From Oxford to Williamsburg

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From Oxford to Williamsburg: Part I – The University of Oxford, Faculty of Law and Bodleian Law Library

Abstract: The Bodleian Law Library has only existed as an entity in its own right for less than 50 years. Yet part of the collection dates back to the days before the founding of the Bodleian Library in 1602. The rise and fall in fortunes of the teaching of law at Oxford is closely tied to the establishment of the law library. A lesser known aspect of the history includes the ties between Oxford and the United States, especially its oldest law school, William and Mary Law School. In this paper, Ruth Bird offers a brief history of the University of Oxford and then looks at the history of law teaching, before moving on to the evolution of the Law Library itself, and some links with our cousins across the pond.

Keywords: universities; academic law libraries; law schools

EARLY HISTORY OF THE UNIVERSITY

It might seem strange that there was no separate law library in Oxford until 48 years ago; the first ‘formal’ proposal to the University for one was made in 1878. A couple of things could explain this. The tutorial method of teaching at Oxford lessened the pressure for a centralised facility because undergraduate teaching was provided in the Colleges, where separate small law library collections were established over time. The other reason could be attributed to the nature of the subject of law within the university, and its peaks and troughs, and the fact that the Faculty of Law as an entity was only created in 1876.

Oxford University is proud of its position as the oldest university in the English speaking world. Oxford was the sixth largest settlement in Britain by the mid 11th century and although there is no exact date, it was already established as a place of teaching in the last decade of the 11th century. There was a revival in learning which had centred on the monastic and cathedral schools, and the universities were developed from the latter. From 1167, when Henry II, in a dispute with Thomas Becket, banned English students from attending the University of Paris, Oxford developed rapidly as a centre of learning.

The influx of students in the 12th century led to food shortages in the town, and with this was the start of centuries of conflicts between students and townsfolk (“town and gown”). In 1209 an Oxford student was accused of murdering a townsman, and because the accused ran away, King John ordered the hanging of 2 of his friends. However, they, and others, decided also to escape and went on to form a learned community that evolved into the University at Cambridge. By this time there were some 1500 and up to possibly 3,000 students at Oxford, being taught by masters, not the religious orders; the first chancellor of the University was appointed in 1214.

After the plague of 1348, the population of Oxford reduced from 30,000 to 5,000 people, which inevitably affected teaching among other aspects of life.

THE STUDY AND TEACHING OF LAW AT OXFORD

Early known law teachers include Roger Vacarius, an Italian authority on canon and civil law, who put together a 9 volume compendium of the Codex Justinianus, and is thought to have been teaching in Oxford in 1149. Copies of this leading work still exist in Prague and Bruges, with fragments in the Bodleian and college libraries.

In the medieval university there were faculties of civil law and of canon law, with study of the latter following on from the former, and concentrating on topics such as
papal directions and decisions. The study of the common law, the evolving custom of the king’s courts, took place at the legal university of the Inns of Court. The student of canon and civil law had no place in the courts of common law; there were numerous ecclesiastical courts with extensive jurisdiction. Before the Reformation it was an advantage to hold a degree in canon law for those who hoped to win work in royal service and gain honour and wealth.

However, after the Reformation in the 1530’s, Henry VIII banned the teaching of canon law at Oxford, and established lectures in civil law to ensure the proper training for matters such as diplomacy in the modern state. All Souls College became the centre of Civil Law at the University. Foreign civil lawyers were welcomed to England.

Protestant lawyer Alberico Gentili escaped from Italy to Oxford and in 1580 he became the All Souls Regius Professor of Civil Law at the University. He was one of the first writers on public international law, along with Hugo Grotius in the Netherlands. Canon law’s influence declined through the rest of the sixteenth century, and Roman law was assimilated alongside the growth of the system of case law.

In the later 17th and 18th C, legal education fell into decline, but it did not disappear. By the mid 18th C, the concentration on civil law was re-balanced when William Blackstone inaugurated a series of lectures in the English common law at Oxford; his lectures evolved into the

Commentaries on the Laws of England. They were the beginning of a new system of legal education, and were adopted with enthusiasm by lawyers in early America, and in 1755, lawyer Charles Viner left the University £12,000 to endow the Vinerian Chair of English Common Law, and first holder was Blackstone.

Viner was the author of the Vinerian Abridgment, he received permission from his legal contemporaries to include the writings of others in this work.

To arrest the steady decline in law teaching in the 18th and early 19th centuries at Oxford, formal university examinations were set in 1850, and the School of Law and Modern History was established. There was, from 1851, a revival of the degree of Bachelor of Civil Laws, with an examination on Justinian and history topics; but it was seen as unsatisfactory. In the 1870s there was a split between the faculties of Law and Modern History, with a new School of Jurisprudence being created, with an expanded curriculum, in 1876.

In the School of Law and Modern History in the 1850’s, the subjects taught were:

- real property,
- Blackstone’s laws of the right of persons and personal property, and
- Justinian’s institutes
The honours degree included:
- jurisprudence

In 1876, the new degree of the Bachelor in Jurisprudence comprised:
- contract law
- real property law
- constitutional law
- Jurisprudence
- history of English law
- Roman law
- international law.

