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# The Jeffersonian Vision of Legal Education

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# The Jeffersonian Vision of Legal Education

Davison M. Douglas

Today many Americans criticize the role and character of lawyers in our society. Several significant books have appeared in recent years lamenting the current condition of the profession.<sup>1</sup> Although lawyers have enjoyed positions of high status throughout most of American history and have been disproportionately represented among our nation's political leaders, many contemporary observers suggest that lawyers no longer exercise their position of influence and authority well, too often pursuing narrow self-interest at the expense of larger commitments to the American polity. Anthony Kronman, for example, in his important 1993 book, *The Lost Lawyer: Failing Ideals of the Legal Profession*, describes the decline of the "lawyer-statesman" ideal in the profession, noting how "impoverished the ideals of American lawyers have become."<sup>2</sup>

In the eighteenth century Thomas Jefferson developed a sophisticated vision of the role of both lawyers and education in the preservation of America's republican form of government. He believed that the new nation desperately needed virtuous leaders who would place the public interest above their own private interest. Proper education could help develop this needed virtue, Jefferson concluded, particularly among lawyers, who by the nature of their work were well positioned to provide direction and leadership to the new nation. Accordingly, he urged not merely that aspiring lawyers be taught the details of legal doctrine and the nuances of proper pleading, but that they also be afforded a broad understanding of political theory, modern and ancient history, and moral philosophy.

Jefferson implemented his vision of legal education at the College of William and Mary in the early 1780s through the professorship of George

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1. See, e.g., Mary A. Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society* (New York, 1994); Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, Mass., 1993); Sol M. Linowitz & Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (New York, 1994); Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* (New York, 2000).
2. Kronman, *supra* note 1, at 5.

Wythe, thereby launching the tradition of training lawyers in the university setting which was adopted by other colleges during the next few decades. Although many scholars have argued that this initial experiment in university-based legal education was of limited success,<sup>3</sup> in fact Jefferson's experiment in legal education at William and Mary, though small in scale, helped train an extraordinary group of lawyers who fulfilled Jefferson's vision for republican leadership.<sup>4</sup> Supreme Court justice Joseph Story recognized the influence of the Jeffersonian vision of legal education in the late 1820s: "many of our most illustrious statesmen have been lawyers; but they have been lawyers liberalized by philosophy and a large intercourse with the wisdom of ancient and modern

3. Harvard dean Roscoe Pound was quite dismissive of these early efforts at university-based legal education in a 1927 article, noting that these early professorships "were not meant to be professional training in law. They were part of the general education of gentlemen, not part of the professional education of lawyers. They were lectures for college students generally and for the community at large." *The Law School and the Professional Tradition*, 24 Mich. L. Rev. 156, 160 (1926-27). Pound's comments have greater application to the professorships of James Wilson at the College of Philadelphia and James Kent at Columbia University during the 1790s than to George Wythe and St. George Tucker at the College of William and Mary during the 1780s and 1790s. Pound's assessment of legal education at William and Mary and the other eighteenth-century colleges may have been motivated by his desire to cement Harvard Law School's claim to primacy in legal education. Pound claimed that Harvard Law School, founded in 1817, was the "first university school of law in the English-speaking world," a claim—depending on one's definition of "school of law"—at odds with the legal education offered at both William and Mary and Transylvania. Pound, *supra*, at 161. See also Charles Warren, *A History of the American Bar* 357 (Boston, 1911) (none of the early law professorships "attempted to afford a complete or practical education for law students"); Robert B. Stevens, *Law Schools and Legal Education, 1879-1979: Lectures in Honor of 100 Years of Valparaiso Law School*, 14 Valparaiso L. Rev. 179, 189 (1980) ("These early experiments in legal education were not profound [and were not] a success."); Amy M. Colton, *Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, 27 U. Mich. J.L. Reform 963, 966-67 (1994) (early law teaching at William and Mary and other colleges was "not successful").

Not all scholars are as dismissive of these early efforts of university-based legal education. Erwin Griswold wrote in 1974: "There can be no doubt that Wythe and [St. George] Tucker [at William and Mary] were engaged in a substantial, successful and influential venture in legal education, and that their effort can fairly be called the first law school in America." *Law and Lawyers in the United States* 39 (Cambridge, Mass., 1974). See also Brainerd Currie, *The Materials of Law Study*, 3 J. Legal Educ. 331, 331 (1951) ("The William and Mary professorship marked the beginning of professional legal education in American universities"); Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 Wash. U. L.Q. 597, 617 (1981) ("the professorships at William and Mary and Transylvania University . . . were on the whole quite successful [and] were to outlive the most successful of the early proprietary law schools").

4. George Wythe's William and Mary students assumed an extraordinary variety of executive, legislative, and judicial offices, including secretary of state (John Marshall); attorney general of the United States (John Breckinridge); U.S. senator (James Brown, Louisiana; John Brown, Kentucky; John Breckinridge, Kentucky; John Eppes, Virginia; William Branch Giles, Virginia; Wilson Cary Nicholas, Virginia; Littleton Waller Tazewell, Virginia; Buckner Thruston, Kentucky); justice of the U.S. Supreme Court (Marshall, chief; Bushrod Washington, associate); governor of Virginia (William Branch Giles, Wilson Cary Nicholas, and Littleton Waller Tazewell); and many members of the U.S. House of Representatives. Moreover, 25 of the 43 judges on the Virginia Court of Appeals before the Civil War received their legal education at William and Mary. Thomas Hunter, *The Teaching of George Wythe*, in *The History of Legal Education in the United States: Commentaries and Primary Sources*, ed. Steve Sheppard, 138, 151-53, 166 n.141 (Pasadena, 1999). James Monroe, the nation's fifth president, may have also studied briefly with Wythe at William and Mary, but the historical record is not clear. *Id.* at 150 (noting that most scholars have concluded that Monroe did study with Wythe, but that "there is no conclusive proof one way or the other."). Paul D. Carrington



times.”<sup>5</sup> Likewise, Willard Hurst concluded that this early university-based legal education “was marked by a breadth of treatment which did not again appear in formal legal education until the 1920’s.”<sup>6</sup>

This article explores the Jeffersonian vision of legal education. Part I examines the method of training lawyers in colonial America, noting that the colleges offered no instruction to aspiring lawyers, while each of the other methods of legal training—the Inns of Court in London, apprenticeship, and self-instruction—carried its own deficiencies. Part II considers Jefferson’s vision of the role of education in sustaining a republican form of government. Jefferson viewed education as the lynchpin of republican constitutionalism which would allow the people to live “under the unrestrained and unperverted operation of their own understandings.”<sup>7</sup> It would also develop leaders necessary to sustain this novel experiment in self-government.

Part III describes the implementation of Jefferson’s vision of legal education first at the College of William and Mary and then at other colleges and universities. Although many of the early experiments in university-based legal education cannot be considered successful and university-based legal education did not gain considerable ground until the second half of the nineteenth century, Jefferson’s model of legal education did achieve success in the eighteenth century, first at William and Mary and later at Transylvania University.

Jefferson’s vision of legal education, however, was fraught with certain tensions from the outset. Some students resisted its strong emphasis on political and legal theory as opposed to the nuances of civil pleading. Indeed, from the 1780s through the 1820s, private proprietary law schools educated more lawyers than did the colleges because of their more practical focus. In time, the most successful nineteenth-century American law school—Harvard—combined both the practical focus of the proprietary law schools with the broader theoretical and philosophical concerns of the early university-based experiments in legal instruction.

Many of the conflicts in contemporary legal education—the extent to which law schools should emphasize skills training as opposed to more theoretical study and the question whether lawyers are sufficiently oriented toward serving the public interest—can be traced to the eighteenth century. Jefferson’s ideas about the role of lawyers in society and the kind of training lawyers should receive have surprising relevance to contemporary conversations about lawyers and legal education. As the legal profession of the early twenty-first

correctly notes that “Wythe’s teaching career may be assessed . . . as consequential beyond comparison to that of any successor in American university law teaching.” *The Revolutionary Idea of University Legal Education*, 31 Wm. & Mary L. Rev. 527, 538 (1990).

5. Quoted in Benjamin R. Barber, *Education and Democracy: Summary and Comment*, in Thomas Jefferson and the Education of a Citizen, ed. James Gilreath, 134, 148 (Washington, 1999) [hereinafter *Jefferson and Education*].
6. James Willard Hurst, *The Growth of American Law: The Law Makers* 258 (Boston, 1950).
7. Quoted in David N. Mayer, *Citizenship and Change in Jefferson’s Constitutional Thought*, in *Jefferson and Education*, *supra* note 5, at 221, 237.



century struggles to confront its "failing ideals," it would do well to consider Jefferson's vision for training lawyers to be "public citizens" concerned with serving the broader public good as opposed to simply furthering their own narrow private interests.

### I. The Training of Lawyers in Colonial America

Seventeenth-century colonial lawyers had low status and were barred in many colonies from representing clients in court for a fee. Although their status improved over the course of the eighteenth century,<sup>8</sup> dissatisfaction with lawyers remained prevalent. John Adams described the typical lawyer in 1758 as one who "foments more quarrels than he composes, and enriches himself at the expense of impoverishing others more honest and deserving than himself."<sup>9</sup> The needs of the revolutionary generation, however, would help reshape the role of lawyers in American society.

During the colonial era opportunities for legal training were quite limited. None of the colonial colleges offered a formal course of study in law. In eschewing law as a field of study, the colleges followed the English model, which placed the training of lawyers in the Inns of Court as opposed to the universities.<sup>10</sup> Moreover, a dearth of resources inhibited efforts by the colleges to offer legal study. An aspiring lawyer in colonial America therefore had three methods of training for law: studying at the Inns of Court in London, self-education by reading law books, or apprenticeship with a member of the bar. Each method had serious limitations.

