

JOHN MARSHALL.

BY CHESTER N. FARR, JR.

It is the tenth of June, 1788. We are standing in the gallery of the old Richmond Theatre on Shockoe Hill. The heart of a nation newly born is throbbing feebly, as if struggling for life, in the gathering on the floor below; for it is the ninth day of the session of the Virginia Convention called to ratify or reject our present Constitution of the United States. Around us in the galleries are clustered the fashion, beauty, wealth and intellect of Richmond; nay, from every walk of life, people have left their employments or their pleasures that they may appear at this stirring crisis. Outside through the windows we look at the city stretched out before us, and tinted in the rays of the summer sun of the South. And as the hushed crowd in the auditorium lean forward to catch the speaker's words, with a stillness so profound that the flutter of fans has ceased, the very airs outside have paused in their sportive whirls, and not a twig or leaf rustles. A single beam of the noontide sun, piercing the atmosphere, throws a glittering halo about the head of a figure standing in the rostrum, upon whom all eyes are fixed. A tall, slender, ungainly figure, dressed plainly in a somewhat ill-fitting sur-tout of blue, is speaking from this place. The clear-cut, impressive features, not handsome, but striking and bronzed with the sun, are upturned to meet the light as if he welcomed this heaven-sent omen of success to the cause for which he is contending.

The black eyes flash with a singular lustre, and the dry, hard voice, drawling and hesitating somewhat at first now speaks with a force as resistless as the thought it conveys, while a single, awkward gesture, a perpendicular sweep of the right arm, cuts the air at intervals.

"John Marshall, the young delegate from Henrico county,"

is whispered near us, and we hear the speaker's voice as he gives utterance to his closing passage.

"The honorable gentleman has told you that your Continental Government will call forth the virtue and talents of America. This being the case, will they encroach upon the power of the State governments? Will our most virtuous and able citizens wantonly attempt to destroy the liberty of the people? Will the most virtuous act the most wickedly? I differ in opinion from the worthy gentleman. I think the virtue and talents of the members of the general government will tend to the security instead of the destruction of our liberty. I think that the power of direct taxation is essential to the existence of the general government, and that it is safe to grant it. If this power be not necessary, and as free from abuse as any delegated power can possibly be, then I say that the plan before you is unnecessary, since it imports not what system we have, unless it have the power of protecting us in time of peace and war."

A hush, a burst of applause, and the orator has taken his seat.

These are the first public statements of John Marshall on the Constitution of the United States. They but foreshadow the great labors which he afterwards performed upon it. As a soldier he had borne arms in defence of the country of its adoption; as a legislator he had contended for its ratification; as a diplomat he was to fling back with dignified scorn the insults levelled at it by the Empire of France, and finally, at the summit of his professional glory, as Chief Justice of the Supreme Court of the United States for thirty-four years, he built up, perfected and expounded this same Constitution through a series of decisions unparalleled in the annals of jurisprudence.

We are burning now, in our peace, our happiness, our prosperity and our liberty, the stored sunshine of the intellects who nourished our republic in its inception. Their powers were at work, perfecting secret forces, to act not for a day, a decade, but for all posterity. Not to patch a piece of mechanism that it might deal a few stirring strokes and then impo-

tently fail, nor to flash out a shower of the glittering sparks of political pyrotechnics leaving the surroundings in intenser darkness when their glow had expired. They worked slowly but they worked truly. They fashioned despite popular clamor and opprobrium. Doubtless they saw in the distance the Promised Lands which their work would develop and perfect, whose waters they might not taste and whose air they might not breathe, and yet they faltered not. And among these men to none do we owe a greater debt, and to none has less of that debt been paid than to John Marshall.

