

William Wirt

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SIXTY YEARS AGO the name of William Wirt was familiar to the American public as that of a cultured gentleman, a thorough scholar, an effective orator, and a brilliant and successful lawyer. To-day his fame is confined to the few who, in advanced years, treasure the rumors of his greatness received in childhood, or whose knowledge of his ability is derived from the meager reports of those important cases in which he once participated. The brief reputation of this man, who was intensely ambitious to live in the minds and hearts of his countrymen, proves the ephemeral character of much of the renown acquired at the bar. In stimulating the ambition of a friend, Mr. Wirt exhibited the motive force which constantly impelled his own efforts: "If you find your spirits and attention beginning to flag, think of being buried all your life in obscurity, confounded with the gross and ignorant herd around you;" and in expressing his horror at the thought of oblivion, he said, "The idea has been always very dismal to me of dropping

into the grave like a stone into the water, and letting the waves of Time close over me so as to leave no trace of the spot on which I fall." That which he so much deprecated, threatens to overtake his memory.

In the early part of the present century, William Wirt was the companion and competitor of many of the ablest men the country had produced, and his steady advancement, both in his profession and in the respect of his fellow-citizens, attested the strength and vitality of his genius, his indefatigable industry, and irreproachable character.

He was born a Southerner. By nature imaginative and vivacious, his youth was spent amid surroundings highly congenial to his singularly warm-hearted and buoyant disposition. His birthplace, the small town of Bladensburg, Maryland, was, in 1772, a thriving village, with its schoolmaster, a typical gentleman of the old school, its rubicund, well-to-do merchants, its French dancing-master, and humble fishermen. Wirt, in his early childhood, lived in the midst of the

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hospitality and genial good-feeling of this country town. He was there introduced to the stirring scenes of the Revolution, and so deeply was the idea of war impressed upon his mind that he conceived it the natural and customary condition of the country. The martial spirit thus acquired in infancy manifested itself during his mature manhood in an enthusiastic, though ineffectual, part which he performed in the War of 1812.

Wirt's elementary education was such as the grammar and classical schools of the section could provide, supplemented by that reading which his tastes and opportunities directed, ranging from Josephus to Peregrine Pickle. Before his general education could be considered complete, he was installed as private tutor in the house of a cultivated and hospitable gentleman of Maryland. His inclinations, however, were for the bar, despite the seemingly insuperable obstacles of great reluctance at appearing conspicuously in public, a thick and indistinct articulation, and a nervous haste in delivery. By the wise counsels and gentle raillery of a friend, Wirt resolved to overcome his diffidence, studied law, and commenced to practice in Virginia in his twentieth year.

The first case of a young lawyer, marked for future distinction, is no less interesting than the great artist's first painting, or the eminent poet's earliest lines. Wirt made his *début* as a barrister in a case of assault and battery, in which, after judgment against his client, he attempted to obtain that relief by motion which had formerly been granted only by writ. The county court, aided by the advice of numerous *amici curiae*, denied the right to relief by this method of procedure. Wirt was incensed at the objection, and forgetting his timidity, argued his point with such force and determination as to carry conviction to the mind of the court. This first modest effort resulted successfully, and gave him an immediate standing at the bar. From that time, his

reputation and clientage grew, and by his twenty-fifth year he ranked among the best lawyers of the section.

It was Mr. Wirt's good fortune, at the beginning of his career, to form the acquaintance of some of the foremost men in public life. He enjoyed a personal friendship with James Madison, James Monroe and Thomas Jefferson, and their sagacious advice and illustrious examples often supplied a powerful stimulus to the young barrister in his professional life.

Though his future success at the bar seemed assured, Mr. Wirt always entertained a strong desire to distinguish himself in literature. Partly for diversion, partly by way of experiment, and from an aspiration to try his literary pinions, he began the publication of a series of essays signed by the pseudonym of "The British Spy," containing comments upon the life, character, politics and morals of Virginians. The series aroused the most intense interest, and not a little antagonism from those whose peculiarities he depicted, and materially contributed to the author's fame. So successfully did he wear his disguise that many of his readers long held to the firm conviction that the essays were written by an American who had received his education in Great Britain and had imbibed British prejudices, while others declared they had seen the very foreigner in question, who was indeed a true Briton!

Another of Mr. Wirt's literary projects was to write the biographies of the eminent citizens of his State. He was a Virginian only by adoption, but he felt a filial pride in the commonwealth, and earnestly desired to commemorate her great men. Among these, Patrick Henry stood foremost in his thought. Though he had never seen this great patriot, he had honored and admired him, and deemed that no more acceptable gift could be offered to the people of Virginia than to describe the life and depict the character of

their heroic leader. The plan was ultimately realized after infinite pains and discouragements, by the publication of the "Life of Patrick Henry," the standard work upon the subject in our American literature.

