

CHAPTER ONE

THE FRONTIER SOLDIER

Lieutenant General Baron von Steuben could not believe his eyes. At great risk and personal expense, he had traveled four thousand miles across the Atlantic from Prussia to join the Continental Army. Arriving at Valley Forge, Pennsylvania, in February 1778, he surveyed the desperate condition of this pathetic army with a mixture of alarm and disgust. He felt deceived.

Under a gunmetal sky, he came on horseback from the town of York, eighty miles west, where Congress had fled after the British captured Philadelphia. After weeks of bitter cold, the weather had improved in late February, and the Schuylkill River had begun to melt. From a distance, Steuben could see one thousand cabins crowding the hills. Smoke curled out of a forest of chimneys. As he approached, Steuben could not discern in the waning light the crimson tracks left by barefoot soldiers. But he could not miss the stinking carcasses of horses lying in the snow.¹

General Washington met him on horseback outside the camp. The handsome, imposing Virginian and the plump Prussian with bulging lips and thick eyebrows rode side by side in awkward silence. Steuben, who was

naturally ebullient, spoke French and German and very little English; Washington, who was characteristically reserved, spoke neither.² It was an inauspicious beginning.

Steuben soon realized that Washington's army was a chimera. The Continental Army was melting away faster than the snow. He had expected to join a force of 40,000 men, but fewer than 14,000 remained and only half that were fit for duty. Nearly 7,000 were sick or not equipped to fight. Over the winter, nearly 2,500 men died from disease and around 15,000 deserted, sneaking across enemy lines into Philadelphia twenty miles south-east along the Schuylkill.³ "With regard to their military discipline," Steuben noted, "I may safely say that no such thing existed."⁴

"The men had been left to perish by inches of cold and nakedness," Washington admitted.⁵ Without adequate food, the soldiers baked "fire cakes" made out of flour and water on a hot stone placed in the hearth.⁶ In some cases, starving men roasted their leather shoes to provide one more meal.⁷ One officer complained that "Congress have let it in the power of the States to starve the Army at pleasure."⁸ The camp needed 30,000 pounds of bread and an equivalent amount of meat daily. In addition, the men were promised a gill (four ounces) of whiskey a day. Rarely did the camp have anything approaching that amount.⁹ Angry soldiers chanted, "No bread, no soldiers!"¹⁰ The local farmers refused to accept the nearly worthless Continental dollars. They preferred to sell food to the British soldiers for pounds sterling.¹¹ The situation was so desperate that Washington told his troops to steal whatever food they could find and "make an example" out of farmers who sold to the British.¹²

The next day Steuben surveyed the troops with his large wolfhound, Azor, sniffing alongside.¹³ Half-naked men with skeletal bodies stared back in wonder at his well-fed figure in a smart Prussian blue tunic bedecked with medals. The men were awed by the general. "Never before, or since, have I had such an impression of the ancient fabled God of War," wrote one young private.¹⁴ Few soldiers owned more than one shirt, and many had

none. More than 3,000 men were barefoot or partly naked.¹⁵ France had sent the army tens of thousands of boots that were too small for most Americans, and those that fit fell apart after marches across hundreds of miles.¹⁶ The scarcity of supplies forced many to cannibalize what little they had. The lucky few who had blankets cut them into tents; the ones with tents sewed the fabric into shirts.¹⁷ Most soldiers suffered from scabies or lice, which drove men to tear madly at their own flesh.¹⁸ As Steuben inspected the troops, men stood shivering with open sores covering their bodies. Medical care was almost nonexistent. Thousands lay in camp hospitals without doctors, food, or drugs.¹⁹

Given all this, Steuben could not be surprised at the poor morale. Nearly all the enlisted soldiers were in their teens and twenties; most were poor and more likely to be motivated by the promise of a steady wage than revolutionary ideology. Soldiers had been promised forty shillings a month in hard coin, but wages were paid irregularly in rapidly depreciating paper money instead. By the winter of 1777, the Continental dollar had lost more than three-quarters of its value. With it, soldiers could barely afford a cheap bottle of rum.²⁰ While soldiers starved, the senior officers feasted on mutton and veal and toasted their commander's health with General Washington's favorite Madeira.²¹ Still, even the officers found the conditions intolerable.²² As many as fifty officers resigned their commissions in a single week.²³ Washington suffered deprivations of his own: He complained to Congress that his servants were not dressed properly.²⁴

