The School Of Law, 1849-1949: A Century Revisited

Ollinger Crenshaw

Follow this and additional works at: https://scholarlycommons.law.wlu.edu/wlulr
Part of the Legal Education Commons

Recommended Citation
THE SCHOOL OF LAW, 1849-1949:  
A CENTURY REVISITED  
OLLINGER CRENSHAW*  

Through a remarkable coincidence, the School of Law of Washington and Lee University celebrates its centennial during the session when the entire institution is commemorating the bicentennial of its origins in the frontier school of Robert Alexander. As early as 1804 the Board of Trustees considered the establishment of a law professorship in the then Washington Academy, and even went as far as to tender the position to Paul Carrington, a prominent Virginia lawyer and friend of Jefferson. Judge Carrington declined the proffered position, and until after the Civil War no efforts were made to set up a law school at Washington College.

Legal education in Virginia had been offered in the famous private school conducted by George Wythe in Williamsburg, and through the time-honored and persistent practice of reading law in the offices and under the tutelage of established lawyers. The University of Virginia did not open its doors until 1826, but from that date a school of law began its famous career of service. A number of distinguished small private law schools, however, rendered useful training to men preparing for a career in the law during the first half of the nineteenth century. Among these were the school conducted at Winchester by Judge Henry St. George Tucker, and that operated by Judge Lucas P. Thompson in Staunton from 1840 to 1849.

The Lexington Law School, 1849-1866

In the summer of 1849 the Lexington Valley Star newspaper announced that Judge John W. Brockenbrough planned to open a law school in town and that he had good prospects for a class. This paper, with which the Judge had once been associated, warmly praised his qualifications and personality, and wished him success in the project. The Richmond Enquirer noted that, as the school long taught by Judge Thompson at Staunton would close, the Lexington school would be the only law school west of the Blue Ridge. Another journal, the Richmond Republican, praised the intelligent population of Lexington, as well as the town's beautiful and healthful location. Judge Brock-

*Professor of History, Washington and Lee University. Since 1945, the author has been preparing a history of Washington and Lee University.
enbrough’s urbanity, learning, and experience at the bar and bench qualified him as teacher.

John White Brockenbrough, founder of the Lexington Law School, was born in Hanover County, Virginia, December 23, 1806, into a well-connected Virginia family. His father had been a distinguished jurist, and the son followed him in pursuing a legal career. Young John W. Brockenbrough was educated at William and Mary, and was one of the earliest matriculates at the University of Virginia. Subsequently he studied law in the aforementioned school of Judge Henry St. George Tucker at Winchester, and became Commonwealth Attorney of Hanover County. In this phase of his career he prepared and published a two volume work of Chief Justice Marshall’s decisions in the United States Circuit Court at Richmond.

Shortly before 1837 he removed to Rockbridge County, where he met and married Mary Bowyer, daughter of Colonel John Bowyer, a leading citizen. Mr. Brockenbrough soon established himself as a successful practitioner and political figure. After the campaign of 1840 he succeeded John Letcher for a time as editor of the local Democratic organ, the Valley Star. Having espoused the principles of the Democratic party from “infancy,” Brockenbrough became a party leader of some consequence in Lexington and Rockbridge—where the Whig party was generally dominant. Therefore, when James K. Polk and the Democrats won the election of 1844, Brockenbrough lost no time in actively seeking the Federal Judgeship of the Western District of Virginia vacated in 1845 by Judge Pennybacker. Despite the covert opposition of John Letcher, he won the coveted appointment early in 1846, and the praise of Whig newspapers in Lexington and Staunton.

Judge Brockenbrough had thus been a Federal Judge for several years when in 1849 he conceived and executed his plan for founding a law school in Lexington. According to a prospectus of the Lexington Law School, the session would open on October 29, and would close March 16, 1850. Two classes, the Junior, or introductory course, and the Senior course would be offered concurrently, so that an ambitious student could enroll in both without additional expense. The announcement also stated that law students might attend lectures at Washington College; and a few lectures were promised at the close of the course on Jurisdiction and Practice of Federal Courts.

Text-books announced for use in the Junior class were: Stephen’s Blackstone, Starkie on Evidence, Stephen on Pleading, and Vol. 1 of Greenleaf’s Evidence. In the Senior course Tucker’s Commentaries, Greenleaf and Starkie on Evidence, Stephen on Pleading, Gould’s
Pleading, Chitty on Pleading, Holcombe's Introduction to Equity Jurisprudence, Lube's Equity Pleading, Mitford's Pleading, Lomax's Digest of Real Property, and Lomax on Executors and Administrators were adopted. According to an official statement made at the close of the first session, Tucker's Commentaries was the principal text-book in the Senior class, and those interested were assured that "the numerous errors of the text will be corrected by very full quotations from the modern decisions of the Court of Appeals of Virginia." The tuition fee was fixed at $60 per session, payable in advance.

In the manner of the nineteenth century, Judge Brockenbrough formally opened his Law School in an "Introductory Address to the Law Class of Lexington." Acceding to a request from a committee of the Senior class, the speaker consented to publication of his remarks in the press and in pamphlet form. The Judge spoke earnestly of his new enterprise, outlined his proposed methods, and enjoined upon the students "systematic and unwearied" study. He promised to amplify the text-books, to note recent decisions, and to consider the civil code which had been adopted a short time earlier by the Legislature of Virginia. This code contained new features of municipal law. The Judge would catechize the students, and promised to set up a moot court during the closing two months of the session.

Their teacher also offered advice to the young men about to embark upon the study of law, and held out tempting rewards to those who should become successful in their profession. He warned that a long probationary period often awaited the young man called to the bar, and illustrated his point by citing the difficult early career of Chapman Johnson, a distinguished Virginia lawyer. "When you shall come to the Bar," he advised, "make it an inflexible rule to be always found during business hours in your offices." The Judge then described the moment in a young lawyer's career when he delivered his first important and eloquent speech—and scored a triumph. He alluded to the eminent English lawyer of the eighteenth century who made his reputation by a single great speech: from making nothing a year he suddenly found his income at £2800 sterling!

