A

BIOGRAPHICAL SKETCH

OF THE

HON. JOHN BOYLE:

IN AN

INTRODUCTORY LECTURE

TO THE

LAW CLASS OF TRANSYLVANIA,

NOVEMBER 7, 1838.

BY

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PUBLISHED BY THE LAW CLASS.

FRANKFORT, KY.

A. G. HODGES, PRINTER.

1838.

LEXINGTON, November 27, 1838.

Sir—We the undersigned having been appointed by the Law Class of Transylvania University, a Committee to wait upon your honor, respectfully request a copy of your Introductory Lecture for publication, believing it to be a just and able eulogy on the life and public services of the late Hon. John Boyle.

Respectfully, your ob't servants,

WILLIAM T. BARBOUR,
WM. R. CARRADINE,
WM. H. ROBARDS,
M. R. SINGLETON,
} *Committee.*

Hon. GEORGE ROBERTSON.

LEXINGTON, 28th November, 1838.

Gentlemen—Thanking you and the Law Class for your kind sentiments, I commit to your discretion and disposal the Introductory Lecture, a copy of which you have requested for publication.

Yours respectfully,

GEORGE ROBERTSON.

Messrs. WM. T. BARBOUR,
W. R. CARRADINE,
W. H. ROBARDS,
M. R. SINGLETON,
} *Committee.*

INTRODUCTORY LECTURE.

It is the sacred duty of every generation to preserve faithful memorials of the character and conduct of its distinguished men. The memory of the illustrious dead should never be lost in the oblivion of time. Biography is the soul of history. The maxims and motives and destiny of prominent men, as exemplified, from age to age, in the moral drama of our race, constitute the elements of historic philosophy and impart to the annals of mankind their only practical utility. When, and only when, illustrated by the life of an eminent man, virtue or vice, knowledge or ignorance, thus personified, is seen and felt as the efficient lever of the moral world. The lives of conspicuous men help to characterise their day and country, and, like sign boards on the highways and the bye-ways through the wilderness of human affairs, tell the bewildered pilgrim where he is going, what way he *should* go, and the weal or the wo of his journey's end.

Here, with trembling hand, the gifted Burns points to the ruin and despair which lie in ambush on the broad and voluptuous turnpike on which his noble genius was driven to destruction—here sits the cold bust of the captive Napoleon scowling on the iron railway where the steam car of unrighteous ambition, exploding with a tremendous crash, shivered all his gigantic hopes and projects of power—and here too stands the god-like statue of our Washington, consecrating the straight and narrow pathway of virtue, which leads the honest man to everlasting happiness, and the pure patriot to immortal renown:—and here, every where, we see exemplifications of the vanity of worldly riches, the wretchedness of selfish ambition, the usefulness of industry, and charity, and self-denial, and the blissfulness of cultivated faculties and of moderation in all our desires and enjoyments.

The lessons, thus only to be usefully taught, are practical truths echoed from the tombs of buried generations, in the mother tongue of all mankind.

Greece, and Rome, and France, and England, have honored their dead and contributed to the stock of useful knowledge among men by graphic memoirs of their conspicuous Philosophers, Heroes, Statesmen, and Bards. And Plutarch's parallel Biographies of Greeks and Romans, and Johnson's Lives of the British Poets,—scholastic as the one and garrulous as the other must be admitted to be,—are among the most valuable of the repositories of practical wisdom.

But it is in this our age of rectified reason and enlightened liberty that the lives of the virtuous great who have lived and are buried in our own America, would exhibit the most attractive models of the virtues which made them and our country great, and which alone will ever ennoble and bless the nations and countries of the earth.

The Anglo-American heroes and statesmen, from the Pilgrim Band of Plymouth Rock to that more illustrious group signalised in our memorable revolution, stand out in bold relief on the column of history; and the humbler, but not less noble pioneers and hunters of Kentucky and the primitive founders of the great social fabric of this blooming valley of the West, have left behind them monuments more enduring than storied urns or animated busts. But the personal history of most of these nobles of their race is yet told only by the tongue of tradition. And the story of the deeds of many of them is, even now among ourselves, listened to as romance.

Our own favored Commonwealth, though young in years, is venerable in deeds. Kentucky has been the theatre of marvellous events and of distinguished talents.

Though not more than 63 years have run since the first track of civilization was made in her dark and bloody wilderness, yet she has already had her age of chivalry, her age of glory, and her age of reason and religion, liberty and law. She has her battle fields as memorable, and almost as eventful, as those of Marathon or Waterloo—and she has had heroes, orators, jurists and lawgivers who would have been conspicuous in any age or country. But neither biography nor general history has done justice to their memories. Most of that class of them, whose lives were peaceful and whose triumphs were merely *civic*, have been permitted to slumber under our feet without either recorded eulogy or biographic memorial.

The memory of the Nicholases, the Breckinridges, the Browns, and the Murrays, the Allans and the Hughes, the Talbotts and the Bledsoes, the Daviesses and the Hardins—the McKees and the Andersons—the Todds, the Trimbles and the Boyles—of whom, in their day, Kentucky was justly proud, should not longer remain thus unhonored and unsung.

Influenced by a strong sense of personal and public obligation, we will now attempt to sketch a brief outline of one of these our departed great.

Among the honored names of Kentucky, *John Boyle*, once Chief Justice of the State, is deservedly conspicuous. Modest and unpretending, his sterling merit alone elevated him, from humble obscurity, to high places of public trust, which he filled without reproach, and to a still more enviable place in public confidence and esteem which but few men ever attained, and none ever more deserved. Though his whole career was peaceful and unaspiring, his life, "take it all in all," domestic and public, exhibits a beautiful model of an honest man, a just citizen, a patriotic statesman, and an enlightened jurist. The example of such a man is worthy of imitation by all men living or to come—and the memorials of such a life must be interesting to all good men, and peculiarly profitable to the young who desire to be useful and honored.

