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WILLIAM AND MARY, THE FIRST AMERICAN LAW SCHOOL.

By ROBERT M. HUGHES.

Hon. Hampton L. Carson, in his interesting article on James Wilson and James Iredell, published in the March number of the *American Bar Association Journal*, says:

"In 1790 he (James Wilson) was chosen as Professor of Law in the University of Pennsylvania—the first publicly established law school in the United States."

I presume Mr. Carson intends by the expression "publicly established" the first law school in a public institution or established by public authority, as distinguished from one run as a private enterprise, like the Litchfield School in Connecticut. In any event, that is the construction which would usually be put upon his language.

I regret to join issue with Mr. Carson, for whose qualities as a lawyer, a scholar and a man I have the highest esteem. I would not do so if I had to rely upon my own arguments. But fortunately I can cite contemporaneous documentary evidence, which demonstrates that the first law school in America of any character, public or private, was established at the College of William & Mary in Virginia in 1779.

Jefferson says 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 & Mary College, a self-electing body, I effected during my residence in Williamsburg that year, a change in the organization of that institution, by abolishing the Grammar School and the two professorships of Divinity and Oriental languages, and substituting a professorship of law and police, one of Anatomy, Medicine and Chemistry, and one of Modern language".

George Wythe, a signer of the Declaration and later a distin-

guished Virginia Chancellor, was the first professor, and had active charge till his resignation in 1789. Among his most distinguished pupils were John Marshall, Spencer Roane and John Breckinridge. His text book was Blackstone, supplemented by his own lectures. Those lectures were in existence in manuscript form as late as 1810, for they are described in a letter of the first Governor Tyler to Jefferson. (*Letters and Times of the Tylers*, vol. 1, p. 249.) But the character of his instruction is abundantly shown by contemporaneous letters.

On August 31, 1780 Richard Henry Lee writes to his brother Arthur:

"If Ludwell is not useful to you there, I think he may benefit himself by repairing to Williamsburg and finishing his law studies under Mr. Wythe, who is now most worthily employed in the character of Law Professor at William & Mary College—which professorship he discharges the duty of with wonderful ability both as to theory and practice."

John Brown, afterwards one of the first senators from Kentucky, writes on February 15, 1780 to his uncle William Preston:

"I apply closely to the study of the law and find it to be a more difficult science than I expected, though I hope with Mr. Wythe's assistance to make some proficiency in it; those who finish this study in a few months either have strong natural parts or else they know little about it."

In a later letter dated July 6, 1780 he says:

"Mr. Wythe, ever attentive to the improvement of his pupils, founded two institutions for that purpose, the first is a Moot Court, held monthly or oftener in the place formerly occupied by the Gen. Court in the Capitol. Mr. Wythe and the other professors sit as judges. Our audience consists of the most respectable of the Citizens, before whom we plead causes given out by Mr. Wythe. Lawyer like I assure you. He has form'd us into a Legislative Body, consisting of about 40 members. Mr. Wythe is Speaker to the House and takes all possible pains to instruct us in the Rules of Parliament. We meet every Saturday and take under our consideration those Bills drawn up by the Comtee appointed to revise the laws, then we debate and alter (I will not say amend)

with the greatest freedom. I take an active part in these Institutions and hope thereby to rub off that natural bashfulness which at present is extremely prejudicial to me. These exercises serve not only as the best amusement after severer studies, but are very useful and attended with many important advantages.

Jefferson in a letter to Ralph Izard, dated July 17, 1788, says:

"I can not but approve your idea of sending your eldest son, destined for the Law, to Williamsburg. . . . The pride of the institution is Mr. Wythe, one of the Chancellors of the State, and Professor of Law in the College. He is one of the greatest men of the age, having held without competition the first place at the Bar of our General Court for 25 years, and always distinguished by the most spotless virtue. He gives lectures regularly, and holds Moot Courts and Parliaments, wherein he presides, and the young men debate regularly in Law and Legislation, learn the rules of Parliamentary Proceeding and acquire the habit of public speaking. Williamsburg is a remarkably healthy situation, reasonably cheap, and affords very genteel society."

Wythe removed to Richmond in 1791, on account of the fact that he had been made sole Chancellor; and his place had been filled by St. George Tucker, the author of Tucker's edition of Blackstone, which, so far as my sources of information go, was the first legal text book published in America. His annotations show fairly well the character of the course at William & Mary at the time, when taken in conjunction with the main text.

One of the live subjects before the Bar Association to-day is the degree of preparation which should be required as a condition of a law degree. The William & Mary law school is notable as having gone on record in its infancy in favor of requiring an academic degree.

In the compilation of the College statutes published in 1792 it was 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."

These statutes were a compilation of previous regulations.

The records of the Board of Visitors for that period are lost, so that the exact date of this regulation can not be fixed, but it was probably very soon after the organization of the law department.

