

## REVIEW

*History of the Supreme Court of the United States: Volume 1, Antecedents and Beginnings to 1801.* JULIUS GOEBEL, JR. The Macmillan Company, New York, 1971. Pp. xxv, 864. \$30.00.

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When Justice Holmes died in 1935, he left his residual estate, amounting to more than a quarter of a million dollars, to the United States. The money remained in the Treasury for many years while the authorities deliberated a suitable use for the unusual bequest. Finally, in 1955, Congress established The Oliver Wendell Holmes Devise Fund, the principal project of which was to be the preparation and publication of a history of the Supreme Court of the United States. As currently envisioned, The Oliver Wendell Holmes Devise *History of the Supreme Court of the United States*, under the general editorship of Paul A. Freund, will include eleven volumes covering the history of the Court to 1941.

In 1957, the Permanent Committee of the Holmes Devise was especially fortunate in securing the services of Professor Julius Goebel to write this first volume in the series, *Antecedents and Beginnings to 1801*. Goebel has had a long and distinguished career at the Columbia University School of Law. He has written a number of notable monographs and articles concerning English and early American legal history<sup>1</sup> and has continued his productive scholarly activities since his retirement in 1961. In addition to writing the present volume, he is the senior editor of *The Law Practice of Alexander Hamilton: Documents and Commentary*.<sup>2</sup> Few scholars have used their "retirement" to such distinguished advantage.

Goebel's efforts have always been characterized by the display of great learning and an individualistic approach to writing the legal

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<sup>1</sup> Goebel's previous contributions to early American legal history are assessed in Flaherty, *An Introduction to Early American Legal History*, in *ESSAYS IN THE HISTORY OF EARLY AMERICAN LAW* 11-12, 15, 23 (1969). For a bibliography of Goebel's writings, see *The Published Works of Julius Goebel, Jr.*, 61 *COLUM. L. REV.* 1198 (1961).

<sup>2</sup> Vols. 1 & 2 (1964).

history of any subject; he writes very large books in exactly the manner in which he thinks they should be written, often paying only the slightest attention to how other scholars have treated an aspect of his subject. *Antecedents and Beginnings to 1801* is no exception. It is an admirably learned book and seemingly thorough on those matters that Goebel chooses to discuss. The text is based on a fresh reading of the extant primary evidence—another hallmark of the Goebel approach. Indeed, it seems unlikely that any other student of the Supreme Court's first decade would have written a book that, in terms of content, emphasis, and methodology, resembles the offering now before us.

Few scholars have the learning to compete with Goebel—especially with his mastery of what he would refer to as the “muniments” of both English and American law in the seventeenth and eighteenth centuries. The depth of his learning and the scope of his primary research are the highlights of this study. His judgments, reflecting the wisdom and acumen developed over a lifetime of scholarship, are in general a model for other students. This immense learning has created an extremely valuable treatise for consultation on a surprisingly varied range of issues concerning the political and legal history of early America. His professional survey of many of the legal issues of the times will be of particular use to general historians, whose treatment of the broader history of this era forces them into contact with unfamiliar legal or law-related questions. Indeed, many historians, accustomed to sneering at what passes for history in judicial opinions and the writings of some legal historians, will be impressed by the scope and depth of Goebel's explorations in primary sources. His research in contemporary newspapers, for example, in the chapters concerning the ratifying conventions of 1787 and 1788, is prodigious. Although his extraordinary awareness of obscure primary and secondary sources is sometimes paraded to excess, especially in the enormous burden of footnotes that the text carries, on the whole the footnotes perform a useful service in correcting previous misinterpretations and plain errors. The author's care and legal acumen serve him well in the examination of primary texts, and the reader is often impressed by the fruits of attention to seemingly petty detail.<sup>3</sup>

Goebel's preface makes clear the type of book he intended to write. He is concerned initially with emphasizing the relative antiquity of American experience with the administration of law and the diversity of that experience in the 180 years before the Constitutional Conven-

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<sup>3</sup> See, e.g., Goebel's correction of a point made by Charles Warren, p. 459 n.8. There is much correction of Warren's well-known article in chapter XI, The Judiciary Act of 1789.

