Marbury *v.* Madison: How John Marshall Changed History by Misquoting the Constitution[1]

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It goes without saying that Marbury *v.* Madison (5 U.S. 137 [1803]) is the single most important decision of the United States Supreme Court and, with its bicentennial at hand, that conclusion will, no doubt, be stated and restated many times. Those of us who teach American government and politics have explained its significance in establishing judicial review countless times to countless students across the years, and we thought we knew what we were talking about. Yet, how long has it been since we actually sat down and read the opinion? How long has it been since we went beyond the conventional textbook wisdom and read it afresh? After having taught American government and politics off and on for 30 years, I recently sat down and read Chief Justice John Marshall's masterpiece from start to finish for the first time since I was in graduate school and, in doing so, I made an interesting discovery: in writing his opinion, Marshall seriously misquoted the relevant part of Article III of the Constitution, and I believe he did so intentionally, to serve his purpose. Article III, Section 2, paragraph 2 says:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

In Marbury *v.* Madison, however, Marshall purports to quote the above passage as follows:

> In the distribution of this [the judicial] power it is declared that "the supreme court shall have original jurisdiction, in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction."

In the first sentence, the Chief Justice reversed the order of the clauses and added an "a" before the word "party." In the second sentence, he dropped "the" and "before mentioned" and, in what is the most significant change, put a period after "jurisdiction" and entirely deleted the phrase "*both as to Law and Fact, with such Exceptions, and under such Regulations, as the Congress shall make.*"

This raises two questions: (1) Is this important? Does it matter? And, if it is important, (2) is it recognized as such? I believe the answers to these questions are "yes" and "no," but, before proceeding further, we need to review the background of the case.

Background

Pursuant to Article III, the Judiciary Act of 1789 (1 Stat. 73 [1789]) determined that the Supreme Court would have six justices and created a system of three circuit and 13 district courts. Each of the 13 states constituted a district and each district court had one judge. The circuits, called the eastern, middle, and southern, grouped various states together and their benches consisted of two justices of the Supreme Court and the district judge of the state where the court was sitting. The justices of the Supreme Court were thus given the odious task of "riding circuit."

In addition, the act defined, or attempted to define, the respective jurisdictions of the three levels of courts. In so doing, it is clear Congress attempted to follow Article III, Section 2, paragraph 2 (quoted above). Section 13 dealt with the jurisdiction of the Supreme Court and concluded by authorizing it to issue writs of mandamus "in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States. . . ."[2]

By 1800, our political party system had developed to the point that the elections in November of that year brought about the first transfer of power from one party to another. That transfer was not amicable and the judiciary was in the middle of the controversy. The Jeffersonian Republicans had won majorities in both houses of Congress and it was clear John Adams would not remain president. Who would become president, however, was not clear due to the tie between Thomas Jefferson and Aaron Burr in the Electoral College. The election was decided by the House of Representatives on the 36th ballot, on February 17, 1801, in favor of Jefferson, and Jefferson was inaugurated 15 days later, on March 4.

The out-going Federalists were busy during this time. President Adams nominated his secretary of state, John Marshall, for chief justice on January 20 and Marshall was confirmed by the lame-duck Senate on February 4. He continued to serve as secretary of state until Adams left office on March 4 but did not accept the salary of that office.

Also during February, the Federalists passed what is known as the Judiciary Act of 1801. This legislation created 16 new circuit courts so that Supreme Court justices no longer had to ride circuit. President Adams quickly nominated and the Senate confirmed the new judges, all Federalists, in what came to be known as the "midnight appointments" process. The act also provided that when the next vacancy occurred on the Supreme Court, the number of justices would be reduced by one, thereby postponing the new president's first nomination to the high court (Morison 1965, 358–363; Smelser 1968, 64–72).

The Federalists had done their best to "stack" the judicial branch in their favor, having lost the executive and legislative branches, and, in what Corwin called "Jefferson's war on the judiciary" (1919, ch. 3), an infuriated President Jefferson set out to undo their handiwork. First, he persuaded Congress to repeal the Judiciary Act of 1801; this was accomplished by the spring of 1802. All the new circuit judges thus lost their jobs in spite of the provision in Article III, Section 1, that "Judges, both of the supreme and inferior Courts, shall hold their offices during good Behaviour."[3] The size of the Supreme Court was increased by one and, in an attempt to delay if not

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John Marshall, U.S. Supreme Court Chief Justice 1801–1835. Illustration: Library of Congress.

thwart consideration of the repeal of the Judiciary Act of 1801, the next term of the Supreme Court was set for February, 1803, meaning it could not meet until then (Morison 1965; Smelser 1968).