For centuries the Inns of Court in London had served as the primary mode of legal education for English barristers. Although some colonists traveled to London to the Inns of Court during the eighteenth century, such a choice did not appeal to many colonists because of the expense.<sup>11</sup> Moreover, the Inns of Court had suffered a serious deterioration in the quality of their legal training by the eighteenth century, having "degenerated into little more than dining clubs with no educational value."<sup>12</sup> Most of the Inns of Court in the eighteenth

8. The demand for legal services from the colonies' growing commercial interests raised the status of the colonial lawyer and drew increasing numbers of young men into the profession. McManis, *supra* note 3, at 601.
9. Quoted in Warren, *supra* note 3, at 79. Timothy Dwight described law practice for the Yale graduating class of 1776 as "[t]hat meanness, that infernal knavery, which multiplies needless litigations, which retards the operation of justice, . . . which artfully twists the meaning of law to the side we espouse, which seizes unwarrantable advantages from the prepossessions, ignorance, interests and prejudices of a jury." Quoted in Maxwell Bloomfield, *American Lawyers in a Changing Society, 1776-1876* at 39-40 (Cambridge, Mass., 1976).
10. Oxford and Cambridge had previously taught canon law and civil law, but by the middle of the eighteenth century these lectures had ceased. William Holdsworth, 12 *A History of English Law* 83-85 (London, 1938).
11. The Inns of Court were particularly popular with aspiring lawyers from South Carolina; indeed, almost half of the American lawyers educated at the Inns of Court between 1760 and the end of the Revolution came from South Carolina. Warren, *supra* note 3, at 188.
12. Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 *J. Legal Educ.* 124, 126 (1976). The English legal historian William Holdsworth has noted that in the latter half of the seventeenth century "all public teaching of English law [at the Inns of Court] was stopped for nearly a century and a half." 6 *A History of English Law* 493 (Boston, 1924).

century required only that students eat a certain number of dinners before joining the bar.<sup>13</sup> The lectures and moot courts, which had been trademarks of the Inns of Court for centuries, had largely ceased. Not surprisingly, after 1729 English lawyers were obliged to serve an apprenticeship in addition to their tenure at the Inns of Court before gaining admission to the bar.<sup>14</sup>

Other aspiring lawyers in colonial America trained by reading law books on their own. Yet independent study was not a satisfactory means of preparing for law practice. Law books were quite expensive; only the wealthiest lawyers could afford a substantial collection.<sup>15</sup> Public libraries were unknown in colonial America, and college libraries contained few law books.<sup>16</sup> Books setting forth colonial statutes—an important aspect of American law—were extraordinarily difficult to come by; few lawyers had a complete set.<sup>17</sup> Thomas Jefferson, in a 1769 letter outlining a course of study for an aspiring lawyer, lamented the general “want of books . . . for a lawyer without books would be like a workman without tools.”<sup>18</sup>

Moreover, without instruction many eighteenth-century law books were extraordinarily difficult to comprehend. Peter Van Schaack, who later opened his own proprietary law school in Kinderhook, New York, said of his own efforts to read law: “[H]ow many hours have I hunted, how many books turned up for what three minutes of explanation from any tolerable lawyer would have made evident to me! It is vain to put a law book into the hands of a lad without explaining difficulties to him as he goes along.”<sup>19</sup> Finally, legal treatises were generally deficient in providing the necessary technical command of court practice that an aspiring lawyer would need.

Most lawyers in the eighteenth century received their legal training by apprenticing with a practicing lawyer.<sup>20</sup> Indeed, some colonies required such apprenticeships before a young man could join the bar. New York, for example, enacted legislation in 1767 requiring aspiring attorneys to engage in a five-year apprenticeship with a practicing attorney, or only three years if the

13. Herbert A. Johnson, Thomas Jefferson and Legal Education in Revolutionary America, in *Jefferson and Education*, *supra* note 5, at 107; see also Holdsworth, *supra* note 10, at 79.

14. McKirdy, *supra* note 12, at 127 n.13.

15. The most common book studied in the colonies was Sir Edmund Coke’s commentary on Sir Thomas Littleton’s *Tenures*, or *Coke on Littleton* as it was known. After the Revolution Blackstone’s *Commentaries* would displace Coke as the most important law book in America. *Id.* at 131.

16. Warren, *supra* note 3, at 164.

17. St. George Tucker, ed., 1 Blackstone’s Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States; and of the Commonwealth of Virginia at iv (New York, 1803, 1969) [hereinafter Blackstone’s Commentaries]. Tucker complained that Virginia had never compiled a complete set of its laws, either before or after the Revolution, and instead distributed its newly enacted laws in loose sheets. *Id.* at v.

18. Letter from Thomas Jefferson to Thomas Turpin (Feb. 5, 1769), in 1 The Papers of Thomas Jefferson, ed. Julian P. Boyd, 23–24 (Princeton, 1950) [hereinafter Jefferson Papers].

19. Quoted in Bloomfield, *supra* note 9, at 25.

20. In many of the colonies, a college education and a law-office apprenticeship were becoming the norm for lawyers by 1740. Mark Warren Bailey, Early Legal Education in the United States: Natural Law Theory and Law as a Moral Science, 48 J. Legal Educ. 311, 312 (1998).



apprentice had a college degree.<sup>21</sup> The apprenticeship method would remain the dominant method of legal training in America until the second half of the nineteenth century.<sup>22</sup>

Yet, like travel to London and independent study, the apprenticeship method of legal training had severe limitations. In theory the apprentice learned by attending court, reading legal treatises, transcribing contracts and other legal documents, and interacting with his mentor.<sup>23</sup> In practice most lawyers had little time to give to their apprentices. Instead they occupied their apprentices' time with menial tasks that took time away from study. As Charles McKirdy, a historian of the eighteenth-century apprenticeship system, has written: "In an age before printed forms and typewriters, it was a rare clerk indeed who didn't spend a good deal of his time bent over a desk copying writs and declarations."<sup>24</sup> The apprentice did have access to his mentor's legal texts, but more often than not the mentor took little time to explain the nuances of these texts. And the apprenticeship did not come without cost; the typical fee paid by the apprentice or his family was \$100 or \$200, although it could be as much as \$500.<sup>25</sup>

Criticism of the apprenticeship system was widespread. John Adams, who had had a poor apprenticeship experience in Massachusetts, concluded that an aspiring lawyer would fare better by reading law on his own than by serving an apprenticeship in a lawyer's office.<sup>26</sup> Jefferson, although his experience had been better than most, under the mentorship of George Wythe, criticized the apprenticeship system for taking students away from their legal studies:

I always was of the opinion that the placing a youth to study with an attorney was rather a prejudice than a help. We are all too apt by shifting on them our business, to incroach on that time which should be devoted to their studies. The only help a youth wants is to be directed what books to read, and in what order to read them.<sup>27</sup>

21. *Id.* at 312. The five-year term was reduced to three years in 1778. Paul M. Hamlin, *Legal Education in Colonial New York* 120 (New York, 1939). New Jersey required a five-year apprenticeship, with one year of credit given for a college degree. Bailev, *supra* note 20, at 312.

22. In the early nineteenth century most states required an apprenticeship, but by 1860 many states had abolished the apprenticeship requirement. Robert B. Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* 7–8 (Chapel Hill, 1983).

23. McKirdy, *supra* note 12, at 127.

24. *Id.* at 128.

25. Warren, *supra* note 3, at 166; Hurst, *supra* note 6, at 256.

26. McKirdy, *supra* note 12, at 133–35.

27. Letter from Thomas Jefferson to Thomas Turpin (Feb. 5, 1769), in 1 Jefferson Papers, *supra* note 18, at 23–24. See also Letter from Thomas Jefferson to John Garland Jefferson (June 11, 1790), in 16 Jefferson Papers, *supra* note 18, at 480 ("It is a general practice to study the law in the office of some lawyer. This indeed gives to the student the advantages of his instruction. But I have ever seen that the services expected in return have been more than the instructions have been worth.").



Some argued that while the apprenticeship did expose aspiring lawyers to the rudiments of legal doctrine and the technical aspects of civil pleading,<sup>28</sup> it offered insufficient exposure to larger principles underlying the law. Leading English legal scholars made similar arguments, urging aspiring lawyers to gain an understanding of the larger philosophical issues in law in addition to the nuances of proper pleading.<sup>29</sup>

Even the most distinguished lawyers often served as poor mentors. James Wilson, one of the best legal minds of the eighteenth century and later a U.S. Supreme Court justice, earned poor marks from one of his apprentices:

Mr. Wilson devoted little of his time to his students in his office . . . and rarely entered it except for the purpose of consulting books. Hence his intercourse with them was rare, distant, and reserved. As an instructor he was almost useless to those who were under his direction. He would never engage with them in professional discussions; to a direct question he gave the shortest possible answer and a general request for information was always evaded.<sup>30</sup>

James Alexander, perhaps the most distinguished member of the New York bar, received a harsh critique from one of his apprentices, who described the apprenticeship system as

an outrage upon common honesty, a conduct scandalous, horrid, base, and infamous to the last degree! These gentlemen must either have no manner of concern for their clerk's future welfare and prosperity, or must imagine, that he will attain to a competent knowledge in the Law, by gazing on a number of books, which he has neither time nor opportunity to read; or that he is to be metamorphos'd into an attorney by virtue of Hocus Pocus.<sup>31</sup>

28. Knowledge of pleading, of course, was of great importance to any lawyer. Before 1848 and the adoption of David Dudley Field's Code of Civil Procedure, learning rules of pleading was extraordinarily difficult for the aspiring lawyer. Bailey, *supra* note 20, at 315. Roger Taney, later chief justice of the U.S. Supreme Court, wrote of his apprenticeship in late eighteenth-century Annapolis:

My reading in the office of a judge, instead of a practising lawyer . . . gave me no instruction in the ordinary routine of practise, nor any information as to the forms and manner of pleading. In that day, strict and nice technical pleading was the pride of the bar and I might almost say of the court. . . . Nor was it so easy in that day for an inexperienced young lawyer to satisfy himself upon a question of special pleading.

*Quoted in Warren, supra* note 3, at 183.

