Lysander Spooner, A Letter to Grover Cleveland, on his false Inaugural Address, the Usurpations and Crimes of Lawmakers and Judges, and the consequent Poverty, Ignorance, and Servitude of the People [1886]

Section XXIV.

John Marshall has the reputation of having been the greatest jurist the country has ever had. And he unquestionably would have been a great jurist, if the two fundamental propositions, on which all his legal, political, and constitutional ideas were based, had been true.

These propositions were, first, that government has all power; and, secondly, that the people have no rights.

These two propositions were, with him, cardinal principles, from which, I think, he never departed.

For these reasons he was the oracle of all the rapacious classes, in whose interest the government was administered. And from them he got all his fame.

I think his record does not furnish a single instance, in which he ever vindicated men's natural rights, in opposition to the arbitrary legislation of congress.

He was chief justice thirty-four years: from 1801 to 1835. In all that time, so far as I have known, he never declared a single act of congress unconstitutional; and probably never would have done so, if he had lived to this time.

And, so far as I know, he never declared a single State law unconstitutional, on account of its injustice, or its violation of men's natural rights; but only on account of its conflict with the constitution, laws, or treaties of the United States.

He was considered very profound on questions of "*sovereignty*." In fact, he never said much in regard to anything else. He held that, in this country, "*sovereignty*" was divided: that the national government was "*sovereign*" over certain things; and that the State governments were "*sovereign*" over all other things. He had apparently never heard of any natural, individual, human rights, that had never been delegated to either the general or State governments.

As a practical matter, he seemed to hold that the general government had "*sovereignty*" enough to destroy as many of the natural rights of the people as it should please to destroy; and that the State governments had "*sovereignty*" enough to destroy what should be left, if there should be any such. He evidently considered that, to the national government, had been delegated the part of the lion, with the right to devour as much of his prey as his appetite should crave; and that the State governments were jackals, with power to devour what the lion should leave.

In his efforts to establish the absolutism of our governments, he made himself an adept in the use of all those false definitions, and false assumptions, to which courts are driven, who hold that constitutions and statute books are supreme over all natural principles of justice, and over all the natural rights of mankind.

Here is his definition of law. He professes to have borrowed it from some one,—he does not say whom,—but he accepts it as his own.

Law has been defined by a writer, whose definitions especially have been the theme of almost universal panegyric, "To be a rule of civil conduct prescribed by the supreme power in a State." In our system, the legislature of a State is the supreme power, in all cases where its action is not restrained by the constitution of the United States.—Ogden vs. Saunders, 12 Wheaton 347.

This definition is an utterly false one. It denies all the natural rights of the people; and is resorted to only by usurpers and tyrants, to justify their crimes.

The true definition of law is, that it is a fixed, immutable, natural principle; and not anything that man ever made, or can make, unmake, or alter. Thus we speak of the laws of matter, and the laws of mind; of the law of gravitation, the laws of light, heat, and electricity, the laws of chemistry, geology, botany; of physiological laws, of astronomical and atmospherical laws, etc., etc. All these are natural laws, that man never made, nor can ever unmake, or alter.

The law of justice is just as supreme and universal in the moral world, as these others are in the mental or physical world; and is as unalterable as are these by any human power. And it is just as false and absurd to talk of anybody's having the power to abolish the law of justice, and set up their own will in its stead, as it would be to talk of their having the power to abolish the law of gravitation, or any of the other natural laws of the universe, and set up their own will in the place of them.

Yet Marshall holds that this natural law of justice is no law at all, in comparison with some "*rule of civil conduct prescribed by* [what he calls] *the supreme power in a State*."

And he gives this miserable definition, which he picked up somewhere—out of the legal filth in which he wallowed—as his sufficient authority for striking down all the natural obligation of men's contracts, and all men's natural rights to make their own contracts; and for upholding the State governments in prohibiting all such contracts as they, in their avarice and tyranny, may choose to prohibit. He does it too, directly in the face of that very constitution, which he professes to uphold, and which declares that "*No State shall pass any law impairing the* [natural] *obligation of contracts*."

By the same rule, or on the same definition of law, he would strike down any and all the other natural rights of mankind.

