

# TEACHING THE CONSTITUTION: AN AMERICAN TRADITION

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## ABSTRACT

Constitutional literacy is startlingly low among American citizens. When surveyed, a majority of Americans lacked basic constitutional knowledge. Recent high school graduates fared worst, indicating a problem with civic education in America's schools. This trend would concern America's Founders, particularly George Wythe and Thomas Jefferson, who believed constitutional literacy was the responsibility of every citizen and essential to a self-governing society. Without an informed citizenry to safeguard the rights and protections afforded by the Constitution, Wythe and Jefferson doubted the viability of America's model of self-government. Constitutional literacy programs that promote collaboration among law schools and high schools create the educated, active, and engaged citizenry Wythe and Jefferson envisioned.

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## INTRODUCTION

The Constitution of the United States<sup>1</sup> is history's greatest promoter of liberty and freedom<sup>2</sup> and "is the final refuge of every right that is enjoyed by any American citizen."<sup>3</sup> It is unsettling that many Americans take for granted the checks and balances created by the Constitution<sup>4</sup> because the Constitution requires public support to thrive.<sup>5</sup> Citizens' understanding of the Constitution is a prerequisite to public support. In other words, the Constitution cannot thrive and be appreciated unless it is taught and learned.<sup>6</sup>

Constitutional literacy programs,<sup>7</sup> such as the Marshall–Brennan Constitutional Literacy Project (Marshall–Brennan),<sup>8</sup> place law students

1. When I refer to the Constitution throughout this Essay, I refer to its Preamble, operational articles, and Bill of Rights.

2. WARREN E. BURGER, *THE CONSTITUTION: FOUNDATION OF OUR FREEDOM*, at iv–v (ann. teacher's ed. 1990).

3. Calvin Coolidge, *Foreword* to JAMES M. BECK, *THE CONSTITUTION OF THE UNITED STATES: YESTERDAY, TODAY—AND TOMORROW?*, at ii (10th prtg. 1925).

4. See BURGER, *supra* note 2, at 83 ("Today most Americans take for granted the system of government created by those inspired delegates to the Constitutional Convention in the long, hot summer of 1787. In some respects this affirms the success of their efforts—the system has worked.")

5. See Coolidge, *supra* note 3 ("The Constitution is not self-perpetuating. If it is to survive, it will be because it has public support.")

6. See Letter from Thomas Jefferson to Marquis de Lafayette (May 14, 1817), in *THE QUOTABLE JEFFERSON* 89, 89 (John P. Kaminski ed., 2006).

7. For the purposes of this Essay, I define "constitutional literacy program" narrowly, as a program in which a law professor teaches a for-credit law school class focused on constitutional issues and in preparation for the law students themselves becoming teachers of a for-credit constitutional law class offered to public high school students in order to develop knowledge of rights and responsibilities under the U.S. Constitution and to foster citizenship and civic participation.

8. The Marshall–Brennan Constitutional Literacy Project was founded at American University's Washington College of Law in Washington, D.C., in the fall of 1999. *The Marshall–Brennan Constitutional Literacy Project*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/> (last visited Mar. 30, 2013). The project is "designed to mobilize talented second- and third-year law students . . . to teach courses on constitutional law . . . in public high schools . . ." *Id.* The national project is headquartered in Washington, D.C., and has expanded to include licensed chapters across the country. *Id.*

This movement for constitutional literacy is rooted in the belief that students will profit for a lifetime from learning the system of rights and responsibilities under the U.S. Constitution. . . . The Marshall–Brennan Fellows work with teachers, administrators and

in high school classrooms to teach the Constitution. Law students introduce high school students to the rights and responsibilities afforded to them by the Constitution, and use the Constitution, cases, and current events to challenge high school students to think critically. Through these exercises, the programs foster citizenship and encourage civic participation.<sup>9</sup>

This Essay reaffirms the original purpose of the American law school. The first American law school was founded to create “citizen lawyers”;<sup>10</sup> therefore, teaching the Constitution to the next generation advances the purpose for which legal education was initially conceived.<sup>11</sup> In supporting constitutional literacy programs, modern law schools have the opportunity to train lawyers ready and willing to serve the public good. Cultivating citizen lawyers should be a cornerstone of modern legal education.

Part I introduces George Wythe and Thomas Jefferson, and explains how their views shaped today’s legal education system. Part II explains how Wythe and Jefferson’s aim to educate the citizen lawyer applies today, and how law schools providing constitutional literacy programs honor Wythe and Jefferson’s purpose. Part III underscores why Wythe and Jefferson would find particular value in constitutional literacy programs and why educating high school students about the Constitution is of particular value to society.

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lawyers to teach students their rights as citizens, the strategic benefits of voting, how lawmaking occurs and other fundamental constitutional processes.

*Id.*

9. Although this Essay focuses on the benefits of law students teaching constitutional law and civics to high school students through programs like the Marshall–Brennan Constitutional Literacy Project, several organizations contribute to civic and constitutional literacy. *See, e.g.*, CIVICS FIRST, <http://civicsfirstct.org> (last visited Mar. 30, 2013) (“Civics First is a private, non-profit association that promotes and conducts law-related education programs and projects in Connecticut’s public and private schools, courtrooms and communities.”); *Courtroom in the Classroom Program*, CT. APPEALS OHIO NINTH APP. DIST., <http://www.ninth.courts.state.oh.us/school.htm> (last visited Mar. 30, 2013) (“The Courtroom in the Classroom Program is the Ninth District Court of Appeals’[s] educational outreach program. It provides high school students . . . with hands-on experience in how the Ohio judicial system works and illustrates how disputes are resolved in a democratic society. The Judges travel to high schools to hear . . . actual oral arguments involving real cases pending before the Court . . . .”); ICIVICS, <http://www.icivics.org/> (last visited Mar. 30, 2013) (“iCivics prepares young Americans to become knowledgeable, engaged 21st century citizens by creating free and innovative educational materials. In 2009, Justice Sandra Day O’Connor founded iCivics to reverse Americans’ declining civic knowledge and participation. Securing our democracy, she realized, requires teaching the next generation to understand and respect our system of governance.”); *About Us*, STREET LAW, INC., [http://www.streetlaw.org/en/about/who\\_we\\_are](http://www.streetlaw.org/en/about/who_we_are) (last visited Mar. 30, 2013) (“By helping to improve the teaching of law and understanding of relevant legal principles, Street Law empowers youths and adults to use their knowledge to solve problems and better their communities, and motivates them to become active participants in society.”).

10. *See* Letter from Thomas Jefferson to James Madison (July 26, 1780), in 3 THE PAPERS OF THOMAS JEFFERSON 506, 507 (Julian P. Boyd ed., 1951) (“This single school by throwing from time to time new hands well principled and well informed into the legislature will be of infinite value.”).

11. *See, e.g.*, Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. LEGAL EDUC. 185, 185 (2001).

I. GEORGE WYTHE, THOMAS JEFFERSON, AND  
THE BIRTH OF MODERN AMERICAN LEGAL EDUCATION

A. *George Wythe and Thomas Jefferson*

That George Wythe is not a household name today—like other Founding Fathers—should be a surprise.<sup>12</sup> Wythe's name appears prominently above those of the other Virginia signers on the Declaration of Independence.<sup>13</sup> Because Wythe was on leave from the Continental Congress, he did not sign the document until autumn of 1776.<sup>14</sup> On July 4, 1776, Thomas Jefferson and the other Virginia signers insisted on leaving a space above their names to assure a place of honor for Wythe.<sup>15</sup> Wythe's reputation for integrity<sup>16</sup> and progressive thought<sup>17</sup> was a model for the members of the Continental Congress, including better known Founding Fathers such as Benjamin Franklin, George Washington, John Adams, and James Madison.<sup>18</sup>

12. JOYCE BLACKBURN, *GEORGE WYTHE OF WILLIAMSBURG*, at xi–xii (1975). Scholarship on Wythe has been limited due to the loss of his papers. IMOGENE E. BROWN, *AMERICAN ARISTIDES: A BIOGRAPHY OF GEORGE WYTHE* 14 (1981).

