

JOHN MARSHALL

From the portrait by Henry Inman in the possession of
John Frederick Lewis

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An Address delivered by
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At the Dedication of the Statue of **JOHN MARSHALL**, presented to the
City of Philadelphia by the Honorable James M. Beck

So much has been written about John Marshall, the great Chief Justice of the United States, that it is difficult to say anything new about him. Nevertheless, we must never forget his authoritative influence in the development of American law, an influence which gathers strength as the years go by, though nearly a century has elapsed since his death. However this may be, we will consider together, not what he did for the law and for lawyers, but what he did for you and for me as laymen, in securing and defending our birth-right as American citizens.

The facts concerning Marshall's private life may be quickly recalled. He was born in Fauquier County, Virginia, September 24, 1755, the eldest of fifteen children. He was the son of a planter and the grandson of a planter, born in the backwoods, and characteristically American in his birth and education. He was largely taught by his father, but studied Latin for a short time in Westmoreland County, where Washington, Monroe and the Lees had been born, and under a neighboring

clergyman, with whom he remained about a year, having as a fellow student James Monroe. His father encouraged him in the study of literature, especially the classical writers of the English school, and thus doubtless contributed to establish that clear and limpid style which characterized all his public writings. He selected the law as his profession and began its study in his eighteenth year, in that admirable method followed by so many of the senior Bar, of reading and re-reading Blackstone's Commentaries on the Laws of England, until he had completely mastered them.

Marshall's father was a staunch Whig and resisted every political movement made by Great Britain, as tending to his personal enslavement and that of his posterity, and when the War of the Revolution broke out, became a captain. The junior Marshall became a lieutenant in a regiment of Minute Men, composed of volunteers from Culpepper, Orange and Fauquier Counties, numbering some 350, and the first minute men raised in the Old Dominion. Of these citizen-soldiers, John Randolph said, that they were "raised in a minute, armed in a minute, marched in a minute, fought in a minute, and conquered in a minute." Wearing green hunting shirts, with the words "Liberty or Death" in large white letters on their bosoms, they had buck tails on their heads, carried tomahawks and scalping knives in their belts, and were calculated to strike terror into the hearts of an enemy. Notwithstanding their costume, they treated their British prisoners with kindness, which was reciprocated when any of the company were captured.

Marshall served as a soldier during the gloomiest period of the War. He fought at Iron Hill, which preceded the Battle of Brandywine. He fought at Germantown. He starved with the exhausted troops at Valley Forge and suffered all the wretchedness of that memorable encampment. He fought at Trenton. He fought

at Monmouth. He was with Wayne at Stony Point, and with the Virginia line in South Carolina, and when his native State was invaded by Arnold, he joined the forces to oppose him.

When that danger was over, he devoted himself with unremitting attention to the study of law. His quiet determination and pursuit of purpose, and his mixed progressiveness and conservatism, are well illustrated by the journey he took, in the Summer of 1780, when in his twenty-fifth year, he walked to Philadelphia, all the way from his home in Virginia, in order to be inoculated with the smallpox. Inoculation was regarded as a wise but doubtful preventive, because the resulting smallpox might be severe and the patient contagious to those around him, and it was afterwards prohibited in England by Act of Parliament.

Marshall's legal knowledge was necessarily not extensive, but his naturally good mind and direct and lucid arguments soon secured him a wide reputation, until he became the leading lawyer in Virginia.

Wirt says of him that in the conduct of his cases, he invariably seized one point only, which he made the pivot of the controversy, and which he enforced with all his powers, never permitting his own mind to wander from it, nor his hearers to be misled by unimportant considerations.

He never sought the emoluments of public office. He preferred to continue his practice at the Bar, and when he did engage in public service, it was for some special reason.

Let us look for a moment at the condition of the country at this time. The States were confederated by the necessities of war but not united. There was no central government able to compete with the problems which arose. While the Declaration of Independence had temporarily united the States, they were mutually

jealous and valued their own interests above those of the general welfare. The affairs of the country were conducted more by the activity and influence of its leading men, than by the authority of such Government as there was. Patriots like Washington and Morris, Hamilton, Jefferson, Hancock, Franklin, Jay, and the Adamses, planned, persuaded, and warned by voice and letter, the necessity for action or the wisdom of delay.

