

April 1990

## The Revolutionary Idea of University Legal Education

Paul D. Carrington  
pdc@law.duke.edu

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [Legal Education Commons](#), and the [Legal History Commons](#)

---

### Repository Citation

Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 Wm. & Mary L. Rev. 527 (1990), <https://scholarship.law.wm.edu/wmlr/vol31/iss3/2>

Copyright c 1990 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

# William and Mary Law Review

---

VOLUME 31

SPRING 1990

NUMBER 3

---

## THE REVOLUTIONARY IDEA OF UNIVERSITY LEGAL EDUCATION

PAUL D. CARRINGTON\*

### I. THOMAS JEFFERSON, THE FOUNDING FATHER OF UNIVERSITY LEGAL EDUCATION IN AMERICA

Thomas Jefferson had the idea, and he was the first to act upon it.<sup>1</sup> In 1779, as Governor of Virginia, he caused the governing board of the College of William and Mary<sup>2</sup> to establish a professorship of "Law and Police."<sup>3</sup> His purpose was to provide moral training to fit an elite responsible for political leadership in a new republic.

Jefferson was not alone in the thought. His generation of Americans had read and absorbed Montesquieu's *The Spirit of Laws* as

---

\* Chadwick Professor of Law, Duke University. B.A., University of Texas, 1952; LL.B., Harvard University, 1955. This paper was presented as the George Wythe Lecture at the Marshall-Wythe School of Law of the College of William and Mary on February 23, 1989. I am grateful to John Hope Franklin, Thomas Green and H. Jefferson Powell for helpful comments on an earlier draft, and to the E.T. Bost Fund of the Duke University School of Law for its support.

1. See generally H. ADAMS, *THE COLLEGE OF WILLIAM AND MARY* 37-39 (1887).

2. Jefferson did to William and Mary what the Supreme Court later held that New Hampshire could not do to Dartmouth: He declared it a public institution. Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819).

3. The chair that Jefferson created at William and Mary was a professorship of "Law and Police," which means law and policy in today's usage. H. ADAMS, *supra* note 1, at 39 n.1.

no other work,<sup>4</sup> and it was there that the relation between education in law and the stability of democratic government was first espoused.<sup>5</sup> That book also had introduced revolutionary America to the idea of separation of powers, to the idea that slavery was especially evil in a society governed as a republic, and to many other thoughts on the relation of legal institutions to the society of which they are a part.<sup>6</sup> Others than Jefferson also would act upon the advice of Montesquieu with respect to education in law.

Montesquieu's idea about education in law was neither complex, nor fully developed. For him, it was axiomatic that a republican government can be sustained only in a society of citizens who practice public virtue, which he "defined as the love of the laws and of country [that] requires a constant preference of public to private interest . . . ."<sup>7</sup> From this axiom, he concluded that republican education must aim to inculcate among citizens a "love" of their laws.<sup>8</sup>

In his Montesquieuan belief that university education in law could make a positive and perhaps essential contribution to republican politics, Jefferson was one of the most optimistic<sup>9</sup> and radical<sup>10</sup> of the revolutionary leaders who supported the constitutional vision of a national government.<sup>11</sup> Influenced by many other sources, perhaps especially by the literature of the "Scottish Enlightenment,"<sup>12</sup> Jefferson had his disagreements with Montes-

4. D. BOORSTIN, *THE LOST WORLD OF THOMAS JEFFERSON* 22 (1948).

5. B. MONTESQUIEU, *THE SPIRIT OF LAWS* 126-30 (D. Carrithers ed. 1977).

6. *Id.*

7. *Id.* at 34.

8. *Id.*

9. See J. APPLEBY, *CAPITALISM AND A NEW SOCIAL ORDER: THE REPUBLICAN VISION OF THE 1790s* 84 (1984). This optimism may have been influenced by George Wythe, who was criticized for having too high an opinion of other men. Pierce, *Character Sketches of Delegates to the Federal Convention*, in 3 *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 94 (1937).

10. R. MATTHEWS, *THE RADICAL POLITICS OF THOMAS JEFFERSON* 15-18, 77-95 (1984).

11. Jefferson was perceived to be much less radical than many of the Antifederalists who opposed ratification of the Constitution. G. WILLS, *INVENTING AMERICA: JEFFERSON'S DECLARATION OF INDEPENDENCE* 18 (1978). See generally C. KENYON, *THE ANTIFEDERALISTS* (1966).

12. For example, Garry Wills argues that the Declaration of Independence was the product of Scottish influence. G. WILLS, *supra* note 11, at 175-80; cf. J. POCOCK, *THE MACHIAVELLIAN MOMENT* 532-33 (1975) (discussing the influence of Machiavelli).

quieu.<sup>13</sup> Although conceding to his fellow elite revolutionaries that most of their fellow citizens were not fit to govern one another, he believed, unlike Montesquieu, that the number of citizens sufficiently virtuous to participate in republican government might be enhanced adequately to sustain a large and effective federation of republican states.<sup>14</sup> Thus, for Jefferson, university legal education was to be part of "the nursery" in which the political leadership of the republic could be nurtured,<sup>15</sup> forming "the statesmen, legislators, and judges, on whom public prosperity and individual happiness" so much depended. To provide the political support for the leadership so propagated, Jefferson planned for universities to provide some legal training for all the intellectual elite in attendance.<sup>16</sup>

Jefferson's purpose was to be distinguished from the purer intellectual pursuit heralded as the classical aim of higher education.<sup>17</sup>

---

13. Jefferson wrote to one of his many law student correspondents that *The Spirit of Laws* was the best book on the science of government: "It contains . . . a great number of political truths; but also an equal number of heresies: so that the reader must be constantly on his guard." Letter from Thomas Jefferson to T.M. Randolph (May 30, 1790), reprinted in VIII THE WRITINGS OF THOMAS JEFFERSON 31 (Library ed. 1904). Jefferson urged that there be an American revision of *The Spirit of Laws*. E.g., Letter from Thomas Jefferson to Colonel William Duane (Aug. 12, 1810), reprinted in XII THE WRITINGS OF THOMAS JEFFERSON, *supra*, at 407-09.

14. R. WIEBE, THE OPENING OF AMERICAN SOCIETY 11 (1984). Montesquieu had ample doubts that a republic could work at all, perhaps being destined to be destroyed by factionalism; for that reason, he supposed that a republic had to be small to insure that all citizens would recognize their common interests. B. MONTESQUIEU, *supra* note 5, at 120. He accepted wealth requirements for participation as desirable. *Id.* at 10-11.

15. Cf. Peeler, *Thomas Jefferson's Nursery of Republican Patriots: The University of Virginia*, 28 J. CHURCH & STATE 79 (1986) (noting that the University of Virginia should be the nursery of future leaders).

16. H. ADAMS, THOMAS JEFFERSON AND THE UNIVERSITY OF VIRGINIA 135 (1888). Jefferson may indeed have regarded elementary education "to enable every man to judge for himself what will secure or endanger his freedom" as the most critical need. Letter from Thomas Jefferson to Governor John Tyler (May 26, 1810), reprinted in XII THE WRITINGS OF THOMAS JEFFERSON, *supra* note 13, at 393. See generally J. CONANT, THOMAS JEFFERSON AND THE DEVELOPMENT OF AMERICAN PUBLIC EDUCATION (1963). Times in Virginia did not seem ripe for this, however, so he undertook the more feasible task of creating a university, leaving the mission of establishing public schools that would enable every man to exercise the franchise to Horace Mann and others, including John B. Minor, the mid-century law professor at the University of Virginia. Mann's voice found a more receptive audience in the 1840s. See generally THE REPUBLIC AND THE SCHOOL: HORACE MANN ON THE EDUCATION OF FREE MEN (L. Cremin ed. 1957).

17. See, e.g., J. NEWMAN, THE IDEA OF A UNIVERSITY 148-53 (1959).

Although he possessed a richly furnished mind and was surely an admirer of all learning,<sup>18</sup> Jefferson did not advocate university education in law as a means of intellectual adornment to enrich the minds and thus the lives of students. Although recognized by his contemporaries as a philosopher, Jefferson was no metaphysician, for he limited his philosophical interest to practical moral philosophy.<sup>19</sup> Even with respect to moral philosophy, he thought academic instruction to be a dubious enterprise. He told his nephew: "[I]t [is] lost time to attend lectures in [moral philosophy] . . . State a moral case to a ploughman and a professor. The former will decide it as well, and often better than the latter, because he has not been led astray by artificial rules."<sup>20</sup>

Jefferson's aim also must be distinguished from that of providing professional training. Although himself a painstaking lawyer<sup>21</sup> and an admirer of technical competence,<sup>22</sup> Jefferson did not regard university education as a suitable means to provide competence for the private practice of the profession. He was firm in his belief that professional competence in law could be achieved without any formal training beyond that required for general citizenship. Indeed, Jefferson did not even recommend apprenticeship as a means of learning law, although it was common in his day for a novice lawyer to train by "reading law" in the office of a preceptor. He thought apprenticeship was not a good bargain in that the services performed for the preceptor were likely to be more valuable than the tutelage provided in exchange.<sup>23</sup> Instead, Jefferson frequently

---

18. See generally D. BOORSTIN, *supra* note 4, at 23 (Jefferson "stood at the center of [a] philosophical community.").

19. *Id.* at 23-24. He was president of the American Philosophical Society from the death of the former president, David Rittenhouse, in 1796, until he resigned on account of old age in 1815.

20. Letter from Thomas Jefferson to Peter Carr (Aug. 10, 1787), reprinted in 12 THE PAPERS OF THOMAS JEFFERSON 14-15 (J. Boyd ed. 1955).

21. See generally F. DEWEY, THOMAS JEFFERSON, LAWYER (1986).

22. In his later years, however, Jefferson became alienated from the profession: "Law is quite overdone. It is fallen to the ground, and a man must have great powers to raise himself in it to either honor or profit. The mob of the profession get as little money and less respect than they would by digging the earth." Letter from Thomas Jefferson to Judge David Campbell (Jan. 28, 1810), reprinted in XII THE WRITINGS OF THOMAS JEFFERSON, *supra* note 13, at 356.

23. Letter from Thomas Jefferson to John G. Jefferson (June 11, 1790), reprinted in 16 THE PAPERS OF THOMAS JEFFERSON 480 (J. Boyd ed. 1961). Apparently this also was the view

assured his contemporaries and their offspring that they could master the law by means of an energetic reading program, as more than a few did.<sup>24</sup> He was ever ready to supply the appropriate reading list.<sup>25</sup> And for many, he provided the books.<sup>26</sup> On occasion, his prescribed reading list was very detailed, and so ample that he felt obliged to prescribe a daily schedule of reading, a schedule to be followed for more than two years.<sup>27</sup>

If a candidate had the money, maturity and time to spend on self-development, Jefferson might advise that he take a trunk of well-selected law books to France<sup>28</sup> for two or three years of reading.<sup>29</sup> In France, the candidate should take quarters with a family in a small town, perhaps an hour's walk from Paris, and develop fluent French by chatting with women and children between periods of intense reading.<sup>30</sup> Jefferson also recommended that the student take a tour of Italy and as much else of Europe as he could afford in order to gain an appreciation of art and architecture before coming home to apply his enhanced maturity and judgment in the practice of law. But Jefferson was cautious and disfavored

---

of George Wythe, who had had a useless apprenticeship with his uncle, Stephen Dewey. See I. BROWN, *AMERICAN ARISTIDES* 22 (1981).

24. E.g., C. WARREN, *A HISTORY OF THE AMERICAN BAR* 157-87 (1911).

25. For a collection of Jefferson's letters of advice, see Cohen, *Thomas Jefferson Recommends a Course of Law Study*, 119 U. PA. L. REV. 823 (1971).

26. Jefferson implored that the young users of his books take good care of them. See particularly his August 19, 1785 letter to his nephew Peter Carr, reprinted in V *THE WRITINGS OF THOMAS JEFFERSON*, *supra* note 13, at 87.

27. Letter from Thomas Jefferson to Dabney Terrell (Feb. 26, 1821), reprinted in XV *THE WRITINGS OF THOMAS JEFFERSON*, *supra* note 13, at 318-22.

28. In 1785, Jefferson strongly recommended against English and European universities as sources of alien philosophies and corrupt morals. He wrote that "the consequences of foreign education are alarming to me, as an American." Letter from Thomas Jefferson to J. Bannister, Jr. (Oct. 15, 1785), reprinted in V *THE WRITINGS OF THOMAS JEFFERSON*, *supra* note 13, at 188.

29. Letter from Thomas Jefferson to T.M. Randolph, Jr. (July 6, 1787), reprinted in 6 *THE WRITINGS OF THOMAS JEFFERSON*, *supra* note 13, at 165-69.

30. *Id.*; see Letter from Thomas Jefferson to J. Bannister, Jr. (Oct. 15, 1785), reprinted in V *THE WRITINGS OF THOMAS JEFFERSON*, *supra* note 13, at 185. This advice was a sore disappointment to at least one nephew, who was moved to argue the point. Letter from Peter Carr to Thomas Jefferson (Apr. 18, 1787), reprinted in 11 *THE PAPERS OF THOMAS JEFFERSON*, *supra* note 20, at 299.

foreign travel by immature Americans who might be corrupted by the inferior morals of Europeans.<sup>31</sup>

Thus, what Jefferson envisioned as a "nursery" of patriots was to be neither purely academic nor purely professional, although it partook of both. In assigning the function of inculcating public virtue to William and Mary and the other colleges of his day, he envisioned but a slight deflection of those institutions, few and small as they were, from their accustomed function of graduating a class of persons from whom the American Protestant clergy might be selected.<sup>32</sup> William and Mary was itself founded to prepare its graduates for the Anglican clergy. Jefferson had in mind the creation of a secular clergy that would maintain the faith<sup>33</sup> in republican institutions.