There can be little doubt that the community of Lexington strongly supported the new school, and doubtless agreed with the Valley Star in wishing success to it. Lexington in the fifties could boast a number of intellectual institutions: Washington College, the Virginia Military Institute, the Ann Smith Academy, and the Franklin Society. Indeed, it was a favorable omen for the Law School that it held its sessions at the Franklin Society Hall. The "Athens of Virginia" welcomed another institution of learning.
At the close of its first session the Lexington Law School graduated five men, and six completed the course in March, 1851. Of the latter group, John Goode, Jr., became a well-known Virginia political leader, member of Congress and Solicitor General of the United States; James W. Massie, served as a Professor of Mathematics at the Virginia Military Institute and assistant to Judge Brockenbrough in his school during 1860; and William McLaughlin was long a local Judge and Rector of the Board of Trustees of Washington and Lee.

The local newspaper, as was its wont in boosting local schools, declared in 1851 that only lack of knowledge concerning it prevented more patronage for the Lexington Law School. But during the fifties the rolls of the school swelled to thirty-eight, and in the last pre-war session twenty-eight were attending Judge Brockenbrough's lectures. The sensational incident in 1854 when a law student killed a cadet of the V. M. I. caused much press comment, but appeared not to damage the law school, although only eleven students matriculated in the 1854-1855 session. By December, 1857, the Richmond Dispatch reported of the Lexington school: "It has 28 students, largest private law school in Virginia at present, or with a single exception, at any former time."

The correspondent of the Dispatch was delighted with Judge Brockenbrough's teaching methods, and described him as teacher: "The chapters, given to the class the previous day for investigation and study, are made the subjects of individual examination, and, instead of a formal lecture... the Judge gives a running commentary on the text as contained in the answers of the students. It is a union of the catechetical and the lecture system, and invests the elaborate duties of instruction with a kind of conversational interest."

It is probable that the pattern of his school outlined by the founder in 1849 was adhered to throughout the ante-bellum period of its existence. According to the rolls of the Lexington Law School printed officially in 1888, a total of two hundred and seven students attended its classes down to 1861, many of them former students of Washington College, as was natural; a large number also came from distant places, and without benefit of previous college work. From the Lexington Law School went scores of men destined for legislative work, for the bench and bar. The rolls are studded with notations of service in the Confederate army, and a number were fated to give their lives for the lost cause.

Although a member of the judiciary of the United States, 1846-1861, Judge Brockenbrough seemed ever responsive to the disturbing political developments of the fifties. He expressed annoyance at the sug-
gestion that he become a candidate for Governor of Virginia on the Know-Nothings ticket, stating in plain words his cordial detestation of the "principles" of that party. During 1858-1859, the Judge was strongly urged for the Governorship on the Democratic ticket by the Richmond Enquirer, a newspaper dominated by Henry A. Wise, and hostile to the pretensions of John Letcher for the Democratic nomination. Thus for a moment the two prominent Lexingtonians clashed, but Letcher won the nomination and the election of 1859.

In the crisis of the years 1860-1861 Judge Brockenbrough, a warm states-rights Democrat, leaned markedly towards the Southern cause. He, Colonel Massie, and E. F. Paxton carried the banner of states-rights in the contest for delegates to the Virginia State Convention of 1861. Rockbridge County, overwhelmingly Unionist in sympathy at the time, defeated the Judge and his cohorts; but in January, 1861, the General Assembly of Virginia appointed him as one of Virginia's delegates to the ill-starred "Peace Convention." His Law class met on January 25, 1861, praised his appointment, "however detrimental to them," and wished him Godspeed. Events tended to strengthen the hand of Judge Brockenbrough with his home people, compelling a reversal of opinion after April 15, 1861, which brought unity of the people for secession.

This is not the place for a full examination of Judge Brockenbrough's services during the Confederate era. Suffice it to say that he served as a member of the Provisional Confederate Congress, and in October, 1861, was appointed Confederate States Judge of Western Virginia, a position he occupied until the overthrow of the Southern government.

Tentative Years at Washington College

Only a few weeks after Appomattox the Lexington Gazette carried the announcement that Judge Brockenbrough proposed to reopen his Law School, closed during the conflict, on the first Monday of July, 1865, with the program much as before the war. The principal change was in the extension of the session to nine months, and the increase of tuition to $100. The Lexington Law School operated with a special summer course during 1865, and attracted 23 students to its regular session, 1865-66.

One of the many pressing problems which confronted the trustees of Washington College was the selection of a president. Because of the dislocations of the war years, no attempt had been made to appoint a successor to Dr. Junkin, President, 1848-61; but in the summer of 1865 the trustees, of whom Judge Brockenbrough had been a mem-
ber since 1852 and rector in 1865, took an inspired action by the election of General R. E. Lee to the presidency of Washington College. It was Judge Brockenbrough who was authorized to visit General Lee in an effort to obtain his acceptance of the post—a mission executed with success.

The coming of General Lee to Washington College infused into the venerable institution new vigor, broadened its field of patronage, and converted its classical curriculum into that of a university. In view of the expanded program at the College, it is not surprising that at the close of Judge Brockenbrough’s first post-war session in April, 1866, the proposal was broached to unite his law school with Washington College.

A committee of trustees reported on the projected law school annexation, June 28, 1866. The report recommended that it should be distinct from the academic department, and known as “the School of Law and Equity.” Judge Brockenbrough was to be the professor, although he was not to be a member of the academic faculty, and was to control discipline. Law students were not to be entitled to use the Library or to occupy the College buildings; academic students might attend either class in Law, upon payment of a $60 fee in addition to a $40 tuition fee for academic studies. No dismissed or expelled academic student could enter the Law School. Upon completion of the entire course, the student would receive the Bachelor of Law degree. Such was the tentative, quasi-independent status of the Law department of Washington College for the first few years of the arrangements, subject to annual renewal.

