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Reimagining the Marshall Court

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THE MARSHALL COURT AND CULTURAL CHANGE, 1815-1835. By *G. Edward White.* New York: Macmillan. 1988. Pp. xxi, 1009. $95.

In early 1826, John Marshall responded to two letters from an old friend, Timothy Pickering of Massachusetts. In his letters Pickering reminisced about the course of political events over the previous decades — decades in which the two friends repeatedly had witnessed the defeat of men and measures they supported. Marshall's pessimistic reply prophesied that defeat lay ahead as well as behind, in the fading of recollections and the unwitting or deliberate misrepresentation of history. "Those who follow us will know very little of the real transactions of our day, and will have very untrue impressions respecting men & things." The most positive thing Marshall could write was that their destiny to be misunderstood was not unique. "Such is the lot of humanity."[1]

In the latest volume of *The Oliver Wendell Holmes Devise History of the Supreme Court of the United States,*[2] Professor G. Edward White set himself the task of proving the Chief Justice wrong, and it is my belief that he has succeeded. *The Marshall Court and Cultural Change, 1815-1835* is a brilliant interpretation of John Marshall, and of the Court over which he presided, masterfully executed against the background of that Court's cultural, intellectual and political setting. It is one measure of White's remarkable accomplishment that his reconstruction of the thoughts and actions of Marshall and his contem-

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I greatly appreciate Jennifer Hill's comments.

1. Letter to Timothy Pickering (Mar. 20, 1826), in J. OSTER, THE POLITICAL AND ECONOMIC DOCTRINES OF JOHN MARSHALL 95 (1914).

2. The other volumes in the Holmes Devise series are J. GOEBEL, ANTECEDENTS AND BEGINNINGS TO 1801 (vol. I 1971); G. HASKINS & H. JOHNSON, FOUNDATIONS OF POWER — JOHN MARSHALL, 1801-1815 (vol. II 1981); C. SWISHER, THE TANEY PERIOD, 1836-1864 (vol. V 1974); C. FAIRMAN, RECONSTRUCTION AND REUNION, 1864-1888 (vol. VI 1971 and vol. VII 1986); and A. BICKEL AND B. SCHMIDT, THE JUDICIARY AND RESPONSIBILE GOVERNMENT, 1910-1921 (vol. IX 1984). Volumes VIII, X, and XI are forthcoming.

Under the original plan of the Holmes Devise series, the 1815-1835 period was assigned two volume numbers (III and IV), and Professor Gerald Gunther was selected to write them. Although Professor Gunther had undertaken a "prodigious amount of archival research," p. xvii, and had prepared "drafts of long sections," p. xv, he found it necessary to withdraw from the project, and subsequently made his notes and drafts available to Professor White. White's treatment of the period led to a consolidation of the two volumes into a single, tightly organized work.

poraries is free of anachronism, and yet allows us to see how our modern notions about the Marshall Court evolved.

This is no simple task,[3] largely because of the cultural changes that were so apparent to Marshall himself late in his life.[4] Marshall's generation grew up in an intellectual and social environment that Daniel Boorstin has aptly described as a "lost world."[5] The Marshall Court Justices lived in a period of explosive population growth accompanied by a dramatic increase in personal mobility (pp. 13-20), of rapid transition from late-colonial economic patterns to an industrialized and economically interdependent commercial society (pp. 21-23), and of the breakdown of eighteenth-century concepts of social and political hierarchy (pp. 23-27). Like many other Americans, the Justices reacted to the transformation of their world by attempting to recast the republican ideology of the Revolutionary era in ways congruent with nineteenth-century reality (pp. 73-75). White recognizes the effect of these cultural changes on the Court and he identifies "the origins of Marshall Court jurisprudence" in the Court's understanding of the interaction of its eighteenth-century "ideological paradigm" with the experiences of nineteenth-century American social change (p. 11). One of White's primary concerns is to describe "the uniqueness, the 'differentness,' and the time-boundedness of the later Marshall Court" (p. 927). According to White, the Marshall Court was "a Court of its age" (p. 10), and he emphasizes that if we wish to understand that Court — rather than merely comb its opinions in search of rhetorical ammunition for contemporary disputes — we must enter into its rather alien world of thought and emotion. White makes this understanding possible by reinterpreting the Court's words and deeds in the light of a sophisticated understanding of the Court's original cultural background.

