1836

Chief Justice Marshall

Lucian Minor
CHIEF JUSTICE MARSHALL.


A formal criticism upon these discourses, is the least of our intentions in placing them at the head of this number. Not that they are either works of criticism, or incapable of abiding its test; but that, slight and unpretending as they are in form and guise, the consideration which their uncommon literary merits would otherwise ensure them, is in great part lost, in the overwhelming magnitude of their subject. To be engrossed by beauties or defects (if there are defects) in the style of a shilling pamphlet, when its theme is the Life, Character and Services of one who blended which we trust our readers may still find much of the savour of the viands whence we make our extracts.

John Marshall was born Sept. 24th, 1755, in Orange County, Virginia—a little more than two months after Benadock's defeat; and was the eldest of fifteen children. Thomas Marshall, who was a colonel in the continental line of the Revolutionary Army, remarkable for courage, and for strength of mind. His courage was signalized at the Battles of Trenton and Brandywine; his regiment, at the latter, bearing the brunt of the attacking column led by Cornwallis in person. Though greatly outnumbered, it maintained its position without losing an inch of ground, until both its flanks were turned, its ammunition nearly expended, and only half the soldiers were crowded into the field of the soldiers were killed or wounded. Col. Marshall, whose horse had received two balls, then retired in good order to resume his position on the right of his division, but it had already retreated.* The heroism of such a fighter, could not be lost upon the son.

The sparsely peopled region in which he lived, operating with a narrow fortune, afforded Col. Marshall little opportunity for sending his children to school; and he was compelled to be almost exclusively himself their teacher. In his earliest son he early implanted a taste for English literature; especially for poetry and history.” At the age of twelve, John had transcribed the whole of Pope's Essay on Man, and some of his Moral Essays; and had committed to memory many of the most interesting passages of that distinguished poet's works. The love of poetry, thus awakened in his warm and vigorous mind, soon exerted a commanding influence over it. He became enamored of the classical writers of the old English schools, of Milton, and Shakespeare, and Dryden, and Pope; and was instinctively attracted by their solid sense and beautiful imagery. In the enthusiasm of passion, he was in disgust with the dry and pedantic compositions, and freely gave up his leisure hours to those delicious dreamings with the muses, which (as we must) constitute with many the purest source of pleasure in the gayer scenes of life, and the sweetest consolations in the hours of adversity.

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"One of the best recommendations, indeed, of the early cultivation of a taste for poetry, and the kindred branches of literature, is, that it does not expire with youth. It affords to mature years a refreshing relaxation from the severe cares of business, and to old age a quiet and welcome employment, always within reach, and always bringing with it, if not the charms of novelty, at least the soothing reminiscences of other days. The variety of the modes may not always treat upon enchanted ground; but the gentle influence of fiction and song will steal over his thoughts, and breathe, as it were, into his soul the fragrance of a second youth of six or seven hours at a time, intensely engaged in examining a single question of law; and this too, at a period of his life when the world thought him little more than a frothy decliner, a sot of poetry, and an inducer of light newspaper essays. But to return.—Judge Story presents us most pleasing views of Col. Marshall's character, derived from conversations with his more distinguished son:

"I have often heard the Chief Justice speak of him in terms of the deepest affection and reverence."

"Indeed, he never named his father, without dwelling on his character with a fond and winning enthusiasm. It was a theme, on which he broke out with spontaneous eloquence; and in the spirit of the most persuasive confidence, he would delight to expatiate on his virtues and intake. My father," he would say with kindled feelings and emphasis, 'my father was a far elder man than any of his sons. To him owe I the solid foundation of all my own success in life.' Such praise from such lips is inexpressibly precious. I know not whether it be most honorable to the parent, or to the child. It warms, while it elevates our admiration of both."

There is great truth in the remark, that children reared among numerous brothers and sisters are the more apt, on that account, to make good men and women. The kindly affections are more exercised; emulation, tempered by such love as prevents its festering into malignity, stimulates to greater activity of body and mind; each one has less expectation of hereditary fortune—that great palaver of useful energies; and each comes to the loss of that parental kindness, which, when concentrated upon one, or two, or three children, so often spoils their characters, and embitters their lives. "To the influence of this truth upon young Marshall's destiny, add the judicious training and admirable example of an intelligent father, and the happy, active life he led, in a wild and mountainous region abounding in game—and many of the best traits in his character, as well as much of his subsequent eminence, are at once accounted for."

At fourteen, he was sent to Westminster, one hundred miles off, where for a year he was instructed in Latin by a clergyman named Campbell, and where James Monroe was one of his fellow students. Returning then to his father's house, he, for another year, received instruction in Latin from a Scotch clergyman named Thompson; "and this was the whole of the classical education he ever obtained." By the assistance of his father, however, and the persevering efforts of his own mind, he continued to enlarge his knowledge, while he strengthened his body by "barely, athletic exercises in the open air. He bathed, and indulged in boating sports, in the deep woods; he indulged his solitary meditations amidst the wildest scenery of nature; he delighted to brush away the earliest dew of the morning."