tion. Various colonies had appropriated selected English laws, precedents, and practices from the stores of the common law and then subjected them to a process of Americanization. The preface then forewarns of difficult matters, for the author believes "that even those matters professionally least beguiling to lay people are part and parcel of intellectual history."<sup>4</sup> We are thus promised an analytic focus on major ideas and issues related to the judiciary rather than a discussion of "how [the Supreme Court] was housed or the apparel of judges."<sup>5</sup> Goebel's ambitions for his treatise seem well expressed in the virtues for which he praises Justice Samuel Chase's maiden opinion in *Ware v. Hylton*<sup>6</sup>: "it was something of a *tour de force*—a close and exhaustive analysis and a trenchant presentation of the issues. . . . There was a meticulous analysis of the language of Article IV evidently designed to counter some of the silly things that had been said about its meaning. When he was done, even the dullest pettifogger could have retained few doubts."<sup>7</sup>

## I

Of the seventeen chapters of *Antecedents and Beginnings to 1801*, the first four concern the legal and judicial experience of the American colonies and the new states prior to the Constitutional Convention of 1787. The transplantation of English law, the colonial experience with a judiciary and with appellate devices, and the traditions of judicial control over legislation, are described in appropriate comparative detail. This reflects Goebel's basic contention that "these materials and the degree of the inhabitants' familiarity with what they represented is as ponderable an element in the struggle over the ratification of the federal Constitution as the factors of economic or ideological involvement."<sup>8</sup> By 1776, he argues:

The principle that government must be conducted in conformity with the terms of the constitution became a fundamental political conviction. What was not fully established was where the ultimate decision on conformity or repugnancy was to be lodged. Everything in the experience of the American lawyers, intellectual and practical, had prepared the way for committing this power to the judicial.<sup>9</sup>

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<sup>4</sup> P. xxi.

<sup>5</sup> *Id.*

<sup>6</sup> 3 U.S. (3 Dall.) 199 (1796).

<sup>7</sup> Pp. 751-52.

<sup>8</sup> P. 49.

<sup>9</sup> P. 95.

An elaborate chapter on the experience of the newly sovereign states with judicial review illustrates "the manner in which the principle of constitutional supremacy, originally a mere matter of political theory in America, became a rule of judicial action."<sup>10</sup>

Chapters V through IX, which focus on the Constitutional Convention and the struggles for ratification, are brisk and readable; they are the sections that will most entertain the general reader. Goebel himself seems to have enjoyed retelling a classic story. These narrative chapters confront the author with a dilemma, however, for the judiciary was rarely at the center of critical attention during the momentous years 1787 to 1789. Goebel can hardly ignore the Constitutional Convention or the various ratifying conventions, but there is an acute lack of evidence on the consideration given at such gatherings to many matters related to the judiciary.<sup>11</sup>

In attempting to make coherent the occasional bits and pieces of relevant debate, Goebel is forced to narrate a larger story. He does so with a sure hand, especially in the two chapters on the state ratifying conventions. His delight in the *bon mot* and the amusing episode stands him in good stead.<sup>12</sup> Goebel reserves one of his best gibes for the Rhode Island legislature, which refused to call a ratifying convention and ordered the submission of the constitution to town meetings, on the ground that no innovations could otherwise be made in the constitution already agreed to by the governors and the governed. Goebel is moved to observe that "[t]his pious sentiment coming from a citizenry long berated as an aggregation of contract breachers was truly inspired."<sup>13</sup>

In his detailed treatment of the ratification controversy carried on in speeches and newspapers in each state, Goebel is able to isolate the debate on the issue of the judiciary from the larger political debate of which it was part. He stays fairly close to the record of what was said and what happened, and his treatment is not particularly innovative. This is as true of his discussion of *The Federalist* as of his survey of antifederalist objections to the judicial provisions of the new constitution. In fact, Goebel is rather hard pressed to show much analytic sophistication in his discussion of antifederalist objections which, al-

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<sup>10</sup> P. 126.

<sup>11</sup> Almost nothing is known of the discussion of the federal judiciary at the South Carolina ratifying convention, for example. See p. 373.

<sup>12</sup> He reports, for example, that on the second day of the Pennsylvania ratifying convention "the delegates had the dispiriting experience of attending a college commencement." A week later the convention "again spent a day indulging its esoteric appetite for academic exercises." Pp. 328-29.

<sup>13</sup> P. 358.

though endlessly repeated from state to state and newspaper to newspaper, are relatively simple and straightforward; they do not furnish him with the materials for weighty analysis.