When Jefferson proclaimed law study to be the best qualification for public life,<sup>34</sup> he spoke as perhaps the most learned lawyer in America. Although many lawyers of his day prepared themselves for practice with only a few months of legal study,<sup>35</sup> Jefferson had studied law intensely, making elaborate reading notes on almost every law book available in Virginia, accumulating the best law library in the United States,<sup>36</sup> investing five years under the tutelage of then-Judge George Wythe, and even teaching himself Old English<sup>37</sup> in order to read pre-Conquest legal materials in the hope of unearthing a vein of law useful to the republic. Therefore, Jeffer-

---

31. Contrast the advice to Peter Carr, Letter from Thomas Jefferson to Peter Carr (Aug. 10, 1787), reprinted in VI THE WRITINGS OF THOMAS JEFFERSON, *supra* note 13, at 261-62, to that given to Thomas M. Randolph, Sr., Letter from Thomas Jefferson to Colonel T.M. Randolph (Aug. 11, 1787), *id.* at 266-69. Carr did not like the advice he received and said so. Letter from Peter Carr to Thomas Jefferson, *supra* note 30, at 299.

32. See generally F. RUDOLPH, THE AMERICAN COLLEGE AND UNIVERSITY 3-22 (1962).

33. See S. LEVINSON, CONSTITUTIONAL FAITH (1988).

34. Letter from Thomas Jefferson to T.M. Randolph, Jr. (July 6, 1787), reprinted in VI THE WRITINGS OF THOMAS JEFFERSON, *supra* note 13, at 165-67.

35. John Marshall studied law with George Wythe for three months. I. BROWN, *supra* note 23, at 205-06; 1 J. BEVERIDGE, THE LIFE OF JOHN MARSHALL 174 (1944). Alexander Hamilton prepared himself in an equally brief time. J. FLEXNER, THE YOUNG HAMILTON 374-79 (1978).

36. His law library was the start-up for the replacement collection of the Library of Congress after the original collection was destroyed by the British in the War of 1812. J. COLE, FOR CONGRESS AND THE NATION 7-10 (1979).

37. One of Jefferson's most substantial works is on the Anglo-Saxon language. *Essay on the Anglo-Saxon Language* (1798), reprinted in XVIII THE WRITINGS OF THOMAS JEFFERSON, *supra* note 13, at 361-411.

son spoke with the greatest authority, as well as with some vanity, on what could be gained from the close study of the law.

Indeed, in thinking of education in law as training for public life, Jefferson plainly intended to perpetuate the teaching of his own mentor, George Wythe. Wythe had been much more than a law teacher to Jefferson,<sup>38</sup> having become rather a "second father"<sup>39</sup> to his most precocious student. Jefferson had met with Wythe regularly for private discussions of the best works on law and politics available in Greek, Latin, French, English or Italian, and had often dined privately with Wythe, Governor Fauquier and the college science professor, William Small.<sup>40</sup> Wythe, in fact, probably introduced Jefferson to Montesquieu.<sup>41</sup> For the remainder of Wythe's life, he and Jefferson corresponded regularly and exchanged visits when they could.<sup>42</sup> Upon Wythe's death, Jefferson inherited his library.

## II. BEGINNINGS AT THE COLLEGE OF WILLIAM AND MARY

### A. *George Wythe's Teaching Career*

Jefferson was surely right in believing that his purpose for the College of William and Mary would be well served by appointing George Wythe, for no person was so qualified to inculcate public virtue. Wythe was a man from a stern Quaker family who had acquired, with his mother's help, an excellent classical education<sup>43</sup> that he enjoyed using and sharing. His intellectual energy can be

---

38. D. MALONE, *JEFFERSON THE VIRGINIAN* 73-74 (1948).

39. Eulogy to Jefferson at U.S. Capitol. Wythe was a "second father" to others as well, including William Munford. I. BROWN, *supra* note 23, at 270-79. In the case of Henry Clay, the relationship was more that of a third grandfather.

40. Late in his life, Jefferson declared that these dinner conversations revealed more wisdom than he had heard elsewhere in a lifetime. D. MALONE, *supra* note 38, at 73. Those wishing to revisit Jefferson's experience as a law student are enabled to do so by the restorations at Colonial Williamsburg. The Wythe home is open at most times; the discussions between Wythe and Jefferson were almost surely conducted in the library to the right of the foyer; the dinners were held at the Governor's Palace a block away, probably in the dining room on the right rear corner of the main floor.

41. When Jefferson read Montesquieu is not exactly clear. Accounts of Wythe's reading assignments are sketchy. I. BROWN, *supra* note 23, at 75-79; W. CLARKIN, *SERENE PATRIOT: A LIFE OF GEORGE WYTHE* 42-43 (1970); D. MALONE, *supra* note 38, at 71-73.

42. In accordance with Jefferson's aims, Wythe was appointed to the professorship at William and Mary immediately upon its establishment. I. BROWN, *supra* note 23, at 199-201.

43. J. BLACKBURN, *GEORGE WYTHE OF WILLIAMSBURG* 7-8 (1975).



measured by the fact that he devoted much of his eighth decade to learning Hebrew, his seventh language.<sup>44</sup>

Classically minded Virginians compared Wythe to Aristides, "the Just."<sup>45</sup> Accounts of his integrity as a lawyer are truly stunning. It was said of him, and apparently never questioned, that "not one dirty coin ever reached the bottom of Wythe's pockets."<sup>46</sup> He made it his practice to resign a representation in any civil matter and return a fee, even though earned, if he concluded that his client was in the wrong.<sup>47</sup>

Although acknowledging Wythe's tendency to pedantry,<sup>48</sup> William Wirt<sup>49</sup> said that "[n]o man was ever more entirely destitute of art" and that he was "above all suspicion."<sup>50</sup> John Randolph said of Wythe that "he lived in the world without being of the world; . . . he was a mere incarnation of justice—that his judgments were all as between A and B; for he knew nobody; but went into court, as Astraea was supposed to come down from heaven, exempt from all human bias."<sup>51</sup>

If completely disinterested, Wythe was surely not without vanity. His one book is a compilation of his decisions as Chancellor,

44. A. DILL, *GEORGE WYTHE: TEACHER OF LIBERTY* 78 (1979).

45. Cox, *George Wythe*, in 10 *DICTIONARY OF AMERICAN BIOGRAPHY* 588 (pt. 2) (D. Malone ed. 1964).

46. See I. BROWN, *supra* note 23, at 35.

47. *Id.* at 35-36. Jefferson, in contrast, was not noticeably punctilious in these matters. See F. DEWEY, *supra* note 21, at 73-82.

48. "He carried his love of antiquity rather too far; for he frequently subjected himself to the charge of pedantry; and his admiration of the gigantic writers of Queen Elizabeth's reign had unfortunately betrayed him into an imitation of their quaintness." W. WIRT, *SKETCHES OF THE LIFE AND CHARACTER OF PATRICK HENRY* 66 (1858).

49. One of the many young men to whom Wythe was patron, Wirt was an accomplished man of letters as well as a celebrated advocate and Attorney General of the United States. See Hall, *William Wirt*, in *GREAT AMERICAN LAWYERS* 263-309 (W. Lewis ed. 1907). Wirt reluctantly but successfully defended Wythe's nephew, George Wythe's Sweaney, when the latter was accused of murdering Wythe. The story is told by I. BROWN, *supra* note 23, at 301-04.

50. W. WIRT, *supra* note 48, at 66-67 ("He knew nothing, even in his profession, and never would know anything of 'crooked and indirect by-ways.' Whatever he had to do, was to be done openly, avowedly, and above-board. He would not, even at the bar, have accepted of success on any other terms.").

51. C. WARREN, *supra* note 24, at 345.

published with a vigorous attack on those decisions of the Virginia Court of Appeals in which he had been reversed.<sup>52</sup>

His disinterest in personal stakes was combined with an intense interest in the public issues of the day. He was a signer of the Declaration of Independence, an esteemed judge and long active in the anti-slavery movement,<sup>53</sup> to which he seems to have brought Jefferson. Wythe was one Virginian who liberated his slaves during his lifetime,<sup>54</sup> and surely one of the very few who provided them with financial resources, even teaching one of them Greek and Latin.<sup>55</sup>

Although as a professor at William and Mary Wythe emphasized the study of political economy and public law,<sup>56</sup> his students received a formal grounding in the English common law, with Blackstone's *Commentaries on the Laws of England*<sup>57</sup> being the basic text for his lectures.<sup>58</sup> Students also were encouraged to read much more, to attend other lectures at the college, and to observe proceedings at the capitol. Those able to do so received tutorial instruction from Wythe that extended from the classics to contemporary economics and politics;<sup>59</sup> but to study with Wythe in this way, one needed to be a competent reader of Greek, Latin and French.

Wythe also gave students some assignments that might be described today as clinical. A creative phase of the program was a resurrection from medieval times of the Roman practice of moot court, with a novel counterpart in the moot legislature.<sup>60</sup> Students were required to argue cases regularly before Wythe sitting as

---

52. See generally DECISIONS OF CASES IN VIRGINIA BY THE HIGH COURT OF CHANCERY, WITH REMARKS UPON DECREES BY THE COURT OF APPEALS REVERSING SOME OF THOSE DECISIONS (1795).

53. A. DILL, *supra* note 44, at 52-53.

54. *Id.* Manumission was not lawful in Virginia before 1782. D. DAVIS, THE PROBLEM OF SLAVERY IN THE AGE OF REVOLUTION 1770-1823 87 (1975). After that time, manumission was required of any Quaker, and one Quaker is said to have freed nearly 100 slaves. T. DRAKE, QUAKERS AND SLAVERY IN AMERICA 75-76 (1950).

55. W. CLARKIN, *supra* note 41, at 209.

56. Bryson, *Introduction to LEGAL EDUCATION IN VIRGINIA 1779-1979* 22-23 (W. Bryson ed. 1982).

57. W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (1765).

58. I. BROWN, *supra* note 23, at 203.

59. Jefferson's nephew, Peter Carr, described this aspect of the program in his Letter from Peter Carr to Thomas Jefferson, *supra* note 30, at 299.

60. I. BROWN, *supra* note 23, at 203.

judge. Apparently, the moot legislature met fortnightly on Saturdays to debate bills drafted by the students, with Wythe sitting in a high presidential seat<sup>61</sup> that “‘adds very much to [his] dignity . . . [and] has a greater effect in throwing a damp upon the spirits of the speaker, than you can imagine. I was prodigiously alarmed to be sure.’”<sup>62</sup> John Brown, later a United States Senator from Kentucky, as a student expressed the hope that the program would “‘rub off that natural Bashfulness which at present is extremely prejudicial to me.’”<sup>63</sup> Not noted himself for his public speaking, Jefferson especially applauded the program’s capacity to make students “‘habituat[e] themselves to think and to speak with method, and lessen [] the shock of the premier debut at the bar . . . .’”<sup>64</sup>

Jefferson took great pride in this program, boasting to Madison in 1780, the program’s first year, that it was

a success which has gained . . . universal applause. Wythe’s school is numerous. [He had 40 students.] They hold weekly courts and assemblies in the capitol. The professors join in it; and the young men dispute with elegance, method and learning. This single school by throwing from time to time new hands well principled and well informed into the legislature will be of infinite value.<sup>65</sup>

A few years later, Jefferson wrote to a celebrated English abolitionist, Richard Price, predicting that slavery would be abolished in Virginia and Maryland in the not too distant future, and urging Reverend Price to write to the law students at William and Mary to enlist their support for his cause:

[It] is the place where are collected together all the young men of Virginia under preparation for public life. They are there under the direction . . . of a Mr. Wythe one of the most virtuous of characters, and whose sentiments on the subject of slavery are unequivocal. I am satisfied if you could resolve to ad-

61. The chair can be seen today in the Chamber of Deputies at the capitol in Williamsburg.

62. I. BROWN, *supra* note 23, at 204 (quoting Thomas Lee Shippen).

63. Shepard, *George Wythe*, in *LEGAL EDUCATION IN VIRGINIA 1779-1979*, *supra* note 56, at 753.

64. *Id.* (quoting Thomas Jefferson).

65. Letter from Thomas Jefferson to James Madison (July 26, 1780), *reprinted in* 3 *THE PAPERS OF THOMAS JEFFERSON* 507 (J. Boyd ed. 1951).

dress an exhortation to those young men, with all that eloquence of which you are master, that it's influence on the future decision of this important question would be great, perhaps decisive.<sup>66</sup>

Wythe resigned his professorship in 1790 in anger at the college, and moved to Richmond, where he continued to serve Virginia as its Chancellor and to tutor a few students in his chambers.<sup>67</sup> The exact cause of Wythe's anger is not fully known. Jefferson suspected that the matter concerned the conduct of Wythe's fellow professors.<sup>68</sup> We know, however, of continuing stress within the governing board between those members of a clerical bent and those with more secular ambitions for the college.<sup>69</sup> Judge St. George Tucker succeeded Jefferson as rector and strove to protect Wythe from the annoyances associated with being a humanist professor in an Anglican institution, but, in the end, his protection was insufficient to maintain Wythe's loyalty to the college. Wythe had prepared a full set of manuscripts for his lectures that, alas, were never published and are apparently lost.<sup>70</sup>

George Wythe taught law to fewer than 200 students. In addition to Jefferson, two others became immortal: John Marshall, who studied in the first class at William and Mary,<sup>71</sup> and Henry Clay, who was tutored in Richmond in Wythe's later years. All three were to play important roles in the development of university education in law in America as well as in the establishment of the nation itself. Wythe also taught his own successor, Judge Tucker, and the first three professors of Law and Police at Transylvania University in Kentucky,<sup>72</sup> which was to become the most important

---

66. Letter from Thomas Jefferson to Richard Price (Aug. 7, 1785), reprinted in 8 THE PAPERS OF THOMAS JEFFERSON 357 (J. Boyd ed. 1953).