"It was to these early habits in a mountainous region, that he probably owed that robust and vigorous constitution, which carried him almost to the close of his life with the freshness and firmness of manhood."}

About his eighteenth year, when he had commenced the study of the Law, the lowering aspect of affairs between the Colonies and Great Britain attracted his notice, and he devoted himself chiefly to the acquiring of military science. "A kinsman and contempan who was an eye witness of this scene, has thus described it to me:—"

"It was in May, 1775. He was then a youth of nineteen. The matter field was some twenty miles distant from the Court House, and a section of country peopled by tillers of the earth. Rumors of the occurrences near Boston, had circulated with the effect of alarm and agitation, but without the means of ascertaining the truth, for not a newspaper was printed nearer than Williamsburg, nor was one taken within the bounds of the militia company, though large. The Captain bad called the company together, and was expected to attend, but did not. John Marshall had been appointed Lieutenant to it. His father had formerly commanded it. Soon after Lieutenant Marshall's appearance on the ground, those who knew him clustered about him to greet him, others from curiosity and to hear the news."

"He proposed to inform the company that the Captain would not be there, and that he had been appointed Lieutenant instead of a better—that he had come to meet them as fellow soldiers, who were likely to be called on to defend their country, and their own rights and liberties invaded by the British—that there had been a battle at Lexington in Massachusetts, between the British and Americans, in which the Americans were victorious, but that more fighting was expected—that robbers were called for, and that it was time to brighten their fire arms, and learn to use them in the field—and that if they would fall into a single line, he would show them the new manual exercise, for which purpose he had bored in his gun—bringing it up to his shoulder. The sergeant put the men in line, and their flegman presented himself in front to the right. His figure, says his venerable kinsman, I have now before me. He was about six feet high, straight, and rather slender, of dark complexion—showing little if any rosy red, yet good health, the outline of the face nearly round, and with a face that, eyes dark to blackness, strong and penetrating, beams with intelligence and good nature; an upright forehead, rather low, was terminated in a high nose, and the hair and beard were equally white and flowery complexion of his face, and the long flowing locks of his hair."

Mr. Binney. 1 Judge Story.
This outline, and the temples fully developed. The result of this combination was interesting and very agreeable. The body and limbs indicated agility, rather than strength, in which, however, he was by no means deficient. He wore a purple or pale-blue hunting-shirt, and trousers of the same material fringed with white. A round black hat, mounted with the cockade, crowned the figure and the man.

"He went through the manual exercise by word and motion deliberately pronounced and performed, in the presence of the company, before he required the men to imitate him; and then proceeded to exercise them, with the most perfect temper. Never did man possess a temper more happy, or if otherwise, more subdued or better disciplined.

"After a few lessons, the company were dismissed, and informed that if they wished to hear more about the war, Mr. Binney would tell them what he understood about it. The circle was formed, and he addressed the company for something like an hour. I remember, for I was near him, that he spoke at the close of his speech of the Minute Battalion, about to be raised, and said he was going into it, and expected to be joined by many of his hearers. He then challenged an acquaintance to an game of quoits, and they closed the day with foot races, and other athletic exercises, at which there was no betting. He had walked ten miles to the muster field, and returned the same distance on foot to his father's house at Oak Hill, where he arrived a little after sunset."

"This is a portrait," to which, as we can testify with Mr. Binney, "is simplicity, gravity of heart, and manliness of spirit," John Marshall "never lost his resemblance. All who knew him well, will recognize its truth to nature." Mr. Marshall accordingly rose rapidly to distinction, against a predatory force under Lord Dunmore, he, one of Delegates, in the Virginia Legislature; and in the business of law, was raised, and said he was going into it, and expected to be joined by many of his hearers. He then challenged an acquaintance to a game of quoits, and they closed the day with foot races, and other athletic exercises, at which there was no betting. He had walked ten miles to the muster field, and returned the same distance on foot to his father's house at Oak Hill, where he arrived a little after sunset.

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In the summer of 1775, he was appointed a Lieutenant in the Minute Battalion; and having been sent, in the next autumn, to defend the country around Norfolk against a predatory force under Lord Dunmore, he, on the 9th of December, had a full and honorable share in the successful action at the Great Bridge, which resulted in Lord D.'s defeat, and flight to his ships. In July 1776, Amble, then Treasurer of Virginia. To this lady he dedicated his commission, and devoted himself to his law studies. The courts were then silenced in Virginia, by the tumult of War. As soon as they were opened, after the capture of Cornwallis, Mr. Marshall commenced practice.

"But a short time elapsed after his appearance at the bar of Virginia, before he attracted the notice of the public. His quickness, moderation, and coolness, irresistibly won the esteem of men, and invited them to intercourse with him — his benevolent heart, and his words and actions joyous temper, made him the chearful companion of his friends—he carried and integrity attracted the confidence of the bar—and that extraordinary comprehension and grasp of mind, by which difficulties were seized and overcome without effort or perturbation, commanded the attention and respect of the Courts of Justice. This is the traditdonary account of the first professional years of John Marshall. He accordingly rose rapidly to distinction, and to a distinction which nobody envied, because he seemed better to wish it, nor to be conscious of it himself."

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In the winter of 1779, Captain Marshall was sent to Virginia as a supernumerary, to take the command of such men as the State Legislature might entrust to him. He used this opportunity, to attend a course of Law-Lectures, delivered by Mr. (afterwards Chancellor) ❧Mr. Binney.❞

"Were, in William & Mary College; and Mr. (afterwards Bishop) Madison's Lectures on Natural Philosophy. In the following summer, he was licenced to practice Law; and in October, rejoined the army. It was probably on this occasion, that he went on foot from Virginia to Philadelphia, in order to be inoculated for the small pox; travelling at the rate of thirty-five miles daily. On his arrival, (as we learn from one to whom he related the incident,) he was refused admittance into one of the hotels, on account of his long beard and shabby clothing. He continued in the army till the end of Arnold's invasion of Virginia; when, there being still a redundancy of officers in the Virginia line, he resigned his commission, and devoted himself to his law studies. The courts were then silenced in Virginia, by the tumult of War. As soon as they were opened, after the capture of Cornwallis, Mr. Marshall commenced practice.