After a surprisingly dull chapter on those aspects of the movement for the Bill of Rights that affected the judicial process, Goebel reaches the heart of his book in the last seven chapters, which treat the Judiciary Act of 1789, the Process Acts, the circuit courts, the appellate practice of the Supreme Court, and the political and constitutional issues that came before the Court. The treatment is authoritative. The discussion of the Judiciary Act is a corrective to the classic interpretation by Charles Warren.<sup>14</sup> Goebel views the Judiciary Act "in a political context as an instrument of reconciliation deliberately framed to quiet still smoldering resentments . . .," its technical scheme "rooted in the law and custom of divers American jurisdictions."<sup>15</sup> The author gives skillful consideration to the Process Acts and the Supreme Court's regulation of appellate practice, other important technical subjects that previous scholars have neglected.

Goebel devotes more than one hundred pages to the organization and jurisdiction—civil, criminal, and appellate—of the federal circuit courts. The separate chapter on the criminal jurisdiction of the circuit courts is most interesting for both the author's general defense of the administration of criminal justice by federal courts from 1790 to 1800, and his discussion of the issue of nonstatutory crimes. Goebel finds reason to believe "that in the early years of federal justice considerable uncertainty prevailed whether or not crimes at common law were cognizable in federal courts."<sup>16</sup> He explores this politically sensitive issue in learned detail, with particular reference to the prosecutions for libel under the Sedition Act.

Goebel's volume suffers from one problem for which the author cannot be blamed: there is a shortage of classic constitutional cases in this first decade of the Supreme Court's history. Even taking this into account, however, the chapters concerning the political and constitutional issues that were before the Court in the 1790's are perhaps the most disappointing in the book. Anticipation of some treatment of great cases gets the reader through some very tedious material on procedural matters. Yet, once the cases are reached, the analysis is anticlimactic and, in many respects, dissatisfying. Although Goebel treats the cases

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<sup>14</sup> Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 *HARV. L. REV.* 49 (1923).

<sup>15</sup> P. 458.

<sup>16</sup> P. 622.

in the overwhelmingly thorough fashion that characterizes the entire treatise, he never strays far from the text of the actual opinions.

Examination of the ten pages devoted to the Court's most important decision during this period, *Chisholm v. Georgia*,<sup>17</sup> a contract action in which the Court held that a state could be sued by a citizen of another state, reveals some shortcomings and biases in Goebel's research methods. As usual, he emphasizes research in original sources, but neglects three studies that, among other things, would have led to useful primary sources of information concerning the litigation.<sup>18</sup> Goebel suggests, for example, that "there is reason to believe" that Chisholm first pursued his action in 1791 in the United States Circuit Court for the Georgia District.<sup>19</sup> Doyle Mathis previously indicated that this was indeed the case.<sup>20</sup> Mathis consulted the case files in the Federal Records Center in Georgia<sup>21</sup> and also used the papers of Justice Iredell, who had written an opinion in the circuit court and was the lone dissenter from the Supreme Court holding that Georgia could be sued by a citizen of South Carolina in the circuit court.

Mathis's treatment of *Chisholm v. Georgia* corrects and supplements *Antecedents and Beginnings to 1801* in a number of other particulars. Goebel says that Jared Ingersoll and Alexander J. Dallas presented a remonstrance from the state of Georgia to the Supreme Court, when the Court was finally prepared to hear the case in February, 1793.<sup>22</sup> Mathis quotes Dallas's denial, reported in a newspaper of that month, that he had done any such thing, and concludes "that if the Remonstrance was read at all it was at a later date, perhaps on August 5,

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<sup>17</sup> 2 U.S. (2 Dall.) 419 (1793).

<sup>18</sup> Professor Richard B. Morris devotes more than twenty pages to a fuller discussion of *Chisholm v. Georgia* than appears in the Goebel volume. R. MORRIS, *JOHN JAY, THE NATION, AND THE COURT* 48-70 (1967). Morris's analysis of Chief Justice Jay's opinion in *Chisholm v. Georgia*, *id.* at 56-60, 64, can usefully be compared with Goebel's denigrating treatment, pp. 732-33. In addition to the insights derived from his direction and editorship of the John Jay Papers project at Columbia University, Morris acknowledges his dependence on a doctoral thesis dealing with this specific case. R. MORRIS, *supra*, at 108, citing K. Yarborough, *Chisholm v. Georgia: A Study in American Constitutional History*, 1963 (unpublished thesis in Columbia University Library). In an authoritative study such as *Antecedents and Beginnings to 1801*, readers should at least be made aware that a scholarly work on so limited a topic exists. The same point can be made about an article specifically dealing with *Chisholm v. Georgia* that was published in 1967, four years before the appearance of the current volume. Mathis, *Chisholm v. Georgia: background and settlement*, 54 J. AM. HIST. 19 (1967).

