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## JOHN H. TUCKER, JR., THE JURISCONSULT

A.N. Yiannopoulos\*

A professional class of lawyers arose, for the first time in the legal history of the world, in republican Rome. A member of this class of lawyers was known as a jurisconsult,<sup>1</sup> (*juris consultus*). Originally, the word denoted a person whose advice was sought in legal questions.<sup>2</sup> In the course of time, however, the same words came to define a person who consulted with litigants (*consultere*), offered responses to legal questions (*respondere*), represented the litigants before the court (*agere*), and was, at the same time involved in legal writing (*scribere*).<sup>3</sup> A jurisconsult practiced as a private citizen and held no elected position; however, he enjoyed a prestige far greater than that of any member of the legal profession in modern society on account of the social function that he performed. He did his work, "not as a way of earning a living, but rather as a gentleman's hobby,"<sup>4</sup> and it was this characteristic that gave to the jurisconsult his unusual standing.

John H. Tucker, jr. was born in Arkansas but he received his legal education in Louisiana and practiced his profession in this state from 1920 to his death in 1984. His many contributions to Louisiana law, and especially the civil law, have earned him the title of jurisconsult and honorary degrees from five institutions of higher education, including Washington and Lee University, Louisiana State University, Tulane University, Loyola University, and Centenary College. Among his friends in the Bartolus Society he was known by the title of *Panhypersebastos* (universally most respected one). To law professors summoned to Shreveport for consultations and planning, he was the Pope, and to most people he was simply the Colonel.

Tucker made his first appearance in the Louisiana legal literature with a series of four articles in the Tulane Law Review, published from 1932 to 1935. Their title was "Source Books of Louisiana Law," and

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1. See Max Weber, *Law in Economy and Society*, 217 (Rheinstein ed. 1954); H.J. Wolff, *Roman Law* 96 (1951).

2. See H.J. Wolff, *Roman Law* 95 (1951).

3. See N. Pantazopoulos, *Roman Law* 129 (1974) (in Greek).

4. H.J. Wolff, *Roman Law* 96 (1951).

dealt with the Civil Code,<sup>5</sup> the Code of Practice,<sup>6</sup> Spanish laws,<sup>7</sup> and the Constitution, Statutes, Reports and Digests.<sup>8</sup> These works contain a wealth of historical information concerning the origins and evolution of the Civil Code, the Code of Practice, and other Louisiana legislation, and display a deep love and respect for Louisiana's legal heritage, and, especially, the civilian tradition.

In 1936, the Louisiana legislature adopted Tucker's suggestion<sup>9</sup> and established a committee,<sup>10</sup> of which Tucker was a member, for the republication of the *Projet* of the Louisiana Civil Code of 1825 and of the *Projet* of the Code of Practice of the same year. The work was completed in 1937,<sup>11</sup> and Tucker's Source Books of Louisiana Law were reprinted to form a part of the Louisiana Legal Archives.

While he was engaged in these projects, Tucker initiated a movement at Louisiana State University for the creation of an Institute devoted to legal research and law revision. In his words, the civil law was historically a body of law expounded by jurisconsults, a university made law,<sup>12</sup> and a hope for the preservation and expansion of the Louisiana legal tradition depended on the development of an indigenous legal scholarship. However, these were the years of the great depression and funds were scarce. The creation of the Institute envisioned by the young Tucker was postponed until 1938.<sup>13</sup> In that year, at the dedication of the new Law Building of Louisiana State University, Leche Hall announced the establishment of the Louisiana State Law Institute as a part of the Louisiana State University Law School by action of the

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5. See Source Books of Louisiana Law; Part I—The Civil Code, 6 Tul. L. Rev. 280 (1932).

6. See Source Books of Louisiana Law; Part II—The Code of Practice, 7 Tul. L. Rev. 82 (1932).

7. See Source Books of Louisiana Law; Part III—Spanish Laws, 8 Tul. L. Rev. 396 (1934).

8. See Source Books of Louisiana Law; Part IV—Constitution, Statutes, Reports and Digests, 9 Tul. L. Rev. 244 (1935). The four articles were reprinted with corrections and revisions in 1 Louisiana Legal Archives, *Projet* of the Civil Code of 1825 (1935).

