

# America's Legal History Started in Williamsburg

by Paul Hellyer

Williamsburg was Virginia's colonial capital from 1699 to 1780 and site of America's first law school. Visiting lawyers will find a rich legal history in Williamsburg. Here are some of the highlights.

## William & Mary Law School

In 1779, the College of William & Mary established the first professorship in law in the United States.<sup>1</sup> George Wythe, high chancellor of Virginia, was the first professor appointed to the position.<sup>2</sup> His students included future presidents Thomas Jefferson and James Monroe, Chief Justice of the United States John Marshall, and prominent Congressman Henry Clay.<sup>3</sup> Wythe's law classes were well received and attracted up to forty students at a time.<sup>4</sup> He was the first scholar to offer regular instruction in American constitutional law,<sup>5</sup> a subject that continues to be a focus of the law school's scholarship.

In 1789, Wythe was succeeded by St. George Tucker, another legal scholar who had a national reputation in his time. Tucker held the professorship in law until 1804.<sup>6</sup> The college's reputation at the time depended heavily on the law professorship and the first two scholars who occupied the post, Wythe and Tucker.<sup>7</sup> After Tucker's departure, the law program at William & Mary gradually lost prominence, but it continued on a small scale until the Civil War. In 1861, the college closed and the law degree program was not revived until 1920.<sup>8</sup>

The homes of Wythe and Tucker have been preserved and restored and are now part of the historic area known as Colonial Williamsburg. The college's original buildings have also been restored to their colonial appearance, and are within walking distance of



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Colonial Williamsburg and the downtown shopping area. A reconstruction of the main building (known as the Wren building, after architect Christopher Wren) is open to the public.<sup>9</sup> There, you can see a reconstruction of the college's original lecture hall.

In 1980, the law school moved from the main campus to its present location on South Henry Street, two blocks south of Colonial Williamsburg.<sup>10</sup> Statues of George Wythe and John Marshall stand in front of the law school's main entrance. The law library features a rare book room that includes legal books from the colonial period and an original portrait of John Marshall. Work is under way to create a "George Wythe Room" to display a recreation of Wythe's book collection. The law library is open to the public.

### Colonial Capitol

After the capital of colonial Virginia relocated from Jamestown to Williamsburg in 1699, a state house was built on the east side of Williamsburg. The colonists called their new state house the Capitol, the first time this word was applied to a building in the American colonies. One side of the H-shaped brick structure was used by the legislature, the other side by the general court. The building was completed in 1705 and destroyed by fire in 1747. A second capitol building was constructed in 1751–53, and that building was destroyed by fire in the 19th century.<sup>11</sup>

A reconstruction of the original 1705 Capitol is now part of Colonial Williamsburg.<sup>12</sup> Visitors can see a reconstruction of the room used by the General Court (also known as the Quarter Court), which was composed of the governor and his council.<sup>13</sup> The court handled civil and criminal cases, and sat as a court of law and a court of chancery. It heard appeals from the county courts, and could also exercise original jurisdiction.<sup>14</sup> Tour guides from

Colonial Williamsburg explain to visitors how the court functioned.

After the state capital moved to Richmond in 1779, Wythe used the former capitol building as the setting for his moot courts and moot legislature, where his law students received much of their training. Moot courts had once been a part of legal education in England, but in Wythe's time the practice had been abandoned for the previous 150 years.<sup>15</sup> Wythe's moot courts were a great success, and the tradition continues at the law school today.<sup>16</sup>

### Wythe House

Wythe, America's first law professor, lived in an elegant Georgian-style home in Williamsburg facing the Palace Green. It was completed in 1754 by Wythe's father-in-law and was occupied by Wythe from 1755 to 1791. At the time, it was considered the finest private home in Williamsburg. After Wythe's departure, the house remained standing in Williamsburg and was restored to its original appearance in 1940. It is now part of Colonial Williamsburg.<sup>17</sup>

