1998

Essays on Legal Education in Nineteenth Century Virginia

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ESSAYS
on
LEGAL EDUCATION
in
NINETEENTH CENTURY
VIRGINIA

edited by
W. HAMILTON BRYSON

William S. Hein & Co., Inc.
Buffalo, New York
1998
Essays on legal education in nineteenth century Virginia / edited by W. Hamilton Bryson.

Includes bibliographical references and index.
ISBN 1-57588-446-1 (alk. paper)


KF273.E85 1998
340'.071'1755--dc21

Printed on acid-free paper.
Printed in the United States of America.

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PREFACE


The letters, which are printed here for the first time, were kindly supplied by E. Lee Shepard. They are published here with the kind permissions of the Library of Virginia, the University of Virginia Library, and the Virginia Historical Society.

The portraits that are used here as illustrations are published with the kind permissions of the owner of the Creed Taylor drawing, who wishes to remain anonymous; The Muscarelle Museum of Art, College of William and Mary, for the drawing of Nathaniel Beverley Tucker; The Library of Virginia for the paintings of Briscoe G. Baldwin, John T. Lomax, John B. Minor, John W. Brockenbrough, and Henry St. G. Tucker; the Virginia Historical Society for the paintings of Benjamin W. Leigh and William Green; and the University of Virginia School of Law for the painting of Stephen O. Southall.

In reprinting these essays and letters, modern punctuation has been used, abbreviations have been extended, and typographical errors have been silently corrected.

An abbreviated version of the introductory essay was presented at the Thirteenth British Legal History Conference, July 1997, in Cambridge. I would like to thank Professor Peter G. Stein and Dr. John W. Cairns for the kind and very helpful comments that they gave me on that occasion.

W. H. Bryson

Richmond, Virginia
April 21, 1998
INTRODUCTION

A. Law Schools in Virginia

Learning the law by means of an apprenticeship under an experienced lawyer was the usual approach to legal education in the eighteenth and nineteenth centuries in Virginia. However, from the beginning of academic training in the common law in Oxford University by William Blackstone in 1753, this latter method was recognized as a superior one. From then on, more so in Virginia than in England, law schools were established and patronized so far as the financial resources of the community permitted.

The first law school in Virginia was established in 1779 at the College of William and Mary in Williamsburg. The founders were Thomas Jefferson, who was then governor of Virginia and rector of the board of visitors of the College, and George Wythe, who was then a judge and who had been Jefferson’s legal mentor. Wythe was the first law professor, and when his judicial position required him to move to Richmond, he was succeeded by St. George Tucker.

The second law school in Virginia was a proprietary venture by Judge Creed Taylor. There is some evidence that Judge Taylor had a law school in Richmond in 1810, but little is known about it other than that it had moot court exercises. In 1821, Taylor moved to his home near Farmville, which is equidistant between Richmond and Lynchburg, where his judicial duties required his attendance. Here, he maintained a law school that flourished for several years.

In 1824, Judge Henry St. George Tucker, the older son of St. George Tucker, set up a law school in Winchester. This institution was quite successful but was closed in 1831 when its proprietor was appointed to the Court of Appeals of Virginia and moved to Richmond. (When Tucker retired from the bench in 1841, he accepted the post of professor of law at the University of Virginia.) Tucker’s lecture notes from the Winchester Law School grew into a two-volume treatise on Virginia law entitled Commentaries on the Laws of Virginia.

The second university law school in Virginia was established in Charlottesville in 1826 at the University of Virginia under the watchful eye of Thomas Jefferson. The first law
professor there was John Tayloe Lomax. Lomax left the groves of academe, which were in his case far from serene, in 1830 to accept a judgeship in Fredericksburg.

In 1831, Judge Lomax opened a private law school in his house in Fredericksburg. This venture was quite successful and remained in existence for over ten years. Lomax also found the time to write his three-volume *Digest of the Laws Respecting Real Property* (1839) and his *Treatise on the Law of Executors and Administrators* (1841) in two volumes.

Also in 1831, a proprietary law school was founded in Staunton by Briscoe G. Baldwin. Sometime before 1839, Baldwin gave up his law teaching, and in that year, Judge Lucas P. Thompson opened his law school in Staunton. Not very much is known about either of these.

Federal judge John W. Brockenbrough established a law school in Lexington, thirty-five miles south of Staunton, in 1849. This school was highly successful by the standards of the time, averaging seventeen students a year until 1861, when the war closed the school.

During the Civil War, only the University of Virginia remained open. After the war, Brockenbrough reopened his law school and soon merged it into Washington and Lee University. The law department of the College of William and Mary did not reopen until the 1920s. However, a new law school was established at Richmond College (now called the University of Richmond) in 1870; the distinguished lawyer and scholar, William Green, was one of the first three law professors. Thus, there were law schools in the eastern, central, and western sections of the state. Nevertheless, only the one at the University of Virginia flourished; it was not until relative prosperity returned to the state in the 1890s that the other two did more than barely maintain their existence. After 1870 and until his death in 1895, Professor John B. Minor and his law lectures dominated the law school at the University of Virginia and, through their publication as *Institutes of Common and Statute Law* (1875–95), the entire legal community of Virginia.

**B. English Ideas on Legal Education in Virginia**

This essay considers next the use of English ideas on legal education in Virginia in the eighteenth and nineteenth centuries. Then it focuses upon the content and the purposes of legal education in England and in Virginia during that period.

In 1700 the only professional lawyers in Virginia were apprentices to a barrister, a solicitor, or an attorney, to study the law books; most persons in the profession did an apprenticeship and observing the courts in action; they no longer practiced in England and Virginia had an obvious importance of legal education on either side of the Atlantic. The * Queries* (1620–26), published in England, and this book is "a Moot Book," owned a copy of William Bartram's *The Study of the Law*. Carter was not a lawyer, proprietary of the Northern Burgesses from 1691 to 1699 to the law books; he advised the law students to read the various English law books, commonplaces. John Doddridge...
In 1700 the only methods of legal education in England and Virginia were apprenticeship to a practicing lawyer, either a barrister, a solicitor, or a court clerk, and independent reading of law books; most persons seeking active membership in the legal profession did an apprenticeship supplemented by reading and observing the courts in action. In 1700 the inns of court had long since ceased to provide legal instruction, and the universities in England and Virginia had not yet begun to do so. However, the obvious importance of legal education was not overlooked on either side of the Atlantic Ocean.

