



Henry Clay's War Hawks: The legacy of George Wythe

by Anton Chaitkin

Henry Clay, the 32-year-old new member from Kentucky, explained to the U.S. Senate why he had to tell that august body, and the whole nation, how to perform its duty.

"When the regular troops of this house, disciplined as they are in the great affairs of this nation, are inactive at their posts, it becomes the duty of its raw militia, however lately enlisted, to step forth in defence of the honor and independence of the country."

It was Feb. 22, 1810. For several years, thousands of Americans had been kidnapped by the armed enemy, on the high seas and just outside American ports. Aaron Burr's southwestern secession plot had been broken up in 1807 by his treason arrest; enemy-linked Bostonians were still plotting the secession of the North. Northwestern Indians were being armed by the Canadian-based enemy for war against the United States.

Having nearly dissolved the armed forces due to insane budget cutting, President Thomas Jefferson was cowed by declarations from both Britain and France that U.S. ships trading with the other would be seized and plundered. He reacted by forbidding American ships to leave U.S. ports.

This embargo was a fiasco, and Congress was now groping for alternative measures. Henry Clay told the senators, "I am for war with Britain. . . . Or, are we to be governed by the low, grovelling parsimony of the counting room . . . before we assert our inestimable rights? . . . The conquest of Canada is in your power. . . . Is it nothing to us to extinguish the torch that lights up savage warfare? . . . A certain portion of military ardor . . . is essential to the liberties of the country . . . I am therefore for resisting oppression, by whomsoever attempted against us. . . ."

For his courageous stand, Clay and his allies were called "War Hawks" by the pathetic would-be British aristocrat, John Randolph of Roanoke. Over the next two years, the young politician led the weakened, stumbling United States to defend itself. By June 1, 1812, President James Madison was forced by Clay's movement to call for a declaration of war, America's second war with Great Britain.

On what authority did Henry Clay presume to instruct the nation?

Clay had for a model the life and work of his teacher and guide, who had made Clay's career his special project. Born in 1777 in Virginia, Clay as a young man was fortunate to be employed by the Chancellor of Virginia, George Wythe, as clerk and copyist. Wythe taught him law, and Clay chose it for his profession. Wythe, who had led the "War Hawks" in the *first* war with Great Britain, also gave young Henry the cultural and philosophical outlook that motivates the builder, and the preserver of a nation.

George Wythe (1726-1806) learned Greek and Latin from his mother. With scant formal education, he eagerly read Erasmus and Euripides, and he mastered such science, philosophy, mathematics, history, law and literature as were available to mid-18th-century American society.

In the 1760s, Wythe's intellectual power was central to the developing republican movement in colonial Virginia. A little leading "junta" was composed of Royal Governor Francis Fauquier; his colonial advisor George Wythe; natural science professor William Small; and young Thomas Jefferson, Wythe's law student, who described his teacher as "My beloved mentor and foster father." The four performed as an amateur quartet in chamber music; at regular dinner meetings they discussed science, philosophy, mathematics, and the curriculum of William and Mary College.

Wythe was vice president of Virginia's Society for the Advancement of Useful Knowledge. Benjamin Franklin, a member of Wythe's Society, allowed the group's communications with leading European and American scientists to be mailed without charge, as with his earlier American Philosophical Society.

George Wythe was a member of the Virginia House of Burgesses (legislature) from 1758 to 1768, and the clerk of the House from 1769 to 1775. When Britain announced the Stamp Tax for the colonies in 1764, George Wythe drafted the Virginia resolutions of remonstrance. With nerves of steel, he guided the republicans carefully toward victory,

keeping in check merely provocative activity—such as Patrick Henry's frequent outbursts.

In 1775, Wythe recommended that America develop a regular army, rather than depend on unreliable militias.

He was elected in 1775 to the Continental Congress. John Adams of Massachusetts described Wythe's Socratic role in promoting the patriot drive for independence:

"In January, 1776 . . . Mr. Wythe of Virginia, passed an evening with me, at my chambers. In the course of conversation upon the necessity of independence, Mr. Wythe, observing that the greatest obstacle, in the way of a declaration of it, was the difficulty of agreeing upon a government for our future regulation, I replied that each colony should form a government for itself as a free and independent State. 'Well,' said Mr. Wythe, 'what plan would you institute or advise for any one of the States?' My answer was, 'it is a thing I have not thought much of but I will give you the first ideas that occur to me,' and I [gave him] my first thoughts. Mr. Wythe appeared to think more of them than I did, and requested me to put down in writing what I had then said."

