

1981

Another Chapter in the History of Marshall-Wythe

William F. Swindler

William & Mary Law School

Repository Citation

Swindler, William F, "Another Chapter in the History of Marshall-Wythe" (1981). *Faculty Publications*. 1592.
<https://scholarship.law.wm.edu/facpubs/1592>

Copyright c 1981 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/facpubs>

Another Chapter Marshall

By Dr. Will

For more than 260 years--from early in the eighteenth century to the final quarter of the twentieth--there has been a traditional relationship at the College of William and Mary between advanced studies in "liberal learning" and the professional preparation for the practice of law. The bicentennial of the formal chair of law in 1779, observed in a series of academic events during the 1979-80 year and climaxing in the occupancy of the new law building in the summer of 1980, may best be understood as a watershed--on the one hand, offering a perspective back to the earliest days of the College itself, and on the other hand, looking to the changing professional needs of the future.

Part of the uniqueness of the new Marshall-Wythe building derives from this retrospective and prospective character. Dominating the main foyer of the building are the two colored-glass panels representing Sir William Blackstone and Sir Christopher Wren, gifts of the faculty of law at All Souls College, Oxford, in recognition of the bicentennial of American legal education. Through the doorways between these panels, themselves reminders of the beginnings of legal education, may be seen the National Center for State Courts, a unique agency committed to the study of practical means of improving the administration of justice in all of the states for the future.

Blackstone and Wren are former fellows of All Souls with close ties to the William and Mary story: Wren, the great English architect, is credited with the basic sketches for a "colledge" building which were then "adapted by certain gentlemen of the country" (i.e., colonial builders). Blackstone, the first occupant of the Vinerian chair of English law, and author of the classic *Commentaries on the Laws of England*, was, along with his chair, the model in large part for the pioneer chair of law at the Williamsburg institution 21 years later. A small brass plate adjacent to the "Oxford windows" describes the circumstances under which the All Souls faculty arranged to make the gift of the windows early in 1978.

But the association of advanced studies and professional training goes back earlier than that, as a companion brass plate indicates. At the end of the seventeenth century, when the College was first chartered, the Virginia colony was emerging from its raw frontier character into something of a settled tidewater society, with growing commerical economy and the need for professional leaders in law and government. For those who could afford it, and had the ambition to do it, the reading of law at one of the Inns of Court in London was a logical means of getting a "head start" in what was beginning to be a highly competitive society. Taking advantage of the new



n the History of -Wythe

3. Swindler

educational institution--a "grammar" or preparatory school complemented by what was a standard two-year course of university-level study -- colonials could go to London equipped to hold their own with students from Oxford and Cambridge also enrolling at one of the Inns of Court.

One of the earliest William and Mary students to undertake this sequence of preparation was John (later Sir John) Randolph, one of seven sons of William Randolph of "Turkey Island," who attended the William and Mary preparatory and, probably, university courses of study between 1705 and 1713. Randolph then traveled to London and entered Gray's Inn on May 17, 1715. His "pre-legal" education, as well as some practical legal experience he had between 1713 and 1715, paid dividends; Randolph was called to the bar of the Inn two years later, well ahead of the normal three-year study period; and by 1718 he was back in Virginia ready to take his place among his professional peers.

The Randolph tradition--one family's example among others--substantially contributed to the identification of advanced study and the law at William and Mary. Sir John's sons, Peyton the Patriot and John the Loyalist, both followed their father's example of study at the College and qualification for the bar at the Inns of Court. His grandson Edmund--later to become the first Attorney General of the United States--also attended the College, but read his law under his father and uncle; for now, on the eve of Independence, there were changes in the common law as practiced in Virginia which foreshadowed the need for an "Americanized" course of study.

In the Jefferson (rare book) Room of the law library are portraits of Sir John Randolph and his grandson, Edmund, visually commemorating the earliest association of law and education at William and Mary. Also in this room are representations of Thomas Jefferson and John Marshall (both Randolph kinsmen), in whose careers the transition to an "Americanized" law and a course of study in "Americanized" common law was to begin. Jefferson recognized that the knowledge of the English parent stock was essential; in writing about reading for the bar, early in the nineteenth century, he urged four treatises as fundamental--Bracton, for the common law as it was epitomized in medieval times; Sir Edward Coke, for the beginning of the Stuart age; Matthew Bacon, for the state of the law after the Restoration; and Blackstone, for the "modern" law.