Amid this landscape of misery and disorder, one man seemed unaccountably upbeat. John Marshall was a twenty-two-year-old lieutenant from the Culpeper regiment of rural Virginia. Steuben's roving eye could not have missed this handsome young man: Rail thin with a tangle of brown hair and intense dark eyes, and more than six feet tall, Marshall towered above his contemporaries. He had a rugged complexion; a round, friendly face; and an infectious grin. Long dangling arms and legs made him appear ungainly, yet he was exceptionally athletic. Harsh weather and

small rations never dampened his humor and good spirits. When other officers groused about conditions, Marshall teased them until they had no choice but to laugh with him. He loved practical jokes, even at his own expense, and turned every mishap into an excuse for laughter. Once, when his bedding caught fire, Marshall made fun of his own clumsiness. He delighted in challenging other soldiers to games. He could jump farther than almost anyone, and he was a master at quoits, a popular game involving tossing a donut-shaped discus onto a stake.²⁵ The men who served with Marshall loved him like a brother, and in all Marshall's prolific writing years later, he hardly ever complained about the conditions at Valley Forge.

Marshall impressed his superior officers with his even temper, fair-mindedness, and intelligence. Washington knew Marshall's father and appointed Marshall deputy judge advocate even though he had no legal experience or education. As a judge advocate, Marshall arbitrated disputes between soldiers and litigated violations of Washington's stern orders: Deserters and cowards were hanged, and even women living in the camp were flogged for minor infractions.²⁶

Marshall also paid attention to how Steuben quickly transformed the Continental Army into a highly disciplined force by combining rigorous training with paternal affection. Steuben wrote the first regulations for the army, borrowing the best practices of the French and Prussian armies. Unlike with his Prussian soldiers, it was not enough to tell these Americans to do something; he had to explain why. Steuben decided to serve as drillmaster himself. He addressed the troops in a mix of German and French, and his translator, who had no familiarity with military terms, turned the general's words into a mishmash of fragmentary English. He drilled them relentlessly with fast-paced, highly stylized routines adapted for the unconventional guerrilla warfare that Washington favored. Soldiers struggled to keep up. Even when Steuben lost his patience with them and swore at them in a jumble of German and baby English, they found him endearing.²⁷

Within a month, Steuben had transformed the ragtag shadow of an army into a disciplined fighting force. He reorganized the army into provisional regiments, reformed the quartermaster's office, improved sanitation and medical care, and demanded better food and uniforms. No one had done more to build the Continental Army, and Washington appointed the Prussian inspector general with the rank of major general.²⁸ At the same time, Steuben, like Marshall, appealed to the soldiers' sense of fun. He served the officers flaming whiskey drinks and organized costume parties that lampooned their conditions.²⁹

MARSHALL WORKED CLOSELY WITH STEUBEN, and the two forged a great friendship. Marshall thought that Steuben and Washington, as different as they were, complemented each other. Steuben formed intense emotional relationships with his soldiers and insisted that his officers bond with their men as well. And Steuben's affection was reciprocated by officers and enlisted men alike.³⁰

Steuben's unconditional love could not have been less like Washington's reserve. To his men, Washington was a remote father figure who demanded respect and discipline. He had a rigid sense of hierarchy and propriety. Officers were punished just for eating with enlisted men.³¹ Still, Marshall thought that Washington was "the greatest Man on earth." He later wrote, "When I speak or think of that superior Man my full heart overflows with gratitude."³² And Marshall credited Washington with saving the Continental Army from defeat.³³

Washington and Steuben gave Marshall an early lesson in two styles of leadership: Washington demanded unquestioning deference to authority while Steuben fostered collegiality. These two heroes came to represent the twin attributes of Marshall's professional success: Marshall's influence as a statesman and jurist derived from his ability to command respect for the authority of the law and his talent for finding common ground.