The contemporary task of reimagining the Marshall Court is hampered as well by the deeply entrenched and essentially stereotypical labels that are commonly applied to the Court. "Nationalist," "Federalist," "property-conscious," and "Chief-Justice dominated," are some of the most important (p. 1). "Republican" is a much newer label that has played an important role in historical and (more recently) legal

3. *See* White, *Imagining the Marshall Court,* 1986 SUP. CT. HIST. SOCY. Y.B. 77.

4. In 1827 Marshall wrote Pickering that since their youth, "Things are very much changed as well as men." Letter to Timothy Pickering (Mar. 15, 1827), in J. OSTER, *supra* note 1, at 96.

5. D. BOORSTIN, THE LOST WORLD OF THOMAS JEFFERSON (1948). The bitter personal animosity between Jefferson and Marshall in their later years was intellectually fratricidal: The two men had far more in common with each other than with respectively, latter-day Jeffersonians or nationalists. On the shared intellectual world of the founding generation, see R. WIEBE, THE OPENING OF AMERICAN SOCIETY (1984), and for a recent argument that Jefferson's fundamental views actually were radically different from those of the "liberal" mainstream, see R. MATTHEWS, THE RADICAL POLITICS OF THOMAS JEFFERSON: A REVISIONIST VIEW (1984).

scholarship on the period.[6] White's attitude toward such categorizations is wisely balanced. In a thoughtful essay on historical revisionism published several years ago, White insisted that the "established sense of the raw materials of a given portion of history" is unlikely to be wholly misguided, and that the most successful revisionist histories are those that identify connections between accepted commonplaces and "new angles of vision."[7] In this decidedly revisionist volume, White has followed his own advice: He acknowledges the "modicum of truth" in the "[e]ntrenched historical labels" (and in their recent "republican" competitor) but refuses to permit them to constrain fresh interpretations of the evidence (p. 2). The result is a convincing argument that none of the established categories is adequate unless we rework them to correspond more closely to the Marshall Court's concerns than to our own.

The third great threat to a successful reconstruction of the Marshall Court's life and meaning lies in the ongoing political significance of that Court's legacy. It does matter, at least on a verbal level, whether Marshall and his colleagues can be characterized as nationalists (and therefore proto-New Deal supporters of federal legislative power), propertarians (and therefore the legal forebears of economic substantive due process), apolitical jurists (and therefore the original proponents of judicial restraint), and so on. One of the virtues of *The Marshall Court and Cultural Change* is White's scrupulous concern for the historically convincing rather than the politically expedient. The results may not please activists of the right and left, but they are by the very same token so much the more persuasive.

In the following section of this review I briefly examine White's reinterpretation of the claims that the Marshall Court was dominated by its Chief Justice, that its aim and accomplishment was to separate a distinct set of legal issues from the realm of politics, and that the Court was "nationalist." In the concluding section I comment on the significance of *The Marshall Court and Cultural Change* for the discipline of constitutional history.

I. Reinterpreting Traditional Labels

"Everyone" knows that John Marshall exercised a unique dominance over "his" Court. In three-and-a-half decades the Chief Justice delivered 547 opinions for the Court, while his combined associates wrote a total of 574 such opinions (p. 191). Only once in all that time did Marshall dissent publicly in a constitutional case.[8] With only the

6. For an excellent survey of the historical issues of "republicanism," see Kerber, *The Ideology of the Revolutionary Generation*, 37 AM. Q. 474 (1985).

7. White, *The Art of Revising History: Revisiting the Marshall Court*, 16 SUFFOLK U. L. REV. 659 (1982).

8. Ogden v. Saunders, 25 U.S. (12 Wheat.) 213 (1827). Significantly, the four Justices in the

rarest of exceptions, Marshall pronounced all major constitutional judgments.[9] Most of Marshall's colleagues on the Court have faded from professional memory altogether — swallowed up, as it were, in the unquestioned preeminence of their Chief Justice.

Chapters three through six of *The Marshall Court and Cultural Change* (pp. 157-426) are a sustained and successful attempt to reconsider this common picture of the Marshall Court as an assembly of nonentities led by a juristic giant. The work of the Court, as White reconstructs it, was the product of a complex set of collaborations among Justices — including, at times vitally, the "silent" or nonwriting members of the Court — the lawyers who argued before them, and other individuals, especially the Court's reporters.[10] Some of Marshall's most renowned opinions, for example, owed a striking debt to the arguments of the Supreme Court bar.[11] The Court's collegial and consultative mode of deciding cases, including the high premium on participation by Justices who seldom delivered the Court's opinions,[12] provide another instance of collaboration. John Marshall certainly was central to the Court's life during his years as Chief Justice, but his primacy did not negate or exclude the vital contributions of many others.

