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## John Marshall

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# BAR BRIEFS

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—By—

## STATE BAR ASSOCIATION OF NORTH DAKOTA

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### JOHN MARSHALL

Not far from the capitol building in Washington, where laws are passed for 126 millions of people, has been erected a new building—a Temple of Justice for the Supreme Court of the United States, costing many millions of dollars.

It is a new home for the Court, solid in its foundations, and in its magnificence it typifies the growth of the country. From its old rooms the court has moved into its new quarters. Marvelous in its architecture, in its beauty it is a monument to the Nation.

Here the Supreme Court passes on the laws made by Congress. It is dedicated to the people. Its power is riveted in the Constitution of the United States. That Constitution has stood the test, the development, the changes in the habits of millions of people.

Its basic principle rests upon the solid foundations of "Equal rights for all and special privileges for none." It keeps before it what the people ordained when they adopted a written Constitution; "We, the people of the United States, in order to form a more perfect Union, establish justice, ensure domestic tranquillity, 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."

When that Constitution was adopted, we were a small country. It has been changed from time to time by amendments. It is the people's Constitution and can be changed by the people. New laws affecting life, liberty and the pursuit of happiness, the result of the growth and advancement of

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the people, demand that the Constitution shall march to meet conditions never dreamed of in 1787 and 1789.

There was a great struggle to establish this instrument, to guide, control and protect the American people.

Out of that great contest which brought about a ratification of new power between conflicting forces of jealousy and of greed, nine of the original thirteen states gave it life.

One of the great characters that appeared on the threshold of the adoption of the Constitution was John Marshall of Virginia. He loved the Union and as a soldier during the Revolutionary War learned that thirteen separate states were powerless to protect the interests of a great people. He had seen at Valley Forge the weakness of the system when hungry soldiers suffered for lack of food and clothing. Without money or the power to raise money, he learned that thirteen colonies contained within their own weakness the power of destruction.

He believed therefore, in a strong government and with Washington and Hamilton he fought in the legislatures and conventions of Virginia for its ratification. A Federalist and later a Whig, he knew and said, "I was in the habit (during those days) of considering America as my country and Congress as my government." He had a great training as soldier and legislator. He had crossed swords with Talleyrand in the field of diplomacy in France. Honest, with lofty purpose, he clung to the idea that the United States was a Union of States, and therefore a great nation.

Appointed Chief Justice of the Supreme Court by President Adams, he served for nearly 35 years for the people. The great opinions that he wrote construing the Constitution, made out of it and developed, a liberal Constitution. In one of his opinions he said, "We think a sound construction of the Constitution must allow the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

He may have had in mind that under Section 8, of the powers of Congress it had this power, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

During his 34 years as Chief Justice he established four great principles which underlie our whole constitutional system, and which constitute its main support:

1. The supremacy of the national government over the states and all their inhabitants.
2. The supremacy of the Constitution over every department of government.
3. The absolute freedom of trade and intercourse between all the states.
4. The inviolability of private contracts.

The long line of opinions that he wrote construing the provisions of the Constitution, without citation of cases, have become maxims in the jurisprudence of our country, and when a great civil war would have destroyed the Union, these truths prevailed as much on the battle-

field as in the courts, and Lee, at Appomattox, surrendered not so much to Grant as to the great principles which Marshall had laid down which, today, say to all the world that the United States is a nation and has the power by law to control the industrial world, to feed the hungry, and preserve the blessings of liberty and promote general welfare for the people of this great country.

A great statesman said when he passed away, "He, Marshall, was supremely fitted for high judicial station." He was born to be Chief Justice.

The Supreme Court of the United States has before it great questions to decide. Let every good American believe that that Court will hew to the line, let the chips fall where they may.

M. A. HILDRETH,  
President North Dakota Bar Association.

### THE 1936 ANNUAL MEETING

The next annual meeting of this Association will be held at Fargo on August 17th and 18th, 1936, according to a decision of the Executive Committee. Hon. William L. Ransom, President of the American Bar Association, has been invited to deliver an address at this meeting, and President Hildreth is assured that if it is possible to make the arrangement, the invitation will be accepted. Undoubtedly an unusually large number of lawyers, both from this state and from adjoining states, will avail themselves of the opportunity to hear and to welcome a great lawyer and speaker. The meeting has been arranged for an earlier date than formerly in order that it may take place before the meeting of the American Bar Association at Boston beginning on August 24th, 1936.

### THE AAA DECISION

As we go to press the decision of the United States Supreme Court in the matter of the validity of the Agricultural Adjustment Act is before us. The great lawyers and statesmen of the country are conjecturing as to its effects and consequences insofar as the New Deal is concerned. Far be it from us to voice an opinion until wiser heads proclaim.

The gist of the main opinion seems to be contained in the following excerpts:

"The act invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production. A matter beyond the powers delegated to the federal government."

"'Congress is not empowered to tax for those purposes which are within the exclusive province of the states.' *Gibbons v. Ogden*, 9 Wheat. 1199."

"But appropriations and expenditures under contracts for proper governmental purposes cannot justify contracts which are not within federal power, and contracts for the reduction of acreage and the control of production are outside the range of that power."

"\* \* \* As an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for non-federal purposes have been enacted and carried into effect.' As the opinion points out, such expenditures have not been challenged because no remedy was open for testing their constitutionality in the courts."

The only comment that Bar Briefs will make is that, in view of the pecuniary and personal interest of the majority of the residents of