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THE HISTORY OF LEGAL EDUCATION IN VIRGINIA

*W. Hamilton Bryson**

I. BEFORE 1779

The English Inns of Court in London had ceased to perform their educational functions in the middle of the seventeenth century.¹ For the next hundred years or so, there was no formal or organized instruction of the English common law. Lawyers, both barristers and solicitors in England and in America, learned their profession as best they could in unstructured situations. They learned by serving as apprentices or clerks to practicing lawyers, by the independent reading of law books, and by observation in the courtroom itself.²

Although the four Inns of Court in the eighteenth century no longer gave an education, they did give the professional degree of barrister. A barrister was deemed to be of the social degree of an esquire. The Inns of Court thrived in the eighteenth century because they controlled the admission of barristers to the practice of law, pretended to supervise the general conduct of the bar, and provided office space and a social club for their members. In this period there was no examination prerequisite to being called to the bar. All that was required was membership in the inn for a period of time and the payment of various fees; in fact fees could be substituted for the traditional eating of dinners which marked the passing of time. When a man was called to the bar of his inn, he was thereby entitled to argue in the high courts of justice in Westminster and to practice in any of the courts of the colony of Virginia, to style himself esquire,

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1. 6 W. HOLDSWORTH, *HISTORY OF ENGLISH LAW* 481-93 (1924) [hereinafter cited as *HOLDSWORTH, H.E.L.*]; W. RICHARDSON, *HISTORY OF THE INNS OF COURT* 167-210 (1975).

2. 6 *HOLDSWORTH, H. E. L.*, *supra* note 1, at 493-99, 12 *id.* 77-89; A. Smith, *Virginia Lawyers, 1680-1776; The Birth of an American Profession* 146-63 (1967) (unpublished Ph.D. dissertation, Johns Hopkins Univ.) [hereinafter cited as *Smith, Virginia Lawyers*].

and to go in procession ahead of gentlemen and yeomen.³ There was no meaningful examination for admission to the English bar until 1871.⁴

The lower branch of the English legal profession, the attorneys at law and solicitors in chancery, had no professional organization until the eighteenth century. Before they began to organize themselves, however, an Act of Parliament in 1729 required that they be examined by a judge before they could practice as attorneys or solicitors. Before 1836, however, the examination was normally a mere sham.⁵

The English civilians had their own separate professional organization. They studied the Roman civil law of continental Europe in the universities in Cambridge and Oxford. They were admitted to membership in Doctors' Commons, in London, and this gave them the privilege of practicing in the civilian courts, which specialized primarily in probate, divorce, and admiralty.⁶ This branch of the legal profession will not be dealt with further since there was nothing like it in Virginia, nor were any Virginians known to have been associated with Doctors' Commons. Law was studied in the universities in Scotland, but Scots law was and is based on the Roman law and is quite different from the English common law.

It is the common law of England that is the law or the basis of the law of Virginia. The original instructions to the Virginia Company required litigation to be settled "as near to the common laws of England and the equity thereof as may be."⁷ In 1632 when commissioners were appointed to hold the monthly court (later renamed the county court) for Warwick, Warrosquyoke (Isle of Wight), Eliza-

3. Act of May, 1732, ch. 13, § 13; 12 HOLDSWORTH, H. E. L., *supra* note 1, at 15-17, 22-23; A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 15-16, 68 (1921) [hereinafter cited as REED]; 4 W. HENING, STATUTES AT LARGE OF VIRGINIA 362 (1820) [hereinafter cited as HENING'S STATUTES]; Smith, Virginia Lawyers, *supra* note 2, at 300-01.

4. 15 HOLDSWORTH, H. E. L., *supra* note 1, at 239.

5. Stat. 2 Geo. 2, ch. 23 (1729); H. KIRK, PORTRAIT OF A PROFESSION: A HISTORY OF THE SOLICITOR'S PROFESSION, 1100 TO THE PRESENT DAY 52-54 (1976); R. ROBSON, THE ATTORNEY IN EIGHTEENTH-CENTURY ENGLAND 53, 54, 62, 159-61 (1959).

6. See generally G. SQUIBB, DOCTORS' COMMONS (1977); W. SENIOR, DOCTORS' COMMONS AND THE OLD COURT OF ADMIRALTY (1922); B. LEVACK, THE CIVIL LAWYERS IN ENGLAND 1603-1641 (1973).

7. *Articles, Instructions and Orders* (Nov. 20, 1606), 1 HENING'S STATUTES 68; note also the second *Virginia Charter* (1609), art. 23, 1 HENING'S STATUTES 96.

beth City, and Accomack, their commission required them to execute the office of justice of the peace and to act "as near as may be according to the laws of the realm of England."⁸ When the statutes of Virginia were recodified in 1662, the common law of England was acknowledged to be in force.⁹ When independence from Great Britain was declared in 1776, a statute was enacted which stated that the general common law of England remained in force, and this provision has been continued in substance by every Virginia code since.¹⁰ Because of this tie going back to the first settling of Virginia, Virginians have always been interested in the English methods of legal education.

In the late seventeenth and early eighteenth centuries, in England and in Virginia, the law was learned primarily through an apprenticeship with a practicing lawyer. The apprentice performed legal and menial chores for his master. One of the more important of these was copying forms, pleadings, and whatever. The apprentice thus did the work of a legal secretary and at the same time gained an intimate knowledge of the contents of the various writs and pleadings. He carried his master's books and notes into court and, of course, remained in court to observe the legal proceedings there and his master's handling of the case. He had the use of his master's law library, and the master had an obligation to teach his apprentice the art of practicing law.

Although some lawyers would take on several apprentices at a time, the normal practice was to have only one at a time. The personal one-on-one teaching opportunity could be far more effective than the impersonal mass-production education of a school. The student observed very closely every stage of every case in his master's office. The lawyer would explain every legal step taken. As the student progressed he would be given more responsibility for the legal research and the out of court preparation of the cases of his master's clients. He learned by handling actual cases under the watchful eye of a practicing lawyer. For these opportunities the

8. Act of Sept. 1632, ch. 18, *reprinted in* 1 HENING'S STATUTES, *supra* note 3, at 186.

9. Act of March 1662, preamble, *reprinted in* 2 *id.* 43.

10. Act of May 1776, ch. 5, § 6, *reprinted in* 9 *id.* 127; VA. REV. CODE, vol. 1, ch. 38 (1819); VA. CODE, ch. 16, § 1 (1849); VA. CODE § 2 (1887); VA. CODE § 2 (1919); VA. CODE ANN. § 1-10 (Repl. Vol. 1973); T. JEFFERSON, NOTES ON THE STATE OF VIRGINIA 179-80 (1803).

apprentice or his family paid a fee to the lawyer who gave of his time and resources to educate the younger man.¹¹

The term apprentice was not used, at the time, for it applied to a person learning a trade; the correct appellation was clerk or pupil. A person who had already been called to the bar but wished to work under the supervision of an older lawyer was said to devil for him; this position was similar to that of the modern associate in a firm of lawyers.

The weaknesses of learning the law by means of an apprenticeship are obvious, and in fact it was seldom that the reality measured up to the theory. The master might not be a good lawyer, or he might have a very narrow or meagre practice so that the student would be exposed only to a small part of the law; in other words there might be a totally insufficient curriculum. The lawyer might be a bad teacher, or he might be too busy, or he might be unconcerned with teaching; in every case he was not a professional teacher. Moreover, the master's law library might be inadequate.

William B. Clarke, a law student in 1837, describing his experiences wrote, "It is true I have access to a large library but my reading for one year will require but few authors, and I believe the only advantage a student can derive from being in a lawyer's office is to see practice." Clarke proceeded to comment on the "mistaken notion that our eminent lawyers are the best instructors, their business is so extensive that they could not find time to devote to their students if they had the inclination."¹²

Thomas Jefferson had a very low opinion of apprenticeships because of the tendency of the lawyers to busy their students with repetitious drudgery which kept them away from their studies.¹³

11. Smith, *Virginia Lawyers*, *supra* note 2, at 181-204 (for a list of some Virginia law clerks and masters see p. 377); 12 HOLDSWORTH, H. E. L., *supra* note 1, at 85-91.

12. Letter from William B. Clarke to Robert Beverley (Apr. 12, 1837) (Virginia Historical Society Mss1B4678a 975) (information supplied by Mr. E. Lee Shepard); these opinions were also expressed by Henry St. George Tucker in his INTRODUCTORY LECTURE 20 (1841)).

13. Letter from Jefferson to Thomas Turpin (Feb. 5, 1769), *reprinted in* 1 PAPERS OF THOMAS JEFFERSON 24 (J. Boyd ed. 1950); Letter from Jefferson to John Garland Jefferson (June 11, 1790), *reprinted in* 16 *id.* 480-82 (1961). This was also the experience of Littleton Waller Tazewell when he was sent to study law in 1795 under Edmund Randolph, L. Heaton, Littleton Waller Tazewell's Sketch of His Own Family 187-88 (1967) (unpublished M. A. thesis, Coll. of William & Mary).

George Wythe had bitter memories of the sterile clerkship that he served under his uncle, Stephen Dewey, a lawyer in Prince George County. However, Wythe did not follow this bad example. After Wythe became established at the bar, he always had several young men studying under him, among them Thomas Jefferson and Henry Clay. Wythe was exemplary as a master; he was concerned with teaching his students rather than with exacting clerical chores from them, and he never charged them fees.¹⁴

In Virginia there was no definite period of apprenticeship required, but the usual time was four or five years. Also the amount of the fee varied greatly. Frequently the master was the boy's father or close relative, in which case no fee was involved.¹⁵ Edmund Pendleton, for instance, taught his nephew, Edmund Pendleton, Jr., his cousin and legal ward, John Taylor of Caroline, and his cousin, John Penn.¹⁶ Henry Tazewell studied law under the supervision of his uncle John Tazewell, and Littleton Waller Tazewell studied for a year and a half under John Wickham, his uncle by marriage.¹⁷ Edmund Randolph studied under his father John Randolph, who was attorney general of the colony of Virginia.¹⁸

From the standpoint of education, the most important aspect of an apprenticeship was access to the master's law library and his guidance in reading the law. So all important was this to the student that then, and still today, studying law as an apprentice or clerk is referred to as reading law. Reading law was also frequently done independently of an apprenticeship, as Jefferson advised Philip Turpin in 1769.¹⁹

In addition to reading, independently or not, there was common-

14. A. DILL, *GEORGE WYTHE* 8, 9, 20, 21, 42, 43, 78 (1979); B. Minor, *Memoir of the Author, Wythe's Reports* xii, xiv, xxxii (1852); Shepard, *George Wythe*, in *VIRGINIA LAW REPORTERS BEFORE 1880*, 90-95 (W. Bryson ed. 1977); Smith, *Virginia Lawyers* 190-93, 377; W. Hemphill, *George Wythe, the Colonial Briton* 36-38, 114-15, 119-24 (1937) (unpublished Ph.D. dissertation, Univ. of Va.).

15. Smith, *Virginia Lawyers*, *supra* note 2, at 188-90, 196-97; REED 82, 83.

16. 1 D. MAYS, *EDMUND PENDLETON* 138-41, 243-44 (1952).

17. L. Heaton, *Littleton Waller Tazewell's Sketch of His Own Family* 71, 190-92 (1967) (unpublished M.A. thesis, Coll. of William & Mary); *DICTIONARY OF AMERICAN BIOGRAPHY*, svv Tazewell, Henry and Tazewell, Littleton Waller.

18. J. REARDON, *EDMUND RANDOLPH* 14 (1974).

19. See note 13 *supra*.

placing. Commonplacing was a form of notetaking, which had been developed in England well before the founding of Virginia. As a lawyer or student read a book, he would enter in his commonplace book under the various heads the comments on the points of law which he found in the book he was reading. Treatises, reports, and statutes could be commonplaced, though statute law was relatively unimportant until the nineteenth century. To begin a commonplace book, a person would take a large blank book and write at the top of each page, in alphabetical order the major divisions of the common law. Then the individual points of law would be added on the appropriate page. A person might begin a commonplace book as a student and continue to add to it throughout his career at the bar. The end result was a small, general, personal digest or abridgment. Commonplace books were kept by Thomas Jefferson and John Marshall.²⁰

It was the responsibility of the practicing lawyer to direct the reading of his pupil or clerk. This duty was more often than not shirked both in England and in Virginia. Lewis Burwell (who died in 1756) wrote in 1734, when he was reading law on his own, that "for want of advice and proper books I am afraid I shall make a very indifferent lawyer." He had already read *Coke upon Littleton*. It is interesting that he considered being a lawyer at all having inherited a large plantation several years before writing these thoughts. Burwell was wealthy and well connected; one would have thought he could have consulted any lawyer in the colony. Perhaps he was not taken seriously because of his youth and position. (He was later a member of the General Court from 1743 to 1756.)²¹

Books were written, however, to guide the reading of law students. One of the earlier of these, J. Doddridge, *Lawyer's Light; or, a True Direction for the Study of the Law* (1629), was owned by the lawyer John Mercer. This book gave to the law student only general advice and a list of principles and maxims. Robert Carter owned a copy of

20. See THE COMMONPLACE BOOK OF THOMAS JEFFERSON (G. Chinard ed. 1926); letter from Thomas Jefferson to Thomas Cooper (Feb. 10, 1814); 14 WRITINGS OF THOMAS JEFFERSON 85-97 (A. Bergh ed. 1904); 1 PAPERS OF JOHN MARSHALL 37-87 (H. Johnson, et al., eds. 1974). See also the commonplace book which James D. Riddle began in 1815 when he was studying law in Richmond (Virginia Historical Society Mss5:4, R4315:1).

21. Bryson, ed., *A Letter of Lewis Burwell to James Burrough, July 8, 1734*, 81 VA. MAG. HIST. BIOG. 405 (1973); C. M. LEONARD, COMP., THE GENERAL ASSEMBLY OF VIRGINIA xix (1978).

W. Fulbecke's *Direction of, or Preparative to, the Study of the Law*. This work went through at least three editions in the first part of the seventeenth century. Fulbecke advised the law student to keep a commonplace book and listed the various English law books in print. He pointed out the matter but not the method of study. W. Phillips, *Studii Legalis Ratio; or, Directions for the Study of the Law*, went through four editions in the late seventeenth century. There were at least two copies in Virginia; they were in the libraries of Arthur Spicer, J. P., and William Byrd, II, a member of the General Court.²²

Phillips gave a list of English law books and then a course of study. He advised beginning with two law dictionaries: Cowell's *Interpreter* and Rastell's *Terms of the Law*. The student was then directed to study *Coke upon Littleton* and then the more recent reports of cases followed by the older reports. Finally Phillips recommended the "ancient authors" of the English law so that the student would have an historical background to his understanding of the law.

