

W&M LAW SCHOOL CAME FIRST WHY CARE?

*W Taylor Reveley III**

The past is a source of knowledge, and the future is a source of hope. Love of the past implies faith in the future.

Stephen Ambrose**

Remove not thy ancient landmark, which thy fathers have set.
Proverbs 22:28

DURING the Revolutionary War, Thomas Jefferson became governor of Virginia and a member of the Board of Visitors of William & Mary his alma mater. Jefferson was acutely unhappy with the then current state of legal education. Fledgling lawyers worked as apprentices in the offices of practicing lawyers, in theory learning the law from their mentors but in practice spending most of their time as human xerox machines. Jefferson felt aspiring lawyers should be trained in a university amid the liberal arts, with the expectation they would become leaders of their communities, states, and nation. He wanted new lawyers educated to be not simply skilled practitioners of law but also servants of the public interest. He wanted to educate *citizen lawyers*.¹

On December 4, 1779 Jefferson succeeded in persuading his colleagues on the William & Mary board to begin legal training at the College. To this end, the board created a new professorship in “law and police” (“police” meaning public policy). Jefferson then recruited his own beloved law teacher, George Wythe, to assume the post. By any measure, Wythe was an extraordinary man, a person of protean ability and accomplishment. He was the leading lawyer of Virginia. His contemporaries insisted that “not one dirty coin ever reached the bottom of Wythe’s pockets,”² referring to his habit of resigning from any representation, with fees returned, if he found his client’s position unjustified as the facts evolved. Over the course of his career, Wythe served in all three branches of Virginia’s government: as attorney

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** The Ambrose quote comes from an interview in the May 2001 edition of FAST COMPANY, at 168.

1. Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527-529 (1990) (citing a letter from Thomas Jefferson to Governor John Tyler (May 26, 1810), in XII THE WRITINGS OF THOMAS JEFFERSON 393 (Library ed. 1904)).

Thus, for Jefferson, university legal education was to be part of “the nursery” in which the political leadership of the republic could be nurtured, forming “the statesmen, legislators, and judges, on whom public prosperity and individual happiness” so much depended. To provide the political support for the leadership so propagated, Jefferson planned for universities to provide some legal training for all the intellectual elite in attendance.

Id.

2. *Id.* at 534.

general of the colony, member and clerk of the House of Burgesses and later speaker of the House of Delegates, and as one of Virginia's leading judges. In the forefront of the Revolutionary generation, he signed the Declaration of Independence and served in the Continental Congress. Wythe was among the framers of the United States Constitution and thereafter one of its most effective champions in Virginia's ratifying convention. He was also a scholar of striking range and depth, as well as a master teacher. In short, Wythe's appointment as the College's first law professor was a perfect way to begin legal training at William & Mary.

The effort got off to a rousing start. While Wythe emphasized political economy and public law, he also insisted his students build a solid foundation in English common law. Wythe lectured twice a week. Often listening along with his students were undergraduates and interested members of the community. He revived the old English custom of moot courts, sitting once or twice a month with other professors to judge student arguments. He initiated a Saturday custom of holding mock legislative proceedings in the old colonial capitol in Williamsburg; the students dealt with the substantive and procedural aspects of important bills then pending in the Virginia General Assembly in Richmond. Thomas Jefferson liked what he saw. In 1780, he wrote James Madison enthusiastically:

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.³

Among Wythe's first students at William & Mary was John Marshall, later the fourth and greatest chief justice of the United States Supreme Court. Over the course of his career, Wythe taught a host of Virginia's and the country's early leaders, starting with Thomas Jefferson and ending with Henry Clay.⁴ They revered him.

Wythe led the new program in law at William & Mary for a decade. Another lawyer of striking ability and prominence, St. George Tucker, followed him. Both of these seminal figures in legal education insisted that their students engage the leading issues of the day—even the most sensitive, slavery in particular. Wythe and Tucker vehemently opposed it. This is how Tucker put the issue to his students:

How far the condition of that unfortunate race of men, whom the unhappy policy of our forefathers has reduced to that degraded condition, is reconcilable to the principles of a free republic, it might be hard for the advocates of such a policy to shew. It was, at

3. Letter from Thomas Jefferson to James Madison (July 26, 1780), in 3 THE PAPERS OF THOMAS JEFFERSON 507 (Julian P. Boyd ed., 1951), reprinted in Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. LEGAL EDUC. 185, 202 (2001).

4. Carrington, *supra* note 1, at 538 ("In 1801, while Wythe was in Richmond, one of his former students was serving as President of the United States, another as Chief Justice of the United States, while a third, James Monroe, served as governor of the nation's largest state before becoming the nation's fifth President in 1817").

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.⁵

By the 1790s, William & Mary had become quite demanding in its requirements for a law degree. In 1792, for instance, the College's statutes stated that "[f]or the degree of Bachelor of Law the student must have the requisites for Bachelor of Arts; he must moreover be well acquainted with Civil History both Ancient and Modern, and particularly with Municipal law and police."⁶ In 1793, William & Mary conveyed its first formal Bachelor of Law degree to William H. Cabell. In due course, he became Governor of Virginia and a justice on the Virginia Supreme Court of Appeals. Like John Marshall and many others, Cabell proved to be the citizen lawyer whom William & Mary Law School was created to produce.