13. BLACKBURN, *supra* note 12, at xi.

14. *Id.*

15. ALONZO THOMAS DILL, *GEORGE WYTHE: TEACHER OF LIBERTY* 1 (1979).

16. *See, e.g.*, NATHAN SCHACHNER, *THOMAS JEFFERSON: A BIOGRAPHY* 33 (1957) (“Of Wythe’s character the testimony is unanimous and approaches the panegyric. He was likened in virtue, integrity and purity of manners to the ancient Roman senators of whom Plutarch wrote . . .”); PAUL D. CARRINGTON, *AMERICAN LAWYERS: PUBLIC SERVANTS AND THE DEVELOPMENT OF A NATION* 22 (2012) (“There was no person in America so qualified for the role of moral educator.”).

17. *See* JULIAN P. BOYD & W. EDWIN HEMPHILL, *THE MURDER OF GEORGE WYTHE: TWO ESSAYS* 4 (1955). According to Thomas Jefferson, “[o]n the first dawn of that [Revolution], . . . instead of higgling on half-way principles, as others did who feared to follow their reason, he took his stand on the solid ground that the only link of political union between us and Great Britain, was the identity of our executive; that that nation and its Parliament had no more authority over us, than we had over them, and that we were coordinate nations with Great Britain and Hanover.” *Id.* (alteration in original) (internal quotation marks omitted). Wythe’s support of the antislavery movement and his being among the first to liberate slaves under the 1782 act of the legislature authorizing manumission illustrate that Wythe’s reputation for virtue was well deserved. *See* CARRINGTON, *supra* note 16, at 23. Wythe was one of very few who provided manumitted slaves financial resources and literacy, and risked punishment for doing so. *Id.* at 23, 147. An additional illustration of Wythe’s character was exhibited through correspondence between Thomas Jefferson and Richard Price, a British moral philosopher and preacher who asked for Thomas Jefferson’s advice on how to end slavery in the United States. Letter from Richard Price to Thomas Jefferson (July 2, 1785), in 8 *THE PAPERS OF THOMAS JEFFERSON*, *supra* note 10, at 258, 258–59. Thomas Jefferson suggested that Price might gain support for ending slavery by enlisting George Wythe’s help, writing:

The college of William and Mary in Williamsburg, since [the creation of the chair of law], is the place where are collected together all the young men of Virginia under preparation for public life. They are there under the direction (most of them) of a Mr. Wythe[,] one of the most virtuous of characters, and whose sentiments on the subject of slavery are unequivocal. I am satisfied if you could resolve to address an exhortation to those young men, with all that eloquence of which you are a master, that [its] influence on the future decision of [ending slavery] would be great, perhaps decisive.

Letter from Thomas Jefferson to Richard Price (Aug. 7, 1785), in 8 *THE PAPERS OF THOMAS JEFFERSON*, *supra* note 10, at 356, 356–57.

18. *See* BLACKBURN, *supra* note 12, at xi.

Wythe was an attorney, patriot, revolutionary, statesman, and above all a teacher.<sup>19</sup> Posts filled by Wythe's students include President of the United States, Chief Justice of the U.S. Supreme Court, U.S. Secretary of State, Speaker of the U.S. House of Representatives, U.S. Senator, U.S. Ambassador,<sup>20</sup> State Governor, state supreme court justice, college president, and law professor.<sup>21</sup>

Thomas Jefferson, after completing his undergraduate work at the College of William & Mary under the tutelage of Professor William Small,<sup>22</sup> sought a profession that would prove intellectually stimulating, useful to society, and profitable.<sup>23</sup> Jefferson chose law.<sup>24</sup> American law schools, however, did not exist;<sup>25</sup> aspiring attorneys served as apprentices to licensed members of the bar.<sup>26</sup> Professor Small recommended Jefferson to his friend, George Wythe,<sup>27</sup> who was foremost among highly esteemed and scholarly lawyers in the colonies.<sup>28</sup> Jefferson rejected the traditional course of apprenticing with one of his relatives, several of

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19. See, e.g., BLACKBURN, *supra* note 12, at 113 (“Communicating knowledge from one mind to another superseded all of the other great drives which [Wythe’s] intellect energized.”); BOYD & HEMPHILL, *supra* note 17, at 3 (calling Wythe “one of the greatest teachers and jurists that America has produced”); Thomas Hunter, *The Teaching of George Wythe*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 138, 155 (Steve Sheppard ed., 2007) (“Of course in addition to his great sense of public duty, Wythe probably began instructing young men in the classics simply because teaching gave him great enjoyment. The Reverend Maury once told [Thomas] Jefferson that ‘Mr. Wythe . . . seems to enjoy himself no where, so much as with his pupils.’” (omission in original) (quoting DILL, *supra* note 15, at 56)). In a letter to John Banister Jr. dated October 15, 1785, Jefferson espoused his own views concerning Wythe’s talents as teacher and the best place to educate youth, after weighing the benefits of various European cities:

But why send an American youth to Europe for education? . . . When [c]ollege education is done with and a young man is to prepare himself for public life, he must cast his eyes (for America) either on Law or Physic. For the former where can he apply so advantageously as to Mr. Wythe?

Letter from Thomas Jefferson to John Banister, Jr. (Oct. 15, 1785), in 8 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 635, 636.

20. What is today referred to as U.S. Ambassador was in Wythe’s time referred to as United States Minister Plenipotentiary.

21. DILL, *supra* note 15, at 1–2 (noting that among Wythe’s students were Thomas Jefferson, John Marshall, Henry Clay, Littleton Tazewell, John Brown, St. George Tucker, John Coalter, and Spencer Roane).

22. See JAMES PARTON, LIFE OF THOMAS JEFFERSON 26 (1971).

23. MERRILL D. PETERSON, THOMAS JEFFERSON AND THE NEW NATION: A BIOGRAPHY 13 (1970) (explaining that because Jefferson’s family wealth would not support a comfortable retirement, Jefferson’s professional options to earn income included the ministry, military, medicine, and law, and that Jefferson positively viewed the law as “a profession of service and, incidentally, of livelihood”).

24. SCHACHNER, *supra* note 16, at 32.

25. ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 19 (1953).

26. *Id.* Although a number of colonists traveled to the Inns of Court in London, the majority of aspiring lawyers self-educated by reading law books or apprenticed with a member of the bar. Douglas, *supra* note 11, at 188.

27. SCHACHNER, *supra* note 16, at 32 (“Dr. Small’s most intimate friend in Williamsburg was George Wythe, perhaps the most learned and scholarly lawyer in all Virginia, if not in the colonies generally. On Small’s advice, Jefferson entered Wythe’s law office and thereby came under the second great influence of his early career.”); see also PAUL M. ZALL, JEFFERSON ON JEFFERSON 6 (2002).

28. SCHACHNER, *supra* note 16, at 32.

whom were among the colonies' leading legal practitioners.<sup>29</sup> Instead, Jefferson chose to study with Wythe, "the best legal mind in Virginia,"<sup>30</sup> a choice that reflected Wythe's reputation as an educator<sup>31</sup> and Jefferson's commitment to scholarship.<sup>32</sup>

### *B. The Origins of Modern Legal Education*

Before becoming a member of the bar, Wythe had served as an apprentice under his uncle, Stephen Dewey.<sup>33</sup> "Dewey 'treated [Wythe] with neglect, and confined him to the drudger[ies] of his office, with little, or no, attention to his instruction in the general science of law.'"<sup>34</sup> Wythe, no doubt, did not want his apprentices to have a similar experience.<sup>35</sup> He taught for the simple joy of imparting information, regularly refusing compensation.<sup>36</sup> Jefferson was likely referring to the apprentice system then common with other attorneys when he stated:<sup>37</sup> "We are all too apt by shifting on them our business, to inroach on that time which should be devoted to their studies. The only help a youth wants is to be directed what books to read, and in what order to read them."<sup>38</sup>

The current model of legal education in the United States stems from Thomas Jefferson's—and others'—frustration with the colonial legal apprenticeship system.<sup>39</sup> Many unlucky apprentices served as a hybrid between personal assistant and monastic scribe.<sup>40</sup> Although ap-

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29. WILLARD STERNE RANDALL, *THOMAS JEFFERSON: A LIFE* 47 (1993) (noting that Peyton and John Randolph, Jefferson's cousins, were among the colonies' leading legal practitioners).