John Boyle's genealogy cannot be traced through a long line of ancestry. He inherited no ancestral honors, nor fortune, nor memorial. Like most of the first race of illustrious Kentuckians, descended from a sound but humble stock, he was the carver of his own fortune and the ennobler of his own name. His only patrimony was a vigorous constitution, a sound head, a pure heart, and a simple, but virtuous education.

He was born October 28th, 1774, in Virginia, at a place called "Castle Woods," on Clinch river, in the (then) county of Bottetourt, now Russell or Tazewell; and in the year 1779 was brought to Whitley's Station in Kentucky, by his father, who immigrated in that year to try his fortune in the wild woods of the west—and who, like the mass of early adventurers, reared in the old school of provincial simplicity and backwoods equality, was a plain, blunt man of independent spirit. The father first "*settled*" in Madison county, but afterwards "moved" to the county of Garrard, where he lived on a small estate until his death.

Of the early history of the son, we have heard nothing signal or peculiar. In his days of pupilage, a collegiate education was not attainable in Kentucky. And those, who like him were poor, were compelled to be content with such scholastic instruction as might be derived from private tutors and voluntary country schools.

Emulous of such usefulness and fame as can be secured only by moral and intellectual excellence, he eagerly availed himself of all the means within his reach for improving his mind and cultivating proper principles and habits. After acquiring an elementary English education, he learned the rudiments of the Greek and Latin languages and of the most useful of the sciences, in Madi-

son county, under the tutelage of the Rev. Samuel Finley, a Presbyterian clergyman of exemplary piety and patriarchal simplicity. With this humble preparation, having chosen the Law for his professional pursuit, he read Blackstone's Commentaries and a few other elementary and practical books under the direction of Thomas Davis, then a member of Congress, whom he succeeded, and who resided in the county of Mercer, in the neighborhood of Jeremiah Tilford, a plain, pious and frugal farmer with whom the pupil boarded, and one of whose daughters (*Elizabeth*)—a beautiful and excellent woman—he married in 1797, about the commencement of his professional career. His wife's estate did not equal in value $1,000, and his own patrimony was himself alone, just as he was. With these humble means he bought an out-lot in *Lancaster*, Garrard county, on which, in 1798, he built a small log house with only two rooms, in which not only himself, but three other gentlemen, *who successively followed him as a national representative. and one of whom also succeeded him in the Chief Justiceship of Kentucky*, began the sober business of conjugal life. There he lived happily and practised law successfully until 1802, when, being unanimously called to the House of Representatives of the United States, he settled on a farm of 125 acres near Lancaster, where he continued to reside until 1811, when he moved to a tract of land in the same county, a part of which had been recently given to him by his father, and where he lived, in *cabins*, until 1814, when he bought and removed to the tract in Mercer on which his wife had been reared, and where he continued to reside until his death.

Here let us pause a moment, and, from the eminence to which the people spontaneously elevated the isolated and unambitious Boyle, let us look back on the humble pathway which led him so soon to the enviable place he occupied in the affections of those who knew him first and best, and not one of whom ever faltered in his confidence and esteem.

Without the adventitious influence of wealth, or family, or accident, and without any of the artifices of vulgar ambition or selfish pretension, he was, as soon as known, honored with the universal homage of that kind of cordial respect which nothing but intrinsic and unobtrusive merit can ever command, and which alone can be either gratifying or honorable to a man of good taste and elevated mind. It was his general intelligence, his undoubted probity, his child-like candor, his scrupulous honor and undeviating rectitude, which alone extorted—what neither money, nor office, nor flattery, nor duplicity, can ever secure—the sincere esteem of all who knew him. And so conspicuous and attractive was his unostentatious worth, that, though he rather shunned than courted, official distinction, it *sought him* and

called him from his native obscurity and the cherished privacy of domestic enjoyment. His education was unsophisticated and practical. He learned things instead of names, principles of moral truth and inductive philosophy instead of theoretic systems and scholastic dogmatisms. His country education preserved and fortified all his useful faculties, physical and moral,—his taste was never perverted by false fashion—his purity was never contaminated by the examples or seduced by the temptations of demoralising associations. Blessed with a robust constitution, his habitual industry and "temperance in all things" preserved his organic soundness and promoted the health and the vigor of his body and his mind. What he knew to be right he always practised—and that which he felt to be wrong he invariably avoided. In his pursuit after knowledge his sole objects were truth and utility. In his social intercourse he was chaste, modest and kind—and all his conduct, public and private, was characterised by scrupulous fidelity, impartial justice, and an enlightened and liberal spirit of philanthropy and benificence. Self-poised, he resolutely determined that his destiny should depend on his own conduct. Observant, studious, and discriminating, whatever he acquired from books or from men he made his own by appropriate cogitation or manipulation. And thus, as far as he went in the career of knowledge, he reached, as if *per saltem*, the end of all learning—practical truth and utility.

Panoplied in such principles and habitudes, his merit could not be concealed. In a just and deserving community, such a man is as sure of honorable fame as substance is of shadow in the sunlight of day. And have we not here a striking illustration of the importance of right education and self dependence? Proper education is that kind of instruction and discipline, moral, mental and physical, which will teach the boy what he should do and what he should shun when he becomes a man, and prepare him to do well whatever an intelligent and upright man should do in all the relations of social and civil life; and any system of education which accomplishes either more or less than this is, so far, imperfect, or preposterous and pernicious. But, after all, the best school-masters are a mediocrity of fortune, and a country society, virtuous but not puritanical, religious but not fanatical, independent but not rich, frugal but not penurious, free but not licentious—a society which exemplifies the harmony and value of industry and morality, republican simplicity and practical equality.

