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Among Herbert A. Johnson’s outstanding and very useful services to legal history scholarship are those in the field of editing primary sources. His work with the letters and papers of John Marshall has significantly expanded our knowledge and understanding of the great Chief Justice, bringing a new excitement to the study of the formative period of American constitutional law. Professor Johnson laid a firm foundation for the collecting and editing of Marshall’s papers, and he was Editor-in-Chief of the first volume. There was no major repository of Marshall’s letters, and they had to be hunted down in their hiding places and captured. Building upon his work, the later editors finished this important task, and the volume presently in the process of printing concludes with Marshall’s death, with the final volume of addenda and errata well in hand.

Not only do the Marshall papers add to our knowledge of federal law, but they also shed much light on the legal history of Virginia. Marshall practiced law in Richmond from 1782 until 1801, when he was appointed to the bench. While on the Supreme Court of the United States, he continued to reside in Richmond, and he sat on the federal circuit court in Richmond. It was in this latter capacity that he presided over the case of United States v. Aaron Burr. Marshall’s correspondence and courtroom arguments illuminate the development of the law of Virginia during the time of transition away from the British Empire to independence, a conservative and cautious movement. The Virginia bench and bar were concerned about preserving the English civil liberties that had been won at the expense of the Crown in the seventeenth century. While a few Virginians flirted with the French revolutionaries, the period of the Terror in France brought that to an abrupt end.

Marshall’s literary remains, as assembled and edited by Professor Johnson, shed considerable light on the politics and the practice of law in Richmond and its courts throughout his lifetime. His Jeffersonian political opponents were his neighbors, with social as well as political and legal interaction. In the Marshall collection are letters to and from the other founding fathers of the nation and the other leading figures of the Commonwealth.

During the period that Professor Johnson has chosen to study, the eighteenth and early nineteenth centuries, no uniformity in American law existed. The different jurisdictions, though all of English foundation, had developed in significantly different ways, and these differences continued in the early nineteenth century. Moreover, federal law was in its infancy. Thus, the study of the individual states’ separate legal histories is a necessary pre-condition to valid national generalizations. In addition to Professor Johnson’s contribution to Virginia legal history, he has also published, and encouraged others to publish, in the areas of New York and South Carolina legal history.

Legal scholars owe a great debt of gratitude to Professor Johnson, and it is a great privilege to have the opportunity to add my voice to his praise.

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1. 25 F. Cas. 201 (C.C. Va. 1807) (No. 14694A).