1892

John Marshall and the Constitution

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John Marshall and the Constitution.

John Marshall was born at Germantown in Fanquier County in the State of Virginia on the 24th. of September, 1755. His father was Thomas Marshall of the same State, a companion in boyhood of Washington and friends ever afterwards, he served with great distinction in the Revolutionary war, as a colonel in the line of the Continental army. Colonel Marshall was a planter of a very small fortune and had received but a narrow education. These deficiencies were supplied, however, by the gifts of nature which were improved and cultivated by observation and reflection and by extensive acquaintance with books. He was equally beloved and admired by his children, at the period of life when they were fully able to appreciate his worth and compare him with other men of known eminence.
"I have myself* says Judge Story, *often heard the Chief Justice speak of him in terms of deepest affection and reverence. It was a theme on which he broke out with a spontaneous eloquence and, in the spirit of the most persuasive confidence, he would delight to expatiate upon his virtues and talents. 'My father' (would he say with kindled feelings and emphasis) 'my father was a far abler man than any of his sons. To him I owe the solid foundation of all my own success in life.'"

Such praise from such a source is beyond measure precious. It warms, while it elevates. It is a tribute of gratitude to the memory of a parent, after death has put the last seal upon his character, and at a distance of time when sorrow has ceased its utterance and left behind it the power calmly to contemplate his excellance.

Thomas Marshall married Miss Mary Keith, by whom
he had fifteen children all of which, females as well as males, possessed superior intellectual endowments.

John, the eldest, was of course the first to engage the solicitude of his father. In the local position of the family, at that time almost upon the frontier settlement of the county (for Fanquiers was a frontier county) it was natural, that the early education of all the children should devolve upon its head. Colonel Marshall superintended the studies of his eldest son, and gave him a decided taste for English literature, and especially for history and poetry.

At the age of twelve young Marshall had transcribed Pope's Essay on Man and also some of his moral essays and had committed to memory many of the most interesting passages of that distinguished poet. The love of poetry, thus awakened in his warm and vigorous mind, never ceased to exert a commanding influence over it.

The contrast, indeed, is somewhat striking between that
close reasoning, which almost rejects the aid of ornament, in the decisions of the Chief Justice, and that generous taste, which devotes itself with equal delight to the works of fiction and poetry. Yet the union has been far less uncommon in the highest classes of minds than slight observers are apt to imagine.

Lord Hardwicke and Lord Mansfield had an ardent thirst for great literature, and each of them was a cultivator if not a devotee, of the lighter productions of the imagination.

There being at that time no school in the part of the country where Colonel Marshall resided, his son was sent at the age of fourteen, to Westmoreland, a hundred miles from home and was placed under the instruction of a Mr. Campbell, a very respectable clergyman, with whom he remained a year, and then returned home and was put under the care of the Rev. Mr. Thomp-

a Scotch clergyman, son, the pastor of the parish. He pursued his classi-
c al studies under this gentleman's direction for about a year; and at the termination of it he had commenced reading Horace and Livy. His father, however, continued to superintend his study in English literature, to cherish his love of knowledge, to give solid cast to his acquirements, and to store his mind with the most valuable materials.

But not to study alone nor to the companionship of such a father, is the eminence of John Marshall to be solely attributed. In addition to the native vigor of his faculties, much was owing to the circumstances amid which he grew up. In a thinly populated region of country he had, necessarily, but little society, his mind was thrown upon itself, and his lonely meditations created and confirmed habits of thought and reflection. The wild and mountainous scenery could not fail to affect a mind like his, reverant and impresible to the varied claims of nature. The simple style of living
too, then common in that part of Virginia, the easy and friendly footing on which all social intercourse was conducted, were both perceptible, later on, in his characteristic simplicity and ready sympathy with humanity, in all its relations, without regard to rank or fortune, which, with his other qualities, so endeared him to his countrymen.

He was fond of athletic exercises, and naturally enough in a region abounding in game, in field sports also. These tastes and habits gave him a firm and robust constitution, and even in his years he exhibited the vigor and freshness of youth. Having selected the law as his future profession, he began the study of it but had not made much progress in the perusal of Blackstone's Commentaries, before the threatening aspect of public affairs withdrew and concentrated his energies upon different pursuits.

