

**BEVERIDGE
ALBERT
JEREMIAH**

THE LIFE OF JOHN
MARSHALL, VOLUME 1:
FRONTIERSMAN, SOLDIER,
LAWMAKER, 1755-1788

Albert Beveridge

**The Life of John Marshall,
Volume 1: Frontiersman,
soldier, lawmaker, 1755-1788**

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The Life of John Marshall, Volume 1: Frontiersman, soldier, lawmaker, 1755-1788

PREFACE

The work of John Marshall has been of supreme importance in the development of the American Nation, and its influence grows as time passes. Less is known of Marshall, however, than of any of the great Americans. Indeed, so little has been written of his personal life, and such exalted, if vague, encomium has been paid him, that, even to the legal profession, he has become a kind of mythical being, endowed with virtues and wisdom not of this earth.

He appears to us as a gigantic figure looming, indistinctly, out of the mists of the past, impressive yet lacking vitality, and seemingly without any of those qualities that make historic personages intelligible to a living world of living men. Yet no man in our history was more intensely human than John Marshall and few had careers so full of movement and color. His personal life, his characteristics and the incidents that drew them out, have here been set forth so that we may behold the man as he appeared to those among whom he lived and worked.

It is, of course, Marshall's public work with which we are chiefly concerned. His services as Chief Justice have been so lauded that what he did before he ascended the Supreme Bench has been almost entirely forgotten. His greatest opinions, however, cannot be fully understood without considering his previous life and experience. An account of Marshall the frontiersman, soldier, legislator, lawyer, politician, diplomat, and statesman, and of the conditions he faced in each of these capacities, is essential to a comprehension of Marshall the constructive jurist and of the problems he solved.

In order to make clear the significance of Marshall's public activities, those episodes in American history into which his life was woven have been briefly stated. Although to the historian these are twice-told tales, many of them are not fresh in the minds of the reading public. To say that Marshall took this or that position with reference to the events and questions of his time, without some explanation of them, means little to any one except to the historical scholar.

In the development of his career there must be some clear understanding of the impression made upon him by the actions and opinions of other men, and these, accordingly, have been considered. The influence of his father and of Washington upon John Marshall was profound and determinative, while his life finally became so interlaced with that of Jefferson that a faithful account of the one requires a careful examination of the other.

Vitally important in their effect upon the conduct and attitude of Marshall and of the leading characters of his time were the state of the country, the condition of the people, and the tendency of popular thought. Some reconstruction of the period has, therefore, been attempted. Without a background, the picture and the figures in it lose much of their significance.

The present volumes narrate the life of John Marshall before his epochal labors as Chief Justice began. While this was the period during which events prepared him for his work on the bench, it was also a distinctive phase of his career and, in itself, as important as it was picturesque. It is my purpose to write the final part as soon as the nature of the task permits.

For reading one draft of the manuscript of these volumes I am indebted to Professor Edward Channing, of Harvard University; Dr. J. Franklin Jameson, of the Carnegie Foundation for Historical Research; Professor William E. Dodd, of Chicago University; Professor James A. Woodburn, of Indiana University; Professor Charles A. Beard, of Columbia University; Professor Charles H.

Ambler, of Randolph-Macon College; Professor Clarence W. Alvord, of the University of Illinois; Professor D. R. Anderson, of Richmond College; Dr. H. J. Eckenrode, of Richmond College; Dr. Archibald C. Coolidge, Director of the Harvard University Library; Mr. Worthington C. Ford, of the Massachusetts Historical Society; and Mr. Lindsay Swift, Editor of the Boston Public Library. Dr. William G. Stanard, of the Virginia Historical Society, has read the chapters which touch upon the colonial period. I have availed myself of the many helpful suggestions made by these gentlemen and I gratefully acknowledge my obligations to them.

Mr. Swift and Dr. Eckenrode, in addition to reading early drafts of the manuscript, have read the last draft with particular care and I have utilized their criticisms. The proof has been read by Mr. Swift and the comment of this finished critic has been especially valuable.

I am indebted in the highest possible degree to Mr. Worthington C. Ford, of the Massachusetts Historical Society, who has generously aided me with his profound and extensive knowledge of manuscript sources and of the history of the times of which this work treats. His sympathetic interest and whole-hearted helpfulness have not only assisted me, but encouraged and sustained me in the prosecution of my labors.

In making these acknowledgments, I do not in the least shift to other shoulders the responsibility for anything in these volumes. That burden is mine alone.

I extend my thanks to Mr. A. P. C. Griffin, Assistant Librarian, and Mr. Gaillard Hunt, Chief of the Manuscripts Division, of the Library of Congress, who have been unsparing in their efforts to assist me with all the resources of that great library. The officers and their assistants of the Virginia State Library, the Boston Public Library, the Library of Harvard University, the Manuscripts Division of the New York Public Library, the Massachusetts Historical Society, the Pennsylvania Historical Society, and the Virginia Historical Society have been most gracious in affording me all the sources at their command.

I desire to express my appreciation for original material furnished me by several of the descendants and collateral relatives of John Marshall. Miss Emily Harvie, of Richmond, Virginia, placed at my disposal many letters of Marshall to his wife. For the use of the book in which Marshall kept his accounts and wrote notes of law lectures, I am indebted to Mrs. John K. Mason, of Richmond. A large number of original and unpublished letters of Marshall were furnished me by Mr. James M. Marshall, of Front Royal, Virginia, Mr. Robert Y. Conrad, of Winchester, Virginia; Mrs. Alexander H. Sands, of Richmond, Virginia; Miss Sallie Marshall, of Leeds, Virginia; Mrs. Claudia Jones, and Mrs. Fannie G. Campbell of Washington, D.C.; Judge J. K. M. Norton, of Alexandria, Virginia; Mr. A. Moore, Jr., of Berryville, Virginia; Dr. Samuel Eliot Morison, of Boston, Massachusetts, and Professor Charles William Dabney, of Cincinnati, Ohio. Complete copies of the highly valuable correspondence of Mrs. Edward Carrington were supplied by Mr. John B. Minor, of Richmond, Virginia, and by Mr. Carter H. FitzHugh, of Lake Forest, Illinois. Without the material thus generously opened to me, this narrative of Marshall's life would have been more incomplete than it is and many statements in it would, necessarily, have been based on unsupported tradition.

Among the many who have aided me, Judge James Keith, of Richmond, Virginia, until recently President of the Court of Appeals of Virginia; Judge J. K. M. Norton and the late Miss Nannie Burwell Norton of Alexandria, Virginia; Mr. William Marshall Bullitt, of Louisville, Kentucky; Mr. Thomas Marshall Smith, of Baltimore, Maryland; Mr. and Mrs. Alexander H. Sands; Mr. W. P. Taylor and Dr. H. Norton Mason, of Richmond, Virginia; Mr. Lucien Keith, Mr. William Horgan, and Mr. William C. Marshall, of Warrenton, Virginia; Judge Henry H. Downing and Mr. Aubrey G. Weaver, of Front Royal, Virginia, have rendered notable assistance in the gathering of data.

I am under particular obligations to Miss Emily Harvie for the use of the striking miniature of Marshall, the reproduction of which appears as the frontispiece to the first volume; to Mr. Roland Gray, of Boston, for the right to reproduce the portrait by Jarvis as the frontispiece of the second volume; to Mr. Douglas H. Thomas of Baltimore, Maryland, for photographs of the portraits of

William Randolph, Mary Isham, and Mary Randolph Keith; and to Mr. Charles Edward Marshall, of Glen Mary, Kentucky, for permission to photograph the portrait of Colonel Thomas Marshall.

The large number of citations has made abbreviations necessary. At the end of each volume will be found a careful explanation of references, giving the full title of the work cited, together with the name of the author or editor, and a designation of the edition used.

The index has been made by Mr. David Maydole Matteson, of Cambridge, Massachusetts, and his careful work has added to whatever of value these volumes possess.

Albert J. Beveridge

LIST OF ABBREVIATED TITLES MOST FREQUENTLY CITED

All references here are to the List of Authorities at the end of this volume

Beard: *Econ. I. C.* See Beard, Charles A. Economic Interpretation of the Constitution of the United States.

Beard: *Econ. O. J. D.* See Beard, Charles A. Economic Origins of Jeffersonian Democracy.

Bruce: *Econ.* See Bruce, Philip Alexander. Economic History of Virginia in the Seventeenth Century.

Bruce: *Inst.* See Bruce, Philip Alexander. Institutional History of Virginia in the Seventeenth Century.

Cor. Rev.: Sparks. See Sparks, Jared. Correspondence of the Revolution.

Eckenrode: *R. V.* See Eckenrode, H. J. The Revolution in Virginia.

Eckenrode: *S. of C. and S.* See Eckenrode, H. J. Separation of Church and State in Virginia.

Jefferson's *Writings:* Washington. See Jefferson, Thomas. Writings. Edited by H. A. Washington.

Monroe's *Writings:* Hamilton. See Monroe, James. Writings. Edited by Stanislaus Murray Hamilton.

Old Family Letters. See Adams, John. Old Family Letters. Edited by Alexander Biddle.

Wertenbaker: *P. and P.* See Wertenbaker, Thomas J. Patrician and Plebeian in Virginia; or the Origin and Development of the Social Classes of the Old Dominion.

Wertenbaker: *V. U. S.* See Wertenbaker, Thomas J. Virginia Under the Stuarts, 1607-1688.

Works: Adams. See Adams, John. Works. Edited by Charles Francis Adams.

Works: Ford. See Jefferson, Thomas. Works. Federal Edition. Edited by Paul Leicester Ford.

Works: Hamilton. See Hamilton, Alexander. Works. Edited by John C. Hamilton.

Works: Lodge. See Hamilton, Alexander. Works. Federal Edition. Edited by Henry Cabot Lodge.

Writings: Conway. See Paine, Thomas. Writings. Edited by Moncure Daniel Conway.

Writings: Ford. See Washington, George. Writings. Edited by Worthington Chauncey Ford.

Writings: Hunt. See Madison, James. Writings. Edited by Gaillard Hunt.

Writings: Smyth. See Franklin, Benjamin. Writings. Edited by Albert Henry Smyth.

Writings: Sparks. See Washington, George. Writings. Edited by Jared Sparks.

CHAPTER I

ANCESTRY AND ENVIRONMENT

Often do the spirits of great events stride on before the events and in to-day already walks to-morrow. (Schiller.)

I was born an American; I will live an American; I shall die an American. (Webster.)

"The British are beaten! The British are beaten!" From cabin to cabin, from settlement to settlement crept, through the slow distances, this report of terror. The astounding news that Braddock was defeated finally reached the big plantations on the tidewater, and then spread dismay and astonishment throughout the colonies.

The painted warriors and the uniformed soldiers of the French-Indian alliance had been growing bolder and bolder, their ravages ever more daring and bloody.¹ Already the fear of them had checked the thin wave of pioneer advance; and it seemed to the settlers that their hereditary enemies from across the water might succeed in confining British dominion in America to the narrow strip between the ocean and the mountains. For the royal colonial authorities had not been able to cope with their foes.²

But there was always the reserve power of Great Britain to defend her possessions. If only the home Government would send an army of British veterans, the colonists felt that, as a matter of course, the French and Indians would be routed, the immigrants made safe, and the way cleared for their ever-swelling thousands to take up and people the lands beyond the Alleghanies.

So when at last, in 1755, the redoubtable Braddock and his red-coated regiments landed in Virginia, they were hailed as deliverers. There would be an end, everybody said, to the reign of terror which the atrocities of the French and Indians had created all along the border. For were not the British grenadiers invincible? Was not Edward Braddock an experienced commander, whose bravery was the toast of his fellow officers?³ So the colonists had been told, and so they believed.

They forgave the rudeness of their British champions; and Braddock marched away into the wilderness carrying with him the unquestioning confidence of the people.⁴ It was hardly thought necessary for any Virginia fighting men to accompany him; and that haughty, passionate young Virginia soldier, George Washington (then only twenty-three years of age, but already the chief military figure of the Old Dominion), and his Virginia rangers were invited to accompany Braddock more because they knew the country better than for any real aid in battle that was expected of them. "I have been importuned," testifies Washington, "to make this campaign by General Braddock, ... conceiving ... that the ... knowledge I have ... of the country, Indians, &c. ... might be useful to him."⁵

So through the ancient and unbroken forests Braddock made his slow and painful way.⁶ Weeks passed; then months.⁷ But there was no impatience, because everybody knew what would happen

¹ For instance, the Indians massacred nine families in Frederick County, just over the Blue Ridge from Fauquier, in June, 1755. (*Pennsylvania Journal and Weekly Advertiser*, July 24, 1755.)

² Marshall, i, 12-13; Campbell, 469-71. "The Colonial contingents were not nearly sufficient either in quantity or quality." (Wood, 40.)

³ Braddock had won promotion solely by gallantry in the famous Coldstream Guards, the model and pride of the British army, at a time when a lieutenant-colonelcy in that crack regiment sold for £5000 sterling. (Lowdermilk, 97.)

⁴ "The British troops had been looked upon as invincible, and preparations had been made in Philadelphia for the celebration of Braddock's anticipated victory." (*Ib.*, 186.)

⁵ Washington to Robinson, April 20, 1755; *Writings*: Ford, i, 147.

⁶ The "wild desert country lying between fort Cumberland and fort Frederick [now the cities of Cumberland and Frederick in

when his scarlet columns should finally meet and throw themselves upon the enemy. Yet this meeting, when it came, proved to be one of the lesser tragedies of history, and had a deep and fateful effect upon American public opinion and upon the life and future of the American people.⁸

Time has not dulled the vivid picture of that disaster. The golden sunshine of that July day; the pleasant murmur of the waters of the Monongahela; the silent and somber forests; the steady tramp, tramp of the British to the inspiriting music of their regimental bands playing the martial airs of England; the bright uniforms of the advancing columns giving to the background of stream and forest a touch of splendor; and then the ambush and surprise; the war-whoops of savage foes that could not be seen; the hail of invisible death, no pellet of which went astray; the pathetic volleys which the doomed British troops fired at hidden antagonists; the panic; the rout; the pursuit; the slaughter; the crushing, humiliating defeat!⁹

Most of the British officers were killed or wounded as they vainly tried to halt the stampede.¹⁰ Braddock himself received a mortal hurt.¹¹ Raging with battle lust, furious at what he felt was the stupidity and cowardice of the British regulars,¹² the youthful Washington rode among the fear-frenzied Englishmen, striving to save the day. Two horses were shot under him. Four bullets rent his uniform.¹³ But, crazed with fright, the Royal soldiers were beyond human control.

Only the Virginia rangers kept their heads and their courage. Obeying the shouted orders of their young commander, they threw themselves between the terror-stricken British and the savage victors; and, fighting behind trees and rocks, were an ever-moving rampart of fire that saved the flying remnants of the English troops. But for Washington and his rangers, Braddock's whole force would have been annihilated.¹⁴ Colonel Dunbar and his fifteen hundred British regulars, who had been left a short distance behind as a reserve, made off to Philadelphia as fast as their panic-winged feet could carry them.¹⁵

So everywhere went up the cry, "The British are beaten!" At first rumor had it that the whole force was destroyed, and that Washington had been killed in action.¹⁶ But soon another word followed hard upon this error – the word that the boyish Virginia captain and his rangers had fought with coolness, skill, and courage; that they alone had prevented the extinction of the British regulars; that they alone had come out of the conflict with honor and glory.

Thus it was that the American colonists suddenly came to think that they themselves must be their own defenders. It was a revelation, all the more impressive because it was so abrupt, unexpected, and dramatic, that the red-coated professional soldiers were not the unconquerable warriors the

Maryland], the most common track of the Indians, in making their incursions into Virginia." (Address in the Maryland House of Delegates, 1757, as quoted by Lowdermilk, 229-30.) Cumberland was "about 56 miles beyond our [Maryland] settlements." (*Ib.*) Cumberland "is far remote from any of our inhabitants." (Washington to Dinwiddie, Sept. 23, 1756; *Writings*: Ford, i, 346.) "Will's Creek was on the very outskirts of civilization. The country beyond was an unbroken and almost pathless wilderness." (Lowdermilk, 50.)

⁷ It took Braddock three weeks to march from Alexandria to Cumberland. He was two months and nineteen days on the way from Alexandria to the place of his defeat. (*Ib.*, 138.)

⁸ "All America watched his [Braddock's] advance." (Wood, 61.)

⁹ For best accounts of Braddock's defeat see Bradley, 75-107; Lowdermilk, 156-63; and Marshall, i, 7-10.

¹⁰ "Of one hundred and sixty officers, only six escaped." (Lowdermilk, footnote to 175.)

¹¹ Braddock had five horses killed under him. (*Ib.*, 161.)

¹² "The dastardly behavior of the Regular [British] troops," who "broke and ran as sheep before hounds." (Washington to Dinwiddie, July 18, 1755; *Writings*: Ford, i, 173-74.)

¹³ Washington to John A. Washington, July 18, 1755. (*Ib.*, 176.)

¹⁴ "The Virginia companies behaved like men and died like soldiers ... of three companies ... scarce thirty were left alive." (Washington to Dinwiddie, July 18, 1755; *Writings*: Ford, i, 173-74.)

¹⁵ Lowdermilk, 182-85; and see Washington's *Writings*: Ford, i, footnote to 175. For account of battle and rout see Washington's letters to Dinwiddie, *ib.*, 173-76; to John A. Washington, July 18, 1755, *ib.*; to Robert Jackson, Aug. 2, 1755, *ib.*, 177-78; also see Campbell, 472-81. For French account see Hart, ii, 365-67; also, Sargent: *History of Braddock's Expedition*.

¹⁶ Washington to John A. Washington, July 18, 1755; *Writings*: Ford, i, 175.

colonists had been told that they were.¹⁷ From colonial "mansion" to log cabin, from the provincial "capitals" to the mean and exposed frontier settlements, Braddock's defeat sowed the seed of the idea that Americans must depend upon themselves.¹⁸

As Bacon's Rebellion at Jamestown, exactly one hundred years before Independence was declared at Philadelphia, was the beginning of the American Revolution in its first clear expression of popular rights,¹⁹ so Braddock's defeat was the inception of that same epoch in its lesson of American military self-dependence.²⁰ Down to Concord and Lexington, Great Bridge and Bunker Hill, the overthrow of the King's troops on the Monongahela in 1755 was a theme of common talk among men, a household legend on which American mothers brought up their children.²¹

Close upon the heels of this epoch-making event, John Marshall came into the world. He was born in a little log cabin in the southern part of what now is Fauquier County, Virginia (then a part of Prince William), on September 24, 1755,²² eleven weeks after Braddock's defeat. The Marshall cabin stood about a mile and a half from a cluster of a dozen similar log structures built by a handful of German families whom Governor Spotswood had brought over to work his mines. This little settlement was known as Germantown, and was practically on the frontier.²³

Thomas Marshall, the father of John Marshall, was a close friend of Washington, whom he ardently admired. They were born in the same county, and their acquaintance had begun, apparently, in their boyhood.²⁴ Also, as will presently appear, Thomas Marshall had for about three years been the companion of Washington, when acting as his assistant in surveying the western part of the Fairfax estate.²⁵ From that time forward his attachment to Washington amounted to devotion.²⁶

Also, he was, like Washington, a fighting man.²⁷ It seems strange, therefore, that he did not accompany his hero in the Braddock expedition. There is, indeed, a legend that he did go part of the way.²⁸ But this, like so many stories concerning him, is untrue.²⁹ The careful roster, made by Washington of those under his command,³⁰ does not contain the name of Thomas Marshall either as officer or private. Because of their intimate association it is certain that Washington would not have overlooked him if he had been a member of that historic body of men.

¹⁷ "The Defeat of Braddock was totally unlooked for, and it excited the most painful surprise." (Lowdermilk, 186.)

¹⁸ "After Braddock's defeat, the Colonists jumped to the conclusion that all regulars were useless." (Wood, 40.)

¹⁹ See Stanard: *Story of Bacon's Rebellion*. Bacon's Rebellion deserves the careful study of all who would understand the beginnings of the democratic movement in America. Mrs. Stanard's study is the best brief account of this popular uprising. See also Wertenbaker: *V. U. S.*, chaps. 5 and 6.

²⁰ "The news [of Braddock's defeat] gave a far more terrible blow to the reputation of the regulars than to the British cause [against the French] itself." (Wood, 61.)

²¹ "From that time [Braddock's defeat] forward the Colonists had a much less exalted opinion of the valor of the royal troops." (Lowdermilk, 186.) The fact that the colonists themselves had been negligent and incompetent in resisting the French or even the Indians did not weaken their newborn faith in their own prowess and their distrust of British power.

²² *Autobiography*.

²³ Campbell, 494. "It is remarkable," says Campbell, "that as late as the year 1756, when the colony was a century and a half old, the Blue Ridge of mountains was virtually the western boundary of Virginia." And see Marshall, i, 15; also, *New York Review* (1838), iii, 330. For frontier settlements, see the admirable map prepared by Marion F. Lansing and reproduced in Channing, ii.

²⁴ Humphrey Marshall, i, 344-45. Also Binney, in Dillon, iii, 283.

²⁵ See *infra*, chap. II.

²⁶ Humphrey Marshall, i, 344-45.

²⁷ He was one of a company of militia cavalry the following year, (Journal, H.B. (1756), 378); and he was commissioned as ensign Aug. 27, 1761. (Crozier: *Virginia Colonial Militia*, 96.) And see *infra*, chaps. III and IV.

²⁸ Paxton, 20.

²⁹ A copy of a letter (MS.) to Thomas Marshall from his sister Elizabeth Marshall Martin, dated June 15, 1755, referring to the Braddock expedition, shows that he was at home at this time. Furthermore, a man of the quality of Thomas Marshall would not have left his young wife alone in their backwoods cabin at a time so near the birth of their first child, when there was an overabundance of men eager to accompany Braddock.

³⁰ Washington MSS., Lib. Cong.

So, while the father of John Marshall was not with his friend and leader at Braddock's defeat, no man watched that expedition with more care, awaited its outcome with keener anxiety, or was more affected by the news, than Thomas Marshall. Beneath no roof-tree in all the colonies, except, perhaps, that of Washington's brother, could this capital event have made a deeper impression than in the tiny log house in the forests of Prince William County, where John Marshall, a few weeks afterwards, first saw the light of day.

Wars and rumors of wars, ever threatening danger, and stern, strong, quiet preparation to meet whatever befell – these made up the moral and intellectual atmosphere that surrounded the Marshall cabin before and after the coming of Thomas and Mary Marshall's first son. The earliest stories told this child of the frontier³¹ must have been those of daring and sacrifice and the prevailing that comes of them.

Almost from the home-made cradle John Marshall was taught the idea of American solidarity. Braddock's defeat, the most dramatic military event before the Revolution,³² was, as we have seen, the theme of fireside talk; and from this grew, in time, the conviction that Americans, if united,³³ could not only protect their homes from the savages and the French, but defeat, if need be, the British themselves.³⁴ So thought the Marshalls, father and mother; and so they taught their children, as subsequent events show.

It was a remarkable parentage that produced this child who in manhood was to become the master-builder of American Nationality. Curiously enough, it was exactly the same mingling of human elements that gave to the country that great apostle of the rights of man, Thomas Jefferson. Indeed, Jefferson's mother and Marshall's grandmother were first cousins. The mother of Thomas Jefferson was Jane Randolph, daughter of Isham Randolph of Turkey Island; and the mother of John Marshall was Mary Randolph Keith, the daughter of Mary Isham Randolph, whose father was Thomas Randolph of Tuckahoe, the brother of Jefferson's maternal grandfather.

Thus, Thomas Jefferson was the great-grandson and John Marshall the great-great-grandson of William Randolph and Mary Isham. Perhaps no other couple in American history is so remarkable for the number of distinguished descendants. Not only were they the ancestors of Thomas Jefferson and John Marshall, but also of "Light Horse Harry" Lee, of Revolutionary fame, Edmund Randolph, Washington's first Attorney-General, John Randolph of Roanoke, George Randolph, Secretary of War under the Confederate Government, and General Robert E. Lee, the great Southern military leader of the Civil War.³⁵

The Virginia Randolphs were one of the families of that proud colony who were of undoubted gentle descent, their line running clear and unbroken at least as far back as 1550. The Ishams were a somewhat older family, their lineage being well established to 1424. While knighthood was conferred upon one ancestor of Mary Isham, the Randolph and Isham families were of the same social stratum, both being of the English gentry.³⁶ The Virginia Randolphs were brilliant in mind, physically courageous, commanding in character, generally handsome in person, yet often as erratic as they were gifted.

³¹ Simon Kenton, the Indian fighter, was born in the same county in the same year as John Marshall. (M'Clung: *Sketches of Western Adventure*, 93.)

³² Neither the siege of Louisburg nor the capture of Quebec took such hold on the public imagination as the British disaster on the Monongahela. Also, the colonists felt, though unjustly, that they were entitled to as much credit for the two former events as the British.

³³ The idea of unity had already germinated. The year before, Franklin offered his plan of concerted colonial action to the Albany conference. (*Writings*: Smyth, i, 387.)

³⁴ Wood, 38-42.

³⁵ For these genealogies see Slaughter: *Bristol Parish*, 212; Lee: *Lee of Virginia*, 406 *et seq.*; Randall, i, 6-9; Tucker, i, 26. See Meade, i, footnote to 138-39, for other descendants of William Randolph and Mary Isham.

³⁶ *Va. Mag. Hist. and Biog.*, iii, 261; xviii, 86-87.

When the gentle Randolph-Isham blood mingled with the sturdier currents of the common people, the result was a human product stronger, steadier, and abler than either. So, when Jane Randolph became the wife of Peter Jefferson, a man from the grass roots, the result was Thomas Jefferson. The union of a daughter of Mary Randolph with Thomas Marshall, a man of the soil and forests, produced John Marshall.³⁷

Physically and mentally, Peter Jefferson and Thomas Marshall were much alike. Both were powerful men of great stature. Both were endowed with rare intellectuality.³⁸ Both were hard-working, provident, and fearless. Even their occupations were the same: both were land surveyors. The chief difference between them was that, whereas Peter Jefferson appears to have been a hearty and convivial person,³⁹ Thomas Marshall seems to have been self-contained though adventurous, and of rather austere habits. Each became the leading man of his county⁴⁰ and both were chosen members of the House of Burgesses.⁴¹

On the paternal side, it is impossible to trace the origin of either Peter Jefferson⁴² or Thomas Marshall farther back than their respective great-grandfathers, without floundering, unavailingly, in genealogical quicksands.

Thomas Marshall was the son of a very small planter in Westmoreland County, Virginia. October 23, 1727, three years before Thomas was born, his father, John Marshall "of the forest," acquired by deed, from William Marshall of King and Queen County, two hundred acres of poor, low, marshy land located on Appomattox Creek.⁴³ Little as the value of land in Virginia then was, and continued to be for three quarters of a century afterwards,⁴⁴ this particular tract seems to have been of an especially inferior quality. The deed states that it is a part of twelve hundred acres which had been granted to "Jno. Washington & Thos. Pope, gents ... & by them lost for want of seating."

Here John Marshall "of the forest"⁴⁵ lived until his death in 1752, and here on April 2, 1730, Thomas Marshall was born. During the quarter of a century that this John Marshall remained on his little farm, he had become possessed of several slaves, mostly, perhaps, by natural increase. By his will he bequeaths to his ten children and to his wife six negro men and women, ten negro boys and girls, and two negro children. In addition to "one negro fellow named Joe and one negro woman named Cate" he gives to his wife "one Gray mair named beauty and side saddle also six hogs also

³⁷ The curious sameness in the ancestry of Marshall and Jefferson is found also in the surroundings of their birth. Both were born in log cabins in the backwoods. Peter Jefferson, father of Thomas, "was the third or fourth white settler within the space of several miles" of his cabin home, which he built "in a small clearing in the dense and primeval forest." (Randall, i, 11.) Here Jefferson was born, April 2, 1743, a little more than twelve years before John Marshall came into the world, under like conditions and from similar parents. Peter Jefferson was, however, remotely connected by descent, on his mother's side, with men who had been burgesses. His maternal grandfather, Peter Field, was a burgess, and his maternal great-grandfather, Henry Soane, was Speaker of the House of Burgesses. But both Peter Jefferson and Thomas Marshall were "of the people" as distinguished from the gentry.

³⁸ Morse, 3; and Story, in Dillon, iii, 330.

³⁹ Randall, i, 7. Peter Jefferson "purchased" four hundred acres of land from his "bosom friend," William Randolph, the consideration as set forth in the deed being, "Henry Weatherbourne's biggest bowl of arrack punch"! (*Ib.*)

⁴⁰ Peter Jefferson was County Lieutenant of Albemarle. (*Va. Mag. Hist. and Biog.*, xxiii, 173-75.) Thomas Marshall was Sheriff of Fauquier.

⁴¹ Randall, i, 12-13; and see *infra*, chap. II.

⁴² Tucker, i, 26.

⁴³ Records of Westmoreland County, Deeds and Wills, viii, I, 276.

⁴⁴ *Ib.* Seventy years later La Rochefoucauld found land adjoining Norfolk heavily covered with valuable timber, close to the water and convenient for shipment, worth only from six to seven dollars an acre. (La Rochefoucauld, iii, 25.) Virginia sold excellent public land for two cents an acre three quarters of a century after this deed to John Marshall "of the forest." (Ambler, 44; and see Turner, Wis. Hist. Soc, 1908, 201.) This same land which William Marshall deeded to John Marshall nearly two hundred years ago is now valued at only from ten to twenty dollars an acre. (Letter of Albert Stuart, Deputy Clerk of Westmoreland County, to author, Aug. 26, 1913.) In 1730 it was probably worth one dollar per acre.

⁴⁵ A term generally used by the richer people in referring to those of poorer condition who lived in the woods, especially those whose abodes were some distance from the river. (Statement of W. G. Stanard, Secretary of the Virginia Historical Society and Dr. H. J. Eckenrode of Richmond College, and formerly Archivist of the Virginia State Library.) There were, however, Virginia estates called "The Forest." For example, Jefferson's father-in-law, John Wayles, a wealthy man, lived in "The Forest."

I leave her the use of my land During her widowhood, and afterwards to fall to my son Thomas Marshall and his heirs forever."⁴⁶ One year later the widow, Elizabeth Marshall, deeded half of this two hundred acres to her son Thomas Marshall.⁴⁷

Such was the environment of Thomas Marshall's birth, such the property, family, and station in life of his father. Beyond these facts, nothing positively is known of the ancestry of John Marshall on his father's side. Marshall himself traces it no further back than his grandfather. "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 Westmoreland, in Virginia, where my Father was born."⁴⁸

It is probable, however, that Marshall's paternal great-grandfather was a carpenter of Westmoreland County. A Thomas Marshall, "carpenter," as he describes himself in his will, died in that county in 1704. He devised his land to his son William. A William Marshall of King and Queen County deeded to John Marshall "of the forest," for five shillings, the two hundred acres of land in Westmoreland County, as above stated.⁴⁹ The fair inference is that this William was the elder brother of John "of the forest" and that both were sons of Thomas the "carpenter."

Beyond his paternal grandfather or at furthest his great-grandfather, therefore, the ancestry of John Marshall, on his father's side, is lost in the fogs of uncertainty.⁵⁰ It is only positively known that his grandfather was of the common people and of moderate means.⁵¹

⁴⁶ Will of John Marshall "of the forest," made April 1, 1752, probated May 26, 1752, and recorded June 22, 1752; Records of Westmoreland County, Deeds and Wills, xi, 419 *et seq.* (Appendix II.)

⁴⁷ *Ib.*, 421.

⁴⁸ *Autobiography*. Marshall gives the ancestry of his wife more fully and specifically. See *infra*, chap. V.

⁴⁹ Will of Thomas Marshall, "carpenter," probated May 31, 1704; Records of Westmoreland County, Deeds and Wills, iii, 232 *et seq.* (Appendix I.)

⁵⁰ Most curiously, precisely this is true of Thomas Jefferson's paternal ancestry.