Books, which were designed to aid the law student, were published in England and read in Virginia. Edmund Plowden’s *Queries* (1620?, 2d ed. 1662) was owned by Richard Hickman, clerk of the Council of Virginia, in 1732 and by Henry Churchill of Fauquier County in 1762. The subtitle to the second edition of this book is “a Moot Book for Young Students.” Robert Carter owned a copy of William Fulbeck, *Direction of, or Preparative to, the Study of the Law* (1600, 2d ed. 1620). Robert “King” Carter was not a lawyer, but he was the land agent for the Fairfax proprietary of the Northern Neck, a member of the House of Burgesses from 1691 to 1699, and a member of the General Court of Virginia from 1699 to 1732, the year of his death. Fulbeck advised the law student to keep a commonplace book and listed the various English law books in print, which were to be commonplace. John Doddridge, *Lawyer’s Light; or, a True Direction in Virginia* (1700-1800, 2d ed. 1740), the entire legal communi-

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for the Study of the Law (1629), was owned by John Mercer.\(^5\) Mercer, who died in 1768, had a very successful law practice in Virginia and was the author of An Exact Abridgment of All the Public Acts of Assembly of Virginia, in Force and Use (Williamsburg, 1737; 2d ed. Glasgow, 1759). Doddridge gave only general advice as to the study of the law, and he provided a list of principles and maxims. William Phillips, Studii Legalis Ratio; or, Directions for the Study of the Law, went through four editions in the late seventeenth century, in 1662, 1667, 1669, and 1675. There were copies in the libraries of Arthur Spicer\(^6\) and William Byrd, II.\(^7\) Spicer, who died in 1699, was a practicing lawyer, a justice of the peace, and a member of the House of Burgesses from 1685 to 1696. Byrd, a barrister of the Middle Temple, never practiced law, but he was a justice of the peace, a member of the House of Burgesses from 1696 to 1697, and a member of the General Court from 1709 to 1744.\(^8\) Phillips gave a list of English law books and then recommended a course of study. These books for students were thin in size and in content; one may very well speculate as to their lack of utility but source of disappointment to their long distance purchasers.

However, these seventeenth century books for law students were superseded in 1708 by William Bohun, Institutio Legalis; or, Introduction to the Study and Practice of the Laws of England, of which there were four editions by 1732 and at least eight copies present in colonial Virginia.\(^9\) This work was soon, in 1720, overshadowed by the first edition of Thomas Wood, An Institute of the Laws of England. This popular book went through eleven editions in the eighteenth century; there were ten copies known to

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\(^7\) J. S. Bassett, The Writings of Col. William Byrd, p. 418 (1901).


\(^9\) Bryson, Census, p. 35.
be present in Virginia before 1776. In 1708 and again in 1727, Thomas Wood published a lengthy essay advocating the teaching of the English municipal law in the English universities. Although no copies of this pamphlet are known to have been present in colonial Virginia, eighteenth century Virginians were certainly not isolated from England and current English ideas; there was regular communication between the mother country and the colony. In 1745, an essay in the *Virginia Gazette* suggested that, as a means to improving the quality of the bench and bar of Virginia, “Our own University” might teach the law by a skilled professor.

However, the first teaching of English law in a university was William Blackstone’s course of lectures at Oxford in 1753. Whether Blackstone should have the credit for the idea is unclear. In 1752, the preceding year, Charles Viner had made a will leaving money to Oxford University to establish a professorship of English law, and, independently, Sir William Murray (later Lord Mansfield) had urged Blackstone to offer lectures on English law, his application to teach Roman law having been unsuccessful. However, Blackstone is due the credit for having put the idea into execution. In 1756, Viner died, and, two years later, Blackstone was elected the first Vinerian Professor of English Law. (In the 1760s, English common law began to be taught at Trinity College Dublin.)

Blackstone’s lectures were an immediate success, and they

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10 Bryson, *Census*, p. 81.


12 I.e. the College of William and Mary.

13 *Virginia Gazette*, October 10, 1745, p. 1.


15 In 1761, a chair of Feudal and English Law was established; the first professor was Francis S. Sullivan; the second was Patrick Palmer: R. B. McDowell and D. A. Webb, *Trinity College Dublin 1592–1952*, pp. 65–66 (1982); the chair was held from 1776 to 1816 by Patrick Duigenan: J. V. Luce, *Trinity College Dublin*, p. 58 (1992).
were soon published under the title of *Commentaries on the Laws of England* (1765-69). An edition was published in Philadelphia in 1771; both the English and the American editions sold widely in Virginia.\(^\text{16}\)

In 1773, Clementina Rind’s *Virginia Gazette* published a substantial essay commenting on the projected addition to the fabric of the College of William and Mary. The author, an anonymous justice of the peace, eloquently advocated the establishment of a professorship of law at the College of William and Mary once the addition was finished.\(^\text{17}\) The inspiration for this essay must have been the successful lectures of Blackstone at Oxford. The 1745 essay in the *Virginia Gazette* would most likely have been forgotten by 1773, and contacts with Ireland at the time were slight compared to England. On the other hand, most, if not all, Virginia lawyers would have been familiar with Blackstone’s *Commentaries*.

Six years after the 1773 essay, the suggestion was acted on, and lectures on the common law were begun at William and Mary. Considering the turbulence of those years in America, it is not likely that any earlier action could have been taken. In 1779 under the leadership of Thomas Jefferson, a member of the board of visitors, the curriculum of the college was substantially changed. One of the most significant changes was the establishment of the professorship of law and police, and Jefferson’s former legal mentor, George Wythe, was installed in this chair.\(^\text{18}\) Chancellor Wythe, as is evident from his published opinions,\(^\text{19}\) was a true scholar of the law, and he looked to Blackstone’s *Commentaries* as the foundation for the person to hear Wythe’s legal education consisted of.