Judge Brockenbrough reviewed the work of the Law School in his first report submitted to General Lee, June 18, 1867. Of 27 enrolled, 21 were candidates for the B. L. degree; the latter gentlemen had stood the ordeal of examination, conducted at the Court House by Judge Brockenbrough, June 13, 14, 15, attended on occasion by General Lee and several members of the faculty. Several town lawyers were also present, as were many “intelligent strangers, one or two of them Lawyers by profession...” Judge Brockenbrough described the details of the examination:

“A large number of legal problems, was prepared with which care & labor by my self, ranging through almost the whole field of jurisprudence, and three of these were assigned to each candidate, by lot, and written answers were required to be prepared in the immediate presence of myself & the audience, without reference to text books or other authorities. They were all prepared & handed to me on the first day, and were publicly read by
the candidates respectively on the following day. They were in a high degree accurate, full & satisfactory. The forenoon of Saturday was devoted to an oral examination on the subjects not drawn from the Lottery & this part of the exercise was especially gratifying & satisfactory. The remaining exercises consisted of the reading of essays on legal subjects, each candidate having prepared one, by my direction, during the April recess of the school."

Judge Brockenbrough highly praised these essays, in style and in research, as well as an earlier series of prepared essays, which General Lee and others had heard read. Student conduct was excellent throughout, according to the professor, and commented upon by townsmen. The Judge wound up his first report by assuring the president that he had heavily taxed student "powers of application and apprehension" during the session. On Monday following the close of the examinations, members of Judge Brockenbrough's class presented him with "a beautiful gold-headed cane," and the town bard and wit, "Lawyer" James D. Davidson, then spoke in humorous vein.

The cautious trustees renewed the connection of the Law School in 1867 and again in 1868, declaring in the latter year that it was not then expedient for the College to establish "a School of Law in regular connection with the institution as one of its departments of instruction." Later it became plain that the Law School should be strengthened by the appointment of another professor. It was clear, also, that the enrollment of the school had not increased; in 1869 only 14 students attended, of whom 12 were recommended for the degree. According to Judge Brockenbrough's report of June 10, 1869, the class had performed well on the written and oral examinations. He admitted, however, misgivings about grading students: "It would be uncandid to deny that there were marked degrees of excellence & proficiency among the candidates, but it would be difficult to apply, with entire correctness, a graduated scale to mark their relative proficiency, in a science so varied & extensive as that of law & Equity." Several members of the Law class of 1867 attained subsequent distinction, the best known of them were J. Harvey McLeary, who became Attorney-General of Texas and Associate Justice of the Supreme Court of Montana, D. Gardiner Tyler (son of President Tyler), and Charles T. O'Ferrall, later a member of Congress and Governor of Virginia.

Radical reconstruction was in full operation in Virginia, as throughout the South, during the late sixties, and much bitterness was engendered among the former ruling class. Judge Brockenbrough privately scorned radical politics, and resented deeply the activity of
the Freedman's Bureau and its allies in Lexington. His feeling was hardly assuaged by the fact that he was hard pressed to pay his Federal taxes in 1868: indeed, because of several factors the last nine years of Judge Brockenbrough's life were anti-climactic.

An able committee of trustees, composed of William McLaughlin, William H. Ruffner, and W. T. Poague, in June, 1869, prepared a thoughtful report on the problem of legal instruction. The report asserted that a single professor could not possibly do all the work of the school, demanded more chairs, and a broader curriculum, together with better integration of law courses with other studies. The committee quoted with approval Blackstone's remark that the study of law was an important part of a polite education. But there was an even more compelling reason to upbuild the Washington College Law School. It appeared to the committee that the mission of educated young Southerners was to "guard from pollution and overthrow that Palladium of the political and civil rights of the people, the Constitution of the United States; and the only means of restoring and preserving these rights, under Providence, is to imbue the youthful minds of the South with a profound knowledge of Constitutional law and political science."

Furthermore, the report noted, the entire direction of legal instruction had sharply altered within the past twenty-five years. It had shifted from study in a lawyer's office to attendance at well-equipped law schools. Unless Washington College could furnish the modern type of school, students would go elsewhere. Enrollment at the University of Virginia's Law School, 1866-1869, ranged from 109 and 121, while the figures for Columbian College Law Department (in Washington, D. C.) for the same years were 173 to 200. Why could not more pupils be attracted to Lexington? The group recommended the appointment of two professors of Law, with salaries and perquisites sufficient to attract the highest legal talent of the nation, and to enable them to devote their exclusive time to the duties of their chairs. The committee did indeed set its sights high; and at once correspondence was opened with the Kentuckian, General John Cabell Breckinridge, former Vice President of the United States, to tender him one of these professorships. General Breckinridge, who had sons at Washington College, and who was himself emerging from his "flight into oblivion," declined the offer.

**John Randolph Tucker and Judge Brockenbrough**

The high purpose of the trustees to obtain the services of a brilliant lawyer and teacher was fulfilled in 1870 when John Randolph...
Tucker, an eminent Virginia lawyer then practising in Baltimore, accepted a professorship of Law in Washington College. An arrangement in regard to the salaries of the law professors, adopted in 1870, proved to work to the advantage of Mr. Tucker and to the disadvantage of Judge Brockenbrough. By action of the trustees, June 23, 1870, the Law professors (and the President) were excepted from the rule which forbade faculty members to engage in pursuits outside their regular duties; and both Judge Brockenbrough and Professor Tucker engaged in the practice of law in Lexington. For the first several years the two professors worked together in harmony. They submitted a report to General G. W. C. Lee, who had succeeded his father as President of the institution, thenceforth known as Washington and Lee University, calling attention to the great need of the Law department—an adequate library. This library, said the professors, should be always accessible to the students, and would make the moot court a valuable adjunct of instruction. "We urge this the more—because there is absolutely no law library here . . . ." This startling deficiency had embarrassed students. It was the rule in Northern colleges to have law libraries adjacent to lecture rooms.

In the years 1870-1873, despite the addition of Mr. Tucker, the Law School did not flourish, students numbering only 31 in the spring of 1871, and but 17 in 1872-73. Judge Brockenbrough's salary was inadequate, depending as it did on fees, and far below that paid his colleague. He conceded that he had no legal grounds for complaint, but it was evident that the Judge had signed an unfavorable contract in 1870. With a measure of pathos, he referred in a letter to Trustees Moore and Davidson to "my Law School," which seemed to be slipping away from him. With deep feeling he wrote: "That I should under any circumstances be compelled to abandon this favorite scheme of my life, so long as a Kind Providence leaves me in possession of my mental & physical powers, is a possibility too painful to contemplate . . . ."