That such a definition of law should suit the purposes of men like Marshall, who believe that governments should have all power, and men no rights, accounts for the fact that, in this country, men have had no "rights"—but only such permits as lawmakers have seen fit to allow them—since the State and United States governments were established,—or at least for the last eighty years.

Marshall also said:

"The right [of government] *to regulate contracts, to prescribe the rules by which they may be evidenced, to prohibit such as may be deemed mischievous, is unquestionable, and has been universally exercised*."—Ogden vs. Saunders, 12 Wheaton 347.

He here asserts that "*the supreme power in a State*"—that is, the legislature of a State—has "*the right*" to "*deem it mischievous*" to allow men to exercise their natural right to make their own

contracts! Contracts that have a natural obligation! And that, if a State legislature thinks it "*mischievous*" to allow men to make contracts that are naturally obligatory, "*its right to prohibit them is unquestionable.*"

Is not this equivalent to saying that governments have all power, and the people no rights?

On the same principle, and under the same definition of law, the lawmakers of a State may, of course, hold it "*mischievous*" to allow men to exercise any of their other natural rights, as well as their right to make their own contracts; and may therefore prohibit the exercise of any, or all, of them.

And this is equivalent to saying that governments have all power, and the people no rights.

If a government can forbid the free exercise of a single one of man's natural rights, it may, for the same reason, forbid the exercise of any and all of them; and thus establish, practically and absolutely, Marshall's principle, that the government has all power, and the people no rights.

In the same case, of Ogden vs. Saunders, Marshall's principle was agreed to by all the other justices, and all the lawyers!

Thus Thompson, one of the justices, said:

"Would it not be within the legitimate powers of a State legislature to declare prospectively that no one should be made responsible, upon contracts entered into before arriving at the age of twentyfive years? This, I presume, cannot be doubted".—p. 300.

On the same principle, he might say that a State legislature may declare that no person, under fifty, or seventy, or a hundred, years of age, shall exercise his natural right of making any contract that is naturally obligatory.

In the same case, Trimble, another of the justices, said:

"If the positive law [that is, the statute law] *of the State declares the contract shall have no obligation, it can have no obligation, whatever may be the principles of natural law in regard to such a contract. This doctrine has been held and maintained by all States and nations. The power of controlling, modifying, and even taking away, all obligation from such contracts as, independently of positive enactions to the contrary, would have been obligatory, has been exercised by all independent sovereigns.*"—p. 320.

Yes; and why has this power been exercised by "*all States and nations*," and "*all independent sovereigns*"? Solely because these governments have all—or at least so many of them as Trimble had in his mind—been despotic and tyrannical; and have claimed for themselves all power, and denied to the people all rights.

Thus it seems that Trimble, like all the rest of them, got his constitutional law, not from any natural principles of justice, not from men's natural rights, not from the constitution of the United States, nor even from any constitution affirming men's natural rights, but from "*the doctrine* [that] *has been held and maintained by all* [those] *States and nations*," and "*all* [those] *independent sovereigns*," who have usurped all power, and denied all the natural rights of mankind.

Marshall gives another of his false definitions, when, speaking for the whole court, in regard to the power of congress "*to regulate commerce with foreign nations, and among the several States*," he asserts the right of congress to an arbitrary, absolute dominion over all men's natural rights to carry on such commerce. Thus he says:

What is this power? It is the power to regulate: that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed by the constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of congress, though limited to specific objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they [the people] *have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.*—Gibbons vs. Ogden, 9 Wheaton 196.

This is a general declaration of absolutism over all "*commerce with foreign nations and among the several States*," with certain exceptions mentioned in the constitution; such as that "*all duties, imposts, and excises shall be uniform throughout the United States*," and "*no tax or duty shall be laid on articles exported from any State*," and "*no preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another*."

According to this opinion of the court, congress has—subject to the exceptions referred to—absolute, irresponsible dominion over "*all commerce with foreign nations, and among the several States*"; and all men's natural rights to trade with each other, among the several States, and all over the world, are prostrate under the feet of a contemptible, detestable, and irresponsible cabal of lawmakers; and the people have no protection or redress for any tyranny or robbery that may be practised upon them, except "*the wisdom and the discretion of congress, their identity with the people, and the influence which their constituents possess at elections* "!

