In Celebration of the United States Constitution

By
The Honorable Harry L. Carrico
Chief Justice of the Supreme Court of Virginia

It is my pleasure to join you in this program celebrating the Bicentennial of the United States Constitution. It is a remarkable document. Most of the nations of this world live under constitutions that are less than 30 years old. Yet ours has survived for two whole centuries and gives promise of being around for at least two hundred years more.

To what does the Constitution owe its longevity? Some scholars contend that the durability of the Constitution is due to the fact it is rooted in the will of the people. Others argue that the Constitution has survived so long because it derives from a higher law.

This latter concept is predicated on the view that there are certain principles which prevail because of their eternal value, regardless of what political force happens to be exercising authority at any given moment. An ancient philosopher expressed this idea when he said, “True law is right reason, harmonious with nature, diffused among all, constant, eternal.” He also said that, “We are born for justice, and right is not the mere arbitrary construction of opinion, but an institution of nature.”

A decade before the Philadelphia Convention of 1787 ever convened, Thomas Paine called for a conference to frame what he called a “Continental Charter”, which he envisioned as reflecting a higher law. He said, “Let (the Charter) be brought forth (and) placed in the Divine law, the word of God: let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy,... in America the law is king.”

Program Chairman Jennings H. Flathers, Chief Justice Harry L. Carrico, Society President H. Gary Heath.

Working Words
But in my opinion, these matters are much too abstract to explain the endurance of the Constitution. To me, the durability of the Constitution lies in what it means. And what does it mean? The answer I think is in the Preamble. Have you read the Preamble lately? Every American should know it by heart. Listen for a moment:

“We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

Beautiful words aren’t they? But they are working words, too, making the Constitution a living document. Therein, to me, is the real meaning of the Constitution and the key to its enduring strength.

How does the Constitution work for us? Remember the part of the Preamble which says that one of the reasons for the Constitution’s adoption was to secure “the blessings of liberty”. What this means is that, as Americans, our freedom is assured and our basic rights are guaranteed.

How wonderful is our freedom!

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How great are our rights! We can assemble, as we do here, without anyone’s leave. We can say what we want, write as we wish, and worship the way we please, all without fear of governmental reprisal. We can select our own leaders, petition for the redress of grievances, remain free from unreasonable searches and seizures, stand upon a presumption of innocence, demand trial by jury, and insist upon the aid of counsel, all as a matter of course. And we take for granted that we can travel where we will, work at what we might, and marry whom we choose. In short, we truly live in freedom.

Law of the Land

All this is true because, although born in rebellion, our freedom has matured and flourished under the protection, not of mere military might, but of a rule of law. And it is the Constitution which, in word and in fact, has made this rule “the supreme Law of the Land”.

But how did the Constitution achieve this position of pre-eminence? It was not always an object of reverence and respect. Indeed, in its infancy, it was an object of ridicule, seemingly destined for oblivion.

The simple truth is that while James Madison, with his authorship, may have given the Constitution a body, and George Mason, with his insistence upon a Bill of Rights, may have given it a heart, John Marshall, with the use of his brilliant analytical mind, gave it a soul and made it the greatest political document the world has ever known.

John Marshall’s Contribution

And so, as we celebrate the Bicentennial of the Constitution, we should also pay homage to John Marshall, for without his tremendous contribution to constitutional history, we might have nothing to celebrate.

Most Americans think of John Marshall only as a judge. But before he assumed that role, he was a dedicated soldier of the Revolution, a skilled practitioner of the law, a successful diplomat, a respected legislator, and a distinguished Cabinet member. The full story of his life is fascinating. Hear some of the details.

John Marshall’s birth at Midland on September 24, 1755, and his childhood in Fauquier County are already familiar to you. Then, when he was nineteen, the first shots of the American Revolution were heard on the village green in Lexington. A few weeks later, a company of militiamen assembled here in Fauquier County in charge of Lt. John Marshall. He instructed the men in the manual of arms and encouraged them to follow him in joining the Minute Battalion, which was about to be formed.