With the onset of the Panic of 1873, preceded in Virginia by hard times, the difficulties of the Law School mounted. A show-down was inevitable and not long delayed. Judge Brockenbrough resigned in June, 1872, as member of the board and as its rector. The trustees in June, 1873, were faced with a painful decision: they were forced to discriminate in the salaries of their two law professors in order to retain the services of Professor Tucker, which they were determined to do. Thus Judge Brockenbrough's resignation was virtually demanded, June 25, 1873, and was forthcoming the next day. The wound to the Judge was deep, and the village reverberated with the echoes of this
conflict. About the same period, Washington and Lee University experienced another of its several recurrences of sectarianism; the battle of the Law School was involved in that matter, and Judge Brockenbrough himself believed that, as an Episcopalian, he had been discriminated against. In fact he appealed to the forum of public opinion by spreading his grievances and his case through four columns of small type in the Richmond *Enquirer*.

Before this disagreeable episode is closed, one may ponder the issues raised by it. The trustees had made a brilliant stroke when they obtained the services of Mr. Tucker, as will be demonstrated in the next section; he was vigorous, able, magnetic—exactly the man needed to infuse energy into the lagging Law School. It was unthinkable to let him go. Sentiment, however, pleaded strongly for Judge Brockenbrough: founder of the school, one who as trustee and professor had rendered the most important services to the institution, but beyond his prime and in straitened financial circumstances. The board accepted the latter's unconditional resignation, June 26, 1873, accompanied by the usual words of praise and the hope that "kind providence" might sustain him. Unfortunately, "kind providence" did not smile on Judge Brockenbrough's valiant efforts to resuscitate a private Law School in Lexington, which he opened in the fall of 1873. The times were most unfavorable to such an enterprise; many of his old law students expressed warm sympathy for their "learned Gamaliel;" but by 1875 it was clear that "the distressing poverty of our people" had defeated this last effort, and death came to Judge Brockenbrough in 1877. The historian may well conclude that Washington and Lee University owed much to the kindly and learned John White Brockenbrough.

*Guardians of the Constitution*

It has been stated that in the summer of 1870 the trustees adopted the plan of a more permanent and extended law school than had previously existed. Thereafter the Law department was to be one of the regular "schools," and its professors members of the University faculty. Law students were to matriculate in the same manner as other students at the College, and were to be subject to the same government and control. On June 22, 1870, John Randolph Tucker was chosen Professor of Law, and the board expressed great hopes of swelled enrollments. We have seen that this expectation was to be disappointed.

The coming of John Randolph Tucker to the Law School faculty was an event in the history of the institution and of the community.
Born in Winchester, Virginia, in 1823, son of the distinguished Judge Henry St. George Tucker, John Randolph Tucker was a member of the eminent Tucker family of Virginia. He was educated at the University of Virginia, where he studied law under his father and was graduated from the University in 1844. From 1845-1857 he practiced law in Winchester, and entered Democratic politics as an ardent states-rights champion. He won the office of State Attorney General in 1857 and served in that capacity until 1865. After the war he became General Counsel of the B. & O. railroad, which position he left to come to Washington College.

Professor Tucker's election to the faculty was hailed by the Lexington Virginia Gazette, July 1, 1870. He was characterized as one “who has a national reputation for Attic wit, irrepressible humor, thrilling eloquence, high legal attainments, unspotted private character, and wide personal popularity.” This was hardly an overstatement, as his career in Lexington was to prove. His personality impressed itself profoundly upon the town and region: the anecdotes of his wit and humorous antics became legion, his eloquence in classroom and on platform was unsurpassed, and his sincere piety impressive.

In accordance with the dispensation granted him by the trustees he opened law offices in Lexington and Staunton. Already a practised hand in the game of politics, the new Professor frequently offered his services to the Conservative (Democratic) party of Virginia, appearing on the hustings in the heated campaigns of the reconstruction period. He was reported by a sympathetic newspaper, on one occasion, to have “skinned alive” his radical Republican adversary. Throughout the whole period of his life in Lexington, whether as Congressman or Professor, his home “Blandome” was the scene of gay social life. Student publications have described parties there with appreciation; and in a time when the student body receded to smaller numbers, the Tucker home brought town and gown together in an atmosphere of friendliness.

We have noted that a reorganization of the School of Law was effected by the trustees in 1873 with Mr. Tucker ensconced as director of the department. He was voted an Assistant Professor in the person of the young Charles A. Graves, whom he had trained at Washington and Lee, and whose career as student and professor here would span 33 years. This combination of Tucker and Graves functioned only two years, however, as the former was nominated and elected to Congress in the Democratic landslide in 1874. Of Mr. Tucker's distinguished career as member of Congress, 1875-1887, there is no room to speak.
Although he resigned his professorship in 1875, he retained a nominal connection with the Washington and Lee Law School, through lectures delivered each year to law students, by addresses to other groups of college men, and an occasional commencement oration.

At graduation exercises of June, 1878, Mr. Tucker gave the audience at Washington and Lee an exposition of his ideas of law and society. As reported by the Southern Collegian the orator opened by a strong affirmation of the necessity of religious faith. Warming to his subject, Mr. Tucker assailed class legislation, and advocated laissez-faire doctrines. He then reviewed the course of the South and Virginia to secession, maintaining that that action had not been undertaken in order to perpetuate slavery. Rather it was done "to defend the right of each State to say how long slavery should continue in its borders." He enjoined his young hearers to labor in defense of Constitutional liberty—all hope was by no means lost. Noting the agricultural character of the South, he prophesied that the section would perform a conservative function in the future history of the nation.

These doctrines John Randolph Tucker taught in the Law School at Washington and Lee, and expounded on the floor of Congress. A student attested to this in August, 1871, when Lucius Desha wrote his fellow-student Hugh A. Moran: "I can blow for our Law School and for Mr. Tucker especially. He is a fine man and a good teacher, and I venture to say there is no school in the country anywhere that teaches the State's rights doctrine in its purity like he does here." During the seventies, also, the attention of Northern conservatives was attracted to the Law School at Washington and Lee. Many Northern professional men, especially lawyers, distrusted the centralizing tendencies of the radical Republicans, and became disgusted with the performance of the Grant administration.