The mistaken notion that much of the value of Marshall's services is a merely technical value has led the popular mind to place him in that category of vague personalities whom we praise with the pleasing indefiniteness born of ignorance of the work which he has accomplished. And yet a theoretical exposition of a national government, crude of necessity, discussed under his hands, became a complete and rounded whole. Statements so general as those contained in the Constitution of the United States, are necessarily susceptible of a varied construction. To define all these, to limit their maximum and minimum effect, in practical application was the work performed by Marshall. The Constitution, a shadowy vision of political theories, grand, indeed, to behold, but intangible and elusive, became under his hands, a living breathing entity.

In the mentality which availed to perform this work, we have a mind that in its peculiar field has not been paralleled in the history of this country. "Aim," said Marshall, "exclusively at strength." He did not wish to obscure by rhetoric or retard by descensive bursts of eloquence the attainment of the object he had in view. He felt that the field in which he labored was one that could not be cultivated by a display of the mental graces, but only by the sturdier qualities of sinewy reasoning. Nor was the faculty which destroys but does not create, which uproots the weeds, mayhap, but leaves behind a barren and sterile field, a faculty which dominated the mind of Marshall. He would not attempt to raze an unsightly building to the ground, unless he was prepared to

remove the ruins or erect in its stead some worthier structure. The impassioned denunciations uttered by Henry against the Constitution that "squints horribly," that "squinted towards monarchy," and the attempts of the latter and the Jeffersonian anti-Federalists to fetter the Federal Government, and to clip its claws, Marshall met with the weapons of weighty logic so thoroughly at his command. Upon the power of these weapons his contemporaries looked with an admiration universally expressed, and admixed with fear when they faced them. Said Daniel Webster, "when the Chief Justice says, 'it is admitted,' I am prepared, for a bomb that will demolish all my points."

This close, remorseless logic was pitted against qualities which appeal to the passions and not the reason of men, and these qualities the best of their time, again and again, and it never failed. The fervid eloquence of Henry, the rich imagination of Wirt, and the graceful and pleasing oratory of Campbell all fell before the overwhelming logic of Marshall. And we must remember that this logic had the incumbrances of an ungraceful delivery and an ungainly figure, and that the triumphs were achieved under circumstances in which the passions of men were most easily moved and their judgments most readily swayed by the tumult of their emotions. Strong, indeed, must have been that power of reasoning, which, under conditions so adverse, could have proved an invariable victor. And as we examine it we are struck with its exceptional clearness.

Indeed, the acts or thoughts of genius are essentially clear and simple. Complications may be readily devised by the baser ability of cold talent. But the formulæ conveying ideas which found empires or establish systems of social or economic polity, have no distortion or opacity. So simple are these thoughts that when revealed to us they startle us with their self-evident truth, and half incline us to believe that we have always been aware of their existence. No laws are so simple as those governing the apparently complex workings of nature, no formulæ so easy of comprehension as those which express them. A simple system, expressed in a single

sentence, enabled Napoleon to revolutionize military tactics, a simple process of reasoning sufficed for Bacon to supplant a species of logic that had stood for centuries, and a simple experiment in physics, gave Watts the means to open the way for a new era in the development of motive power.

The tools of a jurist, rightly applied, can suffice to mould and perfect a nation's existence and prosperity. And Marshall's logic is so clear, so convincing, and so transparent, and every point evolved follows so naturally upon its antecedent, that we feel ourselves forced to guard against the conviction almost thrust upon us, that these are trite truths, which we have known before. Yes, they are trite truths; they have existed through an eternity. They are as common as diamonds in the bowels of the earth, but who shall dig for them; they are as plentiful as pearls in the depths of the sea, but who shall dive for them. The system of constitutional jurisprudence which Marshall built is simple as its logic is convincing. Plain and unadorned, it does not need the tawdry frippery of ingenious sophistry, or the deceptive adornments of obscure learning to hide its defects, it stands naked and bare, showing best like the colossal statue of Phidias, in its majestic outline, when new elements of strength and beauty are revealed by the searching light of truth.

