

# Schwartz and Hogan: Joseph Story

Robert G. Weclaw

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

---

## Recommended Citation

Robert G. Weclaw, *Schwartz and Hogan: Joseph Story*, 9 DePaul L. Rev. 316 (1960)  
Available at: <https://via.library.depaul.edu/law-review/vol9/iss2/30>

This Book Reviews is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact [wsulliv6@depaul.edu](mailto:wsulliv6@depaul.edu), [c.mcclure@depaul.edu](mailto:c.mcclure@depaul.edu).

*Sources of Our Liberties.* Edited by RICHARD L. PERRY. Chicago: American Bar Foundation, 1959. Pp. xxiii+456. \$5.00.

The span of thought, time and space between Runnymede on the Thames, in the reign of King John, and Philadelphia in the time of George Washington, may be measured by twenty-three documents, beginning with the Magna Carta and ending with the Constitution of the United States. The American Bar Foundation, the research affiliate of the American Bar Association, has presented in a chronological and climactic fashion the texts of the twenty-three drafts in one volume, *Sources of Our Liberties*. The editor of this important collection, Attorney Richard L. Perry of the District of Columbia Bar, has placed each document into its own historical perspective with a neat and well annotated introduction. A partial list of these major landmarks in our nation's organic law is as follows: *The Mayflower Compact*, 1620; *The Abolition of the Star Chamber*, 1614; *The Habeas Corpus Act*, 1679; *The Bill of Rights*, 1689; *The Resolutions of the Stamp Act Congress*, 1765; *The Declaration of Independence*, 1776; and *The Northwest Ordinance*, 1787. Though all of the drafts are united by the common theme of individual liberty, they represent a wide variety of forms: royal charters, parliamentary acts and petitions, private compacts, colonial ordinances and corporate charters.

The Committee on American Citizenship of the American Bar Association recommended to the American Bar Foundation the re-examination of the more significant documents which foreshadowed the Constitution; the subject of this review is the result of that recommendation. Through this volume, the American Bar Association has exemplified its professional maturity, by looking beyond the welfare of its own members to the common good of the community at large.

It is recommended that this volume be made widely accessible to all citizens, particularly to students, through school libraries and other institutions. It would serve as an excellent textbook for a course in American legal history, because its selected bibliography and footnotes provide ample collateral reference material. To the lawyer, who is entrusted in a special fiduciary capacity with the custody of our individual liberties, this work is particularly recommended.

ROBERT Q. KELLY\*

\* Librarian, De Paul University College of Law.

*Joseph Story.* By MORTIMER D. SCHWARTZ and JOHN C. HOGAN. New York: Oceana Publications, Inc., 1959. Pp. 228+Index and Bibliography. \$5.00.

The first item in this volume is a letter written by Mr. Justice Joseph Story of Massachusetts in which he tells the story of his life up to the time of his appointment as an Associate Justice of the United States Supreme Court in 1811. The last item is his last will and testament. In between is an edited collection of source materials in the form of letters, articles and reprints intended to present the Justice's role in the unfolding of the country's political and legal history. The compilers of this source material attempt to present all facets in the life of this versatile man. In attempting to present all they present too little.

A succession of letters and articles by the jurist, his contemporaries, and modern legal scholars illustrates his career as student, lawyer, state legislator, member of Congress, poet, law professor, author, drafter of legislation, jurist, and correspondent. He corresponded with important legal figures throughout

Europe and the United States. A volume of this size could probably have been written concerning any one of the man's occupations since, whatever he did, was done thoroughly. He threw his prodigious abilities, memory, intellect and knowledge unstintingly into each undertaking.

Mr. Story's non-legal efforts as a poet and author could have been minimized and more attention given to his decisions. With the exception of *Mayor of New York v. Miln*, 11 Pet. (U.S.) 102 (1837), *Charles River Bridge v. The Warren Bridge*, 11 Pet. (U.S.) 420 (1837), *Martin v. Hunter's Lessee*, 1 Wheat. (U.S.) 304 (1816), *Swift v. Tyson*, 16 Pet. (U.S.) 1 (1842), and a few other cases which are discussed rather superficially, no real attempt is made to correlate the thirty-five volumes of Supreme Court Reports written during his thirty-four years on the bench with the development of American legal history. Story wrote his full share of those opinions. His basic contributions to Commercial Law, Admiralty and Prize are mentioned.

The editors do well in portraying the close and harmonious relationship which existed between Story and Marshall during their 24 years together as Justice and Chief Justice. They explain how Story, a Republican, appointed by Madison at Jefferson's behest, lived with, corresponded with, worked with, and agreed whole-heartedly with Marshall and his Federalist theories. Story was anxious to extend Federal jurisdiction as much as the Constitution would permit as he demonstrated in *Swift v. Tyson*. He strongly believed in Marshall's federalism and national supremacy and that the Constitution "is intended to endure." His vast reservoir of legal learning enabled him to "find precedents for the decisions which John Marshall was not unused to evolve from his inner consciousness."

An incident reveals the closeness of the two men who lived together in Washington boardinghouses and had periods of reform when they drank no wine except on rainy days. The authors tell us that Marshall would say: "Brother Story, step to the window and see if it does look like rain." If Story reported the sun was shining Marshall ruled: "Our jurisdiction extends over so large a territory that the doctrine of chances makes it certain it must be raining somewhere."

Taney succeeded Marshall in 1836, and dual federalism and states' rights had their day in court. Taney believed that the Constitution spoke with the words and intent of the framers. Story sat with Taney for nine years. The editors virtually ignore Story's relationship with Taney and his theories during this important period in the formation of new constitutional doctrine.

The best of the reprints is the one written by Roscoe Pound. Dean Pound compares Story's labors to those of Coke. Story's great pioneer treatises in Conflicts of Law, Constitutional Law, Equity, and Commercial Law, among others, and his work as Dane Professor of Law at Harvard simultaneously with his service on the Supreme Court enabled him as writer, teacher and jurist to exert great influence on our legal system during its formative period. Dean Pound credits Chancellor Kent with his Commentaries to a lesser extent and Story to a greater extent with keeping this country from adopting the civil law in preference to the common law.

ROBERT G. WECLEW\*

\* Assistant Professor, De Paul University College of Law.