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Henry St George Tucker, legal educator

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HENRY ST. GEORGE TUCKER,

"" LEGAL EDUCATOR

A Thesis
Presented to
The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree of
Master of Arts

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Alta E. Cassady
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Alta E. Cassady

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John E. Selby
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The purpose of this study is to discover the nature of legal education in early nineteenth-century Virginia. It focuses on the career of Henry St. George Tucker who experimented with the three most popular methods of preparation for a legal career in the early nineteenth century; the apprenticeship, private law school and school of law at an established academic institution of higher learning.

Tucker's personal correspondence with family members and friends, class lists from his Winchester Law School and copies of lectures he delivered to his students were relied upon heavily for information regarding his career as a legal educator. Primary and secondary sources listed in the bibliography were relied upon for background information on legal education in early nineteenth-century Virginia.

It was discovered that Tucker was in the vanguard of a movement to make legal education more practice oriented. He found the course of study offered at the University of Virginia to be too theoretical and sought to incorporate the beneficial aspects of the apprenticeship and private law school methods in the curriculum he proposed and implemented at the university. Tucker thereby sought to check the trend toward a purely academic pursuit of the law as a preparation for practice.

The study included a careful reading of copies of the lectures delivered by Tucker on the subjects of constitutional law, government and natural law. These lectures provide insight into the interests and concerns of a prominent member of the legal profession in early nineteenth century Virginia. In his Lectures on Constitutional Law Tucker restated the compact theory of the United States government. He took a moderate states rights position on the contemporary issue of the relationship of the state and federal governments and was critical of John C. Calhoun's nullification doctrines. In his Lectures on Government Tucker discussed the principles of government and the rights and responsibilities of citizenship. And in his A Few Lectures on Natural Law he sought to provide his students with a philosophical foundation for their study of the law.
During the early years of the nineteenth century the American legal profession was still in its formative stage. As the profession established itself and prospered, many of its members focused their attention on the means by which their ranks were being replenished. There arose a professional outcry against the amorphous state of American legal education. There were no uniform standards for admission to the individual state bars and the methods of preparation for the practice of law were many. The options available to an aspiring attorney were those of his colonial predecessor. He could either undertake on his own independent reading of the law, serve as an apprentice in the office of a practicing attorney, attend a private law school, or enroll in an established academic institution of higher learning that included the study of law in its curriculum. Not until mid-nineteenth century were there efforts to fashion a more systematic and comprehensive course of study. These efforts were for the most part the result of practicing attorneys who had turned legal educators seeking to supervise and control the training of those wishing to enter their profession.

Henry St. George Tucker was a primary force in shaping the development of legal education in early nineteenth century
Virginia. Tucker found fault with the two most prevalent methods of preparation, the apprenticeship and the academic course of study. He found the apprenticeship method too practice-oriented to be of sound instructional value and the academic course of study too theoretical to prepare the student for the practice of law. In their stead Tucker initially advocated the private law school as an effective compromise between the too practical and the too academic. He organized and operated for seven years one of the four private law schools known to have existed in early nineteenth-century Virginia, the Winchester Law School.

Later Tucker became professor of law at the University of Virginia, where he utilized his experience at Winchester to transform the still inchoate School of Law at the University. He proposed that the program be extended to two years, with the first providing the student with a philosophical foundation for the study of law, and the second offering specialized courses to prepare him for the practice of law. Tucker's course of study which incorporated both the theoretical aspects of institutionalized academic preparation and the practical methods of apprenticeship training remained the core of the law curriculum at the University of Virginia throughout the nineteenth century. The curriculum changes effected by Henry St. George Tucker at the University may thus be viewed as the culmination of his career as a legal educator.
A study of Henry St. George Tucker's career as a legal educator in Virginia will shed needed light on the subject of early American legal education which to date has been only sparsely documented. It will be of special value since Tucker's career covered the entire range of methodologies from supervising an apprentice to organizing and operating a private law school to holding the chair of law at an established institution of higher learning. Furthermore, Tucker's lectures and correspondence provide insight into the opinions of a distinguished member of the Virginia legal profession on contemporary issues and events.

The legal career of Henry St. George Tucker was distinguished and varied. He was a successful practicing attorney in Winchester; a responsible law-maker in the United States House of Representatives and in the Virginia General Assembly; a respected legal educator; and an esteemed jurist sitting on the Winchester-Clarksburg Court of Chancery and presiding over the Virginia Supreme Court of Appeals.

The pursuit of a legal career was a popular endeavor among the sons of wealthy planters and prosperous businessmen and professionals in post-Revolutionary Virginia. The legal profession offered respectability and profit. The ruling elite of eighteenth-century Virginia had aspired to the
lifestyle of an enlightened English country gentleman, for which knowledge of the law was considered a prerequisite. Colonial Virginians were an especially litigious people, for theirs was a landed society which required frequent recourse to the law to settle title disputes and perform property transactions. This eighteenth-century reverence for the law carried over into the early years of the nineteenth century when Virginia's economic base remained agrarian. Hence, it is most likely that Henry St. George Tucker's motives for the study of the law were the usual desire for economic gain coupled with continued enjoyment of the privileges of his social status. Henry's father, St. George Tucker, was a prominent member of the post-Revolutionary Virginia bar and enjoyed a considerable reputation because of his 1803 annotated edition of William Blackstone's Commentaries on the Laws of England and his essays on the nature of the United States Constitution and federal government and on emancipation.

Henry St. George Tucker received his own formal legal education under his father's supervision at the College of William and Mary in the late 1790's. At that time William and Mary was one of the few American institutions of higher learning to offer a course of study in law, and the elder Tucker held the chair of law there from 1790 to 1804. Professor Tucker required his students to pass proficiency tests
in history and government before undertaking their study of law. He approached the study of law with a spirit of scientific inquiry and made Blackstone's Commentaries the basis for his lectures. While a professor of law at Oxford University, Blackstone had collected and systematized the confused and complex body of English common law. His Commentaries had become a basic text soon after its publication. St. George Tucker, finding it necessary to adapt Blackstone's work to American legal conditions, published an annotated edition in 1803 which soon became the standard reference for the American legal profession. Tucker's edition firmly fixed the Blackstone tradition of systematic study of the law in American legal education.¹

Not only did Henry St. George Tucker attend his father's lectures, he also undertook a course of readings under his father's supervision in 1799 and 1800. Among the works he read in addition to Blackstone were Sir Edward Coke's Institutes on the Laws of England and Commentary on Littleton, John Joseph Powell's Essay Upon the Law of Contracts and Agreements and a Treatise on the Law of Mortgages and William Sheppard's The Touchstone of Common Assurances. Young Tucker had the greatest difficulty with Coke, for he requested an extension for completion of that assignment.² Afterward he lamented, "I do not perceive but a very trifling difference between my knowledge now and when I began it."³ However, he
expressed hope that "after reading Sheppard, Blackstone and Powell and having learnt by them how to methodize what I see in him I shall derive from him no inconsiderable degree of information." Tucker pursued his studies diligently and, when reading one author on a subject, would often note the comments of another in the margins.

Upon completion of his formal legal education in his native Williamsburg in 1801, Henry St. George Tucker set out for the lower Shenandoah Valley of Virginia to embark upon his legal career. With his father's financial assistance and professional advice, young Tucker set up practice in Winchester, the trading and commercial center of the region. His handling of the litigation arising from the settlement of the estate of the original proprietor of the area, Lord Fairfax, soon established him professionally, and his marriage into one of the more prominent families in the area, the Hunters, established him socially. In 1806 Tucker was elected to the Virginia House of Delegates. Although he only served one term, that was sufficient time for him to make the acquaintance of several important state political leaders.

In 1815 Tucker was elected to the United States House of Representatives where he served two terms. Among his illustrious colleagues in the Fourteenth and Fifteenth Congresses were Henry Clay, John C. Calhoun, Daniel Webster, and his own half-brother, John Randolph of Roanoke. During his
first term Tucker was appointed chairman of the Committee on the District of Columbia. He voted for the bill chartering the second Bank of the United States and in a speech on the House floor sought to allay fears that the establishment of a national bank would impinge upon the operation of existing state banks. On another issue of that session Tucker opposed the Compensation Bill to increase the salaries of members of Congress. His primary objection to the bill was to its retroactive provisions.

