1836

Chief Justice Marshall

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Repository Citation

Minor, Lucian, "Chief Justice Marshall" (1836). Faculty Publications. 1317.
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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 without a style of criticism, or incapable of abiding its test; but that, slight and unpretending as they are in their form and guise, the consideration which their uncommon literary merits would otherwise ensure them, is in great part lost, in the overshadowing 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 varied yet harmonious greatness, as we verily believe, is next to Washington, the benevolence and purity of Marshall, the piercing and unpretending as they are in their form and guise to give, are drawn from no other source. We regard, not that they are either of criticism, or incapable of abiding its test: but that slight, time and space oblige us here to be content with a short extract from the discourse; and even where we do not literally quote, we are willing to be regarded as merely paraphrasing them,—for by far the most of the incidents we are about to give, are drawn from no other source. We agree, with Lord Bacon, that in general, it is "only the meaner sort of books" that should be thus bracketed and read at second-hand; and that "distilled books are, like common distilled waters, flashy things." But stilted time and space oblige us here to be content with a short extract, in which we trust our readers may still find much of the flavor of the viands whence we make our extracts.

JOHN MARSHALL was born Sept. 24th, 1765, in Fauquier County, Virginia—a little more than two months after Blandford's defeat; and was the eldest of fifteen children of 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 more than half the Continentals and one third 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 but little opportunity for sending his children to school; and he was compelled to be almost exclusively himself their teacher. In his eldest 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, in 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 love of poetry, thus awakened in his warm and vigorous mind, soon excited a commanding influence over it. He became enamored of the classical writers of the old English school, of Milton, and Shakespeare, and Dryden, and Pope; and was instructed by their solid sense and beautiful language. In the enthusiasm of passion more than in the cold and scientific analysis of the poetical compositions, and freely gave up his leisure hours to those exquisite dreamings with the muse, which (say we what we may) constitute with many the purest source of pleasure in the gayer scenes of life, and the sweetest conclusion in the hours of adversity.

* This last hour at which we have received this pamphlet, has prevented us from speaking as fully as we intended of its distinguished parts. It would have given us great pleasure to have embodied, in the text of this article, portions of Mr. Souvenir's Oration—an Oration justly entitled to companionship with the Discourse of Judge Story, and the Essay of Mr. Binney. We must now, however, at this late day, confine ourselves to a general expression of commendation, and a short extract from the conclusion of the Oration.

"But the 'good' of Marshall is not interred with his bones, but lives after him, and will live after him in all time to come. The licence of vice which he hurled upon his country's altar, will continue to rise to heaven, and diffuse itself throughout the land for all following generations. When our children shall read the story of his life, we may refer them to his pages for the best of its history, and even upon the future destinies of this country, is regulating the dispositions of those who are to hold the high places of the nation. Who can say that it will not pervade the moral atmosphere, as we correct many of those evil tendencies which we now so constantly developing ourselves. We must such men as Marshall to rise upon our minds, and shed around the chastened light of their influence. The glare of military fame, and the glittering trappings of power, though they are often allotted to great ones, are the greater, the more we extol them with admiration. But upon the mellow radiance of his virtues we can all look with unclouded eyes—we can all dwell with unalloyed satisfaction."

Throughout the whole of his life, and down to its very close, Mr. Marshall conducted to cultivate a taste for general literature, and especially for those departments of it, which had been the favorite studies of his youth. He was familiar with all its light, as well as its more recondite, productions, and always with interest; in his leisure would allow, all the higher literature of modern times; and, especially, the works of the great masters of the art were his constant delight.*—[Judge Story.]