Another weapon in the conflict between the Federalists and the Republicans was the use of impeachment to remove Federalist judges (Morison 1965; Smelser 1968; Van Tassel and Finkelman 1999, chs. 11–12). The congressional elections of 1802 had been catastrophic for the Federalists; in the new House the party division was 102 Republicans to 39 Federalists and in the new Senate it was 25 to nine (Smelser 1968, 74). The Republicans obviously had the votes to remove any judge they wanted. Six days before Marbury *v.* Madison was decided on February 24, 1803, the House impeached District Judge John Pickering of New Hampshire; the Senate convicted and removed him in March, 1804. This was accomplished with ease because Pickering, a Federalist, also was mentally ill (Smelser 1968, 68; Van Tassel and Finkelman 1999, 91–92).

The next "victim" was Supreme Court Associate Justice Samuel Chase. Chase was outspoken and partisan, and likely had incited President Jefferson by charging that, under his presidency, "our republican constitution will sink into a mobocracy, the worst of all possible governments" (Morison 1965, 363). Chase was impeached by the House on the same day the Senate removed Pickering but when the Senate tried him it failed to convict and remove him (Smelser 1968, 68–69; Van Tassel and Finkelman, 101–103). Of this the noted historian Samuel Eliot Morison says, "Had Chase been found guilty on the flimsy evidence presented, there is good reason to believe that the entire Supreme Court would have been impeached and purged" (363). And, speaking of Chase's acquittal, Marshall Smelser says that "John Marshall was temporarily shaken by the crisis and suspense. Some think that if Chase had been convicted, John Marshall would also have been removed" (70).

Marshall had the nerve, the courage, to misquote the Constitution for his own purpose, and he had the skill to do it in such a way that it has been largely unrecognized for 200 years.

Finally, as if the political environment were not heated enough, there was deep personal animosity between Jefferson and Marshall even though they were distant cousins from Virginia. Marshall had served under Washington in the Continental Army during the Revolutionary War and endured the bitter winter at Valley Forge (Beveridge 1916, 119) while Jefferson served as governor of Virginia 1779 to1781. Marshall, no doubt, was aware that the Virginia House of Delegates had voted to investigate Jefferson's leadership of the state during the British invasion (Peterson 1970, 236–239).[4] To this Morison adds, "Toward Marshall his kinsman Jefferson entertained an implacable hatred because he had shown him up and broken the sentimental French bubble in the X Y Z affair" (362).[5] Needless to say, Jefferson would not have nominated Marshall for chief justice and resented losing the opportunity of making the nomination. The animosity between them continued beyond Marbury *v.* Madison and reached its zenith during Aaron Burr's trial for treason in 1807 (Smelser 1968, 119–123).

Thus, when Chief Justice John Marshall opened the February 1803 term of the Supreme Court with Marbury *v.* Madison on its docket, he had to negotiate a highly charged, highly partisan political minefield. Jefferson and friends were playing for keeps. It was a dangerous time to be a Federalist judge—much less the Federalist Chief Justice.

The Case

William Marbury was one of 42 justices of the peace for the District of Columbia whose nomination had been part of the "midnight appointments" process. They had been nominated by out-going President John Adams and confirmed by the lame-duck Senate but Secretary of State *John Marshall* had not delivered all their commissions. When the undelivered commissions were found after Jefferson's inauguration, the new president ordered his new secretary of state, James Madison, not to deliver them, thereby depriving Marbury and colleagues of their positions. Marbury petitioned the Supreme Court to issue a writ of mandamus to Madison compelling the delivery of his commission.

The case, therefore, hinged on the Court's power to issue a writ of mandamus to Secretary of State Madison under its original jurisdiction. Notwithstanding that Marshall should have recused himself, he knew that if he issued the writ Jefferson would, *at a minimum,* direct Madison not to comply, and thereby embarrass him and the Court. This, of course, he wished to avoid.