30. *Id.*

31. See, e.g., BROWN, *supra* note 12, at 64 n.56 (discussing Jefferson's deeply held belief that Wythe vehemently refused to sign Patrick Henry's law license because Henry had completed only a six-week course of study).

32. See, e.g., PARTON, *supra* note 22, at 33 (comparing Patrick Henry's six-week crash course to Jefferson's more thorough course of study and noting that "[i]t was not in [Jefferson's] nature to slight his work").

33. Hunter, *supra* note 19, at 138, 140.

34. DILL, *supra* note 15, at 9 (quoting Daniel Call, *George Wythe*, in 4 REPORTS OF CASES ARGUED AND DECIDED IN THE COURT OF APPEALS OF VIRGINIA xi (1833)).

35. *Id.* ("Perhaps posterity can thank Counselor Dewey for being a poor instructor. He may have inured young Wythe to the law's drudgeries. He may also have sharpened Wythe's appetite for learning in the deeper and richer historical basis of legal institutions. Above all, he seems to have given Wythe a thorough grounding in how *not* to teach!").

36. See, e.g., BLACKBURN, *supra* note 12, at 113 (noting that Wythe's love of teaching inspired him to refuse compensation); Herbert A. Johnson, *Thomas Jefferson and Legal Education in Revolutionary America*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN 103, 105 (James Gilreath ed., 1999); SCHACHNER, *supra* note 16, at 34 (noting that no record exists of payments from Jefferson to Wythe).

37. Douglas, *supra* note 11, at 190.

38. Letter from Thomas Jefferson to Thomas Turpin (Feb. 5, 1769), in 1 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 23, 24.

39. See Morris L. Cohen, *Thomas Jefferson Recommends a Course of Law Study*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES, *supra* note 19, at 169, 171.

40. See, e.g., PAUL M. HAMLIN, *LEGAL EDUCATION IN COLONIAL NEW YORK* 40–41 (Da Capo Press 1970) (1939) (noting that apprentices typically served "in a variety of ways unrelated to the practice of law"). John Adams described his time with one lawyer thusly: "Mr. Thatcher, as it was Evening when I waited on him, invited me to Tea and then made me smoke Bridgewater tobacco with him, till after ten O Clock. He said nothing about Law, but examined me more severely in

prentices sought and even paid<sup>41</sup> for training, lawyers had little time to mentor.<sup>42</sup> Even where apprentices were allotted time to read theory between copying writs and declarations, the text was dense and indecipherable without guidance.<sup>43</sup> After long apprenticeships, lawyers were often ill equipped to practice law and serve as leaders.<sup>44</sup>

Jefferson wanted more; he thought lawyers should be trained not only as trade practitioners but also as public leaders.<sup>45</sup> Jefferson understood that lawyers were particularly well suited to provide direction for the new nation.<sup>46</sup> To mold leaders, neither an apprenticeship nor a Bachelor of Arts degree was sufficient.<sup>47</sup> In 1779, then Governor of Virginia, Jefferson, in his capacity as a member of the Board of Visitors of the College of William & Mary, oversaw the establishment of the first chair of law at the college.<sup>48</sup>

The board of visitors appointed Wythe chair of law, making him the first American professor of law.<sup>49</sup> Wythe balanced practice and theory<sup>50</sup> and “designed an innovative, rigorous, and enjoyable curriculum.”<sup>51</sup> Students read and analyzed seminal legal texts, listened to lectures,<sup>52</sup> and traveled to the capitol building to participate in the nation’s first moot court and moot legislature.<sup>53</sup> Thus, Wythe created the curriculum that serves as the foundation for all modern-day American legal education.<sup>54</sup>

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Metaphysic[s].” 3 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 272 (L.H. Butterfield ed., 1961); see also Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124, 128 (1976) (noting that “it was a rare clerk indeed who didn’t spend a good deal of his time bent over a desk copying writs and declarations”).

41. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 56 (3d ed. 2005).

42. See, e.g., A. Christopher Bryant, *Reading the Law in the Office of Calvin Fletcher: The Apprenticeship System and the Practice of Law in Frontier Indiana*, 1 NEV. L.J. 19, 23 (2001) (“The Achilles’ heel of the apprenticeship system was that an apprentice’s education was no better than his master was a teacher. Lawyers were then and are now busy people, and some were more given than others to the role of tutor.”); Douglas, *supra* note 11, at 190.

43. See JOHN O. SONSTENG ET AL., *A LEGAL EDUCATION RENAISSANCE: A PRACTICAL APPROACH FOR THE TWENTY-FIRST CENTURY* 18 (2008).

44. See *id.*

45. W. Taylor Reveley, III, *W&M Law School Came First. Why Care?*, 35 U. TOL. L. REV. 185, 185 (2003).

46. Douglas, *supra* note 11.

47. See Hunter, *supra* note 19, at 146.

48. *Id.* at 144. In order to receive a law degree, a student must first have received a Bachelor of Arts degree. *Id.* at 146.

49. *Id.* at 144–45.

50. See Cohen, *supra* note 39, at 174 (stating that Jefferson’s view of legal education was “liberal” and “well-rounded in both its legal and general aspects”); Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527, 535 (1990) (noting that Wythe’s lessons included political economy, public law, English common law, as well as assignments that might be described today as clinical).

51. See Hunter, *supra* note 19, at 145.

52. *Id.* (noting that Governor John Tyler’s notes from Wythe’s lectures reflected much more than a copy of Blackstone in that they contemplated unique underlying reasoning behind the texts).

53. See *id.* at 146 (noting that the motive behind the moot court and moot legislature was to prepare students as speakers and republican leaders).

54. See Carrington, *supra* note 50, at 535–38.

Students and faculty spoke highly of Wythe's comprehensive<sup>55</sup> legal program.<sup>56</sup> One visitor to the college wrote Jefferson, "As to the university, I cannot conceive an institution better planned, or more judiciously managed for the forming, either the lawyer, or the statesm[e]n."<sup>57</sup> Wythe focused on creating not only lawyers, but also leaders for the new republican nation.<sup>58</sup> Writing to John Adams, Wythe explained that his charge as law professor was "to form such characters as may be fit to succe[ed] those [who] have been ornamental and useful in the national councils of America."<sup>59</sup> Wythe and Jefferson believed legal education should aim to produce leaders able to promote "public prosperity."<sup>60</sup>

## II. THE CITIZEN LAWYER

### A. *Wythe, Jefferson, the Constitution, and the Importance of Civic Engagement*

While Jefferson was serving as Ambassador to France,<sup>61</sup> he sent James Madison a letter detailing his thoughts on the proposed constitution.<sup>62</sup> Jefferson closed the letter with a plea: "Above all things I hope the education of the common people will be attended to[,] convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty."<sup>63</sup> Jefferson understood that education was outside the federal government's purview;<sup>64</sup> therefore, his inclusion of education in a letter that was otherwise exclusively dedicated to the analysis of the proposed federal constitution highlights his belief that the

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55. See *id.* at 535–36 (noting that Wythe's program included readings, lectures, moot courts, and moot legislatures).