9. See John H. Tucker, Jr., Source Books of Louisiana Law; Part I—The Civil Code, 6 Tul. L. Rev. 280, 287 (1932).

10. See La. Acts 1936, No. 286. The Committee consisted of William H. Byrnes, Jr., John H. Tucker, jr., and Gaston L. Porterie.

11. See 1 La. Legal Archives, *Projet* of the Louisiana Civil Code of 1825 (1937). The republication of the *Projet* was preceded by a foreword authored by the editorial committee. As intended, the availability of the *Projet* triggered research into the sources of Louisiana civil law and proved to be an invaluable tool in the process of code revision. See Yiannopoulos, *Civil Law Property* § 5 (2d ed. 1980).

12. See John H. Tucker, jr., *The Louisiana State Law Institute*, 1 La. L. Rev. 139 (1938). The same point was made in other works. See, *id.*, *The Role of the Law School in Law Reform*, 17 La. L. Rev. 581 (1957); *Tradition and Techniques of Codification in the Modern World: The Louisiana Experience*, 25 La. L. Rev. 698 (1965).

13. See John H. Tucker, jr., *The Louisiana State Law Institute*, 1 La. L. Rev. 139 (1938).

Board of the University. Soon, thereafter, by Act 166 of 1938, the Charter of the Institute received legislative recognition, and Tucker's brain child, that was destined to leave an indelible imprint on the state's legal tradition, commenced its operation.<sup>14</sup>

In his most creative years, John H. Tucker, jr. served as President and then as Chairman of the Louisiana State Law Institute. Under his firm and informed guidance, the Council of the Institute revised the General Statutes and adopted a series of modern codes that were subsequently enacted into law by the legislature with little or no change. The list includes the Criminal Code, the Code of Criminal Procedure, the Code of Civil Procedure, the Trusts Code, and the Mineral Code. He participated actively in discussions and in the formulation of principles and rules. For example, the retention of the Louisiana system of fact pleading in the Code of Civil Procedure is the result of a well-documented study of his in which he did not hesitate to criticize the views of the General Reporter and friend, Henry G. McMahon.<sup>15</sup>

Much of Tucker's scholarship is devoted to law reform and civil code revision. He had no patience for "paroxysmal"<sup>16</sup> legislation and espoused the philosophy of Portalis: "Laws are not pure acts of power; they are acts of wisdom, of justice and reason. The legislator exercises authority less than he fulfills a sacred trust. He ought never to forget that laws are made for men, and not men for laws."<sup>17</sup> In this spirit, he would not hesitate to recommend change where change was needed, but he would not "recommended change just for the sake of change."<sup>18</sup> His purpose was not "to combat the damnable teachings of modernism,"<sup>19</sup> for by modern standards in sister states "Louisiana was modern one hundred and fifty years ago,"<sup>20</sup> but with an open mind adopt "what

14. See La. Acts 1938, No. 166. The first task assigned by the legislature to the Institute was one of John H. Tucker's proposals, the publication of a Compiled Edition of the Civil Codes of Louisiana. This task was completed in 1939. See 3 La. Legal Archives, Compiled Edition of the Civil Codes of Louisiana (1939).

15. See John H. Tucker, jr., Proposal for the Retention of the Louisiana System of Fact Pleading; Expose des Motifs, 13 La. L. Rev. 395 (1953).

16. John H. Tucker, jr., The Role of the Law School in Law Reform, 17 La. L. Rev. 581, 583 (1957).

17. See John H. Tucker, jr., Legislative Procedures in the Adoption of the Code Napoleon 10 (1935).

18. See John H. Tucker, jr., Proposal for the Retention of the Louisiana System of Fact Pleading; Expose des Motifs, 13 La. L. Rev. 395, 437 (1953).

19. *Id.* at 437.

20. *Id.* The complete passage is an indication of Tucker's wit:

An old gentleman in one of the agricultural parishes in Louisiana gave a rural church a deed to some land with this habendum: "To have and to hold so long as this property shall be used to combat the damnable teachings of modernism." This expose has not been written in this spirit, for by modern standards of pleading in our sister states, Louisiana was modern one hundred and fifty years ago.

is best for Louisiana."<sup>21</sup> During the drafting of the Mineral Code, his admonition to the Council of the Institute was to prepare not "a statute that chokes logical and analogical interpretation by detail and definition, but . . . a statement of general principles which can be adaptable to specific instances and expandable to unforeseen circumstances."<sup>22</sup> This typically civilian legislative technique would also be the guiding star in the revision of the Civil Code itself.