29. For example, William Blackstone, in his *Commentaries*, criticized the training of English lawyers, arguing that a lawyer must learn "the elements and first principles upon which the rule of practice is founded" without which he could "seldom expect to comprehend, any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice." *Quoted in* Holdsworth, *supra* note 10, at 97. William Holdsworth observed that the eighteenth-century English lawyer "acquired a severely practical knowledge of the law from the angle of the pleader and the conveyancer," but "[w]hether or not he gained any knowledge of legal principle depended partly on his abilities and industry, and partly on the capacity and willingness of his master to teach him." As a result, the education of most English lawyers of the eighteenth century "was so defective that it was comparatively few who were more than mere practitioners." *Id.* at 88.
30. *Quoted in* Warren, *supra* note 3, at 167.
31. *Id.* at 168 (quoting William Livingston). A few apprentices were more gracious toward their mentors, most prominently Thomas Jefferson toward George Wythe and John Quincy Adams toward Theophilus Parsons. Adams was effusive:

It is of great advantage to us to have Mr. Parsons in the office. He is in himself a law library, and a proficient in every useful branch of service; but his chief

After the Revolution, widespread dissatisfaction with the training of lawyers remained. Moreover, the Revolution caused a significant diminution in the ranks of American attorneys, as many, often the most able in the profession, fled the colonies out of loyalty to the crown.<sup>32</sup> Many Tory lawyers who remained in the colonies faced loyalty oaths, which further depleted the ranks of the profession. Furthermore, the end of the Revolution brought a substantial need for practicing lawyers, given both the closure of courts during the war and the scores of civil disputes that demanded legal resolution.<sup>33</sup>

In the aftermath of the Revolution, however, two innovations in legal education emerged that eventually transformed the training of lawyers in America: the development of systematic legal training in the colleges and the creation of proprietary law schools by practitioners.

## II. The Role of Education in the New Republic

The eighteenth century was an age of revolution—the throwing off of monarchical power in favor of republican self-rule. John Adams described the extraordinary era in a letter to George Wythe in 1776:

You and I, my dear friend, have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government—more than of air, soil, or climate—for themselves or their children! When, before the present epoch, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive?<sup>34</sup>

As the Revolution came to a close, the nation's keenest minds focused on how to preserve their new republican form of government against encroachments from the old order. Even after the successful conclusion of the Revolution, many worried about the revival of monarchical government in America—worries that would persist until the early nineteenth century.<sup>35</sup>

Many eighteenth-century Americans viewed education as perhaps the most vital component in the preservation of a republican form of government.<sup>36</sup>

excellency is, that no student can be more fond of proposing questions than he is of solving them. . . . I am persuaded that the advantage of having such an instructor is very great, and I hope I shall not misimprove it as some of his pupils have done.

*Quoted in id.* at 169.

32. Craig Evan Klafter, *The Influence of Vocational Law Schools on the Origins of American Legal Thought, 1779–1829*, 37 *Am. J. Legal Hist.* 307, 308 (1993).

33. *Id.* at 308–10. For example, in 1779 the New York legislature suspended the law licenses of all New York attorneys licensed before April 1777 and then reinstated the licenses only of those who could establish their loyalty to the American cause. New Jersey, Pennsylvania, Maryland, New Hampshire, and Massachusetts enacted similar laws. *Id.* at 309.

34. *Quoted in* Adrienne Koch, *Introduction in The American Enlightenment: The Shaping of the American Experiment and a Free Society*, ed. Adrienne Koch, 28 (New York, 1965).

35. Douglass G. Adair, *The Intellectual Origins of Jeffersonian Democracy: Republicanism, the Class Struggle, and the Virtuous Farmer*, ed. Mark E. Yellin, 5 (Lanham, 2000).

36. Pennsylvanian Benjamin Rush spoke of the creation of a uniform system of education that would convert people into “republican machines.” *Quoted in* Lawrence A. Cremin, *American Education: The National Experience 1783–1876* at 2 (New York, 1980).



While monarchy used education, or the lack of it, to fix each social class in its proper place in the political order, republicanism demanded an educated citizenry equipped to engage in the processes of self-government.<sup>37</sup> Indeed, an educated public could operate as yet another of the checks and balances found in republican constitutions.<sup>38</sup> As Jefferson said, "Enlighten the people generally, and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day."<sup>39</sup> On another occasion he exclaimed: "Where the press is free, and every man able to read, all is safe."<sup>40</sup>

In addition to educating the citizenry so as to equip them to exercise their role in self-government, Jefferson was particularly keen to educate a group of "public citizens"—those who would place public interest ahead of private interest and exercise leadership in preserving republicanism. Central to eighteenth-century republicanism was the notion of "public virtue"—"[t]he sacrifice of individual interests to the greater good of the whole."<sup>41</sup> As historian

37. *Id.* at 2. Jefferson equated republicanism with citizen participation in government:

Purely and simply, [a republic means] a government by its citizens in mass, acting directly and personally, according to the rules established by the majority; and that every other government is more or less republican in proportion as it has in its composition more or less of this ingredient of the direct action of its citizens.

*Quoted in* Jean M. Yarbrough, *American Virtues: Thomas Jefferson on the Character of a Free People* 134 (Lawrence, Kan., 1998). Montesquieu, who had a significant impact on Jefferson's thought, wrote in *The Spirit of Laws*: "It is in a republican government that the whole power of education is required." *Quoted in* Robert A. Ferguson, *Law and Letters in American Culture* 49 (Cambridge, Mass., 1984).

38. Harold Hellenbrand, *The Unfinished Revolution: Education and Politics in the Thought of Thomas Jefferson* 14 (Newark, 1990).

39. Mayer, *supra* note 7, at 237. In his famous "Bill for the More General Diffusion of Knowledge," which would have provided for universal public education for free children, Jefferson wrote:

Whereas it appeareth that however certain forms of government are better calculated than others to protect individuals in the free exercise of their natural rights, and are at the same time themselves better guarded against degeneracy, yet experience hath shown, that even under the best forms, those entrusted with power have, in time, and by slow operations, perverted it into tyranny; and it is believed that the most effectual means of preventing this would be, to illuminate, as far as practicable, the minds of the people at large, and more especially to give them knowledge of those facts, which history exhibiteth, that, possessed thereby of the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes.

*Quoted in* Roy J. Honeywell, *The Educational Work of Thomas Jefferson* 199 (Cambridge, Mass., 1931). Jefferson placed special emphasis on the study of history to subvert the rise of tyranny: "History, by apprizing them of the past, will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views." *Quoted in* Daniel J. Boorstin, *The Lost World of Thomas Jefferson* 218 (New York, 1948).

40. *Quoted in* Adrienne Koch, *The Philosophy of Thomas Jefferson* 167 (New York, 1943). Koch has said of eighteenth-century republican attitudes toward education: "The system of public education and the intellectual climate encouraged by freedom of speech and press . . . furnish the real standing army of the functioning republic." *Id.* at 166.

41. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* at 53 (Chapel Hill, 1969).



Gordon Wood has noted, "No phrase except 'liberty' was invoked more often by the Revolutionaries than 'the public good.'"<sup>42</sup> Jefferson believed that a republican form of government could not survive without public virtue, and that such virtue could not simply be assumed.<sup>43</sup> Young men, especially those who would provide leadership, must be trained to exercise public virtue, particularly in the face of the strong inducements of a purely private life.<sup>44</sup> For Jefferson, education must not only train the citizenry to exercise self-rule appropriately, it should also train leaders to practice public virtue and rule wisely.<sup>45</sup>

Jefferson and other members of the Revolutionary generation thought that lawyers were particularly well suited to exercise public virtue. Before and during the Revolution, lawyers played important roles in articulating the legal and political theories necessary to support claims for independence. Indeed, the rhetoric of both revolution and republicanism was grounded in the language of legal and political theory. Not surprisingly, those members of the post-Revolutionary generation who sought to shape the new nation flocked to law. As Robert W. Gordon has written:

[Lawyers] furnished a disproportionate share of Revolutionary statesmen, dominated high offices in the new governments and the organs of elite literary culture, had more occasions even than ministers for public oratory, and were the most facile and authoritative interpreters of laws and constitutions, rapidly becoming the primary medium of America's public discourse and indeed its "civic religion." . . . [T]hey seemed to have exceptional opportunities to lead *exemplary* lives, to illustrate by their example the calling of the independent citizen, the uncorrupted just man of learning combined with practical wisdom. Lives of eminent lawyers were written up and circulated to schoolchildren and popular readers. As an inspiration to the younger bar, lawyers endlessly eulogized their dead brethren's *disinterestedness* and devotion to professional craft and public service, often at considerable sacrifice to income.<sup>46</sup>

Whereas lawyers' status had been low throughout much of the colonial era, the Revolutionary era transformed their role, and they became among the

42. *Id.* at 55.

43. Carrington, *supra* note 4, at 528; Cremin, *supra* note 36, at 2. St. George Tucker, the great republican legal scholar, wrote in 1803: "An enlightened people, who have once attained the blessings of a free government, can never be enslaved until they abandon virtue and relinquish science." Blackstone's Commentaries, *supra* note 17, at xvii.

44. Although Jefferson favored some education for girls, he expected that men would be the leaders of the new nation.

45. Yarbrough, *supra* note 37, at 135. Jefferson drew a direct link between education and virtue: "Education generates habits of application, of order, and the love of virtue; and controls by force of habit, any innate obliquities in our moral organization." With a proper education, Jefferson believed, it is possible to improve that which "was vicious and perverse into qualities of virtue and social worth." *Quoted in id.* at 141. Jefferson embraced fundamental Enlightenment views concerning the ability of human institutions to induce appropriate behavior.

46. The Independence of Lawyers, 68 B.U. L. Rev. 1, 15-16 (1988). In 1803 William Wirt, the distinguished Virginia lawyer, could write of his generation: "Men of talents in this country . . . have been generally bred to the profession of law and indeed throughout the United States, I have met with few persons of exalted intellect, whose powers have been directed to any other pursuit." *Quoted in* Ferguson, *supra* note 37, at 12.

most important republican spokesmen. Many perceived lawyers as “less selfish . . . and therefore better equipped for political leadership and disinterested decision-making than merchants and businessmen.”<sup>47</sup>

### III. The Beginnings of College-Based Legal Education

In June 1779, within a few days of his election as governor of Virginia, Jefferson submitted two education bills to the legislature for approval: one establishing universal public education for Virginia’s free children, and a second restructuring the College of William and Mary to reduce the influence of the church over its governance and to modernize its curriculum.<sup>48</sup> Both pieces of legislation reflected Jefferson’s philosophy of education.

