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St. George Tucker and his Influence on American Law (Program)

Institute of Bill of Rights Law at the William & Mary Law School

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ST. GEORGE TUCKER AND HIS INFLUENCE ON AMERICAN LAW

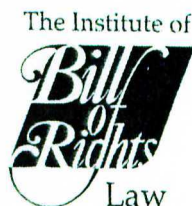


Friday, February 25, 2005

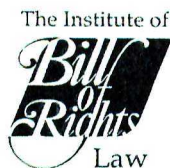
9:00 am to 5:00 pm

Room 239

Institute of Bill of Rights Law
William & Mary School of Law



The 2004-2005 academic year marks the 225th anniversary of the beginning of legal education at the College of William and Mary. In January 1780, William and Mary became the first university in America to train students for the practice of law. As part of this celebration, we will examine the influence on American law of St. George Tucker, the second law professor at William and Mary and one of the most distinguished legal scholars of the late eighteenth and early nineteenth centuries. Tucker's five-volume edition of Blackstone's Commentaries, which Tucker published in 1803 with hundreds of pages of annotations and explanations to account for American departures from the English common law, served as one of the leading legal texts during the first half of the nineteenth century. For more than half a century, aspiring lawyers relied on Tucker's Blackstone to learn the basics of American law. We have assembled a distinguished group of legal historians to examine Tucker's work and its significance for the development of various American legal principles. Papers from this conference will be published in the William and Mary Law Review.



St George Tucker and His Influence on American Law
Friday, February 25, 2005
Schedule

- 9:00 am Introductions
- 9:15 am Michael Curtis, "St. George Tucker and the Legacy of Slavery"
Commenters: Paul Finkelman, Mark McGarvie
- 10:00 am Paul Finkelman, "St. George Tucker and Slavery: The Scholar as Activist and
the Failure of the Activist."
Commenters: Michael Curtis, Paul Carrington
- 10:45 am COFFEE BREAK
- 11:00 am Saul Cornell, "St. George Tucker and the Second Amendment: Original
Understandings and Modern Misunderstandings"
Commenters: Paul Finkelman, David Konig
- 11:45 am Mark McGarvie, "Transforming Society Through Law: St. George Tucker,
Women's Property Rights, and an Active Republican Judiciary"
Commenters: David Konig, William Nelson
- 12:30 pm LUNCH BREAK (Lunch will be served in the law school)
- 1:45 pm Kurt Lash, "Reconstructing Strict Construction: St. George Tucker and
the Textual Basis of Federalism"
Commenters: Saul Cornell, Michael Curtis
- 2:30 pm David Konig, "Understanding States' Rights in the Early Republic: St. George
Tucker on the Theory and Purpose of the Federal Compact."
Commenters: Kurt Lash, William Nelson
- 3:15 pm COFFEE BREAK
- 3:30 pm Craig Klafter, "St. George Tucker: The First Modern American Law
Professor"
Commenters: Paul Carrington, Charles Cullen
- 4:15 pm Charles Hobson, "St. George Tucker's Law Papers"
Commenters: Charles Cullen, Craig Klafter
- 5:00 pm WRAP UP



Conference Participants:

Paul Carrington	Duke Law School
Saul Cornell	Ohio State University
Charles Cullen	President, Newberry Library
Michael Kent Curtis	Wake Forest University School of Law
Davison M. Douglas	William and Mary School of Law
Paul Finkelman	University of Tulsa College of Law
Charles Hobson	Editor, John Marshall Papers; William and Mary School of Law
Craig E. Klafter	President, St. Catherine's College (Oxford) Foundation
David Konig	Washington University
Kurt T. Lash	Loyola Law School, Los Angeles
Mark McGarvie	University of Richmond School of Law
William Nelson	NYU Law School

PAUL CARRINGTON, B. A. 1952, University of Texas; LL.B. 1955, Harvard University, is a native of Dallas. His professional experience includes a brief stint in private practice, another in a military law office, and occasional pro bono services through such organizations as the American Civil Liberties Union and the American Association of University Professors. Since his teaching career began in 1957, he has taught in fifteen American law schools, as well as several in other countries including the University of Tokyo and Albert Ludwigs Universität Freiburg. He has been at Duke since 1978, serving as dean from 1978 to 1988. He has been active in judicial law reform efforts, particularly with regard to the jurisdiction of appellate courts, the rules of civil litigation, and the selection and tenure of judges in state courts. From 1985 to 1992, he served as reporter to the committee of the Judicial Conference of the United States advising the Supreme Court on changes in the Federal Rules of Civil Procedure. He has since 1988 also studied the history of the legal profession in the United States. He teaches civil procedure, international civil litigation, and lawyers in American history. His most recent work is *Stewards of Democracy: Law as a Public Profession* (1999).

