

The Political Philosophy and Congressional Career
of John Randolph Tucker, 1823-1897.

Honors Thesis
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John Randolph Tucker was born on December 24, 1823, at Winchester, Virginia, to Anne Evelina and Henry St. George Tucker. During his lifetime, which spanned seventy four years, John Randolph became a prominent attorney, teacher and Congressman from Virginia,¹ following in the footsteps of his forbears.

Both John Randolph Tucker's grandfather and father had illustrious careers as public servants. Both men earned law degrees from William and Mary College and continued their careers in law as judges. St. George Tucker and Henry St. George Tucker served in the federal government and authored interpretations on law. The following paragraphs examine more closely the careers of both men.

John Randolph's grandfather, St. George Tucker, was born in Bermuda in 1752 and came to William and Mary College for an education in 1770. He graduated from William and Mary with a degree in law and later returned to his alma mater as a professor of law. St. George joined the patriot army and was present at the surrender of Cornwallis. In 1788, he was appointed Judge of the General Court in Virginia and in 1803 became a member of the Court of Appeals. Another honor was bestowed upon him when President James Madison appointed St. George a Judge of the U. S. District Court in 1813. While a member of the Court of Appeals, St. George published a five volume treatise on Blackstone, which contained in the appendix to the first volume, the first known discourse on the content and interpretation of the Federal Constitution. He also penned a letter to the Virginia General Assembly which proposed the gradual abolition of slavery. St. George received the LL.D. degree from William and Mary College in 1790. During the presidency of Thomas

Jefferson, St. George was appointed Treasurer of the United States and was a member of the Annapolis Convention which called for a Federal Convention in 1787. Following an illustrious career as a lawyer and statesman, St. George died in Nelson County, Virginia, in 1827.²

Henry St. George Tucker, father of John Randolph, was born to St. George and Frances Bland Tucker on December 29, 1780, at Matoax, Virginia. Henry St. George received both his undergraduate and law degrees from William and Mary College. In 1802, he settled in Winchester, Virginia, to practice law. On September 23, 1806, he married Miss Anne Evelina Hunter.³

Henry St. George began his political career in the Virginia House of Delegates and Senate. From 1815 to 1819, he served the United States House of Representatives. In 1824, Henry St. George was appointed to the judgeship of the Superior Court of Chancery for Winchester and Clarksburg, Virginia. Seven years later, he became President of the Virginia Court of Appeals. While residing in Winchester, Tucker founded a law school which had an enrollment of fifty students. In 1841, he accepted a position on the law faculty at the University of Virginia where he served as chairman of the faculty until his resignation in 1845. President Jackson had offered him the office of Attorney General of the United States, but Tucker preferred to resume his presidency of the Virginia Court of Appeals. Here, he furthered his reputation as an astute attorney by writing several volumes of commentaries on Blackstone and textbooks on National Law. He received the LL.D. degree from William and Mary, as had his father. Henry St. George died in Winchester, Virginia, on August 29, 1848.⁴

John Randolph Tucker was one of thirteen children born to Henry St. George and Anne Evelina Hunter Tucker. John Randolph was born on Christmas eve in 1823. When his father was elected to the Court of Appeals in 1831, the Tucker family moved to Richmond, where John Randolph enrolled in the Richmond Academy.⁵ At the age of fifteen, he entered the University of Virginia. John Randolph graduated with a degree in mathematics in 1840 and four years later, he received a law degree from the same university. He began practicing law in Richmond and in 1846, John Randolph made his first appearance at the bar of the Court of Appeals in the Hunter v. Waite case which involved the validity of voluntary settlements.⁶

When Henry St. George became ill and was forced to relinquish his law professorship in order to return to Winchester, the loyal son, John Randolph, accompanied his father back to the place of his birth. In Winchester, John Randolph formed a partnership in a law office with Robert Y. Conrad.⁷

Because of his success at the bar and great oratorical powers, John Randolph began to receive political notice.⁸ He began his political career as an elector on the Democratic ticket for the presidential elections of 1852 and 1856. John Randolph campaigned ardently for his friend, Henry A. Wise, in the 1855 Virginia gubernatorial election. Wise won the election and at the same time, with the help of John Randolph, dealt a final blow to the Know-Nothing Party in Virginia and the United States.⁹

At age twenty-five, John Randolph married Miss Laura Holmes Powell, daughter of Colonel Humphrey B. Powell of Loudoun County, Virginia, on October 5, 1848. They had seven children. Two of the children died

before their father and a son, Powell, dying in infancy, and Evelina Hunter, a daughter, dying shortly after her marriage to Wilmer Shields. The remaining children were the future Mrs. Anne Holmes McGuire, Mrs. Virginia Brooke Carmichael, Mrs. Gertrude Powell Logan, Mrs. Laura Randolph Pendleton and Harry St. George Tucker.

Harry St. George was the most famous of all the children. He succeeded his father as United States Congressman from the newly formed tenth district. Harry St. George was the author of the Federal Election bill which returned to the southern states the right to manage their own congressional and presidential elections. This law also provided for the direct election of Senators.¹⁰

John Randolph was appointed Attorney General of Virginia to fill an unexpired term in 1857, and he was re-elected to that position again in 1859 and 1863. As Attorney General of Virginia John Randolph moved back to Richmond from Winchester. It was in Richmond that he witnessed the coming of secession.¹¹

As a State Rights Democrat, John Randolph defended the states' right to secede on the basis that the Constitution was a voluntary compact entered into by several sovereign powers and that those powers could withdraw from the contract at any time they believed it to be in their best interests. He urged the states of the South to act promptly and in unity.¹²

Following the War Between the States, John Randolph moved to Middleburg in Loudoun County, Virginia, and resumed his law practice with B. P. Noland.¹³ He served with Charles O'Conner as counsel in the defense of Jefferson Davis, President of the Confederacy.¹⁴ Davis was indicted for

treason but the case never came to trial because Chief Justice S. P. Chase doubted the constitutionality of such a trial.¹⁵ In 1869, John Randolph was appointed as a chief counsel to the Baltimore and Ohio Railroad by its president, John W. Garrett.¹⁶

In 1870, the trustees of Washington College were able to lure John Randolph away from his law practice in Baltimore in order to fill the position of professor of Equity and Public Law at the Lexington Law School. As well as teaching classes at Washington College, Tucker began a private law practice in Lexington with his faculty associate, Judge John W. Brockenbrough.¹⁷

However, soon after Tucker became associated with the law school, Washington College experienced financial difficulties resulting from the Panic of 1873. As a result the enrollment in the law school declined to the point where only one professor was needed. The trustees of the college were faced with the decision of keeping on the faculty, either John Randolph or Judge Brockenbrough. Determined to keep Tucker on at Washington College, the trustees asked for the resignation of Judge Brockenbrough. So on June 26, 1873, Brockenbrough, founder of the law school at Washington College resigned.¹⁸

"The Lexington Virginia Gazette hailing Tucker's election to the faculty, described him as one who has a national reputation for attic wit, irrepressible humor, thrilling eloquence, high legal attainments, unspotted private character, and wide personal popularity."¹⁹ With the approval of the trustees, Tucker opened new law offices in Lexington and Staunton. Meantime his political interests led him to work closely with the conservative Democratic Party of Virginia. It was stated in

a paper at the time that no other law school in the country taught the doctrine of state's rights so well or with more fervor than John Randolph did at Washington College.

