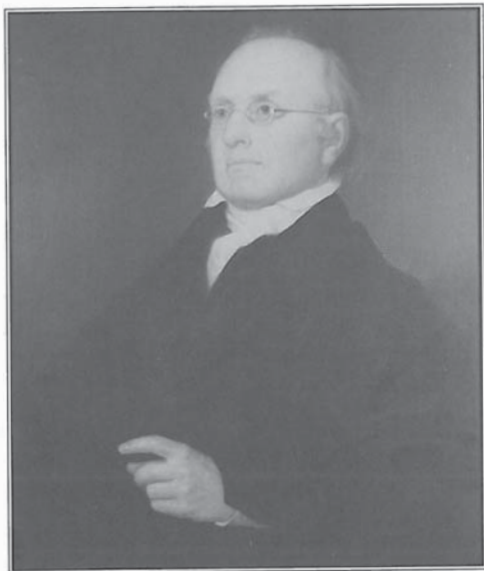


# Joseph Story

## 1812-1845



Source: Collection of the Supreme Courts of the United States

**J**OSEPH STORY, one of the most influential legal scholars in American history, was born September 18, 1779, in Marblehead, Massachusetts. He was the eighth of eighteen children of the two marriages of Elisha Story, a prominent local physician. His mother, Mehitable Pedrick Story, captivated Joseph's imagination with stories of how his maternal grandfather, John Pedrick, had daringly foiled a would-be British raid on the Salem, Massachusetts, arsenal in 1771. Young Joseph was also impressed with the successful career of his pa-

ternal grandfather, William Story, who had served as assistant deputy registrar of the British Vice Admiralty Court in Boston and as clerk of the American Navy Board. But Story's greatest admiration was reserved for his father, who, in addition to being a respected physician, had distinguished himself through his participation in the Boston Tea Party.

In Joseph's last year at Marblehead Academy, a local private school, he was severely disciplined for brawling with a fellow student. Feeling the punishment was un-

just, Story left the academy and sought early admission to Harvard. By diligently studying on his own, he was able to enroll in 1795. Story graduated second in his class in 1798, but such devotion to his studies had detrimental effects on his health, and he emerged balding and sickly.

His health improved when he moved back to Marblehead and read law under a distinguished attorney, Samuel Sewall, a future chief justice of the Massachusetts Supreme Court. When Sewall was appointed to a judgeship, Story completed his apprenticeship under Samuel Putnam in the thriving city of Salem. Under his tutelage, Story was admitted to the bar in 1801.

Although he was a diligent law student, Story's personal inclination was to devote himself to reading and writing poetry. His florid compositions were poorly received, although "the poet of Marblehead," as he was known, did succeed in having poems published in the local papers. His most substantial work was *The Power of Solitude*, a 1,500-line poem written in heroic couplets and published as a book in 1805. Disheartened by his poetry's limited critical and public appeal, Story decided to concentrate seriously upon the law and to write poetry in his spare time.

This decision coincided with the death of his father, whose professional reputation had been sullied by an unfortunate incident. Because many parts of the country had suffered from outbreaks of smallpox, Dr. Story sought to protect the citizens of Marblehead by inoculating them with a newly developed serum from England. Tragically, the serum sent to Story was mislabeled; it proved to be not a vaccine, but live smallpox, resulting in numerous deaths and a local quarantine. Although Dr. Story ultimately was exonerated, many of those who had lost family members held him accountable. These events may have pushed Story to excel in his profession and salvage his family's honor. His father's death in 1805 was preceded by the death of Mary Story, young Story's wife of only seven months and his

collaborator in writing poetry. Devastated at losing his wife, Story bought up all the copies of *The Power of Solitude* he could find and destroyed them.

Story opened his own law practice, but at first attracted few clients. Federalist newspapers, which dominated in the county, openly attacked his Republican politics and his conversion to the Unitarian religion, and on one occasion Story was assaulted and beaten. Discouraged, he considered moving to Baltimore for a time. Through his close association with Salem's fledgling Democratic-Republican party, headed by shipping magnate Jacob Crowninshield, Story's law practice slowly began to expand. His considerable success, in both local courts and the Massachusetts Supreme Court, attracted more clients and impressed even his Federalist antagonists.

