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**JOHN MARSHALL: A LIFE IN LAW.** By Leonard Baker. New York: Macmillan Publishing Company, Inc. 1974. Pp. xv, 846. \$17.95.

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The great question now is whether there will be administration of that charter with the vision and the understanding that inspired Reginald Heber Smith in 1919, Earl Johnson in 1974, and the hundreds of able young lawyers that OEO brought forth. However sound the charter, administration can stultify. The great advances chronicled by Johnson can be reversed. Legal Aid always has been embattled. It always will be. Its opponents never give up. Legal Aiders, and the supporting bar, must never nap. May they read Earl Johnson and be determined anew that the advances since 1965 will be a springboard for more.

JOHN MARSHALL: A LIFE IN LAW. By Leonard Baker.<sup>1</sup>  
New York: Macmillan Publishing Company, Inc. 1974.  
Pp. xv, 846. \$17.95.

*Reviewed by Joseph H. Smith<sup>2</sup>*

This sprawling book by a Washington journalist (apparently not a lawyer) is the most recent of the many books, biographical, historical, and legal, dealing with John Marshall, the fourth Chief Justice of the United States (1801-35). It will not be the last. *The Papers of John Marshall*, at Williamsburg, Virginia, with Herbert A. Johnson and Charles T. Cullen as co-editors, brought out its first volume in November 1974. Also promised within the next few years are three volumes of the *Oliver Wendell Holmes Devise History of the Supreme Court* under the general editorship of Paul A. Freund. One, co-authored by George L. Haskins and Herbert A. Johnson, covering the period from 1801 to 1815, bears the title *Foundations of Power—John Marshall*. The two others, both by Gerald Gunther, are respectively entitled *The Struggle for Nationalism: The Marshall Court, 1815-25* and *The Challenge of Jacksonian Democracy: The Marshall Court, 1826-35*.

As "the Expounder of the Constitution" Marshall in his years as Chief Justice handed down many controversial decisions. Praised and lauded by the Federalists, he was bitterly assailed by the Jeffersonians and the Republican press. At his death he was fortunate in that Joseph Story, his close friend and Associate Justice on the Court, and Horace Binney, the noted

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1. Mr. Baker is a free lance journalist.

2. George Welwood Murray Professor of Legal History, Columbia University. A.B., Yale, 1935; LL.B., Columbia, 1938.

advocate, both captured the spirit of the man, and in eulogies laid a firm foundation for later biographers.<sup>3</sup> Earlier, in his *Commentaries on the Constitution of the United States* (1833), dedicated to Marshall, Story had described and evaluated the work of the Marshall Court. In 1837, John Brockenbrough published a volume of Circuit Court opinions by the Chief Justice from manuscripts preserved by him;<sup>4</sup> apparently, in most cases Marshall made no record of his oral opinions. In 1839 the first collection of significant constitutional opinions by the Chief Justice appeared, seemingly selected by Story;<sup>5</sup> in 1847 a concise autobiography, written in 1818, made its way into print.<sup>6</sup> The first biographical account of any length is found in Flanders' *Lives and Times of the Chief Justices of the Supreme Court* (1859); although later characterized as hack work, it was widely read and utilized by later commentators on Marshall and the Marshall Court. Magruder's *John Marshall* (1885) was largely borrowed from Flanders. Of course, the various constitutional histories published in the second half of the nineteenth century all paid homage to John Marshall.

In 1901, as part of a national celebration of the centennial of Marshall's assumption of the post of Chief Justice, scores of adulatory addresses by the bench and bar filled the air. The best were collected in three volumes by John F. Dillon;<sup>7</sup> only a few merit reading today. As an aftermath of the centenary, John M. Dillon, in 1903, edited a volume of Marshall's constitutional decisions, substantially those appearing in the earlier 1839 edition.<sup>8</sup> Two years later Joseph P. Cotton brought out a more extensive selection, including some delivered while on the Circuit Court in Virginia.<sup>9</sup> In 1914 John Edward Oster made the first attempt at a systematic collection of Marshall material other than his opinions. The resulting efforts, carelessly edited, were published under the misleading title of *The Political and Economic Doctrines of John Marshall*. The constitutional law case books of the time,

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3. The eulogies are reprinted in 3 J.F. DILLON, JOHN MARSHALL, LIFE, CHARACTER AND JUDICIAL SERVICES 281, 327 (1903).