56. See Douglas, *supra* note 11, at 202.

57. See Hunter, *supra* note 19, at 148 (quoting THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 112) (internal quotation marks omitted).

58. See Letter to Thomas Jefferson from James Madison (July 26, 1780), in THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 506, 506–07 ("This single school by throwing from time to time new hands well principled and well informed into the legislature will be of infinite value.").

59. Letter from George Wythe to John Adams (Dec. 5, 1783), in 15 PAPERS OF JOHN ADAMS, 1783–1784, at 396, 396 (George L. Lint et al. eds., 2010).

60. See Carrington, *supra* note 50, at 529.

61. Jefferson's official title was United States Minister Plenipotentiary to France; the term Ambassador was not yet in use.

62. ANDREW BURSTEIN & NANCY ISENBERG, MADISON AND JEFFERSON 171 (2010).

63. See Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), in 12 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 438, 442.

64. See Letter from Thomas Jefferson to Garreau (Dec. 22, 1785), in 9 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 121, 121 (noting that under the Articles of Confederation, Congress's powers did not extend over public education). Although Jefferson appreciated that the proposed constitution would create a more powerful federal government, he turned to the state as the principal sovereign charged with educating the citizenry. See generally Richard D. Brown, *Bulwark of Revolutionary Liberty: Thomas Jefferson's and John Adams's Programs for an Informed Citizenry*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 91, 96. Later, Jefferson, as President, in a speech to Congress, supported the establishment of a national endowment for education. CHARLES MAURICE WILTSE, THE JEFFERSONIAN TRADITION IN AMERICAN DEMOCRACY 140 (1960).

success of the constitution depended on an informed citizenry.<sup>65</sup> The hallmark of Jefferson's constitutional thought was the emphasis he placed on popular participation.<sup>66</sup> The ability to govern had been wrested from the Crown and given to the people, and Jefferson viewed education and self-government as inseparable.<sup>67</sup>

Jefferson's *Bill for the More General Diffusion of Knowledge*, a novel idea for its time,<sup>68</sup> called for the establishment of public schools.<sup>69</sup> The survival of the new nation depended on an educated citizenry<sup>70</sup> because there was a "direct correlation between literacy and successful self-government[; o]ne was necessary to ensure the future of the other."<sup>71</sup> Jefferson wrote Wythe from Paris, "By far the most important bill in our whole code is that for the diffusion of knowledge among the people."<sup>72</sup> Wythe agreed and consistently worked in his capacity as legislative drafter to revise Virginia law to include free education.<sup>73</sup>

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65. See THE QUOTABLE JEFFERSON, *supra* note 6 ("Ignorance [and] bigotry, like other insinuations, are incapable of self-government.").

66. DAVID N. MAYER, THE CONSTITUTIONAL THOUGHT OF THOMAS JEFFERSON 314 (1994).

67. See Letter from Thomas Jefferson to Joseph Priestly (June 19, 1802), in 37 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 625, 625; see also HAROLD NORRIS, *Education for Popular Sovereignty: A Bicentennial View of the Purpose of Education*, in EDUCATION FOR POPULAR SOVEREIGNTY THROUGH IMPLEMENTING THE CONSTITUTION AND THE BILL OF RIGHTS: A COLLECTION OF WRITINGS ON THE OCCASION OF THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION AND THE BILL OF RIGHTS 31, 31 (1991).

68. See Benjamin R. Barber, *Education and Democracy: Summary and Comment*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 134, 146 (calling publicly funded education "an alien notion to eighteenth-century Americans"); Brown, *supra* note 64, at 102 (describing the bill as an attempt "to bypass the old Anglican establishment, and create new, secular educational institutions"); Eugene R. Sheridan, *Liberty and Virtue: Religion and Republicanism in Jeffersonian Thought*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 242, 252 (calling Jefferson's proposal "innovative").

69. *A Bill for the More General Diffusion of Knowledge*, in 2 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 526, 526–27.

70. See MAYER, *supra* note 66, at 86–87 ("Jefferson's stress on public education was tied directly to his republicanism and the assumptions that underlay his concept of self-government. As he later observed, a civilized nation could not be both ignorant and free.").

71. Jeff Sparagana, *The Educational Theory of Thomas Jefferson*, NEW FOUND. (May 13, 2002), <http://www.newfoundations.com/GALLERY/Jefferson.html> (citation omitted).

72. Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786), in 10 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 243, 243–44. A more full text of Jefferson's letter to Wythe reads:

[B]y far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom, and happiness. If anybody thinks that kings, nobles, or priests are good conservators of the public happiness, send them here. It is the best school in the universe to cure them of that folly. . . . Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people. Let our countrymen know that the people alone can protect us against these evils, and that the tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance.

*Id.* at 244–45.

73. See BLACKBURN, *supra* note 12, at 114 (noting that Wythe "scarcely needed Jefferson's admonition to crusade against ignorance" and that Wythe came from "four generations of gifted educators on his mother's side of the family"). James Madison, in a letter to Jefferson explaining that the bill for universal education was unlikely to pass due to cost, hints at Wythe's tremendous efforts to champion the bill: "Mr. Wythe I suppose will not decline any duty which may be imposed on him,

Jefferson believed that survival of the liberty won by the colonies during the American Revolution depended on successful self-government, and successful self-government depended on universal education.<sup>74</sup> Wythe and Jefferson transformed the teaching of law from a system of arcane drudgery to one of inclusive engagement; this idea should not be viewed in a vacuum, but as consistent with their promotion of literacy, civic education, and public schooling.<sup>75</sup>

Wythe and Jefferson read Montesquieu, who “cautioned that education in law is essential if self-government is . . . to be maintained,”<sup>76</sup> and Locke, who presupposed that legitimate government must be derived from the consent of the people through education.<sup>77</sup> Wythe required that his pupils study constitutional law, an innovative approach that contributed to their understanding of politics and social philosophy.<sup>78</sup>

This foundational knowledge prepared young citizen lawyers to lead the national discourse on constitutional issues.<sup>79</sup> Thus, constitutional literacy programs perfectly meld Wythe and Jefferson’s desire to educate citizen lawyers and provide for an educated citizenry.

### *B. Wythe and Jefferson’s Citizen Lawyer and What It Means Today*

Wythe and Jefferson intended to train government leaders to sustain the new republic;<sup>80</sup> the express purpose of America’s first law school was

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but it seems almost cruel to tax his patriotic zeal any farther.” Letter from James Madison to Thomas Jefferson (Dec. 4, 1786), in 10 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 574, 576.

74. Jennings L. Wagoner, Jr., “*That Knowledge Most Useful to Us*”: Thomas Jefferson’s Concept of Utility in the Education of Republican Citizens, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 115, 118. Jefferson from Paris wrote to George Washington: “It is an axiom in my mind that our liberty can never be safe but in the hands of the people themselves, and that too of the people with a certain degree of instruction. This it is the business of the state to effect, and on a general plan.” Letter from Thomas Jefferson to George Washington (Jan. 4, 1786), in 9 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 150, 150–51.

75. See Barber, *supra* note 68, at 149 (discussing the purpose behind Jefferson’s attempts “to take law away from lawyers and return it to citizen philosophers”). Although Barber’s piece only examined Jefferson, for purposes of this Essay, it is fair to also credit Wythe; Jefferson’s role in the transformation of legal education cannot be separated from the role of Wythe—the teacher that inspired Jefferson to champion, and that Jefferson chose to lead, the effort for fundamental changes to the structure of legal education. Also worth noting, Wythe was passionate about teaching students of all ages. See BLACKBURN, *supra* note 12, at 113 (noting that Wythe taught languages, mathematics, and English literature to grammar school students).

76. CARRINGTON, *supra* note 16, at 23.

77. See, e.g., Jan Lewis, *Jefferson, the Family, and Civic Education*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 63, 67.