In 1790 Wythe was named Police at the College of William and Mary in 1804, and for the undistinguished local judge. In 1834, Tucker’s young, he was appointed to the professorship of law. He claimed that he had such extensive additions to federal constitutional law as Blackstone or Dumbauld.

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\(^\text{17}\) *Virginia Gazette* (Rind), 30 December 1773, p. 1. This essay is printed as an appendix to this introduction, below, p. 34.


\(^\text{19}\) G. Wythe, *Decisions of Cases in Virginia by the High Court of Chancery* (1795, 2d ed. 1832, 3d ed. 1903).
In 1790 Wythe was succeeded as Professor of Law and Police at the College of William and Mary by St. George Tucker. Like Wythe under whom he had read the law, Tucker based his own lectures on Blackstone's Commentaries. The close connection between Blackstone and Tucker is shown by Tucker's preparing for publication an American edition of the Commentaries.

Tucker's edition of Blackstone, which was published in 1803, contained numerous footnotes to Virginia and federal statutes that had changed the basic common law. Moreover, the first volume has such extensive additional appendices relating to Virginia and federal constitutional law that it had to be published in two books.

Tucker resigned his position on the faculty of William and Mary in 1804, and for the next thirty years, the chair was held by undistinguished local judges, of whom very little is known. Then in 1834, Tucker's younger son, Beverley Tucker, was appointed to the professorship of law. Beverley Tucker chose as his textbook his father's edition of Blackstone's Commentaries. However, as it

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was for his father's course, Blackstone was not the entirety of the course but was rather the foundation and point of departure.  

Beverley Tucker died in August, 1851, and little is known about the teaching methods of his immediate successor. In 1855 the chair of Law and Police in the College of William and Mary was given to Lucian Minor, and among the textbooks he assigned was Blackstone's *Commentaries*.  

Before passing on to the next university law school to be established in Virginia, we pause to consider several proprietary law schools. The first was that of Chancellor Creed Taylor, which was founded in 1821 in Needham, Virginia; Needham was roughly half way between Richmond and Lynchburg. Taylor's law school was organized to revolve around a series of moot courts at the trial level; Taylor did not lecture to his students. However, before a student could begin the moot court exercises, he was required to pass an examination based on a substantial list of books. This list, which was to be read in a prescribed order, began with *Coke upon Littleton*; the second book was Tucker's edition of Blackstone's *Commentaries*.  

In 1824 Judge Henry St. George Tucker, the older son of St. George Tucker, began his law school in Winchester, Virginia. Henry Tucker found Coke's *Institutes* to be "profound" and a "mine of learning." However, it was Blackstone who worked this mine and "brought order out of chaos and placed the study of the law in the rank of the sciences by system and classification." Blackstone's *Commentaries*, on the other hand, "is to be regarded less as an institute of law than as a methodical guide or elementary work adapted to the commencement of a course of study. [Blackstone] treats most subjects in a manner too general and cursory to give to the study of law. Therefore, although Henry St. George Tucker assigned Blackstone's *Commentaries*, he over the sections on government. Tucker aimed his lectures over the sections on government. Tucker aimed his lectures on Blackstone's *Commentaries* to be an introduction to those topics at the end of the course. Not only did Tucker explain the great publication, but Tucker Commentary, on the Law and Police in the College of William and Mary, was given to Lucian Minor, and among the textbooks he assigned was Blackstone's *Commentaries*.  

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Not only did Tucker base his law course on Blackstone's great publication, but Tucker also based his own two volume Commentaries on the Laws of Virginia, Comprising the Substance of a Course of Lectures Delivered to the Winchester Law School on Blackstone. These two substantial volumes were first published in 1831 and were an encyclopedia of Virginia law. Tucker's Commentaries has a substantial basis in and numerous lengthy quotes from Blackstone's Commentaries, but the discussion of the British constitution and monarchy was replaced. By 1831 there was much Virginia material to be worked into Blackstone's outline, and Tucker must have labored long and hard to accomplish it. Tucker's Commentaries was the first substantial treatise on Virginia law, except for several earlier books written for justices of the peace. It continued to be the major work for Virginia lawyers and judges until John B. Minor's Institute of Common and Statute Law (1875–78).

In 1831, Judge John Tayloe Lomax, who had recently resigned his professorship of law at the University of Virginia, opened a law school in his home in Fredericksburg. Lomax did not believe in teaching law by lecturing to students but instructed "by textbooks with examinations and explanations" what we would today call Socratic teaching. The textbooks upon which Lomax based his course were Blackstone's Commentaries, William Cruise, A Digest of the Laws of England Respecting Real Property (New York 1827), Tucker's Commentaries, and James Kent, Commentaries on American Law. 29

John W. Brockenbrough, United States judge for the Western District of Virginia, opened his law school in Lexington in 1849. It is interesting to note that Judge Brockenbrough had received his legal education in Judge Henry Tucker's Winchester

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28 H. St. G. Tucker, "Introductory Lecture," Notes on Blackstone's Commentaries for the Use of Students, p. 10 (1826), see below, p. 48.

Law School during the 1827–28 term. Brockenbrough taught by means of what he referred to as the “catechetical system of instruction.” This Socratic method of teaching consisted of a daily oral class room examination of the student that was based upon previously assigned texts; it was supplemented by the teacher’s explanations of the more difficult points. The textbooks that were assigned to the junior class, the beginners, were Blackstone’s Commentaries and H. J. Stephen, Treatise on the Principles of Pleading, plus an American book on the law of evidence and a digest of Virginia statute law.

Brockenbrough recognized that “law is a science,” and he recognized Blackstone’s work “as an elegant outline of the common and statute law of England.” “But,” the Virginia judge and law teacher continued, “the peculiar and distinguishing merit of this great work will be found in its beautiful analysis, the original suggestion of which is due to the master mind of Sir Matthew Hale.” He went on to state that Blackstone’s Commentaries was used as a text in every law school in England and the United States.