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In April 1789, he was chosen a member of the House of Delegates, in the Virginia Legislature, and in the next autumn, of the Executive Council. In January 1783, he married Miss Amble, daughter of Mr. Dinney. To this lady he had become attached while in the army; and their union of nearly fifty years, until the most devoted affection, was broken by her death, about three years before his own. Having fixed his residences in Richmond, he resigned his seat in the Council, the more closely to pursue his profession; but his friends and former constituents in Fauquier, nevertheless, elected him again to represent the city of Richmond, in the Legislature. In 1797, he was chosen to represent the city of Richmond.

"Times of civil trouble had now come, teeming with dangers hardly less than those which had beset the country ten years before. The Confederation, by which the States were united, was seen to fail, and a new federal system was prepared in its stead. The public debt, and a disordered currency, made confusion worse confounded. The public debt, incurred by the revolution, was unpaid. More than three hundred millions of continental paper money were unredeemed; and
having depreciated to the value of one dollar for every hundred, had ceased to circulate. Public credit was nearly at an end: private credit, by the frequent violation of contracts, was at an equally low ebb: the administration of civil justice was suspended, sometimes by the wilful delinquency of the courts, sometimes by State laws, restraining their proceedings. Commerce, Agriculture, Manufactures—industry of every kind,—were crippled. "Laws suspending the collection of debts; insolvent laws; insalvage laws; tender laws; and other expedients of a like nature, which, every reducing man knew would only aggravate the evils, were familiarly adopted, or openly and boldly vindicated. Popular leaders, as well as men of desperate fortunes, availed themselves (as is usual on such occasions) of this agitating state of things to inflame the public mind, and to bring into public notice those wiser statesmen, who labored to support the public faith, and to preserve the inviolability of private contracts." To strengthen the arm of the general government, and invest it with larger powers over the public welfare, the money, and the foreign and mutual relations of the States—was believed by most people to be the only remedy for these intolerable evils. Mr. Marshall concurred with Gen. Washington, Mr. Madison, and the majority of their countrymen, in approving of this remedy; and as a member of the State Legislature, advocated the call of a Convention, to revise the Articles of Confederation. Whether they should be so altered, as to increase materially the powers of the Federal Government—was a question which in most of the State Legislatures elicited strenuous debates; and no where more, than in the Legislature of Virginia. The men of this day have little idea, how strong were the gusts of discussion at that momentous period. "It is almost incredible," says Judge Story, "to conceive the zeal, and even animosity, with which the opposing opinions were maintained." The dissolution or continuance of the Union, was freely discussed: one party boldly advocating the former, as necessary to prevent the destruction of the sovereignty; the other party pleading for Union, as not only the sole cure for the innumerable ills which were then afflicting the land, but as indispensable to the preservation of Liberty itself, in the several States. And Union, it was alleged, could not be preserved but by a more vigorous central government.

Mr. Marshall, not then thirty years old, shared largely in the discussions which shook both the Legislative hall, and the popular assemblies, of Virginia, on this great question. Mr. Madison, with whom he served several years in the House of Delegates, fought "side by side, and shoulder to shoulder" with him, through the contest: and "the friendship, thus formed between them, was never extinguished. The recollection of their co-operation in that period served, when other measures had widely separated them from each other, still to keep up a lively sense of each other's merits. Nothing, indeed, could be more touching to an ingenuous mind, than to hear from their lips, in their latter years, expressions of mutual respect and confidence; or to witness their earnest testimony to the talents, the virtues, and the services of each other."*  

* Judge Story.

It was in these debates, that Mr. Marshall's mind acquired the skill in political discussion, which afterwards distinguished him, and which would of itself have made him conspicuous as a politician, had not that talent been overshadowed by his renown in a more soberly illustrious, though less dazzling career. Here, too, it was, that he conceived that deep dread of disunion, and that profound conviction of the necessity for closer bonds between the States, which gave the coloring to the whole texture of his opinions, upon federal politics in after life.

The Convention was at length called; and its product, the present Federal Constitution, was submitted for ratification to the States. In most of them, Conventions were likewise called, to adopt or reject it. Mr. Marshall, though the people of his county were decidely opposed to the new Constitution, and though he avowed on the hustings his determination to support it, he was elected to the Virginia Convention by a considerable majority. In that body, he took an effective, if not a leading part. Three able speeches of his, in behalf of the Constitution, appear in Mr. Robertson's report of the Debates: Speeches, according with "masculine logic, the perspicuous talents of George Nicholas, the animated bow of Governor Randolph, the grave and subtile genius of Pendleton, the consummate skill and varied knowledge of Madison."* After an earnest and powerful struggle of 25 days, the Constitution was agreed to, by a majority of but ten votes—89 to 79. This result is supposed to have been promoted, by the news, received while the Convention sat, that nine states had come to a similar decision. The accession of Virginia to that number, already large enough to give the instrument validity among the adopting states, ensured its complete success; and was hailed by its friends with the liveliest joy.

