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One Hundred Eightieth Anniversary Feature: William and Mary: America's First Law School

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ONE HUNDRED EIGHTIETH ANNIVERSARY FEATURE

WILLIAM AND MARY: AMERICA'S FIRST LAW SCHOOL

Numerous articles have been written purporting to prove that certain schools deserve the title of "First Law School in America." This is an attempt to clarify, if not to dispose of this problem, to the satisfaction of most parties. At the same time, many interesting historical facts are assembled for the reader's perusal and subsequent decision on this question. I feel my objective is merely to unite the facts in point and relate them to the reader in as orderly a fashion as possible. In order to first acquaint the reader with a basic and brief history of the period involved, I shall cite the lead paragraph from an article¹ by D. W. Woodbridge, Dean of the Marshall-Wythe School of Law of the College of William and Mary in Williamsburg, Virginia.

"In the year 1758, Sir William Blackstone filled the first chair (Vinerian chair) of common law in the English speaking world at Oxford University. The first chair of law in this country was established at the College of William and Mary, December 4, 1779. This was some two or three years before the opening of the school at Litchfield, Connecticut, around 1782, by Judge Tapping Reeve (though Judge Reeve had taught his brother-in-law, Aaron Burr, and several others before that date in his own home), eleven years before James Wilson was chosen as the first professor of law in the University of Pennsylvania (1790), thirty-six years before law was taught at Harvard (1815), and forty-six years before the first forensic club or law school opened its doors in Charleston, South Carolina (1825)."

This statement of facts then now brings us to the problem at hand. I shall first deal with the Litchfield School in Connecticut which, it is fairly well settled, was founded in 1782. Young men prior to this time usually obtained their legal

¹ D. W. Woodbridge, *America's First Chair of Law*, May-June 1956, Case and Comment, p. 8.

education by serving as clerks in lawyer's offices. More legal form than legal substance was gleaned from this manner of study. Tapping Reeve, however, gave the embryonic lawyers in his office more than these customary bits of practical advice. The result was that his method of instruction attracted many young men seeking legal training. About 1782, he commenced the delivery of a series of formal and connected lectures. It is here in most everyone's opinion that the office of Judge Reeve first took on a new character, namely, that of a law school. Due to a steady increase in the number of young men flocking to his lectures, Judge Reeve was forced to erect a small building, in 1784, to serve as a lecture hall. There seems to be little doubt that this small building was the first "structure" in America exclusively dedicated to the teaching of law.² This last statement appears to be in accord with an article by Elizabeth Muhlfeld in which her opening sentence is: "Litchfield Law School, the first institution in America *expressly established* [emphasis added] for the study of law, was founded by Tapping Reeve—a lawyer by profession and a teacher by nature."³

William and Mary makes no claim to having the first law building or being the first institution which was expressly established for law study only. Its claim is instead simply that the College of William and Mary is the first law school in America. This then transcends the Litchfield contention and is not concerned with the technicality of the first "structure."

In August 1920, the Honorable Robert M. Hughes of Norfolk, Virginia, and James P. Woodruff of Litchfield, Connecticut had a battle of letters which received attention in the *New York Times*. An editorial had been written commemorating the "Litchfield Bicentenary" in which Judge Reeve's law school, was entitled "the first of American law schools." Mr. Hughes thereupon took issue to this statement in a letter to the Editor appearing August 9, 1920, in the *New York Times*. Not to be outdone, Mr. Woodruff reciprocated with a statement quoted from an address delivered by Judge Simeon

² S. H. Fisher, *The Litchfield Law School*, Committee on Historical Publications, Yale University Press, 1933, pp. 3, 4, 23.

³ E. Muhlfeld, *Litchfield: America's First Law School*, July-August 1959, Case and Comment, p. 40.

E. Baldwin, on Sunday, August 1, 1920, at Litchfield, Connecticut. This address which appeared in an August 20, 1920 issue of the *New York Times*, is as follows:

William and Mary College in Virginia had indeed established a professorship in law during the Revolutionary War, in 1779. George Wythe was the first professor, and John Marshall, the great Chief Justice, one of his first pupils. But here law was taught in a college as one of the several branches of a liberal education, not as a profession to be studied as a preparation for the bar. Bushrod Washington, afterward an Associate Justice of the Supreme Court of the United States, took his bachelor's degree at William and Mary College in 1778, but far from deeming the general education received there as a sufficient legal education, went to secure that into the office of James Wilson in Philadelphia.