The same statutes set out the requirement for the A. B. degree as follows:

“For the degree of Bachelor of Arts, the Student must be acquainted with those branches of the Mathematics, both theoretical and practical, which are usually taught as far as Conic Sections, inclusive, viz. The first six books of Euclid, plain Trigonometry, the taking of Heights and Distances, Surveying, Algebra, the 11th. and 12th. books of Euclid, Spherics, Conic Sections: must have acquired a knowledge of Natural Philosophy as far as it relates to the general properties of Matter, Mechanics, Electricity, Pneumatics, Hydrostatics, Optics and the first principles of Astronomy; must be well acquainted with Logic, the Belles Lettres, Rhetoric, Natural Law, Law of Nations, and the general principles of Politics; he must also have a competent knowledge of Geography and of Ancient and Modern languages.”

More than half the judges of the Supreme Court of Appeals of Virginia prior to 1861 were educated at William & Mary, some before the establishment of the law department, and many afterwards. Among the distinguished alumni were Littleton Waller Tazewell, Benjamin Watkins Leigh, John J. Crittenden, Philip P. Barbour, William T. Barry, Winfield Scott and William C. Rives.

The law department had a continuous existence till 1861. The outbreak of the Civil War compelled the closing of the College. In 1862 the main building was destroyed by fire, except the massive old walls, which had already withstood two conflagrations. At the close of the war the dilapidated condition of the buildings necessitated the use of the diminished endowment in rebuilding, so that it has not been possible to revive this historic law school, though the other departments of the College are in full operation.

The time may yet come when some patriotic citizen will repair the injury inflicted by the devastations of war, and endow the law school so liberally as to restore it to the rank it held so long.

II.

March 31, 1921.

Robert M. Hughes, Esq.,
Plume & Granby Streets,
Norfolk, Va.

My dear Mr. Hughes:

I have read your paper entitled *WILLIAM AND MARY THE FIRST AMERICAN LAW SCHOOL* with interest. Far be it from me to wish to pluck even a single leaf from the chaplet on the brows of William and Mary.

I see no reason in the evidence you submit in support of the Virginia claim to priority of establishment, to change the statement made by me in my recent article on Wilson and Iredell, published in the March number of the *American Bar Association Journal*. My statement was that in 1790 James Wilson was chosen Professor of Law in the University of Pennsylvania—"the first publicly established law school in the United States."

The evidence on which I rely in making this statement is as follows: The Minutes of the Board of Trustees of the University of Pennsylvania of July 10th, August 6th, 10th, 14th, 1790, disclose the formal establishment of the Professorship of Law, and the election on August 17th of James Wilson. It was a contested election and not a private appointment as in the case of the appointment of Wythe by Jefferson. On October 26, 1790, there was published in the *Pennsylvania Packet and Daily Advertiser* an account of the establishment of the Professorship. The plan of the Law School as sketched by Justice Wilson was printed in full in the columns of the *Packet*. On the 15th of December, 1790, the Introductory Lecture by Wilson was delivered to a large audience in Philadelphia, then the National capital, in the presence of President and Mrs. Washington, the members of the Cabinet, the Congress of the United States, State officials, and citizens of Philadelphia. The proceedings, inclusive of the address, were published in *The Universal Asylum and Columbian Magazine* for 1791, Vol. 1, page 9 et seq: also in *The American Museum or Universal Magazine*, 8th Vol., page 259. The Introductory Lecture was separately published in pamphlet form by T. Dobson, to which

was added a plan of the Lectures. The Lectures were delivered in 1791-92, and were subsequently gathered together with other works of Wilson by his son, Bird Wilson, Esq., in 1804.

I am in possession of all this evidence.

I submit that as evidence of the *public* establishment of a Law School, it is far more cogent than *private* letters of Jefferson, Richard Henry Lee and John Brown, even though such letters be earlier in date than 1790.

As to the merits and abilities of George Wythe as a teacher of eminent men there can be no doubt, but eminent as he was his lectures were never printed as were Wilson's, nor can I discover in the evidence you submit anything which would indicate the public establishment of the Law School at William and Mary. Diligent though Wythe doubtless was in lecturing to pupils, it is clear that open acknowledgment of his work does not rest on a basis comparable to that which sustains the labors of Wilson.

I am

Yours very truly,

HLC/D

Hampton L. Carson.

III.

Norfolk, Virginia, April 8, 1921.

Hon. Hampton L. Carson,
Philadelphia, Pa.

Dear Mr. Carson:

I regret that the necessity of writing to Williamsburg and Richmond for information not accessible to me here has delayed a reply to your letter of March 31st.

Your emphasis, if I understand you correctly, is placed not on the question of priority as between the Wythe and Wilson schools but on the question of publicity. You first vouch the minutes of the Pennsylvania Board of Trustees showing the establishment of the school and the election of Wilson in 1790. Unfortunately the records of the William and Mary Board were destroyed when the College was burned. But the fire did not undo the fact, though it entitles me to use secondary evidence. The first which I submit is the record of the Faculty Book of that date, which is in existence. It recites under date of December 29, 1779:

“At a meeting of the President and Professors of Wm. & Mary College under a statute passed by the Visitors the fourth day of December 1779. Present.