The entire compatibility of such a love for elegant literature with the severe logic and closeness of thought, which belonged to* Judge Marshall's character, is well vindicated by Judge Story's observations, as well as by many illustrious examples. Among them may be named William Wirt. The flowery expression of his writings, his evident delight in works of fancy, and the extraordinary grace of his oratory, made the multitude believe him to be the "imagination all compact." But he was in truth far more profoundly versed in the dry, intricate lore of his profession, and by far more capable of tasting the delicious, than the delightful. Whole minds have been occupied with its "mystic, dark, discordant" tones. We have been told by one who knew him intimately, that there were few younger students than Mr. Wirt; and that our informant had known him previously 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 declamer, a spouter of poetry, and an aider of light newspapers. 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 pervaasive confidence, he would delight to expatiate on his virtues and talents. My father," he would say with kindled feelings and emphasis, 'my father was a far elder man than any of his sons. To him I owe 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 in for less of that parental fondness, 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 hardly, 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 Westmoreland, 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 instruction 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 was fine in person, made of a 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 skill, in a volunteer corps of the neighborhood. At length news came, of the battle of Lexington. A militia company, in which he held a commission, was ordered to assemble at a place ten miles from his father's house. Mr. Binney says, "A kinsman and contemporary, 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 muster field was some twenty miles distant from the Court House, and a section of country peopled by settlers 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 had called the company together, and was expected to address them, 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 to greet him, others from curiosity and to hear the news. "He proceeded 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 victors, 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 brought up his gun—bringing it up to his shoulder. The sergeants put the men in line, and their flagman 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 slender, of dark complexion—showing little if any rosy red, yet good health, the outline of the face nearly oval, and with that, eyes dark to blackness, strong and penetrating, beaming with intelligence and good nature; an upright forehead, rather low, was terminated in a broad, concave nose, that was forcible in expression. His hair was brown, and, as he rode his horse, was blown back by the wind, which gave a wildness and the air of a peasant to the countenance. His eyes were of a bright lustrous color, very quick and sharp, he had a small mouth, and a firm, manly, honest countenance, with a strong, authoritative expression, and a voice of moderate pitch and quantity. He was dressed in a red coat, with a red waistcoat, yellow waist, a white shirt, with a yellow neckcloth, and a white stock. The stock was in a style which, at that time, was very common among men of business and education.'

* Mr. Binney.  † Judge Story.
This outline, and the temples fully developed. The result of this combination was interesting and very agreeable. The body and limbs inclined 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 buck's-tail for a 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 troupes. 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, and would form a circle around him, he 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 a game of quoits, and they closed the day with foot pieces, and other athletic exercises, at which there was no letting. 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, gentility of heart, and manliness of spirit," John Marshall "never lost his resemblance. All who knew him well, will recognize its true character."

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, being made lieutenant in the 11th Virginia Regiment in the Continental Service, he marched to the Middle States, where, in May 1777, he was promoted to a cap-taincy. Remaining constantly in service from this time until the close of 1779, he participated largely and actively in the most trying difficulties of the darkest period of the Revolution. He was in the skirmish at Iron Hill, and the battles of Brandywine, Germantown, and Monmouth. He was "one of that body of men, never surpassed in the history of the world, who, un­paid, unlothed, unshod,—trucked the mows of Valley Forge with the blood of their footsteps in the rigorous winter of 1778, and yet turned not their faces from their country in resoluteness, or from their enemies in fear."

Acting often as Deputy Judge Advocate, he formed a wide acquaintance and influence among his brother officers. "I myself," says Judge Story, "have often heard him spoken of by these veterans in terms of the highest praise. In an especial manner, the officers of the Virginia Line, (now, few and faint, but fearless still) appeared almost to idolize him." During this period of his service he became acquainted with Gen. Washington and Col. Hamilton.

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) Webster, in William & Mary College; and Mr. (afterwards Bishop) Madison's Lectures on Natural Philosophy.

In the following summer, he was licensed to prac­tise 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.

"But a short time elapsed after his appearance at the bar of Virginia, before he attracted the notice of the public. His placidity, moderation, and calmness, transcended the ex­pectations of men, and invited them to converse with him.—his benevolent heart, and his errors and at times joyous temper, made him the cherished companion of his friends,—his candor 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 paralyzing, commended the attention and respect of the Courts of Justice. This is the traditional 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 neither to wish it, nor to be conscious of it himself."

