Liberty Tree

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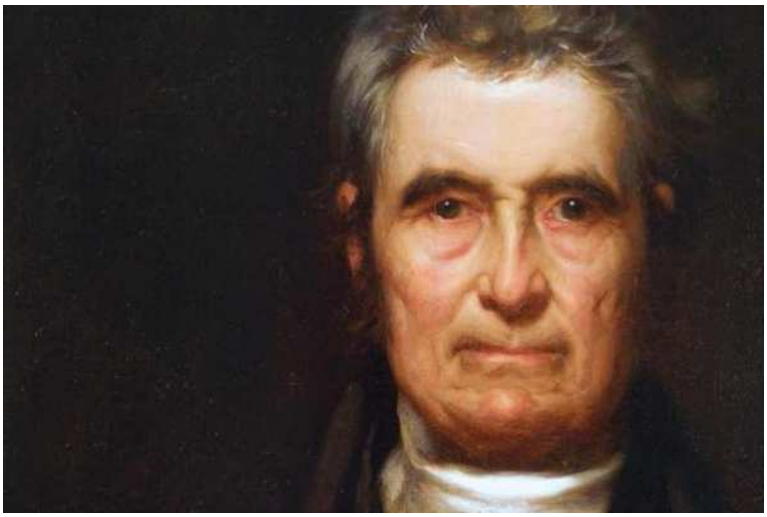
LINEAGE OF TWO REVOLUTIONS – ONE GOOD – ONE EVIL

Part III

By John Baptist Kotmair, Jr.

In the last issue of the Liberty Tree, I discussed the seditious actions of Alexander Hamilton as a part of the evil revolution subverting our Constitutional Republican form of government. Hamilton was the political engine behind the establishment of the first Bank of the United States, but the federalists he represented lost ground under Thomas Jefferson, so that bank lost its charter in 1811.

In 1816, the second Bank of the United States was chartered by Congress, and the State of Maryland passed a law taxing the notes of all banks not chartered under its own authority. McCulloch, the Cashier of the Baltimore branch of the Philadelphia-based national bank, refused to pay the tax. He lost in the State courts, which properly recognized that the federal government had no power to charter a national bank. On appeal, Chief Justice John Marshall of the U.S. Supreme Court ultimately wrote a unanimous opinion setting the stage for what has now become rampant judicial legislation and disregard of the Constitution by judges everywhere.



John Marshall, Chief Justice of the Supreme Court from 1801 to 1835.

John Marshall forges a seditious path

The following demonstrates that the powers-that-be at Harvard have a different opinion than the one I just expressed:

> John Marshall (1755-1835), third Chief Justice of the Supreme Court of the United States, and the greatest of American judges, laid down in the following opinion certain principles which have come to be accepted as fundamental in all questions touching the respective powers of the Federal government and the State legislatures. Chief Justice Marshall, in writing the opinion of the court, is regarded as having established certain principles on which depend "the stability of our peculiar dual system of national and local governments." (*Harvard Classics*, 1910, Vol.43, p. 222).

Jefferson and I have a different opinion.

The questions and findings of the Marshall court must be studied in depth for us to understand the Marshall Doctrine that has been followed by the courts since the *McCulloch* decision. Jefferson considered Marshall to be monarchist like Hamilton, and I believe the following analysis will prove his allegation to be correct.

Constitutionally, the issues before the *McCulloch* court were very simple and straightforward. But as Mr. Elbridge Gerry, a delegate to the Constitutional Convention of 1787 from Massachusetts, warned during that convention, the *sophistry* of the courts is the weak link in the Constitution. Those issues were:

- does Congress have powers that are not enumerated?
- does Congress have the authority to enact laws with respect to property?

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- are the laws of Congress superior to the laws of the States of the union?

(*Formation of the Union of the American States*, 69th Congress, H.D. No. 398, Gov. Printing Office 1927, p. 166).

Before we examine these issues, we must first look at the following principle of law called the *vagueness doctrine*. *Black's Law Dictionary*, 5th Edition, explains this doctrine thusly:

> Vagueness doctrine. Under this principle, a law which does not fairly inform a person of what is commanded or prohibited is unconstitutional as violative of due process.

In other words, if the law is not explicitly written so that it leaves no doubt as to its *command* or *prohibition*, it is *void for vagueness*. That is not hard to understand, is it?