All the significant English law books were present in eighteenth century Virginia libraries, as were plenty of insignificant ones.²³ It is clear that any law book could have been borrowed from a neighbor or ordered from England. The colonial Virginians even owned legal bibliographies and catalogs so they could keep up with the availability of English law books.²⁴

The most popular legal title in colonial Virginia was *Coke upon Littleton*.²⁵ Sir Thomas Littleton wrote a learned treatise on the law of real property in the fifteenth century; in the early seventeenth century Sir Edward Coke brought it up to date and enlarged it. Coke's version went through many editions, and by the end of the eighteenth century the original work had acquired several layers of

22. W. BRYSON, CENSUS OF LAW BOOKS IN COLONIAL VIRGINIA 47, 50, 68 (1978) [hereinafter cited as BRYSON, CENSUS].

23. BRYSON, CENSUS, *supra* note 22, *passim*.

24. BRYSON, CENSUS, *supra* note 22, at 33, 40 (T. BASSETT, CATALOGUE OF THE COMMON AND STATUTE LAW BOOKS OF THIS REALM), 81 (J. WORRALL, BIBLIOTHECA LEGUM); Jefferson and St. George Tucker also owned copies of Worrall's catalog, 5 E. SOWERBY, CATALOGUE OF THE LIBRARY OF THOMAS JEFFERSON 56 (1953) [hereinafter cited as SOWERBY]; H. JOHNSON, IMPORTED EIGHTEENTH CENTURY LAW TREATISES IN AMERICAN LIBRARIES 58 (1978).

25. BRYSON, CENSUS, *supra* note 22, at xvii, 41, 42; 2 SOWERBY, *supra* note 24, at 217.

footnotes and was as much venerated because of Coke's commentary as it was for Littleton's authorship.²⁶ It was and is authoritative, erudite, complicated, and thoroughly turgid. It was frequently the first law book which a law student was assigned²⁷ even though it was quite difficult and also by the mid-eighteenth century more elementary introductions were available. Sooner or later, however, *Coke upon Littleton* had to be mastered. The first assault on it was usually unsatisfactory at whatever stage it was read. Jefferson, during his initial study of this work, wrote to a friend, "I do wish the Devil had old Coke, for I am sure I was never so tired of an old dull scoundrel in my life"²⁸

The legal dictionaries, J. Cowell, *Interpreter*, and J. Rastell, *Terms of the Law*, which were mentioned by Phillips in his book on the study of law, both went through many editions in England; there were six copies of the former and fifteen copies of the latter present in colonial Virginia. The English law reports were also widely read throughout the colony; the most popular were those by Coke, Croke, and Hobart. The works of Glanvill, Bracton, Fortescue, and Saint Germain could also be found. T. Wood's *Institutes of the Laws of England* (1720), which was written for students, was also popular in Virginia.²⁹

A goodly number of Virginians sent their sons to England to study law in the Inns of Court. This often was in addition to or alternatively to study in Cambridge or Oxford. Secondary education was available in both Virginia and England. The study of law in one of the English Inns of Court meant an apprenticeship to a practicing lawyer in London with residence in the inn. Apprenticeship in Eng-

26. W. HOLDSWORTH, *SOME MAKERS OF ENGLISH LAW* 56-58, 111-132 (1938); 1 W. MAXWELL AND L. MAXWELL, *A LEGAL BIBLIOGRAPHY* 449-52, 454-58 (1955).

27. Letter from Lewis Burwell to James Burtough (July 8, 1734), *reprinted in* 81 VA. MAG. HIST. BIOG. 413 (1973); Letter from Chapman Johnson to David Watson (October 27, 1800) (29 VA. MAG. HIST. BIOG. 274 (1921)); Letter from Thomas Jefferson to Dabney Terrell (February 26, 1821), *reprinted in* 7 WRITINGS OF THOMAS JEFFERSON 207 (H. Washington ed. 1854); Letter, Va. Gazette, Dec. 30, 1773, at 1.

28. Letter from Jefferson to John Page (Dec. 25, 1762), *reprinted in* 1 PAPERS OF THOMAS JEFFERSON 5 (J. Boyd ed. 1950); E. DUMBAULD, *THOMAS JEFFERSON AND THE LAW* 8, 11-12 (1978); D. MALONE, *JEFFERSON THE VIRGINIAN* 70-73 (1948); Smith, *Virginia Lawyers*, *supra* note 2, at 206-08.

29. See BRYSON, *CENSUS*, *supra* note 22, *passim*; Jefferson also owned most of these works: 2 SOWERBY, *supra* note 24, at 211-15, 231-33, 329, 331, 336-37, 3 *id.* 119.

land was similar to that in Virginia; however, the choice of a master was far broader, and the cultural life of London was greater than that of Williamsburg or Norfolk. London was much more expensive, but a Virginia lawyer who was a member of an inn of court had a great deal of professional and social prestige which was lacking to the Virginia educated attorney. In fact, many Virginians who were members of an inn had no intention of ever practicing law but joined for purely social purposes.

From 1674 to 1776 there were at least sixty Virginians who were members of one or another of the English Inns of Court. The Middle Temple was by far the favorite of the Virginians. Of these sixty men, all but three returned to Virginia, but only twenty engaged in the practice of law once they got home. Of these sixty only twenty were actually formally called to the bar, but some of these twenty never practiced. The essence of membership in an English inn was that it was a prestigious place to do a legal apprenticeship.³⁰

The end of the period of law studies and of preparation was marked in England by the barrister's being called to the bar of his inn or by the solicitor's being licensed by a judge. In Virginia the first control over the admission to practice law was adopted in 1643 when an Act of Assembly required lawyers to be licensed and sworn by each court in which they practiced.³¹

The first examination for admission to the Virginia bar was required in 1732.³² It is interesting to note that this step was taken only three years after English attorneys and solicitors were required to submit to a qualifying examination.³³ It is doubly interesting that the Virginia act did not apply to those who had been formally called to the bar in England nor to those who had been or were to be admitted to practice before the General Court in Williamsburg.

30. Smith, *Virginia Lawyers*, *supra* note 2, at 143-46, 163-78, 366-76; St. George Tucker's name must be subtracted from Smith's list; Tucker was enrolled in the Inner Temple by his father, but he went to Williamsburg instead. See Cullen, *St. George Tucker*, in *VIRGINIA LAW REPORTERS BEFORE 1880*, at 96-98 (W. Bryson ed. 1977).

31. Act of March 1643, ch. 61, *reprinted in* 1 HENING'S STATUTES, *supra* note 3, at 275; see generally Smith, *Virginia Lawyers*, *supra* note 2, at 280-99.

32. Act of May 1732, ch. 13, §§ 8-12, *reprinted in* 4 HENING'S STATUTES, *supra* note 3, at 360-62.

33. See note 5 *supra*.

This act thus divided the colonial Virginia legal profession into an upper order and a lower order. The division, however, was quite different from that in England where the profession was and is divided according to the legal services performed. In Virginia the distinction was drawn by the level of court in which the lawyer practiced. In colonial Virginia a lawyer practiced as both barrister and solicitor but in either the General Court in Williamsburg or in the county courts. In England a lawyer practiced in any court but only as a barrister or as a solicitor. In both England and Virginia at this time, only the lower bar was subjected to an entrance examination.

Admission to the General Court bar was not subject to official regulation during the colonial period. An aspiring lawyer would be formally introduced to the court by a practicing member of the General Court bar, and the court would admit him and administer the oaths. Thus the bar of the General Court was a self-perpetuating professional elite. Normally a lawyer would be admitted to the bar of the highest court in the colony after having distinguished himself at the county court level, for example Edmund Pendleton. However, if one were well-connected, like Thomas Jefferson, who was a cousin of Attorney General John Randolph and a student of the eminent George Wythe, one might begin his legal career in the General Court. A barrister of an English inn of court probably had an immediate entree to the General Court bar.³⁴ The upper bar in the eighteenth century was brilliant and justly famous; it was these distinguished gentlemen who led the movement for independence in Virginia.

Returning to the study of law in colonial Virginia, we see that the law was also the object of the attention of planters who did not ever intend to practice law. The ambition of the settlers from England "was to produce in the wilderness of Virginia the county life of England They were trying to be country gentlemen in the English manner."³⁵ They were concerned with giving their children liberal educations as far as their means would allow, and their reading kept them in touch with English ideas on education.

34. Smith, *Virginia Lawyers*, *supra* note 2, at 303-05.

35. L. WRIGHT, *FIRST GENTLEMEN OF VIRGINIA* 2 (1970).

In 1693 John Locke wrote the following much-read passage.

It would be strange to suppose an English gentleman should be ignorant of the law of his country. This, whatever station he is in, is so requisite, that from a justice of the peace to a minister of state I know no place he can well fill without it And to that purpose [service to his country], I think the right way for a gentleman to study our law, which he does not design for his calling, is to take a view of our English constitution and government in the ancient books of the common law, and some more modern writers, who out of them have given an account of this government. And having got a true idea of that, then to read our history, and with it join in every king's reign the laws then made. This will give an insight into the reason of our statutes, and show the true ground upon which they came to be made, and what weight they ought to have.³⁶

At least four copies of Locke's book on education were present in eighteenth century Virginia.³⁷

Gilbert Burnet writing in the early eighteenth century stated succinctly the value of some knowledge of the law to the country gentleman.

A competent measure of the knowledge of the law is a good foundation for distinguishing a gentleman; but I am in doubt, whether his being for some time in the inns of court will contribute much to this, if he is not a studious person: . . . A competent skill in this [i.e., the law] makes a man very useful in his country, both in conducting his own affairs, and in giving good advice to those about him: it will enable him to be a good justice of peace, and to settle matters by arbitration, so as to prevent lawsuits; and, which ought to be the top of an English gentleman's ambition, to be an able parliament man.³⁸

36. J. LOCKE, *SOME THOUGHTS CONCERNING EDUCATION* § 187 (1693). Section 186 advises the reading of works on international law and legal philosophy by Grotius and Pufendorf. The works of these two jurists were very popular in Virginia; see BRYSON, *CENSUS*, *supra* note 22, at 27-29.

37. They were owned by Jefferson (1 SOWERBY, *supra* note 24, at 503); William Key in 1764 (9 WM. & MARY QTLY., 1st ser., 167 (1901); Samuel Peachy in 1750 (3 WM & MARY QTLY., 1st ser., 133 (1894), 33 VA. MAG. HIST. BIOG. 40 (1925)); Daniel Parke Custis in 1759 (17 VA. MAG. HIST. BIOG. 410 (1909)); and John Parke Custis in 1782, which was probably the same copy as that owned by D. P. Custis (9 TYLER'S QTLY. 103 (1928)); copies were also for sale in Williamsburg in 1775 (15 WM. & MARY QTLY., 1st ser., 111 (1906)).

38. G. BURNET, *HISTORY OF HIS OWN TIME* 201 (1823). This passage was first published

J. Clarke in his *Essay Upon Study* (1731) expressed similar opinions. "The proper business of gentlemen as such, is, I presume, to serve their country, in the making or execution of the laws; as likewise in preventing the breach and violation of them, by preserving the peace and good order of the world about them"

Now the studies of most use to a gentleman . . . are . . . logic, eloquence, morality and history, especially of his own country, with some knowledge of its laws and trade As for morality, or the law of nature and nations, the knowledge thereof is very useful and necessary for a gentleman, whether he be concerned in the making or execution of laws, and especially in preventing of law suits by the arbitration of differences amongst neighbors . . . I shall say no more upon this head than that a gentleman can hardly read Grotius, Puffendorf, and Barbeyrac too much.³⁹

It was generally agreed in England and in Virginia that a knowledge of the law was desirable for that class of society from which the county court judges, the justices of the peace, who were not professional lawyers, were drawn.⁴⁰ The colonial Virginian, as his English model and counterpart, viewed the study of law as a part of a gentleman's liberal education. The presence of law books in the libraries of small as well as large landholders in Virginia was therefore widespread throughout the colony.⁴¹ The advice of the English writers and the dictates of common sense were followed.

Thomas Wood writing in 1720 approached the study of law primarily from a vocational point of view. His *Institute of the Laws of England* was a text book for those reading the law in preparation for careers as barristers or solicitors. But Wood was also trying to reach the young gentlemen in the universities. In his preface he wrote "My intention, by this institute, is not only to help the stu-

in 1734. Jefferson owned a copy and John Carter, secretary of Virginia, was a subscriber. 1 SOWERBY, *supra* note 24, at 161. Robert "Councillor" Carter owned a copy in 1772. JOURNAL AND LETTERS OF PHILIP VICKERS FITHIAN 290 (H. Farish ed. 1943), 10 WM. & MARY QTLY., 1st ser., 241 (1902).

39. J. CLARKE, AN ESSAY UPON STUDY 224, 226, 232, 233 (1931). Robert "Councillor" Carter owned a copy of this book in 1772. JOURNAL AND LETTERS OF PHILIP VICKERS FITHIAN 291 (H. Farish ed. 1943), 11 WM. & MARY QTLY., 1st ser., 23 (1902).

40. Smith, Virginia Lawyers, *supra* note 2, at 59-75; G. BRAUER, JR., THE EDUCATION OF A GENTLEMAN, 1660-1775, at 44, 80-82 (1959); Letter, Virginia Gazette, Oct. 10, 1745, at 1.

41. BRYSON, CENSUS, *supra* note 22, *passim*.

dents in the inns of court and chancery, but moreover to recommend the study of the English laws to our young nobility and gentry, and to the youth in our universities."⁴²

William Blackstone building upon the ideas of Locke and Wood and the others carried these theories to culmination. It was Blackstone who first introduced the study of the English common law into the university curriculum. Two independent preliminary steps were taken in 1752. In that year Charles Viner made a will leaving his money to Oxford University to establish a professorship of English law.⁴³ Sir William Murray (later Lord Mansfield) recommended in 1752 that Blackstone be appointed to the chair of Roman law at Oxford; after his recommendation was refused, Murray then urged Blackstone to teach English law at Oxford.⁴⁴

On November 6, 1753, Blackstone delivered his first lecture on English law at Oxford; he inaugurated his famous course as a private lecturer in the university. In 1756 Viner died leaving his entire fortune to Oxford to establish a chair of English law. The estate was quickly settled, and in 1758 Blackstone was elected first Vinerian Professor of English law.