One of these was the railroad attorney, Vincent L. Bradford, a resident of Philadelphia. Mr. Bradford, who had been immensely flattered by the award of the honorary degree of LL.D. from Washington and Lee (and who subsequently received, at his indirect suggestion, the honorary degree of Litt. D.), heartily endorsed the Constitutional interpretations expounded in the Washington and Lee Law School. This feeling he phrased in a letter to Dr. Alfred Leyburn, Rector of the Board, July 4, 1874: "...I am in full sympathy and accord with the essential Truths and Doctrines of Constitutional and Public Law, inculcated by Washington, Jefferson, Madison, Taylor of Caroline, and an Host of Statesmen and Jurists, noble sons of the 'the Mother of Commonwealths', and still recognised and taught by 'the Washington and Lee University' of Virginia."
Mr. Bradford, who continued to send an annual contribution to the Law Library (and who left Washington and Lee University a substantial legacy), developed the theme of the mission of the Washington and Lee University Law School. He viewed the school as "a Depository of the soundest principles of Constitutional Law and polite learning..." and conceived of it as a beacon light "in the midst of prevailing political darkness." So long as such an institution "of sound and correct Learning" as Washington and Lee should exist, Mr. Bradford would not "despair of regaining a decentralized and restored Federal Republic...." This far-seeing conservative anticipated by many years the shift of conservatives in general from centralization to decentralization as a device best suited to the protection of their property interests. Yet an occasional critic even in Mr. Tucker's bailiwick could feel that his Constitutional doctrines were obsolete. Some of these were probably defeatist in outlook during the post-Civil War generation. Whatever his motivation, the bucolic local humorist, "G. Whillikens," wrote his friend "Josiah Simpkins" in a letter printed by the Lexington Gazette late in 1886: "Ran Tucker has been lecturin' the boys on the Constitution. Lecturin' on the Constitution now days is like singin' Psalms to a dead hoss." There are those who would feel this comment more applicable to the fourth and fifth decades of the twentieth century than to Mr. Tucker's day.

Meanwhile the Washington and Lee Law School was carried on in its day-to-day instruction, 1875-1889, by Professor Charles A. Graves. This was a period at Washington and Lee of decline and discouragement, of faculty resignations and sharp falling off in enrollment. Years later Professor Graves modestly said that if he deserved credit for his work at Washington and Lee it was in remaining with the institution during those dark days.

Young Professor Graves came to his work well-grounded in academic as well as legal subjects. A native of Bedford, Virginia, Charles Graves and two brothers had come to study in General Lee's College. Charles took the A.B. and M.A. degrees, twice winning the Robinson Prize medal, and serving as Assistant Professor of English and Modern Languages in 1869. He then studied Law with Professors Tucker and Brockenbrough, taking the B.L. in 1873. At the beginning of his law study he wrote his father: "I am going to be a lawyer, and a good one if possible. I am sorry I cannot take both courses this year, so as to be able to begin practice next year if I desired."

But when he had finished his course in 1873, he became Assistant Professor of Law, Adjunct Professor the next year, and in 1875 Pro-
fessor of Common and Statute Law and Equity Jurisprudence, succeeding Mr. Tucker. Although this was a formidable assignment for so young a man, who understandably felt his limitations and lack of reputation, Professor Graves admirably justified the appointment. In the summer of 1875, however, misgivings lingered about the future of the Law School. Professor William Preston Johnston, himself a former member of the academic faculty, and lecturer in the Law department during the seventies, wrote Trustee Francis T. Anderson that the Law School had always been a heavy drain on the University's funds; it could be discontinued, he added, but that would entail a loss of prestige and impair the institution's University status. For the session of 1875-76 Colonel Johnston's plan of having Mr. Tucker lecture on Constitutional Law and Mercantile Law, and Conflict of Laws, supplemented by a number of "free" lectures by distinguished lawyers, was adopted. But from 1876 onward Professor Graves carried the burden alone, although the Catalogues of those years were made impressive by the listing of special lecturers as of the staff of the school.

During the period when Professor Graves directed the Law department "single-handed and alone," the number of students fluctuated from 14 in 1875-76, 28 in 1877-78, 26 in 1876-79 (drawn from ten states, 11 of the total from Virginia), 19 in 1879-80, to 15 in 1882 (Mr. Graves urged an increase in enrollment, and suggested advertisement), and varied but slightly from these figures for the rest of the decade of the eighties. Throughout this time it was possible for students to carry both the Junior and Senior class, and complete the Law course in one year: for example in the class of 1883, 13 attended both classes, 13 the Junior class only, and only two the Senior class exclusively. Better and more commodious quarters were provided in the Washington College building for the Law School. In his report to President G. W. C. Lee for June, 1885, Professor Graves recapitulated ten years of stewardship. One hundred and nine students had been awarded the B.L. degree in a decade; and he also pointed out with satisfaction that the Law School had become more than self-supporting. He calculated that the tuition fees from the Law department were enough to pay the professor's salary, the cost of advertising, and incidental expenses.

Although the sources of information concerning life among the law students in the seventies and eighties are meagre, a few items are available. At commencement of 1876 the Law supper was a happy occasion. In attendance were the law graduates, and the law and academic faculties. According to the Southern Collegian, "There was everything in abundance that could tempt the appetite, and soon the champaign
[sic] began to flow and the spirits of all were raised.” Before the toasts were drunk, student Bradley of Kentucky, for the Law class, presented a “beautiful arm chair” to Professor Graves. The sage professor then offered advice to the graduates, the essence of which was: “first make lawyers of yourselves, for it was the legal logic of a Tucker which overcame the political intrigues of a Blaine.” With the spirited presidential election in the offing, the diners drank to the toast, “The Supremacy of the Democratic Party essential to the preservation of the Liberties of the People.”