We must also be aware of the fact that Madison's *Notes on the Constitutional Convention of 1787* were not published, in accordance with an agreement made by the delegates in attendance, until after the death of all the participants. They were published by Madison's wife after his death in 1835. The *McCulloch* opinion was handed down in 1819. But the *Federalist Papers* were published before the ratification of the Constitution by the States of the union. In fact, when it suits his purpose, Marshall quotes from them within his opinion in the *McCulloch* case.

Hamilton admits in Federalist 32:

> The necessity of a concurrent jurisdiction in certain cases results from the division of the sovereign power; and the rule that all authorities, of which the States are not explicitly divested in favor of the Union, remain with them in full vigor, is not a theoretical consequence of that division, but is clearly admitted by the whole tenor of the instrument which contains the articles of the proposed Constitution. We there find that, notwithstanding the affirmative grants of general authorities, there has been the most pointed care in those cases where it was deemed improper that the like authorities should reside in the States, to insert negative clauses prohibiting the exercise of them by the States. The tenth section of the first article consists altogether of such provisions. This circumstance is a clear indication of the sense of the convention, and furnishes a rule of interpretation out of the body of the act, which justifies the position I have advanced and refutes every hypothesis to the contrary.

In outlining the division of jurisdiction between the States and the federal government, notice that Hamilton states that the Framers *explicitly* named the powers that the federal government was given and that the States retain all other powers *in full vigor*. He also stated that extreme care was taken that like powers would not reside in both state and federal governments, and that to prevent such an occurrence the Framers prohibited to the States, within the *tenth section of the first article*, such powers that would be reasonable for both governments to possess. For your convenience the following are powers that he referred to that could be possessed by both governments if not prohibited to the States by the *tenth section*:

> No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money;. . .

Now we will entertain the issues before the McCulloch Court:

The 1st issue according to Marshall: *The first question in the cause is, has Congress power to incorporate a bank?* He then declares that the first Congress incorporated the first Bank of the United States, and that it was then debated in both houses and within the Executive Cabinet and was allowed to expire without challenge to its constitutionality in the courts, as if that had any legal effect. (4 Wheat beginning at p. 401). But he does admit that:

> Among the enumerated powers, we do not find that of establishing a bank or creating a corporation.

This does not bother him in the least, for he continues:

> But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely

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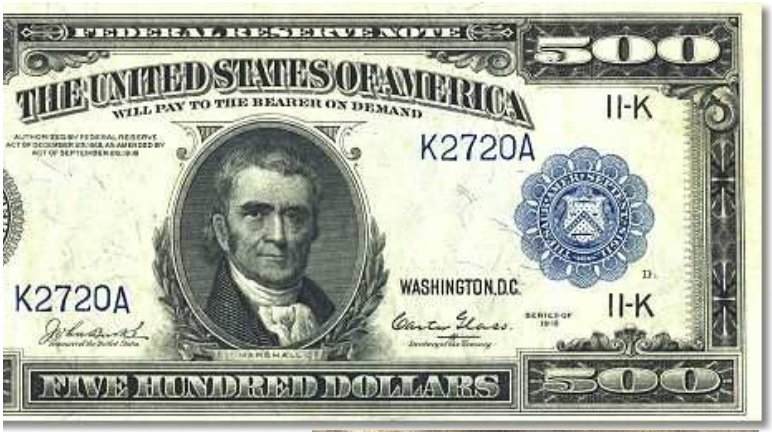

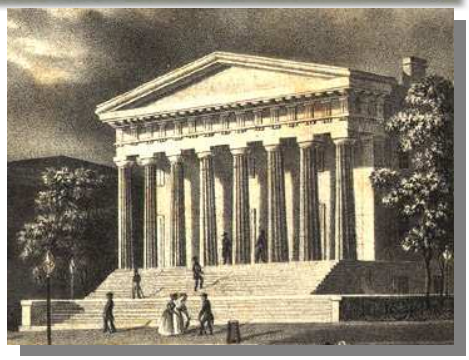

Top: A rare 1918 $500 federal reserve note features the portrait of John Marshall, who enabled the unconstitutional Second Bank of the United States' continued existence by ruling that States could not tax its branches. *Right:* The Second Bank of the United States in Philadelphia.

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described. Even the 10th amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word "expressly," and declares only that the powers "not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;" thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the articles of confederation, and probably omitted it to avoid those embarrassments. A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public.

