

# HERBERT ALAN JOHNSON

## Curriculum Vitae

### Personal

Born January 10, 1934 at Jersey City, New Jersey, to Harry O. Johnson and Magdalena G. Johnson (Diemer)

Married (1st) Barbara Arlene Balcerak (deceased, 1980); two children, Amanda Blair Johnson and Vanessa Paige Johnson

Married (2d) Jane McCue, June 4, 1983

### Education

A.B., Columbia, 1955; LL.B., New York Law School, 1960; M.A., Columbia, 1961; Ph.D., Columbia (American History and European Comparative Law), 1965

#### Other Education

Columbia University School of Law (professional option student), 1954-55

United States Air Force Special Investigations School, Washington, D.C. 1955-56

New York University Graduate School of Business Administration, 1957-58

Lutheran Theological Southern Seminary (non-degree student) 1981-84

### Academic Employment

Research Assistant, The Papers of John Jay, Department of History, Columbia University, 1961-63

Lecturer in History, City College of the City University of New York, 1962-63

Jacob H. Schiff Fellow, Faculty of Political Science, Columbia University, 1963-64

Lecturer in History and Assistant Professor of History, Hunter College of the City University of New York, 1964-67

Revised to September 27, 2011  
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### Academic Employment (con't)

Associate Editor, Co-editor and Editor, *The Papers of John Marshall*, Institute of Early American History and Culture; Lecturer in History, The College of William and Mary, 1967-77

Professor of Law and History, University of South Carolina, 1977-90; Ernest F. Hollings Professor of Constitutional Law, 1991-2002; Distinguished Professor of Law Emeritus, 2002-present

### Other Academic Affiliations

Associate, Columbia University Seminar on the History of Legal and Political Thought, 1966-77

Associate, Columbia University Seminar on Early American History and Culture, 1967-77

Lecturer, Seminar on American Culture, New York State Historical Association, 1969 ("Law and the Lawyers of New York, 1750-1850"); 1975 ("New York in the American Revolution, 1763-1783")

Visiting Research Professor, Southern Studies Program, University of South Carolina, Spring 1976, and Fall 1977

Senior Faculty Member, Seminar on Law and Economics, Humane Studies Foundation and Institute for Humane Studies, College of Notre Dame, July 28-August 3, 1990

Visiting Fellow, Centre for Comparative Constitutional Studies, University of Melbourne Law School, July 22- October 23, 1992

Visiting Research Scholar, University of Toronto Law Faculty, July 1995

Visiting Professor, Faculty of Law, University of Birmingham (U.K.), January-April 1998

Visiting Faculty, Department of History, Western Carolina University, Summer 2007

### Bar Admissions

New York (First Department), 1960; United States District Court for the Southern District of New York, 1963; United States Court of Appeals for the Second Circuit, 1964; United States Supreme Court, 1965; United States District Court for the District of Columbia, 1967;

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### Bar Admissions (con't)

United States District Court for the District of South Carolina, 1979; State of South Carolina, 1983.

### Other Employment

Junior Clerk and Clerk, First National City Bank of New York, Summers 1952, 1953 and June 1955 to October 1955

United States Air Force, Office of Special Investigations, Special Agent and Acting Detachment Commander (First Lieutenant), 1955-57; presently Colonel, USAF Reserve (Retired)

Administrative Assistant, Chase Manhattan Bank, Custody Administration Division and Trust Administration Division, 1957-60

Private Practice of Law, Sole Practitioner and "Of Counsel" to other attorneys, New York City, 1960-67, with a number of cases in the Surrogate's Courts, Civil Court and Supreme Court

### Awards and Prizes

Prize Winner, Cannon Prize Examinations, Chase Manhattan Bank (in bank administration and operations) 1958, 1959 and 1960

American Jurisprudence Prize Volume in Estate Planning, New York Law School, 1960

William P. Lyons Masters' Essay Award, Loyola University Press, 1962

Grant-in-aid, Columbia University, 1962-63; Jacob H. Schiff Fellowship, 1963-64

Paul S. Kerr History Prize, New York State Historical Association, 1970

American Philosophical Society, Grant in support of research, 1971

American Council of Learned Societies Fellowship, 1974-75

Liberty Fund Fellow, Institute for Humane Studies, Summer 1981

Senior Research Fellow, U.S. Army Historical Research Institute, December 1981

Earhart Fellow, Institute for Humane Studies, Summer, 1985

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### Grants and Awards

Research Grant, Committee on Research and Productive Scholarship, University of South Carolina, 1989-90

Summer Grant for Research on Federal Judicial History, Committee on the Bicentennial of the Constitution, Judicial Conference of the United States, 1990

Center Research Associate, United States Air Force Historical Research Center, Maxwell Air Force Base, Alabama, 1990

University of South Carolina Educational Foundation Research Award (Professional Schools), University of South Carolina, 2000

Faculty Research Award, University of South Carolina School of Law, 2001-2002

Gilder Lehrman Institute of American History Fellowship, 2006

Short-term Fellowship, Folger-Shakespeare Library, 2009-2010

### Organizational Activities

Member, American Historical Association, American Society for Legal History, Library Company of Philadelphia, Selden Society, Societe Jean Bodin pour l'Histoire Comparativ de Institutions, University South Caroliniana Society, American Law Institute.

Executive Assistant to the President (1970-71), Vice President (1972-73), President (1974-75), Board of Directors (1998-2001) American Society for Legal History

Chairman, Committee on Honors (1970-71, 1996-98), and Program Committee (1971), American Society for Legal History

Committee Member, Publications Committee (1966-69), and Committee for the Preservation of Court Records (1968-69), American Society for Legal History

Delegate to the American Council of Learned Societies, American Society for Legal History (1977-80)

State Correspondent for South Carolina, The Selden Society, 1988-2002

Committee Member, Littleton-Griswold Committee, American Historical Association (1976-81); Chairman, 1979-81.

