181. On the history of this paper currency see also a valuable letter from Richard Bland to Thomas Adams, August 1, 1771, Virginia Historical Magazine, VI, 128-129; some additional references will be given in the next section of this chapter.

3. Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 194, 196, and 219, 221; McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, III, 1311 and 1321.

4. His colleagues on this committee, in which he had second rank, were Payton Randolph, chairman, John Randolph, Benjamin Waller, and Robert Carter Nicholas; Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 333, 364. The result of their work will be noted in the next chapter,

early eminence in the House of Burgesses is the fact that he became a member of its Committee of Correspondence.

In all the British organization for colonial government there was for many years no provision for a direct communication in person between a transplanted people and the various London or Westminster agencies. Mails, on which even the governors had to depend, were quite irregular and unsafe — and even if their slow courses were successfully negotiated by letters on important issues, there was no one to make desirable explanations or to answer inevitable questions on the colonial point of view. Virginia had been settled only a few decades before a pointed need was felt for some one to visit governmental offices in England, and a series of temporary agents had been sent across the Atlantic as occasion demanded on various special missions, ending with that of Peyton Randolph against the pistole fee. In 1753 James Abercromby had been named a more permanent agent to facilitate Virginia's business and to foster her interests in London,<sup>1</sup> but Abercromby became in effect a personal representative of successive governors by reason of the fact that he received his appointment and instructions from them. Had it been possible for any lieutenant-governor to see eye to eye on most problems with the colonists, this arrangement might have been fairly satisfactory. Yet it is notoriously axiomatic that even a Fauquier was disqualified by the very nature of his position

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1. Brock, ed., Records of Dinwiddie, I, 37 n. Abercromby retained his office through two decades.

from the role of a true interpreter to British officials of Virginia's desires. In present-day parlance, a permanent lobbyist in the halls of English ruling bodies was desirable to sponsor consideration by them of the will of distant colonists.

Such a spokesman faithful to the colonial attitude on all imperial problems relating to Virginia was woefully lacking until 1759. In that year this defect in England's administrative machinery was remedied by legislation appointing another agent to solicit favorable actions in London and a committee to direct his efforts from Virginia. In other words, the agent should be an Aaron attempting to soften the hearts of British Pharaohs with words supplied through a remote and multiple Moses by the god of Virginia's public interests. Edward Montague, a lawyer in the Middle Temple, became the Aaron; four members of the Council and eight members of the House were named on the committee which was to be his collective Moses.<sup>1</sup> It is a very significant testimony of

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1. The act provided that the committee should consist of Councillors William Nelson, Thomas Nelson, Philip Grymes, and Peter Randolph, and of Burgesses John Robinson, Peyton Randolph, Charles Carter, Richard Bland, Landon Carter, Benjamin Waller, Wythe, and Robert Carter Nicholas: Hening, Statutes, VII, 276-277. Since a question was raised in England as to the act's constitutionality, another was passed in October, 1760, to clarify it, but the membership of the committee remained unchanged: Virginia Historical Magazine, XI, 10-12; Hening, Statutes, VII, 375-377. Because one member had died and because others lived at points inconveniently distant from Williamsburg, two Councillors (John Blair and Robert Carter) and two Burgesses (Lewis Burwell and Dudley Digges) were added to the committee in 1763: ibid., 646-647.

George Wythe's ability and reputation that he should have been selected to serve on this committee, composed only of recognized and honored leaders, at a time when he had to his credit less than three full years of membership in the House.<sup>1</sup>

Minutes of the Committee's meetings and its correspondence with Montague are partially preserved.<sup>2</sup> They show that

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1. It may be surmised that his geographical proximity, however, would have made his appointment somewhat preferable to that of some remote leaders, such as Edmund Pendleton and Richard Henry Lee. An article on the Committee summarizes the attainments of its members, without proper regard for chronology: William and Mary College Quarterly (1st series), XXII, 3-4. Paragraphic biographies of each member are included in the notes accompanying its documents in Virginia Historical Magazine, IX, 355 n.
  2. All its available materials are reprinted, with editorial notes, in Virginia Historical Magazine, IX, 353-360, X, 337-356, XI, 1-25, 131-143, 345-354, XII, 1-14, 157-169, 225-240, 353-364.



Wythe was absent only thrice among twenty-three recorded sessions<sup>1</sup> and that he participated in the drafting of instructions to Montague upon four of the fewer occasions when the writing of its letters was sublet, after determination of majority sentiment, to a minority of its membership.<sup>2</sup>

Almost every phase of relationships between the Mother

1. A tabulation of his attendance, with dates and page citations to Virginia Historical Magazine, follows:

<u>Citation</u>	<u>Date</u>	<u>Wythe was</u>
X, 338	May 2, 1759	present
339	November 7, "	absent
340	" 14, "	present
341	" 17, "	absent
341	" 19, "	present
341	" 20, "	"
XI, 10	October 7, 1760	"
10	November 3, "	absent
11	" 6, "	present
17	May 4, 1761	"
21	June 11, "	"
23	" 13, "	"
131	April 30, 1762	"
132	May 4, "	"
132	March 29, 1763	"
350	June 16, "	"
350	" 17, "	"
XII, 4	January 17, 1764	"
5	June 15, "	"
7	July 28, "	"
IX, 354	December 19, "	"
355	September 14, 1765	"
359	" 19, "	"

It is of interest to observe that despite his absence of November 7 and 17, 1759 and November 3, 1760, Wythe did not miss entirely the discussion of a single recorded letter to Montague, the sessions of those days having been devoted to matters begun or ended in some earlier or later meeting.

2. Ibid., XI, 21, 131, XII, 3, IX, 355.

Country and her colony passed under the Committee's review.<sup>1</sup> Montague reported many actions which would affect Virginia, and his correspondents dictated his steps in a number of projects, ranging from assignments to collect for the colony money due in England<sup>2</sup> to the duty of securing the royal assent to favorite bills passed by the colonial legislature. A large portion of his attention for some years was directed to the justification of the paper money issued by Virginia to finance her activities in the French and Indian War, which resulted in a protest by interested British merchants, though such adequate security backed these notes that this currency suffered no undue depreciation.<sup>3</sup> Other aspects of the Committee's activity in advising Montague how to promote on his side of the Atlantic the colony's concerns will be reviewed in later connections. Despite the want of complete records, it seems to be certain that Montague was discharged April 10, 1771, on account of a growing apathy on his part toward his functions; but his services were evidently engaged again.<sup>4</sup>

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1. Cf., e.g., ibid., XI, 17, 21.

2. See, e.g., ibid., XI, 23-24, XII, 4.

3. See, e.g., portions of the Committee's first letter to Montague, ibid., X, 342-353, XI, 1-5, and the following minutes and letters to Montague of 1763 and 1764: ibid., XI, 345-350, XII, 5-11. Cf. also Executive Journals of the Council of Colonial Virginia (Photostats), April 28, 1763, University of Virginia Library.

4. A member of the Committee, after stating the above date and complaining of Montague's neglect, advised a London friend to exert himself unofficially in the colony's behalf, in order to obligate to him the House, in which an inadequate attempt would probably be made to reappoint Montague: Richard Bland to Thomas Adams, August 1, 1771, Virginia

Wythe's Role in the "Parsons' Causes"

Yet George Wythe was also in the thick of less routine problems during this period. Among these were the issues raised by the so-called "Two Penny" act, out of which grew the liveliest religious topic of the day and several tense political questions.

The General Assembly had enacted in 1748 a legal stipulation that Anglican ministers in Virginia should be paid an annual salary of 16,000 pounds of tobacco, a commodity which still tended to displace specie as the common local currency. Ten years later it provided that for twelve months tobacco debts to all public officials could be commuted to cash at the normal ratio of two pence per pound,<sup>1</sup> for unusual weather conditions promised a shortage which would probably triple its value.

This action was taken in October, 1758, just after Wythe began his term as the representative of William and Mary College, and was not entirely without precedent.<sup>2</sup> If the

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Historical Magazine, VI, 133-134. Montague's efforts in 1770 are recorded in ibid., XII, 157-169, 225-240, 353-364. Jefferson told of a paper which Montague copied in 1774 or 1775 and referred to him as agent of the House: Autobiography, Bergh, ed., Writings of Jefferson, I, 13. Thus it would appear that Bland had underestimated the strength of the movement for his reinstatement.

1. Hening, Statutes, VII, 240-241.

2. It is quite probable that Wythe voted in the House for this bill. The most available and comprehensive summary of its history and results is an article by Lyon G. Tyler in William and Mary College Quarterly (1st series), XIX, 10-27.

employees of the government were to be remunerated under its terms, public wages would be at the standard level anticipated in 1748, but in the absence of such a revision their pay would have been magnified beyond all intended proportions by about two hundred per cent.

Some members of the established clergy, whose salaries were paid, of course, out of the colonial income from taxation, were the only officials who did not acquiesce in this provision for specie payments. They argued that the bill of 1758 contained unconstitutional provisions and would probably not receive the assent of the Crown necessary to make it enforceable law. The need for an immediate remedy of the trick played upon the Assembly by the most recent fluctuation in the tobacco market, it is true, had indeed induced the legislators to dispense with the clause, required on bills repealing laws previously approved in England, suspending its operation until His Majesty's pleasure might be known. But the law was to be of such brief duration that it expired before royal disapproval could be returned from London, and the payments in specie were effected. In justification of the failure to comply with strictly legal legislative requirements, it was claimed by the Committee of Correspondence that emergency legislation could not be delayed by slow eighteenth-century communications and that the Assembly had a natural right to enact temporary laws.<sup>1</sup>

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1. Minutes of the Committee of Correspondence, November 14, 1759, Virginia Historical Magazine, X, 340.

At least four clergymen sued in the courts for the balance of the salaries which they claimed, a verbal war broke out with the publication of several well-known pamphlets on the subject by the principals and defenders of each side, and agitation of the question did not cease for some eight or nine years. The most renowned of the trials in court in the famous "Parson's Cause" of Hanover County, in which Patrick Henry, as counsel for the vestry of Fredericksville Parish against the suit of Rev. James Maury, delivered a somewhat far-fetched but eloquent harangue and first served notice that he was a young man who might go far by reason of his sheer verbal control over his listeners' emotions. The court upheld Maury's contention that the Two Penny Act was invalid, for Henry had not denied its alleged unconstitutionality with inescapable logic; but his appeal made its impression on the jury, which rather inconsistently awarded Maury damages of one penny, an absolute minimum.<sup>1</sup>

George Wythe had a direct connection with two less publicized parsons' causes, and each of them ended more successfully for the colonists. Rev. John Camm (1718-1779), then

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1. By far the best document on the Hanover "Parson's Cause", if not indeed on the whole clergy's point of view in the general controversy, is the long and vividly informative letter of Rev. James Maury to Rev. John Camm, December 12, 1763, Virginia Papers (Bancroft Transcripts), I, 207-243, New York Public Library. Maury accuses Henry of deliberate demagoguery, as other rectors also did on the basis of an admission by Henry himself, and of flirting with treasonable utterances. Maury was, of course, the same clergyman who served as private tutor to several eminent Virginians, including Thomas Jefferson.

rector of York-Hampton Parish and later president of William and Mary College, who had a rather strong penchant for being in the midst of tempestuous controversies, prosecuted in the General Court a similar suit which gave Virginia's leaders a great deal more worry.<sup>1</sup> The Committee of Correspondence felt it to be a matter of such public interest that the colony should assist the parish in the expenses of the defense,<sup>2</sup> and explicit instructions were given to its agent with constitutional arguments to assist the cause in London.<sup>3</sup> The Council was firm in supporting the Two Penny Act, too, and its agent succeeded in postponing the progress of an adverse report of the Board of Trade to the eventual official veto by the Crown.<sup>4</sup> When the General Court finally gave a judgment on Camm's suit, in which Robert Carter Nicholas was chief

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1. Virginia Historical Magazine, X, 356, carries a biographical note on Camm. The story of his advocacy of a bishop in the later contentious movement for an American episcopacy is partially told in Richard Bland to Thomas Adams, August 1, 1771, ibid., VI, 130-134. For gossipy comments on his late marriage see Martha Goosley to John Horton, August 5, 1769, Horton Papers, Colonial Williamsburg, Inc. ~~Peter Lyons was Henry's attorney; Wythe's brother-in-law, John Lewis, preceded Henry as counsel for the parish.~~
  2. Minutes of the Committee of Correspondence, November 14, 1759, Virginia Historical Magazine, X, 340.
  3. Committee of Correspondence to Edward Montague, December 12, 1759, ibid., 347-353; id. to id., November 5, 1760, ibid., XI, 14-17.
  4. Executive Journals of the Council of Colonial Virginia (Photostats), December 12, 1759, University of Virginia Library.

attorney for the defendants,<sup>1</sup> the members of the Council in their capacity as judges decreed against the parson.<sup>2</sup> Fauquier granted with misgivings Camm's insistence upon an appeal from the verdict to authorities in England,<sup>3</sup> and the Committee of Correspondence warned Montague to dig up old colonial charters and other precedents with which to combat a possible British reversal of the General Court's decision.<sup>4</sup> But Camm's appeal was allowed to die by the Privy Council in 1767; common belief among English contemporaries attributed its failure to a desire that the colony, already provoked, should not be further agitated.

Rev. Thomas Warrington (d. 1770), a predecessor of Camm in York-Hampton Parish and rector of Elizabeth City Parish from 1756 until his death,<sup>5</sup> likewise brought legal action in his county court against one Jiggitts, who represented the vestrymen of his parish, for the full market value in 1758 of

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1. Nicholas was asked to furnish Montague with a copy of his arguments: minutes of the Committee of Correspondence, June 15, 1764, Virginia Historical Magazine, XII, 7.
  2. Ibid., 6.
  3. Francis Fauquier to the Board of Trade, May 9, 1764, Virginia Papers (Bancroft Transcripts), I, 249-251, gives his official explanation of his actions, which was somewhat against the technicalities of his instructions.
  4. Minutes of the Committee of Correspondence, June 15, 1764, Virginia Historical Magazine, XII, 6-7; Committee of Correspondence to Edward Montague, July 28, 1764, ibid., 11-13. Montague was successful in his effort to secure the copies: entry of February 19, 1765, Board of Trade Journals (Transcripts), LXXIII, 66, Pennsylvania Historical Society Library.
  5. Heffelfinger, Kecoughtan Old and New, 23-25.

his tobacco. After various postponements<sup>1</sup> the case came to trial in 1763, before those of Maury and Camm had been decided. As presiding justice of the Elizabeth City court<sup>2</sup> George Wythe heard the arguments in this suit. A jury brought in a special verdict in favor of Warrington if the law of 1758 were invalid, in favor of the defendant if the court upheld

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1. See, e.g., entry of June 1, 1762, Court Record 1760 [Order Book, 1760-1769], 82, Elizabeth City County Records.
  2. A cursory examination shows that Wythe attended 23 out of 68 meetings of the court between July 7, 1761, and July 2, 1766: ibid., passim; the writer did not find his name in the records of the approximately 70 meetings after the latter date reported in this volume. The following table shows the dates upon which he was present, with page citations to ibid. for his attendance and for his signatures as presiding justice:

<u>Date</u>	<u>Wythe present</u>	<u>Wythe signed proceedings</u>
July 7, 1761	28	33
September 1, 1761	35	39
December 1, 1761	49	54
June 1, 1762	81	
July 6, 1762	90	
January 4, 1763	118	120
January 5, 1763	121	123
March 1, 1763	128	
March 2, 1763	132	138
July 5, 1763	152	160
July 6, 1763	160	163
August 2, 1763	164	[171]
September — [torn], 1763	[171]	176
January 3, 1764	183	
February 7, 1764	198	201
July 3, 1764	228	232
July 4, 1764	232	235
September 4, 1765	243	247
March 5, 1765	283	
July 2, 1765	322	
July 20, 1765	328	328
July 1, 1766	363	368
July 2, 1766	368	371



the Two Penny Act.<sup>1</sup> Two months later the justices listened to pleas of each party's counsel on this matter of law; they determined that the enactment of 1758 was binding upon the vestrymen.<sup>2</sup> Warrington was thereby defeated, but he pressed an appeal to the General Court,<sup>3</sup> which refused in October, 1767, to reverse the verdict.

Thus Wythe, as a member of the Committee of Correspondence and as a judge of his native county's court (if not, perhaps, in other capacities too<sup>4</sup>), had defended against the attacks of two clergymen the right of Virginia's General Assembly to enact, independently of tardy royal approval, temporary and emergency local legislation. Doubtless the constitutional issue in the controversy interested him much more than its religious phases, though he was an officer of the Church, for as early as November 20, 1760, he had become a vestryman and churchwarden of the Bruton Parish church in Williamsburg.<sup>5</sup>

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1. Entry of January 5, 1763, ibid., 121-123.

2. Entry of March 2, 1763, ibid., 132-138.

3. Ibid. These two documents are conveniently reprinted in William and Mary College Quarterly (1st series), XX, 172-173.

4. It is quite possible, e.g., that he was associated with Nicholas in the legal defense of the Two Penny Act before the General Court in Camm's prosecution and that he was an attorney before the same bench for Elizabeth City Parish in the hearing on Warrington's appeal.

5. Surviving records give only incomplete data on his tenure of this position; in addition to the above date it is known only that he was also a vestryman on September 14, 1769, with such men as John Blair, Benjamin Waller, Robert Carter Nicholas, and Thomas Everard: Goodwin, op. cit., 39-40. Cf. Meade, op. cit., I, 179, 191.

But his prominent colleagues in opposing the parsons' claims were, almost without exception, also vestrymen. Indeed, few Virginians of any rank were ever outright proponents of a salary increase for their Anglican clergymen!

### Rational Opposition to the Stamp Act

A controversy of briefer duration than that over the Two Penny Act but of greater intensity and of a more direct relation to the unsolved problems in British colonial organization was the furor raised by the Stamp Act. As might be expected, George Wythe was in the midst of this battle, too, from its very beginning.

In accordance with his instructions to report all proceedings of the English government which concerned the colony, Edward Montague, the agent, informed the Committee of Correspondence that early in 1764 a renewal of duties on certain articles of trade, including sugar and wine, would be levied and that the ministry proposed for subsequent enactment a requirement that stamps be placed on legal documents and on other types of papers.<sup>1</sup>

The basic difficulty in the imperial crisis which resulted from the stamp proposal was the want, in England's unwritten constitution, of any clear definition of the rightful powers of Parliament over the British colonies. Guarantees

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1. Montague's letter was dated March 10; minutes of the Committee of Correspondence, July 15, 1764, Virginia Historical Magazine, XII, 5. The Sugar Act received the royal signature on April 5, 1764.

in Magna Charta and its later amplifications, such as the Bill of Rights, and in the principles of the common law protected from the King's prerogative the liberties of each individual subject. These hard-won rights were often conceded by royal charters to be an inheritance of the colonists, but even these personal privileges were not universally admitted, for in the exercise of its increasing powers Parliament sometimes exceeded the very limitations which it had placed upon the Crown. In the absence of specifically prescribed boundaries of authority, a generally recognized division of powers had been worked out by experience between Parliament and its colonial counterparts. Assemblies in the New World were given in practise the function of taxing their peoples, so long as the welfare of the whole British dominions was not thereby placed in jeopardy; Parliament assumed authority over all matters of taxation and customs involving intra-imperial and international trade. Thus, whenever taxes laid in London were construed by colonists to be imposed for revenue on purely local affairs, protests were forthcoming. New postal regulations early in the eighteenth century, for example, met the vigilant Virginians' rebuff that "Parl't could not Levy any Tax, (for so they call ye Rates of Postage,) here without the Consent of the General Assembly."<sup>1</sup> Under this principle, well established by many precedents, Parliament would be within its bounds if it should exact tariffs on sugar and other

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1. Alexander Spotswood to the Board of Trade, June 24, 1718, Brock, ed., Letters of Spotswood, II, 275-286.

commodities; but, should the proposed tax via stamps be enacted, it would be exceeding its historical authority. The truth of the matter seems to be that British officials knew this as well as any one and that they announced their intention long before the passage of the Stamp Act in order that colonial reactions might be weighed during the period for which execution of this plan was deferred.