The second university law school in Virginia was begun in 1826 at the new University of Virginia in Charlottesville. Like the first one, it existed as a result of the inspiration and the personal efforts of Thomas Jefferson. Much effort was made to attract an eminent lawyer, jurist, or judge of Jefferson’s political persuasion to accept the chair of law, but the financial rewards were quite inadequate. Ultimately, the University had to settle on a young and unknown practitioner, John Tayloe Lomax.

Lomax assigned his law students a course of reading which he supplemented with lectures. Heading the list of textbooks was Blackstone’s Commentaries; other English law books assigned were Cruise on Real Property, Selwyn on Nisi Prius, and Maddock on Chancery.

John B. Minor, who taught law at the University of Virginia for fifty years, 1845 to 1895, based his lectures on Blackstone’s Commentaries. He assigned his first year students to read it along with other texts, and the law books were given to follow Blackstone’s order. A Socratic method was based upon a digest of Common and Statute Law, with the use of Blackstone through.

When the Richmond (Richmond) law school was begun, William Green, followed Blackstone’s order and foundation of his courses. Green chose Blackstone as an admirable restatement of the separation of the American laws, and he did it with an English law book. It was useful starting point for the students.

Even though formal courses were available, it was an expected reading of books which wished to enter the profession. Thus reading for the law of Virginia, often prominent lawyers would read in preparation for admission. The writer could find that this writer could find.

Although Jefferson wrote in a letter to John Minor, “It is a hard matter to find a text book,” as “the last perfect digested” text book. Green always recommended Blackstone.

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Brockenbrough taught by the "catechetical system of teaching consisted of a daily student that was based upon supplemented by the teacher's comments. The textbooks that were beginners, were Blackstone's Treatise on the Principles of the law of evidence and a "law is a science," and he an elegant outline of the "But," the Virginia judge familiar and distinguishing merit in its beautiful analysis, the to the master mind of Sir that Blackstone's Commentaries to law school in England and the in Virginia was begun in a in Charlottesville. Like the inspiration and the personal effort was made to attract an Jefferson's political persuasion financial rewards were quite had to settle on a young Joe Lomax. wrote a course of reading which the list of textbooks was English law books assigned elwyn on Nisi Prius, and law at the University of 1895, based his lectures on combined his first year students to


35 W. Green, Address to the Law Class of Richmond College, pp. 16-18 (1870), see below, pp. 197-200.

course of reading the law. On the other hand, Jefferson always recommended that *Coke upon Littleton* be read before Blackstone, and the edition of Blackstone would have been that of St. George Tucker. Tucker was firmly committed to Jeffersonian political principles, as appears from his appendices to Blackstone’s text.

William Wirt wrote in 1813 to Francis W. Gilmer suggesting a course of reading law. He advised beginning with St. George Tucker’s edition of Blackstone’s *Commentaries*, then consulting J. Chitty’s *Treatise on Pleading* and Matthew Bacon’s *Abridgment*, and finally reading the most recent reports of cases from England, America, and Virginia. Several months before he died, Wirt again responded with a letter of advice to a law student. This time he emphasized the need for a broad liberal education and mentioned, almost in passing, *Coke upon Littleton*, *Coke’s Reports*, Plowden’s *Reports*, Charles Fearne on *Contingent Remainders*, and Blackstone’s *Commentaries*.39

In 1850 William Wirt Henry asked Professor John B. Minor of Charlottesville for advice on a course of reading for the bar. The then youthful teacher recommended that Henry make himself familiar with European political history, feudalism, and political science as a preliminary to the study of law. The order of law reading was first international law, then constitutional law, and lastly municipal law. Sufficient international law could be found in Kent’s *Commentaries*; *The Federalist Papers* and James Madison’s *Report* of 1799–1800 would be enough constitutional law.

“Coming now to municipal law, I think your studies should embrace in succession *Kent’s Commentaries*, and Tuck law would probably ... views of the federal Co Virginia, Minor advised P. Upshur’s *A Brief En of Our Federal Govern time permit, it would be *History of the English L Gilbert’s Tenures*, Sull *Chancellors and [Lives] Smith’s *Leading Cases* events, to read at inter mastered Blackstone.”40

In mid–1838, e Fredericksburg began evenings. He began witnnext two years, read thr4 and American legal tre; law school of Judge Jo

The primary pu nineteenth century En members of the legal pr in order to serve clients the only interest of st teenagers for having t First, they are too your perspective, and second to establish themselves service at first.

On the other ha


40 See below, pp. 153–


42 See, e.g. Henry St. Baldwin, below, p. 61.

In mid-1838, eighteen-year-old Robert R. Howison of Fredericksburg began reading law in his spare time in the evenings. He began with Blackstone’s *Commentaries*, and for the next two years, read through a substantial number of basic English and American legal treatises. Then in 1840 he entered the local law school of Judge John T. Lomax.

II

The primary purpose of legal education in eighteenth and nineteenth century England and Virginia was to train future members of the legal profession how to practice in that profession in order to serve clients. It is fair to say that, then as now, this is the only interest of students. Nor can one be too critical of teenagers for having this limited approach to legal education. First, they are too young and inexperienced to have a very broad perspective, and second, they, for the most part, need an income to establish themselves and cannot afford to give time to public service at first.

On the other hand, the teachers of law, who will be much
older than their students, will have a broader perspective and wider interests. They will want to introduce their students to the fullest extent of the law in its political and social aspects. Furthermore, teachers of the law will want to expose the general public to the law, particularly the members of the legislature who enact the law and the lay justices and constables who enforce it.

The law student and the law teacher, then as now, do not always appreciate fully the perspectives and goals of the other. It was obvious that legal education is important to those preparing to enter into the practice of law. It was not so straightforward that the study of law should be a part of a liberal education. However, in 1693, John Locke published the following much-read passage.