Wythe's reputation extended beyond his work as a law professor. He represented Virginia at the Continental Congress, served as speaker of Virginia's House of Delegates during the Revolution, and became a judge on Virginia's High Court of Chancery.<sup>18</sup> Thomas Jefferson held him in the highest esteem and described him as his earliest and best friend.<sup>19</sup>

The Wythe house and garden are open to visitors. The house was the setting for much of Wythe's work as an educator. He taught and boarded many students there.<sup>20</sup>

### St. George Tucker House

St. George Tucker studied law with George Wythe and in 1789 he succeeded Wythe as professor of law at William & Mary, a post he held until 1804.<sup>21</sup> Aside from his strong reputation as an educator, Tucker was famous for his edition of

Blackstone's Commentaries on the Laws of England. Blackstone's Commentaries was one of the leading legal treatises of the time, and law students were expected to study it closely. Tucker improved the treatise by including his own commentary on areas where American law differed from English law.<sup>22</sup> Tucker published his edition of Blackstone's in 1803 and it (known as "Tucker's Blackstone") became standard reading for lawyers and law students throughout the country. In the early 19th century, Tucker was the most frequently-cited scholar in U.S. Supreme Court opinions.<sup>23</sup>

Tucker's house is preserved as a part of Colonial Williamsburg and is located only a short walk from Wythe's house. Tucker purchased the house in 1788 and it was occupied by several generations of his descendants. First constructed in 1718–19, the house was renovated and expanded several times before being restored to its colonial appearance in 1930–31.<sup>24</sup> The house, located on Nicholson Street near the center of town, is now used as a reception center for Colonial Williamsburg's donors.<sup>25</sup>

Like his predecessor Wythe, Tucker often held classes at his home so that he could have his library at his fingertips.<sup>26</sup>

### Courthouse

In 1715, Williamsburg's first courthouse was constructed at the corner of England and Francis Streets, but it does not survive and little is known about its features. In 1770, a new courthouse was built in the center of Williamsburg and remained functional for more than 150 years.<sup>27</sup> This courthouse served as the hustings court for the City of Williamsburg as well as the county court for James City County. It handled civil and criminal matters.<sup>28</sup>

After the courthouse closed for official business in 1932, Colonial Williamsburg used the building as a museum until 1989. After this, the interior was restored to its original appear-



ance as a colonial courtroom. Today, costumed re-enactors from Colonial Williamsburg hold mock trials based on historical records, with visitors invited to participate. Recreations of the public stocks, a favorite photo spot for tourists, can be found adjacent to the courthouse.<sup>29</sup>

## Public Gaol

The public gaol offers a glimpse of Virginia's early criminal justice system. Located just north of the capitol on Nicholson Street, the public gaol was completed in 1704. Modified over the years, it continued to function as a jail until 1910. It eventually became part of Colonial Williamsburg and was restored to its colonial appearance in 1936.<sup>30</sup>

The gaol housed a wide variety of inmates — criminals awaiting trial, runaway slaves, debtors, and those who found themselves on the wrong side of the Revolutionary War. One of its most notorious inmates was the pirate Blackbeard, who was caught in 1718.<sup>31</sup>

The gaol consists of several sparsely-furnished cells, a small enclosed yard for the prisoners, and the jailer's quarters. The cells were often overcrowded, outbreaks of disease occurred from time to time, and sanitation was primitive by today's standards. Because of its limitations, the gaol was not intended for long-term incarceration. After trial, sentences were carried out by other means, such as fines, corporal punishment, branding, or hanging.<sup>32</sup>

## Conclusion

Williamsburg and the surrounding area (including Jamestown and Yorktown) offer some of the most interesting historical sites in the country. For more information, explore the websites from Colonial Williamsburg (<http://www.history.org>), the Jamestown Settlement & Yorktown Victory Center (<http://historyisfun.org>), and Historic Jamestowne (<http://www.nps.gov/jame/index.htm>).