And yet much further than this did Marshall's mental circle extend. To convince, to explain, to amplify is one thing; to apply another. Marshall was not a purveyor of abstract truths alone. He was forced in his position to apply those truths to the practical workings of actual facts and figures. He was not only compelled to put the machinery in working order, to supply defects in mechanism, and institute additions and improvements, but to manipulate it himself. The combination of qualities required for this purpose is a rare one. Unless we clearly see them as centered in Marshall we see only half of his ability. Many minds gifted with the finest powers of abstract reasoning have failed in the concrete application of the principles which they have evolved. Marshall was obliged to build from the foundation up. That he did not complete the edifice is due solely to the shortness of man's

existence. He left plans and suggestions sufficient for the instruction of those who followed, and the work has been developed almost uniformly on the lines which he has laid down. He introduced the Constitution to the people. He made them familiar with it as a working principle, not as a governmental theory. It ceased to be an unreal being, which they feared to touch, lest the touch be harmful, or a supernatural object to be regarded with mysterious reverence or calm indifference. In truth, to effect this, it were well for one to aim exclusively at strength. Life is too short to permit time to be wasted in adornment. The crisis is critical, let us devote our best energies to its solution. So Marshall reasoned, and the rich heritage of this reasoning is transmitted to us. But there is another view to be considered. As we read the book of this man's character let us not leave those pages uncut which reveal the private spaces in the inner temple where purity is brightly burning or vice rotting to decay.

We love instinctively to see a great man in dressing-gown and slippers. We care more for Frederick the Great when we know he scrawled bad verses, for Lord Tennyson when we see him wreathed in the smoke of his church warden; for Thackeray when he sniffs a bowl of steaming punch, or for Warren Hastings when we hear he cultivated tulips. They cease then to be demi-gods, they become men, we can take them by the hand, we can walk at their side. For we can discuss tulips with Hastings, and we are familiar with good punch; we smoke, and, perchance, we too have written execrable poems. Too often do we tremble to divide those uncut leaves lest we discover that the idol we cherished has feet of clay. But the leaves in Marshall's book we can cut boldly, nay, more than that, with the happy expectancy that the record of those pages will not fill us with distant admiration nor cold respect, but with hearty and healthful love.

There was an atmosphere in this man's presence, a tone in his voice, a sparkle in his eye that warmed even the cynic heart with the glow of affection. I am tempted to compare the effect of contact with Marshall to that sacred feeling of having touched purity and truth, which we experience after

a merry romp with a little child or after its caress—like a breath from the valleys of Paradise, at which the faint heart revives, and the sorrowful cease from sighing.

The character of Marshall was distinguished by an almost childish simplicity—not the politic affectation of simplicity presented us by Jefferson, which has been embalmed in tradition and which existed merely in outward show, but a simplicity of mind and a simplicity of heart. No fulsome airs of superior patronage nor show of gaudy learning marred Marshall's manner or conversation. Confident in his ability, he did not need its continued display to assure him or others of its existence, yet so modest withal in the sense of certain deficiencies that in view of these he hesitatingly transferred to others subjects which he deemed himself incompetent to treat; as in the resumé of authorities so often and so gracefully left "to my brother Story." He did not desire as those whose hearts are tender and lovable never do; the respectful whisper, or the flattering bow, to meet him was to meet as man to man, with cheery laugh, and hearty handsake that marked the equality and drove mental distinctions to the winds. Never fear to try his temper, continued success had not made him despotic in its exercise, for its patient sweetness was never disturbed whether he sat on the bench wearied by a prosy argument or reclined in his easy chair and suffered the tiresome talker to infest his fireside.

