

While not balancing the problems, Gronowicz's apparent wide reading supplies a synthesis on many issues that specialists in New York City history may find interesting. His comments on literary figures of the day such as Charles Dickens, Edgar Allan Poe, Henry David Thoreau, and Walt Whitman offer notable insight. His work further demonstrates dimensions of the antebellum culture war that raged over the question of whose city was New York, after all? Was it the city of the many, of the people—whatever their ilk so long as they were white? Or was it the city of the betters, of the well-born, and able—so long as they were not foreign-born? Gronowicz contributes a view of the partisan answers of various and varying groups organized to win control of the lucrative and formative levers of city government.

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The Chief Justiceship of John Marshall, 1801-1835. By Herbert A. Johnson. ***Chief Justiceships of the United States Supreme Court.*** (Columbia: University of South Carolina Press, 1997. Pp, xii, 317. \$39.95.)

The Reign of Law: "Marbury v. Madison" and the Construction of America. By Paul W. Kahn. (New Haven: Yale University Press, 1997. Pp, xi, 306. \$35.00.)

Johnson's and Kahn's books represent too very different approaches to the Supreme Court under the chief justiceship of John Marshall. Johnson's book is a succinct yet rich history of Marshall and his Court, while Kahn's is a deeply philosophical examination of perhaps the most significant case of that Court, *Marbury v. Madison*.

Herbert Johnson is uniquely qualified to write a survey of the Marshall Court having served as editor of the Marshall Papers and co-author of the one of the Holmes Devise volumes on that court. He is also editor of the series in which his volume appears, the *Chief Justiceships of the United States*, being published by the University of South Carolina Press. The books in this series are much more than studies of the chief justices; they are also summaries and analysis of the significant business of the courts over which the chief justices presided.

Johnson very ably synthesizes the immense scholarship on Marshall and his court, a considerable amount of the important scholarship of which he himself has accomplished in his previous publications both as an editor and author. Further, he introduces much significant new information and analysis, including fresh insights into the personal relationships between the justices and computer-assisted analysis of the cases of the Supreme Court and the federal circuit courts. Johnson does not depart from the traditional view that under Marshall's leadership the Court became a significant branch of the federal government despite repeated challenges to its authority, especially by Thomas Jefferson and certain of the states, most particularly Virginia and Georgia. While Johnson's Marshall is no longer a benevolent despot who miraculously converted Republican appointees to card-carrying Federalists, he remains a charming and effective judicial politician who used the formal judicial conference and the informal boarding house dinner to produce consensus whenever possible. But Johnson stresses that Marshall could not always achieve unanimity among the strong-minded and independent members of the Court, and especially in the years 1813-1818, 1827, and 1830-1832 a significant number of dissents and concurring opinions appeared. Also, from 1823 to 1835 Marshall exercised less control over the Court that began to chip away at some of its earlier more nationalistic and pro-corporation opinions. Yet in a remarkable number of cases by gentle persuasion and artful opinion-writing, he was able to produce a unanimous or nearly unanimous decision. Most useful to this end was his successful campaign against the tradition of seriatim opinions by which each member of the Court had been expected to issue a separate opinion explaining his vote on the case, a practice that tended to diffuse the impact of the Court's decisions.

Johnson provides us with biographies of each member of the Marshall Court, a device that not only personalizes the institution but also emphasizes that it was by no means a monolith. William Johnson, an independent South Carolinian and Thomas Jefferson's first appointee to the Court, and Joseph Story, the brilliant and scholarly legalist from Massachusetts, constituted especially forceful personalities on the Court. Johnson persuades us that Marshall's brilliance in dealing with such formidable colleagues marks him as perhaps the greatest Chief Justice.

Johnson treats not only the major constitutional cases of the Court, but an array of decisions affecting commercial matters, property rights, private law, prize law, and international law. The author also includes as appendices a table of points of law decided in the Supreme Court and circuit courts during the Marshall era and a table of points of law decided by each member of the court as presiding judge of the circuit courts. He additionally devotes space in the main text to the work of the circuit courts,

which were composed of a justice of the Supreme Court and a federal district judge and had significant original and appellate jurisdiction.

It was in constitutional law that the Marshall Court achieved its most enduring legacy and set a standard by which all subsequent courts have been measured. The Court established the tradition of judicial review, confirmed and protected the right to hear appeals from state courts in cases involving federal questions, expanded the contracts clause to include corporate charters, affirmed the power of Congress to charter a national bank and with that the doctrine of implied powers, and offered an expansive interpretation of the commerce clause. Marshall wrote most of the opinions in the major constitutional cases of his Court and only dissented in one of them.

Kahn's study focuses on a single case of the Marshall Court, *Marbury v. Madison*, the first decision of the Court to declare a federal statute (really only part of a statute) unconstitutional. In this endeavor he does not employ the skills of traditional history but rather those concerned with defining political culture, more specifically the system of beliefs that support an understanding of the political order as a rule of law. The rule of law, he argues, is perhaps our most revered political myth. Like Johnson, he submits that Jefferson posed a serious threat to the independence of the federal judiciary, especially the Supreme Court. Further, he contends that Jefferson regarded the Court as nothing more than a instrument of the Federalist party at war with the Jeffersonian party that had democratically assumed leadership of the nation in an authentic political revolution. By means of abolishing the tradition of seriatim opinions, establishing the tradition of a single opinion of the court, and utilizing very clever but not always consistent rhetoric and analysis, the Marshall Court (especially Marshall) succeeded in creating a theoretical right for Marbury to receive his commission, lectured Jefferson and Madison on their administrative responsibilities, avoided a no-win showdown with those two adversaries, and, most importantly, created the myth of the rule of law. The rule of law, Kahn asserts, has taken on almost theological proportions as a manifestation of the sovereign's will, which in turn is grounded in mythical will of the people.

Both Johnson and Kahn have succeeded in their scholarly enterprises, Johnson's as the best short history of the Marshall Court and Kahn's as a brilliantly innovative and provocative work of pathfinding dimensions.

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