



John Marshall. *The Papers of John Marshall, Volume 9: 1820-1823.* Chapel Hill: University of North Carolina Press, 1998. xxxviii + 396 pp. \$60.00 (cloth), ISBN 978-0-8078-2404-7.

Reviewed by K. R. Constantine Gutzman (Department of History, University of Virginia)

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At the Center of the Storm

The latest volume of *The Papers of John Marshall* continues the high standard this series has long set. The papers of the most important judge in American history constitute an essential resource for scholars of the political history of the period in which he lived, as well as for scholars of American law and constitutionalism. Fortunately, the editors obviously have prepared the current volume with these audiences in mind.

The years 1820-1823 came in the middle of one of the most turbulent times in the Supreme Court's history. When the period opened, the court found itself in the midst of its most important series of nationalizing opinions, that which began with *Martin v. Hunter's Lessee* (1816) and ended with *Gibbons v. Ogden* (1824). *Martin*, *McCulloch v. Maryland* (1819), and *Cohens v. Virginia* (1821) touched off public opposition from the Republican party in Virginia, and a substantial amount of space in this volume, as in the previous one in the set, is devoted to this contest.

Chief Justice Marshall himself wrote a series of newspaper essays defending his court's performance in *McCulloch*, as readers of Volume 8 know. Although he evidently did not pick up his pen again to fend off Virginian attackers in the wake of *Cohens*, the skillfully wrought editorial note on the *Cohens* case puts the entire imbroglio in Virginia in context.

The second opinion of particular interest that one finds in this volume is that in the case of *Johnson v. McIntosh* (1823). In another model introductory note,

the editors spell out the context of Marshall's treatise on the law of Indian landholdings and explain the opinion's continuing worldwide significance. One unnoticed aspect of Marshall's handiwork here is his tacit attack on the account of American colonial history offered by his *bete noire*, Thomas Jefferson, in "A Summary View of the Rights of British America." Marshall's hatred of "the great Lama of the mountains" shines through in the most unexpected places.

The editorial staff led by Marshall biographer Charles F. Hobson has made several laudable decisions regarding the material that should be included in this series. All of Marshall's extant circuit court opinions from the period find their way into this volume, but only Supreme Court cases of special significance are included. As the editors explain, the point of the series is not to republish hundreds of opinions already easily accessible elsewhere, but to facilitate the study of Marshall and his time.

That being said, the run of Marshall's circuit court opinions were essentially quotidian (which is no comment on the Chief Justice himself). One wishes the editors could conceive a device similar to the headnotes one finds in legal casebooks so that scholars might avoid wading through several pages of an opinion on, say, the minutia of pleadings in a particular suit before recognizing the opinion's insignificance. In its favor, one might note that the employment of such a device would not deviate greatly from the extended editorial essays to which users of the great papers projects have become accus-

tomed in the past half-century.

Correspondence in this volume resembles that in previous volumes. One finds many letters between Marshall and two of his colleagues, fellow Virginian Bushrod Washington and the like-minded Joseph Story. In those letters, Marshall asks for their impressions regarding legal questions and offers his own when asked. A few letters between Marshall and his relatives on familial matters are sprinkled through the volume. A class of letters that fall into both categories is that concerning a third Marshall son's matriculation at Harvard. Although the third time proved the charm (Edward, unlike his brothers, would graduate), Marshall had troubles with his youngest son, too. Story, the New Englander, helped father and son through.

A final matter with which Marshall was concerned throughout the period covered by this volume was the publication of a second edition of his Washington biography. The first had not been a stunning critical success, and Marshall admitted to Justice Washington that

he hoped to make the new edition worthy of himself, as well as of the General. Scholars will sympathize with the Chief Justice's plight as he finally offers to underwrite one volume of the multi-volume biography himself.

This book's notes are well written, as are the editorial essays. As in other papers projects, editors seem sometimes to slip into "rooting for the home team," but that is probably unavoidable. Unfortunately (and obviously through no fault of the editors), several notes say simply "Letter not found." Much of Marshall's correspondence simply has not survived. What we do have, though, is presented with great skill and scholarship in this series, Volume 9 being no exception.

This review was commissioned for H-Pol by Lex Renda <renlex@uwm.edu>

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