When the Articles of Confederation were adopted, July 9, 1778, they were a great step forward, but they provided no central government adequate to meet the needs of the country. They were in terms a mere "league of friendship." They were signed by the delegates of the States as such. Each state retained its own sovereignty, freedom, and independence, and every power, jurisdiction, and right which was not expressly delegated. Each state was expected to pay the charges of war, in proportion to the value of the land it comprised, but the tax for paying that proportion was to be laid by its own Legislature. The delegates represented the Legislatures of the several States and not the people. The Congress established by the Confederation could incur obligations but could not raise money to pay them. It could make treaties, but could not enforce them. There was no executive. There was no judiciary. There was no power whatever to levy taxes. Money could be raised by request only, not by command. The States, big and little, had an equal voice in this jealous partnership, and before any action could be taken, nine out of the thirteen must concur.

The prolongation of the war was due almost solely to the inadequacy of the Government in supplying men and means to conduct it, and this inadequacy was the direct cause of the starvation at Valley Forge. The

Richmond Jan^y 24th 1797.

Sir

I have just received your letter of the
14th enclosing an authentic copy of a
resolution which passed the general assembly
at their late session respecting the
boundary line between this common-
wealth & the state of Maryland, together
with a copy of the resolution of the state
of Maryland on the same subject
I have the honor to be with much respect

Your obed^t. Serv^t.
Wm. J. Marshall

confederated Congress did next to nothing. They talked much and acted but little. At every crisis which arose, local prejudice and provincial jealousy cropped out. The great Commander-in-Chief was criticised for conditions Congress alone was responsible for, and had it not been for the ceaseless activity of these groups of leading men, the War of Independence would have been lost, and even when peace was declared, the States failed to act in their common interest but devoted their energies rather to their own affairs. Besides, many men of conservative strength and great ability, left the country with the loyalists at the end of the War. Passion and prejudice took the part of cool and impartial judgment. Incredible numbers of those who were Tories and opposed to independence, emigrated. During 1782 and 1783, they passed over the boundaries, in flight, ruined and proscribed, their lands confiscated and their persons attainted. They went to Canada, to Florida under Spanish rule, to the Bermudas and the West Indies, they rushed to New York under shelter of the British arms, and delayed the final evacuation of the City, until transportation could be afforded them. It has been computed that nearly 30,000 refugees left the State of New York alone for Canada, an enormous number, in view of the then small total population of the country.

The five years which followed the end of the War have been termed the most critical in American history. Public matters sank into disorder and confusion. The general tendency of the country's affairs seemed to be downward. Gloomy forebodings were universal. The Federal Government must be strengthened, must be given more effective power not only over foreign but also over domestic affairs. In the several States, almost without exception, any national sovereignty was viewed with extreme jealousy, and while it was admit-

ted that the Articles of Confederation were quite unequal to the task of forming a "perfect union," the most reflecting minds in the country hesitated to confer the necessary power on any central government. They believed it would imperil the liberties and independence of the States. Indeed a dissolution of the Union was viewed by many as preferable to that of a consolidation of the Government.

Peace existed only as a cessation of war from without, but within the country was torn and distracted with all the hatred that the conflict had engendered. No line was drawn between those who actually fought for England and those who waited in hesitation without actual participation in the struggle. All were classed as traitors. Those who were not for independence were judged as being against it. Many an act of needless and cruel persecution resulted. Even Washington, notwithstanding the nobility of his character, was outspoken in bitterness against the Tories. Utter demoralization resulted. The Federal Government was saddled with an enormous debt, and the several States burdened beyond their capacity to pay. Private credit was pledged for public obligations and business was crippled by the want of confidence. Paper money was issued beyond the possibility of redemption. Its total bulk grew larger as its purchasing power grew less. Continental money became a by-word for utter worthlessness, and despite individual sacrifices, general conditions grew worse. Robert Morris had pledged to the last farthing his then large fortune to raise money, as Washington had done, to pay the troops at Trenton. He had borrowed money from foreign sources to supply the needs of the army at Yorktown, and thus assisted to bring about the conditions which made the surrender of the British inevitable.

