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Book Review: Supreme Court Justice Joseph Story: Statesman of the Old Republic. by R. Kent Newmyer.

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SUPREME COURT JUSTICE JOSEPH STORY: STATESMAN OF THE OLD REPUBLIC. By R. Kent Newmyer.[1] Chapel Hill, N.C.: University of North Carolina Press. 1985. Pp. xvii, 490. $32.00.

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Kent Newmyer's magisterial study of "America's Blackstone" arrives in the midst of what can only be called a flood of new judicial biographies. But this one, unlike the others, treats a distinctly unmodern life. Two decades of research, contemplation, and preliminary publication also impart a certain richness and sure-footedness,[3] which serve to remind us that good biography requires time, patience, and a capacity for intimacy. Always, there is a struggle to understand,[4] which involves climbing out of one's own skin long enough to view the terrain and learn a new language. For these and other reasons, *Supreme Court Justice Joseph Story* probably signals a new day in the writing of judicial biography; but let me return to that rather bold suggestion a bit later.

Although far less influential in the 1980's than, say, Louis Brandeis or Oliver Wendell Holmes, Jr., Joseph Story still commands respect among historians and academic lawyers. In legal circles, he is remembered first for landmark opinions written during his long tenure as Associate Justice of the United States Supreme Court during the Marshall and Taney years, and then for his sweeping *Commentaries*, published in eleven volumes between 1832 and 1845, in which Story (very like his contemporary Kent) tried to impose scientific order upon American jurisprudence.[5]

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3. Newmyer is the author of the best brief history of the Marshall and Taney Courts: R. NEWMYER, THE SUPREME COURT UNDER MARSHALL AND TANEY (1968). The many articles published in advance of this new biography still reward a separate reading. *See, e.g.*, *Justice Joseph Story on Circuit and a Neglected Phase of American Legal History*, 14 AM. J. LEGAL HIST. 112 (1970); *Daniel Webster as Tocqueville's Lawyer: The Dartmouth College Case Again*, 11 AM. J. LEGAL HIST. 127 (1967); *Justice Joseph Story, The Charles River Bridge Case and the Crisis of Republicanism*, 17 AM. J. LEGAL HIST. 232 (1973); or *Justice Joseph Story's Doctrine of "Public and Private Corporations" and the Rise of the American Business Corporation*, 25 DE PAUL L. REV. 825 (1976).

4. R. NEWMYER, SUPREME COURT JUSTICE JOSEPH STORY: STATESMAN OF THE OLD REPUBLIC at xiii (1985).

5. BAILMENTS (1832); CONSTITUTION OF THE UNITED STATES (1833); CONFLICT OF

In his own day, however, Story wore numerous other hats. He was a second-rate poet, a legislator, an ambivalent codifier, a Jeffersonian-cum-Federalist-cum-Whig, a husband and father, a practicing lawyer, and the intellectual fount to which men like Daniel Webster returned time and again. Before all else, Old Joe (as some of us affectionately call him) was one of Harvard's finest early law teachers—in the classroom, a "Chinese juggler" who "planted the seed and made it grow before the eyes of his pupils into a tree."[6] He preferred the title "Professor" to "Justice." His students sometimes renounced his influence; but, as the century advanced, many of them fashioned an American legal order more or less from blueprints provided by their old master at Cambridge.

It is ironic, then, that Story's reputation in modern times has come to depend upon the favor accorded his High Federalist judicial opinions and, to a lesser extent, his *Commentaries*. As an intellectual giant on John Marshall's bench, but also as the Taney Court's expert in commercial and admiralty law, Story led or actively participated in campaigns to secure a uniform commercial law, clarify federal admiralty jurisdiction, consolidate congressional regulatory powers, and ensure the sanctity of contracts. His opinions are inseparable from the development of American judicial nationalism; one thinks, for instance, of *Dartmouth, Martin v. Hunter's Lessee, Prigg v. Pennsylvania*, and *Swift v. Tyson*. After Marshall's death, Story in dissent functioned as a kind of old revolutionary conscience in Andrew Jackson's brave new world of social reform and rapid (Story sometimes said barbaric) economic and territorial expansion. The most familiar example is his masterful defense of implied legislative monopoly (and old-style republicanism) in *Charles River Bridge*.[7]

Unlike his colleague and idol, John Marshall, Story lived long enough to become embroiled in sectionalist controversies after 1832—the reef upon which the Supreme Court would founder in *Dred Scott*. He was perhaps the most conservative member of Marshall's bench; and his frequent denunciations of legislative "demogogues," Andrew Jackson, Roger Taney's opinions, and radical or unsettling reform movements after the 1830's—most espe-

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LAWS (1834); EQUITY JURISPRUDENCE (1836); EQUITY PLEADINGS (1838); AGENCY (1839); PARTNERSHIP (1841); BILLS OF EXCHANGE (1843); PROMISSORY NOTES (1845).