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 1788, he married Miss Ambler, daughter of Jacobin Ambler, then Treasurer of Virginia. To this lady he had become attached while in the army; and their union of nearly fifty years, until the devoted affection, was broken by her death, about three years before his own. Having fixed his residence in Richmond, he re­signed his seat in the Council, the more closely to pursue his profession; but his friends and former constitu­ents in Faquier, nevertheless, elected him again to represent them in the Legislature. In 1787, 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 have failed to regulate the country in civil tumult, and a still fuller means of concurrence in the States; but had no power to effectuate its resolutions, laws, or requisitions. It could contract debts, but not lay taxes of any kind to pay them. It could declare war, but not raise armies to wage it. It could make treaties, but not so as to regulate commerce—perhaps the most frequent and important aim of treaties. Each State had the determining of its own scale of duties on imports; the power of emitting money, and of emitting paper-money at pleasure; confecting revenue-laws, therefore, 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 the total non-appearance of judges. Commerce, Agriculture, Manufactures—industry of every kind,—were crippled. "Laws suspending the collection of debts; insolvent laws; inscrutable laws; tender laws; and other expedients of a like nature, which, every reflection upon them 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 odium 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 people, the money, 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."*
measures adopted by her rulers. There is nevertheless a force and beauty in Judge Story's picture of her happiness, that makes it worthy of insertion:

"We have lived," says he, "to see all their fears and prophecies of evil scattered to the winds. We have witnessed the solid growth and 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 productions, created by a generous, I had almost said, a profuse industry. The miserable exporters, scarce amounting in the times, of which I have been speaking, in the aggregate, to the sum of one or two thousand dollars, now almost reach to forty millions a year in a single staple. We have seen our commerce, which scarcely crept along our noiseless docks, and halted with its rich return, spring buoyant on the waves of the home ports; and cloud the very shores with forests of masts, over which the stars and tides are galloping ascending. We have seen our manufactures, awakened from a slumberous lethargy, crowd every street of our towns and cities with their busy workmen, and their busier machinery; and startled the silence of our wide oceans, and deep slumber, and unquiet vaults. We have seen our wild waterfalls, subdued by the power of man, become the more instruments of his will, and, under the guidance of mechanical genius, now driving with unwearied certainty the flying shuttle, now weaving the mysterious threads of the most delicious 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 balloons of our coasters, and the sleepless wheels of our steamboats in endless progress. Nay, the very fate of the ocean, in its regular ebb and flow in our ports, seem now but heraldic to announce the arrival and departure of our unexpected navigation. We have seen all these things; and we can scarcely believe, that there were days and nights, nay, months and years, in ancient solitude 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 powerfull 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 warheads in the centre as the great subject of just apprehension, constantly aimed, by uniting the federal and liberal (or, as it has since been called a literal) 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 raged most hotly in Virginia. It has been said, with 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 censured on the watch-tower of popular liberty and state-sovereignty, 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 would be well if her sister states had performed with something like Virginia's fidelity and zeal. But she has indubitably 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 prodigious 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-eminently instinct with the spirit of liberty, and enjoying unwepted 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:

"That post shall be my care; Not 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, 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 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 tenor, "by a handsome majority."

