

## Phillip Pendleton Barbour ( 25 May 1783 - 25 Feb 1841)

---

### Biographical Directory of the United States Congress 1774-1989

A Representative from Virginia; born at "Frascati," near Gordonsville, Orange County, Va., May 25,



1783; attended common and private schools; was graduated from William and Mary College, Williamsburg, Va., in 1799; studied law; was admitted to the bar in 1800 and commenced practice in Bardstown, Ky.; returned to Virginia in 1801 and practiced law in Gordonsville, Orange County; member of the State house of delegates 1812-1814; elected as a Democrat to the 13th Congress to fill the vacancy caused by the death of John Dawson; reelected to the 14th through 18th Congresses and served from September 19, 1814, to March 3, 1825; was not a candidate for renomination in 1824; served as Speaker of the House of Representatives in the 17th Congress; offered the professorship of law in the University of Virginia in 1825, but declined; appointed a judge of the general court of Virginia and served for two years, resigning in 1827; elected to the 20th and 21st Congresses and served from March 4, 1827, until his resignation on October 15, 1830; president of the

Virginia constitutional convention in 1829; appointed by President Jackson, June 1, 1830, judge of the United States Circuit Court for the Eastern District of Virginia, declining the chancellorship and the post of attorney general; refused nominations for judge of the court of appeals, for Governor, and for United States Senator; appointed Associate Justice of the United States Supreme Court and served from March 15, 1836, until his death in Washington, D.C., February 25, 1841; interment in Congressional Cemetery. Brother of James Barbour and cousin of John Strode Barbour.

*The National Intelligencer, Friday, February 26, 1841*

#### Death of Judge Barbour

The whole city was shocked, yesterday morning, by the information of the sudden demise of the Hon Philip P. Barbour, of Virginia, one of the Associate Justices of the Supreme Court. He was in usual health and even more than usually cheerful at the time of retiring to bed at 10 o'clock on Wednesday night, and the next morning was found in his bed a lifeless corpse!

Judge Barbour entered Congress, in the House of Representatives, in the year 1814, and soon signalized himself by considerable ability in debate. He remained in Congress for a number of years, during a part of which time he filled the honorable office of Speaker of the House. Since retiring from Congress, his life had been devoted with great assiduity to the judicial duties which he had been called to perform.

*The National Intelligencer, February 27, 1841*

IN SENATE

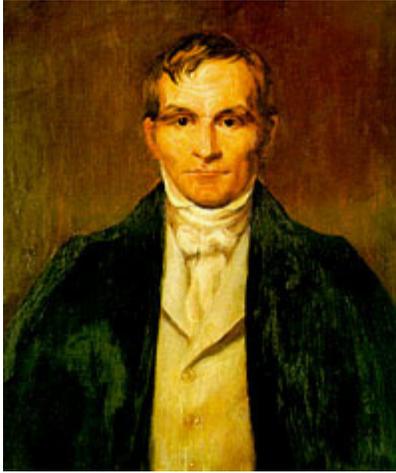
As soon as the Journal was read --

Mr. Roane rose and communicated to the Chair the following letter received by him from the Chief Justice of the United States:

Washington, Feb. 26, 1841

Sir: As one of the Senators of the State of Virginia, of which our lamented brother, Judge Barbour, was so distinguished a citizen, I enclose you a copy of the funeral ceremonies which have been determined upon. I am, sir, with great respect, your obedient servant.

R.B. Taney"



Mr. Roane rose and said: Mr. President, I ask a moment of the precious time of the Senate; I will not abuse it; for already had the mournful intelligence now officially announced to us reached every member of this body, and already had the heart of every individual in this community been touched by that pure and exalted feeling which is ever awakened when the patriot hears that his country has suddenly lost, and lost forever, one of its benefactors.