This articulate, sophistical judicial legislation flies in the face of Hamilton's explanation of powers that the Framers intended for both governments, as he used when selling the American public on the new Federal Constitution, as published in Federalist No. 32. It seems that these aristocrats say what suits them at the moment. (It sounds like some of the like-minded politicians holding office in all three branches today.) The last sentence of the above quote, not only invokes the *vagueness doctrine*, it reveals this monarchist's contempt for the average man.

The 2nd issue is: does Congress have the authority to enact laws with respect to property? Nowhere within the United States Constitution can it be found that Congress has the express authority to enact laws with respect to property. It is a well established policy and practice that when federal agents move to seize property the local law enforcement authorities will be notified and the property laws of that State will be observed. Additionally, the Supreme Court has ruled expressly that *there is no federal common law*, meaning no federal property law; common law meaning custom and usage involving property. By its nature, a corporation would be under and subject to State property laws. (*Erie Railroad. Co. v. Tompkins*, 302 US 671, p. 671, 82 L Ed 518).

In this case the State of Maryland argued that this corporation, the second United States Bank, having a branch office in the State, came under State law and as such was taxable the same as a State chartered corporation. The constitutional question of a federal chartered corporation did not come into question until the court action had commenced.

The 3rd and last issue is: are the laws of Congress superior to the laws of the States of the union? Marshall addresses thusly:

> That the power of taxing it by the states may be exercised so as to destroy it, is too obvious to be denied. But taxation is said to be an absolute power, which acknowledges no other limits than those expressly prescribed in the constitution, and like sovereign power of every other description, is trusted to the discretion of those who use it. But the very terms of this argument admit that the sovereignty of the state, in the article of taxation itself, is

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subordinate to, and may be controlled by the constitution of the United States. How far it has been controlled by that instrument must be a question of construction. In making this construction, no principle not declared can be admissible, which would defeat the legitimate operations of a supreme government. It is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments as to exempt its own operations from their own influence. This effect need not be stated in terms. It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain. We must, therefore, keep it in view while construing the constitution.

In order to see how far afield of the actual law this convoluted thinking is, all we have to do is examine the actual taxing authority of the federal government which we discussed in detail in Chapter IV of this book. According to Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4, the federal government does not have the power to tax property directly; and as clearly shown in Article 1, Section 8, Clause 1, it can only lay and collect duties, imposts and excise taxes. Out of the three taxes collectable by the federal government, the only one that could possibly conflict with the State would be excise taxes. And in the case of excise tax there is no conflict—for example, the sale of gasoline has both a State and federal excise tax imposed on it. As is the practice of lawyers, it seems that Marshall just dazzled us with his brilliant sophistic expostulation of *simplex dictum*. (*Simplex Dictum*, a mere assertion; an assertion without proof. *Black's Law Dictionary,* 5th Edition). In other words, bovine fecal matter. But of course we have the most prestigious law school in America, Harvard, as quoted above, calling him *the greatest of American judges;* now you can see why there seems to be so much contradiction in the law within this country today. The *greatest of American judge* they say — **I say he is the father of perversion**.

Marshall is called the father of case law, which is the sophistical means of twisting and turning an act of a legislature to say what the court, or the powers behind the court, want it to say. This is attributed to the following statement from the McCulloch decision:

> Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations, found in the ninth section of the 1st article, introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent **its receiving a fair and just interpretation**. In considering this question, then, we must never forget that it is a constitution we are expounding.

I once attended a lecture on the United States Constitution given by a circuit court judge from Montgomery, Alabama. After it was over he opened the meeting to questions. I asked him three questions which caused him to be visibly uneasy: Isn't it true that the intent of the law is the force of the law? He tried to evade the question, but finally admitted that it was. Isn't it true that if a law is written in such a way that the average man cannot understand it, that it is void for vagueness? After a feeble attempt not to answer, he answered yes. And the third, and final question: Due to the fact that the intent of the law is the force of the law, and that if an average man cannot understand a law, it is void for vagueness, then please tell me what is the purpose of case law? His immediate reaction was to lean over and say to the individual sitting alongside of him who had invited him to speak, ***get me out of here***.

From this false premise, established by Marshall in 1819, the courts have grown into an out-of-control, chaotic, seditious tyranny, interfering in every segment of society without any real lawful jurisdiction in most cases, usurping the lawful powers of the legislature at will. Because of this anarchical state, it does not matter who is elected to the legislature or the executive branch of government, until the courts are forced to abandon their judicial legislation through interpretation of the law.

With this in mind, the only political campaign slogan that I ever want to hear is: *I will move to impeach any office holder who violates his or her oath of office, and prosecute them for their seditious acts.*