Blackstone along with Locke, Burnet, and the many others believed that the study of law should be included in a gentleman's liberal education. In his introductory lecture on the study of the law, he wrote, "I think it an undeniable position, that a competent knowledge of the laws of that society in which we live, is the proper accomplishment of every gentleman and scholar; an highly useful, I had almost said essential, part of liberal and polite education."⁴⁵ Blackstone, citing Locke, argued that the country gentleman needed an understanding of the law in order to manage his estates effectively and to draft his own will. Gentlemen would also be called upon to serve the public as jurors, justices of the peace, and legisla-

42. 1 T. WOOD, *INSTITUTE OF THE LAWS OF ENGLAND* viii (1720). There were ten copies of this popular work in colonial Virginia. BRYSON, *CENSUS*, *supra* note 22, at xvi, xvii, 81.

43. 12 HOLDSWORTH, H. E. L., *supra* note 1, at 92-95, 164-68. (Viner rewrote his will in 1755). See also H. HANBURY, *VINERIAN CHAIR AND LEGAL EDUCATION* 10-51 (1958).

44. 12 HOLDSWORTH, H. E. L., *supra* note 1, at 91. See generally D. LOCKMILLER, *SIR WILLIAM BLACKSTONE* 37-52, 133-82 (1938); L. WARDEN, *LIFE OF BLACKSTONE* 139-71, 252, 348 (1938).

45. 1 W. BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 5-6 (1765) (hereinafter cited as *BLACKSTONE, COMMENTARIES*).

tors.⁴⁶ Therefore it was most appropriate to teach English law in the eighteenth-century university, where young gentlemen were sent to receive their education.

Blackstone further believed that the study of law in the university setting was invaluable to the future practitioner of the law. A person who studied law as an apprentice to a practicing lawyer learned only the forms and practices of the law but received little or no instruction on the theory or reason of the law. "If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him."⁴⁷ For Blackstone the apprenticeship approach to the learning of law was superficial and inadequate (except for a genius like lord Hardwicke). He saw that the academic study of English law had vocational as well as liberal purposes. This was Blackstone's contribution.

Blackstone's university lectures were well received by the students; however, petty academic jealousies and bickering made his life in Oxford miserable. He resigned in 1766 and several years later was made a high court judge.⁴⁸

Equally important with the giving of Blackstone's lectures was the publishing of them. His *Commentaries on the Laws of England* first appeared between 1765 and 1769. These four volumes were written to introduce students to the common law of England, but they were so clearly and concisely written that the practicing bar was unanimously delighted, and they instantly became a work of authority. The popularity was as great in Virginia as it was in England. Here was an encyclopedia of English law which could be carried on circuit from county court to county court in a saddle bag. The demand in America for sets was so great that an edition was published in Philadelphia in 1771; many Virginians subscribed to this edition.⁴⁹ Blackstone's *Commentaries* became the first law book

46. 1 *id.* 7-10 (1765); J. LOCKE, SOME THOUGHTS CONCERNING EDUCATION § 187 (1693). See note 59 *supra*.

47. 1 BLACKSTONE, COMMENTARIES, *supra* note 68, at 32 (1765).

48. 12 HOLDSWORTH, H. E. L., *supra* note 1, at 95, 706.

49. *Subscribers in Virginia to Blackstone's Commentaries*, 1 WM. & MARY QTLY., 2d ser., 183 (1921), lists 89 individuals and 66 sets ordered by booksellers; the count is 82 individuals

that many a law student read.

Henry St. George Tucker compared Coke and Blackstone as text writers for law students.

It is indeed a matter of no little surprise, that in a former generation so little good sense was displayed in the course recommended to the students of the law. The first work which was put into their hands was the first Institute of Lord Coke which, as Mr. Blackstone very justly observes, has very little indeed of the institutional method to recommend it Its learning is profound indeed, but it does not cover the whole ground, and the student moreover is plunged at once into the abstrusest doctrines, without a previous knowledge of the matters on which they depend. Hale's *Analysis and History of the Common Law* advanced an important step towards the great work which was to be accomplished by Mr. Blackstone [Blackstone] has indeed brought order out of chaos and placed the study of the law in the rank of the sciences by system and classification.⁵⁰

Perhaps the *Commentaries* of the Oxford professor inspired the letter which appeared in the *Virginia Gazette* on December 30, 1773. This letter advocated the establishment of a professorship of law at the College of William and Mary. This letter to the editor from an anonymous county justice of the peace is worthy of extensive quotation because of its comments on the state of legal education at the time and because of the remedy it urges.

I had not long acted in the capacity of a judge before I discovered great confusion, want of argument, of reasoning, and, I conceived, of law, too, in the pleadings of some of our lawyers At first I apprehended it might have been the peculiar fate of my own county to be unassisted by able lawyers; but since I find we are not altogether singular in that respect, I have been led to reflect on the case of this inconvenience, and the means of removing it hereafter.

When a young gentleman has resolved to study the law, he applies

and 97 sets for resale according to Smith, *Virginia Lawyers*, *supra* note 2, at 212; *see also* BRYSON, *CENSUS*, *supra* note 22, at x, xvi, 34; H. JOHNSON, *IMPORTED EIGHTEENTH CENTURY LAW TREATISES IN AMERICAN LIBRARIES* 6, 7 (1978) (re St. George Tucker); 2 SOWERBY, *supra* note 24, at 228-230.

50. H. ST. G. TUCKER, *INTRODUCTORY LECTURE* 14-16 (1841).

to some attorney for his advice, assists him in copying a few declarations, reads the first book of Coke upon Littleton, and the Virginia laws [i.e., statutes], and then applies for a license, and begins to practice a profession, the grounds and first principles of which he is perhaps utterly unacquainted with. He is involved in difficulties at his first setting out, which he is unable to remove by referring to authors, and, in one continued scene of error, plods on to the last, nor gives himself the least trouble to investigate the reason of what he reads.

By establishing a professorship in the law many of those gentlemen, who are obliged to struggle with the greatest difficulties through want of proper books and proper instructions, would repair to a place where they might enjoy the most ample means of pursuing their studies with success, where the road to truth, instead of an inexorable wilderness, would be opened to them, and where they might unravel the mysteries, and reconcile the seeming absurdities, of the profession they were studying under the auspices of an able professor.

If the candidates for the bar were obliged to go through a regular course of lectures on the civil and municipal laws at the college [of William and Mary], and to attend the General Court when sitting, where they might imbibe proper ideas of the practice of the law, at the same time that they received the greatest instruction from the learned arguments and judicious determinations there, I am persuaded our gentlemen of the bar would appear to much greater advantage than at present.

The plan that I would propose, therefore, is . . . that a professor of law be appointed, who shall read a regular and complete course of lectures on the law once in a year, and that no persons but those who have attended the lectures of such professor for two years, and have attended the General Court whilst sitting, during that period, shall be admitted to practice as counsel, or as attorneys, in any of the county courts in this colony . . . and upon examination should be found qualified for it.

The author of this letter pointed out the major defect of a legal apprenticeship. This traditional method of legal education teaches only the mere mechanics of the practice of the law. It completely ignores or neglects the theories, reasons, origins, purposes, and policies of the law. It is a well written and a logical letter; it was certainly read by the bench and bar of Virginia in 1773.

This was an extensive and thoughtful proposal; it was not, however, the first suggestion that law be taught at William and Mary.

On October 10, 1745, a letter had been published in the *Virginia Gazette* urging that law be taught there so that the justices and lawyers would be trained in the English and colonial law that they administered. The proposal in the *Virginia Gazette* in 1773, however, was more likely the suggestion that led to the next step in the development of legal education in Virginia. This step was taken six years later, in 1779.

II. 1779 - 1861

In 1779 the second professorship of English law to be established anywhere was inaugurated in Williamsburg at the College of William and Mary. This was the first law school in the United States, and the first law professor there was the eminent George Wythe.⁵¹

George Wythe was born in Virginia in 1726 or 1727. He entered the practice of law at an early age and rapidly rose to prominence as a practitioner before the General Court in Williamsburg. He was scholarly and distinguished and very successful at the bar. In addition he was civic minded, serving many years in the House of Burgesses and on the Board of Visitors of the College of William and Mary. He was an ardent patriot and a signer of the Declaration of Independence. In 1777 Wythe was elected speaker of the House of Delegates but resigned in 1778 to become a judge on the newly established High Court of Chancery.⁵²

Not only was Wythe a lawyer, legislator, and judge, but he also had the temperament of a teacher. His natural bent for teaching led him to accept many young men as apprentices in his law office; among them were Thomas Jefferson, St. George Tucker, and James Innes.⁵³ Another of Wythe's noteworthy law clerks was James Madison, who later became president of William and Mary and bishop of Virginia. Wythe also taught some of the local youths non-legal subjects. He taught the young Littleton Waller Tazewell Greek,

51. J. MORPURGO, *THEIR MAJESTIES' ROYALL COLLEDGE, WILLIAM AND MARY* 189 (1976); Devitt, *William and Mary: America's First Law School*, 2 WM. & MARY L. REV. 424-36 (1960); Hughes, *William and Mary, the First American Law School*, 2 WM. & MARY QTLY., 2d ser., 40 (1922).

52. A. DILL, *GEORGE WYTHE* (1979); Shepard, *George Wythe*, in *VIRGINIA LAW REPORTERS BEFORE 1880* 90-95 (W. Bryson ed. 1977).

53. Smith, *Virginia Lawyers*, *supra* note 2, at 377.

Latin, and mathematics; he also instructed Peter Carr in similar subjects. When his second wife died in 1787, Wythe attempted to operate a grammar school, but it was too much for him considering his judicial and law school duties, and he quickly gave it up.⁵⁴

In 1779 Thomas Jefferson, then governor of Virginia, was elected to the Board of Visitors of William and Mary, and he and James Madison, president of the college, reformed the college curriculum. The modernization effected by Jefferson and Madison resulted in suppressing the professorships of theology and the grammar school and in creating, inter alia, the new professorship of law and police. Jefferson had attempted to make these changes by an act of assembly, but the dissenters from the Church of England killed the bill because they did not want William and Mary, which was then an Episcopal college, to be strengthened in any way. Therefore Jefferson had to make his reforms by acting through the college's Board of Visitors.⁵⁵ In 1779 Jefferson and Madison called their former law teacher, Chancellor Wythe, to the new professorship of law. It is difficult to conceive that anyone more acceptable or more appropriate or more competent or more scholarly could have been found; no one else was considered.

The title of Wythe's chair, law and police, was unusual. The word police did not refer to enforcement of the criminal law but was a transliteration of the Greek word for state. In the context of the William and Mary curriculum it meant government or political science. Thus Wythe was to teach law as a vocational science and as a liberal arts subject.

That Virginia was the location of the first American chair of law is not a mere coincidence. The lawyers in the other populous colonies were strongly and openly loyal to Great Britain during the Revolutionary period, and those lawyers who were not forced to leave the United States found themselves discredited in the eyes of the general public. In Virginia, on the other hand, the leaders of the Revolution were the lawyers — Jefferson, Henry, Wythe, Pendleton.

54. A. DILL, *GEORGE WYTHE* 41-52, 55-56, 65-66 (1979). For Wythe's classical erudition, see Hoffman, *Classics in the Courts of the U.S., 1790-1800*, 22 AM. J. LEGAL HIST. 55 (1978).

55. 1 P. BRUCE, *HISTORY OF THE UNIVERSITY OF VIRGINIA* 65-72 (1920); R. HONEYWELL, *EDUCATIONAL WORK OF THOMAS JEFFERSON* 54-56 (1964). For the ending of the grammar school, see *Bracken v. William and Mary*, 5 Va. (1 Call) 161 (1797).

When Jefferson proposed a law professorship to teach republican legal and political theories, there was enthusiastic approval from the legal profession.

Wythe lectured to his students twice a week; once or twice a month he held a moot court, and every Saturday he presided over a mock legislature. His course of lectures was based on Blackstone's *Commentaries*, the natural model, but they included also his own thoughts on American constitutional law. After the government of Virginia was moved to Richmond in 1780, Wythe held his moot courts and model legislature in the old Capitol building in Williamsburg in the very chambers which the General Assembly had recently abandoned. He continued to use the court room for his real cases as chancellor as well as for his moot courts.⁵⁶

His moot court exercises were popular with the students, and the citizens of Williamsburg used to come and sit as spectators. Wythe's innovation of bringing the moot court to the university gave his students an understanding of the procedures and practices of the law. His mock legislature prepared them for the role of statesman, which he and Jefferson expected them in the course of time to assume.⁵⁷ It has been suggested that this latter purpose was the sole one of the early law schools.⁵⁸ However, the presence and popularity of the moot court shows that Wythe intended to give his students professional training as well, as he had done formerly as master to his legal apprentices.⁵⁹ Also his law school students usually applied for admission to the bar immediately upon completion of his course and without reading in the office of any practicing lawyer.

Wythe's lectures were a success from the start. In July, 1780, Jefferson wrote, "Our new institution at the college has had a success which has gained it universal applause. Wythe's school is nu-

56. PAPERS OF JOHN MARSHALL 37-41 (H. Johnson, et al., ed. 1974); REED, *supra* note 3, at 116-19; Letter from John Tyler to Thomas Jefferson (November 12, 1810), 1 L. TYLER, LETTERS AND TIMES OF THE TYLERS 249, 250 (1884). Tyler hoped that Jefferson would publish Wythe's lectures. Cullen, *New Light on John Marshall's Legal Education*, 16 AM. J. LEGAL HIST. 345 (1972).

57. Letter from Jefferson to James Madison (July 26, 1780) (3 PAPERS OF THOMAS JEFFERSON 507 (J. Boyd ed. 1951)).

58. A. HARNO, LEGAL EDUCATION IN THE UNITED STATES 27 (1953).

59. See Devitt, *William and Mary: America's First Law School*, 2 WM. & MARY L. REV. 424, 427, 429-31 (1960).

merous.”⁶⁰ The later careers of his students are further evidence of his teaching abilities. Among those who sat at his feet were John Marshall, Spencer Roane, and James Breckenridge.

