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William and Mary Marks Bicentennial of Its First Chair of Law

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Among the significant milestones in United States history, between the initial bicentennial of independence in 1976 and the two hundredth anniversary of the Constitutional Convention to come in 1987, lies the bicentennial of American legal education in 1979. Plans have been in the making for a number of months for appropriate observances of this event at the College of William and Mary, where Thomas Jefferson, when he was governor of Virginia, led the movement to establish the first American chair of law on December 4, 1779.

Jefferson, an alumnus of the college, had his own candidate for the chair—his former mentor, George Wythe, signer of the Declaration of Independence and one of the most distinguished lawyers in Virginia. Jefferson could not have foreseen, however, that one of the first students to enroll for Wythe’s lectures would be his own distant cousin, John Marshall, the future chief justice of the United States with whom the future president would cross many constitutional swords.

Today the Marshall-Wythe School of Law, which bears the names of its greatest student and greatest teacher, probably considers the major event in its anniversary to be the completion of a $5-plus million building in 1979–80. The project promises to be worthy of the occasion. The building will be immediately adjacent to the new $3 million headquarters of the National Center for State Courts, which opened its doors last March. Both facilities, as well as the James City County Courthouse, are set in the magnificently landscaped Bicentennial Park overlooking the National Colonial Historical Parkway, which links Jamestown, Williamsburg, and Yorktown.

The nation’s political and constitutional past and future are strikingly interwoven in this new campus, itself only a few blocks from the Sir Christopher Wren building where Wythe began his formal teaching after nearly twenty years of directing the efforts of Jefferson and others who read for the bar in his home. The Wren building is where Marshall, a young Continental Army soldier on furlough, botched his first page of law notes by doodling “my dearest Polly”—Mary Willis Ambler—instead of committing to paper the basic principles of “Abatement of Actions.” Polly, who became Mrs. Marshall three years later, lived at nearby Yorktown, a fortuitous fact that apparently was almost as persuasive as Wythe’s reputation in bringing Marshall to the college.

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Mary followed by only twenty-one years the founding in 1758 of the first chair of English law at Oxford, which was occupied by Sir William Blackstone. The much older regius professorships at both Oxford and Cambridge were concerned with canon and civil law, and not until Charles Viner provided funds for a permanent professorship on the common law did this subject become academically respectable. From its 1693 chartering, William and Mary had been strongly influenced by the traditions of Oxford and Cambridge, and the substantial strengthening of that relationship through the nearness in time and similarity in purpose of the respective chairs of law has been recognized in a unique “birthday gift” from the present-day law faculty at Oxford for the coming bicentennial at William and Mary.

The gift, first offered a year ago and finally received in Williamsburg in the spring of 1978 with the successful carrying out of complex logistics, consists of two stained-glass windows depicting Blackstone and Sir Christopher Wren. Blackstone and Wren are both among distinguished alumni of All Souls College, the home of the present Vinerian chair of law. Wren, the renowned London architect of the late seventeenth century, provided basic sketches for the first building for the new college after its founding by King William III and Queen Mary II. The windows, originally created by a London stained-glass studio in the late nineteenth century, will be incorporated into an interior court in the new building, with a commemorative tablet.

The particular appropriateness of the Blackstone window, points out the present law school dean, former United States Sen. William B. Spong, Jr., lies in the fact that the second law professor at William and Mary—St. George Tucker—was the author of the first American notes to Blackstone’s Commentaries on the Laws of England. Another Blackstonian link is provided in the announcement that the present Vinerian professor, Sir Rupert Cross, will come to Williamsburg in October of 1979 to deliver one of the principal bicentennial lectures. Cross, an authority on criminal law, will lecture before a combined audience of students and faculty and the delegates to the 1979 convention of the American Society for Legal History, which will be held in Williamsburg.

Among the other groups that have scheduled meetings to commemorate the occasion are the Supreme Court Historical Society, which will assemble on the weekend nearest Constitution Day, September 17, and both the Virginia State Bar and the Virginia Bar Association, which will observe Law Day, 1979, on the campus. The Virginia Supreme Court has drafted an order formally designating Law Day as the legal profession’s observance of the bicentennial. On the annual Charter Day of William and Mary in February, 1979, the calendar of events will begin with an address by Supreme Court Justice Lewis F. Powell, longtime associate of Colonial Williamsburg and past president of the American Bar Association. S.