67. Shepard, *George Wythe*, in LEGAL EDUCATION IN VIRGINIA 1779-1979, *supra* note 56, at 754-55.

68. Letter from Thomas Jefferson to William Short (Dec. 14, 1789), reprinted in 16 THE PAPERS OF THOMAS JEFFERSON, *supra* note 23, at 25.

69. Cullen, *St. George Tucker*, in LEGAL EDUCATION IN VIRGINIA 1779-1979, *supra* note 56, at 660-61.

70. They were last seen in 1810 in the possession of a "Mr. Ritchie." What is known about them is reported in C. WARREN, *supra* note 24, at 345.

71. See Cullen, *New Light on John Marshall's Legal Education and Admission to the Bar*, 16 AM. J. LEGAL HIST. 345 (1972).

72. This number included Clay. See I. BROWN, *supra* note 23, at 277.

university law program in America for four decades beginning in 1818.

In 1801, while Wythe was in Richmond, one of his former students was serving as President of the United States, another as Chief Justice of the United States, while a third, James Monroe, served as governor of the nation's largest state before becoming the nation's fifth President in 1817. Even making allowance for the compactness of post-Revolutionary American political leadership, Wythe's teaching career may be assessed nevertheless as consequential beyond comparison to that of any successor in American university law teaching.

### B. *St. George Tucker*

Wythe's own immediate successor at William and Mary was the college rector, St. George Tucker.<sup>73</sup> A native of Bermuda and a naval blockade runner during the Revolutionary War,<sup>74</sup> Judge Tucker had been prominent in Virginia politics and would remain so while serving as judge and teacher. In 1797, he published an argument and an elaborate plan for the abolition of slavery in Virginia that was considered by the legislature of the Commonwealth, albeit unfavorably.<sup>75</sup> Despite his renowned anti-slavery sentiments, he was appointed to the Virginia Supreme Court while holding his professorship.

In addition to being a respected judge and political leader, Tucker also was a poet and lyricist<sup>76</sup> of sorts. A volume of his poems,<sup>77</sup> most intended to amuse, some bawdy, all social or political rather than personal, bears examination by contemporary readers.<sup>78</sup> He also invented a telegraph and made a serious study of

---

73. *Election of St. George Tucker, as Professor of Law*, 18 WM. & MARY Q. 220 (1910).

74. THE POEMS OF ST. GEORGE TUCKER OF WILLIAMSBURG, VIRGINIA 1752-1827 1 (W. Prince ed. 1977) [hereinafter THE POEMS OF ST. GEORGE TUCKER].

75. Cullen, *supra* note 71, at 676-77.

76. See R. DAVIS, INTELLECTUAL LIFE IN JEFFERSON'S VIRGINIA 1790-1830 231, 244-46 (1964).

77. See THE POEMS OF ST. GEORGE TUCKER, *supra* note 74; see also THE PROBATIONARY ODES OF JONATHAN PINDAR (1796).

78. Consider:

I dreamed last night, the debt of nature paid,  
I, cheek by jowl, was by a Negro laid:  
Provoked at such a neighborhood, I cried,

astronomy.<sup>79</sup> As a parent, Tucker managed to sire a lineage of Virginia law teachers,<sup>80</sup> including a son, Beverley, who held the law chair at William and Mary from 1834 to 1851.<sup>81</sup> He was an Anglican and for a decade was the senior warden of the Bruton Parish Church in Williamsburg.<sup>82</sup>

Tucker remained in the professorship for fourteen years until 1804, when, as Wythe had done earlier, he resigned in exasperation at what he perceived to be officious meddling by the college in his program.<sup>83</sup> He was an effective teacher.<sup>84</sup> Like Wythe's, his was a series of lectures that could be attended in a single year. He appears to have had no time for moot courts and moot legislative sessions, but presented lectures and conducted discussions daily except when he was away performing judicial duties. Near the end of each term, he would engage his students in debate on public matters of interest to him; a list of topics debated in 1794 includes the issues of capital punishment, inheritance of wealth, the national debt and trial by jury.<sup>85</sup> He often lectured on the subject of his "dearest wish," the emancipation of Virginia's slaves.<sup>86</sup> Tucker likely taught more than 150 students at the college. Although his curriculum was aimed at developing republican leaders, Tucker's

"Rascal! begone. Rot farther from my side."

"Rascal!" said he, with arrogance extreme,

"Thou are the only rascal here, I deem;

Know fallen tyrant, I'm no more thy slave!

Quaco's a monarch's equal, in the grave."

Tucker, *A Fable*, in *THE POEMS OF ST. GEORGE TUCKER*, *supra* note 74, at 68.

79. *Id.* at 5.

80. *LEGAL EDUCATION IN VIRGINIA*, *supra* note 56, at 600.

81. Brugger, *Nathaniel Beverley Tucker*, in *LEGAL EDUCATION IN VIRGINIA*, *supra* note 56, at 644.

82. For a full biography, see M. COLEMAN, *ST. GEORGE TUCKER: CITIZEN OF NO MEAN CITY* (1938).

83. One issue among several was that Tucker preferred to teach in his home, where he had access to his own library. The college administration thought ill of this practice. Cullen, *supra* note 71, at 682-85.

84. For a strong endorsement by William T. Barry, a Senator and a member of the Jackson cabinet, and later a law professor at Transylvania, see *Letters of William T. Barry*, 13 *WM. & MARY Q.* 107, 109-10 (1905).

85. Cullen, *supra* note 71, at 665-66.

86. R. DAVIS, *supra* note 76, at 413.

students understood that his teaching might enhance their prospects as private lawyers.<sup>87</sup>

Without doubt, the most important achievement of Tucker's career was his work as an editor of Blackstone's *Commentaries on the Laws of England*, which appeared in five volumes in 1803.<sup>88</sup> Although Blackstone's was certainly the most lucid law book available to post-Revolutionary American lawyers, it was also highly objectionable. Thomas Jefferson<sup>89</sup> and James Wilson<sup>90</sup> were particularly strong in their condemnation of Blackstone's text as simplistic, inaccurate and reactionary. Tucker edited out of Blackstone's text those sections containing the most offensively royalist sentiments and added careful notes documenting the text with those few American sources that were available at that time. He thereby produced a work of enormous utility, studied closely by courts, lawyers and law students in Virginia and in other states for four decades.

Tucker was arguably the most important American legal scholar of the first half of the nineteenth century. The fault with his Blackstone text was not in Tucker's work, but in the use that was made of it. Blackstone's widely distributed text came to be regarded by several generations of American lawyers as complete and sufficient alone—containing all the law that a lawyer of ordinary ambition need ever know or consult; such lawyers merited the approbrium assigned them by Jefferson: "ephemeral insects of the law."<sup>91</sup>

### C. Tucker's Successors

Despite continuing stress between law professors and the administration of the college, the program at William and Mary survived for several decades in much the form in which Jefferson and Wythe had created it. Tucker was succeeded in 1805 by Judge William Nelson, who was the brother of then Governor Thomas Nel-

---

87. *Id.* at 668.

88. W. BLACKSTONE, *supra* note 57.

89. See Waterman, *Thomas Jefferson and Blackstone's Commentaries*, 27 *ILL. L. REV.* 629 (1933).

90. 1 *WORKS OF JAMES WILSON* 39, 78-80 (R. McCloskey ed. 1967).

91. Letter from Thomas Jefferson to Judge John Tyler (June 17, 1812), *reprinted in XVI THE WRITINGS OF THOMAS JEFFERSON* 66 (H. Washington ed. 1854).

son, another signer of the Declaration of Independence. William Nelson had studied law at William and Mary with George Wythe before serving as an officer in the Revolution, during which he had been captured by the British.<sup>92</sup> He served in the Virginia legislature and was a judge of the General Court.<sup>93</sup> William Nelson died in 1813 and was succeeded by his nephew, Robert, the son of Governor Thomas, who was then a 35-year-old chancellor.<sup>94</sup> Robert had studied law at William and Mary under St. George Tucker.<sup>95</sup> Unfortunately, Robert died of typhus in 1818. The Nelsons apparently were both able teachers who maintained the tradition that Wythe had established and Tucker confirmed.

Nevertheless, no later than 1820, William and Mary was to lose its flagship role to its offspring, Transylvania University, the institution of the West and of Henry Clay.

### III. BEGINNINGS AT OTHER COLLEGES

Most of the American colleges in existence at the turn of the nineteenth century at least made plans to join the College of William and Mary in developing leadership for the new republic by appointing a professor of law or otherwise providing instruction in public law that might enlarge the national capacity for the practice of public virtue. The one notable laggard in this attempt was Harvard.

Although most of these early efforts were neither effectively sustained nor, like that of William and Mary, replicated elsewhere, some were significant at the time, and together they served to endorse the timeliness of Jefferson's initiative. Seemingly everywhere except Massachusetts, one found a shared sense of a need for the kind of university education in law that George Wythe had exemplified.

---

92. Bryson, *William Nelson*, in *LEGAL EDUCATION IN VIRGINIA*, *supra* note 56, at 490.

93. *Id.*

94. *Id.*

95. See Bryson, *Robert Nelson*, in *LEGAL EDUCATION IN VIRGINIA*, *supra* note 56, at 489.



A. *Yale*

Yale was founded in 1701 to prepare graduates for “[p]ublick employment both in Church & Civil State.”<sup>96</sup> A Congregational minister, Ezra Stiles, was appointed its president in the troubled year of 1777.<sup>97</sup> Stiles had performed electrical experiments with equipment provided by Benjamin Franklin in 1749 and had been nominated to be a founding fellow of Brown University in 1763.<sup>98</sup>

Not long after his arrival in New Haven, Stiles proposed the establishment of a professorship in law to be funded by the state of Connecticut.<sup>99</sup> His purpose was the development of virtuous republican leadership, to “enable such a multitude of Gentlemen among the body of people at large to judge on political matters, as shall awe those into Fidelity whom the States may entrust with public & important negotiations.”<sup>100</sup> This purpose was to be effectuated by lectures on Roman civil law, English common law, the codes of the thirteen states and comparative law.<sup>101</sup>

The proposal was a radical one for Yale, for at the time the Yale curriculum was limited to the sacred and classical languages, mathematics and divinity.<sup>102</sup> The plan failed on the issue of governance, the Yale governing board being unwilling to surrender any authority to Connecticut in exchange for the funding sought.<sup>103</sup>

Stiles became a friend and admirer of Jefferson,<sup>104</sup> and in time commenced to lecture on topics of law and politics himself, teaching from both Locke and Montesquieu.<sup>105</sup> In 1789, Yale established a requirement that its students read *The Spirit of Laws*, and Stiles

96. An Act for Liberty to Erect A Collegiate School, *reprinted in* G. PIERSON, *THE FOUNDING OF YALE: THE LEGEND OF THE FORTY FOLIOS* 11 (1988).

97. E. MORGAN, *THE GENTLE PURITAN, A LIFE OF EZRA STILES 1727-1795* 292 (1962).

98. R. GUILD, *EARLY HISTORY OF BROWN UNIVERSITY, INCLUDING THE LIFE, TIMES AND CORRESPONDENCE OF PRESIDENT MANNING 1756-1791* 538 (1897). Stiles declined the nomination, believing that the final form of the college's charter would offend his fellow Congregationalist ministers. Letter from J. Manning to the Reverend John Ryland (May 20, 1773), *reprinted in* R. GUILD, *supra*, at 242.

99. I. C. WARREN, *HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA* 165-68 (Da Capo press reprint ed. 1970).

100. *Id.* at 168.

101. *Id.* at 167-68.

102. J. COLBY, *LEGAL AND POLITICAL STUDIES IN DARTMOUTH COLLEGE 1796-1896* 4 (1896).

103. E. MORGAN, *supra* note 97, at 321-24.

104. 3 *LITERARY DIARY OF EZRA STILES 124-26* (F. Dexter ed. 1901).

105. J. HORTON, *JAMES KENT: A STUDY IN CONSERVATISM 1763-1847* 23 (1939).

commenced giving regular required lectures and recitations on that work.<sup>106</sup> In 1790, Stiles organized the first Connecticut Society for the Abolition of Slavery, among the first in America.<sup>107</sup> Shortly before his death in 1794, he published a work of history expressing his republican sentiments.<sup>108</sup>

Stiles was succeeded as president of Yale by Timothy Dwight, an arch Federalist, who secured the appointment in 1801 of Elizur Goodrich as professor of law.<sup>109</sup> Although at the time of his appointment Goodrich had just lost his congressional re-election bid, he did serve as a probate judge and as mayor of New Haven during most of his academic tenure.<sup>110</sup>

Goodrich expanded the program established by Stiles; his efforts sought "to furnish lectures on the leading principles of the Law of Nature and Nations, on the general principles of civil government, particularly of Republican representative government, on the Constitution of the United States and of the State of Connecticut . . . ."<sup>111</sup>

In 1794, Yale appointed Josiah Meigs, the second lawyer of its small faculty, to teach mathematics and natural philosophy.<sup>112</sup> When Meigs left to become founding president of the University of Georgia in 1800, he was replaced by Benjamin Silliman, another lawyer.<sup>113</sup> Silliman became a distinguished chemist and the first American academic to pursue a career in science.<sup>114</sup>

Goodrich resigned his chair in 1810, but remained on the governing board until his death, completing seventy-one years of asso-

106. See 1 C. WARREN, *supra* note 99, at 169.

107. III LITERARY DIARY OF EZRA STILES 400 (F. Dexter ed. 1901). These societies were organized in several states at about the same time. The leadership was Quaker, and Congregationalist support was rare. See D. DAVIS, THE PROBLEM OF SLAVERY IN THE AGE OF REVOLUTION 1770-1833 216-18 (1975).