Marshall’s war experiences carried him from the Battle of Great Bridge, near Norfolk in Virginia, to the Battles of Brandywine and Germantown, near Philadelphia, through the winter of 1777-78 in Valley Forge, to the Battle of Monmouth, N.J., on June 28, 1778. Although he stayed in the Army another year as a Deputy Judge Advocate, he engaged in no further fighting. But one significant aspect of his war experiences stands out: while at Valley Forge, he became part of George Washington’s command group and actually Washington’s protege, a fact that would affect the entire course of his life.

Leaving the Army in late 1779, Marshall journeyed to Yorktown, where his father was stationed. There he met Polly Ambler, whose family lived next door to his father. She later would become his wife, but first, he must make his fortune. He decided to study law and entered the College of William & Mary, where he came under the influence of George Wythe, America’s first and most outstanding professor of law. From Wythe, Marshall learned many of the basic principles he later put to use as Chief Justice of the United States.

Spending only a few months at William & Mary, Marshall returned to Fauquier in the summer of 1789 and was admitted to the practice of law on August 28. After the war ended, he moved to Richmond so, he said, he could practice in the State’s superior courts. It is just as likely, however, that the move was prompted by his desire to be near Polly Ambler, whose family had also moved to Richmond. He would wait until January 3, 1788, however, when Polly was still only sixteen, to make her his wife.

Law and Politics

Marshall soon became a successful member of the Richmond Bar. Recognized as a lawyer’s lawyer he argued cases for other attorneys in the State’s high courts. In addition, he represented prominent persons throughout the State, including George Washington and Thomas Jefferson, although Jefferson would later become his bitter political enemy.

Marshall also entered politics. He was elected to the House of Delegates and was then chosen by the House to
serve on the Privy Council, a powerful advisory body to the Governor. He retired from the House in 1785 to run for the Office of Attorney General, but he was defeated. He was elected again to the House of Delegates and was instrumental in securing a favorable vote in the House for the convening of a special convention to consider the ratification of the Constitution, which had been adopted in Philadelphia on September 17, 1787.

Marshall was elected as a Delegate to the Virginia Convention. The Convention met on June 2, 1788, and continued until June 25. Strong opposition, led by Patrick Henry, kept the question of ratification in doubt until the very end. Marshall was selected to debate Henry, a formidable task for anyone, but especially for one so young and inexperienced as Marshall. His success was reflected in the favorable vote for ratification, and his role in the Convention placed him in the forefront of Virginia politics and brought him national prominence.

Marshall did not seek another term in the House of Delegates at the next election. His services, however, were continually sought after. He rejected offers of appointment from President George Washington to be United States Attorney for Virginia, Attorney General of the United States, and Minister to France. Washington would leave the presidency without fulfilling a desire to place Marshall in high office.

Marshall, however reluctant he might have been to return to public service, could not long stay aloof. After the French Revolution, relations between France and the United States deteriorated. The excesses of the French Revolution frightened even France's warmest American friends, and the fears heightened when France began attacking American ships.

John Adams, who was President by this time, sought desperately to avoid war with France and attempted to settle matters through peaceful means. The political climate of this country made this effort extremely difficult. Fearful that the country would not approve of sending anyone as Minister to France, President Adams selected three persons, Charles Cotesworth Pinckney, Elbridge Guerry, and John Marshall, "to be jointly and severally envoy's extraordinary and Ministers Plenipotentiary to the French Republic." Although inclined at first to reject the appointment, Marshall finally accepted.

The three envoys would spend many frustrating, humiliating, and tiring months in France, ultimately becoming enmeshed in the infamous XYZ Affair. But War with France was averted and, important to this discussion, John Marshall, much to his own surprise, returned home a national hero.

Congressman John Marshall
Marshall returned to Richmond determined to resume his law practice and a normal life with his family. Soon, however, he was approached to run for Congress. He refused. George Washington, anxious to see Marshall in Congress, summoned him to Mount Vernon. On route, Marshall tore his only pair of trousers and had to borrow a pair from his host. He was first refused Washington's urging to run for Congress, but finally gave in when his former Commander-in-Chief appealed to his sense of duty.