But Jefferson also recognized that an American law was essential for practical legal study--and who better to offer instruction in such law than his own mentor, George Wythe, who with Jefferson had been



responsible for most of the famous "revisal" of the common law after the Revolution? So Wythe, an experienced tutor for a generation of aspirants to the bar before the chair of law was established, was the logical choice to be the first professor of law in the United States. Marshall, one of his first students, read his law from Bacon, one of Jefferson's recommended books--and St. George Tucker, who succeeded Wythe a decade later as second professor of law, would prepare the first American notes to Blackstone.

The Jefferson Collection in the rare book room will, when it is completed, replicate the law library of Jefferson himself, much of it undoubtedly collected under the guidance of Wythe. But the rare book room will also preserve the artifacts and mementoes of earlier legal studies associated with William and Mary--photostats of the admissions of Sir John Randolph and his sons to the Inns of Court, and eventually a facsimile reproduction of the Randolph "commonplace book" used at Gray's Inn in 1715.



Marshall-Wythe's Jefferson Rare Book Room

The William and Mary chair was quite consciously modeled after both the Vinerian chair at Oxford, and the practical training offered by the Inns of Court. St. George Tucker--who had been originally intended for enrollment at the Middle Temple--in his 1803 introduction to the "American Blackstone," wrote that until the *Commentaries* were published, "the students of law in England, and its dependencies, were almost destitute of any scientific guide to conduct their studies." He added that "even in those Inns of Court whither those who sought to acquire a knowledge of the profession, generally repaired for instruction," teaching materials were sparse.

Since the pragmatic American approach, of necessity in colonial times, had been to merge activities which in the mother country had developed separately--law and equity actions were heard in the same court, although on different court days; and the distinction between solicitors (office practitioners) and barristers (trial

lawyers) was never followed--it was logical to merge the two elements of legal education. Thus the university-level study of law introduced at Oxford in 1758, and the formal apprenticeship represented in such centers as Gray's Inn or the Temple, simply became two parts of the same program in the William and Mary law curriculum. This was quite clearly set out in the formal university "statutes" for the law degree, which stipulated a course of study embracing history, law and government as well as practical examinations in specific subject-areas of the profession.

The demand for instruction in the new American law began to spread in the generation after independence: Justice James Wilson of the Supreme Court offered a series of lectures, primarily on the Constitution, at the University of Pennsylvania; Tapping Reeve's famous proprietary school at Litchfield, Connecticut, appeared soon after the William and Mary chair; law was an element in the opening curriculum of the University of Virginia in 1819; and the most famous chair to be occupied by a jurist was probably the Dane Professorship at Harvard, expressly created for Joseph Story in the early 1830s. For twenty years there was a renowned proprietary law school in Cumberland County, Virginia, founded in 1821 by Judge Creed Taylor; and another was operated in Winchester by one of St. George Tucker's sons, Henry.

Another Tucker son, Beverley, brought the pre-Civil War law program at William and Mary to its apogee in the 1830s and 1840s. Beverley, a committed states-rights constitutionalist, indeed gave his name to the so-called "Southern school" of legal education in this ante-bellum period. The curriculum was as exacting as ever; the catalog for 1839-40 stipulated required reading in Vattel's *Law of Nations*, the famous *Federalist* essays on the Constitution, St. George Tucker's American notes on Blackstone, Kent's *Commentaries*, Stephens on Pleading and Starkie on Evidence. In addition, said a course description: "A sort of moot court is contrived by devising cases which the students are required to conduct to issue; and which are generally so managed as to lead to an issue of law; on which briefs are handed in, argument heard, if necessary, and judgments pronounced."

The crippling effects of the Civil War on the College in general, and the law program in particular, forced a hiatus of sixty years in the historic law program. The modern period dates from a revival in 1922. The third century began with the opening of the new building in 1980.

Dr. William F. Swindler is John Marshall Professor of Law, Emeritus, at the Marshall-Wythe School of Law. Professor Swindler, a prolific author in the field of legal history, had his most recent book, *The Constitution and Chief Justice Marshall*, published in 1979. He is now preparing a three-volume series of studies on the Bicentennial of American Legal Education.