John Marshall's admirers long have maintained that his greatest accomplishment lay in his creation of a sphere of constitutional *law,* separate and distinct from the arenas of political practice and theory. Within this sphere, unelected and life-tenured judges legitimately may overrule the decisions of electorally responsible officials so long as they base their judgments on law rather than politics. As Professor George L. Haskins has argued, Marshall strove to establish the Supreme Court as "a bulwark of an identifiable rule of law as distinct from the accommodations of politics."[13] Critics of this celebratory interpreta-

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majority were unable to agree upon an "opinion of the Court" and resorted to *seriatim* opinions. Even in *Ogden,* therefore, Marshall's opinion, which was joined by Story and Duvall, commanded more support than any other Justice's.

9. Definitions of "major constitutional judgments" may differ, of course, but a plausible argument can be made that, besides *Ogden,* Marshall failed to author a major constitutional opinion of the Court only twice during his tenure. *See* United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32 (1812) (Johnson, J.) (denying existence of federal common law of crimes); Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816) (Story, J.) (upholding Judiciary Act provision granting Supreme Court jurisdiction over state court judgments in certain situations).

10. One of the reporters, Henry Wheaton, seems to have exercised considerable independent discretion in the preparation of the published opinions with the Court's knowledge and approval. *See, e.g.,* pp. 384-426.

11. *See, e.g.,* pp. 247-50, where White compares the opinions in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), and Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821), to the reported arguments of William Pinkney.

12. *See, e.g.,* pp. 318-21 (discussing the contributions of Thomas Todd), 321-27 (discussing Gabriel Duvall), and 327-32 (discussing Brockholst Livingston).

13. G. HASKINS & H. JOHNSON, *supra* note 2, at 7. Haskins' coauthor, Professor Herbert A. Johnson, shared this interpretation of the Marshall Court. *See, e.g., id.* at 399-400.

tion of the Marshall Court often simply have inverted it, arguing that Marshall and his colleagues were determinedly antidemocratic politicians masquerading their usurpation of power behind a veneer of legalistic argument.[14]

In this volume White reshapes this interpretive dichotomy between law and politics. For Marshall and his contemporaries, White argues, the crucial "jurisprudential issue" was "the problem of judicial 'discretion' and the related problem of distinguishing the judicial declaration of legal principles from partisan political activity" (p. 4). White explains that both the English political tradition and American notions of republicanism led the Court to deny that judges can or should "make" law; instead, the Justices believed that judges "only discovered certain universal or fundamental principles" (p. 196). But this view of judging was not an early nineteenth-century precursor to legal formalism, for Marshall and his contemporaries did agree that "law, especially constitutional law, embraced politics and political theory" (p. 196), and as a result they expected "the federal judges and the federal courts [to] reflect the political interests and goals of the federal government" (p. 118). The Court's political role was known and accepted as legitimate, but the Justices' legitimate political tasks were sharply distinguished from the partisan activities of elected politicians. "The limits on judging imposed by early nineteenth-century jurisprudence were not so much limits focusing on subjectivity, nor limits focusing on politics as separate from law, as they were limits focusing on partisanship" (p. 199), White argues. Many aspects of the Marshall Court's working life reflect the Justices' deep concern for separating themselves from partisanship: their intensely collegial mode of reaching decisions, which involved genuine effort to obtain the views and secure the assent of all the Court's members to its judgments; their substitution of a single "opinion of the Court" for *seriatim* opinions; their careful avoidance of overt identification with the policies and fortunes of partisan politicians, which characterized some federal judges in the 1790s (and indeed led to the impeachment of Justice Samuel Chase); and their sometimes disingenuous attempts to deny personal involvement in cases coming before the Court (pp. 164-200).

The problem of being political without being partisan was, in jurisprudential terms, the problem of discretion. That judges were limited to finding and declaring law (rather than making it) did not mean to early nineteenth-century Americans that some sort of mechanical jurisprudence was possible.

> The task of finding and declaring a source of law, and applying it to a particular case, was not regarded as lawmaking. However, serious ques-

14. *See, e.g.*, C. HAINES, THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT AND POLITICS, 1789-1835 (1944); Nedelsky, *Confirming Democratic Politics: Anti-Federalists, Federalists, and the Constitution* (Book Review), 96 HARV. L. REV. 340 (1982).