During his second term in Congress, Tucker was appointed chairman of the Committee on Internal Improvements. He became an advocate of the American system which Henry Clay and, for the moment, John C. Calhoun were proposing. Tucker steered Calhoun's bill allocating federal funds for internal improvements in transportation and communication through his committee. Opponents charged that Calhoun's proposal to fund construction with $1,500,000 that the second Bank of the United States was required to pay the government as a bonus for its charter was unconstitutional. In response to the strict constructionist view of the opposition, Tucker argued:

the inevitable effect of such a construction of the instrument will be, that the government must either fail of its great objects, or that it will be habitually broken whenever the pressure of events shall seem to require it. It is better to give to it a plain, practical construction that shall suit the necessities of the nation . . . than to attempt a vigorous adherence to the letter.
In 1819 Tucker declined re-election to the United States House of Representatives. His correspondence reveals his disenchantedment with life in Washington and a desire to return home to Virginia. By December 1818, he had become bored and wrote, "the affairs of the United States are at present in such a state of calm (happily for the people) that there is very little to interest the representative." Upon his return home, however, Tucker remained active in state politics and served four years in the Senate of Virginia from 1819 to 1823. During this period Tucker exerted considerable political influence over the state government as a member of the secretive and influential Richmond Junto.

The Junto was the controlling organ of the Republican party in Virginia during the first quarter of the nineteenth century. It determined party policy and nominated candidates for state and local offices. The Junto functioned as a political caucus and conducted its meetings in secrecy. It derived its power from the wealth and social prestige of its members, most of whom were Tidewater aristocrats. The Junto, therefore, represented and sought to promote the interests of the eastern region of the state and opposed internal improvements and efforts to grant the western region greater representation in the state government. Henry St. George Tucker was one of the few members of the Junto from the West, and it is presumed that his inclusion in its activities was due largely to his
family relationships and his own political adroitness. It would seem likely that he found it politically advantageous for both himself and his constituents to associate with the Junto despite its eastern orientation. His involvement with its activities is particularly documented in a letter he wrote United States Senator James Barbour expressing the Junto's displeasure with the Senator's acceptance of the Missouri Compromise.

By the mid 1820's Henry St. George Tucker's interest in political matters waned and he embarked upon new judicial and educational careers. In 1824 he was elected by the General Assembly to the Superior Court of Chancery for the Winchester-Clarksburg district where he sat for seven years until 1831. It was during this period that he organized and operated a private law school in Winchester. His reputation as an instructor and lecturer of exceptional abilities grew. His school attracted students not only from all sections of Virginia, but from the Lower South and western frontier as well. When he was honored with the presidency of the Virginia Supreme Court of Appeals in 1831, however, Tucker temporarily left the teaching profession to devote his time and energy to his judicial career.

A revision of the state constitution in 1829 and 1830 had reorganized the state's judicial system and established a new Supreme Court of Appeals in place of the old Court of Appeals.
under the Constitution of 1776. Despite his youth and relative lack of judicial experience, Tucker seemed the logical choice for the chief judicial position of the Commonwealth. The primary political issue at the time was the intersectional conflict between the eastern and western regions of the state, and the 1829 constitution had been designed to grant western regions more equitable representation in the state government. For this Tucker was especially fit, for not only was he a prominent western jurist but he had retained close ties with the eastern ruling elite. Tucker served as president of the Supreme Court of Appeals for ten years during which time his reputation as an eminent state jurist became firmly established, leading to his eventual appointment as professor of law at the University of Virginia in 1841.

Winchester, the town in which Henry St. George Tucker launched his legal career, was a thriving, prosperous community in the early 1800's. It had experienced an economic boom in the previous decade through an increase in its wheat, hemp, and fur trades. Conditions were favorable for an ambitious young attorney setting up practice. As his father, St. George Tucker, had done during his early days in Williamsburg, the young Tucker cultivated the company of the most important and powerful members of the Winchester business
and professional community. On May 19, 1804, he wrote to his father, "The son of an influential man here is reading the law with me . . . . He seems to be an amiable and correct young man, tho' I fear of slender abilities. However, it may be a means of getting me business."  

The apprenticeship method under which Tucker had undertaken to instruct the well-placed young man, whose name remains unknown, had prevailed as the principal means by which one prepared for a legal career throughout the eighteenth century. Most members of the bar considered it more beneficial to the novice than academic study. They preferred its emphasis on practice. From the copying of wills and deeds and the drafting of briefs the apprentice learned legal form, and from serving writs and filing actions he became acquainted with legal procedures. Since early American jurisprudence was an adaptation of the English common law to American conditions, the developing Anglo-American law was complex and confused, an amalgam of precedents and technical procedures. During the colonial and early national periods greater emphasis was placed on procedure and the discovery of the rules that applied to given situations than to the fundamental principles underlying the system.

However, by the early 1800's members of the legal profession began to criticize the apprenticeship system. Thomas Jefferson observed, "it is a general practice to study the
law in the office of some lawyer. This indeed gives to the student the advantage of his instruction. But I have never seen that the services expected in return have been more than the instructions have been worth. Critics of the apprenticeship method decried its empirical nature and haphazard, disorganized methods. Henry St. George Tucker was among those who believed the system to be too limited. He warned that:

the student who prosecutes his studies without assistance plunges at once into a stream beyond his depth without a guide, he launches forth on an unexplored sea without a star or compass; and after spending years in gathering the treasures of knowledge he finds that he has collected much that is worthless and thrown aside as worthless what was of lasting utility.

Tucker's motivation for launching a small private law school in Winchester in 1825, however, appears to have been for the most part economic. Upon his return to Winchester from Washington five years before, he had reported his "business affairs deranged," and when his brother, Nathaniel Beverley Tucker, requested a loan of $1200 in 1823, Henry St. George Tucker had been unable to raise the amount. Economic distress was widespread at the time. The western regions of the state were especially slow to recover from the economic depression that the country had been plunged into by the Panic of 1819. Rampant, unrestricted land speculation on the frontier had been one of the chief contributing factors to the panic.
Banking in Winchester was disrupted by the distress. Tucker reported in 1823 that the banks had "ceased discounting; and were not making loans to anyone." In a letter to his father announcing his intention of opening a private law school, young Tucker wrote, "I have some thoughts of a law class... I must do that or go to farming for as Death said to Dr. Horbock 'Folk must do something for their bread.' Further complicating Tucker's financial difficulties was the additional expense of sending his eldest son, St. George, to Princeton. Also, poor health at times incapacitated Tucker and hampered him in conducting an active legal practice.

Early private law schools like Tucker's were essentially extensions of a practitioner's law office. The format originated in New England in 1784 with Judge Tapping Reeve's law school in Litchfield, Connecticut. The idea spread quickly to other states. George Wythe founded the first private law school in Virginia in Richmond in 1790 upon his retirement from his law professorship at the College of William and Mary. In 1821 Judge Creed Taylor conducted a small school in his home at Needham, Virginia, and in 1830 John Tayloe Lomax opened a school in Fredericksburg upon his resignation from his law professorship at the University of Virginia.

Tucker's Winchester Law School had an enrollment of
eleven full-time and six part-time students for its first term of 1825-1826. The six part-time students were practicing attorneys who attended Tucker's Saturday morning lectures in the same manner that many modern college graduates take continuing education courses at a local college or university. Tuition for the Saturday morning lectures was thirty-five dollars a term while full-time students paid seventy-five dollars. Fees were paid by purchasing tickets, which admitted the student to the lectures. It seems that Tucker accepted many students on credit that first year, for he wrote his father, "the greater part of cash is in abeyance. I am, however, more solicitous at present about the reputation than the profit of my school."^24

The school's enrollment increased threefold within the year. In November 1826, Tucker was pleased to report to St. George Tucker about the:

unprecedented and unexpected prosperity of my school. There are already in town thirty young men, and others are yet expected before Monday when the lectures begin. . . . I have young men from Alabama and Ohio and others from the extreme western and southern borders of the state.^25

Class rolls for the 1827-1828 and 1828-1829 terms reveal an enrollment of twenty-seven and thirty-seven respectively. Students travelled from every area of Virginia and Maryland and from as far north as Boston and as far south as Louisiana to attend Tucker's school.^26
As an instructor, Tucker selected those materials he believed to be the most important and presented them to his students in lecture form. It was Tucker's belief that "the law, is sooner and better learned, by being studied systematically. . . . it must be reduced to order by the student himself, or by someone for him." Tucker delivered afternoon lectures three days a week and gave a "reviewing examination" every Saturday morning on the previous week's work to his full-time students. It is not known if or in what manner he examined his part-time students. This procedure was similar to that followed by Tapping Reeve at his school in Litchfield, Connecticut.