The increasing eminence of the author and practitioner led to his employment in a class of business which was exceedingly distasteful to him. He had won much of his earlier distinction by his successful participation in criminal cases, but he frankly confessed that this branch of the practice was, to him, uncongenial and revolting. His ambition was directed toward employment in causes involving the investigation of important legal questions in which the great analytic and logical powers of his mind might enjoy free play. He held before him the example of John Marshall, whose mind he described as "little else than a mountain of barren and stupendous rocks, an inexhaustible quarry, from which he draws his materials and builds his fabrics, rude and Gothic, but of such strength that neither time nor force can beat them down."

Such was his ideal of lasting greatness. But his exuberant fancy often led him to throw such beauty and splendor into his forensic arguments as were scarcely compatible with the "rude and Gothic" style which he eulogizes. These qualities were conspicuously displayed in his speech on behalf of the government in the prosecution of Aaron Burr for treason. The trial had proceeded to the partial examination of the witnesses for the prosecution, by whom it was proved that an armed force had assembled on Blennerhassett's Island for the ultimate purpose of capturing the City of New Orleans. Burr was not shown to have been present at this warlike demonstration. His counsel therefore moved that the court interpose to prevent the further examination of witnesses. Upon this motion, Mr. Wirt spoke at length and, while the point was a purely legal one and was argued with strength

and cogency, he infused into the discussion a play of fancy and brilliancy of rhetoric which, for many years, marked the speech as a classic. Most prominent of these passages was that in which he first describes the character of Burr, – fascinating, indefatigable, ambitious, dark and dangerous; following with a description of Blennerhassett, – a man of letters, a lover of science, and of nature, living in peace, tranquility and innocence, till the repose of the scholar is broken by the arrival of Burr. He depicts Burr's insidious advances, the resulting change gradually wrought in Blennerhassett's life, his desperate thirst for glory, his abandoned home, his deserted wife, his wild ambition and utter ruin. The coloring is vivid, and the passage was often quoted as one of the most splendid displays of oratory of the time.

Mr. Wirt's eminent talents had placed him in the front rank of the lawyers of Virginia, and in 1816 he made his first appearance in the Supreme Court of the United States, where he was destined to figure as one of its most prominent practitioners. In his first cause he was opposed by the successful lawyer and admired orator, William Pinkney, and from the encounter Wirt derived but an indifferent estimate of the ability of this leader of the American bar. From Wirt's modest and disparaging account of his own argument, we may nevertheless gather that he himself spoke with energy and determination, and that his blows fell with telling effect. This contest quickened his ambition for further practice in the Supreme Court, for he felt his strength and privately declared that he did not fear any man on that arena, not even the renowned Pinkney.

His second attempt was to him far more satisfactory. The occasion, the trial of a prize case, attracted many of the leading men and women of Washington, besides numerous foreign residents who were indirectly interested in the cause. The subject afforded no opportunity for rhetorical display, but so well was the

argument handled, that the audience remained during the four hours of the speech, and from both sympathizers and opponents Mr. Wirt received the warmest praise for his successful effort. From this time his Supreme Court practice constantly increased and prepared the way for the performance of his duties as Attorney-General of the United States.

No characteristic of the professional career of Mr. Wirt is more striking than its continued and steady advance. From criminal lawyer to general practitioner, from general practice in subordinate courts to that in the highest courts in the State, from these to the highest Federal Courts, and from these to the attorney-generalship, were the regular stages in a progress rendered possible by superb talents and unremitted industry. Throughout his life, Mr. Wirt discounted all aid afforded by mere chance. In his letters of advice to those whom he was desirous of assisting, he continually enlarged upon the importance of laborious effort, affirming that, in his opinion, the "paucity of great men, in all ages, has proceeded from the universality of indolence," and that, "glory is not that easy kind of inheritance which the law will cast upon you, without any effort of your own; but – you are to work for it, and fight for it, with the patient perseverance of a Hercules." His appointment as attorney-general in President Monroe's first cabinet, was the occasion for magnificent eulogies from the press of the country, and the popular approval even went beyond the officer and attached to his principal literary effort, the "Life of Henry," then recently published. The venerable John Adams, foregoing his native prejudice against Southern men, expressed to Mr. Wirt his unqualified gratification at the honor bestowed. Contrary to all his previous inclination, Mr. Wirt was now drawn from private life to figure conspicuously before the country in an official capacity during three presidential terms; a longer period of service

