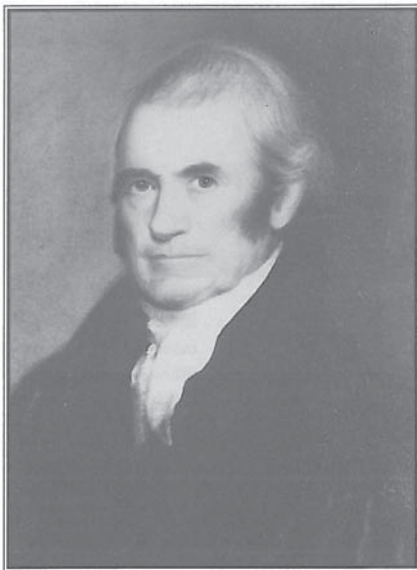


John Marshall

1801-1835



Source: Library of Congress

JOHN MARSHALL was born on the frontier near Germantown, Virginia, September 24, 1755. He was the eldest of fifteen children of Thomas Marshall, a member of the gentry, who served in the House of Burgesses from Fauquier County and as the county's representative to the Virginia Provincial Convention of 1775. Marshall's mother, Mary Randolph Keith Marshall, was the daughter of an Anglican minister, and through her the family was related to the large and prominent Randolph family, which included Thomas

Jefferson. Young Marshall was tutored at the Westmoreland County academy conducted by Rev. Archibald Campbell; a fellow student was future president James Monroe. Subsequently, Marshall received instruction from James Thompson, an Anglican minister assigned to Fauquier County.

When hostilities broke out in Virginia following the battles of Lexington and Concord, Marshall, at age twenty, was chosen as lieutenant in the Culpeper Minute Men and fought in the battle of Great Bridge.



Sent on a mission to France to reduce hostilities and avert war, John Marshall, Elbridge Gerry, and Charles Cotesworth Pinckney were asked by agents of Talleyrand, the foreign minister, for a \$250,000 bribe and a \$10 million loan to France before they would even consider holding talks. This anti-French cartoon depicts the insulted Americans refusing to pay the five-headed French Directory, while French revolutionaries feast on frogs in the shadow of a guillotine.

Source: Huntington Library and Art Gallery

Returning home he was appointed lieutenant in the Eleventh Virginia Continental Regiment. Although his company participated in a number of regimental realignments, Marshall, who was promoted to captain, served with many of the same men, leading them in the battles of Brandywine, Germantown, and Stony Point.

After his war service Marshall went back to Virginia and studied law under George Wythe for three months in 1780 at the College of William and Mary. He was admitted to Phi Beta Kappa and, after returning to his native Fauquier County, to the Virginia bar. Marshall moved to Richmond in 1783, drawn to the capital city by his desire to practice in the central courts and the highest court, the Court of Appeals. Richmond was also the home of Mary Willis Ambler, the daughter of the state treasurer, whom Marshall had courted for several years. They were married in January 1783, and had ten children, raising six to adulthood in their relatively modest town residence near the state capitol complex. Polly, as Mary Marshall was called, suffered from nervous disorders and chronic illness most of her life.

Marshall's account books document a steady expansion in the size of his law practice, which increasingly

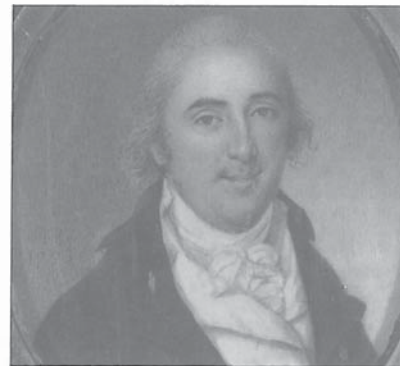
centered around arguing appeals in the General Court, the High Court of Chancery, and the Court of Appeals. With the ratification of the federal Constitution in 1788, new legal business developed from the collection of pre-Revolutionary commercial debts owed to British mercantile firms by prominent Virginia planters. Marshall became one of the leading attorneys defending Virginians in the U.S. District Court of Virginia, and as a consequence he was selected to be lead counsel in arguing the landmark case, *Ware v. Hylton*, at the 1796 term of the U.S. Supreme Court. This case resulted in a ruling that Virginians could not be protected from actions brought by their British creditors that were based, in part, upon the provisions of the 1783 and 1794 treaties with Great Britain.