Reared in such a school and practically instructed in the elements of useful knowledge, a man of good capacity, who enters on the business of life with no other fortune than his own faculties and no other hope than his own honest efforts, can scarcely fail to become both useful and great. But he who embarks destitute

of such tutilage or freighted with heriditary honor or wealth, is in imminent danger of being wrecked in his voyage. Fortune and illustrious lineage are, but too often, curses rather than blessings. The industry and self-denial, which are *indispensable* to true moral and intellectual greatness, have been but rarely practised without the lash of poverty or the incentive of total self-dependence. And the son who cannot make fortune and fame for himself, will not be apt to increase or even to keep inherited wealth or reputation, however bounteously they may have been showered on his early manhood. Parents should therefore be solicitous to educate their children in such a manner as to make them healthful in body and mind, and to enable them to be useful and honorable, without extraneous wealth, which is but too apt to paralize or ensnare the victims of perverted bounty and indiscriminating affection.

John Boyle, rightly reared and unincumbered by patrimonial trash, started the journey of life alone and on foot—his own mind his only guide, his own conduct his only hope: and though there was nothing strikingly imposing in the character of his mind or in his manners, but few men on earth ever reached his earthly goal of honor by a straighter or smoother path. During his short professional career, he was eminently just and faithful to his clients; and though his elocution was neither copious nor graceful, he was extensively patronized. For this success he was indebted altogether to his intelligence, integrity, and fidelity. But with much business—his fees being low, and not well collected—he made but little money. He acquired however that which was far more valuable—the reputation of an enlightened and "an *honest lawyer*."

Translated from the forensic to the political theatre, he declined altogether the practice of the law. In the national legislature he acted with the Jeffersonian and then dominant party. And though not a speaking member, he was vigilant, active and useful, and his disinterested patriotism, amiable modesty, unclouded intelligence and habitual candor, soon exalted him to an enviable reputation. If there be any valid objection to his political course, it is this only—that, agreeing, as he generally did, with a party armed with power and flushed with a recent and great victory in the downfall of an opposing and previously governing party, he was more of a partizan than perfect justice or abstract truth would altogether have approved. But this aberration, which could not have been easily avoided, was, in his case, as venial and slight as it ever was in the case of any other man who ever lived. He did not give "up to party what was meant for mankind"—nor was he intolerant, proscriptive or factious, or ever influenced by any selfish or sinister motive. And if, when he co-operated with his political friends, he ever erred, the ardor of his patriotism and the

unsuspecting confidence of his own honest mind induced him to believe, at the time, that his party was right. But he was never charged with insincerity or obliquity of motive. And his character was always blaimless in the view even of those who did not concur with him in opinion.

If as much could be as truly said of more modern partizans, our country would be blessed with more honor and tranquility than can be admitted to prevail in this our day of comparative intolerance and intellectual prostitution.

Having no taste for political life, and finding moreover that the duties of a representative in Congress were incompatible with his domestic obligations, he had soon resolved to retire from the theatre of public affairs and devote himself to his family and his legal profession. But such a man as *John Boyle* cannot always dispose of himself according to his own personal wishes. His constituents re-elected him twice without competition. And we have heard that Mr. Jefferson, who justly appreciated his worth, offered him more than one federal appointment which either his diffidence or his romantic attachment to his family and home induced him to decline. But, in March 1809, Mr. Madison, among his first official acts as President, appointed him, without his solicitation, the first Governor of Illinois. This being, as it certainly was, prospectively one of the most important and lucrative of all federal appointments, and his domestic duties having become still more and more importunate, he was inclined to accept the provincial Governorship—and did accept it provisionally. But, on his return to his family, he was invited to elect between the territorial office and that of a Circuit Judge, and also of an Appellate Judge of Kentucky, both of which latter appointments had been tendered to him in anticipation of his retirement from Congress. And though the salary of Appellate Judge was then only $1000, and the duties of the office were peculiarly onerous, yet, his local and personal attachments and associations prevailing over his ambition and pecuniary interest, he took his seat on the Appellate bench of his own State on the 4th of April, 1809—and Ninian Edwards, the then Chief Justice of Kentucky, *solicited* and obtained the abdicated proconsulship of Illinois.

The election thus made by Boyle affords an impressive illustration of the cast of his mind and his affections. Illinois was obviously the better theatre for an ambitious or avaricious man of his talents. But he was neither ambitious nor avaricious. His own domestic happiness and social sympathies prevailed over every other consideration. And at last, perhaps his decision was as prudent, as it was patriotic. His judicial career, for which he was peculiarly fitted, forms an interesting epoch in the jurisprudence of the west—and he could not have left to his children a

better legacy than the fame he acquired as Chief Justice of his own beloved Commonwealth—to which high and responsible office he was promoted on the 3d of April 1810, and which he continued to hold until the 8th of November 1826.

When first called to the bench of justice his legal learning could not have been either extensive, ready, or very exact. But he possessed all the elements of a first rate judge, as time and trial demonstrated. He soon became a distinguished jurist. His legal knowledge, though never remarkably copious, was clear and scientific. Many men had read more books, but none ever understood better what they read. His law library contained only the most comprehensive and approved volumes—and those he studied carefully, could use readily, and understood thoroughly. With the elements of the common law and the philosophy of pleading, he appeared to be perfectly acquainted.