> tions of judicial discretion remained, one being whether a judge was entitled to apply the particular source he had deemed appropriate to a given case, another being whether the court in which the judge sat was entitled to decide that sort of case at all. The objection to federal court judges' declaring common law rules, for example, was not that in so doing those judges would be making rather than finding law, but that they either had no authority to use the common law or other source in the particular case they were deciding, or that they had no authority to declare common law rules at all in a given substantive area. [p. 118]

The Marshall Court's objective — and to a considerable extent its accomplishment, at least in the minds of contemporaries (p. 964) — was to distinguish between the illegitimate employment of individual (partisan, interested) discretion and the Court's legitimate exercise of legal discretion. Selecting which of the various sources of law were applicable to a given case (pp. 112-13), the very essence of judicial lawmaking to modern observers, was for Marshall and his contemporaries the means whereby the Justices' personal wills and discretion were constrained by "the will of the law" (pp. 196, 972). Even the Court's contemporary critics, by and large, objected not to the Court's purported method of decisionmaking but instead to what they saw as covert partisanship (p. 973). Neither its critics nor the Court itself believed that the Justices had "stop[ped] deciding political issues."[15] Rather, White argues, the Justices were "convinced that the de-emphasis of overt partisanship and the emphasis of a judicial obligation to subordinate individual discretionary choice to the 'discretion of the law' was an important means of gaining legitimacy for their pronouncements. To say that is not to say that the Court elevated law above politics" (p. 964).

One of the most widely shared twentieth-century perceptions of the Marshall Court is that it was "nationalist." Marshall's great biographer Albert Beveridge wrote many years ago that Marshall's "one and only great conception" was "American Nationalism,"[16] and Charles Warren's classic historical study of the Supreme Court concluded that Marshall's jurisprudence helped "steadily enhance[ ] the power of the National Government."[17] More recently, Professor Charles Black suggested that the establishment of a nationalist constitutional law was Marshall's greatest achievement.[18] Professor White's interpretation of the Marshall Court's treatment of issues of federalism and sovereignty reveals that the Court's nationalism was considerably more nuanced than we often have realized. The Court's decisions, White points out, were made against a background of intense political concern over " 'consolidation,' a catchword for the aggrandizement of

15. P. 196 n.165.

16. 4 A. BEVERIDGE, THE LIFE OF JOHN MARSHALL 1 (1919).

17. 1 C. WARREN, THE SUPREME COURT IN UNITED STATES HISTORY vii (1922).

18. C. BLACK, THE HUMANE IMAGINATION 140-55 (1986).

the sovereignty of the federal government at the expense of the sovereignty of the states" (p. 126). During the great constitutional crisis provoked by the passage of the Alien and Sedition Acts of 1798 and resolved by Jefferson's election to the presidency, the Republicans successfully branded their more nationalistic opponents as advocates of a consolidation of power in the federal government that ultimately would subvert republicanism itself.[19] In the aftermath of the crisis, the charge of consolidation was a potent political accusation, and Marshall and colleagues were obliged by intellectual and pragmatic concerns to take account of the fear of federal power (p. 127).

That the Marshall Court's constitutional cases almost invariably raised the spectre of consolidation in critics' minds was largely the consequence of the widespread belief in what White terms "the coterminous nature of federal power" (p. 503). It was simply axiomatic to virtually all early nineteenth-century Americans that the legislative, executive and judicial powers of the federal government were identical in scope: If one branch of the government could address an issue, assert jurisdiction, or draw on a particular source of law, all could. "Once that assumption was seriously held, every potential expansion of federal judicial power, if warranted by the Constitution, was a potential expansion of legislative power, and every potential extension of Congress's power at the expense of the states a potential increase in the jurisdiction of the federal courts" (p. 125). Understanding the role this thinking played in Marshall's era allows us to comprehend, for example, why the existence of a federal common law was so bitterly disputed. If federal judges were entitled to declare law based on "the common law," an amorphous body of legal principles and precedents addressing virtually all areas of social life, then Congress presumptively was entitled to legislate in those same areas, and would, at a stroke, become legislatively omnicompetent. Similar arguments could be made about the Supreme Court's exercise of jurisdiction to review state court decisions and, indeed, about most of the major constitutional decisions of the Marshall Court. The logic of coterminous power theory made those decisions look bluntly consolidationist.