than that of any man who, either before or after Wirt's time, has filled the office of attorney-general. He had ever been outspoken in his repugnance against politics, declaring that he would never enter on the political highway in quest of happiness, that it never appeared to him to be a desirable field or one for which he was fitted, either by nature or habit; and on two occasions, when the subject of his candidacy for a seat in the United States Senate was agitated, he positively refused to allow his name to be discussed. He entered on his duties at the beginning of that "era of good feeling" which marked the repose of party antagonism and characterized the administration of Mr. Monroe. Wirt threw himself heartily into the arduous labors of his office, involving the delivery of opinions upon the most intricate and important questions of municipal, constitutional, and international law. At his suggestion, the opinions of his predecessors and himself were printed and preserved for the use of future incumbents; a practice continued to the present day. The comparative extent of his labors may be estimated from the fact that, although there had been prior to Mr. Wirt's retirement from the President's cabinet, and during the forty years of the operations of the government, six attorneys-general, whose opinions filled a volume of nearly fifteen hundred pages, Mr. Wirt's opinions alone comprised one third of the whole.

It was during his term as attorney-general that Mr. Wirt performed a prominent part in two of the most important cases which up to that time, had engaged the attention of the Supreme Court, – the case of *McCulloch v. Maryland*, involving the right of Congress to establish a National Bank and the right of a State to tax it; and the case of *Dartmouth College v. Woodward*. In the former the attorney-general was associated with Webster and won; in the second, he was opposed by Webster and lost. His practice extended

into the courts of Maryland, where he crossed swords with his former antagonist and predecessor in office, William Pinkney, whom he generously described as "an excellent lawyer who had very great force of mind, great compass, nice discrimination, strong and accurate judgment, and for copiousness and beauty of diction was unrivalled. – No man dared grapple with him without the most perfect preparation and the full possession of all his strength." After Pinkney's death, Wirt partially filled the position at the bar formerly held by his rival.

The high professional standing of the attorney-general appears from the fact that in the important and leading case of *Gibbons v. Ogden*, reported in 9 Wheaton, 1, in which is presented the question whether a State has the right to regulate commerce between itself and another State while Congress is regulating it, he and Daniel Webster, for the plaintiff, successfully maintained the unconstitutionality of a State law granting exclusive privileges of navigation upon waters within the State of New York, after Congress had legislated upon the subject in a manner inconsistent with the State law. The case engaged the most eminent talent at the bar, and attracted wide-spread attention, more especially as the local feeling engendered by the controversy in New York bordered upon civil war. A further proof of Wirt's extended reputation was his employment in a cause to be tried in Boston, before the Supreme Court of Massachusetts, an arena entirely new to the Virginian, and one in which his chief opponent was to be the pride of New England, Webster himself. Mr. Wirt's term as a member of the Cabinet had now expired, and he must meet the great lawyer and debater of Massachusetts upon the latter's own ground, relying wholly upon his own powers without the aid of official position. His reception at Boston was a continual ovation. He was besieged by visitors, overwhelmed with invitations, and was deeply touched by

the kindness and courtesy of Webster, whom he describes as "plain, warm and cordial, without parade," and who took delight in threading the intricate streets, in company with his guest, as he exhibited the historic sights of the city. He bore from this first experience of New England hospitality and appreciation a far different opinion of the section and its debaters from that which he entertained twenty years previous, when he remarked of the New England orators, as a class, that they could speak on any topic with equal volubility, but with no more variation of feeling or of expression than is seen in the brazen mask covering the face of a Roman actor.

In the latter part of Mr. Wirt's career, he was engaged in the trial of two causes which were singularly adapted to the exhibition of his greatest legal talents. The one was the impeachment of Judge Peck by the House of Representatives for misconduct in office; the other, the celebrated Cherokee Indian case, involving the rights of the Cherokee Nation, under treaties with the United States, in a reservation within the State of Georgia. Mr. Wirt was deeply impressed with the wrongs suffered by the Indians, and contributed to the argument of their cause all the strength of reasoning and fervor of feeling of which he was master. Despite his labors, the Supreme Court of the United States declined, on constitutional grounds, to consider the case.

In the defense of Judge Peck, he was completely successful. His speech contained a full discussion of the liberty of the press in America, and the rights of judges to maintain the dignity of their office by punishing contempts of their authority. It was delivered, as he himself declared, "under the pressure of ill health and deep affliction of spirit," alluding to the recent death of his youngest daughter, to whom he was devotedly attached; yet it was considered a most brilliant and forcible argument.

