

MARYLAND  
IN  
NATIONAL POLITICS

FROM  
CHARLES CARROLL  
TO  
ALBERT C. RITCHIE

By J. FREDERICK ESSARY

*Author: Covering Washington, Washington Sketch Book,  
Reverse English, Life of Isidor Rayner, Your War  
Taxes, Ships (with B. N. Baker)*



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## LUTHER MARTIN

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From the very beginning of our life as a nation, Maryland has enjoyed rare distinction as a producer of great lawyers and profound jurists, a distinction worthily gained in the first half of the last century and just as worthily maintained ever since.

Other States may have given to the republic a longer line of diplomatists, of statesmen and of executives, eminent or even pre-eminent in their day. As a matter of fact, many have. Yet none can lay claim to a bar outranking that of Maryland in brains, in brilliance and in learning, particularly from the time of the convention that framed the Federal Constitution until the beginning of the Civil War.

During those six decades there lived and flourished a celebrated group of Maryland lawyers, a group now recognized far and wide as powerful factors in the history of that eventful period. For instance, Robert H. Harrison, Thomas Johnson, Samuel Chase, Gabriel Duvall and Roger B. Taney, members of the Maryland bar, sat upon the Supreme Court of the United States; Robert

Smith, William Pinkney, William Wirt, Roger B. Taney, John Nelson, and Reverdy Johnson were Attorney-Generals in as many Cabinets, while Philip Barton Key, John Thompson Mason, Charles Lee, William H. Winder, Robert Goodloe Harper, Jonathan Meredith, John Johnson, Arthur Scharf, James Winchester and a host of others were brilliant stars in the State's legal firmament.

In Luther Martin, however, Maryland presented to the country a figure as picturesque, and a lawyer as accomplished as any who ever practiced before an American court. He was not as cultured as Wirt or Pinkney, nor as balanced as Chase or Taney, nor even as polished as Reverdy Johnson, yet he had a mind as finely trained and a grasp of the law as sweeping as had any practitioner at the bar of his State, whether before him or after him.

And it was as a lawyer and nothing else that Luther Martin achieved towering fame. He held a few political offices, it is true, but all of them were in line with his profession. For twenty-nine years he was Attorney-General of his State, and for a very brief period he was Chief Justice of the Court of Oyer and Terminer. Add to that a brief service in the Continental Congress, and an-

other brief service as a Maryland delegate in the Constitutional Convention, and the whole story is told of Martin's career as a public official.

He left no record of note in the Continental Congress, but his course in the Constitutional Convention gave him a station among the strongest men in that body. His determined championship of the States' rights cause, ending in the utter defeat, under his leadership, of the Virginia or Randolph plan for the federal union, introduced him as a national character and gave him identity from end to end of the country.

Martin's chief place in American history, however, rests upon his appearance in two of the most dramatic legal battles ever waged upon this continent. He was chief counsel for the respondent in the impeachment of Samuel Chase, Associate Justice of the Supreme Court of the United States, and was the ablest defender of Aaron Burr when the former Vice-President was arraigned at Richmond, Va., on the charge of high treason. And in each of those cases this Marylander triumphed, though opposed by an array of legal talent as formidable as was ever assembled before a court of justice in this or any other country.

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Luther Martin's early life was as humble and unpromising as was that of any American youth ever sent forth from parental roof without patrimony, without influential friends and without prospects. He was born in Brunswick, N. J., in 1744, was graduated from Princeton College in 1766, and was then ushered out into the world to make of himself whatever he might. He taught school for a while in Queenstown, Md., studied law, and was admitted to the bar at Williamsburg, Va., in 1771. Thereafter he returned to the Eastern Shore of Maryland, and his successes in court were so pronounced that in 1778 he was appointed Attorney-General of the State. A few years later he was temporarily relieved of his duties that he might participate in the formation of a perpetual union of all the States.