Between them, George Wythe and St. George Tucker got legal training off to a splendid start at William & Mary. This was the first university-based legal program in America, coming only slightly later than Sir William Blackstone's 1758 professorship in law at Oxford.⁷ During a 1964 lecture in England, one of Harvard Law School's incomparable deans, Erwin Griswold, spoke about the origins of legal education in the United States. "Though Wythe and Tucker were professors in a university, without being set up as a separate 'law school,'" Griswold said, "the difference is simply one of definition. There can be no doubt that Wythe and Tucker and their successors 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."⁸

So William & Mary Law School came first. Who cares? To judge by behavior, people do put stock in what came first and, more generally, in things with some age on them. Jamestown stresses it got underway before Plymouth Rock as the oldest permanent English settlement in America ("permanent," Jamestown adds to its claim, to deal with the existence of earlier failed settlements). Among the various states, Virginia and Massachusetts guard their temporal primacy. Washington and Lee University and Hampden-Sydney College will disagree forever over which is the tenth oldest institution of higher education in the United States and which the eleventh. Most people prefer to cite the sayings of long dead presidents than those

5. 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 xi-xii (St. George Tucker ed., 1965) (1803), reprinted in Douglas, *supra* note 3, at 204.

6. Ira Bernard Dworkin, *America's First Law School: The College of William and Mary*, 37 A.B.A. J. 348, 349 (1951); Robert M. Hughes, *William and Mary, The First American Law School*, WM. & MARY Q., 2d Ser. II, at 42 (Jan. 1922).

7. "The chair in law [at William & Mary] was the first of its kind at an American university, and second in the English-speaking world, only antedated by Oxford's Vinerian chair of law, first held in 1758 by Sir William Blackstone." 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 144 (Steve Sheppard ed., 1999).

8. ERWIN N. GRISWOLD, LAW AND LAWYERS IN THE UNITED STATES 39 (1964). See also William F. Swindler, *America's First Law Schools: Significance or Chauvinism?* 41 CONN. B.J. 1, 7 (1967); Douglas, *supra* note 3, at 186 n.3.

still living or only recently gone the way of all flesh. We line up to see famous old things, like the original Declaration of Independence. We suffer angst when antiquities are lost. We celebrate institutional birthdays every 25 years, with special passion on occasions denominated in the 100s.

Why do people behave this way? Perhaps because there is a presumption of quality inherent in age. People who belong to old institutions, accordingly, often feel distinguished themselves because of the association. They are nourished vicariously by the institution's deep roots and flourish under the glory of its ancient foliage. They feel linked to past generations, on common ground with those who also have been nourished by the institution in earlier years. This is especially true when those who have gone before went on to glittering achievement.

Why should there be a presumption of quality in age? Perhaps because it suggests staying power, the capacity over time to survive adversity and seize opportunity, the poise and dignity that come from surmounting countless flaps and crises, and the wisdom born of experience, especially the knowledge what not to change even as everything else does. To quote myself from a related context:

Whether universities, regiments or law firms, some institutions move powerfully from one generation to the next. Others find themselves becalmed, or they founder. Reasons for success or failure are legion. But those institutions that prevail usually take strength from their past. They remember their heroes, their times of peril and triumph, and their basic beliefs. The importance of the past as a source of confidence and poise grows with the turmoil of the present.

As never before, law firms need the direction and dignity that come from knowing their roots. When firms reorganize their structure to adapt to current realities, if their basic character is to endure, it becomes all the more crucial that they know what *not* to change. The best of their past usually provides a guide.

The struggles and mistakes of the past are also a useful guide. They reassure and comfort. Disputes ... are nothing new. Nor is the introduction into the firm, sometimes with wrenching impact, of seasoned lawyers who began their careers elsewhere. Ways of governing ... come and go, not always happily. People get angry. But, if successful, the firm goes forward, tempered by the passage through its fires.⁹

It does matter, in my view, that William & Mary Law School's roots run old and deep into American history. The resilience and strength of these roots brought the school back to life after a near death experience during the Civil War and preserved the school in 1939 when William & Mary's own Board of Visitors voted to close it to save money for an impoverished university. It was roots the students argued, in surging opposition to this board decision (which they got reversed in three days). It is roots that provide William & Mary Law School with its original and enduring intent. Thomas Jefferson's design for legal training at William & Mary—the education of citizen lawyers—remains as compelling in 2003 as it was in 1779 when George Wythe became Professor of Law and Police and in 1939 when students saved the school into which he had first breathed life.

9 W Taylor Reveley III, *Foreword to ANNE HOBSON FREEMAN, THE STYLE OF A LAW FIRM: EIGHT GENTLEMEN FROM VIRGINIA* xiii, xiv (1989).