Member, Interim Committee on the Bicentennial Era, 1776-1789, American Historical Association (1976-77)

### Organizational Activities (con't)

Committee Member, John Marshall House Committee, Association for the Preservation of Virginia Antiquities (1969-77)

Member, National Board of Trustees, Fund Raising Campaign for the John Marshall House (1972-74)

Trustee, Fund for Cooperative Editorial Research, American Antiquarian Society (1972-76)

Chairman-elect, Association of American Law Schools Section on Legal History, 1978; Chairman, 1979

Member, Surrency Prize Committee, American Society for Legal History, 1982-87, 1996

Member, Claude R. Lambe Fellowship Review Committee, Institute for Humane Studies, 1987-2000.

Member, Law-Related Education Committee, South Carolina Bar, 1989-1995, 1997-1999.

### Community Service

Member, City of Williamsburg Board of Adjustments and Appeals (1971-77)

Member, Research and Publications Advisory Committee, Heritage '76 Committee, American Revolution Bicentennial Commission (1974-75)

Chaplain Associate and Hospice Volunteer, Baptist Medical Center, Columbia (1983-2002)

Member, Ethics Committee, South Carolina Episcopal Home at Still Hopes, 1989-1998.

Vocational Deacon, The Episcopal Church, Diocese of Upper South Carolina, 1991-2003; Diocese of Western North Carolina, 2003-2008

Chaplain, Angel Medical Center Hospice, 2002-2004

Member, Advisory Board, Angel Medical Center Home Health and Hospice, 2002-2006

### Courses Taught

City College, City University of New York

Survey of American History, 1492-1860



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Courses Taught (con't)

Hunter College, City University of New York

Seminar on the Legal and Social Consequences of Industrialism, 1700-1850  
(Britain, France and the United States), undergraduate senior honors seminar

Survey of American History, 1492-1960

American Constitutional History, 1783-1900

American Constitutional History, 1783-1965 (graduate course)

College of William and Mary

Survey of American History, 1866-1968

American Constitutional History, 1783-1900

American Constitutional History, 1783-1877

American Constitutional History, 1878-1970

Seminar on Early American Legal History, 1607-1815

University of South Carolina

American Constitutional History, 1783-present

American History Survey to 1865

American History Survey 1865 to present

American Intellectual History

American Legal History

American Constitutional and Legal History

Colloquium on American Constitutional History, 1781-1835

Colloquium on Private Property in American Law, 1800- 1850

Seminar in American Legal History

English Legal History

English Origins of the North American Constitutions

History of Criminal Justice

Comparative Constitutional Law (U.S., Canada, Australia)

Constitutional Law (2 semester course)

Domestic Relations

Introduction to Legal Reasoning and Legal Writing

Introduction to Legal Research and Appellate Advocacy

Trusts and Estates

University of Birmingham (U.K.), Faculty of Law

British Constitutional Law (supervision / tutorial sections)

Western Carolina University

Topics in American Constitutional History, 1770-1937

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Bibliography

Books:

*The Law Merchant and Negotiable Instruments in Colonial New York 1664-1730.* Chicago: Loyola University Press, 1963. Reprinted: Union, N.J.:The Lawbook Exchange, 2002.

*John Jay, 1745-1829.* Albany: University of the State of New York, State Education Department, 1970

*The Papers of John Marshall,* with Charles T. Cullen. Chapel Hill, N.C., University of North Carolina Press, Vol. I (1974), Vol. II (1977)

*Historical Courthouses of New York State: 18th and 19th Century Halls of Justice Across the Empire State,* with Ralph K. Andrist and Milo V. Stewart. New York: Columbia University Press, 1977

*Imported Eighteenth-Century Law Treatises in American Law Libraries 1700-1799.* Knoxville: The University of Tennessee Press, 1978

*South Carolina Legal History.* Spartanburg: The Reprint Company, 1980

George L. Haskins and Herbert A. Johnson, *Foundations of Power--John Marshall, 1801-1815, Volume 2, History of the Supreme Court of the United States,* Paul A. Freund, ed. New York: Macmillan Company, 1981; 2<sup>nd</sup> edition, New York: Cambridge University Press, 2009

*Essays on New York Colonial Legal History.* Westport: Greenwood Press, 1981

*History of Criminal Justice.* Cincinnati: Anderson Publishing Co., 1988; 2<sup>nd</sup> edition, with Nancy Travis Wolfe, Cincinnati: Anderson Publishing Co., 1995; 3<sup>rd</sup> edition, with Nancy Travis Wolfe, Cincinnati: Anderson Publishing Co., 2003

*John Jay: Colonial Lawyer.* New York: Garland Publishing Co., 1989; reprinted, Washington: Beard Books, 2006

*American Legal and Constitutional History: Cases and Materials.* San Francisco: Austin & Winfield, 1994; 2<sup>nd</sup> edition, Lanham: University Press of America, 2001

*The Chief Justiceship of John Marshall, 1801-35.* Columbia: University of South Carolina Press, 1997; paperback edition, Columbia: University of South Carolina Press, 1998

*Wingless Eagle: U.S. Army Aviation through World War I .* Chapel Hill: University of North Carolina Press, 2001



Books (con't)

*Gibbons v. Ogden: John Marshall, Steamboats, and the Supreme Court.* Lawrence: University Press of Kansas, 2010

Book Chapters:

"The Advent of Common Law in Colonial New York," in George A. Billias, ed., Law and Authority in Colonial America (Barre, Mass.: Barre Press, 1965)

"American Colonial Legal History: A Historiographical Interpretation," in Alden T. Vaughan and George Athan Billias, eds., Perspectives on Early American History: Essays in Honor of Richard B. Morris (New York: Harper & Row, 1973)

"Gibbons v. Ogden before Marshall," in Leo Hershkowitz and Milton M. Klein, eds., Courts and Law in Early New York (Port Washington, N.Y.: Kennikat Press, 1978), 105-113, 147-148

"Concepts of Crime in Simms' Revolutionary Novels," in Herbert A. Johnson, ed., South Carolina Legal History (Spartanburg, S.C.: The Reprint Company, 1980), 199-208

"The Palmetto and the Oak: Law and Constitution in Early South Carolina, 1670-1800," in Kermit L. Hall and James W. Ely, Jr., An Uncertain Tradition: Constitutionalism and the History of the South (Athens: University of Georgia Press, 1989), 83-101

"Federal Union, Property, and the Contract Clause: John Marshall's Thought in Light of *Sturges v. Crowninshield* and *Ogden v. Saunders*," in Thomas C. Shevory, ed., John Marshall's Achievement: Law, Politics and Constitutional Interpretations (Westport: Greenwood Press, 1989), 33-55.