Martin had already attended two sessions of the Continental Congress, then operating under the Articles of Confederation, and had become fixed in his conviction that the unstable form of government then in effect must be supplanted by a stronger union, else the whole confederacy would collapse. But as a member of the Constitutional Convention he stood like a Gibraltar against any scheme of federalism that tended to swallow

up the smaller States or that in any degree would deprive them of their sovereignty. His superb fight against the Virginia proposal, a proposal which he conceived to be in direct opposition to the rights of the States, is most interestingly told by Judge Ashley M. Gould in his "Sketch of Luther Martin." In this Judge Gould says:

"In the Constitutional Convention, Martin belonged pre-eminently to the class of excellent critics, and from the ninth day of June, when he presented his credentials, up to the day when he went back to Maryland vowing that he would have nothing more to do with such high-handed proceedings, his position was one of able and aggressive opposition to any scheme which had for its object the establishment of a highly centralized and puissant national government. He was the representative of one of the smaller States, and with quick precision saw the baleful results to those States which would follow the adoption of what history knows as the Virginia plan, introduced by Edmond Randolph, the Governor of the State. It will hardly be contended, at this time, by the most ardent advocates of a centralized and powerful national government that the Virginia plan, with its practical elimination of the smaller States from the exercise of federal power, its provision for setting aside by the national legislature of such State laws as it might deem unconstitutional, and its executive to be chosen by the same national legislature, would have stood the test of time; indeed, that it would have endured longer than that "rope of sand," the Confederation. And yet, one who studies even the brief and practically surreptitious journals of that convention must conclude that the present Consti-

tution would never have been evolved from its labors, had it not been for the leadership of Luther Martin, aided by Yates and Lansing, of New York, in opposition to the scheme of Edmond Randolph, backed, as it was, by the Father of the Country himself."

It was this victory, monumental in its consequences, that marked Luther Martin as a fighter of the highest order. Moreover, it brought home to all Marylanders the fact that they had among them a leader in whom they might safely entrust their fortunes as a State. No political office in the gift of the Commonwealth was beyond Martin at that time, yet there was not one that tempted him for one fleeting moment. Whatever ambition for glory or aspiration for power within his breast centered about his profession, and that alone. He resumed his duties as Attorney-General, engaging all the while in a wide and lucrative private practice. Nothing then or thereafter could lure him away from the law.

While in the Continental Congress, Luther Martin had as a colleague from Maryland Samuel Chase, one of the foremost lawyers of his time. When the Maryland convention was called to ratify the Constitution, Martin and Chase were again associated as delegates and as opponents to that ratifica-

tion. Seven years afterwards these two men were the leading figures, one as the accused and the other as his counsel, in the greatest of the early impeachment proceedings under the Constitution of the United States.

Chase, in the meantime, had been appointed an Associate Justice of the Federal Supreme Court by President Washington. In earlier days he had been a bitter anti-Federalist, and as such had joined with Martin in condemning the Constitution. As a judge, however, Chase was now under popular indictment as an uncompromising Federalist, and as a staunch believer in the jurisdiction of the judiciary over the legislative and executive departments of the federal government. Vigorously supporting this indictment was the administration of Thomas Jefferson, led by the President himself.

The strong current of hostility to Associate Justice Chase, intensified by the Federalist leaning of the whole Supreme Court, resulted in 1805 in a motion in the House of Representatives for the impeachment of the Marylander. The specific grievance was a charge delivered by the jurist to a grand jury in Baltimore, in which he bitterly arraigned the administration of Jefferson.

No sooner had the House adopted the im-

peachment resolution than Luther Martin volunteered his services to his old friend, Chase. Martin twenty years before had received his appointment as Attorney-General at the hands of Chase. He had tried hundreds of cases before the Justice when the latter sat on the Maryland bench, and had been associated politically with the accused from the beginning of his career. Moreover, Martin was an implacable hater of Jefferson, just as Jefferson was the irreconcilable foe of Chase. The Maryland lawyer therefore entered the impeachment case with the keenest enthusiasm.