Before 1797 Marshall's political career was closely tied to his residence in Richmond. Perennially he held legislative office, either as a member of the Virginia House of Delegates or as a member of the Governor's Council of State. From July 1785 to March 1788 he was recorder of the Richmond City Hustings Court, his only judicial office before his appointment to the Supreme Court. Elected to the Virginia convention that ratified the fed-

eral Constitution in June 1788, he played only a limited role in supporting the ratification cause, but his speech on the judiciary did much to allay local fears of a federal court system.

After resisting a number of attempts to appoint him to federal office, Marshall accepted President John Adams's assignment to join Charles Coatesworth Pinckney and Elbridge Gerry on a diplomatic mission to revolutionary France. The French Directory insisted upon receiving a gift of tribute before they would negotiate with the American envoys. Pinckney and Marshall, having rejected the demands presented by three emissaries, designated Messrs. X, Y, and Z in diplomatic dispatches, returned home to publish their correspondence with the French. Public resentment against France made Marshall's name well known nationally and led former president George Washington to ask him to campaign as a Federalist for the Richmond seat in the U.S. House of Representatives. Marshall won the election and took his seat early in December 1799. For the next six months, Marshall was prominent in floor debates, his most important contribution being a defense of President Adams's decision to allow the extradition of one Jonathan Robbins, who had been accused of murder and mutiny by the British authorities.

When Adams decided to reorganize his cabinet in May 1800, he appointed Marshall secretary of state. Marshall conducted American foreign relations for nine months. He also was closely involved in making appointments to federal offices, and, during the president's extended absences from Washington, he handled the day-to-day administration of the government. This dedicated and loyal service put Marshall in a strong position to replace Oliver Ellsworth as chief justice in 1801. However, the office was first offered to former chief justice John Jay, who declined. Moreover, the president was under strong pressure to elevate Associate Justice William Paterson of New Jersey. Resisting the pleas of Paterson's supporters, on January 20 Adams



"Midnight appointee" William Marbury, whose suit against James Madison led to a landmark Supreme Court case in 1803. John Marshall's opinion in *Marbury v. Madison* established the Court's authority to review the constitutionality of acts of Congress. Source: Maryland Historical Society, Baltimore.

turned to the younger man who had served him well as secretary of state. The Senate confirmed the nomination January 27.

Political tempers were high when President Thomas Jefferson took office in March 1801. First on the agenda of his Democratic-Republican party was the repeal of the Judiciary Act of 1801, which had created a series of federal circuit courts, and with them a bonanza of judgeships for Federalist lawyers. The subsequent repeal of the 1801 act displaced all of these newly appointed circuit judges, and it fell to Marshall's Court to decide in *Stuart v. Laird* (1803) that the repeal was constitutional and that Supreme Court justices would once more be required to preside at the various circuit courts.

During the same term, Marshall and his colleagues heard argument and decided the landmark case, *Marbury v. Madison*, which involved the "midnight appointments" of Federalist justices of the peace for the

District of Columbia. Through Marshall's oversight as secretary of state, a number of these commissions had not been delivered, and the appointees asked the Supreme Court to order the new secretary of state, James Madison, to do so. After a careful discussion of the appointment process and concluding that the would-be justices of the peace had a property right in their new offices, Marshall proceeded to inquire whether the Supreme Court had authority to order Secretary Madison to deliver the commissions. This question required him to compare the jurisdiction of the Supreme Court, as outlined in the Constitution, with the authority supposedly conferred by the Judiciary Act of 1789. Failing to find the constitutional provisions to support the powers conferred by the Judiciary Act, Marshall denied the petition of William Marbury, one of the appointees. Although this decision limited the power of the Supreme Court, it also served to establish the Court's authority to review the constitutionality of acts of Congress. The doctrine of judicial review, hitherto applied by state courts and some of the federal circuit courts, became a cardinal principle of U.S. constitutional law.

Chief Justice Marshall delivered 519 of the 1,215 opinions of the Supreme Court during his thirty-four-year tenure and probably wrote most of those he delivered. As a result, historians have tended to view Marshall as a dominant presence on the Court, although it has become apparent that his influence varied considerably. In the years before 1812 the advanced age of his associate justices, coupled with their willingness to concur in Marshall's opinions, permitted the chief justice to become preeminent in opinion delivery. In addition, the Court switched from the *seriatim* practice, under which each justice wrote and read his own views, to adopting the "opinion of the Court" approach, a form that remains predominant to the present day.