"Charities," in South Carolina Jurisprudence, V (Columbia: South Carolina Bar, 1991), 213-261

"Sanctions in Colonial North America," in Punishment: Transactions of the Jean Bodin Society for Comparative Institutional History, LVIII (Brussels: DeBoeck-Universite, 1991), 109-153

"Religious Societies", in South Carolina Jurisprudence, XXVII (Columbia: South Carolina Bar, 1996), 321-400 (with James K. Lehman)

Law Review Articles:

"Toward a Reappraisal of the 'Federal' Government: 1783-1789," American Journal of Legal History, VIII (1964), 314-325. Reprinted in Kermit L. Hall, ed., United States Constitutional and Legal History, 20 vols., (New York: Garland Publishing Co., 1987), III, 356-367.

"Civil Procedure in John Jay's New York," American Journal of Legal History, XI (1967), 69-80

"The Prerogative Court of New York, 1686-1776," American Journal of Legal History, XVII (1973), 95-144

"A Look at the American Society for Legal History," American Bar Association Journal, LX (1974), 103-105

"John Jay: Lawyer in a Time of Transition, 1764-1775," University of Pennsylvania Law Review, CXXIV (1976), 1260-1292. Reprinted in Kermit L. Hall, ed., United States Constitutional and Legal History, 20 vols., (New York: Garland Publishing Co., 1987), VI, 347-379.

"Historical and Constitutional Perspectives on Cross-Vesting of Court Jurisdiction," Melbourne University Law Review, XIX (1993), 45-91

"Introduction," 1994 Invitational Conference on Courts and Jurisdiction in Federal States; The United States, Canada, and Australia, South Carolina Law Review, XLVI (1995), 641-645

"Note: A Brief History of Canadian Federal Court Jurisdiction," 1994 Invitational Conference on Courts and Jurisdiction in Federal States: The United States, Canada, and Australia, South Carolina Law Review, XLVI (1995), 761-764

"Judicial Institutions in Emerging Federal Systems: The Marshall Court and the European Court of Justice," John Marshall Law Review, XXXIII (Summer 2000), 1063-1108.

"The Wright Patent Wars and Early American Aviation," Journal of Air Law and Commerce, LXIX (2004), 21-63

"Comments in Reply," in "Symposium: An Appreciation of Professor Herbert Johnson," South Carolina Law Review, LVI (2005), 417, at 451-455

"Bushrod Washington," Vanderbilt Law Review, LXII (2009), 447-490

Essays:

"William Cushing," "Thomas Johnson," and "John Marshall," in Leon Friedman and Fred L. Israel, eds., The Justices of the United States Supreme Court, 1789-1969: Their Lives and Major Opinions ( New York: Chelsea House Publishers, 1969; 2nd edition, New York: Chelsea House, 1995)

"John Marshall (1755-1835)," in Virginius Dabney, ed., The Patriots: The American Revolution Generation of Genius (New York: Atheneum, 1975)

"Courthouse Design, Financing and Maintenance in Antebellum South Carolina," in David Moltke-Hansen, ed., Art in the Lives of South Carolinians: Nineteenth-Century Chapters, 2 vols. (Charleston: Carolina Art Association, 1979), II, pp. HJ 1-9 (Mimeographed)

"Albert J. Beveridge" in Clyde N. Wilson, ed., Dictionary of Literary Biography, Vol. 17, Twentieth Century American Historians (Detroit: Gale Research Co., 1983)

"John Marshall" in Encyclopedia of Southern Culture, Charles Reagan Wilson, et. al. eds., (Chapel Hill: University of North Carolina Press, 1989), pp. 826-827; reprinted in *The New Encyclopedia of Southern Culture*, Charles Reagan Wilson, ed. (University of North Carolina Press, 2008), vol. 10, *Law and Politics*, pp.

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"John Jay: Federalist and Chief Justice, " in Well Begun: Chronicles of the Early National Period, Stephen L. Schechter and Richard B. Bernstein, eds. (Albany: New York State Commission on the Bicentennial of the United States Constitution, 1989), pp. 91-95

"John Jay", in The Blackwell Encyclopedia of the American Revolution, edited by Jack P. Greene and J. R. Pole (Cambridge: Basil Blackwell, Inc., 1991)

"The Supreme Court Declares its Independence: Judicial Review of Federal Statutes," in John W. Johnson, ed., Historic U.S. Court Cases 1690-1990: An Encyclopedia (New York: Garland Publishing, 1992), pp. 63-67 ; 2<sup>nd</sup> edition , 2 vols. (New York: Routledge, 2001), I, 159-163

"Antecedents to the Court," "Mandamus," "Marbury v. Madison," in The Oxford Companion to the Supreme Court of the United States, Kermit L. Hall, et al. eds. (Oxford: Oxford University Press, 1992), pp. 32-34, 519, 521-523; 2<sup>nd</sup> edition, pp.39-41, 603-604, 605-607

"John Marshall, 1801-1835", in The Supreme Court Justices: Illustrated Biographies, 1789-1993, Clare Cushman, ed., (Washington: Congressional Quarterly, 1993), pp. 61-66 ; reprinted, The Supreme Court Historical Society Quarterly, XXIV (No. 2, 2003), 21-24

Essays (con't)

"The Legal Profession", in Encyclopedia of the North American Colonies, Jacob E. Cooke, ed., 3 vols. (New York: Charles Scribner's Sons, 1993), I, 419-428

"John Marshall", in The Supreme Court Justices: A Biographical Dictionary, Melvin I. Urofsky, ed. (New York: Garland Publishing Co., 1994), 301-306

"William Cushing," in American National Biography, V (New York: Oxford University Press, 1999), 918-919

"Thomas Jefferson and Legal Education in Revolutionary America," in James Gilreath, ed. Thomas Jefferson and the Education of a Citizen (Washington: Library of Congress, 1999), pp. 103-114, 330-333.