James Madison, President & Professor of Natural Philosophy & Mathematics.

George Wythe, Professor of Law & Police.

James McClurg, Professor of Anatomy & Medicine.

Robert Andrews, Professor of Moral Philosophy, the Laws of Nature & of Nations, & of the Fine Arts.

Charles Bellini, Professor of Modern Languages.

* * * * *

For the Encouragement of Science,

Resolved, That a Student on paying annually one thousand 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. . . .”

I now submit the following extract from a letter of John Brown to William Preston, dated December 9, 1779:

“William & Mary has undergone a very considerable Revolution; the Visitors met on the 4th. Instant & form’d it into a University, annul’d the old Statutes, abolish’d the Grammer School, Continued Mr. Madison President & Professor of Mathematics, Appointed Mr. Wythe Professor of Law, Dr. McClurg of Physick, Mr. Andrews of Moral Philosophy & Monsr. Bellini of modern Languages.”

You state that Wythe was a private appointment by Jefferson. In this you are mistaken. He was elected by the same Board that established the professorship, of which Jefferson (then Governor) was an influential member. But the Board also included John Blair, James Madison, Edmund Randolph, Thomas Nelson and Benjamin Harrison, so that three of its members had been Wythe’s companions in signing the Declaration.

You state that an account of the Wilson professorship was printed in a Philadelphia paper on October 26, 1790.

The statute of the William & Mary Board establishing the

Wythe professorship was printed in the *Virginia Gazette* of December 18, 1779.

In Query XV of Jefferson's Notes on Virginia (the first edition of which was printed in 1787) it is described and stated to be the action of the Visitors.

You state that Wilson's lectures were printed and Wythe's were not. They were not printed till 1804. St. George Tucker, Wythe's successor, printed his edition of Blackstone in 1803.

The preface to Wilson's Lectures shows that only a part of those printed were ever delivered. If the plan given in vol. I, p. 41, is the one which was published in the *Packet*, the lectures even as printed, fell far short of it. They are practically limited to governmental and criminal law. There is nothing on the four personal relations, nothing on real estate, and nothing on pleading. Wythe on the other hand covered all. His work in his moot court and parliament could not be printed from its very nature. His other lectures were in writing and in existence in 1810. While posterity may have suffered from their loss, his classes did not.

The Wythe school lasted until broken up by the losses of the College in the Civil War. The Wilson school did not survive its second summer.

In short, the difference is that the Wythe lectures were given though never published, while the Wilson lectures though posthumously published, were never given, except in part.

Yours Sincerely

Robt. M. Hughes.

IV

April 9, 1921.

My dear Mr. Hughes:

I have no objection to your rejoinder save that it seems to me to raise an issue not intended. I never wrote a word in depreciation of The Virginia Law School, nor attempted a contrast between it and the Law Department of the University of Pennsylvania. In my Wilson-Iredell article, published in the *Journal of the American Bar Association* for March, I used as to the Pennsylvania School, the words "*the first publicly established law school in the United States.*" I still submit that the evidence as de-

tailed in my former letter in reply to your first is far the weightier in character. Philadelphia as the national capital, and the public delivery in the presence of the President of the United States of Wilson's introductory lecture, the publication of that lecture by Dobson (which you have overlooked in your rejoinder) followed by the publication of three solid volumes of Wilson's lectures, delivered and prepared for delivery, no matter what the topic so long as it relates to law, are all items of greater publicity than what took place at Williamsburg, or was made the subject of private correspondence.

Your reference to Tucker's Edition of Blackstone's Commentaries does not seem to be pertinent. The work was Blackstone's, not Wythe's, nor Tucker's except as to the latter's notes, which were printed as an appendix to each volume in the form of essays showing the differences between the English and Virginian law. If it be pertinent, however, let me remind you that the first *American* edition of Blackstone's Commentaries was printed and published in Philadelphia in 1769—nearly seven years before the American Revolution, and was referred to by Burke in the House of Commons in his great speech on the conciliation of America.

It is scarcely accurate to say that the "Wilson school did not survive its second summer." Wilson's other public duties and subsequent death interrupted his work, as I imagine Wythe's resignation from the professorship and the election of Tucker interrupted his, but the school survived, not continuously it is true, but in 1817 Charles Willing Hare was the Professor and actually lectured, followed in 1854 by the eminent George Sharswood, an editor of Blackstone.

But all of this is afield. I am perfectly willing to concede that Wythe by the almanac lectured at William & Mary before Wilson at Pennsylvania, but I assert that the publicity attending his able efforts was not a tithe of that which was accorded to Wilson.

Let us of this generation be thankful that the sons of both of these great schools of law so auspiciously begun, respect the glory of their founders without any detraction from the fair fame of either.

Very truly yours,

Robert M. Hughes, Esq.

Hampton L. Carson.