The Heritage Foundation

FIRST PRINCIPLES

FOUNDATIONAL CONCEPTS TO GUIDE POLITICS AND POLICY

MAKERS OF AMERICAN POLITICAL THOUGHT

NO. 14 | JANUARY 21, 2016

John Marshall: The Great Chief Justice

Matthew J. Franck, PhD

John Marshall, the fourth Chief Justice of the United States, presided over the Supreme Court longer than any other occupant of that chair—34 years (1801–1835). Because the Court was a relatively insignificant legal forum when he arrived and an indispensable institution in American public life by the time he died, Marshall is justly the most celebrated judge in our history, the only judge to whom the capitalized moniker "the Great" is commonly attached (as in "the Great Chief Justice").

Historians and legal scholars are divided into admirers and detractors of Marshall. Across this difference, there is an underlying agreement that he was ambitious to be a "judicial statesman," to shape his country just as decisively as Presidents and great congressional leaders did, but from the center chair of the Supreme Court.

Outside of the academy and the legal profession, Marshall remains underappreciated. Most Americans know little or nothing about him, perhaps dimly recalling a class in which a teacher or textbook said that Marshall was responsible for proclaiming the power of "judicial review," the authority of the Supreme Court to declare the decisions of other institutions of government unconstitutional. "Judges are in charge of saying what the Constitution means," they conclude, and Marshall gets the praise or blame for this feature of our political life if he is remembered at all.

If that is all that most people know, it is paradoxically both too little and too much. Marshall set out to make the Supreme Court stronger and more consequential, but *not* to make the justices of the Court the supreme and unquestioned lawgivers on the meaning of the Constitution. Marshall's true greatness comes to light as a combination of confident judgment and modest self-abnegation, grounded in a lively sense of the limits as well as the power of the judiciary in our system of government. He had a deep commitment to the rule of law, which he did not confuse with the rule of judges. Marshall belongs in any complete curriculum on American political thought because of the subtlety and consistency with which he balanced strong legal authority with a modest political role for the Supreme Court.

From the Frontier to High Office

John Marshall, the eldest of 15 children of Thomas and Mary Keith Marshall, was born in what is today Fauquier County, Virginia, then the frontier of colonial settlement, in 1755. The Marshall family was not poor by the standards of the day (the Marshalls were related to "first families" of the colony,

This paper, in its entirety, can be found at
http://report.heritage.org/MAPT-14

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

John Marshall

Education

Taught at home by his father, then a year at Campbelltown Academy at age 14, and a further year's study at home with tutor James Thomson, a pastor residing in the Marshall home. No further formal education until he attended the law lectures of George Wythe at the College of William and Mary, Williamsburg, May–July 1780.

Religion

Episcopalian.

Family

At age 27, married Mary Willis "Polly" Ambler, age 17, on January 3, 1783. They had eight children, two of whom died in infancy.

Highlights

- Military service during the American Revolution, 1775–1781. Saw action at battles of Iron Hill, Brandywine, Germantown (wounded in hand), Monmouth, and Stony Point. Served as deputy judge advocate. Discharged with rank of captain.
- Member, Virginia House of Delegates, 1782, 1784–1785, 1787–1788, 1789–1790, 1795, and 1796–1797.
- Member, Virginia Council of State, 1782–1784.
- Member, Virginia Ratifying Convention that adopted the U.S. Constitution, 1788.
- Minister to France, 1797–1798.
- Member, U.S. House of Representatives, 1799–1800.
- Secretary of State, 1800–1801.
- Chief Justice of the United States, 1801–1835.
- Author, *Life of George Washington* (in five volumes, 1804–1807).
- Member, Virginia Constitutional Convention, 1829–1830.

Died

Philadelphia, Pennsylvania, of gallbladder complications, July 6, 1835.

Persistent Myth

That the Liberty Bell cracked when rung to mark the occasion of his death in Philadelphia in July 1835. There is no evidence that this is so.

as was distant cousin Thomas Jefferson), but the region was sparsely populated, and opportunities for formal schooling were meager.