Left 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 movement to excite such a debate; but if others did so, he would assert his opinions at every hazard. The opposition party soon introduced condemnatory 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 Story, "has always been represented as one of the noblest efforts of his genius. His vast powers of reasoning were displayed with the most gratifying success. He demonstrated, not only from the words of the Constitution and the universal practice of nations,' that a commercial treaty was within the scope of the constitutional powers of the executive; but that this opinion had been maintained and sanctioned by Mr. Jefferson, by the Virginian delegation in Congress, and by the leading members of the Convention on both sides. The argument was decisive. The constitutional ground was abandoned; and the resolutions of the assembly were confined to a simple disapprobation of the treaty in point of expediency . . . . . . The fame of this admirable argument spread through the union. Even with his political enemies, it enlarged the estimate of his character; and it brought him at once to the notice of some of the most eminent statesmen, who then graced 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, Windswoth 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 raw art, 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 Congress, to withhold them if it pleased. President Washington about this time offered him the post of Attorney General of the United States; which he declined, as interfering with his lucrative practice. But he continued in the Virginia Legislature. There, federal politics occupied the usual share of attention. A resolution being moved, expressing confidence in the virtue, patriotism, and wisdom of Washington, a member proposed to strike out the word wisdom. "In the debate," Chief Justice himself, "the whole course of the Administration was reviewed, and the whole talent of each party brought into action. Will it be believed, that the word was retained by a very small majority? A very small majority of the Virginia Legislature, acknowledged the wisdom of General Washington?"

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

* We confess a little surprise, at seeing, here, any deduction from that source—Reviever.

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 skilful reasoning, clear illustration, accurate detail, and urban and dignified moderation."

They have always been attributed 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 impersonal form of his positions, and especially with the censor, as much the character of the man as of his writings, with which he allows to the opposing argument its fair strength, without attempting to elude it, or escape from it, by a subtlety. Every line that he has written, bears the stamp of sincerity; and if his arguments fail to produce conviction, they never raise a doubt, nor the shadow of a doubt, that they proceed from it.

"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, 1788. His entrance into this city on the 19th, had the eclat of a triumph. The military corps escorted him from Frankford to the city, where the citizens crowded his lodgings to testify their reverence and gratitude. Public addresses were made to him, breathing sentiments of the liveliest affection and respect. A public dinner was given to him by members of both houses of Congress as an evidence of affection for his person, and of their grateful approbation of the patriotic firmness with which he sustained the dignity of his country during his important mission; and the country at large responded with one voice to 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 newest determination to leave it no more. He was, however, so urgently entreated by General Washington (who sent for him to Mount Vernon for the purpose) to become a candidate for Congress, that he did so; and was elected, in 1790, after a severe contest. Whilst a candidate, President Adams offered him a seat upon the Bench of the Supreme Court; but he declined it. He had not been three weeks in Congress, when, by a fortune as striking as it was mournful, it became his lot to announce to the House, the death of Washington. Never could such an event have been told in language more impressive or more appropriate.

"Mr. Speaker—The melancholy event, which was yesterday announced with doubt, has been rendered but too certain. Our Washington is no more. The hero, the patriot, and the sage of America; the man on whom in times of danger every eye was turned, and all hopes were placed, lives now, only in his own great actions, and in the hearts of an affectionate and afflicted people."

Having briefly alluded to the achievements and services of the deceased, he concluded by offering suitable resolutions, for honoring "the memory of the

* Judge Story.  
† Mr. Bostey.
man, first in war, first in peace, and first in the hearts of his countrymen." The resolutions had been drawn by Mr. Henry Lee, whom a temporary absence of Mr. Madison hindered from presenting them. With characteristic modesty, Mr. Marshall, in the account of this transaction given by him as biographer of Washington, occurs all mention of his own name; saying only, that "a sense of the duties 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 constantly the first in the House, when he dismissed them, nothing more remained to be said; and the impression of his argument effected that of every one else."  

Upon such topics, however dark to others, his mind could by its own clear light

"sit in the centre, and enjoy bright day."  

His speech upon the case of Jonathan Robbins, was a striking example. This man, a subject of Great Britain, had committed a murder 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. The act was furiously assailed by the opposition; and none were more conspicuous than those in that House of Representatives, whom Mr. Livingston. The speeches of Mr. Marshall on this occasion was perhaps one of the most masterly ever delivered in Congress. "It has all the merits, and nearly all the weight of a judicial sentence. It may be said of that speech, as was said of Lord Mansfield’s celebrated Answer to the Prussian Memorial, it was Repulse sans replique—an answer so irresistible, that it admitted of no reply. It silenced opposition; and settled then, and forever, the points of national law, upon which the controversy ended."