SAUL CORNELL specializes in the American Revolution, the Early Republic, American Political Thought and Culture, and Constitutional history. He has studied at the University of Sussex and has a BA from Amherst and an MA and Ph.D. from the University of Pennsylvania. He joined the faculty in 1991 after teaching at College of William and Mary. In 1995 he was the Thomas Jefferson Chair at the University of Leiden in The Netherlands.

Professor Cornell has written *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Institute of Early American History and Culture, University of North Carolina Press, 1999), voted a Choice Outstanding Academic Book for 2001. He has also published *Whose Right to Bear Arms Did the Second Amendment Protect?* Bedford Book's "Historians At Work" series edited by Edward Countryman. He has written articles in the *Journal of American History*, *American Studies*, *William and Mary Quarterly*, *Constitutional Commentary*, and others. Prof. Cornell is currently writing a section of a new textbook, *American Visions: A History of the American Nation*, and a comprehensive history of the rights to bear arms American history, to be published by Oxford University Press.

CHARLES CULLEN is President and Librarian of the Newberry Library in Chicago. A native of Florida, he earned degrees from Sewanee (BA), Florida State University (M.A.), and the University of Virginia (Ph.D.). Concentrating at the doctoral level on the legal history of post-Revolutionary Virginia, his dissertation examined the legal system in that state from 1772 to 1804. Following Ph.D. work, he joined the staff of the Institute of Early American History and Culture in Williamsburg, where he worked on the Papers of John Marshall, becoming co-editor of that project in 1974 and editor in 1976. He joined the history department at Princeton University in 1979, and served first as co-editor, then as editor of the Papers of Thomas Jefferson there. In 1986 he assumed his present duties at the Newberry Library.

Dr. Cullen is presently on the board of the Thomas Jefferson Foundation and is vice-chairman of the board of The Poetry Foundation. Author of *St. George Tucker and Law in Virginia, 1772-1804* (Garland, 1987), he has published or contributed to thirty books and articles, and he has lectured widely on subjects relating to the age of Jefferson, the scholarly use of computers, and the role of humanities research libraries.

MICHAEL KENT CURTIS teaches Constitutional Law, Free Speech, Legal and Constitutional History, and Agency. He is the author of *No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights*, of *Free Speech*, "The People's Darling Privilege: Struggles for Freedom of Expression in American History", and of a number of articles on free speech and the constitutional history of the Fourteenth Amendment and the Bill of Rights.

Prior to joining the faculty of the Wake Forest University School of Law in 1991, Professor Curtis was a partner for 20 years with Smith Patterson, Follin, Curtis, James, Harkavy & Lawrence, following a North Carolina Supreme Court clerkship. In 1985 he received the Frank Porter Graham Award from the North Carolina Civil Liberties Union for achievement in defending and advancing civil liberties in North Carolina. He lives in Greensboro, North Carolina with his wife Deborah Maury, who is also an attorney. He has one son, Matthew Fontaine Curtis-Maury.

St George Tucker and His Influence on American Law

February 25, 2005

Who's Who on the Panels

DAVISON DOUGLAS is an Arthur B. Hanson Professor of Law at the William and Mary School of Law. He received his A.B. from Princeton University, his Ph.D. in History from Yale University, and his J.D. from Yale Law School. He also has an M.A.R. from Yale University Divinity School. Before joining the William and Mary faculty of law in 1990, he was a partner in a Raleigh, North Carolina, law firm and a law clerk for Judge Walter R. Mansfield of the United States Court of Appeals for the Second Circuit. Douglas is the author of *Jim Crow Moves North: The Battle Over Northern School Desegregation, 1865-1954* (forthcoming 2005), *Reading, Writing and Race: The Desegregation of the Charlotte Schools* (1995), and the editor of *A Year at the Supreme Court* (2004) (with Neal Devins) and *Redefining Equality* (1998) (with Neal Devins). He has also co-authored a constitutional law casebook, *Constitutional Law in Context* (2003), with Michael Curtis, Paul Finkelman, and Wilson Parker.