6. *Quoted in* R. NEWMYER, *supra* note 4, at 257.

7. Newmyer, *Justice Joseph Story, the Charles River Bridge Case, and the Crisis of Republicanism, supra* note 3, provides an invaluable corrective in brief compass of the usual suggestion that Story's Charles River Bridge dissent was little more than the bleatings of an Old Guard reactionary. *Cf.* S. KUTLER, PRIVILEGE AND CREATIVE DESTRUCTION: THE CHARLES RIVER BRIDGE CASE (1971).

cially radical abolitionism—resulted in a bad press (or, as his critics preferred to say, a well-deserved dethroning). Story, for instance, was politically and morally opposed both to plantation slavery and to William Lloyd Garrison's "ultraisms"; given abolitionism's central place within the American liberal tradition, Story's antislavery posture (and the extent to which he imagined that rulings like *Prigg* would gradually demolish the "Slave Power") all too easily escaped notice.

After Reconstruction, negative judgments gained ground with the advent of "Progressive" history writing and sociological jurisprudence, both of which were engaged in slightly different ways in a struggle against formalism.[8] Vernon Parrington, Henry Steele Commager, and other deans of post-New Deal professional history had little time for Story's allegedly narrow legalism, his lack of "social orientation," as Commager put it, or his supposed ignorance of numerous moral philosophers who might have humanized him.[9]

The final blow to Story's reputation, as every first-year law student learns, was the Supreme Court's dramatic 1938 conclusion in *Erie* that Story's *Swift v. Tyson* opinion had been unconstitutional.[10] During the preceding fifty-year drive to undo *Swift*, Story's treatises and legal science had been attacked as well. Holmes, for example, granted that Story had made American law "luminous" and "easy to understand,"[11] but found him decidedly misguided in his Blackstonian search for legal truth. Jackson and Garrison would have clapped gleefully over John Chipman Gray's trashing of *Swift v. Tyson* in 1909: Story, he said, was "possessed by a restless vanity. . . . [H]e was a man of great learning, and of reputation for learning greater even than the learning itself; he was occupied at the time in writing a book on bills of exchange, which would, of itself, lead him to dogmatize on the subject."[12]

Plainly, Joseph Story's fall from grace was related in part to political "bad fit" in an age preoccupied with adaptive jurisprudence, urban unrest, and the "Americanization" of political society. Story's conviction that jurists might inch their way toward legal truth closely resembled Holmes's vision; his *objects*, if not his strategies, often mirrored those pursued by Louis Brandeis, who regarded

8. *See* M. WHITE, SOCIAL THOUGHT IN AMERICA: THE REVOLT AGAINST FORMALISM (1947); Gordon, *Introduction: J. Willard Hurst and the Common Law Tradition in American Legal Historiography*, 10 LAW & SOC'Y. REV. 9 (1975).

9. H. Commager, quoted in J. MCCLELLAN, JOSEPH STORY AND THE AMERICAN CONSTITUTION 310 (1971).

10. Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).

11. O. Holmes, *The Use of Law Schools: Oration Before the Harvard Law School Association, At Cambridge, November 5, 1886*, in COLLECTED LEGAL PAPERS 41 (1920).

12. J. GRAY, THE NATURE AND SOURCES OF THE LAW 253 (2d ed. 1921).

law and community as instruments toward self-actualization. Story nevertheless came to be viewed as one of several malignant forces underlying *Slaughterhouse, Adair,* and other post-Civil War judicial travesties; nor have these characterizations disappeared. In 1977, Morton Horwitz linked Old Joe's treatises to "a more general resurgence of legal formalism" which "suppress[ed] all centrifugal legal tendencies before they could even be conceived."[13]