Auxiliaries to the regular course of instruction in law were the Law Society and the Moot Court. At a meeting on March 12, 1877, student F. M. Cockrell delivered an oration, “The Grand Jury,” which was followed by a debate on the subject, “Should parties to an action be allowed to testify in a civil case?” On this occasion the Sergeant-at-arms was severely censured by the Speaker for “gross disrespect.” Moot Court had been held for about six weeks in February and March, 1877, conducted by Judge William McLaughlin.

A writer in the June, 1877, issue of the Southern Collegian, presumably a “bic” (Victorian slang for law student—derivation uncertain), penned an article in which he described Professor Graves in action as teacher: “... the text-books which give the principles are not the real authority for the law; that is to be found in the application of these principles by the courts, and collected in their reports .... Professor Graves, by patient and systematic work, has looked up for him [the student] the leading cases on all the most important subjects; of these some are assigned as required for the examinations .... Others are given as marginal notes, that, to a student who intends to practise in Virginia, are invaluable.”

This article also commented on Judge Hugh White Sheffey's lectures to seniors on Wills and Corporations. Juniors were required to attend the month-long course; but when Judge Sheffey began, the Juniors did not have even “a bowing acquaintance with Corporations.” The writer suggested that the Juniors be introduced to the subject before listening to Judge Sheffey's lectures.

At the close of the eighties the thought occurred to several trustees that the Law School could be placed on the “best possible basis” by the reappointment of John Randolph Tucker to the faculty as a full-time professor. One trustee wrote that the combination of Professors Graves and Tucker would enable the Washington and Lee Law School to compete more effectively for students with the University of Virginia, especially in view of the fact that the eminent Dr. John B. Minor
seemed near the end of his career. Mr. Tucker, who had retired from Congress in 1887, was available, and would bring to the faculty his national prestige. When the appointment was announced, the press throughout the country applauded the return to Washington and Lee of the "statesman-professor;" joining in the praise were "Marse Henry" Watterson of the Louisville Courier-Journal, the Richmond State, and the Baltimore Sun. The Sun quoted Mr. Tucker's views of his future work: "I come back... to this University after years of separation, and I have come to stay. I propose to devote the residue of my life to teaching young men who assemble here, the truth of our Constitutional system, which my experience in public affairs shows to be essential for the protection of our institutional liberties." It was also reported that Mr. Tucker planned to write a book embodying his views on the Constitution: that document was by no means "an obsolete compact whose restrictions upon greed and insolence are to be considered inoperative."

The Southern Collegian, published by the Washington and Lee students, expressed enthusiasm for the Tucker appointment. This "true disciple of Jefferson and Calhoun" had put behind him the "fitful fever" of politics; he was returning to the campus, where his purpose would be to imbue "young minds and young hearts with his ideas and his principles of government, that they may... carry on the work left by him, and thus keep our government pure, and teach men to know that it is 'an indissoluble Union of indestructible States'." The Collegian confidently predicted a brightened future for the Law School.

The Law School at Washington and Lee may be said to have entered a new era of prosperity—a "Golden Age"—during the closing decade of the century. John Randolph Tucker, speaking to a student rally in the spring of 1890, expressed the desire to see more young men enter the University, "from the North and West, as well as from the South, from all over the land as well as from the Valley of Virginia...." He foresaw with broad vision a much greater institution which would boast more professors, more buildings, more students. A progressive note indeed, sounded at a time when discerning critics were disturbed by stagnation at Washington and Lee.

In June, 1890, Professors Tucker and Graves appeared before the Board of Trustees with recommendations regarding the improvement of the Law department. A summer Law School was approved, the Board accepted the suggestion that the regular session course be gradually enlarged, and standards for graduation were raised. Higher standards
pointed towards an eventual requirement of two sessions instead of one for the B.L. degree. At this juncture the trustees sharply cut down free tuition in Law which had been granted certain favored groups.

The rise in numbers at the Law School became marked within two years of Mr. Tucker's appointment. Indeed, the Law enrollment showed a tremendous increase in the early nineties, a boom season in these parts of Virginia. Altogether there were 200 students enrolled at Washington and Lee in 1890; of these in the commencement of 1891, 23 received the B.L. degree, while only three gained the A.B. The Law professors reported to President Lee in June, 1892, that their department had 63 students, the largest number in history, and they expected 75 next session. Each year, they said, the school became better known through its alumni.

Another factor which advertised favorably the Washington and Lee Law School was the succession of honors which came to Mr. Tucker, and the continued attention which the press paid him. Harvard University conferred upon him (who already held similar degrees from William and Mary and Yale) the honorary degree of LL.D. The New York World compared him to General R. E. Lee in character, and after the return of the Democrats to national power in 1892, he was mentioned for Cleveland's cabinet. In 1893 he was chosen President of the American Bar Association, appeared before the United States Supreme Court in the South Carolina Railroad Case (1893), and during the nineties wrote and delivered many orations and articles. Mr. Tucker's wide circle of friends was made aware of the Law School in which he taught, and there are a number of examples of gifts of books and money to the school from his friends. These friendships transcended sectional and party lines. President Garfield, Richard Vaux of Philadelphia, and David Dudley Field were among Mr. Tucker's admirers.

At the suggestion of Professor Graves, the trustees in 1893 conferred the title of Dean upon Mr. Tucker. For the remaining years of life he ceaselessly urged upon the authorities increased instructional staff, and enlarged quarters and library. Despite the impact of the Panic of 1893 and the depression years which followed, the law enrollment held its own at least to the death of Mr. Tucker. It was during these troubled years, too, that a number of the school's most eminent alumni received their training. Perhaps the two most distinguished graduates of the School of Law in the period were John W. Davis, A.B., 1892, B.L. 1895, Assistant Professor of Law at Washington and Lee, 1896-97, afterwards member of Congress, Solicitor General of the United States,
Ambassador to Great Britain, and Democratic candidate for President of the United States in 1924; and Newton D. Baker, Jr. (A.B., Johns Hopkins), B.L., 1894. Mr. Baker attained distinction as reform Mayor of Cleveland, Secretary of War in President Wilson's cabinet, and eloquent champion of the League of Nations. Both men rose to eminence as practitioners of their profession, and both served on the Board of Trustees of Washington and Lee.