In 1788 the courts of Virginia were reorganized, and Chancellor Wythe was required to move his residence to Richmond. This forced his resignation in 1789 of the professorship in Williamsburg after a decade of lecturing.

On March 8, 1790, Wythe was succeeded as professor of law and police by one of his former students, St. George Tucker, who was granted an annual salary of one hundred and twenty pounds. He had been elected judge of the General Court in 1788 and was a prominent person in Virginia legal circles.⁶¹

Tucker began teaching law at William and Mary in September 1790. He used Blackstone's *Commentaries* as the basis of his lectures and supplemented it by discourses on federal and state constitutional law and on Virginia property law. In 1803 Tucker published an edition of Blackstone's *Commentaries* with notes to American cases and statutes and with appendices on American constitutional law. This edition was highly popular immediately and for decades afterwards earning for Tucker the title of "the American Blackstone." Tucker's law school lectures were also very successful; as evidence of this, he had from thirty to forty students in his 1798-1799 course.⁶²

Tucker's course was slightly more structured than Wythe's, and there was less emphasis on political science. One of Tucker's law students wrote a letter in 1801 to a friend.

You may remember that a notion formerly prevailed here that a student of law should make the study of his profession subservient to that of politics. This opinion however seems not to prevail here this course, but has yielded to one perhaps much more rational. The general opinion at this time appears to be that students of law should

60. See note 80 *supra*.

61. *Election of St. George Tucker as Professor of Law*, 18 WM. & MARY QTLY., 1st ser., 220 (1910); see generally M. COLEMAN, SAINT GEORGE TUCKER (1938).

62. C. Cullen, *St. George Tucker and the Law in Virginia, 1772-1804* (1971) (unpublished dissertation, U. Va.); Letter from Benjamin Howard to David Watson (January 30, 1799), reprinted in 30 VA. MAG. HIST. BIOG. 249 (1922).

devote their time partly to legal acquirements, partly to the pursuit of general science [i.e., the liberal arts], and but partially to the science of government.⁶³

It was during Tucker's professorship that the first earned law degree was granted in America. In 1793 the bachelor of law degree was conferred on William H. Cabell. Cabell later distinguished himself further as governor of Virginia and as a justice of the Virginia Supreme Court of Appeals.

In 1803 Judge Tucker and the Board of Visitors had serious disagreements over the administration of the college, and Tucker resigned.⁶⁴ For the next thirty years or so William and Mary was in a serious slump which affected all parts of the college including the law department. There was a series of law professors, who also sat as judges during their professorships; they were respectable but undistinguished people. Not much is known of them or of their teaching.

Even though law was being taught at William and Mary and additional law schools would be founded in the first third of the nineteenth century, the apprenticeship and the independent reading of the law remained the usual methods of legal education. Prominent lawyers were often solicited for their advice as to which books to read in preparation for a career at the bar. Thomas Jefferson, William Wirt, John B. Minor, and no doubt many others produced advice and reading lists of their favorite legal authors.

Thomas Jefferson, for example, wrote to John Garland Jefferson on June 11, 1790, suggesting that he study for the bar only by reading. He began by disparaging apprenticeships.

It is a general practice to study the law in the office of some lawyer. This indeed gives to the student the advantage of his instruction. But I have ever seen that the services expected in return have been more

63. Letter from Joseph C. Cabell to David Watson (April 6, 1801), *reprinted in* 29 VA. MAG. HIST. BIOG. 278 (1921); Note also, Letter from St. George Tucker to John Ambler (Dec. 16, 1801) (Ambler Family Papers, Virginia Historical Soc., Mss 1 Am 167 ch. 77, which was kindly shown me by Mr. E. Lee Shepard).

64. Cullen, *St. George Tucker*, in *VIRGINIA LAW REPORTERS BEFORE 1800*, at 102 (W. Bryson ed. 1977).

than the instructions have been worth. All that is necessary for a student is access to a library, and directions in what order the books are to be read.

Jefferson then gave his young cousin three lists of books; the first was of works on municipal law, the second on legal history and political theory, and the third on English and American political history. The law was to be read in the morning, legal history in the early afternoon, and the rest in the evening. The first list was headed by *Coke upon Littleton* followed by the remaining three of Coke's *Institutes*. Then Jefferson listed the reports of Coke, Vaughan, Salkeld, Lord Raymond, Strange, and Burrow. The student was then to proceed to the study of equity beginning with Kames' *Principles of Equity* and proceeding to the reports of Vernon, Peere Williams, *Precedents in Chancery*, Atkyns, and Vesey. The final books on the first list were Hawkins' *Pleas of the Crown*, a standard work on criminal law, Blackstone's *Commentaries*, and the Virginia statutes.

The second list began with Dalrymple's history of feudal property and continued on with Hale's *History of the Common Law* and the tracts by Gilbert on devises, uses, tenures, rents, distresses, ejectments, executions, and evidence. It also included Sayer's *Law of Costs*, Lambarde's manual for justices of the peace, Bacon's "Pleas and Pleadings," Cunningham's *Law of Bills of Exchange*, Molloy's *De Jure Maritimo*, and works by Locke, Montesquieu, Adam Smith, Beccaria, James, and Vattel. Jefferson estimated that this course of reading would require between two and three years to complete.⁶⁵

The first half of the nineteenth century saw an interesting novelty in legal education in Virginia. This was the expansion of legal apprenticeships into formal proprietary law schools. It began with the establishment of a private law school in Richmond in 1810 by Chancellor Creed Taylor.⁶⁶ Taylor had learned the law by reading under a lawyer who was the clerk of Cumberland County. In 1806 he was

65. Letter from Thomas Jefferson to John Garland Jefferson (June 11, 1790), reprinted in 16 PAPERS OF THOMAS JEFFERSON 480-82 (J. Boyd ed. 1961).

66. Letter from S. Myers, et al., to Creed Taylor (Feb. 20, 1810); Letter from Creed Taylor to S. Myers, et al. (Feb. 22, 1810) (Creed Taylor Papers, MS. dept., Univ. of Va. Library); *A Law School*, Richmond Enquirer, Jan. 18, 1821, p. 1 (Mrs. Susan A. Riggs kindly supplied this information).

elected chancellor of the Richmond district of the High Court of Chancery to succeed George Wythe. In 1810 he began teaching law in Richmond. Four years later Lynchburg was added to his jurisdiction, and he moved his residence to Needham in Cumberland County. Needham is located near Farmville, which is equidistant between Richmond and Lynchburg. In 1821 Taylor reestablished his law school in Needham.

Taylor's method of instruction was unique in Virginia and appears to have been his original invention. He did not lecture. Instead Taylor assigned books to be read, and, when the student passed an examination on these books, he then moved into a moot court program. The moot courts were conducted at both the trial and appellate levels; Taylor, of course, presided.

Taylor required his students to read first these following books:

Coke upon Littleton
 Blackstone's *Commentaries* (Tucker ed.)
 Runninton, *Action of Ejectment*
 Chitty, *Treatise on Pleading*
 Chitty, *Bills of Exchange*
 Peake, *Evidence*
 Noy's *Maxims*

When the student had passed an examination based on these books, he was admitted to the common law side of the moot court. Then as he participated in the moot court exercises, he was to be reading the following:

Fonblanque, *Equity*
 Maddock, *Practice of Chancery*
 Mitford or Cooper on equity pleading
 Francis, *Maxims*

When Chancellor Taylor was convinced that these works had been mastered, the student was allowed to participate in the equity division of the moot court. All cases were carried to appeals. After the equity works were read, the student was given a list of standard books on substantive topics:

Fearne, *Contingent Remainders*
Newland, *Contracts in Equity*
Sugden, *Vendors and Purchasers*
Roberts, *Fraudulent Conveyances*
Toller, *Executors and Administrators*
Kyd, *Law of Awards*
Abbott, *Law Relative to Merchant Ships and Seamen.*

The Virginia statutes and reports were also to be read. Taylor estimated that his course could be completed in eighteen months. This course was designed only as an introduction to the law. After joining the bar, the lawyer was to read works on international law, admiralty, criminal law, and federal law. The Bible too was to be studied "because, for its morality, history, and law, it is not equalled by any other work extant."⁶⁷

In 1822 Taylor summarized in print the proceedings of the first year of his revived law school moot court in a curious little volume entitled *Journal of the Law School and of the Moot Court Attached to it at Needham in Virginia*. It included an extensive appendix of forms. Taylor intended to publish additional volumes, but he never did.⁶⁸

Creed Taylor followed Wythe in reviving the medieval moot court and in conducting it at the *nisi prius* stage of litigation. However, while Wythe used the moot court as a minor adjunct to his lectures, Taylor used it in conjunction with independent reading making the mock court the major element of the law course. A good master would give his apprentice books to read and teach him to draft legal documents, but Taylor went a step further and gave his students the opportunity to practice arguing before a judge. Taylor's 1821 session was very successful; he had nineteen students. Very little is known about this law school past that year, however. It probably declined gradually but steadily; in any event it was no longer in existence in 1830. Certainly the competition from the University of Virginia's law department, which was established in 1826, hastened its demise.

67. C. TAYLOR, *JOURNAL OF THE LAW SCHOOL* iii-vii, 9-14 (1822).

68. This book was reprinted in 1955 by Dennis & Co., Inc.

The next Virginia law school was established in 1824 in Winchester by Judge Henry St. George Tucker. Tucker had studied law at William and Mary when his father, St. George Tucker, was the law professor there. He left home and entered the practice of law in Winchester at the conclusion of his law course in Williamsburg. In 1824 he was made the equity judge for the Winchester and Clarksburg districts. In order to supplement his greatly reduced income, he opened a private law school.⁶⁹

Henry Tucker's primary purpose was to teach his students to practice law. However, he followed in the steps of Wythe and of his father when he said in his introductory lecture "Spare no pains to improve and enlarge the mind which is to be devoted to the important concerns of the administration of justice, and perhaps at a future day to the duties of a lawgiver."⁷⁰

Henry Tucker used his father's edition of Blackstone's *Commentaries* as his text. Tucker lectured three days a week on the text, but he gave daily quizzes to his students on their reading of it. In addition in 1826 he published a thick volume of his own annotations to Blackstone's treatise. Tucker's *Notes on Blackstone's Commentaries for the Use of Students* (Winchester, 1826) gave the current Virginia and federal law on each point covered by Blackstone. This book contained the material which Henry Tucker added in class to the text of the English teacher. Tucker did not lecture on those sections which dealt with English political theory but stuck to the common law.⁷¹

Tucker's law school was a great success. He had eleven students in his first session, 1824-1825, ten the next, then over thirty; in the 1827-1828 course he had thirty-four, and he had thirty-one the following year. Among them were students from Georgia, South Carolina, Louisiana, Alabama, Ohio, and Massachusetts. (Tucker was widely known because of his father's edition of Blackstone and because of his own service in Congress from 1815 to 1819). Some of

69. Tucker, *Judges Tucker of the Court of Appeals of Virginia*, 1 VA. L. REG. 796 (1896); *DICTIONARY OF AMERICAN BIOGRAPHY*, s.v. "Tucker, Henry St. George."

70. H. St. G. Tucker, *Introductory Lecture*, *NOTES ON BLACKSTONE'S COMMENTARIES* 13 (1826); this was repeated in H. St. G. TUCKER, *INTRODUCTORY LECTURE* 23-24 (1841).

71. H. St. G. Tucker, *Introductory Lecture*, *NOTES ON BLACKSTONE'S COMMENTARIES* 11 (1826).

Tucker's students participated in a moot court exercise in the summer of 1828.⁷²

In 1831 Henry Tucker was elected to the Virginia Court of Appeals which required him to move his residence to Richmond and to close his law school. In this same year he completed the revision and editing of his law lectures, and they appeared under the title of *Commentaries on the Laws of Virginia, Comprising the Substance of a Course of Lectures Delivered to the Winchester Law School*. The debt to Blackstone is not hidden, but this two-volume work displays the experience and labors of Henry Tucker. Tucker's *Commentaries* was the first encyclopedia of Virginia law; it went through three editions between 1831 and 1846.

In 1826 the University of Virginia law department was established with John T. Lomax as its first law professor. We shall return to the University of Virginia after we have considered the other proprietary law schools.

In 1830 Professor John Tayloe Lomax of the University of Virginia resigned his chair to become the circuit superior judge in Fredericksburg. The main reason for this move was financial. In 1831 when Lomax was settled in his judgeship, he opened a private law school in the basement of his house on Hanover Street in Fredericksburg.⁷³ Although one of his students in 1840 described his courses as "lectures,"⁷⁴ his initial method of instruction in this private law school was strictly socratic. He had had four years of law teaching experience at the University of Virginia, and he had corresponded with Henry Tucker on the subject of organizing a proprietary law school. Tucker sent him a copy of his recently-published *Commentaries*, which would be available to Lomax's students.⁷⁵

72. Letters from Henry St. G. Tucker to St. George Tucker (Dec. 19, 1824, Mar. 21, 1825, Nov. 20, 1825, Nov. 5, 1826) (Tucker-Coleman Papers, MS. dept., Swem Library, Coll. of William and Mary); *Law School of H. St. G. Tucker in Winchester*, 10 WM. & MARY QTLY., 2d ser., 310 (1930).

73. DICTIONARY OF AMERICAN BIOGRAPHY, s.v. "Lomax, John Tayloe;" E. Lomax, *John Tayloe Lomax*, 9 GREEN BAG 373 (1897).

74. R. Howison, "Twice Forty Years in American Life" 155 (photocopy of MS. in Swem Library, Coll. of William and Mary.)

75. Letter from Henry St. George Tucker to Briscoe Gerard Baldwin (May 5, 1831) (Stuart-Baldwin Papers, MS. dept., Univ. of Va. Library).

In 1831 Lomax decided that reading lectures to students was "a most ineffectual and unsatisfactory mode of instruction in a science so extensive and so abstruse as the law." Instead of lecturing Lomax instructed by means of "text books with examinations and explanations." He therefore assigned Chitty's edition of Blackstone's *Commentaries* (being the cheapest edition), Cruise's *Digest* (New York edition of 1827), H. St.G. Tucker's *Commentaries*, and Kent's *Commentaries*. The students were given daily assignments and daily "exercises." The students "will be rigidly examined upon the matter which has been thus assigned for their studies and in the course of the examination such additional references and explanations will be supplied as will best illustrate the subject in hand." Thus Lomax's teaching was a socratic exchange based on secondary treatises; this was supplemented by whatever further explanations the students needed in order to understand the law. His announced aim was "to facilitate the acquisition of a knowledge of forensic law as practised in America and principally in Virginia."⁷⁶

Not much else is known about the Fredericksburg Law School. There were at least thirteen students there during the 1840-1841 session.⁷⁷ It was in existence as late as 1844.