In much the same way, historians who viewed the American Revolution mostly as a dress rehearsal for Jacksonian "Democracy" and modern political egalitarianism easily could cast Joseph Story as a dangerous counterrevolutionary pitted against what J. Willard Hurst called an instrumentalist "release of energy"[14] and against social regeneration. Rarely did these scholars appreciate the extent to which an old Commonwealthman like Story might have applauded Progressivism's penchant for moral purification through law, its defense of well-regulated capitalism, or the community-building underside of New Freedom, New Deal, New Frontier, and Great Society "uplift."[15]

Story's fate also reflects intellectual misunderstandings, some of them related to basic alterations in the scale of American civilization and legal learning. He inhabited a world without Xerox machines. In the 1820's, western states were only beginning to share statute books with one another; and lawyerly ruminations in myriad scholarly journals had not become required reading for lawyers and their apprentices. Even without an overweening interest in "system," men like Story actually could imagine comprehending "the law" in a dozen or so stout volumes; in our own time, such aspirations seem pretentious if not pathetic.

But these are relatively minor issues; others matter a good deal more. Previous biographies, notably those by James McClellan and Gerald Dunne,[16] were marred by anachronism and superficiality; at long last, we have Joseph Story in several dimensions, firmly embedded in his own world. If the Justice's integrity is apparent, so are his warts: he is equally capable of courage and impolitic obsession. His brilliance and personal charm coexist with occasional gul-

13. M. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 249 (1977).

14. J. HURST, LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH CENTURY UNITED STATES (1956).

15. *See, e.g.*, M. KELLER, AFFAIRS OF STATE: PUBLIC LIFE IN LATE NINETEENTH CENTURY AMERICA (1977); N. CLARK, DELIVER US FROM EVIL (1976); J. JOHNSON, AMERICAN LEGAL CULTURE (1981).

16. J. MCCLELLAN, *supra* note 9, emphasizes Story's legal philosophy and its relationship to the European Enlightenment; G. DUNNE, JUSTICE JOSEPH STORY AND THE RISE OF THE SUPREME COURT (1970), betrays Dunne's overweening interest in commerce and centralized finance.

libility, careerism, and intellectual limitation. By the late 1810's, Story is unabashedly Burkean in political orientation and a budding legal scientist in the style of Blackstone; but Newmyer's emphasis is on the modifier—an *American* Burke, an *American* Blackstone (if comparable to either).

At the heart of Newmyer's painstaking reconstruction are two pivotal concepts. The first is revolutionary republicanism, which the author accurately describes as a "set of collectively held and often vaguely defined general assumptions about American government and society: what it was as well as what it ought to be."[17] At least since the 1960's, revolutionary republicanism has been the subject of a revisionist literature at least as significant as Charles Beard's seminal publication in 1913.[18] We now know that the American War for Independence was more than a footnote to the European Enlightenment, and surely more than a crass coup by privileged colonial elites. Newmyer surrounds Story with these new understandings;[19] the result is a New World legal thinker whose intellectual debts were as eclectic as revolutionary thought itself.

Republican idealism was not a monolithic ideology; rather, it was an intellectual *posture* from which Americans viewed the great swirl of revolutionary events, and calculated their place in the long march of civilization westward from Greece and Rome. Within this "cultural matrix,"[20] as Newmyer puts it, Americans as disparate as Samuel Adams and Joseph Story made political choices which led frequently to sharp disagreement; at the same time, much was shared—language, assumptions, confidence in the muscular cycles of imperial history, and a keen sense of urgency about current events.

Historians have long understood that the American Revolution represented a profound rethinking of ideal relationships between authority and liberty; but it also involved a fresh assessment of individual responsibility within an organic community in the cultivation of civic virtue—the sine qua non of a republic's survival, and the quality which would differentiate republicans from "degenerate" Europeans. Participants in this revolutionary process, very like their Calvinist forebears, placed great weight upon the agency

17. R. NEWMYER, *supra* note 4, at xv.

18. C. BEARD, AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES (1913).

19. On revolutionary republicansim, see, *e.g.*, G. WOOD, CREATION OF THE AMERICAN REPUBLIC (1969); Pocock, *Virtue and Commerce in the Eighteenth Century*, 3 J. INTERDISC. HIST. 199 (1972); Shalhope, *Republicanism and Early American Historiography*, 39 WM. & MARY Q. 334 (1982); Shalhope, *Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography*, 29 WM. & MARY Q. 49 (1972).