"Marbury v. Madison," in Oxford Guide to United States Supreme Court Decisions (New York: Oxford University Press, 1999), pp. 173-175; 2<sup>nd</sup> edition (New York: Oxford University Press, 2005), 605-607

"Fundamental Constitutions of Carolina," in Paul Finkelman, ed., Religion and American Law: An Encyclopedia (New York: Garland Publishing, Inc., 2000), pp. 202-204

"John Jay," in Encyclopedia of the U.S. Supreme Court, Thomas T. Lewis, et al., editors, 3 vols. (Pasadena: Salem Press, Inc., 2001), II, 503-505

"James Kent," and "John Marshall," in John R. Vile, Great American Judges" An Encyclopedia, John R. Vile, editor, 2 vols. (Santa Barbara: ABC Clio, 2003), I, 433-441; II, 487-495

"Supreme Court," and "Supreme Court and War Powers," in Americans at War: Society, Culture, and the Homefront, Volume I: 1500-1815, John P. Resch, editor (Detroit: Thomson Gale, 2005), 181-86

"John Marshall," in Federalism in America: An Encyclopedia, Joseph R. Margbaugh, Troy E. Smith and Ellis Katz, editors (Westport: Greenwood Publishing Group, 2005), 405-412.

"Chief Justice," in Encyclopedia of the Supreme Court of the United States, 5 vols. David S. Tanenhaus, editor (New York: Macmillan Reference U.S., 2008), I, 294-296.

"Circuit Riding," in Encyclopedia of the Supreme Court of the United States, 5

vols.,

David S. Tanenhaus, editor (New York: Macmillan Reference U.S., 2008), I, 305-306.

Essays (con't)

"John Marshall," in The New Encyclopedia of Southern Culture, Charles Reagan Wilson, general editor (Chapel Hill: University of North Carolina Press, 2008), vol. 10, *Law and Politics*, 110-11.

"John Marshall," Milestone Documents of American Leaders, Paul L. Finkelman, editor, (Dallas: Schlager Group, Inc., 2009), III, 1462-1483

Other Articles:

"The Admiralty Court Comes to Morrisania," The Advocate (Bronx County Bar Association), IX (1962), 15-21

"When John Jay was Jack," Columbia College Today, X (1963), 48-51

"Univac is Here! Lawyers Fall Back and Regroup," The Advocate (Bronx County Bar Association), XI (1964), 35-37

"Magyar-Mania in New York City: Louis Kossuth and American Politics," The New-York Historical Society Quarterly, XLVII (1964), 237-249

"Impeachment and Politics," The South Atlantic Quarterly, LXIII (1964), 552-563

"Some Nice Sharp Quillets of the Customs Law: The New York Affair, 1763-1767," with David Syrett, William and Mary Quarterly, 3rd Series, XXV (1968), 432-451

"George Harison's Protest: New Light on Forsey v. Cunningham," New York History, L (1969), 61-82

"The United States Supreme Court: A Time for Change?" Verdict (Oxford University Law Society), V (1969), 27-31

"The Tribulations of Conway Robinson: John Marshall's 'Washington Lotts,'" Virginia Magazine of History and Biography, LXXIX (1971), 427-435

"Schoharie County Courthouse," The Catskills, I, No. 3 (Summer, 1973), 38-39

"English Statutes in Colonial New York," New York History, LVIII (1977), 277-296

"Seeds of Separation: The General Staff Corps and Military Aviation Before World War I," in Air University Review, XXXIV, No. 1 (Nov.-Dec. 1982), 29-45

"The Wright Patent and Early Army Aviation", Air Force Journal of Logistics, IX (No. 2, Spring 1985), 2-6. Extracted in David C. Rugenberg and James S. Allen, eds., The Logistics of Waging War: American Logistics 1774-1985, Emphasiz-

ing the Development of Airpower (Washington: Government Printing Office, 1986), 62

Other Articles (con't)

"The Constitutional Thought of William Johnson," South Carolina Historical Magazine, LXXXIX (1988), 132-145

"John Jay: Federalist and Chief Justice," in Well Begun: Chronicles of the Early National Period, Stephen L Schechter and Richard B. Bernstein, editors, (Albany: New York State Commission on the Bicentennial of the United States Constitution, 1989), 91-95 (abridged from John Jay, 1745-1829 [1970] )

"The Aero Club of America and Army Aviation, 1907-1916," New York History, LXV (1985), 374-395. Reprinted in World War I Aero: The Journal of the Early Aeroplane, No. 154 (Nov. 1996), 3-9, No. 155 (Feb. 1997), 3-6

"Chief Justice John Marshall (1801-1835)," in 1998 Journal of Supreme Court History, Vol. I, 3-20

"The Wright Patent and U. S. Military Aviation in World War I," World War I Aero: The Journal of the Early Aeroplane, No 164 (May 1999), 6-16

"John Jay and the Supreme Court," New York History, LXXI (2000), 59-90

"American Air Power Doctrine and the First World War, 1914-18," World War I Aero: The Journal of the Early Aeroplane, No. 171 (February 2001), 17-26; No. 173 (August 2001), 57-62

"The Wright Patent, the Manufacturers' Aircraft Association, and American Aviation Between the Wars," World War I Aero: The Journal of the Early Aeroplane, No. 190 (November 2005), 3-6

"The Rule of Law in the Realm and in the Province of New York: Prelude to the American Revolution," History: The Journal of the Historical Association (U.K.), XCI (January 2006), 3-23.