Class lists of the Winchester Law School refer to the use of moot courts in the school's curriculum. Although there is no other evidence of such courts at Winchester, Tucker had attended similar courts conducted by his father at the College of William and Mary and later in his own career utilized moot courts at the University of Virginia. The method was popular among early American legal educators. It is probable that Tucker conducted the courts in the same manner Judge Creed Taylor did at his law school in Needham in view of other similarities between the two schools. Taylor's courts were mock-ups of the Virginia courts of original jurisdiction and were presided over by the instructor. By filing pleadings, submitting evidence, examining and cross-examining witnesses,
arguing cases and transacting legal business, the student gained a working knowledge of the state's judicial system. During his first term at Winchester, Tucker realized that his lectures and the Blackstone test alone were insufficient. He observed that "the greatest difficulty I have is that a single reading of abstruse doctrine can not be understood." To provide his students with explanatory supplemental material, Tucker first bound his manuscript lecture notes and made them available to his classes. This practice, however, proved to be impractical, for twenty to thirty students were unable to share efficiently one set of notes. Tucker then had one hundred copies of his notes printed in the hope that the material would aid students in preparing for examinations and "put it in their power to study ... more effectually." No copy of these printed lectures is extant. But, it may be assumed that they were similar in content to those Tucker later delivered at the University of Virginia which he also had printed. Copies of this second edition are still available. Little else is known, however, of Tucker's methods at the Winchester school during the seven years he conducted it.

It was during Tucker's first year at Winchester that he was initially approached to teach at the University of Virginia.
which had just opened its own School of Law. The new school was the sixth such school in the country. Its founder, Thomas Jefferson, had already been instrumental in establishing the first permanent university instruction in law anywhere in the United States at his alma mater, the College of William and Mary, in 1779. Otherwise, the only American colleges or universities to offer courses in law in the eighteenth century had been the University of Pennsylvania and Columbia College in New York. Both were short-lived. The University of Pennsylvania initiated a three-year course of study in law under the direction of James Wilson in 1790, but Wilson abandoned the effort after the second year. In 1793 James Kent was appointed Columbia's first law professor and delivered lectures in his law office to fewer than ten students during the 1794-1795 and 1797-1798 terms. When no students registered for the 1798-1799 term, Kent, too, resigned, and Columbia's early experiment in legal education also failed. It was not until the late 1810's and early 1820's that either institution revived their law programs and that other American colleges and universities such as Harvard and Yale began to incorporate law courses into their curricula. 33

Collegiate preparation for the law in the early years emphasized the theoretical over the practical. The program at either the English Inns of Court or an American college or university invariably consisted of courses in the theory and
doctrines of law, political economy, and moral philosophy. Upon graduation the student still was well advised to serve an apprenticeship in the office of a practicing attorney before embarking upon his own career. The courses of study offered by James Wilson and James Kent at Pennsylvania and Columbia, for example, were "too diffuse, too general and too impractical as regards the needs and demands of the day" according to a leading American legal historian. Wilson's course was distinctly non-vocational in nature, and its stated objective was "to furnish a rational and useful entertainment to gentlemen of all professions."  

The course of study Jefferson designed for the School of Law at the University of Virginia was also heavily theoretical in nature. It was essentially a study of civil polity. Jefferson personally prescribed the texts to be used, including the works of Locke, Montesquieu, and Sydney, and recommended that the Declaration of Independence, The Federalist Papers, and the Virginia and Kentucky Resolutions of 1798 be given careful study.

The quality of the University of Virginia's first faculty was an overriding concern of its founder. Jefferson remarked in a letter to James Madison in 1826, "in the selection of our law professor, we must be rigorously attentive to his political principles," and the private correspondence of Jefferson and Joseph C. Cabell reveals that Jefferson
"considered the high qualifications of our professors as the only means by which we can give to our institution splendor and pre-eminence over all its sister seminaries."  Henry St. George Tucker was among those considered in 1825 for appointment as the first professor of law. He had been an early supporter of the university and had contributed to its fund drives. Already, he had been considered for appointment to the Board of Visitors. While a member of the United States House of Representatives and the Virginia General Assembly, Tucker had gained the respect of many prominent political leaders. Former president James Madison was among those recommending him for the law professorship.

Correspondence between Cahell, who actively promoted Tucker's candidacy for the appointment, and St. George Tucker reveals the elder Tucker as the instigator of the movement to secure the position for his son. When St. George Tucker had originally solicited Henry St. George Tucker's thoughts on the matter, the latter had pleaded with his father to "keep my name out of sight" and warned that there would be difficulty in filling the position because "you cannot command the man you want for a paltry sum; perhaps, indeed, for no sum without some other honor than that of a professorship." He suggested that a judicial position be created to be held simultaneously by the University's law professor. St. George Tucker relayed this suggestion to Cabell who proposed to
Jefferson that a chancery district comprised of Albemarle, Orange, Louisa, Fluvanna, and Nelson counties be created and the law professor be appointed chancellor. No action was ever taken on the proposal.

As Henry St. George Tucker predicted, Jefferson and Cabell did have difficulty filling the position. Francis Walker Gilmer was their first choice, but he was prevented from accepting the position by his death. The presidency of the University as well as the law professorship was then offered to William Wirt, but he accepted neither. Every effort was next made to persuade Henry St. George Tucker to take the law post, but he declined for personal reasons. Thomas Jefferson himself wrote begging Tucker to reconsider and mentioned the possibility of a chancery court being created. In reply Tucker expressed his appreciation for the efforts to accommodate his wishes, but reiterated that he was unable to accept the position because of family considerations, foremost among which was "the sacrifices of feeling which a change of residence would inevitably occasion to my family." In a letter to his father on the same day he confided that:

I would not plant myself and nine children (more than half of whom are girls) in the midst of an university. I could not look but with shutting on the duties attending the office and requiring a surveillance over two hundred young men with all the chances of confusion, riot and rebellion which our seminaries unfortunately give rise to.

The reason for Tucker's concern was that the University of Virginia's student body had already established a reputation
for riotous and rowdy behavior. The university's students were young, highly spirited, and restless. Most were sons of wealthy and influential parents and had never found it necessary to practice self-discipline. Yet, the university's founders expected them to do so and granted them self-governance in social affairs. The experiment was an immediate failure. Early in the fall of 1825 Thomas Jefferson admitted that "experience of six months had proved that stricter provisions were necessary for the preservation of order . . . that coercion must be resorted to, where confidence had been disappointed." The Board of Visitors soon enacted a stringent code of social regulations which was strictly enforced by the faculty despite loud and on occasion violent protests of the students. Rioting occurred and the property of unpopular professors was vandalized. There were even incidents of masked students apprehending and assaulting members of the faculty. Student violence was finally to reach its height in 1836 when the students staged an armed rebellion. Not until the faculty called in the civil authorities was order restored to the campus. Sporadic rioting continued thereafter and the students commemorated the rebellion of 1836 on each anniversary with demonstrations.

Ironically, it was the fatal shooting of the university's law professor, John A. G. Davis, by a masked student during the demonstration of 1840 that enabled Tucker to reconsider
accepting the post. The law professorship was again offered to him in 1841, and this time his personal economic situation motivated him to accept. Tucker wrote his friend, John Hartwell Cocke, that he was concerned about providing his younger sons with a college education, and that "the expense of their tuition will be heavy if I remain as I am, while it will be trivial if I remove to the University" since the post included free tuition for faculty members' sons. Tucker confided to his brother, Nathaniel Beverly Tucker, that he had accepted the position to please his family:

I found here that all my family desired the change. Their motive was an earnest wish to place one in a situation which would enable us to be together throughout the year . . . . I found after much anxious reflection that putting my pride out of the question the scale divided by preponderant in favor of acceptance.⁴⁸

Another consideration was Tucker's age and failing health. In 1841 he was sixty-one years old, and poor health precluded continuing an active legal practice and judicial career much longer. He concluded his letter to his brother with the statement, "I ought to rejoice at so fair an opportunity of retiring in good season from a station where in a few years time my decay may have become conspicuous. I reflected that my opinions . . . . might soon begin to smart of imbecility."⁴⁹

The position of law professor itself was also probably more attractive to Henry St. George Tucker in 1841 than it
had been in 1826. As a legal educator Tucker had been critical of the curriculum originally proposed for the University of Virginia's School of Law. He objected to its orientation toward the study of the principles of government, and he specifically objected to the inclusion of classes in political economy in the curriculum.

John Tayloe Lomax, to whom the university had eventually turned to be its first law professor after Tucker had declined, had instituted an academic course of study in accordance with the founder's wishes. Lomax taught the course for four years until 1830 when he accepted a more lucrative and prestigious position as associate judge of the fifth judicial circuit court. His successor, John A. G. Davis, was apparently more concerned with the practice of law than the academic discipline of jurisprudence. According to an unidentified student, Davis "taught the science of jurisprudence as a code of principles, not as a code of precedents." Davis made the university's faculty and Board of Visitors more aware of the need for a shift in emphasis from the theoretical to the practical aspects of law and thereby laid the groundwork for Henry St. George Tucker's innovative course of study.