The Marshall Court's response to this dilemma evolved over time and had practical as well as jurisprudential aspects. On a practical level the Justices generally avoided blatantly consolidationist rhetoric,[20] and they exercised their power to review state judgments with

19. *See, e.g, Republican Manifesto: The Virginia Report,* in THE MIND OF THE FOUNDER: SOURCES OF THE POLITICAL THOUGHT OF JAMES MADISON 297 (M. Meyers ed. 1973).

20. Contrast Marshall's careful argument that *McCulloch* was reconcilable with the Virginia Report of 1800 (the "Old Testament" of the anticonsolidationists) in his newspaper defense of the decision with Alexander Addison's attack on the Report, in which Addison candidly admitted that his views theoretically amounted to an admission of congressional omnicompetence. *See* Addison, *Analysis of the Report of the Committee of the Virginia Assembly,* in 2 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA 1760-1805, at 1055, 1066 (C. Hyneman &

great care.[21] More fundamental, however, is the fact that most of the Justices were not extreme nationalists. Their primary concern was not with "the development of national institutions" or with "sustain[ing] regulatory policies instituted by the national government" (p. 486). Rather, their "nationalism" was "essentially concerned with the preservation of the Union against dissolution as the American republic expanded" (p. 487). Marshall and most of his colleagues[22] labored to sustain federal supremacy and sovereignty to check the centrifugal forces of state and regional parochialism, not to enable the national government to undertake affirmative activities. "An image of chaos, and the ever-present potential for decay and dissolution, were the spectres against which Marshall's theory of sovereignty was erected" (pp. 592-93).

Through legal doctrine, the Marshall Court's solution to the twin problems of consolidation and dissolution was a sort of jurisprudential compromise. "Concurrent power theory," as reflected in *Gibbons v. Ogden,*[23] allowed the Court to sustain the constitutionality and supremacy of congressional legislation without denying the continuing sovereignty of the states in some areas of federal authority (pp. 575-80), an effort that was politically expedient though intellectually uncomfortable for Marshall, among others. The Court was more successful in defending its own claim to final authority over the Constitution's interpretation throughout the federal system. By the end of Marshall's tenure he and his colleagues had accepted "an implicit constitutional compromise . . . consisting of retention of the extensive Article III powers claimed by the Marshall Court and a circumscription of the equally extensive Article I powers claimed for Congress" (p. 594). The Marshall Court's "nationalism," in the end, had more to do with assuring its own prerogatives than with endorsing, a century early, the New Deal vision of a powerful national government. *Cooper v. Aaron,*[24] it seems, has a greater claim to Marshallian ancestry than does *Wickard v. Filburn.*[25]

D. Lutz eds. 1983). *See generally* JOHN MARSHALL'S DEFENSE OF MCCULLOCH V. MARYLAND (G. Gunther ed. 1969).

21. Referring in particular to Story, White writes that "while some of [the Court's] most influential Justices may have been consolidationist in theory, they were careful not to be overly consolidationist in practice." P. 494.

22. White recognizes that Story was a significant exception to this statement. Pp. 487, 593-94.

23. 22 U.S. (9 Wheat.) 1 (1824).

24. 358 U.S. 1, 18 (1958) (stating that the Court's constitutional interpretations are "the supreme law of the land").

25. 317 U.S. 111, 120 (1942) (stating, of *Gibbons,* "At the beginning Chief Justice Marshall described the federal commerce power with a breadth never yet exceeded.").

II. A New Constitutional History

Professor White has made a major contribution to the legal historical literature on the early Republic. We will not think about John Marshall in the same ways we did before. But White's achievement goes beyond even that considerable success. *The Marshall Court and Cultural Change,* along with recent works by a few other scholars,[26] evidences the arrival of a new and vastly more sophisticated approach to the writing of constitutional history than has dominated the field until now. Traditional constitutional historians have tended to focus rather narrowly on the Supreme Court and on the Court's role in shaping legal doctrine and American political life. The Holmes Devise series itself represents a conscious choice to adopt this approach to the field. Although some work of lasting importance has emerged from this method of writing constitutional history, the approach nevertheless is systemically plagued with certain problems. Most important, traditional constitutional history easily, indeed almost unavoidably, slides into anachronism — the unwitting treatment of past institutions, persons and ideas as if they were contemporary.