"Whither Air Power History?," World War I Aero: The Journal of the Early Aeroplane, No. 197 (August 2007), 125-127.

## Electronic Publications

“The English Revolutions and the Rule of Law in Revolutionary New York: Jay, Livingston, Morris, and Hamilton”, Conference entitled “Columbia’s Legacy: Friends and Enemies in the New Nation,” held at Columbia University and the New-York Historical Society on December 10, 2004.

<http://www.columbia.edu/cu/lweb/symposia/johnjay/pdf/Johnson.pdf>

“Colonial Protectionism in the First British Empire: Implications for American Federalism,” Working Papers Series, Social Science Research Network, Paper #2007585, <http://www.ssrn.com>, author 1052260

“Due Process, Military Exigency, and Civilian-Military Relationships in George Washington’s Army,” Working Paper Series, Social Science Research Network, Paper #1148331, <http://www.ssrn.com/author=1052260>

“Judicial Review: An American Graft on English Root Stock,” Working Papers Series, Social Science Research Network, Paper #1162880, <http://www.ssrn.com/author=1052260>

“Herb Johnson on ‘Manuscript Grubbing’,” November 3, 2008, <http://blog.milestonedocuments.com:80>.

## Book Reviews:

Bradley, Chapin, The American Law of Treason: Revolutionary and Early National Origins, reviewed in New York History, XLVI (1965), 88-89

L. Kinvin Wroth and Hiller B. Zobel, eds., Legal Papers of John Adams, reviewed in New York History, XLIX (1968), 106-108

Leonard W. Levy, Origins of the Fifth Amendment: The Right Against Self-Incrimination, reviewed in New England Quarterly, XLI (1968), 613-615

Robert G. McCloskey, eds., Works of James Wilson, reviewed in William and Mary Quarterly, 3rd Series, XXVI (1969), 151-152

Robert K. Faulkner, The Jurisprudence of John Marshall, reviewed in William and Mary Quarterly, 3rd Series, XXVI (1969) 448-450

Gerald Gunther, John Marshall's Defense of McCulloch v. Maryland, reviewed in Virginia Magazine of History and Biography, LXXXVIII (1970), 113-114

Julius Goebel, Jr., The Law Practice of Alexander Hamilton, Volume II, reviewed in New York History, LI (1970), 413-415

#### Book Reviews (con't)

Mattie Erma Edwards Parker, ed., North Carolina Higher-Court Records, 1670-1696, and Neal W. Allen, Jr., ed., Province and Court Records of Maine, Volume V, reviewed in William and Mary Quarterly, 3rd Series, XXVIII (1971), 157-159

Paul S. Clarkson and R. Samuel Jett, Luther Martin of Maryland, reviewed in Virginia Magazine of History and Biography, LXXIX (1971), 114-115

S. Sidney Ulmer, Military Justice and the Right to Counsel, and Robert Sherrill, Military Justice is to Justice as Military Music is to Music, reviewed in Military Affairs, XXXV (1971), 28

Jerald A. Combs, The Jay Treaty: Political Battleground of the Founding Fathers, reviewed in New-York Historical Society Quarterly, LV (1971), 286-287

Frank L. Klement, The Limits of Dissent: Clement L. Vallandigham and the Civil War, reviewed in Military Affairs, XXV (1972), 162

George W. Keeton, Shakespeare's Legal and Political Background, reviewed in American Journal of Legal History, XVI (1972), 89-90

Richard E. Ellis, The Jeffersonian Crisis: Courts and Politics in the Young Republic, reviewed in Virginia Magazine of History and Biography, LXXX (1972), 106-107

Robert M. Ireland, The County Courts in Antebellum Kentucky, reviewed in The Filson Club Quarterly, XLVII (1973), 56-58

Lawrence M. Friedman, A History of American Law, reviewed in DePaul Law Review, XXIII (1974), 1086-1089

Stow Pearsons, The Decline of American Gentility, reviewed in The Historian, XXXVII (1974), 149-150

Journal of the Proceedings of the Congress Held at Philadelphia; September 5, 1774: A Facsimile of the Official Edition Printed in 1774, Introduction by Edwin Wolf 2d, reviewed in New England Quarterly, XLVIII (1975), 166



Joseph W. Bishop, Jr., Justice Under Fire: A Study of Military Law, reviewed in Military Affairs, XXXIX (1975), 90-91

William E. Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830, reviewed in Columbia Law Review, LXXVI (1976), 713-719

#### Book Reviews (cont):

Edward M. Byrne, Military Law, 2nd ed., in Military Affairs, XLI (1977), 1220

North Carolina Higher-Court Records, 1697-1701, Mattie Erma Edwards Parker, ed.; North Carolina Higher-Court Records, 1702-1708, William S. Price, ed.; County Court Records of Accomac-Northampton, Virginia 1640-1645, Susie M. Ames, ed., in William and Mary Quarterly, 3rd Ser., XXXIV (1977), 501-503

Randall Bridwell and Ralph U. Whitten, The Constitution and the Common Law: The Decline of the Doctrines of Separation of Powers and Federalism, reviewed in Vanderbilt Law Review, XXXI (1978), 761-767

Clarence H. Cramer, The Law School at Case Western Reserve University, 1892-1977, reviewed in American Journal of Legal History, XXII (1978), 332-333

Robert J. Taylor, et al, eds., The Papers of John Adams, Volume 1, September 1775 - October 1773; Volume 2, December 1773 - April 1775, reviewed in New England Quarterly, LII (1979), 130-132

William Hamilton Bryson, The Virginia Law Reporters Before 1880; William Hamilton Bryson, Census of Law Books in Colonial Virginia, reviewed in American Journal of Legal History, XXIX (1979), 91-92

William B. Scott, In Pursuit of Happiness: American Conceptions of Property from the Seventeenth to the Twentieth Century, reviewed in American Journal of Legal History, XXIV (1980), 179-181

William M. Wiecek, The Sources of Antislavery Constitutionalism in America, 1760-1848, reviewed in The Historian, XLII (1980), 342-343