Also in 1831, a private law school was opened in Staunton by Briscoe Gerard Baldwin. Baldwin had read law under his brother-in-law, Judge William Daniel, Sr., before setting up a law practice in Staunton. Baldwin rapidly rose to the top of the widely respected Staunton bar, and he also became prominent in Virginia politics. After consultation with Henry St. George Tucker, Baldwin commenced his law school on October 3, 1831.⁷⁸

Baldwin was critical of practicing attorneys who accepted clerks into their offices but did not take the time to teach them. He announced that he would experiment with a new teaching method. He divided high school into a junior and a senior class. The junior class was given a program of reading elementary legal treatises and the

76. J. Lomax, *Circular* (August 4, 1831) (Stuart-Baldwin Papers, MS. dept., Univ. of Va. Library) (Mr. E. Lee Shepard kindly supplied this information).

77. See note 104 *supra*.

78. Letter from Henry St. George Tucker to Briscoe Gerard Baldwin (June 5, 1831) (Stuart-Baldwin Papers, MS. dept., Univ. of Va. Library) (Mr. E. Lee Shepard and Mr. G. Moffett Cochran kindly supplied this information).

senior class was given lectures; there were daily socratic examinations for both classes. Baldwin's students were allowed to enroll in either or both classes simultaneously. His lectures were directed primarily to the procedures and remedies of the law; the substance of the law was to be learned from reading. He prescribed books for advanced study on jurisprudence, constitutional law, and the Roman based civil law. Dr. Joseph Addison Waddell was engaged to give a lecture on "medical jurisprudence."⁷⁹ This law school was quite successful, but the pressure of business and age forced Baldwin to give it up some time before 1839.

In the year 1839 Judge Lucas Powell Thompson opened a law school in Staunton to fill the gap left when Baldwin's school closed. Judge Thompson did not believe that he had the time to prepare original lectures nor did he see any point in reading aloud to a class that which they could read for themselves. Therefore his announced teaching method was to assign books to read and then to examine the students on their reading. He recommended that Blackstone, Wooddes, Kent, and the Bible be studied. Then he quizzed his students in class on these works.⁸⁰

He described the theory behind this method as follows:

The instructor by a minute and strict catechetical examination is enabled to fix and deepen upon the mind the impression of that which is already superficially or imperfectly understood, by apposite and well timed hints, suggestions or illustrations, to explain what is dark or perplexing, and to remove difficulties, and to conduct step by step, and by easy and natural gradations, from principle to principle, until he compasses such a knowledge of the outlines as to qualify him to be his own teacher, which is the most any system of instruction can accomplish.⁸¹

Although Thompson was educated by reading law under a practicing attorney, he had an appreciation of the place of law in society. He believed that "the science of law and government should in some measure, and in some degree, be the study of every free citizen."

79. B. BALDWIN, INTRODUCTORY LECTURE (1831); A. ROUSE, *THE READS AND THEIR RELATIVES* 623 (1930).

80. L. THOMPSON, INTRODUCTORY LECTURE 11, 12 (1839).

81. *Id.* 13.

However, he knew that a lawyer must also understand the law in "its theory, and its practice, its general principles, and its minute details."⁸²

In 1849 John White Brockenbrough inaugurated a very successful law school in Lexington. This was the year in which Thompson closed his Staunton Law School. Brockenbrough had studied law in Tucker's Winchester Law School, and after a very successful practice in Lexington, he was appointed United States District Judge for the Western District of Virginia in 1846. Three years later Judge Brockenbrough founded the Lexington Law School in order to fill the gap in legal education west of the Blue Ridge Mountains which was left when the Staunton Law School closed and in order to provide additional income for his large family.⁸³

Although Brockenbrough had studied under Henry Tucker, he followed the teaching methods of Lomax and Thompson, which he termed the "catechetical system of instruction." Brockenbrough examined his students in class on their assigned reading and then discoursed on those parts with which the students were having difficulty or where the text was out of date. The school was divided into two classes, beginners and those who had previously read some law. Each class met every other day, and a student could enroll in either or both. The course lasted five months, at the end of which there was a moot court at the trial level.⁸⁴

The Lexington Law School was highly successful from its beginning. Between 1849 and 1861 when war forced its closing, this school educated more than two hundred lawyers.⁸⁵

These six proprietary law schools constitute a fascinating period in the history of legal education in Virginia. Each did not hesitate to experiment with new teaching methods or combinations of old ones which met the needs of the teachers and the students. The teachers were in correspondence with each other or were at least fully aware of what the others had done. Creed Taylor abandoned

82. *Id.* 7, 8.

83. M. PAXTON, *A JUDGE'S SCHOOL: THE STORY OF JOHN WHITE BROCKENBROUGH* (1971); Dobie, *Federal District Judges in Virginia Before the Civil War*, 12 F.R.D. 451, 477-80 (1952).

84. J. BROCKENBROUGH, *INTRODUCTORY ADDRESS* 8, 9 (1849); J. BROCKENBROUGH, *INTRODUCTORY LECTURE* 12-16 (1858).

85. O. CRENSHAW, *GENERAL LEE'S COLLEGE* 324-28 (1969).

the apprenticeship and university lecture methods and used independent reading and the moot court as his method of instruction. Henry Tucker followed the methods of William and Mary and of his father by lecturing and giving socratic quizzes augmented by a moot court. Baldwin followed Tucker. Lomax, Thompson, and Brockenbrough did not deliver formal lectures but used what we today call the socratic method. To this Brockenbrough added a moot court.

The positive aspects of the proprietary law schools were their freedom to experiment with new teaching methods and the practical experience which the teachers brought to the class room. The judges were in daily contact with the practice of the law and could draw on this for their instruction of the students. On the other hand, it is to be remembered that they were only part-time teachers and had to divide their time between their students and their courts or clients. Thus they did not have time to be immersed completely in the academic side of the law. Only Tucker and Lomax found the time to write.

It is interesting to note that all of these men, except for Baldwin, were judges. Judges were notoriously poorly paid then, and teaching law was a method of supplementing their income without becoming involved in any potential conflicts of interest. Students were attracted to these teaching judges because of their high legal reputations. Many of their students probably anticipated practicing before them also later on.

As to the period during which these private schools flourished, it is to be noted that the College of William and Mary was in a state of decline. When in 1804 the eminent St. George Tucker resigned his professorship of law, William and Mary was facing serious competition from Hampden-Sydney College near Farmville and from Washington College in Lexington. Even though these two institutions did not teach law, the loss of other students to them weakened William and Mary. The ties of William and Mary with the Episcopal Church and student disturbances were also detrimental. Moreover, the law department began to feel new competition. In 1810 the first proprietary law school, that of Creed Taylor, was established. In 1811 the first Virginian was enrolled at the Litchfield Law School

in Connecticut.⁸⁶ William and Mary had a series of less than noteworthy law professors until 1834 when Beverley Tucker was given the chair of law and police, which was formerly held by his father. It was the period 1810 to 1834 that four of the six proprietary law schools were established.

Returning now to the organization of the University of Virginia law school, we can see that, when Jefferson retired from politics in 1809, he devoted the rest of his long life to the cause of education. He returned to his plans of 1779, but now he thought in terms of a new university. Jefferson's educational plans for the Commonwealth of Virginia were characteristically grandiose and ahead of his time, but he succeeded in part in that he founded the University of Virginia. This institution opened its doors in 1825.

Jefferson's original plan for the University of Virginia included a law school which would teach common and statute law, equity, federal law, civil and mercantile law, jurisprudence and international law, and the principles of government and political science.⁸⁷ It is noteworthy that, like the original William and Mary law school curriculum, political science is included along with the technical aspects of the law.

Of all the positions at the new university, the chair of law was the most difficult to fill. This was not merely because Jefferson insisted that the professor of law be of his political and constitutional persuasion,⁸⁸ for there were many eminent lawyers who fervently supported Jeffersonian ideas. Rather it was the problem of an insufficient salary which accompanied the appointment. It was difficult to find a sufficiently prestigious lawyer who would be willing to give up a good income and the hope of a political or judicial office in

86. S. FISHER, *LITCHFIELD LAW SCHOOL* 23 (1933). From 1811 to 1832 there were twenty-two law students from Virginia at Litchfield; it was a steady trickle of one or two each year. Morrison, *Virginia and North Carolina at the Litchfield Law School*, 2 *TYLER'S QTLY.* 157 (1921).

87. I P. BRUCE, *HISTORY OF THE UNIVERSITY OF VIRGINIA* 323 (1920); R. HONEYWELL, *THE EDUCATIONAL WORK OF THOMAS JEFFERSON* 120-23 (1964).

88. It is to be noted that Jefferson thought that Blackstone turned lawyers from the Whig politics of Coke to the Tory beliefs of Mansfield. Letter from Jefferson to Thomas Cooper (Jan. 16, 1814) (6 *H. WASHINGTON, WRITINGS OF THOMAS JEFFERSON* 290, 296 (1854)); Letter from Jefferson to Horatio G. Spafford (Mar. 17, 1814) (6 *id.* 334-35); Letter from Jefferson to James Madison (Feb. 17, 1826) (7 *id.* 432, 433).

order to become a teacher. Many, including Henry St. George Tucker and William Wirt, refused offers. Finally in 1826, the second year of the university, John Tayloe Lomax, a bright, young Fredericksburg lawyer, accepted the position. He was successful as a teacher, but four years later he resigned because of the low salary and the offer of a judgeship.⁸⁹

The University of Virginia started out with a broad legal curriculum which had a liberal arts flavor. Two years were required to take all the law courses, and the law students were encouraged to enroll in other departments also. However, in 1829, three years after the death of Jefferson, pressure from the students resulted in a revision of the law curriculum so that they could take in a single year all of the basic law courses and begin practice that much sooner.⁹⁰

John A. G. Davis replaced Lomax in 1830, and the University of Virginia law school continued to flourish. Davis unfortunately was shot and killed during a student riot in 1840. A Richmond lawyer, Nathaniel Pope Howard, was recruited on short notice to teach law the next academic year. In 1841 Henry St. George Tucker decided to retire from the Virginia Court of Appeals, and he accepted the professorship of law in Charlottesville. This was felicitous for the University of Virginia in that he was the most highly respected jurist in the Commonwealth at that time and he was an experienced teacher having been the proprietor of the Winchester Law School from 1824 to 1831. He is credited with having introduced the honor system to the University of Virginia and the moot court to its law school. Tucker, an old man, had to resign because of ill health in 1845; he died three years later.⁹¹

The universally eminent Henry St.G. Tucker was succeeded by a young man, the brother-in-law of Professor John A. G. Davis; this was John Barbee Minor. However, Minor, by the end of his fifty-year tenure as professor of law, had completely eclipsed the reputations of all of his predecessors. From his initial appointment in 1845, Minor was a success. He was a very hard-working man, and his lectures were enthusiastically received. By 1851 the law department

89. 2 P. BRUCE, HISTORY OF THE UNIVERSITY OF VIRGINIA 24-32, 169-71 (1920).

90. 2 *id.* 101-05.

91. 3 *id.* 45-48, 66-68.

was the most successful division of the University of Virginia, and in that year a third year was added to the law curriculum and a full-time adjunct professor of law, James Philemon Holcombe, was added to the faculty. Minor believed in a law curriculum that included academic as well as professional studies. He taught by delivering original lectures; these were later published under the title of *Institutes of Common and Statute Law*. This remarkable work served as the encyclopedia of Virginia law until 1948. The whole body of Virginia law was compacted into six learned volumes. Minor was a supporter of the moot court and allowed nothing to interfere with those exercises.⁹²

The William and Mary department meanwhile was rescued from the doldrums by the arrival in 1834 of Nathaniel Beverley Tucker as professor of law and police. Beverley Tucker was the son of St. George Tucker, the younger brother of Henry St. George Tucker, and the half-brother of John Randolph of Roanoke, whom he idolized. Beverley Tucker continued the broad academic approach to the education of lawyers. He was well qualified to deliver his lectures on the technical aspects of the law, having been a successful lawyer and judge, but he enjoyed more those lectures on politics and constitutional law. He was self-conscious of the fact that his father had been one of the leaders of the movement for independence in Virginia and that his half-brother had been prominent in Congress. He was a prolific writer and speaker on the subject of states rights. His vibrant activity gave an excitement to his classes, and this contributed to the revival of the College of William and Mary at that time. He died in 1851.⁹³

William and Mary continued to flourish until the Civil War. Tucker was succeeded in 1852 by Judge George Parker Scarborough, who was in turn succeeded by Lucian Minor in 1855. Lucian Minor was an older brother of John B. Minor, the professor of law at the University of Virginia. It is interesting to note that Lucian Minor

92. J. RITCHIE, *THE FIRST HUNDRED YEARS: A SHORT HISTORY OF THE SCHOOL OF LAW OF THE UNIVERSITY OF VIRGINIA* 30-51 (1978) [hereinafter cited as J. RITCHIE, *THE FIRST HUNDRED YEARS*].

93. R. BRUGGER, *BEVERLEY TUCKER: HEART OVER HEAD IN THE OLD SOUTH* (1978); N. TUCKER, *A LECTURE ON THE STUDY OF THE LAW; BEING AN INTRODUCTION TO A COURSE OF LECTURES* (1834), reprinted in 1 *SOUTHERN LITERARY MESSENGER* 145-54 (1834).

was the first professor of law and police at William and Mary who was not a judge or a former judge. He died in 1858 and was followed by Charles Morris. In 1859 there was a disastrous fire, and all classes were suspended during the academic year 1859-1860 while the college building was being reconstructed.

In 1861 Lincoln's armies invaded Virginia. Professor Morris along with the rest of the faculty and students at William and Mary joined the Confederate army and went off to war. Judge Brockenbrough closed his law school in Lexington in order to serve the Confederacy as judge of the Western District of Virginia. Professor Holcombe left the University of Virginia to join the Confederate Congress, and Professor John B. Minor remained in Charlottesville to teach a handful of students who were too young to fight.

III. 1865 - 1895

The thirty years from 1865 to 1895 was a period of rebuilding as opposed to the previous period of innovation. After four years of struggling for innovation with a new government, the Confederate States of America, Virginians were ready for retrenchment. Virginia at the end of the war was a physical and financial wreck, and so also were her universities.