⁵¹ There is a family tradition that the first of this particular Marshall family in America was a Royalist Irish captain who fought under Charles I and came to America when Cromwell prevailed. This may or may not be true. Certainly no proof of it has been discovered. The late Wilson Miles Cary, whose authority is unquestioned in genealogical problems upon which he passed judgment, decided that "the Marshall family begins absolutely with Thomas Marshall, 'Carpenter.'" (The Cary Papers, MSS., Va. Hist. Soc. The *Virginia Magazine of History and Biography* is soon to publish these valuable genealogical papers.) Within comparatively recent years, this family tradition has been ambitiously elaborated. It includes among John Marshall's ancestors William le Mareschal, who came to England with the Conqueror; the celebrated Richard de Clare, known as "Strongbow"; an Irish king, Dermont; Sir William Marshall, regent of the kingdom of England and restorer of Magna Charta; a Captain John Marshall, who distinguished himself at the siege of Calais in 1558; and finally, the Irish captain who fought Cromwell and fled to Virginia as above mentioned. (Paxton, 7 *et seq.*) Senator Humphrey Marshall rejected this story as "a myth supported by vanity." (*Ib.*) Colonel Cary declares that "there is no evidence whatever in support of it." (Cary Papers, MSS.) Other painstaking genealogists have reached the same conclusion. (See, for instance, General Thomas M. Anderson's analysis of the subject in *Va. Mag. Hist. and Biog.*, xii, 328 *et seq.*) Marshall himself, of course, does not notice this legend in his *Autobiography*; indeed, it is almost certain that he never heard of it. In constructing this picturesque genealogical theory, the kinship of persons separated by centuries is assumed largely because of a similarity of names. This would not seem to be entirely convincing. There were many Marshalls in Virginia no more related to one another than the various unrelated families by the name of Smith. Indeed, *maréchal* is the French word for a "shoeing smith." For example, there lived in Westmoreland County, at the same time with John Marshall "of the forest," another John Marshall, who died intestate and the inventory of whose effects was recorded March 26, 1751, a year before John Marshall "of the forest" died. These two John Marshalls do not seem to have been kinsmen. The only prominent person in Virginia named Marshall in 1723-34 was a certain Thomas Marshall who was a member of the colony's House of Burgesses during this period; but he was from Northampton County. (Journal, H.B. (1712-23), xi; *ib.* (1727-40), viii, and 174.) He does not appear to have been related in any way to John "of the forest." There were numerous Marshalls who were officers in the Revolutionary War from widely separated colonies, apparently unconnected by blood or marriage. For instance, there were Abraham, David, and Benjamin Marshall from Pennsylvania; Christopher Marshall from Massachusetts; Dixon Marshall from North Carolina; Elihu Marshall from New York, etc. (Heitman, 285.) At the same time that John Marshall, the subject of this work, was captain in a Virginia regiment, two other John Marshalls were captains in Pennsylvania regiments. When Thomas Marshall of Virginia was an officer in Washington's army, there were four other Thomas Marshalls, two from Massachusetts, one from South Carolina, and one from Virginia, all Revolutionary officers. (*Ib.*) When Stony Point was taken by Wayne, among the British prisoners captured was Lieutenant John Marshall of the 17th Regiment of British foot (see Dawson, 86); and Captain John Marshall of Virginia was one of the attacking force. (See *infra*, chap. IV.) In 1792, John Marshall of King and Queen County, a boatswain, was a Virginia pensioner. (*Va. Hist. Prs.*, v, 544.) He was not related to John Marshall, who had become the leading Richmond lawyer of that time. While Hamilton was Secretary of the Treasury he received several letters from John Marshall, an Englishman, who was in this country and who wrote Hamilton concerning the subject of establishing manufactories. (Hamilton MSS., Lib. Cong.) Illustrations like these might be continued

Concerning his paternal grandmother, nothing definitely is established except that she was Elizabeth Markham, daughter of Lewis Markham, once Sheriff of Westmoreland County.⁵²

John Marshall's lineage on his mother's side, however, is long, high, and free from doubt, not only through the Randolphs and Ishams, as we have seen, but through the Keiths. For his maternal grandfather was an Episcopal clergyman, James Keith, of the historic Scottish family of that name, who were hereditary Earls Marischal of Scotland. The Keiths had been soldiers for generations, some of them winning great renown.⁵³ One of them was James Keith, the Prussian field marshal and ablest of the officers of Frederick the Great.⁵⁴ James Keith, a younger son of this distinguished family, was destined for the Church;⁵⁵ but the martial blood flowing in his veins asserted itself and, in his youth, he also became a soldier, upholding with arms the cause of the Pretender. When that rebellion was crushed, he fled to Virginia, resumed his sacred calling, returned to England for orders, came back to Virginia⁵⁶ and during his remaining years performed his priestly duties with rare zeal and devotion.⁵⁷ The motto of the Keiths of Scotland was "Veritas Vincit," and John Marshall adopted it. During most of his life he wore an amethyst with the ancient Keith motto engraved upon it.⁵⁸

When past middle life the Scottish parson married Mary Isham Randolph,⁵⁹ granddaughter of William Randolph and Mary Isham. In 1754 their daughter, Mary Randolph Keith, married Thomas Marshall and became the mother of John Marshall. "My mother was named Mary Keith, she was the daughter of a clergyman, of the name of Keith, who migrated from Scotland and intermarried with a Miss Randolph of James River" is Marshall's comment on his maternal ancestry.⁶⁰

Not only was John Marshall's mother uncommonly well born, but she was more carefully educated than most Virginia women of that period.⁶¹ Her father received in Aberdeen the precise and methodical training of a Scottish college;⁶² and, as all parsons in the Virginia of that time were teachers, it is certain that he carefully instructed his daughter. He was a deeply religious man, especially in his latter years, – so much so, indeed, that there was in him a touch of mysticism; and the two marked qualities of his daughter, Mary, were deep piety and strong intellectuality. She had, too, all the physical hardiness of her Scottish ancestry, fortified by the active and useful labor which all Virginia women of her class at that time performed.

So Thomas Marshall and Mary Keith combined unusual qualities for the founding of a family. Great strength of mind both had, and powerful wills; and through the veins of both poured the blood

for many pages. They merely show the danger of inferring relationship because of the similarity of names, especially one so general as that of Marshall.

⁵² The Cary Papers, *supra*. Here again the Marshall legend riots fantastically. This time it makes the pirate Blackbeard the first husband of Marshall's paternal grandmother; and with this freebooter she is said to have had thrilling and melancholy experiences. It deserves mention only as showing the absurdity of such myths. Blackbeard was one Edward Teach, whose career is well authenticated (Wise, 186.) Colonel Cary put a final quietus on this particular tale, as he did on so many other genealogical fictions.

⁵³ See Douglas: *Peerage of Scotland* (1764), 448. Also Burke: *Peerage* (1903), 895; and *ib.* (1876). This peerage is now extinct. See Burke: *Extinct Peerages*.

⁵⁴ For appreciation of this extraordinary man see Carlyle's *Frederick the Great*.

⁵⁵ Paxton, 30.

⁵⁶ From data furnished by Justice James Keith, President of the Court of Appeals of Virginia.

⁵⁷ Paxton, 30; and see Meade, ii, 216.

⁵⁸ Data furnished by Thomas Marshall Smith of Baltimore, Md.

⁵⁹ With this lady the tradition deals most unkindly and in highly colored pictures. An elopement, the deadly revenge of outraged brothers, a broken heart and resulting insanity overcome by gentle treatment, only to be reinduced in old age by a fraudulent Enoch Arden letter apparently written by the lost love of her youth – such are some of the incidents with which this story clothes Marshall's maternal grandmother. (Paxton, 25-26.)

⁶⁰ *Autobiography*.

⁶¹ In general, Virginia women at this time had very little education (Burnaby, 57.) Sometimes the daughters of prominent and wealthy families could not read or write. (Bruce: *Inst.*, i, 454-55.) Even forty years after John Marshall was born, there was but one girls' school in Virginia. (La Rochefoucauld, iii, 227.) In 1789, there were very few schools of any kind in Virginia, it appears. (Journal, H.B. (Dec. 14, 1789), 130; and see *infra*, chap. VI.)

⁶² Paxton, 30. Marischal College, Aberdeen, was founded by George Keith, Fifth Earl Marischal (1593).

of daring. Both were studious-minded, too, and husband and wife alike were seized of a passion for self-improvement as well as a determination to better their circumstances. It appears that Thomas Marshall was by nature religiously inclined;⁶³ and this made all the greater harmony between himself and his wife. The physical basis of both husband and wife seems to have been well-nigh perfect.

Fifteen children were the result of this union, every one of whom lived to maturity and almost all of whom rounded out a ripe old age. Every one of them led an honorable and successful life. Nearly all strongly impressed themselves upon the community in which they lived.

It was a peculiar society of which this prolific and virile family formed a part, and its surroundings were as strange as the society itself. Nearly all of Virginia at that time was wilderness,⁶⁴ if we look upon it with the eyes of to-day. The cultivated parts were given over almost entirely to the raising of tobacco, which soon drew from the soil its virgin strength; and the land thus exhausted usually was abandoned to the forest, which again soon covered it. No use was made of the commonest and most obvious fertilizing materials and methods; new spaces were simply cleared.⁶⁵ Thus came a happy-go-lucky improvidence of habits and character.

This shiftlessness was encouraged by the vast extent of unused and unoccupied domain. Land was so cheap that riches measured by that basis of all wealth had to be counted in terms of thousands and tens of thousands of acres.⁶⁶ Slavery was an even more powerful force making for a kind of lofty disdain of physical toil among the white people.⁶⁷ Black slaves were almost as numerous as white free men.⁶⁸ On the great plantations the negro quarters assumed the proportions of villages;⁶⁹ and the masters of these extensive holdings were by example the arbiters of habits and manners to the whole social and industrial life of the colony. While an occasional great planter was methodical and industrious,⁷⁰ careful and systematic methods were rare. Manual labor was, to most of these lords of circumstance, not only unnecessary but degrading. To do no physical work that could be avoided on the one hand, and on the other hand, to own as many slaves as possible, was, generally, the ideal of

⁶³ See *infra*, chap. II. When Leeds Parish was organized, we find Thomas Marshall its leading vestryman. He was always a stanch churchman.

⁶⁴ Jones, 35; Burnaby, 58. But see Maxwell in *William and Mary College Quarterly*, xix, 73-103; and see Bruce: *Econ.*, i, 425, 427, 585, 587.

⁶⁵ "Though tobacco exhausts the land to a prodigious degree, the proprietors take no pains to restore its vigor; they take what the soil will give and abandon it when it gives no longer. They like better to clear new lands than to regenerate the old." (De Warville, 439; and see Fithian, 140.) The land produced only "four or five bushels of wheat per acre or from eight to ten of Indian corn. These fields are never manured, hardly even are they ploughed; and it seldom happens that their owners for two successive years exact from them these scanty crops... The country ... everywhere exhibits the features of laziness, of ignorance, and consequently of poverty." (La Rochefoucauld, iii, 106-07, describing land between Richmond and Petersburg, in 1797; and see Schoepf, ii, 32, 48; and Weld, i, 138, 151.)

⁶⁶ Burnaby, 45, 59. The estate of Richard Randolph of Curels, in 1742 embraced "not less than forty thousand acres of the choicest lands." (Garland, i, 7.) The mother of George Mason bought ten thousand acres in Loudoun County for an insignificant sum. (Rowland, i, 51.) The Carter plantation in 1774 comprised sixty thousand acres and Carter owned six hundred negroes. (Fithian, 128.) Compare with the two hundred acres and few slaves of John Marshall "of the forest," *supra*. Half a century later the very best lands in Virginia with valuable mines upon them sold for only eighteen dollars an acre. (La Rochefoucauld, iii, 124.) For careful account of the extent of great holdings in the seventeenth century see Wertenbaker: *P. and P.*, 34-35, 97-99. Jefferson in 1790 owned two hundred slaves and ten thousand acres of very rich land on the James River. (Jefferson to Van Staphorst, Feb. 28, 1790; *Works*: Ford, vi, 33.) Washington owned enormous quantities of land, and large numbers of slaves. His Virginia holdings alone amounted to thirty-five thousand acres. (Beard: *Econ. I. C.*, 144.)

⁶⁷ Burnaby, 54.

⁶⁸ In the older counties the slaves outnumbered the whites; for instance, in 1790 Westmoreland County had 3183 whites, 4425 blacks, and 114 designated as "all others." In 1782 in the same county 410 slave-owners possessed 4536 slaves and 1889 horses. (*Va. Mag. Hist. and Biog.*, x, 229-36.)

⁶⁹ Ambler, 11. The slaves of some planters were valued at more than thirty thousand pounds sterling. (Fithian, 286; and Schoepf, ii, 38; also, Weld, i, 148.)

⁷⁰ Robert Carter was a fine example of this rare type. (See Fithian, 279-80.)

members of the first estate.⁷¹ This spread to the classes below, until it became a common ambition of white men throughout the Old Dominion.

While contemporary travelers are unanimous upon this peculiar aspect of social and economic conditions in old Virginia, the vivid picture drawn by Thomas Jefferson is still more convincing. "The whole commerce between master and slave," writes Jefferson, "is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this and learn to imitate it... Thus nursed, educated, and daily exercised in tyranny ... the man must be a prodigy who can retain his manners and morals undepraved... With the morals of the people their industry also is destroyed. For in a warm climate, no man will labour for himself who can make another labour for him... Of the proprietors of slaves a very small proportion indeed are ever seen to labour."⁷²

Two years after he wrote his "Notes on Virginia" Jefferson emphasized his estimate of Virginia society. "I have thought them [Virginians] as you found them," he writes Chastellux, "aristocratical, pompous, clannish, indolent, hospitable ... careless of their interests, ... thoughtless in their expenses and in all their transactions of business." He again ascribes many of these characteristics to "that warmth of their climate which unnerves and unmans both body and mind."⁷³

From this soil sprang a growth of habits as noxious as it was luxuriant. Amusements to break the monotony of unemployed daily existence took the form of horse-racing, cock-fighting, and gambling.⁷⁴ Drinking and all attendant dissipations were universal and extreme;⁷⁵ this, however, was the case in all the colonies.⁷⁶ Bishop Meade tells us that even the clergy indulged in the prevailing customs to the neglect of their sacred calling; and the church itself was all but abandoned in the disrepute which the conduct of its ministers brought upon the house of God.⁷⁷

Yet the higher classes of colonial Virginians were keen for the education of their children, or at least of their male offspring.⁷⁸ The sons of the wealthiest planters often were sent to England or Scotland to be educated, and these, not infrequently, became graduates of Oxford, Cambridge, and

⁷¹ Burnaby, 53-54 and 59. "The Virginians ... are an indolent haughty people whose thoughts and designs are directed solely towards p[laying] the lord, owning great tracts of land and numerous troops of slaves. Any man whatever, if he can afford so much as 2-3 [two or three] negroes, becomes ashamed of work, and goes about in idleness, supported by his slaves." (Schoepf, ii, 40.)

⁷² "Notes on Virginia"; *Works*: Ford, iv, 82-83. See La Rochefoucauld, iii, p. 161, on Jefferson's slaves.

⁷³ Jefferson to Chastellux, Sept. 2, 1785; *Thomas Jefferson Correspondence*, Bixby Collection: Ford, 12; and see Jefferson's comparison of the sections of the country, *ib.* and *infra*, chap. VI.

⁷⁴ "Many of the wealthier class were to be seen seeking relief from the vacuity of idleness, not merely in the allowable pleasures of the chase and the turf, but in the debasing ones of cock-fighting, gaming, and drinking." (Tucker, i, 18; and see La Rochefoucauld, iii, 77; Weld, i, 191; also *infra*, chap. VII, and references there given.)

⁷⁵ Jones, 48, 49, and 52; Chastellux, 222-24; also, translator's note to *ib.*, 292-93. The following order from the Records of the Court of Rappahannock County, Jan. 2, 1688 (*sic*), p. 141, is illustrative:—"It having pleased Almighty God to bless his Royall Mahst. with the birth of a son & his subjects with a Prince of Wales, and for as much as his Excellency hath sett apart the 16th. day of this Inst. Janr'y. for solemnizing the same. To the end therefore that it may be don with all the expressions of joy this County is capable of, this Court have ordered that Capt. Geo. Taylor do provide & bring to the North Side Courthouse for this county as much Rum or other strong Liquor with sugar proportionable as shall amount to six thousand five hundred pounds of Tobb. to be distributed amongst the Troops of horse, Compa. of foot and other persons that shall be present at the Sd. Solemnitie. And that the said sum be allowed him at the next laying of the Levey. As also that Capt. Samll. Blomfield provide & bring to the South side Courthouse for this county as much Rum or other strong Liquor Wth. sugar proportionable as shall amount to three thousand five hundred pounds of Tobb. to be distributed as above att the South side Courthouse, and the Sd. sum to be allowed him at the next laying of the Levey." And see Bruce: *Econ.*, ii, 210-31; also Wise, 320, 327-29. Although Bruce and Wise deal with a much earlier period, drinking seems to have increased in the interval. (See Fithian, 105-14, 123.)

⁷⁶ As in Massachusetts, for instance. "In most country towns ... you will find almost every other house with a sign of entertainment before it... If you sit the evening, you will find the house full of people, drinking drams, flip, toddy, carousing, swearing." (John Adams's *Diary*, describing a New England county, in 1761; *Works*: Adams, ii, 125-26. The Records of Essex County, Massachusetts, now in process of publication by the Essex Institute, contain many cases that confirm the observation of Adams.)

⁷⁷ Meade, i, 52-54; and see Schoepf, ii, 62-63.

⁷⁸ Wise, 317-19; Bruce: *Inst.*, i, 308-15.

Edinburgh.⁷⁹ Others of this class were instructed by private tutors.⁸⁰ Also a sort of scanty and fugitive public instruction was given in rude cabins, generally located in abandoned fields. These were called the Old Field Schools.⁸¹

More than forty per cent of the men who made deeds or served on juries could not sign their names, although they were of the land-owning and better educated classes;⁸² the literacy of the masses, especially that of the women,⁸³ was, of course, much lower.

An eager desire, among the "quality," for reading brought a considerable number of books to the homes of those who could afford that luxury.⁸⁴ A few libraries were of respectable size and two or three were very large. Robert Carter had over fifteen hundred volumes,⁸⁵ many of which were in Latin and Greek, and some in French.⁸⁶ William Byrd collected at Westover more than four thousand books in half a dozen languages.⁸⁷ But the Carter and Byrd libraries were, of course, exceptions. Byrd's library was the greatest, not only in Virginia, but in all the colonies, except that of John Adams, which was equally extensive and varied.⁸⁸

Doubtless the leisure and wealth of the gentry, created by the peculiar economic conditions of the Old Dominion, sharpened this appetite for literature and afforded to the wealthy time and material for the gratification of it. The passion for reading and discussion persisted, and became as notable a characteristic of Virginians as was their dislike for physical labor, their excessive drinking, and their love of strenuous sport and rough diversion.

There were three social orders or strata, all contemporary observers agree, into which Virginians were divided; but they merged into one another so that the exact dividing line was not clear.⁸⁹ First, of course, came the aristocracy of the immense plantations. While the social and political dominance of this class was based on wealth, yet some of its members were derived from the English gentry, with, perhaps, an occasional one from a noble family in the mother country.⁹⁰ Many, however, were English merchants or their sons.⁹¹ It appears, also, that the boldest and thriftiest of the early Virginia settlers, whom the British Government exiled for political offenses, acquired extensive possessions, became large slave-owners, and men of importance and position. So did some who were indentured servants;⁹² and, indeed, an occasional transported convict rose to prominence.⁹³

⁷⁹ Bruce: *Inst.*, i, 317-22; and see especially, *Va. Mag. Hist. and Biog.*, ii, 196 *et seq.*

⁸⁰ *Ib.*, 323-30; also Fithian, 50 *et seq.*

⁸¹ Bruce: *Inst.*, i, 331-42.

⁸² *Ib.*, 452-53.

⁸³ *Ib.*, 456-57. Bruce shows that two thirds of the women who joined in deeds could not write. This, however, was in the richer section of the colony at a much earlier period. Just before the Revolution Virginia girls, even in wealthy families, "were simply taught to read and write at 25/ [shillings] and a load of wood per year – A boarding school was no where in Virginia to be found." (Mrs. Carrington to her sister Nancy; MS.) Part of this letter appears in the *Atlantic Monthly* series cited hereafter (see chap. V); but the teacher's pay is incorrectly printed as "pounds" instead of "shillings." (*Atlantic Monthly*, lxxxiv, 544-45.)

⁸⁴ Bruce: *Inst.*, i, 402-42; and see Wise, 313-15. Professor Tucker says that "literature was neglected, or cultivated, by the small number who had been educated in England, rather as an accomplishment and a mark of distinction than for the substantial benefits it confers." (Tucker, i, 18.)

⁸⁵ Fithian, 177.

⁸⁶ See catalogue in *W. and M. C. Q.*, x and xi.

⁸⁷ See catalogue in Appendix A to Byrd's *Writings*: Bassett.

⁸⁸ See catalogue of John Adams's Library, in the Boston Public Library.

⁸⁹ Ambler, 9; and see Wise, 68-70.

⁹⁰ Trustworthy data on this subject is given in the volumes of the *Va. Mag. Hist. and Biog.*; see also *W. and M. C. Q.*

⁹¹ Wertenbaker: *P. and P.*, 14-20. But see William G. Stanard's exhaustive review of Mr. Wertenbaker's book in *Va. Mag. Hist. and Biog.*, xviii, 339-48.

⁹² "One hundred young maids for wives, as the former ninety sent. One hundred boys more for apprentices likewise to the public tenants. One hundred servants to be disposed among the old planters which they exclusively desire and will pay the company their charges." (*Virginia Company Records*, i, 66; and see Fithian, 111.)

⁹³ For the understanding in England at that period of the origin of this class of Virginia colonists see Defoe: *Moll Flanders*, 65 *et seq.* On transported convicts see *Amer. Hist. Rev.*, ii, 12 *et seq.* For summary of the matter see Channing, i, 210-14, 226-27.

But the genuine though small aristocratic element gave tone and color to colonial Virginia society. All, except the "poor whites," looked to this supreme group for ideals and for standards of manners and conduct. "People of fortune . . . are the pattern of all behaviour here," testifies Fithian of New Jersey, tutor in the Carter household.⁹⁴ Also, it was, of course, the natural ambition of wealthy planters and those who expected to become such to imitate the life of the English higher classes. This was much truer in Virginia than in any other colony; for she had been more faithful to the Crown and to the royal ideal than had her sisters. Thus it was that the Old Dominion developed a distinctively aristocratic and chivalrous social atmosphere peculiar to herself,⁹⁵ as Jefferson testifies.

Next to the dominant class came the lesser planters. These corresponded to the yeomanry of the mother country; and most of them were from the English trading classes.⁹⁶ They owned little holdings of land from a few hundred to a thousand and even two thousand acres; and each of these inconsiderable landlords acquired a few slaves in proportion to his limited estate. It is possible that a scanty number of this middle class were as well born as the best born of the little nucleus of the genuine aristocracy; these were the younger sons of great English houses to whom the law of primogeniture denied equal opportunity in life with the elder brother. So it came to pass that the upper reaches of the second estate in the social and industrial Virginia of that time merged into the highest class.

At the bottom of the scale, of course, came the poverty-stricken whites. In eastern Virginia this was the class known as the "poor whites"; and it was more distinct than either of the two classes above it. These "poor whites" lived in squalor, and without the aspirations or virtues of the superior orders. They carried to the extreme the examples of idleness given them by those in higher station, and coarsened their vices to the point of brutality.⁹⁷ Near this social stratum, though not a part of it, were classed the upland settlers, who were poor people, but highly self-respecting and of sturdy stock.

Into this structure of Virginia society Fate began to weave a new and alien thread about the time that Thomas Marshall took his young bride to the log cabin in the woods of Prince William County where their first child was born. In the back country bordering the mountains appeared the scattered huts of the pioneers. The strong character of this element of Virginia's population is well known, and its coming profoundly influenced for generations the political, social, industrial, and military history of that section. They were jealous of their "rights," impatient of restraint, wherever they felt it, and this was seldom. Indeed, the solitariness of their lives, and the utter self-dependence which this forced upon them, made them none too tolerant of law in any form.

These outpost settlers furnished most of that class so well known to our history by the term "backwoodsmen," and yet so little understood. For the heroism, the sacrifice, and the suffering of this "advance guard of civilization" have been pictured by laudatory writers to the exclusion of its other and less admirable qualities. Yet it was these latter characteristics that played so important a part in that critical period of our history between the surrender of the British at Yorktown and the adoption of the Constitution, and in that still more fateful time when the success of the great experiment of making out of an inchoate democracy a strong, orderly, independent, and self-respecting nation was in the balance.

These American backwoodsmen, as described by contemporary writers who studied them personally, pushed beyond the inhabited districts to get land and make homes more easily. This was their underlying purpose; but a fierce individualism, impatient even of those light and vague social

⁹⁴ Fithian to Greene, Dec. 1, 1773; Fithian, 280.

⁹⁵ Fithian to Peck, Aug. 12, 1774; Fithian, 286-88; and see Professor Tucker's searching analysis in Tucker, i, 17-22; also see Lee, in Ford: *P. on C.*, 296-97. As to a genuinely aristocratic group, the New York patroons were, perhaps, the most distinct in the country.

⁹⁶ Wertenbaker: *P. and P.*, 14-20; also *Va. Mag. Hist. and Biog.*, xviii, 339-48.

⁹⁷ For accounts of brutal physical combats, see Anburey, ii, 310 *et seq.* And for dueling, though at an earlier period, see Wise, 329-31. The practice of dueling rapidly declined; but fighting of a violent and often repulsive character persisted, as we shall see, far into the nineteenth century. Also, see La Rochefoucauld, Chastellux, and other travelers, *infra*, chap. VII.

restraints which the existence of near-by neighbors creates, was a sharper spur.⁹⁸ Through both of these motives, too, ran the spirit of mingled lawlessness and adventure. The physical surroundings of the backwoodsman nourished the non-social elements of his character. The log cabin built, the surrounding patch of clearing made, the seed planted for a crop of cereals only large enough to supply the household needs – these almost ended the backwoodsman's agricultural activities and the habits of regular industry which farming requires.

While his meager crops were coming on, the backwoodsman must supply his family with food from the stream and forest. The Indians had not yet retreated so far, nor were their atrocities so remote, that fear of them had ceased;⁹⁹ and the eye of the backwoodsman was ever keen for a savage human foe as well as for wild animals. Thus he became a man of the rifle,¹⁰⁰ a creature of the forests, a dweller amid great silences, self-reliant, suspicious, non-social, and almost as savage as his surroundings.¹⁰¹

But among them sometimes appeared families which sternly held to high purposes, orderly habits, and methodical industry;¹⁰² and which clung to moral and religious ideals and practices with greater tenacity than ever, because of the very difficulties of their situation. These chosen families naturally became the backbone of the frontier; and from them came the strong men of the advanced settlements.

Such a figure among the backwoodsmen was Thomas Marshall. Himself a product of the settlements on the tidewater, he yet was the personification of that spirit of American advance and enterprise which led this son of the Potomac lowlands ever and ever westward until he ended his days in the heart of Kentucky hundreds of miles through the savage wilderness from the spot where, as a young man, he built his first cabin home.

This, then, was the strange mingling of human elements that made up Virginia society during the middle decades of the eighteenth century – a society peculiar to the Old Dominion and unlike that of any other place or time. For the most part, it was idle and dissipated, yet also hospitable and spirited, and, among the upper classes, keenly intelligent and generously educated. When we read of the heavy drinking of whiskey, brandy, rum, and heady wine; of the general indolence, broken chiefly by fox-hunting and horse-racing, among the quality; of the coarser sport of cock-fighting shared in common by landed gentry and those of baser condition, and of the eagerness for physical encounter which seems to have pervaded the whole white population,¹⁰³ we wonder at the greatness of mind and soul which grew from such a social soil.

Yet out of it sprang a group of men who for ability, character, spirit, and purpose, are not outshone and have no precise counterpart in any other company of illustrious characters appearing in like space of time and similar extent of territory. At almost the same point of time, historically speaking, – within thirty years, to be exact, – and on the same spot, geographically speaking, – within a radius of a hundred miles, – George Mason, James Madison, Patrick Henry, Thomas Jefferson,

⁹⁸ Schoepf, i, 261; and see references, *infra*, chap. VII.

⁹⁹ After Braddock's defeat the Indians "extended their raids ... pillaging and murdering in the most ruthless manner... The whole country from New York to the heart of Virginia became the theatre of inhuman barbarities and heartless destruction." (Lowdermilk, 186.)

¹⁰⁰ Although the rifle did not come into general use until the Revolution, the firearms of this period have been so universally referred to as "rifles" that I have, for convenience, adopted this inaccurate term in the first two chapters.

¹⁰¹ "Their actions are regulated by the wildness of the neighbourhood. The deer often come to eat their grain, the wolves to destroy their sheep, the bears to kill their hogs, the foxes to catch their poultry. This surrounding hostility immediately puts the gun into their hands, ... and thus by defending their property, they soon become professed hunters; ... once hunters, farewell to the plough. The chase renders them ferocious, gloomy, and unsocial; a hunter wants no neighbour, he rather hates them... The manners of the Indian natives are respectable, compared with this European medley. Their wives and children live in sloth and inactivity... You cannot imagine what an effect on manners the great distance they live from each other has... Eating of wild meat ... tends to alter their temper... I have seen it." (Crèvecoeur, 66-68.) Crèvecoeur was himself a frontier farmer. (*Writings*: Sparks, ix, footnote to 259.)

¹⁰² "Many families carry with them all their decency of conduct, purity of morals, and respect of religion; but these are scarce." (Crèvecoeur, 70.) Crèvecoeur says his family was one of these.

¹⁰³ This bellicose trait persisted for many years and is noted by all contemporary observers.

John Marshall, and George Washington were born. The life stories of these men largely make up the history of their country while they lived; and it was chiefly their words and works, their thought and purposes, that gave form and direction, on American soil, to those political and social forces which are still working out the destiny of the American people.

CHAPTER II

A FRONTIER EDUCATION

"Come to me," quoth the pine tree,
"I am the giver of honor."

(*Emerson.*)

I do not think the greatest things have been done for the world by its bookmen. Education is not the chips of arithmetic and grammar. (Wendell Phillips.)

John Marshall was never out of the simple, crude environment of the near frontier for longer than one brief space of a few months until his twentieth year, when, as lieutenant of the famous Culpeper Minute Men, he marched away to battle. The life he had led during this period strengthened that powerful physical equipment which no strain of his later years seemed to impair; and helped to establish that extraordinary nervous equilibrium which no excitement or contest ever was able to unbalance.¹⁰⁴ This foundation part of his life was even more influential on the forming mind and spiritual outlook of the growing youth.

Thomas Marshall left the little farm of poor land in Westmoreland County not long after the death of his father, John Marshall "of the forest." This ancestral "estate" had no attractions for the enterprising young man. Indeed, there is reason for thinking that he abandoned it.¹⁰⁵ He lifted his first roof-tree in what then were still the wilds of Prince William County.¹⁰⁶ There we find him with his young wife, and there in the red year of British disaster his eldest son was born. The cabin has long since disappeared, and only a rude monument of native stone, erected by college students in recent years, now marks the supposed site of this historic birthplace.

The spot is a placid, slumberous countryside. A small stream runs hard by. In the near distance still stands one of the original cabins of Spotswood's Germans.¹⁰⁷ But the soil is not generous. When Thomas Marshall settled there the little watercourse at the foot of the gentle slope on which his cabin stood doubtless ran bank-full; for in 1754 the forests remained thick and unviolated about his cabin,¹⁰⁸ and fed the waters from the heavy rains in restrained and steady flow to creek and river channels. Amidst these surroundings four children of Thomas Marshall and Mary Keith were born.¹⁰⁹

The sturdy young pioneer was not content to remain permanently at Germantown. A few years later found him building another home about thirty miles farther westward, in a valley in the Blue Ridge Mountains.¹¹⁰ Here the elder son spent the critical space of life from childhood to his eighteenth year. This little building still stands, occupied by negroes employed on the estate of which it forms

¹⁰⁴ Story, in Dillon, iii, 334.

¹⁰⁵ The records of Westmoreland County do not show what disposition Thomas Marshall made of the one hundred acres given him by his mother. (Letter of Albert Stuart, Deputy Clerk of Westmoreland County, Virginia, to the author, Aug. 26, 1913.) He probably abandoned it just as John Washington and Thomas Pope abandoned one thousand acres of the same land. (*Supra.*)

¹⁰⁶ Westmoreland County is on the Potomac River near its entrance into Chesapeake Bay. Prince William is about thirty miles farther up the river. Marshall was born about one hundred miles by wagon road from Appomattox Creek, northwest toward the Blue Ridge and in the wilderness.

¹⁰⁷ Campbell, 404-05.

¹⁰⁸ More than forty years later the country around the Blue Ridge was still a dense forest. (La Rochefoucauld, iii, 173.) And the road even from Richmond to Petersburg, an hundred miles east and south of the Marshall cabin, as late as 1797 ran through "an almost uninterrupted succession of woods." (*Ib.*, 106; and see *infra*, chap. VII.)

¹⁰⁹ John, 1755; Elizabeth, 1756; Mary, 1757; Thomas, 1761.

¹¹⁰ Binney, in Dillon, iii, 284.

a part. The view from it even now is attractive; and in the days of John Marshall's youth must have been very beautiful.