Upon his appointment Tucker sought to make the university's course of study more relevant to the needs of the profession. He extended the program an extra year to offer more specialized courses designed to prepare the student for professional
practice. Students were still required to take courses in the elementary principles of municipal law, the law of nature and nations, the science of government, and constitutional law during their first year. For these introductory studies Tucker assigned his father's edition of Blackstone's Commentaries, Chancellor James Kent's Commentaries on American Law, The Federalist Papers, and The Virginia Report of 1799, touching the Alien and Sedition Laws as his texts. The more specialized second-year program included classes in common and statute law, the principles of equity, and maritime and commercial law. Texts for the course were Henry John Stephen's A Treatise on the Principles of Pleadings in Civil Actions, Thomas Starkie's A Practical Treatise on the Law of Evidence, John William Smith's A Compendium of Mercantile Law, and Tucker's own Commentaries on the Laws of Virginia. In addition, Tucker encouraged his senior students to read John Tayloe Lomax's A Treatise on the Law of Executors and Administrators and Digest of the Laws Respecting to Real Property.\textsuperscript{51}

Classes were held twice a week and weekly as well as annual comprehensive examinations were given.\textsuperscript{52} Graduation requirements included successful completion of both the junior and senior courses of study, satisfactory performance on the comprehensive examinations, and participation in the University's moot courts. Under Tucker's direction moot courts similar in nature to those he had conducted at his law school in Winchester
were held twice weekly to provide the student with a supervised practical experience in judicial procedure.\textsuperscript{53}

Graduation from the University of Virginia School of Law in the early 1840's entitled one to practice in Virginia's courts according to a special act of the General Assembly. This statute was later repealed in the Code Revisal of 1849.\textsuperscript{54} Meanwhile, Tucker had twenty-six students qualify for the Bachelor of Law degree and receive their licenses in 1842,\textsuperscript{55} twenty-four in 1843,\textsuperscript{56} eighteen in 1844,\textsuperscript{57} and fourteen in 1845.\textsuperscript{58}

During his years at the University of Virginia, Tucker was actively involved in the academic community. As professor of law he served as the "ex officio" judge of the Court of the University. The Court had sole jurisdiction over all student offenses under the university's laws and concurrent jurisdiction over all offenses under the state and national laws except for felonies. As compensation for sitting on the university's Court, Tucker received five hundred dollars annually.\textsuperscript{59}

After his first year at the University, Henry St. George Tucker was elected chairman of the faculty.\textsuperscript{60} He held that position for the remainder of his term as professor. The responsibilities of the chairman of the faculty included ensuring that members of the faculty fulfilled their obligations and making annual reports to the Board of Visitors on the faculty's performance. Faculty members were required to
submit monthly records of their students' daily progress to the chairman of the faculty whose responsibility it was to notify the students' parents of their sons' academic performance and deportment at the university.61

As chairman of the faculty, Tucker was also ultimately responsible for the students' adherence to university rules and regulations. In an address he delivered to incoming students in 1842, he appealed to their upbringing as gentlemen and sense of honor to obey the laws prohibiting "riotous, disorderly, intemperate or indecent conduct . . . the frequenting of taverns and confectionaries . . . insulting deportment to professors . . . combinations to violate the laws and the keeping of firearms within the precincts and going about masked."62

Henry St. George Tucker and his cousin, George Tucker, the professor of moral philosophy, found several of the university's social regulations too stringent and unnecessary. They were successful in lifting the requirements for rising early in the morning and wearing uniforms.63 Of more lasting affect was Henry St. George Tucker's proposal for an honor system which granted the students a measure of academic self-government. At the time students deeply resented the faculty's close surveillance of examinations and asserted that the faculty's suspicious attitude questioned the integrity of all and was demoralizing. Tucker consequently moved at a faculty
meeting on July 4, 1842, that:

In all future written examinations for distinction and other honors of the University each candidate shall attach to the written answers presented by him of such examination a certificate in the following words, "I A. B. do hereby certify on honor that I have derived no assistance during the time of this examination from any source whatever whether oral, written or in print in giving the above answer."

The proposal was approved and implemented and remains in effect today as the Honor Code of the University of Virginia.

Henry St. George Tucker's career as a legal educator culminated during his years at the University of Virginia. There he had the opportunity to put into effect a program of his own design. Among his students at the University was his successor on its faculty, John B. Minor, who retained Tucker's program as the core of his own course of study. Minor continued to stress the practical applications of the law over the theoretical during his fifty-year tenure as professor of law at the University of Virginia. Through Minor, Henry St. George Tucker had a lasting influence upon the law curriculum at the University.

Tucker brought years of legal experience to bear upon the program he designed. Like many of his fellow nineteenth-century Virginians, he believed a liberal arts background mandatory for a gentleman in any profession and required it of his
students at Winchester. At the same time his experiences as a practicing attorney, legislator, and jurist impressed upon him the need for a more specialized course of study than he had undertaken at the College of William and Mary. In 1825 he wrote to his father comparing his program of study at Winchester to the one being proposed for the University of Virginia; "the lectures at the University must of necessity deal very much in general. . . . my course of lectures goes much into detail and I should think would be particularly suited for a young man after he had quitted the University."\textsuperscript{65} In his lectures, Tucker emphasized the practical approach to legal studies; "it is important that we lay aside somewhat of the metaphysical subtleties of the schools and take that common sense view of every matter."\textsuperscript{66} Tucker also told his class at Winchester:

> It is the common fault of education among us in all its branches. We attempt too much, we learn too little. We come from the schools smatterers in everything, and we go into the world remembering scarcely the names of the sciences into which we have dipped. Let us pursue a different course.\textsuperscript{67}

Although in some respects an innovator in the field of legal education, Tucker nonetheless adhered to the classical idea of learning that conceived of the human mind as a muscle to be developed through exercise. His pedagogical philosophy was similar to that expressed in the report of the faculty of Yale University in 1828:
The two great points to be gained in intellectual cultures are the discipline and the furniture of the mind, expanding its powers and storing it with knowledge. The former of these is, perhaps, the more important of the two. A commanding object, therefore, in a collegiate course of study should be to call into daily and vigorous exercise the faculties of the student. Those branches of study should be prescribed, and those modes of instruction adopted, the attention, directing the train of thought, analyzing a subject proposed for investigation; following with accurate discrimination the course of argument; balancing nicely evidence presented to judgement; awakening, elevating and controlling the imagination; arranging with skill the treasures the memory gathers; rousing and guiding the powers of genius.68

For this purpose the recitation method by which the instructor orally interrogated his students on the assigned material was ideal. The method had been popular since the late seventeenth century and through the eighteenth. However, by the nineteenth century many American educators had abandoned recitations for the lecture method. In many classrooms the former had degenerated into severe grillings which forced students to resort to rote memorization to prepare themselves for the emotionally trying experience. For this reason many educators like Tucker turned to the lecture method, in which the instructor relied instead on written examinations. Also, lecturing allowed Tucker to compensate for what he perceived to be deficiencies in the standard texts and to make general legal principles more relevant to contemporary conditions in Virginia.69 The lecture method provided him with
the means to convey to his students the practical knowledge he had gained from his experiences at the bar and bench.

At the same time, Henry St. George Tucker retained some of the pedagogical techniques of the old recitation method. He included detailed and specific study questions as appendices to his lectures. For example, in his *Commentaries on the Laws of Virginia* the study questions on the chapter discussing municipal law included, "What is municipal law? Why is it called a rule? Why is it said to be a rule of civil conduct?" These questions served dual purposes. Not only did they accentuate the most important points of the material, but they also trained the student to think analytically and ask questions of the material.

Furthermore, Henry St. George Tucker followed the eighteenth-century pedagogical injunction that learning was to proceed from the simple to the complex. At the outset of his lectures Tucker set forth the general legal principles that he would later illustrate by specific statutes. In Chapter One of his *Commentaries on the Laws of Virginia* he broadly defined law as "a rule of action." He then explained the declaratory and vindicatory aspects of municipal law and in the following chapter discussed the municipal laws of Virginia. In *A Few Lectures on the Natural Law*, Tucker followed a similar pattern by stating the general principles of natural law before illustrating them with concrete examples from everyday
life. He was most effective in asking his students to recall their boyhood observations of nature to illustrate the laws of nature they were studying.