Marshall was elected and took his seat in the House of Representatives on December 2, 1798. He quickly became a leader in the House. One of his floor speeches was described as "a perfect model of argumentative eloquence" and as one which "deserves to be ranked among the most dignified displays of human intellect."

Steps to Chief Justice
Shortly before Congress adjourned in May 1800, Marshall stopped by the War Department to inquire about a matter for a constituent. He detected a coldness in the Secretary of War, whom he considered a good friend. Much to Marshall's surprise, he learned from a clerk that President Adams had on May 7 nominated him to replace the incumbent Secretary of War. Marshall asked Adams to withdraw the nomination, but the President refused, and the Senate confirmed Marshall on May 9. Then, three days later, the Secretary of State resigned, and Adams nominated Marshall for that position. The Senate confirmed Marshall on May 13, and he willingly accepted this appointment, considering himself fitted for this position. He took office at an annual salary of $5,000, with a staff of nine persons, comprising the entire Department of State.

Marshall served as Secretary of (Continued on Page 4)
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State for ten months until John Adams left the presidency following his defeat for reelection. During his tenure, Marshall initiated a policy later to be enunciated in the Monroe Doctrine, telling foreign nations: “Don’t bother us, and we won’t bother you.”

Before Adams left office, he had one last important appointment to make. Oliver Ellsworth had been serving as Chief Justice of the United States, but he fell ill and resigned in December 1800. Adams offered the post to John Jay, who had been the first Chief Justice but who had resigned to become Governor of New York. When Jay refused reappointment to the Court, Adams asked Marshall to recommend someone. Marshall said he had no suggestion other than one Adams had rejected previously. Adams then said to Marshall, “I believe I must nominate you,” Adams made the nomination, the Senate unanimously confirmed Marshall on January 27, 1801, and he took his seat on February 4, 1801.

Constitutional Law

Thus began a brilliant judicial career unsurpassed in the history of American jurisprudence. During his career, Marshall took a document which Alexander Hamilton had described as “a frail and worthless fabric”, transformed it into a living, continuing Constitution of fundamental law, and adapted it “to the various crises of human affairs.” He took a court which had been “an object of derision, even contempt” and converted it into an equal partner in the tripartite arrangement so basic to our system of government. He took a federal judiciary which politicians had sought to make a subservient handmaiden of other branches of government and gave it the freedom and independence virtually essential to its existence.

All this Marshall accomplished with a deep sense of humility, an abiding air of modesty, and a noble character exceptional for its unpresumptuous simplicity. To these great attributes were added a superb intellect and a superior power of reasoning. Even more, Marshall was a prodigious worker, often turning out a greater number of opinions than all his associates combined. Without aid of legal precedent, but passionately motivated by a desire to see the new Constitution work and the infant nation survive, Marshall became the “exponent of the Constitution” and the father of American constitutional law.

With the facility of his fertile mind and the clarity of his bold pen, in one major opinion after another, Marshall established the Constitution as the Supreme Law of the Land and his Court as the final arbiter of that law. Early on, he postulated that America had founded a nation of laws and not of men, and he exalted the Constitution to the pinnacle of authority as the ultimate rule governing human affairs.

Above all else, Marshall believed the judiciary should be free and independent. In a letter to one of his associates, Justice Guerry, in 1821, he wrote:

“That in a free country with a written constitution any intelligent man would wish a dependent judiciary...would astonish me, if I had not learnt from observation that with many men the judgment is completely controlled by the passions.”

And in the very last opinion he wrote, he made a final observation about the independence of the judiciary. He said:

“In the excitement produced by ardent controversy, gentlemen view the same object through such a different media that minds not infrequently receive therefrom precisely opposite impressions. The court, however, must see with its own eyes, and exercise its own judgment, guided by its own reason.”

“An Adherence to Virtue”

In his long career as Chief Justice of the United States—spanning 34 years—John Marshall always strove for excellence; he sought to promote respect for the law and the courts; and he continuously endeavored to advance the concept of human dignity. His ideal of government was noble, almost reverent. He once said that “The principles of good government are...a strict observance of justice and good faith, and a steady adherence to virtue.”