The Committee of Correspondence met on July 15, 1764, to consider the news borne by its agent's letters and described Virginia in its minutes as "much alarmed at the Attempt in parliament to lay a Duty ... on Madeira Wine & [at] the proposal for a Stamp Duty." It resolved to order Montague "to oppose this with all his Influence, & as far as he may venture [to] insist on the Injustice of laying any Duties on us & particularly [of] taxing the internal Trade of the Colony without their consent."<sup>1</sup> Wythe was appointed to draft a letter to Montague, "with the assistance of Robert Carter Nicholas, pursuant to this and other resolutions."<sup>2</sup> The resultant letter was reported to the Committee and adopted in a meeting held thirteen days later.<sup>3</sup> Thus it was given to George Wythe to be the spokesman in the outstanding and most

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1. Minutes of the Committee of Correspondence, July 15, 1764, Virginia Historical Magazine, XII, 6.
  2. Ibid., 7.
  3. Minutes of the Committee of Correspondence, July 28, 1764, ibid.

earnest early protest against the Stamp Act.<sup>1</sup>

Every prominent argument used later by all colonies against the proposed form of taxation, except the point that it would hurt British trade by draining the colonies of their little specie, was summarized adequately in the instructions to Montague written by Wythe and Nicholas. They urged first that the intention was ill-timed, since Virginia was already staggering under a war debt relatively comparable to Great Britain's:

... The immediate Effects of an additional, heavy burthen imposed upon a People already laden with Debts, contracted chiefly in Defence of the Common Cause & necessarily to continue by express Stipulation for a number of years to come, will be severely felt by us and our children....

By reason of the already onerous current taxation, locally levied, a stamp duty would therefore be now inexpedient. But it was seemingly more important in the eyes of Wythe and his colleagues that such a tax would also be unconstitutional and would establish by precedent a parliamentary right to invade the General Assembly's jealously protected power over local taxation and legislation. In phraseology as strong as utter loyalty to British institutions could make it and as apologetic as the role of subordinates admonishing superiors dictated, the Committee assumed with admirable foresight the role

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1. Samuel Adams' resolutions of May 24, 1764, in a Boston town meeting and James Otis' memorial and instructions adopted by the lower house of Massachusetts' legislature, June 13, 1764, were directed principally against the Sugar Act, though probably not exclusively so, as Lyon G. Tyler's articles claim: cf. e.g., that in Tyler's Quarterly Magazine, III, 246-247.

of defender of the English constitution against administrators who would with too little thought pervert it:

... but what makes the approaching Storm appear still more gloomy & dismal is, that, if it should be suffer'd to break upon our Heads, not only we & our children, but our latest Posterity may & will probably be involved in its fatal Consequences. It may, perhaps, be thought presumptuous in us to attempt or even to desire any Thing which may look like a restraint upon the controlling Power of Parliament; We only wish that our just liberties & Privileges as free born British Subjects were once properly defin'd, & we think that we may venture to say that the People of Virginia, however they may have been misrepresented, would never entertain the most distant Inclination to transgress their just Limits. That no Subjects of the King of Great Britain can be justly made subservient to Laws without either their personal Consent, or their Consent by their representatives we take to be the most vital principle of the British Constitution; it cannot be denyed [sic] that the Parliament has from Time to Time, where the Trade of the Colonies with other Parts was likely to interfere with that of the Mother Country, made such Laws as were thought sufficient to restrain such Trade to what was judg'd its proper Channel, neither can it be denied that, the Parliament, out of the same Plentitude [sic] of its Power, has gone a little Step farther & imposed some Duties upon our Exports; but to fix a Tax upon such Part of our Trade & concerns as are merely internal, appears to us to be taking a long & hasty Stride & we believe may truly be said to be of the first Importance. Nothing is farther from our Thoughts than to shew [sic] the least Disposition to any Sort of rudeness, but we hope it cannot be taken amiss that we, apprehending ourselves so nearly concern'd, should, at least whilst the Matter is in Suspence, humbly represent against it, & take every Measure which the Principles & Laws of our Constitution appear clearly to justify, to avert a Storm so very replete with the most dangerous Consequences.

Reverting again to Virginia's recent participation in the French and Indian War, which made additional demands inexpedient, the letter argued that it made them also unjust:

We cannot but consider the Attempts which have been made [to establish future stamp duties], the more extraordinary when we reflect upon the Part we have taken in the late American War, & that we have always

with the greatest Chearfulness [sic] submitted to & comply'd with every Requisition which has been made of us with the least Colour of Reason or Pretence of Necessity.

The Committee's directions to Montague on this head concluded with an urgent command that he should deem opposition to the intended act as his primary duty and should secure the cooperation of agents in London from other colonies:

We ... therefore ... most earnestly recommend to you, as the greatest Object of our present Concern, the exerting [of] your whole weight & Influence as far as Decency will allow in opposing this & every other Measure of the Sort; and since we find, upon other Occasions, that you have met with a ready Disposition in the Agents of the other Colonies to cooperate with you, whenever the general Interest of the Continent of America seems to have been concern'd, we are of Opinion that their Aid & Assistance, in all Probability can never, upon any Occasion whatever, be more seasonably ask'd than in the present Conjuncture, & we don't doubt but [that] you will endeavor to avail yourself of it.<sup>1</sup>

After this letter had been signed, the Committee heard the reading of more recent news in the same dire vein from Montague, written on the eleventh of April, which had been received after its meeting of the middle of July. Its members therefore agreed to write immediately at their table a postscript to the letter drafted by Wythe and Nicholas, in order that Montague might be acquainted fully with their reaffirmed concern "that the parliament seem so determined to carry their Intentions of taxing the Colonies at pleasure into Execution." This addendum should also suggest to him that, "to prevent a precedent of being taxed in this

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1. Committee of Correspondence to Edward Montague, July 28, 1764, ibid., 9-11.

unconstitutional manner", a request from Westminister, like the military and financial requisitions of the past war, for adequate appropriations by the General Assembly would be welcomed as a preferable alternative.<sup>1</sup> The language of the extemporaneous postscript was less cautious and suppliant than that of Wythe's well-considered letter:

... Every Mention of the parliam'ts [sic] Intention to lay an Inland Duty upon us gives us fresh Apprehension of the fatal Consequences that may arise to Posterity from such a precedent; but we doubt not that the Wisdom of a British parliam't will lead them to distinguish between a Power and Right to do any act. No man can say but that they have a power to declare that his Majesty may raise Money upon the people of England by Proclamation, but no man surely [would] dare be such an Enemy to his Country as to say that they have a Right to do this. We conceive that no Man or Body of Men, however invested w<sup>th</sup> power, have a Right to do anything that is contrary to Reason & Justice, or that can tend to the Destruction of the Constitution. These things we write to you with great Freedom and under the greatest Concern, but your Discretion will teach you to make a prudent use of them.

If a sum of money must be raised in the Colonies, why not in a constitutional way? & if a reasonable apportionm<sup>t</sup> be laid before the Legisl<sup>e</sup> of this Country, their past Compliance with his Majesty's several Requisitions during the late expensive War, leaves no room to doubt they will do every thing that can be reasonably expected of them.<sup>2</sup>

This appeal for an adherence to constitutional methods, it must be remarked in passing, was probably, despite its obvious limitations, the most constructive reaction received in England at any time during the Stamp Act crisis.

The postscript to the Committee's letter expressed a hope

1. Minutes of the Committee of Correspondence, July 28, 1764, ibid., 7.
2. Committee of Correspondence to Edward Montague, July 28, 1764, ibid., 13-14.



that the pending Stamp Act might not be enacted before Virginia's General Assembly could put on record its sentiments regarding the proposal.<sup>1</sup> Convening on October 30, 1764, the House of Burgesses turned almost immediately from the usual work of organizing itself to consideration of the state of the colony and ordered the letters of the Committee of Correspondence to be laid before it. After several days of debate on the subject of the projected tax three firm resolutions were reported in mid-November for the preparation of an address to the King and memorials to the House of Lords and House of Commons, as an evidence of the Burgesses' disapproval. And on the same day the resolutions were referred to a committee consisting of Peyton Randolph, chairman, Richard Henry Lee, Landon Carter, Wythe, Edmund Pendleton, Benjamin Harrison, Archibald Cary, and John Fleming.<sup>2</sup> Randolph, Carter, and Wythe were members of the Committee of Correspondence, which had already reviewed the problem, and another of that group was appointed to join in the writing of the three papers when Richard Bland was added several days later to Randolph's committee.<sup>3</sup> After about two weeks of effort spent in drafting the three documents the committee reported to the House,<sup>4</sup> which was unable from the pressure of other business to

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1. Ibid., 14.

2. Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 256, 257.

3. Ibid., 264.

4. Ibid., 279.

resolve itself again into a Committee of the Whole to consider them until two more weeks had passed.<sup>1</sup> The address to the King was adopted without change, but the papers to the two branches of Parliament had to be amended before acceptance.<sup>2</sup> With all of Randolph's committee representing the Burgesses except Carter, Harrison, and Bland,<sup>3</sup> a series of conferences with certain members of the Council ensued before the upper branch of Virginia's legislature concurred, December 18, 1764, in the documents; the remonstrance to the Commons was thereby further amended.<sup>4</sup> When the papers had thus become the official and unanimous statements of the General Assembly, the Burgesses commanded that a copy of each should be inserted in their minutes and that their Committee of Correspondence should send five copies of each to Montague for presentation to the proper authorities in England.<sup>5</sup> The Committee was conscientiously prompt in transmitting the address and memorials within two days, expressing to the agent "apprehensions that you will meet with Difficulty in getting the memorial to the Commons laid before them, as we have heard of their refusing to receive Petitions from the Colonies in former similar Instances." In such an eventuality Montague was directed

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1. Ibid., 293.

2. Ibid., 293, 294.

3. Ibid., 294.

4. Ibid., 294, 299-302.

5. Ibid., 302.

to use the propagandist method adopted by Peyton Randolph when he was refused a hearing on the pistole fee:

... we think you should have them printed and dispersed over the Nation, or the substance of them at least published in such manner as you may think least liable to objection, that the People of England may be acquainted with the Privileges & Liberties we claim as British Subjects; as their Brethren and the dreadful apprehensions we are under of being deprived of them in the unconstitutional method proposed.<sup>1</sup>

It is of special interest that the memorial to the House of Commons, in the form in which it was reported from the committee to the House, was submitted to amendment before its adoption by the Burgesses and to still other amendments before it was approved by the Council. For Thomas Jefferson reports that George Wythe penned the remonstrance in its original form and that, "following his own principles, he so far overwent, the timid hesitations of his colleagues that his draught was subjected by them to material modifications."<sup>2</sup> And upon another occasion Jefferson said that Wythe wrote it "with so much freedom, that, as he has told me himself, his colleagues ... shrank from it as bearing the aspect of treason and smoothed its features to its present form."<sup>3</sup> Despite sundry expurgations of phrases and thoughts too spirited to

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1. Committee of Correspondence to Edward Montague, December 20, 1764, Virginia Historical Magazine, IX, 354-355.
  2. Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1820, Jefferson Papers, Library of Congress. The original authorship of the address to the King and of the memorial to the House of Lords has been variously attributed to Peyton Randolph, Richard Bland, Richard Henry Lee, and Landon Carter.
  3. Thomas Jefferson to William Wirt, August 14, 1814, Bergh, ed., Writings of Jefferson, XIV, 168.

secure general acquiescence, however, this exposition by Wythe for the House of Commons of the dangers inherent in its plan of imposing internal taxes on the colonies was yet bold enough to leave no doubt as to Virginia's unalterable opposition to a Stamp Act. Longer than the address to the King or the memorial to the Lords, it was stronger in argument and terminology than either of them, as it should naturally have been, since it was meant for the unreceptive ear of the body in which the threatened tax would be initiated.

Contemporary references to it spoke of it as a "memorial", but it gave itself the stronger name of a "Remonstrance" and stated in its introductory paragraph that "the Council and Burgesses of Virginia, met in General Assembly, judge it their indispensable Duty, in a respectful Manner, but with decent Firmness, to remonstrate against" the pending tax measure, lest "a Cession of those Rights, which in their Opinion must be infringed by that Procedure, may ... be inferred from their Silence, at so important a Crisis." Without raising the somewhat sophistical distinction between internal and external taxation the remonstrance based its claim that the Stamp Act would be unconstitutional on more general principles, bolstered by illustrations from Virginia history of their application:

They [your remonstrants] conceive it is essential to British Liberty that Laws imposing Taxes on the People ought not to be made without the Consent of Representatives Chosen by themselves; who, at the same Time that they are acquainted with the Circumstances of their Constituents, sustain a Proportion of the Burthen laid on them. This privilege, inherent in the Persons who discovered and settled these Regions, could not be renounced or forfeited by their Removal hither, not as

Vagabonds or Fugitives, but licensed and encouraged by their Prince and animated with a laudable Desire of enlarging the British Dominion, and extending its Commerce: On the contrary, it was secured to them and their Descendants, with all other Rights and Immunities of British Subjects, by a Royal Charter, which hath been invariably recognized and confirmed by his Majesty and his Predecessors in their Commissions to the several Governours, granting a Power, and prescribing a Form of Legislation; according to which, Laws for the Administration of Justice, and for the Welfare and good Government of the Colony, have been hitherto enacted by the Governour, Council, and General Assembly, and to them Requisitions and Applications for Supplies have been directed by the Crown. As an Instance of the Opinion which former Sovereigns entertained of these Rights and Privileges, we beg Leave to refer to three Acts of the General Assembly passed in the 32<sup>d</sup> Year of the Reign of King Charles II (one of which is entitled An Act for raising a Publick Revenue for the better Support of the Government of his Majesty's Colony of Virginia, imposing several Duties for that Purpose) which they thought absolutely necessary, were prepared in England, and sent over by their then Governour, the Lord Culpeper, to be passed by the General Assembly, with a full power to give the Royal Assent thereto; and which were accordingly passed, after several Amendments were made to them here: Thus tender was his Majesty of the Rights of his American Subjects; and the Remonstrants do not discern by what Distinction they can be deprived of that sacred Birth-right and most valuable Inheritance by their Fellow Subjects, nor with what Propriety they can be taxed or affected in their Estates by the Parliament, wherein they are not, and indeed cannot, constitutionally be represented.

But, in addition to the warning of unconstitutionality, the remonstrance plead against the proposed stamps on the ground that Virginia was already too heavily laden with financial responsibilities — another point which Wythe had also reviewed in a different manner in the letter to Montague he had prepared during the preceding summer:

And if it were proper for the Parliament to impose Taxes on the Colonies at all, which the Remonstrants take leave to think would be inconsistent with the fundamental Principles of the Constitution, the Exercise of that Power at this Time would be ruinous to Virginia,

who exerted herself in the late War it is feared beyond her Strength, insomuch that to redeem the Money granted for that Exigence her People are taxed for several Years to come: This with the large Expenses incurred for defending the Frontiers against the restless Indians, who have infested her as much since the Peace as before, is so grievous that an Increase of the Burthen will be intolerable; especially as the People are very greatly distressed already from the Scarcity of circulating Cash amongst them, and from the little Value of their Staple at the British Markets.

It was not enough, however, to show that an imposition of stamp duties was inexpedient from Virginia's point of view.

A Stamp Act would be inexpedient also from the standpoint of Britain's own economic welfare, for it would prove to be a boomerang to English merchants, a poison in the life-blood of the empire's commerce:

And it is presumed that adding to that Load which the Colony now labours under will not be more oppressive to her People than destructive of the Interests of Great Britain: For the Plantation Trade, confined as it is to the Mother Country, hath been a principal Means of multiplying and enriching her Inhabitants; and if not too much discouraged, may prove an inexhaustable [sic] Source of Treasure to the Nation. For satisfaction in this Point, let the present State of the British Fleets and Trade be compared with what they were before the Settlement of the Colonies; and let it be considered that whilst Property in Land may be acquired on very easy Terms, in the vast uncultivated Territory of North America, the Colonists will be mostly, if not wholly, employed in Agriculture; whereby the Exportation of their Commodities of [to] Great Britain, and the Consumption of their Manufactures supplied from thence, will be daily increasing. But this most desirable Connexion [sic] between Great Britain and her Colonies, supported by such a happy Intercourse of reciprocal Benefits as is continually advancing the Prosperity of the latter, reduced to extreme Poverty, should be compelled to manufacture those Articles they have been hitherto furnished with from the former.

This argument, constituting the article of the protest which was by all odds most likely to make the Commons take notice, had been overlooked or omitted in the observations of the

Committee of Correspondence and was not included in the kindred address to the King or memorial to the Lords. Upon its tenets the fate of the future Stamp Act hinged more directly than upon all other considerations collectively, as will be seen. It is therefore pertinent to comment that, though many other enunciators may have preceded him, George Wythe's pen was the first in the colonies discovered in this investigation to have proclaimed that fundamental doctrine. Finally, in a concluding paragraph, which serves as a logical summation of the three grounds upon which Virginia objected formally to Parliament's unprecedented intention, the remonstrance assured the Commons unequivocally that the General Assembly was determined in its stand:

From these Considerations, it is hoped that the Honourable House of Commons will not prosecute a Measure which those who may suffer under it cannot but look upon as fitter for Exiles driven from their native Country after ignominiously forfeiting her Favours and Protection, than for the Prosperity of Britons who have at all Times been forward to demonstrate all due Reverence to the Mother Kingdom, and are so instrumental in promoting her Glory and Felicity; and that British Patriots will never consent to the Exercise of anticonstitutional Power, which even in this remote Corner may be dangerous in its Example to the interior Parts of the British Empire, and will certainly be detrimental to its Commerce.<sup>1</sup>

Lieutenant-Governor Fauquier was told by some of the gentlemen of the committee appointed to draw up this rebuke and its contemporary papers that "their whole Study has been to endeavor to mollify them and [that] they have reason to

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1. Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 303-304.

hope there is nothing now in them which will give the least offence."<sup>1</sup> Though Wythe's words were necessarily minced in his original draft of the remonstrance, lest their desired effect be lost by their very strength, and though some of them were purged by that committee, the House of Burgesses, and the Council, they were nevertheless convincing and resolute. They sought no compromise, but an absolute surrender; the pruning knife was brought into play, calculatedly, in order that the force of logical reasoning should not be destroyed by an attitude of gross defiance.

The address to the King, the memorial to the Lords, and the remonstrance to the Commons having been duly despatched, there was nothing to be done but to await developments calmly. Before any formal replies were given to the Assembly's papers, however, news reached Virginia that the Stamp Act had been passed early in 1765, to be effective in the following November. A less dispassionate note was injected into the issue by Patrick Henry, in a reckless manner which may have lacked the merit of thorough premeditation. Or if his actions had been deliberately conceived, they were at best those of an inexperienced upstart.

