6-1921

William and Mary's Pioneer American Law School

Robert M. Hughes

Reprinted from the Journal issued by the American Bar Association, June, 1921

WILLIAM AND MARY'S PIONEER AMERICAN LAW SCHOOL

By Robert M. Hughes
Of the Norfolk, Va., Bar

PRIOR to the American Revolution the only preparation for the Bar was study under some practitioner, except in the case of the few who were so fortunate as to afford a residence in England and a training in the Inns of Court.

The establishment of the law course at William and Mary is thus described by Jefferson in his Autobiography:

> On the 1st of June, 1779, I was elected Governor of the Commonwealth, and retired from the Legislature. Being elected also one of the Visitors of William and Mary College, a self-electing body, I effected, during my residence in Williamsburg that year, a change in the organization of that institution, by abolishing the Grammar School and the two professorships of Divinity and the Oriental Languages, and substituting a professorship of law and police, one of Anatomy, Medicine and Chemistry, and one of Modern Languages.

The resolution of the Board of Visitors making this change was dated December 4, 1779.

On December 28, 1779 the Faculty carried it into effect by a resolution which is noteworthy as the first application of the elective system. It reads:

> For the encouragement of Science, Resolved, That a student on paying annually one thousands pounds of Tobacco shall be entitled to attend any two of the following professors, viz., of Law & Police, of Natural Philosophy and Mathematics, of Moral Philosophy, the Laws of Nature and Nations & of the Fine Arts, & that for fifteen hundred pounds he shall be entitled to attend the three said professors.

The College Board included, among others, Jefferson, Blair, Madison, Randolph, Nelson and Harrison. They elected as the first professor George Wythe, styled by Jefferson the American Aristides, and a signer of the Declaration. He was one of the Chancellors of Virginia, and was notable as one of the first if not the first American judge to pronounce a legislative act unconstitutional. This he did in *Comth.* v. *Catron* (4 Call 5), staying:

> Nay more, if the whole legislature, an event to be deprecated, should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal; and, pointing to the constitution, will say to them, "here is the limit of your authority; and hither shall you go but no further."

His course was both thorough and practical. It was based upon Blackstone as a text book, accompanied by lectures showing the difference between English and Virginia law. R. H. Lee, in a letter to his brother, Arthur, in 1780, says of Wythe that he discharges his duties as professor "with wonderful ability, both as to theory and practice."

John Brown (later, one of Kentucky's first senators), then a student under Wythe, writes in 1780 describing the Moot Court and Parliament organized by the latter as part of his instruction. And Jefferson, in a letter to Ralph Izard written in 1788 gives substantially the same account of it.

Among Wythe's distinguished pupils were John Marshall, Spencer Roane, John Breckenridge and Francis Preston.

In 1789 Wythe was made sole chancellor, which necessitated his removal to Richmond and resignation of his professorship. He was succeeded by St. George Tucker, whose edition of Blackstone is an American classic. He advocated gradual freeing of the slaves, and in 1796 published a plan for the purpose, which was afterwards made part of the appendix to his Blackstone. He held the position till 1804, and was followed, first by William Nelson and then by Robert Nelson, who were succeeded by James Semple in 1820, and he by Beverly Tucker in 1833.

Judge Tucker filled the chair for nearly a decade. He was an extreme advocate of State Rights and disciple of the old order. His published lectures on pleading are as entertaining as a novel. His opposition to innovation may be gauged by the following comments on the act which first permitted a demurrer and plea to be filed at the same time in Virginia. He says:

> The antiquated idea that pleadings are a quest after truth is exploded. The old notion that a man should not blow hot and cold in the same breath is discarded as only worthy of the beasts and Satyrs, of whose talk we read in Aesop. Accordingly the defendant *uno flatu* may confess and deny the same fact, and the confession and denial are both put into the record, which was contrived by the unlettered wisdom of our ancestors to contain a precise and consistent statement of the facts of the case . . . So contrived, the judgment in its naked form testified to all the community and to all posterity that "such being the facts, such is the law." What it testifies now, who can tell? Truly the march of mind in these enlightened days has made great progress. . .
>
> The guillotine made Marat an important character in history. Let us at least be candid, and admit that perhaps the Huns and Alans, when desecrating and destroying the monuments of Grecian art, thought as favorably of their work as our lawgivers of their labors, in tearing down the pillars of the temple of Justice.

Judge Tucker was succeeded by Judge Scarburgh, who held the chair till his promotion to the Court of Claims. He was followed by Lucian Minor, a brother of John B. Minor, who served until his death in 1859. He was succeeded by Charles Morris, who acted till the College was closed on account of the hostilities in the vicinity during the Civil War.

In 1862 the main building of the College (which had just been restored from the fire of 1859) was set on fire by a mob of drunken soldiers, whose irresponsible vandalism was as much deplored in the North as in the South. But the damage was done all the same. As no insurance was available in such case, the crippled endowment had to be used after the war for rebuilding, and it has since been impossible to revive the law department of the College, though its other activities are in full operation.

Let us hope that some philanthropist may yet reendow this, the first law school in America, and restore it to the rank it held so long.

In more than one respect this old law school blazed a path. One of the live subjects before the profession today is the amount of preparation requisite for a law degree. Certainly as early as 1792, and probably as early as 1779, an A.B. degree was required there as a condition of a law degree. The compilation of the College statutes of 1792 provided:

> For the degree of Bachelor of Law, the Student must have the requisites for Bachelor of Arts; he must moreover be well acquainted with Civil History, both Ancient and Modern, and particularly with municipal law and police.