It will be noticed that the court say that "*all the other powers, vested in congress, are complete in themselves, and may be exercised to their utmost extent, and acknowledge no limitations, other than those prescribed by the constitution*."

They say that among "*all the other* [practically unlimited] *powers, vested in congress*," is the power "*of declaring war*"; and, of course, of carrying on war; that congress has power to carry on war, for any reason, to any extent, and against any people, it pleases.

Thus they say, virtually, that the natural rights of mankind impose no constitutional restraints whatever upon congress, in the exercise of their lawmaking powers.

Is not this asserting that governments have all power, and the people no rights?

But what is to be particularly noticed, is the fact that Marshall gives to congress all this practically unlimited power over all "*commerce with foreign nations, and among the several States*," solely on the strength of a false definition of the verb "*to regulate*." He says that "*the*

power to regulate commerce" is the power "*to prescribe the rule by which commerce is to be governed*."

This definition is an utterly false, absurd, and atrocious one. It would give congress power arbitrarily to control, obstruct, impede, derange, prohibit, and destroy commerce.

The verb "*to regulate*" does not, as Marshall asserts, imply the exercise of any arbitrary control whatever over the thing regulated; nor any power "*to prescribe* [arbitrarily] *the rule, by which*" the thing regulated "*is to be governed*." On the contrary, it comes from the Latin word, *regula*, a rule; and implies the pre-existence of a rule, to which the thing regulated is made to conform.

To regulate one's diet, for example, is not, on the one hand, to starve one's self to emaciation, nor, on the other, to gorge one's self with all sorts of indigestible and hurtful substances, in disregard of the natural laws of health. But it supposes the pre-existence of the natural laws of health, to which the diet is made to conform.

A clock is not "regulated," when it is made to go, to stop, to go forwards, to go backwards, to go fast, to go slow, at the mere will or caprice of the person who may have it in hand. It is "regulated" only when it is made to conform to, to mark truly, the diurnal revolutions of the earth. These revolutions of the earth constitute the pre-existing rule, by which alone a clock can be regulated.

A mariner's compass is not "regulated," when the needle is made to move this way and that, at the will of an operator, without reference to the north pole. But it is regulated when it is freed from all disturbing influences, and suffered to point constantly to the north, as it is its nature to do.

A locomotive is not "regulated," when it is made to go, to stop, to go forwards, to go backwards, to go fast, to go slow, at the mere will and caprice of the engineer, and without regard to economy, utility, or safety. But it is regulated, when its motions are made to conform to a pre-existing rule, that is made up of economy, utility, and safety combined. What this rule is, in the case of a locomotive, may not be known with such scientific precision, as is the rule in the case of a clock, or a mariner's compass; but it may be approximated with sufficient accuracy for practical purposes.

The pre-existing rule, by which alone commerce can be "regulated," is a matter of science; and is already known, so far as the natural principle of justice, in relation to contracts, is known. The natural right of all men to make all contracts whatsoever, that are naturally and intrinsically just and lawful, furnishes the preexisting rule, by which alone commerce can be regulated. And it is the only rule, to which congress have any constitutional power to make commerce conform.

When all commerce, that is intrinsically just and lawful, is secured and protected, and all commerce that is intrinsically unjust and unlawful, is prohibited, then commerce is regulated, and not before.

This false definition of the verb "to regulate" has been used, time out of mind, by knavish lawmakers and their courts, to hide their violations of men's natural right to do their own businesses in all such ways—that are naturally and intrinsically just and lawful—as they may choose to do them in. These lawmakers and courts dare not always deny, utterly and plainly, men's right to do their own businesses in their own ways; but they will assume "to regulate"

them; and in pretending simply "to regulate" them, they contrive "to regulate" men out of all their natural rights to do their own businesses in their own ways.

How much have we all heard (we who are old enough), within the last fifty years, of the power of congress, or of the States, "*to regulate the currency*." And "*to regulate the currency*" has always meant to fix the kind, and limit the amount, of currency, that men may be permitted to buy and sell, lend and borrow, give and receive, in their dealings with each other. It has also meant to say who shall have the control of the licensed money; instead of making it mean the suppression only of false and dishonest money, and then leaving all men free to exercise their natural right of buying and selling, borrowing and lending, giving and receiving, all such, and so much, honest and true money, or currency, as the parties to any or all contracts may mutually agree upon.