Henry had been a member of the House of Burgesses less than a month when he offered in that body his widely eulogized resolutions against the Stamp Act. Its short session of May, 1765, was drawing to a natural close, and only 39 of its

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1. Francis Fauquier to the Board of Trade, December 24, 1764, Virginia Papers (Bancroft Transcripts), I, 273, New York Public Library.



current total of 116 members remained in Williamsburg on the twenty-ninth to conclude its routine business, when he upset the equilibrium of its fruitful attention to ordinary matters by submitting five resolutions against the newly levied tax.<sup>1</sup> Such an event at the fag-end of a session was nothing short of startling to its leaders in a more rational and dignified opposition. Nor was Henry's speech in support of his resolutions quite in line with acknowledged legislative proprieties, for he overstepped conventions by declaring that "he had read that in former times tarquin and Julius [sic] [Caesar] had their Brutus, Charles had his Cromwell, and he Did not Doubt that some good American would stand up in favor of his Country ... in a more moderate manner."<sup>2</sup> So irreverent an allusion to George III provoked a charge of treason from the presiding officer, whereupon Henry apologized quite abjectly and acceptably to the House.<sup>3</sup>

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1. Id. to id., June 5, 1765, ibid., I, 284-285. On the error of reports that six resolutions were proposed see ibid., 285; Wirt, Patrick Henry, 81 n.; Thomas Jefferson to William Wirt, August 14, 1814, Bergh, ed., Writings of Jefferson, XIV, 165-168. The original form of the resolutions and Henry's own account of their initiation and effect are available in Wirt, Patrick Henry, 74-76.
  2. Quoted from the diary of a Frenchman who was an eyewitness of the speech by Claude H. Van Tyne, The Causes of the War of Independence, 155.
  3. Henry replied to the Speaker that "... if he had affronted the Speaker, or the house, he was ready to ask pardon, and he would show his loyalty to his majesty, King G the third, at the Expense of the last Drop of his blood....": ibid., 155-156. In sharp contrast to this picture is the less authentic and more dramatic account, recorded from memory years later, according to which Henry concluded, "and George the Third ... may profit by their example. If this

The five resolutions were reported with amendments, after acrid debate in Committee of the Whole, on May 30 and were agreed upon by 22 votes to 17 or by narrower margins, the last by a majority of only one. A small alteration in the membership of the House on the next day gave the minority hope that they could rescind all of the resolutions, but the strength which they mustered was equal only to the task of having the fifth, deemed the most inflammatory, blotted out of the Journal.<sup>1</sup> Peyton Randolph had gotten the single vote or its equivalent, for which he is reported to have exclaimed with vehemence, as he left the Burgesses' chamber on the preceding day, that he "would have given 500 guineas...."<sup>2</sup>

George Wythe was one of the staunchest and most steadfast among the opponents of Henry's supporters, who were justly characterized by Lieutenant-Governor Fauquier as a phalanx of "the young hot and giddy members."<sup>3</sup> In a report of the whole

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be treason, make the most of it": Wirt, Patrick Henry, 83. A variant of the latter, less defiant but equally dexterous, reads, "and George the third, may he never have either". Randolph, Manuscript History of Virginia, 107, Virginia Historical Library.

1. Francis Fauquier to the Board of Trade, June 5, 1765, Virginia Papers (Bancroft Transcripts), I, 285-286, New York Public Library. The four remaining resolutions may be seen in their amended form in Kennedy, ed., Journals of the House of Burgesses, 1761-1765, 360.
2. Enclosure in Thomas Jefferson to William Wirt, April 12, 1812, Ford, ed., Writings of Jefferson, IX, 339 n. But a later recollection places the figure at "one hundred guineas": id. to id., August 14, 1814, ibid., 468.
3. Francis Fauquier to the Board of Trade, June 5, 1765, Virginia Papers (Bancroft Transcripts), I, 285, New York Public Library.

affair to British authorities Fauquier spoke with natural commendation of the efforts of older, cooler, and more experienced heads to forestall adoption of the resolutions and singled out Speaker Robinson, Attorney-General Peyton Randolph, and Wythe as the three "most strenuous opposers of this rash heat...."<sup>1</sup>

From the fact that a group of six similar but largely spurious so-called "Virginia Resolves" became, through the medium of publication in newspapers from Savannah to Boston, the spark which ignited a widespread and organized popular opposition to the Stamp Act it might be supposed, at first thought, that the names of men who argued and voted against Henry should be forever synonymous with obloquy and infamy. Yet no odium can properly be attached to them in this instance, nor can their opposition be attributed correctly to want of patriotism, logic, or foresight. True it is that Virginia's resolutions served, in the oft-quoted descriptive simile of a disgusted Massachusetts governor, as an "alarm

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1. Ibid. This letter was read on August 20, 1765, by the Lords of Trade, who decided thereupon to embody its facts in a representation addressed to the King for his information: Board of Trade Journals (Transcripts), LXXIII, 208-209, Pennsylvania Historical Society Library. It was later recalled that as a rule the Tidewater members opposed the resolutions, while Henry's ranks were swelled chiefly by representatives of Piedmont and Valley counties — a geographical alignment coinciding roughly with Fauquier's distinction as to their ages: Thomas Jefferson to William Wirt, August 5, 1815, Bergh, ed., Writings of Jefferson, XIV, 336. Robinson was not barred entirely from the debate by his duties as presiding officer, for in Committee of the Whole the Attorney-General or some other member always took the chair.

bell to the disaffected" element in each of the colonies.<sup>1</sup> But the more or less riotous resistance to the Stamp Act which followed Henry's resolutions tended to defeat its own cause. English authorities could not but deem it seditious, and several of them saw in it an additional proof of their claim that a more rigid, overbearing control should be exercised over their distant colonies. Such considerations played very little part, if any, in motivating the change of heart by which the Stamp Act was repealed in 1766. Instead, that revocation was prompted principally by the unpopularity of the Act among British and Scottish merchants, who found that it was killing geese which had laid golden eggs<sup>2</sup> — as George Wythe's remonstrance of 1764, in his plea that the proposed policy would cripple intra-imperial trade, had predicted that it would. Had all the fanfare which attended the colonists' refusal in the winter of 1765-1766 to purchase the hated stamps not preceded a rescinding of the Act, ultra-patriotic historians and hero-worshipping biographers (among whom those of Henry offend most in this particular) would not have beguiled themselves into their false interpretation of the colonial fever as the whip before which an astonished, mistaken Parliament cowed.

But Patrick Henry's resolutions were much less likely to be effectual in erasing the impending tax than even the

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1. Quoted in Van Tyne, op. cit., 157.

2. Ibid., chapter vii, esp. 186-187, 194-195; Charles M. Andrews, The Colonial Background of the American Revolution, 137-142.

reckless demonstrations which they prompted. They were ill-timed and too precipitate: were not formal answers to the address, memorial, and remonstrance of the preceding session yet to be received from Westminster? Sufficient time had elapsed to make the arrival of official replies a matter of daily expectation.<sup>1</sup> Five months intervened before the Act could be enforced; there was still a dim hope of conciliation. Moreover, it was a tactical blunder to embody their sentiments in the form of resolutions. Defiance of the parliamentary will had already been expressed with greater dignity and propriety in the remonstrance to the House of Commons, which gave assurance that Virginia "will never consent to the Exercise of anticonstitutional Power." Resolutions to that effect could only anger the English government and excite the colonial rabble. Finally, in both their original and final phraseology, they fell somewhat short in respect to argumentative power of the three papers approved by the General Assembly in 1764, especially of the remonstrance drafted by Wythe. A crushing indictment, that! Though rather contrary to general opinion, it is nevertheless true. One has only to compare the documents to prove the superficiality of earlier analyses. The first of the resolutions proclaimed that the colonists had forfeited by emigration none of their rights as Britons; the second, that royal charters admitted this fact; the third, that taxation by the people or by their representatives was

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1. Thomas Jefferson to William Wirt, August 5, 1815, Bergh, ed., Writings of Jefferson, XIV, 336.

a cardinal principle of the English constitution; the fourth, that the General Assembly's control over local taxes and affairs had been recognized and enjoyed uninterruptedly; the fifth, which was amended, passed, and expunged, that attempts to undermine that control tended to destroy American and British freedom. Each of these observations had been enunciated six months earlier with equal firmness and superior taste in the remonstrance, written by Wythe, whose constitutional theory was bolstered by practical reasons foreign to Henry's resolutions — denouncing a stamp levy, as has been stated, also on the ground that it was destructive of prosperity in both Virginia and England.

The "alarm bell" resolutions of 1765, then, were merely a partial reaffirmation of principles which had already received unanimous approval in both branches of Virginia's legislature. John Robinson, Peyton Randolph, Wythe, Richard Bland, Robert Carter Nicholas, Edmund Pendleton, and others who voted against Henry did so from no disagreement with the content of his propositions. They believed in the rational wisdom of allowing the equally strong but more conciliatory protests which they had fathered in 1764 to stand as the sole evidence of Virginia's position in the matter.<sup>1</sup> Besides, if official recognition were not soon taken of those papers,

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1. Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1820, Jefferson Papers, Library of Congress; Thomas Jefferson to William Wirt, August 5, 1815, Bergh, ed., Writings of Jefferson, XIV, 336. Other similar statements from Jefferson's pen may be found.

would Virginia not have gained the advantage of putting her British rulers in the wrong? In that event her ability to confront the ministry with the serious charge that her professed grievances had been utterly ignored might be a potent factor in later demands for parliamentary concessions or submission.<sup>1</sup> The question on which Wythe did not see eye to eye with Henry, was, therefore, essentially one of method rather than of principle. Subsequent events indicate on the whole the soundness of the former's judgment in preferring the less provocative means of voicing disapproval of the new parliamentary policy; repeal of the Stamp Act came, as has been shown, along lines which he alone had suggested in his warning of its effects upon British trade. To this extent experience and reason triumphed over youth and emotion. But none would say that Henry's resolutions, whether they be a product of thoughtless boldness or of deliberate strategy, did not perform a distinct service in the crises preceding American Independence. Though they were instrumental in generating a popular clamor which embarrassed the cause of repeal more than it aided in the attainment of that goal, yet the fact that fresh daring and immoderate forms were so easily given to the old spirit of resistance attests the need for someone to represent the robust feelings of the more unthinking, less tactful elements in colonial politics and society.<sup>2</sup>

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1. No contemporary authority can be cited for this thought, which seems to have been suggested exclusively in his sketch of Wythe by Grigsby, Virginia Convention of 1776, 12.

2. Cf. Van Tyne, op. cit., 157-158.

The Committee of Correspondence had met in December, 1764, on the day after that on which the address, memorial, and remonstrance received final approval in the General Assembly, and these papers were sent posthaste to Montague as enclosures in a letter signed the very next day. By way of significant contrast, it is interesting to note that the Committee, each of whose members from the House of Burgesses had probably been aligned in opposition to Henry, felt no obligation to equal enthusiasm and hurry in transmitting to the agent news of the resolutions passed in the following May. It did not find occasion to perform that function until three and a half months had elapsed, and the tenor of its report to Montague may be guessed from the fact that Peyton Randolph, Wythe, and Robert Carter Nicholas were delegated to draw up the usual explanatory letter.<sup>1</sup>

Sequels in Virginia to the adoption of Henry's resolutions were exciting, but little information as to the role which Wythe played in them can be gleaned. Upon hearing of the resolutions Fauquier dissolved the House by an immediate proclamation, dispensing with the customary "civility of a parting speech."<sup>2</sup> A mere prorogation would have been an inadequate rebuff to its obstreperous members; Fauquier hoped that by dissolution he was giving to their constituents a chance to

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1. Minutes of the Committee of Correspondence, September 14, 1765, Virginia Historical Magazine, IX, 355-360. Five days later this letter was signed at the Committee's table, but a copy of it is not extant.
  2. Randolph, Manuscript History of Virginia, 108, Virginia Historical Society Library.



rebuke Henry's supporters at the polls in the resultant general election of that summer. It was a vain wish. Only four changes in the Burgesses' personnel were to be noted when the new House convened, and at least one of these is directly attributable to the death in the interim of a former burgess.<sup>1</sup> Whether unrecorded votes on the resolutions became an issue in the campaigns of old members for reelection is unknown in most instances. But it is certain that the stand against Henry's misguided defiance which George Wythe had taken did not bring down upon his head marked disfavor in the eyes of his constituents. Elizabeth City County freeholders, each of whom voted for two representatives, polled an even hundred votes for him; his chief rival candidates, Col. Wilson Hiles Cary and Capt. James Wallace, for each of whom Wythe himself cast a courteous vote, received totals of 81 and 69, respectively.<sup>2</sup> Perhaps disappointed in the very slight turnover secured by the election, and certainly alarmed as the year 1765 drew almost violently to a close, Fauquier determined not to call the Burgesses together before more than a year had passed, unless some urgent necessity demanded an earlier session. To the home government he explained late in 1765,

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1. John P. Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 3-4. Speaker John Robinson had died, as will be noted in the next chapter. One of the new faces was that of George Washington.

2. Poll of the Election of August 23, 1765, Deeds and Wills, 1763-1771, 77-78, Elizabeth City County Records. Col. William Wager was given six votes.

"my present plan is to give them to next November to cool ...",<sup>1</sup> and he defended that intention, when recommendation of a briefer adjournment came from abroad, with more diatribes against temperaments "so heated as to shut up all avenues to reason",<sup>2</sup> before which, though he was relatively sympathetic and quite anxious to put an end to agitations, he was completely baffled. Wythe thought it well early in 1766 to inform one of his fellow burgesses who lived at a distance of the probable postponement of the next session. "It is generally believed", he wrote to Richard Henry Lee, that "the general assembly, last prorogued to the last Thursday in May, will not meet til [sic] some time in autumn, unless instructions from G[reat] Britain, or some unforeseen emergency here may call us sooner together." Leaving this letter unsealed until he reached the place at which it was to be mailed, he added a postscript, "In my way down [the] street I called at the printing office for a [copy of the] proclamation by which the assembly was prorogued, to be sent to you, but no

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1. Francis Fauquier to Secretary Conway, November 24, 1765, Virginia Papers (Bancroft Transcripts), I, 381, New York Public Library.
  2. Id. to id., December 11, 1765, ibid., 386. This letter continued, in part: "At the time the Resolutions [of May, 1765] were passed in a very thin House, I hoped a fuller House would have quashed them, but by what has since happened ... I fear I was mistaken in that point; though possibly that might have been the case then before the leaven of the North had sufficiently fermented the minds of the Virginians. At present the Colonies reciprocally inflame each other, and where the fury will stop, I know not": ibid., 386-387.

person was there."<sup>1</sup>

On the thirtieth day of October, 1765, Col. George Mercer, collector of the stamp duties for Virginia, arrived in Williamsburg. It was an unfortunate time, for the usual concourse of people were there in attendance upon the fall session of the General Court. Mercer's appearance, however, showed that they were in no ordinary mood. Stirring scenes and impromptu conferences occurred spontaneously between Mercer, with whom Fauquier and members of the Council took sides, and an unidentified populace. Threats and signs of an imminent riot increased by the hour, and the danger was averted only by a promise which the people forced from Mercer on the afternoon of the next day that he would sell no stamps. The helpless Fauquier realized that his own deserved respect in the popular affections, which was his by reason of both his position and personality, had been really the sole guarantee of Mercer's safety before the latter yielded; and in a mystified and horrified vein he wrote detailed reports to England admitting his utter inability to keep the situation under control.<sup>2</sup> Wythe could scarcely have escaped becoming embroiled in the opposition to or defense of Mercer, however little taste he had for such proceedings. Whatever stand he took, doubtless he gave modest and ineffectual counsel for

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1. George Wythe to Richard Henry Lee, February 14, 1766, Lee Papers, University of Virginia Library.
  2. Francis Fauquier to the Board of Trade, November 3, 1765, Virginia Papers (Bancroft Transcripts), I, 347-371, New York Public Library; *id.* to Secretary Conway, November 5, 1765, *ibid.*, 373-375.

moderation. Mercer's fate and failure to collect a single shilling is of more definite interest because Richard Henry Lee had applied for his position and, but for retraction on wise second thought, would have been in his luckless shoes. Eight months later Lee was forced to publish an apologia in the Virginia Gazette, but nothing which he could do for several years was quite equal to the task of blotting out of public remembrance the imputation of disloyalty which had been circulated because of his application. Wythe's aid in restoring his political reputation may have been enlisted and exerted in a manner unknown, for an endorsement on the back of his public statement, written in a hand other than that of Lee, reads: "Letter to M<sup>r</sup> Wythe res[pectin]<sup>g</sup> charges vs him —"<sup>1</sup> Though some contrived to do business without the stamps, most courts in Virginia were closed by an informal boycott; the colonists preferred to dispense with the administration of justice rather than to contribute through them to the British treasury. Certain other channels of business were likewise affected by similar choices, and a non-importation association was formed spontaneously. As early as ten days after Mercer's arrival Fauquier was informed that the resultant commercial and legal stagnation would soon become alarmingly oppressive to the colonists,<sup>2</sup> and until the end of the

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1. Richard Henry Lee to the Editor of the Virginia Gazette, July 25, 1766, Lee Correspondence, American Philosophical Society Library.
  2. Francis Fauquier to the Board of Trade, November 8, 1765, Virginia Papers (Bancroft Transcripts), I, 377-379, New York Public Library.

year he expressed hopes that it would "open their eyes and bring them to another way of thinking,"<sup>1</sup> that thus the Stamp Act "will in time enforce itself...."<sup>2</sup> But he underestimated the resolution of Virginians or overestimated their inconveniences; with rather remarkable unanimity they upheld their self-imposed restrictions until the Act was repealed. Early in 1766 one of them even had the effrontery to interpret certain of these restraints as a blessing in disguise, while more justly assuring a London friend that their evil effects

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1. Id. to Secretary Conway, December 11, 1765, ibid., 387.
  2. Id. to the Board of Trade, December 17, 1765, ibid., 393. The Board took careful notice of such sentiments in his letters: entries of January 23, January 27, and February 6, 1766, Board of Trade Journals (Transcripts), LXXIV, 21, 25-26, 34-35, respectively, Pennsylvania Historical Society Library.

would rebound to England.<sup>1</sup>

Though news of the revocation of the Stamp Act became a signal for the most jubilant celebrations the colonies had ever staged, they did not win an unqualified victory. At the same time Parliament passed an act asserting its claim to absolute authority over American Britons in all their affairs. The imperial issue of direct taxation was postponed, not solved. Foreboding for the future might well have been intermingled with the almost unmitigated rejoicing of the present.

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1. "In this province our minds begin to grow calm. We see with certainty that the stroke will recoil with double force to yourselves, and ultimately be the most beneficial measure for us that can possibly be invented. I will tell you its present benefits. We have the pleasure to see the extremest frugality assumed by all ranks of people; every article of luxury is banished; and those are esteemed the best patriots, and most in fashion, whose clothes are most thread bare and patched. I sincerely pity you and other creditors, upon whom the storm must fall the heaviest. You compute this colony owes to Great Britain a million [in private debts]; you know we cannot raise a mite towards the discharge of it. Our provincial debt amounts to £250,000. The new duties and stamps will complete our bankruptcy; and if we coin papers, it cannot be a legal tender, and of course useless. But you [creditors] will not be the only sufferers. The public [treasury] will lose more in its revenue on tobacco than it will gain by stamps. We cultivate that commodity to exchange for your manufactures, which, we shall convince you, we have no need of": extract of a letter from Virginia to London, dated January 6, 1766, as printed in the New London Gazette, August 2, 1766, quoted in Virginia Papers (Bancroft Transcripts), I, 276-277, New York Public Library.

## Chapter VI

### WYTHE THE CLERK: HIS TRUE NICHE ATTAINED

#### Fauquier's Thwarted Recommendation

The Stamp Act controversy was followed by the most sweeping realignment of leaders in principal Virginia offices which took place in any brief period of the eighteenth century. George Wythe was a candidate in 1766 for the position of second rank in the colony, but additional significance is attached to the shifting of officers in that year by the fact that the new men continued without exception until the actual outbreak of the Revolution to hold the reins of Virginia's government.

The position of Speaker of the House of Burgesses — to which the duties of the colony's Treasurer had long been attached through a custom by which the two offices were invariably and perfunctorily vested in the same person — was by far the most important one which a Virginian could attain. For more than twenty years John Robinson had been its incumbent. Murmurs of dissatisfaction with his execution of its functions were first heard during the General Assembly's session in May, 1765, when a bill to provide for loans from the public treasury to private persons was defeated by the Council after passage in the House. It was charged by its opponents that the bill disguised an effort by Robinson and

his friends to shift to the public the burden of loans already made illegally from the colonial storehouse.<sup>1</sup> The failure of this bill indicated a partial loss of the faith and prestige which Robinson had enjoyed. In addition, the success of Patrick Henry's resolutions, though they were barely passed over the opposition of men like Robinson, Peyton Randolph, and Wythe, presaged a possible turnover in colonial offices.