During the war Pennsylvania troops had burned the newly-rebuilt William and Mary College academic building; a good part of the college endowment, which had been patriotically invested in Confederate bonds, was gone too. After the war the college reopened anyway; however, the law department could not be revived. Not until 1922 would law again be taught at William and Mary.⁹⁴

Jefferson's University of Virginia had better luck. Federal troops did not get to Charlottesville until the very end of the war, and Professor Minor and two colleagues succeeded in their appeal to the union general, George Custer, to throw a guard around the university when his troops marched through the town.⁹⁵ Furthermore, the University of Virginia being a state supported institution did not

94. *Report of the President to the Board of Visitors, July 5, 1865*, 8 WM. & MARY QTLY., 2d ser., 290 (1928); Hughes, *William and Mary, The First American Law School*, 2 WM. & MARY QTLY., 2d ser., 40, 43 (1922).

95. 3 P. BRUCE, *HISTORY OF THE UNIVERSITY OF VIRGINIA* 331-40 (1921).

have to rely so heavily on a private endowment as did William and Mary. Furthermore, the University of Virginia was a much stronger institution in 1861 than was William and Mary.

Minor's success had not been forgotten during the war, and at the close of the hostilities, law students immediately returned to the University of Virginia in great numbers. In 1866 Stephen O. Southall was added to the law faculty. He was a good teacher, but he died suddenly in 1884. He was replaced by James H. Gilmore. A summer law course was begun in 1870. Minor, Southall, and Gilmore taught by lecturing. While there were regular quizzes, these were designed only to encourage the students to read their daily assignments. The moot court continued, but the prime pedagogical method was the lecture.

The curriculum at Virginia was designed by Minor to take two years, but many of the students could only afford a single year of legal education, and so the lectures were arranged so that a student could attend them all in a single year. The students were always urged to stay in school a second year, if it was at all possible. Whether they did or did not, Minor was a strict grader, and less than twenty per cent of his students were awarded law degrees. This was the subject of dissention, but it must be remembered that the degree was not a prerequisite to the practice of law at that time.

Minor's reputation continued to increase after the war, and by the time of his death in 1895 he was nationally prominent. To him as much as, if not more so than, anyone else in the nineteenth century is due the credit for the good name of the University of Virginia and of its law school. He died in 1895, shortly after his fiftieth anniversary as a law professor. Professor Gilmore retired the next year. The passing of John B. Minor marked the end of an era for the University of Virginia law school and for legal education in Virginia.⁹⁶

As soon as the Civil War was over, Judge John W. Brockenbrough announced the reopening of his law school in Lexington. Although Lexington suffered considerably during the war and the Virginia Military Institute was burned to the ground by union troops, under General Hunter, the Lexington Law School was beyond the reach

96. 4 *id.* 1-5; J. RITCHIE, *THE FIRST HUNDRED YEARS* 30-51 (1978).

of the northern vandals. Brockenbrough's law school did not have its own building or library or endowment; its only asset was Brockenbrough himself. At the end of the war, Brockenbrough was no longer a judge, so he resumed the practice of law and reopened his law school.

Before the war Brockenbrough had held his law school in the Franklin Hall in the town of Lexington. After the war, his revived law school was allowed to use the facilities of Washington College, of which he was the rector of the board of trustees. In fact Washington College owed a lot to Brockenbrough because he was greatly instrumental in persuading General Robert E. Lee to accept the presidency of the college in 1865, and this assured the future of that institution. From 1866 to 1870 Brockenbrough's law school had an informal affiliation with Washington College, although the law students were not allowed to use the college library or other buildings. This four-year period saw a decline in the number of law students.⁹⁷

In 1870 General Lee died, and the name of the institution was changed to Washington and Lee University. In that same year, in order to strengthen the law program, the law school became a formal department of the university and its teachers members of the university faculty. Brockenbrough therefore resigned from the board of trustees to avoid the conflict of interest. Also in 1870 John Randolph Tucker was hired as a professor of law in addition to Brockenbrough. Ran Tucker was the son of Henry St. George Tucker who owned the Winchester Law School and later taught at the University of Virginia.

Brockenbrough and Tucker were remunerated for teaching law by splitting the students' fees between themselves. They both also had private law practices. However, only Tucker arranged with the university to receive a minimum income from the institution. The number of law students at Washington and Lee continued to decline, and in 1873 the fees were not sufficient for both professors. Tucker, having had the foresight to contract for a minimum salary, was the one to remain, and Brockenbrough for financial reasons was forced to resign to his great chagrin. Brockenbrough died four years

97. O. CRENSHAW, *GENERAL LEE'S COLLEGE* 329-32 (1969); M. PAXTON, *A JUDGE'S SCHOOL* (1971).

later still bitter over the turn of events.

In 1873 Charles Alfred Graves, a recent law graduate, was appointed assistant professor of law to take the place of Brockenbrough. Two years later Tucker resigned to serve in Congress. From 1875 until 1889 Graves was the sole teacher of law at Washington and Lee. Several local attorneys gave a few lectures, but their teaching was minimal. Although the University of Virginia Law School was in a state of prosperity, Washington and Lee was finding it very difficult to attract law students at this time. The board of trustees came close to terminating the law department altogether, but Graves managed to dissuade them. Even though the numbers were small, by 1885 the fees from the law students were sufficient to cover their professor's salary. At this time the law school was divided into junior and senior years, which the students could take together in a single year or separately in two years.

In 1889 Ran Tucker returned to the law school at Washington and Lee after having distinguished himself in Congress. He resumed the leadership of the school and was now able to attract a goodly number of students. Tucker was given the title of dean in 1893; he died in 1897. In 1897 Graves was made dean but resigned in 1899 to accept a professorship of law at the University of Virginia. The years 1889 to 1899 are referred to in the annals of Washington and Lee as "the golden years of Randy and Charlie." For the first time the law school was in a state of financial stability. The enrollment and academic standards increased. A two-year residency was now required to receive the law degree, and a third professorship was added to the law school.⁹⁸

In 1870 Richmond College instituted a law department. All of the law courses were taught in the late afternoon or in the evening so that the students, many of whom were impoverished by the Civil War and Reconstruction, could support themselves while studying law. It is surprising that no law school had existed before in Richmond except the activities of Creed Taylor in the 1810s. Perhaps this is to be explained by the fact that Richmond was equidistant between William and Mary and the University of Virginia. More-

98. O. CRENSHAW, *GENERAL LEE'S COLLEGE* 333-44 (1969). Professor Charles V. Laughlin very kindly supplied much of this information.

over there was a distinguished bar in Richmond, and an apprentice could easily find there a good master with a good law library.

The original law faculty of Richmond College was composed of three distinguished lawyers: William Green, James D. Halyburton, and J. L. M. Curry. Green was the most erudite practicing lawyer in Virginia; he was a scholar by temperament, and in 1870 he was more highly regarded than John B. Minor or Conway Robinson.⁹⁹ (That he is now all but forgotten is a shame.) Judge James D. Halyburton had been the United States District Judge for the Eastern District of Virginia from 1843 until 1861, and he served as the Confederate judge for eastern Virginia from then until the end of the war. He then went into the private practice of the law in Richmond.¹⁰⁰ Curry, a native of Georgia, was a graduate of the Harvard Law School. He had been very active in politics and had served in the United States Congress and in the Confederate Congress. After the war he devoted his life to education in the South. In 1868 he settled in Richmond to teach English and history at Richmond College. When the law school was opened in 1870, he taught the courses in constitutional and international law.¹⁰¹ After two years of law teaching, however, all three of these men resigned, Green and Halyburton for reasons of old age and ill health, Curry in order to pursue a career in education as general agent of the Peabody and Slater funds.

The prestige and efforts of these three men were successful in establishing the new law school in Richmond. William Green in particular set the tone of the new institution. It was he who was chosen to deliver the inaugural lecture. He urged his students to have a love of excellence and to pursue not money or mere success but the ideals of truth and justice.¹⁰²

From 1872 to 1874 the law classes at Richmond College were taught by William A. Maury and James Neeson. From 1870 to 1874

99. P. SLAUGHTER, *A BRIEF SKETCH OF THE LIFE OF WILLIAM GREEN* (1883).

100. Dobie, *Federal District Judges in Virginia Before the Civil War*, 12 F.R.D. 451, 473 (1952).

101. E. ALDERMAN & A. GORDON, *J. L. M. CURRY* (1911); J. RICE, *J. L. M. CURRY, SOUTHERNER, STATESMAN AND EDUCATOR* (1949).

102. W. GREEN, *ADDRESS TO THE LAW CLASS OF RICHMOND COLLEGE* (1870); D. MAYS, *THE PURSUIT OF EXCELLENCE: A HISTORY OF THE UNIVERSITY OF RICHMOND LAW SCHOOL* 3-13 (1970).

the law classes varied in size from ten to sixteen students. This was not considered sufficient to justify the continuation of the law department, and it was suspended for three years. During these same four years the law classes at Washington and Lee were about the same size, but at the University of Virginia the law classes had between seventy and 137 students.

In 1877 law classes were resumed at Richmond by Professor Samuel D. Davies. He taught until 1882 when the poor financial situation again forced the closing of the law school. After a period of eight years, it became clear that it would take more than student fees to finance legal education at Richmond College. Therefore in 1890 the family of the late T. C. Williams, Sr., a wealthy Richmond businessman, endowed a professorship in law with \$25,000. The first T.C. Williams Professor of Law was Roger Gregory. With this gift the Richmond College law school was put on a sound financial footing, and it has increased in quantity and in quality ever since. Roger Gregory retired from teaching in 1906 and died in 1920.¹⁰³

From its founding in 1870 throughout the period to 1895 and beyond, all of the law professors at Richmond College were practicing attorneys at the same time. The lecture was the sole method of instruction, and classes were held in the evening to accommodate the faculty and the students. The period 1870 to 1895 was one of beginning and competence; excellence was yet to be achieved.

IV. AFTER 1895

The period 1895 to the present has been one of steady growth both in quantity and in quality for legal education in Virginia. There were the times of the two world wars, which were lean indeed, but peace brought the immediate revival of all of the Virginia law schools.

The University of Virginia School of Law added a third law professor in 1893 when William Minor Lile was hired. When John B. Minor died in 1895, he was replaced by Walter D. Dabney, and in the next year Raleigh C. Minor replaced Gilmore whose resignation had been accepted. Raleigh Minor had been a junior instructor at

103. R. ALLEY, *HISTORY OF THE UNIVERSITY OF RICHMOND* 51-52, 60-62 (1977); D. MAYS, *THE PURSUIT OF EXCELLENCE* 13-18 (1970).

the law school since 1893. In 1895 the course offerings were enlarged and re-arranged so that the students could get credit in the first year for courses taken then without having to wait for the examinations on those courses at the end of the second year.¹⁰⁴ The law faculty petitioned the Board of Visitors in 1897 to allow them to require two years of law study before granting a law degree, but this was not allowed until the 1901-1902 session.¹⁰⁵ In 1900 the Association of American Law Schools was founded, but the University of Virginia declined the invitation to be a charter member and did not join until 1916.

In 1904 the administration of the University of Virginia was reformed, and E. A. Alderman was appointed the first president of the university. (Before 1904 the university had been administered by the faculty.) Alderman appointed Lile as the first dean of the law school. The law school continued to prosper and to expand. In 1907 a fourth law professor was added to the faculty, Armistead M. Dobie, and two years later the law course was increased to three years. In 1911 the law school moved into a building of its own, and the new edifice was appropriately named after John B. Minor. The next step forward was taken in 1913 when the law school established its *Virginia Law Review*. After World War I was over Professor Dobie was given a leave of absence to pursue graduate law studies at Harvard Law School. He returned to Charlottesville in 1922 with an S.J.D. degree and with the convert's enthusiasm for the Langdell method of legal education.¹⁰⁶

In the latter quarter of the nineteenth century Dean Christopher C. Langdell developed at the Harvard Law School a revolutionary method of legal education. Langdell believed that the common law was basically judge-made law and that the students should study law "scientifically," by going directly to the sources of the law and not by reading commentaries on the law. Primary sources should be preferred to secondary sources. Therefore law students should study

104. *Re-arrangement of the Law Course at the University of Virginia*, 1 VA. L. REG. 150 (1895).

105. 4 P. BRUCE, *HISTORY OF THE UNIVERSITY OF VIRGINIA* 289-90 (1921). In *The Law Course at the University of Virginia*, 2 VA. L. REG. 670 (1898) it was assumed incorrectly that this improvement would be made immediately by the visitors.

106. 5 P. BRUCE, *HISTORY OF THE UNIVERSITY OF VIRGINIA*, 38, 170-77 (1922); J. RITCHIE, *THE FIRST HUNDRED YEARS* 66-100 (1978).

cases exclusively, but only good cases. Thus Langdell prepared case books of unedited appellate court decisions, and these were all that his students used in their law studies. If the student was to avoid secondary literature, then logically any lecture or even comments from the class-room law teacher must also be avoided. This required the use of the Socratic dialogue in the classroom. The case method can not function independently of the Socratic method. The law student extracted from the carefully-chosen leading cases in the case books the points of law to be learned. He thereby acquired a method for future legal research for use in his practice of law. The classroom discussion assured that a method of legal reasoning was acquired. Langdell taught methodology not law. It has been said that, if you give a man a fish, you feed him for a day, but if you teach him how to fish, you feed him for his lifetime.

There were many problems with Langdell's method of teaching, and they were quickly pointed out. Dean J. R. Tucker at Washington and Lee and Dean W. M. Lile at the University of Virginia both expressly declined to follow the new Harvard system. Socratic teaching is much slower than lecturing, and, since the case method requires immersion therein, the law school curriculum must be greatly reduced. Langdell did not provide practical or tactical training, and, by concentrating on judicial opinions, his system was narrowly professional and ignored the social and philosophical aspects of the law. Langdell did not deal with statutory law or with any local state law. He taught only general principles. Yet in spite of these obvious drawbacks, it soon was recognized that they were all vastly outweighed by the teaching of legal methodology. Langdell's case book-Socratic system of legal education steadily spread throughout the United States and is today almost universally accepted. It is true that the starkness of the original method of teaching has been resiled from; statutory law is taught, problems are used as teaching tools, moot courts and drafting exercises have been retained. But the basic Langdell theory of studying law at its primary source so as to develop a method of dealing with legal problems remains as vigorous as ever.¹⁰⁷

107. A. HARNO, *LEGAL EDUCATION IN THE U.S.* 53-70 (1953); A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 369-85 (1921); A. SUTHERLAND, *THE LAW AT HARVARD* 174-78 (1967); 2 C. WARREN, *HISTORY OF THE HARVARD LAW SCHOOL* 419-27 (1970).