Jefferson’s “Bill for the More General Diffusion of Knowledge” divided the state into school districts each of which would operate an elementary school to teach reading, writing, and arithmetic to all the free children of that district. The most promising children in these elementary schools would be allowed to attend state-supported grammar schools; the most promising children in these grammar schools could attend the College of William and Mary.<sup>49</sup> With this legislation, Jefferson sought to ensure that Virginians would be well educated and thereby help preserve self-government. He also hoped to open opportunities for Virginians to assume leadership in the government based on merit, not inherited privilege.<sup>50</sup> Indeed, in addition to his educational reforms, he vigorously criticized the feudal wealth-transfer provisions of English law—primogeniture and entail—that solidified social and political power for a chosen few.<sup>51</sup> In time, he successfully procured enactment of legislation in Virginia abolishing entails and primogeniture by “chang[ing] the laws of descent, so as that the lands of any person dying intestate shall be divisible equally among all his children.”<sup>52</sup> Almost all of the other states followed Virginia.

47. Gordon S. Wood, *The Radicalism of the American Revolution* 254 (New York, 1991). See also Alexander Hamilton, *Federalist No. 35*, *The Federalist Papers*, ed. Andrew Hacker, 81 (New York, 1964) (noting that lawyers “feel a neutrality to the rivalships among the different branches of industry” and can thus serve as “an impartial arbiter between them” consistent with “the general interests of the community”).

48. Honeywell, *supra* note 39, at 199–210.

49. *Id.* at 10–11.

50. Hellenbrand, *supra* note 38, at 90.

51. Jefferson called for an abolition of the law of entail: “The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth, in select families, and preserve the soil of the country from being daily more and more absorbed in mortmain. The abolition of primogeniture, and equal partition of inheritances, removed the feudal and unnatural distinctions which made one member of every family rich, and all the rest poor, substituting equal partition, the best of all Agrarian laws.” *Autobiography*, in *The Life and Selected Writings of Thomas Jefferson*, eds. Adrienne Koch & William Peden, 49–50 (New York, 1998) [hereinafter *Life and Selected Writings*].

Jefferson noted that under Saxon law feudal landholdings were unknown, and the Saxons held their lands in fee simple. The feudal landholding traditions had been introduced by the Normans; Jefferson argued that because America had not been conquered by the Normans, Norman law should not apply in this country. Thomas Jefferson, *A Summary View of the Rights of British America*, in *Life and Selected Writings*, *supra*, at 285.

52. Thomas Jefferson, *Notes on Virginia*, in *Life and Selected Writings*, *supra* note 51, at 237.



In 1786, having failed in his 1779 efforts to expand the availability of education, Jefferson urged his mentor, George Wythe, to support universal education as a means of ensuring the success of republicanism:

I think by far the most important bill in our whole code, is that for the diffusion of knowledge among the people. No other sure foundation can be devised, for the preservation of freedom and happiness. . . . Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people. Let our countrymen know, that the people alone can protect us against these evils, and that the tax which will be paid for this purpose, is not more than the thousandth part of what will be paid to kings, priests and nobles, who will rise up among us if we leave the people in ignorance.<sup>53</sup>

Jefferson expressed similar sentiments to George Washington: "It is an axiom in my mind that our liberty can never be safe but in the hands of the people themselves, and that too of the people with a certain degree of instruction. This it is the business of the state to effect, and on a general plan."<sup>54</sup>

Jefferson's second education bill in 1779, "Amending of the Constitution of the College of William and Mary," sought to reduce the influence of the church over the college and to shift the college's emphasis from training ministers to equipping young men to assume positions of leadership in the secular world. This bill specifically placed control of the college's governing Board of Visitors with the state legislature rather than with the church.<sup>55</sup> Jefferson complained of the influence of the church over the college, noting that members of the Board of Visitors "were required to be [members of the Anglican Church]; the Professors to subscribe [to] its thirty-nine Articles; its Students to learn its Catechism; and one of its fundamental objects was declared to be, to raise up Ministers for that church."<sup>56</sup> Jefferson's proposed bill would have also modernized the college's curriculum, eliminating professorships in divinity and biblical languages in favor of professorships in law, medicine and anatomy, and modern languages. Jefferson argued that his plan would ensure that "those who are to be the future guardians of the rights and liberties of their country may be endowed with science and virtue, to watch and preserve the sacred deposit" of the people's rights.<sup>57</sup> He viewed the function of the university as training citizens to perform the duties of self-government.<sup>58</sup>

53. Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786), in 5 *The Writings of Thomas Jefferson*, eds. Andrew A. Lipscomb & Albert Ellery Bergh, 396–407 (Washington, 1903) [hereinafter *Jefferson Writings*].

54. Letter from Thomas Jefferson to George Washington (Jan. 4, 1785), in 9 *Jefferson Papers*, *supra* note 18, at 151.

55. Thomas Jefferson, A Bill for Amending the Constitution of the College of William and Mary, and Substituting More Certain Revenues for Its Support, in 2 *Jefferson Papers*, *supra* note 18, at 535.

56. Autobiography, *supra* note 51, at 48.

57. Jefferson, *supra* note 55, at 539.

58. McManis, *supra* note 3, at 622.



The Virginia legislature enacted neither of Jefferson's educational reforms. An insufficient number of legislators supported the notion of taxing the wealthy to educate the children of the middle classes and the poor. And religious dissenters who resented the influence of the Anglican Church over the College of William and Mary refused to support any legislation to reorganize the college.<sup>59</sup>

Although Jefferson's legislative agenda failed, he nevertheless enjoyed success in his efforts to restructure the College of William and Mary. Following his election as governor, Jefferson joined the Board of Visitors of the college and in that capacity persuaded the board, without legislation, to abolish the professorships of divinity and biblical languages and to establish professorships in "Law and Police" (law and government), medicine and anatomy, and modern languages.<sup>60</sup> As a result of his efforts, in January 1780 William and Mary became the first college in America to offer a formal course of study in law.

Jefferson's effort to secure legal training for students at William and Mary was aided by the fact that the apprenticeship method of legal training was not so fully ingrained in Virginia as in a number of northern states where apprenticeships were required in order to gain admission to the bar.<sup>61</sup> Moreover, in Virginia many of the leaders of the Revolution, such as Jefferson, Patrick Henry, and Wythe, had been lawyers, which made the establishment of a chair in law more popular.

Jefferson was not the first to conceive of legal education in a college or university. During the pre-Revolutionary era, several of the colonial colleges offered students some general exposure to law in the context of lectures on theology, ethics, and political philosophy. For example, the College of Philadelphia (later the University of Pennsylvania) adopted a course of study for its students in 1756 that included readings in law and politics so as to equip a student with "a knowledge and practical sense of his position as a man and a citizen."<sup>62</sup> King's College (later Columbia College) developed a curriculum in the 1760s that included some exposure to international law.<sup>63</sup> But neither of these colleges, nor any other colonial college, offered systematic training in law to equip a student to practice law.

59. Jefferson later explained: "the religious jealousies . . . of all the dissenters, took alarm lest this might give an ascendancy to the Anglican sect, and refused acting on that bill." *Autobiography*, *supra* note 51, at 48.

60. See *id.* at 50. The board formally established these new professorships on December 4, 1779; the new faculty began teaching on January 17, 1780. Susan H. Godson et al., 1 *The College of William & Mary: A History* 133, 135 (Williamsburg, 1993). To create these three new chairs and to stay within the mandate of the college's charter that permitted only six professorships, Jefferson directed the abolition of the two professorships of divinity and Oriental languages along with the abolition of the college's grammar school for younger students. With this change the college disposed of its more royalist faculty and shifted in the direction of teaching republicanism. Hunter, *supra* note 4, at 144–45.

61. Alfred Zantlinger Reed, *Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States with Some Account of Conditions in England and Canada* 116 (New York, 1921).

62. *Quoted in id.* at 114.

63. *Id.*

Some educators did urge the establishment of a professorship in law in the colonial colleges, particularly after Oxford University appointed William Blackstone Vinerian professor of law in 1758. For example, during the 1770s Yale College considered establishing a professorship of law but did not fill the position.<sup>64</sup> Yale, by means of its proposed law professorship, aspired to teach students knowledge of law and government so as to equip them to secure the nation's new liberties. Yale president Ezra Stiles's vision of education bore similarities to the Jeffersonian vision of training citizens for the purpose of protecting the new republic, but, unlike Jefferson, Stiles did not seek to prepare students for the practice of law.<sup>65</sup>

At the same time, in England, Blackstone urged the teaching of law in the universities and bemoaned the strong bias in favor of the Inns of Court and legal apprenticeships. He noted that many English lawyers in the eighteenth century advised the

dropping of all liberal education, as of no use to students in the law; and placing them, in its stead, at the desk of some skillful attorney; in order to initiate them early in all the depths of practice, and render them more dextrous in the mechanical parts of the business.<sup>66</sup>

Blackstone argued that

a lawyer thus educated to the bar, in subservience to attorneys and solicitors, will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him.<sup>67</sup>

Blackstone viewed the academic study of law as an important precursor to apprenticeship at the Inns of Court: "those gentlemen who resort to the inns

64. *Id.* at 134.

65. Stiles explained that the new chair in law was not geared towards educating Lawyers or Barristers, but for forming *Civilians*. Fewer than a quarter perhaps of the young gentlemen educated at the college, enter into either of the learned professions of Divinity, Law or Physic: The greater part of them after finishing the academic Course return home, mix in with the body of the public, and enter upon *Commerce* or the *cultivation of their Estates*. And yet perhaps the most of them in the Course of their Lives are called forth by their Country into some or other of the various Branches of civil Improvement & the great public offices in the State.