At the university Tucker continued his practice of publishing his lectures for his students. Already he was well published in legal studies. In 1836 he had published his first work, a two-volume Commentaries on the Laws of Virginia which had originated as his notes on his father's edition of Blackstone's Commentaries. Shortly after its publication the Commentaries on the Laws of Virginia became the standard reference on Virginia statutory law for both legal educators and practicing attorneys. Its popularity and widespread use was short-lived, however, for the Code of 1850 and judicial decisions delivered after its publication quickly dated the work. 72

In 1843 and 1844 Tucker had printed his lectures in three separate studies on constitutional law, government, and natural law. The texts presumably were for the most part revisions of his earlier lectures at Winchester. His Lectures on Constitutional Law (1843), Lectures on Government (1844) and A Few Lectures on Natural Law (1844) provide insight into his concerns and practices as a legal educator in early nineteenth-century Virginia. He delivered the lectures to his
junior class at the University of Virginia. In the lectures on government and constitutional law he sought to ensure that his students had a thorough grounding in the principles of government and a specific understanding of the United States government and its Constitution. In these lectures Tucker also discussed topics he believed to be of pertinent interest to the legal profession. They were written and delivered in the 1820's, 1830's, and 1840's when serious questions as to the nature of the new republic were raised by many Americans. As a concerned citizen and former legislator and jurist, Henry St. George Tucker was well aware of these contemporary issues and sought to explicate them in his lectures. And in his lectures on natural law, Tucker introduced his students to eighteenth-century moral philosophy and natural law theories which were primarily concerned with man's natural rights and correlative duties and obligations. He thereby sought to provide them with a philosophical foundation for their study of law.

Tucker's Lectures on Constitutional Law were an assault on the ideas of Justice Joseph Story of the United States Supreme Court. Story's Commentaries on the Constitution of the United States was considered by many contemporary legal scholars to be authoritative on the subject. Although
Tucker assigned Story's work as a text, he sought to disprove Story's theories on the location of sovereignty in the federal government and on the true nature of the Constitution. Such questions had been raised and debated at the Constitutional Convention in Philadelphia but had been left unresolved. Throughout the early national period these issues remained highly controversial, and the debate extended beyond the political arena into the academic institutions. In his lectures Tucker took issue with the strong nationalist position taken by Joseph Story on these matters.

The key question upon which the debate turned was whether or not the Constitution was a compact of the sovereign states or the supreme law of the land. In his *Commentaries on the Constitution* Story stated his belief that:

A constitution is in fact a fundamental law or basis of government . . . a rule of action prescribed by the supreme power in a state, regulating the rights and duties of a whole community. It is a rule as contradistinguished from a compact, or agreement; for a compact . . . is a promise preceding from us, law is a command directed to us . . . It is a rule prescribed; that is, among us by the people, or a majority of them in their sovereign capacity. Like the ordinary municipal laws, it may be founded upon our consent, or that of our representatives; but it derives its ultimate obligatory force as a law and not as a compact. 74

Story argued that had the framers of the Constitution intended it to have been a compact they would have designated it as such. He based his argument on the language of the Constitution that stated it had been ordained and established
by the people as the supreme law of the land. Story was
adamant on this point and sought to check any possible
influence of St. George Tucker's earlier writings on the
subject. 75

In an appendix to his 1803 annotated edition of Black-
stone's Commentaries, St. George Tucker was among the first
to apply the compact theory to the newly formed United States
government. Tucker's concept of the Constitution as a compact
was a restatement of the social compact theory of the natural
rights philosophers. He proposed that the Constitution was
a document the validity of which rested upon the continued
consent of the people of the individual states who drafted and
ratified it. 76 In his "View of the Constitution of the
United States" Tucker stated that "the Constitution is an
original, written, federal and social compact, freely,
voluntarily and solemnly entered into by the several states." 77
Tucker viewed the federal government as the creation of the
compact and therefore bound to its creators, the individual
states. He argued that, "the union is in fact, as well as
in theory, an association of states . . . the state govern-
ments . . . retain every power, jurisdiction and right not
delegated to the United States government by the Constitution." 78
Tucker thus interpreted the Constitution to limit the powers of
the federal government with the states' ultimate sovereignty
expressed through their reserved powers.
Story sought to discredit this compact theory by demonstrating the possible consequences of its acceptance. He prophesied that the Constitution would be reduced to the status of a treaty with "an obligatory force upon each state no longer than suits its pleasure or its consent continues." Under these conditions an individual state would have the power to dissolve the union at will and to "suspend the operation of the federal government and nullify its acts within its own territorial limits." Story feared that such conditions would be conducive to disunion and anarchy.

Henry St. George Tucker in turn defended the compact theory of government and his father's explication of it in his lectures. Basic to his argument was the belief in the sovereignty of the individual states. He reasoned:

If the Constitution be the result of state action, and if the states are party to it, the Constitution is a compact. And this seems sufficiently obvious, since the only method by which joint action between the several states can take place is compact or agreement.

Tucker concluded as his father had done that the formation of the federal government was the result of the compact and not the compact itself.

Young Tucker denounced Story's interpretation of the Constitution and charged that Story's reliance upon the language of the Constitution as the basis for his interpretation was invalid. Tucker was especially critical of Story's
continued references to the phrase "We the people" in the preamble. 82

Instead, Tucker based his assumptions on what he perceived to be historical realities. According to his interpretation of early American history, the colony-states conceived of themselves as separate and distinct political entities. Tucker stated that "the several colonies were not only different in origin and organization, but they were perfectly independent in their jurisdiction." 83 He argued that even though as colonists the early Americans were subject to the authority of the English government, they were not "one people with England" nor were they "one people with the other states." 84 During the Revolutionary period the citizens of the individual states viewed themselves as autonomous, and they asserted their sovereignty in declaring their independence from Great Britain and establishing governments of their own. Tucker stated that:

the people of Virginia by their constitution or fundamental law, granted and delegated all their supreme civil power to a legislature, an executive and a judiciary. From the moment the people of Virginia exercised the power, all dependence on, and connexion with Great Britain absolutely and forever ceased. 85

Tucker further contended that the states' assertion of their sovereignty could not be denied by any observer of the Confederation period. He queried, "who ever dreamed that the sovereignty of the states was swallowed up in their
and referred his students to the second section of the Articles of Confederation which clearly stated that "each state retains its sovereignty."  

Hence, according to Tucker, when the Constitution of the United States was drafted the individual states were separate and distinct political entities whose citizens retained ultimate sovereignty. He concluded that "the Constitution was in its origination, its progress and final ratification, the act of the states as free and independent sovereigns, not of the whole people of America as one people."  

He pointed out that the delegates to the Constitutional Convention functioned as units by states and that a majority of the states represented, not the total number of delegates present, was required for adoption of any measure. Ratification was conducted on a state by state basis. To further substantiate his position Tucker referred his students to the Federalist Number 35 in which James Madison stated:

> it appears . . . that the Constitution is to be founded on the assent and ratification of the people of America . . . not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each state the authority of the people themselves. The act, therefore, establishing the Constitution will not be a national but a federal act.

Tucker rebutted Story's contention that throughout their history the white inhabitants of the geographical region
that came to be the United States of America consciously perceived of themselves, and functioned politically as one people. With an organic concept of the union, Story had sought in his Commentaries to prove his thesis that the national government was created by the people acting as one by demonstrating that they had consistently acted in that manner since the colonial years. In Book One of his Commentaries, Story wrote that "although the colonies were independent of each other . . . they were fellow subjects, and for many purposes one people." In Book Two of his Commentaries, Story proposed that the birth of the American nation dated back to the signing of the Declaration of Independence. He declared that "from the moment of the Declaration of Independence, if not for most purposes an antecedent period, the united colonies must be considered as being a nation de facto, having a general government over it created, and acting by the general consent of the people of all the colonies."

The basic premises of Henry St. George Tucker's Lectures on Constitutional Law, which was in the form of a syllogistic discourse, were that ultimate governmental authority resided in the citizens of the individual states and that the United States Constitution was a compact entered into by the individual states. Tucker established these premises with an argument based on a historical analysis of the Founding Fathers' intentions and the nature of the document they
drafted. He concluded that the only logical inference was that the individual states were indeed sovereign. This inference was of great importance, for the overriding concern of the Tuckers, Story, and others debating the two theories was the implication of each, and not necessarily the theories themselves.

The proponents of the compact theory argued that in creating the national government the states entered into a conditional contract which stipulated that they retained ultimate sovereignty. They were, therefore, entitled to withdraw the governmental authority they had transferred to the national government whenever they believed it to be exercising its powers in violation of the stipulations of the contract. On the other side, those adhering to the supreme law theory argued that the Constitution was an executed contract transferring ultimate sovereignty to the government it created.

Political events of the early nineteenth century provoked and further stimulated this debate over the nature of the Constitution and the location of sovereignty in the government it created. The question was ultimately one of the authority to exercise governmental power.