Dobie brought the Langdell method back with him to the University of Virginia in 1922, and it slowly caught on there. In 1932 Dobie succeeded Lile as dean, and the Langdell way of teaching became generally accepted in Charlottesville.

In 1928 Garrard Glenn was enticed away from his practice in New York City to teach at the University of Virginia. Glenn had been very successful in the practice of law, but his temperament was that of a scholar. While in Charlottesville he published extensively in the fields of creditors' rights and equity. Glenn is said to have set the pace for the University of Virginia School of Law in the twentieth century. His presence on the faculty attracted other good teachers, and his high standards as a scholar were emulated by his colleagues.

Following World War II, the law school at the University of Virginia took the step of greatly increasing its course offering by the means of hiring a substantial number of part-time lecturers. These persons are for the most part lawyers practicing in Charlottesville, Richmond, and Washington, D.C.; they teach advanced courses, such as aviation law and labor law, and practical courses like trial tactics and estate management. They add a new dimension to the basic and traditional courses taught by the permanent, full-time faculty. In 1946 the University of Virginia began its graduate law program, which grants the LL.M. and S.J.D. degrees.

The year 1896 saw the beginning of the present period of growth and general prosperity for the Washington and Lee Law School. In that year a third professor, John W. Davis, was appointed to the law faculty; this provided the much needed opportunity to expand the law curriculum. In 1897 Dean J. R. Tucker died and Professor Davis resigned to return to practice; two years later Dean Charles A. Graves resigned to accept a professorship at the University of Virginia. The law school in Lexington moved into a new building which was built for the exclusive use of the law school. It was completed in 1900 and named for John Randolph Tucker. Thus the Washington and Lee School of Law began the twentieth century with a new faculty and a new building.

The years 1896 to 1904 were ones of unusual instability for the faculty, but this did not affect the student body significantly. After J. R. Tucker died, Graves became dean, but he resigned after two years. The next dean was Henry St. George Tucker, who was the son

of the first Dean Tucker. In 1900 the president of the university died, and Dean Tucker aspired to succeed to the presidency. When he was not elected, he resigned his position as law dean and professor in protest. Professor William R. Vance was elected dean in 1902, but he resigned the next year to accept a law professorship at Columbian University in Washington, D. C. In 1903 Professor Martin P. Burks was made dean, and he held this post until 1917. J. R. Long was appointed professor in 1902 and A. P. Staples in 1904; these two plus Burks were the law faculty until 1913 when Staples died. In 1917 Burks resigned as dean to become a justice of the Virginia Supreme Court of Appeals; the new dean was Joseph R. Long.

In 1916 E. Merrick Dodd was brought to the Washington and Lee Law School to demonstrate the Langdell case book method of legal education. This experiment had been recommended by Dean Burks. Dodd had graduated from the Harvard Law School in 1913 and had practiced law in Boston from then until his appointment to the law faculty. Although World War I forced Dodd to leave Lexington after only one year of teaching, he had been a success, and the Langdell system began to be adopted by the other law teachers at Washington and Lee. In 1923 the Board of Trustees eased Long out of the deanship and replaced him with William H. Moreland so that the case method of instruction would be used throughout the law school.

A new era for the Washington and Lee Law School began with the end of World War I. In 1920 three years were required for the LL.B. degree and the law school became a member of the Association of American Law Schools. There were five full time law professors, and the case method was in use in the classroom. It was the beginning of the period of the "Old Guard." The Old Guard, also known as the famous five, consisted of professors William H. Moreland (who taught at Washington and Lee from 1914 to 1944), Clayton E. Williams (1919-1968), Raymon T. Johnson (1925-1948), Charles P. Light (1926-1976), and Charles R. McDowell (1927-1968). These five outstanding teachers dominated the law school from 1923, when Moreland became dean, until 1968 when Light retired as dean. From 1927 to 1937 they were the entire law faculty, and because of their seniority, experience, and prestige they controlled the law school until the 1960s. Under them the Washington and Lee Law

School flourished.¹⁰⁸

The University of Richmond law school began a period of growth with the appointment of a second part-time law professor in 1895. This new man on the faculty was John B. Minor, Jr., the son of the famous law teacher at the University of Virginia. The law school at Richmond continued to grow, and E. M. Long was added to the faculty in 1898.

It is, however, the year 1905 that marks the dawn of the modern period of law teaching at the University of Richmond. This was the date of the appointment of Professor Walter Scott McNeill. McNeill received his B.A. from Richmond College, his Ph.D. in economics from the University of Berlin, and his LL.B. from Harvard Law School. In 1905, refusing an offer to teach at Princeton, McNeill returned to his alma mater to teach law. McNeill, a product of the Harvard Law School, brought Langdell's case method of legal education to the University of Richmond. He was the first law professor to use the Langdell system in Virginia. McNeill was an outstanding teacher.

In 1906 Professor Roger Gregory retired. He was succeeded by A. J. Montague, whose term as Governor of Virginia had just expired. Montague was given the title of T. C. Williams Professor of Law and Dean of the Law School. He was the first person to have the title of dean. He resigned in 1909 to re-enter the political world, and both titles of T. C. Williams Professor and dean were suppressed. McNeill became the unofficial administrator of the law school.

John Randolph Tucker, Jr., joined the law faculty in 1909; he taught at Richmond until 1925. He was the son of Henry St. George Tucker, the law professor and dean at Washington and Lee. It is interesting to note that the law professor at the University of Richmond was in the fifth generation of law professors in Virginia from his family.¹⁰⁹

108. Professor Charles V. Laughlin kindly supplied much of this information; see also O. CRENSHAW, *GENERAL LEE'S COLLEGE* 342-46 (1969); Crenshaw, *The School of Law, 1849-1949: A Century Revisited*, 6 WASH. & LEE L. REV. 12, 30-34 (1949); Williams, *Development of the Law Curriculum*, ALUMNI MAG., WASH. & LEE UNIV. 11-15 (Mar.-Apr., 1936).

109. The first was St. George Tucker at William and Mary (1790-1804). His son Henry St. George Tucker taught at the University of Virginia (1841-1845). His son John Randolph

The University of Richmond moved from downtown Richmond to a new campus in the western suburbs in 1914, and the law school moved along with the rest of the university. During World War I, however, the new campus became too cramped for space, and the law school moved back into one of the old university buildings, the Columbia Building, which stands at the corner of Grace and Lombardy Streets. For the first time the law school had a building of its own. In 1954 a new law school building was constructed on the new campus.

In 1920, to acknowledge the further financial generosity of the Williams family, the name of the school was changed to the T. C. Williams School of Law. The conclusion of World War I also marked the beginning of significant academic improvements in the law school. In 1922 the morning division of the law school was opened, as was the summer session. The curriculum was increased to require three years of study for the law degree. Two years of undergraduate education was required for admission to the law school as of 1924. The University of Richmond joined the Association of American Law Schools in 1930. The year 1930 was also a year of transition in that it marked the end of McNeill's vital and constructive service to the law school and the commencement of the deanship of Professor M. Ray Doubles.¹¹⁰

The College of William and Mary re-activated its law school in 1922 after a sixty-one year period of dormancy. In 1906 the college had become a state-supported institution; J. A. C. Chandler had become its president in 1919 with the understanding that the college would regain its former prestige. Part of Chandler's mission was to restore the law school. In this goal, he was aided by Robert M. Hughes, Oscar L. Shewmake, and many other friends of the college.

On January 14, 1922, the law school at William and Mary was formally reopened. It was officially known as the School of Jurisprudence and for administrative purposes was within the Marshall-

Tucker taught at Washington and Lee (1870-1875, 1889-1897). His son Henry St. George Tucker also taught at Washington and Lee (1897-1902), and his son John Randolph Tucker taught at the University of Richmond (1909-1925). B. TUCKER, *TALES OF THE TUCKERS* 1-8, 12-17, 65-73, 146-52 (1942).

110. R. ALLEY, *HISTORY OF THE UNIVERSITY OF RICHMOND* 110, 143, 170-71, 193-95, 210, 220-21, 243-45 (1977); D. MAYS, *THE PURSUIT OF EXCELLENCE* 17-65 (1970).

Wythe School of Government and Citizenship. There was also a close connection between these two schools and the School of Economics and Business Administration. These three departments were academically independent of each other, but they shared faculty and other personnel. The first two law professors were William A. Hamilton and Oscar L. Shewmake; they actually started teaching law in September, 1921, in the government department in anticipation of the re-activation of the law school. In 1922 John Garland Pollard was added to the law faculty, and in 1924 Peter Paul Peebles was granted the first law degree of the modern period.

The law school got off to a slow start; until about 1930 there were very few students. In 1925 P. P. Peebles joined the faculty, and Dudley W. Woodbridge followed in 1927. By 1929 the original three law teachers had resigned or retired, and Theodore S. Cox was appointed to the faculty in 1930. Two years later Cox was made dean of the School of Jurisprudence, the first person to hold this title. By 1932 Peebles, Woodbridge, and Cox had put the law school onto a sound footing, and from then until the present it has continued to grow and expand its horizons.

In 1932 when Cox was made dean, the law school was separated from the government department. By 1934 the Brafferton building was given to the law school for classes. In 1953 the name of the law school was changed to the Marshall-Wythe School of Law to honor its most distinguished alumnus and professor.

The early curriculum of the modern law school emphasized the liberal arts aspect of law. Legal history and jurisprudence were among the first offerings. This no doubt reflects the fact that the law school was reorganized through the department of government. The law curriculum has steadily expanded, and today it includes a program in tax law leading to the degree of master of law and taxation.¹¹¹

Virginia Union University in Richmond opened a law school in October, 1922, to give local blacks the opportunity for legal education without having to go to Howard University in Washington, D. C., or even further from home. The law school at Virginia Union

111. 1 WILLIAM AND MARY ALUMNI GAZETTE, May 31, 1934 at 1, 4; 8 *id.*, Dec., 1940 at 6-7, 22-24.

University was initiated and developed by Professor Peter James Henry, who taught civics and history. Henry had received an LL.B. from Howard University and was a member of the Virginia State Bar. He was joined by Professor Clarence McDonald Maloney, who had a law degree from Dalhousie University and taught history at Virginia Union University. As the law program developed, they were joined by six other black lawyers, who taught law on a part-time basis.

The law department of Virginia Union University offered a four-evening course leading to the LL.B. The only entrance requirement was a high school diploma or its equivalency, and the program was open to women as well as to men. The classes were held in Pickford Hall on Tuesday and Thursday evenings from seven until nine.

This law school got off to a good start, but there was not a sufficient demand to keep it going for very long. It closed in 1931. From 1922 to 1931 there were twenty-three graduates and sixteen students who enrolled but did not complete the course. Of the twenty-three graduates, only six passed the Virginia bar examination. Of these six, four were members of the first graduating class; this suggests that after the initial year the quality of the student body went down. In addition to the small number of students, the economic depression, no doubt, also contributed to the demise of the school. Furthermore the university was unprepared at that time to offer high quality legal education; the law school was the weakest department of the university. The law school was a well-intended undertaking, but it was ambitious beyond the resources of the university and the needs of the community.¹¹²

Proprietary legal education revived, after a long break, in Norfolk in the 1910s. At this time the nearest law school was in Richmond, and there was a need in Norfolk for inexpensive legal education. To meet this need the Norfolk Law School was established and maintained by a series of prominent Norfolk attorneys. It was a night law school and was held in the offices of the various lawyers who taught

112. Dr. J. M. Ellison kindly supplied much of this information; *see also* VIRGINIA UNION UNIVERSITY AND SOME OF HER ACHIEVEMENTS 8, 12, 16, 52 (M. Fisher ed. 1924); 31 VA. UNION BULLETIN 176, 183, 192, 200, 211, 222, 231, 234, 236 (Jan.-Feb., 1931).

in it. It was sometimes called the Norfolk Night Law School and also Grant's Law School. At times there was a single instructor, but in the thirties, at least, the teaching assignments were divided among several. Although somewhat amorphous, the Norfolk Law School was kept going until the middle of the 1930s.

In 1911 and for the next several years, Eugene A. Bilisoly conducted the Norfolk Law School. After Bilisoly stopped teaching, Ernest S. Merrill took over. Merrill was teaching alone between 1920 and 1924; at this time he was conducting a law course which took two years. In the late 1920s and in the 1930s the Norfolk Law School was run by Walter Grant, and the teaching was done by him, John C. Davis, Ernest S. Merrill, and D. Lawrence Groner, Jr. During this later period, classes were held three times a week for three hours each evening. Just prior to the bar examinations refresher classes were held nightly, principally by J. C. Davis. The Norfolk Law School produced a number of prominent attorneys and judges in the Norfolk area.¹¹³

In 1924 Marcus G. James founded a business college called Norfolk College, which was located at Granby Street and Brooke Avenue. Among the departments of this institution was a school of law which offered courses preparing its students to take the Virginia bar examination. These law courses were taught by L. W. Sherritt in 1927, and for the year 1930-1931 they were being taught by A. C. Philpotts, W. B. Tilley, and W. Shepherd Drewry. William M. Phipps was an instructor in 1932 and 1933. This law school appears to have been in operation as late as 1947. It was defunct before 1952; there is no connection between it and the present Norfolk College.¹¹⁴

In Richmond there were two proprietary evening law schools which operated in the twentieth century. William Parham Martin¹¹⁵ was the owner and "dean" of the Smithdeal-Massey College of Law, which was in operation from about 1947 to about 1959. The teachers

113. Mr. Samuel Goldblatt, Mr. Herman A. Sacks, Mr. James A. Howard, and Mr. L. S. Parsons very kindly supplied this information; see also *Eugene A. Bilisoly*, 50 VA. ST. BAR ASSN. REPTS. 215 (1938).

114. This information was kindly given by Judge Richard B. Kellam, Mr. Philip B. West, Mr. L. L. Underwood, Jr., and Mrs. Frances Ripley; see also *Norfolk Virginian Pilot*, July 10, 1927, part 1, at 4.