It was about the time when young Marshall entered
his eighteenth year that the controversy between Great Britain and her American Colonies which ended in the establishment of independence of the latter, began to assume a portentous aspect. This vast theme of conversation involving interests of such vast importance and consequences of such enduring influence that every patriot felt himself called upon by a sense of duty to rouse himself for the approaching exigency. Young Marshall could not be indifferent to it. He entered into it with all the zeal and enthusiasm of a youth, full of love for his country and liberty, and deeply sensible of its rights and wrongs. He devoted much time to acquiring the first rudiments of military exercise, in a voluntary, independant company, composed of gentlemen of the county; to training a militia company in the neighborhood and to reading the political essays of the day.

In the summer of 1775, he received an appointment
as first Lieutenant in a company of minute men, of
which his father was major, enrolled for actual ser-
vice, who were assembled in battalion on the first of
the ensuing September. Their appearance in uniform
was peculiar and striking: dressed in green hunting
shirts home made with the words "Liberty or Death"
in their hats, buck-tails; in large white letters or their bosoms; in their belts
tomahawks and scalping knives, they excited the terror
of the inhabitants as they marched to the front.

In July 1773, he was appointed first Lieutenant
in the eleventh Virginia regiment on the continental es-
tablishment, and in the course of the succeeding win-
ter he marched to the North, where in May, 1777, he
was promoted to the rank of captain, in which capacity
in the action
he served at Iron Hill and in the memorable battles of
Brandywine, Germantown, and Monmouth.

That part of the Virginia line which was not or-
dered to Charleston, S.C., being in effect dissolved
by the expiration of the term of enlistment of the soldiers, the officers (among whom was Captain Marshall) were in the winter of 1779-80 directed to return home in order to take charge of such men as the state legislature should raise for them. It was during this session of inaction, that he availed himself of the opportunity of attending a course of law lectures at William and Mary's, by Mr. Wythe, afterwards Chancellor of the State; and a course on natural philosophy, given by Mr. Madison, then president of the college and subsequently Bishop of Virginia. He was connected with the institution until the summer vacation of 1780, and soon after was admitted to the bar.

In October he returned to the army and continued in the service until the termination of Arnold's invasion, when he resigned his commission. From that time until the courts of law were reopened after the surrender of Cornwallis, Marshall devoted himself to
with unremitting attention to the study of his future profession. Immediately upon their reopening, he commenced the practice of law, and soon rose into distinction at the bar. Once placed in the line of employment, his extraordinary talents could hardly fail to make a strong impression upon whoever witnessed their display. For without possessing a single attribute that we naturally ascribe to the orator, without beauty of style, melody of voice, grace of person, or charm of manner, he nevertheless was as distinguished as an advocate as he afterwards became as a judge. "He possessed one original and almost supernatural faculty," says Mr. Wirt, "the faculty of developing a subject by a single glance of his mind and detecting at once the very point on which each controversy depends. No matter what the question; though ten times more knotty than the "gnarled oak", the lightning of heaven is not more rapid or more resistless than his astonishing pen-
etration. Nor does the exercise of it seem to cost
him any effort. On the contrary it is as easy as vis-
ion. I am persuaded that his eyes do not fly over a
landscape and take in various objects with more prompt-
itude and facility, than his mind embraces and analyzes
the most complex subject."

In the spring of 1782, he was elected a member of
the State legislature, and, in the autumn of the same
year, a member of the executive council.

On the third day of January 1783, he was married t
to Mary Willis Ambler, a daughter of Jacqueline Ambler,
then treasurer of Virginia, to whom he had become at-
tached before he left the army. This lady lived for
nearly fifty years after her marriage, to partake and
enjoy the distinguished honors of her husband.

In 1784, he resigned his seat at the council board, in
order to return to the bar, but he was immediately af-
terwards again elected to the legislature for the coun-
ty of Fanquiers. In 1787 he was elected a member
from the county of Henrico, and though at that time
earnestly engaged in the duties of his profession,
he embarked largely into the political questions which
then agitated the State and indeed the whole nation.
The whole country was divided into two great parties,
the one of which endeavored to put an end to the public
evils by the establishment of a government over the
Union, which should be adequate to all its exigencies
and act directly on the people; the other was devoted
to state authority, jealous of all federal influence,
and determined at every hazard to resist its increase.

