

# American Legal Education

## Celebrates 179th Anniversary

By Cynthia K. Baskett

Members of the American legal profession will celebrate a milestone in their history this year. December 4, 1979, marks the two hundredth anniversary of American legal education. Thomas Jefferson, while he was governor of Virginia, established the first American chair of law at the College of William and Mary. The establishment of the William and Mary chair of law and police followed by only twenty-one years the founding of the first (vinerian) chair of common law in the English speaking world at Oxford University in 1758. The occupant of the first English chair of law was Sir William Blackstone, author of *Blackstone's Commentaries on The Laws of England*.

George Wythe, styled by Jefferson as the American Aristides, was the professor elected by the College's board of visitors to occupy the chair of law and police. Among the members of the board were Thomas Jefferson, James Blair, James Madison, Edmund Randolph, Thomas Nelson, and Benjamin Harrison. Wythe was born in 1726 in Elizabeth City County, Virginia. After finishing his course at the College of William and Mary, he studied law in a law office, was admitted to the bar at the age of twenty and rose rapidly in his profession. He was a member of the Continental Congress and became the first Virginia signer of the Declaration of Independence. He also served as a member of the Constitutional Convention and later presided over some of the Virginia Convention Sessions and chairman of the Committee of the Whole. But for Wythe's services in the Convention of 1788, Virginia would not have ratified the Constitution of the United States as it stood, and the entire course of American history may have been materially changed.

**Wythe became sole high Chancellor of Virginia. In 1782, while serving on the High Court of Chancery in the case of *Commonwealth v. Caton*, 4 Call (Va.) 5 (1782), twenty-one years before the celebrated case of *Marbury v. Madison*, Wythe unequivocally stated:**



Reproduction, of portrait of Thomas Jefferson by Gilbert Stuart, Courtesy of Colonial Williamsburg.

# Legal Education

## bicentennial

*"Nay more, if the whole legislature, an event to be deprecated, should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet their united powers at my seat in this tribunal; and pointing to the Constitution, will say to them, 'here is the limit of your authority; and hither shall you go but no further'."*

This was one of the earliest known instances stating that a court may hold a legislative act unconstitutional.

Jefferson said of Wythe, "He was my ancient master, my earliest and best friend, and to him I am indebted for first impressions which have had the most salutary influence on the course of my life."

**The William and Mary chair of law and "police"** - the latter term simply meaning the complete organizational scheme of government in eighteenth century usage - was intended to train both lawyers and civil servants for the new nation. Wythe assumed his duties in 1779 and continued to serve as professor of law until 1791. From the start the new school was a success. On July 26, 1780, Jefferson wrote to Madison:

*"Our new institution at the College has had a success which has gained it universal applause. Wythe's school is numerous, 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."*

**Wythe's success as a teacher was phenomenal.** Among his students (before, during, and after he occupied the first chair of law in America) were Thomas Jefferson, James Monroe, John Marshall, Edmund Randolph, and Henry Clay. Wythe's course, which was both thorough and practical was based on Blackstone as a textbook, supplemented with lectures



Reproduction. George Wythe. "Signer's of Declaration" by William Crossman. Courtesy of Colonial Williamsburg.

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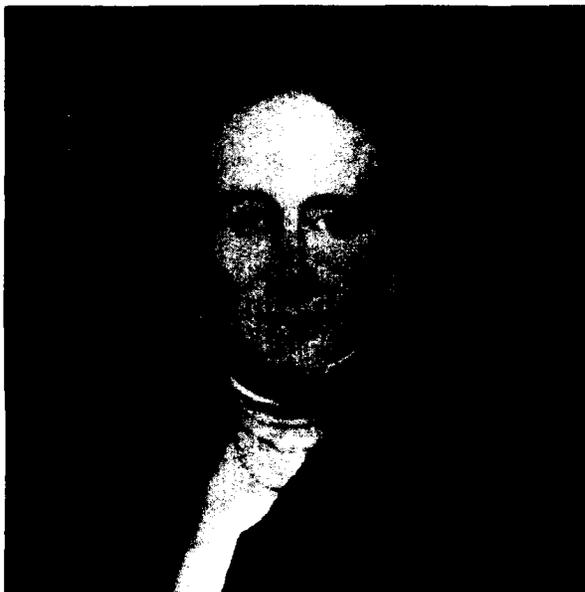
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comparing English and Virginia law. John Brown, afterwards one of the first senators from Kentucky, wrote on July 6th, 1780:

*"My 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. Lawyerlike, I assure you. He has form'd us into a Legislative Body consisting of about forty members. Mr. Wythe is speaker to the house and takes all possible pains to instruct us in the rules of Parliament."*

**Succeeding Wythe was the second professor of law, St. George Tucker, a native of Bermuda, who had been one of the last products of Wythe's preceptorship before the resolution. Tucker was interested in promoting a broad educational base for the aspiring practitioner, and during his dozen years of teaching seems to have been instrumental in establishing a formal prerequisite of a liberal arts education to qualify for the Bachelor of Laws degree. Tucker was also the author of *Tucker's Blackstone*, the first legal textbook published in America. His annotations show fairly well**



St. George Tucker

Reproduction Courtesy of the Colonial Williamsburg Foundation

the character of the course at William and Mary at that time. *Tucker's Blackstone* was published in five volumes in 1803. The set contained Tucker's opinions on the federal and Virginia constitutions and variations in American (particularly Virginia) common law doctrine.

Tucker and Wythe were followed by a distinguished line of law professors including William Nelson, Robert Nelson, James Semple, Nathaniel Beverely, Tucker, George Parker Scarborough, Lucian Minor and Charles Morris who acted until 1861 when the college was closed on account of the hostilities of the war between the states.

The twentieth century reactivation of the chair of law at the college came about on January 14, 1922 when the college formally opened the Marshall-Wythe School of Government and Citizenship. The gradual reactivation of the law program was the dream of several prominent individuals including, Dr. J.A.C. Chandler, then president of the College; Judge Oscar Lane Shewmake, Robert M. Hughes Sr., a Norfolk attorney who in 1921 published an article in the *American Bar Association Journal* entitled, *William and Mary's Pioneer American Law School*; James Goold Cutler whose generous donations helped to maintain the Marshall-Wythe School of Government and Citizenship; Judge Alton B. Parker who gave his fine law library to the college; John Garland Pollard, later governor of Virginia; and many others.

**Law schools are not made or re-made in a day.** Judge Shewmake accepted the position of Professor of Government and Law, and emphasized history, philosophy and governmental aspects. William A. Hamilton became Professor of English Constitutional History, and John Garland Pollard served as Professor of Constitutional History and Law. Shewmake resigned in 1923 and Hamilton was denominated dean of the School of Economics, Business Administration, and the Law. Pollard was named dean of the School of Government and Citizenship. In November of 1926 the Cutler Foundations grant to the latter resulted in Pollard's being named John Marshall Professor of Government and Citizenship. In 1929 Pollard resigned to run for governor and Dudley Warner Woodbridge was named to the faculty.

The mingling of the courses distributed between the business and government schools was accomplished by 1932 when the American Bar Association formally extended accreditation to the new school of Jurisprudence on December 13. In September of 1953 the name of the law school was changed from the Department of Jurisprudence to the Marshall-Wythe

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**The American Bar Association extended accreditation to the new School of Jurisprudence on December 13, 1932.**

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*Christopher Wren Building, America's Oldest Educational Building.*

School of Law in honor of these two great men.

The law school has continued to provide its students with excellent legal instruction under the administrations of such men as Dean Dudley Warner Woodbridge, Dean Joseph Curtis, Dean James P. Wythe, Acting Dean Emeric Fischer, and our current Dean William B. Spong, Jr. Over the course of the years other chairs of law have been added at Marshall-Wythe in addition to the John-Marshall Chair of Law endowed by the Cutler grant and currently being held by Dr. William F. Swindler. These include the Dudley Warner Woodbridge Chair of Law currently occupied by Dean William B. Spong, Jr.; the Tazewell Taylor Visiting Professorships in Law established in 1976, currently held by Delmar Karlen; and the Thomas Conner Atkeson Lectureship in Tax Law held by Meyer Rothwaks.

**Students, faculty, and alumni of the Marshall-Wythe School of Law have a history rich with tradition.**

American legal education has come a long way since 1779 and looks forward to an exciting future.

### **Bibliography**

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2 Wm. & Mary L. Rev. 424.

Ms. Baskett has served as editor-in-chief *The Colonial Lawyer* for the past two years. She received a B.A. from Virginia Wesleyan College in 1976, and will graduate from Marshall-Wythe in May 1979.