GIVEN THE IMMENSITY of the challenge of turning these untrained men into an effective fighting force, one might wonder why on earth Steuben did not return to the Prussian army. The truth was he couldn't. Lieutenant General Baron Friedrich Wilhelm Ludolf Gerhard Augustin von Steuben was neither a general nor a Prussian baron. Though his maternal grandfather may have been a German noble, Steuben possessed neither a title nor a fortune. He never rose above the rank of captain in the army of Frederick the Great. His military career in the Prussian military was aborted in his early thirties when it was rumored that he preferred young boys.³⁴ After his discharge from the Prussian army, Steuben could not find work and eventually ended up in Paris, where he met the French playwright Pierre Augustin Caron de Beaumarchais, who was engaged in selling arms to the Americans. Beaumarchais introduced the Prussian to two American commissioners, Silas Deane and Benjamin Franklin, to see if they could offer him a military commission. They were impressed with him, but Congress had already complained that they were commissioning too many foreign officers, which enflamed jealousy within the ranks of American officers. Deane and Franklin thought that all they could offer was to send Steuben to America without pay or rank. To make Steuben more salable to Congress, Deane and Franklin concocted an over-the-top twenty-year record of military service in combat as a lieutenant general, an aide-de-camp, and a quarter master general to Frederick the Great.³⁵

With his fictionalized curriculum vitae, Steuben was received by Americans as if he were a world-famous warrior. In Boston, John Hancock, the former president of the Continental Congress, gave a huge party in his honor for the leading citizens of the city. The Continental Congress set aside its collective suspicions of foreign mercenaries to welcome him warmly to York. Congress offered him a commission as a captain and agreed to pay him six hundred pounds annually for life if the revolution succeeded.³⁶

Steuben thought he had pulled off a great subterfuge until he arrived in Valley Forge and realized that Washington's army was a far more extravagant deception: He was the one who had been fooled. But Steuben did not return to Europe. He and Azor had no place to return to. Instead, Steuben decided to make the best of a bad situation. He knew that reality often follows appearances. Marshall, too, learned that lesson early.

VALLEY FORGE LEFT an indelible mark on Marshall and laid the foundation of his political and legal career. He developed personal ties to Washington, Steuben, the Marquis de Lafayette, and Alexander Hamilton, among others, that served him well later in life. And the hardships at Valley Forge shaped his views about government. The Continental Congress and the thirteen state governments proved incapable of providing adequate support to the army. The near collapse of the army convinced Marshall that the Articles of Confederation were unworkable. Only a strong central government with the power to tax, regulate commerce, and raise an army could defend the nation effectively, he concluded.

Marshall was born on September 24, 1755, in Germantown, Virginia, in what was then the western frontier and is now Fauquier County—about sixty miles southwest of Washington, D.C. He was the eldest of fifteen—seven boys and eight girls. For the first decade of his life, the family lived in a rough-hewn two-room log cabin. They wore homespun—a coarse handwoven fabric—farmed their rocky soil, and survived primarily on cornmeal mush.³⁷ When Marshall was nearly ten, the family moved farther west to a valley known as the Hollow, now called Markham, in the shadow of the Blue Ridge Mountains. This is where he lived until age eighteen. He and his family shared a wood-framed two-room cabin measuring barely four hundred square feet with a half-story loft. There were few neighbors, and the nearest towns, Warrenton and Winchester, were more than twenty miles away, roughly a day's trip on horseback. At a young age Marshall was

schooled in the conservative values of self-reliance, individualism, and property ownership that shaped his jurisprudence.

Marshall's father, Thomas, came from a modest background. Lord Fairfax, the largest landowner in Virginia, hired Thomas and his friend George Washington to survey Fairfax's more than five million acres in the Northern Neck of Virginia. The two young men worked side by side surveying and selling plots. Fairfax then became the patron of the Marshall family, and Thomas slowly acquired more land. Before John Marshall turned eighteen, the family moved to a larger farm at Oak Hill, a short distance away. As Thomas prospered, he became a respected leader in Fauquier County. Eventually, he was elected to the House of Burgesses.³⁸