78. See Hunter, *supra* note 19, at 145 (“Wythe also discussed materials more akin to political science, and since the first written constitutions in the English-speaking world had just been produced in various colonies, Wythe has been called the first commentator on constitutional law.”).

79. See CARRINGTON, *supra* note 16, at 24 (noting that Wythe was among the first judges “to declare a law invalid as inconsistent with the higher law expressed in Virginia’s constitution” and that John Marshall, one of Wythe’s former students, would soon do the same in invalidating a federal law).

80. See W. Taylor Reveley, III, *The Citizen Lawyer*, 50 WM. & MARY L. REV. 1309, 1309, 1316 (2009).

to educate citizen lawyers.<sup>81</sup> Current President of the College of William & Mary, and former Dean of William & Mary School of Law, W. Taylor Reveley III, in an article titled *The Citizen Lawyer*, modernized the concept of the citizen lawyer by defining a “citizen lawyer” as one who meets his or her civic responsibilities.<sup>82</sup> A lawyer might meet these responsibilities not only through filling government roles but also through representing pro bono clients, leading nonprofit organizations, taking jobs squarely devoted to the larger good even when they offer less compensation or job security than the lawyer’s prior position, and charitable giving.<sup>83</sup> Robert Gordon, citing Reveley’s article, sums up the concept well: citizen lawyers will “devote time and effort to public ends and values: the service of the Republic, their communities, the ideal of the rule of law, and reforms to enhance the law’s efficiency, fairness, and accessibility.”<sup>84</sup>

### III. CIVICS AND TEACHING THE CONSTITUTION

#### A. *The Rise, Fall, and Inadequacy of Civic Education in America*

Civic education, as we recognize it today, first entered school curricula around the turn of the twentieth century.<sup>85</sup> American schools installed these courses to assimilate the many immigrants coming into the United States, emphasizing the country’s “Judeo-Christian, Graeco-Roman, and . . . Anglo-American roots.”<sup>86</sup> The subsequent patriotism surrounding the two World Wars and the onset of the Cold War sustained these programs.<sup>87</sup> The 1960s marked the beginning of the decline of civic education.<sup>88</sup> Sputnik shocked Americans into focusing on math and science education, the Vietnam War disillusioned the American populace, and Watergate shook confidence in the country’s traditional institutions.<sup>89</sup> The shortcomings of the civic education system compounded the issue. Curricula in the 1950s and 1960s were marked by a dry, lecture-driven focus on the structure of American government, and lacked any application or acknowledgment of current events.<sup>90</sup> Consequently, most civics programs were eliminated.<sup>91</sup>

Following this shift, experts began to notice a severe inadequacy in American students’ understanding of government. In his 1984 book *De-*

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81. *Id.* at 1310.

82. *See id.* at 1310–11, 1317.

83. *See id.* at 1316–19.

84. Robert W. Gordon, *The Citizen Lawyer—A Brief Informal History of a Myth with Some Basis in Reality*, 50 WM. & MARY L. REV. 1169, 1169 (2009).

85. Charles N. Quigley, *Civic Education: Recent History, Current Status, and the Future*, 62 ALB. L. REV. 1425, 1426 (1999).

86. *Id.*

87. *Id.* at 1426–27.

88. *Id.* at 1427.

89. *Id.* at 1427–29.

90. *Id.* at 1427–28.

91. *See id.* at 1428.

*mocracy at Risk: The Rising Tide of Political Illiteracy and Ignorance of the Constitution*, Jerry Combee analyzed the lack of comprehension exhibited by high school students in this area.<sup>92</sup> For example, he detailed the 1976 National Assessment of Educational Progress surveys, which exposed a poor understanding of basic constitutional principles.<sup>93</sup> Of seventeen-year-olds surveyed, many could not correctly place the President, Congress, Supreme Court, or cabinet within their respective branches,<sup>94</sup> few understood the concept of judicial review,<sup>95</sup> and some viewed the power of the President as unlimited.<sup>96</sup>

### *B. The Continuing Need to Reform American Civic Education*

Today, few Americans can demonstrate satisfactory knowledge of the Constitution.<sup>97</sup> A Brennan Center for Justice report found that “[o]nly 42 percent of [New York] respondents could correctly answer all three questions about the different roles of the three branches of government.”<sup>98</sup> One-third of New Yorkers could not correctly answer that the President is in charge of the Executive Branch.<sup>99</sup> The report called the lack of constitutional literacy a “crisis” in need of creative answers.<sup>100</sup>

This is a nationwide issue. Another recent survey by the Center for the Constitution found that 69% of respondents reported a limited understanding of the Constitution.<sup>101</sup> Recent high school graduates fared the worst.<sup>102</sup> This statistic is unnerving for two reasons. First, given that less

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92. JERRY COMBEE, *DEMOCRACY AT RISK: THE RISING TIDE OF POLITICAL ILLITERACY AND IGNORANCE OF THE CONSTITUTION* 1–2 (1984).

93. *See id.* at 3.

94. Only 74% identified Congress as part of the Legislative Branch, 71% identified the President as part of the Executive Branch, 35% placed the cabinet within the Executive Branch, and 65% knew the U.S. Supreme Court was part of the Judicial Branch. *Id.*

95. Only 62% knew that the Supreme Court could declare an act of Congress unconstitutional, 7% knew it took only a simple majority of Justices to do this, and 52% did not know that the Senate must approve Supreme Court appointments. *Id.* at 4.

96. In response to the question “Does the President of the United States have the right to do anything affecting the United States that he wants to do?” 10% of students responded “yes.” *Id.* (quoting Karen Dawson, *What You Ought to Know and Believe About the Constitution*, in *TEACHING ABOUT THE CONSTITUTION IN AMERICAN SECONDARY SCHOOLS* 29, 30 (Howard D. Mehlinger ed., 1981)) (internal quotation marks omitted).

97. *See, e.g.*, ERIC LANE & MEG BARNETTE, BRENNAN CTR. FOR JUSTICE, *A REPORT CARD ON NEW YORK’S CIVIC LITERACY* 7 (2011) (finding that 86% of respondents “[b]elieve democracy requires citizens to be knowledgeable about the Constitution,” while a mere 16% of respondents “[c]onsider themselves ‘very familiar’ with the Constitution”).

98. *Id.* at 13.

99. *Id.* at 13–14.

100. *Id.* at 21.

101. *See* CTR. FOR THE CONSTITUTION AT JAMES MADISON’S MONTPELIER, *THE STATE OF THE CONSTITUTION: WHAT AMERICANS KNOW* 1 (2010).

102. *See id.* (finding that nearly 85% of respondents in the eighteen-to-twenty-four-year-old group reported some, a little, or not much of an understanding of the Constitution). Some attribute these declining numbers to the No Child Left Behind Act. *See, e.g.*, SUZANNE SOULE & TED MCCONNELL, CTR. FOR CIVIC EDUC., *A CAMPAIGN TO PROMOTE CIVIC EDUCATION: A MODEL OF HOW TO GET EDUCATION FOR DEMOCRACY BACK INTO U.S. CLASSROOMS IN ALL FIFTY STATES* 2 (2006); Seth Schiesel, *Former Justice Promotes Web-based Civics Lessons*, N.Y. TIMES, June 9, 2008, at E7 (“One unintended effect of the No Child Left Behind Act . . . is that it has effectively

than 30% of Americans obtain a college degree,<sup>103</sup> high school is often the last opportunity to educate the populace on matters of constitutional literacy. Second, youth participation in elections is increasingly influential. Eighteen-to-twenty-four-year-olds' voting and campaign activities arguably decided the 2008 and 2012 elections.<sup>104</sup> Without an understanding of the core concepts of the Constitution, eighteen-to-twenty-four-year-olds might not make educated voting decisions.<sup>105</sup> With such great potential to impact American self-government, it is essential that eighteen-to-twenty-four-year-olds have a basic level of constitutional literacy.

