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Portrait of Thomas Jefferson, engraving after Alonso Chappel, 1862, Muscarelle Museum of Art, 1977.019

Portrait of George Wythe (1726 - 1806), Oil, Mary Sydenor Model after John Trumbull, Muscarelle Museum of Art, 1994.089
GEORGE WYTHE AND THE STUDY OF ROMAN CIVIL LAW IN WILLIAMSBURG

BY LINDA K. TESAR

Those who know of George Wythe, Chancellor of the Commonwealth of Virginia and first law professor in America, are well aware of his contributions as a patriot, an educator and a judge. Others may be surprised to learn of the accomplishments of a founding father who remains relatively unknown outside Virginia. Wythe signed the Declaration of Independence, attended the Constitutional Convention, and served as a chancery court judge for nearly thirty years. But, legal education was by far the greatest contribution of the man who taught among others Thomas Jefferson, John Marshall, and Henry Clay. One historian summed it as “Wythe’s teaching career may be assessed as consequential beyond comparison to that of any successor in American university law teaching.”

Legal historians have marked Wythe’s scholarly pursuit of the classical literature of Greece and Rome, and noted how these studies influenced his judicial opinions and his arguments as a lawyer. Scholars have examined his reliance upon Roman law as legal precedent as demonstrated in his published case reports. But, largely because of the loss of his lecture notes or other substantial evidence, some commentators have dismissed Wythe in discussions of Roman law in American legal education. True, no documentation exists to prove that Wythe lectured on Roman civil law, but no man in his time revered Greek and Latin classics more than Wythe. Given the ways he managed to convey that enthusiasm throughout his careers as lawyer and judge, it would be only natural to infer that Wythe referenced Roman law in his lectures and encouraged his students to compare the civil and common law systems.

While the founding fathers frequently alluded to classical authors, including Justinian, sustained study of Roman law did not occur in the United States until early in the nineteenth century. David Hoffman deserves credit for establishing the first course in Roman law at the University of Maryland in 1816. Prior to that, Ezra Stiles, president of Yale College, proposed a series of civil law lectures, and may have delivered the first lecture in Roman law in 1792 when he discussed “the Jus Civile . . . Pandects and . . . Canon Law.” Another early educator, James Kent, may have given the first series of “academic lectures in the United States on Roman Law” at Columbia College in 1794. None of these “firsts” takes into account what may have happened at the College of William & Mary in the 1780s.

When newly-elected governor Thomas Jefferson decided to reform the curriculum at the College of William & Mary in 1779, he persuaded the Board of Visitors to create the position of Professor of Law and Police, the first chair of its kind in America. To fill that position, the Board followed Jefferson’s suggestion and appointed George Wythe, Jefferson’s own legal mentor and one of the most distinguished lawyers in Virginia. Jefferson and Wythe envisioned a curriculum that would train future statesmen and lawmakers — “citizen lawyers.”

In describing the purpose of his courses, the new professor hoped “to form such characters as may be fit to succeed those which have been ornamental and useful in the national councils of America.” Jefferson concurred: “This single school by throwing from time to time new hands well principled into the legislature will be of infinite value.”
Jefferson could rely upon his own experience in crafting his vision for legal education at William & Mary. In 1762, he had become Wythe's apprentice and presumably learned from the master the same ideas that Wythe would employ at the College. Among those ideas, Roman law surely had a place. One biographer of Wythe described the young Jefferson and his mentor:

"The whole range of civil and common law passed under his review, and neither he nor his teacher was content till he had traced painstakingly every principle to its remote origin in the Roman system or in the period when good King Alfred had ruled the Saxons."

This propensity for intense study, for tracing a legal idea to its very root was fundamental to Wythe's approach to the law and naturally would have been reflected in his lectures. Sadly, Wythe's lecture notes, known in 1810, four years after the Chancellor's death, disappeared before they could be published.

While there may be no class notes to support the idea that Wythe taught Roman civil law, there is strong evidence from his legal and judicial careers to demonstrate Wythe's love of the classics and his use of Roman law. As opposing attorneys in the 1770-1771 case Bolling v. Bolling, Wythe and Jefferson traded references to Justinian's opus. Wythe referenced the Institutes, the Code and the Digest in his final reply for the plaintiff. In doing so, he established, even before the Revolution, his opinion of the usefulness of Roman precedents in certain circumstances.

The books in Wythe's library also add weight to the argument that the chancellor likely lectured on Roman civil law. As demonstrated in this exhibit, Wythe owned a copy of Corpus Juris Civilis, George Harris's English translation of the Institutes, Amadisus Virianus's commentary on the Institutes, and the Greek paraphrase of the Institutes by Theophilos. He also owned at least one copy of the Code Justinianus. In addition, he held copies of Jean Domat's The Civil Law in its Natural Order (a work which organized the Corpus Juris Civilis "as a series of logical deductions from a number of self-evident premises") and John Taylor's Elements of the Civil Law. Unfortunately, information on the contents of Wythe's library is incomplete. Losses through theft and loans depleted what we know of the chancellor's holdings, and he may have owned a much larger civil law collection than bibliographers suggest. Wythe is known to have acquired multiple Greek and Latin classics in numerous editions, and his interest in Roman law surely encouraged him to collect those titles in multiple editions as well.

The strongest evidence of Wythe's admiration for and utilization of Roman law can be found in the chancellor's published case reports. Like many of his time, Wythe associated Roman law "with order, clarity and coherence." As Peter Stein noted in his study on the influence of Roman civil law:

"Immediately after the Revolution, there was a widespread feeling that efforts should be made to develop a particular American jurisprudence, which would not be just a slavish imitation of the English common law, but would be eclectic - selecting the best principles and methods from whatever system they might be found in."

Wythe was a particularly strong proponent of this idea, and he incorporated a deep knowledge of Roman law into his career as a judge.
In an article on Roman law in Virginia courts, W. Hamilton Bryson comments that Wythe "saw the Roman civil law as an art to be learned, and he used it over a wide spectrum of legal points." Wythe cited Justinian's *Corpus Juris Civilis* twenty-one times in his court decisions as precedent. The chancellor also commented upon the application of Roman law in two different cases. In one he remarked, "the Roman civil law ... is ordinarily a reasonable rule of decision ..." In the other, Wythe explained in sustaining a point "Roman civil law, the authority of which, if not decisive, is respectable, in cases of testamentary dispositions." From these comments, it appears that Wythe considered the Roman law to be of equal value with the English common law as a source of legal ideas and precedents. It seems unlikely that a teacher with such mastery of the subject and such respect for the judicial value of Roman law would have refrained from recommending it to his students as well.

Bryson writes that "no judge or attorney seems to have resorted to the Roman law as often or as enthusiastically." Given this, and given Wythe's reputation concerning Jefferson's legal education, it is reasonable to conclude that Wythe's students as William & Mary benefited from their erudite teacher's tastes and inclinations. Despite the lack of documentary evidence, at some point Wythe must have transmitted his passion for Roman law into lectures for his students. If so, his lectures would have been the first academic discussions of Roman civil law on American soil.

3. Ibid., 519.
6. "Law and policy" would today be law and public policy. See ibid., 519.
13. Ibid., 404.
20. Ibid, Bryan argues, stating "it is most likely that he transmitted his students to Roman law as well." See ibid., 168.
21. Ibid., 168.