The advanced degree was the BCL - a full examination of 8 written papers and a viva as well.

LIBRARIES AT OXFORD

The first library for Oxford University - as distinct from the colleges - was housed in a room above the Old Congregation House, in the University Church of St Mary the Virgin. The building stood at the heart of Oxford’s ‘academic quarter’, close to the schools in which lectures were given, which were housed where the Radcliffe Camera stands today. Only teaching masters could borrow books from the library, and they had to leave a deposit pledge of equal value to the book. The room, which still exists as a vestry and meeting room for the Church, was superseded in 1488 by the library known as Duke Humfrey’s, the oldest part of the Bodleian complex. It survived in its original form for just over sixty years; in 1550 its books were dispersed or destroyed after legislation passed by King Edward VI was designed to purge the English church of all traces of Roman Catholicism, including ‘superstitious books and images’.

Oxford was left with a depleted, poor collection not worthy of the university’s position as a highly regarded institution throughout Europe.

THE BODLIEAN LIBRARY

The library was rescued by Sir Thomas Bodley (1545–1613), a Fellow of Merton College who had travelled extensively in Europe and had, between 1585 and 1596, carried out several diplomatic missions for Queen Elizabeth I. He was wealthy, having married a rich widow whose first husband had made a fortune from trading in pilchards. In his retirement from public life, Bodley decided the university deserved a decent library, and he offered a substantial donation to the university. As a result the old library was refurnished to house a new collection of 2,500 books, some of them given by Bodley himself. A librarian, Thomas James, was appointed, and the new library opened on 8 November, 1602. The buildings expanded to include the Schools Quadrangle and Selden End.

In 1610 Bodley, with the support of King James I, entered into an agreement with the Stationers’ Company of London under which a copy of every book published in England would be deposited in the new library. This pointed to the future of the library as a comprehensive and ever-expanding collection, different in both size and purpose from the libraries of the colleges.

In 1749 the Radcliffe Library was opened as a specialist science library, autonomous of the Bodleian. Funded by a retired royal physician, it became popular and competed with the Bodleian because it allowed the use of oil lamps in the evenings and allowed access to the local townspeople, and even the undergraduates. It was taken over by the Bodleian in 1860 and became known as the Radcliffe Camera; the Bodleian changed its policies to stay open after dusk and to admit undergraduates.

The Bodleian’s collection continued to grow; by 1900 over 30,000 books per year were being added, and the total Bodleian research collection was over one million books. Pressure on space was great; stacks were created under the Radcliffe Camera, and by 1941 a whole new building, the New Bodleian, was opened to accommodate the ever expanding collection.

LAW LIBRARIES IN OXFORD

The first building dedicated to a law library for Oxford University was opened in 1964, a mere 48 years ago.
However the collection, which is the raison d’etre of any library, has a longer, and very honourable, life of its own.

The legal deposit status of the Bodleian has meant that there was fairly systematic collecting of English and Scottish law books since 1610. Inevitably there were gaps at times, but they were made up when identified.

As mentioned earlier, by the 19th century the study of law was formalised, as part of the general reforms in the teaching in the university. But there was still no proper law library.

An important development was the establishment in 1867 by All Souls College of a collection of law books in the Codrington Library, open to students and barristers. This became the great standby for Oxford's lawyers until well after the First World War.

Another development was the growth of legal publishing and the writing of textbooks in the latter 19th century, with the establishment of the Incorporated Council of Law Reporting, but even in 1864 there were complaints about the lack of any text books on English Law adapted for University purposes. This contrasts with the United States, where the teaching of law in the universities had, by this stage, produced textbooks of high quality.

By the later 19th C several colleges were offering fellowships and scholarships in law, and some college law libraries were quite well established. From the 1870's efforts were being made to establish a separate university law library; a Miss Rebecca Flower Squire left a large endowment in her will for scholarships or fellowships in divinity and law, and for a Law Library or books for such a library. But the Oxford Law Faculty Board quibbled with the restrictions made by the bequest, fearing it would set a bad precedent, and so Convocation rejected the gift. The endowment went instead to Cambridge, and they created the Squire Law Library; Oxford had to wait another 60 years for adequate law library facilities.

The English law holdings continued to grow in the Bodleian through the late 19th and into the early 20th C. Early in the 20th C the Law Board accepted the need to try to separate the legal materials from the general Bodleian collection, to make them more accessible to the increasing number of students.

By 1923, a separate law section was created within the Bodleian classification. It was housed in a newly established law reading room in the Examination Schools. More colleges also began to buy law resources. Graduate researchers were, however, not well served, with the exception of legal historians.

Commonwealth and foreign law material was not being purchased, and there was no systematic approach to collecting from other jurisdictions. By the 1930s the Law Faculty Board was actively urging the University to provide a law library, and agreement wasn’t far off, but the war intervened...