The disbandment of the army was a difficult problem. The soldiers' pay was not forthcoming. Congress

seemed about to adjourn and send them home penniless. Insurrection broke out. Treason seemed to be in the air, and we can understand how one of Washington's most trusted officers should intimate the willingness of the army to make him King so that the petty States might be united under a rule of order and efficiency.

I.

John Marshall's training under his father, and his experience in the army, both convinced him of the necessity for a national sovereignty sufficient to unite the States in a central government. He was convinced that the country's salvation depended upon a wider aspect of public affairs. He maintained that the Government should have sufficient strength to preserve the union and pass its benefits to posterity. Hence, when the Federal Convention was called to prepare a Constitution for the United States, he hailed it as an auspicious event and supported the movement to the uttermost, and when the Constitution had been finally drafted and referred to the States for adoption, he was outspoken in its advocacy. It differed radically from the old Articles of Confederation. Its preamble read: "We the people of the United States," not "We, the delegates of the Legislatures of the several States."

It was designed not as a mere "league of friendship," but "to form a more perfect union." It was and is remarkably brief, clear and concise. The Senate and House of Representatives, in which the supreme legislative power was vested, were to be paid out of the Treasury of the United States, as contrasted with the provisions of the Articles of Confederation, that each State should maintain its own delegation.

Congress was given express power to lay taxes, express power to pay debts, and provide for the common

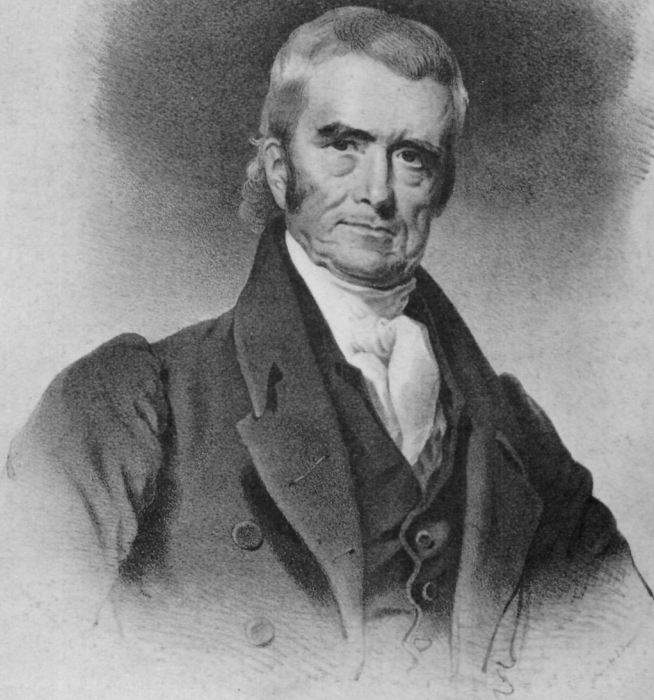
defense and general warfare. The powers given, were, in a word, all those which the Articles of Confederation ought to have given, but failed to do, and then after the enumeration of the various powers expressly granted, the Constitution provided that Congress should have power: "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," and the word "execution" was spelled with a capital "E."

Instead of a mere talkative, an executive was provided, in the simple words "the executive power shall be vested in a President of the United States," and among the duties of the President, was the power, by and with the advice and consent of the Senate, to appoint Judges of the Supreme Court.

Instead of no judiciary, at all, the judicial power of the United States was vested in one Supreme Court, and in such inferior courts as Congress might from time to time ordain and establish. It was independent of Congress. The Judges held their offices during good behavior. Their salaries could not be decreased during their terms of office. Their jurisdiction was supreme.

While the Constitution preserved the integrity of the several States and left them sovereign in home rule, police, education, and land titles, it created one Government in interstate and international affairs.