Such at least was the fear of Lieutenant-Governor Fauquier, who dreaded the threatened necessity of finding other able leaders, lest they prove less cooperative with him in

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1. This episode is not thoroughly related because no evidence has been found to show Wythe's position in the matter. Subsequent developments did actually prove a considerable delinquency in Robinson's accounts. The writer believes that Mr. David J. Mays of Richmond has some valuable materials on Edmund Pendleton's defense of Robinson. Repercussions of this affair, which, as will be noted later, was not finally settled for some years, were still to be seen in 1776. Relating his experiences in the Continental Congress, John Adams wrote, "Jealousies and divisions appeared among the delegates of no State [colony] more remarkably than among those of Virginia. Mr. Wythe told me that Thomas [Ludwell] Lee, the elder brother of Richard Henry [Lee], was the delight of the eyes of Virginia, and by far the most popular man they had; but Richard Henry was not. I asked the reason; for Mr. Lee appeared [to be] a scholar, a gentleman, a man of uncommon eloquence, and an agreeable man. Mr. Wythe said this was all true, but Mr. Lee had, when he was very young, and when he first came into the House of Burgesses, moved and urged on an inquiry into the state of the treasury, which was found deficient in large sums, which had been lent by the treasurer to many of the most influential families of the country, who found themselves exposed, and had never forgiven Mr. Lee. This, he said, had made him so many enemies, that he never had recovered his reputation, but was still heartily hated by great numbers": Autobiography of John Adams, Charles Francis Adams, ed., The Works of John Adams, III, 31-32.



his conciliatory policy, which was in essence a favorable blending of sympathy for orderly colonial opinion with loyalty to England. Soon after he had dissolved the Assembly in 1765 he informed British administrators of his impression that Robinson might not be reelected by the new Burgesses to their speakership. Anticipating his problems in that eventuality, he affirmed his belief that the House would always appoint its presiding officer as Treasurer and asked whether he should approve that custom, favor a separation of those two powers, or try to retain Robinson in the treasury against all comers.<sup>1</sup> He was advised to use his own discretion if his fear was realized, though the home government recommended mildly the selection of different men for the two offices.<sup>2</sup>

The decreased popularity of Robinson among his colleagues was not to be measured by the test of their votes, for he died in May, 1766, about six months before the House of Burgesses was to convene again. Because no gentleman of known capacity seemed to desire the treasury office, the upright Robert Carter Nicholas offered his services, in a magnificently patriotic and unselfish manner. Avowedly he preferred to abandon his more lucrative legal practise rather than to stand by idly while inferior hands administered the colony's funds. Fauquier, with consent of the Council, appointed him to fill the

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1. Francis Fauquier to the Board of Trade, June 5, 1765, Virginia Papers (Bancroft Transcripts), I, 287-289, New York Public Library.

2. Id. to id., April 7, 1766, ibid., 421, states his acknowledgment of these instructions.

vacancy until the Burgesses should meet again, and his pleasure in securing a man of Nicholas' stamp was not lessened when it was rumored that the latter's friends in the House, hoping to secure his continuance in that office, would attempt in the coming session to break the precedent of selecting one man as Speaker and Treasurer.<sup>1</sup> This they were able to do, and the impeccable Nicholas received and disbursed the colony's funds flawlessly until Virginia was no longer a colony.

Meantime, speculation as to Robinson's successor in the chair of the House was rife. Fauquier formulated his own ideas on this vital problem within a few days of the former Speaker's death, as indeed he should properly have done in the interests of harmony between Virginia under his administration and the Mother Country. He informed his English superiors that he intended to exert his influence toward the elevation of Peyton Randolph to the speakership and that he would appoint Wythe Attorney General if Randolph thereby resigned his former position:

I have heard of two candidates for his [Robinson's] office, viz<sup>t</sup> his Majesty's Attorney General Mr [Peyton] Randolph and Mr [Richard Henry] Lee. The first is of all men in this Colony, in my judgment the best qualified to repair the loss, as he possesses the good qualities of his late most intimate friend and has always been one of the foremost to promote his Majesty's service in all the requisitions of the Crown and has always used his endeavors to induce the Assembly to concur with me in all the measures which were conducive [conducive] to the honor and dignity of the Crown, and [to] the peace and advantage of the Colony. On these accounts my wishes for success attend him.

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1. Id. to id., May 22, 1766, ibid., 429-431.

In case of a vacancy in the place of Attorney General I intend to nominate Mr Geo Wythe to succeed Mr Randolph till his Majesty shall be pleased to appoint another. This gentleman has also exerted himself in support of gov<sup>t</sup> particularly so in his opposition to the late hot and virulent resolutions [of May, 1765,] which brought on the dissolution [of the House]. Such men my Lords, I am humbly of opinion merit the favorable eye of gov<sup>t</sup> and I hope your Lordships will think it for the service of the Crown to let it be cast on them.

I cannot my Lords deny this truth, that I have conceived a love and esteem for these gentlemen, but if I know my own heart, it was at first generated and has been since nourished by my observing their conduct both in public and private life, which has been uniformly void of guile and steady in the support of Gov<sup>t</sup><sup>1</sup>

However secret these intentions may have been from others, Fauquier did not hide them from his friend Wythe, who was made fully aware of the approbation which the Lieutenant-governor felt toward him. Wythe thought the chances of Randolph's election as Speaker so good that he took steps fully four months before the expected session to secure an endorsement abroad of his candidacy for the vacancy which might then occur in the Attorney General's office. To Benjamin Franklin, who had recently given influential testimony before Parliament favoring a repeal of the Stamp Act, Wythe wrote a tactful letter which concluded with an aptly turned classical quotation:

If our attorney ge[n]eral, Mr. Randolph, should be elected Speaker] of the house of burgesses, and thereby [resign the attorney's office, as in] all probability will be the case, the gover[nor intends to appoint me] to succeed him; and that recommendation, [undoubtedly w]ill be more effectual, were some of those great per[sons t]o whom it must be addressed, to know that such a promotion would be in any degree pleasing to

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1. Id. to id., May 11, 1766, ibid., 426-428.

doctor Franklin. If you incline to honour me with your patronage in this competition, you will perhaps be partly instrumental in producing that rare phaenomenon [sic] a contented mind, at least in the article of fortune; and you shall find an exception to that observation of Tacitus: "Beneficia eo usque lacta sunt, dum videntur exsolvi posse: ubi multum antevenere, pro gratia odium redditur" [Favors are pleasant only to the extent to which they can be repaid; but when they have exceeded that, hatred is returned instead of gratitude].<sup>1</sup>

Deprived of a commission in His Majesty's service by the Board of Trade's reversal of its attitude toward Peyton Randolph in 1754 and its request that Dinwiddie restore that wayward but repentant agent to office, Wythe thus definitely hoped that his day was coming twelve years later.

Impetus to his wishes must have been given by the Burgesses' selection of Randolph as their Speaker when they convened in November, 1766.<sup>2</sup> Fauquier thereupon urged the Board

1. George Wythe to Benjamin Franklin, June 23, 1766, Franklin Papers, American Philosophical Society Library. The earlier insertions within brackets represent words lost by a V-shaped tear in the original Ms.
2. Nominated by Archibald Cary, he was victorious over Richard Bland, nominated by Richard Henry Lee: Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 11. These nominations and this choice furnish in themselves a rather conclusive rebuttal of the accuracy of the earlier portion of Jefferson's analysis of leadership in the House after 1765. "By these resolutions [of May, 1765,] Mr. Henry took the lead out of the hands of those who had heretofore guided the proceedings of the House, that is to say, of Pendleton, Wythe, Bland, Randolph, Nicholas. These were honest and able men, [who] had begun the opposition on the same grounds, but with a moderation more adapted to their age and experience. Subsequent events favored the bolder spirits of Henry, the Lees, Pages, Mason, etc., with whom I went in all points. Sensible, however, of the importance of unanimity among our constituents, although we often wished to have gone faster, we slackened our pace, that our less ardent colleagues might keep up with us; and they, on their part, differing nothing from us in principle, quickened their gait somewhat beyond that which their prudence might of itself have advised, and thus consolidated the

of Trade again to support his recommendation of Wythe, should the attorney generalship be vacated,<sup>1</sup> and of the British Secretary of State he requested influence in securing a commission for the man whom he deemed most worthy and most deserving:

If he [Randolph] should vacate his place of Attorney I propose to nominate Mr George Wythe to officiate till His Majesty's pleasure be known. He is a gentleman of a most unexceptionable character for his knowledge of the Law, his candor integrity and inflexibility. May I presume to ask your Lordships [sic] interest to procure His Majesty's confirmation of my nomination. I should not dare to ask this particular favor did I not think it for his Majesty's service to promote men who have constantly and uniformly supported government and all His Majesty's requisitions on the House of Burgesses where he [Wythe] has as much weight as any member.

The advantages arising to a Gov<sup>t</sup> from his appearing to have some interest at home will naturally occur to your Lordships [sic] penetration.<sup>2</sup>

The new Speaker did give up his former office, but it was

phalanx which breasted the power of Britain. By this harmony of the bold with the cautious, we advanced with our constituents in undivided mass, and with fewer examples of separation than, perhaps, existed in any other part of the Union [continental colonies]": Thomas Jefferson to William Wirt, August 14, 1814, Bergh, ed., Writings of Jefferson, XIV, 168-169.

1. Francis Fauquier to the Board of Trade, November 10, 1766, Virginia Papers (Bancroft Transcripts), I, 453-455, New York Public Library. The Board considered this letter without taking definite action: entry of February 24, 1767, Board of Trade Journals (Transcripts), LXXIV, 70-71, Pennsylvania Historical Society Library. An extract to the same effect from Fauquier's letter of December 18, 1766, was ordered on the same day to be sent to Secretary Shelburne: ibid., 73.
2. Francis Fauquier to the Earl of Shelburne, November 10, 1766, Virginia Papers (Bancroft Transcripts), I, 450-451, New York Public Library. In its description of Wythe this letter is practically identical with that of the same day to the Board of Trade, cited in the preceding n.

John Randolph, his brother, who secured the commission in his stead. For once a major recommendation by Fauquier was rejected, though no documents have been located to tell the story of its shipwreck. Perhaps Wythe held the office for a short time under the lieutenant-governor's appointment until a commission, gained by stronger influences in England than he and Fauquier could command, came in John Randolph's name.

Wythe had lost a second time the fruits of royal patronage. The assurance of the Attorney's annual salary of £140, which was raised in 1769 to £340,<sup>1</sup> could not have been unwelcome to him — nor for that matter, to any other lawyers in the General Court, few of whom, if any, were as successful as he. Moreover, he had failed to gain a position which would have given him an official rank just beneath that of only one Virginian. But had the commission been awarded to him, embarrassments which he could not foresee might have faced him in the future. In John Randolph's incumbency the office lost gradually some of its prestige as the highest in the Colony secured by appointment of the Crown and as that which was secondary only to the speakership; the new Attorney General became more and more out of step with the trend of the times. His dependence upon His Majesty's pleasure became an insurmountable barrier between him and the progress of his colleagues' thought. When independence of Great Britain became

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1. Governor Botetourt to the Secretary of State, September 23, 1769, *ibid.*, II, states his and John Randolph's appreciation of the increase.

their goal, he found himself so shackled in his opinions that he had to retreat to England and leave them to work out their destiny without his assistance.

It was therefore a fateful defeat for Wythe. In humbler offices he was forced to be content, but at least his was a free mind — a boon undoubtedly valuable to him. He was to be spared the embarrassment of resigning the position he had coveted, in order to protect his mental independence, or the anguish of sacrificing both it and his reputation for patriotism, in order to retain approval abroad. His disappointment may have constituted an unwitting victory, a fortunate escape from a difficult dilemma.

#### In the House of 1766-1768

Until George Wythe found his true place in the political set-up of the colony, he served in routine ways familiar to him through the first two sessions of the General Assembly which met in 1766 and was continued by prorogations until 1769. It has been stated in the preceding chapter that he had been reelected a burgess in the summer of 1765 by his constituents in Elizabeth City County.<sup>1</sup>

Upon the organization of the standing committees he was relieved of his duties on the Committee of Trade; but he retained his position as one of the oldest members on those of Privileges and Elections, Propositions and Grievances, and

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1. Cf. Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 3, 79, 135.

Courts of Justice.<sup>1</sup> And he was one of the members appointed to count the votes in the balloting for a new doorkeeper to the House.<sup>2</sup>

He participated in the drafting of three bills relating to the ownership of lands. One of these concerned the vexing question of titles claimed by aliens in the colony.<sup>3</sup> The others were designed to provide typical concessions to individual owners; one was delegated solely to him,<sup>4</sup> the other to several associates.<sup>5</sup>

He shared with others the responsibility of preparing two ordinary bills, not so easily classifiable, to establish a revision of the legal method of ascertaining book debts,<sup>6</sup> and a new and more expeditious system for criminal trials and for suits in the General Court.<sup>7</sup>

Quite properly, since he represented a nearby Chesapeake Bay county, he was included in a committee appointed to draw up proposals for securing a lighthouse at Cape Henry.<sup>8</sup>

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1. Landon Carter, Lemuel Riddick, Benjamin Harrison, and Richard Henry Lee were also on three of the five: ibid., 14-16.
  2. Ibid., 14.
  3. Ibid., 92.
  4. Ibid., 28.
  5. Ibid., 26, 37.
  6. Ibid., 61.
  7. Ibid., 91.
  8. Ibid., 117.



In their session of November and December, 1766, their first meeting since the repeal of the Stamp Act, the Burgesses resolved to set up a statue to King George III and an obelisk as a commemoration of the efforts of the worthy British patriots who had fostered the revocation of the Act in Parliament. Wythe was named one of a large committee to write inscriptions for the intended obelisk.<sup>1</sup> But before the close of the session the warmth of the House's gratitude cooled, and the project was allowed to rest without further action in the limbo of forgotten resolutions.

Perhaps the Burgesses' chief interest in the sessions of 1766 and 1767 centered in the condition of Virginia's treasury. General reports after Robinson's death had tended to confirm charges that he had been unable to strike a proper balance in his accounts, but until the Burgesses convened nothing definite had been elicited from his acceptable successor, Robert Carter Nicholas. Rumors were so unsatisfying; it would be much better to know the worst. Accordingly, eleven members, among whom was Wythe, were appointed a committee on the second day of the session to examine the state of the treasury.<sup>2</sup> The expected deficit was found and reported, whereupon the House resolved to ask Fauquier to order the initiation of legal suits against the assets of Robinson's estate to recover the colony's losses. Wythe was one of the three Burgesses

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1. Ibid., 53.

2. Ibid., 14.

named to carry this request to the lieutenant-governor.<sup>1</sup> Further action to the same end was deemed advisable in the session of 1767. It took the form of a bill drafted by Wythe and two of his colleagues, which would enable Robinson's administrators to sell his real and personal estate.<sup>2</sup> Years passed, however, before the delinquency reached anything like a final settlement.

In 1767 the career of George Wythe on the floor and in the committees of the House of Burgesses closed; in the future he was connected with it in another capacity. Following five years of apprenticeship (1748-1754) as clerk of its two chief standing committees, he had become the burgess for Williamsburg (1754-1755), the representative for the College (1758-1761), and a burgess for Elizabeth City County (1761-1767). In the latter role he would doubtless have continued for several more years to exercise his talents and his influence, had not a prohibitory appointment placed him beyond the reach of freeholders in his native county.

#### Wythe Receives John Randolph's Mantle, 1768

When the House of Burgesses which had been elected in 1766 convened on the last day of March, 1768, for its third session, John Randolph was not in the place to which he had

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1. Patrick Henry and Thomson Mason were the other two: ibid., 72.
  2. Ibid., 108. Robinson's lands were, of course, entailed and therefore ineligible for sale; thus it was necessary to make a legal exception in this case.

long been accustomed. His commission as Attorney General had arrived since the prorogation of the second session in the preceding year. Therefore he resigned his old post as Clerk of the House after an uninterrupted tenure of sixteen years in that office. A new appointment to the Clerk's desk was thereby required of the Speaker. In the first action of the day Peyton Randolph named Wythe as his brother's successor, and it became the selected one's very first duty to record in the minutes of the House a report of his designation and qualification as official penman. Expressed in the formal terminology of a legislative journal, Wythe's original entry as secretary of the Burgesses reads:

George Wythe, Gentleman, having been appointed Clerk of the House of Burgesses, in the Room of John Randolph, Esqr: who had resigned, and having taken the Oaths appointed to be taken by Act of Parliament, instead of the Oaths of Allegiance and Supremacy and the Abjuration Oath, and also the Oath of Office in due Form, and having repeated and subscribed the Test, was admitted to his Place.<sup>1</sup>

Behind such ceremonious phraseology there was a background of genuine personal interest. Peyton Randolph had been promoted to the Speakership. His brother and Wythe had been rival

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1. Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 141. The seat of Elizabeth City County which he vacated was evidently not filled during the third session: ibid., 135; but in 1769 James Wallace, Jr., became the representative in Wythe's place: ibid., 181. A document upon which eleven Virginians signed the four oaths is extant; Wythe's signature appears thereon under date of November 30, 1768, but the reason for his taking the oaths then is not named: Virginia Miscellaneous Manuscripts Collection, Library of Congress. Probably this was done merely in reaffirmation of his previous declarations as Clerk.

candidates for the office which he had vacated. When, despite Fauquier's partiality for Wythe, the royal choice as Attorney General fell upon his brother, it was but natural in the "closed corporation" type of preferment which characterized colonial Virginia politics for Randolph to appoint the defeated Wythe to fill the resultant opening, which ranked one step lower in the ladder of official prominence. Yet the Speaker's selection was by no means an injudicious one, for obvious grounds of merit were present to justify it against a somewhat fortuitous similarity to unworthy patronage or deserving nepotism. With the possible exception of Richard Bland, who was dubbed even by his contemporaries as "The Virginia Antiquary" and whose vigor was already weakened by age, no other person was as thoroughly qualified by nature and experience for the Clerk's duties as Wythe.

At the close of sixteen days as scribe to the House Wythe was allotted, in a typical appropriation bill for the salaries of servants of the General Assembly, the sum of £125 in remuneration for his labors. In accordance with established custom this figure was much larger than the compensations granted to Nathaniel Walthoe, long-time clerk of the Council, or to the chaplain, sergeant at arms, and other officers.<sup>1</sup> Revelling in the rigid, almost ritualistic formulas and phrases of a legislative reporter, Wythe improved upon some minor laxities which had crept into John Randolph's

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1. Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 174. Debts of this kind were usually permitted by the Assembly to accumulate through several sessions, then payments would be made. As will be seen later, Wythe received three others.

minutes and introduced a rather more precise, conventional, and ostentatious procedure in chronicling the business of the Burgesses.<sup>1</sup>

A spacious room in the Burgesses' wing of the capitol building in Williamsburg, across the hall from the chamber of the House and comfortably equipped with handsome chairs, desks, and bookcases, served as Wythe's office.<sup>2</sup> He had an assistant to relieve him partially of the more onerous phase of his duties, that of copying manuscript reproductions of the Burgesses' journals and of the General Assembly's enrolled bills. One Jacob Bruce worked for him in this capacity from 1772 until the outright rupture with the Mother Country, if not longer.<sup>3</sup> Though his chair at the secretary's desk in the House deprived him of the privilege of participating in the Burgesses' debates and votes, Wythe's preference for it over his former seat upon the floor did not relegate him to a position of negligible influence. True it is that he was thereby withdrawn for seven years from the center of the political whirlpool, but his was not the role of an idle, useless bystander. A more correct simile would be that of the stolidly

1. Ibid., cf., e.g., 187 with 81.
2. An authentic reproduction of it may be seen in the reconstruction of the Capitol by Colonial Williamsburg, Inc.
3. It is known that in 1772 Bruce made an error in changing a certain figure at a time when Wythe was not in office: The Proceedings of the Convention of Delegates Held at the Capitol, in the City of Williamsburg, in the Colony of Virginia, on Monday, the 6th of May, 1776, 59-60. Bruce sent to Wythe in Philadelphia, during the meetings of the Second Continental Congress, a copy of certain papers in the office

dutiful commissary officer who is content to let ambitious fellows in front trenches claim credit for damages inflicted by bullets and shells which could not have been fired but for the plodding faithfulness of the supply department's unsung heroes. On Wythe as custodian of their records the burgesses depended in their conflicts with England and among themselves for the ammunition of precedents, and to him as a promoted colleague they might come to secure the rations of a rational viewpoint on the issues which they faced — for there was nothing to prevent him from drawing upon his journals at any time, or upon his experience, when outside the legislative chamber, to feed actual combatants with valuable information or respected advice. In short, he was not demoted from the hectic front of activity to an indispensable but dull and menial routine service; he was elevated to the clerkship, an agreeable position of influence.