In 1940 the law reading room in the Examination Schools was taken over by the Government for war purposes, and the collection was transferred to the ground floor of the Radcliffe Camera. It remained there until 1955, when it was moved to the refurbished first floor of the Bodleian quadrangle.

After the war there was a great increase in the number of undergraduates reading law, and apart from overcrowding in the Bodleian, it was not possible to keep sufficient essential legal material on open shelves for direct access. This was a great obstacle to effective research in law, and exposed more than ever Oxford's failure to provide for graduate and research needs in law.

**PLANNING FOR THE ST CROSS BUILDING**

In 1956, with the support of the Friends of Oxford Law in the US, the Law Board asked the University to put before the Rockefeller Foundation a proposal for the establishment of a new University Law Library, (as part of the Bodleian Library), and an associated Law Faculty Building. The Foundation made a gift of £150,000 to the University, more than half the estimated cost of a new building, on condition that the University find other sources of funding and a site, which it did.

The selected architects were Sir Leslie Martin and Collin St John Wilson. The Law Board appointed Mr Peter B. Carter of Wadham College to be its delegate to ensure faculty co-operation with the Bodleian and other University authorities in the planning and execution of the project.

Building commenced in 1959, and the library was opened on the 17th of October 1964, by Dean Erwin Griswold of the Harvard Law School, with numerous luminaries in attendance.

The Library is on four floors, occupying 5,200 sq. metres, and is still impressive at first glance, but the interior fabric has worn and it is in need of a touch of love and money to revitalize it. Several projects have been undertaken to modernise the facilities, and in the past 12 years we have had some changes to the layout of the original library, creating an IT training room, a study area for the EU collection, a graduate reading room, and an open access rolling stacks and reading room. In the late 90's the whole building was listed by English Heritage.
The collection continued to thrive and grow. The Legal Deposit status has given us possibly the most comprehensive collection of law materials published in the UK, because it does not distinguish between academic and professional resources, covering the whole range. There was active collecting for primary materials from the US, Canada, Australia, India, Pakistan, much of Western Europe, New Zealand, South Africa, and to a much lesser extent, a further 70 or 80 jurisdictions. Monographs are also purchased, and we undertook a comprehensive review and purchase policy across ten core legal topics in nearly 100 jurisdictions in 2009 to bring the collection up to date.

The Law Library also has extensive collections in Roman law, jurisprudence, comparative law, criminology and a large international law collection of over 70,000 volumes.

Superseded, rare and special collections

In addition to these current collections, we are very proud of our secondary, or superseded, collection. We retain, on open access, all our superseded editions of all our books, encyclopaedias, digests, etc, not only for the UK, but for the whole collection. This means that scholars and researchers can easily browse and access books no longer available elsewhere.

I doubt many of our American colleagues can boast the full run of the Code of Federal Regulations or the superseded volumes and pocket parts of the USCA on open shelves.

We also hold rare books. All original volumes of English statutes as published since 1540 are in our library, housed in boring grey conservation boxes but in pristine condition, and available to researchers, for use under supervision. We are a working law library, and these precious volumes are part of that tradition.

We also hold several special collections, including the libraries of 2 lawyers.

The first is Viner’s collection, comprising the library of Charles Viner from 1756. It is a rare example of an intact eighteenth century lawyer’s library and in 1964 the collection was moved to the newly built Bodleian Law Library.

The second special collection is the Kahn-Freund, which contains the extensive range of books on labour law from the library of Sir Otto Kahn-Freund (1900–1979), former Professor of Comparative Law in the University.

Official Papers

The Law Library became a European Documentation Centre in the 1960s, and in 2010 the Official Papers collection was transferred from the central Bodleian site to occupy a newly refurbished reading room on the ground floor of the law library. It holds over 2,500 linear metres of Official Papers, including British parliamentary papers from 1800, our United Nations collection, and a dozen other NGO and official papers collections. These are also openly available to any reader who visits the library.

The Law Library

The Law Library was designed from the outset to meet some undergraduate, but mainly postgraduate needs, and all books except for rarities were to be on open shelves. Amazingly, the planned capacity from the outset was around half a million volumes; by the beginning of 1966 the library contained 130,000 volumes.¹

as Grade 2nd which restricts changes to the appearance of the public areas of the law library. We need approval for the type of lights we put in, the flooring we use, the way we wire the desks, etc. These restrictions did lead us to be the first library in the Bodleian group to install wifi to supplement the network coverage, but have also means that the removal of our built in card catalogue drawers will require listed building consent.

The staff

Bodleian Curators appointed E.H. (Ted) Cordeaux as the first holder of the newly created post of Superintendent of the Law Library. His staff of 13 included 3 librarians, one of whom, Mr Michalski, was the foreign law librarian, and though he retired in 1975, lived to April this year, passing away at the grand age of 104.