Mary K. Bonsteel Tachau, Federal Courts in the Early Republic Kentucky, 1789-1818, reviewed in Eighteenth-Century Studies, XIV (1980-81), 217-218

David T. Konig, Law and Society in Puritan Massachusetts: Essex County, 1629-1692, and David T. Konig and William E. Nelson, eds., Plymouth Court Records, 1686-1859, Vols. 1-3, in William and Mary Quarterly, XXXIX (1981), 730-735

Francis N. Stites, John Marshall: Defender of the Constitution, in The Historian, XLV (1982), 114-115

A.G. Roeber, Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, in American Historical Review, LXXXVII (1982), 845-846

The Papers of Daniel Webster: Legal Papers, Volume 1: The New Hampshire Practice; Volume 2: The Boston Practice, Alfred S. Konefsky and Andrew J. King, eds., reviewed in New England Quarterly, LVII (1984) 453-455

Book Reviews (con't)

David J. Bodenhamer and James W. Ely, Jr., eds., Ambivalent Legacy: A Legal History of the South, reviewed in Vanderbilt Law Review, XXXVII (1984), 1455-1463

Hendrik Hartog, Public Property and Private Power: The Corporation of the City of New York in America Law, 1730-1870, in William and Mary Quarterly, 3rd Series, XLII (1985), 551-552

Robert J. Cain, editor, North Carolina Higher-Court Minutes, 1724-1732, in American Journal of Legal History, XXX (1986), 86-87

William M. Leary, Aerial Pioneers: The U.S. Air Mail Service, 1918-1927, in New York History, LXVIII (1987), 124-125

Maeva Marcus and James R. Perry, eds., The Documentary History of the Supreme Court of the United States, 1789-1800, Vol. I, Parts 1 and 2 in New York History, LXIX (1988), 489-491

John Phillip Reid, Constitutional History of the American Revolution: The Authority to Tax, in Journal of American History, LXXV (1988), 921-922

Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution, in The Historian, LI (1988), 128-130

William M. Wiecek, Liberty Under Law: The Supreme Court in American Life, in Criminal Justice Review, XV (1990) 104-105

Dwight Holbrook, The Wickham Claim, in American Journal of Legal History, XXXIV (1990), 84-85

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Edward Millican, One United People: The Federalist Papers and the National Idea, reviewed in Journal of American History, LXXVIII (1991), 648-649

Robert L. Clinton, Marbury v. Madison and Judicial Review, and J. M. Sosin, The Aristocracy of the Long Robe: The Origins of Judicial Review in America, in American Historical Review, XCVI (1991), 1278-1279

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Book Reviews (con't):

- ism: Jennifer Nedelsky, Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy reviewed in American Historical Review, XCVII (1992), 1589-1590
- Milton M. Klein, The American Whig: William Livingston of New York, reviewed in New York History, LXXIII (1992), 357-358
- Barbara J. Shapiro, "Beyond Reasonable Doubt" and "Probable Cause": Historical Perspectives on the Anglo-American Law of Evidence, in William and Mary Quarterly, 3rd Series, L (1993), 182-184
- David Neal, The Rule of Law in a Penal Colony: Law and Power in Early New South Wales, in The Sydney Law Review, XV (1993), 383-385
- in Thomas C. Shevory, John Marshall's Law: Interpretation, Ideology, and Interest, Journal of American History, LXXXII (1995), 709-710
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- David R. Owen and Michael C. Tolley, Courts of Admiralty in Colonial America: The Maryland Experience, 1634-1776, reviewed in William and Mary Quarterly, 3rd Series, LIV (1997), 627-629.
- Paul W. Kahn, The Reign of Law: *Marbury v. Madison* and the Construction of America, reviewed in Law and History Review, XIX (2001), 686-688
- William E. Nelson, Marbury v. Madison: The Origins and Legacy of Judicial Review, reviewed in American Journal of Legal History, XLV (2001), 107-109
- David Robarge, A Chief Justice's Progress: John Marshall from Revolutionary Virginia to the Supreme Court, reviewed in Journal of American History, LXXXVIII (2002), 1512-1513
- The Many Legalities of Early America, edited by Christopher L. Tomlins and Bruce H. Mann, reviewed in The Virginia Magazine, CX (2002), 491-92
- Arthur J. Sabin, In Calmer Times: The Supreme Court and Red Monday, reviewed in American Communist History, II (2003), 122-23
- Scott D. Gerber, Seriatim: The Supreme Court Before John Marshall, reviewed in American Journal of Legal History, XLVI (2004), 346-48

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Legal Ken MacMillan, Sovereignty and Possession in the English New World. The Foundations of Empire, 1576-1640, reviewed in Journal of American History, XCIV (2007), 909-910

History. Philip Hamburger, Law and Judicial Duty, reviewed in Journal of American History, XCVI (2009), 824-825

#### Miscellaneous Publications:

"Report No. 4--Doctoral Dissertations," in The Legal Historian. No. 5 (1967), 36-39

"Lame Ducks, 'Midnight' and 'Twilight' Judges," Richmond Times-Dispatch, August 18, 1968

"Perspective: Examining Dower Decisions," The Transcript of the South Carolina Bar, XXIX (No. 4, April 1985), 10

"Ah, to be in England Now that October's There," (report on faculty exchange program with the University of Southampton) in Carolina Lawyer, IX (1989), 14-16

"Hospice Legal Services: Spiritual and Counseling Dimensions," The Journal of Pastoral Care, XLIV (1990), 164-171

"American Constitutional History in Colleges," The Supreme Court Historical Society Quarterly, XX (No. 3, 1999), 14-15

Letter, Historiography Forum, World War I Aero: The Journal of the Early Aeroplane, No 193 (August 2006), 126-27

Foreword, Great and Interesting Events: Private Correspondence of George Washington and John Marshall regarding the U.S. Mission to France, 1796-1798, Marshall Lee Smith, editor (Richmond: The John Marshall Foundation, 2009), at i-ii.