Mr. President, had I the talent and the material (which I have not) to offer a just tribute to the memory of the distinguished Judge whose funeral we are now invited to attend, I should deem it inappropriate to do so on the present occasion. That task I leave in other and abler hands; but knowing, as I well do, the exemplary virtues of the deceased in all the social and domestic relations of life; knowing, as I well do, the exalted estimation in which his virtues, talents, and patriotism were held in his native State, which I have the honor, in part, to represent, and knowing, as does every member of this body, his long, faithful, and valuable public services within the walls of this building, I feel myself authorized to ask the Senate to adopt the resolution I now offer:

Resolved unanimously, That, in testimony of their respect for the memory of the Hon. Philip P. Barbour, late Associate Justice of the Supreme Court of the United States, the Senate will adjourn this day, at 2 o'clock, for the purpose of attending the funeral of the deceased.

The following is the order of the funeral ceremonies as announced from the Chair:

The Judges of the Supreme Court, with it Officers, and The Judges of the Courts of the District, with the members of the Bar, will assemble at 2 o'clock today at Mrs. Turner's, Pennsylvania avenue, and thence attend the remains of the deceased to the room of the Supreme Court, where the usual services will be performed by the Chaplains of Congress; and where the President ( ), the Heads of Departments, the Senators and Representatives in Congress, the members of the Foreign Legations, and citizens and strangers are requested to attend; after which, the procession will move in the above order to the Steamboat wharf, where the remains of the deceased will be embarked with proper attendants, in order to be conveyed to his country seat in Orange county, Virginia, for interment.

??

**BARBOUR, PHILIP PENDLETON** (May 25, 1783 – Feb. 25, 1841), lawyer, statesman, jurist, was the son of Thomas and Mary (Thomas) Barbour, and the brother of James Barbour [q.v.]. Philip was for a time the pupil of Rev. Charles O'Neil, an Episcopal clergyman, the main ingredient of whose pedagogical system is said to have been flogging. The tradition is that the young Barbour showed great aptitude for languages and became versed in classical literature, as one can easily believe from his later speeches. In 1800, after having read a little law, he removed to Kentucky, where he began the practice of the profession in which he was des-tined to achieve great distinction. In the summer of 1801, he returned to Virginia, borrowed some money, and spent one session at William and Mary College. In 1802, he resumed the practice of law, to which he devoted himself until he entered active political life in 1812.

Elected representative from Orange County to the Virginia House of Delegates in the latter year, he divided his energies during the rest of his life between politics and law. During approximately half of this time he was a member of a legislative body, two years in the House of delegates and fourteen years in

Congress. The other half of his public service was spent, two in the state, and ten in the Federal, judiciary. There was a legislative interlude within his judicial service, and during most of his career law and politics joined hands. Always he was true to the dominant local tradition of state rights and strict construction, of which he became a conspicuous protagonist.

He entered Congress in September 1814, taking the seat which had been made vacant by the death of John Dawson, and served in that body continuously until 1825, when he accepted an appointment to the general court of Virginia. He held the speakership from 1821 to 1823, when he was defeated by Henry Clay for that office. Unlike his brother James, he was little affected by the nationalistic spirit which marked the first few years after the War of 1812. He was identified rather with the particularistic reaction which soon manifested itself in opposition to the tariff, internal improvements, and the extension of Federal jurisdiction by the Supreme Court under Marshall. He was one of the most prominent of the "new lights" in the Virginia delegation, who combated the policies championed by Clay and Calhoun and sought to restore the fallen prestige of their state by guarding zealously her constitutional rights against alleged Federal encroachments (C. H. Ambler, *Thomas Ritchie*, p. 73). He must be classified, not with the older school of contemporary Virginia statesmen as represented by Monroe and to some extent by his own brother James, but with the new group which centered in Judge Spencer Roane and his own intimate friend, Thomas Ritchie. The former, doubtless more aware of the practical exigencies of government, were relatively tolerant of the growth of national authority, which the latter viewed with an alarm that bordered on hysteria.