4. REPORTS OF CASES DECIDED BY THE HONOURABLE JOHN MARSHALL . . . IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF VIRGINIA AND NORTH CAROLINA, FROM 1802 TO 1833 INCLUSIVE (J. Brockenbrough ed. 1837).

5. THE WRITINGS OF JOHN MARSHALL, LATE CHIEF JUSTICE OF THE UNITED STATES, UPON THE FEDERAL CONSTITUTION (J. Perkins ed. 1839).

6. 7 AMERICAN HISTORICAL AND LITERARY CURIOSITIES (facsimile No. 6) (J. Smith & J. Watson eds. 1847). For a fuller treatment, see AN AUTOBIOGRAPHICAL SKETCH BY JOHN MARSHALL: WRITTEN AT THE REQUEST OF JOSEPH STORY AND NOW PRINTED FOR THE FIRST TIME FROM THE ORIGINAL MANUSCRIPT PRESERVED AT THE WILLIAM L. CLEMENTS LIBRARY (J.J. Adams ed. 1937).

7. J.F. DILLON, *supra* note 3.

8. JOHN MARSHALL, COMPLETE CONSTITUTIONAL DECISIONS (J.M. Dillon ed. 1903).

9. THE CONSTITUTIONAL DECISIONS OF JOHN MARSHALL (J. Cotton ed. 1905).

almost pocket books by comparison with today's massive tomes, were still dominated by the opinions of the Marshall Court.

The years 1916-19 saw the publication in four volumes of what was to become the "standard" life of John Marshall.<sup>10</sup> The author was Albert V. Beveridge, former Senator from Illinois, and at times a lawyer, politician, and author. Based upon a tremendous amount of research in original sources, presented in dramatic fashion, the work was widely hailed as a biographical and literary masterpiece. But not all the reviews were laudatory. The *Life* was fiercely partisan and many wails of anguish went up from the admirers of Thomas Jefferson and those still willing to champion states' rights. Some diligently sought errors in the handling of factual material.<sup>11</sup> A succinct view of the criticisms is presented by James Servies:

The criticisms leveled at the work have usually been directed to two major areas: 1) stylistic features, the most important of which is the oratorical overtone, which result in blacks and whites, but no grays; and 2) the ideological preconceptions of the author which color, if not distinctly affect, each conclusion. Specifically, historians have objected to his complete disregard for precision in the use of terms or labels; to his "drawing a long bow" for a small target; to his use of violently partisan sources while omitting references to others or "hiding" them in footnotes; to his use of Jefferson as a straw-man; and, to the lack of any criticism of Marshall's motives or actions throughout the narrative.<sup>12</sup>

Nevertheless, all later writings on Marshall have had to start with Beveridge; unfortunately many have stopped there.

In 1919 the short but authoritative biography by Edward S. Corwin, entitled *John Marshall and the Constitution*, appeared in the Chronicles of America series of the Yale University Press. Although written after the appearance of the first two volumes of Beveridge, it owes little to that work. In 1922 Charles Warren brought out *The Supreme Court in United States History*. Most of the first volume is devoted to the Marshall Court; written prior to the publication of Beveridge and "from an entirely different viewpoint, and without any attempt to rival his dramatic depiction of personalities,"<sup>13</sup> it is a valuable supplement to Beveridge's *Life*. Warren, for one

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10. A. BEVERIDGE, *THE LIFE OF JOHN MARSHALL* (4 vols. 1916-1919).

11. See, e.g., Bell, *John Marshall; Albert Beveridge as a Biographer*, 12 VA. L. REG. (n.s.) 641 (1927).

12. J. SERVIES, *A BIBLIOGRAPHY OF JOHN MARSHALL* 69 (1956).

13. 1 C. WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* at v-vi (rev. ed. 1937).

thing, made much greater use of newspaper reactions to Marshall's decisions than did Beveridge.