His miscellaneous reading was extensive—and in mental and moral philosophy and polite literature, his attainments were eminent. His colloquial style was plain and unpedantic, but fluent, chaste and perspicuous; and his style of writing was pure, graceful, and luminous.

Though his perceptions were clear and quick, yet he was habitually cautious in forming his judical opinions. It was his maxim that a Judge should never *give* an opinion until he had explored all the consequences, direct and collateral, and had a well considered opinion *to give*. His associates on the bench, and the members of his bar always felt for him perfect respect, and manifested towards him a becoming deference. His reported opinions are equal, in most, if not in all respects, with those of any other Judge ancient or modern, and will associate his name, in aftertimes, with those of the Hales and the Eldons of England, and the Kents and the Marshalls of America.

In politics, also, he was enlightened and orthodox. In his more matured and tranquil season of life, he repudiated some of the theories of his earlier and more impassioned days—and in American politics, he was, long before his death, neither a centralist, nor a confederationist—a democrat, nor an aristocrat—but was an honest and liberal republican, national as far as the common interests of the people of the United States were concerned, and local so far as the municipal concerns of each State were separately and exclusivery involved. He was a friend to that kind of liberty and equality which are regulated by intelligence and controlled and preserved by law—and was a foe to demagoguery, ignorance, licentiousness, and jacobinism.

But it was as a Jurist that he was most distinguished. And as an illustration of his influence, as well as rare modesty and public spirit on the bench,we may notice the signal fact that, in his whole

judicial career, during a portion of which about five hundred causes were annually decided, he never, *but once*, dissented from the opinion of the court, and then he magnanimously abstained from intimating any reason against the judgment of the majority, lest he might impair the authority of the decision which, until changed by the court, should, as he thought, be deemed the law of the land.

The only objection to him as a Judge, which we ever heard suggested, was that, in the opinion of some jurists, he adhered rather more rigidly to the ancient precedents and technicalities of the common law than was perfectly consistent with its progressive improvements and its inadaptableness, in some respects, to the genius of American institutions. But this criticism, though it may, in some slight degree, have been just, should not detract much from his superior merit as an Appellate Judge. So far as he misapplied any doctrine of the British common law to cases in this country to which the reason for it in England does not apply here, he certainly erred. But such a misapplication was rarely, if ever, made by him. And for not extending or improving the Amrican common law, he was not justly obnoxious to censure. It is safer and more prudent to err sometimes in the recognition of an established doctrine of the law, than to make innovation by deciding upon principle against the authority of judicial presedents. And though one of the most valuable qualities of the common law is its peculiar malliableness, in consequence of which it has been greatly improved from age to age by judicial modifications corresponding with its reason and the spirit of the times, yet the Judge who leaves it as he finds it, is at least a safe depository. Such a Judge, was John Boyle. He was neither a *Mansfield* nor a *Hardwicke*—he was more like *Hale* and *Kenyon*. If he did not improve, he did not mar or unhinge the law. But, not long before he commenced his judicial career, the Legislature of Kentucky, as if to seal up the common law as it was understood on the 4th of July 1776, and to hide it from the light of more modern reason and improvement shed on it in the land of its birth—interdicted the use—in any court in this State—of any post revolutionary decision by a British court. And that proscriptive enactment was scrupulously observed by Judge Boyle. So far as it was so observed—however injuriously—the fault was not so much his as that of the Legislative department. But it is impossible altogether to proscribe enlightened reason, whether foreign or domestic, ancient or modern, British or American. And now, Judges more bold, but perhaps less prudent, virtually disregard the legislative interdict, by consulting *British* decisions since '76—not exactly as *authoritics*, but as *arguments* to prove what the common law now is and ever should have been held to be, here as well as in England.

No man however, of his day, contributed more than Judge Boyle contributed to establish the proper authoritativeness of judical decisions, to elevate the true dignity and to inspire confidence in the purity of the judiciary department of the Government, and to settle, on the stable basis of judicial authority, the legal code of Kentucky. Truly he was—to his own State—what *Edmund Pendleton* was to *Virginia* and *John Marshall* to the United States—the *Palinurus* of our lawyers and our judges. And a more honest and faithful pilot never stood at the helm of jurisprudence. A careful review of his many judicial acts, as published in our State Reports from 1st Bibb to 3d Monroe, including fifteen volumes, will result in the conviction that he was equalled by but few Judges and surpassed by still fewer of any age or country. Such an analysis cannot be here attempted.

But, for the purpose of illustrating his official firmness and prudence, we will cursorily notice a few only of his decisions.

1st. In the year 1813, the question whether a merely *legal* or *constructive seizin* was sufficient for maintaining a "Writ of Right" came up, for the first time, for decision by the Court of Appeals of Kentucky. Few questions could have been more interesting or eventful—especially as some of the best lands in our State, which had been improved and occupied for many years by our own citizens under titles deemed good by them, were claimed under dormant, though superior titles held by non-residents, and the ultimate assertion of which disturbed the tranquility of our society and impaired the security of meritorious occupants of our soil. If an *actual* seizin, or personal entry, or *pedis possessio*, were indispensable to the maintenance of a writ of right, many of the claims of non-residents could not have been successfully asserted against an adversary occupant who had been possessed of the land more than twenty years. But if a constructive seizin, resulting from a perfect title, were alone sufficient to support a "*writ of right*," many non-resident claimants, who would otherwise be remediless, might evict the occupants in that species of action, which could be maintained on the demandent's own *seizin* within thirty years, and on that of his ancestor within fifty years, even though he had never been on the land. In an opinion written by Chief Justice Boyle, and reported in 3d Bibb, (*Speed vs. Buford*,) our Court of Appeals decided that, according to the common law, *actual* seizin was indispensable to the maintenance of a "*writ of right.*" A petition for a rehearing having been granted by the Court, the Supreme Court of the United States, between the granting of the rehearing and the final decision upon it, *unanimously* decided, in the case of *Green vs. Liter*, that mere *legal* seizin, resulting from a perfect title, was sufficient to maintain a "*writ of right.*" But, as that decision, though conclusive in the case in

