

**AN ADDRESS ON THE LIFE  
CHARACTER AND  
INFLUENCE OF  
CHIEF JUSTICE MARSHALL**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649302949

An Address on the Life Character and Influence of Chief Justice Marshall by Horace Gray

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**HORACE GRAY**

**AN ADDRESS ON THE LIFE  
CHARACTER AND  
INFLUENCE OF  
CHIEF JUSTICE MARSHALL**



AN  
ADDRESS  
ON THE  
LIFE CHARACTER AND INFLUENCE  
OF  
CHIEF JUSTICE MARSHALL

DELIVERED AT RICHMOND ON THE FOURTH DAY OF FEBRUARY 1901  
AT THE REQUEST OF THE STATE BAR ASSOCIATION OF  
VIRGINIA AND THE BAR ASSOCIATION OF  
THE CITY OF RICHMOND

BY  
HORACE GRAY

WASHINGTON  
PEARSON PRINTING OFFICE  
1901

In the earliest known speech of his, (as described by a kinsman who heard it,) made in May, 1775, when he was under twenty years old, upon assuming command as lieutenant of a company of the Virginia militia, he told his men "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 victorious, but that more fighting was expected; that soldiers were called for, and that it was time to brighten their fire-arms, and learn to use them in the field."

Many years afterwards, in a letter to a friend, (quoted by Mr. Justice Story, to whom it was perhaps addressed,) he wrote: "When I recollect the wild and enthusiastic notions with which my political opinions of that day were tinged, I am disposed to ascribe my devotion to the Union, and to a government competent to its preservation, at least as much to casual circumstances, as to judgment. I had grown up at a time when the love of the Union, and the resistance to the claims of Great Britain, were the inseparable inmates of the same bosom; when patriotism and a strong fellow-feeling with our suffering fellow-citizens of Boston were identical; when the maxim, 'United we stand; divided we fall,' was the maxim of every orthodox American. And I had imbibed these sentiments so thoroughly, that they constituted a part of my being. I carried them with me into the army, where I found myself associated with brave men from different States, who were risking life and everything valuable in a common cause, believed by all to be most precious; and where I was confirmed in the habit of considering America as my country, and Congress as my government."

Before the adoption of the Constitution, one of the chief defects in the government of the United States

was the want of a national judiciary, of which there was no trace other than in the tribunals constituted by the Continental Congress, under powers specifically conferred by the Articles of Confederation, for the decision of prize causes, or of controversies between two or more States.

Among the objects of the Constitution, as declared in the preamble, the foremost, next after the paramount aim "to form a more perfect Union," is to "establish justice." It ordains that the judicial power of the United States shall be vested in "one Supreme Court," and in such inferior courts as Congress may from time to time establish; that the judicial power shall extend to "all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority," and to other classes of cases specified; that the Supreme Court, in cases affecting ambassadors, public ministers and consuls, or to which a State shall be party, shall have original jurisdiction; and, in all the other cases before mentioned, shall have appellate jurisdiction, with such exceptions and under such regulations as Congress shall make; and that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

On the 24th of September, 1789, the first Congress under the Constitution passed the Judiciary Act, which had been framed by Oliver Ellsworth, then a Senator from Connecticut. That act has always been regarded as a contemporaneous construction of the Constitution; and, with some modifications, remains to this day the foundation of the jurisdiction and practice of the courts of the United States. It provided that the Supreme Court should consist of a Chief Justice, and of five Associate Justices who should

have precedence according to the date of their commissions; established the Circuit and District Courts; defined the jurisdiction, original and appellate, of all the Federal courts; and empowered the Supreme Court to reëxamine and reverse or affirm, on writ of error, any final judgment or decree, rendered by the highest court of a State in which a decision in the case could be had, against a right claimed under the Constitution, laws or treaties of the United States.

President Washington, on the very day of his approval of that act, nominated John Jay, of New York, as Chief Justice; and John Rutledge, of South Carolina, William Cushing, of Massachusetts, Robert H. Harrison, of Maryland, James Wilson, of Pennsylvania, and John Blair, of Virginia, as Associate Justices of the Supreme Court; and the nominations were all confirmed by the Senate on the 26th of September. The commissions of Chief Justice Jay and of Mr. Justice Rutledge were dated on that day, and those of the other Justices on successive days, in the order above named, thus determining their precedence. President Washington, in a letter to each of the Associate Justices, informing him of his appointment, remarked, "Considering the judicial system as the chief pillar upon which our National Government must rest;" and in a letter to the Chief Justice, enclosing his commission, said that the judicial department "must be considered as the keystone of our political fabric."

During the first twelve years of the Supreme Court, there were frequent changes in its membership: three by the appointees preferring high offices in the governments of their several States; three others by resignation; one by rejection by the Senate; and two by death.

