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READING COPY OF CHIEF JUSTICE WARREN'S ADDRESS AT THE CEREMONIES HONORING THE LATE CHIEF JUSTICE TANEY IN FREDERICK, MARYLAND, ON SUNDAY, OCTOBER 24, 1954

Through your gracious invitation, it has become my privilege to join you in this pilgrimage to historic Frederick. This community has a secure place in American annals. It was here that Francis Scott Key spent his youth and early manhood. It was here that Barbara Fritchie - immortalized by Whittier's poem - dramatized her devotion to the cause of national unity. And, above all, it was here that Roger Brooke Taney - son of a Calvert County tobacco planter - laid the foundation of one of the most distinguished careers in the nation's history.

His life began a year after the Declaration of Independence; his life ended a few months before Appomattox. During that span of 87 years, this nation was founded; a Constitution was established and its central doctrines were expounded; thirteen colonies grew to a union of 36 states, and that union was nearly torn asunder. In 1796, at the age of 19, Taney began his study of law in the office of Judge Jeremiah T. Chase in Annapolis. Three years later, he was admitted to the bar and was elected to the Maryland Legislature from Calvert County. In 1801 - the year that John Marshall assumed his duties as Chief Justice - Taney commenced the practice of law here in Frederick. He came at the urging of Francis Scott Key, a dear friend and fellow attorney, and later married Key's sister Anne. Success in the law came to him quickly, and he was soon recognized as a leader of the Maryland Bar. For twenty-two years, here in Frederick, he pursued the law diligently and set the stage for his future greatness. While Marshall was expounding the Constitution through his enduring decisions, Taney appeared before the bar expounding his legal philosophy and his vision for the union. It was here that he attained his maturity and stature in the law, and when

he moved to Baltimore in 1823, he was ready for the high offices he was destined to hold and for the tempestuous times through which he was to play such a dynamic part for more than forty years. First as Attorney General of Maryland and then as Attorney General of the United States in the Cabinet of President Andrew Jackson, he became one of the great lawyers of his time. Then, more or less by political fate, he became Secretary of the Treasury, but because of his role in the violent controversy stimulated by Jackson's attack on the United States Bank, his appointment to the Treasury was never confirmed by the Senate. A similar fate awaited his appointment in 1835 as Associate Justice of the Supreme Court. These were indeed turbulent times. But Jackson persisted and, only nine months later, sent his name to the Senate as successor to John Marshall. This time, after a bitter struggle, confirmation was obtained. On March 28, 1836, Taney appeared before the United States District Court in Baltimore, and in the presence of the distinguished Maryland Bar took the oath of office as the fifth Chief Justice of the United States. He commenced his judicial duties ten days later "on the circuit" by presiding over the United States Circuit Court in Baltimore. Thus began a judicial career that was to last 28 years - a tenure as Chief Justice exceeded only by Marshall. During this turbulent period - roughly coterminous with the era from Jackson to Lincoln - he was to give the oath of office to seven Presidents, lead the Supreme Court through the most critical period of the nation's history, and serve as an able successor to Marshall as an expounder of the Constitution.

We meet today to honor his memory and to express in this monument our enduring admiration for him. It is fitting that we should do this. His services to state and nation

his exemplary Christian life - these alone would provide ample justification. But there is yet an additional reason. In a manner of speaking, today's tribute helps redress an old wrong - helps erase the calumny which Taney's enemies had hurled at him during his lifetime and which superficial historians preserved as gospel truth for a time after his death. Few men in American life - and surely no Justice of the Supreme Court - have been so grossly misrepresented as Taney. Until recent years, he was all too frequently characterized as the doctrinal enemy of his predecessor Marshall, as the exponent of narrow provincial interests, as a stalwart defender of the institution of slavery. But, by and large, with the passing of time, and the cooling of passions, that characterization has been discredited and the true Taney has emerged. We know him today as a needed balance to Marshall's conservative nationalism; as one who personally detested slavery but who detested even more the prospect of violent disunion. We know him today as a great Chief Justice.

Taney's differences with Marshall have been strongly emphasized; their similarities have been largely ignored. Each had been a Federalist, a leader of the bar of his State, and a Cabinet member prior to appointment as Chief Justice. And, although Taney had left the declining Federalist Party to support Andrew Jackson, it is reported that Marshall favored the nomination of Taney as Associate Justice. Marshall's approval of Taney was not misplaced, for there actually was no sharp break in constitutional interpretation between the opinions of the Court in the Marshall era and those after 1835. One reason, to be sure, was that there remained on the Court men, like Justices Story and McLean, who shared Marshall's strongly nationalistic views. But, in any event, there is little evidence to suggest that Taney ever desired any wholesale reversal of Marshall's doctrines. It is true that Taney differed with Marshall's

interpretation of the Commerce Clause. To Marshall, the clause itself - granting to Congress the power to regulate interstate commerce deprived the states of such power. To Taney, states could be deprived of this power only by appropriate legislation by Congress and then only if the state action was in irreconcilable conflict with the federal legislation. But, it should be noted, Taney did not dispute the supremacy of the national government in the field of commerce; he merely insisted that Congress must make its will explicit if state action is to be invalidated under the Commerce Clause. Similarly, in dealing with the Impairment of Contract Clause, he did not dispute the immunity of state-granted corporate charters from retroactive state legislation; he merely insisted that, in the public interest, such charters should be strictly construed.

