

JOHN MARSHALL—THE MAN

Harold H. Burton†

“[H]ighly as he was respected, he had the rare happiness to be yet more beloved.”¹ This was said of the late John Marshall, in 1835, in his home city of Richmond, Virginia, by the bar and officers of the circuit court over which he had presided as a circuit justice for more than a generation.

Best known today for his creative opinions interpreting the Constitution of the United States as endowing the federal government with powers adequate for its effective operation, Chief Justice Marshall was also a vigorous, courageous, warmhearted, and modest man, exemplifying the best traditions of the American Revolution.

Born in Virginia, September 24, 1755, he was the oldest of fifteen children, nine boys and six girls. Raised among the Blue Ridge Mountains, he received his early education from local clergymen and his parents. John's father, Thomas Marshall, built a home at Oak Hill, and was one of the original subscribers to the first American publication of Blackstone's *Commentaries*. Thomas Marshall served in the Virginia House of Burgesses, at Williamsburg, was sheriff of Fauquier County and later clerk of Dunmore County. At 19, John was six-feet tall, straight and slender, with thick black hair and penetrating dark eyes.

He became a soldier of distinction. At 19, he was a lieutenant, commanding Virginia “Minute Men” fighting British Grenadiers near Norfolk. In March, 1776, he was a lieutenant in the Third Virginia Regiment in which his father was a major. Joining Washington's army, John took part in the engagements at Iron Hill, Brandywine and Germantown. At Valley Forge he shared the hunger and cold which tested America's fortitude and devotion. “[N]othing discouraged, nothing disturbed” John Marshall.² A champion at quoits, and generally a leader in athletic contests, he was nicknamed “Silver Heels” because of the white yarn that his mother had knitted into the heels of the woolen stockings in which he won many foot races. Later he fought at Monmouth, Stony Point, and elsewhere. Soon promoted to

† Associate Justice, Supreme Court of the United States.

1. BROCKENBROUGH, *REPORTS OF CASES DECIDED BY JOHN MARSHALL IN THE CIRCUIT COURT OF THE UNITED STATES* xviii (1837). This phrase is quoted also in THAYER, *JOHN MARSHALL* 155-56 (1901).

2. Lieutenant Slaughter said this of him at Valley Forge, as quoted in 1 BEVERIDGE, *THE LIFE OF JOHN MARSHALL* 118 (1916).

a captaincy, he was, by 1793, commissioned a brigadier general in the Virginia militia. In that capacity he commanded a brigade in the Whiskey Rebellion, and, until appointed Chief Justice, he usually was addressed as General Marshall.

John had little formal legal education. He attended but six weeks of law lectures by George Wythe at William and Mary College, where he was a member of the debating team of Phi Beta Kappa. At Valley Forge he had served as a deputy judge advocate. When 25, he received from his cousin, Thomas Jefferson, then Governor of Virginia, a license to practice law and was admitted to the bar in Fauquier County in 1780. In 1782, he was elected to the Virginia House of Delegates and then to the council of eight members chosen by joint ballot of the two Houses of the Assembly.

Eight times he was sent to the Assembly. When the new Federal Constitution was referred to the states for ratification, he urged that Virginia call a convention to act upon it. Such a convention met in 1788, with Marshall a member of it. His service to the Constitution dates from that time. In the convention he directed his principal attention to taxation, the militia, and the judiciary and stoutly supported ratification of the Constitution as a whole. This vital approval was secured by the narrow margin of ten votes.

While Marshall accepted these calls to public service, he declined others. In 1789, although named by President Washington as District Attorney of the United States at Richmond, he declined the nomination. The same was true when Washington offered him the Attorney Generalship of the United States in 1795, and the post of Minister to France in 1796. However, in 1797, when the need was pressing, President Adams induced him to join C. C. Pinckney and Elbridge Gerry on the XYZ Commission that attempted to adjust international differences with France in the days of Talleyrand. In that capacity he rendered high diplomatic service with widely commended integrity and skill. Throughout these years he was an active proponent of Washington's policies, although many Virginians were turning to the anti-Federalist leadership of Thomas Jefferson.

