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St. George Tucker

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*Encyclopedia of the Supreme Court
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conflicts Americans face today. He reminds all Americans that in today's world, liberty is always on the line.

SEE ALSO *Black, Charles; Bork, Robert; Bush v. Gore*, 531 U.S. 98 (2000); *Constitutional Interpretation*

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Jon M. Van Dyke

TUCKER, ST. GEORGE

1752-1827

St. George Tucker was born in Bermuda on June 29, 1752, into a politically prominent family. He was sent in 1772 to Williamsburg, Virginia, to study at the College of William and Mary and to read law under George Wythe (1726-1806). In September 1778, Tucker married Frances Bland Randolph (1752-1788), a young widow, who had three plantations and three sons, one of whom was John Randolph of Roanoke (1773-1833). St. George and Frances had three children, Henry St. George Tucker (1780-1848), Nathaniel Beverley Tucker (1784-1851), and Anne Frances Bland Tucker (1779-1813), who married John Coalter (1769-1838), a judge on the Virginia Court of Appeals from 1811 to 1831.

Tucker's practice at the bar was successful, and his distinction as a lawyer led to his appointment to the General Court of Virginia on January 4, 1788. On January 6, 1804, he was elevated to the Court of Appeals of Virginia. While sitting on the General Court, Tucker wrote an important opinion in the case of *Kemper v. Hawkins*, 3 Va. (1 Va. Cas.) 20 (1793), in which he held

that an act of the legislature is subject to judicial review as to its constitutionality. While sitting on the Court of Appeals, Tucker recused himself from hearing the case of *Hunter v. Fairfax's Devisee*, 15 Va. (1 Munford) 218 (1810), his eldest son's wife's uncle and his frequent client being David Hunter (1761-1813), the appellant. (This case was reversed in *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. [7 Cranch] 603 [1812].) Tucker resigned from the Virginia Court of Appeals in 1811, and he was appointed to the U.S. District Court for the District of Virginia in 1813. He died on November 10, 1827, at his stepdaughter's home in Nelson County, Virginia.

In his capacity as a federal judge, he sat with Chief Justice John Marshall (1755-1835) in the federal Circuit Court for Virginia. This was a cordial collaboration. Many years before, on November 6, 1800, Tucker began a letter to Marshall as follows: "Our former friendship which on my part, and I flatter myself on yours also, has suffered no diminution from political difference of opinion . . ." (Marshall 1990, vol. 6, p. 4). This friendly relationship lasted until 1825, when Tucker resigned from the court for the reason of ill health.

On March 8, 1790, Tucker was appointed professor of law at the College of William and Mary, and he delivered his first lecture in June. He used the *Commentaries* (1765-1769) of the English jurist William Blackstone (1723-1780) as the basis for his lectures, and in 1803 Tucker published his own edition of this popular treatise. Tucker's edition of Blackstone was greatly augmented by numerous footnotes and appendices on Virginia and federal law. The essays that appeared as appendixes to this book were the first academic commentary on the U.S. Constitution. Some of the topics that Tucker addressed were whether the common law was a part of federal law, federal courts, expatriation, the rights of aliens, freedom of conscience, free speech, and the free press. (The only earlier book on this subject was the *Federalist* [1787-1788], a polemical work, not a scholarly book, by Alexander Hamilton, James Madison, and John Jay.) Tucker became, in fact, one of the most frequently cited commentators on the Constitution in the U.S. Supreme Court from its creation until 1827.

Tucker was cited in the majority opinion of Justice Joseph Story (1779-1845) in *Terrett v. Taylor*, 13 U.S. (9 Cranch) 43 (1815), on the topic of the capacity of a church to own land. Justice Bushrod Washington (1762-1829) cited Tucker in *Buckner v. Finley*, 27 U.S. (2 Peters) 586 (1829), as to the definition of inland bills of exchange. In the dissenting opinion of Justice Levi Woodbury (1789-1851) in *Waring v. Clarke*, 46 U.S. (5 Howard) 441 (1847), Tucker was cited for the proposition that the common law and the admiralty law of England were in force in America. In *Luther v. Borden*, 48 U.S. (7 Howard) 1 (1849) Justice Woodbury relied on

Tucker's edition of Blackstone for the point that only the national government has the power to declare war. In the *Passenger Cases*, 48 U.S. (7 Howard) 283 (1849) Woodbury cited Tucker on the subjects of aliens and federalism. Justice Benjamin Robbins Curtis (1809–1874), dissenting in *Dred Scott v. Sandford*, 60 U.S. (19 Howard) 393 (1857), relied on Tucker on the subject of aliens. He was also cited frequently in arguments of counsel.

St. George Tucker's political and constitutional views were similar to those of Thomas Jefferson (1743–1826). They stood in the middle; they were the moderates between the nationalists, John Marshall and Bushrod Washington, on one side, and the Anti-Federalists, Patrick Henry (1736–1799) and his son-in-law Spencer Roane (1762–1822), on the other side. Tucker understood the need for a national government that was strong enough to negotiate successfully with the European nations. On the other hand, he did not wish to substitute British imperialism with American national imperialism. Tucker believed in decentralized governmental power; therefore, the U.S. Constitution should be interpreted to favor the state governments. His constitutional view was that the people are sovereign; they delegated general governmental power to the states, and the states delegated specific limited governmental powers to the national government.

SEE ALSO *Blackstone, William; Marshall Court; Roane, Spencer; Slavery*

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W. Hamilton Bryson

TURNER V. DEPARTMENT OF EMPLOYMENT SECURITY, 423 U.S. 44 (1975)

Mary Ann Turner was eligible for unemployment insurance benefits under the law of the state of Utah. But Utah law contained an exception for pregnant women.

It stated that they could not collect unemployment insurance benefits for twelve weeks prior to childbirth and six weeks following childbirth. Due to the operation of this rule, Turner was able to collect unemployment insurance benefits only for thirty rather than thirty-six weeks because she was pregnant, under the presumption that she was too incapacitated to work during that period. In fact, Turner worked intermittently as a clerical worker for portions of the eighteen-week period during which she was conclusively presumed to be incapacitated.

Turner challenged this rule as violating both the state and federal constitutions. In an opinion issued in *Turner v. Department of Employment Security*, 531 P.2d 870, 871 (Utah 1975), the Utah Supreme Court concluded that this rule did not violate the Constitution. The Court suggested that Turner should seek recourse from the "Great Creator" rather than a court if she were unhappy with the different treatment of pregnant women. "What she should do is to work for the repeal of the biological law of nature. . . . The Great Creator so ordained the difference, and there are few women who would wish to change the situation."

In a brief per curiam opinion, the U.S. Supreme Court reversed the Utah Supreme Court. Citing its decision in *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974), the Court held that the state could not have an irrebuttable presumption about a woman's incapacity to work during pregnancy. The Constitution requires a more "individualized approach."

The importance of *Turner* and the Court's earlier decision in *LaFleur* was that they created an opportunity for women to bring due process rather than equal protection cases to challenge inflexible rules about pregnant women. Because the Supreme Court had ruled in *Geduldig v. Aiello*, 417 U.S. 484 (1974), that pregnancy-based distinctions did not necessarily constitute invidious sex discrimination, this due process alternative was an important doctrinal development. Before the Court decided *LaFleur* and *Turner*, states had routinely excluded women from employment when they were pregnant. These two decisions required states to make individualized decisions under the due process clause rather than create blanket exclusions. The frequent sight of pregnant women in the public workplace is due, in part, to the *LaFleur* and *Turner* decisions.

SEE ALSO *Pregnancy; Sex Discrimination*

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