Rutledge never sat in the Supreme Court as Associate Justice, and in 1791 resigned the office to accept that of Chief Justice of South Carolina. Harrison declined his appointment, preferring to become Chancellor of Maryland. James Iredell, of North Carolina, was appointed



in 1790, in the stead of Harrison; and Thomas Johnson, of Maryland, in 1791, in the place of Rutledge. The other Associate Justices before 1801 were two appointed by President Washington: William Paterson, of New Jersey, in 1793, in the place of Thomas Johnson, resigned; and Samuel Chase, of Maryland, in 1796, upon the resignation of Blair; and two appointed by President John Adams: Bushrod Washington, of Virginia, in 1798, upon the death of Wilson; and Alfred Moore, of North Carolina, in 1799, upon the death of Iredell.

President Washington, in his eight years of office, appointed four Chief Justices of the United States; John Jay in 1789; John Rutledge in 1795; William Cushing and Oliver Ellsworth in 1796. Jay held the office for about five years and nine months; and for the first six months of that time, by the President's request, also acted as Secretary of State. Ellsworth held the office of Chief Justice a little more than four years and a half. But Jay, as well as Ellsworth, during the whole of his last year, ceased to perform his judicial duties, by reason of being employed on a diplomatic mission abroad. Rutledge, after sitting as Chief Justice for a single term, was rejected by the Senate; and Cushing, though confirmed by the Senate, declined the appointment, and remained an Associate Justice until his death in 1810. Ellsworth resigned in 1800, owing to ill health; and Jay resigned in 1795 to accept the office of Governor of the State of New York, and in 1800, towards the close of his second term of office as Governor, being in a depressed condition of health and spirits, and having finally determined to retire from public life, declined a reappointment as Chief Justice, offered him by President Adams on the resignation of Ellsworth.

John Marshall, then Secretary of State, was nominated as Chief Justice of the United States by President Adams on the 20th, confirmed by the Senate on the 27th, and commissioned on the 31st of January, 1801.

His characteristic letter of acceptance, addressed to the President, and dated February 4th, 1801, was in these words:

"Sir: I pray you to accept my grateful acknowledgments for the honor conferred on me in appointing me Chief Justice of the United States.

"This additional and flattering mark of your good opinion has made an impression on my mind which time will not efface.

"I shall enter immediately on the duties of the office, and hope never to give you occasion to regret having made this appointment.

"With the most respectful attachment,

"I am, Sir,

"Your obedient servant,

"J. MARSHALL."

On the same day, as is stated on the record of the Supreme Court, his commission as Chief Justice, "bearing date the 31st day of January, A. D. 1801, and of the Independence of the United States the twenty-fifth," was "read in open Court, and the said John Marshall, having taken the oaths prescribed by law, took his seat upon the Bench."

In speaking of one who has been for a hundred years the central and predominant figure in American jurisprudence, little more can be expected, at this day, than to echo what has been better said by others. Almost the whole ground was covered, long ago, by Mr. Binney, in the admirable eulogy delivered before the Councils of the City of Philadelphia on the 24th of September, 1835, the eightieth anniversary of the Chief Justice's birth, and within three months after his death; and by Mr. Justice Story, in the interesting essay, first published in the North American Review in 1828, and again, with some changes, in the American National Portrait Gallery in 1833, and finally developed into his discourse before the Suffolk

Bar on the 15th of October, 1835, and containing much information derived from the Chief Justice himself.

In the researches incited by your invitation, my first and most important discovery was a letter from Chief Justice Marshall, dated "Richmond, March 22d, 1818," and addressed to "Joseph Delaplaine, Esq., Philadelphia." Delaplaine was then publishing, in numbers, his *Repository of the Lives and Portraits of Distinguished American Characters*, which was discontinued soon afterwards, without ever including Marshall. The letter purports to have been written in answer to one "requesting some account of my birth, parentage, &c.," and contains a short autobiography.

My earliest knowledge of the existence of such an autobiography was obtained from a thin pamphlet, published at Columbus, Ohio, in 1848; found in an old bookstore in Boston; and containing (besides Marshall's famous speech in Congress on the case of Jonathan Robbins) only this letter, entitling it "Autobiography of John Marshall." The internal evidence of its genuineness is very strong; and its authenticity is put almost beyond doubt by a facsimile (recently shown me in your State Library) of a folio sheet in Marshall's handwriting, which, although it contains neither the whole of the letter, nor its address, bears the same date, and does contain the principal paragraph of the letter, word for word, with the corrections of the original manuscript, and immediately followed by his signature.

An autobiography of Marshall is of so much interest, that no apology is necessary for quoting it in full. Except for one or two slips of the pen, corrected in the printed pamphlet, it is as follows:

"I was born on the 24th of September, 1755, in the county of Fauquier in Virginia. My father, Thomas Marshall, was the eldest son of John Marshall, who intermarried with a Miss Markham, and whose parents migrated from Wales, and settled in the county of West-