Judge Story depicts in vivid colors, the happy effects of the Government thus established, upon our prosperity: and extols with the fullest apprehensions of those who, clinging "with an invincible attachment" to the former Confederation, and accustomed to have all their affections concentrated upon the State governments, "saw in the new system "but another name for an overwhelming despotism." Undoubtedly, the state of things which preceded the change, was as bad as, with such a people, it could well be. Undoubtedly, the new government did very much, to retrieve our national credit and honor; to make us respected abroad, tranquil and prosperous at home. But still, not all is due to the Government. A people, animated with the spirit of freedom, enlightened enough to see their interests, and enterprising enough to pursue them strenuously,—inhabiting, too, a country not peopled to the extent of a thousandth part of its immense capabilities—would thrive and grow powerful in spite of what almost any government could do to impede their onward march. In the body politic there is, what physicians ascribe to the body natural, a vis medicae Naturae, by which the wounds of War, the desolations of Pestilence, and all the ills flowing from the blunders of charlatan statesmen, are healed and made amends for. Few are so bigoted as not to admit, that the self-healing energies of our country have thus at some times prevailed over the hurtful tendencies of the
the National Government, to an extent never over­
all prosperity of the whole country, under the auspices of the National Government, to an extent never even imagined by its warmest friends. We have seen our agriculture pour forth its various products, created by a generous, and almost sacred, a profound industry. The miserable exports, scarce amounting in the times, of which I have been speaking, in the aggregate, to the sum of one or two hundred thousand dollars, now almost reach to forty millions a year in a single staple. We have seen our commerce, which scarcely exists among our desolate docks, and, butts with its rich returns, spring buoyant on the waves of the humane ports; and cloud the very shores with forests of masts, over which the stars and stripes are gaily ascending. We have seen our manufactures, awakening from a doubtful lethargy, crowd every street of our towns and cities with their busy work­men, and their busier machinery; and scattering the silences of our wide streams, and deep dells, and aquatic valleys. We have seen our wild waterfalls, multiplied by the power of man, because the more instruments of his will, and, under the guidance of mechanical genius, now driving with uncertain certainty the flying shuttle, now weaving the mysterious threads of the most delicate fabrics, and now pressing the reluctant metals into form, as if they were but playthings in the hands of giants. We have seen our rivers bear upon their bright waters the swelling floods of our commerce, awakening from a deathlike lethargy, in endless progress. Nay, the very vital of the ocean, in their regular ebb and flow in our ports, seem now but heralds to announce the arrival and departure of our uncounted navigation. We have seen all these things; and we can scarcely believe, that there were days and nights, nay, months and years, in which our wheat pastures and manufactories lay, in anxious meditation to devise the measures which should save the country from impending ruin. The Constitution being adopted, Mr. Marshall was prevailed on by his countrymen, to serve again in the Legislature till 1792; although the claims of a growing family and a slender fortune had made him wish, and resolve, to quit public life, and devote himself exclu­sively to his profession. He was wanted there by the friends of the new system, to defend its administration against the incessant attacks made upon it by a power­ful and hostile party. This party consisted of those who had resisted the change, because they thought the proposed government too strong. Now that it was adopted, they naturally sought, by constraining the grants of power to it with literal strictness, to prevent, as far as possible, the dangers to Liberty with which they deemed it pregnant. Their opponents, on the other hand, having long regarded weakness in the centre as the greatest subject of just apprehension, constantly aimed, by an enlarged and liberal (or, as it has since been called a luttuitious) interpretation of those grants of power, to render them in the highest degree counteractive of the centrifugal tendency, which they so much dreaded. This controversy probably rent most hotly in Virginia. It is said that there was a smile at the characteristic fact, that "almost every important measure of President Wash­ington's administration was discussed in her Legislature with great freedom, and no small degree of warmth and acrimony." We applaud and honor the stand which Virginia has always taken, as a censure on the watch­tower of popular liberty and state-soverignty, to guard against federal usurpation. It is a duty, allotted to the State Legislatures by the enlightened advocates of the Constitution who wrote "The Federalist:" a duty which it were well if her sister states had performed with something like Virginia's fidelity and zeal. But she has indifferently suffered this one subject too much to mono­polize her attention: and we are amongst those who think this a main reason, why, with a surface and re­sources the most propitious of all the states to internal improvement, she lags so far behind the rest in works of that kind; and why, with a people pre-eminent instantly with the spirit of liberty, and enjoying unwanted leisure for acquiring knowledge, she has five times as many ignorant sons and daughters, as New York or Massa­chusetts. She ought to have looked well to her foreign relations, without losing sight of her domestic interests. We hail, with joy, the change which is now taking place in this respect. We trust that she and her states­men, hereafter, when all attention is claimed for any one point in the vast field of their duties, will adopt the spirit of the reply which Mr. Pope (not Homer) puts into Hector's mouth, when he was advised to fix himself as a guard at one particular gate of Troy:

"The post shall be my care;
Nor that alone, but all the works of war.
From 1792 to 1795, Mr. Marshall devoted himself exclusively and successfully to his profession. Washing­ton's Reports, show him to have enjoyed an exten­sive practice in the Court of Appeals of Virginia. Dur­ing this time, also, he did not withdraw himself from politics so entirely, but that he took a prominent part at public meetings, in support of Gen. Washington's Pro­clamation of Neutrality. He advocated this measure, orally and in writing; and Resolutions approving it, drawn up by him, were adopted by a meeting of the people of Richmond. In 1795, when Jay's Treaty was the absorbing theme of bitter controversy, Mr. Marshall was again elected to the House of Delegates, "not only without his approbation, but against his known wishes." Virginia, as usual, was the Flanders of the war. Her popular meetings, and her Legislature, rung with angry discussions. Even the name of Washington could not screen the treaty from reproba­tion. It was denounced at a meeting in Richmond, at which Chancellor Marshall, who had presided, as insulting, injurious, dangerous, and unconstitu­tional; but the same citizens, at a subsequent meet­ing, were prevailed upon by a masterly speech of Mr. Marshall, to adopt resolutions of a contrary tone, "by a handsomely majority." Lest his popularity might suf­fer, he was urged by his friends not to engage in any Legislative debates upon the obnoxious Treaty. He answered, that he would make no move to excite such a debate; but if others did so, he would assert his opinions at every hazard. The opposition party soon introduced condemnable resolutions. Among other arguments against the treaty, it was alleged, that the executive could not, constitutionally, make a com­mercial treaty; since it would infringe the power given to Congress, to regulate commerce; and this was relied upon as a favorite and an unanswerable position. "The speech of Mr. Marshall on this occasion," says Judge
The argument was decisive. "The constitutional ground demonstrative reasoning—the infrequency of his resort to the impersonal form of his positions, and especially his judicial powers of reasoning were displayed with the most gratifying success. The same of this admirable argument spread through the union. Even with his political enemies, it enhanced the estimate of his character; and it brought him at once to the notice of some of the most eminent statesmen, who then crossed the councils of the nation."

Being called to Philadelphia in 1786, as counsel in an important case before the Supreme Court of the United States, he became personally acquainted with many distinguished members of Congress. He expressed himself delighted with Messrs. Cabot, Ames, Sedgwick, and Dexter of Massachusetts, Woodworth of Connecticut, and King of New York. To these, his great speech on the treaty could not fail to recommend him: and (as he says in a letter) "a Virginian, who supported, with any sort of reputation, the measures of the government, was such a rare ant, that I was received by them all with a degree of kindness, which I had not anticipated. I was particularly intimate with Mr. Ames; and could scarcely gain credit with him, when I assured him that the appropriations for the treaty would be seriously opposed in Congress."

They were opposed; and passed only after a stormy debate of several weeks: and passed even then, with a declaration of a right, in response to the sentiment pronounced by Mr. Marshall arrived in New York on the 17th of June, 1786. His entrance into this city on the 19th, had the effect of a triumph. The military corps escorted him from Frankford to the city, where the citizens crowded to receive General Pinckney, who was appointed in his stead, to witness the sentiment pronounced at this celebration. "Millions for defence, but not a cent for tribute.""

Once more, he resumed his practice of the Law, with the usual share of attention. A resolution being moved, expressing confidence in the whole talent of each party brought into action. The impression made by the despatches of the American ministers was immediate and extensive. Mr. Marshall arrived in New York on the 17th of June, 1786. His entrance into this city on the 19th, had the effect of a triumph. The military corps escorted him from Frankford to the city, where the citizens crowded to receive General Pinckney, who was appointed in his stead, to witness the sentiment pronounced at this celebration. "Millions for defence, but not a cent for tribute.""

The appointment of Minister to France, as successor to Mr. Monroe, was offered him by the President, and declined. The French Government, however, refused to receive General Pinckney, who was appointed in his stead, Messrs. Marshall, Fitch, and Gerry, were sent by President Adams as envoys, extraordinary to that country. The Directory refused to negotiate.

But though the direct object of the embassy was thus failed, much was effected in showing France to be in the wrong, by the official papers which the envoys addressed to her minister of foreign relations—the since famous Talleyrand: "Models of skillful reasoning, clear illustration, accurate detail, and urbanity and dignity: They have always been attributes to Mr. Marshall. They bear internal marks of it. We have since become familiar with his simple and masculine style,—his direct, connected, and demonstrative reasoning—the infrequency of his resort to illustrations, and the pertinency and truth of the few which he uses—the absence of all violent assertion—"The impression made by the despatches of the American ministers was immediate and extensive. Mr. Marshall arrived in New York on the 17th of June, 1786. His entrance into this city on the 19th, had the effect of a triumph. The military corps escorted him from Frankford to the city, where the citizens crowded to receive General Pinckney, who was appointed in his stead, to witness the sentiment pronounced at this celebration. "Millions for defence, but not a cent for tribute.""

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* We confess a little surprise, at seeing, here, any dedication of authority to the American Executive. "From the practice of other nations." If we mistake not, a certain famous Protest of a certain President, was censured severely for deducting power to be author from that source. —Receiver.

* Judge Story. M. Binney.
man, first in war, first in peace, and first in the hearts of his countrymen." The resolutions had been drawn by counsel Henry Lee, whom a temporary absence hindered from presenting them. With characteristic modesty, Mr. Marshall, in the account of this transaction given by him as biographer of Washington, omits all mention of his own name; saying only, that "a letter written by him on the subject of the first order for debate and none were more conspicuous than those of John Marshall. Indeed, where the law or constitution was to be discussed, he was confessedly the first man in the House, when he discussed them, he exhausted them: nothing more remained to be said; and the impress of his argument effaced that of every one else." Upon such topics, however dark to others, of John Marshall. Indeed, where the law or constitution was to be discussed, he was confessedly the first man in the House, when he discussed them, he exhausted them: nothing more remained to be said; and the impress of his argument effaced that of every one else.