Tucker was aware of fears in Louisiana and in France that the times were not propitious for code reform, that the adoption of a new code might render useless a great part of the judicial works that preceded it, and that it is dangerous to tamper with an ancient and honorable tradition. However, he did not share these views, and prepared a blue print for civil code revision.<sup>23</sup> He believed that time-tested principles could, and should be, adapted to new conditions, in the indestructible foundations of the civil law, "its equitable and moral precepts of *honeste vivere, alterum non laedere, and suum quique tribuere*,"<sup>24</sup> and in the ability of Louisiana legal scholars to meet the challenge.

He would entrust the work of revision, primarily, to law professors:

In the preparation process, the work of redaction has been confided nearly always to the jurist—the expert in his field. The research which must underlie all sound law revision and law reform can only be undertaken in the law schools. Research today is a matter of international concern; the legal scholars of the world are constantly exchanging ideas, and the experiences and practices of the country in solving legal problems may be of great value in the solution of similar questions everywhere. Comparative law is the order of the day—it may well have a decisive influence in code reform.<sup>25</sup>

Tucker's scholarship had deep foundations in the classical Roman tradition, in medieval legal literature in France and Spain, in Louisiana

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21. John H. Tucker, jr., Appellate Jurisdiction of the Supreme Court and Courts of Appeal in Louisiana, 19 La. Bar J. 31, 36 (1959).

22. John H. Tucker, jr., Au dela du Code Civil, mais par le Code Civil, 34 La. L. Rev. 957, 974 (1974).

23. See John H. Tucker, jr., Tradition and Techniques of Codification in the Modern World; The Louisiana Experience, 25 La. L. Rev. 698 (1965). See also *id.* The Code and the Common Law in Louisiana, 29 Tul. L. Rev. 739 (1955).

24. John H. Tucker, jr., Tradition and Techniques of Codification in the Modern World; The Louisiana Experience, 25 La. L. Rev. 698, 719 (1965).

25. John H. Tucker, jr., Tradition and Techniques of Codification in the Modern World; The Louisiana Experience, 25 La. L. Rev. 698, 712 (1965). Cf. *id.* at 714; Only the professor in the law school has the detailed, but panoramic and systematic view in a field of law that is indispensable for its codification. Only the Law School has the facilities for the necessary research. Only the Law School can maintain the organized, objective, and critical discussion that is so vital to law reform.

legal history, and in modern civil law and common law. He was at ease with the work of Gaius, the Justinian Digest, Febrero, Curia Philippica, Portalis, Saleilles, and Geny, to name but a few of the works that are mentioned prominently in his writings. His publications were adorned with quotations from, and citations to, a wealth of sources that he had collected with love over the decades to form one of the finest law libraries in the state. His research was thorough and at times original. In *Substitutions, Fideicommissa and Trusts in Louisiana Law: A Semantical Reappraisal*,<sup>26</sup> he undertook an exhaustive historical and comparative research and reached the conclusion that, contrary to Louisiana jurisprudence and commentary, a substitution and a *fideicommissum* under the Civil Code are one and the same. He attributed the erroneous views of "the host of scholars and judges that had adorned the profession"<sup>27</sup> to the nonavailability of sources at critical times in the development of Louisiana jurisprudence.

In his last printed work, the Foreword to the latest edition of the Louisiana Civil Code, he says to his colleagues:

Here is . . . the most important book in your library, the Civil Code of Louisiana. It is your most important book because it ushers you into society as a member of your parent's family and regulates your life until you reach authority. It then prescribes the rules for the establishment of your own family by marriage and having children, and for the disposition of your estate when you die, either by law or by testament subject to law.<sup>28</sup>

Thus spoke John H. Tucker, jr., the Louisiana Jurisconsult.

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26. 24 La. L. Rev. 439 (1964).

27. *Id.* at 442, n. 6.

28. John H. Tucker, Jr., Foreword, Louisiana Civil Code 1984 Edition by A.N. Yiannopoulos.