In 1935, the bar, struggling with the Depression and New Deal legislation, and in contrast to the ceremonies of 1901, paid scant attention to the centennial of Marshall's death. Few significant books or articles on Marshall appeared in the 1930's and 1940's; exceptions were books by Frankfurter<sup>14</sup> and Haines<sup>15</sup> and an article by Max Lerner.<sup>16</sup> The next decade saw a revival of interest with the 1955 bicentennial of Marshall's birth, as conferences were held and significant papers presented at Williamsburg, Philadelphia, and Cambridge.<sup>17</sup> Portions of some of these papers and other recent articles were included in Erwin Surrency's *The Marshall Reader* (1955). James Servies' *A Bibliography of John Marshall* (1956) was the only publication of lasting value of the United States Commission for the Celebration of the Two Hundredth Anniversary of the Birth of John Marshall. The interest sparked in 1955, nurtured by the announcement of the Holmes Devise Supreme Court history, continued into the 1960's with the publication of Mason's book based upon Marshall's letters to his wife;<sup>18</sup> Konefsky's book on John Marshall and Alexander Hamilton;<sup>19</sup> Roche's collection of the major opinions and other writings of Marshall for the American Heritage Series;<sup>20</sup> Newmyer's *The Supreme Court Under Marshall and Taney* for the Crowell American History Series;<sup>21</sup> Faulkner's valuable study of the jurisprudence of John Marshall;<sup>22</sup> Gunther's collection of Marshall's anonymous articles defending *McCulloch v. Maryland*;<sup>23</sup> and the invaluable descriptive calendar of the

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14. F. FRANKFURTER, *THE COMMERCE CLAUSE UNDER MARSHALL, TANEY, AND WAITE* (1936).

15. C. HAINES, *THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT AND POLITICS, 1789-1835* (1944). See also B. PALMER, *MARSHALL AND TANEY: STATESMEN OF THE LAW* (1939); D. LOTH, *CHIEF JUSTICE: JOHN MARSHALL AND THE GROWTH OF THE REPUBLIC* (1949).

16. Lerner, *John Marshall and the Campaign of History*, 39 COLUM. L. REV. 396 (1939).

17. See CHIEF JUSTICE JOHN MARSHALL: A REAPPRAISAL (W. Jones ed. 1956); *Chief Justice John Marshall: A Symposium*, 104 U. PA. L. REV. 1-68 (1955); GOVERNMENT UNDER LAW: A CONFERENCE HELD AT HARVARD LAW SCHOOL ON THE OCCASION OF THE BICENTENNIAL OF JOHN MARSHALL, CHIEF JUSTICE OF THE UNITED STATES 1801-1835 (A. Sutherland ed. 1956).

18. F. MASON, *MY DEAREST POLLY; LETTERS OF CHIEF JUSTICE JOHN MARSHALL TO HIS WIFE, WITH THEIR BACKGROUND, POLITICAL AND DOMESTIC, 1779-1831* (1961).

19. S. KONEFSKY, *JOHN MARSHALL AND ALEXANDER HAMILTON* (1964).

20. JOHN MARSHALL—MAJOR OPINIONS AND OTHER WRITINGS (J. Roche ed. 1967).

21. R. NEWMYER, *THE SUPREME COURT UNDER MARSHALL AND TANEY* (1968).

22. R. FAULKNER, *THE JURISPRUDENCE OF JOHN MARSHALL* (1968).

23. JOHN MARSHALL'S DEFENSE OF *MCCULLOCH V. MARYLAND* (G. Gunther ed. 1969).

papers of John Marshall by Irwin Rhodes.<sup>24</sup> More recently, Stanley Kutler has edited John Marshall for the Great Lives Observed series.<sup>25</sup>

Beveridge fragmented his *Life* into forty-four chapters, each with a descriptive heading and a mini-table of contents. Baker has divided his volume into four books, the last being divided into three parts, with no detailed table of contents for books or parts. This results in an amorphous structuring and makes it difficult for the reader to locate the discussion of specific matters without an inordinate expenditure of time.