Tucker's career at Washington College was interrupted for a twelve year period, beginning in 1875, when he was elected to the United States Congress from the sixth district in a Lynchburg Convention. He was re-elected to five more consecutive terms, serving from 1875 to 1887. These were perhaps the most illustrious years of his life. Upon entering Congress, Tucker was appointed to the House Ways and Means Committee, here he served eight years. During his last four years in Congress, in the forty-eighth and forty-ninth sessions, Tucker served as the chairman of the Judiciary Committee. He was considered to be the leader of the Southern delegation and often led this bloc of states in voting.¹⁹

Tucker made his first speech in Congress in January 1876, in opposition to a proposed \$1,500,000 appropriation for the Centennial Exposition in Philadelphia.²⁰ Tucker further enhanced his reputation as an orator with speeches on the Tariff, the Electoral Commission bill, the Constitutional Doctrine as to the Count on the Electoral Vote, the Hawaiian Treaty of 1876, the Federal Election bill in 1879 and Chinese immigration in 1883.²¹ Among his other Congressional achievements were his co-authorship of the anti-polygamy law, his aid in helping to defeat the Blair Educational bill, and his representing the Democratic Party on the electoral commission which decided the disputed Presidential election of 1876.

In 1889, the board of trustees at Washington and Lee University asked Tucker to return to Lexington in order to assume the position of

Professor of Equity, Commercial, Constitutional and International Law. Tucker accepted readily. In an interview with the Baltimore Sun, he stated "I come back...to this University after years of separation, and I have come to stay. I propose to devote the residue of my life to teaching young men who assemble here, the truth of our Constitutional system, which my experience in public affairs shows to be essential for the protection of our institutional liberties."²² The trustees believed that with the addition of Tucker to the law faculty, the law school at Washington and Lee could successfully compete with the University of Virginia for law students.

Professors Tucker and Charles A. Graves, the latter a former law student at Washington College, introduced reforms in the law school with the hope of increasing the enrollment and standards. Enrollment was up noticeably following Tucker's appointment and the expansion of the law library. During his later years at Washington and Lee, Tucker received numerous honors including an honorary LL.D. degree from Harvard and in 1893 his election as president of the American Bar Association. In this same year, the trustees conferred the title of Dean on John Randolph.²³ Later they would name the law school building for him.

Tucker was a devout Presbyterian throughout his life. While in Lexington, he taught a Presbyterian Sunday school class every week. His favorite topics for discussion were the arguments in favor of Christianity and the lessons of the four gospels.²⁴

On November 26, 1896, Tucker became ill with influenza. This illness was compounded by an attack of pleurisy. Tucker rallied temporarily,

but at the end of January 1897, he was failing. On February 13, 1897, John Randolph Tucker was dead. Memorial services were conducted at the Presbyterian church in Lexington with the burial in Winchester, Virginia. Officiating at the burial was Reverend J. R. Graham and one of John Randolph's nephews, Reverend Beverly Tucker, offered the closing prayer which in part went "...So lived and died the greatest Virginian of the closing nineteenth century. Living and dead, he was and is our pride, worthy a place by the side of Washington and Lee."²⁶

In the succeeding chapter the major constitutional concepts which influenced the political philosophy of John Randolph Tucker will be discussed. His application of these principles to his political career will be discussed in the third and fourth chapters of this paper.

Footnotes

- ¹Dumas Malone, ed., Dictionary of American Biography, Vol. 19, 34.
- ²James A. Quarles, "Biographical Sketch," The Southern Collegian, February, 1897, 158.
- ³Ibid., 159.
- ⁴Ibid.
- ⁵Ibid., 160.
- ⁶John W. Davis, "John Randolph Tucker, The Man and His Work," 2.
- ⁷Ibid., 3.
- ⁸Ibid.
- ⁹Quarles, 160.
- ¹⁰Ibid., 166-167.
- ¹¹Ibid., 160.
- ¹²Ibid., 161.
- ¹³Davis, 4.
- ¹⁴Ibid.
- ¹⁵New York Sun, February 24, 1897, 2.
- ¹⁶Davis, 4.
- ¹⁷Ollinger Crenshaw, General Lee's College, 332.
- ¹⁸Ibid., 332-333.
- ¹⁹Ibid., 334-335.
- ²⁰Davis, 7.
- ²¹Quarles, 162.
- ²²Crenshaw, 339.
- ²³Ibid., 340.
- ²⁴Quarles, 168-169.
- ²⁵Ibid., 176.
- ²⁶Ibid., 178-179.

The Political Philosophy of John Randolph Tucker

Throughout his career as a professor and politician, Tucker wanted to publish a commentary on the Constitution. He believed that the upholding of the principles set forth in the Constitution was necessary to preserve the stability of the Union and prosperity of the people and that a rejection or deviation from these principles would lead to a disintegration of the United States by the tyrannical forces of despotism. Because of extenuating circumstances, Tucker was unable to begin work on his commentary until 1895. His son, Henry St. George Tucker, had the book published posthumously without any alterations of the original text.²⁷

Undoubtedly John Randolph Tucker received inspiration for his doctrine of state's rights from his grandfather's Commentaries on Blackstone. John Randolph Tucker was an adherent to the state's rights school of constitutional theory. He viewed the Constitution as a limited charter of government which "created a federal agency of carefully prescribed" powers. Tucker thought it necessary to keep the powers of the state and federal governments at manageable levels. However, the federal government had the greatest potential for corruption because of unscrupulous politicians who would attempt to extend the powers of the federal government past those explicitly stated in the Constitution. Tucker asserted that it was the responsibility of the states to serve as watchdogs over the federal government. The states, as authors of the constitutional system, expressed

their desire to curb the powers of the federal government through their inclusion of the expressed powers of the states.²⁸

John Randolph Tucker made a summary of his political creed in a speech to the forty-sixth Congress.

If, Mr. Chairman, I should venture to predict the policy of a triumphant future I would fix its landmarks thus: Let us cling to the Constitution as the tabula in raufragio, as our only hope under God in the breakers and amid the storms which beset us; that Constitution which is a bundle of the institutional liberties of the Anglo-Saxon race secured by new and Republican forms of government.

Let us uphold the Federal authority in all its integrity...and preserve to the governments and the people of the several states all their rights and powers.

Let us strictly and zealously secure to every citizen his individual and personal rights to life, liberty and self-development.

Let us grant to government the minimum of power, to the citizen the maximum of liberty, consistent with the order and safety of society.²⁹

Tucker defines the Body-Politic as "the organ in unity of the many human beings associated by jural bond for the objects of the social state in which is vested all rightful political power over its members for the common good of all."³⁰ Tucker was careful to distinguish between Body-Politic and Government. Body-Politic was the entire body of persons who were politically associated. The force of the Body-Politic which asserted controls over persons and things to preserve order for the common good was Government. The words "vested" and "rightful" are used to qualify the political power of the Body-Politic and illustrate the derivation and limitations of

Sovereignty, the initial political power.³¹

Tucker believed that Society and Government were made to serve man. Society was to be an educator of mankind and Government was established by the Body-Politic, in order to preserve society. Both the power of government and the rights of man were ordained by God, but the power and authority of the government was limited to the conservation of the rights and privileges of the individual.

According to Tucker, man's rights in society were not the result of a social compact. Tucker disagreed with the statement that "all men are born free and equal." The human being is born into a social state, not in isolation, without his consent. The equality between men exists in that each individual has the sole right to the endowments he receives from God.³²

The Body-Politic was legitimate only when it protected the inalienable rights of men. Governments derived their power from the governed and when the government violated the rights of man, the governed had the right to abolish the old and create a new government. The Body-Politic served as a trustee for man to protect his rights.³³

The function of society was to provide the maximum social liberty to all persons. Because of human nature, government was required to restrain the actions of men. Both internal and external force was needed to control men. The internal or moral force was that which the individual imposed on himself as basis for action. The government provided external force to regulate an individual's actions when self-control would not suffice. As mankind progressed in moral intelligence, the individuals were better able to control themselves. If

man fell on the scale of moral intelligence, more external control was needed to regulate the actions of the individual. Tucker believed that man had progressed in moral intelligence, and he concluded that it was best to "give man the maximum of liberty and to government the minimum of power consistent with conservation of social peace and order."³⁴ The Body-Politic was sovereign and gave powers to the government.