His speech upon the case of Jonathan Robbins, was a striking example. This man, a subject of Great Britain, had urged a mandate on board a British frigate, and then fled to the United States. Being demanded by the British Government, President Adams caused him to be surrendered, under a clause in Jay's treaty. This House of Representatives abounded in talents of the first order for debate: and none were more conspicuous than those of Mr. Marshall. Indeed, where the law or constitution was to be discussed, he was confessedly the first man in the House, when he discussed them, he exhausted them: nothing more remained to be said; and the impress of his argument effaced that of every one else.

The account of the last thirty-five years of Judge Marshall's life. It was spent in the diligent, and upright, as well as able discharge of his official duties; sometimes presiding in the Supreme Court at Washington, sometimes assisting to hold the Circuit Federal Courts, in Virginia, and North Carolina. His residence was in Richmond, whence it was his frequent custom to walk out, a distance of three or four miles, to his farm, in the county of Henrico. He also had a farm in his native county, Fauquier; which he annually visited, and where he always enjoyed a delightful intercourse with numerous relations and friends. Twice, in these thirty-five years, he may be said to have mingled in political life, but not in party politics.

In 1828, he was delegated, with others from the city of Richmond, to a convention held in Charlottesville, for the purpose of devising a proper system of internal improvements, for the State; to be recommended to the Legislature: and he took a becoming part in the deliberations of that enlightened body.

In 1829, he was chosen, to represent the city in the Convention which met in October of that year, to revise and amend the State Constitution. Here was exhibited a spectacle, one of the most affecting in our day, of three men—Madison, Monroe, and Marshall—who having assisted in establishing the liberties and creating the government of their country, and having filled her highest stations, were now consulting with a later generation, upon the means of rendering that government

* Judge Story.

** Judge Story.

*** Mr. Inney. * Judge Story. § Mr. Inney. ¶ Mr. Inney. 

It is a remarkable, yet not an extraordinary fact, that his induction into that high office which he so illustriously filled, is precisely the juncture in his life at which, for the purposes of striking narrative, his biography ends. That part of his career, the most signalized by enduring monuments of his intellectual power, and the most adored by the winning graces of his daily actions, is precisely that in which it is hardest to find glaring inci
dents, that stand forth boldly on the page, and rivet the reader's mind. "Peace" indeed, as Milton said to Cromwell—"Pace hath her victories."

and few men have achieved more signal ones, than he who may be said to have built up a national Jurisprudence for the Union, by the strength of his own genius: but such triumphs ring not in the common ear, and glitter not in the common eye. Even History often forgets to chronicle (him in her bloodstained page: that page is to us a more picture of crimes and misfortune, where the peaceful and innocent crowd never appears, but give place to the profligate votaries of perverted ambition—and which, like tragedy, is languid and dis
tasteful, unless enlivened by atrocious deeds, and horrid sufferings. We shall not attempt, then, to protract our account of the last thirty-five years of Judge Marshall's life. It was spent in the diligent, and upright, as well as able discharge of his official duties; sometimes presiding in the Supreme Court at Washington, sometimes assisting to hold the Circuit Federal Courts, in Virginia, and North Carolina. His residence was in Richmond, whence it was his frequent custom to walk out, a distance of three or four miles, to his farm, in the county of Henrico. He also had a farm in his native county, Fauquier; which he annually visited, and where he always enjoyed a delightful intercourse with numerous relations and friends. Twice, in these thirty-five years, he may be said to have mingled in political life, but not in party politics.

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"Peace hath her victories."

No less renowned than War.

Mr. Inney. * Judge Story. § Mr. Inney. ¶ Mr. Inney.
No man more highly relished social, and even convivial enjoyments. He was a member of the club, which for 48 summers has met once a fortnight near Richmond, to pitch quoits and mingle in relaxing conversation: and there was not one more delightedly punctual in his attendance at these meetings, or who contributed more to their pleasantness: scarcely one, who excelled him in the main game, from which "the Quoit-Club" drew its designation. He would hurl his iron ring of two pound's weight, with rarely erring aim, fifty-five or sixty feet; and, at some chief-ware of skill in himself or his partner, would spring up and clap his hands, with all the light-hearted enthusiasm, of pleased. Such in the old age, which follow a temperate, an innocent, and a useful life! We extract from the American Turf Register of 1829, the following entertaining account of this Club.

During a recent visit to Richmond, in Virginia, I was invited to a "Barbecue Club," held under the shade of some fine oaks, near "Buchanan's Spring," about a mile distant from the town. I there met with about thirty of the respectable inhabitants of Richmond, with a few guests. The day was a line one, and there was not one more delightfully punctual. The business of representative of the members rendered it peculiarly pleasant.

This Club is probably the most ancient one of the sort in the United States, having existed upwards of forty years. It originated in a meeting, every other Saturday, from the first of May to the last in September. The idea was suggested by the Virginia convention of 1829, the following entertaining account of which was published in the Richmond Enquirer.

