



# Life Story: Bushrod Washington

*A learned judge whose tireless pursuit of legal knowledge was the keystone of his judgments as an Associate Justice of the Supreme Court.*

Bushrod Washington was born at Bushfield in Westmoreland County, Virginia on June 5, 1762. His father, John “Jack” Augustine Washington, was the younger brother of George Washington and a **delegate** to the Virginia legislature and his mother, Hannah Bushrod Washington, was the daughter of a prominent Virginia family. Bushrod was the favorite nephew of his Uncle George who would become commander of the Continental Army and the first President of the United States. The Washingtons believed all their children, including their daughters, should receive a quality education. Thus, Bushrod was taught by private tutor until he was sixteen, when he moved to finish his studies at a school in Fredericksburg, Virginia. In 1780, he attended William and Mary College to study law under the first law professor in the United States, George Wythe, gaining a more extensive formal legal education than most law students of his time. For example, Professor Wythe helped his students practice for their future careers by participating in **moot courts** and mock legislatures. Bushrod shared law classes with many future leaders of the United States including John Marshall, the Chief Justice under whom he would later serve.

In 1781, when the British Army invaded Virginia during the **American Revolution**, Bushrod volunteered for service and joined a cavalry unit of the Continental Army. He saw action in one key battle but returned to Bushfield before **General Cornwallis**’ surrender at Yorktown, which ended the war. After the war, General Washington took an interest in his nephew’s education and arranged for him to **apprentice** with Philadelphia lawyer James Wilson, a signer of the Declaration of Independence and future Associate Justice of the Supreme Court. Bushrod spent two years learning from Wilson.

At the age of twenty-one, Bushrod returned to Virginia when his younger brother, Augustine, unexpectedly died due to a gun related accident. His loss deeply affected Bushrod and the Washington family. Soon after his return home, Bushrod was admitted to the Virginia Bar. In 1785, he married Julia Ann “Nancy” Blackburn, the daughter of one of General Washington’s most respected officers. She was a lover of music who suffered from lifelong physical and mental illnesses. Though the couple had no children, they raised many of their nieces and nephews as their own. Shortly after his wedding, Bushrod’s interest in politics led him to join the **Patriotic Society** where he was able to refine his **Federalist** views. In January of 1787, Jack Washington suddenly passed away and Bushrod inherited the family estate including 1,500 acres of land and numerous enslaved people. Later that year, he made a successful run for the Virginia House of Delegates. Bushrod, and his friend John Marshall, also helped to ratify the new U.S. Constitution in 1788 as members of the Virginia state convention.

After that significant victory, Bushrod decided to concentrate on the law and opened successful law practices in Alexandria and later Richmond where he occasionally encountered Marshall before the Virginia Court of Appeals, the state's highest court during that period. Bushrod was involved in nearly a quarter of the court's cases which helped to establish him as a committed and dedicated practitioner of law. He kept thorough legal notes on all his cases, later publishing them in a two-volume book, *Reports of Cases Argued in the Courts of Appeals of Virginia 1790-96*. Bushrod was both celebrated and criticized for his dedication to the study of law, which some believed limited his broader education. Young legal scholars, however, benefitted from his expertise through apprenticeships.

When Associate Justice James Wilson died in 1798, a seat opened on the Supreme Court. President John Adams wanted to nominate a Federalist from Virginia and his top candidates were John Marshall and Bushrod Washington. Though Adams originally offered the position to Marshall, Marshall was more interested in running for Congress and recommended his close friend Bushrod instead. President Adams formally nominated Bushrod to the Supreme Court on December 19, 1798 and he was confirmed by the Senate the following day. Marshall joined Bushrod on the bench three years later as Chief Justice of the Supreme Court. During his judicial service, Bushrod became one of Marshall's most faithful supporters, publicly disagreeing only three times with the Chief Justice. He wrote seventy Supreme Court opinions in his thirty-one years on the bench, deferring most to Marshall, and formally dissented only once. Justice Joseph Story credits Bushrod with persuading him not to **dissent** without deep conviction when he remarked, "delivering dissenting opinions on ordinary occasions, weakens the authority of the Court, and is of no public benefit." Towards the end of his and Marshall's career, however, Marshall's only dissent came in response to Bushrod's majority opinion for *Ogden v. Saunders* (1827).

Like the rest of the Supreme Court Justices during the 1800s, Bushrod also served as a circuit court judge and rode circuit four months each year, hearing cases in cities and towns in the region to which he was assigned. He was responsible for part of the middle circuit, Pennsylvania and New Jersey. His wife, Nancy, often accompanied him on the difficult, months-long journey along with his personal enslaved person, Oliver Smith. As he traveled, Bushrod delivered opinions rooted deeply in legal authority despite political and societal protest and personal threats. In fact, most of his notable opinions were written during his service as a circuit court judge. In 1798, Bushrod authored *United States v. Bright* (1809), an important **federalism** decision in which he defended the authority of the federal courts. His opinion in *Golden v. Prince* (1814) asserted that the power to pass bankruptcy laws belonged exclusively to the federal government, clarifying the relationship between federal courts and state laws. Finally, in *Corfield v. Coryell* (1823), a well-known section from Bushrod's opinion listed the "privileges and immunities" enjoyed by citizens of the United States which laid the foundation for the Civil Rights Act of 1866 and the **14th Amendment**.