The trial of the Associate Justice took place in the old Senate Chamber, the Senators assuming the oath as jurors, and Vice-President Aaron Burr sitting as the presiding judge. The entire membership of the House of Representatives attended in a body and was flanked by members of the Cabinet and by the Diplomatic Corps. The chief manager of the impeachment on the part of the House was John Randolph of Roanoke, and though but thirty-one years of age, he was the acknowledged leader of that body. Opposite Randolph sat Luther Martin, chief counsel for the accused, whom Henry Adams, in his "Life of Randolph" described

as the "most formidable of American advocates, the rollicking, witty, audacious Attorney-General of Maryland, boon companion of Chase and the whole bar; drunken, generous, slovenly, grand; bulldog of Federalism, as Mr. Jefferson called him; shouting with schoolboy's fun at the idea of tearing Randolph's indictment to pieces and teaching the Virginia Democrats some law."

As the famous trial closed, Luther Martin delivered his argument to the Senate, an argument that acquitted Chase and invited the enthusiastic plaudits of the whole country. That speech occupied almost two days in delivery and was perhaps the crowning effort of Martin's career. Of it Professor Adams says:

"If any student of American history, curious to test the relative value of reputations, will read Randolph's opening address, and then pass on to the argument of Luther Martin, he will feel the distance between show and strength, between intellectual brightness and intellectual power. Nothing can be finer in its way than Martin's famous speech. Its rugged and sustained force; its strong humor, audacity and dexterity; its even flow and simple choice of language, free from rhetoric and affectations; its close and compulsive grip of the law; its good-natured contempt for the obstacles put in its way—all these signs of elemental vigor were like the forces of nature—simple, direct, fresh as winds and ocean."

It is now a matter of common agreement that Justice Chase owed his acquittal to the effort of Luther Martin in his behalf. And the jurist never ceased to be grateful for the service. It is related, for instance, in the *American Law Review*, published in 1866, that some time after the impeachment Martin appeared before the district judge then sitting at Baltimore in a case with Justice Chase. On this occasion Martin, obviously drunk, assumed an insolent bearing towards the court that became intolerable. The district judge drew up a commitment for contempt and passed it to Chase for the latter's signature. Chase, after taking up the pen, threw it down, declaring: "Whatever may be my duties as a judge, Samuel Chase can never sign a commitment against Luther Martin."

Two years after the failure of the Jefferson administration to impeach Justice Chase the most memorable criminal trial in American history was staged at Richmond, Va. Aaron Burr, late Vice-President, was arraigned for high treason in levying war against the United States, and for a misdemeanor in organizing a military expedition against Mexico, a country with which we were then at peace. It was the same Burr

who had presided over the impeachment of Chase "with the dignity and impartiality of an angel, but with the rigor of a devil," regardless of the fact that he was even at that time a fugitive from justice for killing Alexander Hamilton.

The late Vice-President, "bankrupt in fortune and in political standing," moved mysteriously into the West after his retirement from office and immediately engaged in a conspiracy for the founding of a great empire in Mexico, himself the fancied Napoleon and his name to be the beginning of an American dynasty. To accomplish this Burr planned the capture of New Orleans and possibly the detachment of the Western States from the Union. It was an ambitious and fascinating dream, and as the arch-conspirator unfolded it to his confidantes he won many of them to his cause. Jonathan Dayton was drawn into it, as was Daniel Clark, General Wilkinson, a former military comrade, and Blennerhassett, an Irish gentleman who had acquired an island in the Ohio River, where he had built a palatial home.

And for a while the conspiracy developed ominously. It had appealed to the imagination of hundreds of restless men west of the Alleghanies. Many yielded to it for a time

without realizing the diabolical designs of Burr. "The panorama of the great West was fairly unrolled, and in the adventurous, self-confident sons of the valley, heedless of restraints, but in heart true to the republic, despising diplomacy and ready to take the short cut, we perceive a fresh and distinctive type of American citizen. Over this section Burr's spell was momentarily cast, but his magic failed when the sinister bend of his plans was discovered."

