In Celebration of the Bicentennial of America's First Bachelor of Law Degree Recipient, William Cabell, William & Mary LB, 1793

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by Susan L. Trask ’91

In 1993, the College of William & Mary will celebrate the three hundredth anniversary of its founding. The year 1993 will also mark another important milestone in the history of the College, the Law School and the legal profession. In 1793, the College awarded to William H. Cabell the first bachelor of law degree earned in the United States. Thus, in 1993, during the tercentenary celebration of the founding of the College, we will also celebrate the bicentennial of the awarding of the first bachelor of law degree.

William H. Cabell’s contributions to the Commonwealth and to the legal profession were many and varied. He represented Amherst County for five years in the House of Delegates. He was governor of Virginia for three years. And he later served over forty years as a judge, most while sitting on the Supreme Court of Appeals of Virginia, the highest court of the Commonwealth.

Because William H. Cabell led such a prominent public life, his political and judicial contributions are well recorded. The personal and educational aspects of his life, however, are more obscure. Much of the information concerning his life before his entry into the political arena has been gleaned from his autobiographical sketch and letters.

Cabell’s legal education can be documented from records and historical accounts of the College of William and Mary. Unfortunately, the matriculation records and bursar’s accounts for William and Mary during the late 1700s have been destroyed. Likewise, other pertinent faculty and official records did not survive. A 1874 history of the College includes a catalogue of alumni by year, compiled from papers and records of the faculty. Under the 1793 heading, William H. Cabell is listed as the sole recipient of a Bachelor of Law (L.B.) degree. In addition to this early source, numerous secondary materials accord Cabell the distinction of receiving the first law degree awarded in the United States.

William Cabell was born on December 16, 1772 at his maternal grandfather’s home, Boston Hill, in Cumberland County, Virginia. His education began with private tutors in English and Latin. However, his public education commenced when, in 1785, he enrolled at Hampden-Sydney College where he studied until September 1789. The next February, Cabell entered William and Mary to further his education in the area of law.
William and Mary established the first chair of law in the United States. In 1779, Thomas Jefferson, while Governor and on the Board of Visitors at William and Mary, changed the College's organizational structure to include a Professorship of Law and Police (civil order or government). He envisioned the curriculum providing training for lawyers as well as preparing future participants in state and federal government. Jefferson appointed his old friend and former mentor, George Wythe, to this newly appointed chair.

After Wythe left the College, St. George Tucker assumed the professorship of law. It was under St. George Tucker's guidance and tutelage that William H. Cabell received his formal legal education. In teaching his students, including Cabell, Tucker endeavored to produce both scholars and practitioners. He taught his students in his home surrounded by his books and arranged his teaching schedule around his riding circuit as a district judge. Sir William Blackstone's *Commentaries* served as the foundation for Tucker's lessons, with supplementary material about the United States Constitution and occasional digressions about public morality and the political system. According to one of Tucker's later students: "[Tucker] is a man of genuine cleverness and of the most exalted talents... He is more luminous on the subject of law than any man I ever saw, and takes more pains to communicate instructions to his students." During Cabell's days at William and Mary, other promising young men attended the school. Among them were James Barbour, who became Governor of Virginia, United States Senator, Secretary of War, and Minister of Great Britain; Littleton W. Tazewell, also a Governor and Senator; and John Randolph.

Although formal legal education was being introduced during this period, the concept was not widely accepted or enthusiastically embraced. During the eighteenth century, most aspiring lawyers studied for several years under a well-respected attorney, in effect, an apprenticeship. In contrast, according to the College statutes of 1792, William and Mary required a student seeking a Bachelor of Law degree to satisfy the requirements for an academic Bachelor of Arts degree as well as demonstrate a solid acquaintance with "Civil History, both Ancient and Modern and particularly with Municipal law and police." Thus, at William and Mary Cabell seems to have received as complete and solid a legal education as was available in early America.

After Cabell left William and Mary in July 1793, he went to Richmond to complete his study of law and began practicing law one year later. On June 13, 1794, he was licensed to practice after an examination by Judges Joseph Prentis, James Henry and William Nelson. Not much is
known about the extent or type of law Cabell practiced, although it is believed he must have distinguished himself before the bar to have been appointed Governor at the young age of thirty-three. About this same time, Cabell inserted a middle initial of H. in his name to distinguish himself from two other William Cabells.

William H. Cabell was elected to the Assembly in the spring of 1796 and served until 1805. Twice during his tenure, in 1800 and 1804, he served as presidential elector for Thomas Jefferson. Additionally, Cabell voted for Madison’s famous Virginia Resolutions of the Assembly of 1798.

In 1805, the legislature elected Cabell Governor, a position he held for three years, the maximum length of time permitted under the Virginia Constitution. As Governor, Cabell’s responsibilities included the granting of commissions, the appointment to office of sheriffs, justices and others, the oversight of the State Penitentiary, and the supervision of the State Manufactory of Arms.

During Cabell’s gubernatorial tenure, two exciting events of historical significance occurred. First, the Chesapeake-Leopard affair, which foreshadowed the War of 1812, commenced in June 1807 with the attack of the British warship HMS Leopard on the American frigate USS Chesapeake, which sailed out of Norfolk. Cabell mobilized a large segment of the state militia, set troops and munitions in motion, and kept in constant contact with President Jefferson in Washington for several months until it was clear that the British were not going to invade the Old Dominion’s shores.