Of the present staff, none of us are quite that old! We now have around 30 staff, making up about 22 full time equivalent posts; of these, 9 are qualified librarians working in a range of roles, three also have law degrees, and we have a classicist, a couple of teachers, and other useful skills to share. We undertake all our own technical services within the framework of the Bodleian libraries system, and we teach a compulsory first year course in the law degree. We are also part of the Law School’s post graduate researchers’ methods programme.

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Our connections with the US have been strong all along; we have regular summer schools and proper semester long courses with several American Universities; we have been inspected by, and gained approval from, the ABA as a suitable collection to support the teaching of subjects forming part of the US JD courses, our collection of US law reports, journals, digests, congressional debates, codes and regulations, along with over 7,000 texts (or treatises) is one of the better ones in the country, together with the revitalised Middle Temple collection and the IALS & Squire holdings.

Another link is the Bodleian Plate, an engraved copperplate discovered in 1929 at the Bodleian Library. It is the only known 18th century architectural drawing of Colonial Williamsburg's principal buildings, and so it became the basis for their restoration and the reconstruction of the Wren Building, the Governor's Palace, and the Capitol.

And perhaps the most important connection is that our library's architectural design was created after members of the Oxford Law Faculty went on a field trip to the US to view law libraries in the 1950's, and decided the University of Chicago provided them with the layout they preferred. Imitation is a form of flattery!

Our library has continued to grow in size of collection, in the range of services we provide for researchers and academics, in e-resources available, and in staff to support the research and teaching undertaken by the faculty. We are proud to be part of the Bodleian Libraries, holding about 5% of its extraordinary collection, and also part of the long and rich history of the University of Oxford.

Footnote

1 It has now exceeded the original estimate of half a million volumes and continues to grow by about 250 linear metres or more each year

Biography

Ruth Bird is the Law Librarian at the Bodleian Law Library, University of Oxford and has managed academic and law firm libraries in Australia and England for the past 25 years. In 2010 she was made an Honorary Bencher at Middle Temple. She was the National Convenor of the Australian Law Librarians Association (1994–1995), has been an active member of the Council of the British and Irish Association of Law Librarians (2008–2012) and a Board member of the International Association of Law Libraries since 2007.
From Oxford to Williamsburg:
Part 2 – The College of William & Mary
Law School and Wolf Law Library

Abstract: William & Mary, chartered in 1693 by King William III and Queen Mary II, is the second oldest college in America. When George Wythe was appointed Professor of Law and Policy in 1779, the College opened the first American law school. This article, written by Jim Heller, traces the development of the law school and its library in four stages. The Founding Stage, from 1779 until the commencement of the Civil War in 1861, shows gradual growth for the young law program. The Stage of Decline lasted from the closing of the College in 1861 to the reinstitution of the study of law at the College in the early 1920's. The fifty-year Struggling Revival Era runs from the early 1920's through to the 1970s. The Modern Era, from 1980 to the present, shows maturation and growth of the law school and the law library.

Keywords: universities; academic law libraries; law schools

The development of the College of William & Mary, its Law School, and the law library spans more than three centuries. As in most law schools, the history of the law library closely tracks the development of the school. And the history of the law school tracks the development of the College – and the Colony and Commonwealth of Virginia. There also are many similarities in the development of the law programs at Oxford – the first law school in the English-speaking world, and William & Mary, America's first law school.

The Law School's connection with Oxford is obvious when one comes upon the “Oxford Windows” in the building's lobby. Two stained glass panels that depict Sir William Blackstone and Sir Christopher Wren were

Figure 1: Oxford and Williamsburg: the Oxford Windows

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created in London in the 1890's and removed from a hall at Oxford on the eve of the Second World War. The windows were donated in 1980 by the Warden and the Faculty of Laws at All Souls College to celebrate the Law School's 200th birthday one year earlier. But let's go even further back in time, to the early 17th Century.

THE FOUNDING STAGE

When John Smith and 213 other Virginia Company explorers landed at Jamestown Island in 1607, they established the first permanent English settlement in the new world. Jamestown was the capital of the Virginia Colony until 1699, at which time the government was moved ten miles away to less swampy Middle Plantation. The village was renamed Williamsburg, more in keeping for the new capital of the Colony. Besides fewer mosquitoes, a major attraction in moving was The College of William & Mary. Chartered in 1693 by King William III and Queen Mary II, William & Mary is the second oldest college in America, preceded only by Harvard. William & Mary is where three of the first five, and four of the first
ten, United States presidents were educated: George Washington, Thomas Jefferson, James Monroe, and John Tyler.

We can break down the history of the law school and its library into four distinct stages. The “Founding Stage,” from 1779 until the commencement of the Civil War in 1861, shows gradual growth for the young law program. The “Stage of Decline” lasted from the closing of the College in 1861 to the reinstitution of the study of law at William & Mary in the early 1920’s. The next 50-year period, what I will call the “Struggling Revival Era”, begins when law classes reemerged in the early 1920’s and continued through the 1970’s. During this time William & Mary’s law school and law library suffered from inadequate financial resources, dismal facilities, and deficient staffing. Finally, the “Modern Era” begins in 1980 with the completion of the present law building and, in the last five years, a new law library facility. This period shows maturation and growth for both the law school and the law library.