He was not in Congress when the famous Sedition Law passed; but he had the merit of voting to repeal the most obnoxious section of it; in opposition to all those, with whom he generally concurred. In May, 1800, he was appointed Secretary of War: but before his entry upon the duties of that office, a rupture occurring between the President and Col. Pickering, he was made Secretary of State in lieu of the latter. It is honorable both to him and his predecessor, that the delicate position in which they stood towards each other, did not interrupt their harmony: but they retained, while both lived, a warm and cordial friendship. Even during the few months that he held this office, Mr. Marshall evinced great ability, in discussing several important questions between our country and England.

"It is impossible to imagine a finer spirit, more fearless, more dignified, more conciliatory, more true to his country, than animates his instructions to Mr. King to the American Minister in London. "His dispatch of September 29th, 1800, is a noble specimen of the first order of State papers, and shows the most finished adaptation of parts for the station of an American Secretary of State."  

On the 31st. of January, 1801, he was appointed Chief Justice of the Supreme Court of the United States: "not only without his own solicitation, (for he had in fact recommended another for the office,) but by the prompt and spontaneous choice of President Adams, upon his own unassisted judgment. The nomination was unanimously confirmed by the Senate."  

It is a remarkable, yet not an extraordinary fact, that his induction into that high office which he so illustrously 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 adorned by the winning graces of his daily actions, is precisely that in which it is hardest to find striking incidents, that stand forth boldly on the page, and rivet the reader’s mind. "Peace" indeed, as Milton said to Cromwell—

"Peace hath her victories No less renowned than War!"

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, which is too common a picture of crimes and misery, where the peaceful and innocent crowd never appear, but give place to the profligate votaries of perverted ambition—and which, like tragedy, is languid and distasteful, unless enlivened by atrocious deeds, and horrid sufferings." We shall not attempt, then, to project 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 country, 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 more perfect.

Mr. Binney. Mr. Binney. Mr. Binney. Mr. Binney.
Mr. Monroe was nominated by Mr. Madison as President of the Convention; and, having been unanimously chosen, was conducted by Mr. Madison and Mr. Marshall to the chair. During the three months of the session, Judge Marshall repeatedly engaged in debate: displaying still that power of reasoning, with that bland courtesy of manner, which had always distinguished him. His voice was now become extremely feeble; so that those who sat far off could not hear him: no sooner therefore did he rise, than the members would press towards him, and strain with outstretched necks to the least satisfactory. 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 month of October, of some of the Scotch merchants who were early settlers in that town. They agreed each to take out some cold mutton for their repeat, and to provide a due quantity of drinks, and enjoy relaxation in that way after the labors of the week. They occasionally invited some others of the inhabitants, who finding the time passed pleasantly, put in the year 1788 to form a regular club, consisting of thirty members, under a constitution, limiting their expenses each day by a sort of exemplary law which prohibited the use of wine and porter.

The Virginia, you know, have always been great insisted on: as to constitutional virtue. Whenever a member died or resigned, but there have been very few resignations, his place was filled by ballot for a new one, who could not be elected without the concurrence of two-thirds of the club. It is said that for many years no vacancy occurred, and a sort of superstition continued to prevail, that to become a member of the club, was to lose longevity. The Arch Deacon, however, as length appeared in all his strength, and made such havoc, that not one of the original members (the venerable Chief Justice of the United States,) is now surviving.

The club consists of judges, lawyers, doctors, and merchants, and the Governor of the Commonwealth has a general invitation, whenever he enters the office. What gave additional interest to this body, some years ago, was the constant attendance (as honorary members) of two venerable clergymen—one of the Episcopal, and the other of the Presbyterian church, who joined in the innocent pastime of the day. They were pious and exemplary men, who discerned no sin in harmless gaiety. Quoit and back-gammon are the only games indulged in, and one of the clergymen was for many years "cook of the week" in showing the dinner. They are gone to their account, and have left a chasm which never will be filled.

