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David Robarge. *A Chief Justice's Progress: John Marshall from Revolutionary Virginia to the Supreme Court.* Contributions in American History, No. 185. Westport, Conn., and London: Greenwood Press, 2000. xxv + 364 pp. $65.00 (cloth), ISBN 978-0-313-30858-1.

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Seeing John Marshall Without Hindsight

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In February, 2001, we will mark the bicentennial of John Marshall's becoming the fourth Chief Justice of the United States. Marshall's admirers often treat him as if he were not the fourth but the first Chief Justice – or, at least, the first Chief Justice who mattered. Not only does their acclaim for Marshall's tenure and achievements eclipse the pre-Marshall Court[1] – it also has obscured our understanding of the pre-Court John Marshall.

By contrast, David Robarge's new book refuses to view Marshall's first 45 years through the lens of his service on the Court; instead, it calmly and lucidly explores Marshall's life for the subject's own sake, seeing him without hindsight. (Robarge, a historian with the Central Intelligence Agency, originally wrote this book as his Ph.D. dissertation in hsitory at Columbia University, under the guidance of Eric L. McKitrick.) Grounded in extensive research in both primary sources and the vast historical and legal literature, this book ranks high among the recent outpouring of monographs dealing with Marshall and the Marshall Court.[2] Robarge demonstrates the need for what he terms a "half-life" (pp. xviii, xx) focusing on Marshall's pre-Court career – a need this book fills superbly (even though its title inadvertently prompts the reader to see Marshall's first 45 years as a progress to the Chief Justiceship).

Beginning with President John Adams's appointment of Marshall to the Court in January 1801, the prologue (pp. xiii-xxv) uses that vignette as a jumping-off point, both to explain the need for a "half-life" of Marshall and to situate this project in Marshall historiography. Through the eight brisk, accessible chapters that form the body of the book, Robarge's focus is on the evolution of John Marshall as a politician.[3]

Born on the Virginia frontier, Marshall was a product of the intersection of the frontier with the established forces guiding Virginia society. He was born and raised a member of the gentry (that layer of society just below what might be termed the aristocracy of colonial Virginia), which helped dominate the colony's economic, social, and political life. Marshall's father was the most important influence on his son's evolving mind and character. Shrewd, ambitious, and able, Thomas Marshall was a planter, a soldier in the Continental Army, and a well-regarded politician esteemed by his friends and neighbors. Thus, he was both a role model for and an active mentor to his son.

With the outbreak of hostilities between the American colonies and Great Britain, the young John Marshall enlisted in the Continental Army alongside his father, launching a military career devoted to American independence. Robarge rightly stresses (pp. 21-50) the profound effect of Marshall's military service on his coalescing political views. Enduring the greatest hardships that the Revolution imposed on the ramshackle Continental Army, he saw firsthand the difficulties of waging war with unseasoned, undisciplined militia forces and the desirability of a skilled, professional soldiery under national control and well-equipped by a strong general government. Marshall's war experiences helped to make him a firm nationalist, as did his lifelong admiration for George Washington, whose biography he eventually wrote.

Various factors prompted Marshall to pursue a legal career – his father's urgins; his own inclination to law

and his antipathy to the life of a planter; and his experience conducting courts-martial in the winter and spring of 1778-1779 at Valley Forge. Marshall was one of the first Virginians to base his legal training on college courses – specifically, three months of law lectures offered in 1780 by George Wythe, the first Professor of Law and Police at the College of William and Mary. As Robarge notes, Wythe's plan of legal education "combin[ed] theory and pratice and consist[ed] of readings and lectures supplemented with moot courts and mock legislative sessions" (p. 55). He adds, "In just three months, [Marshall] could have received only an introduction to the theory and substance of the law.... For the most part, Marshall learned his law while he practiced it" (*id.*). In an irony that many readers will savor, Governor Thomas Jefferson approved Marshall's application for admission to the Virginia bar. As a lawyer, Marshall was more a skilled courtroom pleader who emphasized forensic ability (like Patrick Henry) than a studious attorney inclined to scholarly pursuits and the deployment of legal learning (like Wythe or Jefferson). For most of the 1780s, he combined law practice (specializing in actions to recover debts and to decide disputed titles to real estate) with forays into local and state politics. Allying himself with James Madison (another irony) against the coalition led by Patrick Henry and its debtor-based political agenda, Marshall increasingly defined himself as a nationalist and a spokesman for the interests of the Virginia-Kentucky frontier. He often also expressed disillusionment with the want of public spirit of many of his colleagues and with Virginia's faltering commitment to national interests. Also in the early 1780s, Marshall wooed and wed Mary "Polly" Ambler, eleven years his junior, and, after the mid-1780s, increasingly frail. The demands of caring for his wife and family prompted Marshall to withdraw from public life at regular intervals through the 1780s and 1790s.

Dismayed by the Confederation's growing difficulties, and appalled by debtors' insurrections from New England down to Virginia itself, Marshall embraced the cause of national constitutional reform and the promise offered by the proposed Constitution of the United States. Like many previous Marshall biographers (notably Albert J. Beveridge), Robarge highlights Marshall's able supporting role as a pro-Constitution delegate to the 1788 ratifying convention in Richmond. Unlike some hagiographic treatments of Marshall, Robarge does not reduce Marshall's role in that convention to delivering a series of set-piece speeches presaging his opinions as Chief Justice. Following ratification, Marshall had to navigate increasingly troubled political waters in Virginia. Most of the state's politicians moved into opposition to the Washington Adminsitration's fiscal policies; thus, Marshall became more and more prominent among the dwindling band of Virginia's Federalists –even though, but 1791, he had retired from public life to devote himself to his wife, his legal practice, and his speculations in western lands.

>From 1791 to 1797, however, Marshall shuttled regularly between private and public life. The demands of his growing law practice clashed with his political sympathies, for he represented Virginia debtors seeking to evade the claims of American and British creditors or to defend Virginia statutes easing debtors' burdens in the face of the Constitution and national treaties. In 1796, he argued his only case as an attorney before the U.S. Supreme Court – *Ware v. Hylton*, which he lost decisively. While he was honing his skills as a trial and appellate lawyer, he also was returning to prominence as a Southern Federalist, emerging as second only to Washington himself. Indeed, as the Federalists increasingly became a regional rather than a national political force, Marshall's standing helped vault him into national prominence.

Thus, in 1797-1798, when he was named, along with Charles C. Pinckney and Elbridge Gerry to what became the infamous XYZ Mission, the appointment launched a vital episode in his life – cementing his national reputation, bolstering his status as a Federalist, and above all commending him to the attention of President John Adams, a man not given to undue fondness for Virginians. Following his return to America, Marshall continued to rise within the Federalists' fractious and disintegrating ranks, esteemed by both High Federalists and Adams Federalists yet unswerving in his support of President Adams. Following the President's purge of High Federalists from his Cabinet in 1800, he named Marshall to the key office of Secretary of State. Then, in early 1801, following the news of the resignation of Chief Justice Oliver Ellsworth and John Jay's brusque rejection of his attempt to reappoint the New Yorker to the Court, Adams turned once more to Marshall. Robarge concludes Chapter Seven at the same point at which he began his prologue. By the time we reach this point, Robarge has so deftly guided us through Marshall's life and career that we take his appointment to the Court not as the denouement that the conventional wisdom would have led us to expect, but as the launch of a new phase of a political career interesting in its own right. Robarge's final chapter (pp. 247-322) presents a clear and engaging thematic summary of the high points of Marshall's Chief Justiceship, linking them to the themes that Robarge discerns in