The contributions of the younger Barbour to the state-rights reaction were chiefly in the form of constitutional disputation. His speeches in Congress were marked by a predominant constitutional emphasis and a consistent advocacy of strict construction.

He opposed the bonus bill for which his brother voted (*Annals of Congress*, 14 Cong., 2 Sess., 893-99). Like him, he denied the right of Congress to impose terms upon the admission of Missouri, but was more inclined to palliate the evils of slavery (*Ibid.*, 16 Cong., 1 Sess., 2054-80). A close reasoner rather than an orator, he was inclined to a "subtlety in disquisition" which was not relished by loose constructionists but gratified the sensitive palate of such a constitutional epicure as John Randolph of Roanoke. Serving as counsel for the state in the celebrated case of *Cohens vs. Virginia*, he denied the right of appeal from the decision of a state court to the Federal judiciary, and later he reargued the case in Congress (Charles Warren, *Supreme Court in United States History*, 1926, II, 8, 125n.). During the first half of Adams's administration, with which his brother was loyally associated, he was a member of the judiciary of Virginia, but in 1827, upon the request of many of his former constituents, he resigned and was returned to Congress without opposition, in order to combat the nationalistic tendencies which now seemed ascendant. For the Adams administration he had scant respect. He objected to the large expenditure of public money, particularly for internal improvements, and to the imposition of a tariff (1828) which he termed impolitic, oppressive, and unjust. Convinced that there must be "concession to the remonstrances of a minority," he pinned his hopes on the executive veto after Jackson became president and began to wield this hitherto little-used weapon. He opposed nullification as a method of resistance to the tyranny of the majority, but defended the right of a state to secede in case of hopeless extremity. In order to check the extension of Federal power by judicial construction, he presented a bill in 1829 to require the concurrence of five of the seven judges of the Supreme Court in any decision involving a constitutional question (*Ibid.*, p. 177).

His prominence in state affairs and his alignment in local sectional controversy are clearly indicated by his position and attitude in the Virginia constitutional convention of 1829-30, so fateful in the history of the state. In consequence of the illness of Monroe, president of the convention, Barbour was first appointed president pro tempore, and then unanimously elected president (*Virginia Debates*, 1829-30, pp. 608-620). In the chief controversies which marked the convention, he identified himself with the

conservative eastern slaveholders against the westerners. He opposed apportionment of representation on the basis of white population exclusively, and favored a "compound ratio," based on white population and property combined (*Ibid.*, pp. 90-98). He regarded some landed interest, though not necessarily a freehold, as a necessary qualification for the suffrage (*Ibid.*, pp. 435-36). Like the majority of his associates in the convention he erred on the side of immediate rather than ultimate public safety, and he is to be condemned no more nor less than they for his failure adequately to sense the just claims of the westerners, who later in a time of crisis settled their ancient grudge by forming a separate state.

His acceptance of an appointment by Jackson, made in the autumn of 1830 as judge of the United States district court of Eastern Virginia, marked the end of his active political career. Politics, however, he abandoned with reluctance. In a valedictory to the citizens of his congressional district, which the Whigs termed unbecoming, he discussed the political situation and emphasized the necessity for continued insistence upon "restricted construction" of the Constitution. After he became a Federal judge, he presided, in 1831, over a free-trade convention in Philadelphia, and in 1832 he was offered by a group of southern strict constructionists as a candidate for the vice-presidency against Van Buren (*A. C. Cole, Whig Party in the South, 1913, p. 14*). Many of his supporters refused to accept the nomination of Van Buren and organized a Jackson-Barbour movement. Notwithstanding the fact that late in the campaign, after a public statement from Van Buren, Barbour announced his withdrawal to preserve party unity, he received some votes in the national election.