"Sovereignty is the essence of power from which flow emanations of powers."³⁵ Sovereignty cannot be granted, divided or distributed whereas governmental powers, emanations of sovereignty, are granted, divided and distributed. Since the source of all power is the people, they are sovereign. It is the sovereign Body-Politic that makes its will manifest through a constitution which creates, defines and limits the functions of government.³⁶

The principle that the Body-Politic is sovereign and serves as the constitution-maker and that the government merely serves as an agent of the Body-Politic with only those powers granted to it by the Body-Politic in the constitution is the basis for American Constitutional Law. Government has no inherent authority, only that which it is granted by the Body-Politic in the constitution. All acts and decisions made by government which are within its constitutional bounds are valid, while those acts which exceed the constitutional bounds of the government are void.³⁷

This Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws

of any state to the contrary notwithstanding. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial offices both of the United States and of the several states, shall be bound by oath or affirmation to support this Constitution.³⁸

The Constitution is supreme over all laws of Congress, treaties and the constitutions and laws of the states.

The supremacy of the Constitution was to be maintained by the judiciary of the states and the United States in that their decisions must be in accordance with the law of the land. Laws which were made by the various states which were not in accordance with the Constitution were declared to be null and void.³⁹

Congress had the power to make all laws which were necessary and proper to carry into effect the powers granted to the United States government by Congress. In order for a law to be constitutional it must be "necessary and proper" in that the legislation must have appropriate means to reach a constitutional end.⁴⁰ Tucker used this clause as argument against a Congressional appropriation for the American Centennial in Philadelphia. This will be discussed in detail in a later chapter.

As a strict constructionist, Tucker often cited the enumerated powers of the three governmental departments in order to defend state's rights. All legislative powers were vested in the Congress of the United States, which consisted of a Senate and a House of Representatives. Some of the enumerated powers of Congress which Tucker used in his defense of state's rights were Congress' powers to regulate commerce with foreign nations, to establish a uniform rule of naturalization, to establish post offices,

to declare war, grant letters of warfare and reprisal and to make all laws which are necessary and proper for carrying out the enumerated powers.⁴¹

The Executive power was vested in a President of the United States. The Chief Executive served as Commander-in-Chief of the army and navy, and had the authority to make treaties, subject to the approval of two-thirds of the Senate, and appoint ambassadors, consuls and judges of the Supreme Court.⁴²

The judicial power of the United States resided with the Supreme Court and all other inferior courts established by Congress. Their power extended to all cases, in law and equity, which arose from the Constitution.⁴³

The tenth amendment to the Constitution of the United States provided that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states respectively, or to the people."⁴⁴ The powers which were prohibited to the states were based on the principle that it would be in the best interests of our nation to reserve and vest those powers exclusively in a common government. Tucker asserted that the limitations of the powers of the various states fell into two categories: absolute and qualified.⁴⁵

The first absolute limitation is found in Article I, Section 10, Clause 1 of the Constitution which states that "No state shall enter into any treaty, alliance or confederation."⁴⁶ Tucker stated that the reason for this limitation lay in the fact that if a state were to make a treaty with a foreign power, the mutual obligations which exist between the states and the Union, would require the Union to defend the provisions of that treaty. In fact, this would give a single state the right to

engage the other states in a general war if the treaty were to be broken. Similarly, no state could grant letters of marque and reprisal for this might also lead to war with foreign powers and the entire body of states would be obligated to help defend the individual state that had initiated the trouble.⁴⁷

No state had the right to coin money. If the various states did possess this right, it would be difficult to establish a value on the mediums of exchange and this would be disastrous for all commercial activities.⁴⁸

No state could grant titles of nobility. Since nobles inherited their political power by virtue of family, such a system would be inconsistent with the republican form of government in the United States where political officials were elected by the people.⁴⁹

In addition to these absolute limitations, there were several qualified limitations on the powers of the states. No state could, without the consent of Congress, establish duties on imports or, exports, other than those which were essential in carrying out inspection laws. The monies which were collected from duties came under direct control of the United States Treasury. Congress did have the power to revise these laws. These qualified powers of the states included the right to lay duties, with the consent of Congress and the right to lay duties to provide for the implementation of inspection laws.⁵⁰

The Constitution further stated that no state was allowed to keep troops or warships in peacetime, without the consent of Congress. This was clearly in the best interests of the nation, so that states would not feel threatened by a more powerful neighboring state. States were not

allowed to enter into compact or agreement with another state or foreign power without the consent of Congress. The reasons for this laid in the fact that an agreement between two states might be in conflict with an agreement between one of the states and the Union.⁵¹

The states hold the majority of powers. The powers held by the state and federal governments are delegated to those bodies by the states, who are the Bodies-Politic, and ultimately from the people, who as sovereigns, have granted the powers to the states giving them the power to vest certain powers in the Federal Government.⁵²

Following the War Between the States, there was much discussion on the right of secession. Basically there were three theories as to a state's right to secede from the Union. The first theory was that the states were subordinate parts of the Union. The states were not parties to the Constitution as a compact, so the supremacy of the Federal government's rights superseded those of the states. The second theory stated that the Constitution was an indissoluble compact. A state could not withdraw from the Union without the consent of all states or through revolution. The third theory, which was held by the secessionists, and John Randolph Tucker, was that the Constitution was a compact in which the states reserved the right to withdraw from the compact, if the terms of the agreement were violated.⁵³

The thirteenth, fourteenth and fifteenth amendments increased the powers of the Federal government while abrogating the powers of the states, but the basic principles and fundamentals of the Constitution have not changed. America is a union of states bound by a Constitution, which serves as a permanent compact among the states.⁵⁴

Tucker's application of these constitutional principles will be explored in the succeeding chapter of this paper on his congressional career. His views on the tariff, congressional appropriations, polygamy and immigration reflect his adherence to a state's rights doctrine.

Footnotes

- ²⁷Tucker, Vol. 1, v-viii.
- ²⁸Robert J. Brugger, Beverly Tucker: Heart Over Head in the Old South, 22-23.
- ²⁹Davis, 10-11.
- ³⁰John Randolph Tucker, Constitution of the United States, Vol. 1, 2.
- ³¹Ibid.
- ³²Ibid., 3-11.
- ³³Ibid., 14-18.
- ³⁴Ibid., 59.
- ³⁵Ibid., 60.
- ³⁶Ibid., 60-66.
- ³⁷Ibid., 66-67.
- ³⁸Constitution of the United States, Article VI, Sections 2-3.
- ³⁹Tucker, 376-377.
- ⁴⁰Ibid., 370-371.
- ⁴¹Constitution of the United States, Article I, Section 8.
- ⁴²Ibid., Article II, Section 2.
- ⁴³Ibid., Article III, Section 2.
- ⁴⁴Ibid., Tenth Amendment.
- ⁴⁵Tucker, Vol. 2, 822.
- ⁴⁶Constitution of the United States, Article I, Section 10.
- ⁴⁷Tucker, Vol. 2, 822-823.
- ⁴⁸Ibid., 823.

⁴⁹Ibid., 841.

⁵⁰Ibid.

⁵¹Ibid., 844-845.

⁵²Ibid., 847.

⁵³Tucker, Vol. 1, 338-339.

⁵⁴Ibid., 348.