Marshall at once arrayed himself on the side of Wash-
ington and Madison for the establishment of a national
government.

Both Madison and Marshall were members of the
convention subsequently called in Virginia for the rat-
ification of the Federal Constitution, and throughout
the vigorous and hotly contested debates in that body, the defense of the Constitution was uniformly and most powerfully maintained by Mr. Marshall. The adoption of the Constitution of the United State having been assumed, Mr. Marshall immediately formed the determination to relinquish public life and to devote himself to the arduous duties of his profession, but was again prevailed upon and with great reluctance yielded to the public wishes and was again elected to the State legislature as a representative from the city of Richmond, in which capacity he continued in the years 1788, 1789, 1790 and 1791. During this period every important measure in the national government was discussed in the State legislature with great freedom and shrewdness. On these occasions Mr. Marshall vindicated the national government with a manly and zealous independence.

After the termination of the legislature in 1791, Mr. Marshall voluntarily retired. In 1795 he was a-
gain elected to the State legislature, but against his wishes and without his consent.

The Jay treaty had at this time created an unparalleled ferment and excitement. At a meeting of the citizens of Richmond, Marshall introduced resolutions strongly favorable to the treaty, and approving the conduct of the executive, and supported them in an argument of great power. His resolutions were adopted, but marked as was his success on this occasion, it was in the debate in the legislature that he gave one of the most memorable displays of his genius. He demonstrated so clearly the competency of the executive to make the treaty, that all objection to it on constitutional grounds was abandoned.

The death of Mr. Bradford, the Attorney General, in the summer of 1795 gave Washington an opportunity to mark his appreciation of the character and abilities of Marshall, by tendering him the vacant post. This
offer he declined upon the ground that it would interfere with his engagements at the Bar in Virginia. Again in the following summer Washington called upon him to enter the public service, as successor to Monroe at Paris; but again he declined on the ground that the crisis of his affairs rendered it impossible for him to leave the United States. General Pinckney of South Carolina was appointed in his stead. Mr. Marshall was not, however, long permitted to act upon his own judgment and choice. The French government refused to receive General Pinckney as minister from the United States and the administration, for the preservation of peace, resorted to the extraordinary measure of sending a commission of three envoys, and in 1797 Mr. Adams, who had succeeded to the Presidency, appointed Mr. Marshall one of the envoys in conjunction with General Pinckney and Mr. Gerry. The mission was unsuccessful and Mr. Marshall returned to America in the summer of
1798

Marshall was then elected and took his seat in Congress in 1799 and participated actively in the debates of the ever memorable session of 1799-1800. In May 1800 Mr. Marshall was without the slightest personal communication nominated by the President for Secretary of War. He immediately wrote a letter requesting the nomination to be withdrawn. It was not, and his appointment was confirmed by the Senate; but in less than a week afterward Marshall was appointed Secretary of State, an appointment in every view most honorable to his merits, and for which he was in the highest degree qualified, but one which he was destined to retain but shortly, for on the 31st. day of January 1802, he became Chief Justice of the United States.

He had now attained the age of forty five. His personal appearance at this period of his life has been described thus: "The Chief Justice of the United
States is in his person, tall, meagre, emaciated; his muscles relaxed and his joints so loosely connected as not only to disqualify him apparently for any vigorous exercise of the body but to destroy anything like harmony in his air and movements. Indeed in his whole appearance and demeanor; dress, attitudes, gesture; sitting, standing or walking he is as far removed from the idolized graces of Lord Chesterfield 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 unerring index, possess an irradiating spirit which proclaims the imperial powers of the mind that sits enthroned therein."

Pinckney summed up his whole character when he de-
clared that Marshall was born to be Chief Justice of whatever country his lot might happen to be cast in. He stood pre-eminent and unrivaled, as well upon the unanimous testimony of his great contemporaries, as by the whole subsequent judgment of his countrymen.