In Book One: *Soldier*, Baker takes John Marshall from his birth on September 24, 1755 at Germantown in frontier Prince William County, later part of Fauquier County, Virginia, to his marriage to Polly Ambler on January 3, 1783. Despite his autobiography we know little of Marshall's early life. Two years of formal education supplemented the education furnished by his father Thomas, a small landholder prominent in county affairs and a friend of George Washington. A tough frontiersman, amply endowed with native intelligence, John served for four years as an officer in the militia and Virginia Line during the American Revolution, participating in combat at Great Bridge near Norfolk, Iron Hill near Philadelphia, Brandywine, Germantown, and Monmouth. Surviving Valley Forge, he spent some months on Washington's staff as deputy judge advocate, although the extent to which he presided at courts-martial or acted as counsel is in dispute. Returning to Virginia in the winter of 1779-80, he attended William and Mary for a short period. On August 28, 1780, producing a license to practice law signed by Governor Thomas Jefferson, he was admitted to the Fauquier County bar. At this time the sum total of his "legal training" was (1) reading Blackstone's *Commentaries* before the Revolution (although this has been questioned); (2) serving as deputy judge advocate; (3) attending law lectures by George Wythe, the future Chancellor, at William and Mary; and (4) preparing a legal commonplace book running from Abatement to Limitation of Actions from Bacon's *Abridgment*, a volume of Virginia colonial laws, and Blackstone's *Commentaries* (though this may have been compiled later). Family tradition that he worked and studied for a while at a lawyer's office in Fauquier County before his marriage finds no supporting evidence. Unfortunately, Baker's plethora of background material on the Virginia environment, the events leading to the Revolution, and the conflict itself includes some dubious generalizations and clogs the narrative. There is no doubt, however, as Baker stresses, that his frontier upbringing and his

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24. I. RHODES, *THE PAPERS OF JOHN MARSHALL: A DESCRIPTIVE CALENDAR* (2 vols. 1969).

25. JOHN MARSHALL (S. Kutler ed. 1972).

military service did leave a permanent imprint on Marshall's character, political attitudes, and sense of values. Marshall himself remarked that most of those serving in the Revolution, at least the officers, became nationalists and Federalists.

Book Two of Baker is entitled *Lawyer and Politician*. Upon examination this turns out to be largely an account of Marshall as legislator and Federalist politician during the period from 1783 to 1796. At various times from 1782 to 1796 Marshall was elected to the House of Delegates from Fauquier County, Henrico County, and the City of Richmond. A member of the Virginia Council of State from November 1782 to his resignation in April 1784, he found that his membership was incompatible with a burgeoning law practice. In 1785 he was elected a member of the body corporate of the City of Richmond and then made recorder by the incorporators. In this capacity he exercised judicial functions, sitting on the Court of Hustings, which possessed civil and criminal jurisdiction equivalent to a county court, until resigning in March 1788. In June 1788, as a representative of Henrico County, he achieved prominence in Federalist circles at the convention called in Virginia to ratify the Federal Constitution. Marshall's clashes with Patrick Henry are ably portrayed by Baker (pp. 128-38). However, a reading of Mays' biography of Edmund Pendleton indicates that Marshall may have played a lesser role than that pictured by Baker.<sup>26</sup> In 1794, although not a candidate, Marshall was elected to the Common Council of Richmond, refusing the office of mayor. In 1799 he was elected to the United States House of Representatives by a narrow margin, allegedly spending \$6,000 on his campaign. As a Federalist, Marshall is credited with having written or contributed to the minority report on the famous Virginia Resolutions (1798); the Alien and Sedition Acts he regarded as regrettable, thus alienating the extremists in his party. Marshall's military career persisted into the 1790's as he headed the Virginia militia (being usually addressed as General until his appointment to the bench) and, under Adams, was confirmed as Secretary of War, before becoming Secretary of State a few days later.

Beveridge was criticized for his handling of Marshall as lawyer; Baker's treatment is no substantial improvement. In defense of both, it should be said that few briefs, notes of arguments, or memoranda of Marshall have survived comparable to those which have made it possible to reconstruct in detail the law practice of Alexander Hamilton.<sup>27</sup> Secondly, if notes on his arguments were at times taken and preserved by opposing counsel or by co-

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26. D. MAYS, EDMUND PENDLETON, 1721-1803; A BIOGRAPHY 217-72 (1952).