Chapter III Congressional Career of John Randolph Tucker (1875-1887)

Because of his success at the bar and powers of oratory, John Randolph Tucker began to receive political notice. He was a member of the Electoral College on the Democratic ticket in 1852 and 1856. Tucker campaigned heavily against the "Know Nothing" ticket in 1855 under the leadership of Henry A. Wise of Virginia.⁵⁵

Much to his surprise, Tucker's scholastic life as a professor at Washington and Lee Law School was interrupted when he was selected as the Democratic nominee for the House of Representatives from the Lynchburg district in 1874. He was easily elected and was subsequently re-elected for five succeeding terms.⁵⁶

Immediately upon entering Congress, Tucker was appointed to the Ways and Means Committee, the senior committee of the House of Representatives. In the 48th and 49th sessions of Congress, Tucker served as chairman of the Judiciary Committee as well as continuing his service on the Ways and Means Committee.⁵⁷

Tucker took his seat in Congress on December 6, 1875, and made his first speech the following month in opposition to a proposed \$1,500,000 appropriation for the Centennial Exposition in Philadelphia. Tucker began his speech with a summary of underlying principles, as he did in many of his subsequent speeches. He asserted that the United States government was one of granted and enumerated powers, not one of original and unlimited powers. Being a strict constitutionalist, Tucker asked his fellow Representatives how the Centennial Appropriation

bill was necessary and proper to carry into effect an expressly granted power of Congress. Tucker refused to vote in favor of the bill because he believed that such a measure was not within the constitutional powers of Congress.

This speech gained for Tucker the respect of his peers and put him at the forefront of the most skilled debaters of the time. A Baltimore newspaper commented about his first speech that even if Tucker never made another speech in Congress, he would be honored forever as a great orator.⁵⁸

As a member of the Ways and Means Committee, Tucker became interested in the tariff. In a historic speech on May 8, 1878, Tucker proclaimed himself to be a free-trader or at most in favor of a tariff for revenue only. In this, Tucker espoused an anti-protectionist point of view. He stated that protection was privilege and criticized the taxing power for the purpose of increasing the revenue beyond what the federal government needed for its operations.

Tucker also attacked the pro-tariff protectionists on the question of equality. He stated that equality before the law was when all men were able to determine their destinies through their own conscious efforts, by using the gifts of God, without being impeded by obstructions of government. Tucker believed that a man who was motivated by self-interest could devise his own methods of success better than any government could for him. He further stated, "Let him alone and the average man will better decide on the best and most profitable employment than could the wisdom of the Congress or parliament of any nation."⁵⁹

Tucker began his speech on the revision of the tariff by asserting that the operations of government had perverted the power of laying taxes to raise revenue into a power which put burdens on the common man to enhance the revenues for the privileged classes. He stated that the authors of the Constitution made the distinction between the power to regulate commerce and the power to lay and collect duties. Therefore, Tucker contended that the power to lay duties on imports should distinctly be a revenue power and that to use this power to regulate commerce in order to enrich a privileged class through bounties extracted from other industries would be a perversion of the revenue power and therefore contrary to the spirit of the Constitution.⁶⁰

Tucker distinguished between revenue tariffs, which he considered appropriate, and protective tariffs which he deemed inappropriate. A revenue tariff was the lowest rate of duty on every article which would produce the required revenue from that article. To impose a higher rate of duty, beyond the maximum revenue point, would be to establish a protective tariff which placed heavy burdens on the people. In accordance with the spirit of the Constitution, Tucker believed that no duty should be laid higher than the maximum revenue point, that under the maximum revenue point, luxury items could be taxed at a higher rate than necessities and that raw materials should be duty-free, unless a tariff were necessary for revenue.

Tucker cites the pig-iron industry and compares the prices of British and Philadelphia pig-iron. Through a series of tables, Tucker showed his colleagues that in the period from 1871 to 1876, as the duty

on pig-iron fell, revenues increased and when the duty was raised, revenues fell. Tucker supported a revision of the tariff on the grounds that by lowering the duties on iron and other articles, importation would increase, thus increasing revenues. He rested his belief on the theory that a lower price would induce consumers to spend more, thus increasing total revenues.⁶¹

Tucker opposed a high tariff because such a protective policy would create a privileged class. Such a system of high duties would prevent the importation of foreign goods into the market place. In effect, this would create a monopoly by businessmen in their respective markets. The result of these policies would be large benefits for industry and large burdens for consumers because of a lack of competition.⁶²

Tucker illustrated the effects of a protective tariff on the consumer. Should the consumer buy a foreign article, the duty from it goes to the government as revenue. In this case, the burden of paying a duty is balanced by the benefits given to the consumer by government. But if by virtue of a high duty, the domestic producer could undersell his foreign competitor. In turn the consumer pays this enhanced price to the manufacturer, not to the government. Thus the privileged classes profit at the expense of the consumer and government. Tucker declared that a protective tariff policy was a "wrongful invasion of private right for the benefit of favored monopolies."⁶³

Tucker also believed that restricting imported goods would hurt international commerce. He maintained that without buying from other countries, we could not expect to sell to foreign countries. If the

United States did not limit trade with foreign countries through taxes on foreign goods, the United States could find larger markets for her exports abroad. Tucker's analysis showed that as tariffs fell exports and imports rose and when the tariff rose, exports and imports fell. When exports and imports fell, the prosperity of the country diminished because a high tariff limited the available markets.⁶⁴

On these grounds, Tucker argued in favor of a revised revenue tariff and a system of free trade. In his conclusion, Tucker stated "Let us render to Caesar the things that be Caesar's, but let tribute to privilege and bounty to favored classes cease forever!"⁶⁵

Tucker was in favor of free trade, thus protecting individuals from government restraints, but he opposed the right of a man to have more than one wife. Tucker addressed the problem of polygamy in the Utah Territory in a speech on March 14, 1882. He began by stating his opposition to polygamy but said that he could not vote for the present bill because sections five and eight of it were unconstitutional. The fifth section of the bill declared that no man could serve on a jury who had lived or was presently living in the practice of bigamy, polygamy or unlawful cohabitation. Tucker asserted that the fact that a man had been guilty of an offense in the past was no reason to exclude him from a jury. Since no law against polygamy or unlawful cohabitation existed prior to July 1, 1862, Tucker believed that this "inquisitorial" proceeding to determine who could serve on a jury violated a man's constitutional rights by declaring him a criminal without

a trial.⁶⁶

The eighth section of the bill prohibited bigamists, polygamists and persons unlawfully cohabitating from voting or holding political office. Tucker stated that this section took away privileges and individual liberties without a trial determining one's guilt. The question of one's right to vote would be determined by a five-man commission. Their decision was absolute and the accused had no right to appeal. Tucker states that this is a violation of the accused's right to due process.

Tucker furthers his constitutional argument against the polygamy bill by stating that it constituted a bill of attainder. In Article I, section 9, clause 3 of the Constitution it is stated that no bills of attainder, or legislative acts which inflict punishment without a judicial trial, shall be passed. The Supreme Court defined punishment to include the deprivation or suspension of political or civil rights. Clearly, denying a man the right to a trial by jury and suspending his right to vote and hold office constitutes a blatant violation of the Constitution. Tucker concluded his speech by stating that he could not consent to eradicating one vice (polygamy) by the inscription of a power which might produce greater evils than the original in the future.⁶⁷

Tucker made another historic speech on polygamy in the House of Representatives on January 12, 1887. He spoke in favor of this bill which would outlaw polygamy and disestablish the Mormon church in the Utah Territory. Unlike the Edmunds bill, introduced in 1882, which

Tucker opposed as being unconstitutional, he favored this one as being in line with the Constitution.