It would be strange to suppose an English gentleman should be ignorant of the law of his country. This, whatever station he is in, is so requisite that from a justice of the peace to a minister of state, I know no place he can well fill without it . . . . And to that purpose [service to his country], I think the right way for a gentleman to study our law, which he does not design for his calling, is to take a view of our English constitution and government in the ancient books of the common law and some more modern writers who out of them have given an account of this government. And having got a true idea of that, then to read our history and with it join in every king's reign the laws then made. This will give an insight into the reason of our statutes and show the true ground upon which they came to be made and what weight they ought to have.43

Copies of Locke's famous book were present in eighteenth century Virginia in the libraries of Thomas Jefferson,44 William Key,45 Samuel Peachy,46 and William Custis.48 Also, copies were in the library of Gilbert Burnet, who stated succinctly the value of a country gentleman.

A competent man is a good foundation, but I am in doubt whether a man in the inns of court who is not a student of the law is able to serve his country, both in giving good counsel to those he advises and in settling matters by the law which will enable him to be a good judge; and, which is of the utmost importance, a gentleman's ambition to such a man.50

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43 J. Locke, Some Thoughts Concerning Education, § 187 (1693).
INTRODUCTION

Key, Samuel Peachy, Daniel Parke Custis, and John Parke Custis. Also, copies were for sale in Williamsburg in 1775.

Gilbert Burnet, writing in the early eighteenth century, stated succinctly the value of some knowledge of the law to the country gentleman.

A competent measure of the knowledge of the law is a good foundation for distinguishing a gentleman; but I am in doubt whether his being for some time in the inns of court will contribute much to this if he is not a studious person . . . . A competent skill in this [i.e., the law] makes a man very useful in his country, both in conducting his own affairs and in giving good advice to those about him; it will enable him to be a good justice of peace and to settle matters by arbitration so as to prevent lawsuits; and, which ought to be the top of an English gentleman’s ambition, to be an able parliament man.

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47 “Books in Williamsburg,” Wm. & Mary Qtly., 1st ser., vol. 15, pp. 100, 111 (1906).
John Clarke in his *Essay upon Study* (1731) expressed similar opinions. “The proper business of gentlemen as such is, I presume, to serve their country in the making or execution of the laws as likewise in preventing the breach and violation of them by preserving the peace and good order of the world about them . . . .” In Clarke’s view, “the studies of most use to a gentleman . . . are . . . logic, eloquence, morality, and history, especially of his own country, with some knowledge of its laws and trade.” “As for morality, or the law of nature and nations, the knowledge thereof is very useful and necessary for a gentleman, whether he be concerned in the making or execution of laws, and especially, in preventing of lawsuits by the arbitration of differences amongst neighbors . . . .” “I shall say no more upon this head than that a gentleman can hardly read Grotius, Pufendorf, and Barbeyrac too much.”

Thomas Wood, writing in 1720, approached the study of law primarily from a vocational point of view. His *Institute of the Laws of England* was a textbook for those reading the law in preparation for careers as barristers or solicitors. But Wood was also trying to reach the young gentlemen in the universities. In his preface, he wrote, “My intention, by this institute, is not only to help the students in the inns of court and chancery, but moreover to recommend the study of the English laws to our young nobility and gentry and to the youth in our universities.”

It may be that the primary object of Wood’s words were to sell more copies of his book. However, the idea of teaching law at a university to young persons who were not aiming at the practice of law was taken up and put into practice by Blackstone in his classroom lectures on political science. Blackstone offered his university lectures on the laws of England to both the future political leaders of Great Britain and the future practicing lawyers of the nation and its empire. There is other evidence that the additional goals of preparing future politicians was a primary object of teaching law at Oxford. Blackstone offered his university lectures on the laws of England to both the future political leaders of Great Britain and the future practicing lawyers of the nation and its empire. But, perhaps the most important goal of teaching law at Oxford was to prepare the students for a broad view of the legal regulations and the social and political order that they would find in the new United States. Blackstone’s lectures on the laws of England were part of a broader view of the legal and political order that he expected Jefferson and the other Jeffersonian leaders to provide when they created the United States in 1776. In the eighteenth century, the idea of teaching law at a university to young persons who were not aiming at the practice of law was taken up and put into practice by Blackstone at Oxford. Blackstone offered his university lectures on the laws of England to both the future political leaders of Great Britain and the future practicing lawyers of the nation and its empire.

Although George Wythe’s lecture notes have been lost, there is other evidence that the additional goals of preparing future politicians was a primary object of teaching law at Oxford. Blackstone offered his university lectures on the laws of England to both the future political leaders of Great Britain and the future practicing lawyers of the nation and its empire. But, perhaps the most important goal of teaching law at Oxford was to prepare the students for a broad view of the legal and political order that they would find in the new United States. Blackstone’s lectures on the laws of England were part of a broader view of the legal and political order that he expected Jefferson and the other Jeffersonian leaders to provide when they created the United States in 1776.
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There is other evidence that he followed Blackstone’s dual educational goals of preparing practicing lawyers and future politicians. Not only did he lecture to his students and conduct a moot court, but also he presided over a mock legislature for his students in order to prepare them for future political service. Moreover, this broad view of the legal curriculum at William and Mary was expected by Jefferson and the other members of the Board of Visitors when they created the new chair of Law and Police in 1779. In the eighteenth century, the word police meant political economy or public order; today, they would have named it the chair of Law and Political Science. Thus, the visitors of the College expected Wythe to aim at both targets.54

Wythe’s immediate successor, St. George Tucker, also had the broader view of legal education. Based on the appendices to his edition of Blackstone’s Commentaries, which had their genesis in his classroom lectures, Tucker appears to have limited his teaching of political science to what we would today call constitutional law.55 But, perhaps in 1800, that distinction would not have been recognized.

Beverley Tucker, on the other hand, was much more interested in the political science aspect of his professorship than the strictly legal aspect. His major published work was A Series of Lectures on the Science of Government, Intended to Prepare the Student for the Study of the Constitution of the United States (1845). This is not to say that the latter was neglected; in 1846, he published a law book entitled The Principles of Pleading.

Tucker based his lectures on Blackstone’s Commentaries, but he changed the order of presentation so that the principles of the law were taught first and the principles of government followed. However, his introductory lecture to his law students addressed only principles of government and politics, and he observed that he was required by the College to teach constitutional law. Tucker stated:

But this is not a mere school of professional education, and it is made my duty, by the statutes


of the College, to lecture especially on the constitution of this state and of the United States. In the discharge of this duty it may be necessary to present views more important to the statesman, than to the mere practitioner . . . .