Adams' resultant pamphlet, "Thoughts on Government, in a Letter from a Gentleman [Adams] to his Friend [Wythe]" was the precursor to Adams' later works outlining the theory of American government.

George Wythe was one of the first and one of the most important advocates within Congress for a declaration of independence. Wythe wrote the instructions for Benjamin Franklin and the other envoys who were to ask Canada to join in resistance to the Crown. He fought for the right of the colonies to trade and ally with foreign countries. His Appeal for the

Jefferson studied it in the crucial summer of 1776.

When Richard Henry Lee called for independence, Adams, Wythe, and Lee led the debate in its favor. Wythe's student and "stepson"

the Declaration. Wythe signed the Declaration—above the names of other Virginians who had signed just before him.

George Wythe
min Franklin that were to guide his negotiations for an alliance with the French and other Europeans. George Wythe instructed intelligence-officer Samuel Kirkland in his mission to win over the Iroquois Indians. Wythe worked on counter-espionage, on plans for a military academy—and on at least 20 wartime committees of the Continental Congress.

Back in Virginia, with the war's outcome uncertain, George Wythe designed the seal and flag for the state of Virginia:

dead king whose crown has fallen off, above the motto "Sic Semper Tyrannus."

George Wythe was assigned to revise all the laws that had been made for Virginia from 1688 to 1776; he and Jefferson together brought about the disestablishment of the Church of England within Virginia.

In 1778, he was appointed judge of the state's high court of chancery, becoming Chancellor Wythe for life. The fol-

lowing year the first law professorship in America was created for him at the College of William and Mary.

Wythe contrasted for his students the British and American systems of law. He devised a moot court, to inject excitement and realism into otherwise deadly studies. He studied Plato and taught his law students the meaning of Aeschylus, and they helped him with his electrical experiments. He learned and taught many languages; he hired a rabbi to teach him Hebrew, so that he could be sure of an accurate reading of the Old Testament. When a mob came to his house to demand he represent Virginia at the Constitutional Convention in Philadelphia, they found him teaching Greek. At Philadelphia, he wrote the rules for the Convention, then departed.

Wythe's famous honesty in his private law practice must still be embarrassing in some circles: cases or returned fees if he discovered his client's suit was unjust.

Henry Clay, Chancellor Wythe's amenuensis, law clerk and personal assistant for several years in the mid-1790s, who, like Jefferson, claimed him as a kind of foster father, was one of many great men whose courses were shaped by Wythe's passion for justice. Wythe's assumption of moral authority based on Reason, was of incalculable benefit as a precedent and example for the survival of the republic.

Three persons convicted of treason during the Revolution, under a clause in the Virginia constitution, appealed the verdict on the grounds of a resolution in their favor by the lower house of the Virginia legislature. Chancellor Wythe's 1782 decision said

concur, and thus "should attempt to overleap the bounds, prescribed to them by the people, I in administering the public justice of the country, will meet the united powers at my seat in this tribunal; and pointing to the Constitution, will say to them, 'here is the limit of your authority, and hither shall you go but no further.'"

This was the most complete statement of the principle of judicial review up to that time. *George Wythe's student* John Marshall would later make his teacher's example the basic legal concept of the United States judiciary, during his long tenure as Chief Justice of the Supreme Court.

Henry Clay went out to Kentucky in the late 1790s, joining other former students of George Wythe who made up the core of that state's republican leadership. As attorney Clay entered politics, he was still very much in the charmed circle of Wythe's fatherly concerns for the future of his protégés.

The old Virginia Chancellor freed his slaves, made one of them his heir and was teaching him classical languages when Wythe, aged 80, and the young black man were both murdered by a jealous relative.

Wythe had lived his extraordinary life, and had died, in the cause of freedom. Four years later the second generation War Hawk asked the U.S. Senate not to abandon "the most precious rights which the revolution secured."

To Be Continued