108. E. STILES, A HISTORY OF THREE OF THE JUDGES OF KING CHARLES I (1794).

109. See 1 YALE COLLEGE: A SKETCH OF ITS HISTORY 113-22 (W. Kingsley ed. 1879).

110. IV DICTIONARY OF AMERICAN BIOGRAPHY 401 (pt. 1) (A. Johnson & D. Malone ed. 1960). He later was Collector of the Port of New Haven, until he was unceremoniously fired by Jefferson to make room for a Democrat. The story is told in C.R. FISH, THE CIVIL SERVICE AND THE PATRONAGE 32-58 (1905).

111. C. WARREN, *supra* note 24, at 354 (quoting resolution establishing a professorship of law).

112. See IV DICTIONARY OF AMERICAN BIOGRAPHY 507 (pt. 2) (D. Malone ed. 1961).

113. 1 YALE COLLEGE, *supra* note 109, at 116-17.

114. *Id.*

ciation with Yale.<sup>115</sup> Yale did not replace Goodrich as professor of law until 1826 when David Daggett was appointed.<sup>116</sup>

### B. Princeton

Princeton was established in 1746 to train Presbyterian ministers.<sup>117</sup> The selection in 1768 of John Witherspoon, a leader of the Church of Scotland and a professor of divinity at the University of Edinburgh, as president and sole professor, therefore came as no surprise.<sup>118</sup> That Witherspoon would become a leader of a revolution,<sup>119</sup> a member of the Continental Congress and the New Jersey legislature, and a member of dozens of federal committees and commissions during and after the war, was, however, unexpected.<sup>120</sup> He also was to become a major figure in the campaign for New Jersey's ratification of the United States Constitution.<sup>121</sup>

Witherspoon proved at once to be an innovative teacher, not by departing from the regimented classical curriculum suited to the needs of those headed for the Presbyterian ministry, but by engaging his students in extracurricular political debates and discussions.<sup>122</sup> Good Tories were sometimes appalled by the Princeton students' tendencies toward speculation.<sup>123</sup> Persons of republican bent were enthusiastic, however. In fact, admiration for Witherspoon led James Madison, Sr., to send his son to Princeton, where Witherspoon encouraged young Madison's interest in public affairs.<sup>124</sup>

115. F. HICKS, *YALE LAW SCHOOL: THE FOUNDER AND THE FOUNDERS' COLLECTION* 3-4 (1935) (Publication No. 39 of the Tercentenary Commission of the State of Connecticut; also published as Yale Law Library Publication No. 1, June 1935).

116. III *DICTIONARY OF AMERICAN BIOGRAPHY* 27 (pt. 1) (A. Johnson & D. Malone ed. 1960).

117. See T. WERTENBAKER, *PRINCETON 1746-1896* 12-23 (1946). Princeton was founded as the College of New Jersey. *Id.* at 23. I have referred to institutions throughout this work with the names by which they are known in the twentieth century.

118. *Id.* at 51.

119. He was a signer of the Declaration of Independence. See W. MICHAEL, *THE DECLARATION OF INDEPENDENCE* 38 (1904).

120. See generally V. COLLINS, *PRESIDENT WITHERSPOON: A BIOGRAPHY* (1925), *reprinted in RELIGION IN AMERICA* (E. Gaustad ed. 1969).

121. *Id.* at 164-65.

122. T. WERTENBAKER, *supra* note 117, at 100.

123. *Id.*

124. *Id.* at 78.

During the Revolutionary War, Princeton was itself a battlefield of consequence; the college was closed, occupied, shelled by American guns and surrendered by Redcoats as a ruin.<sup>125</sup> After the War, the college was awash in revolutionary sentiment, with President Witherspoon himself in the vanguard of enthusiasts.<sup>126</sup> He had "found the college, if not a theological seminary, at least a place where religion struck the dominant note and where a very large percentage of the graduates went into the ministry; he left it a place devoted chiefly to training men for public life."<sup>127</sup>

Samuel S. Smith succeeded as president upon Witherspoon's death in 1794.<sup>128</sup> Smith was Witherspoon's son-in-law, a Presbyterian clergyman who had founded Hampden-Sidney College (also Presbyterian) in 1773,<sup>129</sup> and had been Princeton's second professor since 1779.<sup>130</sup> He also published a book on physical anthropology in 1788.<sup>131</sup> As president of Princeton, Smith proposed a series of lectures on "those principles . . . of jurisprudence, politics, and public law or the law of nature and nations with which every man . . . in a free country ought to be acquainted."<sup>132</sup>

Smith succeeded at first in restoring Princeton to its pre-war condition and tradition, building on the institutional aims established by his revolutionary father-in-law. In time, however, he was beset with difficulties in his relations with conservative trustees and disorderly students. In 1800, Nassau Hall was seized by "jacobinic and anti-religious students."<sup>133</sup> In 1807, the entire student body conducted a strike to protest matters of student discipline, and some trashed Nassau Hall, resulting in a five-week recess and the dismissal of 70 of the 125 students.<sup>134</sup> This confrontation led to

---

125. *Id.* at 57-65.

126. *Id.* at 58.

127. *Id.* at 76.

128. *Id.* at 118. In addition to the republicanization of a clerical institution, Witherspoon left behind nine volumes of ecclesiastical writings. *THE WORKS OF JOHN WITHERSPOON, D.D.* (1804), cited in *V. COLLINS, supra* note 120, 261-62 app. A.

129. See *T. WERTENBAKER, supra* note 117, at 114.

130. *Id.* at 64.

131. See *S. SMITH, AN ESSAY ON THE CAUSES OF THE VARIETY OF COMPLEXION AND FIGURE IN THE HUMAN SPECIES* (W. Jordan ed. 1965) (2d ed. 1810).

132. 2 *A. CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA* 208 (1965) (footnote omitted). Apparently, however, nothing came of this proposal. *Id.*

133. *T. WERTENBAKER, supra* note 117, at 136-37.

134. *Id.* at 140-42.

the institution's serious decline and Smith's forced retirement in 1812.<sup>135</sup>

In retirement, Smith collected and published two volumes of his lectures on politics and public law.<sup>136</sup> As published, the works reveal Smith to be a staunch Jeffersonian and an adherent of Montesquieu's philosophy of university teaching of law.<sup>137</sup> He explained and justified the law of property<sup>138</sup> and of contracts,<sup>139</sup> as well as criminal law<sup>140</sup> and international law.<sup>141</sup> He required all Princeton seniors to memorize the Constitution of the United States.<sup>142</sup> Along with Ezra Stiles, Smith also established a practice that would be adopted by other university presidents in succeeding decades, that of taking direct responsibility for the inculcation of public virtue in the often unruly young college men of America. Although Smith's term at the helm ended unhappily, he completed Princeton's transition from Presbyterian seminary to an academic institution with public responsibilities.

### C. Pennsylvania

The University of Pennsylvania originated with a 1753 charter<sup>143</sup> issued by the proprietors of the commonwealth, Thomas and Richard Penn.<sup>144</sup> Although nonsectarian, the school had a distinctly Anglican air.<sup>145</sup> The president of the governing board, in fact, was Benjamin Franklin.<sup>146</sup>

135. *Id.* at 150.

136. See S. SMITH, *THE LECTURES, CORRECTED AND IMPROVED, WHICH HAVE BEEN DELIVERED FOR A SERIES OF YEARS, IN THE COLLEGE OF NEW JERSEY; ON THE SUBJECTS OF MORAL AND POLITICAL PHILOSOPHY* (1812).

137. See *id.* at 300-29 (vol. 2, lectures 27 and 28).

138. *Id.* at 189 (vol. 2, lecture 22).

139. *Id.* at 201 (vol. 2, lecture 23).

140. *Id.* at 246 (vol. 2, lecture 25).

141. *Id.* at 352 (vol. 2, lecture 30).

142. *Id.* at 329 (vol. 2, lecture 28).

143. See E. CHEYNEY, *HISTORY OF THE UNIVERSITY OF PENNSYLVANIA 1740-1940* 39 (1940). A second charter in 1755 authorized the granting of the usual college degrees. *Id.* at 43. At that time, the name of the institution was The College, Academy, and Charitable School of Philadelphia in the Province of Pennsylvania. *Id.*

144. *Id.* at 39.

145. *Id.* at 32.

146. *Id.* at 30.

In 1779, the state closed the university and confiscated its property.<sup>147</sup> The university reopened when the trustees were reinstated in 1789.<sup>148</sup> Thereafter, one of the first acts of the trustees was the appointment of James Wilson as professor of law.<sup>149</sup>

Wilson was a Scotsman who had prepared for the Presbyterian ministry and was thus well-trained in the classics at the Scotch universities of St. Andrews, Glasgow and Edinburgh<sup>150</sup> before his emigration to Philadelphia in 1765 at the age of 23.<sup>151</sup> He tutored at the university while reading law with John Dickinson, a leading Quaker lawyer,<sup>152</sup> and then practiced prosperously in Reading and Carlisle,<sup>153</sup> where he was elected to the Pennsylvania legislature and to the Continental Congress.<sup>154</sup> Unlike his mentor, Dickinson, Wilson signed the Declaration of Independence, although his slowness in doing so evoked some hostile comment and mistrust.<sup>155</sup> In 1778, he returned to Philadelphia to represent the Penns and other Quaker men of commerce,<sup>156</sup> becoming wealthy not only from his law practice, but from his land speculations.<sup>157</sup> In 1779, apparently inspired by Wilson's wartime wealth and suspect enthusiasm for

---

147. *Id.* at 124.

148. *Id.* at 129. Much of the property confiscated in 1779 was not restored to the trustees until 1785. *Id.* at 145.

149. *Id.* at 158.

150. *Id.* at 91.

151. McCloskey, *Introduction* to 1 THE WORKS OF JAMES WILSON 7-9 (R. McCloskey ed. 1967) (1st ed. 1804).

152. *Id.* at 9. Dickinson had trained at the Middle Temple and, at age 33, was prospering as a lawyer and serving as speaker of the Pennsylvania legislature. III DICTIONARY OF AMERICAN BIOGRAPHY 299 (pt. 1) (A. Johnson & D. Malone ed. 1960). A strong advocate of the principle that sovereignty derives from the consent of the governed, he wrote in opposition to the power of Parliament over the colonies. See J. DICKINSON, LETTERS FROM A FARMER IN PENNSYLVANIA, TO THE INHABITANTS OF THE BRITISH COLONIES (1768). However, as a member of the Continental Congress, Dickinson refused to sign the Declaration of Independence because he opposed war; he urged embargo instead. *Id.* at 300. He was later a leader of the Pennsylvania Federalists. See generally THE POLITICAL WRITINGS OF JOHN DICKINSON, ESQUIRE, LATE PRESIDENT OF THE STATE OF DELAWARE, AND OF THE COMMONWEALTH OF PENNSYLVANIA (1801).

153. See McCloskey, *supra* note 151, at 10-21.

154. See E. CHEYNEY, *supra* note 143, at 91.

155. See McCloskey, *supra* note 151, at 11.

156. *Id.* at 18.

157. *Id.* at 19.

the Revolution, a violent mob drove him temporarily out of town.<sup>158</sup>

Nevertheless, Wilson represented Pennsylvania at the Constitutional Convention of 1787, where he performed services “[s]econd to Madison and almost on a par with him,”<sup>159</sup> and thereby earned a national reputation. Eventually, Wilson would give the principal oration at the event celebrating the adoption of the Constitution,<sup>160</sup> and would be promptly appointed one of the initial members of the Supreme Court by Washington.<sup>161</sup>

Wilson’s political views were distinctive and prescient. Despite the Pennsylvania Constitution of 1776’s popular democratic provisions, Wilson had opposed its ratification<sup>162</sup> because it “flouted the separation of powers principle,”<sup>163</sup> and he persuaded his fellow citizens to ratify instead a new constitution in 1790 that incorporated this principle.<sup>164</sup> A Federalist, Wilson agreed with Hamilton that a strong national government was needed, provided it was subject to appropriate separation of powers protections; Wilson did not, however, share Hamilton’s mistrust of popular governance.<sup>165</sup> Even more than Jefferson, Wilson believed in the capacity of the people to make public decisions. His opinions in all of these matters were, of course, to prevail.

In appointing Wilson, the university explained that it hoped “to furnish a rational and useful entertainment to gentlemen of all professions, and . . . to assist in forming the legislator, the Magistrate and the ‘Lawyer.’”<sup>166</sup>

Wilson planned his irregular lectures as a three-year course,<sup>167</sup> apparently not expecting that his auditors would be devoting more than a minor fraction of their efforts to participation in his program. The first year’s lectures were devoted to a comparative and

---

158. *Id.* at 21.

159. M. FARRAND, *THE FRAMING OF THE CONSTITUTION* 197 (1913).

160. 2 *THE WORKS OF JAMES WILSON*, *supra* note 151, at 773-80.

161. McCloskey, *supra* note 151, at 28; see L. BAUM, *THE SUPREME COURT* 245 (2d ed. 1985).

162. See McCloskey, *supra* note 151, at 19-20.

163. *Id.* at 20.

164. *Id.* at 21.

165. *Id.* at 4-5.

166. A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 122 (1921).

167. *Id.*

international treatment of his subject.<sup>168</sup> In the second year, he moved on to American constitutional and criminal law.<sup>169</sup>

Published in 1804,<sup>170</sup> Wilson's lectures remain an important source for persons interested in the origins of American constitutional law. They also confirm that Wilson's aim as a teacher was identical to that of George Wythe—training students for public life. Wilson's opening lecture, presented with President and Mrs. Washington, and members of Congress in attendance,<sup>171</sup> was an echo of Montesquieu. He asserted the interconnection of popular republican governance and "the love of law."<sup>172</sup> He also proclaimed the need to inform the people of the most important principles of their law, which, like religious principles, cannot be "a very great distance from common apprehension."<sup>173</sup> He hoped especially to train his students in principles of republican leadership:

In every government, which is not altogether despotical, the institution of youth is of some publick consequence. In a republican government, it is of the greatest. Of no class of citizens can the education be of more publick consequence than that of those, who are destined to take an active part in publick affairs. Those who have had the advantage of a law education, are very frequently destined to take this active part. This deduction clearly shows, that, in a free government, the principles of a law education are matters of the greatest publick consequence.<sup>174</sup>

As early as 1792, however, Wilson stopped lecturing,<sup>175</sup> perhaps on account of low class attendance.<sup>176</sup> And those young apprentices who attended with hopes of justifying prompt increases of their professional fees were probably disappointed. The termination of lectures might have been because Wilson was courting a 17-year-

---

168. *Id.*

169. *Id.*

170. THE WORKS OF THE HONOURABLE JAMES WILSON (B. Wilson ed. 1804).

171. See A. REED, *supra* note 166, at 122.

172. 1 THE WORKS OF JAMES WILSON, *supra* note 151, at 70.