The house is placed on a slight rise of ground on the eastern edge of the valley. Near by, to the south and closer still to the west, two rapid mountain streams sing their quieting, restful song. On all sides the Blue Ridge lifts the modest heights of its purple hills. This valley at that time was called "The Hollow," and justly so; for it is but a cup in the lazy and unambitious mountains. When the eldest son first saw this frontier home, great trees thickly covered mountain, hill, and glade, and surrounded the meadow, which the Marshall dwelling overlooked, with a wall of inviting green.¹¹¹

Two days by the very lowest reckoning it must have taken Thomas Marshall to remove his family to this new abode. It is more likely that three or four days were consumed in the toilsome task. The very careful maps of the British survey at that time show only three roads in all immense Prince William County.¹¹² On one of these the Marshalls might have made their way northward, and on another, which it probably joined, they could have traveled westward. But these trails were primitive and extremely difficult for any kind of vehicle.¹¹³

Some time before 1765, then, rational imagination can picture a strong, rude wagon drawn by two horses crawling along the stumpy, rock-roughened, and mud-mired road through the dense woods that led in the direction of "The Hollow." In the wagon sat a young woman.¹¹⁴ By her side a sturdy, red-cheeked boy looked out with alert but quiet interest showing from his brilliant black eyes; and three other children cried their delight or vexation as the hours wore on. In this wagon, too, were piled the little family's household goods; nor did this make a heavy load, for all the Lares and Penates of a frontier settler's family in 1760 would not fill a single room of a moderately furnished household in the present day.

By the side of the wagon strode a young man dressed in the costume of the frontier. Tall, broad-shouldered, lithe-hipped, erect, he was a very oak of a man. His splendid head was carried with a peculiar dignity; and the grave but kindly command that shone from his face, together with the brooding thoughtfulness and fearless light of his striking eyes, would have singled him out in any assemblage as a man to be respected and trusted. A negro drove the team, and a negro girl walked behind.¹¹⁵

So went the Marshalls to their Blue Ridge home. It was a commodious one for those days. Two rooms downstairs, one fifteen feet by sixteen, the other twelve by fourteen, and above two half-story lofts of the same dimensions, constituted this domestic castle. At one end of the larger downstairs room is a broad and deep stone fireplace, and from this rises a big chimney of the same material, supporting the house on the outside.¹¹⁶

Thomas and Mary Marshall's pride and aspiration, as well as their social importance among the settlers, are strongly shown by this frontier dwelling. Unlike those of most of the other backwoodsmen, it was not a log cabin, but a frame house built of whip-sawed uprights and boards.¹¹⁷

¹¹¹ The ancient trunks of one or two of these trees still stand close to the house.

¹¹² British map of 1755; Virginia State Library.

¹¹³ See La Rochefoucauld, iii, 707. These "roads" were scarcely more than mere tracks through the forests. See chap. VII, *infra*, for description of roads at the period between the close of the Revolution and the beginning of our National Government under the Constitution. Even in the oldest and best settled colonies the roads were very bad. Chalkley's *Augusta County (Va.) Records* show many orders regarding roads; but, considering the general state of highways, (see *infra*, chap. VII) these probably concerned very primitive efforts. When Thomas Marshall removed his family to the Blue Ridge, the journey must have been strenuous even for that hardship-seasoned man.

¹¹⁴ She was born in 1737. (Paxton, 19.)

¹¹⁵ At this time, Thomas Marshall had at least two slaves, inherited from his father. (Will of John Marshall "of the forest," Appendix I.) As late as 1797 (nearly forty years after Thomas Marshall went to "The Hollow"), La Rochefoucauld found that even on the "poorer" plantations about the Blue Ridge the "planters, however wretched their condition, have all of them one or two negroes." (La Rochefoucauld, iii, 135.)

¹¹⁶ Personal inspection.

¹¹⁷ Mill-sawed weather-boarding, held by cut nails, now covers the sides of the house, the original broad whip-sawed boards,

It was perhaps easier to construct a one and a half story house with such materials; for to lift heavy timbers to such a height required great effort.¹¹⁸ But Thomas Marshall's social, religious, and political status¹¹⁹ in the newly organized County of Fauquier were the leading influences that induced him to build a house which, for the time and place, was so pretentious. A small stone "meat house," a one-room log cabin for his two negroes, and a log stable, completed the establishment.

In such an abode, and amidst such surroundings, the fast-growing family¹²⁰ of Thomas Marshall lived for more than twelve years. At first neighbors were few and distant. The nearest settlements were at Warrenton, some twenty-three miles to the eastward, and Winchester, a little farther over the mountains to the west.¹²¹ But, with the horror of Braddock's defeat subdued by the widespread and decisive counter victories, settlers began to come into the country on both sides of the Blue Ridge. These were comparatively small farmers, who, later on, became raisers of wheat, corn, and other cereals, rather than tobacco.

Not until John Marshall had passed his early boyhood, however, did these settlers become sufficiently numerous to form even a scattered community, and his early years were enlivened with no child companionship except that of his younger brothers and sisters. For the most part his days were spent, rifle in hand, in the surrounding mountains, and by the pleasant waters that flowed through the valley of his forest home. He helped his mother, of course, with her many labors, did the innumerable chores which the day's work required, and looked after the younger children, as the eldest child always must do. To his brothers and sisters as well as to his parents, he was devoted with a tenderness peculiar to his uncommonly affectionate nature and they, in turn, "fairly idolized" him.¹²²

There were few of those minor conveniences which we to-day consider the most indispensable of the simplest necessities. John Marshall's mother, like most other women of that region and period, seldom had such things as pins; in place of them use was made of thorns plucked from the bushes in the woods.¹²³ The fare, naturally, was simple and primitive. Game from the forest and fish from the stream were the principal articles of diet. Bear meat was plentiful.¹²⁴ Even at that early period, salt pork and salt fish probably formed a part of the family's food, though not to the extent to which such cured provisions were used by those of the back country in later years, when these articles became the staple of the border.¹²⁵

Corn meal was the basis of the family's bread supply. Even this was not always at hand, and corn meal mush was welcomed with a shout by the clamorous brood with which the little cabin soon fairly swarmed. It could not have been possible for the Marshall family in their house on

fastened by wrought nails, having long since decayed.

¹¹⁸ Practically all log cabins, at that time, had only one story.

¹¹⁹ See *infra*.

¹²⁰ Six more children were born while the Marshalls remained in "The Hollow": James M., 1764; Judith, 1766; William and Charles, 1767; Lucy, 1768; and Alexander, 1770.

¹²¹ Nearly twenty years later, "Winchester was rude, wild, as nature had made it," but "it was less so than its inhabitants." (Mrs. Carrington to her sister Nancy, describing Winchester in 1777, from personal observation; MS.)

¹²² See Mrs. Carrington to her sister Nancy, *infra*, chap. V.

¹²³ John Marshall, when at the height of his career, liked to talk of these times. "He ever recurred with fondness to that primitive mode of life, when he partook with a keen relish of balm tea and mush; and when the females used thorns for pins." (Howe, 263, and see *Hist. Mag.*, iii, 166.) Most of the settlers on the frontier and near frontier did not use forks or tablecloths. Washington found this condition in the house of a Justice of the Peace. "When we came to supper there was neither a Cloth upon ye Table nor a knife to eat with; but as good luck would have it, we had knives of our [own]." (*Writings*: Ford, i, 4.) Chastellux testifies that, thirty years later, the frontier settlers were forced to make almost everything they used. Thus, as population increased, necessity developed men of many trades and the little communities became self-supporting. (Chastellux, 226-27.)

¹²⁴ More than a generation after Thomas Marshall moved to "The Hollow" in the Blue Ridge large quantities of bear and beaver skins were brought from the Valley into Staunton, not many miles away, just over the Ridge. (La Rochefoucauld, iii, 179-80.) The product of the Blue Ridge itself was sent to Fredericksburg and Alexandria. (See Crèvecoeur, 63-65.) Thirty years earlier (1733) Colonel Byrd records that "Bears, Wolves, and Panthers" roamed about the site of Richmond; that deer were plentiful and rattlesnakes considered a delicacy. (Byrd's *Writings*: Bassett, 293, 318-19.)

¹²⁵ See *infra*, chap. VII.

Goose Creek to have the luxury of bread made from wheat flour. The clothing of the family was mostly homespun. "Store goods," whether food, fabric, or utensil, could be got to Thomas Marshall's backwoods dwelling only with great difficulty and at prohibitive expense.¹²⁶

But young John Marshall did not know that he was missing anything. On the contrary, he was conscious of a certain wealth not found in cities or among the currents of motion. For ever his eye looked out upon noble yet quieting, poetic yet placid, surroundings. Always he could have the inspiring views from the neighboring heights, the majestic stillness of the woods, the soothing music of meadow and stream. So uplifted was the boy by the glory of the mountains at daybreak that he always rose while the eastern sky was yet gray.¹²⁷ He was thrilled by the splendor of sunset and never tired of watching it until night fell upon the vast and somber forests. For the boy was charged with poetic enthusiasm, it appears, and the reading of poetry became his chief delight in youth and continued to be his solace and comfort throughout his long life;¹²⁸ indeed, Marshall liked to make verses himself, and never outgrew the habit.

There was in him a rich vein of romance; and, later on, this manifested itself by his passion for the great creations of fiction. Throughout his days he would turn to the works of favorite novelists for relaxation and renewal.¹²⁹

The mental and spiritual effects of his surroundings on the forming mind and unfolding soul of this young American must have been as lasting and profound as were the physical effects on his body.¹³⁰ His environment and his normal, wholesome daily activities could not have failed to do its work in building the character of the growing boy. These and his sound, steady, and uncommonly strong parentage must, perforce, have helped to give him that courage for action, that balanced vision for judgment, and that serene outlook on life and its problems, which were so notable and distinguished in his mature and rugged manhood.

Lucky for John Marshall and this country that he was not city born and bred; lucky that not even the small social activities of a country town drained away a single ohm of his nervous energy or obscured with lesser pictures the large panorama which accustomed his developing intelligence to look upon big and simple things in a big and simple way.

There were then no public schools in that frontier¹³¹ region, and young Marshall went untaught save for the instruction his parents gave him. For this task his father was unusually well equipped, though not by any formal schooling. All accounts agree that Thomas Marshall, while not a man of any learning, had contrived to acquire a useful though limited education, which went much further with a man of his well-ordered mind and determined will than a university training could go with a man of looser fiber and cast in smaller mould. The father was careful, painstaking, and persistent in imparting to his children and particularly to John all the education he himself could acquire.

Between Thomas Marshall and his eldest son a mutual sympathy, respect, and admiration existed, as uncommon as it was wholesome and beneficial. "My father," often said John Marshall,

¹²⁶ Even forty years later, all "store" merchandise could be had in this region only by hauling it from Richmond, Fredericksburg, or Alexandria. Transportation from the latter place to Winchester cost two dollars and a half per hundredweight. In 1797, "store" goods of all kinds cost, in the Blue Ridge, thirty per cent more than in Philadelphia. (La Rochefoucauld, iii, 203.) From Philadelphia the cost was four to five dollars per hundredweight. While there appear to have been country stores at Staunton and Winchester, over the mountains (Chalkley's *Augusta County (Va.) Records*), the cost of freight to those places was prohibitive of anything but the most absolute necessities even ten years after the Constitution was adopted.

¹²⁷ *Hist. Mag.*, iii, 166; Howe, 263; also, Story, in Dillon, iii, 334.

¹²⁸ Story, in Dillon, iii, 331-32.

¹²⁹ *Ib.*

¹³⁰ See Binney, in Dillon, iii, 285.

¹³¹ "Fauquier was then a frontier county ... far in advance of the ordinary reach of compact population." (Story, in Dillon, iii, 331; also see *New York Review* (1838), iii, 333.) Even a generation later (1797), La Rochefoucauld, writing from personal investigation, says (iii, 227-28): "There is no state so entirely destitute of all means of public education as Virginia."

"was a far abler man than any of his sons."¹³² In "his private and familiar conversations with me," says Justice Story, "when there was no other listener ... he never named his father ... without dwelling on his character with a fond and winning enthusiasm ... he broke out with a spontaneous eloquence ... upon his virtues and talents."¹³³ Justice Story wrote a sketch of Marshall for the "National Portrait Gallery," in which Thomas Marshall is highly praised. In acknowledging the receipt of the magazine, Marshall wrote: "I am particularly gratified by the terms in which you speak of my father. If any contemporary, who knew him in the prime of manhood, survived, he would confirm all you say."¹³⁴

So whether at home with his mother or on surveying trips with his father, the boy continually was under the influence and direction of hardy, clear-minded, unusual parents. Their lofty and simple ideals, their rational thinking, their unbending uprightness, their religious convictions – these were the intellectual companions of John Marshall's childhood and youth. While too much credit has not been given Thomas Marshall for the training of the eldest son, far too little has been bestowed on Mary Randolph Keith, who was, in all things, the equal of her husband.

Although, as we have seen, many books were brought into eastern Virginia by the rich planters, it was difficult for the dwellers on the frontier to secure any reading material. Most books had to be imported, were very expensive, and, in the back country, there were no local sources of supply where they could be purchased. Also, the frontier settlers had neither the leisure nor, it appears, the desire for reading¹³⁵ that distinguished the wealthy landlords of the older parts of the colony.¹³⁶ Thomas Marshall, however, was an exception to his class in his eagerness for the knowledge to be gathered from books and in his determination that his children should have those advantages which reading gives.

So, while his small house in "The Hollow" of the Blue Ridge probably contained not many more books than children, yet such volumes as were on that frontier bookshelf were absorbed and made the intellectual possession of the reader. The Bible was there, of course; and probably Shakespeare also.¹³⁷ The only book which positively is known to have been a literary companion of John Marshall was a volume of Pope's poems. He told Justice Story that, by the time he was twelve years old (1767), he had copied every word of the "Essay on Man" and other of Pope's moral essays, and had committed to memory "many of the most interesting passages."¹³⁸ This would seem to prove that not many other attractive books were at the boyhood hands of so eager a reader of poetry and fiction as Marshall always was. It was quite natural that this volume should be in that primitive household; for, at that time, Pope was more widely read, admired, and quoted than any other writer either of poetry or prose.¹³⁹

For those who believe that early impressions are important, and who wish to trace John Marshall's mental development back to its sources, it is well to spend a moment on that curious work which Pope named his "Essay on Man." The natural bent of the youth's mind was distinctively logical and orderly, and Pope's metred syllogisms could not but have appealed to it powerfully. The soul of Pope's "Essay" is the wisdom of and necessity for order; and it is plain that the boy absorbed this vital message and made it his own. Certain it is that even as a beardless young soldier, offering his

¹³² See Binney, in Dillon, iii, 285.

¹³³ Story, in Dillon, iii, 330.

¹³⁴ Marshall to Story, July 31, 1833; Story, ii, 150.

¹³⁵ See *infra*, chaps. VII and VIII.

¹³⁶ "A taste for reading is more prevalent [in Virginia] among the gentlemen of the first class than in any other part of America; but the common people are, perhaps, more ignorant than elsewhere." (La Rochefoucauld, iii, 232.) Other earlier and later travelers confirm this statement of this careful French observer.

¹³⁷ Story thinks that Thomas Marshall, at this time, owned Milton, Shakespeare, and Dryden. (Dillon, iii, 331.) This is possible. Twenty years later, Chastellux found Milton, Addison, and Richardson in the parlor of a New Jersey inn; but this was in the comparatively thickly settled country adjacent to Philadelphia. (Chastellux, 159.)

¹³⁸ Story, in Dillon, iii, 331, and Binney, in *ib.*, 283; *Hist. Mag.*, iii, 166.

¹³⁹ Lang: *History of English Literature*, 384; and see Gosse: *History of Eighteenth Century Literature*, 131; also, Traill: *Social England*, V, 72; Stephen: *Alexander Pope*, 62; and see Cabot to Hamilton, Nov. 29, 1800; *Cabot*: Lodge, 299.

life for his country's independence, he already had grasped the master truth that order is a necessary condition of liberty and justice.

It seems probable, however, that other books were brought to this mountain fireside. There was a limited store within his reach from which Thomas Marshall could draw. With his employer and friend, George Washington,¹⁴⁰ he was often a visitor at the wilderness home of Lord Fairfax just over the Blue Ridge. Washington availed himself of the Fairfax Library,¹⁴¹ and it seems reasonable that Thomas Marshall did the same. It is likely that he carried to his Blue Ridge dwelling an occasional Fairfax volume carefully selected for its usefulness in developing his own as well as his children's minds.

This contact with the self-expatriated nobleman had more important results, however, than access to his books. Thomas Marshall's life was profoundly influenced by his early and intimate companionship with the well-mannered though impetuous and headstrong young Washington, who engaged him as assistant surveyor of the Fairfax estate.¹⁴² From youth to manhood, both had close association with Lord Fairfax, who gave Washington his first employment and secured for him the appointment by the colonial authorities as public surveyor.¹⁴³ Washington was related by marriage to the proprietor of the Northern Neck, his brother Lawrence having married the daughter of William Fairfax. When their father died, Lawrence Washington took the place of parent to his younger brother;¹⁴⁴ and in his house the great landowner met George Washington, of whom he became very fond. For more than three years the youthful surveyor passed most of his time in the Blue Ridge part of the British nobleman's vast holdings,¹⁴⁵ and in frequent and intimate contact with his employer. Thus Thomas Marshall, as Washington's associate and helper, came under the guidance and example of Lord Fairfax.

The romantic story of this strange man deserves to be told at length, but only a résumé is possible here. This summary, however, must be given for its bearing on the characters of George Washington and Thomas Marshall, and, through them, its formative influence on John Marshall.¹⁴⁶

Lord Fairfax inherited his enormous Virginia estate from his mother, the daughter of Lord Culpeper, the final grantee of that kingly domain. This profligate grant of a careless and dissolute monarch embraced some five million acres between the Potomac and Rappahannock Rivers back to a straight line connecting the sources of these streams. While the young heir of the ancient Fairfax title was in Oxford, his father having died, his mother and grandmother, the dowager Ladies Fairfax and Culpeper, forced him to cut off the entail of the extensive Fairfax estates in England in order to save the heavily mortgaged Culpeper estates in the same country; and as compensation for this sacrifice, the noble Oxford student was promised the inheritance of this wild Virginia forest principality.

Nor did the youthful baron's misfortunes end there. The lady of his heart had promised to become his bride, the wedding day was set, the preparations made. But before that hour of joy arrived, this fickle daughter of ambition received an offer to become a duchess instead of a mere baroness, and, throwing over young Fairfax without delay, she embraced the more exalted station offered her.

These repeated blows of adversity embittered the youthful head of the illustrious house of Fairfax against mother and grandmother, and, for the time being, all but against England itself. So, after some years of management of his Virginia estate by his cousin, William, who was in Government

¹⁴⁰ Binney, in Dillon, iii, 283-84; Washington's *Diary*; MS., Lib. Cong.

¹⁴¹ Irving, i, 45; and Lodge: *Washington*, i, 59. Many years later when he became rich, Washington acquired a good library, part of which is now in the Boston Athenæum. But as a young and moneyless surveyor he had no books of his own and his "book" education was limited and shallow.

¹⁴² Binney, in Dillon, iii, 281-84.

¹⁴³ Irving, i, 37, 45; and Sparks, 10.

¹⁴⁴ Irving, i, 27.

¹⁴⁵ Irving, i, 46.

¹⁴⁶ As will appear, the Fairfax estate is closely interwoven into John Marshall's career. (See vol. II of this work.)

employ in America, Lord Fairfax himself left England forever, came to Virginia, took personal charge of his inherited holdings, and finally established himself at its very outskirts on the savage frontier. In the Shenandoah Valley, near Winchester, he built a small house of native stone and called it Greenway Court,¹⁴⁷ after the English fashion; but it never was anything more than a hunting lodge.¹⁴⁸

From this establishment he personally managed his vast estates, parting with his lands to settlers on easy terms. His tenants generally were treated with liberality and consideration. If any land that was leased or sold did not turn out as was expected by the purchaser or lessee, another and better tract would be given in its place. If money was needed for improvements, Lord Fairfax advanced it. His excess revenues were given to the poor. So that the Northern Neck under Lord Fairfax's administration became the best settled, best cultivated, and best governed of all the upper regions of the colony.¹⁴⁹

Through this exile of circumstance, Fate wove another curious thread in the destiny of John Marshall. Lord Fairfax was the head of that ancient house whose devotion to liberty had been proved on many a battlefield. The second Lord Fairfax commanded the Parliamentary forces at Marston Moor. The third Lord Fairfax was the general of Cromwell's army and the hero of Naseby. So the proprietor of the Northern Neck, who was the sixth Lord Fairfax, came of blood that had been poured out for human rights. He had, as an inheritance of his house, that love of liberty for which his ancestors had fought.¹⁵⁰

But much as he hated oppression, Lord Fairfax was equally hostile to disorder and upheaval; and his forbears had opposed these even to the point of helping restore Charles II to the throne. Thus the Virginia baron's talk and teaching were of liberty with order, independence with respect for law.¹⁵¹

He loved literature and was himself no mean writer, his contributions while he was in the University having been accepted by the "Spectator."¹⁵² His example instructed his companions in manners, too, and schooled them in the speech and deportment of gentlemen. All who met George Washington in his mature years were impressed by his correct if restricted language, his courtly conduct, and his dignified if rigid bearing. Much of this was due to his noble patron.¹⁵³

Thomas Marshall was affected in the same way and by the same cause. Pioneer and backwoodsman though he was, and, as we shall see, true to his class and section, he yet acquired more balanced ideas of liberty, better manners, and finer if not higher views of life than the crude, rough individualists who inhabited the back country. As was the case with Washington, this intellectual and moral tendency in Thomas Marshall's development was due, in large measure, to the influence of Lord Fairfax. While it cannot be said that George Washington imitated the wilderness nobleman, yet Fairfax undoubtedly afforded his protégé a certain standard of living, thinking, and acting; and Thomas Marshall followed the example set by his fellow surveyor.¹⁵⁴ Thus came into the Marshall household a different atmosphere from that which pervaded the cabins of the Blue Ridge.

¹⁴⁷ For description of Greenway Court see Pecquet du Bellet, ii, 175.

¹⁴⁸ Washington's *Writings*: Ford, i, footnote to 329.

¹⁴⁹ For a clear but laudatory account of Lord Fairfax see Appendix No. 4 to Burnaby, 197-213. But Fairfax could be hard enough on those who opposed him, as witness his treatment of Joist Hite. (See *infra*, chap. V.)

¹⁵⁰ When the Revolution came, however, Fairfax was heartily British. The objection which the colony made to the title to his estate doubtless influenced him.

¹⁵¹ Fairfax was a fair example of the moderate, as distinguished from the radical or the reactionary. He was against both irresponsible autocracy and unrestrained democracy. In short, he was what would now be termed a liberal conservative (although, of course, such a phrase, descriptive of that demarcation, did not then exist). Much attention should be given to this unique man in tracing to their ultimate sources the origins of John Marshall's economic, political, and social convictions.

¹⁵² Sparks, 11; and Irving, i, 33.

¹⁵³ For Fairfax's influence on Washington see Irving, i, 45; and in general, for fair secondary accounts of Fairfax, see *ib.*, 31-46; and Sparks, 10-11.

¹⁵⁴ Senator Humphrey Marshall says that Thomas Marshall "emulated" Washington. (Humphrey Marshall, i, 345.)

All this, however, did not make for his unpopularity among Thomas Marshall's distant, scattered, and humbly placed neighbors. On the contrary, it seems to have increased the consideration and respect which his native qualities had won for him from the pioneers. Certainly Thomas Marshall was the foremost man in Fauquier County when it was established in 1759. He was almost immediately elected to represent the county in the Virginia House of Burgesses;¹⁵⁵ and, six years later, he was appointed Sheriff by Governor Fauquier, for whom the county was named.¹⁵⁶ The shrievalty was, at that time, the most powerful local office in Virginia; and the fees and perquisites of the place made it the most lucrative.¹⁵⁷

By 1765 Thomas Marshall felt himself sufficiently established to acquire the land where he had lived since his removal from Germantown. In the autumn of that year he leased from Thomas Ludwell Lee and Colonel Richard Henry Lee the three hundred and thirty acres on Goose Creek "whereon the said Thomas Marshall now lives." The lease was "for and during the natural lives of ... Thomas Marshall, Mary Marshall his wife, and John Marshall his son and ... the longest liver of them." The consideration was "five shillings current money in hand paid" and a "yearly rent of five pounds current money, and the quit rents and Land Tax."¹⁵⁸

In 1769 Leeds Parish, embracing Fauquier County, was established.¹⁵⁹ Of this parish Thomas Marshall became the principal vestryman.¹⁶⁰ This office supplemented, in dignity and consequence, that of sheriff; the one was religious and denoted high social status, the other was civil and evidenced political importance.¹⁶¹ The occupancy of both marked Thomas Marshall as the chief figure in the local government and in the social and political life of Fauquier County, although the holding of the superior office of burgess left no doubt as to his leadership. The vestries had immense influence in the civil affairs of the parish and the absolute management of the practical business of the established (Episcopal) church.¹⁶² Among the duties and privileges of the vestry was that of selecting and employing the clergyman.¹⁶³

The vestry of Leeds Parish, with Thomas Marshall at its head, chose for its minister a young Scotchman, James Thompson, who had arrived in Virginia a year or two earlier. He lived at first with the Marshall family.¹⁶⁴ Thus it came about that John Marshall received the first of his three short periods of formal schooling; for during his trial year the young¹⁶⁵ Scotch deacon returned Thomas Marshall's hospitality by giving the elder children such instruction as occasion offered,¹⁶⁶ as was the custom of parsons, who always were teachers as well as preachers. We can imagine the embryo

¹⁵⁵ See *infra*.

¹⁵⁶ Bond of Thomas Marshall as Sheriff, Oct. 26, 1767; Records of Fauquier County (Va.), Deed Book, iii, 70. Approval of bond by County Court; Minute Book (from 1764 to 1768), 322. Marshall's bond was "to his Majesty, George III," to secure payment to the British revenue officers of all money collected by Marshall for the Crown. (Records of Fauquier County (Va.), Deed Book, iii, 71.)

¹⁵⁷ Bruce: *Inst.*, i, 597, 600; also, ii, 408, 570-74.

¹⁵⁸ Records of Fauquier County (Va.), Deed Book, ii, 42. There is a curious record of a lease from Lord Fairfax in 1768 to John Marshall for his life and "the natural lives of Mary his wife and Thomas Marshall his son and every of them longest living." (Records of Fauquier County (Va.), Deed Book, iii, 230.) John Marshall was then only thirteen years old. The lease probably was to Thomas Marshall, the clerk of Lord Fairfax having confused the names of father and son.

¹⁵⁹ Meade, ii, 218.

¹⁶⁰ In 1773 three deeds for an aggregate of two hundred and twenty acres "for a glebe" were recorded in Fauquier County to "Thos. Marshall & Others, Gentlemen, & Vestrymen of Leeds Parish." (Records of Fauquier County (Va.), Deed Book, v, 401, 403, 422.)

¹⁶¹ The vestrymen were "the foremost men ... in the parish ... whether from the point of view of intelligence, wealth or social position." (Bruce: *Inst.*, i, 62; and see Meade, i, 191.)

¹⁶² Bruce: *Inst.*, i, 62-93; and see Eckenrode: *S.C. & S.*, 13.

¹⁶³ Bruce: *Inst.*, i, 131 *et seq.*

¹⁶⁴ Meade, ii, 219. Bishop Meade here makes a slight error. He says that Mr. Thompson "lived at first in the family of Colonel Thomas Marshall, of Oak Hill." Thomas Marshall did not become a colonel until ten years afterward. (Heitman, 285.) And he did not move to Oak Hill until 1773, six years later. (Paxton, 20.)

¹⁶⁵ James Thompson was born in 1739. (Meade, ii, 219.)

¹⁶⁶ *Ib.*

clergyman instructing the eldest son under the shade of the friendly trees in pleasant weather or before the blazing logs in the great fireplace when winter came. While living with the Marshall family, he doubtless slept with the children in the half-loft¹⁶⁷ of that frontier dwelling.

There was nothing unusual about this; indeed, circumstances made it the common and unavoidable custom. Washington tells us that in his surveying trips, he frequently slept on the floor in the room of a settler's cabin where the fireplace was and where husband, wife, children, and visitors stretched themselves for nightly rest; and he remarks that the person was lucky who got the spot nearest the fireplace.¹⁶⁸

At the end of a year the embryo Scottish clergyman's character, ability, and services having met the approval of Thomas Marshall and his fellow vestrymen, Thompson returned to England for orders.¹⁶⁹ So ended John Marshall's first instruction from a trained teacher. His pious tutor returned the next year, at once married a young woman of the Virginia frontier, and settled on the glebe near Salem, where he varied his ministerial duties by teaching such children of his parishioners as could get to him. It may be that John Marshall was among them.¹⁷⁰

In the light they throw upon the Marshall family, the political opinions of Mr. Thompson are as important as was his teaching. True to the impulses of youth, he was a man of the people, ardently championed their cause, and was fervently against British misrule, as was his principal vestryman. Five years later we find him preaching a sermon on the subject so strong that a part of it has been preserved.¹⁷¹

Thus the years of John Marshall's life sped on until his eighteenth birthday. By this time Thomas Marshall's rapidly growing prosperity enabled him to buy a larger farm in a more favorable locality. In January, 1773, he purchased from Thomas Turner seventeen hundred acres adjacent to North Cobler Mountain, a short distance to the east of his first location in "The Hollow."¹⁷² For this plantation he paid "nine hundred and twelve pounds ten shillings current money of Virginia." Here he established himself for the third time and remained for ten years.

On an elevation overlooking valley, stream, and grove, with the Blue Ridge as a near background, he built a frame house thirty-three by thirty feet, the attic or loft under the roof serving as a second story.¹⁷³ The house had seven rooms, four below and three above. One of the upper rooms is, comparatively, very large, being twenty-one by fifteen feet; and, according to tradition, this was used as a school-room for the Marshall children. Indeed, the structure was, for that section and

¹⁶⁷ Forty years later La Rochefoucauld found that the whole family and all visitors slept in the same room of the cabins of the back country. (La Rochefoucauld, iv, 595-96.)

¹⁶⁸ "I have not sleep'd above three nights or four in a bed, but, after walking ... all the day, I lay down before the fire upon a little hay, straw, fodder or bearskin ... with man, wife, and children, like a parcel of dogs and cats; and happy is he, who gets the berth nearest the fire." (Washington to a friend, in 1748; *Writings*: Ford, i, 7.) Here is another of Washington's descriptions of frontier comforts: "I not being so good a woodsman as ye rest of my company, striped myself very orderly and went into ye Bed, as they call'd it, when to my surprize, I found it to be nothing but a little straw matted together without sheets or any thing else, but only one thread bear [*sic*] blanket with double its weight of vermin such as Lice, Fleas, &c." (Washington's *Diary*, March 15, 1747; *ib.*, 2.) And see La Rochefoucauld, iii, 175, for description of homes of farmers in the Valley forty years later – miserable log huts "which swarmed with children." Thomas Marshall's little house was much better than, and the manners of the family were far superior to, those described by Washington and La Rochefoucauld.

¹⁶⁹ Meade, ii, 219.

¹⁷⁰ *Ib.* Bishop Meade says that Thomas Marshall's sons were sent to Mr. Thompson again; but Marshall himself told Justice Story that the Scotch parson taught him when the clergyman lived at his father's house.

¹⁷¹ Meade, ii, 219. This extract of Mr. Thompson's sermon was treasonable from the Tory point of view. See *infra*, chap. III.

¹⁷² Records of Fauquier County (Va.), Deed Book, V, 282. This purchase made Thomas Marshall the owner of about two thousand acres of the best land in Fauquier County. He had sold his Goose Creek holding in "The Hollow."

¹⁷³ The local legend, current to the present day, is that this house had the first glass windows in that region, and that the bricks in the chimney were imported from England. The importation of brick, however, is doubtful. Very little brick was brought to Virginia from England.

period, a pretentious dwelling. This is the famous Oak Hill.¹⁷⁴ The house still stands as a modest wing to the large and attractive building erected by John Marshall's eldest son, Thomas, many years later.

A book was placed in the hands of John Marshall, at this time, that influenced his mind even more than his reading of Pope's poetry when a small boy. Blackstone's "Commentaries" was published in America in 1772 and one of the original subscribers was "Captain Thomas Marshall, Clerk of Dunmore County, Virginia."¹⁷⁵ The youthful backwoodsman read Blackstone with delight; for this legal classic is the poetry of law, just as Pope is logic in poetry. Also, Thomas Marshall saw to it that his son read Blackstone as carefully as circumstances permitted. He had bought the book for John's use as much as or more than for his own information. Marshall's parents, with a sharp eye on the calling that then brought greatest honor and profit, had determined that their eldest son should be a lawyer. "From my infancy," says Marshall, "I was destined for the bar."¹⁷⁶ He did not, we believe, give his attention exclusively to Blackstone. Indeed, it appears certain that his legal reading at this period was fragmentary and interrupted, for his time was taken up and his mind largely absorbed by military exercises and study. He was intent on mastering the art of war against the day when the call of patriotism should come to him to be a soldier.¹⁷⁷ So the law book was pushed aside by the manual of arms.