Marshall's false assumptions are numerous and tyrannical. They all have the same end in view as his false definitions; that is, to establish the principle that governments have all power, and the people no rights. They are so numerous that it would be tedious, if not impossible, to describe them all separately. Many, or most, of them are embraced in the following, viz.:

1. The assumption that, by a certain paper, called the constitution of the United States—a paper (I repeat and reiterate) which nobody ever signed, which but few persons ever read, and which the great body of the people never saw—and also by some forty subsidiary papers, called State constitutions, which also nobody ever signed, which but few persons ever read, and which the great body of the people never saw—all making a perfect system of the merest nothingness—the assumption, I say, that, by these papers, the people have all consented to the abolition of justice itself, the highest moral law of the Universe; and that all their own natural, inherent, inalienable rights to the benefits of that law, shall be annulled; and that they themselves, and everything that is theirs, shall be given over into the irresponsible custody of some forty little cabals of blockheads and villains called lawmakers—blockheads, who imagine themselves wiser than justice itself, and villains, who care nothing for either wisdom or justice, but only for the gratification of their own avarice and ambitions; and that these cabals shall be invested with the right to dispose of the property, liberty, and lives of all the rest of the people, at their pleasure or discretion; or, as Marshall says, "*their wisdom and discretion!*"

If such an assumption as that does not embrace nearly, or quite, all the other false assumptions that usurpers and tyrants can ever need, to justify themselves in robbing, enslaving, and murdering all the rest of mankind, it is less comprehensive than it appears to me to be.

2. In the following paragraph may be found another batch of Marshall's false assumptions.

The right to contract is the attribute of a free agent, and he may rightfully coerce performance from another free agent, who violates his faith. Contracts have consequently an intrinsic obligation. [But] *When men come into society, they can no longer exercise this original natural right of coercion. It would be incompatible with general peace, and is therefore surrendered. Society prohibits the use of private individual coercion, and gives in its place a more safe and more certain remedy. But the right to contract is not surrendered with the right to coerce performance*.—Ogden vs. Saunders, 12 Wheaton 350.

In this extract, taken in connection with the rest of his opinion in the same case, Marshall convicts himself of the grossest falsehood. He acknowledges that men have a natural right to make their own contracts; that their contracts have an "*intrinsic obligation*"; and that they have an "*original and natural right*" to coerce performance of them. And yet he assumes, and virtually

asserts, that men voluntarily "*come into society*," and "*surrender*" to "*society*" their natural right to coerce the fulfilment of their contracts. He assumes, and virtually asserts, that they do this, upon the ground, and for the reason, that "*society gives in its place a more safe and more certain remedy*"; that is, "*a more safe and more certain*" enforcement of all men's contracts that have "*an intrinsic obligation*."

In thus saying that "*men come into society*," and "*surrender*" to society, their "*original and natural right*" of coercing the fulfillment of contracts, and that "*society gives in its place a more safe and certain remedy*," he virtually says, and means to say, that, in consideration of such "*surrender*" of their "*original and natural right of coercion*," "*society*" pledges itself to them that it will give them this "*more safe and more certain remedy*"; that is, that it will more safely and more certainly enforce their contracts than they can do it themselves.

And yet, in the same opinion—only two and three pages preceding this extract—he declares emphatically that "*the right*" of government—or of what he calls "*society*"—"*to prohibit such contracts as may be deemed mischievous, is unquestionable*."—p. 347.

And as an illustration of the exercise of this right of "*society*" to prohibit such contracts "*as may be deemed mischievous*," he cites the usury laws, thus:

The acts against usury declare the contract to be void in the beginning. They deny that the instrument ever became a contract. They deny it all original obligation; and cannot impair that which never came into existence.—p. 348.