27. See THE LAW PRACTICE OF ALEXANDER HAMILTON (J. Goebel, Jr. ed. 2 vols. 1964-1969).

counsel, such material, for the most part, has not been ferreted out.<sup>28</sup> Thirdly, the file papers of the principal courts of Virginia were destroyed by fire in the closing days of the Civil War. Consequently, it has been impossible to determine from the available sources when Marshall started his practice in Richmond, and how, with no training in the law, he managed to become a highly regarded member of the bar by the late 1780's. Baker indicates that his first clients may have been veterans pursuing federal and state benefits and that his connections with the Ambler family helped (pp. 78-79). In an appendix to his second volume, Beveridge lists all the cases argued by Marshall before the Court of Appeals of Virginia as determined from the reports of Call and Washington. From this listing it appears that Marshall argued eighty-six appeals between May 1786 and the Fall Term of 1796. Neither Baker nor Beveridge make very much of these cases, although both state that Marshall was primarily an appellate lawyer. Rhodes has identified a substantial number of cases handled by Marshall at the trial level in the Court of Chancery, the General Court, and various District Courts.<sup>29</sup> Marshall's Account Book, edited as part of *The Papers of John Marshall*, also contains a record of those cases in which Marshall was retained. Baker makes no mention of these cases. Marshall appeared before the Supreme Court of the United States in only one case, *Ware v. Hylton*,<sup>30</sup> the Great British Debt Case, argued in Philadelphia in February 1796. At the Circuit argument before Justice Iredell, Patrick Henry had the laboring oar for the Virginia debtors but Marshall excelled in " 'sound sense and argument' " (p. 160) (emphasis in original). In 1789 Marshall turned down an appointment as United States Attorney for the Virginia District (after Senate confirmation, to Washington's chagrin) on the ground that the federal courts and the Virginia courts sat at the same time in different cities and he wanted to retain his practice in the state courts. Later, as Rhodes shows, Marshall did handle a fair number of cases in the Circuit Court for Virginia.<sup>31</sup> In

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28. *The Papers of John Marshall* at Williamsburg has obtained notes of arguments made by Marshall between 1786 and 1788. These were taken by St. George Tucker and were found in three volumes of manuscript notebooks containing notes he made as counsel, and later as judge, of cases before various Virginia courts from 1786 to 1811. Call used these notebooks for his Court of Appeals reports but the notes taken in the General Court and District Courts have not been used. S.G. Tucker, *Notes of Cases, in the General Court, District Court & Court of Appeals in Virginia, 1786-1811* (ms. in Tucker-Coleman Collection, Swem Library, College of William & Mary). Charles Cullen, a co-editor of *The Papers of John Marshall*, is editing the notes with a view to publication in the American Legal Records Series of the American Historical Association. Some edited Marshall arguments are contained in the first volumes of *The Papers of John Marshall*.

29. The cases are listed by year in 2 I. RHODES, *supra* note 24, at 483.

30. 3 U.S. (3 Dall.) 199 (1796).

31. 2 I. RHODES, *supra* note 24, at 510-14 (listing Marshall's cases in the circuit court



1795 he refused an offer to become Attorney General of the United States, despite the lure held out by the President of establishing a lucrative practice in Philadelphia. By this time Marshall was acting as Attorney General of the Commonwealth of Virginia in the absence of the incumbent; some of his opinions are mentioned by Baker (pp. 171-72).

One lurid criminal case discussed at some length by Baker involved the trial in 1793 of Richard Randolph for the murder at birth of a bastard child of his wife's sister; Marshall and Patrick Henry were counsel for the defense (pp. 139-54). Marshall's papers in this case have survived and give us some insight into Marshall the trial lawyer. Baker also discusses one celebrated 1790 case reported by Call, *Bracken v. William and Mary College*,<sup>32</sup> involving the dismissal of the grammar master upon discontinuance of the grammar school. Here Marshall crossed swords with John Taylor of Caroline, later a political foe of some renown. Somewhat typically the author attempts in a strained manner to read political principles into the arguments of counsel—a dangerous practice (p. 156).

His account books show that in 1784 Marshall was involved in about a hundred cases, his income from practice amounting to about £500. By 1787 this income exceeded £1000 per annum.<sup>33</sup> Albert Gallatin, a political opponent, wrote that Marshall, a young lawyer in 1783, was “almost at the head of the bar” in 1786 (p. 87). When Edmund Randolph, the Attorney General, was elected governor in 1786, he notified clients that Marshall would succeed to his business (*id.*). Marshall did number Washington, Monroe, and Robert Morris among his clients at various times. Marshall's brother James married Morris' daughter and in the mid-1790's John Marshall became a business partner of the great land speculator. By 1796 Marshall was said to be earning from \$4,000 to \$5,000 a year from his practice—a respectable figure for the time.