It is no disparagement to the eminent and learned men who shared his labors, to say that Chief Justice Marshall was not only the official head, but by far the most conspicuous and influential member of the Supreme Court during the thirty four years of his service. In his brief address at the unveiling of the statue erected to John Marshall by the Bar and Congress of the United States at Washington, D. C., Chief Justice Waite said: "He was appointed Chief Justice in January, 1801 and took his seat on the bench at the following February term. The Court had then been in existence but eleven years, and in that time less than one hundred cases had passed under its judgment. In short
the nation, the constitution and the laws were in their infancy. Under these circumstances, it was most fortunate for the country that the great Chief Justice retained his high position for thirty-four years, and that during all that time, with scarcely any interruption, he kept on with the work he showed himself so competent to perform. He kept himself at the front on all questions of constitutional law and consequently his master hand is seen in every case on the subject. And when at the end of a long and eminent career he laid down his life, he and those who so ably assisted him in his great work had the right to say that the judicial power of the United States had been carefully preserved and wisely administered. The nation can never honor him or them too much for the work they accomplished.*

Another interest less important, but perhaps to the lawyer more fascinating, attaches to the life of
Marshall. He was the central figure—the cynosure—in what may well be called the Augustan age of the American Bar; golden in its jurisprudence, golden in those charged with its service and sharing in its administration, we cannot expect, since change is the law of systems as well as of individuals and of all human affairs, we can never expect to see hereafter a jurisprudence so simple, so salutary, so elevated as the jurisprudence of those days. Perplexed as the law has become with infinite legislation, confused and distracted with a multitude of incongruous and inconsistent precedents that no man can number, it is a different system now, although still the same in name, from that which Marshall dealt with. We can never expect to behold again such a circle of advocates as gathered around the tribunal over which the Great Chief Justice presided. The Livingslons, Emmet, Oakley, Dexter, with Webster, Pinckney, Sergeant, Binney, Hop-
kinson, Dallas, no need to name them all, their names are household words.

The field which Marshall now entered upon was one absolutely untried. Never before had there been such a science in the world as the law of a written constitution of government. There were no precedents, courts of justice usually sit to determine the existing law in the light of authorities, precedents and statutes. Originality is neither expected nor tolerated. An original field of judicial exertion very rarely offers itself. Such was the task that addressed itself when Marshall took his seat upon the bench—a task of momentous importance, fraught with infinite difficulty, on a field without precedent, and under the most peculiar and critical circumstances.

It is a singular fact, that although the Supreme Court had been in existence twelve years before 1801, when Marshall was appointed, and though three Chief
Justices with brief terms of office had preceded him, only six decisions of that court had been made on the subject of constitutional law, in two of which no opinion was given and of which only two were of any importance. (Chisholm v. Georgia, 2 Dallas 14; Hylton v. U.S., 3 Dallas 171.) Between that time and 1835, when Marshall died, sixty two decisions involving questions of constitutional law, were given, in thirty six of which the opinion of the court was written by Marshall, and his only dissenting opinion on a constitutional question was filed by Marshall in the case of Ogden v. Saunders, 12 Wheaton 332. In which case it is hardly necessary to add that as the half century that has passed away since all of these decisions were rendered, has completely established and confirmed and rendered the soundness and the wisdom of the law they involve, so experience has likewise shown, that in this solitary instance in which his opinion was rejected,
the Chief Justice was right.

The first question, in order of time and perhaps in importance, was as to the power of the court to declare void an act of Congress repugnant to the Constitution; which was determined in Marbury v. Madison, 1 Cranch 137, at the February term, 1803. The nomination of Marbury as Justice of the Peace for the District of Columbia having been confirmed by the Senate, his commission was made out, signed, and sealed but had not been delivered to him; and Mr. Madison, Secretary of State under Jefferson, refused to deliver it. The office being one not subject to removal by the President, Marbury claimed that his title to it was complete, and made application directly to the Supreme Court under the thirteenth section of the Judiciary act, which authorized the court "to issue writs of mandamus, in cases warranted by the principles and usages of the law, to any courts appointed or persons holding office, un-
der the authority of the United States," for a writ of 
mandamus commanding the Secretary to deliver the com-
mission.