Marshall's mother, Mary Keith, was descended from two of Virginia's leading families, the Randolphs and the Ishams. She was the granddaughter of William and Mary Randolph, the "Adam and Eve" of colonial Virginia society. Marshall's relation to the Randolphs was tainted by scandal, however. His maternal grandmother, Mary Isham Randolph, was a free spirit who could not be constrained. At sixteen she eloped with a poor Irish workman, with whom she had a child. Members of her family chased her down and allegedly killed her husband and child. The trauma caused Mary to suffer an emotional collapse. Later, she had an affair with an unsavory Scottish minister, James Keith, who was seventeen years older than she was. After they were caught in *flagrante delicto*, the Randolphs banished Keith from his parish. When Mary was old enough to marry Keith without her parents' permission, she did so. The Randolphs refused to pay her dowry and cut Mary out of any inheritance. The cloud of scandal turned darker when rumors swirled that Mary's first husband was, in fact, still alive, casting doubt both on the legality of her second marriage and the legitimacy of her eight children, including John Marshall's mother. Perhaps as a consequence of this scandal, John Marshall rarely acknowledged his relationship to the Randolphs.³⁹ His grandmother's shame and the lack of a dowry undoubtedly made it more difficult for his mother to find a suitable husband.

Marshall's mother was a first cousin of Thomas Jefferson's mother, so Thomas Jefferson was Marshall's second cousin. Jefferson's father, Peter, was, like Marshall's father, a farmer and surveyor. Peter Jefferson befriended William Randolph, the eldest brother of Marshall's maternal grandmother. When William Randolph died in 1746, he did something unexpected: Rather than naming one of his relatives as his executor, he chose his friend Peter Jefferson and placed him in charge of the family's ancestral home, Tuckahoe. This was where Marshall's grandmother had been raised. In addition, William Randolph explicitly disinherited Marshall's mother and grandmother, so much of the Randolph property that otherwise might have flowed to John Marshall's family ended up in the hands of the Jefferson family. As a result, Thomas Jefferson grew up at Tuckahoe with five hundred slaves. There he enjoyed enormous privilege and wealth. His cousin John Marshall and his fourteen siblings grew up on the frontier working the stony soil on their father's modest farm.⁴⁰

It is one thing to grow up poor. It is another to grow up bearing the shame of an ancestor and the knowledge that your family's wealth was irrevocably in the hands of a distant cousin. Yet Marshall responded to these circumstances without resentment. His upbringing allowed him to identify with the common man and also gave him the aplomb to associate with his social superiors. He did not become a prisoner of either his bloodline or the economic class he was born into. He moved fluidly between classes. The narrative of the Marshall family's fall from grace also endowed him with the boldness to lift himself up and the confidence of knowing that this was possible.

Marshall's father taught him to read and write, and his mother, Mary, who, unlike most frontier women, was literate, inspired an appreciation for reading in all her children. By the age of twelve, Marshall could transcribe Alexander Pope's *Essay on Man*. Lord Fairfax provided Thomas with books for his oldest son. One of Marshall's favorites as a young man was William Blackstone's *Commentaries on the Laws of England*, which may

have influenced his decision to practice law. When Marshall was fourteen, he was sent to a grammar school about one hundred miles away in Westmoreland County that was run by a strict Anglican minister, Reverend Archibald Campbell. That was the only year of formal education that Marshall received. Campbell's school stressed mathematics and Latin. It was there that Marshall befriended his classmate James Monroe, whose friendship would turn bitter in later years. The next year John Marshall returned home, presumably for financial reasons. The local minister, Reverend James Thompson, moved into the Marshall household and tutored Marshall and his siblings in exchange for bed and board. From Thompson, Marshall mastered Latin and read Horace and Livy. After that, Marshall had no teacher other than his dictionary and the few books his father brought home from Lord Fairfax's library.⁴¹

Growing up in the relative isolation of the frontier, Marshall had little opportunity to socialize outside his family. His peers were his younger siblings, who looked up to him. At a young age Marshall had to assume substantial responsibility for raising the other children. Other boys his age were, he thought, "entirely uncultivated," but he enjoyed spending time with them in "hardy athletic exercise." He patterned himself after his father, whom he once described years later as "my only intelligent companion" and "affectionate instructive friend."⁴² Marshall's characterization of his father is curious given the reality. His father may have been a strong role model, but he was neither affectionate nor encouraging. By modern standards, both parents were distant and strict, which is understandable—with fifteen children to raise on a struggling farm, his parents had little time to spare. After Marshall left his family home to join the Continental Army, there is little evidence he corresponded with or visited either parent. Yet, over the course of Marshall's life, his expression of admiration for his father, like his attitude toward Washington, suggests that at an early age Marshall attached himself to authority figures. These two qualities, a

natural predisposition for leadership and a respect for authority, shaped his philosophy and his career in public service.