Fortunately each of these distinguished graduates was called upon to place on record his thoughts of society and the Law. Mr. Baker wrote an article for the *Southern Collegian's* May, 1896, issue, "Academic Preparation for the Study of Law." He observed that lawyers were becoming "experts in technical business," a tendency which he decried, and called upon the "lawyer of the future, true to his traditions... [to] again become the regulator and upbuilder of the social fabric." He thought he saw favorable omens that this was to be the case, and proceeded to discuss the lawyer as a man of affairs. Young men believed in progress, in some ages painfully slow but sure; at other times revolutions occurred and progress was rapid. The present, he asserted, doubtless with the free silver agitation in mind, was such a time when old forms of government were being tested as never before. "Communism, anarchy and socialism are no longer the amusements of dreamy social philosophers and romancers, but are coming to be investigated by serious people with a view to diminishing evils, which if not new to society are more oppressive and more apparent under our new conditions. Socialism, indeed, is a great and growing system of thought...." Here the guidance of lawyers would be needed, Mr. Baker maintained.

The passing of the classical curriculum he did not deplore. Regarding the college program of the nineties he wrote that it appeared to fit students better for the study of law than Latin and the higher Mathematics. The newer subjects provided broad cultural values; and also the intrinsic value of such studies as history, economics, and politics bore directly upon the law itself. A law student, Mr. Baker contended, should have been grounded in English institutional and constitutional history, political science, the natural sciences, logic, mathematics, metaphysics, modern and classical languages. In conclusion, he asked what should the model lawyer be? And his answer was brief and clear: "Simply an honest man with a good mind and all the training of mind and heart that his best efforts can attain from the best opportunities."

John W. Davis's "Law Class Oration," delivered in 1895, was entitled, "The Call of Our Age to the Lawyer." Mr. Davis surveyed the
rise and fall of civilizations, and declared that "we, as heirs of all who have gone before us, seem to stand at the apex of a mighty pyramid, in a purer atmosphere than those who lived below, and with a broader, clearer view." Like Mr. Baker, he examined the defects and dangers of modern society. On one hand he saw the Scylla of discontented masses, restless and explosive, ready perhaps to set up a bitter and unenlightened despotism. On the other, was the even more pressing Charybdis of American plutocracy. Between these dangers lawyers must steer the nation through adherence to the doctrine of "reverence for the Law:" he called upon his classmates of 1895 to protect and defend the law, and make the United States an exemplar to the entire world.

In the spring of 1896, Professors Tucker and Graves submitted a memorial to the Board of Trustees, which recommended a number of improvements in the Law School necessary to maintain Washington and Lee abreast of other law schools. The professors felt that they were overburdened, and called for the appointment of a third teacher. Many areas of the field of law were either ignored or taught inadequately at Washington and Lee: Practice in Federal Courts, Criminal Procedure, Admiralty Law, Insurance, Agency and Partnership. In order to cover Carriers, Title to Personal Property, and Contracts in the regular schedule, one of the teachers carried an extra hour each day, which in addition to his hour and a half lecture made his teaching two and a half hours a day. This was more work than a man ought to do, they argued. At the University of Virginia, no professor had more than four lectures a week, while at Washington and Lee he who did the extra hour was burdened with 14 hours!

This memorandum of April, 1896, advised the trustees that nearly all Law Schools had from three to six or seven professors, and many also employed Assistant Professors and lecturers. A school of only two professors, even though they did the work of three or four, was in these times likely to become discredited. The University of Virginia faculty consisted of three full professors and an adjunct professor, while West Virginia University had three full professors. The memorial also urged an increase of tuition fees in law from $80 to $100 or $125, depending on whether a student elected one or both courses. The faculty admitted that, while much could be said on both sides of the question of a one year against a two year course, the majority of Washington and Lee men attempted the entire course in one year. Mr. Tucker expressed himself as ready to seek funds for these improvements, and believed that he could get them.
The Board hearkened to this strong representation, and appointed John W. Davis of Clarksburg, West Virginia, Assistant Professor of Law, for the session 1896-97. Mr. Davis confessed that he fancied himself the occupant of a law chair at some point in his career, although his first ambition was to achieve success as a practitioner. He modestly doubted his abilities to fill the post, but decided to accept. Nor was the coming of so able a young teacher postponed a moment too long, for Mr. Tucker fell ill late in 1896, and retaining his zest until the end, died early in 1897. The whole state mourned his passing, and the general sentiment seemed to have been expressed by William Henry Ruffner, who wrote his daughter: "We shall ne'er see his like again. Everybody loves him."

As the century closed, more changes altered the faculty of the Law department. Harry St. George Tucker was chosen Professor of Law in 1897, "the worthy successor of a worthy sire." Mr. Harry Tucker, A.M., 1875, B.L., 1876, had served as member of Congress for several terms prior to 1896 (when the silver issue forced his retirement), and as member of the Board of Trustees of Washington and Lee. In a general way, the younger Tucker subscribed warmly to the constitutional views of his father, and also possessed a genial personality which made him a charming companion. As successor to John W. Davis the Board chose Dr. William Reynolds Vance, an alumnus who held four degrees, including the Ph.D. Professor Vance thus began what was to be a long and distinguished career as law teacher which wound up at the Yale Law School. Professor Graves was elevated to the deanship as successor to J. R. Tucker.

But this combination was not to last long, for in 1899 Dean Graves resigned to accept a position at the University of Virginia. The departure of such a fixture as Professor Graves was a blow to the Law School, which the Trustees attempted to remedy by the election of Mr. Harry St. George Tucker as Dean. The law course by 1898 had been so arranged as to make the completion of the B.L. in one session impossible. Meanwhile, Professor Harry Tucker had busied himself with the filial tasks of aiding in the collection of a fund with which the John Randolph Tucker Memorial building could be erected, and with the editing for publication of The Constitution of the United States by J. Randolph Tucker, LL.D., a work which appeared in 1899.

The cornerstone of Tucker Hall was laid, June 13, 1899, with appropriate Masonic ceremonies; funds were gathered from among the late Mr. Tucker's friends, alumni, and others. Notable among the contributors were Mrs. James A. Garfield, John E. Russell of Massa-
chusetts, and James C. Carter of New York. The building was ready by the spring of 1900, a substantial gray stone structure, described by the Lexington Gazette with understatement as presenting "a striking contrast" to the other college buildings.