Book Three: *Diplomat* takes up almost a quarter of Baker's volume, and perhaps gives disproportionate treatment to Marshall's support of Washington's foreign policy in the press and of the Jay Treaty in the House of Delegates. It also traces his participation, with Charles Pinckney and Elbridge Gerry, in the diplomatic mission to France which became known as the XYZ Affair, and describes his short tenure as Secretary of State at the end of Adams' administration and the beginning of Jefferson's. The blow-by-blow

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from 1791 onward). Marshall was admitted to the circuit court bar on November 26, 1790.

32. 5 Va. (1 Call) 161 (1797).

33. See 2 I. RHODES, *supra* note 24, at 483, for the break-out for each year of practice.

account of the bizarre XYZ Affair makes fascinating reading but it distracts from Marshall the lawyer and jurist (pp. 217-93). This is not to deny that Marshall's experience in foreign affairs contributed in some measure to his belief in the necessity of a strong central government capable of holding its own in international relations. Marshall's strong stand in the XYZ Affair made him a national figure and probably contributed to his nomination by Adams to be Chief Justice of the United States. But if John Jay had not declined the post of Chief Justice and William Paterson of New Jersey, the Senate favorite, had been acceptable to Adams, Marshall would never have been considered for the position. On February 4, 1801 Marshall took his seat on the tribunal he would head for the next thirty-four years.

Book Four: *Judge* is divided into three parts. The first part is entitled *The Struggle for an Independent Judiciary*. After sketching the early days of the Supreme Court and the circumstances surrounding Marshall's appointment as Chief Justice, Baker embarks upon a lengthy treatment of *Marbury v. Madison*<sup>34</sup> and the political repercussions to that decision (pp. 394-417). This is followed by a discussion of the impeachment of Justice Samuel Chase for his conduct while sitting on circuit (pp. 418-38). The part closes with an extended discussion of the trial of Aaron Burr (pp. 448-518). Because of the nature of the subject matter, this is easily the most dramatic and gripping part of the book. Beveridge was criticized in some quarters for making Thomas Jefferson the villain of his piece. On the subject of the independence of the judiciary this book is a return engagement for the third president, although he is treated less severely by Baker. Burr and Chase are treated sympathetically. As in Beveridge, Marshall, in the role of witness in the impeachment trial, emerges with less than heroic stature. Baker is probably correct in attributing Marshall's caution and timidity on the stand to a deep seated and sincere fear for the future of the Court (p. 516). This part, however, lacks an analytical approach to the basic concept of judicial review. Moreover, the historical treatment is truncated and no use is made of the late Julius Goebel's handling of the subject in the first volume of the *Oliver Wendell Holmes Devise History of the Supreme Court*.<sup>35</sup>

Few lawyers today think of John Marshall as an historian. Yet, as Baker brings out in this part (pp. 438-44), in his early years on the bench much of the Chief Justice's time was devoted to writing and publishing a five volume biography of George Washington<sup>36</sup>—really a history of the United States

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34. 5 U.S. (1 Cranch) 137 (1803).

35. J. GOEBEL, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES, VOL. I: ANTECEDENTS AND BEGINNINGS TO 1801* (1971).

36. J. MARSHALL, *THE LIFE OF GEORGE WASHINGTON, COMMANDER IN CHIEF OF THE*

through the administrations of the first President. The work proved a financial and critical disappointment. It was badly structured—the first volume was a history of the American colonial period with little reference to Washington; the style was dull and listless; numerous documents were inserted in the text. The Republicans and the British critics, for different reasons, charged Marshall with bias and partisan accounts. Despite the poor reception, Marshall later revised the work, detaching the colonial section, and republished it in two volumes in 1832 (not in 1826 as Baker states). After Marshall's death, historians continued to find the *Life* of some value as an account of Washington's administration by one who, if scarcely intimate, shared the President's viewpoint on most political matters. Most significantly for Marshall the jurist, the research and writing of the Washington biography confirmed and strengthened his nationalistic tendencies and his conviction as to the necessity for a strong central government. Although his treatment of the Constitutional Convention and the ratifying conventions is sketchy (Elliot's *Debates*<sup>37</sup> on the adoption of the Constitution did not appear until 1830), Marshall as historian of the period probably gained confidence in his ability to speak authoritatively on questions involving the intent of the framers. Both Beveridge and Baker admit the defects of Marshall as historian; Baker is perhaps more charitable (pp. 441-43).