During the heated Anti-Masonic excitement following the mysterious disappearance

of Morgan,¹ Mr. Wirt was again forced to take a part in politics. At the urgent solicitation of the Anti-Masons, he accepted the nomination for President in the election in which Henry Clay and Andrew Jackson were his opponents. In this instance, as in his former political career, Wirt reluctantly assumed the position offered, and in no sense solicited the honor either for the purpose of courting favor with a class, or extending his reputation throughout the country. The result was, as he had from the first anticipated; General Jackson was elected, and Wirt received the vote of but one State, Vermont.

Mr. Wirt's death occurred February 18, 1834. He had three years before received, as he termed it, "a blow over the heart" from which he never rallied. This was the unexpected loss of his youngest daughter, who was his constant companion, confidential friend, and helper. From the time of her death, a marked change resulted in Wirt's character. He lost much of that playfulness and genial good humor, which had been such prominent traits from his childhood. In his early manhood, this jovial disposition came near resulting disastrously for his future happiness. He had been paying attentions to the lady whom he afterwards married. Her father, Colonel Gamble, a critical gentleman, desired to keep the suitor upon a term of probation before giving his assent to the marriage. One summer morning, at sunrise, the old gentleman, while pursuing his walk, happened to pass near Wirt's office. It chanced that Wirt, with other choice spirits, was passing the night in merriment and had not yet retired. Colonel Gamble opened the door without warning, and with

amazement beheld his intended son-in-law clad in a light wrapper, brandishing a poker in one hand, his arm thrust through the handle of a sheet iron blower for a shield, and with a tin wash basin on his head, for a helmet, loudly declaiming Falstaff's onset upon the thieves. Colonel Gamble gravely bowed and withdrew, leaving the young suitor in anything but a tranquil state of mind.

So long as health remained, his buoyancy of spirits was one of his most prominent characteristics. He often amused himself and his family by dancing and singing about the house like a madman. His private letters abound with laughable situations, witty retorts or humorous expressions. He was frequently addressed, in the letters of his friends, as "Φυν-loving Wirt,"² as a tribute to his mirthful disposition. His quick wit and ready ingenuity may be judged from an incident occurring during the progress of a trial at Richmond. Two eminent lawyers, Wickham and Hay, were engaged in trying the case, and the former in his argument had reduced his adversary to two alternatives, either of which was disastrous to his cause. Mr. Hay was notorious for his quick temper, and Wickham's dilemma did not conduce to his good humor. A Mr. Warden, known to the bar as "Jock," quietly remarked of Wickham, "Take care of him! he has *hay* on his horn." Wirt, sitting near by, overheard the jest and instantly threw it into the form of the following epigram: –

"Wickham was tossing Hay in court,

On a dilemma's horns for sport:

Jock, rich in wit and Latin, too,

Cries, "*Habet foenum in cornu!*"³

His effervescent humor and fascinating

1 William Morgan was a bricklayer in western New York who disappeared mysteriously in 1826 after it was rumored that he planned to break his Masonic vow of secrecy by publishing the organization's secrets.

2 Presumably "fun-loving," transliterated.

3 Brewer's Dictionary of Phrase and Fable reports: "The Romans used to twist straw round the horns of a tossing ox or bull, to warn passers-by to beware, hence the phrase *foenum habet in cornu*, the man is crochety or dangerous."

manners made him a universal favorite with his acquaintances. In private discourse, he dealt with every kind of amusing topic, and his keen sense of the ridiculous gave a sprightliness and charm to his conversation which none could withstand. On one occasion, out of pure love of fun, Mr. Wirt so delightfully entertained a company, to which he had been invited for a ten o'clock supper, that the entire night was spent in humorous and grave discussion until the entrance of the servant to throw open the blinds apprised the company that it was broad daylight. All, except Wirt, were amazed to find they had consumed the entire night listening to his conversation.

To his friends, Mr. Wirt was sincerely devoted and not many men have attained such distinction as his, and at the same time have made so few enemies. His letters, which are exceedingly numerous, overflow with hearty appreciation and unfeigned affection. The friendships of his youth were those of his declining years, and he never tired of quoting those lines, as appropriate to the journey of himself and his friends down the hill of life: –

“Still hand in hand we’d go,
And sleep thegither at the foot.”⁴

His extensive practice and multitudinous cares did not prevent him from offering the word of counsel, or of cheer, to those who were struggling up the ascents he had climbed. His interest in the younger members of the profession was always great, and his advice preserved in his letters to his young friends is wise, wholesome, and practical. His power of adaptation was an equally prominent characteristic of the man. His letters to Thomas Jefferson, and James Monroe are models of a dignified and restrained style; those to his familiar friends ripple and flow as did his own conversation; those to his infant daughter, though dealing with so abstract a theme as the

faculties of human intellect, are couched in language so simple, clear, and poetic, that the child reader of eight, to whom they were addressed, could readily comprehend their meaning.