Well might Gladstone declare, that the Constitution was the most wonderful work ever struck off at a given time by the brain and purpose of man. It was the concentrated intelligence of a republic of freemen, the first time in the history of the world, in which a great nation had been formed upon the basis of a single written agreement. Notwithstanding the tremendous growth of the country, in wealth, in commerce, in manufacturing, and the radical changes in navigation, in transportation; in the growth of cities, and the amazing development of the great West, the Constitution with its



Manassah

From the original portrait, painted by order of the Bar of Philadelphia

Engraved according to act of Congress, in the year 1833, by Childs & Lumsden, in the Clerk's office of the District Court of the Eastern District of Pennsylvania.

few amendments, has been equal to every exigency, and adaptable to every condition.

Strange as it may seem, the opposition to its adoption by the several States was violent in the extreme. Samuel Adams of Massachusetts opposed it. Patrick Henry of Virginia fought it. It narrowly escaped rejection by the State of New York. Pennsylvania adopted it only after a bitter fight and by a bare two-thirds vote. North Carolina and Rhode Island absolutely refused their consent. They allowed the new Government to be erected without their aid, and remained apart as separate sovereignties, until economic conditions necessarily brought them under its protection. The voters of the country were generally opposed to it. Probably not more than one-fourth of the adult white male population voted at all, and it is said that but one-sixth only of the total white male population cast their ballots in its behalf.

Virginia, Marshall's own state, and Washington's Madison's and Monroe's, the first to hear the voice of Patrick Henry against English tyranny, seemed to bring the whole force of her influence against any central authority. Marshall took up the fight and in the Convention which Virginia called to accept or reject the Constitution, fought for it with modesty, but with convincing logic. So close were the parties divided, that the debate upon its adoption lasted for nearly four weeks, and was finally carried by a vote of only 89 to 79.

This was the first and most conspicuous service Marshall rendered us as American citizens. He had become a candidate for the convention, but his well known opinions in favor of the Constitution seemed about to prevent his election. The Convention assembled at Richmond, June 2, 1788, and was composed of the leading men of the Old Dominion. As Marshall said, everything

“seemed to be afloat and the country without any safe anchorage.” Among those who opposed the Constitution, besides Patrick Henry, were George Mason and William Grayson. Among those who supported it, were James Madison and Edmund Randolph, and to their aid John Marshall brought his commanding abilities. He contended that the real object of the discussion was whether democracy or despotism were the more eligible. He urged that those who framed the Constitution and who now supported it, intended the establishment of democracy and its future security. Beginning with some reluctance and hesitation, it is said that his eye became more fixed, his voice clear, full, and rapid, and his manner bold, that his whole face lighted up with the mingled fire of genius and passion, while he poured forth an unbroken stream of eloquence in a current deep, majestic, and strong.

Marshall never wavered in supporting the Government organized in accordance with the Constitution, and the principles on which the Government was conducted by Washington, but the ruling party in Virginia were constantly in opposition to almost every important measure of Washington’s administration. Disapprobation was manifest, and when the President’s Proclamation of Neutrality was proclaimed, discontent strengthened the opposition, Marshall came to the support of Washington’s course, and obtained at a meeting of the citizens of Richmond a majority in support of the Proclamation, but he was assailed by those who thought otherwise. Even the purity of his motives was attacked. He was charged with being a loyalist and an enemy of republicanism.

As a member of the Virginia Legislature to which he had been elected, he ever vindicated the measures of the administration, and in the session of 1796, when a Federalist moved a resolution expressing the confi-

dence of the House in the virtue, patriotism, and wisdom of the President, a motion was promptly made to strike out the word "wisdom." The debate which followed necessarily reviewed the whole course of Washington's administration. Feeling ran so high, that the word "wisdom" could be retained by a small majority only.

Marshall himself in his "Life of Washington," describes clearly the great issue which agitated our people. He says that the country was—

"Divided into two great political parties, the one of which contemplated America as a nation, and labored incessantly to invest the Federal head with powers competent to the preservation of the Union. The other attached itself to the State Governments, viewed all the powers of Congress with jealousy, and assented reluctantly to endeavors which would enable the head to act in any respect independently of the members."