Part II of Book Four is entitled *The Struggle for the Supremacy of the Union*. This part starts with the decision in *Fletcher v. Peck*<sup>38</sup> (1810); the treatment makes no reference at all to the recent monograph of Magrath on the Yazoo lands<sup>39</sup> or to the influence upon Marshall of an earlier legal opinion given by Alexander Hamilton.<sup>40</sup> There follows a discussion of *Martin v. Hunter's Lessee*<sup>41</sup> (1816), a case in which Marshall did not participate since he and his family were interested in the Northern Neck lands; the Court's opinion is by Justice Story. The remainder of Part II is devoted to an extended discussion of *McCulloch v. Maryland*<sup>42</sup> (1819) and to a shorter treatment of *Cohens v. Virginia*<sup>43</sup> (1821). Part III, the last portion

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AMERICAN FORCES DURING THE WAR WHICH ESTABLISHED THE INDEPENDENCE OF HIS COUNTRY, AND FIRST PRESIDENT OF THE UNITED STATES (5 vols. 1804-1807).

37. J. ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION . . . TOGETHER WITH THE JOURNAL OF THE FEDERAL CONVENTION (1830).

38. 10 U.S. (6 Cranch) 87 (1810).

39. C.P. MAGRATH, YAZOO: LAW AND POLITICS IN THE NEW REPUBLIC; THE CASE OF FLETCHER V. PECK (1966).

40. See B. WRIGHT, THE CONTRACT CLAUSE OF THE CONSTITUTION 22 (1938).

41. 14 U.S. (1 Wheat.) 304 (1816).

42. 17 U.S. (4 Wheat.) 316 (1819).

43. 19 U.S. (6 Wheat.) 264 (1821).

of Book Four, is given the heading *The Sanctity of Contracts*. Appropriately enough, Baker leads off with *Dartmouth College v. Woodward*<sup>44</sup> (1819). He then turns to *Gibbons v. Ogden*<sup>45</sup> (1824) and *Brown v. Maryland*<sup>46</sup> (1827). What these latter two cases involving the commerce clause have to do with the "sanctity of contracts" is far from clear. The remainder of this part is a mixed bag with *Osborn v. Bank of United States*<sup>47</sup> (1824) followed by *Ogden v. Saunders*<sup>48</sup> (1827) (Marshall's first dissent on a constitutional issue), *Cherokee Nation v. Georgia*<sup>49</sup> (1831), *Worcester v. Georgia*<sup>50</sup> (1832), and *Barron v. Baltimore*<sup>51</sup> (1833). It would appear, to some extent, that the arrangement of Book Four was dictated by chronology rather than by subject matter classification.

The author's discussions are not limited to the cases mentioned above. Perhaps fifteen to twenty other cases receive short—a paragraph or two—treatment. However, as in the case of Beveridge, there is no attempt in Book Four to write a comprehensive history of legal developments for the Marshall period. The approach is episodic. A general criticism may be made that the author is too intent on demonstrating Marshall's adherence to abstract legal principles rather than viewing the decisions as adjustments to conflicting economic and social factors. Reflecting a changed climate of opinion, Baker is more defensive and apologetic than Beveridge in dealing with Marshall's views on slavery, Indian territorial rights, and the protection of individual rights. At times the reader is distracted from the portrait of Marshall the jurist by recurrent forays into his domestic life, his land speculations, his conviviality off the bench, and society in Washington and Richmond. At other times the reader has the feeling that every person who ever met Marshall recorded his or her impressions and that the author has quoted from every one of them.