Marshall hoped upon his retirement to return to the county of his birth—Fauquier. Plans were made to build an addition on the home of one of his sons for his use. But his hopes would not be fulfilled. One Sunday afternoon in June 1835, while walking from his Richmond home to visit Polly’s grave nearby, he collapsed from exhaustion. He was carried to Philadelphia for treatment and died there on July 6, 1835.

To gauge the extent of John Marshall’s legacy, one need only guess what this country would have become without him. That we are a nation governed by a rule of law because he lived, there can be no doubt. Oliver Wendell Holmes said, “If American law were to be represented by a single figure, skeptic and worshipper alike would agree without dispute that the figure could be but one alone, and that one John Marshall.”

Marshall Portrait
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The report of the committee appears in the court minutes of April 26, 1859. A contract had been made with artist William D. Washington to paint the portrait and the Court ordered that the report and contract be ratified and adopted and, further, the committee was instructed to inspect the portrait upon presentation by Mr. Washington.

William D. Washington was born in Clarke County, but was a resident of Fauquier. He did several paintings which became more or less famous. He also held a chair at the Virginia Military Institute for some years. A copy of his Marshall portrait was made by the late Richard N. Brooke and hung in the United States Capitol.

Upon completion the portrait was accepted by the Court on June 27, 1859 and an order entered in the minutes:

“The report of the Committee in the matter of the portrait of Chief Justice John Marshall, having this day returned, the Court, on consideration thereof doth unanimously accept the said portrait and doth order that the sum of Five Hundred Dollars be levied on the county in favor of William D. Washington for the same.”

Present:—Richards Payne, Presiding Justice
James E. Murray
Joseph S. Reid Associates
John P. Ashby

—Edited by Isabelle S. Palmer from the Fauquier Historical Society Bulletin No. 2, published July 1922.
Annual Meeting

One hundred and sixty-six members and guests attended the annual dinner meeting in the Federal Room at Airlie on June 16. Cocktails were served at 6:30 followed by a fine dinner.

Nominating committee chairman J. H. Bartenstein presented the following slate for the board of directors: Mrs. Patricia K. Beal, C. Irvin Garrett, H. Lynn Hopewell, Mrs. Michael G. MacDonald, Michael R. Matthews, A. Cowper Smith, Mrs. Anne Brooke Smith, and Mrs. Donald A. Smith. The addition of Michael Matthews to the board initiates a new policy of the Society to have the input of a high school student in the management of the Society.

Finance committee chairman Lenwood Embry made the following suggestions for fundraising: A Lecture series, the formation of a gifts group to solicit funds and a dinner auction.

Newsletter editor Isabelle Palmer apologized for the delay in getting-out the newsletter. Newsletter staff members Anne B. Smith and John Toler were cited for their exceptional help with the publication.

Membership chairman Adelaide Neily reported 400 members currently.

Museum chairman Lucy Jones reported the acquisition of a new visitor's register and IDs for workers, a display mannequin and a memorial record book for honorees and donors. Among new assessments are the Gilmer Maps and an 1803 Decatur presentation sword.

President Gary Heath reported on the preservation work at the museum. The stone wall around the courtyard and exercise yard has been completed. A stone mason will be hired to point-up the brick on the jailer's residence and as soon as we obtain the permission of the County government the slate roof of the cell-block will be completely replaced.

The preservation work will be covered by a $25,000 grant and an additional grant of $10,000. As a part of this work the Society has retained an architectural preservationist to advise the board.

Jennings Flathers, program chairman, then introduced Chief Justice Harry L. Carrico of the Supreme Court of Virginia who spoke on John Marshall and the Constitution.

Speaker is Fauquier Native

The Honorable Harry L. Carrico, Chief Justice of the Supreme Court of Virginia was born on September 4, 1916, the son of William Temple and Nellie Willett Carrico of Casanova. His wife, Betty Lou Peck, whom he married in 1940, passed away on February 22, 1987 and is interred in the Carrico family plot in the Warrenton Cemetery.

The Chief Justice became a member of the Supreme Court of Virginia on January 30, 1961 and Chief Justice on February 1, 1981.