The members each advanced ten dollars to the treasurer at the beginning of the season, and every member is entitled to invite any
strangers as guests, on paying into the general fund one dollar each; while the entrees of the day, consisting of two meals, were eaten, plenty, and have the privilege of bringing each a guest (either citizen or non-resident) at free cost. On the day I was present, dinner was ready at half past three o'clock, and consisted of excellent meats and dishes, well prepared and well served, with the vegetables of the season. Your variable gunnehain never fails to regale himself on his favorite barbecue—which is a fine fat pig, called "shouts," cooked on the coals, and highly seasoned with cayenne—a dessert of melons and fruits follows, and punch, porter and rum are the table liquors; but with this comes on the favorite beverage of the Virginians, mint julep, in place of wine. I never witnessed more festivity and good humor than prevailed at this club. By the constitution, the subject of politics is forbidden, and each man strives to make the time pleasant to his companions. The members think they can offer no higher compliment to a distinguished stranger, than to introduce him to the club, and all feel it a duty to contribute to his entertainment. It was refreshing to see such a man as Chief Justice Marshall, laying aside the reserve of his dignified station, contend with the young men at a game of quoits, with all the emulation of a youthful spirit. He asked, "If you think it possible that the dignitaries of the land could thus intermix with private citizens," and when assured of the fact, he observed, with true Gallic coolness, that "it had never before seen the real beauty of republican life.

Many anecdotes are told of occurrences at these meetings. Such is the portiality for the Chief Justice, that it is said the greatest anxiety is felt for his success in the game by the bystanders; and on one occasion an old Scotch gentleman was called on to decide between his quest and that of another member, who, till then seemingly undecided, announced, "Sir, Mr. Marshall has it a foot," when it was visible to all that the contrary was the fact. A French gentleman (Maison, Quentin), was on one occasion a guest, when the Governor, the Chief Justice, and several of the Judges of the High Court of Appeals, were engaged with others, with coats off, in a well-contested game. He asked, "Is it possible that the dignitaries of the land could thus intermix with private citizens," and when assured of the fact, he observed, with true Gallic coolness, that "it had never before seen the real beauty of republican life."

In Judge Marshall's yearly visits to Fauquier, where the proper implements of his favorite sport were not to be had, he still practiced it among his rustic friends, with flat stones for quoits. A casual guest at a barbecue in that county—one of those rural entertainments so frequent among the country people of Virginia—soon after his arrival at the spot, saw an old man emerge from a thicket which bordered the neighboring brook, carrying as large a pile of these flat stones as he could hold between his right arm and his chin: he stepped briskly up to the company, and threw down his load briskly up to the company, and threw down his load hastily. "Have here are quoits enough for us all!" The stranger's surprise may be imagined, when he found that this plain and cheerful old man was the Chief Justice of the United States! Nor was the bonhomie, with which he could descend to the level of common life, restricted to his intercourse with men and women: he was often a pleasing companion even to children. One, whose first recollection of him referred to his triumphant entry (for such it was) into Richmond, on his return from France, and who, as a printer's boy, afterwards for several years was courier of a newspaper to him, describes him as "remarkably fond of boys' company—always chatty—and always pleased." The remarkable, having been transferred to Washington in 1806, while Mr. M. was Secretary of State, says, "again did the pleasing office of serving him with the Washington Federalist" devolve on me. He resided in a brick building hardly larger than most of the kitchens now in use. I found him still the same plain, unostentatious John Marshall: always accessible, always with a smile on his countenance when I handed him the "Federalist." His kindness of manner won my affection; and I became devotedly attached to him."

Even from this early period the reminiscence may go to the commencement of an intercourse and correspondence with the Chief Justice, which endured uninterrupted for many years, until the period of his lamented death. The unaffected and childlike simplicity of manner, action, and thought which pervaded, as the sunlight pervades the atmosphere, every moment of this truly great man's existence, and which, indeed, formed, in no small degree, the basis of his greatness, sufficed to render the intercourse of which we speak, an intercourse of the most kindly, unmarmarsed, and intimate nature; and one which afforded opportunities for a more particular knowledge of the strictly private and familiar habits of the man, than has fallen to the lot of many who, perhaps, were better entitled to his confidence. The reminiscence would here acknowledge, not only with gratitude, but with pride, the immemorial, yet undeviating, and unobtrusive, and uniform attention and care of which he is indebted to the friendship of Chief Justice Marshall.

When, to all these engaging traits of character, we add his charitable benevolences were as large as his mind, and as unostentatious as his life; and that in his dealings he was so sparsely just, as always to prefer his own loss to the possibility of his wronging another; it can be no wonder, that despite the unpopularity of his federal-political opinions, he was the most beloved and esteemed of all men in Virginia.

The influence of Judge Marshall upon the decisions of the Supreme Court, in cases requiring a determination of the limits set by the Constitution to federal power, will be deemed salutary or pernicious, according as the mind which contemplates it is biased towards the one or the other school of opinions on that subject—towards the strict, or towards the liberal (what its opponents term the licentious) construction. Having been profoundly—perhaps extravagantly—impressed with a dread of the evils attending a flaccid government for the Union, he had advocated the new Constitution originally, and maintained the liberal interpretation of it afterwards, as indispensable to the integrity and wholesome action of our system. Opinions which he had held for thirteen years, and which had become fixed more and more deeply in his mind by his numberless able vindications of them, he could not be expected to throw aside when he ascended the Bench. They pervaded his decisions there; and such was the influence of his gigantic intellect, that, although, as Chief Justice, his vote had no more legal authority than that of any other Judge, and although most of his associates were deemed, at their appointments, maintainers of the strict construction, the Supreme Court took its tone from him; and in almost every instance where the controversy turned upon the boundaries between federal and state authority, as fixed by the Constitution, its determination tended to enlarge the former, and to circumscribe the latter. Never, probably, did any judge, who had six associates equal to himself in judicial authority, so effectually stamp their adjudications with the impress of his own mind. This may be read, in the generous pleasure with which the best and ablest* of those associates dwells upon the

*Judges Story.
inestimable service done to the country, in establishing a code of Constitutional Law so perfect, that "His proudest epitaph may be written in a single line—Here lies the Expounder of the Constitution of the United States." It may be read in the glowing pages, where Mr. Blinney, resolving the glory of the Court in having "explained, defended and enforced the Constitution," into the merits of its presiding judge, declares himself "lost in admiration of the man, and in gratitude to Heaven for his beneficent life." It may be read in the many volumes of Reports, where, whenever a question of constitutional law was to be determined, the opinion of Judge Marshall is found, almost without exception, to be the opinion of the Supreme Court.