As southern influence over national affairs waned with the decline of the Virginia Dynasty and the ascendance of the northeastern commercial interests, southerners came to perceive
themselves as a political minority by the 1820's. They feared that their interests would be threatened by any coalition of northeastern and western interests. Southern political theorists sought to provide their political leaders with a political philosophy and the legal rationale by which they could protect their minority interests from any possible tyranny of a majority. A political philosophy stating the right of a minority to impose restraints upon the will of the majority was developed in the South during this period. In rebuttal, champions of the northeastern and western interests re-emphasized the rights of the national government by broadly interpreting the implied powers clause of the Constitution.

Political and economic issues thus came to be debated in constitutional terms. Southern political leaders justified their opposition to the Jackson Administration's economic nationalism, specifically the protective tariff measures, with the doctrines of minority rights and state sovereignty.

South Carolina leaders in particular declared that the individual sovereign states were empowered to declare acts of Congress unconstitutional and therefore null and void within a state. The doctrine was first publicly stated in the South Carolina Exposition of 1828 which was secretly drafted by John C. Calhoun who later publicly expounded it. The means by which nullification was to be accomplished was a state convention called specifically for that purpose.
Calhoun argued that the state conventions retained the power to interpret the Constitution because they had been the political bodies that had originally ratified it.

Henry St. George Tucker together with a majority of his fellow Virginians was in accord with John C. Calhoun's basic belief in state sovereignty and the idea that sovereign states were entitled to voice their disapproval of those actions of the national government they believed to be beyond its constitutional authority. However, Tucker, again with a great majority of his fellow Virginians, found Calhoun's nullification proposals too extreme, impractical, and unnecessary. In regard to his disagreement with some of Calhoun's proposals Tucker stated, "the true point of difference ... is not the existence of the right to interfere ... but, the extent of interference."  

In his lectures on constitutional law, Tucker was critical of the nullification proposals and sought to demonstrate their inability to accomplish their stated ends. Tucker considered the nullification doctrine to be "subversive of the subsisting order of things" and feared its implementation would entail the "suspension of vital laws." He posed several hypothetical situations to demonstrate the possible consequences of nullification. In the area of national security, he predicted:

if direct taxes are laid to carry on a war for liberty and existence, the collection must be suspended till all the states are heard from. If a
fort is to be erected, we may be compelled by one state to wait till all the rest shall respond. 94

Another concern of Tucker's was that the New England states would adopt and implement the nullification doctrines to the southern states' disadvantage. He spoke directly to the fears of many of his fellow southerners when he speculated that:

if the surrender of our runaway slaves, or of the Negro stealers, who carry them off is evaded against the plain words of the Constitution, we must wait for redress until three-fourths of the states shall decide that the act of our Northern brethern is not justified by the compact. And when might that be expected? Never!95

Tucker went to great lengths to demonstrate the impracticality and ineffectiveness of the nullification process. He pointed out that the calling of a special convention within each state would be too time-consuming and cumbersome to be of value. He observed that:

no effectual appeal can be made, except through the call of a convention . . . and thus the heavy burden of an extra deliberate body must be incurred . . . if this call is to be responded to, it can only be answered by the deliberation and decision of 5 and 20 other state conventions called together for that purpose . . . there is no such provision in the Constitution for any such proceeding and the appeal and response must be tardy and protracted.96

Having thus critically examined the nullification doctrine and exposed its weaknesses, Tucker dismissed it as a "notion which is the mere figment of the brain of a politician teeming with new conceptions generated by the heats of party feuds."97
Tucker then sought to reassure his students that there was little chance of a numerical majority ruthlessly tyrannizing a minority within the existing framework of the American government. He enumerated all the remedies available to a discontented minority and reminded his students that the Founding Fathers had provided for a system of checks and balances within the government. He also referred to the process by which the Constitution could be amended as a means by which an objectionable governmental policy could be reversed.

Tucker concluded his Lectures on Constitutional Law with a restatement of allegiance to the existing system of government and an expression of belief in the federal judiciary as the ultimate arbiter of controversies arising within the system. On this point he and Story were in agreement. Tucker stated that "the judiciary constitutes the umpire between the states and the United States and between the several states of the confederacy and their citizens and both parties are conclusively bound by its decisions." He further reassured his students, "nor can there be any danger in such umpirage." Not only did Tucker have a great deal of faith in the judicial system, but he also had a great personal respect for the members of the judiciary. He quoted the oath taken by a judge to his students and extolled the personal virtues of the members of the judiciary of his acquaintance,
a group of gentlemen with whom he seemed most impressed by their integrity, impartiality and independence. 100

Tucker was well aware of the moderate position he had taken on the states' rights question. He commented, "with these views of my own on the interesting topics of nullification and the powers of the supreme court ... I occupy an isthmus that divides the two great contending parties"101 and concluded, "I have endeavored to maintain a middle course between two dangerous extremes."102

How much influence Tucker's political views had is, of course, difficult to measure. Certainly he would have liked to have thought that the future political leaders of Virginia were of his own political persuasion. But even if some did not subscribe to his views on contemporary issues, Tucker sought to impress upon all his students the value of exercising care and caution in all their deliberations and of working within the framework of the existing government.

Several of Tucker's students were to later hold important state administrative, legislative, and judicial positions. William Robertson and E.C. Burks were to sit on the Virginia Supreme Court of Appeals and James Barbour was to represent Virginia in the United States Senate. Two in particular, Henry A. Wise and Robert Mercer Taliaferro Hunter, were to become political leaders of national significance. Tucker may have had an early influence upon Wise, for he ran on an
anti-nullification platform in his first Congressional race in 1833. Wise was later to become a close advisor to President Tyler and serve as United States minister to Brazil in the 1840's. Upon his return home he served as governor of Virginia from 1856 to 1860 and later as a general in the Confederate army during the War Between the States. Hunter served in both the United States House of Representatives and Senate. He was elected Speaker of the House during his second Congressional term and held that position from 1839 to 1841. As did Wise, Hunter became a Whig and, also like Wise, later supported the Confederate cause, serving as Secretary of State in the Confederate government.

Henry St. George Tucker's third work, Lectures on Government, was primarily concerned with the principles of government. Tucker also discussed the rights and responsibilities of citizenship as well. The lectures, therefore, served the dual purpose of providing Tucker's students with a course in civics as well as political science. Like many of his fellow early American educators, Henry St. George Tucker considered the primary purpose of political science courses to be to prepare students for an informed and involved citizenship. In his Lectures on Government he stated:

The origin and root of all evil in government partaking strongly of the democratic character,
is the want of knowledge and of good principles in the mass of the people. If the people are to govern through the medium of representation, if their will is to be the law . . . they should be thoroughly imbued with good principles . . . and some knowledge of their instructions. Education, therefore, is of primary importance.104

Tucker found all the available works on the subject to be either too speculative and theoretical or biased for use as a standard text for his course. He, therefore, relied upon many sources in preparing his lectures, and assigned no text. Tucker first defined the concept of government and then analyzed the existing forms. In conclusion he declared the American government to be superior to all other governments in existence in both theory and operation.

In Tucker's thinking the organization of a good government reflected the formation of a civil society by individuals voluntarily entering into a social compact to maintain their natural rights and to promote the common good. He believed the United States government had been founded upon natural law principles. In his lectures he proposed that the Founding Fathers' primary concern had been the creation of a government that would protect the American people's natural rights. Tucker conceded that the individual's natural rights were circumscribed by his membership in civil society and sought to convince his students of both the necessity and advantages of this denial of the absolute rights of the individual. He stated that, "the liberty of individuals is abridged in a state of civil society . . . . each individual,
however, obtains more than an equivalent for what he gives up.\textsuperscript{105}

Tucker embraced the doctrine that the law was a regulatory force in society, that laws were made to order human relations in politically organized societies and to control the exercise of power within those societies. Accordingly, Henry St. George Tucker found the terms law and government to be interchangeable and defined them as follows:

\begin{quote}
Law implies government or rather government is law. It is the exercise of the power of the whole society in prescribing rules, commanding what is right and prohibiting what is wrong. It branches itself out indeed into several departments which constitute altogether but one whole. The first and most commanding is that which makes the law, the next is that which applies it, the last the power that executes it. The first is called the legislature, the second the judiciary and the third the executive.\textsuperscript{106}
\end{quote}

Using this definition as a standard, Tucker undertook a comparative study of all forms of government. He categorized them according to the classic divisions of the three pure forms of government; monarchy, aristocracy, and democracy. Tucker then analyzed each of the forms, assessing the advantages and disadvantages of each. In his evaluation of the monarchial form he cited unity in deliberation and action as its chief advantage which he considered a source of great strength in defense and military affairs. The chief disadvantage, however, he found to be the propensity of monarchies to degenerate into tyrannies. Second, Tucker considered the
strength of aristocratic government to be the accrued wisdom and experience of its leaders. Conversely, its weakness was the inevitability of dissension within the ruling class and its oppression of the lower classes. Tucker's partiality to the democratic form of government was evident in his remarks. He characterized its advantages to be "exemption from needless restrictions, equal laws and regulations adapted to the wants and circumstances of the people."\(^{107}\)

In his concluding lecture Tucker observed that all existing governments were combinations of the three pure forms. He declared his preference to be a mixed government in which the democratic form was paramount:

> the happiness of the people . . . the only legitimate object of all political institutions is only to be found in a mixed government; that public virtue the main ingredient to be sought for, is to be expected only in those in which the democratic principle is largely infused and that our own affords, perhaps, a fairer prospect than any other of permanence and stability.\(^{108}\)

Tucker reaffirmed his belief that the United States government was superior to all other existing governments. He described its pre-eminent features as the separation of powers and the checks and balances provided by the Constitution. Tucker's analysis of the forms of government was elementary and largely a restatement of widely accepted beliefs. Yet, his Lectures on Government served his purposes as a legal educator, for they provided his students with a working knowledge of
the principles of government and sought to convince them of
the superiority of their own.