Some years ago, an amendment was made to the constitution, which admits the use of porter. Great opposition was made in this innovation, and the destruction of the club was predicted as the consequence. The oppositionists, however, soon became as great consumers of malt and hops as their associates, and now even consent to the introduction of wine at the last meeting of every year, provided there be "a slat in the locker." The members each advance ten dollars to the treasurer at the beginning of the season, and every member is entitled to invite any

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 delightfully punctual in his attendance at these meetings, or who contributed more to their pleasantness: scarcely one, who excited 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-putre of skill in himself or his partner, would spring up and clap his hands, with all the light-hearted enthusiasm of boyhood. Such is the old age, which follows 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. There sat sixty men, about thirty of the respectable inhabitants of Richmond, with a few guests. The day was a fine one, and the free and social intercourse of the members rendered it peculiarly pleasant.
strangers as guests, on paying into the general fund one dollar for each; while the entertainers of the day, consisting of two men, women, grosbeaks, 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 merriments and the day for each your erilable gOllrmand never fails to regale himself on his favorite beverage of the Virginians, mist julps, 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 that club, and all feel it a duty to contribute to his entertainment. It was refreshing to see each man in Chief Justice Marshall, laying aside the reserve of his dignified station, in contemplation with the young men at a game of quoits, with all the enthusiasm of a youth.

Many anecdotes are told of occurrences at these meetings. Such is the partiality 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, after a somewhat erilable measurement, announced, "Mister Marhsall has it a footly," when it was visible to all that the contrary was the fact. A French gentleman (Harrow Queen) was at one time a guest, when the Governor, the Chief Justice, and several of the Judges of the High Court of Appeals, were engaged with others, with clubs off, in a well-contested game. He asked, "If it was possible that the dignitaries of the land could thus intermix with private citizens," and when assured of the fact, he observed, with true Gallic enthusiasm, that "he had never before seen the real beauty of republicanism."

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 finally, and maintained the semblance of a newspaper to him, describes him as "remarkably fond of boys' company—always chatty—and always pleasant." The remnants, having been transferred to Washington in 1809, 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 accomable, and always with a smile on his countenance, when I handed him the Federalist. His kindness of manner won my affections; 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 uninterruptedly 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 little degree, the basis of his greatness, sufficed to render the intercourse of which we speak, an intercourse of the most kindlv, unassuming, 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 undestroyed and unassuming friendship and regard, for which he is indebted to the friendship of Chief Justice Marshall.

When, to all these engaging traits of character, we add that his charitable benevolences were as large as his mind, and as unostentatious as his life; and that in his dealings he was so scrupulously 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 licentian) construction. Having been profoundly—perhaps exasperately—impressed with a dread of the evils attending a feeble 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 thus 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 curtail 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 Exponent of the Constitution of the United States." It may be read in the glowing pages, where Mr. Binney, 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. Binney's admirable Eulogy.

"In a court so peopled with a patience that was never surpassed—patience to bear that which he knew already, that which he disapproved, that which quenched his bias. When he ceased to hear, it was not because his patience was exhausted, but because it ceased to be a virtue. His carriage in the discharge of his judicial business, was faultless. Whether the argument was animated or dull, intricate or superficial, the regard of his expressive eye was an assurance that nothing that ought to affect the cause, was lost by inattention or indifference; and the courtesy of his general manner was only so far restrained on the Bench, as was necessary for the dignity of office, and for the suppression of familiarity.