The argument seemed to lapse after Mr. Hughes answered the preceding letter with the following conclusion which also appeared in the *Times*:

The fact that law work is counted as part of an academic course does not take away its character as law work. Law books were few and law preparation meagre then as compared with present conditions. Notwithstanding Judge Baldwin's assertion, the course at William and Mary was studied as a preparation for the bar, and was not followed by any other except, of course, in many cases a further reading in a lawyer's office—a practice not unknown now. During the existence of the William and Mary law course twenty-five out of forty-three judges of the Virginia Court of Appeals received their legal education there. The immediate successor to Wythe was St. George Tucker, whose edition of Blackstone was his textbook. An examination of it and of Tucker's supplementary notes shows the legal character of the course.

Mr. Woodruff's letter was attempting to get around William and Mary's priority by the contention that the course was

merely a part of a "liberal education" and not intended as preparation for the practice of law. Letters from Wythe's students, however, seem to disprove this contention. One such letter follows, the others are elsewhere included.

In a letter of Richard Henry Lee to his brother, Arthur, dated April 24, 1780 (Ballagh's letters of Richard Henry Lee, vol. 2, p. 177), he says:

Our worthy and learned friend, Geo. Wythe esquire is now professor of Law in William and Mary College —his lectures are greatly admired.

Incidentally, it was in this year of 1780, that Wythe's law class numbered about forty young men.⁴

As Mr. Hughes points out, many took law at William and Mary, however, who had not taken the academic course. Some came there to take law after having taken an academic course at other colleges.

In a remarkably inaccurate letter appearing in the January, 1931 issue of *The Law Student*, p. 17, Mr. Walter Mack of Indianapolis refers to Aaron Burr as becoming Judge Reeve's first student in 1776. This date should be, however, 1774 because it was in the next year that Burr went to fight in the Revolution.⁵ Other inaccuracies are not in point here but Theodore S. Cox, Professor Jurisprudence and Head of School at the College of William and Mary nevertheless answered and corrected Mr. Mack's letter.⁶ Mr. Cox concluded his letter with a most apt paragraph concerning Aaron Burr's being Tapping Reeve's first student. He said:

That private instruction in law was given in the United States prior to Chancellor Wythe's appointment to the faculty of the College of William and Mary undoubtedly is true, but to maintain that Judge Reeve

⁴ Tyler, *Great American Lawyer*, vol. 1, pp. 69, 72.

⁵ 3 Dictionary of American Biographies, pp. 314-315.

⁶ October 1931, *The Law Student*, p. 15.

by teaching his brother-in-law (Aaron Burr), thereby became the first professor of law in the United States and his home the first law school seems extravagant.

For that matter if the above allegation were true it could be readily negated by the fact that, in 1764, Jefferson studied law in Wythe's office in Williamsburg.⁷ He, too, then could easily qualify under this "private instruction" rule if it were indeed a valid one.

University of Pennsylvania or William and Mary?

Another source of disagreement as to the first law school in America was commenced in a series of letters between Mr. Hughes of Norfolk, Virginia and the Honorable Hampton L. Carson of Philadelphia, Pennsylvania. In this series Mr. Hughes vouched for the precedence of William and Mary as the first American law school. The facts show that Mr. Carson wrote an article on James Wilson and James Iredell which was published in the *American Bar Association Journal*, March, 1921. In this article it was maintained that,

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

To this statement Mr. Hughes joined issue. He proceeded to cite contemporaneous documentary evidence which he felt demonstrated "that the first law school in America of any character public or private was established at the College of William and Mary in Virginia in 1779."⁸

The following citations which appeared in Mr. Hughes' article are of interest: Jefferson says in his autobiography:

On the 1st of June 1779, I was elected Governor of the Commonwealth, and retired from the Legislature.

⁷ E. Ruffin, *The Raleigh Tavern in Williamsburg*, 14 *William and Mary Quarterly*, 1st ser., p. 214.