The mind of the student of law is the ground in which correct constitutional opinions and sound maxims of political law should be implanted. The study of the common law involves the study of all the rights which belong to man in a state of society. 56

On the other hand, Beverley Tucker concluded his course with a valedictory address that said nothing about politics or constitutional law. He stressed heavily the importance of the "science of pleading" and the rules of evidence, and he ended with much common sense advice for the young practicing lawyer. 57

The law curriculum of the University of Virginia, from its beginning, included a liberal education within the perspective of training legal practitioners. However, in three years, this was modified to emphasize the more practical side of legal education to benefit impecunious law students who could afford only one year at a university. The subjects that were most basic to the practice of law were rearranged so that they could all be completed in one year. 58 John A. G. Davis succeeded John T. Lomax in 1830 as professor of law. Davis restructured the law curriculum to include in the first year junior course natural law, international law, political science, constitutional law, and English legal history along with the basic subjects of municipal law. The senior course included more details of common and statute law, plus equity and maritime and

George Tucker retired from 1841 to succeed Davis while he taught the basic law, government, and constitutional law, but they were not the favorites of John B. Minor. Minor and Davis continued in the law school, while he taught the basic law, government, and constitutional law. The proprietary War appear not to have taken the law, or jurisprudence, back to the curriculum of the new law faculty.

Thus one is left with the question of Blackstone's Commentaries, and indirectly, the authority of Blackstone. However, this work the general ideas on the subject that were not the favorites of John B. Minor. Minor and Davis continued in the law school, while he taught the basic law, government, and constitutional law. The proprietary War appear not to have taken the law, or jurisprudence, back to the curriculum of the new law faculty.

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56 N. B. Tucker, A Lecture on the Study of Law, p. 19 (1834), see below, p. 93.

57 N. B. Tucker, “Professor Beverley Tucker’s Valedictory Address to His Class,” Southern Literary Messenger, vol. 1, pp. 597–602 (July 1835), see below, pp. 103–12.

58 P. A. Bruce, History of the University of Virginia 1819–1919, vol. 2, pp. 102–03 (1920).
INTRODUCTION

equity and maritime and commercial law.\textsuperscript{59} When Henry St. George Tucker retired from the Court of Appeals of Virginia in 1841 to succeed Davis who had been murdered by a rowdy and drunken student, he continued to teach natural law, international law, government, and constitutional law.\textsuperscript{60} These subjects continued in the law school curriculum after his resignation in 1845, but they were not the favorite subjects of his successor, Professor John B. Minor. Minor assigned them to his assistant professors while he taught the basic course, which was entitled Common and Statute Law.\textsuperscript{61}

The proprietary law schools before the American Civil War appear not to have taught constitutional law, international law, or jurisprudence, but these subjects were a part of the law curriculum of the new law school at Richmond College in 1870.\textsuperscript{62}

III

Thus one is left with the observation that after the publication of Blackstone’s \textit{Commentaries}, Blackstone was, directly or indirectly, the authority for legal education in Virginia.\textsuperscript{63} Not only was this work the general beginning for the study of law, but it was generally followed as to its broad scope of legal study. The ideas on the subject that preceded it were incorporated into it, and the older books were superseded and forgotten.

However, the publication of the \textit{Commentaries} provoked an immediate reaction. Most of the responses were positive, but a


\textsuperscript{60} H. St. G. Tucker, \textit{Introductory Lecture}, pp. 9–11 (1841), see below, pp. 134–36; his lectures on constitutional law were published in 1843, and those on government and on natural law in 1844.

\textsuperscript{61} J. Ritchie, \textit{The First Hundred Years: A Short History of the School of Law of the University of Virginia for the Period 1826–1926}, pp. 37, 45, 48 (1978).


\textsuperscript{63} Tucker’s edition of Blackstone’s \textit{Commentaries} “fixed the Blackstone tradition” in America: A. Z. Reed, \textit{Training for the Public Profession of the Law}, p. 117 (1921).
few were highly critical.

In reference to Blackstone's opinions that "the common law of England, as such, has no allowance or authority" in the American colonies,\(^64\) Landon Carter noted with ire in 1774 in his private diary:

By this doctrine the colonists are in a legal view considered by the parent state as infidel or a conquered people; and are only subject to the Parliament and not as her children with her consent establishing societies. Further he [Blackstone] adds they are not only subject to the control of Parliament but the king may alter and impose what laws on them he pleases. What does he mean here by the word principally? Can he allude to the humanity and justice of the first settlers of some colonies who purchased the lands of the natives? If he does, it must be an ill directed humanity or a very useless exercise of their virtue to posterity; for if by accident they had settled an uninhabited country the invaluable rights of the common law would have attended them; but when they dared to attempt a settlement by humanity and justice, they forfeited all right to the common law to the latest ages. In support of this law, which every man of common sense must shudder at, he cites cases,\(^65\) every one of which make a distinction between settlements composed of English of conquered people reasoning the colonists out of themselves; and the drivers out of possessing. This instances which he cites in the courts of law a villain?\(^66\)

Jefferson's skepticism grounded on two fears. A student finds and his indolence understands that body of the law. A second, Jefferson to John Tyler, 26\(^67\) A. E. Bergh, eds., Writings of Thomas Jefferson to Thomas Jefferson (1903).
opinions that “the common owance or authority” in the noted with ire in 1774 in his

are in a legal view state as infidel or a only subject to the children with her consent he [Blackstone] adds the control of Parlia­
and impose what laws he mean here by the multitude to the humanity of some colonies who natives? If he does, it humanity or a very useless posterity; for if by inhabited country the common law would have dared to attempt a justice, they forfeited to the latest ages. In every man of common cases, every one between settlements

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composed of English subjects and those composed of conquered people. Therefore, according to his reasoning the conquerors are the conquered, and the drivers out of the natives are the very natives themselves; and those who owned by fair purchases are the very infidels driven out and no longer possessing. This is the species of law in many instances which has given that monster a reputation in the courts of law. Is he not then either an ass or a villain?