As we have seen, the power to issue writs of mandamus had been given the Supreme Court by Congress in Section 13 of the Judiciary Act of 1789. Marshall agreed that Marbury had been wronged and that he had a right to a remedy but he also said Marbury had gone to the wrong court to obtain it because Congress had violated Article III in Section 13 when it gave the mandamus power to the Supreme Court under its original jurisdiction. Hence, Section 13, in relevant part, was unconstitutional and null and void, and judicial review was thereby established. And, at the same time, Marshall very adroitly avoided a dangerous confrontation with President Jefferson with whom he obviously was not on good terms.

Marshall ruled that the Supreme Court could not issue a writ of mandamus under its original jurisdiction, saying, "To enable this court . . . to issue a *mandamus,* it must be shown to be an exercise of appellate jurisdiction . . ." Yet, as we have seen, Article III, Section 2, paragraph 2, reads as follows: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original jurisdiction." It was reasonable for Marbury to conclude that he was a public official who had been nominated by President Adams and confirmed by the Senate but whose office was being unlawfully withheld from him. It also was reasonable for him to take his complaint to the Supreme Court under its original jurisdiction, pursuant to Article III, Section 2, paragraph 2 as quoted above. That seemingly correct but politically risky action required Marshall's considerable ingenuity to unravel. He was up to the task.

Marshall accomplished his objective by misquoting Article III, Section 2, paragraph 2, as shown at the beginning of this paper, the most significant part of which was the deletion of the phrase "with such Exceptions, and under such Regulations, as the Congress shall make" from the second sentence. Thus, that sentence, in effect, was made to read "In all the other Cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to Law and Fact" instead of "In all the other Cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations, as the Congress shall make." In other words, the Constitution gave Congress the power to adjust the original and appellate jurisdictions of the Supreme Court via the exceptions and regulations clause and Marshall removed it because doing so enabled him to avoid a confrontation with Jefferson, on the one hand, and to establish judicial review, his greatest legacy, on the other. *The misquotation is the single most important part of the opinion in that it is the cornerstone upon which everything else rests.* If we read Article III, Section 2, paragraph 2, as correctly written, Marshall is wrong; if we read it as he misquoted it, he is right.

Marshall's arguments were clever contrivances to extricate himself and the Court from the political predicament in which they found themselves and to establish the Supreme Court as a truly equal third branch of government

In a later reference to this slight of hand, Marshall says, "The subsequent part of the section is mere surplussage . . . entirely without meaning . . ." Yet, in one of the most famous passages in the Marbury opinion, he also says, "It cannot be presumed that any clause in the constitution is intended to be without effect . . ." He was right the second time, not the first. The "subsequent part" most definitely is not "mere surplussage without meaning" because the framers put it there to allow Congress to adjust the jurisdictions of the Supreme Court as it saw fit. Thus, for Marshall to dismiss their words as "mere surplussage" was incorrect and improper. And, when he said, "If Congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared it shall be original; and original jurisdiction where the constitution has declared it to be appellate; the distribution of jurisdiction, made in the constitution, is form without substance," he simply was wrong.

While it is true that, later on in the opinion, Marshall made a passing reference to the exceptions clause, as it has come to be known, he dismissed its relevance out of hand.[6] Thus, my basic contention is that Marshall intentionally misconstrued Article III, Section 2 in three closely-related ways. The first was when he said Marbury had gone to the wrong court, that is, the Supreme Court could hear the case only under appellate rather than original jurisdiction; this is how he solved his problem with Jefferson. The second was when he said the Supreme Court could not issue a writ of mandamus under its original jurisdiction, meaning that the relevant part of Section 13 of the Judiciary Act of 1789 violated Article III; this is how he established judicial review. Finally, the third was when he simply dropped the phrase "both as to Law and Fact, with such Exceptions, and under such Regulations, as the Congress shall make" from Article III; this had to be done in order to accomplish his first two objectives. Whatever validity may inhere in other parts of the opinion, the plain and simple truth is, in my view, that all of Section 13 of the Judiciary Act of 1789 was a completely lawful exercise of congressional authority. Marshall's arguments to the contrary were clever contrivances to extricate himself and the Court from the political predicament in which they found themselves, on the one hand, and to establish the (Federalist-dominated and Marshall-controlled) Supreme Court as a truly equal third branch of government, on the other. That he was successful on both counts is beyond dispute.

