

The Legacy of St. George Tucker: College Professors in Virginia Confront Slavery and Rights of States, 1771-1897

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Review

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Vanderford, Chad *The Legacy of St. George Tucker: College Professors in Virginia Confront Slavery and Rights of States, 1771-1897*. University of Tennessee Press, \$49.95 ISBN 9781621902164

Legal Legacies: How Virginia's Law Professors Defended Slavery and States' Rights

Law professors were among the most influential people in the southern United States during the century and a quarter this volume treats. It is unfortunate that as a discreet population they have not received more attention. Here they do. Four law professors of the Tucker family of Virginia occupied unusually prominent positions in the legal and political realms of the antebellum south. Their books on law and the Constitution were instrumental in shaping southern politics before the Civil War, and their legacy remained important long afterward. Their students resided throughout the south and influenced legal cultures in all the states as they taught in other law schools and served in legislatures, on courts, in constitutional conventions, and in Congress. The Tuckers and their students contributed to southern defenses of slavery, defined philosophies of federalism and state rights, and if they lived past the Civil War struggled to fit their beliefs to the new constitutional and legal orders that emerged afterward—or to fit the new orders to their old beliefs.

Chad Vanderford, currently associate professor of history at the University of Texas of the Permian Basin, focuses on three Tuckers, beginning with paterfamilias St. George Tucker (1752–1827), law professor at the College of William and Mary, state court judge, federal judge, and compiler of the first American edition of Blackstone's *Commentaries on the Laws of England* (1803), which included the first extended commentaries on the Constitutions of the United States and of Virginia. The second is his elder son, Henry St. George Tucker (1780–1848), state court judge, law professor at his own school in Winchester and at the University of Virginia, congressman, and author of

Commentaries on the Laws of Virginia (1831). The third is in turn his son, John Randolph Tucker (1823–1897), attorney general of the Confederate state of Virginia, law professor at Washington and Lee, congressman, author of the posthumously published *The Constitution of the United States* (1899), and president of the American Bar Association. Vanderford also includes substantial sections on several other Virginia professors who wrote about or taught law, history, political economy, or philosophy and on Henry St. George Tucker's brother, Nathaniel Beverley Tucker (1784–1851), who taught law at William and Mary, published *A Series of Lectures on the Science of Government, Intended to Prepare the Student for the Study of the Constitution of the United States* (1845), and wrote a novel, *The Partisan Leader* (1831), one of the first arguments for southern secession.

St. George Tucker, Henry St. George Tucker, and John Randolph Tucker each is the primary subject of two chapters, one treating slavery and the other treating state rights. Vanderford argues that all three men grounded their beliefs on both subjects in the American Revolution's natural right understanding that all people were born free and equal and that government was based on the voluntary consent of the governed. Members of the Revolutionary generation withdrew consent from the government of Great Britain and gave consent to their separate states and to the United States. Each state was a voluntary, consensual political entity composed of people—that is, of adult white men—who had been born free and equal. The new United States government was also a voluntary, consensual union of free and equal states, which having given their consent to join the union retained the right to withdraw that consent.

Slavery posed more complex and difficult interpretive problems. The Tuckers understood it to be a naturally occurring phenomenon throughout history. The Bible did not condemn slavery, but they nevertheless regarded slavery as a violation of natural right because enslaved people had not voluntarily given their consent to that form of government over their lives. Enslaved people had not consented to the state or national governments, either, and therefore not being parties to the governmental compact were not entitled to rights of citizenship; but were they entitled to freedom by natural right? Evidently not.

In the 1790s St. George Tucker prepared a plan for the gradual abolition of slavery. His plan was so gradual that it might have taken a century to put into effect. Never adopted or even seriously considered, it was decidedly limited in

its scope. If implemented it would have eventually converted enslaved Virginians into a species of vassals with few or no civil or economic rights. That is about as far as any Tuckers went toward explicit public criticism of slavery or expressing before the Civil War an opinion about accepting freed people into the consensual body politic. Vanderford suggests that Tucker viewed slavery as a necessary evil. Perhaps a better way to categorize the Tuckers' perception is that slavery was a sort of entailed inheritance that became essential to their way of life. They could not abolish it even if they wanted to without impoverishing themselves or immorally destroying or expelling enslaved or freed people from the country or making themselves vulnerable in a race war. A very Jeffersonian view.

St. George Tucker and Henry St. George Tucker both died before having to face the question of withdrawing consent to the union of states—secession—which Nathaniel Beverley Tucker (who also died before the secession crisis) advocated and which John Randolph Tucker of the third generation accepted. But they all faced slavery. They all owned slaves and lived in the parts of Virginia where slavery was almost ubiquitous and had become the cornerstone of the way of life elite white Virginians had created. The Tuckers' legal theories about natural right played a prominent part in public discussions about government and the place of slavery in the nation. Their jurisprudence gave aid and comfort to the pro-slavery ideology that developed during the decades before the Civil War and to legitimizing secession. Vanderford embellishes this with extended asides on the intellectual ferment about slavery and the law in which other Virginia college professors also engaged.

This book suggests the value of additional inquiries about the spread of these ideas through the southern legal community and into the law and particularly into the understandings of the general population. It is not fair to criticize the author for not writing a different book, but I wish he had included more about Nathaniel Beverley Tucker. The most extreme of the Tuckers, he is the subject of some very good scholarship and on the question of slavery might be regarded as a Calhoun before Calhoun and on secession as a fire-eater before fire-eaters. Vanderford treats him as an outlier in the family rather than as a member taking some of the family's core beliefs further or in a different direction.

Vanderford believes that the Tuckers' understanding of natural right was the basis for their ideas about slavery as well as their theories of federalism and state

rights. He rather casually dismisses race and racism from the inquiry. The explanation for doing so and the consequences are not entirely satisfying intellectually. It reminds me of the old saying about a good lawyer being a person able to contemplate a thing which is inextricably intertwined with another thing without regard to that other thing with which it is inextricably intertwined. It produces a clarity of vision that is too much narrowed and consequently distorted and without proper context. Leaving out race may have robbed this inquiry of an extra dimension it needs in the same way that concentrating entirely on race to the exclusion of legal theory would have.

That criticism aside, and I may even be in error on that, *The Legacy of St. George Tucker* invites legal and intellectual historians to go forth and do likewise throughout the states of the old south. Now is the time to complicate rather than to simplify things and try to understand how ideas about religion, race, class, law, and natural right operated together in the intellectual soup of southern legal and political thought. And to keep an eye open for post–Civil War changes in legal thought, too, which Vanderford wisely investigated with some thoroughness. Almost all inquiries about the nineteenth-century south benefit if they employ the long historical context used here, with the Civil War not just as the end of something or as the beginning of something else but in the center of a long interpretive arc contemplating change and continuity.

Brent Tarter is a co-founder of the annual Virginia Forum, an editor of Revolutionary Virginia, The Road to Independence: A Documentary Record (1973–1983), a founding editor of the Library of Virginia’s Dictionary of Virginia Biography (1998–), author of The Grandees of Government: The Origins and Persistence of Undemocratic Politics in Virginia (2013), of Daydreams and Nightmares: A Virginia Family Faces Secession and War (2015), and of A Saga of the New South: Race, Law, and Public Debt in Virginia (2016), and coeditor with Warren M. Billings of the forthcoming “esteemed Bookes of Lawe” and the Legal Culture of Early Virginia. His email address isbrent.tarter@lva.virginia.gov.