Tucker cited Article IV, section 3, clause 2, of the Constitution, which states that Congress has the power to dispose of and enact all needed rules concerning the territory or other property belonging to the United States, in his defense of the polygamy bill. He stated further that Congress was charged with the duty to organize the people of the Territories into distinct communities and to govern them accordingly until the Territories could enter the Union as equal states with a republican form of government. Tucker based this part of his argument on the necessary and proper clause and recent Supreme Court decisions which supported the right of Congress to govern the Territories.⁶⁸

Tucker accepted the religious freedom of Mormons being able to believe as they saw fit, but he rejected the fact when the Mormon beliefs violated the rights of another man or the power of government and its laws governing society. When religious belief extended to the practice of polygamy, Tucker believed that the government should act to prohibit this practice in order to preserve society. Tucker quoted Biblical passages which supported his belief that monogamy was the only foundation of a decent civilization.⁶⁹

Tucker believed that the foundation of the state was the home and that home should consist of one husband and one wife. He argued that the practice of polygamy served to break down the family unit. Once the family unit, as the germ of society, had been broken down,

Tucker believed that Christian society would cease to exist. He thought it to be the duty of Congress to prepare the Utah Territory for admission to the Union as a state by rooting out all practices which were alien to American institutions.

Tucker proceeded with the argument that the Mormon Church in the Utah Territory overrode the powers and functions of the state. In their constitution for the Utah Territory, the Mormons provided that they should govern the state of Deseret (the Utah Territory) until the United States Congress made provisions for the government of the area. They claimed to be an independent state of Deseret until they were admitted as a free state into the Union. By this act, the Mormon government repudiated the power of Congress to govern her territories. After the organic act had been passed in September 1850, making the independent state of Deseret a territory of the United States, the Mormon government had passed legislation which incorporated the Church of Jesus Christ of Latter Day Saints. In effect, this was a union of church and state, with the church at the head of the state. Tucker stated that this act of the Mormon Church was null and void. It did not have the power to enact such a measure because Congress had assumed control over the Utah Territory prior to its passage.

The proposed bill would disestablish the Mormon Church, thus putting it on an equal basis with all other churches. The acquired properties of the church, in excess of \$50,000, would be disposed of by the judiciary of the United States. The bill would further require a registration oath in which men would promise not to enter into polygamous

relations in the future. This practice was held to be a crime, despite its being an institution of the Mormon society, because it was immoral and debasing to society. If a man did not take the registration oath, he was to be deprived of his right to vote in elections, hold political office or serve on juries.⁷⁰

Concluding his argument, Tucker stated that he wanted the Congress to make the practice of polygamy a constitutional crime, just as treason was, and punished accordingly by the federal courts in order to stamp out the evils of polygamy forever. With that, Tucker urged the passage of the present bill and called for a constitutional amendment to outlaw polygamy in order to protect Christian society.⁷¹

Tucker continued to lambast bills he viewed as unconstitutional with his oratory which aided in the defeat of the Consular and Diplomatic Appropriations Bill of 1876. He began by stating that there was nothing in the Constitution which gave the President and the Senate the power to create the offices of ambassadors, public ministers and judges. The sole power of the executive was to nominate and with the consent of the Senate, appoint ambassadors, public ministers and judges. Tucker argued that until Congress had by a direct or indirect act, such as an act of appropriation, authorized an ambassador, public minister or judge, the President had no right to nominate and appoint such an official. The power to create such offices rested with Congress.

Because the President had appointed an ambassador to England, without such an office being created by law in Congress, Tucker opposed the appropriation of funds to pay his salary until Congress had created the office. Tucker's arguments contributed to the defeat of the Consular

and Diplomatic Appropriations Bill.⁷²

Tucker opposed the Hawaiian Treaty which would have lifted duties on sugar and rice imported from Hawaii, on the grounds that it would usurp the power of Congress to lay and collect duties. He went on to distinguish between two different kinds of treaties: those that are self-operating and those that require legislative action in order for their operation. Tucker argued that duties on Hawaiian rice and sugar had been enacted by Congress, and before a treaty which would lift those duties could come into operation, Congress would have to pass a law lifting those duties. He contended that any treaty which could not be carried into effect without legislation was not a treaty at all until the necessary legislation was passed. Tucker used previous court decisions to support his arguments.⁷³

Tucker believed that the real question raised by the Hawaiian Treaty was whether or not Congress was willing to divest itself of its constitutional right to lay duties for the duration of the treaty, seven years, and possibly for all time. The treaty, according to its own provisions, could not take effect until Congress passed a law to bring it into operation. Tucker believed that Congress should not enact measures which would sanction the treaty because of the resulting loss of duty-laying power to Congress.

He argued against the treaty also because it involved a serious loss of revenue to the United States. Tucker cited statistics which showed that the United States would lose \$738,923 in duties in one year

if the treaty were passed. It was noted that the effect of the treaty with the Hawaiian government would be that other countries with similar, original treaties would be able to export sugar and rice duty-free to the United States. The result would be a flooding of the U. S. market with sugar and rice, thus injuring those interests in the United States. He projected that the total loss in revenue would approach \$1,000,000 annually. Tucker asserted that to compensate for this loss, duties on other articles would have to be enacted and taxes increased for U. S. citizens.⁷⁴

Tucker declared that the effect of this treaty would further damage the sugar refining industries on the Atlantic Coast. By allowing sugar to be imported duty free from Hawaii into California, the California refiner would have a 40 to 60 per cent advantage over his counterpart on the Atlantic seaboard. Tucker countered arguments that the treaty would ultimately lead to the acquisition of Hawaii by the United States by stating that such an acquisition would be fatal. It would be fatal because it would increase the patronage of the U. S. Government. Tucker concluded his argument with the statement, "give no bounties to aliens by the taxation of your own children."⁷⁵ Tucker opposed the Hawaiian treaty in an effort to protect the American sugar industry. Similarly, he opposed placing a tax on oleomargarine, because it would virtually destroy the industry. Both of these efforts illustrate Tucker's preference for free trade and the protection of American industry.

Tucker made two speeches in opposition to the proposed tax on

oleomargarine. His arguments against the Oleomargarine Bill were based on his support of the police powers of the various states.

In the first speech, which Tucker made on May 26, 1886, he entered his protest against the proposed bill. He stated that the bill was not intended for raising revenue at all, but for condemning the oleomargarine industry in favor of butter producers. Tucker believed that Congress would be overstepping its constitutional bounds by interfering in a local interest. Local industries should be regulated by state governments rather than the United States government.⁷⁶

On June 3, 1886, Tucker continued his argument against the Oleomargarine Bill. He cited numerous court cases which upheld the doctrine of state's rights. In one of these, Lane County vs. Oregon, the presiding judge maintained the independent authority of the states by declaring that the charge of interior regulation rested with the states. In the United States vs. Cruikshank, Chief Justice Waite declared that the police power of the states extended to all regulations of the interior affairs and businesses of the people of the state. The United States vs. Dewitt case definitely decided that Congress could not forbid any trade or business or punish any act concerning its operation within a state. These precedents led Tucker to believe that Congress could not forbid the manufacture of or punish the oleomargarine industry through a divestiture law.⁷⁷

Tucker furthered his argument against the tax on oleomargarine by explaining the purpose of the revenue power of Congress. He stated that the taxing power was given to Congress in order to provide an

independent revenue for the maintenance and functioning of government. Tucker showed through a set of tables that the government did not need the revenue which would be generated from a tax on oleomargarine in order to function. The only effect of the added revenue would have been to tempt Congress to spend extravagantly. Tucker stated,

Now the proposition I maintain is this: As Congress has no power given it to regulate or control the police affairs of a state, as it has no power to suppress or punish the manufacture or sale of oleomargarine; as in fact this power is unquestionably reserved to each state, can Congress, unable to assail this reserved power directly, use the tax power confided to it for revenue purposes to suppress and punish the making and sale of oleomargarine when it needs no revenue, or lay the tax so high that it will bring no revenue but only to suppress the product? ⁷⁸

Tucker considered the oleomargarine bill to be a fraudulent evasion of constitutional duty by using false means to attain a prohibited end.