In 1798 he declined an appointment to the Supreme Court of the United States to succeed Associate Justice Wilson.³ But in the same year, at the urgent request of George Washington, he ran for Congress from the Richmond district. He made a vigorous campaign. Unlike many Federalist candidates, he declared himself against the revival of the Alien and Sedition Laws, and, with the support of Patrick Henry,

3. George Washington's nephew, Bushrod Washington, received the appointment and later served on the Court nearly twenty-nine years with Marshall.

was elected, in April, 1799, to the Sixth Congress by 108 votes. Congress convened in Philadelphia, December 2, and, on December 18, Marshall performed the painful duty of announcing the death of Washington. December 19, he offered the resolutions, drafted by "Light-Horse Harry" Lee, which described Washington as "first in war, first in peace, and first in the hearts of his countrymen." These were precisely the sentiments of John Marshall.

In Congress, he pursued an independent course. He cast a crucial vote, against his party, for the repeal of the most hotly contested section of the Sedition Law. He killed a Disputed Elections Bill that would have benefited the Federalists in the next presidential election. On the other hand, he ably defended the Jay Treaty and the administration's conduct in a *cause célèbre* as to an alleged mutineer who had been handed over to a British consul.

On May 12, 1800, President Adams named him Secretary of State and in June, he resigned from Congress to assume his duties in the cabinet. He declined to use his influence in favor of either side in the contest between Jefferson and Burr which resulted, on February 17, 1801, in the election of Jefferson as President and Burr as Vice President. He performed his duties as Secretary of State until late on the third of March, 1801, although he had been appointed Chief Justice in January and had been sworn in as such February 4, 1801. On March 4th, he administered the presidential oath of office to Jefferson.

Marshall's appointment to the Court terminated most of his activities in other governmental fields. To this there was one notable exception. In 1829, together with ex-Presidents Madison and Monroe, he accepted election to the Virginia convention called to revise the constitution of that commonwealth. As a member of its judiciary committee, he helped to secure provisions for an independent judiciary.

The above activities would have constituted a full career for most men, but in Marshall's case his judicial career became so extraordinary that his earlier services are but little known. They are important, however, not only on their own account, but because they help to explain the breadth of his understanding of constitutional issues.

In the legal profession, he was the leader of his local bar as a trial lawyer. In 1786, his standing was such that when Edmund Randolph was elected Governor of Virginia, Marshall took over his practice. In May of that year, Marshall's name first appeared in the reports of the Court of Appeals of Virginia.⁴ In about 1793, with the help of Robert Morris of Philadelphia, he and several associates

4. As counsel in *Hite v. Fairfax*, 4 Call 42, 69 (Va. 1786). This was the first of more than 120 cases he argued in that court.

contracted to buy the remaining Fairfax estates of over 160,000 acres in Virginia. This was his greatest financial undertaking. It caused him much anxiety but yielded substantial returns. In 1796, he made an impressive but unsuccessful argument in the Supreme Court of the United States.⁵

A disciple of George Washington, he undertook, while Chief Justice, to write a biography of Washington after the latter's death. It was primarily a labor of love and an expression of loyalty to Washington. Forced to early publication between 1802 and 1804, its five volumes contained valuable historical material, but were neither a financial nor a literary success. Many years later, he shortened the work to three volumes. One was published as a preliminary history of the colonial period and the other two as a *Life of Washington*. These were better received. Today they help to confirm the thesis that Marshall, to a substantial degree, succeeded to Washington's leadership in the establishment of a strong, representative federal republic dedicated to the preservation for the individual of the greatest freedom consistent with like freedom for all.

While Marshall's judicial career requires separate treatment for adequate demonstration of its monumental character, some reference to it is essential in any biographical sketch of him. He served as Chief Justice from 1801 to 1835. Such service is longer than that of any other Chief Justice of the United States, and all of it was rendered during the crucial formative period of the nation's history. Under his leadership, the loose stones provided for the nation's structure were built into a firm foundation.