20. R. NEWMYER, *supra* note 4, at xvi.

of individuals in civil regeneration. They also created a language from bits and pieces of apocalyptic Protestantism, British "country" politics, and classicism—"virtue," "perfectionism," "voluntarism," "lawful opposition," the "people out of doors." Only by the 1830's would this new language begin to "lose its meaning";[21] before then, it was Joseph Story's intellectual prism and the source of that singleminded confidence (epitomized perhaps by Story's moot court declaration, "Gentlemen, this is the High Court of Errors and Appeals from all other courts in the world!")[22] which so irritated John Gray.

If republicanism provided language and frame of mind, legal science was the scaffolding through which Story intended to preserve Americans from the corruption and internal decay to which republics were taken (by Federalists especially) to be peculiarly vulnerable.[23] Newmyer's insistence upon the centrality of legal science in Story's life and thought (and upon the extent to which the Justice, unlike his European counterparts, had in mind an "applied science") is his most persuasive and valuable insight. This was an age of system building. Very like Blackstone, Story rummaged in legal closets from ancient Rome to contemporary Philadelphia in search of "the law" as jurists and academic civil lawyers had recorded it. He then set about organizing this evidence into coherent patterns, and instructed his students to do the same.

To the extent that Story viewed historical experience as a constraint upon present possibility, the political objects of his science indeed were Burkean, as Newmyer claims. Scientific law would serve as a hedge against future shock, and against the "passionate" politics inseparable from republics.[24] Unlike Burke or Blackstone, however, Story had little taste for immutable constraints upon social advancement, or for the idea of permanent silences in the common law—less because they were unsightly than because they were dangerous. Very like Montesquieu (whose influence Newmyer might have explored more deeply), Story recognized that "necessary relations"[25] between law and society could vary with political culture; also with Montesquieu, he feared the loss of "simple princi-

21. The phrase belongs to J. WHITE, WHEN WORDS LOSE THEIR MEANING (1984).

22. J. Story, *quoted in* R. NEWMYER, *supra* note 4, at 259.

23. *See, e.g.*, G. WOOD, *supra* note 19, at 471-518.

24. *Cf.* VanBurkleo, *Honour, Justice and Interest: John Jay's Republican Politics and Statesmanship on the Federal Bench*, 4 J. EARLY REPUBLIC 239 (1984).

25. MONTESQUIEU, SPIRIT OF LAWS, translated and quoted by J. BRONOWSKI & B. MAZLISH, THE WESTERN INTELLECTUAL TRADITION 271 (1960): "Laws are the necessary relations which derive from the nature of things . . . [T]here is an original reason; and laws are the relations which are found between it and different beings, and the relations of these beings among themselves."

ples" (among them, "virtue")[26] whenever republics dispensed with the lessons in public morality inherent in law. If American society required fluid rules—the application of "old law to new circumstances"—then lawyers should find ways, always viewing law as an approximation of "truth," and never resisting "new and sometimes astonishing results."[27] At the same time, republicans could not forsake guiding principles—primary among them, the need to keep promises ("contract" as a cultural idea),[28] or the need to hold individuals accountable to community rules.

The task, then, was to negotiate a tightrope between principle and social necessity, between a rule of law necessarily entrusted to well-educated legal professionals and the sometimes destructive demands of this or that canal company. If law could never be entirely fixed, it also carried a heavier social burden in America than in monarchical Britain, where lawyers perhaps could afford to engage primarily in advocacy. In the New World, it was essential that *lawyers* should supersede mere politicians as agents of regeneration, and that codifiers compile only those rules acknowledged by judges. It followed, too, that courts of chancery (despite the American aversion to equity)[29] should be allowed to apply scientifically-derived rules of equity wherever the common law was powerless, lest the law cease to be *useful*, and lest whole areas of commercial life escape the bounds of legality altogether.

Story, in short, was both a positivist and a formalist in much the same way that Holmes was—a believer in the existence of principles and observable, "true" legal artifacts to which republicans ought to adhere as they tried to encase new developments in common law (or equitable) language. Holmes, after all, mainly faulted Story for his tone and for having been born too soon;[30] and Roscoe Pound found little to criticize. As a legal methodologist, Story's "case method" was as systematic (and decidedly more imaginative) than Langdell's; and his sensitivity to domestic improvement (which caused him to regret deeply the need to insist upon the performance of an agreement in *Green v. Biddle*) was every bit as "instrumentalist" as the suggestion by Governor Gabriel Slaughter of Kentucky in 1818 that law ought to address the needs of the coun-

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26. *Id.* at 272.