which it was rendered, was not controlling authority for the State Court on a question depending on the State law, and as to which the National Court could not reverse or revise the judgment of the highest Court of Kentucky, Chief Justice Boyle, as much as he respected the tribunal which rendered it, and anxious as he undoubtedly was for harmony and uniformity, still clearly adhering to his first opinion, firmly, but temperately and respectfully, reasserted and maintained it by affirming the coincident judgment of the inferior court, even though Judge Logan, his only colleague on the bench in that case, receded and yielded to the opinion of the Supreme Court of the Union. And the decision, thus given by *Boyle alone*, has never since been overruled.

2d. Though *Chief Justice Boyle* had been inclined to the opinion that the Bank of the United States was unconstitutional, yet, after the Supreme Court of the United States had decided unanimously that it was constitutional, he acquiesced and recognized the authoritativeness of the opinion of the *National* Court on a *national* question.

3d. Nevertheless, although a majority of the Judges of the Supreme Court of the Union had decided, in a solitary case, that the Kentucky statute of 1812, for securing to *bona fide* occupants a prescribed rate of compensation for improvements before they could be evicted by suit, was inconsistent with the compact between Virginia and Kentucky, and therefore unconstitutional—Chief Justice Boyle, with the concurrence of his associates, maintained the validity of that protective enactment. And the doctrine thus settled by our State Court has never since been disturbed.

In this instance—being clearly of the opinion that the compact guaranteed only the *titles* to land according to the laws of Virginia under which they had been acquired, and did not restrict, in any manner, the authority of Kentucky over the remedies for asserting them, and that the occupant law did not impair the obligation of contracts—our distinguished *Chief Justice* did not feel bound or even permitted to surrender his own judgment to the conflicting judgment of a mere majority of the Judges of the Supreme National Court in a single case and never reasserted by all the Judges, or even by a majority. And, in thus acting, he exhibited, in a becoming manner, his own firmness and purity, whilst he did not manifest any unjustifiable obstinacy or want of due respect for the opinions of a majority of the federal Judges on a national question. Had Boyle's opinion been indefensible, the fair presumption is that it would have been overruled: and the fact that it has never been disturbed is evidence, almost conclusive, that it was right. And thus he and his colleagues, by their firmness and intelligence, maintained the sovereign rights of their

own State, without any dereliction of official duty, or improper assumption of official authority.

4th. The only other case to which we shall here allude, is the memorable one arising out of a series of Legislative enactments designed for the relief of debtors, and therefore characterized as the "relief system." Having chartered a Bank denominated "*The Bank of the Commonwealth,*" the notes of which—as the natural consequence of deficient capital—were constantly fluctuating in value, and once sunk to less than 50 per cent. of their denominated worth—the Legislature, among other subsidiary enactments, passed an act for prolonging, from three months to two years, the right of replevying judgments and decrees on contracts, unless the creditor would agree to accept, at its nominal value, the depreciated paper of that Bank.

That act, as well as the general system of legislation which it consummated, was popular. And the minority, opposed to the whole system as inexpedient, unjust and unconstitutional, was, of of course denounced as aristocrats, federalists, shilocks. When the antagonist parties, denominated "*relief*" and "*anti-relief*," had become greatly excited and the subject of their division had silenced every other common topic of party discussion and produced extreme discord—*Chief Justice Boyle* and his associates of the Court of Appeals, at the fall term, 1823, decided unanimously in the case of *Blair et al. vs. Williams*, and of *Lapsley vs. Brashears et al.* reported in *4th Littell*, that the two year's replevin statute, *in its retroactive operation on contracts made prior to the enactment of it*, was repugnant to that clause of the federal constitution which declares that no State shall pass any act "*impairing the obligation* of contracts." That decision was, as might have been expected, very offensive to the dominant party in the State—and the appellate Judges were denounced as "*tyrants, usurpers, kings.*" Corrupt motives were imputed to them by many partisans—their authority thus to annul or disregard a legislative act was derided by some, and the correctness of their decision was confidently assailed by all or nearly all of the "relief party." During the first sessson (1823–4,) after the date of the decision, a majority of the Legislature, *but not two thirds*, adopted resolutions condemnatory of the Chief Justice and his colleagues and calling on the Governor to remove them from office; which were prefaced by a long "*preamble,*" assailing their decision as unauthorized, ruinious and absurd. That attempt to intimidate and degrade the court having failed, the same party, still greatly ascendant, determined, at the next session, to remove the Judges from office by *abolishing* the *Court* of Appeals *establisihed* by the constitution, and substituting a "*new court*, by a statute entitled "*the reorganizing act.*" Under that act other persons were commissioned as

the appellate Judges, opened court, and attempted to do business. But the act being resisted by "the old Judges" and the pary twhich sustained them, a judicial anarchy ensued and both parties appealed to, the only ultimate arbiter of such a conflict, the people at the polls. Here a great civil battle was to be fought; a battle in which the constitution of Kentucky was the stake, and on the issue of which that fundamental law was either to triumph or to fall, perhaps forever. It triumphed. The people unfurled its white banner and inscribed on it with their own hands, in new and indellible colors, "*supreme law*"—"sacred and inviolable"—"and far above *the transient passions of partisan strife.*"

The radical and decisive objection to the constitutionality of "*the reorganizing act*" was, that, as the constitution expressly ordained and established the Court of Appeals, no *legislative statute* could abolish it; and that, therefore, as the same *tribunal* instituted by the constitution still existed, "the old Judges," who, by an express provision of the same constitution, were entitled to hold their offices during good behavior and *the continuance of their court*—could not be legislated out of office by a less majority than that of two thirds of both branches of the legislature, that being the requisite constitutional majority for removal by address.