### *C. Civic Education's Renewed Role in Shaping Democracy*

The last few decades have seen multiple movements to reinvigorate and reemphasize civic education in America. In 1988, Harold Norris proposed that education should aim to create citizens competent and skilled for self-government.<sup>106</sup> He sought a "self-governing society of self-governing individuals"<sup>107</sup> and noted that a thorough grounding in the Constitution, Bill of Rights, and Declaration of Independence could serve as an efficient moral education.<sup>108</sup> Similarly, in 1994, the Center for Civic Education published the study *National Standards for Civics and Government*, which discussed the importance of civic education and laid out standards for grades K–4, 5–8, and 9–12.<sup>109</sup> The center's guidelines

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squeezed out civics education . . . . And at least half of the states no longer make teaching of civics and government a requirement for high school graduation." (quoting Justice Sandra Day O'Connor, Keynote Address at the Games for Change Conference (June 4, 2008)) (internal quotation marks omitted)).

103. Although 57% of American adults experience some level of post-secondary education, only 28% of American adults reported educational attainment of a bachelor's degree or higher. CAMILLE L. RYAN & JULIE SIEBENS, U.S. DEP'T OF COMMERCE, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2009, at 6 (2012). As of 2009, among people aged twenty-five to thirty-four, about 30% have a bachelor's degree. *Id.*

104. See, e.g., Scott Keeter et al., *Young Voters in the 2008 Election*, PEW RES. CENTER FOR PEOPLE & PRESS (Nov. 13, 2008), <http://www.pewresearch.org/2008/11/13/young-voters-in-the-2008-election/> (noting that young voters disproportionately support Democratic candidates, attend campaign events at a rate far exceeding that of older generations, and have made financial contributions at rates comparable to their middle-aged counterparts).

105. See JOHN LOCKE, THE SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION 48 (J.W. Gough ed., Basil Blackwell Oxford 1948) (1690) ("Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, *without his own consent*. . . . When any number of men have so *consented to make one community or government*, they are thereby presently incorporated, and make *one body politic*, wherein the *majority* [has] a right to act and conclude the rest." (emphases added)). The high correlation between parents' voting choices and the political views of their children may provide further evidence of the need for more extensive civic education to prepare young voters to truly consent to their governance. See Kitty G. Abraham, *Influence of Significant Others' Perceived Voting Behaviors on Children's Political Socialization*, 54 PERCEPTUAL & MOTOR SKILLS 995, 1000 (1982); see also Larry M. Bartels, *The Study of Electoral Behavior*, in THE OXFORD HANDBOOK OF AMERICAN ELECTIONS AND POLITICAL BEHAVIOR 241, 242–43 (Jan E. Leighley ed., 2010).

106. See NORRIS, *supra* note 67, at 33.

107. See *id.* at 35.

108. *Id.* at 56–60.

109. CTR. FOR CIVIC EDUC., NATIONAL STANDARDS FOR CIVICS AND GOVERNMENT 8 (2010).

emphasize citizens' role in the mechanisms and principles of American government.<sup>110</sup>

Along these lines, in 2008, Cricket F.L. Kidwell recommended steps to improve the civic education of students in California schools.<sup>111</sup> The report highlighted the insufficient time, resources, and teacher preparation devoted to civics in California schools and encouraged a renewed emphasis.<sup>112</sup> The Norris and Kidwell studies also emphasized engaging students in activities simulating our governmental and legal processes, evoking greater interest and understanding.<sup>113</sup>

Civic engagement has also gained prominent international attention. Since 1999, the World Movement for Democracy has organized seven assemblies around the globe discussing the challenges faced by democracy today and how to overcome them.<sup>114</sup> Each assembly stressed the importance of civic education to the success and spread of democracy.<sup>115</sup> Additionally, in 2006, Susan Soule and Ted McConnell of the Center for Civic Education presented an article at an international conference on school reform outlining current efforts to reform American civic education.<sup>116</sup> Civic education has become a leading issue for concerned experts in recent years.

#### *D. The Constitution's Essential Role in Civic Education*

The Constitution is the business of every American citizen,<sup>117</sup> and is the embodiment of what it means to be an American.<sup>118</sup> The U.S. government provides one hundred civics flashcards to immigrants wishing to pass the naturalization test.<sup>119</sup> The first flashcard asks: "What is the supreme law of the land?"<sup>120</sup> Answer: "[T]he Constitution."<sup>121</sup> The second

110. *See id.* at 13.

111. CRICKET F.L. KIDWELL, CAL. CAMPAIGN FOR THE CIVIC MISSION OF SCH., CIVIC EDUCATION IN CALIFORNIA: POLICY RECOMMENDATIONS 3 (2008).

112. *Id.* at 2–4.

113. *See* KIDWELL, *supra* note 111, at 4; NORRIS, *supra* note 67, at 61.

114. *See Assemblies*, WORLD MOVEMENT FOR DEMOCRACY, <http://www.wmd.org/assemblies> (last visited Mar. 31, 2013).

115. *See, e.g., Youth Engagement & Empowerment*, WORLD MOVEMENT FOR DEMOCRACY, <http://www.wmd.org/assemblies/sixth-assembly/workshops/youth-engagement-empowerment/increasing-investment-youth-educati> (last visited Mar. 16, 2013) (reporting on discussions from the sixth assembly including the idea that "[e]ducation in democracy is important because it creates consciousness among youth").

116. *See* SOULE & MCCONNELL, *supra* note 102, at 1.

117. *See* TONI MARIE MASSARO, CONSTITUTIONAL LITERACY: A CORE CURRICULUM FOR A MULTICULTURAL NATION 70 (1993) (stating as fallacy that constitutional principles "are the province of lawyers and judges, not ordinary citizens").

118. *See, e.g.,* Justice William J. Brennan, Jr., Speech at the Georgetown University Text and Teaching Symposium (Oct. 12, 1985), [http://www.pbs.org/wnet/supremecourt/democracy/sources\\_document7.html](http://www.pbs.org/wnet/supremecourt/democracy/sources_document7.html).

119. U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP'T OF HOMELAND SEC., CIVICS FLASHCARDS FOR THE NATURALIZATION TEST 3 (2012).

120. *Id.* at 4.

121. *Id.* at 5.

flashcard asks: “What does the Constitution do?”<sup>122</sup> Answer: “[S]ets up the government[;] defines the government[;] [and] protects basic rights of Americans.”<sup>123</sup> The third flashcard asks: “What are the first three words of the Constitution that describe the idea of self-government?”<sup>124</sup> Answer: “We the People.”<sup>125</sup> The U.S. government’s prominent placement of the Constitution in the study material given to aspiring citizens is a testament to its importance in the life of every American. Citizenship is a birthright for those born on American soil.<sup>126</sup> This birthright must be appreciated and understood.

Constitutional literacy programs protect the American system of self-government by producing engaged citizens.<sup>127</sup> Teaching the Constitution to high school students meets both pedagogical and civic ends.<sup>128</sup> Constitutional literacy programs directly benefit high school students: students who understand the Constitution are better able to navigate American political structures;<sup>129</sup> students capable of grasping complex constitutional debate are better able to hold political leaders accountable;<sup>130</sup> students aware of the individual rights afforded by the Constitution are less likely to accept government infringement and more likely to respect the rights of others;<sup>131</sup> students wrestling with and deliberating the text of the Constitution are more likely to become responsible citi-

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122. *Id.* at 6.

123. *Id.* at 7.

124. *Id.* at 8.

125. *Id.* at 9.

126. U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”).

127. See Douglas L. Wilson, *Jefferson and Literacy*, in THOMAS JEFFERSON AND THE EDUCATION OF A CITIZEN, *supra* note 36, at 79, 81 (“With literacy came knowledge and discernment, and with these came the means of safeguarding self-government and independence. Thus the link between literacy and successful citizenship was unambiguous and direct.”).