*Quoted in Warren, supra* note 3, at 563.

66. William Blackstone, 1 *Commentaries on the Laws of England* in Four Books 32 (1783).

67. *Id.* This favoring of legal apprenticeships over university legal training would persist in England. Albert Dicey, a subsequent Vinerian professor, commented in 1883 that if the question whether English law can be taught at the Universities could be submitted in the form of a case to a body of eminent counsel, there is no doubt whatever as to what would be their answer. They would reply with unanimity and without hesitation that English law must be learned and cannot be taught, and that the only places where it can be learned are the law courts and chambers.

*Quoted in William Holdsworth, Some Lessons from Our Legal History* 171 (New York, 1928)



of court with a view to pursue the profession, will find it expedient, whenever it is practicable, to lay the previous foundations of this, as well as every other science, in one of our learned universities.”<sup>68</sup>

In establishing the professorship of law at the College of William and Mary, Jefferson sought to give aspiring lawyers both training in legal doctrine and a broad liberal education. When asked, as he frequently was, what an aspiring lawyer should read, Jefferson recommended basic legal texts such as treatises, statutes, and case reports, but also insisted that the aspiring lawyer engage in much broader study: languages (particularly French), mathematics, science (astronomy, physics, natural history, anatomy, botany, and chemistry), political theory, ethics, and history.<sup>69</sup> He also urged broad exposure to theories of government—both ancient and modern.<sup>70</sup> This ambitious education served a specific purpose: to provide wisdom and perspective necessary for governance. As Herbert Johnson has noted, “with Jefferson and Wythe the study of law was coordinated with other studies designed to place the law in context with the emerging social science disciplines, and to give the future lawyer a broader view of law as an instrument of social policy.”<sup>71</sup>

Like many Enlightenment thinkers, such as Montesquieu and Beccaria, Jefferson believed that nations must modify their legal rules to reflect their particular social and political environment.<sup>72</sup> Jefferson himself was deeply involved in reshaping the English common law to suit the American context, arguing, for example, that the English feudal rules of wealth transfer were inconsistent with republican government. He argued that lawmakers and judges could not properly adapt English law to the American context if their education were limited merely to a reading of the English common law.<sup>73</sup> He also insisted that the aspiring lawyer acquire the “art of writing and speaking,”

68. Blackstone, *supra* note 66, at 31.

69. See, e.g., Letter from Thomas Jefferson to Thomas Mann Randolph, Jr. (Aug. 27, 1786), in 10 Jefferson Papers, *supra* note 18, at 306; Johnson, *supra* note 13, at 106. Robert Ferguson has described Jefferson’s recommended reading for aspiring lawyers as “virtual bibliographies of the Enlightenment, requiring fourteen hours of reading a day across a five-year period.” Ferguson, *supra* note 37, at 28.

70. Jefferson was particularly fascinated by the Saxons of pre-Norman England and taught himself the Saxon language. He perceived a “golden age of Saxon freedom preceding Norman usurpation.” Ferguson, *supra* note 37, at 52.

71. Johnson, *supra* note 13, at 107.

72. As Montesquieu had written, law must be developed “relative to the climate . . . soil . . . situation and bigness” of each people. Hellenbrand, *supra* note 38, at 59. Jefferson was an enthusiastic reader of Montesquieu; he encouraged aspiring lawyers to read his *The Spirit of Laws* and recommended it to students as “the best general book on the science of government.” Ferguson, *supra* note 37, at 47.

73. Hellenbrand, *supra* note 38, at 59. Jefferson also worried about the effect of Blackstone—the primary source for studying the English common law—on young lawyers. In fact, he viewed Blackstone as an enemy of the American Revolution. McManis, *supra* note 3, at 610. Writing in 1826 to James Madison, Jefferson spoke of the influence of Blackstone among eighteenth-century lawyers: “when . . . the honeyed Mansfieldism of Blackstone became the students’ hornbook, from that moment, that profession (the nursery of our Congress) began to slide into toryism, and nearly all the young brood of lawyers now are of that hue.” Letter from Thomas Jefferson to James Madison (Feb. 17, 1826), in 16 Jefferson Writings, *supra* note 53, at 155.



recognizing the importance of effective communication and advocacy to the work of the lawyer.<sup>74</sup>

To carry out his vision of legal education at William and Mary, Jefferson selected George Wythe, perhaps the foremost lawyer in colonial Virginia,<sup>75</sup> to serve as William and Mary's first law professor and the first law professor in the New World. Wythe well understood the inadequacies of the apprenticeship system, having suffered a dismal time himself in the law office of his uncle, Stephen Dewey.<sup>76</sup> Despite that experience Wythe, largely self-taught, was widely regarded as one of the most learned legal scholars in Virginia. And his knowledge went far beyond the bounds of the law; Jefferson called him "the best Latin and Greek scholar in the State."<sup>77</sup> In addition to being a leading member of the Virginia bar, Wythe had held a variety of public offices before his appointment at William and Mary: attorney general of the colony of Virginia, member of the Virginia House of Burgesses including service as its clerk, member of the Second Continental Congress, signer of the Declaration of Independence, speaker of the House of Delegates, and chancellor on the three-judge Virginia Court of Chancery.<sup>78</sup> The Board of Visitors who approved Jefferson's recommendation of Wythe were drawn not just to Wythe's legal learning, but to his "zeal for republicanism."<sup>79</sup>

Wythe had long served as a mentor for aspiring lawyers—most notably Thomas Jefferson for three years, from 1762 until 1765.<sup>80</sup> Wythe had Jefferson read legal texts, particularly *Coke on Littleton*, volumes on pleading, and volumes on Virginia and British statutes, but, recognizing the value of a broader liberal education, he also encouraged Jefferson to study science, ethics, religion, history, and literature.<sup>81</sup> When Virginia sought to revise its laws in the mid-1770s to adjust them to republican principles, it turned to its most learned lawyers who were widely read in legal theory, government, and history—Wythe, Jefferson, and Edmund Pendleton.<sup>82</sup>

74. Quoted in Hellenbrand, *supra* note 38, at 60.

75. Jefferson described Wythe to a acquaintance who was considering sending his son to William and Mary to learn law: "He is one of the greatest men of the age, having held without competition the first place at the bar of our general court for 25 years, and always distinguished by the most spotless virtue." Letter from Thomas Jefferson to Ralph Izard (July 17, 1788), in 13 Jefferson Papers, *supra* note 18, at 372.

76. Wythe later wrote that his uncle "treated him with neglect, and confined him to the drudgeries of his office, with little, or no, attention to his instruction in the general science of law." Quoted in Hunter, *supra* note 4, at 140.

77. Quoted in *id.* at 141.

78. Wythe had also worked closely with Jefferson from 1776 until 1778 on an effort to revise Virginia law. The fruits of their labor were 126 proposed bills in the Virginia General Assembly. Wythe became speaker of the House of Delegates of Virginia in 1777, but in 1778 was appointed to the three-person Court of Chancery, the most prominent court in Virginia, which required him to resign from his legislative activities. *Id.* at 142.

79. Imogene E. Brown, *American Aristides: A Biography of George Wythe* 200 (East Brunswick, 1981).

80. Frank L. Dewey, *Thomas Jefferson, Lawyer* 9–17 (Charlottesville, 1986).

81. Hunter, *supra* note 4, at 142.

82. Hellenbrand, *supra* note 38, at 55.

When Wythe began his legal instruction at the College of William and Mary in January 1780, he taught his students the nuances of the common law and exposed them to a broad education that included the principles of republicanism.<sup>83</sup> He lectured his students twice a week, drawing on Matthew Bacon's *New Abridgement of the Law*, Blackstone's *Commentaries*, and the Virginia constitution and statutes.<sup>84</sup> He frequently offered his own interpretation of both the common law and the Virginia constitution.<sup>85</sup> The new state constitutions in America provided fertile material for Wythe, unexplored by English legal commentators like Blackstone and Coke. As one historian has noted, "Wythe was the first scholar in the United States to make American constitutional law the subject of regular instruction."<sup>86</sup> Wythe's students also read political theorists such as Montesquieu, and classical writers such as Horace and Virgil.<sup>87</sup>

Wythe also used the moot court as a means of teaching his students advocacy skills. The English Inns of Court had first developed the moot court during the late Middle Ages, but the seventeenth-century Puritans abolished its use because it had deteriorated into more of a social event than an educational one.<sup>88</sup> Wythe's students would gather once or twice a month in the courtroom of the old colonial capitol in Williamsburg and present legal cases to their professors. The use of the moot court as an instructional device would be widespread in the proprietary law schools developed in the last two decades of the eighteenth century.<sup>89</sup>

Wythe's second innovation, the establishment of a legislative assembly, served as his central tool for teaching his students the practical art of govern-

83. *Id.* at 92.

84. Paul D. Carrington, Teaching Law and Virtue at Transylvania University: The George Wythe Tradition in the Antebellum Years, 41 Mercer L. Rev. 673, 675 (1990); Johnson, *supra* note 13, at 109.

85. Hunter, *supra* note 4, at 145. Virginia governor John Tyler (the father of President John Tyler) wrote Thomas Jefferson about Wythe's lecture notes in 1810:

Judge [Spencer] Roane has read them, or most of them, and is highly pleased with them, thinks they will be very valuable, there being so much of his own sound reasoning upon great principles, and not a mere servile copy of Blackstone, and other British commentators,—a good many of his own thoughts on our constitutions and the necessary changes they have begotten, with that spirit of freedom which always marked his opinions.

Letter from John Tyler to Thomas Jefferson (Nov. 12, 1810), in 1 The Letters and Times of the Tylers, ed. Lyon G. Tyler, 249 (Richmond, 1884).

86. Alonzo Thomas Dill, George Wythe: Teacher of Liberty 43 (Williamsburg, 1979).

87. William Clarkin, Serene Patriot: A Life of George Wythe 156 (Albany, 1970). Peter Carr, Thomas Jefferson's nephew, wrote his uncle describing his studies with Wythe:

Mr. Wythe advised me to begin the study of the Law, reading it two or three hours every day, and devoteing the rest of my time to the languages, history and Philosophy. . . . I rise about day, and take a walk of half an hour to shake off sleep, read law till breakfast, then attend Mr. Wythe till 12 oclock in the languages, read philosophy till dinner, history till night and poetry till bed time.