We begin with the Founding Stage. There was no formal training of lawyers in Colonial America. One could study at the Inns of Court in London, educate himself by reading law books, or apprentice with a lawyer. (The Inns of Court actually did little to educate lawyers, and after 1829 English lawyers also had to serve apprenticeships). Because law books were very expensive in the Colonies, reading law was an option for few would-be lawyers. The apprenticeship route, then, was most common, and the most prominent trainer of lawyers in Colonial Virginia was Williamsburg lawyer and judge George Wythe.

Wythe apprenticed dozens of would-be lawyers at his home. One such apprentice was Thomas Jefferson, who in the early 1760’s had been a student of Wythe’s at William & Mary. When Jefferson was elected governor of Virginia in 1779, he also joined the College’s Board of Visitors. Jefferson understood the need to educate citizen lawyers for a new nation, and at his urging, the Board created a professorship of Law and Police (in those days “Police” meant political science or government). The first law professor in America would be Jefferson’s teacher and mentor, Mr. Wythe.

Soon thereafter, Wythe started teaching undergraduate students at William & Mary – there were no graduate students at that time – in the College’s first building, whose design has been attributed to Sir Christopher Wren. Wythe began teaching only twenty-one years after Sir William Blackstone was confirmed as Vinerian Professor of English Law at Oxford. Wythe was very well-qualified. He was at that time a member of the Virginia High Court of Chancery, and had been a member and clerk of the House of Burgesses. He also had been a member of the Continental Congress, and signed the Declaration of Independence.

One of Wythe’s earliest students was John Marshall. Known in America as The Great Chief Justice, Marshall established the primacy of the United States Supreme Court in interpreting the Constitution and declaring statutes unconstitutional – what we call Judicial Review – in Marbury v. Madison in 1803. But not many people know that twenty-one years earlier it was Marshall’s mentor, George Wythe, who proclaimed the authority of a court to nullify a legislative act.

The issue in Commonwealth v. Caton, 8 Va. 5 (1782) was whether the Virginia House of Delegates, acting alone without the Virginia Senate, could pardon three men convicted of treason. The well-read Wythe averred to contests in England between the House of Commons and the Crown relative to impeachments, where the King would frustrate the prosecution by pardoning the offender. In nullifying the act of the Virginia House of Delegates, Wythe wrote that it was his power, “to protect one branch of the legislature, and consequently, the whole community, against the usurpations of the others … [if] the whole legislature … should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the
Wythe established a varied curriculum. In addition to having his students study court decisions, he assigned them readings from his large personal library. He relied heavily on Matthew Bacon's New Abridgement of the Law, Blackstone's Commentaries on the Laws of England, and the Virginia Acts of Assembly. His students also read books on government and philosophy.

Wythe's students could rely little on William & Mary's library. The College charged students ten shillings for the support of the library, with two thirds of the proceeds for buying books. (10 shillings in 1780 would be about £50 in 2012, or about $80 US). Little of that early funding went to buy law-related materials, however, and there would be no separate law library at William & Mary until well into the 20th Century.

There also was a practical side to Wythe's teaching, and he borrowed from England the concept of a moot court. But rather than have students watch the barristers, as was done in England, Wythe's students argued the cases while he and other lawyers and judges served as judges for the moot court. Wythe also introduced a moot legislature, he serving as speaker and his students as legislators. The moot court and legislature were held in the courtroom and legislative chamber of the Colonial Capital building in Williamsburg, which had been abandoned when the capital was moved to Richmond in 1780.

In 1789 Wythe resigned his position at William & Mary and moved to Richmond because of his duties as Chancellor of the High Court. All told, he taught law to perhaps 200 men, including a delegate to the Continental Congress (John Brown); two Presidents (Jefferson and Monroe) and a Vice President (John Breckenridge) of the United States; a Secretary of State and the first U.S. Attorney General (Edmund Randolph); U.S. Senators (John Breckenridge and John Brown), a Chief Justice (Marshall) and Associate Justice (Bushrod Washington) of the U.S. Supreme Court; state and federal court judges (Spencer Roane and St. George Tucker), a foreign minister and Governor of Virginia (Jefferson); members of the legislatures of Kentucky, North Carolina and Virginia; and a president of William & Mary (The Rev. James Madison).

Wythe was replaced in 1790 by St. George Tucker, who himself had studied under Wythe. At his introductory lecture, the modest judge told his students that he had little to add beyond what his students could get by reading the works of Blackstone, Bacon (Bacon's Abridgement), Sir Henry Finch (Nomotexnea, or "Finch's Law"), and Sir Matthew Hale (A History and Analysis of the Common Law of England, and Historia Placitorum Corone, or "The History of the Pleas of the Crown"). Tucker's students also read Locke's Essay on Civil Government, Coke's Institutes, William Sheppard's Touchstone, James Burgh's Political Disquisitions, and Jean Louis de Lolme's Constitution d'Angleterre, titles one might expect to find in an early 19th Century lawyer's library.