His industry and powers of labor, when contemplated in connection with his social temper, show a facility that does not generally belong to parts of such strength. There remains behind him nearly thirty volumes of copiously reasoned decisions, greater in dulility and labor, than probably it has been made in any other court during the life of a single judge! yet he participated in them all; and in those of greatest difficulty, his pen has most frequently drawn up the judgment; and in the midst of his judicial duties, he composed and published in the year 1801, a copious biography of Washington, surpassing in authenticity and minute accuracy, any public history with which we are acquainted. He found time also to write his own life, and publish a second edition, separating the History of the American Colonies from the Biography, and to prepare with his own pen an edition of the latter for the use of schools. Every part of it is marked with the scrupulous veracity of a judicial exposition; and it shows moreover, how deeply the writer was imbued with that spirit which will live after all the compositions of man shall be forgotten,—the spirit of charity, which could indulge a history of the Revolution nad of partizans, in which he was a conspicuous actor, without discarding his pages with the slightest inflection of gait. It could not be written with more candid an hundred years hence. It has not been challenged for the want of it, but in a single instance, it has been refuted by hiss, with irresistible force of argument, as well as with unexhausted tenacity of tenacity.

To qualities such as these, he joined an inestimable firmness befitting the office of presiding judge, in the highest tribunal of the country. It was not the result of excited feeling, and consequently never rose or fell with the emotions of the day. It was the constitution of his nature, and sprung from the composure of a mind undisturbed by doubt, and of a heart unapproachable of fear. He thought not of the fleeting judgments and comments of men; and although he was not indifferent to their approbation, it was not the cause by which he was directed, nor the bias which he looked for safety.

His learning was great, and his faculty of applying it of the very first order. But it is not by these qualities that he is so much distinguished from the judges of his time. In learning and industry, in patience, industry, and facility, he has had his equals. But there is no judge, living or dead, whose claims are disparaged by ascribing the first place in the department of constitutional law to Chief Justice Marshall.

For several years past, Judge Marshall had suffered under a most excruciating malady. A surgical operation by Dr. Physick of Philadelphia, at length procured him relief; but a hurt received in travelling, last spring, seems to have caused a return of the former complaint, with circumstances of aggravated pain and danger. Having revisited Philadelphia, in the hope of again finding a cure, his disease there overpowered him; and he died, on the 6th of July, 1835, in the 80th year of his age, surrounded by three of his children. His eldest son, Thomas, journeying to attend his death bed, had been killed by the fall of a chimney in Baltimore, but eight days before.

The love of simplicity and the dislike of ostentation, which had marked Chief Justice Marshall's life, displayed itself also in his last days. Apprehensive that his remains might be encumbered with the vain pomp of a costly monument and a hurdy-gurdy epitaph, he, only two days before his death, directed the common grave of himself and his consort, to be indicated by a plain stone, with this simple and modest inscription:

"John Marshall, son of Thomas and Mary Marshall, was born on the 24th of September, 1755, intermarried with Mary Willis Ambler the 3rd of January, 1783, departed this life the day of—18—"
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 stamps with disdain, on all her flower-decked plaits 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 a 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 difficult, followed as certainly, as cogently, as inevitably, as any demonstration in Euclid.

"Possessing such the instinctive readiness and precision of his mind, that no superfluous thought, or even word, ever presents itself, and still he says every thing that seems appropriate to the subject. This perfect exemption from needless incumbrance of matter or ornament, is in some degree the effect of an aversion to the labor of thinking. So great a mind, perhaps, like large bodies in the physical world, is in difficulty set in motion. That this is the case with Mr. Marshall's, is manifest, from his mode of entering on an argument, both in conversation and in public debate. It is difficult to cause his faculties: he begins with reluctance, hesitation, and vacuity of eye: presently, his Orati on becomes less broken, his eye more fixed, until, finally, his voice is full, clear, and rapid, his manner bold, and his whole face lighted up, with the mingled fires of genius and passion: and he pours forth the unbroken stream of eloquence, in a current deep, majestic, smooth and strong. He reminds one of some great bird, which flounders and flounders on the earth for a while, before it acquires impetus to sustain its soaring flight."

"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 close 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 favorite argument. On the contrary, every sentence is progressive; every idea sheds new light on the subject; the listener is kept perpetually in that sweetly pleasurable 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 hearers."

"All his observations on the intellectual character of Judge Marshall, are from the pen of Francis W. Gilbert—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 pro-