

mark which that great lawyer ever made," and "not much inferior to those of Webster, Hopkinson, and Pinkney," whose arguments he had respectively described as "meticulous," "superb," and "great."¹⁷⁰ Martin's argument in *McCulloch* also had its personal drama, with Martin, by 1819 one of the few surviving participants in the Philadelphia Convention, making his own history part of his advocacy.¹⁷¹

Martin was seventy-one at the time of his appearance in *McCulloch*, but there was one sad chapter in his life yet to come. A stroke in August 1819 temporarily incapacitated him, although as late as 1821 he could write a letter giving an interpretation of a Maryland insolvency statute.¹⁷² He began, however, to wander aimlessly into courtrooms, staring vacantly and munching gingerbread, appearing to one observer as a "trembling old dotard."¹⁷³ In 1822 the Maryland legislature, in an unprecedented gesture, passed a resolution assessing each member of the Maryland bar five dollars annually "to the use of . . . Luther Martin." The resolution referred to the "afflicting disposition of divine Providence" that had "bereaved [Martin] of his intellectual powers" and to the fact that Martin was "poor and unable to procure support."¹⁷⁴ That resolution was repealed less than a year later, however, because Aaron Burr, who had returned to America in 1812, re-established his law practice, and reversed his financial misfortunes, offered to take Martin in as a boarder in Burr's New York home. A strange friendship was thus renewed, and the two veterans of the Burr trial lived together until 1826, when Martin died.¹⁷⁵

Of all the lawyers portrayed in this chapter, Martin was the least able to benefit from his considerable talents. His "unfortunate habits," Taney said, "made him reckless in money matters. . . . He was kind to

¹⁷⁰ Beveridge, *John Marshall*, IV, 285-87.

¹⁷¹ *McCulloch* was not Martin's last Marshall Court argument. Ten days later he appeared in *Sergeant's Lessee v. Biddle*, 4 Wheat. 508 (1819), a routine civil procedure case in which his argument was not reported.

¹⁷² Luther Martin to Richard Peters, Jr., August [no date given] 1821, Richard Peters Papers, Historical Society of Pennsylvania, Philadelphia, Pa.

¹⁷³ Henry P. Goodard, as recounted in Goodard, "Luther Martin: 'The Federal Bulldog,'" *Md. Hist. Soc. Pub.*, 24:10-11 (1887). The gingerbread references are from John H. B. Latrobe's recollections of seeing Martin when Latrobe was in his early twenties:

[I]t was an affecting sight. [Martin] was in his dotage. He used to come

into the Courts when they were in session, an aged man, decrepit in his movements, dressed in the style of the past generation . . . eating a star ginger head as a child would do, and smiling with a vacant lack lustre eye as the members of the bar made way for him.

Quoted in J. Semmes, *John H. B. Latrobe and His Times* (1917), 204. Latrobe, a Baltimore practitioner who argued before the Taney Court, was born in 1803 and died in 1891.

¹⁷⁴ Resolution No. 60, Feb. 23, 1822, quoted in Clarkson and Jett, *Luther Martin*, 303.

¹⁷⁵ For the last years of Martin's life, see Clarkson and Jett, *Luther Martin*, 302-303.

young members of the profession, and liberal, and indeed profuse, in his charities, and easily imposed upon by unworthy objects."¹⁷⁶ His private life had some unfortunate aspects, including the early death of his wife, some unsuccessful infatuations, the elopement of one daughter at the age of fifteen, and the institutionalization of another for mental illness.¹⁷⁷ His excessive drinking throughout his professional life occasionally led to skirmishes in court and caused him personal embarrassment.¹⁷⁸ But one has the sense that Martin, for all the unhappiness of his domestic life and the sad circumstances of his death, defied life rather than being buffeted by it. He was, in a self-conscious, elegant, and circumspect age, an independent, ebullient, and vivid spirit.

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We have noted the contrasts in styles and temperaments in passing from Emmet to Tazewell and then to Martin; another striking contrast occurs in passing from Martin to William Pinkney. In this instance the contrast is one any spectator witnessing arguments in the Marshall Court could easily have marked. Pinkney was once reported as "writh[ing] as if in pain when listening to Martin speaking in his slovenly way in broken sentences, using the most indefensible vulgarisms and sometimes mispronouncing his words."¹⁷⁹ If Martin's mode of discourse offended Pinkney, so surely must his mode of dress, for whereas Martin was probably the most "slovenly" of the leading Marshall Court advocates in his appearance, Pinkney was undoubtedly the most resplendent. "The personal appearance of Mr. P.," Story recalled, "was as polished as if he had been taken right from the drawer; his coat of the finest blue, was nicely brushed; his boots shone with the highest polish; his waistcoat, of perfect whiteness, glittered with gold buttons; he played in his hand with a light cane; in short, he seemed perfectly satisfied with himself."¹⁸⁰ Taney's portrait went further:

[Pinkney] was very attentive to his dress, indeed more so than was thought suitable for his age and station. It approached to dandyism, if it did not reach it. He was always dressed in the extreme of the newest

¹⁷⁶ Taney in Tyler, *Memoir of Taney*, 61.

¹⁷⁷ See Clarkson and Jett, *Luther Martin*, 192-96, 255, 291.

¹⁷⁸ Goddard, "Luther Martin," 31-32, and Clarkson and Jett, *Luther Martin*, 279-80, report examples, as does Tyler, *Memoir of Taney*, 122-23, recounting an anecdote told to him by Taney. Martin was quoted as defining

"drunk" as "when after drinking liquor [a man] says or does that which he would not otherwise have said or done." Quoted in Goddard, "Luther Martin," 37.

¹⁷⁹ Taney in Tyler, *Memoir of Taney*, 70.

¹⁸⁰ J. Story, "Notes for a Lecture on William Pinkney," in W. Story, *Life and Letters*, II, 491.