

***JAMES BRADLEY
THAYER***



***JOHN
MARSHALL***

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CHAPTER I

HIS LIFE BEFORE BECOMING CHIEF JUSTICE; HIS PERSONAL CHARACTERISTICS

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IN beginning his “Life of Washington,” Chief Justice Marshall states that Washington was born in 1732, “near the banks of the Potowmac,” in Westmoreland County, Virginia; mentions his employment by Lord Fairfax, the proprietor of the Northern Neck, as surveyor of his estates in the western part of that region; and adds that, in the performance of these duties, “he acquired that information respecting vacant lands, and formed those opinions concerning their future value, which afterwards contributed greatly to the increase of his private fortune.”

Thomas Marshall, the father of the Chief Justice, two years older than Washington, was also born in Westmoreland County, was a schoolmate of Washington, served with him both as surveyor of the Fairfax estates, and soon afterwards, as an officer in the French and Indian wars; and he, too, as time passed, found like advantage from his experience as a surveyor.

In 1753, Thomas Marshall was made agent of Lord Fairfax in the management of his estates. In the next year, he married Mary Isham Keith, daughter of a Scotch clergyman, whose wife was a descendant of William Randolph, of Turkey Island, the ancestor of the famous Virginia family of that name. Their son, John Marshall, the oldest of fifteen children, was born on September 24, 1755, in what was

afterwards Fauquier County, at a little settlement then known as Germantown,—now Midland, on the Southern Railroad, a few miles south of Manassas. That was the year of Braddock's defeat, and Thomas Marshall, like Washington, was in the service, as an officer.

In Marshall's early childhood, his father's household, situated in a frontier county, must have been agitated with the dreadful rumors, anxieties, and terrors of the troubles with the French and Indians. "So late," he tells us in the "Life of Washington," "as the year 1756, the Blue Ridge was the northwestern frontier; and [Virginia] found immense difficulty in completing a single regiment to protect the inhabitants from the horrors of the scalping-knife, and the still greater horrors of being led into captivity by savages who added terrors to death by the manner of inflicting it." It was not until two years later that the capture of Fort Duquesne relieved Virginia from the frightful ravages that laid waste the region just west of the Blue Ridge.

When John Marshall was ten years old or more, his father left the level country and poor soil of eastern Fauquier, for the higher and more fertile region in the western part of the county, just under the Blue Ridge. At Midland all they can show you now, relating to Marshall, is a small, rude heap of bricks and rubbish,—what is left of the house where he was born; and children on the farm reach out to you a handful of the bullets with which that sacred spot and the whole region were thickly sown, before a generation had passed, after his death.

Marshall's education was got from his father, from such teachers as the neighborhood furnished, and, for about a

year, at a school in Westmoreland County, where his father and George Washington had attended, and where James Monroe was his own schoolmate. But most he owed to his father,—a man of good stock, of enterprise, experience, strong character and sense, himself of no mean education,—who, personally, took great pains with the training of his children. Marshall admired his father, and declared him to be a far abler man than any of his sons. From him and the teachers provided for him his son got a good knowledge of English history, literature, and poetry, and a fair acquaintance with the classics.

All Marshall's later youth was passed in the mountain region of Fauquier County, under the Blue Ridge. Judge Story declared that it was to the hardy, athletic habits of his youth among the mountains, operating, we may well conjecture, upon a happy physical inheritance, "that he probably owed that robust and vigorous constitution which carried him almost to the close of his life with the freshness and firmness of manhood."

The house that Marshall's father built at Oakhill is still standing, an unpretending, small, frame building, having connected with it now, as a part of it, another house built by Marshall's son Thomas. At one time the farm comprised an estate of six thousand acres.^[1] Since 1865 it has passed out of the hands of the family. It is beautifully placed on high, rolling ground, looking over a great stretch of fertile country, and along the chain of the Blue Ridge, close by. To this region, where his children and kindred lived, about a hundred miles from Richmond, Marshall delighted to resort in the summer, all his life long. In the autumn of 1807, after

the Burr trial, he writes to a friend, "The day after the commitment of Colonel Burr for a misdemeanor, I galloped to the mountains." "I am on the wing," he tells Judge Story in 1828, "for my friends in the upper country, where I shall find rest and dear friends, occupied more with their farms than with party politics."

When Marshall was about eighteen years old he began to study Blackstone; but he quickly dropped it, for the troubles with Great Britain thickened, and, like his neighbors, he prepared for fighting.