<sup>19</sup> P. 726.

<sup>20</sup> Mathis, *supra* note 18, at 22; see R. MORRIS, *supra* note 18, at 49-50.

<sup>21</sup> He also quotes an important statement by the Governor of Georgia in response to the litigant's petition opposing federal jurisdiction in this case.

<sup>22</sup> P. 726.

1793, or in another case."<sup>23</sup> Goebel emphasizes the deliberate pace of congressional response to the decision, despite the great public outcry and "the presence of state rights' standard-bearers in Congress . . ."<sup>24</sup> He points out that on the day after the Supreme Court's order a resolution was introduced in the Senate for a constitutional amendment to render the states immune to suit, but it never came to a vote. Mathis, however, relies on two separate newspaper accounts to show that a similar resolution was introduced in the House of Representatives on the same day as the Court's decision.<sup>25</sup> He also corrects and supplements Goebel's version of the fate of the cause after the Supreme Court awarded the plaintiff a writ of inquiry to ascertain damages. The writ was not sued out because Georgia promptly settled the claim.<sup>26</sup>

A reviewer is not in a position to subject a major treatise such as Goebel's to detailed checking and criticism in more than a few limited areas, but the preceding paragraphs should encourage readers to approach *Antecedents and Beginnings to 1801* with a degree of wariness. Goebel's seeming objectivity and commitment to primary research sometimes conceals more than it reveals. Prior scholars have done an enormous amount of research and writing concerning many of the topics treated in this volume, and Goebel has ignored some of this at his own peril.

## II

Goebel's view of the late eighteenth century is decidedly federalist in tone, as perhaps befits the editor of the legal papers of Alexander Hamilton.<sup>27</sup> He has slight patience with historians who have attempted to show that conditions in the mid-1780's were not as bad as the rubric "the Critical Period" might imply. Indeed Goebel seems almost carping in his criticism of Merrill Jensen,<sup>28</sup> a leading authority on the period.<sup>29</sup> The federalist inclinations of the author surface most amusingly, however, in his evaluation of the performance of certain Fed-

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<sup>23</sup> Mathis, *supra* note 18, at 24 & n.29.

<sup>24</sup> P. 736.

<sup>25</sup> Mathis, *supra* note 18, at 25-26.

<sup>26</sup> Compare p. 734 with Mathis, *supra* note 18, at 21, 27. It is ironic that Chisholm's successor later had great problems in collecting on the state certificates that he received in 1794; the final settlement of this case did not occur until 1847. See Mathis, *supra* note 18, at 27-29.

<sup>27</sup> Indeed, Hamilton's role approaches heroic proportions at several stages in his narrative. See, e.g., pp. 219, 308, 397, 411.

<sup>28</sup> See pp. 197, 201, 340.

<sup>29</sup> See, e.g., M. JENSEN, *THE NEW NATION: A HISTORY OF THE UNITED STATES, 1781-1789* (1950).

eralists during the ratifying conventions. Federalist leadership in Rhode Island, for example, by refusing to participate, "showed none of the acumen to be expected of men of affairs,"<sup>30</sup> while in South Carolina "the Pinckneys and John Rutledge demonstrated that the federalist cause could be handled with skill. Their speeches were polished and adorned with learning. The self-interest of Carolina was adroitly handled, and if Rutledge toward the end showed the sharp side of his tongue, this only added spice to the proceedings."<sup>31</sup> The sharp tongues of the anti-Federalists, on the other hand, seem only to have lowered the tone of debate.

Goebel's general neglect of the writings of some leading scholars on the second half of the eighteenth century is a more serious defect than his federalist sympathies. Goebel refers, for example, to the older work of Charles Beard and his critics, but not to the writings of such recent authorities on the era of constitution making as Wright, Kenyon, Levy, Ferguson, and McDonald.<sup>32</sup> In particular, he has ignored the recent and lively debate over the evolution of political ideology in the United States between 1776 and 1787. Where Gordon Wood has concluded, for example, that "all of the arguments in the eighties for enhanced judicial authority and discretion would have made little headway if it had not been for the fundamental changes in American attitudes toward politics and law taking place in these years,"<sup>33</sup> Goebel merely quotes what particular people were saying, without inquiring why they were saying such things. Thus, although Goebel promises to emphasize ideas and intellectual history,<sup>34</sup> in many ways his treatise appears to have been written in a vacuum, unmindful of alternative interpretations of societal trends. At the very least such selectivity mars the utility of Goebel's study as a reference work, especially in a treatise evidently written primarily for lawyers, who are often least able to find their way through the thickets of recent historiography.<sup>35</sup>

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30 P. 358.