As early as 1831, the possibility of his appointment to the Supreme Court had been suggested and had aroused the fears of nationalists. John Quincy Adams dreaded that if Marshall should retire, "some shallow-pated wild-cat like Philip P. Barbour, fit for nothing but to tear the Union to rags and tatters," would be appointed in his place (*Memoirs Feb. 13, 1831*). In Virginia there was strong desire for the appointment of Barbour, who was regarded by the dominant group as "eminently fitted to adorn the Bench with his talents and enlighten it with his inflexible and uncompromising State-Rights principles" (*Richmond Enquirer, Mar. 19, 1836*). The reconstitution of the Court, which aroused unwarranted Whig fears and Democratic hopes, did not come until 1836, when Taney became chief justice and Barbour succeeded Duval. Shortly after the new justices took their seats at the opening of the 1837 term, three cases of great constitutional importance, which had been pending for several years, were decided, the Bridge Case, the Miln Case, and the Briscoe Case. In the Miln Case, Justice Barbour delivered the opinion of the Court (*II Peters, 129--42*). Although the change made by the reconstituted Court in the lines of construction laid down by Marshall has been often exaggerated, there was some tendency henceforth to give the benefit of the doubt to the states, and there was greater recognition of economic and social factors. Barbour was a member of the new majority that followed Taney and deserves recognition in connection with this change in emphasis, but his un-timely death and relatively short service prevented his exercising his potential influence. His active political life had not been favorable to profound or dispassionate legal scholarship, but he had always retained great interest in his profession. His conscientious study after his appointment to the Supreme Court resulted in the steady increase in his learning and reputation, as Story, who disapproved of the new order, had predicted. His colleagues felt that he would have attained the highest judicial distinction had he lived out his promise of years.

His last association with his fellow justices was in the evening of Feb. 24, 1841, when he attended a conference which lasted until ten o'clock and took part in the deliberations, apparently in good health. The next morning he was found dead in his bed. When the Court assembled that day, the chief justice announced that "Brother Barbour" was dead and that the Court would adjourn. Appropriate resolutions were subsequently adopted by the members and officers of the Court, and a brief sketch of his life, prepared apparently by Story, was incorporated in the records. According to his distinguished colleague, Justice Barbour's "talents were of a high order; but he was distinguished less for brilliancy of effort, than for perspicacious, close, and vigorous reasoning. He sought less to be eloquent than to be accurate" (*see 15 Peters*). Conscientious, upright, and industrious, he was respected by his associates for his talents,

virtues, and high sense of duty. Like his brother James, Philip Pendleton Barbour married a daughter of Benjamin Johnson of Orange County. His marriage to Frances Todd Johnson took place in 1804 and had as its fruitage seven children. His mansion, "Frascati," in his native county was built some time before 1830 by workmen who had been engaged in building the University of Virginia, and had a serpentine wall around its garden. Prosperous in his later years, he lived in dignity and comfort as a country gentleman, loyal to the social, as well as the political, traditions of Virginia.

No adequate account of the life of Philip Pendleton Barbour has yet been published. The sketch by P. P. Cynn in the John P. Branch Hist. Papers of Randolph -Macon Coll., IV, no. I (1913), pp. 67-77, is much less satisfactory than that of James Barbour in the same publication. The brief accounts of Judge Barbour's life all seem to be based on the obit. notice in Peters's Supreme Court Reports, vol. XV, which differs little from the sketch in W. W. Story, Life and Letters of Joseph Story (1851 ), II, 349-50. For his legislative career, the Annals of Cong., continued in the Reg. of Debates, are indispensable. The Va. Debates, 1829-30 (1831) are valuable and a considerable amount of source material in the form of speeches, etc., is contained in Niles' Reg. For his judicial career, see Peters's Reports, and for information about the family, see W. W. Scott, History of Orange County ( 1907) and the general in Philip Slaughter, Hist. of St. Marks Parrish (1877), pp. 118-121. An engraving of Judge Barbour may be seen in H.L. Corson's Hist. of the Supreme Court (1891), I, 295.]