It was during Tucker's tenure that the first earned law degree was granted in America when, in 1793, the College conferred a bachelor of law degree on William H. Cabell. Cabell later served as Governor of Virginia, and in 1811 became a member of the Court of Appeals (Virginia's highest court), where he served for 41 years.

During his lectures, Tucker supplemented readings from Blackstone's Commentaries with how British law was changing in America, particularly in Virginia. This culminated in 1803 with the publication of what we call "Tucker's Blackstone", the most influential early 19th Century American legal treatise. When Tucker resigned his professorship that same year after a disagreement with the William & Mary Board of the entire college already was in a serious decline. For the next thirty years the law program was led by a series of local judges. Stability was achieved from 1833-1850 when Nathaniel Beverly Tucker, St. George Tucker's son, directed the law program. But the decade preceding the Civil War, where the program had several directors, was anything but stable.
THE STAGE OF DECLINE

The "Stage of Decline" begins in 1861 when the College closed its doors at the commencement of the American Civil War. It would not reopen until 1888, with about 100 total students. Eighteen years later, in 1906, William & Mary became a state-supported university, which it still is today. The law program, however, would not re-appear until 1920, which takes us to the "Struggling Revival Era."

By 1920, legal education in America had changed in three significant ways. First, there were many more law schools. In 1850 there were only 18 law schools in the U.S., all within respected universities. In 1900 there were 96 law schools. And in 1920 there were 140 — many of which were not affiliated with universities.

Second, the Socratic method of teaching using court decisions, credited to Harvard's Christopher Columbus Langdell, had gained a firm toehold. Legal education no longer had a practical component, and statutory law was virtually ignored.

Third, there were more rigid requirements to be able to practice law. In England, examinations in law were first set by an 1850 statute. In Virginia, an 1896 Act required the Virginia Supreme Court of Appeals to license future Virginia attorneys only after they passed a written bar exam. But it wasn't until 1934 that Virginia required every bar applicant to either have a law degree from an ABA-accredited law school or two years of undergraduate study. Two years later, at the urging of the state bar association, the requirements were made stiffer; an applicant without a law degree had to have two years of college, and also had to read law for two years under a lawyer.

STRUGGLING REVIVAL ERA

Even after the first law courses were re-introduced in 1920, then President J.A.C. Chandler (1919–1934) did not consider William & Mary to have a genuine "law school", as the College offered only two years of law courses. The College's Board of Visitors solved this problem when they agreed on a third year of law beginning in 1923–24 and renamed the program the School of Jurisprudence — 50 years after Oxford's School of Jurisprudence was established.

Under the direction of law professor Oscar Lane Shewmake, the School of Jurisprudence struggled on with few students, a small faculty, and limited facilities. Amidst the Great Depression, 1932 was a very notable year. First, the law school separated from the government department. Second, the College hired its first librarian, John Latane Lewis, to supervise the small law collection of less than 7,000 volumes. It was shelved on the top floor of the college's library, comparable to Oxford's shelving its law collection in a law reading room a decade earlier. Most important, that year the law school secured accreditation by the American Bar Association. Four years later, in 1936, the law school was accredited by the Association of American Law Schools.

To get an idea of how small the law school was in the 1930's, the School of Jurisprudence shared space on two floors in Marshall-Wythe Hall (later renamed James Blair Hall) with the departments of Economics, Government, History, and Sociology. In the thick of the Depression, the legal collection at William & Mary was nothing to gloat about. In 1936, there were fewer than 8,000 volumes in the law collection, and less than $2,000 was spent to buy law materials.

Notwithstanding the ABA (1932) and AALS (1936) accreditations, as well as the granting of the first law degree to a woman (Virginia Mister in 1937), in 1938 William & Mary President John Stewart Bryan (1934–1942) convinced the College's Board of Visitors to downgrade the School of Jurisprudence to the Department of Jurisprudence. A special committee composed of Board members was then charged to study the law program, which had bestowed only twenty-three degrees since its revival eighteen years earlier. Following the special committee's recommendation, in May of 1939 the Board of Visitors announced plans to abolish the law school.

Mace / John Marshall Portrait

Figure 9: The Law School Mace and John Marshall Portrait
Surprised by the outcry from current law students and law alumni, the Board reversed its action only a week later. It announced not only that it would retain the law school, but that it would strengthen it. The new decade gave birth to escalated interest in the law program and an increase in the number of students studying law at William & Mary. By 1941, enrollment in the Department of Jurisprudence jumped from 79 to 140. The law collection, still housed in the main library and with five part-time staff, began to receive regular and sustained use.

But then the progress of the law program was interrupted by World War II, which also led to a series of rapid changes and instability in the library's leadership. From 1943–1950 the law library had four different law librarians. Lewis went off to war in April of 1943 and did not return to that position. Charles Harper Anderson became law librarian in the fall of 1946 after graduating from William & Mary, but he held that position only until 1947 when he joined the law faculty. Anderson was followed by Virginia Blanche Till, the College's first female law librarian, who served until the end of 1949. Chester Stoyle Baker, Jr. managed to stabilize the position, serving from 1950 until 1959.