27. Newmyer paraphrasing Story on the much-admired Lord Mansfield, and quoting Story on the value of legal study; R. NEWMYER, *supra* note 4, at 246.

28. *Id.* at 228-35; *see also* Newmyer, *Justice Joseph Story, the Charles River Bridge Case, and the Crisis of Republicanism, supra* note 3.

29. *See, e.g.*, Katz, *The Politics of Law in Colonial America: Controversy over Chancery Courts and Equity in the Eighteenth Century*, 5 PERSP. AM. HIST. (1971); and R. NEWMYER, *supra* note 4, at 289-300.

30. O. Holmes, *supra* note 11.

try's "agricultural and Commercial interests."[31]

But what of that recurring charge of "formalism"—the notion that Story, allied with figures as disparate as Blackstone, Chief Justice Fuller, and Germanic legal theoreticians, somehow was opposed to "instrumentalism" and sociological jurisprudence? In the strict sense in which these terms have meaning to lawyers, Story was neither and both (which probably is true of most common lawyers); he moved simultaneously from an observable, predictable world of social consequence, and from first principles derived more or less "objectively" from historical texts. He may, in fact, have been engaged in bridge building between civil and common lawyers; but the important fact is that, in Story's day, the several elements of legal science (scientism, system building, conceptualism, abstraction, formalism, and purism)[32] had not been influenced powerfully, as they would be later in the century, by the reifications and rigidities of German legalism. A German might have said that Waite and Fuller were *methodisch* (which, in A.E. Housman's translation, meant that they had "laid down a hard and fast rule and . . . stuck to it through thick and thin"), whereas Story, Pound, Ames, and Justice Holmes would probably have been damned as *willkürlich* (meaning that they were "guilty of the high crime and misdemeanour of reasoning").[33] When legal realists finally rejected scientism and system building—the two elements of legal science which sociological jurisprudence had *not* rejected[34]—the baby (Story) was tossed out with the bathwater (the civil lawyer's penchant for asocial, academic hairsplitting).

Arguably, the legal historians' persistent association of Story with formalism has less to do with his jurisprudence (or with his attitude toward economic development) than with his politics. Embedded in many instrumentalist legal histories is hostility to political conservatism, to judge-made law, to the rules of equity that Story tried to resuscitate,[35] and, most especially, to the idea that a "detached" legal profession ought to make legal rules. To some extent, early republican conservatism has been misunderstood by post-Realist historians; Story's age did not view conservatism

31. Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823); R. NEWMYER, *supra* note 4, at 126-27, 130, 148, 200-201, 204, 207-10; G. Slaughter, Speech before the House and Senate of Kentucky (Dec. 8, 1818) (Executive Journal, Papers of Kentucky Governors, Kentucky Historical Society, Frankfort).

32. J. MERRYMAN, THE CIVIL LAW TRADITION 71 (1969).

33. Edward M. Wise, Wayne State University Law School, led me gleefully to Housman's 1911 Cambridge Inaugural Lecture: A. HOUSMAN, THE CONFINES OF CRITICISM 37 (J. Carter ed. 1969).

34. J. MERRYMAN, *supra* note 32, at 70-71.

35. *See, e.g.*, M. HORWITZ, *supra* note 13, at xii, 265-66.

merely as mindless resistance to change (a handful of diehard monarchists notwithstanding); nor did the term denote the dismantling of centralized authority in favor of "home rule," except as it came to be applied to proslavery disciples of John C. Calhoun.[36]

But Story indeed produced Blackstonesque treatises; with other Federalists, he also imposed historical and constitutional constraints upon sudden change and "licentious" lawmaking, particularly in state legislatures. For these reasons, historians have been unable to acknowledge the extent to which Story might have empathized with many of modern liberalism's (and legal realism's) objectives—community harmony, vigorous economic development, new learning (as against crabbed systems, which he took to be inappropriate in republics), and pointed dissent on behalf of enslaved Afro-Americans or embattled American Indians (about whose original rights to land Story was decidedly more insistent than John Marshall).