Letter from Peter Carr to Thomas Jefferson (March 18, 1788), in 12 Jefferson Papers, *supra* note 18, at 677.

88. Dill, *supra* note 86, at 44.

89. See Marian C. McKenna, Tapping Reeve and the Litchfield Law School 7–8 (New York, 1985).



ment. Every Saturday during the school term, Wythe would assemble his students in the legislative chamber of the old colonial capitol. Schooled in the nuances of parliamentary procedure, the students would prepare and debate legislation, drawing on actual bills pending in the Virginia General Assembly in Richmond.<sup>90</sup> Wythe's instruction in the legislative process had great effect. More than a dozen of his students eventually took their seats in the U.S. Senate or the other legislative bodies of the new nation.<sup>91</sup>

Jefferson applauded this training in legislative process. Writing James Madison in July 1780, he explained:

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.<sup>92</sup>

Wythe agreed with Jefferson's assessment of his purpose of training political leaders. Writing John Adams in December 1785, Wythe articulated his purpose as "to form such characters as may be fit to succeed those which have been ornamental and useful in the national councils of America."<sup>93</sup>

Wythe's legal program proved immensely popular with both students and faculty. During his first year half of the college's students (about forty) enrolled in his classes.<sup>94</sup> Although most students were Virginians, Wythe did draw students from out of state, particularly the Carolinas and Pennsylvania.<sup>95</sup> Wythe disliked taking on a student who planned to stay only two years at the college unless the student brought considerable training beforehand.<sup>96</sup>

90. Brown, *supra* note 79, at 203. Walker Maury, headmaster of Williamsburg's grammar school, described the model legislature to Jefferson: the students assemble

as a body of Legislators, in whom you see our assembly in miniature debating, at least many of them, extempore, on important questions of state. Some of their harrangues wou'd be heard with pleasure in any house of representatives; and the whole is conducted with, perhaps, more spirit than was ever display'd in an institution of this nature.

Letter from Walker Maury to Thomas Jefferson (Apr. 20, 1784), in 7 Jefferson Papers, *supra* note 18, at 112. One Wythe student, John Brown, described the legislative assembly in a July 1780 letter:

He has form'd us into a Legislative Body, consisting of about 40 members. Mr. Wythe is speaker to the House, & 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 to revise the laws, then we debate & alter (I will not say amend) with the greatest freedom.

Clarkin, *supra* note 87, at 143–44.

91. W. Hamilton Bryson, *Legal Education in Virginia 1779–1979* at 23 (Charlottesville, 1982).

92. Letter from Thomas Jefferson to James Madison (July 26, 1780), 3 Jefferson Papers, *supra* note 18, at 507.

93. *Quoted in* Oscar L. Shewmake, *The Honorable George Wythe: Teacher, Lawyer, Jurist, Statesman* 16–17 (Williamsburg, 1921).

94. Hunter, *supra* note 4, at 146. All of Wythe's students, of course, were white males. It would be decades before women and African-Americans would enter the legal profession.

95. *Id.* at 153.

96. Brown, *supra* note 79, at 206.

When Wythe resigned his professorship in 1789, he was succeeded by one of his former students, St. George Tucker, who would become one of the most distinguished legal scholars in the new nation.<sup>97</sup> Tucker continued Wythe's model of legal instruction with an emphasis on the details of the common law, Virginia statutory law, and constitutional law, as well as on the science of government. Like Wythe, Tucker used Blackstone as his primary legal text, but he emphasized that American law had departed from the English common law in various ways and warned his students that Blackstone was not always a reliable guide to American law.<sup>98</sup> Blackstone could teach students "what the law had been," but to know what the law "now is, [the student] must resort to very different sources of information."<sup>99</sup>

Tucker urged law students to study the federal and state constitutions, arguing that

in America the force and obligation of every positive law, and of every act of government, are so immediately blended with the authority of the government itself, as confided by the people to those who administer it, that no man can pretend to a knowledge of the laws of his country, who doth not extend that knowledge to the constitution itself.<sup>100</sup>

He also emphasized political theory, requiring every law student to read John Locke's *Essay on Civil Government*, James Burgh's *Political Disquisitions*, and

97. The exact reasons for Wythe's departure are unclear, but legislation that took effect in 1789 moved the Court of Chancery to Richmond, and Wythe relocated to that city upon completing the 1789–90 term at the college. Dill, *supra* note 86, at 71. According to Jefferson, Wythe also apparently had some type of disagreement with his colleagues at the college. Jefferson was bitterly disappointed at Wythe's departure. He wrote at the time: "The [board of] visitors will try to condemn what gave [Wythe] offence [and caused him to leave] and press him to return: otherwise it is over with the college." Letter from Thomas Jefferson to William Short (Dec. 14, 1789), in 16 Jefferson Papers, *supra* note 18, at 25–26. Tucker was an extraordinarily distinguished successor to Wythe, but Jefferson's high regard for the college was not restored. In particular, Jefferson objected to certain decisions by the Board of Visitors in the early 1790s that had the effect of increasing the influence of the church over the college: the consecration of Professor Madison as bishop of Virginia, the required attendance at prayers, and the establishment of a degree in divinity. Jefferson's disappointment was so great that by 1800 he would refer to the "demolition" and "ruin" of his 1779 plan to modernize and reform William and Mary. Godson et al., *supra* note 60, at 173.

After Wythe's departure, Jefferson did not suggest that other aspiring lawyers attend the college. His disappointment with the changes at William and Mary would have profound consequences for the history of higher education in America. In time, he turned his attentions to the establishment of a new university to fulfill his educational ideals—the University of Virginia.

98. For example, Tucker explained that the American Revolution had "produced a corresponding revolution not only in the principles of our government, but in the laws which relate to property, and a variety of other [laws] irreconcilable to the principles contained in the Commentaries." Michael Grossberg, *Citizens and Families: A Jeffersonian Vision of Domestic Relations and Generational Change*, in *Jefferson and Education*, *supra* note 5, at 19. See also Charles T. Cullen, *St. George Tucker and Law in Virginia, 1772–1804* at 120 (New York, 1987).

99. Blackstone's *Commentaries*, *supra* note 17, at v.

100. *Id.* at xvi–xvii. Tucker also believed that knowledge of constitutional law was essential to the preservation of liberty and republican government: "In a government founded on the basis of equal liberty among all its citizens, to be ignorant of the law and the constitution, is to be ignorant of the rights of the citizen. . . . [W]hen ignorance is united with supineness, liberty becomes lethargic, and despotism erects her standard without opposition." *Id.* at xvii.



Jean Louis de Lolme's *Constitution d'Angleterre*.<sup>101</sup> One of his students described Tucker's teaching: "The general opinion at this time appears to be that students of law should devote their time partly to legal acquirements, partly to the pursuit of general science, and but partially to the science of government."<sup>102</sup>

In 1803 Tucker published his own five-volume edition of Blackstone's *Commentaries* with hundreds of pages of annotations and explanations to account for American departures from the English common law, and with analysis of the constitution and laws of both the United States and Virginia.<sup>103</sup> Tucker's "American Blackstone," which drew heavily from his lectures to his William and Mary students,<sup>104</sup> would serve as a leading legal text during the first half of the nineteenth century.<sup>105</sup> Ironically, his scholarly work made legal training outside of the university more palatable.<sup>106</sup>

Tucker, like Wythe, engaged his students in debate on some of the leading political and legal issues of the day, seeking to train them to take leadership in the new nation. In particular, Tucker discussed with his students the questions of the abolition of slavery, capital punishment, the principle of political equality, trial by jury, and the practice of seizing goods in execution of a debt.<sup>107</sup> On the slavery issue, for example, Tucker, an ardent abolitionist, invited his students to consider the morality of slavery:

How far the condition of that unfortunate race of men, whom the unhappy policy of our forefathers has reduced to that degraded condition, is reconcileable to the principles of a free republic, it might be hard for the advocates of such a policy to shew. It was, at least, presumed that . . . in this country, where the blessings of liberty have been so lately, and so dearly purchased, it could not be deemed improper to inquire whether there was a due correspondence between our avowed principles, and our daily practice; and if not, whether it were practicable, consistently with our political safety, to wipe off that stigma from our nation and government.<sup>108</sup>

Tucker also lectured on the equality of persons in a republic contrasted with the social hierarchy typical of monarchical government:

101. Cullen, *supra* note 98, at 130.

102. *Quoted in id.* at 129.

103. Blackstone's *Commentaries*, *supra* note 17.

104. For example, Tucker used almost verbatim his lecture to his law students on the irreconcilability of slavery with republican principles in his introduction to his edition of Blackstone. Cf. Cullen, *supra* note 98, at 119–20 with 1 Blackstone's *Commentaries*, *supra* note 17, at xi–xii.

105. The U.S. Supreme Court also considered Tucker's Blackstone authoritative as to the legal understandings of the founders. Indeed, Tucker's Blackstone has been cited by the Supreme Court in more than 40 cases, as recently as 1995. Paul Finkelman & David Cobin, An Introduction to St. George Tucker's Blackstone's *Commentaries*, in 1 Blackstone's *Commentaries*, *supra* note 17, at v–vi.

106. Currie, *supra* note 3, at 360. Some have suggested that Tucker's Blackstone helped extend the life of the apprenticeship method of legal training since it made much of American law accessible to the aspiring lawyer. Reed, *supra* note 61, at 117.

107. Cullen, *supra* note 98, at 125–26.

108. 1 Blackstone's *Commentaries*, *supra* note 17, at xi–xii.