That Wythe took his new duties seriously is amply indicated by a series of letters which he wrote during the late spring and summer of 1768. These constitute a portion of the extant remnants of his correspondence with the firm of John Norton and Sons, prominent exporters from London to Virginia for about three decades before and after the Revolution. John Norton, the head of the house, was an Englishman who resided in the colony for a number of years, married Courtney

Walker, one of George Wythe's first cousins,<sup>1</sup> and returned to London, leaving enough American friends to insure his success as a merchant.<sup>2</sup> One of his sons, John Hatley Norton, remained in Virginia, living in Yorktown, visiting frequently in Wythe's home, and assisting in the management of the family's mercantile business.<sup>3</sup> It is certain that Wythe had

1. Courtney was a daughter of Jacob Walker, one of the brothers of Wythe's mother: Tyler's Quarterly Magazine, III, 287-288. Thus it was that she could send her respectful compliments to "my Cousin With [Wythe] & his Lady": Courtney Norton to J. H. Norton, March, 1772, Norton Papers, Department of Research and Education, Colonial Williamsburg, Inc. Cf. the letter of her brother to her, which does not mention Wythe: George Walker to Courtney Norton, February 14, 1779, ibid.
2. Political attacks were occasionally made against him through the medium of the newspapers: see, e.g., Governor Botetourt to John Norton, January 6, 1770, ibid.; Virginia Gazette (pub. by Purdie and Dixon), December 8 Supplement, 15, 22, and 29, 1775. One of his customers was Wythe's father-in-law, who sent him six hogsheads of tobacco and ordered cloths, teas, spices, a saddle, etc.: Richard Taliaferro to John Norton, September 2, 1770, Norton Papers, Colonial Williamsburg, Inc.
3. He was at least once a justice for York County: Executive Journals of the Council of Colonial Virginia (Photostats), December 13, 1773, University of Virginia Library. He married Sarah, daughter of Robert Carter Nicholas. He advertised his Yorktown house as being for sale in 1774: Virginia Gazette (pub. by Purdie and Dixon), December 15, 1774. His name occurs rather frequently in Wythe's letters to his father, as later pages will show. His father acknowledged receipt of one of his letters written at Wythe's house: John Norton to J. H. Norton, July 31, 1767, Norton Papers, Colonial Williamsburg, Inc. "Your Son hath been a little indisposed lately at Mr. Wythe's, but I desired Hugh to call on him today and let me know how he was: & he writes me that Mr. Horton is so well, that he rode out to Majr. [Richard] Taliaferros [sic] this Morning": William Nelson to John Norton, November 14, 1768, ibid. "Your Son has been sometime confined Sick at my Neighbor M<sup>r</sup>. Wythes [sic] but is now pretty well recovered and [has] gone to York[town]": Thomas Everard to John Norton, August 1, 1770, ibid.

been one of their customers before 1768,<sup>1</sup> receiving imported goods in exchange for the tobacco which he raised at "Chester-ville", but all details of earlier transactions were lost.

In a letter written to John Norton about three weeks after the adjournment of the first session in which Wythe served as Clerk of the House of Burgesses, he ordered, together with a large stock of clothing for his wife and himself, equipment by the use of which its members could indicate their votes better than by oral "ayes" or than a show of hands:

I have paid to my cousin J H Norton thirty seven [sic] pounds and ten shillings for which he will desire you to credit my account [at the current rate of exchange] with thirty pounds sterling. I have also given him orders for four hogsheads of tobacco to be shipped to you. Be pleased to send me a piece of cambrick and another of lawn [fabric], one pair of satin and five pair[s] of callimanco or lasting shoes with high full heels and a satin cloak for Mrs Wythe, and a piece of irish [sic] linen 2/6 per yard, two large damask and four small huckaback table cloths, six pair[s] of cotton stockings and two of black silk for myself, a dark tie wig [for myself] and a sett [sic] of balloting glasses such as are used in the house of commons. Mr Waldron may send me two pair[s] of black Manchester velvet breeches and a suit of very fine light cloath [sic] fit for our hot summers with a silk waistcoat and [one] pair of silk breeches besides. With my best wishes for your and all your family's health and prosperity....

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1. "... the Surplus of y<sup>e</sup> hyson [Hyson] tea is charged to me ... it must be sold for my Acc<sup>t</sup> & if any of our Correspond<sup>ts</sup> shou'l want any for their family use, M<sup>r</sup> [Benjamin] Waller, [Thomas] Everard, Wythe, [Robert Carter] Nicholas, [Jacquelin] Ambler, &c &c. &c. you may lett [sic] them have it at y<sup>e</sup> Cost": John Norton to J. H. Norton, April 10, 1767, *ibid.* Later in the year the elder Norton reported that things ordered had been shipped to Wythe, Nicholas, and Fauquier: *id.* to *id.*, July 31, 1767, *ibid.*



[P. S.] Be pleased to add a black Russells coat for mrs. Wythe, and a piece of fine pocket-handkerchief [cloth].<sup>1</sup>

A week later he asked that his file of the journals of Parliament's lower house should be brought and kept up-to-date and that an inkwell and tray for pens should be gotten for his new office:

I beg the favour of you to send me the printed journals of the house of commons from September 1766, (until which I have them compleat [sic]), and of every future session so soon as they are published, an handsome large inkstand fit for a public office, a treatise concerning money-matters, (I think the title is "Of civil oeconomy [sic]") written by Sir James Stewart, and Fankes's Theocritus.<sup>2</sup>

His next order contained no reference to his new position:

I shall be obliged to you if you will send me eight or ten gallons of the best arrack in carboys properly secured, and some gardenseeds. Your son left us this morning. He is in very good health and spirits. He was going to Hanover [County's] court.<sup>3</sup>

But within a month his thoughts had turned again to the clerkship, especially to his function as librarian of the House. He had on file for reference a copy of the Burgesses' manuscript journals for all sessions since 1751. It occurred to him that he might find frequent occasions to use those of earlier dates, if British authorities could be weaned away from a spare copy in their archives:

The governours of Virginia, by a royal instruction, have from time to time transmitted to the king, secretary of state, Lords of trade, &c. two or more duplicates of the journals of the house of burgesses, after every session of the general assembly. The reason of ordering several to be sent, is supposed to be for the better

1. George Wythe to John Norton, May 9, 1768, ibid.

2. Id. to id., May 15, 1768, ibid.

3. Id. to id., June 1, 1768, ibid.

assurance of one coming to hand, so that the other, it is imagined, can be of little use or no use. If I could procure one sett [sic] of those duplicates, from the first settlement of this colony til [sic] the year 1752, I expect it will be of considerable advantage to me. Your inquiring into this matter, conferring with mr Montagu[e, agent for the House of Burgesses,] on the subject, and taking proper and effectual measures to obtain the papers desired, (or even copies of them if the other is not practicable,) so as it be not made public, nor attended with great expense, will be esteemed a very friendly office.<sup>1</sup>

As the summer wore on Wythe thought it well, in a letter by which he ordered an expensive carriage, to refer again to his need for a complete set of the Burgesses' minutes:

If you will be so good as [to] procure for me a well built handsome post-charriott [sic], I will remit the price of it in due season. Some thing [sic] like the inclosed device may be put upon it. Of the several articles I have lately wrote [written] for, the glasses, balls and other apparatus, such as are used by the house of commons in balloting, and the duplicates of our journals, I am most anxious about, and earnestly desire your particular attention to. The journals especially would be of considerable advantage to me.<sup>2</sup>

The emblem which he had intended to enclose in that letter was not sent until ten days later. Renewing at that time in another form his request that Norton see what could be done toward getting a file of the journals, which most of his predecessors as Clerk had failed to build up, he added to personal requests an order for a bookplate to identify the volumes in the House's library:

I wrote many months ago to mess<sup>rs</sup> James Buchanan and company for an elegant sett [sic] of table and tea china, with bowls of the same of different sizes,

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1. Id. to id., June 13, 1768, ibid. Perhaps it was not a mere coincidence that his file began in the same year as John Randolph's tenure as clerk.
  2. Id. to id., August 8, 1768, ibid.

decanters and drinking glasses, an handsome service of glass for a dessert, four middlesized and six lesser [small] dishes, and three dozen plates of hard metal, 100 skins of writing parchment proper for enrolling our acts of assembly on, several bundles of [the] best quills, two pieces of blanketing and as many rolls for servants, 10 or 12 pair[s] of shoes and two of slippers for myself, and one or two articles which I do not recollect. At this time there was due to me [by them] about thirty pounds, I believe, for I have mislaid their last account current; and besides I had shipped four hogsheads of tobacco to that house. The goods have not come to hand, neither have I yet an account of sales of the tobacco. If they have not sent, nor design to send the goods, I desire [that] you will be so kind as to let me have them, with a bonnet for Mrs Wythe, and present the inclosed order and receive the balance. A few days since I desired you would procure for me an handsome well built charriot [sic], with the device [which is] now sent painted on it, for which you may depend on a seasonable remittance. I again beg the favour of your attention to the affair of the journals. If they are not to be procured, let me be informed what 120 printed copies of them to the year 1752 will cost. If they do not exceed the sum I suppose, the assembly, I doubt not, will defray the expense. The prospect of a benefit to me, I flatter myself, will not only excuse the earnestness and frequency of my importunities, but [will also] stimulate your endeavours to serve me in this business. You will oblige me by sending a copper plate, with the [coat of] arms of Virginia neatly engraved [on it], and some impressions [prints] of them [it] to be pasted on the books belonging to the house of burgesses. If any additions are made on the plate in consequence of what is proposed within, I will cheerfully pay the extraordinary cost. J[ohn] H[atley] N[orton] left us a day or two ago in good health &c. I forgot to mention that I had drawn bills on Mess. Ja[m]es Buchanan and company for about sixteen pounds payable to Mr James Cocke. I

Since the extant collection of such letters does not include the firm's replies to its correspondents, it is unknown whether Wythe received all the things of a legislative nature which he asked his kinsman to secure for him. Probably the

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1. Id. to id., August 18, 1768, ibid. The two enclosures to which Wythe referred in this letter are not available.

ballotting glasses, inkstand, parchment, and bookplates were duly and promptly shipped to him. Later pages of this chapter will show that there must have been a considerable delay in his receipt of printed minutes of the House of Commons' meetings since 1766. It is not likely that he ever obtained manuscript or published copies of the Burgesses' journals.

#### Lord Botetourt's Administration

Lieutenant-Governor Francis Fauquier died on the third day of March, 1768. Laudatory obituaries, more fervent in their praises of his public and private virtues than custom required, appeared immediately in the two Williamsburg newspapers and gave eloquent testimony to the popular satisfaction with the way in which he had piloted Virginia's government for almost ten full years.<sup>1</sup> An anonymous poetaster put public sentiment on the colony's loss into the form of a quatrain:

If ever virtue lost a friend sincere,  
 If ever sorrow claim'd Virginia's tear,  
 If ever death a noble conquest made,  
 'Twas when FAUQUIER the debt of nature paid.<sup>2</sup>

In his will he appointed William Nelson and Robert Carter, two of his friends in the Council, and Peyton Randolph

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1. Virginia Gazette (pub. by Rind), March 3, 1768; Virginia Gazette (pub. by Purdie & Dixon), March 3, 1768.

2. Anonymous "Communication", Virginia Gazette (pub. by Rind), March 10, 1768.

and George Wythe to be his executors.<sup>1</sup> They made an inventory of those of his possessions which could be of no sentimental value and were not sent to relatives in England.<sup>2</sup> They could themselves purchase at fair prices any articles which they might want; Wythe made a few modest acquisitions, as the following entry in their accounts shows:

Sold [to] George Wythe Esquire		
1 large Turkey Carpet .....	5.	0. 0
12 1/2 yds Printed Cotton .....	1/6.....	18. 9
12 yds Dowlass [linen] .....	1/6.....	18. 0
1 Hair Broom and Bottle Brush .....		2. 6
		<u>6.19. 3</u> <sup>3</sup>

Following a conference in Williamsburg with Robert Carter in 1772 on the subject of their responsibilities as executors, Wythe informed Carter that he had in due course furnished Fauquier's sons with a report of their progress in settling the estate:

I hope you arrived safe at Nomony [Hall], and found Mrs Carter and all the family there in good health. Our best wishes attend them. Soon after you left us, I wrote a letter to Mr Fauquier, and send inclosed a copy of it, that you may see what I said concerning his father's affairs. What relates particularly to you, I think is the substance of what passed at our last conversation. My anxiety to be

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1. Will of Francis Fauquier, Wills and Inventories Book 21, 397-403, York County Records. It is a significant commentary on his character that, despite a fear of imputations of indecency, he desired an autopsy to be performed upon his body if the cause of his death was not otherwise ascertainable, in order that "by these means I may become more useful to my fellow Creatures by my Death than I have been in my life. I insist [on] this...."
  2. Inventory and Executors' Accounts of Fauquier's Estate, Wills and Inventories No. 22, 1771-1783, 83-103, ibid.
  3. Ibid., 95.

rid of this troublesome business increases daily. I am convinced you are equally desirous of it. Let us then endeavour to bring the matter to a speedy conclusion.<sup>1</sup>

At the same time he asked John Norton to convert into cash and to pay to the lieutenant-governor's son some money which had been realized from sales of the elder Fauquier's effects:

I beg the favour of you to deliver the packet, which accompanies this, and to negotiate the bill on mr Bell, and [to] pay the contents of that, as well as of the other upon yourself to mr Fauquier, and also to pay him twenty five [sic] pounds sixteen shillings and eight pence more, and to take his receipt for the whole, as [having been]<sub>2</sub> paid by his father's executors, and [to] send it to me.

Later in the same year Wythe availed himself again of Norton's services; an instruction in a letter written for other reasons reads, "You will oblige me by forwarding the inclosed letter to mr Fauquier."<sup>3</sup> As late as the summer of 1774 there were still a few details in the balancing of the executor's accounts to be cleared up, for Wythe then wrote to Carter:

I send you a copy of the account of our administration of governour Fauquier's estate since the last settlement, by which it appears, if your bill for 334.11.0 sterling be extended at 25 per cent for

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1. George Wythe to Robert Carter, May 29, 1772, Emmet Collection, New York Public Library.
  2. George Wythe to John Norton, May 29, 1772, Norton Papers, Colonial Williamsburg, Inc.
  3. Id. to id., December 12, 1772, ibid. "There is a bala[nce] of [£]16 or 17 due from Mr. Athawes to me.... I must beg the favour of you to receive it, and to pay Mr Fauquier 27.£ Sterg. Be pleased to inform that gentleman that I have recd his letter, and will answer it very soon; tho, I hope he is satisfied by the accounts sent him by Mr. Wythe before this time": Peyton Randolph to id., August 5, 1772, ibid.

difference of exchange, that there is a small sum of money due to you, unless we agree to pay for the articles mentioned in the paper inclosed in mr Fauquier's letter to me. A copy of that paper accompanies this. We concluded, if I remember rightly, when we conversed upon this subject, to pay for the things mentioned in the inventory, and not accounted for; although I am convinced that they were made away with by some of the governour's servants in whom we were obliged in some measure to trust. I believe you proposed becoming responsible for them yourself alone, which I cannot consent to, since, if we were blameable, I was not less so than you. The next time we meet, I shall hope to finish this affair. Till then adieu.<sup>1</sup>

The fragmentary records which are available do not tell how they concluded their administration of Fauquier's will, but Wythe was probably successful in his insistence that he be permitted to share the losses incurred through thefts by dishonest servants at the Governor's Palace.

During the interim which elapsed before the arrival of Fauquier's successor the headship of Virginia's government devolved for the fourth time upon John Blair, President of the Council.<sup>2</sup> With the memory of their whole-hearted approval of the affable Fauquier fresh in their minds and with threats of a renewal of Parliamentary taxation disturbing their calm, the colonists awaited uneasily the

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1. George Wythe to Robert Carter, July 2, 1774, Autograph Collection of the Signers of the Declaration of Independence, J. Pierpont Morgan Library.
  2. He presided over the Council's meeting on the day after Fauquier's death: Executive Journals of the Council of Colonial Virginia (Photostats), March 4, 1768, University of Virginia Library. Later in the month he informed English authorities of the loss and stated that he had again taken charge as he had done upon Dinwiddie's departure and during Fauquier's visits on official business to New York and Georgia: John Blair to the Earl of Shelburne, March 21, 1768, Virginia Papers (Bancroft Transcripts), II, New York Public Library.

appointment of their new ruler.<sup>1</sup> Their fears, so far as Fauquier's tradition of harmony between governor and subjects was concerned, were allayed very soon after the Crown's deputy reached Williamsburg late in October, 1768.<sup>2</sup> Norborne Berkeley (b. 1718), Baron de Botetourt, brought with him a commission as Lieutenant-Governor and Governor-General, for authorities in England had decided to insist upon the governor's presence in the colony, as a means to placate some of her growing discontent. Virginians took great pride in the abolition of the former administrative system, under which resident deputies acted for nonresident lords who looked upon their office as a sinecure. It was flattering, in the eyes of self-respecting colonists, to have a titled courtier to preside personally over their government. Thus there was an immediate predilection for Lord Botetourt. His polished conduct in gentlemanly society, his invariable accessibility to

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1. E.g., "We are not a little Anxious to know what the Resolutions of the Parliament may be about American Affairs as also who we are to have for a Governor[;] should he come charged with Instructions such as were lately sent to a Governor in New England I fear the Peace and tranquility [sic] of this Colony will be greatly disturbed"; Thomas Everard to John Norton, August 20, 1768, Norton Papers, Colonial Williamsburg, Inc.
  2. He was welcomed by the Council: Executive Journals of the Council of Colonial Virginia (Photostats), October 26 and 27, 1768, University of Virginia Library. He had travelled faster than his servants and found no food in the Palace. Thus he was invited daily to the homes of Williamsburg's chief citizens for meals and could report in a vivid description of his hearty welcome, "[I] ... am at present upon the very best terms with all. I like their style exceedingly and augure [sic] well of every thing that is to happen": Governor Botetourt to the Earl of Hillsborough, November 1, 1768, Virginia Papers (Bancroft Transcripts), II, New York Public Library.



all on matters of business, and his willingness to reconcile as far as possible the colony's interests with his instructions all helped to confirm him in the public favor.<sup>1</sup>

The Crown's strategy in appealing to their vanity was insufficient, however, to make the Burgesses blind to measures prejudicial to Virginia affairs. From the controversy over the Stamp Act a substantial body of colonial opinion had emerged to deny to Parliament a power to lay internal taxes on its subjects across the Atlantic. Forced to increase from some source the government's income, Charles Townshend, Chancellor of the Exchequer, had proposed exultantly a method, as he described it, "by which a revenue may be drawn from America without offence". He said publicly, "I laugh at the absurd distinction between internal and external taxes";<sup>2</sup> but to suit meticulous colonists he secured the passage in 1767 of several revenue acts levying customs duties on lead, glass, paper, and tea. By their own definition of English rights this ingenious device should have suited a majority of the colonists, but the pinch of a more effective system for collecting these disguised taxes only forced many theorists to revise their previous admission of Parliamentary control over imperial trade, amending it in such a way as to include power to levy duties for the sake of regulation but not for revenue.

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1. Randolph, Manuscript History of Virginia, 108, Virginia Historical Society Library.