These views undoubtedly reflected Taney's deep concern over undue infringement of the power of the states to enact legislation necessary to the welfare of their citizens. Because of this concern, Taney is rightly regarded as a vigorous champion of so-called "state police powers." To Taney, as he declared in one of his most famous opinions -

> "The object and end of all government is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created."

This statement bears a striking similarity to Marshall's famous dictum:

> "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 consist with the letter and spirit of the Constitution, are constitutional."

Both men thus rejected the thesis that government is at best a necessary evil. They disagreed with each other only as to the proper apportionment of governmental powers in

our federal system between the national government and the state governments. And on many issues of federal versus state power, there was not even this difference of opinion - for example, as to the exclusive power of the national government in conducting foreign relations. Indeed, with respect to the admiralty jurisdiction of the federal courts, the positions of the two men were reversed; in this field, Taney conceded greater power to the national government than Marshall was ever willing to claim. These apparent inconsistencies are understandable only in terms of Taney's philosophy of the Supreme Court's function. Unlike Marshall, who viewed the Court as primarily an organ of the national government, Taney conceived of the Court as an independent agency outside of and above both the national government and the states. In a notable opinion, proclaiming the unqualified power of the national government to enforce its laws without state interference, Taney declared:

> "This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, but also to guard the States from any encroachment upon their reserved rights by the general government . . . So long . . . as this Constitution shall endure, this tribunal must exist, with it, deciding in the peaceful forms of judicial proceeding, the angry and irritating controversies between sovereignties, which in other countries have been determined by the arbitrament of force."

Throughout his long judicial career, Taney earnestly sought to steer this middle course. In his view, the Court's function was to serve as arbiter - subject of course to constitutional limitations - between the competing interests within our federal system. In large measure, that continues to be the Court's function a century later.

A necessary corollary of Taney's judicial philosophy was the principle of judicial self-restraint. In opinion after opinion, he reiterated his belief that the Court should not intrude itself into political controversies, that the Court was not concerned with questions of motive but only with questions of power, that other branches of the

government should be permitted the maximum degree of freedom consistent with the express commands of the Constitution, that hence judges should stick closely to the constitutional text. With but one tragic exception, his decisions accurately reflected this philosophy, and today the motives of that exception are not questioned. That instance, as we all know, occurred when he was eighty years old, and the avalanche of criticism that descended upon him obscured for many years his other constructive work on the Court. With the courage that was characteristic of him, he philosophized:

> "At my time of life when my end must be near I should have enjoyed to find that the irritating strifes of this world were over, and that I was about to depart in peace with all men and all men in peace with me. Yet perhaps it is best as it is. The mind is less apt to feel the torpor of age when it is thus forced into action by public duties."

And well he might long to "find that the irritating strifes of this world were over" for no man in our public life has ever suffered so many years of bad health and without complaint. From his youth, he was ill most of the time, and at no time during his long life was he expected to live more than a very few years. Only his indomitable courage, his devotion to family and nation, and his faith in God sustained him.

Seven years later, when he was 87 years of age, still serving his country, "... the irritating strifes of this world were over ..." at last for Roger Brooke Taney. On the morning of Columbus Day, ninety years ago this month, he perceived that the end was near and asked to receive the last rites of his faith. That evening, according to his eldest daughter, "... he suddenly raised his head, all trace of suffering gone, his eyes bright and clear, said 'Lord Jesus receive my spirit', and never spoke again." After a quiet ceremony in Washington, a special train carried his body to Frederick, where in St. John's Catholic Church - a church that Taney himself had helped build - requiem services were held. And here he rests today - free finally of the controversy

he had known throughout his stormy career - surrounded at last by the peace which had so long eluded him. Like some other great men, the passions of the age in which he lived eclipsed his greatness for many years, but even at the time of his passing there were those who recognized his true worth and who did not hesitate to express their belief. Three days after his death, on October 15, 1864, at a meeting of the Boston Bar, former Associate Justice B. R. Curtis of the Supreme Court, who had not always seen eye to eye with him, concluded a beautiful tribute to the departed Chief Justice in these words:

> "It is one of the favors which the providence of God has bestowed on our once happy country, that for the period of sixty-three years this great office has been filled by only two persons, each of whom has retained to extreme old age his great and useful qualities and powers. The stability, uniformity, and completeness of our national jurisprudence are in no small degree attributable to this fact. The last of them has now gone. God grant that there may be found a successor true to the Constitution, able to expound and willing to apply it to the portentous questions which the passions of men have made."

Ninety years later Americans in all parts of the nation think of him in these same terms, and I am happy to join with you today in honoring his memory.