128. See MASSARO, *supra* note 117 (“[T]he commitments set down in the Constitution are believed to have specific pedagogical implications. They imply a preference for methods of instruction that inspire critical deliberation, are tolerant of diverse viewpoints, and respect individual autonomy.”); see also James Youniss & Peter Levine, *A “Younger Americans Act”: An Old Idea for a New Era*, in ENGAGING YOUNG PEOPLE IN CIVIC LIFE 13, 14 (James Youniss & Peter Levine eds., 2009) (noting that engaging youth in civics might inspire “mature” citizens).

129. See JAMIN B. RASKIN, *WE THE STUDENTS*, at xiv (2d ed. 2003) (stating that studying the Constitution might cause the high school student to “fulfill the highest calling of democracy: to be an active, engaged, educated, and responsible citizen”).

130. See ADOLF G. GUNDERSEN, *THE SOCRATIC CITIZEN: A THEORY OF DELIBERATIVE DEMOCRACY* 91 (2000) (“The more individual citizens are capable of defining the issues, the more they set the agenda, and the more the public sector must respond to them rather than vice versa.”); see also MASSARO, *supra* note 117, at 153 (describing, as important, “the kind of national knowledge that will enable our children to assume the complex duties of American citizenship”).

131. See MASSARO, *supra* note 117, at 70, 151 (noting that “constitutional literacy is the best way to preserve” the values in the Bill of Rights because “[t]he Constitution and its vocabulary offer a particularly accessible and engaging framework for the core curriculum debate in that constitutional language transcends disciplines, sects, political affiliations, and dialects”); see also RASKIN, *supra* note 129, at xiii (stating that learning the Constitution enables high school students to “learn your rights as a citizen, but [that such] rights exist only . . . where we all assume corresponding responsibilities”).

zens who act for the common good;<sup>132</sup> and students studying the Constitution are more likely to transcend differences and exhibit tolerance.<sup>133</sup>

#### *E. Constitutional Literacy as a Mechanism to Educate Citizen Lawyers*

To educate modern-day citizen lawyers, Reveley challenges law schools in four ways.<sup>134</sup> Law schools must (1) “talk the talk” of the citizen lawyer by communicating the importance of lawyers as citizens at every opportunity, (2) walk the walk of the citizen lawyer by supporting professors and administrators who are themselves citizen lawyers, (3) find opportunities for law students to serve the common good while in school, and (4) bring together influential lawyers to promote public service in the legal profession.<sup>135</sup> Constitutional literacy programs advance each of the four goals.

Marshall–Brennan promotes constitutional literacy by bringing together high school and law students.<sup>136</sup> Law schools, by virtue of being Marshall–Brennan licensed chapters, strive to meet the challenge to produce citizen lawyers. Marshall–Brennan’s membership standards require a law school to (1) offer a for-credit class designed to prepare law students to teach constitutional literacy and (2) partner with a school district to provide a for-credit constitutional literacy class for high school students.

First, Marshall–Brennan chapters “talk the talk.” Each chapter must attract law and high school students. Law professors actively recruit students, and former Marshall–Brennan Fellows recommend the program to fellow law students. This buzz inspires positive dialogue about the importance of constitutional literacy and the benefits of becoming citizen lawyers by helping community youth. School district administrators, counselors, teachers, and program alumni actively recruit, recommending the class to current high school students. Recruiting efforts communicate the benefits of constitutional literacy and the importance of civic education.<sup>137</sup>

Second, Marshall–Brennan chapters walk the walk by employing citizen lawyer professors qualified to lead the constitutional literacy program. The professors must commit time to effectively teach law students

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132. See GUNDERSEN, *supra* note 130, at 185 (stating that deliberation promotes responsibility in three concrete ways: (1) by forcing individuals to identify values, (2) by issuing a challenge to determinism, and (3) by highlighting that the citizen is active rather than an object subject to forces beyond the citizen’s control).

133. See MASSARO, *supra* note 117 (“The Constitution and its vocabulary offer a particularly accessible and engaging framework for the core curriculum debate in that constitutional language transcends disciplines, sects, political affiliations, and dialects.”).

134. Reveley, *supra* note 80, at 1319–20.

135. *Id.*

136. See *The Marshall–Brennan Constitutional Literacy Project*, *supra* note 8.

137. Interview with Deborah H. Crawford, Academic Advisor, Warhill High Sch., in Williamsburg, Va. (Nov. 7, 2012).

to present a constitutional literacy curriculum in a high school classroom setting. The professors must also maintain close contact with school district administrators, high school students, and parents to ensure program success. The school must commit financial and professional support to the program.<sup>138</sup> Faculty and administrators must support the offering of a for-credit law school class, a professor's salary, annual chapter dues, and other expenses.<sup>139</sup>

Third, Marshall–Brennan chapters provide law students the opportunity to serve while still in law school. Law students are busy. Opportunities for service outside of law student organizations and scholarship are limited. By providing constitutional literacy programs, law schools enable students to benefit their community as teachers and role models to high school students.<sup>140</sup>

Fourth, Marshall–Brennan chapters inspire lawyers—both within and external to the law school community—to contribute to constitutional literacy. At William & Mary Law School, faculty support for the program extends into high school classrooms. Because academic calendars do not perfectly align, law students are sometimes unavailable to teach the regularly scheduled high school class.<sup>141</sup> Members of the law faculty volunteer to cover these classes each semester.<sup>142</sup> Lawyers from the outside community also contribute to the programs. For example, one Virginia Commonwealth attorney regularly welcomes the high school students to the courthouse to learn about the judicial system,<sup>143</sup> and local attorneys judge moot court competitions.<sup>144</sup>

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138. At William & Mary Law School, the program exists thanks to a committed faculty and administration. Specifically, Marshall–Brennan membership is possible thanks to the leadership of Professor Neal Devins, the support of Professor of Practice Rebecca Green, and the backing of Dean Davison Douglas.

139. At William & Mary Law School, other expenses include funding for sending faculty and students to national high school moot court competitions and the provision of classroom space on campus to teach the high school class. The college's main campus generously invites law students to teach the high school students in the nation's oldest functioning collegiate building, the Sir Christopher Wren Building, where George Wythe was once a professor and Thomas Jefferson was once a student. This collaboration, between college and law school, illustrates the campus-wide support for constitutional literacy and the cultivation of citizen lawyers.

140. Interview with Deborah H. Crawford, Academic Advisor, Warhill High Sch., in Williamsburg, Va. (Nov. 7, 2012).

141. Faculty substitutes are generally needed for three or four class sessions each semester as a result of law school final exams or holiday breaks.

142. At William & Mary Law School, faculty members Neil Devins, Ali Larson, Rebecca Green, and Anna Chason are enthusiastic volunteers.

143. Commonwealth Attorney Nathan Green's lesson provides the high school students with a bird's-eye view of the criminal justice system from the inception of a crime through potential sentencing and appeal.

144. In addition, William & Mary's Marshall–Brennan chapter organized a program where local attorneys and law students are welcomed to high school classrooms to teach a week-long seminar on civics, the Constitution, law, and legal writing. At the conclusion of the seminar, a high school counselor reflected: "We all appreciate the opportunity to collaborate with the Law School through the Constitutional Law classes and speakers you provided for our freshmen. Our students

*F. The Value of Law Students Teaching the Constitution to High School Students*

Repeated classroom success has proven constitutional literacy programs' worth.<sup>145</sup> Placing law students, high school students, and the Constitution in the same room is a recipe for success.<sup>146</sup> All are entertained, real issues are examined thoughtfully, and the value of compromise is appreciated.<sup>147</sup> This model works because law students and high school students are particularly suited to benefit each other.