While best known for the opinions he wrote for the Court in the exercise of its appellate jurisdiction, he also rendered outstanding service as a circuit justice. The most famous of his circuit cases was the trial and acquittal, in 1807, of Aaron Burr on a charge of treason.⁶ Marshall's conduct in this case set an admirable example of judicial courage and demeanor.

While he was a member of the Supreme Court, it decided sixty-two cases on questions of constitutional law. In these he wrote thirty-six opinions for the Court. These are the foundation stones of our constitutional law upon which his fame and much of the stability of our federal structure depend.⁷ In appraising this contribution and

5. As counsel in *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 210 (1796).

6. *United States v. Burr*, 25 Fed. Cas. 2-207, Nos. 14692a-14694a (C.C.D. Va. 1807).

7. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810); *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *Dartmouth College*

Marshall's part in it, it is important to emphasize the fact that these decisions were not his alone. However, to him as Chief Justice and author, there must go substantial credit for securing the support of a majority of the Court. Twenty-three of the decisions were unanimous. To appreciate this phase of his service, we should see him as the leader of those able judges who constituted "the Marshall Court." Together, they made, nurtured, and protected great precedents. Chief Justice Marshall served with fifteen Associate Justices. Seven were with him many years. They were: Thompson for 12 years, Livingston for 16, Todd for 19, Story for 23, Duvall for 23, Washington for 29, and William Johnson for 30 years. There has been no other period of comparable continuity, and none when continuity was so essential.

Returning to Marshall the man, he was a devoted husband and father. Brought up in a large family, he treasured family associations. On January 3, 1783, he married "Polly" Ambler, one of four sisters from a distinguished Virginia family. She was not quite 17, and he was 27. He had been in love with her for three years, since, as a young army officer, he first saw her in Yorktown. They had ten children, six of whom survived to maturity, five sons and one daughter. Although obliged to spend much time in Washington, he delighted to return to his home in Richmond. There he lived in the Georgian style brick house which he built on a two-acre plot. He was deeply affected when his wife died on Christmas Day, 1831. Thereafter, he constantly wore, on a chain around his neck, a locket containing a lock of her hair. He, himself, underwent a serious operation in 1831 but regained his health and lived until July 6, 1835.

The famous Liberty Bell that rang in Philadelphia in 1776 to announce the Declaration of Independence tolled to announce his death. His active service and that of the bell ended together, for, as the bell tolled, it cracked. Their voices were silenced, but they have never ceased to inspire the nation to seek to fulfill the high mission to which both Marshall and the bell were dedicated.

Marshall's judicial service is fittingly recognized in the excellent bronze statue of him, which faces the sunset on the lower west terrace of the Capitol. Appropriately placed near the place where Marshall presided over the Court, this statue is the work of W. W. Story, a son of the Chief Justice's friend and colleague, Associate Justice Story. It represents the Chief Justice, sitting in his judicial robe, expound-

v. Woodward, 17 U.S. (4 Wheat.) 518 (1819); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264 (1812); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824); *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827); *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419 (1827).

ing upon some subject of deep interest to him as he looks toward the towering monument erected to the memory of Washington, whom he so greatly admired.

In keeping with Marshall's devotion to his wife, his body is buried beside hers in Richmond. And in keeping with his modesty, the following simple inscriptions, written by him, appear on horizontal tablets above the graves. On his, we read: "John Marshall, Son of Thomas and Mary Marshall, was born the 24th of September, 1755. Intermarried with Mary Willis Ambler, the 3d of January, 1783. Departed this life the [6th] day of July, 1835." On hers: "Sacred to the memory of Mrs. Mary Willis Marshall, Consort of John Marshall, Born the 13th of March, 1766. Departed this life the 25th of December, 1831. This stone is devoted to her memory by him who best knew her worth, And most deploras her loss."