It was unanimously held in an opinion by the 
Chief Justice: "That when the commission was signed 
and sealed, the appointment was complete and vested in 
Marbury a legal right to the office. That to withhold 
that commission was a violation of that right, for 
which wrong a writ of mandamus, if issued by the court 
of competent jurisdiction, was the appropriate legal 
remedy. But that the provision of the Judiciary Act 
purporting to give the Supreme Court jurisdiction in 
a proceeding original and not appellate, to issue writs 
of mandamus to public officers, was not warranted by 
the Constitution, and was therefore inoperative and 
void, and the application must be refused.

As to the real decision of the Court, namely on 
the question of jurisdiction and its power to declare
void and unconstitutional an act of Congress, the
reasoning and conclusions of the Chief Justice have
commanded universal admiration and are so characteris-
tic of his mode that a brief extract may be allowed:

"The question", said the Chief Justice, "whether
an act repugnant to the Constitution can become the
law of the land, is a question deeply interesting to
the United States; but happily not of an intricacy
proportioned to its interest. If an act of the Legis-
lature repugnant to the Constitution is void, does it
notwithstanding its invalidity, bind the courts and
oblige them to give it effect? or in other words,
though it be not law, does it constitute a rule as
operative as if it was law? This would be overthrowing
in fact what was established in theory; and would seen,
at first view, an absurdity too gross to be insisted
upon. It shall, however, receive a more attentive con-
sideration.
It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other the courts must decide on the operation of each. So if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty. If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution and not such ordinary act, must govern the case to which both apply."

This unanswerable reasoning applies to every...
written constitution under there exists an independent judiciary and a legislature with limited powers; and it is as much the duty of the lower as of the higher courts, in every case within their jurisdiction to reject as no law, a supposed law not warranted by the constitution. But in applying it, Marshall was as careful not to overstep the limits of judicial duty as he was fearless in fulfilling it, repeatedly holding that the courts ought never "on slight implication and vague conjecture" to pronounce an act of the legislature void, "unless upon a clear and strong conviction of its incompatibility with the Constitution".

This unique feature of our system has attracted more than any other the attention of thoughtful students. De Tocqueville admiringly dwelt upon this power, pointing out its limits but declaring that "within these limits the power vested in the American courts of justice, of pronouncing a statute to be unconstitu-
tional, forms one of the most powerful barriers which has ever been devised against the tyranny of political assemblies."

These limits are precisely what makes it a judicial and not a political power—a distinction which Marshall strongly maintained. So, questions purely political or which are by the Constitution and laws committed to either the executive or legislative discretion are not within the province of the courts. This line was sharply drawn when Marshall held in 1804 (in Little v. Barrene, 2 Cranch 170) that the commander of a public armed vessel, held for the illegal seizure of private property, was liable in damages for the trespass, though he was acting under the direct instruction of the President.

Nor can it be said that the courts in thus declaring the law control the legislature. Their whole concern is whether it is a valid exercise of the legis-
lative power. If it is they must enforce it; if not, they must reject it. "The judicial department," said Marshall in Osborn v. U.S. Bank, 9 Wheat. 738, "has no will in any case, judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the law."

Again in Fletcher v. Peck, 6 Cranch 131, after rebuking an attempt, in a suit on a private contract between individuals, to collaterally impeach a legislative act, as having been corruptly passed, as being an inquiry "indecent in the extreme"; he proceeded to hold that act void because it impaired the obligation of a contract.

It was inevitable that the extreme advocates of State rights should try conclusions with the national authority as administered in the Federal Courts. This was attempted now by State enactments in disregard of
their decisions, and again by the refusal of the state courts to acknowledge the supervisory power of the Supreme Court; the eleventh amendment to the Constitution, prohibiting suits by a citizen against a state, being in either case relied upon. The first collision occurred in the prize case of U. S. v. Peters (6 Cranch 136), a case now seldom mentioned but involving most important issues. The sloop "Active" was condemned in 1777, by the Pennsylvania Admiralty Court as a prize to an armed vessel of that State, overruling the claims of Olmstead and others. In pursuance of which the sloop was sold and the marshall paid over the money to the State judge, and by him afterward to the State Treasurer, Rittenhouse, who invested it in loan certificates.