Marshall-Wythe School of Law will get a new building as part of its celebration of the two hundredth anniversary of legal education.
Shepherd Tate, president of the A.B.A., will be the featured speaker at Law Day.

Three major projects for the two hundredth anniversary have been proposed by a special committee of faculty, alumni, and members of the bar. One is a three-volume series, "Studies on the Bicentennial of American Legal Education," to be published by the University Press of Virginia. A second is a plan to reconstruct the original law library of Thomas Jefferson—some six hundred titles of books on common law and related jurisprudential subjects, which represented one of the definitive collections of its day. Third will be a series of lectures and symposia throughout the anniversary period, beginning with Charter Day in February, 1979, and continuing to the end of the 1979–80 academic year, in which contemporary leaders of the profession will discuss current and prospective developments in law.

The studies represent a major scholarly publication plan to place the founding of the American chair of law in the context of "Americanization" of the English common law in Virginia. The first volume, Seedtime of American Law: Legal Change in Virginia, 1729–1829, traces the adaptations from the half century prior to the establishment of the chair to the end of the fifty years following. The date 1729 represents the earliest reported case from the colonial courts, while 1829 marks the opening of the second Virginia constitutional convention, the "last meeting of the giants"—Marshall, Madison, James Monroe, and John Randolph—who were delegates.

The thesis of the studies is that a conscious effort to adapt the common law to American needs was being made continually in the century leading to the 1829–30 convention and that by the time of independence a school to train persons in this new law was a practical and logical necessity. The second volume—Law and Police: Theory and Practice in the First Law Cur-
riculum of the College of William and Mary in Virginia—the actual history of the establishment of the law school, sets that history against the larger history of the first volume.

The final volume—John Marshall’s Law Notes: A Bicentennial Edition—may become something of a collector’s item. Intended to illustrate how the law was studied in this new law school, it will reproduce Marshall’s student notes and collate them with the sources from which they were taken in the “commonplace” copying practice of the day. The earlier “commonplace books” of Sir John Randolph, made at Gray’s Inn in London early in the eighteenth century, and Thomas Jefferson, made in the 1760s under Gray’s Inn, are abstracted in the first volume and may thus be compared with Marshall’s entries of 1780.

Publication schedules for the three books, depending on editorial and production progress, call for the first to be released on or near Law Day, 1979, with the second volume on the actual anniversary in December, 1979, and the third volume in the spring of 1980, or approximately two hundred years after Marshall made his entries in the original manuscript book.

Jefferson Library Reconstructed

The Jefferson law library is intended to duplicate, insofar as practicable, the specific volumes and specific editions in the original collection, most of which are now in the Library of Congress. Using Jefferson’s own inventory of titles when his library was sold to the government in 1815, the bicentennial committee has commissioned a local specialist in rare books to search for duplicates. A gift of private funds has been made available for the project, and another gift will equip a special rare book room in the library of the new law school to house the collection.

Caroline Heriot, William and Mary law librarian, explains that this is not simply an “antiquarian adventure” but an attempt to establish a broad foundation on which collections of special subjects in law can be based, extending from the school’s beginning to the present. For example, as private funds are attracted for the purpose, definitive collections in constitutional law and history, or in judicial administration (complementing the working collections of the national center), or tax law (another pioneering specialty at William and Mary) may be developed.

The working relationship with the national center has already begun, with several members of the center’s staff serving as guest lecturers in various law school courses, and the law faculty providing occasional lectures for groups coming to Williamsburg for special center programs. A “judge’s chair” was established two years ago, bringing to the campus as visiting professors either retired judges or academic specialists in judicial administration. The first two visitors were the late Justice Tom Clark of the Supreme Court and Glenn R. Winters, former executive director of the American Judicature Society. Former Chief Jus-

tice Howell Heflin of Alabama and United States District judge Walter Hoffman have been other occupants of the “judges’ chair,” while Delmar Karlen, former director of the Institute of Judicial Administration at New York University, is in his second year as a Tazewell Taylor Visiting Professor. The endowment for the chair is named for two generations of lawyers of Norfolk, Virginia.