His opinion also stated that voting was an essential right leading to its favor among women's **suffrage** activists. Though riding circuit was dangerous and unpredictable, Bushrod continued to keep excellent records and once again published his legal notes and decisions in a four-volume text titled *United States Court for the Third Circuit, 1803-27*.

Despite his stellar legal reputation and his status as the favorite nephew of the well-known American hero, Bushrod was not handed prestigious government positions. President Washington was known to be a critic of **nepotism** which prevented him from appointing Bushrod to United States Attorney for the District of Virginia. When Justice Wilson's seat opened on the Supreme Court, President Washington did not recommend Bushrod for the appointment. President Adams appointed him anyway. Upon his death in 1799, however, Washington left his beloved plantation, Mount Vernon which included 4,000 acres of land and the contents of the library to his nephew. The house was in poor condition with only one livable room and the plantation was no longer **self-sustaining**. Additionally, Bushrod had the daunting task of preserving his uncle's personal papers and legacy. He and John Marshall published the five-volume biography of George Washington in 1807.

In his **will**, George Washington directed that his enslaved people should be freed upon the death of his wife, Martha. As his uncle's executor, Bushrod ensured that the direction to **emancipate** all the enslaved people was carried out. The crumbling condition of the plantation, however, led Bushrod to bring his own enslaved people to Mount Vernon in an attempt to make it profitable once again. His lack of farming experience caused Mount Vernon to fall into even greater debt resulting in the sale of many of the enslaved people at auction to sustain the plantation. Though Bushrod attempted to ensure that families would not be separated when they were sold, his actions brought great criticism from **abolitionists** for not simply freeing his enslaved people. Bushrod defended his right to sell the individuals as his property. As lifetime president of the American Colonization Society, he also supported efforts to return free black people to Africa. The Society's efforts were generally not supported by abolitionists who believed the resettlement efforts were the result of racism and fear of slave uprisings.

On November 26, 1829, Bushrod Washington died conducting circuit court business in Philadelphia. His wife, Nancy, was heartbroken and died a few days later while bringing his body back home. Though Bushrod had freed his uncle's enslaved people, he never freed his own. In his will, Bushrod left 160 acres of land to **West Ford Washington**, a formerly enslaved man who had been freed by his mother upon her death in 1801. Due to Ford's appearance and special treatment, many believe him to be related to the Washingtons. Though Bushrod had freed his uncle's enslaved people, he never freed his own. Bushrod Washington was **eulogized** by fellow Supreme Court Justice Joseph Story with these words, "He read to learn, and not to merely quote; to digest and master, and not merely display. ...The value of his learning was the keystone of all his judgments..." His loyal friend Chief

Justice Marshall wrote, “I need not say how much I regret his loss. ...He was...one of the worthiest and best...in amiableness of manners, in excellence of heart, in professional acquirements and in soundness of intellect...” Associate Justice Bushrod Washington, and his wife Nancy, were buried in the family crypt at Mount Vernon next to George and Martha Washington.

### Vocabulary

- **Delegate:** a representative in government, usually at the state legislature.
- **Classical education:** an education strategy that focused on math, reading, and writing.
- **American Revolution:** also known as the War for Independence, it was the military conflict between the 13 British colonies in North America and Great Britain during which the victorious American forces secured an independent United States of America.
- **General Cornwallis:** the leader of the British forces during the American Revolution.
- **Moot Courts:** a mock court at which law students argue cases for practice.
- **Apprentice:** a paid job where the employee gains valuable experiences through on the job training and mentoring from an experienced professional.
- **Chancery:** involves the principles and concepts of contract and trusts law.
- **Patriotic Society:** a political club with influence in the state of Virginia.
- **Federalism:** a doctrine that recognizes the existence and independent powers of the federal and state governments.
- **Dissent:** when a Justice does not agree with the majority vote on a case.
- **14th Amendment:** ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all citizens “equal protection of the laws.”
- **Suffrage:** the right to vote.
- **Nepotism:** the practice among those with power or influence of favoring relatives, friends, or associates, especially by giving them jobs.
- **Self-sustaining:** able to continue in a healthy state without outside assistance.
- **Will:** a legal document that communicates a person’s final wishes upon their death.
- **Emancipate:** to free enslaved people.
- **Abolitionists:** people who advocated for the end of slavery.
- **West Ford Washington:** a formerly enslaved person by the Washington family who inherited family land. He sold the land to buy a larger piece that became a free black community known as “Gum Springs” in Virginia.
- **Eulogy:** a speech or piece of writing that praises someone or something highly, typically someone who has just died.

### **Discussion Questions**

1. How did Bushrod's life experiences prepare him to serve as a Supreme Court Justice?
2. What can you infer from George Washington's disdain of nepotism and Bushrod's Washington's career and accomplishments?
3. Do you think that Bushrod's narrow focus on the law had a more positive or negative impact? Explain.
4. How does Bushrod's ownership of enslaved people impact your opinion of him?
5. What are Bushrod's most important accomplishments? What should his legacy be?

### **Extension Activity**

When Justice Bushrod Washington passed away, his colleague, Justice Story, wrote his eulogy praising his work as a learned judge. Now that you have learned about the life and legacy of Bushrod Washington, write your own version of his eulogy that encompasses his whole life.

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