PAUL FINKELMAN is the Chapman Distinguished Professor of Law at the University of Tulsa College of Law. He received his BA in American Studies from Syracuse University (1971) and his M.A. and Ph.D. in U.S. history from Chicago (1972, 1976) and was a fellow in law and humanities at Harvard Law School (1982-83). He is the author or editor of numerous books on the law of slavery including *An Imperfect Union: Slavery, Comity and Federalism* (1981, reprint 2001); *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (2nd ed., 2001); and *Dred Scott v. Sandford: A Brief History* (Bedford, 1995). His most recent books include *Defending Slavery* (Bedford, 2003), *Landmark Decisions of the United States Supreme Court* (co-authored) (CQ Press, 2003); and the co-authored *Library of Congress Desk Reference to the Civil War* (Simon and Schuster, 2002). He is the co-author of *American Legal History: Cases and Materials* (Oxford, 2nd ed. 1995) and *A March of Liberty: A Constitutional History of the United States* (Oxford, 2002). He is the editor of *Religion and American Law: An Encyclopedia* (Routledge, 1999); the *Encyclopedia of the United States in the Nineteenth Century* (3 vols., Scribners, 2001); and the co-editor of the *Macmillan Encyclopedia of World Slavery* (1998). He has written more than one hundred scholarly articles and book chapters. He is the editor of the series *Law, Society, and Politics in the Midwest* with Ohio University Press, and the co-editor of *Studies in the Legal History of the South* at the University of Georgia Press. He has held fellowships from the National Endowment for the Humanities, the American Philosophical Society, the American Bar Foundation, and the Japan Society of the Promotion of Science. He has previously served as chair of the membership committee and the nominating committee of the ASLH. He served as an expert witness in the Alabama Ten Commandments monument case and in the lawsuit over the ownership of Barry Bonds' 73rd home run ball.

CHARLES F. HOBSON is editor of the Papers of John Marshall, a project sponsored by the College of William and Mary and the Omohundro Institute of Early American History and Culture. He has published and lectured extensively in the field of early American legal and constitutional history. He is the author of *The Great Chief Justice: John Marshall and the Rule of Law* (1996).

CRAIG KLAFTER earned a B.A. with General Honors in History and an M.A. in History from the University of Chicago, and a D.Phil. in Modern History from the University of Oxford where he studied under J.R. Pole. He has taught at the University of Manchester, the University of Southampton, and Boston University. From 1994 to 2002, he was also Assistant to the Provost and Assistant to the President of Boston University. He currently serves as President of the St. Catherine's College (Oxford) Foundation.

Klafter has published on legal history and legal practice management. His books include: *Reason Over Precedents: Origins of American Legal Thought* (Westport, CT and London: Greenwood Press, 1993), *Essays on English Law and the American Experience* (College Station, TX: Texas A & M University Press, 1994), and *Legal Practice Management and Quality Standards* (London: Blackstone Press, 1995). In 1992, the University of Texas awarded him the Webb-Smith Essay Prize for his article, "The Americanization of Blackstone's Commentaries." He has also served as an historical consultant for two television series: *Jeeves and Wooster* (Carnival Films, London Weekend Television, 1992) and *The American Revolution* (BBC, 1993).

DAVID THOMAS KONIG received his doctorate in History from Harvard University in 1973. Since that date he has taught at Washington University in St. Louis, where he is Professor of History and Law. He has also taught at the Universities of Rome and Perugia, and at Aoyama Gakuin University in Tokyo. In addition, he was co-director of Colonial Williamsburg's restoration of the Courthouse of 1770, and adviser on the creation of its interpretive program.

He is the author of *Law And Society In Puritan Massachusetts* (1979) and editor/co-author of *Devising Liberty: Preserving And Creating Freedom In The New American Republic* (2000), and of articles on Virginia legal development. He is currently completing a book on the development of due process in colonial Virginia, and beginning a study of Thomas Jefferson's legal thought and practice, *Nature's Advocate: Thomas Jefferson On The Laws Of Nature and Mankind*.