#### Oral Presentations:

"The Advent of Common Law in Colonial New York," at the Fifteenth Conference on Early American History and Culture, Clark University, April 1964

"John Marshall and the Supreme Court," at the Columbia University Seminar on Early American History and Culture, December 1968

"A Statistical Analysis of Marshall Court Opinions," at the Southern Historical Association Convention, October 1969

"Opportunities and Challenges in Editing Legal and Judicial Documents," at the Center for Editorial and Textual Studies in Humanistic Sources, University of Virginia, May 1971

"The Editor Prepares His Text for the Printer," at the Institute on Historical Editing, National Historical Publications Commission, Charlottesville, Va., August 1972, June 1973, and June 1974

"English Statutes in New York, 1664-1776," at the Columbia University Seminar on the History of Legal and Political Thought, November 1973

"The Palmetto and the Oak: Law and Constitution in Early South Carolina, 1670-1815," Lucy Hampton Bostick Lecture, University of South Carolina, April 20, 1976

"The Aftermath of the Revolution in Woodcraft: A Legal Historian's Viewpoint," at a Conference on William Gilmore Simms, College of Charleston, May 6, 1976

"Concepts of Crime in William Gilmore Simms' Revolutionary Novels," Conference on South Carolina Legal History, Columbia, S.C., December 2-3, 1977

"The Rule of Law and Judicial Review in the Marshall Court, 1800-1815," Joint Session with the Supreme Court Historical Society and American Society for Legal History, at the annual meeting of the American Historical Association, December 30, 1978, at San Francisco, California

"Legal Culture in the Colonial South," 39th Conference on Early American History, Culture in the Colonial South, April 27-29, 1979, University of Tennessee, Knoxville

"Custom and Constitution in Anglo-American History," Annual State-Wide Meeting of the Law, Youth and Citizenship Program of the New York State Bar Association and New York State Department of Education, at Cooperstown, New York, October 7, 1979

## Oral Presentations (con't)

"Private Property in English Law and Political Thought," Seminar on Philosophy and the Law, Mills College, August 16, 1981

"Individual Liberties in Colonial America," Seminar on Individual Liberties under Constitutional Government, Oak Bay Beach Hotel, Victoria, British Columbia, March 4, 1982

"Humor in South Carolina Law," Loblolly Society, Columbia, S.C., November 18, 1983

"Moral Issues in Criminal Justice: A Historical Perspective," Annual Meeting, Southern Association of Criminal Justice Educators, Atlanta, Georgia, October 15, 1986.

"Law and Constitution in South Carolina, 1670-1800," Conference on the South and the American Constitutional Tradition, University of Florida, Gainesville, March 6, 1987

"The Constitutional Thought of Justice William Johnson," Conference on South Carolina and the American Constitution," University of South Carolina School of Law, May 22, 1987

"Magna Carta: As it Was and As it Is," Annual Meeting, National Society of the Dames of Magna Carta and the Barons of Runnymede, Forest Lake Country Club, Columbia, South Carolina, June 13, 1987

"Federal Union, Property and the Contract Clause: John Marshall's Thought in Light of Sturges v. Crowninshield and Ogden v. Saunders," delivered at a John Marshall Symposium held at Marshall University, Huntington, West Virginia on November 23, 1987

"The Nature and Rationale of Punishment in Colonial North America," at Southern Criminal Justice Association's annual meeting at Asheville, North Carolina, on October 12, 1988

"British and American Views of Property and Constitutionalism," delivered at the annual meeting of the American Society for Legal History, held at Charleston, South Carolina on October 21, 1988

"Prison Libraries in the United States: A Brief History," at College of Library Science, University of South Carolina, June 13, 1989.

"Hospice Wills, Special Problems in Serving the Terminally Ill," Pro Bono Update on Probate and Health Law Issues, South Carolina Bar Headquarters, July 14, 1989

## Oral Presentations (con't)

"Marbury v. Madison: Another Look at a Well Worn Case," at Texas Tech University School of Law, October 19, 1989

"The Origin of the Executive Departments, 1781 to the Present," Teachers' Conference on Congress and the Executive Departments, University of South Carolina, November 17, 1989

"American Constitutional Thought Relating to Property Issues during the Colonial Period," at 1990 meeting of the British Association of American Studies, University of Exeter, March 31, 1990

Discussant, "Separation of Church and State," Clergy and Law Conference, Lutheran Theological Southern Seminary, June 22, 1990

"Divergent Constitutionalism: England and Her Colonies, 1607-1776," Seminar held by Institute of Humane Studies at the College of Notre Dame, Belmont, California, August 2, 1990

"Separation of Powers," South Carolina Bar, Law-Related Education Program, Advanced Summer Institute, August 7, 1991

"Politically Correct Speech and Teaching," South Carolina Bar, Law-Related Education Program, Summer Institute, June 12, 1992.

"Upon First Looking into Cross-Vesting: Historical and Constitutional Perspectives," University of Melbourne Law School Seminar on Advanced Constitutional Law, September 7, 1992; Monash University School of Law Faculty Seminar, September 8, 1992

"Thomas Jefferson and Legal Education in Early America," at a Library of Congress Conference on "Thomas Jefferson and the Education of a Citizen," May 13-15, 1993

"Hierarchical and Congregational Church Clergy," at Clergy and the Law Conference VII (Continuing Lawyers' Education), Lutheran Theological Southern Seminary, June 18, 1993

"John Jay and the Supreme Court," at The Speranza Lectures for 1995: The Life and Legacy of John Jay, delivered at Columbia University on December 12, 1995.

This lecture was recorded by C-Span, and shown nationally during the month of December at various dates and times.



## Oral Presentations (con't)

"Chief Justice John Marshall (1801-1835," a lecture delivered on April 9, 1997, as the first lecture in the series "The Chief Justiceship: The Role of the Nineteenth and Twentieth Century Chief Justices", sponsored by the Supreme Court Historical Society.