2. Quoted in Van Tyne, op. cit., 246.

Virginians wrote to England during 1768 plaintive letters of individual protest.<sup>1</sup> Governor Botetourt warned his superiors, though the duties were being collected early in 1769 "without a shadow of resistance from any mortal", that he "must not venture to flatter you with hopes, that they will ever willingly submit to ... being taxed by the Mother Country...." On the contrary, he reported, "the reverse is their creed; they universally avow a most ardent desire, to assist upon every occasion, but pray to be allowed to do it as formerly in consequence of Requisition".<sup>2</sup> Nevertheless, he did not anticipate any difficulty with the General Assembly when it convened in May.<sup>3</sup>

On the sixteenth day of the month the House of Burgesses, in secret session as Committee of the Whole, passed unanimously four resolutions, two of which asserted again the Assembly's exclusive power to tax Virginians and provided

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1. See, e.g., significant appeals of Page and Nicholas: John Page to John Norton, August 26, 1768, Norton Papers, Colonial Williamsburg, Inc.; Robert Carter Nicholas to id., October 3, 1768, ibid.
  2. Governor Botetourt to the Earl of Hillsborough, February 17, 1769, Virginia Papers (Bancroft Transcripts), II, New York Public Library.
  3. Id. to id., March 30, 1769, ibid.; id. to id., May 10, 1769, ibid.

for the drafting of an address to the King.<sup>1</sup> About seven o'clock that evening, through some leak in the dike of concealment, hints of these proceedings reached Botetourt, who decided that he was thereby compelled to dissolve the House.<sup>2</sup> Tradition says that he tried that evening to secure from George Wythe a copy of the offensive resolutions and that the Clerk contrived loyally to put off or evade his messenger, in order that the Burgesses might complete their protest by adopting on the next day the address to His Majesty.<sup>3</sup> Convening promptly the following morning, they passed the address, and it was duly recorded in their journals, as Wythe had hoped it could be ere they were commanded to adjourn.<sup>4</sup> At noon, as soon as Botetourt could collect the Councillors, he addressed to the Burgesses a succinct speech which showed that, though personally he disapproved of the very legislation to which they objected, he was forced

1. Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 214. A copy of these resolutions, in an unidentified hand but signed by Wythe, is in the Virginia Miscellaneous Manuscripts Collection, Library of Congress. Copies were transmitted to other colonies: Peyton Randolph to the Speaker of the Lower House of New Hampshire's Assembly, May 19, 1769, ibid. Wythe published them over his signature in a local newspaper: Virginia Gazette (pub. by Rind), May 25, 1769.
2. Governor Botetourt to the Earl of Hillsborough, May 19, 1769, Virginia Papers (Bancroft Transcripts), II, New York Public Library.
3. Wirt, Patrick Henry, 104. This story was adopted unqualifiedly by Dr. Tyler: Tyler, Williamsburg, 46-48; Tyler, "George Wythe", loc. cit., 60.
4. Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 215-216.

against his wishes to punish their action. "I have heard of your Resolves", he stated, "and augur ill of their Effect: You have made it my Duty to dissolve you; and you are dissolved accordingly".<sup>1</sup> One of their number, speaking for his colleagues in the House, bore witness in a letter written a few days later to John Norton that they held no grudge against Botetourt for his action, asserting, "This has not lessen'd him in their Esteem, for they suppose he was obliged to do so...."<sup>2</sup>

A large number of them assembled later that day in the Apollo Room of Anthony Hay's Raleigh Tavern, a few blocks west of the Capitol on Duke of Gloucester Street. George Washington, who had rather recently become a burgess, reported that they did not adjourn before 10 P.M.<sup>3</sup> There they entered into and signed an agreement not to purchase English goods, particularly the articles upon which taxes in the guise of customs duties had been levied. Thus began the operation of a widespread non-importation association, matched by earlier or contemporary organizations of a like nature in

1. Ibid., 218.

2. This account continues, "he is universally esteemed here, for his great Assiduity in his Office, Condescencion [sic], good Nature & true Politeness": John Page to John Norton, May 27, 1769, Norton Papers, Colonial Williamsburg, Inc. Earlier he had said, "L<sup>d</sup> Botetourt seems very happy here & is much liked but some People suspend their Judgement of him till after the Meeting of the Assembly": id. to id., April 10, 1769, ibid. Norton's correspondents kept him informed of Virginia's politics and temper; see, e.g., Thomas Everard to id., August 2, 1769, ibid.

3. Entry of May 17, 1769, Fitzpatrick, ed., Diaries of George Washington, I, 325.

most of the other colonies. Men who felt, with perhaps some justice, that the administration of the government "at home" was being shamefully bandied between arrogant or ignorant leaders of villainous political parties<sup>1</sup> put their trust in a boycott's baneful effect upon the figures of the Exchequer's ledgers and of the merchants' balance-sheets to bring the ministry to its senses. To an Englishman one of the "Associators", as they called themselves, exclaimed, "How must your Manufacturers curse the Minister who has driven the Colonies to this!"<sup>2</sup> The ladies' cooperation was enlisted in this enthusiastic campaign for giving up the use of every commodity which had previously brought profits to the English.<sup>3</sup> No evidence has been discovered to show what part George Wythe had in the movement, but it is probable that he heartily favored it. Some two months after the memorable organization meeting in the Tavern, he published over his signature as Clerk of the House the names of eleven burgesses who had been absent when the Association was formed but had

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1. Even Botetourt complained a little in this vein: Governor Botetourt to John Norton, January 6, 1770, Norton Papers, Colonial Williamsburg, Inc.; *Id.* to the Secretary of State, June 30, 1770, Virginia Papers (Bancroft Transcripts), II, New York Public Library. Cf. Executive Journals of the Council of Colonial Virginia (Photostats), January 8, 1771, University of Virginia Library.
  2. John Page to John Norton, May 27, 1769, Norton Papers, Colonial Williamsburg, Inc.
  3. Martha Jacquelin to *id.*, August 14, 1769, *ibid.*; Martha Goosley to *id.*, June 13, 1770, *ibid.*; Virginia Gazette (pub. by Rind), July 27, 1769.

since acceded to its provisions.<sup>1</sup>

Reelected without exception, the Burgesses convened again late in 1769. Botetourt announced to them with pleasure that he had been assured from abroad that no additional taxes would be exacted,<sup>2</sup> and as the summer of 1770 approached news came to the effect that all the duties had been repealed, except that on teas — news which had been long anticipated.<sup>3</sup> Parliament's retraction had been welcome but was still too partial.<sup>4</sup> Hence a large body of the Associators met again in Williamsburg in June to renew their agreement.<sup>5</sup>

In an atmosphere which was steadily growing quieter Botetourt died on the fifteenth day of October, 1770. Private letters to England lamented the colony's loss,<sup>6</sup> and the General Assembly voted in the next year to have a marble statue of him carved abroad and shipped to Virginia at the public expense.<sup>7</sup> Somewhat damaged and much weather-beaten, it has

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1. Virginia Gazette (pub. by Rind), July 27, 1769.
  2. Cf. Thomas Everard to John Norton, November 8, 1769, Norton Papers, Colonial Williamsburg, Inc.
  3. John Norton to John Hatley Norton, May 27, 1769, ibid.
  4. Thomas Everard to John Norton, August 1, 1770, ibid.
  5. Wythe's name does not appear in a list of more than a hundred signers: Virginia Historical Register, III, 22-23. But it has been said without apparent authority that he signed that pledge: Grigsby, Virginia Convention of 1776, 91.
  6. E.g., Cary Wilkinson to John Norton, October 20, 1770, Norton Papers, Colonial Williamsburg, Inc.
  7. Cf. Thomas Everard to id., July 20, 1771, ibid.; Richard Bland to Thomas Adams, August 1, 1771, Virginia Historical Magazine, VI, 132-133.

stood for years on the William and Mary College campus, facing eastward toward the Capitol. As had been the case in the death of Lord Botetourt's worthy predecessor, Wythe assisted other prominent colonists in taking care of the inevitable post-mortem details.<sup>1</sup> Some of the beloved governor's possessions, including an expensive stage-coach, were given to the colony for the use of his successors.<sup>2</sup>

A number of facts about George Wythe which are not related to the principal issue of Botetourt's administration may be gleaned from extant records. He caused an order of the Burgesses designed to facilitate the long-delayed disposal of John Robinson's estate, in order that the former treasurer's debt to the colony might be repaid, to be published in a Williamsburg newspaper above his signature as their Clerk.<sup>3</sup> Three times during the two sessions of the

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1. See the letter from William Nelson, John Randolph, Robert Carter Nicholas, Wythe, and John Blair to the Duke of Beaufort, October 30, 1770, five letters between the two parties during the next year, and an inventory of Botetourt's effects, Tyler's Quarterly Magazine, III, 109-126.
  2. This was done by his relatives, for Botetourt had died intestate. The Council accepted the gifts in accordance with his known desire: Executive Journals of the Council of Colonial Virginia (Photostats), April 12, 1771, University of Virginia Library.
  3. The House commanded that the executors, Edmund Pendleton and Peter Lyons, sell all but the dower in real estate of Robinson's widow: Virginia Gazette (pub. by Rind), December 28, 1769. In the same issue Pendleton and Lyons therefore advertised the sales: ibid.

House in 1769 George Washington had lunch in the Wythe home.<sup>1</sup> To the volumes filed in the Clerk's office Robert Carter Nicholas referred for certain details in the history of legislation regarding slavery.<sup>2</sup> It has been noted in the preceding chapter that Wythe had been appointed in 1765 with Peyton Randolph, John Randolph, and Robert Carter Nicholas to collate and publish the laws of the colony. The result of their work, usually known as the Code of 1769, appeared in print four years later.<sup>3</sup> It was the first collection of the Assembly's statutes since 1751 and the first of four monumental attempts by Wythe to deal with the whole body of Virginia's laws. In recompense for their services the four editors were awarded official thanks and £100 apiece from the public treasury, upon a recommendation of the Burgesses' Committee of Propositions and Grievances.<sup>4</sup> In 1770 Wythe

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1. Entries of May 12, November 15, and December 11, 1769, Fitzpatrick, ed., Diaries of George Washington, I, 324, 352, and 355, respectively.
  2. The Treasurer, having satisfied himself regarding earlier provisions, urged that a bill to limit importations of Negroes by imposing a duty on them should meet concurrence in the Council and in England, since it met objections which had brought down a royal disallowance upon a former act for that purpose: Robert Carter Nicholas to Governor Botetourt, December 30, 1769, Virginia Papers (Bancroft Transcripts), II, New York Public Library. Official disapproval of these attempts, of course, enabled Jefferson to name it in the Declaration of Independence as a grievance against George III.
  3. The Acts of Assembly, Now in Force, in the Colony of Virginia with an Exact Table to the Whole. Published by Order of the General Assembly (Williamsburg, 1769).
  4. Kennedy, ed., Journals of the House of Burgesses, 1766-1769, 332.



received a second payment as Clerk for his labors through several sessions, amounting to £300.<sup>1</sup>

On the last day of November, 1768, Wythe was elected Mayor of Williamsburg for the ensuing year.<sup>2</sup> He endorsed a petition of a group of obscure colonists for permission to survey and lay claim to lands west of the Alleghanies.<sup>3</sup> He tried in 1770 through the medium of an advertisement in a local weekly news-sheet to clear his title to a certain tract of land:

ONE James Ransome, of Gloucester [County], the 23d of November 1670 demised 50 acres of land, which is now in my possession, to Abraham Savey and Sarah his wife, for 99 years; and covenanted that he, or his heirs, &c. at the expiration of that time, would make another lease, for the like term, to the lessees, or their heirs, &c, they paying 100 pounds of tobacco. I long ago purchased the right of the lessees, and ever since the expiration of the former term have been, and now am, ready to make another lease, and [to] pay the tobacco, but I cannot discover who is the person entitled to the reversion. If he inclines to sell the reversion, I am willing to buy it for what it is worth.  
G. Wythe<sup>4</sup>

Though the legality of Wythe's claim had terminated in the

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1. Kennedy, ed., Journals of the House of Burgesses, 1770-1772, 101.
  2. Virginia Gazette (pub. by Purdie and Dixon), December 1, 1768; Virginia Gazette (pub. by Rind), December 1, 1768. Wythe was named among the five managers of a public lottery, together with Robert Carter Nicholas and Thomas Everard, for disposing of 146 lots of land in Hanover, the drawing for which took place at the Raleigh Tavern on April 4, 1768: Virginia Gazette (pub. by Rind), December 24, 1767.
  3. Calendar of Virginia State Papers, I, 260. This is the only known instance in which Wythe is known to have been identified in any respect with the current mania for land speculation.
  4. Virginia Gazette (pub. by Purdie and Dixon), March 22, 1770.

preceding year, it is possible that Ransone's heir did not appear to assert or sell his rights. In 1770, if not also in other years, Wythe was again made presiding justice of Elizabeth City's county court.<sup>1</sup> Finally, he wrote to John Norton two letters, renewing his previously unsuccessful requests for a copy of the published minutes of the House of Commons' meetings since 1766. In the first he ordered also some bolts of several types of cloth:

I beg the favour of you to send me the articles undermentioned. Capt. Robertson will deliver [to] you nine hogsheads of tobacco, which are all that I made. Pray give mrs Wythe's and my best respects to mrs Norton, and [to] all your good family....  
 2 pieces of sheeting linen not exceeding 2s per yard  
 2 pieces of irish [sic] linen, for shirts, 2s per yard.  
 1 piece of ditto ditto 1/3 per yard.  
 1 piece of dark coloured Russia drab [a thick gray woolen cloth].  
 Debates of the parliament of Ireland.  
 Journals of the House of commons since 1766.  
 Some best razors and penknives<sup>2</sup>

In the second he asked that a stock of legal volumes should be shipped to him:

I beg the favour of you to get the undermentioned books, and [to] send them by an early opportunity....  
 Books to be sent to G. W.  
 Andrews' reports  
 Atkyns' reports  
 Bunbury's reports  
 Burrow's reports  
 Fortescue's reports  
 Foster's reports  
 Melmoth's reports  
 Shorver's cases in parliament.

[Enclosure dated May 8]

Be pleased to add to the catalogue in the letter the journals of the house of commons since 1766.<sup>3</sup>

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1. Calendar of Virginia State Papers, I, 265.
  2. George Wythe to John Norton, August 3, 1769, Norton Papers Colonial Williamsburg, Inc.
  3. Id. to id., May 7, 8, 1770, ibid.

After having seen these books which Wythe had secured through John Norton and Sons, John Randolph decided to order some from the same firm.<sup>1</sup>

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1. John Randolph to id., December 16, 1770, ibid.

## Chapter VII

### LORD DUNMORE'S ADMINISTRATION: THE END OF AN ERA

#### The Calm Before the Storm, 1771-1774

Upon the death of Governor Botetourt, John Blair resigned his presidency of the Council on account of his age, and the ad interim leadership of the colony devolved upon his colleague, William Nelson (d. 1772).<sup>1</sup> John Murray (1732-1809), Earl of Dunmore, a Scottish peer to whom the governorship of New York had been granted in 1770, was transferred to Virginia in the following year. He reached Williamsburg on September 25, and, in a letter to England reporting his arrival, expressed his desire to emulate the successful administration of his worthy predecessor.<sup>2</sup>

It was a vain hope. Future years were to prove that the English government was unwilling to abandon its intention of taxing the colonies and that ruling colonists were determined to resist unflinchingly every new Parliamentary encroachment upon their control over their financial and political affairs. Steadfast in his support of authorities

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1. William Nelson to the Secretary of State, October 15, 1770, Virginia Papers (Bancroft Transcripts), II, New York Public Library. Cf. also id. to id., December 19, 1770, ibid.; id. to id., March 27, 1771, ibid.

2. Governor Dunmore to id., October 3, 1771, ibid.

abroad, Dunmore was thus placed squarely by circumstances between upper and nether millstones. Under even the best of conditions, his position as governor would have made his situation one little to be envied. Dutiful obedience to instructions from those who gave him his appointment and compliance with the dictates of colonial opinion were two practically irreconcilable aims. Indeed, it is almost axiomatic that a governor could rarely be both faithful to his trust and popular among his people, and the unfortunate Dunmore's predecessors, like many a fellow-governor in other colonies, had found cause to complain of the very nature of their office.<sup>1</sup> Amid the tension of 1771-1775, Lord Dunmore was a fit object for genuine pity.

But certain changes in his character might have made his figure a bit less pathetic. He "boasted that he was the companion of George III" during that monarch's tuition under Lord Bute, an irreconcilable Tory — but such thoroughgoing Tory training did not afford him a worthy recommendation to Virginians, who were most likely to think of themselves in

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1. The conciliatory Fauquier seemed to dislike his obligation to tattle. E.g., he wrote upon one occasion, "... the circumstances of the Colony and my duty to his Majesty, both require that I should represent the state of the country in its true light, however disagreeable the picture may be": Francis Fauquier to the Earl of Halifax, June 14, 1765, ibid., I, 329. A more unyielding administrator had, under less vexing circumstances, exclaimed bitterly, "A Gov'r cannot contrive a surer way of gaining their [Virginians'] disfavor than by strictly pursuing his Duty and faithfully discharging his Trust": Alexander Spotswood to the Board of Trade, June 24, 1718, Brock, ed. Letters of Spotswood, II, 283.

terms of the Whig party.<sup>1</sup> His intellectual abilities were only mediocre at best, and he was inclined to be intemperate.<sup>2</sup> In none of these respects was George Wythe attracted to Dunmore, and the last of the royal governors became the only one of the four whom he had opportunities to know with whom Wythe had no intimate relationship.<sup>3</sup> Whenever, during the three preceding administrations, there had been a dispute between Virginia and England, Wythe had patriotically upheld the colonial cause, despite the patronage and friendship of Dinwiddie, Fauquier, and Botetourt. During the last five years

1. Autobiography of John Page, Virginia Historical Register, III, 148.
2. An unfavorable tale of his participation in an intoxicated escapade preceded Dunmore to Virginia. "We entertain a very disadvantageous [sic] Opinion of him from the accounts brought us from New York. I will tell you one of his Exploits which Wood, member [of the House] for Frederick County, who [sic] you know, brought to the Assembly from New York from whence he had just returned. His Lordship with a Set of his Drunken Companions Sallied about midnight from his Palace and attacked Chief Justice Horsmanden's Coach and Horses. The Coach was destroyed and the Poor Horses lost their Tails. The next day the Chief Justice applied to Government for Redress. And a Proclamation [was] issued by advice of the Council offering a reward of £200 for a discovery of the Principal in this violent act. We have not heard whether the Governor demanded the Reward": Richard Bland to Thomas Adams, August 1, 1771, Virginia Historical Magazine, VI, 134. Contrast, however, the more flattering report "that the People of New York parted with him very unwillingly": Thomas Everard to John Norton, September 30, 1771, Norton Papers, Colonial Williamsburg, Inc. Richard Henry Lee described Dunmore to the Continental Congress as a man "fond of his bottle": John Adams' Notes of Debates, October 6, 1775, Worthington Chauncey Ford, ed., Journals of the Continental Congress, 1774-1789, III, 482.
3. Call, "Judge Wythe", loc. cit., xii.

of his life as a British subject it was probably easier, from the personal point of view, for him to oppose measures supported by the Crown's representative.<sup>1</sup>

The years 1771-1773 were marked by little political excitement, and Wythe went about his duties as secretary of the lower house of the General Assembly quietly, with his characteristic patience in attending to routine details. In the first of these, and again in the last, he was paid £75 for his services at the Clerk's desk.<sup>2</sup> His pride in his position prompted him in 1772 to order from the Norton firm in London a new robe like that used by the corresponding officer of the House of Commons. Requesting also at the same time a number of legal and literary works, he voiced, in one delightfully curt phrase, his utter disapproval of a gown which he had previously secured from another English merchant:

You will oblige me by sending the books and robe mentioned in the inclosed. I shall draw upon you soon for the cost of two pipes of Madeira wine.

[Enclosure]

To be bought for G. Wythe,  
The works of Theophilus in greek and latin, two volumes in quarto, published at the Hague, in 1751,

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1. Cf. Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 131.
  2. Kennedy, ed., Journals of the House of Burgesses, 1770-1772, 139; Kennedy, ed., Journals of the House of Burgesses, 1773-1776, 32.

by Gul. Otto Teitz,  
 Glanville,  
 Bracton,  
 Britton,  
 Fleta,  
 Lamb. eirenarcha,  
 Erasmus's adages,  
 [Book of] Common prayer in greek.