About this time John Marshall was given his second fragment of formal teaching. He was sent to the school of the Reverend Archibald Campbell in Westmoreland County.¹⁷⁸ This embryo "academy" was a primitive affair, but its solitary instructor was a sound classical scholar equipped with all the learning which the Scottish universities could give. He was a man of unusual ability, which, it appears, was the common possession of his family. He was the uncle of the British poet Campbell.¹⁷⁹

The sons of this colonial parson school-teacher from Scotland became men of note and influence, one of them among the most distinguished lawyers of Virginia.¹⁸⁰ Indeed, it was chiefly in order to teach his two boys that Mr. Campbell opened his little school in Westmoreland.¹⁸¹ So, while John Marshall attended the "academy" for only a few months, that brief period under such a teacher was worth much in methods of thought and study.

The third scanty fragment of John Marshall's education by professional instructors comes seven years later, at a time and under circumstances which make it necessary to defer a description of it.

During all these years, however, young Marshall was getting another kind of education more real and more influential on his later life than any regular schooling could have given him. Thomas Marshall served in the House of Burgesses at Williamsburg¹⁸² from 1761 until October, 1767, when he became Sheriff of Fauquier County.¹⁸³ In 1769 he was again chosen Burgess,¹⁸⁴ and reelected until 1773, when he was appointed Clerk of Dunmore County.¹⁸⁵ In 1775 he once more appears as

¹⁷⁴ Five more children of Thomas and Mary Marshall were born in this house: Louis, 1773; Susan, 1775; Charlotte, 1777; Jane, 1779; and Nancy, 1781. (Paxton.)

¹⁷⁵ This volume is now in the possession of Judge J. K. M. Norton, of Alexandria, Va. On several leaves are printed the names of the subscribers. Among them are Pelatiah Webster, James Wilson, Nathanael Greene, John Adams, and others.

¹⁷⁶ *Autobiography*.

¹⁷⁷ Binney, in Dillon, iii, 286.

¹⁷⁸ Story and Binney say that Marshall's first schooling was at Campbell's "academy" and his second and private instruction under Mr. Thompson. The reverse seems to have been the case.

¹⁷⁹ Meade, ii, 159, and footnote to 160.

¹⁸⁰ *Ib.*, 161.

¹⁸¹ *Ib.*

¹⁸² Journal, H.B. (1761-65), 3. Thomas Marshall was seldom out of office. Burgess, Sheriff, Vestryman, Clerk, were the promising beginnings of his crowded office-holding career. He became Surveyor of Fayette County, Kentucky, upon his removal to that district, and afterwards Collector of Revenue for the District of Ohio. (Humphrey Marshall, i, 120; and see ii, chap. V, of this work. Thomas Marshall to Adams, April 28, 1797; MS.) In holding offices, John Marshall followed in his father's footsteps.

¹⁸³ Journal, H.B. (1766-69), 147 and 257.

¹⁸⁴ His election was contested in the House, but decided in Marshall's favor. (*Ib.* (1761-69), 272, 290, 291.)

¹⁸⁵ *Ib.*, (1773-76), 9. County Clerks were then appointed by the Secretary of State. In some respects the Clerk of the County Court

Burgess for Fauquier County.¹⁸⁶ Throughout this period, George Washington also served as Burgess from Westmoreland County. Thomas Marshall was a member of the standing committees on Trade, Religion, Propositions and Grievances, and on several special committees and commissions.¹⁸⁷

The situations, needs, and interests of the upland counties above the line of the falls of the rivers, so different from those on the tidewater, had made the political oligarchy of the lower counties more distinct and conspicuous than ever. This dominant political force was aristocratic and selfish. It was generally hostile to the opinions of the smaller pioneer landowners of the back country and it did not provide adequately for their necessities. Their petitions for roads, bridges, and other indispensable requisites of social and industrial life usually were denied; and their rapidly growing democratic spirit was scorned with haughty disfavor and contempt.¹⁸⁸

In the House of Burgesses, one could tell by his apparel and deportment, no less than by his sentiments, a member from the mountains, and indeed from anywhere above the fall line of the rivers; and, by the same tokens, one from the great plantations below. The latter came fashionably attired, according to the latest English mode, with the silk knee breeches and stockings, colored coat, ornamented waistcoat, linen and lace, buckled shoes, garters, and all details of polite adornment that the London fashion of the time dictated. The upland men were plainly clad; and those from the border appeared in their native homespun, with buckskin shirts, coonskin caps, and the queue of their unpowdered hair tied in a bag or sack of some thin material. To this upland class of Burgesses, Thomas Marshall belonged.

He had been a member of the House for four years when the difference between the two Virginia sections and classes suddenly crystallized. The upper counties found a leader and fought and overcame the hitherto invincible power of the tidewater aristocracy, which, until then, had held the Government of Virginia in its lordly hand.

This explosion came in 1765, when John Marshall was ten years old. For nearly a quarter of a century the combination of the great planter interests of eastern Virginia had kept John Robinson Speaker of the House and Treasurer of the Colony.¹⁸⁹ He was an ideal representative of his class – rich, generous, kindly, and ever ready to oblige his fellow members of the ruling faction.¹⁹⁰ To these he had lent large sums of money from the public treasury and, at last, finding himself lost unless he could find a way out of the financial quagmire in which he was sinking, Robinson, with his fellow aristocrats, devised a scheme for establishing a loan office, equipping it with a million and a quarter of dollars borrowed on the faith of the colony, to be lent to individuals on personal security.¹⁹¹ A bill to this effect was presented and the tidewater machine was oiled and set in motion to put it through.

As yet, Robinson's predicament was known only to himself and those upon whom he had bestowed the proceeds of the people's taxes; and no opposition was expected to the proposed resolution which would extricate the embarrassed Treasurer. But Patrick Henry, a young member from Hanover County, who had just been elected to the House of Burgesses and who had displayed in the famous Parsons case a courage and eloquence which had given him a reputation throughout the colony,¹⁹² opposed, on principle, the proposed loan-office law. In a speech of startling power he

had greater advantages than the Sheriff. (See Bruce: *Inst.*, i, 588 *et seq.*) Dunmore County is now Shenandoah County. The Revolution changed the name. When Thomas Marshall was appointed Clerk, the House of Burgesses asked the Governor to issue a writ for a new election in Fauquier County to fill Marshall's place as Burgess. (*Ib.* (1773-76), 9.)

¹⁸⁶ *Ib.* (1766-69), 163.

¹⁸⁷ *Ib.*, 16, 71, 257; (1770-72), 17, 62, 123, 147, 204, 234, 251, 257, 274, 292; (1773-76), 217, 240.

¹⁸⁸ Ambler, Introduction.

¹⁸⁹ Ambler, 17-18.

¹⁹⁰ Henry, i, 71.

¹⁹¹ *Ib.*, 76-77.

¹⁹² Henry, i, 39-48.

attacked the bill and carried with him every member from the up counties. The bill was lost.¹⁹³ It was the first defeat ever experienced by the combination that had governed Virginia so long that they felt that it was their inalienable right to do so. One of the votes that struck this blow was cast by Thomas Marshall.¹⁹⁴ Robinson died the next year; his defalcation was discovered and the real purpose of the bill was thus revealed.¹⁹⁵

Quick on the heels of this victory for popular rights and honest government trod another event of vital influence on American history. The British Parliament, the year before, had passed resolutions declaring the right of Parliament to tax the colonies without representation, and, indeed, to enact any law it pleased for the government and administration of British dominions wherever situated.¹⁹⁶ The colonies protested, Virginia among them; but when finally Parliament enacted the Stamp Act, although the colonies were in sullen anger, they yet prepared to submit.¹⁹⁷ The more eminent men among the Virginia Burgesses were willing to remonstrate once more, but had not the heart to go further.¹⁹⁸ It was no part of the plan or feeling of the aristocracy to affront the Royal Government openly. At this moment, Patrick Henry suddenly offered his historic resolutions, the last one a bold denial of Parliament's right to pass the Stamp Act, and a savage defiance of the British Government.¹⁹⁹

Cautious members of the tidewater organization were aghast. They did not like the Stamp Act themselves, but they thought that this was going too far. The logical end of it would be armed conflict, they said; or at the very least, a temporary suspension of profitable commerce with England. Their material interests were involved; and while they hazarded these and life itself most nobly when the test of war finally came, ten years later, they were not minded to risk either business or comfort until forced to do so.²⁰⁰

But a far stronger influence with them was their hatred of Henry and their fear of the growing power of the up country. They were smarting from the defeat²⁰¹ of the loan-office bill. They did not relish the idea of following the audacious Henry and his democratic supporters from the hills. They resented the leadership which the "new men" were assuming. To the aristocratic machine it was offensive to have any movement originate outside itself.²⁰²

The up-country members to a man rallied about Patrick Henry and fought beneath the standard of principle which he had raised. The line that marked the division between these contending forces in the Virginia House of Burgesses was practically identical with that which separated them in the loan-office struggle which had just taken place. The same men who had supported Robinson were now against any measure which might too radically assert the rights of the colonies and offend both the throne and Westminster Hall. And as in the Robinson case so in the fight over Henry's Stamp Act Resolutions, the Burgesses who represented the frontier settlers and small landowners and who stood

¹⁹³ Wirt, 71 *et seq.* It passed the House (Journal, H.B. (1761-65), 350); but was disapproved by the Council. (*Ib.*, 356; and see Henry, i, 78.)

¹⁹⁴ The "ayes" and "noes" were not recorded in the Journals of the House; but Jefferson says, in his description of the event, which he personally witnessed, that Henry "carried with him all the members of the upper counties and left a minority composed merely of the aristocracy." (Wirt, 71.) "The members, who, like himself [Henry], represented the yeomanry of the colony, were filled with admiration and delight." (Henry, i, 78.)

¹⁹⁵ Wirt, 71. The incident, it appears, was considered closed with the defeat of the loan-office bill. Robinson having died, nothing further was done in the matter. For excellent condensed account see Eckenrode: *R. V.*, 16-17.

¹⁹⁶ Declaratory Resolutions.

¹⁹⁷ For the incredible submission and indifference of the colonies before Patrick Henry's speech, see Henry, i, 63-67. The authorities given in those pages are conclusive.

¹⁹⁸ *Ib.*, 67.

¹⁹⁹ *Ib.*, 80-81.

²⁰⁰ *Ib.*, 82-86.

²⁰¹ Wirt, 74-76.

²⁰² Eckenrode: *R. V.*, 5-6.

for their democratic views, formed a compact and militant force to strike for popular government as they already had struck, and successfully, for honest administration.²⁰³

Henry's fifth resolution was the first written American assertion of independence, the virile seed out of which the declaration at Philadelphia ten years later directly grew. It was over this resolution that Thomas Jefferson said, "the debate was most bloody";²⁰⁴ and it was in this particular part of the debate that Patrick Henry made his immortal speech, ending with the famous words, "Tarquin and Cæsar had each his Brutus, Charles the First his Cromwell, and George the Third – " And as the cries of "Treason! Treason! Treason!" rang from every part of the hall, Henry, stretching himself to the utmost of his stature, thundered, " —*may profit by their example*. If *this* be treason, make the most of it."²⁰⁵

Henry and the stout-hearted men of the hills won the day, but only by a single vote. Peyton Randolph, the foremost member of the tidewater aristocracy and Royal Attorney-General, exclaimed, "By God, I would have given one²⁰⁶ hundred guineas for a single vote!"²⁰⁷ Thomas Marshall again fought by Henry's side and voted for his patriotic defiance of British injustice.²⁰⁸

This victory of the poorer section of the Old Dominion was, in Virginia, the real beginning of the active period of the Revolution. It was more – it was the ending of the hitherto unquestioned supremacy of the tidewater aristocracy.²⁰⁹ It marked the effective entrance of the common man into Virginia's politics and government.

When Thomas Marshall returned to his Blue Ridge home, he described, of course, the scenes he had witnessed and taken part in. The heart of his son thrilled, we may be sure, as he listened to his father reciting Patrick Henry's words of fire and portraying the manner, appearance, and conduct of that master orator of liberty. So it was that John Marshall, even when a boy, came into direct and living touch with the outside world and learned at first hand of the dramatic movement and the mighty forces that were about to quarry the materials for a nation.

Finally the epic year of 1775 arrived, – the year of the Boston riots, Paul Revere's ride, Lexington and Concord, – above all, the year of the Virginia Resolutions for Arming and Defense. Here we find Thomas Marshall a member of the Virginia Convention,²¹⁰ when once more the radicals of the up country met and defeated the aristocratic conservatives of the older counties. The latter counseled prudence. They argued weightily that the colony was not prepared for war with the Royal Power across the sea. They urged patience and the working-out of the problem by processes of conciliation and moderate devices, as those made timid by their own interests always do.²¹¹ Selfish love of ease made them forget, for the moment, the lesson of Braddock's defeat. They held up

²⁰³ "The members from the upper counties invariably supported Mr. Henry in his revolutionary measures." (Jefferson's statement to Daniel Webster, quoted in Henry, i, 87.)

²⁰⁴ Henry, i, 86.

²⁰⁵ Henry, i, 86, and authorities there cited in the footnote.

²⁰⁶ Misquoted in Wirt (79) as "500 guineas."

²⁰⁷ Jefferson to Wirt, Aug. 14, 1814; *Works*: Ford, xi, 404.

²⁰⁸ It is most unfortunate that the "ayes" and "noes" were not kept in the House of Burgesses. In the absence of such a record, Jefferson's repeated testimony that the up-country members voted and worked with Henry must be taken as conclusive of Thomas Marshall's vote. For not only was Marshall Burgess from a frontier county, but Jefferson, at the time he wrote to Wirt in 1814 (and gave the same account to others later), had become very bitter against the Marshalls and constantly attacked John Marshall whom he hated virulently. If Thomas Marshall had voted out of his class and against Henry, so remarkable a circumstance would surely have been mentioned by Jefferson, who never overlooked any circumstance unfavorable to an enemy. Far more positive evidence, however, is the fact that Washington, who was a Burgess, voted with Henry, as his letter to Francis Dandridge, Sept. 20, 1765, shows. (*Writings*: Ford, ii, 209.) And Thomas Marshall always acted with Washington.

²⁰⁹ "By these resolutions, Mr. Henry took the lead out of the hands of those who had heretofore guided the proceedings of the House." (Jefferson to Wirt, Aug. 14, 1814; *Works*: Ford, xi, 406.)

²¹⁰ *Proceedings*, Va. Conv., 1775, March 20, 3; July 17, 3, 5, 7.

²¹¹ Henry, i, 255-61; Wirt, 117-19. Except Henry's speech itself, Wirt's summary of the arguments of the conservatives is much the best account of the opposition to Henry's fateful resolutions.

the overwhelming might of Great Britain and the impotence of the King's subjects in his western dominions; and they were about to prevail.

But again Patrick Henry became the voice of America. He offered the Resolutions for Arming and Defense and carried them with that amazing speech ending with, "Give me liberty or give me death,"²¹² which always will remain the classic of American liberty. Thomas Marshall, who sat beneath its spell, declared that it was "one of the most bold, animated, and vehement pieces of eloquence that had ever been delivered."²¹³ Once more he promptly took his stand under Henry's banner and supported the heroic resolutions with his vote and influence.²¹⁴ So did George Washington, as both had done ten years before in the battle over Henry's Stamp Act Resolutions in the House of Burgesses in 1765.²¹⁵

Not from newspapers, then, nor from second-hand rumor did John Marshall, now nineteen years old, learn of the epochal acts of that convention. He heard of them from his father's lips. Henry's inspired speech, which still burns across a century with undiminished power, came to John Marshall from one who had listened to it, as the family clustered around the fireside of their Oak Hill home. The effect on John Marshall's mind and spirit was heroic and profound, as his immediate action and his conduct for several years demonstrate.

We may be sure that the father was not deceived as to the meaning of it all; nor did he permit his family to be carried off the solid ground of reality by any emotional excitement. Thomas Marshall was no fanatic, no fancy-swayed enthusiast resolving highly in wrought-up moments and retracting humbly in more sober hours. He was a man who looked before he leaped; he counted the costs; he made up his mind with knowledge of the facts. When Thomas Marshall decided to act, no unforeseen circumstance could make him hesitate, no unexpected obstacle could swerve him from his course; for he had considered carefully and well; and his son was of like mettle.

So when Thomas Marshall came back to his Fauquier County home from the fateful convention of 1775 at Richmond, he knew just what the whole thing meant; and, so knowing, he gravely welcomed the outcome. He knew that it meant war; and he knew also what war meant. Already he had been a Virginia ranger and officer, had seen fighting, had witnessed wounds and death.²¹⁶ The same decision that made him cast his vote for Henry's resolutions also caused Thomas Marshall to draw his sword from its scabbard. It inspired him to do more; for the father took down the rifle from its deerhorn bracket and the hunting-knife from its hook, and placed them in the hands of his first-born. And so we find father and son ready for the field and prepared to make the ultimate argument of willingness to lay down their lives for the cause they believed in.

²¹² Wirt, 142; Henry, i, 261-66.

²¹³ *Ib.*, 271; and Wirt, 143.

²¹⁴ In the absence of the positive proof afforded by a record of the "ayes" and "noes," Jefferson's testimony, Washington's vote, Thomas Marshall's tribute to Henry, and above all, the sentiment of the frontier county he represented, are conclusive testimony as to Thomas Marshall's stand in this all-important legislative battle which was the precursor of the iron conflict soon to come in which he bore so heroic a part. (See Humphrey Marshall, i, 344.)

²¹⁵ Washington was appointed a member of the committee provided for in Henry's second resolution. (Henry, i, 271.)

²¹⁶ Thomas Marshall had been ensign, lieutenant, and captain in the militia, had taken part in the Indian wars, and was a trained soldier. (Crozier: *Virginia Colonial Militia*, 96.)

CHAPTER III

A SOLDIER OF THE REVOLUTION

Our liberties are at stake. It is time to brighten our fire-arms and learn to use them in the field. (Marshall to Culpeper Minute Men, 1775.)

Our sick naked, and well naked, our unfortunate men in captivity naked. (Washington, 1777.)

I have seen a regiment consisting of *thirty men* and a company of *one corporal*. (Von Steuben, 1778.)

The fighting men of the up counties lost not a minute's time. Blood had been shed in New England; blood, they knew, must soon flow in Virginia. At once Culpeper, Orange, and Fauquier Counties arranged to raise a regiment of minute men with Lawrence Taliaferro of Orange as colonel, Edward Stevens of Culpeper as lieutenant, Thomas Marshall of Fauquier as major.²¹⁷ Out over the countryside went the word; and from mountain cabins and huts in forest clearings, from log abodes in secluded valleys and on primitive farms, the fighting yeomanry of northern Virginia came forth in answer.

In the years between Patrick Henry's two epochal appeals in 1765 and 1775, all Virginia, but particularly the back country, had been getting ready to make answer in terms of rifle and lead. "No man should scruple, or hesitate a moment, to use arms," wrote Washington in 1769.²¹⁸ Thomas Marshall's minister, Mr. Thompson, preached militant preparation; Parliament had deprived the colonists of "their just and legal rights" by acts which were "destructive of their liberties," thundered the parson; it had "overawed the inhabitants by British troops," loaded "great hardships" upon the people, and "reduced the poor to great want." The preacher exhorted his flock "as men and Christians" to help "supply the country with arms and ammunition," and referred his hearers, for specific information, to "the committee of this county,"²¹⁹ whose head undoubtedly was their Burgess and leading vestryman of the parish, Thomas Marshall.

When news of Concord and Lexington finally trickled through to upper Virginia, it found the men of her hills and mountains in grim readiness; and when, soon after, Henry's flaming words came to them, they were ready and eager to make those words good with their lives. John Marshall, of course, was one of the band of youths who had agreed to make up a company if trouble came. In May, 1775, these young frontiersmen were called together. Their captain did not come, and Marshall was appointed lieutenant, "instead of a better," as he modestly told his comrades. But, for his years, "a better" could not have been found; since 1773 John Marshall had received careful military instruction from his father.²²⁰ Indeed, during the two years before his company took the field in actual warfare, the youth had devoted most of his time to preparing himself, by study and practice, for military service.²²¹ So these embryo warriors gathered about their leader to be told what to do.²²²

Here we get the first glimpse of John Marshall's power over men. "He had come," the young officer informed his comrades of the backwoods, "to meet them as fellow soldiers, who were likely to be called on to defend their country." Their own "rights and liberties" were at stake. Their brothers

²¹⁷ Slaughter, 107-08. This was "the first minute battalion raised within this Commonwealth." (Memorial of Thomas Marshall to the Virginia Legislature for military "emoluments"; MS. Archives, Va. St. Lib.) Appendix IV.

²¹⁸ Washington to Mason, April 5, 1769; *Writings*: Ford, ii, 263.

²¹⁹ Meade, ii, 219.

²²⁰ Binney, in Dillon, iii, 286.

²²¹ *Ib.*

²²² Statement of eye-witness. (Binney, in Dillon, iii, 287.)

in New England had fought and beaten the British; now "it is time to brighten our fire-arms and learn to use them in the field." He would show them how to do this. So the boys fell into line, and John Marshall, bringing his own gun to his shoulder, instructed them in the manual of arms. He first gave the words of command slowly and distinctly and then illustrated the movements with his own rifle so that every man of the company might clearly understand what each order meant and how to execute it. He then put the company through the drill.²²³

On this muster field we learn how John Marshall looked in his nineteenth year. He was very tall, six feet at least, slender and erect. His complexion was dark, with a faint tinge of red. His face was round – "nearly a circle." His forehead was straight and low, and thick, strong, "raven black" hair covered his head. Intense eyes "dark to blackness,"²²⁴ of compelling power, pierced the beholder while they reassured him by the good nature which shone from them. "He wore a purple or pale blue hunting-shirt, and trousers of the same material fringed with white."²²⁵

At this point, too, we first learn of his bent for oratory. What his father told him about the debates in the House of Burgesses, the speeches of Wythe and Lee and Randolph, and above all, Patrick Henry; what he had dreamed and perhaps practiced in the silent forests and vacant fields, here now bore public fruit. When he thought that he had drilled his company enough for the time being, Marshall told them to fall out, and, if they wished to hear more about the war, to gather around him and he would make them a speech.²²⁶ And make them a speech he did. Before his men the youthful lieutenant stood, in his hand his "round black hat mounted with a buck's tail for a cockade," and spoke to that company of country boys of the justice of their cause and of those larger things in life for which all true men are glad to die.

"For something like an hour" he spoke, his round face glowing, the dormant lightning of his eye for the time unloosed. Lively words they were, we may be sure; for John Marshall was as ardent a patriot as the colonies could produce. He had learned the elementary truths of liberty in the school of the frontier; his soul was on fire with the burning words of Henry; and he poured forth his immature eloquence not to a company of peaceful theorists, but to a group of youths ready for the field. Its premises were freedom and independence; its conclusion was action. It was a battle speech.²²⁷ This fact is very important to an understanding of John Marshall's character, and indeed of the blood that flowed in his veins. For, as we shall find, he was always on the firing line; the Marshall blood was fighting blood.²²⁸

But it was not all labor of drill and toil of discipline, heroics of patriotic speech, or solemn preachments about duty, for the youths of John Marshall's company. If he was the most earnest, he was also, it seems, the jolliest person in the whole band; and this deserves especial note, for his humor was a quality which served not only the young soldier himself, but the cause for which he fought almost as well as his valor itself, in the martial years into which he was entering. Indeed this capacity for leavening the dough of serious purpose with the yeast of humor and diversion made John Marshall's entire personal life wholesome and nutritious. Jokes and fun were a part of him, as we shall see, whether in the army, at the bar, or on the bench.

So when, the business of the day disposed of, Lieutenant Marshall challenged his sure-eyed, strong-limbed, swift-footed companions to a game of quoits, or to run a race, or to jump a pole, we find him practicing that sport and comradeship which, luckily for himself and his country, he never

²²³ *Ib.*, 288.

²²⁴ In all descriptions of Marshall, it is stated that his eyes were black and brilliant. His portraits, however, show them as dark brown, but keen and piercing.

²²⁵ Binney, in Dillon, iii, 287-88.

²²⁶ *Ib.*

²²⁷ Binney, in Dillon, iii, 288.

²²⁸ Not only do we find Marshalls, father and sons, taking gallant part in the Revolutionary War, but, thereafter, advocates of war with any country when the honor or interest of America was at stake.

outgrew. Pitch quoits, then, these would-be soldiers did, and coursed their races, and vaulted high in their running jumps.²²⁹ Faster than any of them could their commander run, with his long legs outgoing and his powerful lungs out-winding the best of them. He could jump higher, too, than anybody else; and from this accomplishment he got his soldier nickname "Silver Heels" in Washington's army a year later.²³⁰

The final muster of the Culpeper Minute Men was in "Major Clayton's old field" hard by the county seat²³¹ on September 1, 1775.²³² They were clad in the uniform of the frontier, which indeed was little different from their daily apparel. Fringed trousers often of deerskins, "strong brown linen hunting-shirts dyed with leaves, ... buck-tails in each hat, and a leather belt about the shoulders, with tomahawk and scalping-knife" made up their warlike costume.²³³ By some preconcert, – an order perhaps from one of the three superior officers who had poetic as well as fighting blood in him, – the mothers and wives of this wilderness soldiery had worked on the breast of each hunting-shirt in large white letters the words "Liberty or Death,"²³⁴ with which Patrick Henry had trumpeted the purpose of hitherto inarticulate America.

Early in the autumn of 1775 came the expected call. Not long had the "shirt men,"²³⁵ as they were styled, been drilling near the court-house of Culpeper County when an "express" came from Patrick Henry.²³⁶ This was a rider from Williamsburg, mounting swift relays as he went, sometimes over the rough, miry, and hazardous roads, but mostly by the bridle paths which then were Virginia's principal highways of land travel. The "express" told of the threatening preparations of Lord Dunmore, then Royal Governor of Virginia, and bore Patrick Henry's command to march at once for the scene of action a hundred miles to the south.

Instantly the Culpeper Minute Men were on the move. "We marched immediately," wrote one of them, "and in a few days were in Williamsburg." News of their coming went before them; and when the better-settled districts were reached, the inhabitants were in terror of them, for the Culpeper Minute Men were considered as "savage backwoodsmen" by the people of these older communities.²³⁷ And indeed they must have looked the part, striding along armed to the teeth with the alarming weapons of the frontier,²³⁸ clad in the rough but picturesque war costume of the backwoods, their long hair falling behind, untied and unqueued.

When they reached Williamsburg half of the minute men were discharged, because they were not needed;²³⁹ but the other half, marching under Colonel Woodford, met and beat the enemy at Great Bridge, in the first fight of the Revolution in Virginia, the first armed conflict with British soldiers in the colonies since Bunker Hill. In this small but bloody battle, Thomas Marshall and his son took part.²⁴⁰

²²⁹ Binney, in Dillon, iii, 288.

²³⁰ *Infra*, chap. IV.

²³¹ Slaughter, 107-08. But Binney's informant says that it was twenty miles from the court-house. (Binney, in Dillon, iii, 286.)

²³² Slaughter, 107-08; and certificate of J. Marshall in pension claim of William Payne; MSS. Rev. War, S. F. no. 8938½, Pension Bureau.

²³³ Slaughter, 107-08.

²³⁴ *Ib.*

²³⁵ Campbell, 607-14.

²³⁶ Slaughter, 107-08; certificate of J. Marshall in pension claim of David Jameson; MSS. Rev. War, S. F. no. 5607, Pension Bureau.

²³⁷ Only the Tories and the disaffected were frightened by these back-countrymen. Apparently Slaughter took this for granted and failed to make the distinction.

²³⁸ "The people hearing that we came from the backwoods, and seeing our savage-looking equipments, seemed as much afraid of us as if we had been Indians," writes the chronicler of that march. But the people, it appears, soon got over their fright; for this frontier soldiery, as one of them relates, "took pride in demeaning ourselves as patriots and gentlemen, and the people soon treated us with respect and great kindness." (Slaughter, 107-08.)

²³⁹ Slaughter, 107-08.

²⁴⁰ *Ib.*

The country around Norfolk swarmed with Tories. Governor Dunmore had established martial law, proclaimed freedom of slaves, and summoned to the Royal standard everybody capable of bearing arms. He was busy fortifying Norfolk and mounting cannon upon the entrenchments. Hundreds of the newly emancipated negroes were laboring upon these fortifications. To keep back the patriots until this military work should be finished, the Governor, with a force of British regulars and all the fighting men whom he could gather, took up an almost impregnable position near Great Bridge, about twenty miles from Norfolk, "in a small fort on an oasis surrounded by a morass, not far from the Dismal Swamp, accessible on either side by a long causeway." Here Dunmore and the Loyalists awaited the Americans.²⁴¹

When the latter came up they made their camp "within gunshot of this post, in mud and mire, in a village at the southern end of the causeway." Across this the patriot volunteers threw a breastwork. But, having no cannon, they did not attack the British position. If only Dunmore would take the offensive, the Americans felt that they would win. Legend has it that through a stratagem of Thomas Marshall, the British assault was brought on. He instructed his servant to pretend to desert and mislead the Governor as to the numbers opposing him. Accordingly, Marshall's decoy sought the enemy's lines and told Dunmore that the insurgents numbered not more than three hundred. The Governor then ordered the British to charge and take the Virginians, "or die in the attempt."²⁴²

"Between daybreak and sunrise," Captain Fordyce, leading his grenadiers six abreast, swept across the causeway upon the American breastworks. Marshall himself tells us of the fight. The shots of the sentinels roused the little camp and "the bravest ... rushed to the works," firing at will, to meet the British onset. The gallant Fordyce "fell dead within a few steps of the breastwork... Every grenadier ... was killed or wounded; while the Americans did not lose a single man." Full one hundred of the British force laid down their lives that bloody December morning, among them four of the King's officers. Small as was this affair, – which was called "The Little Bunker Hill," – it was more terrible than most military conflicts in loss of life in proportion to the numbers engaged.²⁴³

This was John Marshall's first lesson²⁴⁴ in warfare upon the field of battle. Also, the incidents of Great Bridge, and what went before and came immediately after, gave the fledgling soldier his earliest knowledge of that bickering and conflict of authority that for the next four years he was to witness and experience in far more shocking and dangerous guise.²⁴⁵

Within a few months from the time he was haranguing his youthful companions in "Major Clayton's old field" in Culpeper County, John Marshall learned, in terms of blood and death and in the still more forbidding aspects of jealousy and dissension among the patriots themselves, that freedom and independence were not to be wooed and won merely by high-pitched enthusiasm or fervid speech. The young soldier in this brief time saw a flash of the great truth that liberty can be made a reality and then possessed only by men who are strong, courageous, unselfish, and wise enough to act unitedly as well as to fight bravely. He began to discern, though vaguely as yet, the supreme need of the organization of democracy.

After the victory at Great Bridge, Marshall, with the Culpeper Minute Men, marched to Norfolk, where he witnessed the "American soldiers frequently amuse themselves by firing" into Dunmore's vessels in the harbor; saw the exasperated Governor imprudently retaliate by setting

²⁴¹ Campbell, 633-34; Eckenrode: *R. V.*, 81, 82.

²⁴² Burk, iv, 85; and Lossing, ii, 535-36.

²⁴³ Marshall, i, 69; and Campbell, 635.

²⁴⁴ Marshall to Samuel Templeman, Richmond, Sept. 26, 1832, supporting latter's claim for pension; MSS. Rev. War, S. F. no. 6204, Pension Bureau.

²⁴⁵ For the conduct of the men then in supreme authority in Virginia see Wirt, 166-81; and Henry, i, 333-36; also, Campbell, 636 *et seq.*; and see Eckenrode: *R. V.*, 75.

the town on fire; and beheld for "several weeks" the burning of Virginia's metropolis.²⁴⁶ Marshall's battalion then marched to Suffolk, and was discharged in March, 1776.²⁴⁷

With this experience of what war meant, John Marshall could have returned to the safety of Oak Hill and have spent, at that pleasant fireside, the red years that were to follow, as indeed so many in the colonies who then and after merely prated of liberty, actually did. But it was not in the Marshall nature to support a cause with lip service only. Father and son chose the sterner part; and John Marshall was now about to be schooled for four years by grim instructors in the knowledge that strong and orderly government is necessary to effective liberty. He was to learn, in a hard and bitter school, the danger of provincialism and the value of Nationality.