173. *Id.* at 72.

174. *Id.* at 81.

175. See A. REED, *supra* note 166, at 122.

176. 1 C. WARREN, *supra* note 99, at 173.



old maiden in Boston who would become his second wife.<sup>177</sup> Or the lapse may have been because of Wilson's serious, festering and notorious financial difficulties arising out of his imprudent purchase of an iron works.<sup>178</sup> By 1797, he was riding circuit as a justice of the Supreme Court in flight from debtor's prison.<sup>179</sup> After being imprisoned several times for debt, he died of malaria in 1798 in North Carolina.<sup>180</sup>

Wilson's failings were tragic for both university legal education and for the Supreme Court because his intellectual capacity and sound political judgment would have enabled him to make mighty contributions to both endeavors had he narrowed the compass of his efforts. Unfortunately, his reach exceeded his grasp, foreclosing the prospect of any enduring consequence of his teaching effort. As Robert McCloskey explained: "A teacher may transform the thought of his generation, but he needs decades to accomplish this, and Wilson had only months to spare."<sup>181</sup>

Wilson's chair remained vacant until 1817, when it was renewed with the appointment of Charles W. Hare, who devised a similarly ambitious program.<sup>182</sup> Yet Hare's health failed after a year, and a professor of law was not appointed again at the University of Pennsylvania until 1850.<sup>183</sup>

#### D. Brown

In the same year that Wilson commenced his lectures at Pennsylvania, his former colleague in the Continental Congress, David Howell, was appointed professor of law, mathematics and natural philosophy at Brown University.<sup>184</sup>

---

177. See McCloskey, *supra* note 151, at 44. Alfred Reed characteristically, and perhaps generously, attributes termination of the lectures to the overbreadth of Wilson's design. See A. REED, *supra* note 166, at 122.

178. See McCloskey, *supra* note 151, at 43-44.

179. *Id.* at 44.

180. *Id.*

181. *Id.* at 43.

182. See E. CHEYNEY, *supra* note 143, at 234.

183. *Id.* at 234-35.

184. See C. WARREN, *supra* note 24, at 349.

Brown was established in 1764 as a Baptist institution,<sup>185</sup> with a young Princeton alumnus, the Reverend James Manning, as president.<sup>186</sup> In 1766, when he was able to afford some help, Manning brought in his school and college classmate, David Howell, first as tutor, and then as professor of natural philosophy.<sup>187</sup> Apparently, Howell also was reading law, for he was admitted to the Rhode Island bar in 1768.<sup>188</sup> In 1773, while still a professor, Howell was elected to the governing board of Brown and served in that capacity until his death in 1824.<sup>189</sup>

In 1776, British and Hessian troops serving the Crown occupied the college.<sup>190</sup> Howell took the occasion of the college's closing to commence a career as a Federalist politician.<sup>191</sup> With Manning, he led the campaign for Rhode Island's ratification of the Constitution.<sup>192</sup> Howell led a life of high achievement outside of the college, having served in the Continental Congress, on the Supreme Court of Rhode Island and as the state's attorney general.<sup>193</sup>

In 1790, Howell was reappointed as a professor in the college.<sup>194</sup> Although he was expected to provide lectures on law, Howell does not appear to have ever done so, at least not on a regular basis.<sup>195</sup> After Manning's death, however, Howell served as president *ad interim* in 1791-92,<sup>196</sup> and devoted his presidential commencement address to political ethics, importuning Brown graduates to practice public virtue.<sup>197</sup> Howell presumably was not a candidate for the presidency of Brown, for he apparently continued to practice law in Providence until his appointment to the federal judiciary in 1812.<sup>198</sup> He was asked frequently by fellow trustees to lecture on

---

185. W. BRONSON, *THE HISTORY OF BROWN UNIVERSITY 1764-1914* 1-3 (1914). Brown University was initially established as Rhode Island College. *Id.* at 9.

186. *Id.* at 35-36.

187. *Id.* at 38.

188. *Id.* at 68; see V *DICTIONARY OF AMERICAN BIOGRAPHY* 301 (pt. 1) (D. Malone ed. 1961).

189. See W. BRONSON, *supra* note 185, at 38.

190. *Id.* at 66-67.

191. See *id.* at 38, 68.

192. *Id.* at 94.

193. *Id.* at 38.

194. *Id.* at 35-38.

195. *Id.* at 38.

196. *Id.*

197. *Id.* at 130-31.

198. *Id.* at 38.

the law, though he apparently never did so.<sup>199</sup> Howell also presided over debates and discussions of public issues,<sup>200</sup> and was a presence that may have influenced the development of Brown students. His role at Brown, however limited, certainly made plain the school's ambition to provide suitable preparation for public life.

### *E. Columbia*

Columbia University originated with a 1754 charter<sup>201</sup> to a predominantly Anglican group.<sup>202</sup> Although the governing board included representatives of Dutch Reformed and Lutheran clergy, the charter dictated that school religious ceremonies follow the Episcopal liturgy.<sup>203</sup> The institution was closed in 1776 because of suspicions of its royalist leanings and was not reopened until 1784. It reopened under the aegis of an ambitious committee, with Alexander Hamilton responsible for planning. The plan called for state funding of three law professors. Hamilton's scheme seems to have been modeled on the Ezra Stiles' Connecticut proposal. In lieu of funding, the state gave the college its freedom from state control.

In 1794, James Kent, who had studied Montesquieu at Yale with President Stiles,<sup>204</sup> was appointed professor of law at Columbia.<sup>205</sup> Kent was a young Federalist politician, close to both Alexander Hamilton and John Jay, then Chief Justice of the United States Supreme Court.<sup>206</sup> While practicing law in Poughkeepsie, Kent was elected to the New York Assembly, and, in 1793, he ran for Congress as an unsuccessful Federalist candidate.<sup>207</sup>

---

199. *Id.* at 158-59.

200. *Id.* at 148.

201. See A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 4-9 (J. Goebel ed. 1955). Columbia was originally chartered as King's College. *Id.* at 4.

202. J. VAN AMRINGE, AN HISTORICAL SKETCH OF COLUMBIA COLLEGE IN THE CITY OF NEW YORK 1754-1876 6-8 (1876).

203. *Id.* at 13. President Myles Cooper was loyal to the Crown. He was saved from mob violence in 1775 by Alexander Hamilton, a recent alumnus, who interceded with the mob while Cooper escaped. F. BOARDMAN, JR., COLUMBIA AN AMERICAN UNIVERSITY OF PEACE AND WAR 5 (1944).

204. J. HORTON, *supra* note 105, at 23.

205. See A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY, *supra* note 201, at 13.

206. See J. HORTON, *supra* note 105, at 34-87.

207. *Id.* at 43-74.

Kent's inaugural lecture clearly reflected the influence of Montesquieu in defining Kent's educational aims:

A lawyer in a free country . . . should be a person of irreproachable virtue and goodness . . . .

. . . .  
 . . . [This institution] is intended to explain the principles of our constitutions, the reason and history of our laws, to illustrate them by comparison with those of other nations, and to point out the relation they bear to the spirit of representative republics.<sup>208</sup>

Kent planned a one-year course similar to George Wythe's.<sup>209</sup> While the Columbia announcement contained a somewhat ambiguous suggestion that future lawyers might be well served by attending the lectures, the lectures themselves and the students who attended them were not unlike those at Philadelphia and Williamsburg in their emphasis on public law.

Although a conservative by any reckoning, Kent's lectures forcefully called attention to premises animating American public law that were vastly different from those underlying the British Constitution. Somewhat inconsistently perhaps,<sup>210</sup> Kent condemned the "adventitious advantages of birth or fortune"<sup>211</sup> preserved in the House of Lords, while extolling the American institution of property.<sup>212</sup> He cautioned his students against both "English reaction"<sup>213</sup> and "Gallic revolution,"<sup>214</sup> and urged them to "imbibe the principles of republican government from pure fountains."<sup>215</sup>

Kent also made clear that he expected his students to be well-read in Greek and Latin, to be masters of logic and mathematics, and to be well-grounded in moral philosophy.<sup>216</sup> He eschewed the

208. Kent, *An Introductory Lecture to a Course of Law Lectures*, 3 COLUM. L. REV. 330, 338, 341 (1903); see A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY, *supra* note 201, at 14-15.

209. See A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY, *supra* note 201, at 14.

210. See J. HORTON, *supra* note 105, at 90.

211. Kent, *supra* note 208, at 331.

212. *Id.* at 331-33.

213. J. HORTON, *supra* note 105, at 91.

214. *Id.*

215. Kent, *supra* note 208, at 333.

216. *Id.* at 338-39.

aim of prescribing "a system of rules for the mere mechanical"<sup>217</sup> practice of law. He concluded his introductory lecture with a suitable expression of the aspiration to public virtue that he hoped to impart to his students:

If he to whom is entrusted in this seat of learning the cultivation of our laws, can have any effect in elevating the attention of some of our youth from the narrow and selfish objects of the profession, to the nobler study of the general principles of our governments, and the policy of our laws—if he can in any degree illustrate their reason, their wisdom, and their propitious influence on the freedom, order, and happiness of society, and thereby produce a more general interest in their support, he will deem it a happy consolation for his labors.<sup>218</sup>

Perhaps in part because he was a soporific lecturer, Kent taught a dwindling audience of students.<sup>219</sup> Moreover, he may have had some difficulties with the college administration; a problem apparently arose in his relationship with a colleague teaching moral philosophy who may have resisted Kent's intrusion on his academic turf.<sup>220</sup> Kent stopped lecturing in 1795 and resigned in 1798 when he was appointed Justice of the Supreme Court of New York State.<sup>221</sup>

Kent did, however, maintain his connection with Columbia, and he returned in 1823 to his professorship, holding it until his death in 1847, although he did little teaching during this latter period.<sup>222</sup>

#### F. North Carolina

In 1776, North Carolina was almost wholly rural and sparsely populated; not only were "want and penury" ubiquitous, but so were "ignorance and prejudice and a wild spirit of lawlessness."<sup>223</sup> Perhaps on account of these conditions, the Crown refused to char-

---

217. *Id.* at 341.

218. *Id.* at 343.

219. See J. HORTON, *supra* note 105, at 95.

220. See A. REED, *supra* note 166, at 120.

221. See J. HORTON, *supra* note 105, at 95 n.89.

222. A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY, *supra* note 201, at 18-25.

223. 1 K. BATTLE, HISTORY OF THE UNIVERSITY OF NORTH CAROLINA 40 (1907).

ter a college in the colony.<sup>224</sup> The Scotch-Irish settlers who had moved into the western part of the state from Pennsylvania were especially affronted and put the matter on the agenda of the state Constitutional Convention of 1776, which imposed an obligation on the state to create a state college.<sup>225</sup>

In 1789, a charter was issued accordingly to a group of trustees headed by William Davie, a Federalist lawyer;<sup>226</sup> the group included Justice James Iredell and his successor on the Supreme Court of the United States, Alfred Moore.<sup>227</sup> Woefully, no financial appropriation accompanied the charter.<sup>228</sup> But with funds begged and borrowed, the university held its first classes in 1795<sup>229</sup> with a faculty of five.<sup>230</sup>

The public purpose of the school, as expressed by the governor, was to provide a from which the state may draw forth " 'men of ability . . . to fill the different departments of government with reputation, or be formed for useful and ornamental members of society in private or professional life.' "<sup>231</sup> Davie, acting for the trustees, went so far as to quote the French Convention requiring that all citizens be educated in law and announced that the program of the university would be predicated upon this principle.<sup>232</sup>

Unfortunately, the university did not have a professor especially suited to this mission and, like others of the time, had to make do. Professor Samuel E. McCorkle, a former student of John Witherspoon's at Princeton,<sup>233</sup> was designated professor of moral and political philosophy and history and assigned responsibility for instructing the young gentry of the state on Hume, Montesquieu and Paley, state and federal constitutional law, and international law.<sup>234</sup>

---

224. *Id.* at 2. Queen's College in Mecklenberg County (now Charlotte) sought a royal charter, but it was denied. *Id.*

225. *Id.*

226. *Id.* at 3-5.

227. *Id.* at 3.

228. *Id.* at 9.

229. *Id.* at 16-66.

230. *See id.* at 48-55.

231. *Id.* at 13 (quoting 1790 letter of Governor Alexander Martin).

232. *Id.* at 97 (citing N.C. JOURNAL article of that period).

233. *See id.* at 60.

234. *Id.* at 94-100.

McCorkle was a Presbyterian clergyman and the keeper of the best secondary school in the state, one that provided many of the students in the university's first entering class.<sup>235</sup> He played an important role in planning the university and would have been designated its president but for his reputation as a careless person: As a farmer, McCorkle had been seen lying in the field reading, completely inattentive to his nearby mule, which was eating his corn.<sup>236</sup> Nonetheless, McCorkle had been the orator at the laying of the first cornerstone.<sup>237</sup> He held his academic position until his death in 1811.<sup>238</sup> Nothing remains to tell us of the instruction he provided.