II.

Marshall's second great service to us as American citizens, was the interpretation of that Constitution, when questions under it came before the Supreme Court of the United States while he was Chief Justice.

The Constitution provided that the judicial power should extend to all cases arising under it and the laws of the United States, but the American lawyer who had been trained to recognize Parliament as the center of all power under the British constitution, was unable to conceive that a law passed by Congress and signed by the President, could be pronounced unconstitutional by the Supreme Court. Such a doctrine was startling. It raised the gravest doubts. It had never before been asserted. It seemed to strike at the very roots of democracy, but it was manifest that Congress might pass a law which was contrary to the Constitution and

if it did who should pronounce it void? It might be necessary to construe the document. Who was to construe it? The doctrine that the Supreme Court could nullify an Act of Congress, was received by Jefferson and his followers with consternation, but not only did Marshall fearlessly declare unconstitutional an Act of Congress when he deemed it such, but also he applied the same doctrine to acts of the State Legislatures. He pronounced unconstitutional a law of Georgia, and informed her that she was part of a large empire and a member of the American Union and that Union has a Constitution which imposes limits upon State Legislatures.

He declared void an Act of the Legislature of Maryland, because it was designed to paralyze the branches of the United States Bank; and in the famous Dartmouth College case, he nullified an Act of the Legislature of New Hampshire, upon the ground that the Charter of the College was a contract with the State, and under the Federal Constitution no State could pass a law impairing the obligation of contracts.

While the unwritten British Constitution is interpreted and executed by the supreme power of Parliament alone, and any statute may be executed until repealed by the same authority, yet an Act of Congress may be set aside at any time by the Supreme Court as a violation of the fundamental law of the land.

This power of the Supreme Court was first announced by Marshall in 1803, after he had been Chief Justice about two years, and has never been questioned since. It remains today as the greatest bulwark of our American liberties. Congress may be divided into blocs, may become socialistic, populist, communistic or anarchistic, but between us and its unlawful Acts, if any, there is a great gulf fixed, behind which sits a small body of select men, whose word is final in the decision of our rights.

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Washington Feb. 25th 1832

I have received your letter of the 16th inst enclosing a copy of the constitution of the new society for the benefit of Indians and am glad, at the city of Washington, of which the Judges of the Supreme court of the United States, with other high Officers of government, are ex officio, Vice Presidents.

From the most entire conviction of my inability to contribute in any manner to the success of this institution, I must decline the honor of being considered as one of its Vice Presidents.

I am Sir with great respect
Yours obt. Servt

J Marshall

Ours is a stronger and better Constitution than the more ancient British,—simpler, more definite, more democratic, and yet more secure against attack. The line of demarcation between the different functions of government is the chief characteristic of the American system, and while in England, judges are personally and politically as independent as they are with us, our Federal judges form a separate department of the Government, not only independent, but equal, and not only equal, but when acting within their jurisdiction they are supreme.

It has been said that there is as much difference between the British Constitution and the American, as there is between the Lord High Chancellor of England proceeding to Westminster in his robes of office, in almost regal pageantry, and John Marshall driving himself to Court in a one horse gig, both shafts of which have been spliced with hickory twigs.

Marshall fully realized the sublime conception of our American Constitution, by which every citizen is subject to two complete systems of law—the one Federal and National, supreme within its delegated powers, and the powers incidental thereto; and the other, the State and Municipal, likewise supreme within its reserved powers, and even more so, because powers not delegated are reserved. Each jurisdiction, “moving one within the other, noiselessly and without friction—one of the longest reaches of constructive statesmanship the world has ever known.”

In the interpretation of the Constitution, there were necessarily two methods—one liberal and the other strict, and Marshall by a series of decisions demonstrated beyond question, that the Constitution must be construed liberally in order to effectuate its purpose, and to his construction we owe many of its blessings and few of its burdens. While Washington, and Hamilton, and Jefferson, and Madison, and Monroe, may be

regarded as the architects and designers of the Governmental edifice, John Marshall was the builder. He applied the abstract principles of these men, to the concrete conditions which the country presented. It has been said that he found the Constitution paper and made it a power, that he found it a skeleton and clothed it with flesh and blood. More credit is due to him for the present frame of our Government than to any other man in our history.