He seems to have found a copy of Blackstone in his father's house, as he had found there much other sterling English literature. It was then a new book, but already famous. Published in England in 1765-69, a thousand copies had been taken in this country;^[2] and just now the first American edition was out (Philadelphia, 1771-72), in which the list of subscribers, headed by the name of "John Adams, barrister at law, Boston," had also that of "Captain Thomas Marshall, Clerk of Dunmore County." Dunmore County, now Shenandoah, was then a very new county, just over the Blue Ridge from Fauquier; and it is believed that there was but one Captain Thomas Marshall in those parts.

The earliest personal description of Marshall that we have belongs to this period. It is preserved in Horace Binney's admirable address at Philadelphia, after Marshall's death. He gives it from the pen of an eyewitness, a "venerable kinsman" of Marshall. News had come, in May, 1775, of the fighting at Concord and Lexington. The account shows us the youth, as lieutenant, drilling a company of soldiers in Fauquier County:—

“He was about six feet high, straight, and rather slender, of dark complexion, showing little if any rosy red, yet good health, the outline of the face nearly a circle, and within that, eyes dark to blackness,^[3] strong and penetrating, beaming with intelligence and good nature; an upright forehead, rather low, was terminated in a horizontal line by a mass of raven-black hair, of unusual thickness and strength. The features of the face were in harmony with this outline, and the temples fully developed. The result of this combination was interesting and very agreeable. The body and limbs indicated agility rather than strength, in which, however, he was by no means deficient. He wore a purple or pale blue hunting-shirt, and trousers of the same material fringed with white. A round black hat, mounted with the 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 temper....

“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 about him, he would tell them what he understood about it. The circle was formed, and he addressed the company for something like an hour. He then challenged an acquaintance to a game of quoits, and they closed the day with foot-races and other athletic exercises, at which there was no betting.”

“This,” adds Mr. Binney, “is a portrait, to which in simplicity, gayety of heart, and manliness of spirit, in

everything but the symbols of the youthful soldier, and one or two of those lineaments which the hand of time, however gentle, changes and perhaps improves, he never lost his resemblance.”

Marshall accompanied his father to the war as a lieutenant, and in a year or two became a captain. In leaving the father here, it may be said that three of his sons were with him in the war, and that he himself served with gallantry and distinction as a colonel. In 1780, he was at the South with General Lincoln, and being included in the surrender of that officer and on parole, visited Kentucky, not yet a State. After a few years he removed there with the younger part of his family, leaving Oakhill, as it seems, in the hands of his son John. He died in Kentucky in 1806, having survived to witness the successive honors of his son culminate in his becoming Chief Justice of the United States.

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It was in the autumn of 1775 that Marshall, as lieutenant in a regiment of minutemen, of which his father was major, marched down through the country to the seaboard to resist Lord Dunmore’s aggressions. They were clothed, we are told, in green home-spun hunting-shirts, having the words “Liberty or Death” in large letters on the breast, with bucks’ tails in their hats, and tomahawks and scalping-knives in their belts. The enemy at Norfolk feared, it is said, for their scalps, but they lost none.[5]

He was thus in the first fighting in Virginia, in the fall of 1775, at Norfolk; afterwards he served in New Jersey, Pennsylvania, and New York; and again in Virginia toward the end of the war. He was at Valley Forge, in the fighting at

the Brandywine, Germantown, Monmouth, Stony Point, and Paulus Hook, between 1776 and 1779. He served often as judge advocate, and in this way was brought into personal relations with Washington and Hamilton. A fellow officer and messmate describes him, during the dreadful winter at Valley Forge, as neither discouraged nor disturbed by anything, content with whatever turned up, and cheering everybody by his exuberance of spirits and "his inexhaustible fund of anecdote." He was "idolized by the soldiers and his brother officers."

President Quincy gives us a glimpse of him at this period, as he heard him described at a dinner with John Randolph and a large company of Virginians and other Southern gentlemen. They were talking of Marshall's early life and his athletic powers. "It was said in them that he surpassed any man in the army; that when the soldiers were idle at their quarters, it was usual for the officers to engage in matches of quoits, or in jumping and racing; that he would throw a quoit farther, and beat at a race any other; that he was the only man who, with a running jump, could clear a stick laid on the heads of two men as tall as himself. On one occasion he ran in his stocking feet with a comrade. His mother, in knitting his stockings, had the legs of blue yarn and the heels of white. This circumstance, combined with his uniform success in the race, led the soldiers, who were always present at these races, to give him the sobriquet of 'Silver-Heels,' the name by which he was generally known among them."

Toward the end of 1779, owing to the disbanding of Virginia troops at the end of their term of service, he was