⁸ R. H. Hughes, *William and Mary, The First American Law School*, 2 *William and Mary Quarterly*, 2d ser., pp. 40-48.

Being elected also one of the Visitors of William and Mary College, a self-electing body, I effected during my residence in Williamsburg that year, a change in the organization of that institution, by abolishing the Grammar School and the two professorships of Divinity and Oriental Languages, and substituting a professorship of law and police, one of Anatomy, Medicine and Chemistry, and one of Modern language.

George Wythe was the first law professor at William and Mary and had active charge until his resignation in 1789. Wythe had risen rapidly in the legal profession and, at the age of 28, had been appointed Attorney General of the Colony, the youngest Attorney General Virginia had ever had. In 1775, he was a member of the Continental Congress and, in 1776, he was one of the signers of the Declaration of Independence. In 1777, the High Court of Chancery of Virginia was established, and Wythe was elected as one of its three judges.

Wythe is also known as one of the first judges to enunciate the doctrine of judicial review. This he did in *Commonwealth v. Caton*, 4 Call 5, (1782), when he declared a legislative act unconstitutional.

Among his most distinguished pupils were John Marshall, Spencer Roane, John Breckenridge, Thomas Jefferson, James Monroe, Henry Clay and Edmond Randolph. (Some of the aforementioned studied under Wythe before his appointment to professorship at William and Mary.) Wythe's course which was both thorough and practical was based on Blackstone as a textbook and lectures comparing English and Virginia law. Those lectures were in existence in manuscript form as late as 1810, for they are described in a letter of the first Governor Tyler to Jefferson.⁹ But the character of his instruction is abundantly shown by contemporaneous letters.

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

⁹ Letters and Times of the Tylers, vol. 1, p. 249.

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

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

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

In a letter dated July 6, 1780, John Brown says:

Mr. Wythe, ever attentive to the improvement of his pupils, founded two institutions for that purpose, the first is a Moot Court, held monthly or oftener in the place formerly occupied by the General Court in the Capitol. Mr. Wythe and the other professors sit as judges. Our audience consists of the most respectable of the citizens, before whom we plead causes given out by Mr. Wythe. Lawyer like, I assure you. He has form'd us into a Legislative Body, consisting of about 40 members. Mr. Wythe is Speaker to the House and takes all possible pains to instruct us in the Rules of Parliament. We meet every Saturday and take under our consideration those Bills drawn up by the Committee appointed and alter (I will not say amend) with the greatest freedom. I take an active part in these Institutions and I hope thereby to rub off that natural bashfulness which at present is extremely prejudicial to me. These exercises serve not only as the best amusement after severer studies, but are very useful and attended with many important advantages.

Mr. Hughes further outlines the history of the college:

Wythe removed to Richmond in 1791, on account of the fact that he had been made sole Chancellor; and his place had been filled by St. George Tucker, the author of *Tucker's Blackstone*, which, so far as my sources of information go, was the first legal textbook published in America. His annotations show fairly well the character of the course at William and Mary at that time. (*Tucker's Blackstone* was published in five volumes in 1803 by William Young Birch and Abraham Small of 17 South Second Street, Philadelphia. Robert Carr was the printer. The set contained Tucker's opinions on Federal and Virginia Constitutions and is considered by many persons to be the earliest distinctive law book published in the United States.)

The William and Mary law school is also notable as having gone on record in its infancy in favor of requiring an academic degree as a condition of a law degree. In the compilation of the College statutes, published in 1792, it was provided:

For the degree of Bachelor of Law, the Student must have the requisite for the Bachelor of Arts; he must, moreover, be well acquainted with civil history, both Ancient and Modern, and particularly with municipal Law and police.

Mr. Hughes concludes his historical discussion with the fact that the law department had continuous existence until 1861. The Civil War caused a complete shut down of the College. In 1922, the law school was again opened and has remained so ever since.

In answer to the facts presented in the aforementioned article, the following correspondence took place between Mr. Hughes and Mr. Carson:

March 31, 1921

ROBERT M. HUGHES, ESQ.,
Plume & Granby Streets,
Norfolk, Va.