In his *Lectures on Government* Tucker again commented on
the contemporary sectional conflict that threatened the
preservation of the union. He called upon his students to
adhere to the constitutional system and warned against
tampering with it; "Upon questions of reform, the habit of
reflection to be encouraged is one of sober comparison . . .
we live not with models of speculative perfection but with the
actual chance of obtaining better."^{109}

Earlier as a member of the United States House of Repre­
sentatives, Tucker had been a proponent of the American system
as devised by Henry Clay and that association possibly had a
lasting influence upon Tucker's views on the relationships
between the sections of the country. Tucker sought to
persuade his students that it was to the mutual benefit of
all sections to remain within the union by referring to the
system of interdependence that had evolved among the sections.
He pointed out that the commercial and manufacturing states
of the Northeast were dependent upon the South for cotton and
for a market for their manufactured goods. The southern
states in turn were dependent upon the Northeast for its
merchant marine and benefited from the two regions' combined
defense effort. So, too, western frontier states were
dependent upon the northeastern and southern states for
defense and protection of navigational rights on the Mississippi River. 110

As an advocate of a liberal arts education for all professional students, Henry St. George Tucker was concerned that his students have a strong philosophical foundation for their study of law. In A Few Lectures on Natural Law Tucker sought to provide this foundation by discussing the principles of natural law and their practical application. Many contemporary philosophers and political theorists believed all human relations were governed by immutable and eternal laws of nature. From this point of view the positive or municipal law was an attempt to realize natural law in civil society. Natural law theories were thus legal formulation of fundamental moral values and a rational explanation for existing political and social institutions and codes of ethics. It was therefore a practice among eighteenth and nineteenth-century legal educators to include a course in natural law to provide their students with a philosophical foundation for their study of contemporary jurisprudence. 111

Tucker defined the law of nature as "the rule of rectitude which is prescribed to us by the author of our being and pointed out by our reason and which lies at the foundation of all wise and salutary systems of law." 112 In his lectures
he analyzed the laws of nature and sought to persuade his students of their validity and utility. The latter he did by demonstrating to his students how the laws of nature provided a philosophical foundation for specific municipal laws.

Although there was no assigned text for the course, Tucker referred his students to William Paley's *Principles of Moral and Political Philosophy*. Paley was an eighteenth-century British theologian and philosopher whose works by all accounts were the most widely read and often used textbooks in American colleges and universities in the late eighteenth and early nineteenth centuries. Paley's popularity has been attributed to both his medium and his message. His plain prose writings illustrated with examples taken from common everyday experiences were more easily understood by American students than the esoteric style of many of the more metaphysical moral philosophers. Furthermore, Paley's theological utilitarianism found a receptive audience in early nineteenth-century America. In his *Principles of Moral and Political Philosophy* Paley sought to validate Christianity with rational and empirical proofs for the existence of God and to demonstrate the utility of the adoption of the Christian code of ethics. It is presumed that Henry St. George Tucker recommended Paley's work to his students as a general handbook on the duties of citizenship.
A common practice in early American colleges and universities was to look to a course in moral philosophy to provide students with a workable code of ethics for both their public and private lives.

Tucker was greatly influenced by William Paley's works and subscribed to many of his theories. Paley proposed that civil society was merely an extension of the family unit and traced its origins back to Adam and Eve in the Garden of Eden. Tucker adhered to this position and in so doing took issue with one of the great natural law theorists of the seventeenth century, Thomas Hobbes. It was Hobbes's contention that a state of nature in which each individual was isolated, independent, and self-sufficient existed as a precondition of civil society. Hobbes believed man to be basically egotistical and motivated only by his own self-interest, and described the state of nature as "solitary, poore, nasty, brutish and short." Man accordingly entered into the social compact to avoid the state of nature. Yet, even as a member of society man's primary concern continued to be his own survival and the furtherance of his own interests.

Tucker repudiated these theories of Hobbes stating, "I look upon these speculations as having little probability in fact and not much value in point of utility. That man ever existed in what is familiarly called a state of nature is but the dream, I think of the visionary theorist." It was
Tucker's contention that man had never existed as an isolated, self-sufficient individual and that "the natural state of Man has ever been and ever must be a state of society." He drew examples from everyday life and common experience to substantiate his position. Tucker referred to the gleam of recognition in the eyes of two infants upon their first meeting as an illustration. He further contended that the removal of a man from the company of his fellow men to be "one of the greatest punishments that can be inflicted." To substantiate his point Tucker cited instances of prisoners placed in solitary confinement going insane.

Tucker asserted that all men possessed an innate sense of right and wrong that enabled them to perceive the laws of nature, and furthermore that all men possessed the rational ability to understand them. They were, therefore, responsible for their actions as they decided whether or not to comply with or violate the laws of nature. He stated "the first law of nature" to be "obedience to the dictates of this moral sense of right and wrong." Tucker called upon his students to make reason their guide and to "cultivate, inform and enlighten their reason by patient and deliberate thinking . . . giving the mind the habit of reflection upon the subject of duty and weighing things maturely before it chooses and determines." Tucker contended that man was endowed with the rational faculties to determine his own course of action
in the same manner that he was given eyes to see and ears to hear, and that it was possible to increase and sharpen these rational powers through deliberate and conscientious effort.

Tucker considered the fundamental principles underlying natural law to be the principles of self-preservation, parental love, sexual attraction, the desire for property, and the propensity to associate with others of the species. In his lectures he examined each principle individually and discussed the natural rights it implied and the correlative duties and obligations it imposed. In his discussion of the law of self-preservation Tucker stated that "it is my right to use all the means in my power to effect this object without encroaching upon the rights of others . . . the only limit we can impose is the necessity of the case." Tucker further asserted that the law of self-preservation licensed the use of force in self-defense. Should the result be the taking of another's life, it would be recognized by the law as justified homicide.

In his discussion of the natural right to possess property, Tucker based the specific municipal laws governing the transfer of property and mortgages upon this right. He argued that the rights of disposition were corollary to the rights of ownership and that they placed upon the owner the powers of alienation and disposition. The complex body of
probate law that had emerged over the centuries to expedite transactions of land and personal property exemplified the nature of all municipal law to facilitate and regulate man's dealings with his fellow man in society. Tucker defined positive law as "the body of fixed and settled rules which serve as our guide and which absolve us from the necessity and restrict us from the right of consulting our own views in deciding upon our course of conduct."¹²²

As an instructor of youth, Henry St. George Tucker was concerned with the personal growth and moral development of his students, as well as their acquisition of knowledge and understanding of the law and techniques of practice. He sought to instill a respect for the virtues of honesty, moderation, and diligence. He once described the moral climate of his Winchester law school to his nephew, St. George Coalter, "If young men will gamble and be reprobate in private no institution can prevent them, but they can not be reprobate in private or riotous here without incurring consequences that no young gentleman of feeling would hazard."¹²¹ Later, at the University of Virginia, Tucker sought to institutionalize integrity with his Honor Code. Tucker, however, was no martinet. His lectures and correspondence reveal him to have been a compassionate man with a keen under-
standing of human nature. It must be remembered, too, that the social regulations he proposed at the University of Virginia were only modifications of existing requirements.