Not for long did he tarry at the Fauquier County home; and not an instant did the father linger there. Thomas Marshall, while still serving with his command at Great Bridge, was appointed by the Legislature major of the Third Virginia Regiment; and at once entered the Continental service;²⁴⁸ on July 30, 1776, four months after the Culpeper Minute Men, their work finished, had been disbanded by the new State, his son was commissioned lieutenant in the same regiment. The fringed hunting-shirt and leggings, the buck-tail headgear, scalping-knife, and tomahawk of the backwoods warrior now gave place to the buff and blue uniform, the three-cornered hat,²⁴⁹ the sword, and the pistol of the Continental officer; and Major Thomas Marshall and his son, Lieutenant John Marshall, marched away to the north to join Washington, and under him to fight and suffer through four black and heart-breaking years of the Revolution.

It is needful, here, to get clearly in our minds the state of the American army at this time. What particular year of the Revolution was darkest up almost to the victorious end, it is hard to say. Studying each year separately one historian will conclude that 1776 sounded the depths of gloom; another plumbs still greater despair at Valley Forge; still another will prove that the bottom was not reached until '79 or '80. And all of them appear to be right.²⁵⁰

Even as early as January, 1776, when the war was new, and enthusiasm still warm, Washington wrote to the President of Congress, certain States having paid no attention to his application for arms: "I have, as the last expedient, sent one or two officers from each regiment into the country, with money to try if they can buy."²⁵¹ A little later he writes: "My situation has been such, that I have been obliged to use art to conceal it from my own officers."²⁵²

Congress even placed some of Washington's little army under the direction of the Committee of Safety of New York; and Washington thus wrote to that committee: "I should be glad to know how far it is conceived that my powers over them [the soldiers] extend, or whether I have any at all. Sure I am that they cannot be subjected to the direction of both"²⁵³ (the committee and himself).

In September the Commander-in-Chief wrote to the President of Congress that the terms of enlistment of a large portion of the army were about to expire, and that it was direful work "to be forming armies constantly, and to be left by troops just when they begin to deserve the name, or perhaps at a moment when an important blow is expected."²⁵⁴

²⁴⁶ Marshall, i, 69; and see Eckenrode: *R. V.*, chap. iii, for the best account that has been given of this important episode. Dr. Eckenrode's narrative is a complete statement, from original sources, of every phase of this initial armed conflict between the patriots and Royalists in Virginia. Also see affidavit of Marshall in pension claim of William Payne, April 26, 1832; MSS. Rev. War, S. F. no. 8938½, Pension Bureau.

²⁴⁷ Affidavit of Marshall in pension claim of William Payne, April 26, 1832; MSS. Rev. War, S. F. no. 8938½, Pension Bureau.

²⁴⁸ Memorial of Thomas Marshall. (*Supra*, and Appendix IV.)

²⁴⁹ This uniform was rare; it is probable, however, that Thomas Marshall procured it for himself and son. He could afford it at that time, and he was a very proud man.

²⁵⁰ Chastellux found the army nearly disbanded from necessity in 1782. (Chastellux, translator's note to 60.)

²⁵¹ Washington to President of Congress, Jan. 24, 1776; *Writings*: Ford, iii, 372-73.

²⁵² Washington to Reed, Feb. 10, 1776; *ib.*, 413.

²⁵³ Washington to Committee of Safety of New York, April 27, 1776; *Writings*: Ford, iv, 51-52.

²⁵⁴ Washington to President of Congress, Sept. 20, 1776; *ib.*, 422.

Four days later Washington again told Congress, "beyond the possibility of doubt, ... unless some speedy and effectual measures are adopted by Congress, our cause will be lost."²⁵⁵ On December 1, 1776, the army was "greatly reduced by the departure of the Maryland *Flying Camp* men, and by sundry other causes."²⁵⁶ A little afterwards General Greene wrote to Governor Cooke [of Rhode Island] that "two brigades left us at Brunswick, notwithstanding the enemy were within two hours' march and coming on."²⁵⁷

Thirteen days before the Christmas night that Washington crossed the Delaware and struck the British at Trenton, the distressed American commander found that "our little handful is daily decreasing by sickness and other causes."²⁵⁸ And the very day before that brilliant exploit, Washington was compelled to report that "but very few of the men have [re]enlisted" because of "their wishes to return home, the nonappointment of officers in some instances, the turning out of good and appointing of bad in others, and the incomplete or rather no arrangement of them, a work unhappily committed to the management of their States; nor have I the most distant prospect of retaining them ... notwithstanding the most pressing solicitations and the obvious necessity for it." Washington informed Reed that he was left with only "fourteen to fifteen hundred effective men. This handful and such militia as may choose to join me will then compose our army."²⁵⁹ Such was American patriotic efficiency, as exhibited by "State Sovereignty," the day before the dramatic crossing of the Delaware.

A month earlier the general of this assemblage of shreds and patches had been forced to beg the various States for militia in order to get in "a number of men, if possible, to keep up the appearance of our army."²⁶⁰ And he writes to his brother Augustine of his grief and surprise to find "the different States so slow and inattentive... In ten days from this date there will not be above two thousand men, if that number, of the fixed established regiments, ... to oppose Howe's whole army."²⁶¹

Throughout the war, the neglect and ineffectiveness of the States, even more than the humiliating powerlessness of Congress, time and again all but lost the American cause. The State militia came and went almost at will. "The impulse for going home was so irresistible, that it answered no purpose to oppose it. Though I would not discharge them," testifies Washington, "I have been obliged to acquiesce, and it affords one more melancholy proof, how delusive such dependencies [State controlled troops] are."²⁶²

"The Dependence, which the Congress have placed upon the militia," the distracted general complains to his brother, "has already greatly injured, and I fear will totally ruin our cause. Being subject to no controul themselves, they introduce disorder among the troops, whom you have attempted to discipline, while the change in their living brings on sickness; this makes them Impatient to get home, which spreads universally, and introduces abominable desertions. In short, it is not in the power of words to describe the task I have to act."²⁶³

Nor was this the worst. Washington thus pours out his soul to his nephew: "Great bodies of militia in pay that never were in camp; ... immense quantities of provisions drawn by men that never rendered ... one hour's service ... every kind of military [discipline] destroyed by them... They [the militia] come without any conveniences and soon return. I discharged a regiment the other day that had in it fourteen rank and file fit for duty only... The subject ... is not a fit one to be publicly known

²⁵⁵ Washington to President of Congress, Sept. 24, 1776; *ib.*, 439.

²⁵⁶ Washington to Major-General Lee, Dec. 1, 1776; *ib.*, v, 62.

²⁵⁷ General Greene to Governor Cooke, Dec. 4, 1776; *ib.*, footnote to 62.

²⁵⁸ Washington to President of Congress, Dec. 12, 1776; *Writings*: Ford, v, 84.

²⁵⁹ Washington to President of Congress, Dec. 24, 1776; *ib.*, 129-30. While Washington was desperately badly off, he exaggerates somewhat in this despondent report, as Mr. Ford's footnote (*ib.*, 130) shows.

²⁶⁰ Washington to President of Congress, Nov. 11, 1776; *ib.*, 19.

²⁶¹ Washington to John Augustine Washington, Nov. 19, 1776; *Writings*: Ford, v, 38-39.

²⁶² Washington to President of Congress, Sept. 8, 1776; *ib.*, iv, 397.

²⁶³ Washington to John Augustine Washington, Sept. 22, 1776; *ib.*, 429.

or discussed... I am wearied to death all day ... at the conduct of the militia, whose behavior and want of discipline has done great injury to the other troops, who never had officers, except in a few instances, worth the bread they eat."²⁶⁴

Conditions did not improve in the following year, for we find Washington again writing to his brother of "militia, who are here today and gone tomorrow – whose way, like the ways of [Pr]ovidence, are almost inscrutable."²⁶⁵ Baron von Steuben testifies thus: "The eternal ebb and flow of men ... who went and came every day, rendered it impossible to have either a regiment or company complete... I have seen a regiment consisting of *thirty men* and a company of *one corporal*."²⁶⁶ Even Thomas Paine, the arch-enemy of anything resembling a regular or "standing" army, finally declared that militia "will not do for a long campaign."²⁶⁷ Marshall thus describes the predicament in which Washington was placed by the inconstancy of this will-o'-the-wisp soldiery: "He was often abandoned by bodies of militia, before their places were filled by others... The soldiers carried off arms and blankets."²⁶⁸

Bad as the militia were,²⁶⁹ the States did not keep up even this happy-go-lucky branch of the army. "It is a matter of astonishment," savagely wrote Washington to the President of Pennsylvania, two months before Valley Forge, "to every part of the continent, to hear that Pennsylvania, the most opulent and populous of all the States, has but twelve hundred militia in the field, at a time when the enemy are endeavoring to make themselves completely masters of, and to fix their winter quarters in, her capital."²⁷⁰ Even in the Continental line, it appears, Pennsylvania's quota had "never been above one third full; and now many of them are far below even that."²⁷¹

Washington's wrath at Pennsylvania fairly blazed at this time, and the next day he wrote to Augustine Washington that "this State acts most infamously, the People of it, I mean, as we derive little or no assistance from them... They are in a manner, totally disaffected or in a kind of Lethargy."²⁷²

The head of the American forces was not the only patriot officer to complain. "The Pennsylvania Associators [militia] ... are deserting ... notwithstanding the most spirited exertions of their officers," reported General Livingston in the midsummer of 1776.²⁷³ General Lincoln and the Massachusetts Committee tried hard to keep the militia of the Bay State from going home; but, moaned Lee, "whether they will succeed, Heaven only knows."²⁷⁴

General Sullivan determined to quit the service because of abuse and ill-treatment.²⁷⁵ For the same reason Schuyler proposed to resign.²⁷⁶ These were not examples of pique; they denoted a general sentiment among officers who, in addition to their sufferings, beheld their future through none too darkened glasses. They "not only have the Mortification to See every thing live except themselves," wrote one minor officer in 1778, "but they see their private fortune wasting away to make fat those

²⁶⁴ Washington to Lund Washington, Sept. 30, 1776; *Writings*: Ford, iv, 457-59.

²⁶⁵ Washington to John Augustine Washington, Feb. 24, 1777; *ib.*, v, 252. The militia officers were elected "without respect either to service or experience." (Chastellux, 235.)

²⁶⁶ Kapp, 115.

²⁶⁷ *The Crisis*: Paine; *Writings*: Conway, i, 175.

²⁶⁸ Marshall (1st ed.), iii, 66.

²⁶⁹ The militia were worse than wasteful and unmanageable; they deserted by companies. (Hatch, 72-73.)

²⁷⁰ Washington to Wharton, Oct. 17, 1777; *Writings*: Ford, vi, 118-19.

²⁷¹ *Ib.*

²⁷² Washington to John Augustine Washington, Oct. 18, 1777; *ib.*, 126-29.

²⁷³ Livingston to Washington, Aug. 12, 1776; *Cor. Rev.*: Sparks, i, 275.

²⁷⁴ Lee to Washington, Nov. 12, 1776; *ib.*, 305.

²⁷⁵ Sullivan to Washington, March 7, 1777; *ib.*, 353-54.

²⁷⁶ Schuyler to Washington, Sept. 9, 1776; *ib.*, 287.

very Miscreants [speculators] ... they See their Country ... refuse to make any future provision for them, or even to give them the Necessary Supplies."²⁷⁷

Thousands of the Continentals were often practically naked; Chastellux found several hundred in an invalid camp, not because they were ill, but because "they were not covered even with rags."²⁷⁸ "Our sick naked, and well naked, our unfortunate men in captivity naked"! wailed Washington in 1777.²⁷⁹ Two days before Christmas of that year he informed Congress that, of the force then under his immediate command, nearly three thousand were "barefoot and otherwise naked."²⁸⁰ Sickness was general and appalling. Smallpox raged throughout the army even from the first.²⁸¹ "The Regimental Surgeons are immediately to make returns ... of all the men in their Regiments, who have not had the small Pox,"²⁸² read the orders of the day just after New Year's Day, in 1778.

Six years after Concord and Lexington, three hundred American soldiers, in a body, wished to join the British.²⁸³ Stern measures were taken to prevent desertion and dishonesty and even to enforce the most ordinary duties of soldiers. "In the afternoon three of our regt were flogged; – 2 of them received one hundred lashes apiece for attempting to desert; the other received 80 for enlisting twice and taking two bounties,"²⁸⁴ Wild coolly enters in his diary. And again: "This afternoon one of our men was hanged on the grand parade for attempting to desert to the enemy";²⁸⁵ and "at 6 ock P.M. a soldier of Col. Gimatts Battalion was hanged."

Sleeping on duty meant "Twenty Lashes on ... [the] bare back" of the careless sentry.²⁸⁶ A soldier convicted of "getting drunk & losing his Arms" was "Sentenc'd to receive 100 Lashes on his bare back, & pay for his Arms lost."²⁸⁷ A man who, in action, "turns his back on the Enemy" was ordered to be "instantly put ... to Death" by the officers.²⁸⁸ At Yorktown in May, 1781, Wayne ordered a platoon to fire on twelve soldiers who were persuading their comrades not to march; six were killed and one wounded, who was, by Wayne's command, enforced by a cocked pistol, then finished with the bayonet thrust into the prostrate soldier by a comrade.²⁸⁹

Such was the rough handling practiced in the scanty and ill-treated army of individualists which Washington made shift to rally to the patriot colors.²⁹⁰ It was not an encouraging omen. But blacker still was the disorganizing effect of local control of the various "State Lines" which the pompous authority of the newborn "sovereign and independent" Commonwealths asserted.²⁹¹

Into this desperate confusion came the young Virginia lieutenant. Was this the manner of liberty? Was this the way a people fighting for their freedom confronted their enemy? The dreams he

²⁷⁷ Smith to McHenry, Dec. 10, 1778; Steiner, 21.

²⁷⁸ Chastellux, 44; and see Moore's *Diary*, i, 399-400; and *infra*, chap. IV.

²⁷⁹ Washington to Livingston, Dec. 31, 1777; *Writings*: Ford, vi, 272.

²⁸⁰ Washington to President of Congress, Dec. 23, 1777; *ib.*, 260; and see *ib.*, 267.

²⁸¹ *Pa. Mag. Hist. and Biog.*, 1890-91 (2d Series), vi, 79. Most faces among the patriot troops were pitted with this plague. Washington was deeply pockmarked. He had the smallpox in the Barbadoes when he was nineteen years old. (Sparks, 15.)

²⁸² Weedon, Jan. 6, 1778, 183.

²⁸³ Hatch, 135; and Kapp, 109.

²⁸⁴ *Proc.*, Mass. Hist. Soc. (2d Series), vi, 93.

²⁸⁵ *Ib.* Entries of desertions and savage punishment are frequent in Wild's *Diary*; see p. 135 as an example. Also see Moore's *Diary*, i, 405.

²⁸⁶ Weedon, 14.

²⁸⁷ *Ib.*, Sept. 3, 1777, 30.

²⁸⁸ *Ib.*, Sept. 15, 1777, 52. And see Sept. 6, p. 36, where officers as well as privates are ordered "instantly Shot" if they are "so far lost to all Shame as basely to quit their posts without orders, or shall skulk from Danger or offer to retreat before orders."

²⁸⁹ Livingston to Webb, May 28, 1781; *Writings*: Ford, ix, footnote to 267.

²⁹⁰ One reason for the chaotic state of the army was the lack of trained officers and the ignorance of the majority of common soldiers in regard to the simplest elements of drill or discipline. Many of the bearers of commissions knew little more than the men; and of such untrained officers there was an overabundance. (Hatch, 13-15.) To Baron von Steuben's training of privates as well as officers is due the chief credit for remedying this all but fatal defect. (Kapp, 126-35; also *infra*, chap. IV.)

²⁹¹ For statement of conditions in the American army throughout the war see Hatch; also, Bolton.

had dreamed, the visions he had seen back in his Virginia mountains were clad in glories as enchanting as the splendors of their tree-clad summits at break of day – dreams and visions for which strong men should be glad of the privilege of dying if thereby they might be won as realities for all the people. And indeed at this time, and in the even deadlier days that followed, young John Marshall found strong men by his side willing to die and to go through worse than death to make their great dream come true.

But why thus decrepit, the organization called the American army? Why this want of food even for such of the soldiers as were willing and eager to fight for their country? Why this scanty supply of arms? Why this avoidable sickness, this needless suffering, this frightful waste? What was the matter? Something surely was at fault. It must be in the power that assumed to direct the patriot army. But whence came that power? From Congress? No. Congress had no power; after a while, it did not even have influence. From the States? Yes; that was its source – there was plenty of power in the States.

But what kind of power, and how displayed? One State did one thing; another State did another thing.²⁹² One State clothed its troops well; another sent no supplies at all.²⁹³ One regiment of Maryland militia had no shirts and the men wrapped blankets about their bare bodies.²⁹⁴ One day State troops would come into camp, and the next day leave. How could war be conducted, how could battles be fought and won, through such freakish, uncertain power as that?

But how could this vaunted liberty, which orators had proclaimed and which Lieutenant Marshall himself had lauded to his frontier companions in arms, be achieved except by a well-organized army, equipped, supplied, and directed by a competent central Government? This was the talk common among the soldiers of the Continental establishment in which John Marshall was a lieutenant. In less than two years after he entered the regular service, even officers, driven to madness and despair by the pusillanimous weakness of Congress, openly denounced that body; and the soldiers themselves, who saw their wounds and sufferings coming to naught, cursed that sham and mockery which the jealousy and shallowness of State provincialism had set up in place of a National Government.²⁹⁵

All through the latter half of 1776, Lieutenant Marshall of the Third Virginia Regiment marched, suffered, retreated and advanced, and performed his duties without complaint. He did more. At this time, when, to keep up the sinking spirits of the men was almost as important as was ammunition, young Marshall was the soul of good humor and of cheer; and we shall find him in a few months heartening his starving and freezing comrades at Valley Forge with quip and jest, a center from which radiated good temper and a hopeful and happy warmth. When in camp Marshall was always for some game or sport, which he played with infinite zest. He was the best quoit-thrower in the regiment. His long legs left the others behind in foot-races or jumping contests.

So well did he perform his work, so highly did he impress his superior officers, that, early in December, 1776, he was promoted to be captain-lieutenant, to rank from July 31, and transferred to the Fifteenth Virginia Line.²⁹⁶ Thus he missed the glory of being one of that immortal company which on Christmas night, 1776, crossed the Delaware with Washington and fell upon the British at

²⁹² The States were childishly jealous of one another. Their different laws on the subject of rank alone caused unbelievable confusion. (Hatch, 13-16. And see Watson, 64, for local feeling, and inefficiency caused by the organization of the army into State lines.)

²⁹³ Hatch says that Connecticut provided most bountifully for her men. (Hatch, 87.) But Chastellux found the Pennsylvania line the best equipped; each Pennsylvania regiment had even a band of music. (Chastellux, 65.)

²⁹⁴ "The only garment they possess is a blanket elegantly twined about them. You may judge, sir, how much this apparel graces their appearance in parade." (Inspector Fleury to Von Steuben, May 13, 1778; as quoted in Hatch, 87.)

²⁹⁵ Diary of Joseph Clark; *Proceedings*, N.J. Hist. Soc. (1st Series), vii, 104. The States would give no revenue to the general Government and the officers thought the country would go to pieces. (Hatch, 154.)

²⁹⁶ Heitman, 285.

Trenton. His father, Major Thomas Marshall, shared in that renown;²⁹⁷ but the days ahead held for John Marshall his share of fighting in actual battle.

Sick, ill-fed, dirty, and ragged, but with a steady nucleus of regular troops as devoted to their great commander as they were disgusted with the hybrid arrangement between the States and Congress, Washington's army worried along. Two months before the battle of the Brandywine, the American General informed the Committee of Congress that "no army was ever worse supplied than ours ... our Soldiers, the greatest part of last Campaign, and the whole of this, have scarcely tasted any kind of Vegetables; had but little salt and Vinegar." He told of the "many putrid diseases incident to the Army, and the lamentable mortality," which this neglect of soldiers in the field had caused. "Soap," says he, "is another article in great demand," but not to be had. He adds, sarcastically: "A soldier's pay will not enable him to purchase [soap] by which his ... consequent dirtiness adds not a little to the disease of the Army."²⁹⁸

Such was the army of which John Marshall was a part when it prepared to meet the well-fed, properly clad, adequately equipped British veterans under Howe who had invaded Pennsylvania. Even with such a force Washington felt it necessary to make an impression on disaffected²⁹⁹ Philadelphia, and, for that purpose, marched through the city on his way to confront the enemy. For it was generally believed that the American army was as small in numbers³⁰⁰ as it was wretched in equipment. A parade of eleven thousand men³⁰¹ through the Tory-infested metropolis would, Washington hoped, hearten patriot sympathizers and encourage Congress. He took pains that his troops should make the best appearance possible. Arms were scoured and the men wore sprigs of green in their headgear. Among the orders for the march through the seat of government it was directed: "If any Soldr. shall dare to quit his ranks He shall receive 39 Lashes at the first halting place afterwards... Not a Woman³⁰² belonging to the Army is to be seen with the troops on their March through the City."³⁰³

The Americans soon came in contact with the enemy and harassed him as much as possible. Many of Washington's men had no guns. Although fewer militia came to his aid than Congress had called for, testifies Marshall, yet "more appeared than could be armed. Those nearest danger were, as usual, most slow in assembling."³⁰⁴

Upon Wayne's suggestion, Washington formed "a corps of light infantry consisting of nine officers, eight sergeants, and a hundred rank and file, from each brigade" and placed them under the command of General Maxwell who had acquired a reputation as a hard fighter.³⁰⁵ Among these picked officers was Captain-Lieutenant John Marshall. Maxwell's command was thrown forward to Iron Hill. "A choice body of men" was detailed from this select light infantry and, during the night, was posted on the road along which it was believed one column of the British army would advance. The small body of Americans had no artillery and its only purpose was to annoy the enemy and retard his progress. The British under Cornwallis attacked as soon as they discovered Maxwell's troops. The Americans quickly were forced to retreat, having lost forty killed and wounded. Only three of the British were killed and but nineteen were wounded.³⁰⁶

²⁹⁷ Binney, in Dillon, iii, 284.

²⁹⁸ Washington to Committee of Congress, July 19, 1777; *Writings*: Ford, v, 495.

²⁹⁹ Washington to President of Congress, Aug. 23, 1777; *Writings*: Ford, vi, 50; also see Marshall (1st ed.), iii, 126.

³⁰⁰ Marshall (1st ed.), iii, 126.

³⁰¹ *Ib.*, 127.

³⁰² On this subject see Waldo's poem, *Hist. Mag.*, vii, 274; and Clark's Diary, *Proc.*, N.J. Hist. Soc., vii, 102.

³⁰³ Weedon, Aug. 23, 1777, 19.

³⁰⁴ Marshall (1st ed.), iii, 127.

³⁰⁵ *Ib.*, 128; and see Trevelyan, iv, 226.

³⁰⁶ Marshall (1st ed.), iii, 127-29; *ib.* (2d ed.), i, 154-56; Washington to President of Congress, Sept. 3, 1777; *Writings*: Ford, vi, 64-65.

This action was the first engagement in which Marshall took part after the battle of Great Bridge. It is important only as fixing the command to which he was assigned. Marshall told Justice Story that he was in the Iron Hill fight;³⁰⁷ and it is certain, therefore, that he was in Maxwell's light infantry and one of the little band picked from that body of choice troops, for the perilous and discouraging task of checking the oncoming British thousands.

The American army retreated to the Brandywine, where on the 9th of September Washington stationed all his forces except the light infantry on the left of the river. The position was skillfully chosen, but vague and conflicting reports³⁰⁸ of the movement of the British finally resulted in American disaster.

The light infantry was posted among the hills on the right of the stream along the road leading to Chadd's Ford, in order to skirmish with the British when they approached, and, if possible, prevent them from crossing the river. But the enemy, without much effort, drove the Americans across the Brandywine, neither side suffering much loss.³⁰⁹

Washington now made his final dispositions for battle. The command to which Marshall belonged, together with other detachments under the general direction of Anthony Wayne, were placed opposite the British at Chadd's Ford. Small parties of selected men crossed over and attacked the British on the other side of the stream. In one of these skirmishes the Americans "killed a British captain with ten or fifteen privates, drove them out of the wood and were on the point of taking a field piece." But large numbers of the enemy hurried forward and again the Americans were thrown across the river. Marshall was in this party.³¹⁰

Thomas Marshall, now colonel,³¹¹ held the advanced position under Sullivan at the right; and his regiment did the hardest fighting and suffered the heaviest losses on that unhappy day. When Cornwallis, in greatly superior numbers, suddenly poured down upon Sullivan's division, he all but surprised the Continentals and drove most of them flying before him;³¹² but Colonel Marshall and his Virginians refused to be stampeded. That regiment "maintained its position without losing an inch of ground until both its flanks were turned, its ammunition nearly expended, and more than half the officers and one third of the soldiers were killed and wounded."³¹³ Colonel Marshall had two horses shot under him. But, cut to pieces as they were, no panic appeared in this superb Virginia command and they "retired in good order."³¹⁴

While Thomas Marshall and his Third Virginia Line were thus checking Cornwallis's assault on the right, the British charged, in dense masses, across the Brandywine, at Chadd's Ford, upon

³⁰⁷ Story, in Dillon, iii, 335.

³⁰⁸ Washington to President of Congress, Sept 11, 1777; *Writings*: Ford, vi, 69.

³⁰⁹ Marshall (1st ed.), iii, 131; *ib.* (2d ed.), i, 156. Colonel Harrison, Washington's Secretary, reported immediately to the President of Congress that Maxwell's men believed that they killed or wounded "at least three hundred" of the British. (Harrison to President of Congress, Sept. 11, 1777; *Writings*: Ford, vi, footnote to 68.)

³¹⁰ Marshall, i, 156. The fact that Marshall places himself in this detachment, which was a part of Maxwell's light infantry, together with his presence at Iron Hill, fixes his position in the battle of the Brandywine and in the movements that immediately followed. It is reasonably certain that he was under Maxwell until just before the battle of Germantown. Of this skirmish Washington's optimistic and excited Secretary wrote on the spot, that Maxwell's men killed thirty men and one captain "left dead on the spot." (Harrison to the President of Congress, Sept. 11, 1777; *Writings*: Ford, vi, footnote to 68.)

³¹¹ Thomas Marshall was promoted to be lieutenant-colonel Aug. 13, 1776; and colonel Feb. 21, 1777. (Heitman, 285.)

³¹² Trevelyan, iv, 230.

³¹³ Marshall, i, footnote to 158.

³¹⁴ *ib.* Colonel Thomas Marshall's cool-headed and heroic conduct at this battle, which brought out in high lights his fine record as an officer, caused the Virginia House of Delegates to elect him colonel of the State Regiment of Artillery raised by that Commonwealth three months later. The vote is significant; for, although there were three candidates, each a man of merit, and although Thomas Marshall himself was not an aspirant for the place, and, indeed, was at Valley Forge when the election occurred, twice as many votes were cast for him as for all the other candidates put together. Four men were balloted for, Thomas Marshall receiving seventy-five votes and the other three candidates all together but thirty-six votes. (Journal, H.B. (Nov. 5, 1777), 27.)

Wayne's division, to which Captain-Lieutenant John Marshall had been assigned. The Americans made a show of resistance, but, learning of the rout of their right wing, quickly gave way.³¹⁵

"Nearly six hundred British ... were killed or wounded; and the Americans lost eleven pieces of artillery and above a thousand men, of whom the third part were prisoners," according to the British statement.³¹⁶ And by their own account the Americans lost three hundred killed, six hundred wounded, and between three and four hundred prisoners.³¹⁷

Both British and American narratives agree that the conduct of the Continental troops at Brandywine was most unequal in stanchness, discipline, and, courage. John Marshall himself wrote: "As must ever be the case in new-raised armies, unused to danger and from which undeserving officers have not been expelled, their conduct was not uniform. Some regiments, especially those which had served the preceding campaign, maintained their ground with the firmness and intrepidity of veterans, while others gave way as soon as they were pressed."³¹⁸

But the inefficiency of the American equipment gave some excuse for the fright that seized upon so many of them. For, testifies Marshall, "many of their muskets were scarcely fit for service; and being of unequal caliber, their cartridges could not be so well fitted, and consequently, their fire could not do as much execution as that of the enemy. This radical defect was felt in all the operations of the army."³¹⁹

So ended the battle of the Brandywine, the third formal armed conflict in which John Marshall took part. He had been in skirmish after skirmish, and in all of them had shown the characteristic Marshall coolness and courage, which both father and son exhibited in such striking fashion on this September day on the field where Lafayette fell wounded, and where the patriot forces reeled back under the all but fatal blows of the well-directed British regiments.³²⁰

It is small wonder that the Americans were beaten in the battle of the Brandywine; indeed, the wonder is that the British did not follow up their victory and entirely wipe out the opposing patriots. But it is astonishing that the American army kept up heart. They were even "in good spirits" as Washington got them in hand and directed their retreat.³²¹

They were pretty well scattered, however, and many small parties and numerous stragglers were left behind. Maxwell's men, among whom was John Marshall, were stationed at Chester as "a rallying point" for the fragments which otherwise would disperse or be captured. Much maneuvering followed by both British and Americans. At sight of a detachment of the enemy approaching Wilmington, the Delaware militia "dispersed themselves," says Marshall.³²² Soon the two armies again faced one another. Marshall thus describes the situation: "The advanced parties had met, and were beginning to skirmish, when they were separated by a heavy rain, which, becoming more and more violent, rendered the retreat of the Americans a measure of absolute necessity."³²³

Through a cold and blinding downpour, over roads deep with mud, Captain-Lieutenant Marshall marched with his retreating comrades. All day they struggled forward, and nearly all night. They had no time to eat and little or no food, even if they had had the time. Before the break of a gray, cold, rainy September dawn, a halt was called, and an examination made of arms and ammunition. "Scarcely a musket in a regiment could be discharged," Marshall records, "and scarcely one cartridge

³¹⁵ Marshall, i, 156; and Trevelyan, iv, 230-31. Washington reported that Wayne and Maxwell's men retreated only "after a severe conflict." (Washington to President of Congress, Sept. 11, 1777; *Writings*: Ford, vi, 69.)

³¹⁶ Trevelyan, iv, 232.

³¹⁷ Marshall, i, 157-58.

³¹⁸ *Ib.*; and see Irving, iii, 200-09.

³¹⁹ Marshall, i, 158-59.

³²⁰ Four years afterward Chastellux found that "most of the trees bear the mark of bullets or cannon shot." (Chastellux, 118.)

³²¹ Washington to President of Congress, Sept. 11, 1777; *Writings*: Ford, vi, 70.

³²² Marshall (1st ed.), iii, 141, and see Washington to President of Congress, Sept. 23, 1777; *Writings*: Ford, vi, 81.

³²³ Marshall, i, 160.

in a box was fit for use," although "forty rounds per man had just been drawn" – this because the cartridge boxes had been ill-made and of improper material.

Gun locks were loose, declares Marshall, because flimsily put on; the muskets were scarcely better than clubs. Hardly any of the soldiers had bayonets.³²⁴ "Never" had the patriot army been "in such imminent peril," he asserts – and all because of the inefficiency or worse of the method of supplies. Well might Washington's dilapidated troops thank Providence for the bitter weather that drenched through and through both officers and men and soaked their ammunition, for "the extreme severity of the weather had entirely stopped the British army."³²⁵

Yet Washington was determined to block the British march on Philadelphia. He made shift to secure some fresh ammunition³²⁶ and twice moved his army to get in front of the enemy or, failing in that, "to keep pace with them."³²⁷ To check their too rapid advance Washington detached the troops under Wayne, among whom was John Marshall.³²⁸ They found the "country was so extensively disaffected that Sir William Howe received accurate accounts of his [Wayne's] position and of his force. Major-General Grey was detached to surprise him [Wayne] and effectually accomplished his purpose." At eleven o'clock at night Grey drove in Wayne's pickets with charged bayonets, and in a desperate midnight encounter killed and wounded one hundred and fifty of his men.³²⁹ General Smallwood, who was to have supported Wayne, was less than a mile away, but his militia, who, writes Marshall, "thought only of their own safety, having fallen in with a party returning from the pursuit of Wayne, fled in confusion with the loss of only one man."³³⁰

Another example, this, before John Marshall's eyes, of the unreliability of State-controlled troops;³³¹ one more paragraph in the chapter of fatal inefficiency of the so-called Government of the so-called United States. Day by day, week by week, month by month, year by year, these object lessons were witnessed by the young Virginia officer. They made a lifelong impression upon him and had an immediate effect. More and more he came to depend on Washington, as indeed the whole army did also, for all things which should have come from the Government itself.

Once again the American commander sought to intercept the British, but they escaped "by a variety of perplexing maneuvers," writes Washington, "thro' a Country from which I could not derive the least intelligence (being to a man disaffected)" and "marched immediately toward Philadelphia."³³² For the moment Washington could not follow, although, declares Marshall, "public opinion" was demanding and Congress insisting that one more blow be struck to save Philadelphia.³³³ His forces were not yet united; his troops utterly exhausted.