In 1805 Story was elected to the first of three terms in the Massachusetts House of Representatives. His election was a testament to the increased vigor of the Democratic-Republican party, an organization he had helped to build. Yet, his emergence as a local party leader coincided with a growing detachment from partisan loyalties. Story spent much of his tenure in the legislature promoting measures for judicial reform and greater judicial independence. His absences from legislative roll calls, due mainly to time spent litigating cases, coupled with his nearly perfect attendance on the legislature's judiciary committee, suggest that Story's political ambitions had already succumbed to his growing interest in the courts.

He became acquainted with the nation's highest court and its members in 1808 when he was retained by a group of New England land speculators to appear as their counsel in Washington. He sought financial redress for his clients in the notorious Yazoo land fraud case, *Fletcher v. Peck*, which came before the Supreme Court in 1810. The speculators sought to reverse the Georgia legislature's invalidation of the corrupt public land sale of an enormous tract of land (extending into



The complicated case of *Martin v. Hunter's Lessee* (1816) involved a parcel of land in the northern neck of Virginia that the state had confiscated from Thomas Lord Fairfax, a Loyalist, during the American Revolution. Joseph Story's landmark opinion established the Supreme Court's authority to reverse state court decisions involving federal laws or constitutional rights. Source: Virginia State Library and Archives

Alabama and Mississippi) made by the previous legislature, since voted out of office. Unanimously accepting Story's argument, the Court struck down Georgia's revoking act, obliging the state to uphold its contract, although corrupt, and eventually pay restitution to the speculators. The decision marked the first time the Court relied upon its implied powers to overturn state laws it held contrary to the Constitution.

Story's role in the Yazoo land fraud controversy brought him national prominence. He had been elected in 1808 to finish out the congressional term of his old political ally, Jacob Crowninshield, who had died in office. While in the U.S. Congress, Story broke with party leadership to oppose President Thomas Jefferson's foreign trade embargo. The decision was a difficult one for Story, and it earned him powerful political enemies in Washington, including the president. Disgusted with political chicanery and wanting to resume his law practice, Story returned to Massachusetts. He was once again elected to the state legislature and served briefly as Speaker of the Massachusetts House of Representatives in 1811.

Despite his hectic professional life, Story found time to court Sarah Waldo Wetmore, and they married in 1808. A distant relative of his first wife, and the daughter of a judge of the Boston Court of Common Pleas, Sarah fulfilled the hopes for home and family that had been dashed three years earlier by Mary Story's sudden death. The second marriage was a happy match, but it too was touched by tragedy. Only two of the couple's seven children survived childhood. A son, William Wetmore Story, became a prominent lawyer and, reversing his father's progression from art to law, became an artist and sculptor of world renown.

The death of Associate Justice William Cushing in September 1810 created a vacancy on the Supreme Court that Joseph Story would fill for almost thirty-four years. But his path to this high office was neither easy nor certain. At thirty-two, he was considered by many to be too young and inexperienced to serve on the nation's highest bench. His political enemies argued that Story's record of loyalty to the Democratic-Republicans, also the party of President James Madison, made him overly partisan. Ironically, many Democratic-Re-

publicans, including Jefferson, questioned Story's allegiance. Nevertheless, after three unsuccessful attempts to fill the seat, including a refusal from John Quincy Adams, then ambassador to Russia, the president sent Story's nomination to the Senate on November 15, 1811. Story was confirmed three days later, becoming one of the youngest appointees ever to sit on the high bench. Gabriel Duvall was confirmed on the same day, but Story, because he was younger, ranked behind Duvall in seniority.

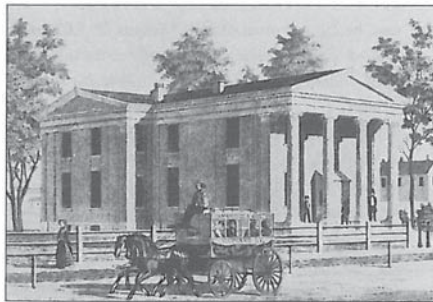
On the Court, Story followed Chief Justice John Marshall's lead and gradually embraced an expansive federalist view on the authority of the Supreme Court as a coequal third branch of government. To promote this view, Story successfully worked to expand the jurisdiction of federal courts to protect the supremacy of federal law. His opinion in *Martin v. Hunter's Lessee* (1816) established the Court's power to reverse the decisions of state courts and ensure that federal law was interpreted uniformly throughout the nation. He advocated the establishment of a federal common law of crimes to expand the scope of federal criminal law. He also sought to exert federal admiralty jurisdiction as widely as possible.