## Endnotes:

- 1 ALONZO THOMAS DILL, GEORGE WYTHE: TEACHER OF LIBERTY 41-42 (1979); SUSAN H. GODSON ET AL, THE COLLEGE OF WILLIAM AND MARY: A HISTORY 170 (1993).
- 2 *Id.*
- 3 ROBERT BEVIER KIRTLAND, GEORGE WYTHE: LAWYER, REVOLUTIONARY, JUDGE 126 (1983).
- 4 Dill, *supra* note 1, at 43-44, 51
- 5 *Id.* at 43.
- 6 Godson, *supra* note 1, at 170.
- 7 *Id.* at 192.
- 8 *Id.* at 289-290, 570-71.
- 9 College of William & Mary, Wren Building, at <http://www.wm.edu/about/history/historiccampus/wrenbuilding/> (last visited April 17, 2014), archived at <http://perma.cc/9AKC-72K8>.
- 10 Godson, *supra* note 1, at 841.
- 11 OLIVER PERRY CHITWOOD, JUSTICE IN COLONIAL VIRGINIA 38 (1905); Colonial Williamsburg, Capitol, at <http://www.history.org/almanack/places/hb/hbcap.cfm> (last visited April 17, 2014), archived at <http://perma.cc/CE2H-2RVU>.
- 12 Visitors must purchase tickets to enter buildings operated by Colonial Williamsburg. For details, visit <http://www.colonialwilliamsburg.com/>.
- 13 Chitwood, *supra* note 11, at 38, 45.
- 14 *Id.* at 44-48.
- 15 W. HAMILTON BRYSON, LEGAL EDUCATION IN VIRGINIA, 1779-1979: A BIOGRAPHICAL APPROACH 752-53 (1982); Dill, *supra* note 1, at 44.
- 16 Godson, *supra* note 1, at 843-844.
- 17 HUGH HOWARD, COLONIAL HOUSES: THE HISTORIC HOMES OF WILLIAMSBURG 45-47 (2004); Colonial Williamsburg, George Wythe House, at <http://www.history.org/almanack/places/hb/hbwythe.cfm> (last visited April 18, 2014), archived at <http://perma.cc/L6U3-36AW>.
- 18 Bryson, *supra* note 15, at 751.
- 19 Letter from Thomas Jefferson to William DuVal, June 14, 1806.
- 20 Godson, *supra* note 1, at 193; Dill, *supra* note 1, at 55-56.
- 21 Godson, *supra* note 1, at 170.
- 22 *Id.* at 194; Bryson, *supra* note 15, at 662.
- 23 Bryson, *supra* note 15, at 680-682.
- 24 Godson, *supra* note 1, at 113-115.
- 25 Colonial Williamsburg, The St. George Tucker House, at <http://www.history.org/foundation/development/tucker.cfm> (last visited April 17, 2014), archived at <http://perma.cc/NR67-E8BB>.
- 26 Godson, *supra* note 1, at 174.
- 27 Carl Lounsbury, *Ornaments of Civic Aspiration: The Public Buildings of Williamsburg*, in WILLIAMSBURG, VIRGINIA: A CITY BEFORE THE STATE, 1699-1999 37 (Robert P. Maccubbin, ed. 2000).
- 28 Colonial Williamsburg, Courthouse, at <http://www.history.org/almanack/places/hb/hbcourt.cfm> (last visited April 18, 2014), archived at <http://perma.cc/6MYL-Y7WJ>.
- 29 *Id.*
- 30 Colonial Williamsburg, Public Gaol, at <http://www.history.org/almanack/places/hb/hbgaol.cfm> (last visited April 24, 2014), archived at <http://perma.cc/YH3K-4RTQ>;
- 31 Lounsbury, *supra* note 27, at 32.
- 32 Colonial Williamsburg, Public Gaol, *supra* note 30.
- 32 *Id.*



Paul Hellyer is a reference librarian at William & Mary Law School.