In seeking an able teacher to fill the third post at the Law School, the Board chose Professor William L. Clark, Jr., a prolific writer of law volumes, whose zealous industry it was hoped would infect the students. But Mr. Clark's tenure at Lexington was short-lived; in an unpleasant incident in the fall of 1899, he was said euphemistically to have "vacated" his chair of Law at President Wilson's "suggestion." Professor John N. Pomeroy and Mr. Frank T. Glasgow of Lexington took over Mr. Clark's work, and the Board appointed Mr. Martin P. Burks of Bedford, Virginia, A.B., 1870, B.L. (University of Virginia), as Professor of Law.

The Twentieth Century

In the summer of 1900 President William L. Wilson died. The Board turned to Dean Harry St. George Tucker, who served in the capacity of Acting President until the following June. When the trustees failed to elect Mr. Tucker President in 1901, for which office he had had some strong backing, he continued as Dean of the Law School only until the end of the session 1901-02. Around the turn of the century, the Vincent L. Bradford legacy had become available, and in June, 1902, Professor Vance could report that the Law library contained around 6,000 volumes. The Bradford income was used to purchase Official Reports of the Supreme Court of the United States and of the Virginia Court of Appeals, American State Reports, the Lawyers' Reports Annotated, Southeastern, Southwestern, Southern, Northeastern and Atlantic Reporters.

President Denny, however, while noting the increase of Law School attendance in his Annual Report of 1903 to the trustees, said that the resignation of Dean Vance had brought "us face to face with the embarrassing situation that has continually confronted the School in recent years." Stability was provided, however, for many years to come, by the election of Professor Martin P. Burks, who had made an enviable record, to the deanship, and in 1904 he was joined by Professor Abram P. Staples of Roanoke, Virginia. Also, in 1903, the trustees authorized the use of a limited number of scholarships in the Law School. Despite additional teaching furnished by Professors H. Parker Willis and John H. Latane, the regular staff of Dean Burks, Professor Joseph R. Long, and Professor Staples, felt itself over-burdened during 1903-04.
During President Denny's decade in the presidency, the enrollment of the University steadily climbed until it exceeded 600 by 1911-12, of which number the Law School claimed 207. Meanwhile gradual curricular changes had been made, as well as tentative progress towards better standards. As early as 1902 the Catalogue strongly recommended that a student have at least one year of academic work before engaging in law study, though this was not a requirement. In June, 1905, the trustees authorized, on recommendation of the Law faculty, that the Law degree take two years, and in 1906 the form of the degree was changed from B.L. to LL.B. By 1908, a student was required to furnish the number of credits requisite for college entrance for admission to the Law department, and in his 1912 report, Dean Burks suggested that, while the two years course be continued, an optional three year program be offered.

Responding to Dean Burks's request for another full-time professor, the trustees in 1912 appointed Mr. R. W. Withers, giving the School a four-man faculty. But the team was soon broken up by the death in September, 1913, of Professor Staples, who was eventually replaced in 1914 by Professor D. Clovis Moomaw. Mr. Withers resigned at the close of the 1913-14 session, and Dean Burks was granted a two-year leave of absence to accept appointment by Governor Stuart as one of the code revisers of the state. Dean Burks's leave was extended, and in 1917 he was appointed to the State Supreme Court of Appeals. William Hayward Moreland, class of 1907, of the Norfolk bar, joined the faculty in 1914, and took over the courses formerly taught by Dean Burks. The various changes in personnel of this time, and those occasioned by the coming of World War I, have been ably described by Professor Clayton E. Williams in an article published in the Washington and Lee Alumni Magazine, XI (March-April, 1936).

At the close of the 1914-15 session the trustees considered the fact that leading law schools in North and South had made such additions to their curricula as to place them on a three-year basis. The retention of the two-year course at Washington and Lee had subjected its Law School to discussion and criticism. During the previous fall and winter the Law faculty made an exhaustive study of the subject, and in April unanimously adopted resolutions which "in effect put the school on a three-year curriculum." Actually, the three-year course remained optional.

Professor Joseph R. Long was elected Dean in 1917, and after the close of the first World War, a staff of five full-time teachers was appointed, courses were expanded, and the curriculum modernized. Be-
ginnning with the 1920 session, three full years of residence were required for a degree. At this time the Washington and Lee Law School adopted the "case system," by which "the cases are the basis of instruction and the text book and law review articles are the reference works." By 1926 all courses were taught by the case method. Of much significance was the admission of the Washington and Lee Law School into the Association of American Law Schools in 1920. Another indication of the relative standing of the School came in 1923 when the American Bar Association placed Washington and Lee in "Class A" rating, a classification enjoyed at the time by only 39 American law schools. In 1923, two years of college work was required for admission.

The remaining two decades are too close to the present to be described here in detail or viewed in the proper perspective. Mr. Moreland became Dean in 1923, upon the resignation of Mr. Long, and by the end of the decade the faculty included Professor Clayton E. Williams, LL.B. 1912 (who had joined the faculty in 1919), Professor Charles P. Light, Jr., (LL.B., Harvard), Professor Raymon T. Johnson, (J.D., Chicago), and Professor Charles R. McDowell, (LL.B., Yale). This staff continued with the institution through the thirties and was unbroken in ranks until the death of Dean Moreland in 1944, and of Professor Johnson in 1948. In the meantime additions were made to the faculty in the persons of Professor Theodore A. Smedley (J.D., Northwestern) and Professor Charles V. Laughlin (J.S.D., Chicago).

On December 16, 1934, the old Tucker Hall building was destroyed by fire. Plans were immediately drawn up to replace it with a more modern and more beautiful edifice, synchronous with the architectural pattern of the Washington College group. The result was the present model structure. Despite the impact of the second World War, which all but emptied the Law School of teachers and students, a thread of existence was preserved, and at the war's conclusion, students flocked to Tucker Hall in unprecedented numbers. Professor Williams became Dean, and with a full complement of staff, the venerable Law School enjoys an excellent reputation and favorable prospects as it celebrates its centennial in the year 1949.