The temptation to anachronism is especially acute in dealing with the Marshall Court, which seems so familiar, so "modern" in many ways. When White observes that "the two great jurisprudential issues" of the Court's era were "consolidation and judicial discretion" (p. 156), we naturally but mistakenly think that the Court and its contemporaries were concerned with the same issues of federalism and judicial process that worry us today. But as White shows, they were not, and it is as vital as it is difficult to keep in mind the cultural distance between early nineteenth-century America and the United States of the present.

In addition to its propensity for anachronism, traditional constitutional history has proven itself vulnerable to distortion by modern political needs and preferences. As I noted earlier, what the Marshall Court thought and said about the Constitution is legally and politically significant. This is hardly surprising in a legal culture shaped by common law notions of tradition and precedent, but it nonetheless exerts a powerful and continuous pressure on the constitutional historian to produce expedient results consistent with his or her normative constitutional commitments.

Another major problem with much (although by no means all) traditional constitutional history has been its relative isolation from

26. *See, e.g.,* E. Foner, Reconstruction: America's Unfinished Revolution, 1863-1877 (1988); H. Hartog, Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870 (1983); H. Hyman & W. Wiecek, Equal Justice Under Law: Constitutional Development, 1835-1875 (1982); W. Nelson, The Fourteenth Amendment: From Political Principle to Judicial Doctrine (1988).

other modes of exploring American history. Many constitutional historians have written without paying serious attention to the literature in historical disciplines other than legal and national political history.

The Marshall Court and Cultural Change contradicts each of these generalizations. White's work rests upon a broad familiarity with scholarship on the intellectual, cultural and social history of the early Republic, as well as with the political and legal-historical literature.[27] White's interpretation of the jurisprudence of Marshall and his colleagues is guided not by a quest for the useful but by a desire to "surmount the gaps between them and ourselves" (p. 975) and thereby to understand the Marshall Court's actions and achievements as something more than valuable precursors of contemporary debates. White's historical sophistication and his refusal to succumb to expediency have enabled him to write a study of the Marshall Court that is remarkably free of anachronism.

In his brief but useful introduction, White discusses several of the specific methods he used in researching and writing the book (pp. 1-10). One was a careful reconstruction of the processes by which the Court's decisions were produced, from its initial assertion of jurisdiction, through the advocates' arguments and the Justices' deliberations, to the oral presentation and subsequent publication of the opinion(s) (p. 4). A second method involved the employment of "certain reading techniques." White paid close attention to the Court's use of "cultural signifiers, words intended to convey a bundle of associations and thereby to invoke an appeal to values perceived to be of great importance in the culture" (p. 4). He also closely examined the Court's implicit judgment as to which issues were "pressing and significant" and which were "beyond dispute, insignificant, or too complex," and to those propositions that Marshall and his contemporaries regarded as too obvious to debate (pp. 4-5). White's third method was the use of a working hypothesis, which the evidence richly confirms, that the Marshall Court's development of legal doctrine was itself "an ideological exercise" (p. 5) by which the Court acted both as "a barometer and a precipitator of cultural change" (p. 965).

White's general approach and specific methodologies reflect a new and much more satisfactory mode of writing constitutional history than has been the general practice. White's writing style is equally admirable: *The Marshall Court and Cultural Change* is a joy to read.[28] One can only hope that it will be imitated as well as admired.

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27. The most serious fault with *The Marshall Court and Cultural Change* (aside from its exorbitant price) is its lack of a bibliography and the paucity of references to secondary literature in the footnotes. Readers unfamiliar with, for example, the historical literature on "republicanism" receive inadequate assistance from White in locating the relevant scholarship.

28. Among the myriad examples, consider White's summary description of the personality of William Wirt, United States Attorney General under Monroe and Adams:

Wirt's physical problems while attorney general were undoubtedly related to his temperament. His correspondence reveals a high-strung, resonant person of considerable nervous energy and a thirst for life; a person who felt things acutely, deeply, and with passion; a person who could not be counted on to restrain his impetuousness. He was immoderate both in his consumption of food and drink and in his daily routine. He rarely exercised; he loved company and conversation, and was oblivious to time when engaged intellectually or emotionally. He had considerable powers of concentration, was remarkably sensitive and perceptive, was occasionally enraged by the actions of other lawyers, and in general lived life with intensity. Wirt's family letters continually refer to his health being restored through vacations, travel, reduced working hours, and moderation in habits. Both he and his family were aware that for him tranquility was a necessity.

P. 264 (footnote omitted).