Jefferson’s skepticism of Blackstone’s Commentaries was grounded on two fears. First, he thought that law students and practitioners would think too highly of the work and not go beyond it in their legal researches and preparations.

A student finds there a smattering of everything, and his indolence easily persuades him that, if he understands that book, he is master of the whole body of the law. The distinction between these and those who have drawn their stores from the deep and rich mines of Coke upon Littleton seems well understood even by the multitude of common people, who apply the appellation of Blackstone lawyers to these ephemeral insects of the law.

Second, Jefferson thought that by reading Blackstone’s law book, the youth of America would be turned into anti-republican political conservatives. In 1814, Jefferson wrote in a letter, “In truth, Blackstone and Hume... are making tories of those young Americans whose native feelings of independence do not place

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them above the wily sophistries of a Hume or a Blackstone."

Before the revolution, Coke [upon] Littleton was the universal elementary book of law students, and a sounder whig never wrote, nor of profounder learning in the orthodox doctrines of the British constitution, or in what were called English liberties. you remember also that our lawyers were then all whigs. But when his black-letter text, and uncouth but cunning learning got out of fashion and the honied Mansfieldism of Blackstone became the student’s 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. They suppose themselves, indeed, to be whigs because they know no longer what whigism or republicanism means.

The most famous negative response was that of Jeremy Bentham with his *A Fragment on Government: Being an Examination of What is Delivered on the Subject of Government in General in the Introduction to Sir William Blackstone’s Commentaries* (1776). Bentham’s ideas were incorporated into the lectures of John Austin. Austin in a preparatory note to a lecture, which he never completed, wrote:

The method observed by Blackstone in his far too celebrated Commentaries is a slavish and blundering copy of the very imperfect method which Hale delineates roughly in his short and unfinished Analysis. From the outset to the end of his Commentaries, he blindly adopts the mistakes of his rude and compendious model missing invariably, with a nice and surprising infelicity, the pregnant but obscure suggestion, which are always modulated to the taste of the moment, and which is fitted to catch by the simplicity of rhetorical artifice and inspire the Hpistos with an illusion which is really a delusion. He flatters the over-polished elegance with a peculiar institution of rhetorical artifice which is fitted to suit the manner of their minds, or peculiar intellects. He never entertains by the manner of these instruments, but to which are always modulated to the meaning be never so affected yet appear so graceful and elegant."

William Green Blackstone and then copied quotations from respectably and from them Sir William Jones say:

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70 This was first published in Green, *Lectures on the English Language*, p. 16 (1870).

71 W. Green, *Address*, p. 16 (1830).
[upon] Littleton was of law students, and, nor of profounder trines of the British called English liberur lawyers were then out of fashion and Blackstone became the moment, that profess) began to slide the young brood of They suppose them because they know no licanism means.

Response was that of Jeremy or Government: Being an Examina- of Government in General Blackstone's Commentaries incorporated into the lectures of to a lecture, which he never

Blackstone in his far too lavish and blundering method which Hale short and unfinished the end of his Com- the mistakes of his missing invariably, felicity, the pregnant

William Green quoted John Austin's snide opinions of Blackstone and then countered them with numerous laudatory quotations from respected English lawyers and judges, among them Sir William Jones and Justice Coleridge. Green went on to say:

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70 This was first published in Robert Campbell's 1869 edition of Austin's works: J. Austin, Lectures on Jurisprudence, vol. 1, p. 71 (1869); quoted in W. Green, Address, p. 16 (1870), see below, p. 198.

71 W. Green, Address, pp. 16–17 (1870), see below, pp. 198–99.
The fault, if fault it be, which doubtless first and most provoked Mr. Austin’s ire, was Blackstone’s optimism, as it has been called; his propensity to praise the constitution and laws of England in their existing state at the time he wrote, as being not only the best then in the world, but also the best that could be. That he sincerely thought so, Mr. Austin, with his estimate of Blackstone’s force of mind, should in common candor have believed, from his own statement of what was then an almost unanimous opinion in England. At any rate, so complete and total is the dissent therefrom among us [Americans] that I cannot imagine there is the least danger of poisoning [American students’] minds therewith . . . .

These attacks went primarily to Blackstone’s political views. Naturally, whigs and republicans disagreed with his conservative opinions on government. However, the law professors in Virginia did not see his antithetical political opinions as a reason to ignore the entire work. St. George Tucker added his own lectures on constitutional law as appendices to his edition of the *Commentaries*. Henry Tucker and Beverley Tucker put the political section of their courses at the end; thus if time ran out, this part would get short shrift, if any. All of the Virginia law professors gave their students their own opinions of constitutional law and either ignored Blackstone’s or used them as a foil.

It was Blackstone’s succinct and well-written survey of the entire law of England that made it so attractive as a textbook for law students. It was at the same time an outline and an encyclopaedia. It was clearly written and could be read by a beginning law student with relative ease of comprehension in a fairly short period of time. Of course, there were errors in the law here and there and occasional overgeneralizations, but they were relatively few, and the diligent lawyer would go behind Blackstone’s text to the primary sources. While it was not perfect, it was far better than anything that had gone before. It most certainly aided in the learning of the law and resulted in a better trained bar. And thus it was the foundation of legal education in Virginia from 1775 to

C. Conclusion

As Sir William Blackstone replaced the apprenticeship method of instruction, he was in turn replaced by the lecture method. This latter method, in turn, replaced the lecture and delivery method of teaching on secondary legal literature with reliance on the primary sources of the law. The true foundation of the Harvard Law School rests upon their study of the basic legal treatises. Such a method has tremendous value, not only for the students but also for the bar and the courts.