In January, 1803 the claimant obtained in the U. S. District Court of Pennsylvania, a personal judgment for the proceeds against Rittenhouse's executrixes and
was about to enforce it, when the Pennsylvania Legislature passed an act claiming the money for the State, denying the jurisdiction of the court, and the validity of its judgment. Efforts to force a settlement having failed, the claimants in 1808 applied to the Supreme Court of the United States for a writ of mandamus, commanding the district judge to enforce the judgment.

After the fullest consideration it was granted. The opinion of the Court by the Chief Justice left no doubt, either as to the nature or gravity of the real issue. He said: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery; and the nation is deprived of its means of enforcing its laws by the instrumentality of its own tribunals. So fatal a result must be deprecated by all, and the people of Pennsylvania as well as the
citizens of every other state must feel a deep interest in resisting principles so destructive of the Union and in averting consequences so fatal to themselves."

To the argument that the Federal Courts were deprived of jurisdiction in the case by the Eleventh Amendment, he replied: "The amendment simply provides that no suit shall be commenced or prosecuted against a state. The state cannot be made a defendant to a suit brought by an individual. But it remains the duty of the courts of the United States to decide all cases brought before them by citizens of one state against citizens of a different state, where a state is not necessarily a defendant."

Thus backed by the Supreme Court the district judge issued his writ. When the attempt was made to serve it, armed forces were called out by the Governor of Pennsylvania to resist; the United States then summoned two thousand men and a conflict might have
taken place, had not the legislature passed another act opening the door for retreat. The state authorities gave way, the writ was served and the money paid over, and furthermore the forces called out by the Governor of Pennsylvania were arrested, indicted, tried and adjudged guilty of unlawful resistance to civil process, and a sentence of fine and imprisonment imposed and executed.

This vital question was again presented in 1821 in the great case of Cohens v. Virginia (3 Wheat. 264) in which the opinion was delivered by the Chief Justice, and may easily be considered one of his grandest efforts.

The case was a simple one. The Cohens were indicted in the Sessions Court of Norfolk for selling lottery tickets in Virginia contrary to State Statute. Their defence was that the lottery was established and the tickets issued by the city of Washington, under auth-
ority of its charter granted by Congress; but it was
overruled and a fine of $100 imposed. The Sessions
court being the highest State court having jurisdiction
of the case, they sued out a writ of error from the
Supreme Court of the United States. The counsel for
Virginia moved to dismiss the writ on three grounds;
that a State was made a defendant contrary to the Elev-
enth Amendment, that no writ of error lay in any case
from the Supreme Court to a state court, and that neith-
er the Constitution nor any law of the United States
had been violated by the judgment complained of.

The opinion of the Court fills nearly sixty print-
ed pages. Its opening paragraph is a most impressive
example of Marshall's extraordinary power of terse and
luminous statement. and his method of exposing and de-
stroying fallacies by reducing them to their simplest
terms and then inexorably deducing from them fatal con-
clusions. It also shows plainly his profound convic-
tion, not only that the Constitution is the Supreme Law of the land, but that its provisions were designed and ample to maintain its supremacy. Step by step he proceeds with remorseless logic to rend asunder the network of technical argument with which it was sought to fetter the judicial power. Distinguishing the two great classes of jurisdiction under the Constitution, one arising from the character of the parties, the other depending upon the nature of the controversy, he says:

"It (the Constitution) marks with lines too strong to be mistaken, the characteristic distinction between the government of the Union and those of the States. The general government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the Constitution, and if there be any who deny its necessity, none can deny its authority."

In proceeding he maintains that this was not a
suit against a State but a prosecution by the State, to which a defence under the laws of the United States was set up; and that the writ of error merely removed the record into the supervisory tribunal, in pursuance of the constitutional right of citizens to have their defence re-examined there.

So at pages 387-9, in a defence of the Constitution, he says: "A constitution is framed for ages to come and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests, and its framers must be unwise statesmen indeed, if they have not provided it, as far as its nature will permit, with the means of self preservation from the perils it may be destined to encounter. . . . The framers of the Constitution were indeed unable to make any provision which should protect that instrument against a general combination of the States or of
the people, for its destruction; and conscious of this inability, have not made the attempt. But they were able to provide against the operation of measures adopted in any one State whose tendency might be to arrest the execution of the laws, and this it was the part of true wisdom to attempt. We think they have attempted it."