Possessing powers of mind which marked him as exceptional wherever he displayed them, he always entertained the most modest estimate of his own ability. His industry was indefatigable, yet he never attributes his success to his own exertions, but always refers to himself, in his private correspondence, as a “lazy, worthless rascal,” who did not deserve the thousandth part of the good fortune he had obtained, and that he had never studied any one thing in his life, but had only labored to conceal his ignorance from the world. “I have been,” he says, “an idle, thoughtless dog, as heedless and reckless as any monkey that ever swung by the tail; quite as much a man of whim, impulse and pleasure, as if I had been born a prince of endless revenue, and had had nothing to do but to devise the most agreeable modes of killing time.” Yet underneath this self-disparagement there lay a deep, though modest, realization of his own power. When speaking of Pinkney or Webster, he frequently expressed his eager desire to meet them in a trial of strength, quietly avowing that with full preparation he had no fear of the result. In no instance in his life does he show a timid shrinking from responsibility, or weakness, when the time for effort arrived. His strength rose with the greatness of the occasion, and the spirit with which he entered upon his great legal battles against the popular champions of the day was well expressed in one of his favorite quotations: –

“The blood more stirs
To rouse the lion, than to start the hare.”⁵

Much as Mr. Wirt depreciated his own efforts to attain eminence, it is easy to discover

⁴ From Robert Burns, “John Anderson, my Jo.”

⁵ From Henry IV, Part I, Act I, Scene 3.

the painstaking and laborious student beneath the brilliant and successful lawyer. In his advice to others, we may see his own methods of study reflected. His reading, covering a vast variety of subjects, legal, scientific, literary and religious, was close, thoughtful and analytic. Above all things he prized strength, cogency and comprehensiveness in argument, never concealing his contempt for all "puerile, out-of-the-way, far-fetched, or pedantic ornaments or illustrations." For the cultivation of that rough, abrupt strength which he so ardently admired, he believed that the study of the judicial opinions of John Marshall, the writings of Locke, the essays of Burke, and the subject of mathematics, mostly strongly conducted.

Mr. Wirt's style of oratory was Asiatic rather than Ciceronian. He often regretted that his fancy had been too exuberant and unrestrained in his youth to allow his style to become perfect in his mature years. But judging from his intense repugnance for feigned emotion and unnatural display, and from his speeches which have been preserved, we may be assured that his great legal arguments were in no degree weakened by the fervor of his imagination. Throughout his life he studied to improve his style. The classical writers were his constant companions, and apt quotations from their pages were ever ready upon his tongue. He habituated himself to writing for practice, and usually had some literary task on hand to aid him in self-improvement. These, at various times, took the form of "The British Spy," "A Protest against the traducers of Mr. Madison," "The Old Bachelor," a series of essays upon topics of current interest, "The

Life of Patrick Henry," and an unpublished play entitled, "The Path of Pleasure." As a writer, his fame chiefly rests upon his "Life of Henry." In this work he was handicapped by the fact that Henry's life, with a few exceptions, was almost wholly devoid of interesting incident. He was a natural genius, and not the well-trained, thoroughly educated man he had been imagined. His was not a character to elicit strong personal affection, and the materials available to the biographer's hand were often conflicting and irreconcilable in their statement of facts.

As a man the estimate of his contemporaries marks William Wirt as one of the ablest and most lovable characters in public or private life. Thomas Jefferson prophesied that, should he consent to take a seat in Congress, he would lead his party in the Lower House and might ultimately gain for himself any position in the military, judicial, diplomatic, or civil departments which he might desire. Daniel Webster offered his tribute to the unsullied honor, patient labor, persuasive eloquence, and extensive learning of his rival; Chief Justice Marshall acknowledged the debt which the Supreme Court of the United States had often owed to Mr. Wirt for his diligent research and lucid reasoning upon questions argued before it; and John Quincy Adams, in addressing the House of Representatives, on the occasion of Mr. Wirt's death, uttered a sentiment in praise of his friend singularly appropriate to one who had risen to the highest pinnacle of fame in his profession, — "Nothing was wanting to *his* glory; *he* was wanting to ours." 