At the crucial moment Wilkinson, to whom Burr had entrusted all his plans, turned against the would-be emperor and, by carefully anticipating every move, he arranged to crush the expedition at New Orleans before it was fairly under way. Martial law was declared at that port and the lines were carefully drawn about those followers of Burr who had assembled on Blennerhassett's island for the final dash for the West.

Meanwhile, President Jefferson was on his guard. Rumors had reached Washington even before Wilkinson could confide to the administration that treason against the United States was at the bottom of Burr's activities. Without delay Jefferson issued a proclamation denouncing the conspirators

and setting the machinery of the government in motion to prevent the departure of the expedition and to capture Burr and any of his followers who could be apprehended. Burr while at Natchez awaiting his "army" from the Ohio was informed of Wilkinson's desertion. Abandoning the campaign he fled precipitately into the interior. He was a few months later arrested in a little village on the Tombigbee and sent under military guard to Richmond. Blennerhassett was taken prisoner shortly afterward in Kentucky and also taken to Richmond.

On May 22, 1807, Aaron Burr was placed on trial charged with the most serious crime a nation may allege against a citizen. John Marshall, Chief Justice of the Supreme Court of the United States presided, while beside him sat Cyrus Griffin, judge of the United States District Court of Virginia. The little courtroom was crowded to the doors. Ranged opposite each other at the bar were eminent counsel for the government and prisoner.

And a dramatic circumstance of that melodramatic situation was the fact that facing each other at that trial table sat Luther Martin and William Wirt, two of the greatest Marylanders who ever addressed a jury.

Martin was there as the defender of Aaron Burr, the ablest by far of all the prisoner's counsel. Wirt appeared as the prosecutor of traitors who had sought to undermine the very foundations of the republic. Before that legal battle was concluded these two men had achieved a renown that was recognized throughout the civilized world.

In no material characteristic were these Marylanders alike. Martin was many years older than his rival. He was bold, fearless, contemptuous, determined. His blows were delivered with the force of a sledgehammer. At times he was the embodiment of cold, merciless logic. Then he would brush aside obstacles with no attempt at reasoning, and gain by sheer audacity what he might not have attained by milder processes. He was at all times overbearing, and often brutal in his rejoinders.

Wirt, on the other hand, was fluent and fiery. His shafts had the keenness of a rapier rather than the smashing effect of a battle ax. His appeal was more human, more vivid, more sympathetic than the argument of his opponent. At times his eloquence was overpowering, though he obviously tried to repress his impassioned impulses and restrain his fertile imagination as he charged and

countered the defence. Wirt's brilliant closing in this case still holds a place among the oratorical classics of American court procedure, though it did not at the time have the weight that marked the less spectacular argument of Martin.

In addition to Wirt there were on the side of the government Attorney-General Rodney, George Hay, a close personal friend of Jefferson, and Alexander McRae, Lieutenant-Governor of Virginia and one of the most successful lawyers in the State. Flanking Martin on the other side were Edmond Randolph, Attorney-General and Secretary of State in Washington's Cabinet; John Wickham, of the Richmond bar; Benjamin Botts, Charles Lee and Jack Baker. There was, too, back of the prosecution the whole weight of the Jefferson administration.

The trial was long and bitterly contested. The usual amenities were absent. Counsel thundered at each other daily and almost hourly. Repeatedly the Chief Justice was forced to admonish the lawyers against personalities and unbecoming asperity, but the opposing legal batteries would only momentarily cease their fire. And the feeling shown particularly by the defence was strongly intensified by the attitude of the President.

Jefferson had long hated Martin, but no longer than Martin had hated Jefferson, and many of Martin's thrusts had a higher target than the government's lawyers in the case. One of the Marylander's most vehement outbursts came in connection with a subpoena which he asked the Court to issue for the President who had in his possession letters and other papers of value to the defence. In arguing his motion Martin said:

"All that we want is the copies of some papers and the original of another. This is a peculiar case, sir. The President has undertaken to prejudge my client by declaring 'of his guilt there can be no doubt.' He has assumed the knowledge of the Supreme Being himself, and pretended to search the heart of my highly respected friend. He has proclaimed him a traitor in the face of that country which has rewarded him. He has let slip the dogs of war, the hell-hounds of persecution, to hunt down my friend. And would this President of the United States, who has raised all this absurd clamor, pretend to keep back the papers which are wanted for this trial, where life itself is at stake? It is a sacred principle, that in all such cases, the accused has the right to all the evidence necessary for his defense."