This essay began with the suggestion that *Supreme Court Justice Joseph Story* signals a new beginning in American judicial biography. In historical circles, biography of late has fallen upon hard times. Increasingly, biographical writers have come to be viewed as professional stepchildren (as have scholars of leadership generally, particularly constitutional historians).[37] It is too glib to say (as some have done) that diminished interest in "great lives" occurred solely because of social science history. Recent assaults upon "traditional" Whiggism and internalism often have been justified; equally important, the academy generally has been plagued for awhile now by a profound existential depression, which enhances skepticism about the role of mind in historical change.[38]

Judicial biography, more than any other subfield within constitutional studies, symbolizes a tradition in which "great men" define entire courts and historical periods; it also is rife with Whiggish celebration and the spinning of lawyerly wool. However impressively documented or beautifully written, biographies rarely have addressed broad-gauged historical issues, or that all-important question, "So what?" Beveridge's *Life of John Marshall*, for example, was a formidable narrative achievement; but few professional

36. C. ROSSITER, CONSERVATISM IN AMERICA 128-62 (2d ed. 1962); D. FISCHER, THE REVOLUTION OF AMERICAN CONSERVATISM (1965).

37. *See, e.g.*, Friedman, *American Legal History: Past and Present*, 34 J. LEGAL EDUC. 563, 576 (1984); Gordon, *Historicism in Legal Scholarship*, 90 YALE L. J. 1017 (1981); Scheiber, *American Constitutional History and the New Legal History: Complementary Themes in Two Modes*, 68 J. AM. HIST. 337 (1981).

38. For "state of the art" commentary, see THE PAST BEFORE US: CONTEMPORARY HISTORICAL WRITING IN THE UNITED STATES (1980); 10 REV. IN AM. HIST. (1982), a special issue entitled THE PROMISE OF AMERICAN HISTORY: PROGRESS AND PROSPECTS.

historians would call it good history.[39]

Judicial biography may well be the most taxing of all legal-historical forms. No less than constitutional historians, biographers have to juggle cultural, private, *and* public evidence of a life at law, judging whether and how these disparate sources and influences intersected. In addition, biographers confront nettlesome problems of causation and intellectual determinism. But the alternatives are untenable. At present, a biographer's impact often is limited to legal scholars, which is a blessing (the audience is captive) and a plague (judicial biography, with Story's *Commentaries*, will be relegated to "Clio's junkpile").[40]

Supreme Court Justice Joseph Story represents exactly the right kind of sensitive, responsible history—the first, one hopes, of a new breed. Newmyer has not simply surrounded Joseph Story with larger or smaller doses of "context," as biographers nowadays seem to do; nor has he forsaken traditional biographical fullness (and narrative) in favor of a partial, life-centered analytical monograph. Instead, he offers an analytical narrative—to some, a contradiction in terms[41]—specifying and clarifying relationships between life and a lived-in world. Nowhere does he presume the significance of Story's life without demonstration; if anything, the book is infused (in spite of Newmyer's desire to escape his own skin) with the chastened posture toward leadership (and the power of human will) so apparent in our own time.

Consequently, this biography carries a nearly insupportable burden—the need to bear witness for Story without claiming too much, and to embed life without burying it completely. One wishes occasionally for *more* boldness, for additional massaging of many overlapping, self-obfuscating subsections, for less willingness to believe (as Story, the apocalyptic republican, kept predicting) that the judge's impact upon American law barely outlived him. Indeed, the suggestion at book's end that Story's concerns were mostly "transitional"—that he and his historical moment essentially were annihilated by centrifugal social force—perhaps internalizes too much of Story's characteristic anxiety and fear.[42]

Kent Newmyer tells us that he approached Joseph Story twenty years ago as a skeptical, latter-day Jacksonian. That Old Joe managed to insinuate himself into Newmyer's affections is a tribute

39. A. BEVERIDGE, LIFE OF JOHN MARSHALL (1919).

40. R. NEWMYER, *supra* note 4, at xvii.

41. *See, e.g.*, Wood, *Star-Spangled History: Review of R. Middlekauf, The Glorious Revolution*, N. Y. Rev. Books, Aug. 12, 1982, which accepts the traditional distinction between "narrative" and "analytical" history.

42. R. NEWMYER, *supra* note 4, at 380.

to an old revolutionary lawyer's decency. But this biography, as I've tried to suggest, is more than the proverbial labor of love. It is the considered work of an accomplished historian determined to make sense of a life (although not so much sense that the life seems implausible). That Newmyer establishes a new standard for future biographers is a tribute to his art. Justice Story would have recognized this book and its language, praised its discipline, and admired its compassionate criticism. I suspect that he would have carried it along on his evening walks, heartened by the knowledge that his increasingly unpopular defense of a moral, regenerative republic had not been swept aside entirely by Andrew Jackson and other prophets of a new age.