Marching through heavy mud, wading streams, drenched by torrential rains, sleeping on the sodden ground "without tents ... without shoes or ... clothes ... without fire ... without food,"³³⁴ to use Marshall's striking language, the Americans were in no condition to fight the superior forces of the well-found British. "At least one thousand men are bare-footed and have performed the marches

³²⁴ Marshall, i, 160. When their enlistments expired, the soldiers took the Government's muskets and bayonets home with them. Thus thousands of muskets and bayonets continually disappeared. (See Kapp, 117.)

³²⁵ Marshall, i, 160-61.

³²⁶ *Ib.*

³²⁷ Washington to President of Congress, Sept. 23, 1777; *Writings*: Ford, vi, 81-82.

³²⁸ This is an inference, but a fair one. Maxwell was under Wayne; and Marshall was one of Maxwell's light infantry of picked men. (*Supra.*)

³²⁹ Marshall, i, 161. "The British accounts represent the American loss to have been much larger. It probably amounted to at least three hundred men." (*Ib.*, footnote.)

³³⁰ *Ib.*, and see *Pa. Mag. Hist. and Biog.*, i, 305.

³³¹ Marshall repeatedly expresses this thought in his entire account of the war.

³³² Washington to President of Congress, Sept. 23, 1777; *Writings*: Ford, vi, 80.

³³³ Marshall, i, 162.

³³⁴ *Ib.*

in that condition," Washington informed the impatient Congress.³³⁵ He did his utmost; that brilliant officer, Alexander Hamilton, was never so efficient; but nearly all that could be accomplished was to remove the military stores at Philadelphia up the Delaware farther from the approaching British, but also farther from the American army. Philadelphia itself "seemed asleep, or dead, and the whole State scarce alive. Maryland and Delaware the same," wrote John Adams in his diary.³³⁶

So the British occupied the Capital, placing most of their forces about Germantown. Congress, frightened and complaining, fled to York. The members of that august body, even before the British drove them from their cozy quarters, felt that "the prospect is chilling on every side; gloomy, dark, melancholy and dispiriting."³³⁷ Would Washington never strike? Their impatience was to be relieved. The American commander had, by some miracle, procured munitions and put the muskets of his troops in a sort of serviceable order; and he felt that a surprise upon Germantown might succeed. He planned his attack admirably, as the British afterwards conceded.³³⁸ In the twilight of a chilling October day, Washington gave orders to begin the advance.

Throughout the night the army marched, and in the early morning³³⁹ the three divisions into which the American force was divided threw themselves upon the British within brief intervals of time. All went well at first. Within about half an hour after Sullivan and Wayne had engaged the British left wing, the American left wing, to which John Marshall was now attached,³⁴⁰ attacked the front of the British right wing, driving that part of the enemy from the ground. With battle shouts Marshall and his comrades under General Woodford charged the retreating British. Then it was that a small force of the enemy took possession of the Chew House and poured a murderous hail of lead into the huzzaing American ranks. This saved the day for the Royal force and turned an American victory into defeat.³⁴¹

It was a dramatic struggle in which John Marshall that day took part. Fighting desperately beside them, he saw his comrades fall in heaps around him as they strove to take the fiercely defended stone house of the Tory Judge. A fog came up so thick that the various divisions could see but a little way before them. The dun smoke from burning hay and fields of stubble, to which the British had set fire, made thicker the murk until the Americans fighting from three different points could not tell friend from foe.³⁴² For a while their fire was directed only by the flash from what they thought must be the guns of the enemy.³⁴³

The rattle of musketry and roar of cannon was like "the crackling of thorns under a pot, and incessant peals of thunder," wrote an American officer in an attempt to describe the battle in a letter to his relatives at home.³⁴⁴ Through it all, the Americans kept up their cheering until, as they fought, the defeat was plain to the most audacious of them; and retreat, with which they had grown so familiar, once more began. For nine miles the British pursued them, the road stained with blood from the beaten patriots.³⁴⁵ Nearly a thousand of Washington's soldiers were killed or wounded, and

³³⁵ Washington to President of Congress, Sept. 23, 1777; *Writings*: Ford, vi, 82.

³³⁶ *Works*: Adams, ii, 437.

³³⁷ *Ib.*

³³⁸ *Pa. Mag. Hist. and Biog.*, xvi, 197 *et seq.*

³³⁹ American officer's description of the battle. (*Ib.*, xi, 330.)

³⁴⁰ Marshall, i, 168.

³⁴¹ *Ib.*, 168-69.

³⁴² From an American officer's description, in *Pa. Mag. Hist. and Biog.*, xi, 330.

³⁴³ *Ib.*, 331-32.

³⁴⁴ *Ib.*

³⁴⁵ "The rebels carried off a large number of their wounded as we could see by the blood on the roads, on which we followed them so far [nine miles]." (British officer's account of battle; *Pa. Mag. Hist. and Biog.*, xvi, 197 *et seq.*)

over four hundred were made prisoners on that ill-fated day, while the British loss was less than half these numbers.³⁴⁶

Two months of service followed, as hard as the many gone before with which Fate had blackened the calendar of the patriot cause. Washington was frantically urged to "storm" Philadelphia: Congress wished it; a "torrent of public opinion" demanded it; even some of Washington's officers were carried off their feet and advised "the mad enterprise," to use Marshall's warm description of the pressure upon his commander.³⁴⁷ The depreciation of the Continental paper money, the increasing disaffection of the people, the desperate plight of American fortunes, were advanced as reasons for a "grand effort" to remedy the ruinous situation. Washington was immovable, and his best officers sustained him. Risking his army's destruction was not the way to stop depreciation of the currency, said Washington; its value had fallen for want of taxes to sustain it and could be raised only by their levy.³⁴⁸ And "the corruption and defection of the people, and their unwillingness to serve in the army of the United States, were evils which would be very greatly increased by an unsuccessful attempt on Philadelphia."³⁴⁹

So black grew American prospects that secret sympathizers with the British became open in their advocacy of the abandonment of the Revolution. A Philadelphia Episcopal rector, who had been chaplain of Congress, wrote Washington that the patriot cause was lost and besought him to give up the struggle. "The most respectable characters" had abandoned the cause of independence, said Duché. Look at Congress. Its members were "obscure" and "distinguished for the weakness of their understandings and the violence of their tempers ... chosen by a little, low, faction... Tis you ... only that support them." And the army! "The whole world knows that its only existence depends on you." Consider the situation: "Your harbors are blocked up, your cities fall one after the other; fortress after fortress, battle after battle is lost... How fruitless the expense of blood!" Washington alone can end it. Humanity calls upon him to do so; and if he heeds that call his character "will appear with lustre in the annals of history."³⁵⁰ Deeply offended, Washington sent the letter to Congress, which, however, continued to find fault with him and to urge an attack upon the British in the Capital.

Although Washington refused to throw his worn and hungry troops upon the perfectly prepared and victorious enemy entrenched in Philadelphia, he was eager to meet the British in the open field. But he must choose the place. So when, early in December, Howe's army marched out of Philadelphia the Americans were ready. Washington had taken a strong position on some hills toward the Schuylkill not far from White Marsh. After much maneuvering by the British and effective skirmishing by detachments of the patriots,³⁵¹ the two armies came into close contact. Not more than a mile away shone the scarlet uniforms of the Royal troops. Washington refused to be lured from his advantageous ground.³⁵² Apparently the British were about to attack and a decisive battle to be fought. After Brandywine and Germantown, another defeat would have been ruinous.

Washington personally animated his men. Marshall, who witnessed it, thus describes the scene: "The American chief rode through every brigade of his army, delivering, in person, his orders respecting the manner of receiving the enemy, exhorting his troops to rely principally on the bayonet, and encouraging them by the steady firmness of his countenance, as well as by his words, to a vigorous performance of their duty."³⁵³

³⁴⁶ Marshall, i, 170-71.

³⁴⁷ *Ib.*, 181.

³⁴⁸ *Ib.*, 181-82.

³⁴⁹ Marshall (1st ed.), iii, 287. Marshall omits this sentence in his second edition. But his revised account is severe enough.

³⁵⁰ The Reverend Jacob Duché, to Washington, Oct. 8, 1777; *Cor. Rev.*: Sparks, i, 448-58.

³⁵¹ Washington to President of Congress, Dec. 10, 1777; *Writings*: Ford, vi, 238-39.

³⁵² Clark's Diary, *Proc.*, N.J. Hist. Soc. (1st Series), vii, 102-03. "It seems that the enemy had waited all this time before our lines to decoy us from the heights we possessed." (*Ib.*)

³⁵³ Marshall, i, 184.

These words make one see, as one reads, the great Virginian in his noblest aspect – calm in the face of possible disaster, his spirit burning brightest on the very fuel of danger itself, his clear mind unclouded by what was likely to befall.

Each division, each regiment, each company, was given plain and practical orders for the expected conflict. And we may be sure that each man, private as well as officer, took heart as he looked upon the giant figure and listened to the steady directions and undismayed encouragement of his chief. Certain it is that John Marshall so felt and thought. A rare picture, this, full of life and color, that permits us to behold the growth in the young soldier's soul of that faith in and devotion to George Washington, seeds of which had been planted in his childhood days in the Blue Ridge home.

Finally the British, seeing the resolute front of the Americans and already bleeding from the fierce thrusts of Morgan's Virginia riflemen, suddenly withdrew to Philadelphia,³⁵⁴ and Washington's army went into winter quarters on the hills of Valley Forge.

³⁵⁴ Marshall, i, 184.

CHAPTER IV

VALLEY FORGE AND AFTER

Unless some great and capital change suddenly takes place ... this army must inevitably starve, dissolve, or disperse. (Washington, Dec. 23, 1777.)

John Marshall was the best tempered man I ever knew. Nothing discouraged, nothing disturbed him. (Lieutenant Slaughter, of Marshall at Valley Forge.)

Gaunt and bitter swept down the winter of 1777. But the season brought no lean months to the soldiers of King George, no aloe to the Royal officers in fat and snug Philadelphia.³⁵⁵ It was a period of rest and safety for the red-coated privates in the city, where, during the preceding year, Liberty Bell had sounded its clamorous defiance; a time of revelry and merry-making for the officers of the Crown. Gay days chased nights still gayer, and weeks of social frolic made the winter pass like the scenes of a warm and glowing play.

For those who bore the King's commission there were balls at the City Tavern, plays at the South-Street Theater; and many a charming flirtation made lively the passing months for the ladies of the Capital, as well as for lieutenant and captain, major and colonel, of the invaders' army. And after the social festivities, there were, for the officers, carousals at the "Bunch of Grapes" and all night dinners at the "Indian Queen."³⁵⁶

"You can have no idea," wrote beautiful Rebecca Franks, – herself a keen Tory, – to the wife of a patriot, "you can have no idea of the life of continued amusement I live in. I can scarce have a moment to myself. I spent Tuesday evening at Sir William Howe's, where we had a concert and dance... Oh, how I wished Mr. Paca would let you come in for a week or two!.. You'd have an opportunity of raking as much as you choose at Plays, Balls, Concerts, and Assemblies. I have been but three evenings alone since we moved to town."³⁵⁷

"My wife writes me," records a Tory who was without and whose wife was within the Quaker City's gates of felicity, "that everything is gay and happy [in Philadelphia] and it is like to prove a frolicking winter."³⁵⁸ Loyal to the colors of pleasure, society waged a triumphant campaign of brilliant amusement. The materials were there of wit and loveliness, of charm and manners. Such women there were as Peggy Chew and Rebecca Franks, Williamina Bond and Margaret Shippen – afterwards the wife of Benedict Arnold and the probable cause of his fall;³⁵⁹ such men as Banastre Tarleton of the Dragoons, twenty-three years old, handsome and accomplished; brilliant Richard Fitzpatrick of the Guards; Captain John André, whose graces charmed all hearts.³⁶⁰ So lightly went the days and merrily the nights under the British flag in Philadelphia during the winter of 1777-78.

For the common soldiers there were the race-course and the cock-pit, warm quarters for their abodes, and the fatness of the land for their eating. Beef in abundance, more cheese than could be used, wine enough and to spare, provisions of every kind, filled pantry and cellar. For miles around the farmers brought in supplies. The women came by night across fields and through woods with eggs,

³⁵⁵ It appears that, throughout the Revolution, Pennsylvania's metropolis was noted for its luxury. An American soldier wrote in 1779: "Philada. may answer very well for a man with his pockets well lined, whose pursuit is idleness and dissipation. But to us who are not in the first predicament, and who are not upon the latter errand, it is intolerable... A morning visit, a dinner at 5 o'clock – Tea at 8 or 9 – supper and up all night is the round *die in diem*... We have advanced as far in luxury in the third year of our Indepeny. as the old musty Republics of Greece and Rome did in twice as many hundreds." (Tilghman to McHenry, Jan. 25, 1799; Steiner, 25.)

³⁵⁶ Trevelyan, iv, 279.

³⁵⁷ *Ib.*, 280.

³⁵⁸ *Ib.*

³⁵⁹ The influence of Margaret Shippen in causing Arnold's treason is now questioned by some. (See Avery, vi, 243-49.)

³⁶⁰ Trevelyan, iv, 281-82.

butter, vegetables, turkeys, chickens, and fresh meat.³⁶¹ For most of the farmers of English descent in that section hated the war and were actively, though in furtive manner, Tory. They not only supplied the British larder, but gave news of the condition and movements of the Americans.³⁶²

Not twenty miles away from these scenes of British plenty and content, of cheer and jollity, of wassail and song, rose the bleak hills and black ravines of Valley Forge, where Washington's army had crawled some weeks after Germantown. On the Schuylkill heights and valleys, the desperate Americans made an encampment which, says Trevelyan, "bids fair to be the most celebrated in the world's history."³⁶³ The hills were wooded and the freezing soldiers were told off in parties of twelve to build huts in which to winter. It was more than a month before all these rude habitations were erected.³⁶⁴ While the huts were being built the naked or scarcely clad³⁶⁵ soldiers had to find what shelter they could. Some slept in tents, but most of them lay down beneath the trees.³⁶⁶ For want of blankets, hundreds, had "to sit up all night by fires."³⁶⁷ After Germantown Washington's men had little to eat at any time. On December 2, "the last ration had been delivered and consumed."³⁶⁸ Through treachery, cattle meant for the famishing patriots were driven into the already over-supplied Philadelphia.³⁶⁹

The commissariat failed miserably, perhaps dishonestly, to relieve the desperate want. Two days before Christmas there was "not a single hoof of any kind to slaughter, and not more than twenty-five barrels of flour!"³⁷⁰ Men died by the score from starvation.³⁷¹ Most of the time "fire cake" made of dirty, soggy dough, warmed over smoky fires, and washed down with polluted water was the only sustenance. Sometimes, testifies Marshall himself, soldiers and officers "were absolutely without food."³⁷² On the way to Valley Forge, Surgeon Waldo writes: "I'm Sick – eat nothing – No Whiskey – No Baggage – Lord, – Lord, – Lord."³⁷³ Of the camp itself and of the condition of the men, he chronicles: "Poor food – hard lodging – Cold Weather – fatigue – Nasty Cloaths – nasty Cookery – Vomit half my time – Smoak'd out of my senses – the Devil's in it – I can't Endure it – Why are we sent here to starve and freeze – What sweet Felicities have I left at home; – A charming Wife – pretty Children – Good Beds – good food – good Cookery – all agreeable – all harmonious. Here, all Confusion – Smoke – Cold, – hunger & filthiness – A pox on my bad luck. Here comes a bowl of beef soup, – full of burnt leaves and dirt, sickish enough to make a hector spue – away with it, Boys – I'll live like the Chameleon upon Air."³⁷⁴

While in overfed and well-heated Philadelphia officers and privates took the morning air to clear the brain from the night's pleasures, John Marshall and his comrades at Valley Forge thus greeted one another: "Good morning Brother Soldier (says one to another) how are you? – All wet, I thank'e,

³⁶¹ *Ib.*, 278-80.

³⁶² *Ib.*, 268-69; also Marshall, i, 215. The German countrymen, however, were loyal to the patriot cause. The Moravians at Bethlehem, though their religion forbade them from bearing arms, in another way served as effectually as Washington's soldiers. (See Trevelyan, iv, 298-99.)

³⁶³ Trevelyan, iv, 290.

³⁶⁴ The huts were fourteen by sixteen feet, and twelve soldiers occupied each hut. (Sparks, 245.)

³⁶⁵ "The men were literally naked [Feb. 1] some of them in the fullest extent of the word." (Von Steuben, as quoted in Kapp, 118.)

³⁶⁶ *Hist. Mag.*, v, 170.

³⁶⁷ Washington to President of Congress, Dec. 23, 1777; *Writings*: Ford, vi, 260.

³⁶⁸ Marshall, i, 213.

³⁶⁹ *Ib.*, 215.

³⁷⁰ Washington to President of Congress, Dec. 23, 1777; *Writings*: Ford, vi, 258.

³⁷¹ "The poor soldiers were half naked, and had been half starved, having been compelled, for weeks, to subsist on simple flour alone and this too in a land almost literally flowing with milk and honey." (Watson's description after visiting the camp, Watson, 63.)

³⁷² Marshall (1st ed.), iii, 341.

³⁷³ *Hist. Mag.*, v, 131.

³⁷⁴ *Ib.*

hope you are so – (says the other)."³⁷⁵ Still, these empty, shrunken men managed to squeeze some fun out of it. When reveille sounded, the hoot of an owl would come from a hut door, to be answered by like hoots and the cawing of crows; but made articulate enough to carry in this guise the cry of "'No meat! – No meat!' The distant vales Echo'd back the melancholy sound – 'No Meat! – No Meat!' ... What have you for our Dinners, Boys? [one man would cry to another] 'Nothing but Fire Cake and Water, Sir.' At night – 'Gentlemen, the Supper is ready.' What is your Supper, Lads? 'Fire Cake & Water, Sir.'"

Just before Christmas Surgeon Waldo writes: "Lay excessive Cold & uncomfortable last Night – my eyes are started out from their Orbits like a Rabbit's eyes, occasion'd by a great Cold – and Smoke. What have you got for Breakfast, Lads? 'Fire Cake and Water, Sir.' The Lord send that our Commissary of Purchases may live on Fire Cake & Water till their gluttoned Guts are turned to Pasteboard."

He admonishes: "Ye who Eat Pumpkin Pie and Roast Turkeys – and yet Curse fortune for using you ill – Curse her no more – least she reduce you ... to a bit of Fire Cake & a Draught of Cold Water, & in Cold Weather."³⁷⁶

Heart-breaking and pitiful was the aspect of these soldiers of liberty. "There comes a Soldier – His bare feet are seen thro' his worn out Shoes – his legs nearly naked from the tatter'd remains of an only pair of stockings – his Breeches not sufficient to cover his Nakedness – his Shirt hanging in Strings – his hair dishevell'd – his face meagre – his whole appearance pictures a person foresaken & discouraged. He comes, and crys with an air of wretchedness & despair – I am Sick – my feet lame – my legs are sore – my body cover'd with this tormenting Itch – my Cloaths are worn out – my Constitution is broken – my former Activity is exhausted by fatigue – hunger & Cold! – I fail fast I shall soon be no more! And all the reward I shall get will be – 'Poor Will is dead.'"³⁷⁷

On the day after Christmas the soldiers waded through snow halfway to their knees. Soon it was red from their bleeding feet.³⁷⁸ The cold stung like a whip. The huts were like "dungeons and ... full as noisome."³⁷⁹ Tar, pitch, and powder had to be burned in them to drive away the awful stench.³⁸⁰ The horses "died by hundreds every week"; the soldiers, staggering with weakness as they were, hitched themselves to the wagons and did the necessary hauling.³⁸¹ If a portion of earth was warmed by the fires or by their trampling feet, it froze again into ridges which cut like knives. Often some of the few blankets in the army were torn into strips and wrapped around the naked feet of the soldiers only to be rent into shreds by the sharp ice under foot.³⁸² Sick men lay in filthy hovels covered only by their rags, dying and dead comrades crowded by their sides.³⁸³

As Christmas approached, even Washington became so disheartened that he feared that "this army must dissolve;"³⁸⁴ and the next day he again warned Congress that, unless the Commissary were quickly improved, "this army must inevitably ... starve, dissolve, or disperse."³⁸⁵

Early in 1778 General Varnum wrote General Greene that "The situation of the Camp is such that in all human probability the Army must soon dissolve. Our desertions are astonishingly great."³⁸⁶

³⁷⁵ *Ib.*, 132.

³⁷⁶ *Hist. Mag.*, v, 132-33.

³⁷⁷ *Hist. Mag.*, v, 131-32.

³⁷⁸ Trevelyan, iv, 297.

³⁷⁹ *Ib.* For putrid condition of the camp in March and April, 1778, see Weedon, 254-55 and 288-89.

³⁸⁰ Trevelyan, iv, 298.

³⁸¹ *Ib.*

³⁸² Personal narrative; Shreve, *Mag. Amer. Hist.*, Sept., 1897, 568.

³⁸³ Trevelyan, iv, 298.

³⁸⁴ Washington to President of Congress, Dec. 22, 1777; *Writings*: Ford, vi, 253.

³⁸⁵ Washington to President of Congress, Dec. 23, 1777; *ib.*, 257.

³⁸⁶ General Varnum to General Greene, Feb. 12, 1778, Washington MSS., Lib. Cong., no. 21. No wonder the desertions were

"The army must dissolve!" "The army must dissolve!" – the repeated cry comes to us like the chant of a saga of doom.

Had the British attacked resolutely, the Americans would have been shattered beyond hope of recovery.³⁸⁷ On February 1, 1778, only five thousand and twelve men out of a total of more than seventeen thousand were capable of any kind of service: four thousand were unfit for duty because of nakedness.³⁸⁸ The patriot prisoners within the British lines were in even worse case, if we credit but half the accounts then current. "Our brethren," records Surgeon Waldo in his diary, "who are unfortunately Prisoners in Philadelphia, meet with the most savage & inhumane treatments – that Barbarians are Capable of inflicting... One of these poor unhappy men – drove to the last extremity by the rage of hunger – eat his own fingers up to the first joint from the hand, before he died. Others eat the Clay – the Lime – the Stones – of the Prison Walls. Several who died in the Yard had pieces of Bark, Wood, – Clay & Stones in their mouths – which the ravings of hunger had caused them to take in the last Agonies of Life."³⁸⁹

The Moravians in Bethlehem, some miles away from Valley Forge, were the only refuge of the stricken patriots. From the first these Christian socialists were the Good Samaritans of that ghastly winter. This little colony of Germans had been overrun with sick and wounded American soldiers. Valley Forge poured upon it a Niagara of starvation, disease, and death. One building, scarcely large enough for two hundred and fifty beds, was packed with nearly a thousand sick and dying men. Dysentery reduced burly strength to trembling weakness. A peculiar disease rotted blood and bones. Many died on the same foul pallet before it could be changed. The beds were "heaps of polluted litter." Of forty of John Marshall's comrades from a Virginia regiment, which was the "pride of the Old Dominion," only three came out alive.³⁹⁰ "A violent putrid fever," testifies Marshall, "swept off much greater numbers than all the diseases of the camp."³⁹¹

Need, was there not, at Valley Forge for men of resolve so firm and disposition so sunny that they would not yield to the gloom of these indescribable months? Need, was there not, among these men, for spirits so bright and high that they could penetrate even the death-stricken depression of this fetid camp with the glow of optimism and of hope?

Such characters were there, we find, and of these the most shining of all was John Marshall of the Virginia line.³⁹² He was a very torch of warmth and encouragement, it appears; for in the journals and diaries left by those who lived through Valley Forge, the name of John Marshall is singled out as conspicuous for these comforting qualities.

so great. It was not only starvation and death but the hunger-crazed soldiers "had daily temptations thrown out to them of the most alluring nature," by the British and Loyalists. (Chastellux, translator's note to 51.)

³⁸⁷ Marshall, i, 227.

³⁸⁸ *Ib.*

³⁸⁹ *Hist. Mag.*, v, 132. This is, probably, an exaggeration. The British were extremely harsh, however, as is proved by the undenied testimony of eye-witnesses and admittedly authentic documentary evidence. For their treatment of American prisoners see Dandridge: *American Prisoners of the Revolution*, a trustworthy compilation of sources. For other outrages see Clark's *Diary*, *Proc.*, N.J. Hist. Soc., vii, 96; Moore's *Diary*, ii, 183. For the Griswold affair see Niles: *Principles and Acts of the Revolution*, 143-44. For transportation of captured Americans to Africa and Asia see Franklin's letter to Lord Stormont, April 2, 1777; Franklin's *Writings*: Smyth, vii, 36-38; also Moore's *Diary*, i, 476. For the murder of Jenny M'Crea see Marshall, i, 200, note 9, Appendix, 25; and Moore's *Diary*, i, 476; see also Miner: *History of Wyoming*, 222-36; and British officer's letter to Countess of Ossory, Sept. 1, 1777; *Pa. Mag. Hist. and Biog.*, i, footnote to 289; and Jefferson to Governor of Detroit, July 22, 1779; *Cal. Va. St. Prs.*, i, 321. For general statement see Marshall (1st ed.), iii, 59. These are but a few of the many similar sources that might be cited.

³⁹⁰ Trevelyan, iv, 299.

³⁹¹ Marshall, i, 227.

³⁹² John Marshall's father was also at Valley Forge during the first weeks of the encampment and was often Field Officer of the Day. (Weedon.) About the middle of January he left for Virginia to take command of the newly raised State Artillery Regiment. (Memorial of Thomas Marshall; *supra.*) John Marshall's oldest brother, Thomas Marshall, Jr., seventeen years of age, was commissioned captain in a Virginia State Regiment at this time. (Heitman, 285.) Thus all the male members of the Marshall family, old enough to bear arms, were officers in the War of the Revolution. This important fact demonstrates the careful military training given his sons by Thomas Marshall before 1775 – a period when comparatively few believed that war was probable.

"Although," writes Lieutenant Philip Slaughter, who, with the "two Porterfields and Johnson," was the messmate of John Marshall, "they were reduced sometimes to a single shirt, having to wrap themselves in a blanket when that was washed"³⁹³ and "the snow was knee-deep all the winter and stained with blood from the naked feet of the soldiers,"³⁹⁴ yet "nothing discouraged, nothing disturbed" John Marshall. "If he had only bread to eat," records his fellow officer, "it was just as well; if only meat it made no difference. If any of the officers murmured at their deprivations, he would shame them by good-natured raillery, or encourage them by his own exuberance of spirits.

"He was an excellent companion, and idolized by the soldiers and his brother officers, whose gloomy hours were enlivened by his inexhaustible fund of anecdote... John Marshall was the best tempered man I ever knew,"³⁹⁵ testifies his comrade and messmate.

So, starving, freezing, half blind with smoke, thinly clad and almost shoeless, John Marshall went through the century-long weeks of Valley Forge, poking fun wherever he found despondency, his drollery bringing laughter to cold-purpled lips, and, his light-hearted heroism shaming into erectness the bent backs of those from whom hope had fled. At one time it would be this prank; another time it would be a different expedient for diversion. By some miracle he got hold of a pair of silk stockings and at midnight made a great commotion because the leaves he had gathered to sleep on had caught fire and burned a hole in his grotesque finery.³⁹⁶

High spirits undismayed, intelligence shining like a lamp, common sense true as the surveyor's level – these were the qualities which at the famine camp at Valley Forge singled the boyish Virginia officer out of all that company of gloom. Just before the army went into winter quarters Captain-Lieutenant Marshall was appointed "Deputy Judge Advocate in the Army of the United States,"³⁹⁷ and at the same time, by the same order, James Monroe was appointed aide-de-camp to Lord Stirling, one of Washington's generals.³⁹⁸

Such was the confidence of his fellow officers and of the soldiers themselves in Marshall's judgment and fairness that they would come to him with their disputes and abide by his decision; and these tasks, it seems, the young Solomon took quite seriously. He heard both sides with utmost patience, and, having taken plenty of time to think it over, rendered his decision, giving the reasons therefor in writing.³⁹⁹ So just after he had turned his twenty-second year, we find John Marshall already showing those qualities which so distinguished him in after life. Valley Forge was a better training for Marshall's peculiar abilities than Oxford or Cambridge could have been.

His superiority was apparent, even to casual observers, notwithstanding his merriment and waggishness. One of a party visiting Valley Forge said of the stripling Virginia officer: "By his appearance then we supposed him about twenty-two or twenty-three years of age. Even so early in life ... he appeared to us *primus inter pares*, for amidst the many commissioned officers he was discriminated for superior intelligence. Our informant, Colonel Ball, of another regiment in the same line,⁴⁰⁰ represented him as a young man, not only brave, but signally intelligent."⁴⁰¹

Marshall's good humor withstood not only the horrors of that terrible winter, but also Washington's iron military rule. The Virginia lieutenant saw men beaten with a hundred stripes for

³⁹³ This was the common lot; Washington told Congress that, of the thousands of his men at Valley Forge, "few men have more than one shirt, many only the moiety of one and some none at all." (Washington to President of Congress, Dec. 23, 1777; *Writings*: Ford, vi, 260.)

³⁹⁴ Slaughter, 107-08.

³⁹⁵ Howe, 266.

³⁹⁶ Slaughter, 108.

³⁹⁷ Weedon, 134; also, Heitman, 285.

³⁹⁸ *Ib.*

³⁹⁹ Description of Marshall at Valley Forge by eye-witness, in *North American Review* (1828), xxvi, 8.

⁴⁰⁰ Ninth Virginia. (Heitman, 72.)

⁴⁰¹ *North American Review* (1828), xxvi, 8.

attempting to desert. Once a woman was given a hundred lashes and drummed out of the army. A lieutenant was dismissed from the service in disgrace for sleeping and eating with privates, and for buying a pair of shoes from a soldier.⁴⁰² Bitter penalties were inflicted on large numbers of civilians for trying to take flour, cattle, and other provisions to the British in Philadelphia;⁴⁰³ a commissary was "mounted on a horse, back foremost, without a Saddle, his Coat turn'd wrong side out his hands tied behind him & drummed out of the Army (Never more to return) by all the Drums in the Division."⁴⁰⁴

What held the patriot forces together at this time? George Washington, and he alone.⁴⁰⁵ Had he died, or had he been seriously disabled, the Revolution would have ended. Had typhoid fever seized Washington for a month, had any of those diseases, with which the army was plagued, confined him, the patriot standard would have fallen forever. Washington was the soul of the American cause. Washington was the Government. Washington was the Revolution. The wise and learned of every land agree on this. Professor Channing sums it all up when he declares: "Of all men in history, not one so answers our expectations as Washington. Into whatever part of his life the historian puts his probe, the result is always satisfactory."⁴⁰⁶

Yet intrigue and calumny sought his ruin. From Burgoyne's surrender on through the darkest days of Valley Forge, the Conway cabal shot its filaments through Congress, society, and even fastened upon the army itself. Gates was its figurehead, Conway its brain, Wilkinson its tool, Rush its amanuensis, and certain members of Congress its accessories before the fact. The good sense and devotion of Patrick Henry, who promptly sent Washington the anonymous letter which Rush wrote to the Virginia Governor,⁴⁰⁷ prevented that shameful plot from driving Washington out of the service of his country.

Washington had led his army to defeat after defeat while Gates had gained a glorious victory; Gates was the man for the hour – down, then, with the incompetent Virginian, said the conspirators. The Pennsylvania Legislature, wroth that Howe's army had not been beaten, but allowed to occupy the comfortable Capital of the State, remonstrated to Congress. That body, itself, was full of dissatisfaction with the Commander-in-Chief. Why would he not oust the British from Philadelphia? Why had he allowed Howe to escape when that general marched out to meet him? As the first step toward Washington's downfall, Congress created a new Board of War, with Gates as President; Conway was made Inspector-General.⁴⁰⁸

The conspirators and those whom their gossip could dupe lied about Washington's motives. His abilities, it was said, were less than ordinary; and his private conduct, went the stealthy whisper, was so bad as to prove the hypocrisy of his deportment.⁴⁰⁹ Nor were Washington's generals spared. Greene was a sycophant, said these assassins of character; Sullivan a braggart; Stirling "a lazy, ignorant drunkard." These poisoners of reputation declared that General Knox and Alexander Hamilton were "paltry satellites" of Washington and flatterers of his vanity.⁴¹⁰ So cunning, subtle, and persistent were these sappers and miners of reputation that even the timely action of Patrick Henry in sending Washington Rush's unsigned attack might not have prevented the great American's overthrow; for

⁴⁰² Weedon, Feb. 8, 1778, 226-27. Washington took the severest measures to keep officers from associating with private soldiers.

⁴⁰³ *Ib.*, 227-28.

⁴⁰⁴ *Ib.*, Jan. 5, 1778; 180.