MY DEAR MR. HUGHES:

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

The evidence on which I rely in making this statement is as follows: The Minutes of the Board of Trustees of the University of Pennsylvania of July 10th, August 6th, 10th, 14th, 1790, disclose the formal establishment of the Professorship of Law, and the election on August 17th of James Wilson. It was a contested election and not a private appointment as in the case of the appointment of Wythe by Jefferson. On October 26, 1790, there was *published* in the *Pennsylvania Packet and Daily Advertiser* an account of the establishment of the Professorship. The plan of the Law School as sketched by Justice Wilson was printed in full in the columns of the *Packet*. On the 15th of December, 1790, the Introductory Lecture by Wilson was delivered to a large audience in Philadelphia, then the National capital, in the presence of President and Mrs. Washington, the members of the Cabinet, the Congress of the United States, State officials, and citizens of Philadelphia. The proceedings, inclusive of the address, were published in *The Universal Asylum and Columbian Magazine for 1791*, Vol. 1, page 9 *et seq.*: also in *The American Museum or Universal Magazine*, 8th Vol., page 259. The Introductory Lecture was separately published in pamphlet form by T. Dobson, to which was added a plan of the Lectures. The Lectures were delivered in 1791-92, and were subsequently gathered together with other works of Wilson by his son, Bird Wilson, Esq., in 1804.

I am in possession of all this evidence.

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

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

I am

Yours very truly,

HAMPTON L. CARSON

HLC/D

* * * *

Norfolk, Virginia, April 8, 1921

HON. HAMPTON L. CARSON
Philadelphia, Pa.

DEAR MR. CARSON:

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

Your emphasis, if I understand you correctly, is placed not on the question of priority as between the Wythe and Wilson Schools but on the question of publicity. You first vouch the minutes of the Pennsylvania Board of Trustees showing the establishment of the school and the election of Wilson in 1790. Unfortunately the records of the William and Mary Board were destroyed when the College was burned. But the

fire did not undo the fact, though it entitles me to use secondary evidence. The first which I submit is the record of the Faculty Book of that date which is in existence. It recites under date of December 29, 1779:

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

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

“George Wythe, Professor of Law & Police.

“James McClurg, Professor of Anatomy & Medicine.

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

“Charles Bellini, Professor of Modern Languages.

* * * *

“For the Encouragement of Science,

“Resolved, That a Student on paying annually one thousand pounds of tobacco shall be entitled to attend any two of the following Professors, viz.: of Law & Police, of Natural Philosophy and Mathematics, & of Moral Philosophy, the Laws of Nature and Nations & of the Fine Arts, & that for fifteen hundred pounds he shall be entitled to attend the three said Professors . . .”

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

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

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

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

The Statute of the William & Mary Board establishing the Wythe professorship was printed in the *Virginia Gazette* of December 18, 1779.

In Query 15 of Jefferson's Notes on Virginia (the first edition of which was printed in 1787) it is described and stated to be the action of the Visitors.

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

The preface to Wilson's lectures shows that only a part of those printed were ever delivered. If the plan given in vol. 1, p. 41, is the one which was published in the *Packet*, the lectures even as printed, fell far short of it. They are practically limited to governmental and criminal law. There is nothing on the four personal relations, nothing on real estate, and nothing on pleading.

Wythe on the other hand covered all. His work in his moot court and parliament could not be printed from its very nature. His other lectures were in writing and in existence in 1810. While posterity may have suffered from their loss, his classes did not.

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

In short, the difference is that the Wythe lectures were given though never published, while the Wilson

lectures though posthumously published, were never given, except in part.

Yours sincerely,

ROBERT M. HUGHES

* * * *

The particular issue of the Virginia Gazette referred to above in Mr. Hughes' letter can be found in the Archives of the Virginia State Library, Richmond.

Yet another question which occasionally arises is, what is the "oldest" law school in America? By this is meant, which school has had the longest continuous existence. This is a matter which I prefer not to pursue, however, as my theme throughout is based on the "first" law school.

These then are the sources for my article from which I have drawn the following resolutions: 1) Resolved: William and Mary is the "first" law school in America and the second in the English speaking world. 2) Resolved: Litchfield has the distinction of having been the first building expressly constructed for teaching law classes as well as being the second law school in America.

FRED B. DEVITT, JR.