Let us recall a few of the beneficial activities of the Government, not expressly authorized by the Constitution, but which Marshall's liberal interpretation may be said to have rendered possible.

The Agricultural Department, with its Experiment Stations; the Bureau of Entomology; of Animal Industry; and the Prevention of Tuberculosis in live stock; the Department of Labor, the eight hour law, and the Board of Arbitration for Labor Disputes; the Bureau of Navigation; the Hydrographic Office; the safety of passengers at sea; boiler inspection; Quarantine Stations; Relief of destitute seamen; marine hospitals; Coast and Geodetic survey; the Nautical Almanac; the weather bureau; the life saving service, and radio legislation; the Congressional Library, and the National Museum; the Geological Survey; the Forestry Service; the National Park system; the Immigration Bureau; and the Bureau of Education; the Bureau of Markets; Public Health Service; Veterans' Bureau; Children's Bureau; Narcotic Control Board; the Interstate Commerce Commission; River and Harbor, and Internal, improvement; National Irrigation; the Panama Canal; and National Banks; Federal Intermediate Credit Bank; Federal Land Bank and the Federal Reserve System.

John Marshall died in Philadelphia, July 6, 1835, in an humble boarding house, kept by Mrs. Mary Crimm

on Walnut Street, south side above Fourth. It was No. 108, according to the old system of numbering houses west from the Delaware, but No. 426 in our time. He was in his eightieth year and had come to this City for relief from his infirmities. His strength was sapped by his age and his system did not respond to treatment. His death was a great shock to our people and especially to the Bar of Philadelphia. It has been said of Marshall, that with the single exception of Washington, no American citizen, whether in public or private life, was so universally loved and esteemed. A Committee of the Bar was appointed to accompany his body to Richmond for interment. Contributions were solicited to erect in Washington a memorial monument, but a panic occurred in 1835, and money was hard to raise. The total received was less than \$3,000. Philadelphia subscribed about half, \$1,225, and New York \$10. Nothing daunted, the Philadelphia Committee invested the money, and it was finally turned over to the Law Association. In 1883, it had increased seven fold and Congress gave permission to erect the monument in front of the Capitol, and appropriated \$20,000 towards its cost.

The work was intrusted to William Wetmore Story, son of Joseph Story, who had been associate justice with Marshall for twenty-four years, and his selection for the Commission was peculiarly appropriate.

William Wetmore Story was an extraordinary man. He graduated from Harvard, then from its Law School where he studied under his distinguished father, and seemed fair to follow his father's footsteps. Judge Story, notwithstanding his arduous labors upon the Supreme Bench, wrote more law books than any man of his time; and Wetmore published: "Reports of Cases Argued and Determined in the Circuit Court of the United States for the First Circuit," a "Treatise on the Law of Contracts," and a "Treatise on the Law

of Sales of Personal Property.''' He received the degree of Doctor of Civil Law from Oxford, but like many lawyers he loved art. He went to Europe to study sculpture, and soon acquired an international reputation, and his works found place in many public and private collections. He was a poet of no mean ability—published four volumes of his verse, and was a prolific author publishing some ten works on literature, art, and even science. He was an accomplished musician, decorated by France and Italy, and made a Professor in the Italian Academy of Santa Cecilia, and imparted his remarkable genius to two sons, Waldo Story, the sculptor, and Julian Story, the painter.

It is preeminently appropriate, that as the original statue was largely due to the Philadelphia Bar, a distinguished member of that Bar, should now present to this City, a replica of the original, as a token of respect for Marshall, and of affection for Philadelphia. The beautiful memorial is erected upon the western front of this Fairmount, looking towards the setting sun. It seems to tell us, that while Marshall's course on earth has been run, and while the heathen may rage and the people imagine a vain thing, yet if we are true to the immortal principles his judgments have declared, we will never be confounded.