Marshall's childhood was influenced by the French and Indian Wars, which ended when he was eight. Virginians on the frontier were made uneasy by the proximity of Indian tribes and French garrisons. Even boys as young as fourteen typically carried guns slung over their backs for protection.⁴³ Though the triumph of Britain in the war removed the French threat, the war also taught people living in the Piedmont that they needed to be ready to defend themselves and that they could not rely on the British army to protect them. Thomas Marshall took this lesson to heart. He prepared his oldest son for service in the local militia unit and taught him to be an excellent rifleman. When they heard the news that the first shots of the Revolutionary War had been fired at Lexington and Concord in 1775, Thomas and John Marshall volunteered for the 3rd Virginia Regiment.⁴⁴

WHY WOULD MEN such as John and Thomas Marshall, living in the isolation of the Virginia frontier hundreds of miles from Massachusetts and struggling to support their families, concern themselves with colonial politics? Why would stamp taxes or tea concern men who had little use for either? And why would the events in a place as remote as Boston raise any alarm to someone who had never ventured beyond the western edge of northern Virginia?

Virginians living in the Piedmont were motivated by local concerns to join the struggle for independence. Virginia in the 1770s was struggling with a long-term economic crisis triggered by a steep drop in tobacco prices and a string of bad weather that devastated crops. As immigration surged, there was a shortage of land, and after George III decreed that settlers could not move farther west into Indian territory, many Virginians felt that their opportunities were limited. On top of that, poll taxes were

raised to support the presence of British forces, squeezing the middle class especially hard.⁴⁵ Most Virginians in the northern and western counties resented the wealthy gentry who owned the Tidewater plantations and dominated colonial politics.⁴⁶ The Tidewater elite lived like the British gentry, and they were obsessed with wealth, gambling, drinking, and horse racing. By the 1770s, many of them were living far beyond their means, and their indebtedness to the Scottish traders who controlled the tobacco market threatened the colony's economy. All this was alien to the toilsome life of the Piedmont. Most Virginians did not aspire to ape the affectations of upper-crust Englishmen. They blamed the Tidewater gentry for the colony's moral decline.⁴⁷ By the 1770s, nearly one in five Virginians had joined Presbyterian, Baptist, or Methodist congregations. They resented the taxes they were required to pay for the support of Anglican ministers, whom many saw as immoral.⁴⁸

These frustrations of ordinary Virginians were ignited by the appointment of Lord Dunmore as royal governor of the colony. Lord Dunmore was only the second royal governor to reside in Virginia, and he was ill-suited to the job. He was an obstinate bully with no patience for the people's elected representatives in the House of Burgesses.⁴⁹ Given the hostility Virginians felt toward the Scottish tobacco traders, it hardly helped that the governor was a Scotsman. Dunmore, one wit commented, "was as popular as a Scotsman could be" in Virginia.⁵⁰

In March 1775, Lord Dunmore canceled the colony's elections for representatives to the Second Continental Congress called in Philadelphia to discuss British colonial policy. The following month, Dunmore seized fifteen barrels of gunpowder from the public magazine in Williamsburg to keep them from falling into the hands of rebels. These two incidents sparked fears that the unpopular governor was planning some sort of military action against Williamsburg. The fact that this happened as British troops marched on Concord and Lexington to seize colonists' arms inflamed the public. Confronted by angry colonial leaders, the governor impetuously threatened

to arm slaves against white Virginians. White Virginians had a longtime fear of a slave insurrection: Some slaves had already revolted, hoping to win their freedom in exchange for supporting the British Crown.⁵¹ When Dunmore ordered the arrest of Patrick Henry, one of Virginia's popular political leaders, local governments resolved to prevent Henry's arrest by force of arms. Some Virginia politicians, such as Richard Henry Lee, fanned public outrage by falsely alleging that the British planned to kidnap members of the Continental Congress to prevent them from meeting in Philadelphia.⁵²

By June, Governor Dunmore had lost control of the situation. He fled Williamsburg on a schooner and returned later with a British fleet to suppress the incipient rebellion. Though many Virginians still hoped for reconciliation with Britain, the final straw came when Lord Dunmore issued a proclamation in November 1775 that freed all slaves who were willing to bear arms against the rebels. John and Thomas Marshall and their fellow Virginians were now prepared to fight for their independence. Like most white Virginians, they saw no irony in defending both freedom and slavery under the same flag.⁵³