The second phase of the Marshall Court, from 1813 to 1818, was initiated by the arrival in 1812 of Associate Jus-

tice Joseph Story, whose conservative economic views greatly influenced Marshall. During these years the Court divided sharply over prize ship cases generated by the War of 1812. There were numerous dissents and concurring opinions, and new appointees were of Jeffersonian political persuasion and more active in their participation in the work of the Court than the aged associate justices of the first period.

The third period, from 1819 through 1822, can be termed the "golden age" of Marshall's tenure, for it was during this critical period that economic growth and diversification sparked rapid development and westward expansion. His great nationalist decisions, *McCulloch v. Maryland* (1819), *Dartmouth College v. Woodward* (1819), and *Cohens v. Virginia* (1821), date from this period, and the encyclopedic Commerce Clause decision, *Gibbons v. Ogden* (1824), came initially before the Court in 1821.

Marshall's declining influence is apparent in the last period of his tenure. The arrival of Jacksonian jurists on the Supreme Court fractured the working consensus Marshall had developed with most of his Democratic-Republican colleagues. Marshall's only dissent in a constitutional case was delivered in *Ogden v. Saunders* (1827), a case in which the majority upheld the validity of a state insolvency law. In *Willson v. Blackbird Creek Marsh Company* (1829) Marshall set forth an expanded view of state police powers that can be seen as a retreat from the broad view he had taken of the Commerce Clause in his *Gibbons v. Ogden* decision. It was also in this time period that the Court had a major confrontation with the executive branch over Indian treaty rights (*Cherokee Nation v. Georgia*, 1831, and *Worcester v. Georgia*, 1832), concluding with executive refusal to implement Marshall's opinions recognizing the civilized tribes as "dependent, sovereign nations." Politically, this was a period of rising states' rights, coupled with widespread demands for greater economic freedom and mobility. With his strong personal belief in the sanctity of



The lawsuit of one-time business partners Thomas Gibbons, left, and Aaron Ogden, right, led to a landmark Commerce Clause decision in 1824. John Marshall's opinion for the Court defined commerce and stated that Congress has the power to regulate interstate commerce. Source: (Gibbons) Georgia Historical Society; (Ogden) Courtesy of the New York Historical Society

private property and his devotion to a strong federal government, the aging and ailing chief justice was in a distinct minority—on his Court and in the general population.

Marshall and his colleagues were responsible for shaping the federal government into the form it would take until the end of the Civil War. This pattern included a commitment to according the federal government preeminent authority in foreign affairs, in the exercise of war powers, and in the control of interstate and foreign commerce. In addition, the Marshall Court before 1815 began to lay the foundations for the Supreme Court's own powerful position in the development of constitutional and international law, which was accomplished through the selective assertion of jurisdiction, not only on its own behalf but also for the lower federal courts.

In economic matters, Marshall has rightly been identified as a protocalipal. He understood the need for predictability in commercial transactions. His thinking is apparent not only in his development of the Contract Clause to defend property rights (*Fletcher v. Peck*, 1810, and *Dartmouth College*), but also in the efforts he made to resolve embarrassing and conflicting rules of negotia-

bility in the District of Columbia. Marshall recognized the danger that state-based mercantilism would pose for the nation's future economic growth, and a theme running through many opinions stresses the "common market" philosophy of those who wrote and fought to ratify the Constitution. Finally, the chief justice viewed realistically, but with trepidation, the industrial potential of the United States. Unlike his distant cousin, Thomas Jefferson, he did not develop an agrarian preference, but rather hoped that legal institutions would protect America from the environmental ills and class conflict inherent in an urban industrial society.

Marshall's last years were marked by loneliness and painful illness. In 1831 he underwent surgery for bladder stones and survived that ordeal only to suffer the death of his "Dearest Polly" later in the same year. His final illness was an intestinal blockage, but he persisted in attending the February 1835 term before seeking medical assistance in Philadelphia. There he died on July 6, 1835, three months before his eightieth birthday, mourned by friend and political foe alike. His humble demeanor, robust sense of humor, and devotion to the nation he loved and served so well, marked him as one of the preeminent statesmen of the Republic.