A Franklin or a Washington need not the pageantry of honors, the glare of titles, nor the preeminence of station to distinguish them. . . . Equality in rights precludes not that distinction which superiority in virtue introduces among citizens of a Republic. Washington in retirement was equal, and only equal, in rights to the poorest citizen of the State.<sup>109</sup>

Another of Tucker's favorite topics was the issue of unequal voting power, whether it be the gross legislative malapportionment of the English Parliament, or the disproportionate influence of smaller states in the Electoral College's selection of the American president.<sup>110</sup> Some Tucker students thought he emphasized the science of government more than legal doctrine, and in time he did provide greater emphasis on the nuances of the common law and statutory law. Joseph C. Cabell, a Tucker student who later became governor of Virginia, wrote in 1801: "You may remember that a notion formerly prevailed here that a student of law should make the study of his profession subservient to that of politics. This opinion however seems not to prevail here this course, but has yielded to one perhaps more rational."<sup>111</sup>

In conjunction with Wythe and Tucker's instruction in law, the College of William and Mary decided to award a law degree. The requirements were rigorous. First, the college required a bachelor of arts degree, for which the student must become "acquainted with [the various] branches of the Mathematics, both theoretical and practical, . . . Natural Philosophy[,] . . . Logic, the Belles Lettres, Rhetoric, Natural Law, Law of Nations, . . . Geography and of Ancient and Modern Languages."<sup>112</sup> For the law degree itself, the student must become "well acquainted with Civil History, both Ancient and Modern, and particularly with Municipal law and police."<sup>113</sup> William and Mary awarded its first law degree—and the first in the United States—in 1793. Tucker sought unsuccessfully to make the requirements for a William and Mary law degree even more demanding, proposing that students demonstrate knowledge in ancient and modern history, ancient and modern constitutions (particularly those of the United States and Virginia), ethics, international law, English law (that which applied in this country) and American law, and legal procedure. He also favored a requirement that the law student master the skill of oral advocacy and write a thesis for publication on some aspect of American law.<sup>114</sup>

109. Quoted in Cullen, *supra* note 98, at 124.

110. Tucker noted that London sent only four members to Parliament, although it contained one-seventh of the nation's population, and that some other English cities, like Manchester and Birmingham, had no representation in Parliament. In like fashion, he criticized the Electoral College because it could allow a minority of voters to elect the president. *Id.* at 123–24.

111. Quoted in *id.* at 129 (emphasis omitted).

112. Quoted in Hunter, *supra* note 4, at 146–47.

113. Quoted in Ira Bernard Dworkin, America's First Law School: The College of William and Mary, 37 A.B.A. J. 348, 349 (1951).

114. St. George Tucker, Plan for Conferring Degrees on the Students of Law in the University of William and Mary in Tucker-Coleman Papers, Special Collections, Earl Gregg Swem Library, College of William and Mary. Finally, Tucker prepared legislation for the Virginia General Assembly providing that any student who completed a law degree at the College of William and Mary should gain admission to the bar without payment of any additional fees. *Id.*



Tucker aspired to train both excellent practitioners and scholars with an extraordinary breadth of knowledge. So committed was he to this educational vision that if a student sought to leave early before completion of his degree, Tucker would offer to pay the student's fees to induce him to remain.<sup>115</sup> Tucker taught as many as fifty students at a time—from both inside and outside Virginia—although he typically taught about twelve to fifteen.<sup>116</sup> He resigned his professorship in 1803 over a dispute with the college administration.<sup>117</sup> Like the Wythe resignation, Tucker's was a major blow to the college. William and Mary would continue to teach law until the Civil War, but no subsequent professor could match Wythe or Tucker in eminence.

Although William and Mary provided the entire professional training of many of its students, some Wythe and Tucker students supplemented their formal legal studies with an apprenticeship. For example, two of Wythe's most distinguished students, Bushrod Washington, who later became a U.S. Supreme Court justice, and Spencer Roane, who served a distinguished tenure on the Virginia Court of Appeals, both entered legal apprenticeships in Philadelphia after a year of study with Wythe.<sup>118</sup> Joseph Cabell explained his decision to apprentice in a Richmond law office following his William and Mary education: "It is a mistaken idea that young men derive much assistance from the attornies here, but as there is some advantage I am unwilling to lose it."<sup>119</sup> William Short, a Wythe student whom Jefferson considered his "adopted son," commented about his William and Mary education: "I had plead causes also in a simulated court, where our professor presided, & I was considered able and eloquent. . . . I am sure I may say without vanity that I [was] prepared more than most of the Lawyers who then were practicing at the bar."<sup>120</sup> But Short also saw the virtue of an apprenticeship to supplement his education:

115. Cullen, *supra* note 98, at 123.

116. Letter from St. George Tucker to the Rector of the Convocation of Visitors & Governors of William & Mary College (Dec. 9, 1803), in Tucker-Coleman Papers, *supra* note 114.

117. Tucker objected to a number of actions taken by the Board of Visitors of the college, including requirements that all classes be taught on the college premises, that all faculty regularly present the Board of Visitors with class rolls, and that all faculty regularly patrol dormitory rooms to control student misconduct. As to the requirement that he teach on the college premises rather than in his home a few blocks away, Tucker commented: "I tried this method one or two winters. A chairbox full of books was daily transported there and back again with no small inconvenience to myself and servants. But often in the midst of a lecture I found that I had overlooked an important reference, perhaps many, which it was in vain to attempt to supply." Tucker construed the requirement that he present the board with his class roll as demonstrating their "total want of confidence in the professors: not to say a perfect contempt for them." Finally, in response to the requirement that he patrol student living quarters, Tucker refused to "inflict upon my students the ordinary discipline of a village school" or "to perform the duties of a beadle . . . the performance of which must degrade the professor in the eyes of his pupils, and of the public, and the man in his own eyes." He resigned instead. *Id.*

118. Hunter, *supra* note 4, at 149–50.

119. Quoted in Cullen, *supra* note 98, at 137.

120. Letter from William Short to Greenbury Ridgely (Dec. 11, 1816), in *To Practice Law: Aspects of the Era of Good Feelings Reflected in the Short-Ridgely Correspondence, 1816–1821*, ed. George Green Shackelford, 64 Md. Hist. Mag. 342, 349 (1969) [hereinafter *To Practice Law*].

"this technical & practical part [of the law] is to be learned only in an attorney's office. My advice therefore always would be to everyone to pass one year in this way previous to the commencement of the practice."<sup>121</sup> In particular, Short commented that he did not have sufficient knowledge of forms of pleading after his Wythe training, explaining:

Scientific students [of the law] are apt to despise the mere technical & practical [part] of the business—that is the process or forms of pleading. . . . I had read the best reporters, but I was miserably ignorant of the mere technical forms. These were known to the clerks of courts & to every pettifogger, & I despised them.<sup>122</sup>

Jefferson and Wythe's model of university-based legal education to train public citizens to practice public virtue and to exercise leadership was embraced by other universities. In 1790 U.S. Supreme Court justice James Wilson initiated what he intended to be a three-year course at the College of Philadelphia emphasizing comparative and historical examinations of law. Wilson's primary aim was not to train aspiring lawyers, but rather to equip his students to engage in the art of government. He paid considerable attention to moral philosophy and political economy, viewing law as a branch of moral philosophy. According to Robert McCloskey, Wilson offered a "complete political theory, grounded on theology and psychology, and leading to a philosophy of American law."<sup>123</sup> Wilson's teaching, alas, was not terribly popular. Because of a lack of interest, he abandoned the lectures before he completed his second year.

In 1793 James Kent was appointed professor of law at Columbia College in New York, where he taught until 1798 and again from 1823 until 1826. Kent embraced the Jefferson and Wythe view of the purpose of legal education. In his inaugural lecture in 1794 he set forth his view of legal education and the role of lawyers in American society:

[E]xtensive legal and political knowledge is requisite to render [men] competent to [administer the government.] A general initiation into the elementary learning of our law, has a happy tendency to guard against mischief, and at the same time to promote a keen sense of right, and warm love of freedom. . . . A lawyer in a free country, should have all the requisites of Quintilian's orator. He should be a person of irreproachable virtue and goodness. He should be well read in the whole circle of the arts and sciences. He should be fit for the administration of public affairs, and to govern the

121. Letter from William Short to Greenbury Ridgely (Nov. 10, 1817), in *To Practice Law*, *supra* note 120, at 369.

122. Letter from William Short to Greenbury Ridgely (Dec. 11, 1816), in *To Practice Law*, *supra* note 120, at 349–50. One former student wrote Tucker in 1802 about his frustration with practice in the county courts of Virginia: "I feel myself very much unprovided with that kind of teaching, which alone seems useful in county courts. And though I may be in possession of some uncoined ore, which may hereafter be valuable, and which great labor has extracted from the mines of Coke and Sheppard yet the current half-pence, in possession of every pettifogger, gives them a . . . superiority, which I cannot relish." Letter from Chapman Johnson to St. George Tucker (May 29, 1802), in *Tucker-Coleman Papers*, *supra* note 114.

123. Robert Green McCloskey, Introduction in *1 The Works of James Wilson*, ed. Robert Green McCloskey, 37 (Cambridge, Mass., 1967).



commonwealth by his councils, establish it by his laws, and correct it by his example.<sup>124</sup>

Kent's lectures focused on constitutional law: "the importance of a knowledge of our constitutional principles, as a part of the education of an American lawyer . . . arises from the uncommon efficacy of our courts of justice, in being authorized to bring the validity of a law to the test of the Constitution."<sup>125</sup> Kent did not aspire to offer narrow training in the practice of law, but rather a broad exposure:

This is not the proper place to prescribe a system of rules for the mere mechanical professor of our laws. The design of this institution, is undoubtedly of a more liberal kind. . . . Nothing I apprehend is to be taught here, but what may be usefully known by every gentleman of polite education, but is essential to be known by those whose intentions are to pursue the science of the law as a practical profession.<sup>126</sup>

Kent's audience, however, was primarily composed of existing members of the bar, not aspiring lawyers. And, like Wilson's, Kent's lectures received a lukewarm response. During his first year, Kent had an audience of forty-three for his lectures, most of whom were members of the bar.<sup>127</sup> The following year, 1795, he had only two students in addition to his clerks, and he taught no more than eight students in each of the next three years.<sup>128</sup> In 1798 Kent resigned his professorship to become a judge. His most significant influence on legal education would be his four-volume *Commentaries* on American law produced in the late 1820s.

