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COLONEL TUCKER, THE SCHOLAR

*Saul Litvinoff**

As a scholar, Colonel Tucker belongs in the reduced and exclusive category of those for whom the pursuit of knowledge is worthwhile only as a step in the pursuit of the betterment of man. No ivory tower isolated him from the world. Not only was he a scholar in action, but a gentlemen scholar also. The image of his scholarly *persona* was neither medieval nor modern. It was rather an image of the renaissance. His name does not conjure up the vision of someone who is identified as a scholar because he is eating a frugal meal while immersed in large and old looking books in Spartan surroundings. On the contrary, his name brings to mind the fleeting representation of someone who, like Erasmus, is swaddled in costly and elegant furs against the bitter Rotterdam winter and who, while sipping the finest of wines with assuredness of an infallible expert, has let his mind wander from the pages of an exquisitely bound book into a reflection on the creative accents of human madness.

As a man of the law Colonel Tucker had the boundless ambition that the law of his community should be the very best. As a scholar he delved deeply into the past, took apart the present and even foretold the future in order to show that the best was there, its brilliance only obscured by the opaque sediment of time. To restore that brilliance he conceived a master plan. First, as a consummate craftsman endeavoring to restore a work of classical art, he carefully analyzed the raw material of which the work was made and, for that purpose, with unsurpassed depth, he studied its origin in Roman, French and Spanish quarries.¹ He then endeavored to show that the work to be preserved was truly classical because the artificers who fashioned it lavished upon their creation the virtue to endure the challenge of centuries. He showed, thus, that there was room in the Civil Code of Louisiana for mineral royalties and mineral leases even though the code was enacted long

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1. See Tucker, "Source Books of the Louisiana Law: I Civil Code," 6 Tul. L. Rev. 280 (1932); Tucker, Source Books of the Louisiana Law: II Code of Practice, 7 Tul. L. Rev. 82 (1933); Tucker, Source Books of the Louisiana Law: III Spanish Laws, 8 Tul. L. Rev. 396 (1934); Tucker, Substitution, Fideicommissa and Trusts in Louisiana Law: A Semantical Reappraisal, 24 La. L. Rev. 439 (1964).

before such legal instruments were needed to aid in the creation of wealth.² To his clear and systematic mind it was just a matter of going beyond, but always with and through the civil code. And then he explained in all detail the technical steps required to restore the classical work so that the light of new times will be reflected with the same old majesty.³ For that, he drew the general plan and with merciless veracity he explained how painstaking the effort had to be.⁴ In the words he spoke and wrote that effort required all the knowledge that could be mustered and, to be mustered it would have, first, to be accumulated.⁵ Behind the words he spoke and between the lines he wrote he meant that, besides knowledge, the effort required love, a love comparable to the one he felt for that peculiar object understood by him as a most unique crucible where the wisdom of practical problem-solvers melts together with the factual results of history and the perennial truth of philosophy.⁶

It was done as he said. The effort proved to be as painstaking as he foretold. It still goes on.⁷

True scholars know how to project their subject unto the universe as a manner of showing the altogetherhness of everything.⁸ As a true scholar, Colonel Tucker not only found a place for the law of Louisiana in the world, but was able to bring the world to the law of Louisiana. A token of that is his finding that, in the words of Maine, the Louisiana

2. See Tucker, *An dela du code civil, mais par le code civil*, 34 La. L. Rev. 957 (1974). See also Tucker, *The Code and the Common Law in Louisiana*, 29 Tul. L. Rev. 739 (1955).

3. See Tucker, *The Louisiana State law Institute*, 1 La. L. Rev. 139 (1938); Tucker, *The Role of the Law School in Law Reform*, 17 La. L. Rev. 581 (1957).

4. See Tucker, *The Louisiana State Law Institute*, 1 La. L. Rev. 139, 140 (1938) ("Law revision and law reform are the results of careful preparation, thorough study and adequate discussion. For many years that has not been possible in Louisiana, due to the lack of time and a proper forum where the judge, lawyer and legislator could meet for a scholarly discussion of legal problems and proposed legislation.").