We shall make but one more extract from Mr. Blinney's admirable Eslogy.

"John Marshall, son of Thomas and Mary Marshall, was born on the 2d of September, 1755, intermarried with Mary Willis Ambler the 3d of January, 1783, departed this life the day of—1835—"

All the just renown with which his great name might have been embellished, simplified into the three circumstanties, of birth, marriage, and death, which would equally sati the grave-stone of the humblest villager!

We cannot better conclude this article than by copying two delineations of its subject, sketched by hands which, years before him, were mouldering in the grave: sketched, it seems to us, with so much elegance and truth, that any extended account of Judge Marshall could hardly be deemed complete without them. The first was drawn thirty years ago: the other, less than twenty.

The...... of the United States," says Mr. Wirt, in The British Spy, "is, in his person, tall, mea­

surer, emaciated: his muscles relaxed, and his joints so loosely connected, as not only to disqualify him, ap­

parently, for any vigorous exertion of body, but to destroy every thing like harmony in his air and movements. Indeed, in his whole appearance, and demeanor, his dress, attitudes, gesture; sitting, standing, or walking; he is as far removed from the idealized graces of Lord Cher­

terfield, as any other gentleman on earth. His head and face are small in proportion to his height: his complexion swarthy; the muscles of his face, being relaxed, make him appear to be fifty years of age, nor can he be much younger: his countenance has a faithful expression of great good humor and hilarity; while his black eyes—that unfurling index—possess an infuriating spirit, which proclaims the imperial powers of the mind that sits enthroned within.

"This extraordinary man, without the aid of fancy, without the advantages of person, voice, attitude, gesture, or any of the ornaments of an orator, deserves to be considered as one of the most eloquent men in the world; if eloquence may be said to consist in the power of seizing the attention with irresistible force, and never permitting it to elude the grasp, until the hearer has received the conviction which the speaker intends.

"His voice is dry and hard; his attitude, in his most effective orations, was often extremely awkward; while all his gesture proceeded from his right arm, and con­

sisted merely in a perpendicularly swing of it, from about
the elevation of his head, to the bar, behind which he was accustomed to stand.

"As to fancy, if she hold a seat in his mind at all, his gigantic genius tramples with disdain, on all her flower-decked plates and blooming parterres. How then, you will ask, how is it possible, that such a man can hold the attention of an audience enchanted through a speech of even ordinary length? I will tell you.

"He possesses one original, and almost supernatural faculty: the faculty of developing his subject by a single glance of his mind, and detecting at once, the very point on which every controversy depends. No matter what the question: though ten times more knotty than "the guarded oak," the lightning of heaven is not more rapid or more resistless, than his astonishing penetration. Nor does the exercise of it seem to cost him an effort. On the contrary, it is as easy as vision. I am persuaded, that his eyes do not fly over a landscape and take in its various objects with more promptitude and facility, than his mind embraces and analyzes the most complex subject.

"Possessing while at the bar, this intellectual elevation, which enabled him to look down and comprehend the whole ground at once, he determined immediately and without difficulty, on which side the question might be most advantageously approached and assailed. In a bad cause, his art consisted in laying his premises so remotely from the point directly in debate, or else in terms so general and so specious, that the hearer, seeing no consequence which could be drawn from them, was just as willing to admit them as not; but, his premises once admitted, the demonstration, however distant, followed as certainly, as cogently, as inevitably, as any demonstration in Euclid.

"And all his eloquence consists in the apparently deep self-conviction, and emphatic earnestness of his manner; the correspondent simplicity and energy of his style; the clear and logical connexion of his thoughts; and the easy gradations by which he opens his lights on the attentive minds of his hearers. The audience are never permitted to pause for a moment. There is no stopping to weave garlands of flowers, to hang in festoons, around a favorable argument. On the contrary; every sentence is progressive; every idea sheds new light on the subject; the listener is kept perpetually in that sweetly pleasing vibration, with which the mind of man always receives new truths; the dawn advances with easy but unremitting pace; the subject opens gradually on the view; until, rising, in high relief, in all its native colors and proportions, the argument is consummated, by the conviction of the delighted hearer."

"The following observations on the intellectual character of Judge Marshall, are from the pen of Francis W. Gilman—one who, had he not been prematurely cut off by the hand of death, would have ranked with the foremost men of his age and country."

"His mind is not very richly stored with knowledge; but it is so creative, so well organized by nature, or disciplined by early education, and constant habits of systematic thinking, that he embraces every subject with the clearness and facility of one prepared by previous study to comprehend and explain it. So perfect is his analysis, that he extracts the whole matter, the kernel of inquiry, unbroken, clean, and entire. In this proc