A robe, such as [that which] is worn by the clerk of the house of commons, but better than the one I had before from Mr Child, which indeed was scandalous.<sup>1</sup>

Only meticulous propriety in the official dress of his office could satisfy Wythe, who was no more inclined to tolerate an unauthentic or cheap robe than he had been to perpetuate the somewhat slovenly ritual which John Randolph had adopted for the minutes of the House! In the same year the Assembly enacted a law to extend inland navigation on the Potomac River. To secure necessary funds for this purpose it was provided that a vast public lottery, offering 20,000 tickets and 8,308 prizes, should be established. Fourteen of the best-known Burgesses and Councillors were entrusted with the management of this venture by the colony into the gambling business; Wythe was among them.<sup>2</sup> In 1773 counterfeiting was the outstanding problem of local affairs,<sup>3</sup> and there are still extant the original copies of two resolutions of the House of Burgesses, signed by Wythe as Clerk, thanking Lord Dunmore for his aid in the apprehension and arrest of certain

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1. George Wythe to John Norton, May 29, 1772, Norton Papers, Colonial Williamsburg, Inc.

2. Hening, Statutes, VIII, 570-579.

3. The principal sources on this problem are cited or reprinted in Kennedy, ed., Journals of the House of Burgesses, 1773-1776, viii-xi.



offenders who had printed and put into circulation the spurious paper money.<sup>1</sup> Perhaps it was about this time, too, that Wythe extracted from the minutes of the House in 1753 for an unknown purpose an excerpt recording the Burgesses' treatment of a man who had used abusive language in addressing one of their members.<sup>2</sup>

George Wythe seems to have had, after the expiration of his term as Mayor, an occasional hand in Williamsburg's municipal government, for a newspaper announced at the close of 1772 his resignation as an Alderman.<sup>3</sup>

His available correspondence reveals something of Wythe's personal affairs during the first half of Dunmore's administration. In the summer of 1771 he planned to have a house erected in Elizabeth City County. Financially cautious, he submitted to his mercantile friend in London, John Norton, an itemization of the building materials which would have to be imported for this job, together with a list of proposed additions to the sideboard of his Williamsburg home, asking that an estimate of the cost of the intended purchases be

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1. Mss. in the handwriting of George Wythe, one of which was dated March 6, 1773, Sparks Collection, Harvard University Library.
  2. Ms. copy in the handwriting of George Wythe, with his signature, of a portion of the minutes for November 29, 1753, Roberts Autograph Collection, Haverford College Library.
  3. James Cocke became Mayor for the ensuing year, Dr. James Blair replaced Wythe, and John Dixon, the printer, was elected to the Common Council: Virginia Gazette (pub. by Purdie and Dixon), December 3, 1772.

sent to him:

I am about building a small house, and must be obliged to you for the english [sic] materials, which I shall send a bill of exchange to pay the cost of, so soon as I can get the favour of you to inform me, by inquiring of proper [per]sons, as near as may be, what it will amount to.

A bill of the things I shall want is inclosed, none of which I would have you [sen]d til [sic] I write again.

It is with pleasure I can acquaint you that your son, who is now at our home, seems to be in good health.

With my best respects to mrs Norton, and [to] the rest of your family....

[Enclosure]

A chest of nice joiner's and other tools, to cost six or seven guineas, or even eight, to be complete.

A set of tea china.

3 dozen wine glasses, one dozen beer-glasses, and four wine decanters.

Oil, colour [paint] & brushes to cost . . . . . 3- 0- 0

400 panes of crown glass . . . . . 20- 0- 0

2 mortis locks large . . . . . 1-13- 0

4 ditto smaller . . . . . 2-12- 0

3 ditto . . . . . 1- 2- 6

6 p<sup>r</sup> 4 inch door dovetail hinges . . . . . 1- 4- 0

3 p<sup>r</sup> smaller d<sup>o</sup> . . . . .

48 p<sup>r</sup> HL rising joint for shutters . . . . . 4- 0- 0

48 p<sup>r</sup> side hinges d<sup>o</sup> . . . . . 2- 0- 0

40 2/2 wainscot pullies for sashes . . . . . 0- 8- 0

65 yds. white line [rope] for d<sup>o</sup> . . . . . 0-10-10

48 brass jointed rings for shutters . . . . . 1-16- 0

10 pieces fly wire [screening] 3 feet  
1 inch square . . . . . 10-15- 0

a cask of nails

The tea china & glass ware [sic] to be sent to [me at] Williamsburg, the others to be left with mr Jacob Wray at Hampton for

G. Wythe.<sup>1</sup>

Some months later Norton instructed his son to tell Wythe that he had taken steps to secure the appraisal, which might be expected to reach Virginia in reasonable time.<sup>2</sup> When it

1. George Wythe to John Norton, July 18, 1771, Norton Papers, Colonial Williamsburg, Inc.

2. John Norton to John Hatley Norton, February 24, 1772, Mason, ed., John Norton & Sons, 222.

came, Wythe replied:

I am much obliged to you for the estimate you was [sic] so good as to send me by capt. Robinson, which I received this morning. The articles [which I intended to order] exceed what I can afford; and therefore I shall content myself without most of them, if not all. My friend J. H. N[orton]. was at our house two days since, and seemed to be in good health.<sup>1</sup>

Later in the same year, however, Wythe decided that modest acquisitions for intellectual improvement were within his means. For himself he ordered an optical instrument to assist him in the study of astronomy:

I beg the favour of you to send me a telescope. For a good one I would go as far as eight or ten guineas. I would have a light stand [i.e., tripod] to keep it steady upon.<sup>2</sup>

For a descendant of one of his mother's brothers, a lad who was Norton's nephew and whose education he was supervising, Wythe sought to obtain some mathematical instruments:

I lately desired my friend J. H. Norton to send for a few articles upon my account, and to remit a bill of exchange to be placed to my credit. Be pleased to let me have a state[ment] of my account, for I do not know exactly how it stands. Jacob Walker, a youth of great hopes, who lives with me, is likely to make a good progress in the mathematics, which he is pursuing with some other branches of useful knowledge. To assist him, I beg [that] you will send me a set of instruments, which his tutor informs me may be had for two or three guineas.<sup>3</sup>

Despite the payment on his account which he thus transmitted to London through Norton's son, the books of the firm

1. George Wythe to John Norton, June 17, 1772, Norton Papers, Colonial Williamsburg, Inc.

2. Id. to id., September 8, 1772, ibid.

3. Id. to id., December 12, 1772, ibid.

indicated a debit of £40.3.1 opposite his name in the summer of 1773.<sup>1</sup> What business Wythe transacted after that date with the Nortons in England cannot be learned. At the close of that year he ordered some seeds from Philadelphia for a friend in Elizabeth City County:

If it will not be giving you too much trouble I beg the favour of you to send to Philadelphia for three hundred pounds weight of red clover seed and two bushels of timothy seed to be left for me with mr Jacob Wray at Hampton. Mr Saint George who recommended it to me to procure the seeds from Philadelphia wishes to have them as soon as possible.<sup>2</sup>

It was probably in the years just before the Revolution that Wythe began to broaden his intellectual studies to include fields notably beyond the range of the classics and the law. He became thoroughly acquainted with mathematics and with natural philosophy (in more modern terminology, the natural sciences), and the proficiency which he attained in them caused his friends to marvel that, at "a period in life, which in others would be deemed at least the verge of old age", he could surpass in ardor and depth the efforts of nearly all youthful students.<sup>3</sup> In 1773 an organization to encourage scientific and philosophical work was launched in Williamsburg and christened the Society for the Advancement of Useful Knowledge. It was a group which may take rank as

1. List of Foreign Debtors, July 30, 1773, ibid.
2. George Wythe to an unknown addressee, December 22, 1773, Autograph Collection of the Signers of the Declaration of Independence, Maine Historical Society Library.
3. Anonymous "Communication", The Enquirer, June 10, 1806.

the second learned society to be established in the colonies.<sup>1</sup> In its second annual meeting, held in the Capitol in June, 1774, John Page<sup>2</sup> was advanced from the vice-presidency to the president's chair. Wythe was elected to succeed Page as vice-president for the coming year, a monetary reward was bestowed upon the builder of a model of a machine for threshing wheat, and prominent English and American intellectuals were selected as corresponding members.<sup>3</sup> The Society appears to have been active at least eleven years.<sup>4</sup> Though records have not survived to tell its later history, George Wythe doubtless continued to have a prominent part in its studies and to serve at times as one of its officers.

The Political Isolation of the Clerkship, 1774-1775

Lord Dunmore's disposition during 1772 and 1773 was evidently aimed at the goal of amicable relations with the

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1. It certainly did not precede the American Philosophical Society in Philadelphia, of which Benjamin Franklin was the leading spirit. Cf. John Page to James E. Heath, January 3, 1834, Ms. pasted to front cover of [George Wythe, Etymological Praxis], Virginia Historical Society Library.
  2. On his scientific interest cf. esp. his report and observations on rainfall at "Rosewell" during the year ending June 13, 1773, as he had minutely recorded it with a home-made contrivance: id. to John Norton, July 21, 1773, Norton Papers, Colonial Williamsburg, Inc.
  3. Rev. James Madison and Rev. Robert Andrews, with each of whom Wythe was to be associated on the William and Mary faculty, were chosen as secretaries at the same time: Virginia Gazette (pub. by Purdie and Dixon), June 16, 1774.
  4. Tyler, Williamsburg, 57-58, 61.

House of Burgesses.<sup>1</sup> When, in its session of the latter year, that body elected a committee of intercolonial correspondence and proposed that sister colonies should set up similar agencies for communication, he dissolved it,<sup>2</sup> but no quarrel of those years had been really serious. However, the Declaratory Act of a former year remained upon the statute books, and its assertion for Parliament of a right and power to control by legislation colonial matters of every type was portentous, to say the least.

A series of developments began in 1774 which led in unbroken continuity to the War of American Independence and which in Virginia brought Dunmore and the colony into outright hostility. A customs duty on imported tea was re-enacted in the preceding year. The Boston Tea Party resulted, and Parliament accepted the challenge by adopting several punitive or coercive acts directed against Massachusetts, including that which closed the port of Boston to trade, effective June 1, 1774. News of some of these troubles in New England reached Virginia during the session of the House of Burgesses in May. A group of the least conservative

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1. Percy Scott Flippin, The Royal Government in Virginia, 1624-1775 (Columbia University Studies in History, Economics, and Public Law, LXXXIV, no.1), 144. Nevertheless, Dunmore got started on the wrong foot: Robert Leroy Hilldrup, "The Virginia Convention of 1776: a Study in Revolutionary Politics" (Ms. Doctor's Dissertation), 96, University of Virginia Library.

2. Autobiography, Bergh, ed., Writings of Jefferson, I, 7-8.

members, principally Jefferson, Richard Henry Lee, and Henry, drew up a resolution designating the first of June as a day of fasting and prayer, in the hope that a demonstration of that type would quicken the public pulse. With appropriateness and tactical wisdom, they persuaded the cautious and gravely pious Robert Carter Nicholas to propose their measure, and the House agreed to it readily. Almost two decades had passed since the colony had solemnly observed a fast. Dunmore, shocked to find that such an act of religious and political fervor could be inspired merely by sympathy for distant colonists or by fear that quiet acquiescence would be considered a precedent, retaliated with the only recourse in his power, a dissolution of the Assembly.<sup>1</sup>

His sole resort was ineffectual. As had been done previously under similar circumstances, a number of the Burgesses thereupon convened in Raleigh Tavern and agreed to a non-importation association. But their actions in 1774 went much farther than ever before. Espousing the cause of Massachusetts with a generous and far-seeing "all for one" policy, they proclaimed that an attack upon any colony should be deemed hostility to every one of the thirteen and directed their committee of inter-colonial correspondence to propose a continental congress of deputies as a clearing-house of

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1. Ibid., 9-10; Governor Dunmore to the Earl of Dartmouth, May 29, 1774, Virginia Papers (Bangcroft Transcripts), II, New York Public Library; George Mason to Martin Cockburn, May 26, 1774, Virginia Historical Register, III, 27-28; Pendleton, "Autobiography", Richmond Enquirer, April 11, 1828.

mutual resistance. Moreover, they recommended that a convention of delegates from Virginia counties should meet the first day of August.<sup>1</sup> Thus, balked by Dunmore from acting in a legal capacity, they promoted the alternative of illegal colonial and intercolonial organizations which were to become agencies of opposition to Parliament and, in time, engines of independence from England. It was certainly the most overt measure for resistance against British authority which had thus far been conceived.

Comparative harmony could no longer exist between Lord Dunmore and the Burgesses. The turn of events became more incomprehensible to the governor a few weeks later, however, when the Council cast aside its usual adherence to his point of view by urging unanimously that he issue immediately writs for the election of a new House of Burgesses, in order that the General Assembly might be ready to convene whenever a new session should seem advisable. Deserted by his only allies, Dunmore could not but yield.<sup>2</sup> Yet he postponed until

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1. Autobiography, Bergh, ed., Writings of Jefferson, I, 10-11; Governor Dunmore to the Earl of Dartmouth, June 6, 1774, Virginia Papers (Bancroft Transcripts), II, New York Public Library. A congress had often been proposed: e.g., Communication signed "Observation", Virginia Gazette (pub. by Purdie and Dixon), November 11, 1773.
  2. Executive Journals of the Council of Colonial Virginia (Photostats), June 16, 17, 1774, University of Virginia Library; Governor Dunmore to the Earl of Dartmouth, June 20, 1774, Virginia Papers (Bancroft Transcripts), II, New York Public Library; Autobiography of John Page, Virginia Historical Register, III, 148. Page, formerly in the House of Burgesses, was recommended by Dunmore to become a Councillor: John Norton to John Hatley Norton, February 16, 1773, Norton Papers, Colonial Williamsburg, Inc. Dunmore soon had occasion to regret that appointment.



the next year calling the Assembly together.

In the popular Convention of August, 1774, which consisted very largely of the burgesses who had met in May as a House, Peyton Randolph, Richard Bland, George Washington, Edmund Pendleton, Richard Henry Lee, and Benjamin Harrison were chosen as delegates to the First Continental Congress, which met at Philadelphia in the following September. George Wythe, Clerk of the House, had been for some years in a position too retired from politics to be a member of the convention or a deputy to the congress. But Wythe could assist those who were sent to Pennsylvania. Washington thought immediately of the possible need in Philadelphia for statistical information on Virginia's trade and population. Accordingly, he secured from Wythe's records, as the best index to the latter, a summary of the most recent list of tithables.<sup>1</sup> In the spring of 1775 Jefferson was studying in connection with his duties the significant and involved question of the relation of the King to colonial land; evidently he enlisted the aid of his mentor. Wythe replied:

I do not know that the terms on which the crown engaged to grant the lands in Virginia are contained in any other charter than that by Car. 11. [Charles II on] the 10.[th day] of Oct. [in the] 28[th year] of his reign. The original, I believe although the seal is not now to it, I found in my office; and I understand it is recorded in the Secretary's office. A copy of it I now enclose to be sent by the first opportunity. In the mean time [sic] I will look over some other charters transmitted some years ago by agent Montagu[e] to the committee of correspondence and send you a list of them with copies of those if there be any which relate to the subject you are investigating

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1. George Washington to Richard Henry Lee, August 7, 1774, Fitzpatrick, ed., Writings of Washington, III, 236.

and will procure you copies of such others as you shall signify a desire to have.<sup>1</sup>

Two days later Wythe completed the report which his haste to post some word to Jefferson had left unfinished:

Since my letter of [the day before] yesterday, I have looked cursorily over all the charters in my office. Of those sent by mr Montagu[e] the three which seem to concern the matter you are considering are the same that are in the appendix to mr Stith's history [of Virginia] and the other which is all that I have of them besides is an ordinance relating to the appointment of a council in England for the affairs of the colony. Among these I find several commissions by James the first and his son appointing commissioners to consider the state of the colony and of the proper means to advance it &c. Shall I send you copies of them? Is there any thing else in which I can assist you?<sup>2</sup>

Thus did Wythe have occasion again to regret the inadequacy of the documentary and legislative records of the colony.

As early as May and June, 1774, began the organization of local committees of safety to enforce the boycott and to serve as executive units.<sup>3</sup> When the Continental Congress endorsed that movement, it was determined that even Williamsburg, the seat of the royal government, should set up a group of that type. At the close of the year 1774 the residents of the capital chose a committee of fifteen of its citizens, among whom they named Peyton Randolph, chairman, Robert Carter

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1. George Wythe to Thomas Jefferson, April 5, 1775, Jefferson Papers, Library of Congress.

2. Id. to id., April 7, 1775, ibid.

3. H. J. Eckenrode, The Revolution in Virginia, 34, 42-45.

Nicholas, Benjamin Waller, and Wythe.<sup>1</sup> Little is known of the activities of this body, but a note written by Wythe for it in the following summer to the presiding officer of the Virginia Convention of July, 1775, has been preserved:

The committee of Williamsburg thought it proper to send the inclosed letters, which came to their hands this morning, by express, to you, to be laid before the convention.<sup>2</sup>

The enclosures to which reference was made are not available, and the nature of the alarm which prompted the use of the fastest mails cannot be ascertained.

A second convention convened in Richmond in March, 1775, and it has been supposed that Wythe attended its sessions.<sup>3</sup> But the relative political isolation into which his position as Clerk of the House had betrayed him was not to be broken so soon.<sup>4</sup> In that session Patrick Henry supported his successful resolution for arming the local militia forces with his most familiar oratorical effort, which closed with the

1. Virginia Gazette (pub. by Purdie and Dixon), December 22, 1774. It is of interest that Pendleton, absent in Philadelphia, was elected chairman of the Caroline County committee: ibid., December 8, 1774.
2. James Hubard, George Wythe, and John Dixon to the Speaker of the Convention, August 12, 1775, Gratz Collection, Pennsylvania Historical Society Library. All of this letter except the signatures of Hubard and Dixon was undeniably penned by Wythe.
3. Grigsby, Virginia Convention of 1776, 122; Tyler, "George Wythe", loc. cit., 60-61.
4. Wythe was not an official delegate to this assembly, of which John Tazewell was clerk: The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia, Held at Richmond ... March, 1775, 3-4.

immortal declaration: "... give me liberty or give me death". But for the conservative influence of Peyton Randolph, Bland, Pendleton, Harrison, and Nicholas, more rebellious steps might then have been taken.<sup>1</sup> Yet in the present connection the chief interest of that Richmond meeting lies in an estimate of Wythe's abilities supposed to have fallen at that time from the lips of the man whose leadership was for the present most on the ascendant. Without known provocation, Henry is reported to have posed a rhetorical question in reference to Wythe: "Shall I light up my feeble taper, before the brightness of his noon tide [sic] sun?" In terms of a different and less forceful simile, he replied to his own query: "It were to compare, the dull dewdrop of the morning, to the intrinsic beauties of the diamond."<sup>2</sup>

In the month of the convention's meeting Dunmore addressed to British officials a tirade in which he recommended that John Page, whose opposition to the government's policies had been outspoken, should be deposed from the Council. It is an indicative commentary on the crystallization of sentiment against England that the harassed governor could think at that time of only three men in the colony

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1. Eckenrode, Revolution in Virginia, 45-48.