5. See Tucker, *The Role of the Law School in Law Reform*, 17 La. L. Rev. 581, 589 (1957):

Research, which must underlie all law revision and reform, can be undertaken only in the law schools. The horizon of legal research today is international. Scholars of the world are constantly exchanging ideas and the experience and practices of other countries in solving legal problems are of great assistance in the solution of similar questions at home. Comparative law is in the ascendancy, but mostly so in the law schools, although the expansion of American business and influence all over the world is compelling increasing attention from the practicing profession. The facilities for research, from the very nature of things, can be found only in the law schools.

Id. at 589.

6. See Tucker, *Source Books of the Louisiana Law: I Civil Code*, 6 Tul. L. Rev. 280, 289-290 (1932).

7. See *The Twenty-Third Biennial Report of the Louisiana State Law Institute to the Legislature of Louisiana* 10 (1984).

8. Heaton, *A Scholar in Act* - Edwin F. Gay 9 (1952).

Civil Code of 1825 is, "Of all republications of Roman law . . . the clearest, fullest, the most philosophical, and the best adapted to the exigencies of modern society."⁹ Another token of that is the Colonel's finding that the weight of French authorities in Louisiana is not limited to mere citations, but that, in one case at least, Coin-Delisle, Delangle, Giraud, Duranton and Marcade became active participants with their expert opinions.¹⁰ And still another token of that is his finding that, so fascinating is the historical background of the Louisiana legal system that the question was warranted in one case whether the Council of Trent was ever in effect in Louisiana.¹¹ In the recently published memoirs of Rene David, Louisiana's legal wealth is recognized and, in that illustrious writer's emotions, strongly identified with the pleasant memories of his visit to Colonel Tucker.¹²

A scholar's concern with universality does not relieve him, however, of his obsession for detail, even minute. Detail may be important or not, but even when unimportant, command of detail is an indicium of mastery. Of that mastery the Colonel gave a token when he found that the Louisiana Civil Code of 1825 was printed in New Orleans by a certain Joseph Charles de Saint Romes, and that an Act of 1824 provided for an edition of two thousand copies of which eighteen hundred should be bound in parchment, and two hundred in calf.¹³ Nor did it escape the Colonel's fine scholarly eye that, in 1840, a certain Eyma undertook to do a full commentary of the civil code, a worthy ambition that was never fulfilled.¹⁴

I have respected, admired and loved Colonel Tucker. While indulging in the privilege of his company I used to tell him that he reminded me of another scholar of many books who was also an idealist that carried his ideals into action with relentless courage. He reminded me of Don Quixote. With a passion for truth as his spear, the Colonel rode up to the ominous windmill and waged battle. Unlike the knight of the rueful countenance, the Colonel won. That victory is the best tribute to his memory.

9. Maine, *Cambridge Essays* 17 (1856), in 1 Sherman, *Roman Law in the Modern World* 252 (1922), cited in Tucker, *Source Books of the Louisiana Law: I Civil Code*, 6 *Tul. L. Rev.* 280, 290 (1932).

10. *State v. Executors of McDonough*, 8 *La. Ann.* 171 (1853), cited in Tucker, *Source Books of Louisiana Law: IV Constitution, Statutes, Reports and Digests*, 9 *Tul. L. Rev.* 244, 266 (1934).

11. See *Patton v. Cities of Philadelphia & New Orleans*, 1 *La. Ann.* 98 (1846), cited in Tucker, *Source Books of Louisiana Law: III Spanish laws*, 8 *Tul. L. Rev.* 397, 400 (1934) and Tucker, *The Code and the Common Law in Louisiana*, 29 *Tul. L. Rev.* 739, 743 (1955).

12. See R. David, *Les avatars d'un comparatiste* 200 (1983).

13. See Tucker, *Source Books of Louisiana Law: I Civil Code*, 6 *Tul. L. Rev.* 280, 287-292 (1931). See also Act of April 12, 1824, *Louisiana Acts of 1824*, p. 172.

14. See Tucker, *supra* note 13, at 299.