Tucker saw dangerous precedents being set if the bill were passed. First, it aided one business, butter interests, by destroying another. This was clearly in opposition to the free-trade policy which Tucker favored. Secondly, the bill increased the authority of the internal-revenue machinery. Thirdly, it imposed an unequal distribution of the tax burden, by taxing a product which would otherwise be more affordable than butter for the poor. For these reasons, Tucker thought that such a measure would be disastrous to a democratic system of government and free institutions. ⁷⁹

Tucker's desire to protect native Americans from adverse foreign

interests and secure what was best for the American public led him to support the Chinese Immigration bill for some of the very reasons he opposed the Oleomargarine bill. Tucker's arguments were always made with the average American in mind. On March 22, 1882, this led Tucker to voice his support for the Chinese Immigration bill, which would limit Chinese immigration to the United States. He favored the bill on grounds that the proposed treaty dealt with a subject, the regulation of commerce with foreign nations, which was an expressed power of Congress. The power to regulate immigration was included in the power to regulate commerce. This had been clearly defined by the Supreme Court in a number of decisions. Tucker believed that treaty-making power of the President could not divest Congress of an expressly delegated power and that if this bill were not passed, and the treaty was allowed to take effect it would disrupt the balance of power between the branches of Government.⁸⁰

He illustrated the limitations on the treaty-making power of the President with a resolution passed by the House of Representatives. The resolution stated that when a treaty stipulated regulations on expressed powers of Congress that it depended on its execution for laws passed by Congress. It was the constitutional right and duty of the House of Representatives to deliberate on the expediency of carrying such treaties into effect. Tucker also cited the Supreme Court decision which said that a treaty could supersede a prior act of Congress, and an act of Congress could supersede a prior treaty.⁸¹

Tucker held that the Chinese Immigration bill did not violate any

stipulations of the proposed treaty. The first article of the proposed treaty stated "that whenever in the opinion of the government of the United States the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the government of China agrees that the government of the United States may regulate, limit or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be of reasonable duration."⁸²

Tucker believed that the central issue was how long a period of time the U. S. government could limit the entrance of Chinese laborers to the U. S.. He favored a suspension of Chinese immigration for a period of twenty years or until the danger to U. S. interest ceased. It was the constitutional duty of Congress to take care that the rights and interests of American citizens were protected. Tucker presented statistical evidence which showed that thirty percent of the male population of California was Chinese and that other Pacific coast states had a similar number of Chinese in their total population. He thought that such a high percentage of Chinese in the population seriously endangered the interests of Americans and led to a breakdown in society.

Tucker enumerated the differences between American and Asiatic cultures to show the threats made on U. S. civilization. Christian civilization held as a fundamental idea the worship of only one God. The Chinese were polytheists and considered as idolaters and pagans by Christians. Where Christians were monogamists, the Chinese were polygamists. In the United States, the liberty of the citizen was secured

against absolutism in government. In China, the emperor was the high priest of a theocracy, ruling despotically over his people as slaves. Tucker saw these differences as important reasons to limit the entrance of Chinese into the U. S. in order to uphold the ideals and values of a Christian society.⁸³ The passage of this bill established Congress' right to impose restrictions on immigration and limited the ultimate authority of treaties made by the President. Tucker supported this bill in order to secure the maximum of rights and liberties to Americans. He supported the Counting of the Electoral Votes bill to ensure that the majority of the people would be represented when the votes for president were counted, thus protecting the right of the people to choose the president.

On January 23, 1877, Tucker made one of his most brilliant speeches in Congress advocating the passage of a bill which would provide for and regulate the counting of votes for President and Vice-President. In supporting the measure, Tucker attempted to deduce the true interpretation of the Twelfth Amendment to the Constitution from the nature of the Federal system, the obvious meaning of terms employed, the history of their adoption and from the practice of government, defined by precedents.⁸⁴

Tucker proclaimed that the framework of the Constitution provided that while the right of the States were secured by their representatives in Congress, the body itself had self-protecting powers to ensure honesty and efficiency in government. This self-protecting power was essential to make sure that all members of Congress were indeed eligible to hold the office.

The purpose of this bill was to define the roles of the President of the Senate, the Senate and House of Representatives in the opening and counting of the electoral votes for President. Tucker believed that some Federal control over the counting of the electoral ballots was necessary to guard against fraudulent acts by the various states.⁸⁵

Tucker proceeded to state the relative powers of the President of the Senate and the two Houses in the determination of the election of the President and Vice-President. The Constitution provides that the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the ballots and then the votes shall then be counted. Tucker believes that the proponents of the Twelfth Amendment thought the language of this clause to be sufficient in guarding against fraudulent activity by the states in the presidential election.⁸⁶

Tucker then discussed the powers and duties of the two Houses with regard to the presidential election. His first proposition was that the functions of the two Houses were not only ministerial but protective as well. If it were just a matter of counting votes, a court clerk could tally the ballots and declare the winner in the presidential election. Tucker asserts that the members of the Constitutional Convention were aware of the possible abuses of such a system and therefore required both houses of Congress and the President of the Senate to be present for the opening and counting of the electoral votes.⁸⁷

Tucker continued his argument with an analysis of the wording of

the Twelfth Amendment. He believed that the phrase "in the presence of" denoted more than being in the same room. The true meaning of the phrase denoted a supervision and control. Thus according to Tucker, the President of the Senate, under the supervision and control of the Senate and House of Representatives, could open and count the ballots. It was also the duty of the two Houses to determine what should and should not be counted as votes, should some question arise as to the validity of a vote. Then, the two Houses were to count the votes. The Senate and the House of Representatives were to be of equal weight in the arbitration.⁸⁸

Tucker proceeded to illustrate how the Houses were to execute the given powers. Because the clause did not read "in the presence of Congress," it was to be assumed that the two Houses should act separately in their arbitration of presidential elections. For the Senate and House to act as one body would destroy the double guardianship of the co-equal bodies which the Constitution provided for. In such a case, the decisions of the more numerous House of Representatives would overwhelm those of the smaller Senate.⁸⁹ Should a difference in the vote count occur between the two Houses, no vote could be counted unless confirmed by both the Senate and the House of Representatives.

Tucker rejected the idea that the requisition of a concurrence of both Houses in counting the vote would impair the rights of the States. He believed that the right to judge whether or not state laws had been observed and elections conducted without fraud should reside with the Federal government. To allow state officials to serve as final arbitrators

in the counting of electoral votes would put the election of the President at the mercy of those state officials. Such a system would ultimately lead to fraud and corruption, according to Tucker.

The proposed bill would do four things. It would ignore the power of the President of the Senate to count the electoral votes and claim the right of both Houses to count the votes separately. It would also require the concurrence of both Houses to reject a vote and in the case of double returns, the controversy would be settled by a tribunal, whose decision would stand unless overruled by both Houses.⁹⁰

Tucker concluded his speech by arguing that the bill was constitutional. He stated that the bill was really a joint arrangement between the two Houses which was necessary and proper in carrying out the duties of Congress in counting the electoral votes. The results of the commission to decide the Hayes-Tilden election would be subject to the approval of the two Houses of Congress. Tucker believed that it was mandatory that this bill be passed because if a count was not made, there would be no Executive and as a result no Federal Government. Tucker addressed this problem as a result of the Hayes-Tilden election, but he realized its future significance as well.