All this is as much as to say that, when a man has voluntarily "*come into society*," and has "*surrendered*" to society "*his original and natural right of coercing*" the fulfilment of his contracts, and when he has done this in the confidence that society will fulfil its pledge to "*give him a more safe and more certain coercion*" than he was capable of himself, "*society*" may then turn around to him, and say:

We acknowledge that you have a natural right to make your own contracts. We acknowledge that your contracts have "*an intrinsic obligation*." We acknowledge that you had "*an original and natural right*" to coerce the fulfilment of them. We acknowledge that it was solely in consideration of our pledge to you, that we would give you a more safe and more certain coercion than you were capable of yourself, that you "*surrendered*" to us your right to coerce a fulfilment of them. And we acknowledge that, according to our pledge, you have now a right to require of us that we coerce a fulfilment of them. But after you had "*surrendered*" to us your own right of coercion, we took a different view of the pledge we had given you; and concluded that it would be "*mischievous*" to allow you to make such contracts. We therefore "*prohibited*" your making them. And having prohibited the making of them, we cannot now admit that they have any "*obligation*." We must therefore decline to enforce the fulfilment of them. And we warn you that, if you attempt to enforce them, by virtue of your own "*original and natural right of coercion*," we shall be obliged to consider your act a breach of "*the general peace*," and punish you accordingly. We are sorry that you have lost your property, but "*society*" must judge as to what contracts are, and what are not, "*mischievous*." We can therefore give you no redress. Nor can we suffer you to enforce your own rights, or redress your own wrongs.

Such is Marshall's theory of the way in which "*society*" got possession of all men's "*original and natural right*" to make their own contracts, and enforce the fulfilment of them; and of the way in which "*society*" now justifies itself in prohibiting all contracts, though "*intrinsically obligatory*," which it may choose to consider "*mischievous*." And he asserts that, in this way, "*society*" has

acquired "*an unquestionable right*" to cheat men out of all their "*original and natural right*" to make their own contracts, and enforce the fulfilment of them.

A man's "*original and natural right*" to make all contracts that are "*intrinsically obligatory*," and to coerce the fulfilment of them, is one of the most valuable and indispensable of all human possessions. But Marshall assumes that a man may "*surrender*" this right to "*society*," under a pledge from "*society*," that it will secure to him "*a more safe and certain*" fulfilment of his contracts, than he is capable of himself; and that "*society*," having thus obtained from him this "*surrender*," may then turn around to him, and not only refuse to fulfil its pledge to him, but may also prohibit his own exercise of his own "*original and natural right*," which he has "*surrendered*" to "*society*!"

This is as much as to say that, if A can but induce B to intrust his (B's) property with him (A), for safekeeping, under a pledge that he (A) will keep it more safely and certainly than B can do it himself, A thereby acquires an "*unquestionable right*" to keep the property forever, and let B whistle for it!

This is the kind of assumption on which Marshall based all his ideas of the constitutional law of this country; that constitutional law, which he was so famous for expounding. It is the kind of assumption, by which he expounded the people out of all their "*original and natural rights*."

He had just as much right to assume, and practically did assume, that the people had voluntarily "*come into society*," and had voluntarily "*surrendered*" to their governments all their other natural rights, as well as their "*original and natural right*" to make and enforce their own contracts.

He virtually said to all the people of this country:

You have voluntarily "come into society," and have voluntarily "surrendered" to your governments all your natural rights, of every name and nature whatsoever, for safe keeping; and now that these governments have, by your own consent, got possession of all your natural rights, they have an "unquestionable right" to withhold them from you forever.

If it were not melancholy to see mankind thus cheated, robbed, enslaved, and murdered, on the authority of such naked impostures as these, it would be, to the last degree, ludicrous, to see a man like Marshall—reputed to be one of the first intellects the country has ever had—solemnly expounding the "*constitutional powers*," as he called them, by which the general and State governments were authorized to rob the people of all their natural rights as human beings.

And yet this same Marshall has done more than any other one man—certainly more than any other man within the last eighty-five years—to make our governments, State and national, what they are. He has, for more than sixty years, been esteemed an oracle, not only by his associates and successors on the bench of the Supreme Court of the United States, but by all the other judges, State and national, by all the ignorant, as well as knavish, lawmakers in the country, and by all the sixty to a hundred thousand lawyers, upon whom the people have been, and are, obliged to depend for the security of their rights.

This system of false definitions, false assumptions, and fraud and usurpation generally, runs through all the operations of our governments, State and national. There is nothing genuine, nothing real, nothing true, nothing honest, to be found in any of them. They all proceed upon the principle, that governments have all power, and the people no rights.