Recognition

I am not the first to contend that Marshall's reasoning was flawed. The well-known constitutional scholar Edward S. Corwin wrote, "In short there was no valid occasion in Marbury *v.* Madison for any inquiry by the court into its prerogative in relation to acts of Congress. . . . To speak quite frankly,

this decision bears many of the earmarks of a deliberate partisan *coup*" (1914, 542–543).[7]

Referring to Article III, Section 2, clause two of the Constitution, William W. Van Alstyne (1969, 31–32) says,

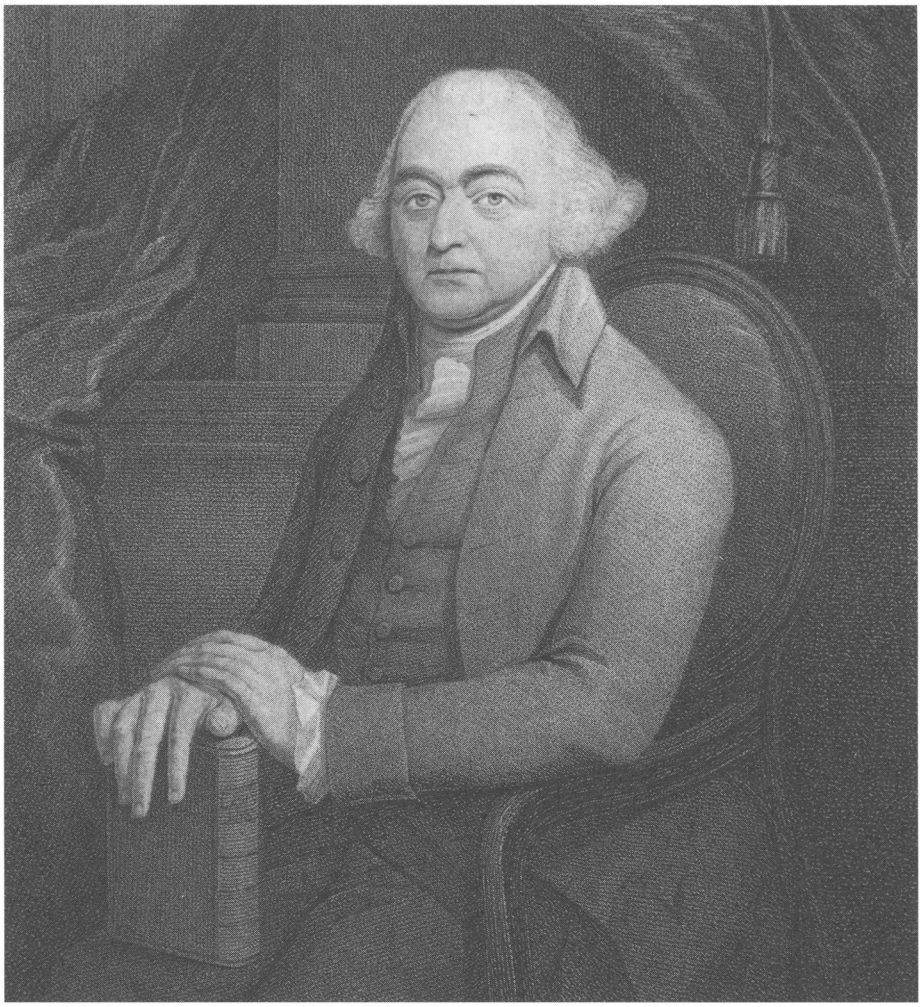
> The clause readily supports a meaningful interpretation that the Court's original jurisdiction may not be *reduced* by Congress, but that it may be supplemented by adding to it original jurisdiction over some cases which would other-wise fall only within its appellate jurisdiction. Such a reading makes sense and makes no part of the clause surplusage. Thus it might be supposed that certain kinds of cases – those affecting Ambassadors, other public Ministers and Consuls, and those in which a state shall be a Party . . . constitute an *irreducible minimum* of Supreme Court original jurisdiction . . . [and that] Congress may except certain cases otherwise subject only to the Court's appellate jurisdiction *by adding them to the Court's original jurisdiction*, which, it might be added, is precisely what Congress did in Section 13 of the Judiciary Act.