We do know, however, that in 1795, as the number of students grew to almost one hundred, the trustees struck Montesquieu and Vattel from the required reading list apparently because the university owned only three copies of each.<sup>239</sup> Paley's *Political Philosophy*<sup>240</sup> and *The Federalist*<sup>241</sup> became, for several decades, the materials of instruction in public law for the future leadership of the state, the university owning as many as six copies of each of these works.<sup>242</sup>

In 1798, the university was criticized for its alleged effort to direct its students toward aristocracy, a charge that the new young president, Joseph Caldwell, denied emphatically.<sup>243</sup> Caldwell, a mathematician and a graduate of Princeton,<sup>244</sup> was admired as physically stronger and faster afoot, as well as smarter, than any of the students or trustees, and thus was considered a good man to handle the frequent disorders.<sup>245</sup> He was an ardent Federalist<sup>246</sup>

---

235. *Id.* at 37-40, 60-61.

236. *Id.* at 60.

237. *Id.* at 37-40.

238. *Id.* at 61.

239. *Id.* at 99.

240. W. PALEY, *THE PRINCIPLES OF MORAL AND POLITICAL PHILOSOPHY* (4th American, from the 12th English ed. 1801).

241. A. HAMILTON, J. MADISON & J. JAY, *THE FEDERALIST: A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES, BEING A COLLECTION OF ESSAYS WRITTEN IN SUPPORT OF THE CONSTITUTION AGREED UPON SEPTEMBER 17, 1787, BY THE FEDERAL CONVENTION* (H.C. Lodge ed. 1895).

242. *See* 1 K. BATTLE, *supra* note 223, at 99.

243. *Id.* at 142-43.

244. *Id.* at 108.

245. *Id.* at 173-74.

and given to vituperation.<sup>247</sup> " 'Be assured,' " he said to the university's critics, that

"the stupidity of your politics shall be known . . . . The grave may open to you a retreat from public anger and contempt, . . . [but] you shall live [as] notorious monuments of that vileness, into which a sinister, a malignant and insidious warfare against the good of the country must very shortly descend."<sup>248</sup>

In 1799, Caldwell gave credence to the charge of political bias by accusing the one discernibly republican professor, Samuel Holmes, of treason.<sup>249</sup> By 1818, Caldwell had taken over responsibility for the instruction of the students in politics, political philosophy and practical morality.<sup>250</sup>

Whatever the Federalist bias of the curriculum, McCorkle and Caldwell produced a number of alumni who became active in public affairs, most notably James K. Polk of the class of 1818, who was elected President of the United States in 1844.<sup>251</sup> Many of the alumni furthered their training by reading law privately or in the offices of lawyers,<sup>252</sup> for their university training, cast in Jefferson's mold, had not been intended to substitute for such additional professional training as they deemed necessary or desirable. At least three alumni of this program distinguished themselves during the mid-1800s as law teachers influenced in the tradition initiated by George Wythe.<sup>253</sup>

### G. *Transylvania*

In 1799, George Nicholas, a student of George Wythe at the College of William and Mary, was appointed to a chair in law at Transylvania University in Lexington, Kentucky.<sup>254</sup> This institution was founded with a grant of land acquired by the Commonwealth of

---

246. *Id.* at 158.

247. *Id.* at 146.

248. *Id.* at 146-47 (quoting Joseph Caldwell).

249. *Id.* at 156-57.

250. *Id.* at 253-57.

251. *Id.* at 258.

252. Coates, *A Century of Legal Education*, 24 N.C.L. REV. 307, 321 (1946).

253. John L. Bailey, class of 1819; William H. Battle, class of 1920; and Richmond M. Pearson, class of 1823. *See id.* at 322-33.

254. *See* A. REED, *supra* note 166, at 118.



Virginia by escheat, the former owner having fought for the Crown in the Revolution.<sup>255</sup> Made to the Transylvania Land Company in 1780, the grant antedated the statehood of Kentucky.<sup>256</sup> The Transylvania Company was a private organization promoting the settlement of central Kentucky<sup>257</sup> led by another Wythe alumnus, John Breckenridge,<sup>258</sup> later Attorney General of the United States in the Jefferson administration.<sup>259</sup>

Transylvania University's law program was modeled on the chair at William and Mary; Nicholas was a "Professor of Law and Politics."<sup>260</sup> When he died the year following his appointment, he was replaced by another Wythe protege, James Brown,<sup>261</sup> the brother of Senator John Brown. Henry Clay, another Wythe student,<sup>262</sup> succeeded Brown in turn and served as the law professor at Transylvania from 1804 to 1807.<sup>263</sup> Still another William and Mary graduate, John Monroe (no apparent relation to the President) followed Clay in this chair.<sup>264</sup>

The Transylvania program flourished. By 1823, the university had three teachers of law: Professor William T. Barry, formerly a United States Senator and soon to become a member of the Jackson cabinet; Professor Jesse Bledsoe, also formerly a senator; and Horace Holley, the president of the university.<sup>265</sup> Barry also was a graduate of William and Mary and a former student of St. George Tucker.<sup>266</sup>

255. R. PETER, *TRANSYLVANIA UNIVERSITY: ITS ORIGIN, RISE, DECLINE, AND FALL* 18-20 (1896).

256. *Id.* at 18; J. WRIGHT, *TRANSYLVANIA: TUTOR TO THE WEST* 23 (1975) (Kentucky was admitted as the fifteenth state in 1792).

257. T. CLARK, *A HISTORY OF KENTUCKY* 60 (1937).

258. W. CLARKIN, *supra* note 41, at 195.

259. *Id.* at 143.

260. *See* J. WRIGHT, *supra* note 256, at 33.

261. *Id.* at 39.

262. C. EATON, *HENRY CLAY AND THE ART OF AMERICAN POLITICS* 7 (1957).

263. *See generally* Kerr, *Transylvania University's Law Department*, 31 *AMERICANA ILLUSTRATED* 7 (1937).

264. *See id.* at 29.

265. *See id.* at 34.

266. *See* F. AUMANN, *THE CHANGING AMERICAN LEGAL SYSTEM: SOME SELECTED PHASES* 112 n.76 (1940). In a letter written while he was a student at William and Mary in 1804, Barry said that Tucker

is a man more profoundly read in the Law perhaps than any lawyer of the present time. No person can with more ease and facility clear up or elucidate a

In the tradition of George Wythe, Transylvania recruited public men to train a younger generation of republican leaders, grooming them for public life. In no small part due to the efforts of Henry Clay as trustee and patron,<sup>267</sup> the success of this law department<sup>268</sup> contributed to establishing Transylvania as the largest university in America in 1830, with more than 400 students.

### H. Middlebury

Middlebury College was founded in 1800<sup>269</sup> and in 1806 appointed Daniel Chipman its professor of law.<sup>270</sup> A Dartmouth alumnus and a Vermont lawyer,<sup>271</sup> Chipman provided lectures on law for Middlebury students until his resignation in 1816. Middlebury replaced him with his older brother, Nathaniel, a founding trustee of the college.<sup>272</sup> Nathaniel Chipman held the position until 1843, although his deafness apparently prompted him to cease teaching at an earlier date.<sup>273</sup> Nathaniel was a Revolutionary War veteran and a Yale alumnus who had studied Montesquieu with President Stiles.<sup>274</sup>

Both Chipmans were public men: Daniel served as a judge and a congressman after his teaching experience, and Nathaniel served as Chief Justice of Vermont and as a United States Senator before his time at Middlebury. The college lectures were neither brothers' primary activity, much less primary career.

The public today knows little of the early lectures of Daniel Chipman aside from what can be garnered from the 1822 publica-

---

knotty or abstruse point of law, and he not only possesses the capacity of doing so, but does it with willingness, and appears solicitous to communicate every information that he is possessed of.

*Id.* (quoting letter of William Taylor Barry) (citation omitted).

267. See J. WRIGHT, *supra* note 256, at 52.

268. *Id.* at 87-92, 139-45. Transylvania also had a successful medical department. *Id.* at 33.

269. THE WORLD ALMANAC AND BOOK OF FACTS 193 (1989).

270. II DICTIONARY OF AMERICAN BIOGRAPHY 72 (pt. 2) (A. Johnson & D. Malaone ed. 1960).

271. *Id.*

272. *Id.* at 73.

273. See D. CHIPMAN, THE LIFE OF HON. NATHANIEL CHIPMAN, LL.D. 208 (1846).

274. Nathaniel was 21 when he began his studies at Yale in 1773. A brief account of his Yale years can be found *id.* at 10-23.

tion of his essay on the law of contracts,<sup>275</sup> which gives some indication of his interests and talents. In a lucid prose style, he describes the right to contract as a basic civil liberty and proclaims an established law of contracts as an essential means of securing political stability. To ensure uniform application of contract law and to protect individuals from arbitrary state action, thereby advancing political freedom, his work argues for professional judges and for reporting case decisions.<sup>276</sup> References to Bacon, Coke, Swift, Blackstone and Roman authorities amply document the work.

In 1846, Daniel also published a biography of his late distinguished brother that recounts Nathaniel's professorial appointment and includes texts of his introductory lectures at Middlebury from 1816 and subsequent years.<sup>277</sup> The lectures commence with a discourse on the fundamental nature of man and proceed through a brief treatment of English legal history. A treatment of the nature of case law and an explication of analogical thinking are included.

Nathaniel Chipman's published works include *Principles of Government*.<sup>278</sup> The publication appears to grow out of his lectures as well as his experience as a judge and Senator. An intellectually ambitious work, the publication was not altogether successful, perhaps because of its effort to comprehend the theory of American government at an abstract level. The author's earlier study of Montesquieu seems to have inspired the book.

### I. Dartmouth

Dartmouth College opened in 1771 under the leadership of President Eleazer Wheelock, a revivalist minister<sup>279</sup> who had studied at Yale and devoted some years to missionary work and basic education of the Indians.<sup>280</sup> He secured modest financial support for his college in England and negotiated for a land grant and a charter

---

275. D. CHIPMAN, *LAW OF CONTRACTS FOR THE PAYMENT OF SPECIFICK ARTICLES* (1822).

276. *Id.* at i-xii.

277. D. CHIPMAN, *supra* note 273.

278. N. CHIPMAN, *PRINCIPLES OF GOVERNMENT* (1833).

279. 1 L. RICHARDSON, *HISTORY OF DARTMOUTH COLLEGE* 13-23 (1932).

280. *Id.* at 27-48.

from the royal Governor of New Hampshire after unsuccessfully bargaining with Pennsylvania and Delaware.<sup>281</sup>

Wheelock secured the financial support to serve the Indians with the expectation that the students would include some Indians and men training to be missionaries. At the outset, the curriculum, like that found at Yale, Harvard or elsewhere, consisted of classical languages and literature. As early as 1776, however, the trustees of the college adjured Wheelock to vary it to provide instruction "on the Spirit of Laws, the nature of Liberty and civil Government . . . in addition to their other studies."<sup>282</sup>

When Wheelock died in 1779, the trustees apparently felt obliged to honor his wishes and offer the presidency to his son,<sup>283</sup> John Wheelock. A callow youth of twenty-five, whose only significant experience was in the military, young Wheelock did apply great energy to his work. In trying to make a scholar of himself, however, he made a pedant instead.<sup>284</sup> He took personal charge of the academic work of seniors and in 1796 commenced a series of lectures on natural and political law,<sup>285</sup> which he presented as a sequence to work done in the junior year on natural and moral philosophy.<sup>286</sup> Presumably in connection with this teaching, he labored earnestly to produce a substantial manuscript on the subject of political economy<sup>287</sup> that those at Dartmouth supposed to be of precious value. In fact, however, publishers scorned the work: "Their ready and unanimous opinion was that the manuscript was a confused mass of facts, assertions, quotations and stories totally distinct in the different points they were to establish, irrelevant in their objects to each other and to any common established

---

281. *Id.* at 49-90.

282. *Id.* at 120 (quoting a rough draft of the trustees' records in 1776).

283. Most of the trustees were close friends of the elder Wheelock, who was a shameless nepotist; his two sons-in-law also had been appointed to the faculty. *Id.* at 252.

284. *See id.* at 195-200.

285. J. COLBY, *supra* note 102.

286. The Reverend John Smith, the Latin and Greek professor, apparently taught the junior course. *Id.* at 4. One student described Smith as "the best linguist in New England but did not know beans about anything else." 1 L. RICHARDSON, *supra* note 279, at 254 (quoting Judah Dana of the class of 1795). He also was described by the Dartmouth historian as "a man of monumental dullness." *Id.* at 255.

287. J. WHELOCK, *PHILOSOPHICAL HISTORY OF THE ADVANCEMENT OF NATIONS WITH AN INQUIRY INTO THE CAUSES OF THEIR RISE AND DECLINE* (unpublished).

opinion . . . which they . . . could distinguish . . . .'<sup>288</sup> Despite the limitation this assessment implied for the quality of John Wheelock's instruction, his teaching did not impede seriously the public career of one of his students, Daniel Webster of the class of 1801.

John Wheelock gradually lost control of the trustees. A turning point came in 1805 when he became embroiled in a local ecclesiastical struggle involving the college's newly appointed divinity professor, Rosewell Shurtleff, whom the clergy of New Hampshire supported. Lawyers soon infiltrated the governing board: Judge Nathan Niles, a Calvinist minister and a doctor, as well as a lawyer, an inventor, a poet, a songwriter and a congressman; Thomas Thompson, Daniel Webster's mentor and later a Congressman and Senator; Judge Timothy Farrar; Judge Elijah Paine, formerly a Senator, and from 1801 to 1842, the federal judge in Vermont; and Charles Marsh, the United States Attorney for Vermont and later a Congressman.<sup>289</sup> "These men were of high repute, entirely capable of thinking for themselves, and they were not favorably impressed" with John Wheelock's abilities.<sup>290</sup> They soon began to manage the college themselves.