He was educated in Fairfax County public schools and earned his J. D. from George Washington University in 1942; he holds honorary LL.D degrees from University of Richmond, 1973 and George Washington University, 1987.

He has served as judge in the Trial Justice Court (now General District Court), Fairfax County, 1943-51—with time out for duty with the Naval Reserve during World War II. He entered private practice from 1951-56. This was followed by his service as judge in the Sixteenth Judicial Circuit from 1956-61.

Chief Justice Carrico became a member of the Judicial Council of Virginia in 1970, and its chairman in 1981. He is an honorary member of the Order of the Coif and Omicron Delta Kappa, and is a member of the Phi Delta Phi Legal Fraternity.

His honors include the George Washington University General Alumni Distinguished Achievement Award, 1972 and the Law Alumni Professional Achievement Award, 1981. He is a member of the Board of Directors and First Vice President, Conference of Chief Justices, 1985—present.

Photo by John T. Toler

Chief Justice Carrico chats about "old times" in the Fairfax Hunt with Meade Palmer who foxhunted with the Chief Justice's father in the 1930s.

Please Return To:
The Fauquier Historical Society, Inc.
P.O. Box 675
Warrenton, Virginia 22186

Name: ____________________________

Address: __________________________

Phone: ____________________________

Check appropriate membership category: ( ) - Sustaining - $25 and over
( ) - Individual or family - $10
( ) - Contributing - $15
( ) - Student - $3
( ) - Business - $25

How would you be willing to help the Society this year?

(5)
Can You Help?


HALEY. Mrs. Sibyl Northcutt, 508 Coke St., Yoakum, TX 77995 needs info on David Haley who lived in Fauquier in 1815. Signed marriage contract for daughter Anna to m. William Garrett in October 1815.

KIRBY. Jeanne Kirby, P.O. Box 31, Grottoes, VA 24441 is seeking info on Richard Kirby. Son George William Kirby b. 3 Mar 1839 near Warrenton.

TUSSEY. W. Glenn Tussey, 2370 Earlysville Rd., Earlysville, VA 22936 is trying to locate burial place of Private David Tussey, Company H, 48th Regiment, North Carolina Infantry (State Troop). He died "of disease" in Warrenton 3 Oct 1862.

THOMPSON: Arthur F. Thompson, 9810 Denali Rd., N.E., Albuquerque, NM 87111 is enlarging the genealogical record of Jesse Thompson who lived most, if not all, of his life in Fauquier and died here 1803-1805. Was on rent rolls of Leeds Manor 1770s-1780s. Would like a copy of William and Mary College Quarterly Historical magazine, First Series. Will pay costs.

PICKETT. Member Dr. Richard F. Selcer, 3932 Stonehenge Rd., Ft. Worth, TX 76109 is working on biography of Gen. George Pickett of Civil War fame. Would like info on the Pickett family of Fauquier when they were known as the Fighting Picketts of Fauquier.

Society members and guests bade a very fond farewell to secretary Kathy Bowling-Shade who will be moving to Pennsylvania. Kathy has served as secretary from 1980-1982 and again from 1986-1987. It was at her suggestion, in 1980, that the annual meeting has been held at Airlie. We will miss you Kathy, and our best wishes go with you!

Lecture Series

The first lecture of a series of three will be held in the John Barston Payne Building at Courthouse Square, Warrenton, December 16 at 7:30 p.m.

Eugene M. Scheel, cartographer, historian and author of The Civil War in Fauquier County will be the speaker.

Warrenton Rifles

Anyone having information on the Warrenton Rifles of 1861-1865 or is interested in participating in a Re-enactment Group of the Warrenton Rifles is invited to contact James Byrne, 548 Hunton St., Warrenton, VA 22186. Daytime phone: 202-862-8214; evening phone: 703-347-2856.

The Fauquier Historical Society

P. O. Box 675, Warrenton, VA 22186

Address Correction Requested

CORRECTION

Vol. 9, No. 2, Spring 1987, Page 2, column 2: Daniel Flowererres should read Daniel Flowerree.