On January 13, 1886, John Randolph Tucker announced to the voters of the Tenth Congressional district of Virginia that he would not seek re-election to the House of Representatives. He stated that he would devote the remainder of his life to the law profession. Tucker said that it had been his wish to retire earlier but that his interest in the presidential election of 1884 and the State elections in Virginia in

1885 caused him to remain in public life. He stated that since those elections resulted in the triumph of the Democratic party in both the Union and Virginia, he could retire while his party was strong. Next, Tucker thanked the people of Virginia for their expression of trust in the integrity of his purposes in defending the principles of the Constitution.

There was universal praise for Tucker at his retirement from Congress. One newspaper stated of Tucker that no man in public office had left behind a more creditable record. The Staunton Spectator published a statement that Tucker was a man worthy of every honor bestowed upon him and that as a Democrat of the Jeffersonian school he upheld the principles of the Constitution in every manner possible. The article continued by stating that he was a man of convictions and principles and that upon his retirement, Congress would lose a sagacious statesman, an able lawyer and a gentleman.⁹³ The Baltimore Sun stated that his superior legal ability, great oratorical skills and genial social qualities made him a widely respected statesman in both parties.⁹⁴ Yet another article expressed the widely held belief that Tucker had been one of the most bold and able defenders of the reserved powers of the States and had upheld liberty for persons, religions and commerce. It also noted his belief that the Constitution was the supreme law of the land, not the plaything of partisan groups.

55. Davis, 3.
56. Ibid., 5.
57. Ibid., 6.
58. Ibid., 8.
59. Ibid., 10.
60. John Randolph Tucker, Revision of the Tariff Speech,
May 8, 1878, 1-5.
61. Ibid., 5-10.
62. Ibid., 10-14.
63. Ibid., 19.
64. Ibid., 20-28.
65. Ibid., 29-39.
66. John Randolph Tucker, Polygamy Speech, March 14, 1882, 1-3.
67. Ibid., 3-4.
68. John Randolph Tucker, Polygamy Speech, January 12, 1887, 1-4.
69. Ibid., 5.
70. Ibid., 6-11.
71. Ibid., 12.
72. John Randolph Tucker, Consular and Diplomatic Appropriations
Speech, 1876, 45-49.
73. John Randolph Tucker, Hawaiian Treaty Speech, May 8, 1876, 1-2.
74. Ibid., 3-4.
75. Ibid., 6.
76. John Randolph Tucker, Oleomargarine Speech, May 26, 1886, 1-8.
77. John Randolph Tucker, Oleomargarine Speech, June 3, 1886, 10-13.
78. Ibid., 13.

79. Ibid., 16.
80. John Randolph Tucker, Chinese Immigration Speech, March 22, 1882,
1.
81. Ibid., 2-5.
82. Ibid., 5-13.
83. Ibid., 13-16.
84. John Randolph Tucker, Counting the Electoral Votes Speech,
January 23, 1877, 1.
85. Ibid., 3-5.
86. Ibid., 6.
87. Ibid., 7-14.
88. Ibid., 14-15.
89. Ibid., 18.
90. Ibid., 46-48.
91. Ibid., 48-50.
92. Newspaper article, University of North Carolina, Tucker Family
Papers, January 13, 1886.
93. Staunton Spectator, January 21, 1886.
94. "Retirement from Congress," Baltimore Sun, Jan. 14, 1886.

Conclusion

Tucker received widespread acclaim as a lecturer before various christian, political and social organizations. Among his numerous public addresses, one of the most notable was The Southern Church Justified in its Support of the South delivered before the Young Men's Christian Association on May 21, 1863, in Richmond, Virginia. In this address, Tucker presented the grounds for justifying the attitudes which the Southern churches held in supporting the Confederate cause. He began by stating that the union of church and state was fatal to both institutions. However, since both the church and state dealt with the same subjects of influence, the rights and freedoms of individuals, the actions of the state, within its political sphere, affected the progress and success of the churches. Therefore, Tucker stated, social and political changes could produce good or evil results and thus advance or retard the progress of Christianity. On these grounds, Tucker stated that the church could never be indifferent to political actions.⁹⁶

Tucker continued by stating that the church could not ignore the civil rights of its members or be indifferent to their unconstitutional oppression because civil and religious liberty were related. If civil liberties were destroyed, religious liberties would also fall. Therefore, when a power unlawfully attempted to destroy civil liberty, it was the duty of the church to aid in the fight against this usurpation of political authority, so as to protect religious liberty while

defending civil liberty.⁹⁷

Tucker claimed that secession was not the cause of the War Between the States. The actual cause of the war was the violation of certain constitutional rights of the states. When ratifying the Constitution, several states expressly stated that the granted powers could be resumed by the states if those granted powers were used to oppress or injure the states.⁹⁸

Tucker went on to point out the different structures of society in the North and South. The principal labor force of the South was constituted by Africans adapted to the rural, farming needs of the Southern planter. He went on to say that the North was primarily industrial. This diversity caused much antagonism, for the Northern abolitionists did not understand the needs of the Southern economy.

In succeeding paragraphs of the address, Tucker discussed the merits of the slave system. He began with the statement that the African race was incapable of amalgamation with the white race by natural law. The African was, because of original inferiority, not fit to be free. He was only fit to be enslaved, because Africans were brutal savages when given freedom. The system of slavery in the South eliminated the conflict between capital and labor, thus contributing to the political stability of Southern political institutions. Tucker pointed out that the master-slave relationship had been mutually beneficial. The master profited from the slave's labor and the slave was becoming more civilized and Christian through the instruction given him by his master.⁹⁹ Slavery was viewed as a

social necessity by the majority of people in the South.

Northern abolitionists preached that slavery was a sin and that the slaveholder was guilty of heresy. The Southern Christian was in effect, excommunicated from his church for not preaching or accepting abolition. In this way, the Southern church was threatened and its progress retarded. The Southern Christian found that his only recourse was in supporting the views of the secessionists.

Tucker then outlined the secular and religious causes of secession. The Northerners' aims were to overthrow and destroy Southern civilization and to subject the interests of the South to the absolute control of the North. These were the secular causes of secession as viewed by Tucker. The Southerners felt a duty to civilize and christianize barbaric races through a system of guardianship. The abolitionists incited the races to hate and mistrust one another. They planted the seeds of discord in the church, by doing this. Thus threatened, the church was constrained to oppose abolition by all lawful means in order to protect the religious and civil rights of its members, both black and white.¹⁰⁰

Tucker cited examples wherein the North had been able to take hold of all political power in the federal government, thus subjecting an entire region to its whim. The result of this was that the Union had ceased in truth and existed only in form. The North and South, with distinct political ideologies, had become separate nations in theory.¹⁰¹

The Federal Government declared war on the seceding states, abridged the rights of free speech and free press, confiscated property (slaves) without compensation and prohibited the free exercise of religion.

According to Tucker, the Federal Government had violated the principles of the Constitution under which it was created. It incited servile insurrection "to insure domestic tranquility" and made war on fellow Americans "to provide for the common defense." For these reasons, Tucker believed that the Southern church was justified in supporting the Confederate cause.¹⁰² This address clearly demonstrated Tucker's devotion to constitutional and states' rights.