William W. Crosskey (1980, 1039–1041) likewise concludes,

> . . . the fact that section 13 of the first Judiciary Act could not have been unconstitutional in any very obvious way seems certain; and when the ground the Court put forward in 1803 to justify its decision is scrutinized, it becomes perfectly obvious that section 13 was not unconstitutional at all. . . . What, then, was the Supreme Court doing in Marbury *v.* Madison? . . . the decision must have been motivated on a political basis only.

After reviewing Marbury *v.* Madison on Article III and Section 13, David P. Currie (1985, 68–69) says,

> This reasoning is far from obvious. It would not have been idle for the Framers to make a provisional distribution of the Court's jurisdiction pending congressional revision; that is precisely what they did with respect to the appellate jurisdiction by empowering Congress to make "exceptions." Indeed, the exceptions clause itself arguably authorized the grant of original mandamus jurisdiction: Congress had made an "exception" to the appellate jurisdiction by providing original jurisdiction instead, and it had made an "exception" to the otherwise applicable constitutional division. . . . Marshall himself was to reject the implications of the *Marbury* reasoning in *Cohens v. Virginia,* where he declared that Congress could grant appellate jurisdiction in cases where the Constitution provided for original.[8]



Stacking the Bench. On his appointment of John Marshall to the Supreme Court, President John Adams said, "My gift of John Marshall to the people of the United States was the proudest act of my life." Illustration: Library of Congress.

Finally, Leonard W. Levy (1988, 81) argues that,

> . . . section 13, contrary to Marshall, did not add to the Court's original jurisdiction. . . . Marshall grossly misinterpreted the statute and Article III, as well as the nature of the writ, in order to find that the statute conflicted with Article III so that he could avoid issuing the writ without appearing to buckle before political enemies.

While I concur with the powerful arguments presented by these scholars, I believe they do not go far enough. I submit that the scholarship on Marbury *v.* Madison, as extensive as it is, has failed to recognize the critical importance of Marshall's misquotation of Article III.

As the most significant court case in American history, Marbury *v.* Madison is likely also the most analyzed and I cannot claim to have read every article or book about it. Yet, of those I have read, only two said anything about Marshall misquoting Article III. In addition, I have checked with colleagues, practicing attorneys, and former students now in law school, and Marshall's single-handed amending of Article III was news to them all. I also examined works by Charles Warren (1926 and 1930), Robert L. Clinton (1989), Lee Epstein and Thomas Walker (2001), and William E. Nelson (2000) with the same result.

What I, however, did find was the following. Morison wrote intriguingly that "*By a legal twist,* which the Jeffersonians considered mere chicanery, the Chief Justice managed to deliver an opinion which has become classic . . ." (363)[9] but he did not explain what the "twist" was. Van Alstyne quoted the missing clause but did not note that Marshall omitted it (32). Crosskey quoted Article III, Section 2, paragraph 2 (not entirely correctly) and italicized "with such exceptions . . . as the Congress shall make" but made no mention of Marshall's omission (1041). Currie

also quoted the missing clause but said nothing about Marshall leaving it out (68). In his chapter on Marbury *v.* Madison, Clinton devoted a short section to the exceptions clause but, again, did not note that Marshall left it out (1991, 94–97).

Corwin, however, in his now-obscure 1914 article, did write that " . . . the words thus pointed to are followed by the words—*which the Chief Justice fails to quote*—'with such exceptions . . . as the Congress shall make' " (540).[10] But he made no use of his discovery and, in a later work, went so far as to say, " . . . the case . . . marches to its conclusion with all the precision of a demonstration from Euclid" and "There is not a false step in Marshall's argument" (1919, 67, 70). Levy also noted that Marshall omitted the exceptions clause and like Corwin and all the others, he did not mention the other liberties Marshall took with Article III (81–82). While his forceful and rather acerbic analysis makes many points diametrically opposed to Corwin's stated above,[11] he did not declare the misquoting of Article III, section 2, paragraph 2 to be the key to unlocking the case as I have done here.

It seems, then, that Marshall's misquoting Article III is routinely unrecognized or, at best, unutilized. Now that we know this, what do we do with it? What difference does it make? Judicial review is firmly established; it is not going to be undone, and rightfully so.