When the final appeal was made to the ballot box all the talents and moral energies of Kentucky were brought out into most active and efficient exertion, and the whole Union looked on with intense anxiety; for the issue involved the integrity and efficacy of fundamental law—the stability and efficiency of an honest and enlightened judiciary as the only sure anchor of that law—and the momentous question whether the people will, in every emergency, maintain the rightful supremacy of their own organic will over the subordinate and conflicting will of their legislative agents. The people of Kentucky determined that issue and answered that question with a most decisive emphasis in the never-to-be-forgotten year of 1825. Nevertheless, after all, the Senate of Kentucky, not having been fully subjected to the popular ordeal at the polls, still retained a small majority in favor of the proscribed act, and that majority, in defiance of the people's award, resisted the repeal of the act. But the "New Court" vanished, and the "Old Court" reappeared and resumed its suspended functions without further obstruction; and *John Boyle* was still the honored Chief Justice of that signally persecuted, but more signally triumphant, "*Old Court.*" Had he consulted his own personal wishes and repose, he would have submitted with alacrity to the legislative mandate. He was tired of his office—had worn out his constitution in a laborious discharge of its irksome and incessant duties—had become no richer by his small salary; and no man on earth was less belligerent, or had less taste for notoriety or for strife

and obloquy. Most anxious was he, we well knew, to escape the impending storm. But he felt that it was his duty to his country, his character, and the constitution to stand firm on the judicial rampart, even though he should sink with it, a martyr in the great cause of constitutional security.

Had he and his colleagues bowed to the *unauthoritative* will of the legislature, they would have been treacherous to the constitution and faithless to a proscribed minority, for whose security that supreme law was adopted by the people and placed under the guardianship of a judiciary so organized as to be able, if firm and faithful, to uphold its rightful supremacy against the passions and the will of any majority less than that of two-thirds of the Legislature.

The great object of the Constitution was to secure certain fundamental rights from invasion by a bare majority of the people or their legislative agents. That end could not be effectuated without an enlightened Judiciary, armed with power to prevent the enforcement of unconstitutional legislation. Such a Judiciary, invested with such authority, was ordained by the constitution itself; and, to enable it to execute its high trust, *honestly and fearlessly*, it was made, in a great degree, independent of popular caprice and legislative authority. Here we find the *constitution's* inherent power of self-preservation—this, at last, is its chief conservative principle—without which a numerical majority would be politically omnipotent, the few would be subjugated by the many, reason would bow to passion—and the simplest problem in arithmetic might solve the whole mystery and power of our democratic institutions, by the mighty magic of "*the majority of numbers.*"

But had Boyle and his colleagues, consulting either their own ease or their personal fears, yielded to popular clamor or to legislative denunciation, they would have surrendered the constitution to the keeping of the legislative department *which it was framed to control*—and such an example might have given practical supremacy to unlicenced numbers—to physical over moral power—to matter over mind—and thus eventually have converted our beautiful system of *organized liberty* into unalloyed and uncontrollable anarchy.

But *our Judges* did not thus ingloriously fly. Like *Leonidas*, with his Spartan band, *Boyle* and his associates stood firmly, a forlorn hope, in the last *Thermopylæ* of the Constitution—but more fortunate than the Grecian martyrs, they achieved a glorious triumph for mankind, and lived to enjoy the homage of their country's gratitude.

A civic victory more eventful or glorious has seldom been won—its spoils are the fruits of a rescued and reanimated Constitution, the *practical* vigor and supremacy of which constitute

the only sure *palladium* of the *rights of men—social, civil and religious.* And the example has been most salutary—and will, as we trust, be useful in all time to come.

Had *Boyle* been suppliant, he might have been, for the moment, the idol of a dominant party; but such popularity, being meretricious, would have been as evanescent as the fleeting breath on which it would have floated. Solid fame can be acquired only by solid worth—lasting renown is the matured fruit of noble, virtuous, honest deeds. Boyle deserved such renown for his self-devotion on the altar of his country's Constitution; and, had he been even sacrificed on that altar, his fame should have been associated with that of *Socrates,* who was doomed to the hemlock only because he would not make a mean compromise of eternal truths with the vulgar prejudices and vices of his day.

As the Constitution is the supreme law, no legislative enactment which conflicts with it can be law: all such unauthorised or prohibited acts must be void. And therefore, as it is the province of the Judiciary to administer *the law,* it is the duty of a Judge to disregard, as a nullity, any act of assembly which is inconsistent with the fundamental law of the sovereign people, and thus to uphold their organic will against the opposing and forbidden wills of their legislative agents. And consequently, as the Constitution forbids every legislative enactment impairing the obligation of contracts, it was the obvious duty of the Court of Appeals to declare, as it did, that the two years' replevin act was void, if they were, as doubtless they were, clearly of the opinion that it impaired the obligation of contracts made prior to the enactment of it.