The new law school building will provide a special laboratory for the national center in its ultramodern, electronically equipped moot courtroom, for which nearly $250,000 in extra funding has been provided by the Kellogg Foundation, the Cabell Foundation of Richmond, and the Law Enforcement Assistance Administration. The grants will make possible a variety of experimental capabilities, such as “instant replay” videotape of witnesses’ testimony, closed-circuit retrieval of pretrial data, intersystematic communications, and other contemporary techniques whose feasibility is the primary concern of the national center’s studies.

The electronic age is a measure of the distance that has been traversed in legal education since Wythe moved to the Wren building and, according to the minutes of the William and Mary faculty in December of 1779, took the seat established a few weeks earlier. Tutoring young men not only for the bar but for a wide variety of liberal studies was nothing new to him. Jefferson, after enrollment at the college from 1760 to 1762, settled down to the leisurely study of law in Wythe’s home on the Palace Green for the next four years, devoting his extracurricular activity to joining the royal governor, Francis Fauquier, in evenings of informal chamber music or doing some unsuccessful courting of one or two young ladies at nearby Carter’s Grove.

Wythe was a “Renaissance man,” as Jefferson himself later became. Law and government were only the most important of a wide range of his interests. Like other educated scions of colonial Virginia, he was conversant with Latin and Greek classics and read and corresponded with writers in various colonies and in England. He had been a member of the House of Burgesses and its clerk, as well as acting attorney general for the colony. When the final move for independence developed, it was logical that he should be chosen as one of the delegates to the Continental Congress, where he eventually joined other William and Mary alumni in signing the Declaration of 1776.

One of his later protégés in the law, Littleton Waller Tazewell, has preserved a vivid description of Wythe as a teacher:

I attended him every morning very early, and always found him waiting for me in his study by sunrise. When I entered the room, he immediately took from his well-stored library some Greek book, to which any accidental circumstance first directed his attention. This was opened at random, and I was bid to recite the first passage that caught his eye. Although utterly unprepared for

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such a task, I was never permitted to have the assistance
of a Lexicon or a grammar, but whenever I was at a loss,
he gave me the meaning of the word or structure of the
sentence which had puzzled me. . . .

Whenever in the course of our reading, any reference
was made to the ancient manners, customs, laws, super-
stitions, or history of the Greeks, he asked me to explain
the allusion, and when I failed to do so satisfactorily (as
was often the case) he immediately gave full clear and
complete account of the subject to which reference was so
made. Having done so, I was bidden to remind him of it
the next day, in order that we might then learn from some
better source, whether his explanation was correct or not;
and the difficulties I met with on one day, generally pro-
duced the subject of the lesson for the next.

Wythe's law collection, within this variegated li-
brary, contained the fundamental source books on
common law. An order placed with his London agent
in the spring of 1772 lists a number of classics such as
Glanville, Bracton, Fleta, and Britton. When Jefferson
studied under Wythe, he had been made to read "old
Coke" in his entirety and then bring it up to date with
Matthew Bacon's New Abridgement of the Law. By
Marshall's day, Wythe was using a later edition of

Bacon, while Marshall himself had begun delving
into a well-received new treatise by Blackstone.
Thomas Marshall, father of the future chief justice,
had subscribed to an American printing of the Com-
mentaries, and the surviving fourth volume of this
subscription set, with the signatures of both father
and son, is in the collections of the William and Mary
library.

The first law classes had an impressive list of future
leaders. Besides Marshall, there was Spencer Roane,
who reportedly would have been Jefferson's choice to
head the Supreme Court if he had had the opportunity
to make the appointment; John Breckenridge, a later
leader of law and politics in Kentucky; and John
Brown, one of Kentucky's first United States senators.
Brown described Wythe's teaching methods—his use
of case methods of instruction, anticipating Harvard's
Christopher Columbus Langdell by a century, and his
moot courts and legislative practice sessions—as

techniques ahead of their time. "Mr. Wythe and the
other professors sit as judges," Brown wrote. "Our
audience consists of the most respectable of the citi-
zens, before whom we plead causes given out by Mr.
Wythe."