⁴⁰⁵ See Washington's affecting appeal to the soldiers at Valley Forge to keep up their spirits and courage. (Weedon, March 1, 1778, 245-46.)

⁴⁰⁶ Channing, ii, 559.

⁴⁰⁷ See Rush's anonymous letter to Henry and the correspondence between Henry and Washington concerning the cabal. (Henry, i, 544-51.)

⁴⁰⁸ Marshall, i, 217.

⁴⁰⁹ Trevelyan, iv, 301.

⁴¹⁰ *Ib.*, 303-04.

envy of Washington's strength, suspicion of his motives, distrust of his abilities, had made some impression even on men like John Adams.⁴¹¹

The great American bore himself with dignity, going hardly further than to let his enemies know that he was aware of their machinations.⁴¹² At last, however, he lashed out at Congress. Let that body look to the provisioning of the army if it expected the soldiers to fight. The troops had no food, no clothing. The Quartermaster-General had not been heard from for five months. Did his critics think "the soldiers were made of stocks and stones?" Did they think an active winter campaign over three States with starving naked troops "so easy and practicable a business? I can assure those gentlemen," writes Washington, "that it is a much easier and less distressing thing to draw remonstrances in a comfortable room by a good fireside, than to occupy a cold, bleak hill, and sleep under frost and snow, without clothes or blankets... I have exposed myself to detraction and calumny" because "I am obliged to conceal the true state of the army from public view... No day nor scarce an hour passes without" an officer tendering his resignation.⁴¹³

Washington was saved finally by the instinctive faith which that part of the common people who still supported the Revolution had in their great leader, and by his soldiers' stanch devotion, which defeat after defeat, retreat hard upon the heels of preceding retreat, hunger and nakedness, wounds and sickness could not shake.

"See the poor Soldier," wrote Surgeon Waldo at Valley Forge. "He labours thro' the Mud & Cold with a Song in his mouth, extolling War & Washington."⁴¹⁴

Congress soon became insignificant in numbers, only ten or twelve members attending, and these doing business or idling as suited their whim.⁴¹⁵ About the only thing they did was to demand that Washington strike Philadelphia and restore the members of this mimetic government to their soft, warm nests. Higher and yet more lofty in the esteem of his officers and men rose their general. Especially was this true of John Marshall for reasons already given, which ran back into his childhood.

In vain Washington implored the various States to strengthen Congress by sending their best men to this central body. Such able men as had not taken up arms for their country refused to serve in Congress. Nearly every such man "was absorbed in provincial politics, to the exclusion of any keen and intelligent interest in the central Government of his nation."⁴¹⁶

Amidst the falling snow at Valley Forge, Washington thus appealed to Colonel Harrison in Virginia: "America never stood in more eminent need of the wise, patriotic, and spirited exertions of her Sons than at this period... The States, separately, are too much engaged in their local concerns... The States ... have very inadequate ideas of the present danger."⁴¹⁷ The letter could not be sent from that encampment of ice and death for nearly two weeks; and the harassed commander added a postscript of passionate appeal declaring that "our affairs are in a more distressed, ruinous, and deplorable condition than they have been in since the commencement of the War."⁴¹⁸

"You are beseeched most earnestly, my dear Colo Harrison," pleaded Washington, "to exert yourself in endeavoring to rescue your Country by ... sending your best and ablest Men to Congress – these characters must not slumber nor sleep at home in such times of pressing danger – they must not

⁴¹¹ "The idea that any one Man Alone can save us is too silly for any Body but such weak Men as Duché to harbor for a Moment." (Adams to Rush, Feb. 8, 1778; *Old Family Letters*, 11; and see Lodge: *Washington*, i, 208; also Wallace, chap. ix.)

⁴¹² Sparks, 252; and Marshall, i, 218.

⁴¹³ Washington to President of Congress, Dec. 23, 1777; *Writings*: Ford, vi, 257-65. And see Washington's comprehensive plans for the reorganization of the entire military service. (Washington to Committee of Congress, Jan. 28, 1778; *ib.*, 300-51.)

⁴¹⁴ *Hist. Mag.*, v, 131.

⁴¹⁵ On April 10, 1778, Ædanus Burke of South Carolina broke a quorum and defied Congress. (Secret Journals of Congress, April 10, 11, 24, 25, 1778, i, 62; and see Hatch, 21.)

⁴¹⁶ Trevelyan, iv, 291-92.

⁴¹⁷ Washington to Harrison, Dec. 18, 1778; *Writings*: Ford, vii, 297-98.

⁴¹⁸ *Ib.*

content themselves in the enjoyment of places of honor or profit in their Country [Virginia]⁴¹⁹ while the common interests of America are mouldering and sinking into irretrievable ... ruin, in which theirs also must ultimately be involved."⁴²⁰

With such men, Washington asserted, "party disputes and personal quarrels are the great business of the day, whilst the momentous concerns of an empire [America]⁴²¹ ... are but secondary considerations." Therefore, writes Washington, in angry exasperation, "in the present situation of things, I cannot help asking – Where is Mason – Wythe – Jefferson?"⁴²²

"Where is Jefferson?" wrote Washington in America's darkest hour, when the army was hardly more than an array of ragged and shoeless skeletons, and when Congress was so weak in numbers and ability that it had become a thing of contempt. Is it not probable that the same question was asked by the shivering soldiers and officers of the Continental army, as they sat about the smoking fires of their noisome huts sinking their chattering teeth into their "Fire Cake" and swallowing their brackish water? If Washington would so write, is it not likely that the men would so talk? For was not Jefferson the penman who had inscribed the Declaration of Independence, for which they were fighting, suffering, dying?

Among the Virginians especially there must have been grave questionings. Just as to John Marshall's army experience the roots of the greatest of his constitutional opinions may clearly be traced, so the beginnings of his personal estimate of Thomas Jefferson may be as plainly found in their relative situations and conduct during the same period.

John Marshall was only a few days beyond his twentieth year when, with his Culpeper Minute Men, he fought the British at Great Bridge. Thomas Jefferson at that time was thirty-two years old; but the prospect of battle on Virginia's soil did not attract him. At Valley Forge, John Marshall had just entered on his twenty-third year, and Thomas Jefferson, thirty-five years old, was neither in the army nor in Congress. Marshall had no fortune; Jefferson was rich.⁴²³

So, therefore, when as reserved a man as Washington had finally and with great effort trained himself to be, asked in writing, "Where is Jefferson?" is it not a reasonable inference that the Virginia officers in the familiar talk of comrades, spoke of Jefferson in terms less mild?

And, indeed, where was Thomas Jefferson? After serving in Congress, he refused point-blank to serve there again and resigned the seat to which he had been reelected. "The situation of my domestic affairs renders it indispensably necessary that I should solicit the substitution of some other person," was the only excuse Jefferson then gave.⁴²⁴ He wanted to go to the State Legislature instead, and to the State Legislature he went. His "domestic affairs" did not prevent that. In his Autobiography, written forty-four years afterward (1821), Jefferson declares that he resigned from Congress and went to the State Legislature because "our [State] legislation under the regal government had many very vicious points which urgently required reformation and I thought I could be of more use in forwarding that work."⁴²⁵

So while the British revels were going on in Philadelphia and the horrors of Valley Forge appeared to be bringing an everlasting night upon American liberty, and when the desperation of the patriot cause wrung from the exasperated Washington his appeal that Virginia's ablest men should

⁴¹⁹ At this period and long after a State was referred to as "the country."

⁴²⁰ Washington to Harrison, Dec. 18, 1778; *Writings*: Ford, vii, 297-98.

⁴²¹ Until after Jefferson's Presidency, our statesmen often spoke of our "empire." Jefferson used the term frequently.

⁴²² Washington to Harrison, Dec. 18, 1778; *Writings*: Ford, vii, 301-02.

⁴²³ "My estate is a large one ... to wit upwards of ten thousand acres of valuable land on the navigable parts of the James river and two hundred negroes and not a shilling out of it is or ever was under any incumbrance for debt." (Jefferson to Van Staphorst and Hubbard, Feb. 28, 1790; *Works*: Ford, vi, 33.) At the time of Valley Forge Jefferson's estate was much greater, for he had sold a great deal of land since 1776. (See Jefferson to Lewis, July 29, 1787; *ib.*, v, 311.)

⁴²⁴ Jefferson to Pendleton, July, 1776; *ib.*, ii, 219-20.

⁴²⁵ Jefferson's *Autobiography*; *Works*: Ford, i, 57.

strengthen the feeble and tottering Congress, Jefferson was in the State Legislature. But he was not there merely enjoying office and exclusively engaged in party politics as Washington more than intimates. He was starting such vital reforms as the abolition of entails, the revision of the criminal code, the establishment of a free school system, the laying of the legal foundations of religious freedom.⁴²⁶

In short, Jefferson was sowing the seeds of liberalism in Virginia. But it is only human nature that breasts bearing the storm of war should not have thrilled in admiration of this civil husbandry. It was but natural that the benumbed men at Valley Forge should think the season early for the planting of State reforms, however needful, when the very ground of American independence was cold and still freezing with patriot misfortune and British success.

Virginia's Legislature might pass all the so-called laws it liked; the triumph of the British arms would wipe every one of them from the statute books. How futile, until America was free, must all this bill-drafting and reforming have appeared to the hard-driven men on the Schuylkill's Arctic hills! "Here are we," we can hear them say, "in worse case than most armies have been in the whole history of the world; here are we at Valley Forge offering our lives, wrecking our health, losing the little store we have saved up, and doing it gladly for the common American cause; and there, in safe and comfortable Williamsburg or at sumptuous Monticello, is the man who wrote our Declaration of Independence, never venturing within the sound of cannon or smell of powder and even refusing to go to Congress."

The world knows now that Jefferson was not to be blamed. He was not a man of arms, dreaded the duties of a soldier, had no stomach for physical combat.⁴²⁷ He was a philosopher, not a warrior. He loved to write theories into laws that correct civil abuses by wholesale, and to promote the common good by sweeping statutes. Also, he was a born politician, skillful and adroit in party management above any man in our history.⁴²⁸

But as a man of action in rough weather, as an executive in stern times, he himself admitted his deficiency.⁴²⁹ So we know to-day and better understand this great reformer, whose devotion to human rights has made men tolerant of his grave personal shortcomings. Nothing of this, however, could have occurred to the starving, shivering patriot soldiers in their awful plight at Valley Forge. Winning the war was their only thought, as always is the soldier's way.

Early in April, 1778, when, but for the victory at Saratoga, the Revolution seemed well-nigh hopeless to all but the stoutest hearts, an old and valued English friend begged Washington to give up the apparently doomed American cause. The Reverend Andrew Burnaby appealed to him for American and British reunion. "Must the parent and the child be forever at variance? And can either of them be happy, independent of the other?" The interests of the two countries are the same; "united they will constitute the fairest and happiest state in the world; divided they will be quite the reverse. It is not even possible that America should be happy, unconnected with Great Britain." In case America should win, the States will fall asunder from civil discord. The French, "that false and treacherous people," will desert the Americans. Great Britain and America have "the same interest, the same lineage, the same language, the same liberty, the same religion, connecting them." Everybody in England wants reunion; even the Government is anxious to "rectify ... errors and misunderstandings." It is time to "heal the wounds on both sides." Washington can achieve this "divine purpose" and "thereby acquire more glory and confer more real and lasting service, both to your own country and to mankind in general than ... ever yet happened to the lot of any one man."⁴³⁰

⁴²⁶ Tucker, i, 92 *et seq.*; Randall, i, 199 *et seq.*; *Works*: Ford, ii, 310, 323, 324.

⁴²⁷ Bloodshed, however, Jefferson thought necessary. See *infra*, vol. II, chap. I.

⁴²⁸ See vol. II of this work.

⁴²⁹ Jefferson's *Autobiography*; *Works*: Ford, i, 79.

⁴³⁰ Burnaby to Washington, April 9, 1788; *Cor. Rev.*: Sparks, ii, 100-02. Washington sent no written answer to Burnaby.

This subtle plea, designed to prepare the way for the British "Commission of Conciliation," neither flattered nor tempted Washington. It insulted him. He acted more vigorously than ever; and, soon afterward, his answer was delivered with cannon and bayonet on the field of Monmouth.⁴³¹

When the winter had passed, Washington once more appealed to Congress to cease its bickering and indecision. That body was jealous of the army, he declared, whereas, said he, "We should all be considered, Congress and Army, as one people, embarked in one cause, in one interest; acting on the same principle, and to the same end" – a philosophy which a young Virginia officer was then absorbing and continued to absorb, until it became the ruling force in his life.

"No history extant," continues Washington, "can furnish an instance of an army's suffering such uncommon hardships ... and bearing them with the same patience and fortitude. To see men without clothes to cover their nakedness, without blankets to lie on, without shoes, by which their marches might be traced by the blood from their feet, and almost as often without provisions as with them, marching through the frost and snow, and at Christmas taking up their winter quarters within a day's march of the enemy, without a house or hut to cover them, 'till they could be built, and submitting to it without a murmur, is proof of patience and obedience which, in my opinion can scarce be paralleled."⁴³²

Further shaming Congress into action, Washington says that "with us ... the officer ... must break in upon his private fortune for present support, without a prospect of future relief"; while, with the British, company commands "are esteemed so honorable and so valuable that they have sold of late from fifteen to twenty-two hundred pounds sterling and ... four thousand guineas have been given for a troop of dragoons."⁴³³

Finally came the spring of 1778. The spirits of the men rose with the budding of the trees. Games and sport alternated with drill and policing of the camp. The officers made matches for quoits, running, and jumping. Captain-Lieutenant Marshall was the best athlete in his regiment. He could vault over a pole "laid on the heads of two men as high as himself." A supply from home had reached him at last, it appears, and in it were socks. So sometimes Marshall ran races in his stocking feet. In knitting this foot apparel, his mother had made the heels of white yarn, which showed as he ran. Thus came his soldier nickname of "Silver Heels."⁴³⁴

As spring advanced, the troops recovered their strength and, finally, were ready and eager again to meet the enemy. Washington had persuaded General Greene to accept the vital office of Quartermaster-General; and food, clothing, and munitions had somewhat relieved the situation.⁴³⁵ Baron von Steuben had wrought wonders in the drill and discipline of the men and in the officers' knowledge of their technical duties.⁴³⁶ "I should do injustice if I were to be longer silent with regard to the merits of the Baron de [von] Steuben" Washington told Congress, in hearty appreciation of the Prussian general's services.⁴³⁷

Another event of immense importance cheered the patriot forces and raised patriot hopes throughout America. The surrender of Burgoyne had encouraged the French statesmen to attempt the injury of England by helping the revolting colonies. On May 6, 1778, the treaty of alliance with

⁴³¹ See *infra*.

⁴³² Washington to Banister, April 21, 1778; *Writings*: Ford, vi, 477-87. In thus trying to arouse Congress to a sense of duty, Washington exaggerates the patience of his troops. They complained bitterly; many officers resigned and privates deserted in large numbers. (See *supra*.)

⁴³³ *Ib.*

⁴³⁴ Thayer, 12. For camp sports, see Waldo's poem, *Hist. Mag.*, vii, 272-74.

⁴³⁵ Lossing, ii, 595, *et seq.*

⁴³⁶ Marshall, i, 230. And see Hatch's clear account of the training given by this officer (63). To the work of Von Steuben was due the excellent discipline under fire at Monmouth. And see Kapp, already cited; and Bolton, 132. Even Belcher says that our debt to Von Steuben is as great as that to Lafayette. (Belcher, ii, 14.)

⁴³⁷ Washington to President of Congress, April 30, 1778; *Writings*: Ford, vi, 507, and footnote to 505-06. And see Channing, iii, 292.

Louis XVI was laid before Congress.⁴³⁸ The miseries of the past winter were forgotten by the army at Valley Forge in the joy over the French Monarch's open championship of the American cause and his attack upon the British.⁴³⁹ For it meant trained troops, ships of war, munitions, and money. It meant more – it signified, in the end, war by France upon England.

The hills of Valley Forge were vocal with huzzas and the roar of cannon. Songs filled the air. The army paraded. Sermons were preached. The rebound went to heights of enthusiasm equaling the former depths of despair.⁴⁴⁰ Marshall, we may be sure, joined with his characteristic zest in the patriots' revel of happiness. Washington alone had misgivings. He feared that, because of the French alliance, Congress and the States would conclude that "we have nothing more to do" and so "relapse into a state of supineness and perfect security."⁴⁴¹ Precisely this occurred.

Soon, however, other inspiring tidings came – the British, it was said, were about to quit Philadelphia. The gayety in that city had continued throughout the winter, and just before the evacuation, reached its climax in a festival of almost unbelievable opulence and splendor. Processions of flower-decked boats, choruses, spectacles, and parades crowded the day; dancing and music came with sunset, and at midnight, lighted by hundreds of wax candles, twelve hundred people sat down to a dinner of Oriental luxury served by negroes clad in the rich costumes of the East "with silver collars and bracelets."⁴⁴²

When, on June 18, the Royal forces abandoned the city, the Americans were quick in pursuit. On June 28, a day of blistering heat, the battle of Monmouth was fought. That scorching Sunday "was long remembered all over the United States as the most sultry day which had ever been endured since mankind learned to read the thermometer."⁴⁴³

It must have been very hot indeed, for Marshall himself speaks of "the intense heat";⁴⁴⁴ and he disliked extreme terms. Marshall was one of the advance guard⁴⁴⁵ under Wayne, with Lee in command of the division. In a previous council of war most of the higher officers were decidedly against risking the action; but Washington overruled them and ordered Lee to attack the British force "the moment it should move from its ground."⁴⁴⁶

The Commander-in-Chief, with the main body of American troops, was to come to Lee's support. It is unnecessary to go over the details of Lee's unhappy blunder, his retreat, Washington's Berserker rage and stinging rebuke on the battlefield in sight and hearing of officer and private, the turning of the rout into attack, and attack into victory by the sheer masterfulness of the mighty Virginian. From ten o'clock until nightfall the conflict raged, the Americans generally successful.

The overpowering sun made the action all but insufferable. Many died from the effects of the furnace-like heat. The fighting was heavy and often hand to hand. Throughout the day Washington was the very soul of battle. His wrath at Lee's retreat unleashed the lion in him. He rode among the troops inspiring, calming, strengthening, steadying. Perhaps at no time in his life, except at Braddock's defeat, was his peculiar combination of cool-headed generalship and hot-blooded love of combat so manifest in a personal way as on this blazing June day at Monmouth.

⁴³⁸ See Channing, iii, 286, 288; and Marshall, i, 235, 236.

⁴³⁹ Marshall, i, 237.

⁴⁴⁰ Sparks, 267; and Moore's *Diary*, i, 48-50.

⁴⁴¹ Washington to McDougall, May 5, 1778; *Writings*: Ford, vii, 6. Washington was advised of the treaty with the French King before it was formally presented to Congress.

⁴⁴² Description by Major André, who took part in this amazing performance, reprinted in *American Historical and Literary Curiosities*, following plate 26. And see Moore's *Diary*, ii, 52-56.

⁴⁴³ Trevelyan, iv, 376.

⁴⁴⁴ Marshall, i, 252.

⁴⁴⁵ Marshall speaks of "one thousand select men" under Wayne; Maxwell's division was with Wayne under Lee; Marshall was in the battle, and it seems certain that he was among Wayne's "select men" as on former and later occasions.

⁴⁴⁶ Marshall, i, 252.

"Never," testifies Lafayette, who commanded part of the advance and fought through the whole battle, "was General Washington greater in war than in this action. His presence stopped the retreat. His dispositions fixed the victory. His fine appearance on horseback, his calm courage, roused by the animation produced by the vexation of the morning, gave him the air best calculated to excite enthusiasm."⁴⁴⁷

When Washington was preparing the final stroke, darkness fell. The exhausted Americans, their clothing drenched with sweat, slept on their arms upon the field of battle, their General-in-Chief himself lying on the ground among the living, the wounded, and the dead. Somewhere on that hard-fought ground, Captain-Lieutenant John Marshall stretched himself by his comrades. Washington was determined to press the attack at break of day. But at midnight the British stole away so silently that the Americans did not hear a sound from their retreat.⁴⁴⁸ The Americans lost eight officers and sixty-one privates killed, one hundred and sixty wounded, and one hundred and thirty missing. The British left more than two hundred and fifty dead upon the field.⁴⁴⁹

Upon Charles Lee most accounts of the battle of Monmouth have placed the brand of infamy. But John Marshall did not condemn Lee utterly. There were, it appears, two sides of the business – the difficulty of the ground, the mistake made by Scott, a reinforcement of the British rear, and other incidents.⁴⁵⁰ These appealed even to Washington when the calm of judgment returned to him after the battle was fought and his blazing wrath had cooled; and had Lee not sent insulting letters to the Commander-in-Chief, it is probable that no further action would have been taken.⁴⁵¹

Marshall had been in the fight from first to last; he had retreated unwillingly with the other five thousand men whom Lee commanded; he was a fighting man, always eager for the shock of arms; he cherished a devotion to Washington which was the ruling attachment of his life – nevertheless, Marshall felt that more was made of Lee's misconduct than the original offense deserved. Writing as the chosen biographer of Washington, Marshall gives both sides of this controversy.⁴⁵²

This incident throws light upon Marshall's temperament. Other historians in their eulogy of Washington, have lashed the memory of Lee naked through the streets of public scorn. Marshall refuses to join the chorus of denunciation. Instead, he states the whole case with fairness.⁴⁵³

Three days after Monmouth, he was promoted to a full captaincy;⁴⁵⁴ and, as we have seen, he had been made Deputy Judge Advocate at Valley Forge. Holding these two offices, Marshall continued his military service.

The alliance with the French King, followed by the American success at Monmouth, lulled the patriots into an unwarranted feeling of security. Everybody seemed to think the war was over. Congress became more lethargic than ever, the States more torpid and indifferent. The British had seized the two points commanding King's Ferry on the North River, thus cutting the communication between the small American forces on opposite sides of the Hudson.⁴⁵⁵ To restore this severed connection was important; and it was essential to arouse once more the declining interest of the

⁴⁴⁷ Lafayette to Marshall; Marshall, i, footnote to 255.

⁴⁴⁸ Marshall, i, 254-59.

⁴⁴⁹ For descriptions of the battle of Monmouth see Washington to President of Congress, July 1, 1778; *Writings*: Ford, vii, 76-86; and to John Augustine Washington, July 4, 1778; *ib.*, 89-92. Also Marshall, i, 251-56; Trevelyan, iv, 376-80; Irving, iii, 423-34; Sparks, 272-78; Lossing, ii, 354-65.

⁴⁵⁰ Marshall, i, 251-56.

⁴⁵¹ *Ib.*, 257.

⁴⁵² *Ib.*, 257-58.

⁴⁵³ Girardin follows Marshall in his fair treatment of Lee. (Burk, iv, 290.)

⁴⁵⁴ He was promoted July 1, 1778. (Heitman, 285.)

⁴⁵⁵ The whole patriot army everywhere, except in the extreme south and west, now numbered only sixteen thousand men. (Marshall, i, 306-07.)

people. Washington resolved to take Stony Point, the then well-nigh impregnable position dominating King's Ferry from the New Jersey side.

A body of light infantry was carefully selected from all ranks. It was the flower of Washington's troops in health, stability, courage, and discipline. Upon this "*élite* of the army," says Dawson, "the safety of the Highlands and, indirectly, that of the cause of America, were dependent."⁴⁵⁶ This corps of picked soldiers was intended for quick and desperate enterprises of extra hazard. John Marshall was one of those selected.⁴⁵⁷ Their first notable task was to take Stony Point by assault. Anthony Wayne was placed in command. "I have much at heart," Washington told Wayne, in the capture of this position, "the importance of which ... is too obvious to need explanation."⁴⁵⁸

Yet even to these men on missions of such moment, supplies came tardily and in scant quantities. Wayne's "men were almost naked."⁴⁵⁹

Finally, on June 15, 1779, the time came for the storming of the fort. It was washed on three sides by the waters of the Hudson and a marsh separated it from the solid land on the west. Heavy guns were on the great hill of rock; lighter batteries were placed on its slope; two rows of abatis were farther down; and the British ships in the river commanded almost every point of attack.⁴⁶⁰

A party of Wayne's men was detailed to remove obstructions, capture the sentries, and, in general, prepare the way for the assault by the first detachment of the Light Infantry, which was to advance with unloaded muskets, depending exclusively on the bayonet.⁴⁶¹ The fort was taken by those assigned to make the initial attempt, Colonel Fleury being the first to enter the stronghold. Below at the edge of the marsh waited the major part of Wayne's little force, among whom was the future Chief Justice of the United States.

If the state of Wayne's nerves is an indication, we know how the young Virginia captain felt, there in the midnight, holding himself in readiness for the order to advance. For early in the evening Wayne thus wrote to his brother-in-law: "This will not reach your eye until the Writer is no more – the Enclosed papers ... [will] enable [you] to defend the Character and Support the Honor of the man who ... fell in defense of his Country... Attend to the Education of my Little *Son & Daughter*– I fear that their tender Mother will not Survive this Stroke."⁴⁶² But the British were overcome more easily than anybody had thought possible,⁴⁶³ and, though wounded, Wayne survived to give more displays of

⁴⁵⁶ The fullest and most accurate account of the capture of Stony Point, and conditions immediately preceding, is given by Dawson in his *Assault on Stony Point*.

⁴⁵⁷ Binney, in Dillon, iii, 315-16. The care in the selection of the various commands of "light infantry," so often used by Washington after the first year of the war, is well illustrated by his orders in this case. "The officers commanding regiments," runs Washington's orders, "will be particularly careful in the choice of the men... The Adjutant General is desired to pass the men ... under critical inspection, and return all who on any account shall appear unfit for this kind of service to their regiments, to be replaced by others whom he shall approve." (Washington's Order Book, iii, 110-11; MS., Lib. Cong.)

⁴⁵⁸ Washington to Wayne (Private and Confidential), July 1, 1779; Dawson, 18-19.

⁴⁵⁹ Dawson, 20. Wayne's demand for sustenance and clothing, however, is amusing. "The Light Corps under my Command," writes Wayne, "... have had but two days fresh Provision ... nor more than three days allowance of Rum *in twelve days*, which article I borrowed from Genl McDougall with a Promise to Replace it. I owe him Seventy five Gallons – must therefore desire you to forward three Hodds [hogsheads] of Rum to this place with all possible Dispatch together with a few fat sheep & ten Head of good Cattle." (Wayne to Issuing Commissary, July 9, 1779; *ib.*, 20-21.) Wayne wrote to Washington concerning clothing: "I have an [word illegible] Prejudice in favor of an Elegant Uniform & Soldierly Appearance – ... I would much rather risque my life and Reputation at the Head of the same men in an Attack Clothed & Appointed as I could wish – with a Single Charge of Ammunition – than to take them as they appear in Common with Sixty Rounds of Cartridges." (Dawson, 20-21.) Washington wrote in reply: "I agree perfectly with you." (*Ib.*, 21.)

⁴⁶⁰ Marshall, i, 310.

⁴⁶¹ Wayne's order of battle was as picturesque as it was specific. Officer and private were directed "to fix a Piece of White paper in the most Conspicuous part of his Hat or Cap ... their Arms unloaded placing their whole Dependence on the Bayt... If any Soldier presumes to take his Musket from his Shoulder or Attempt to fire or begin the battle until Ordered by his proper Officer he shall be Instantly put to death by the Officer next him... Should any Soldier ... attempt to Retreat one Single foot or Sculk in the face of danger, the Officer next to him is Immediately to put him to death." (*Ib.*, 35-38.)

⁴⁶² Wayne to Delaney, July 15, 1779; Dawson, 46-47.

⁴⁶³ The generous and even kindly treatment which the Americans accorded the vanquished British is in striking contrast with the

his genuine heroism, while Providence spared John Marshall for a no less gallant and immeasurably greater part in the making of the American Nation.⁴⁶⁴

But the brilliant exploit went for nothing. The Americans failed to take Verplanck's Point on the eastern bank of the river and the patriot forces were still separated. Unable to spare enough men to garrison Stony Point permanently and since the Ferry remained under the British guns, Washington moved his army to the Highlands. The British at once reoccupied the abandoned fort which Wayne's men had just captured.

A detail from the Light Infantry was placed under Major Henry Lee of Virginia, who was instructed to watch the main forces of the enemy. Among Lee's flying detachment was Captain John Marshall. For three weeks this scouting expedition kept moving among the ravines, hills, and marshes, always in close touch with the British. "At Powles Hook, a point of land on the west side of the Hudson, immediately opposite the town of New York, penetrating deep into the river,"⁴⁶⁵ the enemy had erected works and garrisoned them with several hundred men. The British had made the Hook an island by digging a deep ditch through which the waters of the river flowed; and otherwise had rendered their position secure.

The daring Lee resolved to surprise and capture the defending force, and Washington, making sure of lines of retreat, approved the adventure. All night of August 18, 1779, Lee's men marched stealthily among the steep hills, passed the main body of the British army who were sleeping soundly; and at three o'clock in the morning crossed the ditch, entered the works, and carried away one hundred and fifty-nine prisoners, losing in the swift, silent effort only two killed and three wounded.⁴⁶⁶ This audacious feat fired the spirits of the patriot forces and covered the British with humiliation and chagrin.

Here, except for a small incident in Arnold's invasion of Virginia, John Marshall's active participation in actual warfare ended. He was sent home⁴⁶⁷ because of the expiration of the term of enlistments of the regiments in which he had commanded and the excess of officers which this created.⁴⁶⁸ The Revolution dragged along; misfortune and discouragement continued to beat upon the granite Washington. The support of Louis XVI was a staff upon which, substantial as it was, the people of the States leaned too heavily. Their exertions relaxed, as we have seen; Jefferson, patriot and reformer, but not efficient as an executive, was Governor of Virginia; and John Marshall waited in vain for the new command which never appeared.

On December 30, 1780, Jefferson received positive news of Arnold's invasion.⁴⁶⁹ He had been warned by Washington that just this event was likely to occur;⁴⁷⁰ but he had not summoned to the colors a single man of the militia, probably fifty thousand of whom were available,⁴⁷¹ nor taken any measures to prepare for it. Not until the hostile vessels entered Virginia waters to disembark the invading force was General Nelson sent to watch the enemy and call out the local militia of the adjacent vicinity; and not until news came that the British were on their way up the James River did the Governor summon the militia of the neighboring counties. The Royal soldiers reached Richmond on January 4, 1781, without opposition; there Arnold burned some military factories and munitions,

latter's treatment of Americans under similar circumstances. When the fort was taken, the British cried, "*Mercy, mercy, dear, dear Americans,*" and not a man was injured by the victors after he ceased to resist. (Dawson, 53; and Marshall, i, 311.)

⁴⁶⁴ The fort was captured so quickly that the detachment to which Marshall was assigned had no opportunity to advance.

⁴⁶⁵ Marshall, i, 314.

⁴⁶⁶ *Ib.*, 314-16.

⁴⁶⁷ The rolls show Marshall in active service as captain until December 9, 1779. (Records, War Dept.) He retired from the service February 12, 1781. (Heitman, 285.)

⁴⁶⁸ Binney, in Dillon, iii, 290. There often were more officers of a State line than there were men to be officered; this was caused by expiring enlistments of regiments.

⁴⁶⁹ Tucker, i, 136.

⁴⁷⁰ Marshall, i, 418.

⁴⁷¹ *Ib.*, 139.

and returned down the river. John Marshall hastened to the point of danger, and was one of the small American force that ambushed the British some distance below Westover, but that scattered in panic at the first fire of the invaders.⁴⁷²

Jefferson's conduct at this time and especially during the subsequent invasion of the State has given an unhappy and undeserved coloring to his personal character.⁴⁷³ It all but led to his impeachment by the Virginia Legislature;⁴⁷⁴ and to this day his biographers are needlessly explanatory and apologetic in regard to this phase of his career. These incidents confirmed the unfortunate impressions of Jefferson which Marshall and nearly all the Virginia officers and soldiers had formed at Valley Forge. Very few of them afterward changed their unfavorable opinion.⁴⁷⁵

It was his experience, then, on the march, in camp, and on the battlefield, that taught John Marshall the primary lesson of the necessity of efficient government. Also his military life developed his real temperament, which was essentially conservative. He had gone into the army, as he himself declared, with "wild and enthusiastic notions,"⁴⁷⁶ unlike those of the true Marshall. It did not occur to this fighting Virginia youth when, responding to Patrick Henry's call, he marched southward under the coiled-rattlesnake flag inscribed "Don't tread on me," that anything was needed except to drive the oppressor into the sea. A glorious, vague "liberty" would do the rest, thought the stripling backwoods "shirtman," as indeed almost all of those who favored the patriot cause seemed to think.⁴⁷⁷

And when in blue and buff, as an officer of the Continental army, he joined Washington, the boyish Virginia lieutenant was still a frontier individualist, though of the moderate type. But four years of fighting and suffering showed him that, without a strong and practical government, democracy cannot solve its giant problems and orderly liberty cannot live. The ramshackle Revolutionary establishment was, he found, no government at all. Hundreds of instances of its incredible dissensions and criminal inefficiency faced him throughout these four terrible years; and Marshall has recorded many of them.