Perhaps the most important contribution this discovery makes to the advancement of knowledge is to make us even more aware of what a political genius John Marshall was. He knew what his problem was and he solved it. He had the nerve, the courage, to misquote the Constitution for his own purpose, and he had the skill to do it in such a way that it has been largely unrecognized for 200 years. In doing so, he traded away the microscopic power of issuing writs of mandamus in original jurisdiction cases for the huge power of judicial review, while avoiding a constitutional showdown with Jefferson, preserving the prestige of the Supreme Court, and avoiding impeachment. Indeed, this was a *coup d' etat!*

Another contribution we may derive is how very political this entire affair was. It was not an exercise in lofty jurisprudence; it was an exercise in pure politics, both institutional and personal. That being the case, perhaps we need to spend some time contemplating the implications of what Marshall did, for good and ill, given the likelihood that our history would have been very different from what it is if Marshall had either issued the writ of mandamus to Madison or dismissed the case for want of jurisdiction, his most obvious other two options.

Thirdly, if, as I claim, the misquotation is critical to a complete understanding of the opinion, it seems clear that academia needs to modify the way it teaches the Marbury case.

Explanation

How might we explain why Marshall's misquotation has been routinely overlooked? I offer the following complementary possibilities. Levy says that, "The partisan *coup* by which Marshall denounced the executive branch, not the grand declaration of the doctrine of judicial review for which the case is remembered, was the focus of contemporary excitement" (83). According to this view, it was the politics of the opinion, not its scholarship, which attracted attention, and this is, no doubt, correct.

Smelser (68) states,

> The Republican press boiled over briefly, but other pressing problems soon distracted public attention from the case. In depriving poor Marbury of his sinecure and status, the administration had won a battle, but Marshall, while pulling off a partisan coup, had also written a bare, didactic argument which, in generations to come, was to establish the Supreme Court, and the federal judiciary as a whole, in the position Marshall thought it should occupy . . .

Thus, new issues came to the fore, rather quickly, and displaced Marbury *v.* Madison from public attention. Examples would be the impeachments of Pickering and Chase, the Napoleonic regime in France, the Louisiana Purchase, the Barbary pirates, and so forth.

Another, and more important, factor is that the establishment of judicial review was more important than how it was done. Generally sympathetic to the concept, analysts have focused on Marshall's theoretical defense of judicial review, on the pros and cons of judicial review, on its consequences, and on how it has been manifested through the years. That is what was seen as important. As Bernard Schwartz (1993, 41) put it,

> *Marbury v. Madison* is the great case in American constitutional law because it was the first case to establish the Supreme Court's power to review constitutionality. Indeed, had Marshall not confirmed review power at the outset . . . it is entirely possible it would never have been insisted upon, for it was not until 1857 that the authority to invalidate a federal statute was next exercised by the Court. Had the Marshall Court not taken its stand, more than sixty years would have passed without any question arising as to the omnipotence of Congress. After so long a period of judicial acquiescence in Congressional supremacy, it is probable that the opposition then would have been futile.[12]

Fourthly, when scholars undertake a critical examination of a case or issue, it is important that it be not only significant but challenging, not trivial and easy. But, as we have seen, Marbury *v.* Madison is not complicated at all. Marshall arrived at his desired result by simply misquoting the Constitution.

Finally, when scholars read a court opinion by the chief justice of the United States, they instinctively assume that quotes are correct. This is such a part of our ethic that to question otherwise is unthinkable. Today, scholars and students can get into a lot of trouble over this assumption, but it was not unthinkable for Marshall and he did not get into a lot of trouble over it. He was not in my class.

Conclusion

I have used the term "intentionally" here with regret. It is not my purpose to diminish Marshall's place in history. This was the first important case in the first term of his long career as Chief Justice, and he obviously grew intellectually and judicially as the years passed. But, in my view, the changes he made in Article III, Section 2, paragraph 2 are too extensive and their implications are too important for them to have been oversights or careless mistakes. Marshall was too intelligent and too diligent for that.

Moreover, he quoted the Constitution five other times in the Marbury opinion and in four of those he did so totally correctly; in the fifth there was a minor variation that did not change the meaning. He also quoted Blackstone correctly four times. It, therefore, seems obvious to me that Marshall had his sources in front of him when he wrote and, consequently, I must conclude that he knew what he was doing. As Corwin (1941,vii) put it,

> However welcome or unwelcome the truth, it is ever the responsibility of centers of learning to discover and communicate it. Upon no other basis may scholars, as scholars, lay claim to the deference of their fellow men, and there is no way by which the claim to such deference vanishes so quickly as through failure to meet this responsibility.