In 1808, these trustees announced plans to initiate a professorship of law, consistent with their thinking that a general acquaintance with the science of law would advance the "welfare and prosperity of the citizens of our country."<sup>291</sup> Although the board made academic appointments in 1809 that the president opposed, it never found a law professor. The divisive War of 1812 did not ease the problem, and by 1815 the relationship between Wheelock and the board was such that he asked the New Hampshire state legislature to investigate the tyrannical behavior of the board and to appoint a new board to save the college.<sup>292</sup> The board invited Wheelock to respond to its charges of neglect. Wheelock responded by asserting that the board lacked jurisdiction over him; the board

---

288. 1 L. RICHARDSON, *supra* note 279, at 260 (quoting a Boston bookseller named Nancrede).

289. *Id.* at 225-26, 296-97.

290. *Id.* at 297.

291. J. COLBY, *supra* note 102, at 6 (quoting an excerpt from the trustees' meeting held Jan. 7, 1808).

292. 1 L. RICHARDSON, *supra* note 279, at 303-09.

voted unanimously that it did in fact have such jurisdiction and then fired him.<sup>293</sup>

New Hampshire Democrats leaped to the support of the martyred president, only to be denounced in turn as "agrarians," "infidels" and "French Jacobins"<sup>294</sup> by members of the Federalist press. The press vilified the board as well, identifying its members as "gangrened persecutors," and likening them to "Jews who had sworn not to eat until they had killed Paul."<sup>295</sup>

When the Democrats swept into state office in the post-war election of 1816, the legislature revoked the Dartmouth College charter, created a Dartmouth University to take over the college's assets and increased the old board from twelve to twenty-one members.<sup>296</sup> In the bargain, they also threw out of office all the Federalist judges in the state, thereby assuring themselves a favorable judgment in the state courts on any suit brought by the trustees.<sup>297</sup>

In 1819, the United States Supreme Court invoked a rarely used provision of the Constitution, the contracts clause,<sup>298</sup> to invalidate the state legislature's action as an unconstitutional impairment of a contract.<sup>299</sup> The case is remembered because of Webster's passion and eloquence in arguing for the trustees: "There was not one among the strong-minded men of that assembly [who heard the argument] who could think it unmanly to weep, when he saw standing before him the man who had made such an argument melted into the tenderness of a child."<sup>300</sup>

The idea of a law professor at Dartmouth became a casualty of this struggle. An institution then in distress apparently abandoned the plan in 1817.<sup>301</sup> Meanwhile, however, Dartmouth had enlarged

---

293. *Id.* at 309-10.

294. *Id.* at 311.

295. *Id.*

296. *Id.* at 318.

297. *Id.* at 330-31.

298. U.S. CONST. art. I, § 10, cl. 1; see L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 614 (2d ed. 1988).

299. *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 517 (1819).

300. 1 L. RICHARDSON, *supra* note 279, at 336 (quoting Rufus Choate's eulogy to Webster).

301. C. WARREN, *supra* note 24, at 355-56. A young alumnus, Francis Brown, served as president of the college during the tumultuous years of struggle for control. Unfortunately, his death came on the heels of victory. 1 L. RICHARDSON, *supra* note 279, at 368. Although

its role in training its students for public life. In the early decades of the nineteenth century, almost half of its graduates became lawyers.<sup>302</sup> The effective teaching of the Reverend Shurtleff, the professor of divinity, takes partial credit for this development. From 1804 to 1823, Shurtleff taught a lively junior course on natural and moral philosophy that was based on the writings of Burlamaqui and Paley.<sup>303</sup>

### *J. Vermont*

Vermont chartered the University of Vermont in 1791, but, like North Carolina, had difficulty finding funds for the university's operation.<sup>304</sup> In 1811, the university appointed Royall Tyler, a trustee, as professor of jurisprudence.<sup>305</sup> At the time, he was a lawyer of national repute and enjoyed even greater repute as a man of letters.<sup>306</sup>

A native of Boston, Tyler graduated from Harvard in 1776, in time to serve as a major in the Revolutionary Army.<sup>307</sup> He was admitted to the bar in 1780, and practiced in Braintree, where he courted John Adams' daughter.<sup>308</sup> Suspecting that Tyler fathered the child of a Harvard College cleaning lady, and citing other evidence of negligence, Adams rejected Tyler as a son-in-law.<sup>309</sup> Tyler rejoined the militia in 1786 and played a major role in suppressing Shays' Rebellion.<sup>310</sup>

the curriculum called for him to teach law, whether those lectures continued through Brown's tenure is uncertain. See J. COLBY, *supra* note 102, at 4.

302. J. COLBY, *supra* note 102, at 5.

303. *Id.* Shurtleff was a strong-minded man who had played an important role in the unseating of President Wheelock. 1 L. RICHARDSON, *supra* note 279, at 256, 295.

304. See J. LINDSAY, *TRADITION LOOKS FORWARD, THE UNIVERSITY OF VERMONT: A HISTORY 1791-1904* 1-30 (1954).

305. See *id.* at 15.

306. See R. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* 111-19 (1984).

307. G. TANSALLE, *ROYALL TYLER* 8 (1967).

308. *Id.* at 10. Tyler took up residence in Braintree at the home of Mary Cranch, John Adams' sister-in-law. The relationship between the Adams and Cranch households was close, and Tyler quickly grew enamoured with the young Nabby Adams, John Adams' daughter. *Id.*

309. See *id.* at 11-12.

310. See R. TAYLOR, *WESTERN MASSACHUSETTS IN THE REVOLUTION* 128-68 (1954). An armed uprising of poor farmers in Massachusetts, this protest against the land tax prompted significant anxiety over the potential excesses of democracy and eventually led to the

After that brief episode of law enforcement, Tyler went on to New York to become the first successful American playwright, working in comedy,<sup>311</sup> farce,<sup>312</sup> satire and sacred drama.<sup>313</sup> His classic work was *The Contrast*, a comedy satirizing post-Revolutionary America. Although the object of some ridicule, the hero is a republican patriot, sort of a founding father, who warns against the evils of luxury and urges that people place the common good over the pursuit of private interest.<sup>314</sup> In the end, the hero wins the girl despite her father's disapproval.

Tyler was also a poet,<sup>315</sup> an essayist<sup>316</sup> and a novelist.<sup>317</sup> A recent surveyor of his work remarked that "[n]o other writer of the eighteenth century gave Americans so perfect a glass of their existence."<sup>318</sup>

In 1794, he moved to Vermont, according to his mother, because he thought it the "outskirts of creation," a place where the presence of so many "rogues and runaways" promised a good law business.<sup>319</sup> He became a trustee of the university and a state's attorney, and then served on the Supreme Court of Vermont from 1801 to 1813. During this time, he was a member of the Dennie Circle, a group of men, mostly lawyers, who met from time to time at court sessions or in taverns around Vermont and New Hampshire to share their literary tastes and develop contributions to Joseph Dennie's *Farmer's Weekly Museum*, a literary labor that was a precursor to *Port Folio*, Dennie's magazine for lawyers.<sup>320</sup> Tyler

prompt ratification of the Constitution. Many credit Tyler for encouraging the mob's dispersal with his speeches. See G. TANSSELLE, *supra* note 307, at 20-22.

311. *E.g.*, R. TYLER, *THE CONTRAST* (AMS Press ed. 1970) (play written in 1787); Tyler, *May Day in Town, or New York in an Uproar* (1787) (unpublished).

312. *E.g.*, Tyler, *The Farm House; or, The Female Duellists* (1796) (unpublished).

313. *E.g.*, Tyler, *The Origin of the Feast of Purim; or, The Destinies of Haman and Mordecai* (1825), in *FOUR PLAYS BY ROYALL TYLER* 31 (1941).

314. R. TYLER, *supra* note 311, at 79-80.

315. See *THE VERSE OF ROYALL TYLER* (M. Péladeau ed. 1968).

316. Although published chiefly in *Farmer's Weekly Museum* and *The Eagle*, Tyler's works also can be found in *THE PROSE OF ROYALL TYLER* (C. Tuttle ed. 1972) and *THE YANKEY IN LONDON* (1809) (fictional letters from an American traveller).

317. See R. TYLER, *THE ALGERINE CAPTIVE* (1797).

318. K. SILVERMAN, *A CULTURAL HISTORY OF THE AMERICAN REVOLUTION* 560 (1976).

319. J. LINDSAY, *supra* note 304, at 15.

320. H. ELLIS, *JOSEPH DENNIE AND HIS CIRCLE: A STUDY IN AMERICAN LITERATURE FROM 1792 TO 1812* (1915).



served as Dennie's political essayist and also was in considerable demand as a Fourth of July orator.

Tyler lectured as professor of jurisprudence for three years. Despite his theatrical inclinations and oratorical and literary skills, however, the lectures apparently were not a great success. Tyler's resulting dissatisfaction with the response was perhaps owed to a university too small to sustain the prospect of attracting an audience of suitable dimension. However diminished the result, the endeavor itself clearly aimed at the same goals that had animated George Wythe and his followers: Tyler was a patriot who sought to engender a republican spirit of laws.<sup>321</sup>

When his teaching career ended in 1813 with federal troops occupying the university,<sup>322</sup> Tyler retired to his writing desk. He compiled two volumes of Vermont Reports in addition to his literary efforts. Two of his later plays<sup>323</sup> were courtroom dramas exploring issues of justice. Together with occasional essays and judicial opinions, Tyler left behind a considerable body of legal literature, some of it still in circulation today.

Meanwhile, the university fell on very hard times. After several financial travails, fire destroyed it in 1824, and its president lapsed into temporary insanity.<sup>324</sup> The school never renewed its interest in teaching law.

### K. Maryland

The University of Maryland was established in Baltimore in 1812.<sup>325</sup> Among its first acts was the appointment in 1816 of David Hoffman as professor of law.<sup>326</sup> A native of Baltimore, Hoffman had studied at St. John's College, and was a novelist and historian in his spare time.<sup>327</sup> Perhaps as a consequence of the War of 1812

---

321. Professor Chamberlain explained also that the purpose of the program in law was "to promote virtue." J. LINDSAY, *supra* note 304, at 109.

322. *Id.*

323. See Tyler, *The Island of Barrataria* (1813), Tyler, *The Judgement of Solomon* (1825), in *FOUR PLAYS BY ROYALL TYLER* (1941). For reviews of these works, see W. MESERVE, *AN EMERGING ENTERTAINMENT* 101-02 (1977).

324. J. LINDSAY, *supra* note 304, at 122.

325. G. CALLCOTT, *A HISTORY OF THE UNIVERSITY OF MARYLAND* 16-17 (1966).

326. C. WARREN, *supra* note 24, at 356.

327. G. CALLCOTT, *supra* note 325, at 34.

(sometimes waged in Baltimore), or perhaps on account of the breadth of Hoffman's intellectual ambition, his program of study was not published until 1836.<sup>328</sup> The ultimate product, however, was extremely ambitious, yielding nothing in its compass to Jefferson's extensive reading program.<sup>329</sup>

For want of students and financial support, Hoffman was unable to commence his lectures until 1823.<sup>330</sup> When at last he did begin to teach, Hoffman was interrupted when the state of Maryland closed and seized the university building in which he was teaching.<sup>331</sup> Despite hardships, and with help from several distinguished members of the Baltimore bar, Hoffman maintained a successful program for more than a decade.<sup>332</sup> Hoffman left the university in the 1830s when it was taken over by the state. Leaderless, the program was abandoned in 1836.<sup>333</sup>

Nevertheless, the 1817 plan was admired widely and regarded as perhaps the best synthesis of post-Revolutionary thinking about the appropriate aim and content of university legal education.<sup>334</sup> His curriculum included an examination of both legislation and case law, and in every subdivision it also entailed an examination of moral, political or religious literature thought to illuminate the underlying aims of the law. The curriculum emphasized public law and articulated the aim of guiding students toward the development of law that would better serve the public.<sup>335</sup> Hoffman's purpose of teaching public virtue to a new generation of national leaders was articulated clearly.

Hoffman's plan also exhibited an awareness of the nature of the law that later legal scholars who advanced the ideas of sociological

---

328. D. HOFFMAN, *A COURSE OF LEGAL STUDY ADDRESSED TO STUDENTS AND THE PROFESSION GENERALLY* (1836).

329. See *supra* notes 24-27 and accompanying text.

330. A. REED, *supra* note 166.

331. 2 A. CHROUST, *supra* note 132, at 205 n.142.

332. See generally Shaffer, *David Hoffman's Law School Lectures 1822-1833*, 32 J. LEGAL EDUC. 127 (1982).

333. G. CALLCOTT, *supra* note 325, at 69.

334. Mr. Justice Story declared it "the most perfect system for the study of the law which has ever been offered to the public." *Id.* (quoting Justice Story).

335. See D. HOFFMAN, *LEGAL OUTLINES passim* (1836).

jurisprudence<sup>336</sup> and legal realism<sup>337</sup> would admire, for Hoffman sought above all to bring his students to think purposively about legal doctrine. The great breadth of knowledge he tried to bring to bear on legal issues was no mere affect, but was carefully structured to inform practical judgment.

What remains of Hoffman's writings confirms that if given the time and support, he had the intellectual capacity to achieve much of what he projected. His commentary on Harrington, Sidney, Montesquieu and Machiavelli, for example, is a very suitable introduction to the issues and problems of republican governance, and makes interesting reading even today.<sup>338</sup>

Perhaps because Hoffman recognized a need to compensate for his own lack of experience in the world of affairs, or perhaps in an effort to attract more tuition-paying students, he proposed to affix to his lectures an elaborate program of moot exercises replicating the kind of teaching that might be done by an earnest preceptor. In this, too, Hoffman seemed more ambitious than Wythe.

### *L. Harvard*

In 1815, Isaac Parker, the Chief Justice of Massachusetts, was appointed Royall Professor at Harvard College and commenced a series of lectures on public law and moral philosophy.<sup>339</sup> Congregationalist Harvard thereby became the last of the colleges existing at the time of the Revolution, among those ever to do so,<sup>340</sup> to provide instruction in law.