There was a major change in 1953 when the Department of Jurisprudence split from the School of Government and Citizenship. Under the dynamic leadership of Dean Dudley Warner Woodbridge, it became the Marshall-Wythe School of Law. The school consolidated offices, classrooms, and the law collection in Bryan Hall. The establishment of an endowed chair in taxation reflected the addition to the curriculum of a Master of Taxation, the first degree of its kind in the United States. By 1954, the entire law collection of about 21,000 volumes had been moved from the main library and consolidated in the law library in Bryan Hall.

The excitement was short-lived, however. Yet another threat to the law school was on the horizon, when in 1956 the Virginia General Assembly created the State Council of Higher Education to, in part, recommend elimination of duplicative programs in the state-supported colleges and universities. Davis Y. Paschall, a William & Mary alumnus who would later become president of the College, had only days earlier been appointed Superintendent of Public Instruction for the Commonwealth of Virginia. At his first State Council meeting, Paschall learned that the Council listed the William & Mary Law School as its number one priority slated for elimination. Paschall believed that the General Assembly would approve the Council's recommendation if it saw it.

In a passionate speech, Pascal told the Council that "[t]o abolish the law school that Jefferson established would be like removing the very heart of a College that is, indeed, a "Pearl of Great Pride" to this Commonwealth." He cautioned that abolishing the law school "... would be a gross and callous disregard of the Biblical admonition: 'Remove not thy ancient landmark, which thy fathers have set.' (Proverbs 22:28). It would constitute an unforgivable betrayal of a priceless heritage, and its perpetrators would be silhouetted in infamy." Heeding Pascall's words, the Council agreed to hold in abeyance its recommendation to abolish the law school, and did not send it to the General Assembly.

The law school had survived another scare, and two years later, in 1958, its connections to England were further strengthened with the establishment of The Drapers' scholarship. Each year the Drapers' Company of London provides a scholarship for a just-graduated William & Mary law student to enroll at Queen Mary College to take law courses at any of the colleges of the University of London. William & Mary, in turn, gives a scholarship to a British student to study law for a year in Williamsburg.

As for the law library, Anna Booth Johnson replaced Baker as law librarian in 1960, becoming the law school's first full-time librarian. Like her predecessors, Johnson remained under the joint supervision of the College librarian and the law school dean. The law library soon began receiving a much needed infusion of funds from the College, including private support in the form of two significant endowments. One, a gift from Charles Phineas Sherman, Lecturer Emeritus in Roman, Canon and Civil Law, enabled the library to build a collection of Roman law materials. The other gift, from Marie Estaire Baumert in the name of her brother Guifermo Butler Sherwell, also would be used to buy law books. Both endowments continue to the present.

While funding improved, space became a severe problem for the entire law school. In 1960 the law school had fewer than 50 students. By 1969, it had nearly quadrupled in size to 190 students. Through most of the 1960's the law library was housed in several different buildings, including the basements of two halls. The law school was able to address some of its problems in 1968 when it moved into a building vacated by the university library. It was renamed the Marshall-Wythe Building for Chief Justice John Marshall and his teacher, George Wythe. The facility was adequate for a time, but it filled up quickly with post-war baby boomers; enrollment ballooned from 190 students in 1969 to 459 students in 1973.

Anna Booth Johnson stepped down as law librarian in 1971 and was followed by J. Madison Whitehead, the first to hold a law degree. Sometime between 1970 and 1972 - it's not exactly clear - the law library became totally autonomous from the College's main library. But gaining autonomy brought neither more funding for materials nor additional personnel. The small staff of seven - two librarians and five clerical - could not address the massive increase in the use of the library, which in 1975 acquired its 100,000th volume. Poor facilities compounded the problems, for the law library operated in three different buildings: the main collection and library administrative offices were housed in the Marshall-Wythe Building, additional seating and space for duplicate materials were located in the Wren Building, and incoming books were processed on the third floor of James Blair Hall.
The dismal facilities, along with inadequate staffing and support, put the entire law school at risk. After the ABA inspected the law school in 1975, its Consultant on Legal Education criticized both the law school and its library. He wrote that “[t]he Law School has possibly the most inadequate physical plant of any ABA approved law school in the country.” As for the law library, the Consultant wrote “[t]he first impression that the present physical setting and support level for the library limits the academic aspirations and goals of the Marshall-Wythe School of Law.”

The ABA’s criticism began a turning point when William B. Spong was appointed dean of the law school in 1976. Spong, a prominent and politically well-connected Virginian, had earlier served for ten years as a Virginia State Senator, and then a term as a United States Senator. He convinced the Virginia General Assembly to allocate a large increase in funding for the law library collection, and staffing needs were addressed by transferring two university librarians to the law library.