First, law students have recently studied constitutional law.<sup>148</sup> This enables Marshall–Brennan Fellows to tackle complex issues from a new perspective. A Marshall–Brennan Fellow notes: “Law students are uniquely suited to teach the U.S. Constitution to high school students because . . . they have current knowledge of constitutional issues.”<sup>149</sup> Preparing to teach is an effective way to learn. Another Marshall–Brennan Fellow reports: “I did not realize how much I knew about the intricacies of our [C]onstitution until I was being grilled by an eleventh grader.”<sup>150</sup>

Second, law students can relate to high school students. Generally, law students are only five to ten years older than high school students. This makes them uniquely suited to serve as effective mentors and to develop culturally relevant and effective classroom materials.<sup>151</sup> Having a civics teacher who speaks the same generational language as his or her

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benefit greatly from the enrichment [faculty] and students provide.” E-mail from Ann Shaver, Counselor, Jamestown High Sch., to Author (Jan. 22, 2013, 8:39 EST) (on file with author).

145. E-mail from Ann Shaver, Counselor, Jamestown High Sch., to Author (Jan. 22, 2013, 13:13 EST) (on file with author) [hereinafter Shaver] (“High School students . . . enthusiastically report that it was a highlight of their high school classes. Whenever I ask a student about the experience, the response is always positive. Kids offer that they loved the class, enjoyed the atmosphere and level of debate, and that the class was pivotal to their deeper understanding of content delivered in AP Government and other classes. Regardless of courses taken at the high school, [the constitutional literacy class] helps kids learn to think on their feet, collect the facts to prepare a well-informed debate, and become better citizens through their knowledge of the Constitution.”).

146. See E-mail from Quincy Marrow, Supervisor of Guidance and Counseling, Williamsburg-James City Cnty. Pub. Sch., to Author (Apr. 16, 2012, 8:58 EST) (highlighting the continued success of the constitutional literacy program) (on file with author).

147. See Shaver, *supra* note 145 (“When you discuss controversial topics, people who don’t understand often stick to their opinions without considering or understanding the other side. The law students pushed us [high school students] to learn more from each other and the facts we needed to reach an agreement. I can see why it’s hard to compromise and come to a consensus so I have a better appreciation for why the law is both challenging and satisfying when you fuse opinions with facts. In Constitutional Law, your opinion is ‘money’ as long as you support it with the facts. This is an analytical skill that will help me in life.” (quoting Amy Pressey, a high school student who participated in the constitutional literacy program) (internal quotation marks omitted)) (on file with author).

148. Constitutional law is typically part of a law school’s first-year curriculum.

149. E-mail from Naomi Harralson, Marshall–Brennan Fellow, William & Mary Law Sch., to Author (Jan. 20, 2013, 18:51 EST) (on file with author).

150. E-mail from Kylie Madsen, Marshall–Brennan Fellow, William & Mary Law Sch., to Author (Nov. 28, 2012, 23:16 EST) (on file with author).

151. William & Mary’s Marshall–Brennan chapter attempts to match the experiences of Marshall–Brennan Fellows with the interests of the high school students taking the class.

students is especially useful in communicating difficult or complex ideas. Understanding what is likely to capture high school students' attention, law students regularly incorporate pop culture references into their lesson plans, dramatically improving the learning environment and level of retention.<sup>152</sup>

Third, law students are taught to think critically and examine issues from multiple viewpoints. Teaching high school students the same inspires a sharper, more responsible analysis. One high school student reflects: "The class has made me better at taking a step back from an issue at hand and looking at things objectively."<sup>153</sup> Requiring students to employ rational thinking makes them more effective leaders. This program teaches them that no one person can have a monopoly on absolute truth.<sup>154</sup>

Fourth, teaching high school students provides law students with a ready example of the merits of their chosen profession. In recent years, the legal profession has suffered a decline in reputational capital. Public perception has shifted, and a profession once viewed as admirable is now vilified. Law students facing a challenging employment market and public scrutiny derive a sense of pride from participating in a community-minded program. The chance to demonstrate legal knowledge while fostering goodwill and providing an essential community service is an invaluable addition to modern legal education.

#### CONCLUSION

Jefferson valued education: "The boys of the rising generation are to be the men of the next, and the sole guardians of the principles we deliver over to them."<sup>155</sup> The survival of American principles and values, as set forth in Constitution, is not assured; it requires those willing to teach and those willing to learn.<sup>156</sup>

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152. See, e.g., PATRICK SLEBONICK, LESSON PLAN: FOURTH AMENDMENT; SEARCH AND SEIZURE *passim* (2011) (on file with author). After reading a law review article that analyzed the lyrics from Jay-Z's hit song *99 Problems*, Mr. Slebonick created a Fourth Amendment lesson plan to educate students about search and seizure. *Id.*

153. See WILLIAMSBURG-JAMES CITY COUNTY HIGH SCHOOL STUDENT CLASS EVALUATIONS (2011) (on file with author). Other reflections similarly illustrated an increased awareness of issues by high school students, e.g., "[t]his class gave me the opportunity to see different perspectives from all types of people"; and "[m]y teachers were adamant about us learning to think with logic and rationale as opposed to thinking with our emotions on issues. Critical thinking is an important, if not the most important, aspect of humans, so essentially by teaching us how to utilize this better, our teachers made us better human beings." *Id.*

154. See Interview with Robert M. Gates, Chancellor, Coll. of William & Mary, in Williamsburg, Va. (Feb. 2, 2012).

155. Letter from Thomas Jefferson to Samuel Knox (Feb. 12, 1810), in THE QUOTABLE JEFFERSON, *supra* note 6, at 85, 85.

156. See Schiesel, *supra* note 102 ("The better educated our citizens are, the better equipped they will be to preserve the system of government we have. And we have to start with the education of our nation's young people. Knowledge about our government is not handed down through the gene pool. Every generation has to learn it, and we have some work to do." (quoting Justice Sandra

To Wythe and Jefferson, self-government exists in symbiosis with education. The mechanisms set forth by the Constitution cannot flourish without an informed citizenry; this realization led Wythe and Jefferson to champion universal education and found America's first law school.<sup>157</sup>

Constitutional literacy programs promote an educated, active, and engaged citizenry, realizing both of Wythe and Jefferson's goals: first, to cultivate citizen lawyers; and second, to provide for an informed citizenry capable of safeguarding the American system of self-government provided by the Constitution.

Today's constitutional literacy programs implemented at law schools across the United States promote Wythe and Jefferson's vision of citizen lawyers and public education partnering to secure America's future.<sup>158</sup> Leaders of every institution of legal education in the United States should answer the citizen lawyer's calling, undertaking a comprehensive constitutional literacy program to help revive civic education in America. Imagine what George Wythe would think.

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Day O'Connor, Keynote Address at the Games for Change Conference (June 4, 2008)) (internal quotation marks omitted).

157. See CARRINGTON, *supra* note 16, at 23 (stating that for Wythe and Jefferson, self-government depended on citizens' ability to choose the public good over private interest and that "[i]t was the aim of Jefferson and Wythe to deploy the public College of William and Mary to supply the needed moral training").

158. At the time of publication, at least eighteen law schools nationwide support constitutional literacy programs. Marshall-Brennan Constitutional Literacy Project, *Teaching Partners*, AM. U. WASH. C.L., <http://www.wcl.american.edu/marshallbrennan/partners.cfm> (last visited Mar. 31, 2013). Licensed Marshall-Brennan chapters include American University Washington College of Law, Arizona State University Sandra Day O'Connor School of Law, Drexel University Earle Mack School of Law, Howard University School of Law, Phoenix School of Law, Rutgers University School of Law-Camden, Santa Clara Law School, Southern University Law Center, Suffolk University Law School, University of California Hastings College of the Law, University of Colorado Law School, University of Louisville Louis D. Brandeis School of Law, University of New Mexico School of Law, University of Pennsylvania Law School, University of Pittsburgh School of Law, Washington University School of Law, William Mitchell College of Law, and Yale Law School. *Id.*