In the very important case of Mc.Culloch v. Maryland, decided in 1819, the question arose as to the constitutional power of Congress to charter the United States Bank. This power the Chief Justice affirmed in one of his most elaborate celebrated opinions, in which he stated the rule in these words: "Let the end be legitimate, let it be within the scope of the Constitution, and all the means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."
By this case and the cases of Osborn v. Bank of United States, 9 Wheat. 738 and Weston v. Charleston, 2 Peters 449, the general principle was established, that the States have no power, by taxation or otherwise, to impede, burden or in any manner control any means or measures adopted by the government for the execution of its powers.

The case of Gibbons v. Ogden, 9 Wheat. 1, followed by Brown v. Maryland, 12 Wheat. 419, and Wilson v. Blackbird Creek Marsh Co., 2 Peters 245, presented questions whose importance, great even then, has been immensely increased by the unparalleled development of the internal commerce of our country. They involved the construction of that clause of the Constitution, which confers on Congress power "to regulate commerce with foreign nations and among the several States and with the Indian tribes".

In Gibbons v. Ogden, an injunction granted by
Chancellor Kent, was sustained by the highest appellate court of New York, restraining Ribbons from navigating the Hudson river with steamboats, duly licensed for the coasting trade under the act of Congress, on the ground that he was thereby infringing the exclusive right, granted by the State of New York to Robert Fulton and Livingston and by them assigned to Ogden, to navigate all the waters of that State with vessels moved by steam. In holding the State law unconstitutional, as an interference with inter-state commerce, the Chief Justice said: "What is commerce among the States? and how is it to be conducted? Commerce among the States must of necessity be commerce with the States.

The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several States. What is this power? It is the power to regulate; that is to prescribe the rule by which commerce is to be governed. This power, like
all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution."

In this case, perhaps more than others, are the most exact definitions and accurate criticism of constitutional and statute provisions. When we consider how vast must be the reach, how great the beneficence of these principles, which conduct so peaceably the enormous commerce among the states, with its commercial rivalry, its mutually destructive and retaliatory legislation, we can realize the importance of this great decision of Marshall's. In one of the latest judicial constructions of the Inter-State Commerce Act, Mr. Justice Lamar, rendering the opinion of the Court (128 U.S. Rep. 13, 17.), quotes largely from "that great opinion" of Chief Justice Marshall in Gibbons v. Ogden.
In Brown v. Maryland, the question was of the validity of the State law requiring an importer to pay a State license tax on foreign imported goods before being permitted to sell them. It was held void, both as in conflict with the powers of Congress under the decision of Gibbons v. Ogden, and as a duty upon imports such as prohibited by the Constitution.

In Wilson v. Blackbird Creek Marsh Co., a State law was held valid, which authorized a dam across a creek navigable from the sea within the ebb and flow of the tide, on the ground that it was not in conflict with any act passed by Congress, implying that the power of Congress to regulate commerce was exclusive only when exercised. A like construction had already been placed upon the power of Congress to pass uniform bankrupt laws, in the important case of Sturges v. Crowninshield, 4 Wheat. 193, where it was held that until Congress exercised that power, States were not for-
bidden to pass a bankrupt law, providing it did not violate provisions concerning contracts. This proposition has never been questioned.

Under the point involving the sanctity of contracts were the important cases of Fletcher v. Peck and Sturges v. Crowninshield (already considered), Ogden v. Saunders, and Trustees of Dartmouth College v. Woodward.

The case of Ogden v. Saunders, decided in 1827, (12 Wheat. 213) involved the only constitutional question upon which the majority of the Court ever differed from the Chief Justice. The difference, in brief, was this. The majority of the Court held that the municipal law in force when a contract is made is part of the contract itself; and that if such law provides for the discharge of the contract upon prescribed conditions, its enforcement upon these conditions does not impair the obligation of the contract, of which the law was
itself a part.

Marshall, on the other hand, maintained in an elaborate and powerful opinion, that however an existing law may act upon contracts when they come to be enforced, it does not enter into them as a part of the original agreement; and that an insolvent law that released the debtor upon conditions not, in fact, agreed to by the parties themselves, whether operating on past or future contracts, impaired their obligation, and as has already been stated, time has shown the weight of Marshall's argument and the correctness of his position.