Although Blackstone changed the ideas of legal education in mid-19th century Virginia, the method of teaching is the same as the essays printed here. These essays are an introduction to Blackstone’s ideas on legal education, and they serve as the essays printed here. In each of the Virginia teachers at Harvard, the Virginia teachers found support for their lecture method of teaching. This created a debate that lasted at least a century in the legal community was such that each had their own idea of what the true foundation of the state by the Civil War was to be. After 1900, legal education followed the lead of Virginia, and there was little to be said about the lecture method of teaching. Today the lecture method is used for Minor, the case method is still used, though not actually as much as before. This illustrates an earlier period in legal education.
which doubtless first and entirely was Blackstone’s modelled; his propensity to the laws of England in their were, as being not the world, but also the best thought so, Mr. Blackstone’s force of orandor have believed, that was then an almost round. At any rate, so present therefrom among the imagine there is the [American students’] introductio

As Sir William Blackstone and his lectures and books replaced the apprenticeship as the preferred method of legal education, he was in turn superseded by the case method of legal instruction. This latter method was begun by Dean C. C. Langdell at the Harvard Law School in 1870. This pedagogical innovation replaced the lecture and the classroom quiz and discussion based on secondary legal literature and substituted the examination of the primary sources of the law, the reports of cases. However, the true foundation of the fame of the faculty of the Harvard Law School rests upon their succession to Blackstone as writers of the basic legal treatises. Such legal scholarship was and still is of tremendous value, not only to the law student but also to the bar and to the courts.

Although Blackstone was the preeminent influence on the ideas of legal education in the first two-thirds of the nineteenth century Virginia, the methods of teaching law varied considerably, as the essays printed here well demonstrate. The general content of Blackstone’s ideas on the common law was well received, but the Virginia teachers felt quite free to use different methods of delivery: socratic, moots, lectures. They were aware of each other’s opinions; their introductory lectures were in print, and the legal community was small and gregarious. Nevertheless, they each had their own ideas of legal education, some of them being quite creative. This creativity was stifled by the impoverishment of the state by the Civil War and Reconstruction. From 1865 to 1900, legal education flourished in Virginia only at the University of Virginia, and there it was dominated by one man, John B. Minor. After 1900, Minor’s influence was gradually superseded by that of Langdell.

Today the lecture method of legal instruction used by Minor and the case method used by Langdell are being questioned, though not actually rejected. But this collection of essays illustrates an earlier period of creative thinking heretofore over-

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looked, and this is the justification for reprinting them. Perhaps, some of these teachers' ideas and techniques may be useful, interesting, or instructive to the present generation.

Virginia Gazette (Rind), 1752

There is yet another country, which I shall not now, but under the necessity of attention not only of the citizens and Mary] but even of the legislature, that is, the establishment. By virtue of my position, I had not long acted in this great confusion, want of a true system of law, too, in the proceedings were sometimes even observed at a distance properly attended to, which, were condensed it might have been. It was the unassisted by able lawyers together singular in that respect case of this inconvenience.

When a young gentleman applies to some attorney a few declarations, reads the Virginia laws, and practice a profession, the situation is perhaps utterly unequal to what to authors, and, in one last, nor gives himself the value of what he reads. Far better daily observation shows representation.

By establishing gentlemen, who are obligated through want of property to repair to a place where pursuing their studies instead of an inexplorable

\[74\text{ I.e., statutes.}\]
There is yet another object of the greatest importance for this country, which I shall beg leave to mention, and which merits the attention not only of the governors of the College [of William and Mary] but even of the general legislative body of this colony, that is, the establishment of a professorship in the law.

By virtue of my office [as a justice of the peace], I am under the necessity of attending the county court where I reside, I had not long acted in the capacity of a judge before I discovered great confusion, want of argument, of reasoning and, I conceived, of law, too, in the pleadings of some of our lawyers. Their proceedings were sometimes exceedingly perplexed, and I could even observe them at a standstill in some points, which when properly attended to, were sufficiently clear. At first I apprehended it might have been the peculiar fate of my own county to be unassisted by able lawyers; but since I find we are not altogether singular in that respect, I have been led to reflect on the case of this inconvenience and the means of removing it hereafter.

When a young gentleman has resolved to study the law, he applies to some attorney for his advice, assists him in copying a few declarations, reads the first book of Coke upon Littleton, and the Virginia laws, and then applies for a license, and begins to practice a profession, the grounds and first principles of which he is perhaps utterly unacquainted with. He is involved in difficulties at his first setting out, which he is unable to remove by referring to authors, and, in one continued scene of error, plods on to the last, nor gives himself the least trouble to investigate the reason of what he reads. Far be it from me to allege this generally, but daily observation shows that there is but too much truth in the representation.

By establishing a professorship in the law many of those gentlemen, who are obliged to struggle with the greatest difficulties through want of proper books and proper instructions, would repair to a place where they might enjoy the most ample means of pursuing their studies with success, where the road to truth, instead of an inexplorable wilderness, would be opened to them.

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74 I.e., statutes.
and where they might unravel the mysteries, and reconcile the seeming absurdities, of the profession they were studying under the auspices of an able professor.

Were I worthy of proposing anything to the consideration of a legislative body, long revered for the wisdom of their laws and regulations, I should recommend the encouragement of such a plan of education. If the candidates for the bar were obliged to go through a regular course of lectures on the civil and municipal laws at the College, and to attend the General Court when sitting, where they might imbibe proper ideas of the practice of the law, at the same time that they received the greatest instruction from the learned arguments and judicious determinations there, I am persuaded our gentlemen of the bar would appear to much greater advantage than at present, and in a couple of years, with such assistance, I conceive that they would be much better qualified for their business than in double that time without it.

The plan that I would propose, therefore, is that when the additional building to the College is erected, that a professor of law be appointed, who shall read a regular and complete course of lectures on the law once in a year, and that no persons but those who have attended the lectures of such professor for two years, and have attended the General Court whilst sitting, during that period, shall be admitted to practice as counsel, or as attorneys, in any of the county courts in this colony, except such persons who have been admitted to practice in other places, and upon examination should be found qualified for it.

I would also propose that after attending the lectures of such professor and the General Court, whilst sitting, for four years, all candidates for the profession of the law, who upon examination should be found qualified to practice, shall be admitted to practice in the General Court of this colony and at the county courts at the same time. By this means, the study of the law, as a science, would be infinitely encouraged, and we might expect to see the practice of it on the most respectable footing in this country.

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