Also during Cabell’s administration, Aaron Burr was tried in Richmond before Chief Justice John Marshall for treason based on an alleged plan to form an empire in western America. Cabell’s close friend, William Wirt, prosecuted the case against Burr, which ended in an acquittal. Because of Burr’s high official position and the wide interest in the case, distinguished men, including Andrew Jackson, came to Richmond to watch the drama unfold.

In December 1808, Cabell was elected by the legislature to be a judge of the General Court. He served in that capacity until April 1811, when he was appointed to the Supreme Court of Appeals. In his acceptance letter to Governor James Monroe on March 24, 1811, Cabell modestly stated, “I do it, however, with much diffidence of my abilities for an office high and responsible, but a firm determination to devote an exclusive attention to its arduous duties.” Cabell served on the Court from 1811 to 1851, serving as “president” for his last nine years on the bench.

During his forty years of judicial service, Cabell was involved in numerous interesting and influential decisions. Starting with his first reported opinion, Cooke v. Piles, 16 Va. (2 Munf.) 151 (1811), Cabell’s opinions stretch through the volumes of Munford, Randolph, Leigh, Robinson and the first seven volumes of Grattan.
Two of the cases in which Cabell and the Supreme Court of Appeals were involved are especially noteworthy. In 1814, Cabell and his colleagues became embroiled with the United States Supreme Court in the case of Hunter v. Martin, which centered around the right of appeal from the highest state court to the United States Supreme Court. While recognizing that the Judiciary Act of 1789 permitted such an appeal, the Supreme Court of Appeals decided the appeal was not authorized under the Constitution. Judge Cabell stated in his opinion:

I am deeply sensible of the extreme delicacy and importance of this question. I have diligently examined it according to my best ability, uninfluenced, I trust, by any other feelings than an earnest desire to ascertain and give to the constitution, its just construction; being as little anxious for the abridgment of the federal, as for the extension of the state jurisdiction. My investigations have terminated in the conviction, that the constitution of the United States does not warrant the power which the act of Congress purports to confer on the federal judiciary.

Hunter v. Martin, 18 Va. (4 Munf.) 1, 7 (1814). Despite the Court’s valiant arguments, however, on a second appeal the Supreme Court reversed the Virginia court.

The case of Davis v. Turner, 45 Va. (4 Gratt.) 422 (1848), exemplifies Cabell’s judicial sensibility and demonstrates his inclination to favor the principles of equity over the rules of the common law. In this case, he reexamined the settled rule that “possession of the vendor after an absolute bill of sale is fraud per se” and effectively overruled prior decisions. Cabell reevaluated his own views and concluded that his previous opinions were wrong and had to be abandoned. In concluding his opinion, Judge Cabell wrote:

Some of the opinions now expressed, are widely different from those which I have heretofore entertained. The revolution has not been effected without a struggle. Not that I have, for a moment, permitted the pride of self-consistency to stand in the path of duty; but because from the very constitution of our nature, we feel a prejudice in favour of opinions long formed and often acted on, which, for a time at least, closes our eyes against the light that would shew that we have erred. But I am convinced, and I cheerfully retract my steps, by heartily concurring in the judgment about to be pronounced, and which will restore the law to the solid foundation of good sense and sound reason, on which it originally stood.

In conjunction with his numerous public duties, Cabell led a busy personal and family life. There are varying accounts tallying the number of children William H. Cabell fathered in his two marriages. His first marriage to his cousin, Elizabeth Cabell, produced at least three children before she died. In 1805, Cabell married Agnes Gamble, with whom he had five sons and three daughters. Evidently, his second marriage was extremely happy, for upon his deathbed, Cabell gathered his children around him and instructed them: “My children, ever love and honor...”
perhaps students have not changed all that much from earlier times.

Cabell spent his later years quietly in Richmond. He retired from the Court in 1851 due to illness. He died on January 12, 1853 and was buried in Shockoe Hill Cemetery in Richmond. The county of Cabell, formed in 1809 from Kanawha County and now in West Virginia, was named in his honor. Upon Cabell’s death, the Supreme Court of Appeals and bar of Virginia adopted the following resolution:

Resolved, That we cherish, and shall ever retain, a grateful remembrance of the signal excellence of the Honorable William H. Cabell, as well in his private as in his public life. There were no bounds to the esteem which he deserved and enjoyed. Of conspicuous ability, learning and diligence, there combined therewith a simplicity, uprightness and courtesy, which left nothing to be supplied to inspire and confirm confidence and respect. It was as natural to love as honor him; and both loved and honored was he by all who had an opportunity of observing his unwearied benignity or his conduct as a Judge. In that capacity, wherein he labored for forty years in our Supreme Court of Appeals, having previously served the State as Governor and Circuit Judge, such was his uniform gentleness, application and ability; so impartial, patient and just was he; of such remarkable clearness of perception and perspicuity, precision and force in stating his convictions, that he was regarded with warmer feelings than those of merely official deference. To him is due much of the credit which may be claimed for our judicial system and its literature. It was an occasion of profound regret, when his infirmities of age, about two years since, required him to retire from the bench, and again are we reminded, by his death, of the irreparable loss sustained by the public and the profession.

William H. Cabell achieved much during his eighty-one years. Some of his success was undoubtedly based on his experiences and education at William and Mary. Today’s alumni from Marshall-Wythe should be inspired by William H. Cabell, whose long and distinguished career included success as both a well-respected public servant and a devoted spouse and parent. When Cabell received the first bachelor of law degree awarded in America and bestowed by William and Mary, he began a tradition of eminent and talented graduates. The success of law school alumni from the College continues today.

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