The case of Dartmouth College (4 Wheat. 518), from the importance of the principle it established, namely that a grant of corporate powers is a contract, the obligation of which the States are forbidden to impair, attracted great attention at the time and has lost but little of its interest since.
The facts of the case were as follows. A charter was granted to Dartmouth College in 1769 by the Crown on the representation that property would be given the college if chartered; and after the charter was granted, property was actually given. In 1816, the legislature of New Hampshire passed three acts amending the charter, which amendments the trustees would not accept. They invoked the aid of the State courts, but judgment being given against them, they carried their case to the Supreme Court of the United States.

The decision in this case is one of Marshall's most famous, and is often cited as the one which established the inviolability of contracts under the Constitution, but the controversy turned rather on the construction of the charter of Dartmouth College, than upon the construction of the Constitution; whether there was a grant of political power which the State could resume or modify at pleasure, or a contract for
the security and disposition of property bestowed in trust for educational purposes.

In holding it to be the latter, Marshall said:

"This is plainly a contract to which the donors, the trustees, and the Crown (to whose rights and obligations New Hampshire succeeded), were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal estate has been conveyed to the corporation.

It is, then, a contract within the letter of the constitution, and within its spirit also, unless the fact that its property is invested by the donors in trustees for the promotion of religion and education, for the benefit of persons who are constantly changing, though the objects remain the same, shall create a peculiar exception taking this case out of the prohibi-
tion contained in the Constitution." The Court in its continuing opinion found this no exception and therefore that the action of the legislature was repugnant to the Constitution of the United States and consequently void.

Such may be briefly stated to be a few of the more important opinions of Marshall, and their influence upon many of the most important constitutional questions of his time, settling forever afterwards the points to which he devoted the native strength of his mind, his unrivalled penetration, and his magnificent powers of analysis and combination.

In forming his principles he depended more upon general principles than cases, though he yielded all proper respect to authority. "He seized", says Judge Story, "as it were by intuition, the very spirit of judicial doctrines, though casued up in the armour of centuries; and he discussed authorities, as if the
very minds of the judges themselves stood disembodied before him."

Marshall laid the foundations and erected no scaffolding or, as Story says: "When I examine a question I go from headland to headland, from case to case; Marshall has a compass, puts out to run, and goes directly to his result."

The Supreme Court in his day, was an object of great attraction, and he the most interesting figure of the scene. Miss Martineau, in her Western Travel, Vol. I., p. 274, gives a beautiful description of the Court in those days: "I have watched the assemblage while the Chief Justice was delivering judgment; the three judges on either hand gazing at him more like hearers than associates; Webster standing firm as a rock, his large, deep-set eyes wide awake, and his whole countenance in that intent stillness which instantly fixes the eye of a stranger; Clay leaning a-
gainst the desk in an attitude, whose grace contrasts
strangely with the slovenly make up of his dress, his
snuff box for the moment unopened in his hand, his
small gray eyes and placid half-smile conveying an ex-
pression of pleasure which redeems his face from its
usual unaccountable commonness; the Attorney General
his fingers playing among his papers, his quick black
eyes, and thin tremulous lips for once fixed, his
small face pale with thought, contrasting markedly
with the other two; groups of idlers and listeners,
the newspaper corps, the dark Cherokee Chiefs, the
stranglers from the far West, the gay ladies in their
waving plumes, and the members of either house that
have stepped in to listen—all these have I seen at
one moment constitute one silent assemblage, while
the mild voice of the Chief Justice sounded through the
Court."

John Marshall died upon the 8th, day of July, 18-
35. After placing the court, over which he presided, in the highest respect and confidence of a people strongly imbued then, as now, with a loyal spirit and trained to reverence the law. And pre-eminently among the influences which cultivated that spirit, and to which that training is due, must be reckoned the lucid and irresistible reasoning, the profound political insight, the splendid courage, tempered by judicial caution, the exalted patriotism and majestic character of John Marshall, the Expounder of the Constitution.
Marshall's Constitutional Decisions.

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