His good nature never failed. It seemed in this phase of his character as if he had drunk of the Fountain of Perpetual Boyhood, and when, as an old man, he staggers into the ring of jolly pleasure-seekers in a woodland party, and dropping an armful of flat stones to the ground, challenges with his bright smile the sturdiest of the youths to a game of quoits, this same boyishness shines forth and lends its subtle charms to the veneration which his grey hairs command. These springtide odors in the winter of life are borne on breezes that seem to waft us one length nearer heaven. All that is good and true and beautiful is of their essence, and he who, like Marshall, radiates from his presence their grateful glow, leaves a private debt that is recorded in letters of gold on the pages

of the books of the celestial city, no matter how negligently forgotten on this forgetful earth.

Alas! for those who give to others all their affection! When the ties are broken the struggle is indeed hard, and when we see this venerable head bearing its seventy-five years, bowed over his writing at his desk and shedding passionate tears over the memory of the wife who had been his constant companion during his busy life, we feel the wealth of affection he had bestowed, and the depth of feeling of which his spirit was capable. Yet to Marshall was given a great consolation too often denied to those whose days have long outlived their generation. As the charred brand that lies on the hearth, and with blue smoke curling feebly upward seems to offer a mute appeal for its separation from its fellows so brightly blazing in the glowing grate. So the last days of those cursed with a too great longevity, are too frequently passed in silence and seclusion the former companions dead, the former faculties fast fading, and the world with its burning issues of the bright present leaving them further and further behind.

No so with Marshall, a generation expired, but he was abreast of the next, his surroundings changed but his work was of that character that built far into the future, and each year of life, but assured him the stronger of its complete fulfillment. He worked to the last, no decline of mental vigor, no symptoms of approaching decay, and when fourscore well spent years had passed away, his dust was gathered to mingle with the other illustrious dead in the soil of that country whose prosperity he had so nobly enhanced, and of the State whose name he had so highly adorned, and the great bell that "proclaimed liberty throughout the land," as if conscious that, in this man's death, its work was done, cracked its iron heart in the strokes that tolled his funeral knell.

Contemporaries are but too apt to undervalue master minds. "De Mortuis" is not necessarily a cynical aphorism, but the result of the calm judgment of retrospection. Many that have labored through a toilsome life to build their immortality have reaped its rewards only in death. Often at the close of a hot summer's day we turn our eyes toward the sun as he sinks

behind the hills in his fiery splendor, with his bright beams lying athwart the landscape and flashing upward like the golden lances of a serried square, and in this most noble of spectacles, forgetting the oppressive burden and heat with which we had reviled his disc at noonday, we gaze half regretfully at his expiring glories. Something of a prayer breathed that we may atone on the morrow for this day's ingratitude to the great life-giver; a morrow that too often we may not see. And thus when the heat of party strife and faction has passed away, the people hasten to the death bed of a masterful intellect too late, indeed, to accord an earthly satisfaction to a soul now freed from worldly trammels, but yet to breathe their prayers of atonement and their wishes for another life that can never come. The pomp and pageantry of a solemn funeral, the glowing tribute of eloquent eulogies, the sculptor's chisel and the painter's brush may all be invoked as a sacrifice in propitiation, and as a symbol branded deep in history, of past neglect, of ingratitude when living.

The true greatness of Marshall could not be appreciated during his lifetime, only the eye that could scan futurity could behold the fruition of his work. Only the eye trained to prophetic vision could have seen each constitutional fibre of our National Government knit tighter together with each succeeding year, or perceive how each plank in the ship of State fashioned by his hand, would cling closer to its fellow, only seasoned and hardened by use, until a government based on political liberty should float through the mightiest surges of time, scathless, enduring, a model for posterity.

And even the glory accorded the dead, has not yet been given in its proper fulness to Marshall. His name stands with thousands of people as a name and nothing more. He yet needs a memorial, other than that which he himself has wrought, not carved in perishable marble or limned in fading color, nor made of the breath of oratorical vapping, but sketched in living words, a biography, written by a master hand, and woven in the undecaying fabric of the English tongue.

NOTE.—The above address was delivered by Chester N. Farr, Jr., of the Philadelphia Bar, at the recent Commencement of the University of Pennsylvania.