Spong also changed the law library’s administration when Whitehead was replaced by Caroline Chandler Heriot. Heriot quickly transformed the library, expanding the hours it was open and banning smoking, food, and drinks in the library. The law faculty adopted her proposal that new courses could not be approved absent a library impact statement. In that same year, the law library received a significant endowment from Louis Ellenson, a 1950 graduate of the law school, for the purchase of law books.

Most significantly, Spong secured funds for a new law school building one-half mile from the main campus, adjacent to land where the National Center for State Courts planned to build its new headquarters. Heriot spent most of her time planning and overseeing construction of the library portion of the new law school building, which opened in the fall of 1980. The law library also moved into the electronic age later that year when it acquired its first Lexis terminal. Almost immediately after moving into the new building, the law school was admitted as a chapter of the Order of the Coif, one of 57 schools so honored at the time.

THE MODERN ERA

Heriot died in December 1981, and Associate Law Librarian Ed Edmonds was promoted to director in 1983. The law library passed the 200,000 volume mark in 1985, a doubling in the size of the collection from ten years earlier. The law library continued its slow move into the digital age in 1987 when it subscribed to Westlaw and inaugurated its online catalog. More good news was in store that year when Pearl Jones, who had served as private secretary to five William & Mary presidents, gave the law library a $500,000 endowment to purchase books for its collection. Edmonds departed William and Mary in 1988, and was succeeded by James Heller. After receiving funds to hire an additional reference librarian — which brought to five the number of professional staff — the four dual-degree librarians began teaching the legal research component of the law school’s innovative Legal Skills program. The law library saw significant budget increases for both staffing and collections during the mid-1990’s, and acquired its 300,000th volume in 1993. After adding yet another dual-degree librarian, the library began offering evening reference services and advanced legal research courses.

As for funding, state support for higher education throughout the United States began dwindling before the bursting of the dot-com bubble in 2000 and the housing bubble in 2007. In 1980, Virginia funded 43% of William & Mary’s operating budget. In 2012 it was 13% for the entire College, and 8% for the Law School. Diminished state support has been in part made up by increasing enrollment. William & Mary’s Law School had fairly constant enrollment of about 525 students during the first two decades of the modern era, 1980 to 2000, but it expanded significantly in the first decade of the new century. Enrollment breached 600 students in 2005, and 650 in 2011, which included over two-dozen LLM candidates from other countries.

As was the case in the 1970’s, the need for a larger and better facility became more acute. The library physical plant was showing its age, both esthetically and functionally. The facility problem was addressed by a total renovation and expansion of the law library. When completed in 2007, the new facility — renamed The Wolf Law Library — had 568 total seats, twelve group study rooms, two computer labs, and impressive Reading Rooms on the main and top floors. A year after opening, the law library acquired its 400,000th volume.

The library’s impressive Nicholas St. George Rare Room features a portrait of John Marshall that was once owned by his son, and also the John Marshall family bible, with writings from Marshall and his wife, Polly Amber. The Law School Mace, a 19th Century replica of those used in Parliament, offers evidence of our British roots. One of the special collections displayed in the Rare Book Room — donated by the Armistead Family, four generations of whom practiced law in Williamsburg — offers a glimpse into the law books used by 18th and 19th Century Virginia lawyers.

Two of the law library’s major collection-related projects reflect the past, present, and future of the Law School. As for the past, the library actively collects books that were used by America’s first law professor, George Wythe. Wythe, also a classics scholar, had a personal collection of nearly 500 titles, and the law library has about one-third of those titles. As for the present and future, in 2010 the law library created the William & Mary Law School Scholarship Repository, an open access digital archive that includes the Law School’s faculty publications, five law reviews, and numerous other documents relating to the unique history of the nation’s first law school. In May, 2012, less than two years after it began, the
Discovering the Digitised Law Library of Heritage Collections

Repository broke 1 million downloads. The library will continue to add to the repository so that future generations will have access to student and faculty legal scholarship and the law school’s rich history.

From its distinguished beginnings as America’s first law school, it’s closing in 1861 at the outset of the Civil War, the Struggling Survival Period from the 1920’s into the 1970’s, and the modern period that began in the last quarter of the 20th Century, William & Mary’s Law School mirrors the ups and downs of the Commonwealth of Virginia and the nation. Fortunately, both the College of William & Mary and its Law School are well-positioned to meet whatever challenges and opportunities that will occur during the next three centuries.

Biography

James S. Heller is Director of the Law Library, Professor of Law, and Professor of Public Policy at the College of William & Mary in Williamsburg, VA (USA). He came to William & Mary in 1988 after serving as Director of the Law Library and Professor of Law at the University of Idaho, Director of the Civil Division Library at the U.S. Department of Justice, and Head of Reader Services at the George Washington University Law Library. He received a B.A. from the University of Michigan, a J.D. from the University of San Diego, and an M.L.S. from the University of California at Berkeley. He has served as President of the American Association of Law Libraries (AALL), and of the Southeastern and Virginia Chapters of AALL.