KURT T. LASH, is Professor and W. Joseph Ford Fellow, Loyola Law School, Los Angeles. He holds a B.A. from Whitman College and a J.D. Yale Law School. After law school, Professor Lash clerked for the Honorable Robert R. Beezer of the United States Court of Appeals for the Ninth Circuit. He joined Loyola's faculty in 1993 as Associate Professor and became a full Professor of Law in 1996. Professor Lash has published numerous articles on constitutional history and religious liberty, including works appearing in the *Texas Law Review*, *Northwestern University Law Review*, *George Washington Law Review*, *Fordham Law Review*, *Ohio State Law Journal*, and the *American Journal of Legal History*.

MARK DOUGLAS MCGARVIE, J.D., Ph.D., is Assistant Professor of History and Law at the University of Richmond. He also directs the first year Law Skills Program. Mark specializes in the intellectual and legal history of the early republic. His first book, *Charity, Philanthropy, and Civility in American History*, co-edited with Lawrence J. Friedman, won the Skystone Ryan Research Prize and placed second in the Virginia A. Hodgkinson research competition for 2003. His new book, *One Nation Under Law: America's Early National Struggles to Separate Church and State* was released in late 2004. He is also a contributor to the forthcoming *Cambridge History of Law in America*, edited by Mike Grossberg and Chris Tomlins. Mark completed a post-doctoral Golieb Fellowship in Legal History at NYU School of Law.

WILLIAM NELSON, J.D., LL.B., Ph.D., is the Judge Edward Weinfeld Professor of Law at New York University School of Law. He has been active as a legal historian since the publication of his first history article in the *Annual Survey of American Law* in 1966. Over the intervening years, Professor Nelson has published two prize-winning books, four additional books, and numerous articles in leading law reviews and history journals. Professor Nelson's first love during the past decade has been research for a monograph that focuses in detail on the legal history of twentieth-century New York. He reports that, in doing the research, he has read over half of more than 500 volumes of the *New York Supplement* and thousands of published opinions authored by federal judges in New York. He has also done a statistical analysis of more than 50,000 unpublished cases randomly selected from trial courts around the state.



St. George Tucker

PLAN FOR CONFERRING DEGREES ON THE STUDENTS OF LAW IN THE UNIVERSITY OF WILLIAM AND MARY (CA. 1792)

Undated manuscript in the hand of St. George Tucker, second professor of law (1790-1804). Original in Tucker-Coleman Collection, Earl Gregg Swem Library, College of William and Mary.

Each Candidate for the Degree of Batchellor of Law shall have resided three years at the University, and attended at least two compleat courses of Lectures, or the greater part of three courses, and performed his Exercises regularly during that period.

Previous to his admission to his Degree he shall undergo a private examination by the professors either separately or collectively, and must be well acquainted with History, both ancient and modern; the Constitution and policy of the ancient republics, as well as those of our own days, but above all with that of the united States of America in their federal Capacity and that of Virginia in particular. He shall be well versed in Ethics, the Law of Nations, and the municipal Laws of his country, including such Acts of the British Parliament as have been adopted by our Constitution. He shall be well acquainted with the leading points of practice in the Law, and shall without the Aid of Books, or other assistance, produce some specimen of his Talents in this respect, on a subject proposed *ex tempore* by the Examining professor. Having undergone an examination by such of the professors as shall choose to examine him and being approved of he shall submit to an examination by the persons appointed or to be appointed to examine & admit Attorneys to practice in the County Courts, or by two of the Judges of the Court of Appeals, and if he shall obtain from them a certificate under their hands and seals that they have examined and found him duly qualified to practice Law in all or any of the courts of Law within the Commonwealth, he shall compose a thesis upon some subject analogous to his profession, which shall be examined by the professors, & printed, after which if no moral objection be made against him on the Day of the Commonwealth he shall receive his Degree.

After two years further residence, or four years of non-residence, a Graduate in Law may if he please, and if upon examination he be found duly qualified, take ye Degree of Master of Arts, and after four years residence from the time of taking his first Degree or eight years of non-residence or five years practice in Sup: Court he shall upon examination and being found duly qualified be admitted to the Degree of Doctor of Laws.

A student being so disposed, & found duly qualified, may take a Degree in Arts, at the same time that he takes a Degree in Law.

The Day of Commencement to be fixed so as to enable the Judges of the Court of Appeals, or some of them & the Attorney General & Councilors to be present who are to be requested to examine the candidates.

Judges of the Land, Attorneys who have practiced for seven years at the Bar of the General Court or in the high Court of Chancery & Court of Appeals, may be admitted to the honorary Degree of Doctor of Laws.