Not only did each State do as it pleased, as we have seen, but these pompous sovereignties actually interfered in direct and fatal fashion with the Continental army itself. For example, when the soldiers of the line from one State happened to be in another State, the civil power of the latter often "attempted to interfere and to discharge them, notwithstanding the fact that they were not even citizens

⁴⁷² Marshall, i, 419; Binney, in Dillon, iii, 290.

⁴⁷³ Even the frightened Virginia women were ashamed. "Such terror and confusion you have no idea of. Governor, Council, everybody scampering... How dreadful the idea of an enemy passing through such a country as ours committing enormities that fill the mind with horror and returning exultantly without meeting one impediment to discourage them." (Eliza Ambler to Mildred Smith, 1781 MS. Also *Atlantic Monthly*, lxxxiv, 538-39.) Miss Ambler was amused, too, it seems. She humorously describes a boastful man's precipitate flight and adds: "But this is not more laughable than the accounts we have of our illustrious G-[overno] – r [Jefferson] who, they say, took neither rest nor food for man or horse till he reached C-[arte] – r's mountain." (*Ib.*) This letter, as it appears in the *Atlantic Monthly*, differs slightly from the manuscript, which has been followed in this note. These letters were written while the laughing young Tarleton was riding after the flying Virginia Government, of which Eliza Ambler's father was a part. They throw peculiar light on the opinions of Marshall, who at that time was in love with this lady's sister, whom he married two years later. (See *infra*, chap. v.)

⁴⁷⁴ An inquiry into Jefferson's conduct was formally moved in the Virginia Legislature. But the matter was not pressed and the next year the Legislature passed a resolution of thanks for Jefferson's "impartial, upright, and attentive Administration." (See Eckenrode's thorough treatment of the subject in his *Revolution in Virginia*, chap. vii. And see Tucker, i, 149-56, for able defense of Jefferson; and Dodd, 63-64; also Ambler, 37.)

⁴⁷⁵ Monroe, Bland, and Grayson are the only conspicuous exceptions.

⁴⁷⁶ Story, in Dillon, iii, 338.

⁴⁷⁷ This prevalent idea is well stated in one of Mrs. Carrington's unpublished letters. "What sacrifice would not an American, or Virginian (even) at the earliest age have made for so desirable an end – young as I was [twelve years old when the war began] the Word Liberty so continually sounding in my ears seemed to convey an idea of everything that was desirable on earth – true that in attaining it, I was to see every present comfort abandoned; a charming home where peace and prosperous fortune afforded all the elegancies of life, where nature and art united to render our residence delightful, where my ancestors had acquired wealth, and where my parents looked forward to days of ease and comfort, all this was to be given up; but in infancy the love of change is so predominant that we lose sight of consequences and are willing to relinquish present good for the sake of novelty, this was particularly the case with me." (Mrs. Carrington to her sister Nancy, March, 1809; MS.; and see *infra*, chap. VIII.)

of that State."⁴⁷⁸ The mutiny of underfed, poorly clothed, unpaid troops, even in the State lines; the yielding of Congress to their demands, which, though just in themselves, it was perilous to grant on compulsion;⁴⁷⁹ the discontent of the people caused by the forcible State seizure of supplies, – a seizure which a strong National Government could not have surpassed in harshness,⁴⁸⁰ – were still other illustrations of the absolute need of an efficient central power. A few "judicious patriots" did urge the strengthening of National authority, but, writes Marshall, they were helpless to "correct that fatal disposition of power [by States and Congress] which had been made by enthusiasm uninstructed by experience."⁴⁸¹ Time and again Marshall describes the utter absence of civil and military correlations and the fearful results he had felt and witnessed while a Revolutionary officer.

Thus it is that, in his service as a soldier in the War for our Independence, we find the fountain-head of John Marshall's National thinking. And every succeeding circumstance of his swift-moving and dramatic life made plainer and clearer the lesson taught him on red battlefield and in fetid camp. No one can really understand Marshall's part in the building of the American Nation without going back to these sources. For, like all living things, Marshall's constructive opinions were not made; they grew. They were not the exclusive result of reasoning; they were the fruit of an intense and vivid human experience working upon a mind and character naturally cautious, constructive, and inclined to order and authority.

⁴⁷⁸ Marshall, i, 355-65.

⁴⁷⁹ *Ib.*, 422-24.

⁴⁸⁰ *Ib.*, 425.

⁴⁸¹ Marshall, i, 425.

CHAPTER V

MARRIAGE AND LAW BEGINNINGS

He was always and under all circumstances an enthusiast in love. (Mrs. Carrington, of Marshall's devotion to his wife.)

It was upon a night of gentle gayety in the late winter or early spring of 1779-80 that Captain John Marshall first met Mary Ambler. When he went back to Virginia to take charge of troops yet to be raised, he visited his father, then commanding at the village of Yorktown.⁴⁸² More than a year had gone by since Colonel Marshall had left his son at Valley Forge. On this visit befell the most important circumstance of John Marshall's private life. While he was waiting for his new command, an event came to pass which relieved his impatience to prolong still further his four years of active warfare and inspired him to improve this period of enforced absence from the front, by preparing himself for his chosen profession.

Jacquelin Ambler had been one of Yorktown's wealthiest men, and his house was called a "mansion." But the war had ruined him financially;⁴⁸³ and the year 1780 found the Ambler family dwelling in humble quarters. "The small retired tenement" to which reduced circumstances forced him to take his invalid wife and young children stood next door to the headquarters of Colonel Thomas Marshall. The Ambler family was under Colonel Marshall's protection, for the father's duties as State Councillor kept him at Williamsburg.⁴⁸⁴ But the reverse of Jacquelin Ambler's fortunes did not make this little house less attractive than his "mansion" had been.

The unusual charm of his daughters rendered that modest abode very popular. Indeed, this quality of pleasing seems to have been a common possession of the Ambler family, and has become historic. It was this very Jacquelin Ambler for whom Rebecca Burwell threw over Thomas Jefferson. This Virginia belle was the love of Jefferson's youth. She was the "Campana in die,"⁴⁸⁵ "Belinda," "Adnileb," and "R. B." of Jefferson's letters.⁴⁸⁶ But Rebecca Burwell preferred Jacquelin Ambler and became his wife.⁴⁸⁷ The Ambler daughters inherited from both mother and father that beauty, grace, and goodness which gave them their extraordinary personal appeal.

⁴⁸² Mrs. Carrington to her sister Nancy, 1810; *Atlantic Monthly*, lxxxiv, 546; and same to same, March, 1809; MS. Thomas Marshall was now Colonel of the Virginia State Regiment of Artillery and continued as such until February 26, 1781, when his men were discharged and he became "a reduced officer." (Memorial of Thomas Marshall, *supra*. See Appendix IV.) This valuable historical document is the only accurate account of Thomas Marshall's military services. It disproves the statement frequently made that he was captured when under Lincoln at Charleston, South Carolina, May 12, 1780. Not only was he commanding the State Artillery in Virginia at that time, but on March 28 he executed a deed in Fauquier County, Virginia, and in June he was assisting the Ambler family in removing to Richmond. (See *infra*.) If a Thomas Marshall was captured at Charleston, it must have been one of the many others of that name. There was a South Carolina officer named Thomas Marshall and it is probably he to whom Heitman refers. Heitman (ed. 1914), 381. For account of the surrender of Charleston, see McCrady, iii, 507-09.

⁴⁸³ "Certain it is that another Revolutionary War can never happen to affect and ruin a family so completely as ours has been!" It "involved our immediate family in poverty and perplexity of every kind." (Mrs. Carrington to her sister Nancy; *Atlantic Monthly*, lxxxiv, 545-47.)

⁴⁸⁴ *Ib.*

⁴⁸⁵ Dog Latin and crude pun for "bell in day."

⁴⁸⁶ Jefferson to Page and to Fleming, from Dec. 25, 1762, to March 20, 1764; *Works*: Ford, i, 434-52. In these delightful letters Jefferson tells of his infatuation, sometimes writing "Adnileb" in Greek. "He is a boy and is indisputably in love in this good year 1763, and he courts and sighs and tries to capture his pretty little sweetheart, but like his friend George Washington, fails. The young lady will not be captured!" (Susan Randolph's account of Jefferson's wooing Rebecca Burwell; *Green Bag*, viii, 481.)

⁴⁸⁷ Tradition says that George Washington met a like fate at the hands of Edward Ambler, Jacquelin's brother, who won Mary Cary from the young Virginia soldier. While this legend has been exploded, it serves to bring to light the personal attractiveness of the Amblers; for Miss Cary was very beautiful, heiress of a moderate fortune, and much sought after. It was Mary Cary's sister by whom Washington was captivated. (Colonel Wilson Miles Cary, in Pecquet du Bellet, i, 24-25.)

During John Marshall's visit to his father the young ladies of Yorktown saw to it that a "ball" was given. All the officers had been invited, of course; but none of them aroused such interest as did Captain John Marshall of the Eleventh Virginia Regiment of the line.

The fame of this young soldier, fresh from the war, was very bright in Virginia. His name was on the lips of all the fair attendants of the dance. They were in a quiver of expectancy at the prospect of meeting the gallant captain who had fought under the great Washington and who had proved himself a hero at Brandywine and Germantown, at Valley Forge and Monmouth.

Years afterwards, Eliza, the eldest of the Ambler daughters, described the event in a letter full of color written to her sister. "We had been accustomed to hear him [Marshall] spoken of by all as a very *paragon*," writes Mrs. Carrington, "we had often seen letters from him fraught with filial and paternal affection. The eldest of fifteen children, devoted from his earliest years to his younger brothers and sisters, he was almost idolized by them, and every line received from him was read with rapture."⁴⁸⁸

"Our expectations were raised to the highest pitch," writes the elder sister, "and the little circle of York was on tiptoe on his arrival. Our girls particularly were emulous who should be first introduced"; but Mary Ambler, then only fourteen years old, and very diffident and retiring, astonished her sister and friends by telling them that "we were giving ourselves useless trouble; for that she, for the first time, had made up her mind to go to the ball, though she had not even been at dancing school, and was resolved to set her cap at him and eclipse us all."⁴⁸⁹

Great was their disappointment when finally Captain Marshall arrived. His ungainly dress, slouch hat, and rustic bearing instantly quenched their enthusiasm.⁴⁹⁰ They had looked forward to seeing a handsome, romantic figure, brilliantly appareled, and a master of all the pleasing graces; instead they beheld a tall, loose-jointed young man, thin to gauntness, whose clothes were hanging about him as if upon a rack, and whose manners were awkward and timid to the point of embarrassment. No game was he for Cupid's bow, thought these belles of old Yorktown.

"I, expecting an Adonis, lost all desire of becoming agreeable in his eyes when I beheld his awkward figure, unpolished manners, and total negligence of person";⁴⁹¹ thus writes Eliza Ambler of the impression made upon her by the young soldier's disheveled aspect and unimpressive deportment. But Mary Ambler stuck to her purpose, and when John Marshall was presented to her, both fell in love at first sight. Thus began a lifelong romance which, in tenderness, exaltation, and constancy is unsurpassed in the chronicle of historic affections.

It was no longer alone the veneration for a father that kept the son in Yorktown. Day followed day, and still the gallant captain tarried. The unfavorable first judgment gave way to appreciation. He soon became a favorite at every house in the village.⁴⁹² His gift of popularity was as great, it seems, among women as among men; and at the domestic fireside as well as in the armed camp. Everybody liked John Marshall. There was a quality in him that inspired confidence. Those who at first had been so disappointed in his dress and manners soon forgot both in his wholesome charm. They found him delightfully companionable.⁴⁹³ Here was preëminently a social being, they discovered. He liked people, and wanted people to like him. He was full of fun and hearty laughter; and his rare good sense and sheer manliness furnished solid foundation to his lighter qualities.

So every door in Yorktown was thrown open to Captain John Marshall. But in Jacquelin Ambler's house was the lodestone which drew him. April had come and the time of blossoming. On

⁴⁸⁸ Mrs. Carrington to her sister Nancy; *Atlantic Monthly*, lxxxiv, 547. Of the letters which John Marshall wrote home while in the army, not one has been preserved.

⁴⁸⁹ *Ib.*

⁴⁹⁰ *Ib.*

⁴⁹¹ Mrs. Carrington to her sister Nancy; *Atlantic Monthly*, lxxxiv, 547.

⁴⁹² *Hist. Mag.*, iii, 165. While this article is erroneous as to dates, it is otherwise accurate.

⁴⁹³ *Ib.*, 167.

mellow afternoons, or by candlelight when the sun had set, the young lover spent as much time as the proprieties would permit with Mary Ambler, telling her of the war, no doubt; and, as her sister informs us, reading poetry by the hour.⁴⁹⁴ Through it all he made love as hard as he could. He wooed as ardently and steadily as he had fought.⁴⁹⁵

The young lover fascinated the entire Ambler family. "Under the slouched hat," testifies Mary Ambler's sister, "there beamed an eye that penetrated at one glance the inmost recesses of the human character; and beneath the slovenly garb there dwelt a heart complete with every virtue. From the moment he loved my sister he became truly a brother to me... Our whole family became attached to him, and though there was then no certainty of his becoming allied to us, we felt a love for him that can never cease... There was no circumstance, however trivial, in which we were concerned, that was not his care."

He would "read to us from the best authors, particularly the Poets, with so much taste and feeling, and pathos too, as to give me an idea of their sublimity, which I should never have had an idea of. Thus did he lose no opportunity of blending improvement with our amusements, and thereby gave us a taste for books which probably we might never otherwise have had."⁴⁹⁶

The time had come when John Marshall must acquire a definite station in civil life. This was especially necessary if he was to take a wife; and married he would be, he had decided, whenever Mary Ambler should be old enough and would consent. He followed his parents' wishes⁴⁹⁷ and began his preparation for the bar. He told his sweetheart of his purpose, of course, and her family "learned [of it] with pleasure."⁴⁹⁸ William and Mary College, "the only public seminary of learning in the State,"⁴⁹⁹ was only twelve miles from Yorktown; and there the young officer attended the law lectures of George Wythe for perhaps six weeks⁵⁰⁰— a time so short that, in the opinion of the students, "those who finish this Study [law] in a few months, either have strong natural parts or else they know little about it."⁵⁰¹ Recalling a criticism of one of Marshall's "envious contemporaries" some years later, Mrs. Carrington says: "Allusion was made to his short stay at William and Mary, and that he could have gained little there."⁵⁰²

It is said also that Marshall took a course in philosophy under President Madison, then the head of the little college and afterwards Bishop of Virginia; but this is unlikely, for while the soldier-student took careful notes of Wythe's lectures, there is not a word in his notebook⁵⁰³ concerning any other college activity. The faculty consisted of five professors.⁵⁰⁴ The college was all but deserted at that time and closed entirely the year after John Marshall's flying attendance.⁵⁰⁵

⁴⁹⁴ Mrs. Carrington to her sister Nancy; *Atlantic Monthly*, lxxxiv, 547.

⁴⁹⁵ *Hist. Mag.*, iii, 167.

⁴⁹⁶ Mrs. Carrington to her sister Nancy; *Atlantic Monthly*, lxxxiv, 547.

⁴⁹⁷ *Supra*, chap. II.

⁴⁹⁸ Mrs. Carrington to her sister Nancy; *Atlantic Monthly*, lxxxiv, 547.

⁴⁹⁹ "Notes on Virginia": Jefferson; *Works*: Ford, iv, 65.

⁵⁰⁰ Mrs. Carrington to her sister Nancy; *supra*. William and Mary was the first American institution of learning to adopt the modern lecture system. (Tyler; *Williamsburg*, 153.) The lecture method was inaugurated Dec. 29, 1779 (*ib.*, 174-75), only four months before Marshall entered.

⁵⁰¹ John Brown to Wm. Preston, Feb. 15, 1780; *W. and M. C. Q.*, ix, 76.

⁵⁰² Mrs. Carrington to her sister Nancy; MS.

⁵⁰³ See *infra*.

⁵⁰⁴ The Reverend James Madison, Professor of Natural Philosophy and Mathematics; James McClung, Professor of Anatomy and Medicine; Charles Bellini, Professor of Modern Languages; George Wythe, Professor of Law; and Robert Andrews, Professor of Moral and Intellectual Philosophy. (*History of William and Mary College*, Baltimore, 1870, 70-71.) There was also a fencing school. (John Brown to Wm. Preston, Feb. 15, 1780; *W. and M. C. Q.*, ix, 76.)

⁵⁰⁵ *History of William and Mary College*, Baltimore, 1870, 45. "Thirty Students and three professors joined the army at the beginning of the Revolutionary War." (*Ib.*, 41.) Cornwallis occupied Williamsburg, June, 1781, and made the president's house his headquarters. (Tyler; *Williamsburg*, 168.)

Although before the Revolution "the Necessary Expence of each Scholar *yearly* ... [was] only 15 £ Currency,"⁵⁰⁶ one of Marshall's fellow students testifies that: "The amazing depreciation of our Currency has raised the price of Every Article so enormously that I despair'd of my Father's ability to support me here another year... Board & entring under two Professors amounts to 4000wt of Tobacco."⁵⁰⁷

The intercourse of students and faculty was extremely democratic. There was a "college table" at which the students took their meals. According to the college laws of that time, beer, toddy, and spirits and water might be served, if desired.⁵⁰⁸ The students were not required to wear either coats or shoes if the weather was warm.⁵⁰⁹

At a later period the students boarded at private houses in the town.⁵¹⁰ Jefferson, who, several years before Marshall's short attendance, was a student at William and Mary, describes the college and another public building as "rude, mis-shapen piles, which, but that they have roofs, would be taken for brick-kilns."⁵¹¹ Chastellux, however, declares that "the beauty of the edifice is surpassed [only] by the richness of its library and that still farther, by the distinguished merit of several of the professors," and he describes the college as "a noble establishment ... which does honour to Virginia."⁵¹²

The youths attending William and Mary during Marshall's brief sojourn were disgusted by the indifference of the people of the vicinity toward the patriot cause. "The want of Men, Money, Provisions, & still more of Public Virtue & Patriotism is universal – a melancholy Lethargick disposition pervades all Ranks in this part of the Country, they appear as if determined to struggle no more, but to 'stand still & see what the Lord will do for them,'" wrote John Brown in July, 1780.⁵¹³

Mr. Wythe, the professor of law, was the life of the little institution in this ebbing period of war-time. He established "a Moot Court, held monthly or oftener ... Mr. Wythe & the other professors sit as Judges. Our Audience consists of the most respectable of the Citizens, before whom we plead our Causes, given out by Mr. Wythe Lawyer like I assure you." The law professor also "form'd us into a Legislative Body, Consisting of about 40 members." Wythe constituted himself Speaker of these seedling lawmakers and took "all possible pains to instruct us in the Rules of Parliament." These

⁵⁰⁶ Fithian, 107.

⁵⁰⁷ John Brown to Wm. Preston, Jan. 26, 1780; *W. and M. C. Q.*, ix, 75. Seventeen years later the total cost to a student for a year at the college was one hundred and fifty to one hundred and seventy dollars. (La Rochefoucauld, iii, 49-56.) The annual salary of the professors was four hundred dollars and that of the president was six hundred dollars.

⁵⁰⁸ In Marshall's time the college laws provided that "No liquors shall be furnished or used at [the college students'] table except beer, cider, toddy or spirits and water." (*History of William and Mary College* (Baltimore, 1870), 44; and see Fithian, Feb. 12, 1774, 106-07.) Twelve years after Marshall took his hasty law course at William and Mary College, a college law was published prohibiting "the drinking of spirituous liquors (except in that moderation which becomes the prudent and industrious student)." (*History of William and Mary College*, 44.) In 1769 the Board of Visitors formally resolved that for professors to marry was "contrary to the principles on which the College was founded, and their duty as Professors"; and that if any professor took a wife "his Professorship be immediately vacated." (Resolution of Visitors, Sept. 1, 1769; *ib.*, 45.) This law was disregarded; for, at the time when Marshall attended William and Mary, four out of the five professors were married men. The college laws on drinking were merely a reflection of the customs of that period. (See chaps. VII and VIII.) This historic institution of learning turned out some of the ablest and best-educated men of the whole country. Wythe, Bland, Peyton and Edmund Randolph, Taylor of Caroline, Nicholas, Pendleton, Madison, and Jefferson are a few of the William and Mary's remarkable products. Every one of the most distinguished families of Virginia is found among her alumni. (See Catalogue of Alumni, *History of William and Mary College*, 73-147. An error in this list puts John Marshall in the class of 1775 instead of that of 1780; also, he did not graduate.)

⁵⁰⁹ *Infra*, chap. VII.

⁵¹⁰ La Rochefoucauld, iii, 49; and see Schoepf, ii, 79-80. William Wirt, writing twenty-three years after Marshall's short attendance, thus describes the college: "They [Virginians] have only one publick seminary of learning... This college ... in the niggardly spirit of parsimony which they dignify with the name of economy, these democrats have endowed with a few despicable fragments of surveyors' fees &c. thus converting their national academy into a mere *lazaretto* and feeding its ... highly respectable professors, like a band of beggars, on the scraps and crumbs that fall from the financial table. And, then, instead of aiding and energizing the police of the college, by a few civil regulations, they permit their youth to run riot in all the wildness of dissipation." (Wirt: *The British Spy*, 131, 132.)

⁵¹¹ "Notes on Virginia": Jefferson; *Works*: Ford, iv, 69.

⁵¹² Chastellux, 299. It is difficult to reconcile Jefferson's description of the college building with that of the French traveler. Possibly the latter was influenced by the French professor, Bellini.

⁵¹³ John Brown to Col. Wm. Preston, July 6, 1780: *W. and M. C. Q.*, ix, 80.

nascent Solons of old William and Mary drew original bills, revised existing laws, debated, amended, and went through all the performances of a legislative body.⁵¹⁴

The parent chapter of the Phi Beta Kappa Society had been instituted at the college; and to this Marshall was immediately elected. "At a meeting of the Society the 18 of May, 1780, Capt. John Marshall being recommended as a gentleman who would make a worthy member of this Society was balloted for & received."⁵¹⁵ This is an important date; for it fixes with reasonable certainty the time of Marshall's entrance at William and Mary. He was probably the oldest of all the students; his army service made him, by far, the most interesting and notable; his extraordinary social qualities never failed to render him popular. It is, therefore, certain that he was made a member of Phi Beta Kappa without much delay. He probably entered college about May 1.⁵¹⁶

At once we find the new member appointed on the society's debating team. Two students were selected to "declaim" the question and two to "argue" it.

"Mr. Cabell & Mr. Peyton Short appointed to declaim the Question whether any form of government is more favorable to our new virtue than the Commonwealth.

"Mr. Joseph Cabell and Mr. Marshall to argue the same. An adjournment. William Short President.

"At a meeting in course Saturday June ye 3rd, 1780, Mr. President leaving ye chair with Mr. Fitzhugh to ye same. Mr. Wm Cabell according to order delivered his declamation on ye question given out. Mr. Peyton Short, being unprepared, was silent on ye occasion. Mr. Marshall, a gentleman not immediately interested, argued ye Question."⁵¹⁷

But it was not debating on which John Marshall was intent, nor any other college duties. He had hard work, it appears, to keep his mind on the learned words that fell from the lips of Mr. Wythe; for on the inside cover and opposite page of the book in which he made notes of Wythe's law lectures,⁵¹⁸ we find in John Marshall's handwriting the words, "Miss Maria Ambler"; and again "Miss M. Ambler"; and still again, this time upside down, "Miss M. Ambler – J. Marshall"; and "John Marshall, Miss Polly Am."; and "John, Maria"; and "John Marshall, Miss Maria"; and "Molly Ambler"; and below this once more, "Miss M. Ambler"; on the corner of the page where the notes of the first lecture are recorded is again inscribed in large, bold letters the magic word, "Ambler."⁵¹⁹

Jacquelin Ambler had been made Treasurer of State, and, early in June, 1780, the family removed from Yorktown to Richmond, stopping for a day or two in Williamsburg. While there "a ball was ... given ... by certain gentlemen in compliment ... 'to the Misses Amblers.'" Eliza Ambler describes the incidents of this social event. The affair was "simple and frugal as to its viands," she writes, "but of the brilliancy of the company too much cannot be said; it consisted of more Beauty and Elegance than I had ever witnessed before... I was transported with delight." Yet she could not "treat ... the prime mover in this civility with common good manners... His more successful friend Marshall, was devoted to my sister."⁵²⁰

This "ball" ended John Marshall's college studies; the lure of Mary Ambler was greater than that of learning to the none too studious captain. The abrupt ending⁵²¹ of the notes he was making of Mr. Wythe's lectures, in the midst of the course, otherwise so inexplicable, was caused by her two days' sojourn in the college town. Forthwith he followed to Richmond, where, for two weeks he gayly

⁵¹⁴ John Brown to Col. Wm. Preston, July 6, 1780; *W. and M. C. Q.*, ix, 80.

⁵¹⁵ Records, Phi Beta Kappa Society of William and Mary College, printed in *W. and M. C. Q.*, iv, 236.

⁵¹⁶ Dr. Lyon G. Tyler, now President of William and Mary College, thinks that this date is approximately correct.

⁵¹⁷ Records, Phi Beta Kappa Society of William and Mary College; printed in, *W. and M. C. Q.*, iv, 236.

⁵¹⁸ See *infra*.

⁵¹⁹ Marshall's Notebook; MS. See *infra*.

⁵²⁰ Betsy Ambler to Mildred Smith, 1780; *Atlantic Monthly*, lxxxiv, 536.

⁵²¹ See *infra*.

played the part of the head of the family (acted "Pa," as Marshall quaintly expresses it), apparently in Jacquelin Ambler's absence.⁵²²

Although he had scarcely begun his studies at William and Mary; although his previous instruction by professional teachers was meager and fragmentary; and although his father could well afford the small expense of maintaining him at Williamsburg long enough for him to secure at least a moderate education, John Marshall never returned to college.⁵²³ No more lectures of Professor Wythe for the young lover. He would begin his professional career at once and make ready for the supreme event that filled all his thoughts. So while in Richmond he secured a license to practice law. Jefferson was then Governor, and it was he who signed the license to the youth who was to become his greatest antagonist. Marshall then went to Fauquier County, and there, on August 28, 1780, was admitted to the bar. "John Marshall, Gent., produced a license from his Excellency the Governor to practice law and took the oaths prescribed by act of Assembly," runs the entry in the record.⁵²⁴

He waited for the recruiting of the new troops he was to command, and held himself in readiness to take the field, as indeed he rushed to do without orders when Arnold's invasion came. But the new troops never were raised and Marshall finally left the service. "I continued in the army until the year 1781," he tells us, "when, being without a command, I resigned my commission in the interval between the invasion of Virginia by Arnold and Phillips."⁵²⁵

During this season of inaction he resolved to be inoculated against the smallpox. This was another effect which falling in love had on the young soldier; for he could, had he wished, have had this done more than once while with Washington's army.⁵²⁶ He would now risk his health no longer. But the laws of Virginia made the new method of treating smallpox almost impossible.⁵²⁷ So away on foot⁵²⁸ went John Marshall to Philadelphia to be made proof against this disfiguring malady.

According to Marshall's own account, he covered the ground at an amazing pace, averaging thirty-five miles a day; but when he arrived, so disreputable did he appear that the tavern refused to take him in.⁵²⁹ Long-bearded and slovenly clothed, with battered hat and uncouth manners, he gave the unfavorable first impression which the same causes so often produced throughout his life. This is not to be wondered at, for, writing twenty years afterward, when Marshall as Chief Justice was at the height of his career, his sister-in-law testifies that his "total negligence of person . . . often produced a blush on her [Marshall's wife's] cheek."⁵³⁰ But he finally secured lodgings, was inoculated, and, made secure from the attacks of the dreaded scourge, back he fared to Virginia and Mary Ambler.

And Marshall made love as he made war, with all his might. A very hurricane of a lover he must have been; for many years afterward he declared to his wife's sister that "he looked with astonishment at the present race of lovers, so totally unlike what he had been himself."⁵³¹ In a touching letter to his wife, written almost half a century later, Marshall thus recalls the incidents of his courtship: —

⁵²² Marshall to his wife, *infra*.

⁵²³ Marshall could have had at least one year at William and Mary, for the college did not close until June, 1781. Also he could have continued to attend for several weeks after he left in June, 1780; for student John Brown's letters show that the college was still open on July 20 of that year.

⁵²⁴ County Court Minutes of Fauquier County, Virginia, 1773-80, 473.

⁵²⁵ *Autobiography*.

⁵²⁶ Marshall, with other officers, did go to Philadelphia in January or February of 1777 to be inoculated for smallpox (Marshall to Colonel Stark, June 12, 1832, supporting latter's pension claim; MSS. Rev. War, S. F. no. 7592, Pension Bureau); but evidently he was not treated or the treatment was not effective.

⁵²⁷ First, the written permission to be inoculated had to be secured from all the justices of the county; next, all the neighbors for two miles around must consent – if only one of them refused, the treatment could not be given. Any physician was fined ten thousand dollars, if he inoculated without these restrictions. (Hening, ix, 371.) If any one was stricken with smallpox, he was carried to a remote cabin in the woods where a doctor occasionally called upon him. (La Rochefoucauld, iii, 79-80; also De Warville, 433.)

⁵²⁸ Horses were very scarce in Virginia at this time. It was almost impossible to get them even for military service.

⁵²⁹ *Southern Literary Messenger* (quoting from a statement by Marshall), ii, 183.

⁵³⁰ Mrs. Carrington to her sister Nancy; *Atlantic Monthly*, lxxxiv, 547.

⁵³¹ *Ib.*, 548. A story handed down through generations of lawyers confirms Mrs. Carrington. "I would have had my wife if I had

"I begin with the ball at York, and with the dinner on the fish at your house the next day: I then retrace my visit to York, our splendid assembly at the Palace⁵³² in Williamsburg, my visit to Richmond where I acted Pa for a fortnight, my return the ensuing fall and the very welcome reception you gave me on your arrival from Dover, our little tiffs & makings up, my feelings while Major Dick⁵³³ was courting you, my trip to the cottage,⁵³⁴ the lock of hair, my visit again to Richmond the ensuing fall, and all the thousand indescribable but deeply affecting instances of your affection or coldness which constituted for a time the happiness or misery of my life and will always be recollected with a degree of interest which can never be lost while recollection remains."⁵³⁵

When he left the army in 1781, Marshall, although a member of the bar, found no legal business to do.⁵³⁶ He probably alternated between the Oak Hill plantation in Fauquier County, where his help was sadly needed, and Richmond, where the supreme attraction drew him. Thus another year wore on. In this interval John Marshall engaged in politics, as was the custom of young gentlemen of standing and ambition; and in the fall of 1782 was elected to the House of Delegates from Fauquier County.⁵³⁷ This honor was a material help, not only in his career, but in his suit for the hand of Mary Ambler.

Also, membership in the Legislature required him to be, where his heart was, in Richmond, and not two months had John Marshall been in the Capital as a member of Virginia's Legislature when he was married. "In January [3d] 1783," writes Marshall, "I intermarried with Mary Willis Ambler, the second daughter of Mr. Jacquelin Ambler, then Treasurer of Virginia, who was the third son of Mr. Richard Ambler, a gentleman who had migrated from England, and settled at York Town, in Virginia."⁵³⁸

The Ambler abode in Richmond was not a romantic place for the wedding. The primitive town was so small that when the Ambler family reached it Eliza exclaimed, "*where*

had to climb Alleghany's skulls and swim Atlantic's blood" the legend makes Marshall say in one of his convivial outbursts. (The late Senator Joseph E. McDonald to the author.)

⁵³² "The Palace" was a public building "not handsome without but ... spacious and commodious within and prettily situated." ("Notes on Virginia": Jefferson; *Works*: Ford, iv, 69.)

⁵³³ Richard Anderson, the father of the defender of Fort Sumter. (Terhune: *Colonial Homesteads*, 97.)

⁵³⁴ A country place of Edward Ambler's family in Hanover County. (See Pecquet du Bellet, i, 35.) Edward Ambler was now dead. His wife lived at "The Cottage" from the outbreak of the war until her death in 1781. (*Ib.*, 26; and Mrs. Carrington to Mrs. Dudley, Oct. 10, 1796; MS.)

⁵³⁵ Marshall to his wife, Feb. 23, 1826; MS.

⁵³⁶ Most of the courts were closed because of the British invasion. (Flanders, ii, 301.)

⁵³⁷ *Infra*, chap. VI.

⁵³⁸ *Autobiography*.

Конец ознакомительного фрагмента.

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