Most readers will have some familiarity with Marshall's major constitutional opinions. Does Baker present anything new with respect to the background of these cases, the arguments of counsel, or the formulation of the opinions? Does the author offer any new and fresh insights into the contemporary impact or the lasting significance of these cases? The answers to these questions have to be in the negative. Baker does dwell at great length

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44. 17 U.S. (4 Wheat.) 518 (1819).

45. 22 U.S. (9 Wheat.) 1 (1824).

46. 25 U.S. (12 Wheat.) 419 (1827).

47. 22 U.S. (9 Wheat.) 738 (1824).

48. 25 U.S. (12 Wheat.) 212 (1827).

49. 30 U.S. (5 Pet.) 1 (1831).

50. 31 U.S. (6 Pet.) 515 (1832).

51. 32 U.S. (7 Pet.) 243 (1833).

upon the significance of Marshall's major decisions but much of this seems a repetitious elaboration of the obvious, at least for the lawyer with some knowledge of American constitutional law. In view of all that has been written about Marshall's milestone opinions, from Story's *Commentaries* onward, what is there left unsaid or capable of discovery by a writer without legal training?

How does Baker's volume differ from Beveridge's *Life*? Both cover substantially the same events in Marshall's life in much the same order, utilizing much the same material. Baker may be more restrained in his hero worship but Marshall still emerges as the great Chief Justice. Beveridge's metaphoric, declamatory style may irritate or bore many of today's readers; Baker's prose is restrained and highly readable. The continuing confrontation with Jefferson and the Republicans is still a focal point, although the criticism of Jefferson is toned down. Baker's text is about one-fifth shorter than Beveridge's; many quotations from sources have been eliminated or shortened. More of the background material could have been omitted. All the discursive, and at times informative, footnotes of Beveridge have disappeared in favor of bareboned citations to authority relegated to the rear of the volume. Baker thus has less colorful detail and is less valuable as a source book. Some, at least, of Beveridge's factual errors have been corrected, but Baker adds a few of his own.

Baker, as did Beveridge, makes extensive use of manuscript sources, particularly letters from or to John Marshall. However, his bibliography under "Manuscript Sources" is merely a listing of over sixty libraries and archives.<sup>52</sup> This is scarcely an improvement over Beveridge, who printed no bibliography of manuscript material. Baker's enumeration may evidence industry and impress the lay reader, but it is of little value to the scholar. The Baker bibliography also lists almost eighty entries under "Newspapers and Periodicals" ranging from *The London Gazette* to *The Louisiana Law Journal*. Apparently all this means is that there is at least one reference in the footnotes

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52. Although there are a limited number of Marshall's opinions in manuscript form after an 1898 explosion in the Capitol destroyed most of them, these are sources that Baker apparently did not use. One such source is a volume entitled *Original Opinions of the Justices of the Supreme Court, January Term, 1832*. This volume, which had belonged to Richard Peters, Jr., the reporter, was, at least in 1903, in the possession of the Clerk of the Supreme Court. See JOHN MARSHALL, COMPLETE CONSTITUTIONAL DECISIONS, *supra* note 8, at 682-83. Also available, but apparently not used, is the manuscript opinion by Marshall in *New Jersey v. New York*, 30 U.S. (5 Pet.) 284 (1831). This manuscript, along with Marshall's notes of argument of counsel in four other cases, was sent by Peters to James Kent on July 4, 1837, as a Marshall memento. See *Manuscripts of the Honorable John Marshall, Chief Justice of the United States* (Special Collections, Columbia University Library).

to, say, an article in *The Green Bag* or the *William and Mary College Quarterly*. If Baker has examined all the contemporary newspapers, his gleanings do not appear to have exceeded the results of the pioneer researches of Beveridge and Warren. An examination of the list of "Published Sources" raises doubts whether Baker has fully utilized all the secondary material appearing since Beveridge. Baker's index is much less detailed, and thus less useful, than Beveridge's 54-page General Index. And, in contrast to Beveridge, there are no appendices of relevant documents.

In short, the reader who is looking for a readable, comprehensive, and generally sound life of John Marshall—told dramatically and somewhat romantically—will find it in the Baker volume. The alternative of Beveridge is probably too much for most of today's readers. A reader primarily intent upon a scholarly, in-depth analysis of Marshall's constitutional opinions had better look elsewhere.