31 P. 372.

32 E. FERGUSON, *THE POWER OF THE PURSE: A HISTORY OF AMERICAN PUBLIC FINANCE, 1776-1790* (1961); L. LEVY, *ORIGINS OF THE FIFTH AMENDMENT* (1968); F. McDONALD, *E PLURIBUS UNUM: THE FORMATION OF THE AMERICAN REPUBLIC, 1776-1790* (1965); B. WRIGHT, *CONSENSUS AND CONTINUITY, 1776-1787* (1958); *THE ANTIFEDERALISTS* (C. Kenyon ed. 1966). For a more complete discussion of the kinds of secondary sources neglected by Goebel, see G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787*, at 622-27 (1969).

33 G. WOOD, *supra* note 32, at 456.

34 P. xvi.

35 Many older but still valuable studies are similarly ignored. See, e.g., C. HAINES, *THE AMERICAN DOCTRINE OF JUDICIAL SUPREMACY* (2nd ed., 1932); C. HAINES, *THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT AND POLITICS, 1789-1835* (1944); N. LASSON, *THE*



The most surprising scholarly deficiency of the book is Goebel's seeming failure to utilize the John Jay Papers—which are housed within a few hundred yards of his office at Columbia University—preferring instead to depend on an 1890 edition of Jay's correspondence and public papers. Since 1959 the Jay Papers Project has made great efforts to collect material relating to Jay's career as chief justice of the Supreme Court from 1789 to 1795. Among other items, it has unearthed Jay's diary while on the Eastern Circuit in 1790, 1791, and 1792. Yet Goebel acknowledges the existence of this major manuscript source in a single, anecdotal footnote reference to the diary.<sup>36</sup>

Of course, neither this reviewer, readers of the treatise, nor Goebel himself can be certain that the Jay Papers would have altered a single parenthetical remark or added anything at all to *Antecedents and Beginnings to 1801*. Nonetheless, one does suspect that Goebel should have looked at the collection.<sup>37</sup> It seems likely that Jay's papers would furnish some valuable information on the way in which Jay thought a Chief Justice and his associates should act, how their records should be kept, and so on, as well as insights into broader questions, such as the scope of the Court's functions and the rationales behind its decisions. In addition, the paucity of primary materials concerning the Court during Jay's chief justiceship makes the records of the justice's Circuit Court activities very important. Although Goebel did consult original manuscript records of the circuit activities of the justices, only the Jay Papers bring together a complete record of Jay's circuit work, fully indexed by plaintiff and defendant.

In light of his neglect of Jay's papers, it is perhaps not surprising that Goebel's treatise evinces a fair degree of hostility to the first Chief Justice. Goebel assesses Jay's career on the Court most fully in connection with his opinion in *Chisholm v. Georgia*, which Goebel treats as "the chief exhibit on Jay's judicial prowess."<sup>38</sup> He accuses Jay of prefacing his opinion "with a bit of handtailored history. The lamentable standards of American judicial historiography may thus be said to be of his founding."<sup>39</sup> Goebel presents the offensive statement as follows:

The Chief Justice asserted that "from the crown of *Great Britain*,

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<sup>36</sup> P. 557 n.22. For an interesting summary of the contents of the diary, see MORRIS, *John Jay and the New England Connection*, MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS, 1968, at 26-28.

<sup>37</sup> Goebel did, for example, put the Hamilton and Jefferson papers to valuable use.

<sup>38</sup> P. 732.