---

336. See A. SUTHERLAND, *THE LAW AT HARVARD* 55 (1967); Pound, *The Scope and Purpose of Sociological Jurisprudence* (pts. 1, 2 & 3), 24 *HARV. L. REV.* 591 (1911), 25 *HARV. L. REV.* 140 (1911), 489 (1912).

337. See J. FRANK, *LAW AND THE MODERN MIND* (1930); K. LLEWELLYN, *THE BRAMBLE BUSH* (1930); cf. L. GREEN, *JUDGE AND JURY* (1930) (examining pragmatic aspects of tort law, including how the judicial process handles litigation in the tort field).

338. See D. HOFFMAN, *supra* note 328, at 413-51.

339. S. MORISON, *THREE CENTURIES AT HARVARD* 238 (1964).

340. Others existing in some form at the time of the Revolution were the College of Charleston, founded in 1770; the University of Delaware, founded in 1743; Hampden-Sidney College, founded in 1776; Moravian College, founded in 1742; and Salem College, for women, founded in 1772. Rutgers and Georgetown were operating as academies during the war.

Harvard's laggard spirit cannot be explained with confidence. Possibly, Harvard made an attempt to establish a professorship in law as early as 1785, but evidence of this is very slender.<sup>341</sup>

Although Harvard Law School historians Charles Warren and Arthur Sutherland attribute the delay to a lack of funding, Harvard's receipt of the Isaac Royall bequest in 1781, an endowment for "a Professor of Laws," belies such an assertion. This was the only such endowment in the country. Although the necessarily substantial liquidation of the Royall land required fifteen years and was not complete until 1809,<sup>342</sup> by 1796 the Royall endowment was probably drawing interest greater than the salaries of law professors at other schools.

Other Harvard characteristics provide more likely explanations for the school's delay in participating in legal education. For one, perhaps on account of its relative age, the college was even more fixed than other American colleges in its educational mission to train religious leaders: "[It] was a little realm as fixed and final as a checker-board. The squares of the various studies were plainly marked, with straight lines and indisputable corners."<sup>343</sup> Associated with this curricular and intellectual rigidity was a noticeable tendency of students to resist the instruction program.

Harvard's president during the early Revolutionary War years was Samuel Langdon, described by Samuel Eliot Morison as a "complete failure."<sup>344</sup> Among his burdens was the failure of the university treasurer, John Hancock, to remit any interest on the endowment funds entrusted to him after 1774.<sup>345</sup> Langdon resigned in 1780 after an elected student committee advised him that "as a President, we despise you."<sup>346</sup>

---

341. Charles Warren reports that Theophilus Parsons, a Boston lawyer known to his colleagues as "The Awfulest Parsons," and who served as Chief Justice of Massachusetts from 1806 to 1813, was offered a professorship of law. The only evidence of such an offer, however, was a reference in the memoir of Chief Justice Parson's son that is not confirmed by any official record of Harvard University. 1 C. WARREN, *supra* note 99, at 283-84.

342. A. SUTHERLAND, *supra* note 336, at 40-42.

343. V. BROOKS, *THE FLOWERING OF NEW ENGLAND 1815-1865* 38 (1940).

344. S. MORISON, *supra* note 339, at 163.

345. *Id.* at 153-56. The matter became acutely sensitive after Hancock became governor and ex officio overseer. Hancock was indignant over Harvard's efforts to recover its property, which was at last received from Hancock's estate in 1795.

346. *Id.* at 162.

The austere Joseph Willard succeeded Langdon. Willard was responsible for the establishment of a "Medical Institution" in 1783.<sup>347</sup> Although a freestanding part of the university, the medical school set out to prove its Harvard mettle by conducting its inaugural ceremony wholly in Latin.<sup>348</sup> Student disorders of impressive dimensions confronted Willard during most of his twenty-four years at Harvard's helm.<sup>349</sup> The disorders included the throwing of knives and clubs at faculty members, and threats to burn Willard's house, with the most serious disorder occurring in 1791 when the university threatened the students with examinations.<sup>350</sup> Willard developed a technique of rustivating the exceptionally disorderly, much in the manner of a czar. When he died in 1804 as the last of the doctrinaire Calvinists, Willard left the university in the hands of the Unitarians, the now prevalent religion of the Massachusetts elite.<sup>351</sup>

After 1804, Harvard's intellectual rigidity diminished in the face of a growing Unitarian influence. Morison dubbed the presidencies of Samuel Webber, John Kirkland and Josiah Quincy, from 1806 to 1845, Harvard's "Augustan Age."<sup>352</sup> During the early years of that period, the college's curriculum remained predominantly classical: rigorous and combative, an inducement to thinking and to the development of literary skill, but narrowly restricted in content. Professor Levi Hedge's instruction in logic, for example, was viewed as "the Muse of Law."<sup>353</sup>

The Unitarian influence could have made Harvard more receptive to developing political as well as religious leaders. The earlier intense Calvinism of Harvard may, however, have been an obstacle to the idea's reception, for New England Calvinists did not share Jefferson's optimism regarding education's contributions to the development of public virtue.<sup>354</sup> There is no evidence, however, that

---

347. *Id.* at 170.

348. *Id.*

349. *Id.* at 175-76.

350. *Id.* at 188-91.

351. *Id.* at 187.

352. *Id.* at 193, 195.

353. V. BROOKS, *supra* note 343, at 37-41.

354. See J. DIGGINS, *THE LOST SOUL OF AMERICAN POLITICS* 69-99 (1984).

the shift to Unitarianism opened the institution to any Jeffersonian ambition to train public leaders.

Even Massachusetts' religious liberals remained staunch Federalists to the end.<sup>355</sup> Although the Boston patricians who created and sustained Harvard had been revolutionaries, whether they at any time accepted the conception of government set forth in the Declaration of Independence, even to the extent of regarding the people as the source of sovereignty, is not clear. Many likened the Boston of the time to Edinburgh,<sup>356</sup> one of the similarities being a shared if grudging attachment to the English Crown.

At least one Harvard patron was literally royalist. Isaac Royall, who endowed the law professorship in 1781, was himself a loyal Tory who had fled America during the Revolution, never to return.<sup>357</sup> Royall left Harvard property that he would have had great difficulty recovering, if he could have recovered it at all.<sup>358</sup> This is why Harvard took so long to assemble the proceeds of Royall's gift. Using Royall's endowment to pursue a revolutionary republican idea may have seemed inappropriate, had Harvard otherwise been so inclined.

New England anglophilia had its counterpart in francophobia. Thus, New England felt keenly the excesses of the French Revolution, many believing that "the mark of a wise and good man was that he abhorred the French Revolution, and believed democracy to be its cause."<sup>359</sup> Harvard students appeared especially demonstrative of their hostility to Jacobinism and any American apologists.<sup>360</sup> One Harvard luminary recalled of these times "that, as a boy, he had heard with utter amazement,—as if such a thing could scarcely be conceived,—the remark of an old Bostonian, 'A Democrat may be honest in his convictions.'"<sup>361</sup> Such a political environment was not a fertile one in which to plant Jefferson's conception of university legal education.

---

355. S. MORISON, *supra* note 339, at 164.

356. V. BROOKS, *supra* note 343, at 7, 90-91.

357. A. SUTHERLAND, *supra* note 336, at 39.

358. I. C. WARREN, *supra* note 99, at 279-81.

359. I. H. ADAMS, *HISTORY OF THE UNITED STATES* 82 (1863).

360. S. MORISON, *supra* note 339, at 185-87.

361. V. BROOKS, *supra* note 343, at 130 n.\* (quoting William Henry Channing).

Action taken by Harvard when at last it made its start eliminated any doubt regarding the school's political leanings with respect to law teaching. During the War of 1812,<sup>362</sup> the Massachusetts gentry represented on the Harvard governing board were "100 percent anti-war."<sup>363</sup> Never popular among northern citizens engaged in trans-Atlantic commerce, the War of 1812 had become very unpopular early in those regions that had expected to benefit from the anticipated union with Canada, for it soon became clear that no such union would occur.<sup>364</sup> Partly on the advice of its Supreme Judicial Court, Massachusetts refused to send troops to support "Mr. Madison's War."<sup>365</sup> Josiah Quincy, the state's senior representative in Congress in 1813 and later President of Harvard, led vitriolic attacks on Madison and Henry Clay, the Speaker of the House of Representatives, for supporting Madison.<sup>366</sup>

Daniel Webster represented Massachusetts in actively opposing the war, and he "imbibed"<sup>367</sup> the spirit of the Hartford Convention of 1814, an event that seemed to threaten New England secession. New England Federalists seriously proposed a new union that would have excluded all but the original thirteen states.<sup>368</sup> They exulted over Napoleon's 1813 defeat in Russia, even though France was allied then with the United States.<sup>369</sup>

The law professor finally appointed to the Royall chair was a native Bostonian, Isaac Parker; he had graduated from Harvard, served in Congress for a term, and practiced in Falmouth (now Portland, Maine).<sup>370</sup> Harvard awarded him an honorary degree in 1814 in recognition of his service as Chief Justice of Massachusetts, and in particular, his advice to the governor to withhold the militia requested by President Madison.<sup>371</sup>

---

362. For a brief account of the war, see M. PETERSON, *THE GREAT TRIUMVIRATE* 38-46 (1987).

363. S. MORISON, F. MERK & F. FRIEDEL, *DISSENT IN THREE AMERICAN WARS* 6 (1970).

364. See M. PETERSON, *supra* note 362, at 39.

365. *Id.*

366. *Id.* at 40.

367. *Id.* at 44.

368. S. MORISON, F. MERK & F. FRIEDEL, *supra* note 363, at 18, 22.

369. See *id.* at 38-46.

370. 1 C. WARREN, *supra* note 99, at 292.

371. S. MORISON, F. MERK & F. FRIEDEL, *supra* note 363, at 6.

Parker was said to be “‘good-natured’” and “‘lazy,’”<sup>372</sup> or “‘naturally disinclined to labor,’”<sup>373</sup> but intelligent enough to be a respectable judge on a court with a light docket. As evaluated by Arthur Sutherland, a Harvard law professor of the mid-twentieth century, Parker’s lectures were few, broad and shallow.<sup>374</sup> He resigned on request in 1827.<sup>375</sup> Meanwhile, Harvard had established in 1817 a different program, one having aims distinct from those of the revolutionaries who had first established university legal education in America. Not until 1829, with the appointment of Joseph Story as professor of law, would Harvard be influenced in any degree by the Jeffersonian idea.

### CONCLUSION

The conception of university legal education as a means of nurturing public virtue and the traits needed for effective republican leadership failed to take root in the Northeast. Columbia and the University of Pennsylvania earnestly tried, and Yale, Princeton, Dartmouth, Brown, Middlebury and Vermont manifested the aspiration. Columbia, Yale and Princeton would renew their efforts at the time of the Revolution.

This regional disappointment caused some historians to pronounce the failure of the vision of Jefferson, Kent, Wilson, Wythe, Tucker, Clay and others. Charles Warren, the first serious historian of legal education in America, thus chose to regard the events described here as scarcely worthy of reporting.<sup>376</sup> For him, the beginnings were at Harvard, or perhaps at the proprietary school at Litchfield, Connecticut, where the conception of legal education for profit first appeared.<sup>377</sup> Possibly Warren came to such a conclusion because he was writing on the banks of the Charles River, because he was the historian of the Harvard Law School, or because he simply perceived the university legal education that he observed in

---

372. 1 C. WILLIAMS, *THE LIFE OF RUTHERFORD BIRCHARD HAYES* 36 (1914) (quoting Joseph Story’s remarks to his student, Rutherford B. Hayes).

373. A. SUTHERLAND, *supra* note 336, at 49 (quoting William Sullivan).

374. *See id.* at 52.

375. *Id.* at 81.

376. “It will be readily seen that none of these professorships attempted to afford a complete or practical education for law students.” C. WARREN, *supra* note 24, at 357.

377. *Id.*



Cambridge at the turn of the twentieth century to be the appropriate norm by which to judge all efforts to teach law in universities. In any case, later scholars toiling in the same vineyard, including such perspicuous observers as Alfred Reed,<sup>378</sup> Brainerd Currie<sup>379</sup> and Robert Stevens,<sup>380</sup> generally accepted Warren's estimate of the insignificance of these efforts.

Warren's estimate was a miscalculation.<sup>381</sup> The idea Jefferson and others acquired from Montesquieu survived, not only at William and Mary, but elsewhere in the South and the Midwest. The direct institutional offspring of William and Mary, the Transylvania University Law Department, would be the idea's flagship until the Civil War, when Transylvania would pass the torch to others, particularly the state university law schools in the Middle West.<sup>382</sup> The idea's influence in time would be felt not only in institutions organized to propagate it, but even in those that were not, such as Harvard and University of California. Assuredly, the idea would meet stiff competition from other notions that have often manifested superior influence over the minds of lawyers, educators and students. Little celebration would accompany the victories for the idea of teaching law as public virtue. Yet, as I shall strive to show in later work, George Wythe's values, the values that brought American universities to law, abide today in every law school in America.

---

378. See A. REED, *supra* note 166, at 112-27.

379. See Currie, *The Materials of Law Study*, 3 J. LEG. ED. 331 (1951).

380. See R. STEVENS, *LAW SCHOOL* (1983).

381. See McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U.L.Q. 597, 606-08 (1981). Professor McManis makes the point that early law teaching at William and Mary, Columbia and Pennsylvania was "broader" than the "narrow" teaching provided at Harvard and celebrated by Warren. *Id.* at 620-37.

382. An account of the law department at Transylvania will be published in a forthcoming issue of the *Mercer Law Review*. See Carrington, *Teaching Law and Virtue at Transylvania University: The George Wythe Tradition in the Antebellum Years*, 41 MERCER L. REV. — (1990).