Notes

1. I wish to thank the anonymous *PS* reviewers as well as my son Scott (J.D., University of Virginia, 2000) for their helpful comments and suggestions.

2. A writ of mandamus is an order from a court to a public official to perform an act required by his position.

3. This action was sustained by the Supreme Court a few days after the Marbury decision in Stuart *v.* Laird, 5 U.S. 299 (1803).

4. Jefferson regarded this as a vote of censure but the assembly later rescinded it and thanked him for his service; yet it was the low point of his public life.

5. The X Y Z affair occurred in 1797–1798.

6. "That they should have appellate jurisdiction in all other cases, with such exceptions as congress might make, is no restriction; unless the words be deemed exclusive of original jurisdiction." Certainly this is not a restriction; it is the removal of a restriction.

7. An almost but not entirely identical version of this article appeared as chapter 1 in Corwin's book *The Doctrine of Judicial Review: its Legal and Historical Basis,* originally published by Princeton University Press in 1914 and reprinted by Peter Smith of Gloucester, MA in 1963. This quote is on page 9 in the reprint.

8. Cohens *v.* Virginia may be found at 19 U.S. 392. Clinton rejects this line of reasoning and supports Marshall in *Marbury v. Madison and Judicial Review,* University Press of Kansas, 1991, 94–97.

9. Emphasis added.

10. Emphasis added. This quote may be found on page 5 of the reprinted book in note 7 above.

11. To give only two examples, on page 75 Levy calls *Marbury v. Madison* "one of the worst opinions ever delivered by the Supreme Court." And, on page 88 he states that, "To the extent that national judicial review rests on *Marbury,* it rests on rubbish . . ." This is not to say that his book is not worth reading; quite the contrary, it is well worth reading.

12. The 1857 case was Dred Scott v. Sandford, 60 U.S. 393.

References

Beveridge, Albert J. 1916. *The Life of John Marshall.* vol. I. New York: Houghton Mifflin.

Clinton, Robert L. 1989. *Marbury v. Madison and Judicial Review.* Lawrence: University Press of Kansas.

Corwin, Edward S. 1914. "Marbury *v.* Madison and the Doctrine of Judicial Review." *Michigan Law Review.* 12:538–572.

——. 1919. *John Marshall and the Constitution.* New Haven: Yale University Press.

——. 1941. *Constitutional Revolution, Ltd.* Claremont: Claremont Colleges.

——. 1963. *The Doctrine of Judicial Review: Its Legal and Historical Basis.* Gloucester, MA: Peter Smith (reprint edition). Originally published in 1914 by Princeton University Press.

Crosskey, William W. 1980. *Politics and the Constitution in the History of the United States.* Chicago: University of Chicago Press.

Currie, David P. 1985. *The Constitution in the Supreme Court.* Chicago: University of Chicago Press.

Epstein, Lee, and Thomas G. Walker. 2001. *Constitutional Law for a Changing America.* 4th ed. Washington, DC: Congressional Quarterly Press.

Levy, Leonard W. 1988. *Original Intent and the Framers' Constitution.* Chicago: Ivan R. Dee. Originally published by Macmillan.

Morison, Samuel E. 1965. *The Oxford History of the American People.* New York: Oxford University Press.

Nelson, William E. 2000. *Marbury v. Madison: The Origins and Legacy of Judicial Review.* Lawrence: University Press of Kansas.

Peterson, Merrill D. 1970. *Thomas Jefferson and the New Nation: A Biography.* New York: Oxford University Press.

Schwartz, Bernard. 1993. *A History of the Supreme Court.* New York: Oxford University Press.

Smelser, Marshall. 1968. *The Democratic Republic 1801–1815.* New York: Harper & Row.

Van Alstyne, William W. 1969. "A Critical Guide to Marbury *v.* Madison." *Duke Law Journal.* 1969: 1–47.

Van Tassel, Emily F., and Paul Finkelman. 1999. *Impeachable Offenses: A Documentary History from 1787 to the Present.* Washington, DC: Congressional Quarterly, Inc.

Warren, Charles. 1926. *The Supreme Court in United States History.* Boston: Little, Brown and Company.

——. 1930. *Congress, the Constitution, and the Supreme Court.* Boston: Little, Brown and Company.