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The Man Behind the *“WYTHE”*

George Wythe, the lesser known of the Law School’s namesakes, was a visionary legal educator.

by Professor Davison M. Douglas

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By the end of the first week of classes, every law student here knows all about John Marshall (along with William Marbury and James Madison). But few law students, even by the end of the last class of the third year of law school, know much, if anything, about George Wythe. Indeed, an informal survey of Marshall-Wythe students taken during the spring of 1993 indicated that less than a quarter could identify Wythe as William and Mary’s first law professor.

Yet Wythe was far more than William and Mary’s—and America’s—first professor of law. While at William and Mary, Wythe instituted an expansive and creative system of legal education that has remarkably contemporary applications.

Just as many current legal educators espouse the importance of providing law students with training in collateral fields such as economics and history, Wythe insisted that his students read literature, moral philosophy and history along with their study of legal doctrine. Moreover, Wythe viewed one of his primary roles as legal educator to train his students to engage in a life of public service. Although that vision is shared by many contemporary law professors, few modern educators can boast of having taught two presidents of the United States (Thomas Jefferson and James Madison), one chief justice of the Supreme Court (John Marshall) and several United States senators (including Henry Clay). Finally, Wythe appreciated the need to provide law students with rigorous practical training in the advocacy skills of the lawyer, reinstituting the medieval tradition of the moot court and initiating his own innovation of the mock legislature. William and Mary’s current legal-skills training program, which has served as a model for many other law schools, has a distinguished 18th-century predecessor.

The aspiring lawyer in colonial America had few options to learn the law: either travel to London to study at the Inns of Court or apprentice with a local lawyer in the colonies. London
was the preferred method, but was expensive, and so most lawyers—including Wythe—learned the law by means of an apprenticeship. Yet the apprenticeship method of learning the law left much to be desired; many apprentices did little more than spend their days transcribing documents by hand in an era that knew nothing of the copying machine.

Wythe joined the Virginia bar in 1746, practiced law in Williamsburg and eventually won a seat in the Virginia House of Burgesses. In 1762, Wythe took on his first apprentice, a young man who had just finished his formal studies at the College of William and Mary and who appeared to show particular promise. For the next five years, Thomas Jefferson studied under the direction of Wythe.

Dissatisfied with his own apprenticeship experience, Wythe developed for Jefferson an extremely broad curriculum: ethics, moral philosophy, biblical studies, government, history, art, literature, along with the leading legal treatises, primarily Edward Coke’s Commentaries on Littleton. Coke’s treatise was an extremely difficult read, prompting Jefferson to comment: “I so wish the devil had old Coke, for I am sure I never was so tired of an old dull scoundrel in my life.” Eventually, the standard legal text for aspiring American lawyers would be Blackstone’s Commentaries, but it was not published in this country until 1771.

In 1779, Jefferson became Governor of Virginia and a member of the Board of Visitors of the College of William and Mary. Jefferson directed the creation of a professorship of “Law and Police,” something akin to what currently might be characterized as law and policy.

In establishing this professorship, Jefferson aspired to implement his vision of legal education. Drawing in large measure on his own experience with Wythe, Jefferson was convinced that lawyers needed far more than training in forms of pleading and substantive legal doctrines. Rather, in Jefferson’s view, lawyers should receive a broad education through which they would be instilled with “public virtue”—the desire to pursue the public good rather than private gain.

One of the most popular books in America during the 1770s—and a favorite of Jefferson’s—was Montesquieu’s The Spirit of Laws. Montesquieu believed that a republican form of government could be maintained only if a significant group of persons emerged who practiced public virtue. Although Montesquieu thought that the family would function as the primary social institution for inculcating public virtue, Jefferson believed that the university was best suited to perform this role. Whereas universities had traditionally engaged primarily in the training of clergy, Jefferson’s goal was to train a secular clergy of political leaders. Thus, using monies that had originally been designated for a chair in theology, Jefferson established the professorship of Law and Police.

To carry out his vision of education, Jefferson turned to his mentor, George Wythe. In 1779, Wythe became the first law professor in the colonies, and would remain in that post until 1790.

About half of William and Mary’s 80 students quickly chose to pursue a course of study with Wythe. There were several components to Wythe’s educational program. First, Wythe lectured his students on basic English common law doctrines, relying in significant measure on Blackstone. Although Wythe’s lecture materials have been lost, the classroom notes of several of his students have been preserved—including those of John Marshall. Marshall’s classroom notes suggest that
18th-century students were just as likely to have their minds on other topics as are their 20th-century counterparts; scattered throughout the margins of Marshall's notebooks are protestations of love for Mary Ambler, whom he would later marry. In addition to lecturing on the common law, Wythe held tutorials with his students to discuss economics, political theory and classical literature.

In conjunction with these lectures and discussions, Wythe instituted two devices for improving his students' advocacy skills: the moot court and the mock legislature. In the Middle Ages, the Inns of Court of London had conducted moot courts; in time, they had evolved into great feasts, somewhat removed from their original purpose, and under the English Puritans of the 17th century they were discontinued. Wythe resurrected the moot court tradition, holding regular court sessions in the old Capitol building in Williamsburg at which professors from the College served as judges and the general public gathered to watch. At the same time, Wythe instituted a mock legislature whereby he and his students would debate the merits of actual legislation pending before the Virginia General Assembly.

This training in the art of legislative debate would prove useful to several of Wythe's students who would eventually serve in the United States Senate. One such student, John Brown, later a senator from Kentucky, commented that this early legislative experience afforded him the opportunity "to rub off that natural bashfulness which at present is extremely prejudicial to me." Jefferson underscored the enormous value of this training in legislative debate in a letter to James Madison in 1780:

[Wythe's program] is a success which has gained universal applause. 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.

By the 1790s, Wythe's model of legal training had been adopted by several other colleges, including Yale, Princeton, Columbia, Dartmouth and Brown. Yet the College of William and Mary would remain the preeminent school for legal education until about 1820. Transylvania College in Lexington, Kentucky, eventually supplanted William and Mary as the center of American legal education; not surprisingly, Transylvania was established in large part by a group of former Wythe students, including Henry Clay, who adopted the educational model developed by their mentor. Although it would be another century before a majority of American lawyers would receive their legal training in a university setting, Wythe was responsible for initiating a transformation in the education of lawyers in this country.

Wythe's legacy has been deep and lasting, as measured both by his innovative teaching methods and his profound personal impact on a generation of American presidents, senators and Supreme Court justices. Deeply moved by the public spiritedness of his mentor, Clay eulogized Wythe at his funeral as a man "whose republican virtues were unequalled even by the best of the worthies of ancient Greece and Rome."

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Professor Douglas was greatly assisted in the preparation of this essay by Dee Cohen, a member of the Class of 1993 at Marshall-Wythe.