ON A WARM SPRING MORNING in May 1775, nineteen-year-old John Marshall arrived by foot at the local militia's first drill in Germantown. He carried a tomahawk and a rifle and wore a beaver hat, hunting shirt, and white-fringed pants that were a faded shade of periwinkle blue. The regiment met on a quiet farm field twelve miles from the county courthouse. When the regiment's captain failed to appear, Marshall, who had practiced with his father, volunteered to lead the drill. He assumed the leadership of the company with a naturalness that seemed remarkable for such a young man. After the drill, Marshall extolled the men to join the newly formed regiment to defend the colony against Lord Dunmore. He described the recent outrages imposed on Bostonians and warned the men that the same could happen in Virginia. Though Marshall had probably never traveled

much farther than twenty miles from his home, he already had a sense that Americans shared a common destiny.⁵⁴

Later that summer the Virginia convention met illegally to plan the defense against the British regulars commanded by Lord Dunmore. They formed battalions of minutemen. The most important of these were the Culpeper minutemen, who were charged with the defense of the western frontier in Fauquier County. Marshall quickly volunteered for the Fauquier Rifles, a company of about three hundred sharpshooters, and he was commissioned as a first lieutenant. The company marched under a flag bearing the warning “Don’t Tread on Me” and an image of a menacing rattlesnake. The men did not have cannons, bayonets, or uniforms like the British redcoats. Instead, they carried their own tomahawks and muskets. They wore homespun osnaburg hunting shirts embroidered with the words “Liberty or Death,” fringed deerskin trousers, and Indian boots. Their rustic appearance left no doubt that this was a homegrown battalion of local farmers and craftsmen.⁵⁵

In September, under the command of his father, who had been commissioned as a major, Lieutenant Marshall and his men marched to Williamsburg where Patrick Henry, the commander of the Virginia militia, was preparing to attack Lord Dunmore’s forces in Norfolk, Virginia’s largest city, which was sixty miles south, near the mouth of the James River. Norfolk seemed impenetrable. As the city was surrounded by water and marshland, the only way to attack Norfolk would be to storm across the Great Bridge, a narrow 150-yard wooden trestle that crossed the Elizabeth River. At one end was a British fort guarded with a dozen cannons.

In early December, Lieutenant Marshall took part in a lightning-quick raid across the bridge, but they were easily repulsed by a hail of British fire. Five days later, the British launched a poorly executed counterattack. Marshall and the Culpeper sharpshooters positioned on the high ground above the river shot dozens of redcoats as they charged over the bridge. After suffering massive casualties, the British withdrew and ultimately

abandoned Norfolk. The Great Bridge was Marshall's first taste of combat and was a signal victory for the Virginians. While the city was now back in the hands of Virginians, the townspeople were Loyalists, and a significant British fleet remained in the harbor. Marshall's regiment fired on the fleet but could do little more to drive them away. On New Year's Day 1776, Lord Dunmore gave the order to the British fleet to bombard the city. Cannon balls ripped apart the great port. It was a terrifying attack. Before the rebels retreated, they joined in the destruction by setting fire to the homes of wealthy Loyalists. Marshall watched helplessly as British and American forces together incinerated Virginia's largest metropolis. Soon black smoke blotted out the sun. Not a single residence was spared.⁵⁶ Marshall later described the burning of Norfolk as "one of those ill-judged measures, of which the consequences are felt long after the motives are forgotten."⁵⁷

The Revolutionary War was a formative experience for the young frontiersman. It brought Marshall out of the isolated valley of his rural upbringing and exposed him to the wider world. He experienced firsthand the failure of state government and the need for a strong national government to defend against foreign adversaries. The ghastly image of that once great city reduced to smoldering rubble disabused him of any romantic notion of warfare or revolution. Instead, the young frontiersman, so skilled in the use of a gun, would later pursue the art of diplomacy.

Death and destruction demonstrated to Marshall the essential fragility of the social contract. It was easy for Jefferson to write about revolution since he had never experienced war firsthand. Marshall's military experience taught him to eschew facile ideologies and resort to violence. The elements of Marshall's conservatism were now formed—a belief in ordered liberty and a respect for property, national defense, moderation, and the need for reconciliation.