And was it not clearly unconstitutional? It was only the *civil* or *legal* obligation of contracts which the Constitution contemplated—for no legislation could impair a *moral* obligation. Then, what is a *legal* obligation? Is it not the binding or coercing efficacy of the law? Can a contract, which the law will not sanction or enforce, have any *legal* obligation? Can the law be said to bind a party whom it will not coerce? And how *alone* does the law enforce contracts? Is it not by the legal remedies by suit and execution? Then, will not the abolition of all such remedial agency of the law, destroy the merely legal obligation of contracts? And if it will, must not any statute, which impairs the remedy, impair also, in the same degree, the obligation of pre-existing contracts? And if the Legislature cannot, by acting on the remedy, impair the legal obligation of antecedent contracts, how will it be possible to impair the obligation of contracts by any species of legislation? The legislature cannot change the terms or alter the form of a contract—it can only modify its *legal* effect—and this it can only do by giving, withholding or modifying the reme-

dies necessary for enforcing the contract. *Right* and *Remedy*, or the *civil* obligation of a contract and the civil remedy for enforcing it, are essentially different. But, though the legislature *may* therefore change the remedy without impairing the right, yet it cannot destroy the legal obligation of a contract without abolishing all legal remedy, nor impair it without making the remedy less efficient or available—and therefore it cannot abolish all remedy for existing contracts, nor so change the remedy as to essentially impair it. And if the retrospective extension of indulgence under execution for two years did not impair the legal obligation of contracts, an unlimited extension or even an abrogation of all means of coercion would not have been an impairment of the obligation of any contract. But the one, as certainly as either of the others, would, in our view, be an impairment of the legal obligation of contracts existing and unperformed at the date of the enactment. So every court in the Union, which has adjudicated on the question, has decided. So thought Boyle; and therefore so he decided, *at all hazards*. And, in thus deciding, he faithfully discharged his official duty to the parties litigant, to his own conscience, and to his country—revived a prostrate Constitution, and inspired the commercial community with confidence.

It was for that decision alone that he was denounced and persecuted, and his State was convulsed by a most perilous conflict. As long as the storm raged he would not "give up the ship." But as soon as the troubled elements were stilled by the people's voice, and he saw the old Constitution safely moored with its broad banner still proudly floating, he determined to retire from the cares and toils of an office which he had so long and so nobly filled and illustrated. It had been his settled purpose, from the beginning of the judicial contest, to resign his office as soon as he could do so consistently with fidelity to the Constitution and to his own honor. And now, the people having, at the August elections of 1826, settled the controversy finally and conclusively, he accordingly, on the 8th of November of that year, resigned the *Chief Justiceship* of Kentucky—thus saying to his countrymen: "Persecuted "and abused for honestly maintaining the best interests of your- "selves and your children and for helping to save your Constitu- "tion, I now voluntarily resign, and with alacrity, the most im- "portant office in your gift—an office full of labor and responsi- "bility, and to the duties of which I have dedicated the prime of "my life—an office which I never sought; and the profits of "which have been barely sufficient to feed my wife and children "—an office in which I have grown gray, and from which I retire "at last much the poorer, in consequence of having so long held "it—*now fill it better, if you can.*"

But the Federal Government, anticipating his resignation, had

offered him the office of District Judge of Kentucky, which he accepted as soon as he retired from that of *Chief Justice.* This new office he filled admirably—but it never pleased him. Its duties were not sufficient to give him active employment, and he felt some scruples of conscience in receiving the salary (*only* **$1,500** *per annum*) without performing more public service. But he was induced to hold it until his death.

Upon the death of Judge Todd, he refused to be recommended to the President as his successor on the Bench of the Supreme Court of the United States—and subsequently upon the demise of Judge Trimble, he was unwilling to accept the same office—because he preferred retirement, and *distrusted his qualifications for a place so high!* Rare and excellent man!

He now devoted most of his time to the teaching of law, to miscellaneous reading, and to agriculture. He was, for one year, sole professor of law in Transylvania—but was generally engaged at home in giving instruction to such young men as sought it—and they were not a few. He became much pleased with rural employments, and talked *con amore* of ploughs and ploughing—cattle and grazing.

But he was hastening to the end of his journey of life. His constitution had been impaired by hard public service. During the prevalence of the cholera in 1833 his wife died, and he himself had a violent attack of that fatal malady, which he survived. But all his hopes of domestic happiness being buried in the grave of his beloved wife, he continued lonely and desolate, and never recovered his former tone of health or spirits. He talked of his own death as very near and not undesirable. And though he had in his early life, been an infidel, and had always been a sceptic, he now studied theology, talked reverently of the christian religion, and finally, not a month before his death, expressed to us his firm and thorough conviction of the divinity of that system, and his determination to become a member of some christian church. But this last and best boon he was not permitted to enjoy. He died rather unexpectedly, but not suddenly, on the 28th day of January, 1835, in his own house, like a christian philosopher, firm, placid, and rational—surrounded by his physicians, his younger children, and his devoted servants. And, in the agonies of death, turning himself on his couch, he said, "*Doctor I am dying*"—and with his expiring breath ejaculated, firmly and audibly—"*I have lived for my country!!!*" These were his last words on earth—and *they were true.*