According to the accounts of his contemporaries, Tucker set a personal example of morally upright behavior worthy of emulation. The most eloquent tribute was from his brother, Nathaniel Beverley Tucker: "The elements of goodness were in him combined and harmonized in a certain majestic plainness of sense and honor, which . . . commanded the respect, confidence and affection of all."\(^{123}\)

Evaluations of Tucker as an instructor also are to be found in the writings of his students. Judge William Robertson of the Virginia Supreme Court of Appeals wrote:

Judge Henry St. George Tucker . . . possessed the rare faculty of explaining in clear language the most abstruse subjects and the affectionate respect with which he was regarded by each member of his class caused the relation between teacher and pupil to be as productive of good as it was possible to make it.\(^{124}\)

Another pupil of Tucker's who was also elected to the Virginia Supreme Court of Appeals, Judge E. C. Burks, praised his former mentor as being:

a model law teacher, exhibiting in the professional chair the qualities that so distinguished him on the bench. His lectures on every subject in the wide domain of jurisprudence were most attractive. His explanations were always lucid; his illustrations apt and impressive; and his reasoning convincing.\(^{125}\)

Hence, Henry St. George Tucker's contributions as a legal educator were in many instances in terms of personal
influence. Of greater significance, however, were the innovations he effected in early nineteenth-century American legal education. Tucker was among those that determined the course American legal education was to take in the nineteenth century by incorporating the practice-oriented aspects of apprenticeship training and private law schools in a university law curriculum. He thereby checked any possible development of a strictly academic pursuit of knowledge of the law as a means of preparation for the practice of law.
APPENDIX I

The following is a list of the members of Henry St. George Tucker's law class in Winchester in 1827-1828.

Chandler
Nesbitt

x Huston
x Goggin

Henry A. Wise
x William Tinsley
x Field
x Alexander
x Gerald Wagner
Davidson
Servis

x Collins Lee
Watkins, S.

x Wiley Mason
x Francis Smith
x John Carter
x McDonald
x John Wilson

x Fry
x Robert Carter
x William Daniel
x John Pierce
x George Porter
x James Ligon

William Johnson
George Southall

x Washington Singleton

Georgia
Georgia

Rockingham County, Virginia
Rockingham County, Virginia
Northampton County, Virginia
Hanover County, Virginia
Culpepper County, Virginia
Rockbridge County, Virginia
Jefferson County, Virginia
District of Columbia
District of Columbia
Prince Edward County, Virginia
Fredericksburg, Virginia
Fauquier County, Virginia
Richmond, Virginia
Western Virginia
Portsmouth, Virginia
Jefferson County, Virginia
Albemarle County, Virginia
Fairfax County, Virginia
Leesburg, Virginia
Powhatan County, Virginia
Prince Edward County, Virginia
Frederick County, Maryland
Williamsburg, Virginia
Winchester, Virginia

Those members having a cross attached to their names obtained a license to practice in the spring or summer of 1828. William Johnson and George Southall obtained licenses to practice law in the spring of 1827.

The following is a list of those members of the 1827-1828 class who attended the Moot Court conducted during the months of June and July, 1827.

William Tinsley
Gerald Wagner
Collins Lee

Francis Smith
John Carter
Robert Carter

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APPENDIX II

The following is a list of the members of Henry St. George Tucker's law class in Winchester in 1828-1829.

- Gibbs
- Maverick
- Thompson
- Gloves
- Magruder, Benjamin
- Campbell
- Henderson
- Lenis
- Edmund Hunter
- William Syme
- Bronaugh
- Lewis Niklin
- Flavins Braden
- William Jones
- Samuel Beale
- Davis
- Mason Barnes
- Henry Street
- Selden
- Boner
- Tazenell Taylor
- Claiborne
- Josiah Matthews
- John Carter
- Francis Smith
- John Wilson
- John Brener
- Samuel Beale
- Wilson Cary
- Alex Sterrett
- George Warner
- Sarris Douglas
- George Southall
- Phillip Kennedy
- John Brockenbrough
- Uriah Parke
- Washington Singleton

- South Carolina
- South Carolina
- South Carolina
- Boston, Massachusetts
- Fluvanna County, Virginia
- Western Virginia
- Western Virginia
- Western Virginia
- Martinsburg, Virginia
- Hanover County, Virginia
- Romney Stampshire, Virginia
- Culpepper County, Virginia
- Loupond County, Virginia
- Louisiana
- Rockville, Maryland
- Frederick County, Maryland
- Frederick County, Maryland
- Hanover County, Virginia
- Powhatan County, Virginia
- Fauquier County, Virginia
- Norfolk, Virginia
- Brunswick County, Virginia
- Georgia
- Richmond, Virginia
- Fauquier County, Virginia
- Portsmouth, Virginia
- Montgomery County, Maryland
- Rockville, Maryland
- Fluvanna County, Virginia
- Baltimore, Maryland
- Baltimore, Maryland
- Loupond County, Virginia
- Williamsburg, Virginia
- Jefferson County, Virginia
- Richmond, Virginia
- Frederick County, Virginia
- Winchester, Virginia

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Those members having a cross attached to their names obtained a license to practice in the spring or summer of 1829.

The following is a list of those members of the 1828-1829 class who attended the Moot Court conducted during the months of June and July, 1828.

William Jones  
John Carter  
Francis Smith  
John Wilson  
Samuel Beale  
Wilson Cary  
George Southall  
Phillip Kennedy  
John Brockenbrough  
Washington Singleton

Source: Class Lists of the Winchester Law School, Tucker-Coleman Collection, Swem Library, College of William and Mary, Williamsburg, Virginia.
FOOTNOTES

1 Alfred Reed, Training for the Public Profession of Law, (Boston: Merrymount Press, 1921), p. 117.

2 Henry St. George Tucker to St. George Tucker, April 1, 1799, Tucker-Coleman Collection, Swem Library, College of William and Mary, Williamsburg, Virginia, hereafter cited as T-C Coll.

3 Henry St. George Tucker to St. George Tucker, September 1, 1799, T-C Coll.

4 Ibid.


10 Henry St. George Tucker to St. George Tucker, December 22, 1818, T-C Coll.


14 Henry St. George Tucker to St. George Tucker, May 19, 1824, T-C Coll.


17 Henry St. George Tucker to St. George Tucker, March 2, 1820, T-C Coll.

18 Henry St. George Tucker to St. George Tucker, September 26, 1823, T-C Coll.

19 Ibid.

20 Henry St. George Tucker to St. George Tucker, April 24, 1824, T-C Coll.

21 Henry St. George Tucker to St. George Tucker, July 1, 1824, T-C Coll.

22 Henry St. George Tucker to St. George Tucker, February 23, 1824, T-C Coll.


24 Henry St. George Tucker to St. George Tucker, February 23, 1824, T-C Coll.

25 Henry St. George Tucker to St. George Tucker, November 5, 1826, T-C Coll.

26 Henry St. George Tucker, Class Lists of Winchester Law School, 1827-1828 and 1828-1829, T-C Coll.


28 Henry St. George Tucker to St. George Tucker, December 19, 1824, T-C Coll.


31 Henry St. George Tucker to St. George Tucker, December 19, 1824, T-C Coll.

32 Henry St. George Tucker to St. George Tucker, March 21, 1825, T-C Coll.


35 Alfred Reed, Training for the Public Profession of Law, p. 122.


38 Joseph Cabell to Thomas Jefferson, February 15, 1819, Cabell Papers, Alderman Library, University of Virginia, Charlottesville, Virginia.

39 James Madison to Thomas Jefferson, February 17, 1820, or April 30, 1825, Jefferson Papers, Alderman Library, University of Virginia, Charlottesville, Virginia.

40 Henry St. George Tucker to St. George Tucker, December 19, 1824, T-C Coll.

41 Ibid.

42 Joseph Cabell to Thomas Jefferson, February 3, 1825, Early History of the University of Virginia, p. 338.

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Bruce, A History of the University of Virginia, Volume II, p. 132.

Henry St. George Tucker, Address to the Students of the University of Virginia on the Eleventh Day of the Session, 1842, T-C Coll.

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Henry St. George Tucker, Introductory Lecture, T-C Coll., p. 11.


75 Bauer, Commentaries on the Constitution, p. 280-283.

76 Bauer, Commentaries on the Constitution, p. 254.


79 Joseph Story, Commentaries on the Constitution, p. 213.

80 Ibid.


83 Henry St. George Tucker, Lectures on Constitutional Law, p. 11.

84 Ibid.

85 Henry St. George Tucker, Lectures on Constitutional Law, p. 46-47.

86 Henry St. George Tucker, Lectures on Constitutional Law, p. 53.

87 Henry St. George Tucker, Lectures on Constitutional Law, p. 91.


90 Joseph Story, Commentaries on the Constitution, p. 123.


93 Ibid.


95 Ibid.

96 Ibid.

97 Ibid.


102 Ibid.


111 Anna Haddow, *Political Science in American Colleges and Universities*, p. 83.


123 Henry St. George Tucker to St. George Coalter, May 10, 1828, T-C Coll.


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