It was this savage assault, followed by the ruling of Chief Justice Marshall to the effect that the President is not absolved from the obligations of citizenship and, therefore, was subject to subpoena, that aroused Jefferson's

rage and brought forth his famous letter to his prosecutor, Hay. In this the President said:

"The leading feature of the Constitution is the independence of the Legislative, Executive and Judiciary of each other; and none are more jealous of this than the judiciary. But would the Executive be independent of the Judiciary if he were subject to the commands of the latter, and to imprisonment for disobedience; if the smaller courts would bandy him from pillar to post, keep him constantly trudging from north to south and east to west, and withdraw him entirely from his duties."

The one great issue in the Burr trial, however, was the interpretation of that clause of the Constitution which declares that "Treason against the United States shall consist only in levying war against them," and "That no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court." The prosecution failed to produce testimony that Burr had committed any such overt act, and the Chief Justice in his charge to the jury virtually instructed them to bring in a verdict of not guilty. The misdemeanor charge was likewise disposed of by a verdict to the same effect and the Burr trial, the most noteworthy in our criminal annals, came to an end.

In this as in the Chase impeachment Luther Martin, upon whom rested the burden of the defence, was signally victorious. His successive triumphs in these two all-absorbing trials gave him a standing at the American bar enjoyed by few great lawyers in our history. He figured, however, in but one other lawsuit of nation-wide importance. This was the celebrated case of *McCulloch vs. Maryland*, involving the right of Congress to incorporate a national bank. Martin appeared for the State along with Hopkinson and Walter Jones. Opposing him were Daniel Webster, William Wirt and William Pinkney. Martin lost his case, probably because he was arguing against that Federalism for which he had stood for a decade. He had been one of the original State's rights leaders in the early days, had then gone bodily over to the Federalists and, in this litigation, had returned once more to the faith of his youth.

Martin's private life was in disappointing contrast to his standing as a great advocate. No excuse can be offered for his drunkenness, a weakness that pursued him through life. Withal, he was a man of wonderful success in his profession and the fact was recognized throughout the whole nation. His high station among the members of the bar

is illustrated by one of the quaintest legislative acts ever placed upon the statute books of a State. In 1822, after Martin had been stricken with paralysis and incapacitated for business, the General Assembly of Maryland passed the following resolution:

*“Resolved*, That each and every practitioner of law in the State, shall be, and is hereby compelled, from and after the passage of this resolution, to obtain from the clerk of the county court in which he may practice, a license to authorize him to so practice, for which he shall pay annually on or before the first day of June, the sum of five dollars, which said sum is to be deposited by the clerk of the county court, from which he may procure said license, in the treasury of the Western or Eastern shore, as the case may be, subject to the order of Thomas Kell and William H. Winder, Esquires, who are hereby appointed trustees for the appropriation of the proceeds raised by the virtue of this resolution, to the use of Luther Martin; PROVIDED, That nothing herein contained shall be taken to compel a practitioner of law to obtain a license in more than one Court, to be annually renewed under penalty of being suspended at the bar at which he may practice. AND PROVIDED, That this resolution shall cease to be valid at the death of the said Luther Martin.”

Martin was now a physical and mental wreck. “His vast learning was hidden in the oblivious darkness of an extinguished intellect.” Through excessive drinking his fortune had been wasted away. Broken in health and penniless, this great Marylander

was prevented from becoming a public charge by Aaron Burr, the man whom Martin had probably saved from the hangman's gallows. Of this charity Chief Justice Taney, in his autobiography, says "The only good thing I know of Colonel Burr is that, soon after this happened, he took Mr. Martin to his house and provided for his wants, taking care of him until his death."