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"Justice Joseph Story: Most Scholarly of
Justices"

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Justice Joseph Story stands as a giant among those who have held a seat on the Supreme Court. Story was one of the greatest legal figures in the 19th Century, in the upper echelon of everyone's list of outstanding judges in American history and the most scholarly of scholarly Justices.

Justice Story remains the youngest person ever named to the Supreme Court. He was just 32 when President James Madison nominated him to the High Bench in 1811. At that young age, he had already served in the U.S. House of Representatives, Speaker of the Massachusetts House, authored two volumes on pleading and was a leader of the bar.

Madison's appointment of Story to the Court was undertaken against the strong advice of his friend and mentor, Thomas Jefferson. Though Story was a Republican from Massachusetts, Jefferson warned that he would "out-Marshall, John Marshall." For one of the few times in his life, Madison ignored Jefferson's advice, but it wasn't long before he realized that Jefferson was right.

In his long and distinguished career on the Court (1811-1845), Justice Story, like Chief Justice Marshall, urged broad construction of national powers, at the expense of state powers. His masterful opinion in the landmark case of *Martin v. Hunter's Lessee* (1816) rejected the claim of state sovereignty, a

theory that would evolve, years later, into the doctrine of state secession from the union. Story reminded Americans that the people, not the states, are sovereign, that the people, not the states, ratified the Constitution. That fundamental principle, Story observed, could not have been more plainly stated than it was in the Preamble to the Constitution, which declares, "We the people ordain and establish this Constitution."

In *Hunter's Lessee*, Story upheld section 25 of the Judiciary Act of 1789, which vested in the Supreme Court appellate review of state court decisions. The ruling angered Virginia, which contended that its high court should have final authority over cases brought in the state. Story demonstrated conclusively that the union could not endure if state courts were able to defy the U.S. Supreme Court.

Story's opinions reflected his life-long penchant for scholarship. They were studded with footnotes, reflected patient, laborious research and investigation, meticulous writing and, generally, were long and filled with numerous references to laws, cases and writers.

Story was devoted to historical scholarship and thought it was essential to the business of judging. Chief Justice Marshall, who admired Story's intellect and a love for scholarship, once said to his colleagues, "Brother Story here . . . can give us the cases from the Twelve Tables down to the latest reports." Marshall was not exaggerating Story's knowledge of the foundation of Roman law.

Story's devotion to historical research reflected another interest: to provide lawyers with plenty of material from which they could derive arguments. Judicial opinions shorn of citations to writers and

cases lack the utility of those grounded in great learning.

Story's energy was the stuff of legend. He escaped the anxieties of life through constant work. He conceded that, "My cheerfulness is the effect of labor and exertion to fly from melancholy recollections, and to catch at momentary joy." Story had suffered great personal loss, including the death of his first wife, six months after his wedding and, later, in his second marriage, the death of most of his children before adolescence.

Story's judicial career was just part of a broader career. He wrote nine books, including his celebrated three-volume work, "Commentaries on the Constitution," a widely admired treatise on the complicated field of admiralty law, and another on commercial law. During his tenure on the Court, Story held a chaired professorship at the Harvard Law School, where he assumed a leadership role and transformed legal education in America, all while serving as a bank president. Energy, indeed.

In Story's time on the Court, theories about conflicts of interest had yet to emerge. Thus, his extra-judicial activities included lobbying Congress for new legislation regarding the structure and powers of the judiciary and assisting Daniel Webster, one of the most influential attorneys in our nation's history, with speeches and arguments that asserted broad national powers.

Story's integrity and commitment to the law and the protection of the courts created some personal challenges and professional dilemmas for him at the tail end of his career. He despaired for the future of the Court and American Constitutionalism upon the death of John Marshall and the rise of Jacksonian Democracy.

Marshall's death, he said, "meant the Constitution was gone."

Story despised slavery, on both moral and policy grounds, but was convinced that the Constitution sanctioned it. When slavery cases presented some leeway, he struck a blow for freedom, but he upheld the odious institution when given no choice. He failed to accommodate his morality with the law of the land in the tragic case of Prigg v. Pennsylvania (1841). His professional ethics compelled him to uphold the Fugitive Slave Act of 1793, which required the return of escaped slaves. The case pained him, but he reminded those who would listen that he was a judge, not a legislator. Still, he was excoriated by abolitionists, which contributed to his decision to retire from the bench in 1845, to focus on teaching and writing.