<sup>39</sup> *Id.*

the sovereignty of their country passed to the people of it," and that it was not an uncommon opinion that the unappropriated lands of the Crown passed not to the colony or state where these were situate, but to the whole people. Jay's views are hardly borne out by contemporary records . . . .<sup>40</sup>

At this point Goebel has succeeded in conveying a very low opinion of the Chief Justice. Jay's statement may well be presented in its original language for purposes of comparison:

From the crown of Great Britain, the sovereignty of their country passed to the people of it; and it was then not an uncommon opinion, that the unappropriated lands, which belonged to that crown, passed, not to the people of the colony or states within whose limits they were situated, but to the whole people; on whatever principles this opinion rested, it did not give way to the other, and thirteen sovereignties were considered as emerged from the principles of the revolution . . . .<sup>41</sup>

Even if Jay personally believed the first assertion in the quoted passage, which is not altogether self-evident, it is quite clear that Goebel has no grounds for attributing the second idea to him. Jay obviously had problems understanding the basis of the second "not . . . uncommon opinion." In any event, there *is* good contemporary evidence that such beliefs were held and that they were not without foundation. One need only consult the extended controversies in the Continental Congress over Virginia's cessions of western lands to the United States.<sup>42</sup>

### III

Goebel's writing style is often sparkling but at other times ponderous and dull. His account of the newspaper wars over ratification of the Constitution is particularly perceptive and refreshingly written. Goebel's wit, and especially his frequent, thinly veiled satirical comments are perhaps the most entertaining elements in the book. The author does not shrink from the sweeping judgment or generalization at appropriate points.<sup>43</sup> John Adams's 1787 treatise *A Defence of the Constitutions of the United States against the Attacks of M. Turgot* is described as "more widely read than its literary merits deserved," and then dismissed as "merely a tedious history of various polities, garnished

<sup>40</sup> *Id.*

<sup>41</sup> 2 U.S. (2 Dall.) 419, 470 (1793).

<sup>42</sup> See Flaherty, *Virginia and the Marginal Sea: An Example of History in the Law*, 58 VA. L. REV. 710-13 (1972).

<sup>43</sup> His discussion of the common law of crimes, pp. 654-58, is but one example.

by a chapter recounting the opinions of certain philosophers."<sup>44</sup> Justice James Wilson is a frequent target of Goebel's barbs. His opinion in *Chisholm v. Georgia* is described as "an example of his judicial style at its fussiest," although the "analysis, nevertheless, was not wholly unprofessional."<sup>45</sup> The treatment of Justice Wilson is illustrative of Goebel's strong likes and dislikes, which, although entertaining, reveal a lack of objectivity. Goebel's praise is reserved for learning and elegance; his scorn is heaped on unrigorous thinking, uninformed criticism of the legal profession, inelegant speech, and "flighty remarks," by people such as Thomas Jefferson, "about the beneficence of revolutions."<sup>46</sup>

Only a devotee, one suspects, will read Goebel's treatise from cover to cover. His style is not always a model of elegance and clarity.<sup>47</sup> The cause of clarity is not furthered by unusual language, and Goebel uses words like furbelows, pleonastic, abscission, and recension with unsettling frequency.<sup>48</sup> His use of the obsolete noun "judicial" is a recurrent irritant. Goebel's recourse to legal jargon, which is not unexpected in the discussion of a technical point, is more surprising in simple descriptive or narrative sentences. Some readers may be entertained by a description of federalist writing as "largely a literature of rebuttal. The Constitution itself stood as the affirmative statement of the proponents' case. Since the opposition by singling out particulars had elected to plead specially, as it were, the controversy was spun out in a succession of replications, rejoinders, rebutters, surrebutters and the like."<sup>49</sup> But many general readers and scholars, without legal training, will just be mystified. Legal and constitutional history are difficult subjects, and, especially in the Holmes Devise series, authors should be particularly sensitive to the comprehensibility of their text.

Goebel is unlikely to be sympathetic to this view. He takes pleasure in using legal jargon and archaic words. Indeed, Goebel's whole approach to legal history appears to be elitist. His description of a group of men represented in the ratifying conventions betrays his personal attitude toward similar types among his prospective readers: "At the same time it should be observed that a great many *minuti homines* attended these conclaves. These men, unskilled in expressing themselves,

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<sup>44</sup> Pp. 276-77.

<sup>45</sup> P. 731.

<sup>46</sup> P. 367.

<sup>47</sup> Not infrequently the author treats his readers to such convoluted sentences as the following: "The wrathful indignation that publication of the treaty's terms excited no similar event in our history can equal." P. 748.

<sup>48</sup> Pp. 731, 520, 441, 466.

<sup>49</sup> P. 282.

sometimes ventured to speak, and when they did, betrayed their limitations."<sup>50</sup>

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*Antecedents and Beginnings to 1801* will no doubt become the standard treatise on the constitutional history of eighteenth century America. The volume has significant limitations but, on the whole, it is a worthy beginning to what should prove to be a distinguished series and a magnificent contribution to American legal scholarship.

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<sup>50</sup> P. 325.