Story supplied the intellectual reasoning behind many of the Court's opinions. According to tradition, Marshall is said to have remarked after reading his

opinions: "These seem to be the conclusions to which we are conducted by the reason and spirit of the law. Brother Story will furnish the authorities." Although their beliefs on the Court's constitutional role in government were similar, Story differed from Marshall in several instances, notably in his views on corporations. *Dartmouth College v. Woodward* (1819) questioned whether the New Hampshire legislature, having granted Dartmouth College a corporate charter, could later rewrite that charter without impairing a contract, an action expressly forbidden by the Constitution. Marshall found no reason to exempt private charters from constitutional protection, but Story made clear in his separate opinion that states could retain the power to make future modifications in contracts without violating the Constitution if such a provision is written into the charter.

Story provoked strong reactions in others. Many adored him, but others, such as his colleague and adversary William Johnson, found him impetuous and garrulous. He was indeed known to monopolize the justices' discussions. Johnson also resented Story's close friendship with Henry Wheaton, the Supreme Court's reporter of decisions.

Even if Story had not served on the Supreme Court, he might have left a lasting mark on the nation's legal system. He was one of the nation's greatest legal schol-



A Harvard University graduate, Joseph Story moved back to Cambridge, Massachusetts, in 1829 to teach while continuing to perform his Supreme Court duties. He became an influential professor who contributed enormously to Harvard Law School's success and to legal education in general. Dane Hall, built in 1832, housed Harvard's law school for more than a century. Source: Harvard Law Art Collection

## Joseph Story

ars, and his commentaries are still cited as legal authority. In 1829 Harvard Law School finally persuaded Story, after several entreaties, to move from Salem to Cambridge, Massachusetts, and join the law faculty. By then his ties to the university were already well established; he had become a Harvard overseer in 1819 and a fellow of the Harvard Corporation in 1825.

While continuing as associate justice, Story wrote a series of nine works clarifying the philosophical and legal bases of law. The series demonstrated the remarkable breadth of Story's legal knowledge. Although all the books were well received and widely read, his landmark *Commentaries on the Constitution*, published in three volumes in 1833, was so successful that it was eventually translated into French, Spanish, and German. A one-volume abridgment of that work became a popular text in law schools. By 1844 money from his book royalties was more than twice his judicial salary, and the influence of his writings was widespread.

With the election of Andrew Jackson as president in 1828, Story contemplated retirement from the Court to devote himself entirely to academic life. Jackson's victory, heralding a new era of populism, prompted Story to observe cynically that "the reign of 'King Mob' seemed triumphant." One by one, death claimed Story's colleagues, including, in 1835, his great friend and longtime ally, John Marshall. Jackson balked at appointing Story—the obvious and popular choice—to fill the chief justice's chair and selected Roger B. Taney instead. By 1837 Jackson had replaced five of the justices on the seven-member bench, but, despite widespread speculation, Story did not retire. He spent the next nine years conducting a rear guard defense of the Marshall Court's record of jurisprudence. Significantly, many of the radical reforms expected of the Jacksonian appointees did not materialize, perhaps in part because of Story's participation. While Story often disagreed with his new colleagues on various is-



A popular and forceful president, Andrew Jackson was caricatured by his opponents as a despotic monarch because he expanded the powers of the president at the expense of the legislature. This cartoon charges that Jackson exceeded his authority by vetoing the 1832 bill to recharter the National Bank. *Source: Library of Congress*

sues, he did not often dissent. Dissents, he felt, should be used sparingly because they weakened the institution whose authority he had spent a lifetime trying to build.

Story's energy began to wane in the early 1840s, and he was absent from the 1843 term due to illness. He struggled through the 1844 term, and in 1845 he commenced his circuit duties with the intention of retiring as soon as a successor could be named. Before he could tender his resignation, Story became gravely ill, and on September 10, 1845, he died.