2. Call, "Judge Wythe", loc. cit., reported the quotation without a hint as the circumstances of its alleged utterance, and Tyler, "George Wythe", loc. cit., 61, adopted it. One commentator has assumed that the allusion was of this date: E. C. Massie, Report of the Committee on a Memorial to Wythe, Virginia State Bar Association Re-ports, XXXIV (1922), 44.

loyal enough to be deemed eligible for the two vacant seats in the upper body of the legislature.<sup>1</sup>

During the evening of April 20, 1775, Dunmore precipitated his rapid and complete loss of authority over Virginia. Under his orders a supply of gunpowder was removed from the magazine of the powder-house in Williamsburg and was taken aboard a British ship in the James. To armed citizens of the town an explanation was offered the next morning that these military stores were being protected from capture by slaves for use in a threatened, always-dreaded insurrection and that they would be returned if needed by the colony. Defense of this shallow, utterly fictional excuse by Peyton Randolph and Robert Carter Nicholas forestalled the near-riot. Yet a daily influx of demands from county militias for a return of the powder kept the issue open for several weeks. Patrick Henry in particular threatened to effect a reprisal, but Dunmore sent him a payment for the stolen powder, and conservative colonists persuaded him to postpone his intended hostilities. So dangerous was Dunmore's position in Williamsburg that he moved his family to the protection of the Fowey, an English man-of-war in the river at Yorktown, and implored his superiors to send him men and munitions, promising to repel force with force, if necessary, in the meantime by arming his personal servants and any other slaves whom he

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1. Governor Dunmore to the Secretary of State, March 14, 1775, Virginia Papers (Bancroft Transcripts), III, New York Public Library.

could attract to his standard by a promise of freedom. He, too, soon fled to the refuge of the Fowey's guns.<sup>1</sup>

The illogic of the situation was made complete when the House of Burgesses convened finally on the first day of June, after a full year since its last dissolution<sup>2</sup> — a year in which its members had met twice as a convention. For more than three weeks it struggled with legislative procedures, but no guarantee of his personal safety could persuade Dunmore to return to the capital to put his signature upon its bills, nor could the General Assembly, still observing certain legal forms in a day when law had been in truth superseded, accept his offer of safe conduct to attend him at Yorktown. Thus there was nothing to be done but to adjourn. It was the last session of the House.<sup>3</sup> The absence of the governor, of course, made it impossible, too, to pass an appropriation for the salaries of its officers, and Wythe's

1. His side of the story is related in detail in his letters to the Secretary of State on May 1, 1775, and later dates: ibid.
2. Perhaps in anticipation of an earlier meeting, or perhaps merely as a reminder to negligent county court clerks, Wythe published at the end of 1774 a copy of an earlier order of the House requiring them to submit at the opening of each session a list of tithables, to which he added over his signature as Clerk of the Burgesses a list of the counties whose reports he had received to date: Virginia Gazette (pub. by Purdie and Dixon), December 22, 29, 1774.
3. A quorum could not be obtained in its three abortive later attempts to convene, October, 1775, March and May, 1776: Kennedy, ed., Journals of the House of Burgesses, 1773-1776, 283. Wythe was in Philadelphia upon each of these occasions. Possibly he took in August, 1775, the step of a formal resignation, but that is unlikely.

services in recording minutes of the meetings on the 47 days of the two sessions since his payment in 1773 went unrewarded by any financial compensation.

In his hasty retreat from the Governor's Palace to the safety of the vessel in the York River, Dunmore had left in his Williamsburg mansion a considerable quantity of muskets and ammunition. Three raids upon the Palace by patriotic Virginians effected the seizure of these arms.<sup>1</sup> George Wythe is reported to have been numbered among one of the parties which thus, in June, 1775, rifled the governor's residence, placed the powder in the public magazine, and divided the rifles among themselves.<sup>2</sup> But an unidentified alarm of about the same period afforded him an opportunity to show more pointedly his willingness to belie for the moment the Quaker anti-war tradition of his maternal grandfather and to oppose physically the power of those whom he considered enemies of the colony. Some wild rumor that an attack would be made on Williamsburg by Dunmore or by his small naval forces spurred the volunteer militia corps there to assemble. Clad in a hunting shirt and bearing a musket upon his shoulder, Wythe marched, despite the entreaties of his wife, to the place at which the company was drawn up in formation. Confronted by a leading citizen attired in the garb and equipped with the

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1. See several of Dunmore's letters in June to the Secretary of State: Virginia Papers (Bancroft Transcripts), III, New York Public Library.

2. Meade, op. cit., I, 294-295.

weapon of the chase, its astonished commanding officer inquired of him the reason for his presence. "I come to offer my services to my country," the reply is said to have been, "and to do what you command." Apparently, in his intent eagerness to make himself useful, Wythe had overlooked the formality of procuring for himself a commission and an official military rank; the technicality of enlistment had not entered his head. Nor does it seem to have occurred to him that his appearance before the volunteers on such a mission would create a mild sensation or that his patriotism would not have been doubted had he sat calmly in his parlor. The ranks of the soldiers were pervaded by the silence of awe, their officers were overcome by a surprise amounting almost to consternation, and spectators nearly gasped in admiration at the sight of so forthright, humble, and naive an application for military duty on the part of a dignitary aged forty-nine. Those in charge persuaded him tactfully to forget his purpose and to stow his gun away, but this could be accomplished only with difficulty and on the ground that he could be of greater service in the forum than upon the battlefield.<sup>1</sup>

George Wythe had not long to wait for an assignment to responsible civil activity. Abandoned by the absentee Dunmore, the old burgesses convened a third time as a convention

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1. Anonymous "Communication", The Enquirer, June 10, 1806; Randolph, Manuscript History of Virginia, Virginia Historical Magazine, XLIII, 132; Call, "Judge Wythe", loc. cit., xiii; Grigsby, Virginia Convention of 1776, 122.



in July at Richmond and assumed complete legislative and executive control of the colony. Vacancies occurred in the deputation to the Continental Congress. George Washington had accepted the leadership of the continental army; Patrick Henry was chosen by the convention to be commander of Virginia's troops; Pendleton resigned on a plea of ill-health, which was, fortunately, not prolonged. On the eleventh of August ballots were cast for the selection of seven delegates for a term of one year. Peyton Randolph received 89 votes; Richard Henry Lee, 88; Jefferson, 85; Richard Bland, 61; and Wythe, 58. Because of the infirmities of old age, Bland declined his reelection on the next day, and Col. Francis Lightfoot Lee, one of Richard Henry's brothers, was named soon in his stead, taking rank just behind Wythe as the junior member of the group.<sup>1</sup>

By this election Wythe was rescued from the comparative oblivion into which his clerkship to the House of Burgesses had unavoidably and somewhat noticeably plunged him during the past year or two. He had not in the least lost step with the progress of political opinions in the colony; the declining importance of the body of which he was secretary had

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1. The Proceedings of the Convention of Delegates for the Counties and Corporations ... of Virginia, Held at Richmond ... July, 1775, 14, 15, 17. Cf. George Mason to Martin Cockburn, July 24, 1775, Calendar of Virginia State Papers, I, 267; id. to id., August 22, 1775, ibid., 268; Peyton Randolph to George Washington (photostat), September 6, 1775, Washington Papers, Library of Congress; Virginia Gazette (pub. by Pinkney), August 17, 1775; Virginia Gazette (pub. by Dixon and Hunter), August 19, 1775.

simply reacted to promote the ascendant leadership of the men upon its floor, who, unlike himself, had not by the nature of their position lost touch with their respective constituencies and closed the door to their election as delegates to the series of conventions. There is a bit of pathetic irony in the fact that Peyton Randolph's well-intentioned appointment of Wythe to the Clerk's desk, an office of honor and influence to which the new incumbent was extremely well suited by nature and experience, might early in 1775 have seemed in retrospect perilously equivalent to the burial of an outstanding political career. That of John Randolph had indeed been consigned to an early graveyard by his commission as Attorney General, and that stolid supporter of British control in Virginia found it more comfortable in 1775 to exile himself than to remain for the full eclipse of his beliefs.<sup>1</sup> On the other hand, Wythe's career as a statesman was given a tremendous new lease on life by his former colleagues who composed the convention in the summer of 1775. Their inclusion of him among their delegates to Congress becomes all the more significant when one reflects that the successive conventions very rarely reached outside their own ranks to commandeer the services of a deputy.<sup>2</sup>

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1. John Randolph to Thomas Jefferson, August 31, 1775, Jefferson Papers, Library of Congress. Contrast the very different tone of a letter written to Jefferson on the same day by Randolph's son, who upheld the colonial cause: Edmund Randolph to *id.*, August 31, 1775, *ibid.*

2. Francis Lightfoot Lee seems to have been the only other such appointee by any of the conventions.

A Williamsburg newspaper announced to its readers in the following notice Wythe's departure for Philadelphia on August 28:

LAST Sunday morning the honourable PEYTON RANDOLPH, esquire, left this city to attend the continental congress; and on the succeeding morning GEORGE WYTHE, esquire, set off for the same laudable purpose. THE LADIES of the above gentlemen accompanied them. The volunteers, as usual, paid every mark of distinction on the occasion.<sup>1</sup>

This date upon which Wythe began his trip to Pennsylvania may be singled out better than any other as that which best signalizes for him the end of his life as a loyal British colonist. A proclamation issued by the King five days before his departure gave tardy recognition to the state of rebellion which was already in existence and produced in certain colonial quarters a feeling that the Crown itself had thereby forfeited unalterably the homage of its American subjects — a belief which Wythe shared. Months of hesitation were to elapse ere the general spirit of resistance could be transformed by actual warfare — a militant Dunmore, reinforced by minor detachments of British forces,<sup>2</sup> was the aggressor in Virginia — and by the failure of every effort at reconciliation into the movement for independence. The

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1. Virginia Gazette (pub. by Pinkney), August 31, 1775. Another such announcement appeared in Virginia Gazette (pub. by Dixon and Hunter), September 2, 1775.
  2. Lord Dartmouth to Governor Dunmore, August 2, 1775, Virginia Papers (Bancroft Transcripts), III, New York Public Library. Dunmore was soon generally referred to as "Our late Governor": John Page to Thomas Jefferson, November 24, 1775, Jefferson Papers, Library of Congress.

formal abolition of Wythe's allegiance to England did not come until a Declaration of Independence was proclaimed in July, 1776, but by that time he had taken independence for granted and plunged into the problems of rebuilding American institutions to make them conform to a new order of things. To trace his leadership as a revolutionary only to the summer of 1776 would be to leave in mid-air the story of his leadership as a republican; his labors as an American reformer began before his work as an English rebel had ceased. The two were inseparably linked together. This survey of the life of George Wythe the Briton may therefore be concluded most appropriately with the episode which seems to have best defined his transition from a disaffected subject of George III to a Virginia nationalist.

#### A Premature Theory of Empire

The real proof of the development of George Wythe into an ardent advocate of American independence lies in his career as a member of the Continental Congress, for the retirement of his clerkship offered him few opportunities to proclaim his thoughts on political questions. But, perhaps, sufficient evidence of his firm opposition to Parliament's intention to subordinate the colonies has been noted in this review of his life until September, 1775. The theoretical ground upon which that opposition was based has been relegated thus far to the background. Yet the ideas which explain Wythe's actions in the series of imperial crises cannot be neglected in any summary of that portion of his life in

which he was subject to the authority of Great Britain.

The chief issue at stake between England and Virginia from the time of the Stamp Act controversy was what powers over the colony might be constitutionally exercised by Parliament. As has been previously stated, no definition of those powers was available. Hence the question was open to the ventures of any would-be expounder of the British system of government who might choose to evolve his own particular interpretation. For a decade after 1764 a wealth of speculation on the subject thrived in the continental colonies. From the accumulated literature of state papers and pamphleteers it has been observed that the whole mass of divergent theories can, in the main, be classified in three mutually exclusive interpretations.

According to the first, Parliament, which was admittedly a constituent assembly in its relation to England, had an unlimited power also over the colonists; its enactments were enforceable law in America as well as in the Mother Country. This was in essence the doctrine which it proclaimed for the first time in its Declaratory Act of 1766, asserting for itself the right to bind the colonies in all cases whatsoever. That authoritative announcement stood as the official statement of a British position from which it would brook no retreat, and its unwillingness to modify this claim of unrestricted power was the foundation of colonial alienation. Few voluble proponents of this idea were to be found west of the Atlantic.

The second type of colonial theories admitted only a limited parliamentary control and professed the exclusive authority of the public assembly of each colony over all other matters. Parliament, conceived in an imperial capacity as a sort of arbiter, was granted supervision over affairs of intra-imperial and international commerce, with even the right of levying customs duties as a regulatory measure; but the colonial legislatures were presumed to be supreme in internal affairs, including taxation. This view arose from the undeniable facts that Parliament had assumed direction of commercial concerns long before 1763 and that the colonies had accepted rather unquestioningly a series of navigation acts. Its chief exponent was John Dickinson, author of the widely read Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies, a series of essays in protest against the Townshend duties. Its weakness lay in the difficulty of drawing a line between internal and external affairs and of making a clear-cut distinction between tariffs imposed for revenue and those levied merely for regulation. Dickinson would trust in the discovery of the primary intent behind ambiguous duties for the solution of the latter dilemma. This division of legislative authority had a tremendous vogue about 1770; its influence may be discerned as late as 1776.

The third colonial point of view was the exact antithesis of the first and denied to Parliament any control at all over the colonies. This theory was based upon appeals to the

natural right of expatriation and to an alleged constitutional right of self-government. It held that the original colonists had by their emigration severed their subjection to England's legislature, having moved outside the geographical limits of parliamentary rule, but that their allegiance to British kings had in no wise been destroyed and remained as the only tie between England proper and British America. Thus each of the colonies was delineated as a sovereign nation under a common executive in the person of the English monarch. The many unfortunate precedents of an actual exercise of parliamentary jurisdiction over American peoples were early explained away by an argument that acquiescence by the weak in the usurpations of the strong might be retracted whenever the weak gained adequate strength. Benjamin Franklin gravitated to this interpretation by 1770; James Wilson, also of Pennsylvania, gave it convincing expression about the same time in his Considerations on the Nature and Extent of the Legislative Authority of the British Parliament (published in 1774); John Adams elucidated it ably in his journalistic contributions over the pseudonym Novanglus; and Jefferson asserted it somewhat as a postulate in his resolutions inspected by Virginia's Convention of August, 1774, published in Williamsburg and London under the title of A Summary View of the Rights of British America. Professed adherents of this theory were very few in number before 1774; this list of its propounders is practically exhaustive for the years

preceding 1775.<sup>1</sup>

The idea of the King as the one bond of union between the colonies and Great Britain was supported by the contemporary analogy of the position of Hanover. From that German principality the grandfather of George III had moved to England to assume the British throne. The ruling member of the family still retained his authority as Elector of Hanover, which was nevertheless beyond the pale of parliamentary control. Thus in the person of the very sovereign to whom the colonists acknowledged allegiance there existed an illustration of the principle that kingship can transcend nationality. In seventeenth century British history another example was available. Just before the settlement at Jamestown was inaugurated King James of Scotland became King James of England as well, and for about a hundred years he and his successors

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1. For scholarly treatments of the relation of the colonies to England see Carl Becker, The Declaration of Independence: a Study in the History of Political Ideas, 80-134; Randolph Greenfield Adams, Political Ideas of the American Revolution: Britannic-American Contributions to the Problem of Imperial Organization, 1765 to 1775, esp. 20-28, 40-61; Charles Howard Hollman, The American Revolution, a Constitutional Interpretation; Moses Coit Tyler, The Literary History of the American Revolution; Van Tyne, op. cit., esp. 198-223. For a few adverse comments on the third of these theories see Hellen Chamberlain, "The Constitutional Relations of the American Colonies to the English Government at the Commencement of the American Revolution", Papers of the American Historical Association, III (1888), 70; Hannis Taylor, The Origin and Growth of the American Constitution, 105-106; Christopher Hollis, The American Heresy, 11. For a most unusual attempt to justify the third of these theories, by a muster of the precedents related to Virginia, see the chapter titled "The American Kingdoms" in Walter Neale, The Sovereignty of the States, 1-72.



ruled simultaneously over two kingdoms which were mutually independent of one another.

Many of the implications of the theory were obvious. In their legislative aspect they meant that the General Assembly was to Virginia what Parliament was to England; the Council corresponded to <sup>the House of Lords, and the House of Burgesses was an equivalent</sup> the House of Commons. A contributor to a Williamsburg newspaper advocated urgently in 1773 that the Assembly should adopt "Parliament of Virginia" as its name.<sup>1</sup>

The letter to Montague which George Wythe penned for the Committee of Correspondence in 1764, it will be remembered, in its protest against the proposed Stamp Act smacked of the specious distinction between internal and external taxation. There is reason to believe that he may have been expressing upon that occasion sentiments which were not his personal convictions but which represented the majority opinion of the Committee. Jefferson testified that, from the very beginning of the constitutional conflict which ended in the expulsion of the British flag, Wythe subscribed unreservedly to the theory which refuted Parliament's claim of colonial authority. In upholding this interpretation mentor and pupil stood almost alone among Virginia patriots; as late as 1774 Peyton Randolph, Richard Henry Lee, Robert Carter Nicholas, Edmund Pendleton, and others, Jefferson was forced to admit,

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1. Communication signed "Hampden" to "the Parliament of Virginia", Virginia Gazette (pub. by Purdie and Dixon), November 11, 1773.

straddled the fence after the manner of John Dickinson.<sup>1</sup>

Some of these gentlemen and thousands more were never won over to the doctrine of complete colonial independence from English legislation. Their opposition to the parliamentary program on the eve of the Revolution was based upon less sweeping objections than that of Wythe and Jefferson, whose indictment of Parliament was all-inclusive. But when all joined in July, 1776, to issue to the world a justification of their actions, they pronounced themselves independent of the King, against whom an imposing list of grievances was enumerated, and made only two veiled references to Parliament.<sup>2</sup>

The subsequent history of Great Britain has confirmed the sagacity of the interpretation of the English constitution which Jefferson and Wythe adopted. The British Empire of the eighteenth century has largely dissolved into a Britannic Commonwealth of Nations in which Canada, Australia, and other units, including even Ireland, rank as co-ordinate and self-governing states under the seal of but one king. Loss of thirteen colonies was the price which England paid for its inability in 1775 to see the wisdom of an advanced theory which looked at the imperial structure as it ought to be.

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1. Autobiography, Bergh, ed., Writings of Jefferson, I, 11-12; Jefferson, "Notes for the Biography of George Wythe", filed under August 31, 1820, Jefferson Papers, Library of Congress.

2. Becker, op. cit., 18-22.

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Chamberlain Collection

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Miscellaneous Manuscripts Collection

Colonial Williamsburg, Inc., Williamsburg, Va.  
Norton Papers

Duke University Library, Durham, N. C.  
Robert Carter Papers

Harvard University Library, Cambridge, Mass.  
Sparks Collection

Haverford College Library, Haverford, Penna.  
Roberts Autograph Collection

Henry E. Huntington Library and Art Gallery, San Marino, Calif  
Autograph Collection of the Signers of the Declaration  
of Independence  
R. A. Brock Papers

Library Company of Philadelphia, Philadelphia, Penna.  
John A. McAllister Collection

Library of Congress, Washington, D. C.  
Continental Congress Papers  
Jefferson Papers  
Madison Papers  
George Morgan Manuscripts Collection, 1775-1787  
Virginia Miscellaneous Manuscripts Collection, 1606-1772  
Washington Papers

Maine Historical Society Library, Portland, Me.  
Autograph Collection of the Signers of the Declaration  
of Independence

Massachusetts Historical Society Library, Boston, Mass.  
Jefferson Papers  
Miscellaneous Manuscripts Collection

J. Pierpont Morgan Library, New York, N. Y.  
Autograph Collection of the Signers of the Declaration  
of Independence

New York Historical Society Library, New York, N. Y.  
James Duane Papers  
Miscellaneous Manuscripts Collection

New York Public Library, New York, N. Y.  
Samuel Adams Papers  
Emmet Collection  
Myers Collection  
Virginia Papers (Bancroft Transcripts), 1756-1781

New York State Library, Albany, N. Y.  
Autograph Collection of the Signers of the Declaration  
of Independence

Pennsylvania Historical Society Library, Philadelphia, Penna.  
Board of Trade Journals (Transcripts), 1675-1782  
Dreer Collection  
Etting Collection  
Gratz Collection  
Manuscript Biographies Collection  
Sprague Collection

University of Pennsylvania Library, Philadelphia, Penna.  
Autograph Collection of the Signers of the Declaration  
of Independence

University of Virginia Library, University, Va.  
Cabell Papers  
Executive Journals of the Council of Colonial Virginia  
(Photostats), 1752-1776  
Jefferson Papers  
Lee Papers  
Miscellaneous Transcripts Collection

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