In 1799 Transylvania University in Lexington, Kentucky, appointed a William and Mary graduate, George Nicholas, professor of law and politics. Transylvania continued the William and Mary tradition of moot courts and mock legislatures and offering students a broad training in both law and political theory.<sup>129</sup>

Other colleges also established courses in law that emphasized training in political leadership. In 1801 Yale College finally filled the law professorship it had established in the 1770s. Its stated purpose was to provide

lectures on the leading principles of the Law of Nature and Nations, on the general principles of civil government, particularly of Republican representative government, on the Constitution of the United States and of the State of Connecticut . . . and on the various obligations and duties

124. Kent's Introductory Lecture, 3 Colum. L. Rev. 330, 332, 338 (1903).

125. *Id.* at 334. Kent aspired to "explain the principles of our constitutions, the reason and history of our laws, to illustrate them by a comparison with those of other nations, and to point out the relation they bear to the spirit of representative republics." *Id.* at 341.

126. *Id.* at 341.

127. Kent delivered 26 lectures his first year to seven college students and to 36 lawyers and law students from outside the college. Julius Goebel, Jr. & Samuel F. Howard, *A History of the School of Law, Columbia University* 16–17 (New York, 1955).

128. Warren, *supra* note 3, at 350–52.

129. Carrington, *supra* note 84, at 679; Reed, *supra* note 61, at 118.

resulting from the social relations, especially those which arise from our own National and State Governments.<sup>130</sup>

Princeton offered instruction in law to its undergraduates from 1795 to 1812 through lectures by its president, Samuel S. Smith; Smith addressed “the subjects of jurisprudence, politics and public law or the law of nature and nations, with which every man . . . in a free country ought to be acquainted.”<sup>131</sup> Several colleges in Ohio and Indiana in the early nineteenth century taught law with the purpose “of creating a corps of potential leaders appreciative of the need for self-restraint in the practice of democratic self-government.”<sup>132</sup>

During the 1780s a second innovation in legal education emerged: the establishment of private proprietary law schools. The most substantial of these were Tapping Reeve’s school at Litchfield, Connecticut, and Peter Van Schaack’s school at Kinderhook, New York.<sup>133</sup> These schools emphasized private law, as opposed to public law, and mastery of English and American common law. They paid far less attention to public law topics such as constitutional law that received greater emphasis in the colleges and universities. Their focus was more explicitly to equip students to practice law as opposed to training them both to practice law and to exercise political leadership.<sup>134</sup>

The proprietary law schools benefited from the weakness of legal apprenticeships, the decline in interest in the Inns of Court after the Revolution, and the limited opportunities for legal instruction in American colleges. As one leading historian of the Litchfield law school has written, “Despite its narrow technicalism, or perhaps because of it, Litchfield’s form of legal training caught on.”<sup>135</sup>

When universities began full legal instruction in separate professional schools during the first half of the nineteenth century, they combined the proprietary schools’ emphasis on practical training with the earlier college-

130. Quoted in Warren, *supra* note 3, at 354.

131. Quoted in *id.* at 355.

132. Paul D. Carrington, *Legal Education for the People: Populism and Civic Virtue*, 43 *Kansas L. Rev.* 1, 6 (1994). See Paul D. Carrington, *Teaching Law in the Antebellum Northwest*, 23 *U. Tol. L. Rev.* 3, 8–12, 16–21 (1991).

133. Reeve established his Litchfield school in 1784. From 1784 to 1798 the school taught about 210 students; from 1798 until 1833, 805 students. The largest year was 1813, when it taught 54 students; 40 was the average. The Litchfield program, which lasted 14 months, consisted of daily lectures on a variety of legal topics, weekly examinations, and a weekly moot court. Warren, *supra* note 3, at 357–61.

134. Johnson, *supra* note 13, at 110. Van Schaak, for example, prepared an “Analysis of the Practice of the Supreme Court,” in which he outlined the progress of a typical lawsuit from start to finish in great detail. Quoted in Bloomfield, *supra* note 9, at 25. His questions to his students were exceedingly practical. For example: “Suppose a person inclined to purchase a farm in the County of Westchester was to give you a fee for your advice, how he should find out, whether there were any incumbrances upon the land. What instructions would you give him?” *Id.* at 26. Jefferson criticized the proprietary law schools for their focus on the narrow practical aspects of law practice and spent the last years of his life attempting to integrate the study of law into a broader liberal arts education at the University of Virginia with, again, a purpose of training leaders. Barber, *supra* note 5, at 148.

135. McKenna, *supra* note 89, at 67.



based law programs' emphasis on public law and the science of government.<sup>136</sup> Joseph Story, whose appointment as Dane professor of law at Harvard in 1829 has been called "the most significant event in American legal education since Jefferson's 1779 reform," mixed both Jefferson's concept of public law training for citizenship and leadership with the private law emphasis of the proprietary law schools.<sup>137</sup> Evoking a Jeffersonian notion of intellectual breadth, Story urged students in his inaugural lecture to pursue "the study of philosophy, of rhetoric, of history, of human nature."<sup>138</sup> As Herbert Johnson has written, "Within a relatively short period of time Justice Story succeeded in synthesizing the public law emphasis of Wythe, Wilson, and Kent with the professional training of Reeve, Van Schaack, and others."<sup>139</sup> Jefferson's second experiment with legal education—at the University of Virginia—also embraced the purpose of training public citizens.<sup>140</sup> Although the university came under early criticism for its inattentiveness to the nuances of legal practice, it subsequently expanded its focus to provide students with practical instruction in law in addition to knowledge of legal doctrine and theories of government.<sup>141</sup> Jefferson's emphasis on the importance of history, political theory, and public law in legal education influenced other law schools as well—such as Columbia—in the nineteenth century.<sup>142</sup>

By the end of the eighteenth century, the vast majority of aspiring lawyers still received their legal training through apprenticeships in law offices as opposed to universities or proprietary law schools. And more aspiring lawyers were trained by proprietary law schools in the late eighteenth and early nineteenth centuries than by universities. But the innovations of university-based legal education were highly significant. As Brainerd Currie has observed, these early professorships advanced a new principle of legal education:

[T]he training of the lawyer should be broad; it should include university training; and positive professional values were attached to nontechnical

136. For example, David Hoffman's ambitious law curriculum that he completed in 1817 for the purpose of implementation at the University of Maryland included both private law topics and moral and political philosophy, international law, Roman law, and political economy. McManis, *supra* note 3, at 616.

137. Quoted in Johnson, *supra* note 13, at 114.

138. Quoted in Ferguson, *supra* note 37, at 26.

139. Johnson, *supra* note 13, at 114.

140. Jefferson articulated his purpose in establishing the University of Virginia as forming "statesmen, legislators, and judges" by "develop[ing] the reasoning faculties of our youth, enlarg[ing] their minds, cultivat[ing] their morals, and instill[ing] into them the precepts of virtue and order." Quoted in Yarbrough, *supra* note 37, at 142. Jefferson also wrote of the University of Virginia: "Nor must we omit to mention the incalculable advantage of training up able counsellors to administer the affairs of our country in all its departments,—legislative, executive, and judicial, and to bear their proper share in the councils of our National Government; nothing more than education advancing the prosperity, the power, and the happiness of a nation." Currie, *supra* note 3, at 355. Jefferson expressed the hope that "within a dozen or twenty years a majority of our own legislature" would be graduates of the University of Virginia. Quoted in David Tyack, *Forming the National Character: Paradox in the Educational Thought of the Revolutionary Generation*, 36 Harv. Educ. Rev. 29, 40 (1966).

141. Johnson, *supra* note 13, at 113.

142. McManis, *supra* note 3, at 624.

elements of university training. . . . Together, these ideas accounted for a phase of legal education in America which was distinguished by breadth, intellectual vitality, and productiveness, and which has important significance for the modern university law school.<sup>143</sup>

Moreover, the Jeffersonian vision of the public role of lawyers in the new republic won wide acceptance. One legal historian has noted: "Few of the practitioners whose deaths were recorded in the law journals of the 1840s had missed election to a state legislature or to Congress at some point in their careers. Collectively they established a pattern of public leadership which had answered well the needs of the early Republic."<sup>144</sup>

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Jefferson's vision of legal education was considerably more ambitious than the proprietary law schools or apprenticeships of the late eighteenth and early nineteenth centuries. He thought that aspiring lawyers should be taught not merely the nuances of the common law and proper pleading, but also theories of government and comparative history. He assumed that those trained in law would offer leadership to the new nation and that they needed to be trained accordingly. Although a majority of aspiring lawyers in the late eighteenth and early nineteenth centuries rejected this type of legal training, preferring instead law office apprenticeships or the practice-oriented proprietary law schools, Jefferson's expansive vision for both the role of lawyers and the structure of legal education would survive.

As the legal profession struggles to redefine its role today in American public life in the face of broad criticism, lawyers would do well to consider the Jeffersonian vision of lawyers as "public citizens," concerned with serving the broader public good as opposed to mere private self-interest.

143. Currie, *supra* note 3, at 357.

144. Bloomfield, *supra* note 9, at 148. The *American Quarterly Review* remarked in 1832: "Of the learned professions, nay of all the sciences, [law] may well put in a claim for even the highest rank. What, indeed, can be more noble than the aim of that science which is to direct the actions of mankind." *Quoted in* Ferguson, *supra* note 37, at 25. David Hoffman wrote in 1837 that lawyers were "the most entrusted, the most honoured, and withal, the most efficient and useful body of men" in the country. *Quoted in* Perry Miller, *The Life of the Mind in America from the Revolution to the Civil War* 105 (New York, 1965).

This role of lawyers as public citizens, however, would begin to decline by the middle of the nineteenth century. A midcentury legal publication noted: "It is well known that men of the highest eminence in our profession are seldom members of the legislative assemblies in this country." Bloomfield, *supra* note 9, at 149.