115. See *Richmond Times Dispatch*, June 8, 1970, at B-2 (obituary of W. P. Martin); 58 VA. STATE BAR ASSN. REPTS. 57 (1947); 61 *id.* 77 (1950).

were local practicing attorneys. Martin owned the law school, but he had an arrangement whereby he used the name and building of the Smithdeal-Massey Business College, a highly respected secretarial school in Richmond. At least seventy-five of Martin's graduates applied to take the Virginia state bar examination; this was allowed under the theory that they were reading law under Mr. Martin. This institution catered mainly to returning veterans of the Second World War who wanted to go to law school under the G. I. Bill but could not be accommodated by the established law schools. Many of the graduates of the Smithdeal-Massey Law School passed the bar, and the school was a great financial success.

The Virginia College of Commerce and Law was chartered in 1937 as a non-profit organization, but it was closely associated with the Richmond Business College, which had been founded in 1922. It was an evening course which prepared its students to take the Virginia bar examination. From 1948 to 1954 approximately fifty of its graduates applied to take the bar examination. Mr. A. Clair Sager was its first dean and taught law from 1937 to about 1943; after World War II Mr. Gordon B. Ambler and then Mr. W. Griffith Purcell acted as dean.¹¹⁶ This law school, along with the other proprietary efforts, ended soon after 1952 when the law was changed so that its students were no longer eligible to take the Virginia bar examination.¹¹⁷

These private law schools were operated not by judges as before the Civil War but by lawyers and persons in the business of making legal education lucrative. In addition to these schools, the various business colleges in the state taught business law to their students, who were not studying to become attorneys. In the twentieth century the colleges and universities in Virginia as throughout the nation added to their liberal arts courses classes in constitutional law and commercial law, and introduction to law courses. They thus continued the idea of John Locke and the others that law should be part of a liberal education.

In 1888 the Virginia State Bar Association was established with one of its original stated goals being to require higher qualifications

116. See Richmond News Leader, Feb. 19, 1953, at 20.

117. 1952 Va. Acts, ch. 553 at 867, 868.

for the admission to the practice of law in Virginia. This would result in forcing greater study of law on the part of aspirants to the legal profession, and it would indirectly encourage the study of law in a proper law school and discourage reading law under an attorney. The standing Committee on Legal Education and Admission to the Bar was erected at the first meeting of the Association. It was noted that "The tests prescribed for determining fitness for admission to the bar in Virginia are a mocking farce." The Committee was therefore directed to draft an act making the examination for admission to the bar a meaningful experience.¹¹⁸

The draft act, which required a bar examination to be conducted by three attorneys who were to be appointed by the local circuit judge, was presented to the General Assembly, but it was defeated. The reason for the failure of the bill seems to have been a feeling that anyone who can get clients should have the right to practice law.¹¹⁹ This philosophy was directly counter to that of the Association, which was trying to raise the level of the practice of law by excluding those who lacked knowledge or intelligence or integrity.

In 1895 the Committee on Legal Education and Admission to the Bar presented to the Virginia State Bar Association two proposed bills. The first would have set up boards of bar examiners; the second would transfer the examination of applicants from the circuit judges to the justices of the Supreme Court of Appeals. Although the Committee favored the first, the Association voted to recommend the second.¹²⁰ In 1896 the General Assembly finally acted, and an act was passed requiring the Supreme Court of Appeals to license future members of the Virginia bar after an examination pursuant to regulations to be promulgated.¹²¹ Rules for a written bar examination were promptly published,¹²² and the first

118. 1 VA. STATE BAR ASSN. REPTS. 6, 7, 12, 15 (1888); note also 13 VA. L. J. 531 (1889). That the good and ignorant were being licensed indiscriminately see Anderson and Lile, *Report of the Committee on Legal Education and Admission to the Bar*, 7 VA. STATE BAR ASSN. REPTS. 49, 50 (1894) and *Examination for Admission to the Bar in Virginia—The Past—The Future*, 2 VA. L. REG. 310, 312 (1896).

119. 2 VA. STATE BAR ASSN. REPTS. 52-54 (1889); 3 *id.* 22-23 (1890). The bill was resubmitted to the General Assembly in 1894 and was again defeated. 6 *id.* 44-46, 273-75 (1893); 7 *id.* 16-22, 49 (1894).

120. 8 *id.* 26-40, 62-68 (1895).

121. 1895-96 Va. Acts, ch. 41 at 49.

122. 93 Va. v (1897); 2 VA. L. REG. 219 (1896); 2 *id.* 910 (1897). They were applauded in

bar exam was given on January 8, 1897.¹²³ In 1910 the Virginia Board of Bar Examiners was created to relieve the court of this time-consuming responsibility.¹²⁴

The year 1934 saw the first requirement of any academic study before taking the Virginia bar examination. William M. Lile, chairman of the Committee on Legal Education, had recommended in 1901 that no one be allowed to practice law who had not studied law for at least two years.¹²⁵ This proposal, however, was not heeded at the time. This cudgel of professional betterment was taken up in 1927 by F. D. G. Ribble, Lile's successor at the University of Virginia and on the Committee. In that year the Committee recommended that two years of college work and two years of law study be a prerequisite to taking the bar examination.¹²⁶ From then until 1934, the Virginia State Bar Association worked diligently to secure the passage of an act to that effect, undaunted by their initial failure.¹²⁷ The Act of 1934 required every applicant to have either a degree from a law school which was approved by the American Bar Association or to have studied for two years in an accredited college or have the equivalent of two years undergraduate education.¹²⁸ Unsatisfied, the Bar Association got this act amended in 1936 to require two years of reading law in addition to the two years of college if the applicant did not have a law degree.¹²⁹

At the close of World War II, the two proprietary Richmond night law schools came into prominence because of the demand of the returning armed forces for legal education in Virginia. The students

Corbitt, *Admission to the Bar in Virginia*, 40 VA. STATE BAR ASSN. REPTS. 286 (1928); 9 *id.* 39 (1896); 2 VA. L. REG. 310 (1896).

123. The exam was later published in 2 VA. L. REG. 774 (1897). Other bar exams were published in 3 *id.* 315, 465 (1897-98); 4 *id.* 270, 405, 707 (1898-99); 5 *id.* 273, 422, 723 (1899-1900).

124. 1910 Va. Acts, ch. 152 at 238.

125. Lile, *Report of the Committee on Legal Education*, 14 VA. STATE BAR ASSN. REPTS. 62 (1901).

126. 39 *id.* 72 (1927).

127. 40 *id.* 61 (1928); 41 *id.* 161 (1929); 43 *id.* 73-74, 89-94 (1931); 44 *id.* 16, 48-54, 96-102 (1932); 45 *id.* 26-27, 44-46, 56-58 (1933); see also Corbitt, *Admission to the Bar in Virginia*, 40 *id.* 286 (1928).

128. 1934 Va. Acts, ch. 266 at 411.

129. 1936 Va. Acts, ch. 53 at 79; 46 VA. STATE BAR ASSN. REPTS. 45 (1934); 47 *id.* 41-42, 100-08 (1935); 50 *id.* 136 (1938).

of these schools were being allowed to take the Virginia state bar examination under the provision of the statute which was designed for law students who were reading law with a practicing attorney; the proprietors were licensed attorneys at law. The Virginia State Bar Association, in an effort to maintain the high quality of the Virginia bar, moved against these proprietary law schools and succeeded in amending the relevant statute.¹³⁰ As of 1952, if an applicant is not a graduate of an A.B.A. approved law school, he must have done a three-year college course and have read law for three years with an attorney who has been approved by the Board of Bar Examiners and is also a full-time practitioner.¹³¹ These new qualifications for the law reader's master removed the proprietary law schools from the Virginia legal scene. It is interesting to note that today Virginia is one of the very few remaining states to allow persons to qualify to practice after reading law without attending any law school.

The reintroduction of a meaningful bar examination in 1896 and the subsequent academic requirements for the practice of law were a very important part of the improvements in legal education in the twentieth century. There has been in Virginia no diploma privilege whereby graduates of law schools are exempt from the bar exam and admitted to practice on the sole basis of their law school diplomas. Such direct power of law schools over the practice of law invites in return direct or indirect public interference with the administration of the law schools, particularly with matters of curriculum and teaching methodology. It would be a great loss to legal education if the academic freedom of law faculties were thus diminished by people outside the law school. The present informal contacts between the bar and the schools is sufficient to keep the schools informed of the thinking of the practitioners and judges; more would be harmful.

The functions of the law school and the bar examiners are not directly the same. This is demonstrated by the fact that many subjects taught in law school are not included on the bar exam. The bar examination is directed to assuring a minimum competency in the

130. 58 *id.* 57 (1947); 61 *id.* 77 (1950); 62 *id.* 89 (1951); 63 *id.* 77 (1952).

131. 1952 Va. Acts, ch. 553 at 867, 868; VA. CODE ANN. § 54-62 (Repl. Vol. 1978).

basics of law practice. The law schools strive to educate their students so that they will be of maximum competency. The law schools emphasize legal methodology, and a good law school examination is a learning experience. The bar exam, on the other hand, recognizes only the memorization of legal doctrine.

In general, by 1895 Virginia had recovered from the Civil War and from Reconstruction. More and more law students could afford to attend law school, and by that time studying law in a school was recognized to be vastly preferable to reading in a law office, even though it was much more expensive. The increase in students' fees made possible the hiring of more law professors. The economics of a larger law school were instantly felt. It was possible to enlarge the curriculum and the law libraries, and this was vital because the reach of the law was expanding dramatically. Before 1900 there was no need for such courses as tax law, labor law, antitrust law, administrative law, workman's compensation, and many others; constitutional law was relatively unimportant, as was criminal procedure. The more persons there were on the law faculties, the greater was the opportunity for a teacher to develop an expertise in one or two branches of the law and to do research and writing.

The twentieth century has also seen the decrease in the number of part-time students and part-time teachers. The part-time student does not receive as good a legal education as he might, because he does not have the time to study sufficiently his assignments outside of class. At the end of his work day he cannot have as much energy as he did at the beginning of it; evening law classes are a burden even for the highly-motivated student. Furthermore the time for any contemplation of the law is not there.

In actual numbers, there are more part-time law instructors today than there were in 1895, but the percentage is less. In 1895 and earlier it was necessary for many law professors to supplement their inadequate university salaries by practicing law on the side. Perhaps they thought of themselves as practitioners who were teaching on the side. In any case, they could not give their undivided attention to their schools, students, and research. After 1895 it became less necessary and then unnecessary for law teachers to practice law also, and most law schools gave up part-time teachers as soon as they could. After World War II, however, a new phenomenon occurred in the law schools. This was the hiring of great numbers of

local lawyers to teach highly specialized and very technical law courses. Actually this had been done on a very limited scale since about 1870, but before about 1895 the part-time teachers had frequently taught basic, required courses. It is not good to have them teach the basic law curriculum because they are not generally available during the day for conferences with the individual students when this is needed. Nor do they serve on faculty committees or aid in the administration of the law school.

In modern times, however, the part-time law teacher adds a unique dimension to legal education. He brings to the law school practical legal experience, but more importantly he brings an expertise in his field of practice. Usually it is a special knowledge not otherwise present in the faculty. These outside specialists provide great depth to the curriculum.

There can be, however, too much of a good thing. Legal education in Virginia is a part of the American picture and is affected very much by national thinking. Not everything new is good, nor is every change necessarily an improvement. Some twentieth-century trends should be followed only in moderation.

The growth in the law school student bodies is a problem as well as a blessing. As the law schools increase in size, the contact between the student and the teacher diminishes. The much talked about student-teacher ratio is a false measure. A law school does not divide the students up among the faculty so that each student sees only one teacher and each professor teaches only twenty or however many students. Each teacher should teach each student. In a law school of four hundred students and twenty teachers, the true figure is four hundred to one not twenty to one. A teacher can deal adequately with four hundred students, but it is doubtful whether much teaching gets done at a school of fifteen hundred.

A further problem in large schools is that, where there is a large faculty, the teachers are so busy keeping in touch with each other that they have little time left for their students. The intellectual cross-fertilization of ideas within a law faculty is a good thing, and it keeps a teacher from becoming stale or jaded. But if it interferes too much with the student-teacher contact, then it defeats the primary purpose of the institution.

Another of the curses of bigness in a law school is the problem of administration. First, too much of the professor's time is taken up with administration; this keeps him away from teaching. Second, the professional administrators, deans et al., can too easily lose touch with the students and even with the teaching purposes of their law school. It happens occasionally that academic decisions are more influenced by the money-raising functions of the dean's office than the pedagogical purposes of the law school. Not only can law school deans and university presidents lose contact with their students, but they can also get out of touch with their teaching faculties. This frequently happens in large law schools outside of Virginia, and a law professor is judged, rewarded, and promoted on the most superficial criterion, the quantity of his professional publications. A dean who is an expert in tax law, for example, cannot adequately judge the quality of a book on criminal procedure, for example, nor can a university president who is a biologist. The quality of a professor's teaching is even further removed. Thus the teacher is not judged as a teacher nor as a scholar but as a hack writer. With pressure on him to publish, he is tempted to neglect his students.

This sad state of affairs is the natural and foreseeable result of bigness in law schools. So far no Virginia law school has come to this unhappy stage of development, but many law schools outside the state have. The essence of education is the interchange between the student and the teacher. When this becomes impersonal, because of the size of the school or for whatever reason, then the school sinks to the level of a correspondence school. If a student can not have a personal intellectual contact with his teacher, he might just as well study law at home in his spare time.

It would be misleading to the reader and unfair to the Virginia law schools to end with this pessimism. It is obvious from the thriving state of the present four law schools in Virginia that their professors are conscientious and approachable teachers. Furthermore they are active in the affairs of the bar and contribute to the legal literature of the state.

The conclusions of this study are that many, many people have contributed to the new ideas and improvements of legal education over the centuries. The great men have used and built upon the

contributions of the lesser and vice versa. Perhaps the celebrities could not have succeeded had not others prepared the way before them. The lesser figures have made and do make significant achievements, though public acclaim is awarded to others. Almost all of the Virginia law teachers have been useful and important as instructors.

Many methods of legal education have been used over the years. Each has its strengths and its weaknesses. The study of the past is instructive and useful in showing both the good and bad goals and methods. We must cultivate the good and uproot the bad. This study suggests that there has always been progress, slow but constant improvement. The teaching of law is vital to the administration of justice, a noble cause. The continuing challenge is ever to strive for the improvement thereof.

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