Tucker served as a spokesman for slavery basing many of his arguments on previous work by George Fitzhugh and others. In Cannibals All, Fitzhugh argued that it was impossible for capital and labor to coexist peacefully, except by means of slavery. Fitzhugh stated that the system of slavery enabled the masters to protect the slaves from ordinary labor. In order to accomplish this, enslavement of the weak was necessary for their protection in a competitive society. He also pointed out that slavery served as an admirable educational system by allowing the ignorant slaves to interact with their more intelligent masters on a daily basis.¹⁰³

John Randolph Tucker had a prolific career in law, teaching and politics. He practiced law at Winchester, Virginia, from 1845 to 1857 and served as a judge on various state courts. Tucker also served as attorney-general of Virginia from 1857 to 1865 when he represented the state in important civil and criminal cases. While serving as a professor of law at Washington and Lee University (1870-74; 1889-97), Tucker continued to practice law to supplement his income. He appeared before the federal Supreme Court more often than any other man of this

period. Some of his most notable cases included his defense of the Chicago anarchists before the United States Supreme Court. He stated that he did not defend anarchy, but he did defend individual rights as established by the Constitution. He served as defense counsel in the case against Jefferson Davis which never came to trial and the Florida case before the electoral commission.¹⁰⁴

Upon entering Congress in 1875, Tucker established himself as a leader on the Democratic side of the House of Representatives. Throughout his terms in Congress, Tucker showed himself to be an ardent defender of states' rights and a strict constructionist of the Constitution by opposing measures of centralization of governmental power and "applying the yardstick of constitutionality to every measure before Congress."¹⁰⁵ He favored tariff reform so as not to overfill the coffers of the federal treasury which would lead to waste and corruption. Tucker favored the Chinese exclusion bill in order to protect the best interests and culture of the Pacific states. He opposed polygamy in the Utah Territory and was instrumental in eradicating this social evil. Tucker consistently questioned bills as to their constitutionality and this aided in the defeat of the Consular and Diplomatic Appropriations bill, the Hawaiian treaty bill, and the Oleomargarine bill.

Following his retirement from Congress, Tucker returned to Washington and Lee University where he served as professor of constitutional and international law. In 1893, Tucker was made dean of the law school and from 1892-93, he was president of the American Bar Association. After John Randolph Tucker died in 1897, his son, Henry

St. George Tucker, was chosen as professor of law at Washington and Lee. While a professor, Henry St. George Tucker assumed the filial duty of collecting funds for the construction of a John Randolph Tucker memorial building. Funds for the building were collected from Washington and Lee alumni and friends of J. R. Tucker. Among the notable contributors were Mrs. James A. Garfield, John E. Russell and James C. Carter. The cornerstone of Tucker Hall was laid on June 13, 1899, and the building was ready for occupation by the spring of 1900. This building served as a memorial to one of the most outstanding and beloved professors ever to have taught at Washington and Lee University.¹⁰⁶

When John Randolph Tucker died on February 13, 1897, he was remembered and honored by individuals from all regions of the country. Tucker was hailed by Judge Culbertson of Texas as a great lawyer, orator and scholar. Culbertson remarked that Tucker's knowledge of constitutional law was exact and that he used this knowledge in clear, forceful arguments both for and against bills in Congress. It was further remarked that Tucker was a staunch Democrat who knew the true meaning of democracy. By his death, the Democratic party lost a leader whose purposes had strengthened that party. As a tariff reformer, Tucker was a pioneer in movements toward a moderate tariff. Tucker was unequalled in his knowledge of international law and regarded as man who was imbued with the spirit of Christ in all that he did. His fellow attorneys lauded Tucker as a man of responsibility who fulfilled the requirements of a competent lawyer, Congressman, professor

and member of the Presbyterian church. Hon. William Wirt Henry remarked that Tucker combined humor and wit with superior intellect and statesmanlike qualities in all of his pursuits.¹⁰⁷

The faculty, the law classes and the student body of Washington and Lee University along with the Lexington Bar Association passed resolutions commemorating the career of John Randolph Tucker. The faculty resolution stated its purpose as being to put on record his colleagues' estimate of Tucker as a lawyer, teacher, man and citizen. It (the resolution) stated that as a lawyer Tucker had an acute and discriminating mind and that he was greatly admired by his counterparts. They lauded Tucker as a teacher on his ability to present fundamental principles. The faculty praised Tucker as a devoted Christian, hard worker, a man of strong convictions and an ardent patriot. The law class resolved that Tucker was a master instructor and that through his death, the state had lost a son who had loved her traditions. The church had lost a great Christian and the country, a true statesman and patriot. It was further resolved that the law students would wear crepe and the law school would be draped for a period of thirty days to memorialize and pay tribute to Tucker. The student body praised Tucker as a man of unusual ability, humor and integrity. It was resolved by the Lexington Bar Association that Tucker was a man who held the universal respect and admiration of his brothers of the bar. They praised Tucker as an industrious individual whose defense of constitutional principles was the most notable since the days of Webster and Calhoun.¹⁰⁸

Perhaps the greatest personal tribute paid to John Randolph Tucker was made by his colleague and friend, Dr. James A. Quarles. His tribute, in part, read as follows:

"Our country has lost the interpreter of the Constitution; Virginia, the wise statesman; Washington and Lee University, the professor beloved by his colleagues and revered by the students; Lexington, her distinguished and honored citizen; society, one of its delightful wits and humorists; the law, a pleader and a judge, true to client and to justice; the church, a prophet of righteousness by life and lip, a priest that drew near the mercy-seat and carried the people with him; and all of us, a friend that never wavered, generous to our faults, and appreciative of our virtues."¹⁰⁹

The career of John Randolph Tucker was indeed unparalleled by anyone of his era. His contributions have had lasting effects on Washington and Lee University, the state of Virginia and our nation. As a professor at Washington and Lee, Tucker brought national recognition to the law school with changes in curriculum. Tucker's reputation as one of the foremost constitutional lawyers of the period also brought acclaim to the Washington and Lee law school. As a spokesman for the Southern Democratic party, Tucker was successful in bringing about positive changes in states' rights issues which benefited the Southern states. He was instrumental in bringing about tariff reform, the eradication of polygamy and retaining the powers of Congress over the treaty-making powers of the president. Tucker's real significance lies in that he was a true spokesman for the people and region he represented and fought successfully to retain the maximum of powers for state governments over internal affairs.

⁹⁶John Randolph Tucker, Lecture on The Southern Church Justified in its support of the South in the present War, 1-6.

⁹⁷Ibid., 6-8.

⁹⁸Ibid., 8-10.

⁹⁹Ibid., 10-12.

¹⁰⁰Ibid., 12-16.

¹⁰¹Ibid., 17.

¹⁰²Ibid., 18-29.

¹⁰³George Fitzhugh, Cannibals All, 116-125.

¹⁰⁴Dictionary of American Biography, IX, 34-5.

¹⁰⁵Ibid.

¹⁰⁶Crenshaw, 343.

¹⁰⁷The Southern Collegian, February, 1897, 186-90.

¹⁰⁸Ibid., 191-7.

¹⁰⁹Ibid., 175.

I. Introduction: A Brief Biographical Sketch

- A. 1823-1844
 - 1. Birth and forbears
 - 2. Education
 - a. Richmond Academy
 - b. University of Virginia
- B. 1845-1865
 - 1. Law Practice
 - a. Admission to Virginia State Bar
 - b. Practice in Winchester, Va.
 - 2. Marriage to Laura Powell
 - 3. Attorney General of Virginia
- C. 1866-1887
 - 1. Professor of Law, Washington and Lee University
 - 2. Congressman from Virginia, 1875-1887
- D. 1887-1897
 - 1. Professor of Law & Dean, Washington and Lee University
 - 2. President of American Bar Association (speeches)
 - 3. Death

II. Political Philosophy of John Randolph Tucker

- A. Origins of Government
 - 1. Sovereignty and Body-Politic Defined
 - a. Relations of Man to Society
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 - 2. Government As a Trustee for Man's Rights
- B. Sources of Sovereignty and Power
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IV. Conclusion

- A. Speech on the Southern Church Justified in Supporting the Confederate Cause.
- B. Importance of man, public opinion, estimates.

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