Wythe had been one of a select committee, together
with Jefferson and Edmund Pendleton, appointed by
the revolutionary assembly of Virginia in 1776 to
undertake a monumental report on the "revisal" of the
laws in consequence of independence. The committee
was directed to assess the whole body of
English law, both statutory and common law, as it had
been "received" in the erstwhile colony, and recom-
mand what should be retained, what rejected, and
what revised into new form. The "Report of the Revis-
ers" was submitted to the legislature two years later,
about eighteen months before Wythe would assume
his duties as the first professor of law in the new coun-
try. While the proposed bills contained in the report
were debated and adopted in part over the next
twenty years, the new teacher brought to his
classroom a fresh, first-hand summary of the entire
body of English law in Virginia as it stood as of that
time.

Wythe continued as professor of law and "police"
until 1790–91, when his duties as presiding judge of
the High Court of Chancery required his moving from
Williamsburg to Richmond. There he would become
widely renowned for his pioneer collection of case
reports and for his earlier dictum on judicial review in
the case of Commonwealth v. Caton, 4 Call (Va.) 5
(1782). His zeal for teaching continued unabated, and
he set up his own private law school in his new city of
residence, to which he attracted other future leaders
including Henry Clay, a young man about to go west
to Kentucky.

Succeeding Wythe as the second professor of law
was St. George Tucker, who had been one of the last products of Wythe's preceptorship before the Revolution. A native of Bermuda, Tucker had come to the colony in 1770 with plans to go back to London to prepare for the bar at Middle Temple, but finding Wythe so highly recommended as a mentor, he had elected to remain in Virginia for his legal study. He was also 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 "B.L. degree." In his twenty years of practice before becoming professor of law, Tucker had kept extensive notes on variations in American (particularly Virginia) common law doctrine, and in 1803 published these observations in the first American edition of Blackstone to have these annotations, as well as extensive appendix commentaries of his own.

Like Wythe, Tucker went from academic life to the bench, becoming one of the early federal judges. A generation later his son, Nathaniel Beverly Tucker, took his turn at occupying the chair of law at William and Mary, as well as authoring a widely acclaimed book, Principles of Pleading, in 1846. Another son, Henry St. George, was to be one of the first law teachers at the University of Virginia, and still another of the brilliant family became a professor in the law program established at Washington and Lee University.

In 1861 the pioneering law curriculum at William and Mary, together with the rest of the college's teaching program, was abruptly suspended by the outbreak of the Civil War, which made the peninsula between the James and York rivers an obvious invasion route for Union armies. The devastation of the four years of conflict left the historic campus in ruins, with dim prospects that it would ever be revived, despite the postwar efforts in Congress, led by Sen. Ebenezer Hoar, of Massachusetts—to make restitution for wanton destruction. Until Virginia took it over as part of the system of public higher education in 1901, the college existed in little more than name, and the law program not even to that extent.

In 1921–22, as part of a dream of a "renaissance" of the college developed by Chancellor Julian A.C. Chandler, the law program was in fact revived as the central feature in a general plan for a modern school of "police" or government. Throughout most of the 1920s and 1930s, the law curriculum resembled the practice in many English universities, assuming the form of a social science department (jurisprudence) for internal purposes and the form of a professional school for external purposes. It gained independent status just after World War II, when it also launched its pioneer graduate program in law and taxation.

Two other pioneering educational activities have characterized the modern William and Mary law program—its summer school in England for American law students, which has been functioning for twelve years, and its joint research program on environmental legislation, which is carried on co-operatively with the Virginia School of Marine Biology. The summer program, conducted on the campus of the University of Exeter, attracts an average enrollment of 150 students from seventy-five or more American law schools. Taught by four American and four English law professors, the curriculum emphasizes comparative Anglo-American aspects of standard common law subjects and uses Exeter's resources as a center for studies on Common Market law. Emeric Fischer, director of the William and Mary Summer School of Law in England, believes that this unique combination of courses in an established law facility with a well-stocked library accounts for the effectiveness of the program abroad.

American legal education has come a long way since Wythe, the man Jefferson called the "American Aristides," gathered up some of his favorite books and notes and moved from his home on the Governor's Palace Green up the Duke of Gloucester Street to the Wren Building. Even so, Wythe established a sound basis for law teaching—comprehensive understanding of the contemporary law, appreciation of its historic origins, and a continuing interest in its future. It is a worthy goal for the next century of legal education.