This lecture was recorded by C-Span, and shown nationally beginning on April 25, 1997.

"Small Group Dynamics and the Supreme Court," a seminar presentation at Preston College, University of South Carolina, April 22, 1997

"John Marshall: *The Great Chief Justice?*", lecture at the National Archives, Washington, D.C., September 16, 1997

"Is Britain Becoming a State in the Federal Union of Europe? A Comparison Between the Exercise of Federal Judicial Power by the Marshall Court, and of Sovereignty by the European Court of Justice," Faculty of Law Seminar, University of Birmingham (U.K.), February 11, 1998.

"Collegiate Study of American Constitutional History: A Search for New Beginnings," at a Teaching Conference on United States Constitutional History in Colleges, University of Maryland Inn and Conference Center, College Park, Maryland, March 19-21, 1999

"Legal and Constitutional History: Useful Combination or Casting Oil on Water?", at a Teaching Conference on United States Constitutional History in Colleges, University of Maryland Inn and Conference Center, College Park, Maryland, March 19-21, 1999

"The Legacy of John Marshall and the European Court of Justice: A Preliminary Consideration," American Political Science Association Annual Meeting, Atlanta Hilton and Towers, September 3, 1999

"Judicial Institutions in Emerging Federal Systems: The Marshall Court and the European Court of Justice," Symposium on Chief Justice John Marshall and the United States Supreme Court 1801-1835, John Marshall Law School, April 5, 2000

"Historical Antecedents of the First Amendment," South Carolina Bar, Law-Related Education Division, Program on the First Amendment, August 19, 2000

1901-2001,"

"John Marshall and His Supreme Court: From Adulation to Evaluation, American Association of Law Libraries annual meeting, July 15, 2001, Minneapolis, Minnesota (Available on line at <http://ssrn.com/author=1052260>)

Oral Presentations (con't)

“The Wright Patent Wars and U.S. Army Aviation,” North Carolina First Flight Commission’s Symposium on the Wright Brothers and American Aviation, North Carolina State University, Raleigh, October 22, 2001

“Citizenship, Treason and the Civil War,” Western North Carolina Civil War Roundtable, Sylva Civic Center, March 10, 2003

“Judicial Review: An American Graft on English Root Stock,” Conference on Judicial Review commemorating the Bicentennial of the Decision in *Marbury v. Madison*, sponsored by the Institute for United States Studies, University of London, and held at Old Hall of Lincoln’s Inn, London, on May 29<sup>th</sup> and 30<sup>th</sup>, 2003 (Available on line at <http://ssrn.com/author=1052260>)

“The English Revolutions and the Rule of Law in Revolutionary New York: Jay, Livingston, Morris, and Hamilton”, Conference entitled “Columbia’s Legacy: Friends and Enemies in the New Nation,” sponsored by the Rare Books and Manuscript Library at Columbia University, with the support of the Gilder-Lehrman Institute of American History. held at Columbia University and the New-York Historical Society on December 10, 2004

“Gibbons v. Ogden: The Commerce Clause, Federalism, and the National Economy”, Discover YOUR History, 2004-05 Monthly Seminar, Teaching American History Grant, Buncombe County School District, Asheville, North Carolina, January 22, 2005

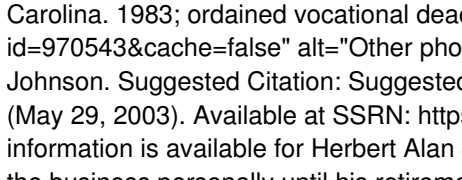
Panelist, “The Future of the Legal History Book”, Annual Meeting of the American Society for Legal History, Baltimore, Maryland, November 19, 2006

“Congress and the Continental Army Cope with the Fear of Standing Armies,” Annual Meeting of the Society for Military History, held at Frederick, Maryland on April 21, 2007 (Revision available on line as “Due Process, Military Exigency and Civilian-Military Relations in George Washington’s Army,” <http://ssrn.com/author=1052260>)

“New Perspectives on Early Aviation,” American Aviation Historical Society, Franklin Chapter, June 19, 2007

“Justice Bushrod Washington: Maybe John Marshall’s Twin. . .but not Identical,” Conference on Neglected Justices, Vanderbilt University School of Law, April 3-5, 2008

“Sir Edward Coke and the Divergence of English and American Constitutional Law,” Faculty Colloquium, University of South Carolina School of Law, April 9, 2010

Herbert Alan Johnson has 26 books on Goodreads with 67 ratings. Herbert Alan Johnson's most popular book is Gibbons V. Ogden: John Marshall, Steamboats. Books by Herbert Alan Johnson. Herbert Alan Johnson Average rating 3.39 · 23 ratings · 1 reviews · shelved 67 times. Showing 26 distinct works. sort by. popularity original publication year title average rating number of pages. Gibbons V. Ogden: John Marshall, Steamboats, and Interstate Commerce by. Herbert Alan Johnson. Herbert Alan Johnson, American History and law educator, lawyer, chaplain. Bar: New York 1960, Supreme Court of the United States Ct 1965, District of Columbia 1967, South Carolina. 1983; ordained vocational deacon, 1991.  src="/web/img/loading.gif" data-src="/web/show-photo.jpg?id=970543&cache=false" alt="Other photo of Herbert Alan Johnson" class="gallery\_\_img" height="167". Other photo of Herbert Alan Johnson. Suggested Citation: Suggested Citation. Johnson, Herbert Alan, Judicial Review: An American Graft on English Root Stock (May 29, 2003). Available at SSRN: <https://ssrn.com/abstract=1162880> or <http://dx.doi.org/10.2139/ssrn.1162880>. No contact information is available for Herbert Alan Johnson. Download This Paper. Open PDF in Browser. Herbert Johnson continued to work in the business personally until his retirement in 1928. He had made the name synonymous with quality — a man with a Herbert Johnson hat is a man apart. He has an air of sophistication and assurance such as arises from the knowledge that he is in possession of superb quality craftsmanship. Whether a bowler (black for the town