What is it to live for one's country? It is not to get rich, nor to hold office, nor to be gazed at with vulgar admiration, nor to win a battle, nor to make a noise in the world. Many who have accomplished all these have been a curse rather than a blessing to mankind. But he, and he alone, who honestly dedicates his talents

and his example to the happiness and improvement of his race, lives for his country, whatever may be his sphere. He who seeks his own aggrandisement at the expense of truth, or principle, or candor, does not live for his country—nor can *he* live for his country, in the full sense, whose example is demoralizing, or, in any way, pernicious. But *he* truly lives for his country, who, in all the walks of life and relations of society, does as much good and as little harm as possible, and always acts according to the disinterested suggestions of a pure conscience and a sound head. Whatever may be his condition—high or low, conspicuous or obscure—he, whose life exemplifies and commends the negative and positive virtues, personal, social and civil—who lives in the habit of pure morality, enlarged patriotism and disinterested philanthropy—and whose conduct and example are, as far as known and felt, useful to mankind—*he and he alone lives for his country.*—And hence it is perfectly true that a virtuous peasant in a thatched hut may live more for his country than many idolised *orators*, triumphant *politicians*, or *laureled chieftains.*

The life of *John Boyle* exhibits a practical illustration of all the nobler and more useful virtues of our race. No man was ever more chaste or upright in the whole tenor of his conduct—he had no selfish pride or sinister ambition—he was punctiliously just and truthful—he was as frank and guileless as an artless child untutored in the arts and ways of social life—his humility was most amiable and his benevolence unsurpassed. He always spoke as he thought and acted as he felt—and his sentiments were pure and honorable and almost always right. He devoted his life to the cultivation of his moral and intellectual faculties, and all those faculties were dedicated to the honest and useful service of his fellow men, his family, and his country. He was a patriot and benefactor in a pure and comprehensive sense. His heart was his country's—his head was his country's—his hand was his country's—his whole life was full of philanthropy and lofty patriotism—and his example, altogether blameless and beneficent, presents a full-orbed and spotless model, worthy of all imitation.

In contemplating his character we see nothing to condemn—much to admire.

As a Lawyer he was candid, conscientious and faithful—as a Statesman, honest, disinterested and patriotic—as a *Judge*, pure, impartial and enlightened—as a citizen, upright, just and faultless—as a neighbor, kind, affable and condescending—as a man, chaste, modest and benignant—as a husband, most constant, affectionate and devoted.

We have heard his amiable and excellent wife declare in his presence, not longer than a year before her death, that, notwithstanding all the cares and crosses of domestic life, there had never

been a sour look, a harsh word, or a hard thought between them, from the eventful moment when their destinies were linked together on the altar! And knowing them both as we did, we doubt not that she told the truth.

Here, in this man, we present a fit *exemplar* for all men, in every condition of social and civil life.

The noiseless life we have thus imperfectly sketched, illustrates most impressively the old fashioned truth that "*honesty is the best policy*"--shows what may be achieved by industry, probity, and undissembled humility—proves how much better and more honorable it is to *deserve* than to *seek* preferment, and how certain modest merit will ever be of ultimate notice and reward—and may we not add, that it affords strong evidence of the important fact that an enlightened mind, when once abstracted from the cares of earth or mellowed by affliction, will be apt to see the light and feel the value of the christian's hope, and to embrace, as the best of all books, the christian's bible?

Surely this was a good and a great man—and most truly did he asseverate, on his exit from earth, "I HAVE LIVED FOR MY COUNTRY."

Such is a brief outline of the life and character of one of the best and greatest of men, hastily and imperfectly sketched, by one who knew him long and well, and who feels too much respect for his virtues and reverence for his memory to exaggerate or disguise the truth of faithful biography with any embellishment of empty panegyric. The best eulogy of Boyle would be a naked exhibition of him, as he was, without any drapery from either fancy or friendship. Posterity would be greatly benefitted and his own fame much exalted by such a portraiture.

The death of such a man, in the prime of his life, was a great public calamity. His intimate friends felt it most deeply, and regretted that an inscrutable Providence had not spared him longer to delight and instruct the countrymen whom he left behind him. Had he lived to a mellow old age, he would have enjoyed the ripe fruits of his earlier habits and toils, and have rendered inestimable service to his country in the example of a venerable, virtuous and enlightened Patriarch.

But doubtless it was better for *him* to die when he did. He had lost his dearest earthly treasure—his house had become, to him, desolate—and, by his early death, he escaped all the infirmities of extreme age. He died full of *honor* and of *hope*, when his setting *sun* had "*all its beams entire—its fierceness lost.*"

The worth of such a man is never fully known until long after his death. Posthumous fame is of slow growth, and never attains its full elevation until it has survived all personal prejudice and envy. Though *Boyle* died in peace with all mankind and left not

an enemy behind, yet his death was followed by no sepulchral honors or postmortuary testimonial. No funeral eulogy, no public meeting, no Bar resolution, nor even obituary notice announced that he was dead, and that Kentucky mourned. Nor has either marble or canvass, chisel or pencil, preserved any trace of his person. But this is just what he would have preferred. He desired none of the empty pageantry of mock sorrow—his memory needed no perishable memorial. Like *old Cato*, he *built his own monument*—and one far more honorable and enduring than any marble cenotaph or granite column.

Personal reminescences of the most revered of our race moulder with their dead bodies, and are soon buried forever with the dying generation that knew and loved them. Their deeds and their virtues alone may be embalmed for ages. *Boyle's* illustrious deeds and rare virtues, if faithfully recorded and transmitted, will be long and gratefully remembered by approving posterity. And should a *Tacitus* ever become his biographer, his name will be as immortal and at least as much honored as that of *Agricola*.

And now and henceforth, in all time to come, may every American youth emulate the virtues and imitate the bright example of *John Boyle*—and then, like him, he may be able honestly to declare, with the expiring breath that wafts him to eternity—"I HAVE LIVED FOR MY COUNTRY."