Young John was taught almost entirely by his father, except for a year away from home at a boarding school at age 14 and during the succeeding year on his return home when a local pastor briefly boarding in the Marshall home undertook to tutor him. Marshall's home schooling, however, was a classical education in Latin authors, English literary figures such as Alexander Pope (a particular favorite), and enough mathematics to take up land surveying alongside his father. Marshall's father was an early purchaser of the first colonial edition of William Blackstone's *Commentaries on the Laws of England*, but it was the son, not the father, who absorbed the book and went into the legal profession.

In his 20th year, as the American Revolution began, Marshall joined the local militia as an officer. Soon thereafter, he took a commission in a Virginia regiment of the Continental Army. Marshall saw action on several battlefields in Delaware, New Jersey, and Pennsylvania, was slightly wounded once, and endured two winters at Valley Forge. He ultimately mustered out with the rank of captain and ever after considered the war the formative experience of his life. While on leave in the spring and summer of 1780, he attended the law lectures of George Wythe at the College of William and Mary; these three months in Williamsburg were his only formal education since grammar school, and he was admitted to the practice of law in August of that year.

It was in Williamsburg that he first met Mary Willis Ambler, "Polly" to her intimates. They were married in 1783. The Marshalls settled in the new state capital of Richmond, and Polly bore eight children; two were lost in infancy, and she had two miscarriages. At some point relatively early in their marriage, Polly became something of an invalid, though it did not prevent her and John from entertaining Richmond society in their home.

Marshall became a pillar of the Richmond community over many years' residence there. His natural amiability and constant community involvement won him the enduring affection of his neighbors despite the local political establishment's opposition to his jurisprudence in later years. The measure of their esteem may be taken by noting Marshall's election to the convention that wrote a new constitution for Virginia in the winter of 1829–1830.

Tall, handsome, a war veteran who moved in the orbit of George Washington, and rapidly recognized as a highly talented legal advocate, Marshall was drawn into political office, for the most part contrary to his inclinations. At various times in the 1780s and '90s, he served in the Virginia House of Delegates, and he was briefly a member of the commonwealth's executive Council of State. In the summer of 1788, he served in the Virginia convention that debated the U.S. Constitution, ably assisting James Madison in securing their state's ratification. Marshall is most remembered (no doubt because of his subsequent career) for a forceful defense of the judicial power created by the Constitution.

Having kept a journal that recorded the corruption and arrogance he and his fellow ministers experienced at the hands of the French in the "XYZ Affair," Marshall was now a national hero for his stalwart defense of his country's honor.

Just a decade later, Marshall rose rapidly to national prominence. Dispatched to Paris in 1797 by President John Adams with fellow ministers Elbridge Gerry and Charles Cotesworth Pinckney to settle America's differences with the revolutionary French government, then raiding American shipping, Marshall returned home the following year from a mission that had largely failed. But having kept a journal (partially published before his return) that recorded the corruption and arrogance he and his fellow ministers experienced at the hands of the French in the "XYZ Affair," Marshall was now a national hero for his stalwart defense of his country's honor. Drafted by the Federalists, he was elected to the U.S. House of Representatives in 1799.

Less than a year later, Marshall was appointed Secretary of State by President John Adams. Then, in the waning days of Adams's presidency, just before Jefferson's inauguration, he was appointed Chief Justice to succeed Oliver Ellsworth. Now 45 years of age, John Marshall began the most distinguished judicial career in American history.

Chief Justice Marshall and the Role of the Supreme Court

When Marshall joined the Supreme Court in 1801, much had been achieved by his predecessors John Jay, the briefly recess-appointed John Rutledge, and Oliver Ellsworth to establish the federal judiciary's position in the new constitutional order, but much more remained to be done, and the Supreme Court had decided only a few cases of large significance in its first decade. Until 1801, the justices still announced their opinions *seriatim*—each one speaking in turn of his individual reasons for the way he voted. Marshall persuaded his colleagues to adopt instead the practice of a single written "opinion of the Court," ideally speaking for all. More often than not in the big cases, that single opinion was by Marshall himself.

Despite his great persuasive powers, gift for writing quickly and cleanly, and tremendous energy for the work, however, Marshall did not and could not simply impose his views on his fellow judges. In those days, all Supreme Court justices did double duty, presiding over trials in the federal circuit courts where they served alongside district court judges, as well as convening together for just two or three months of the year as the Supreme Court. When "riding circuit," as they called the travel away from the capital to sit on the trial bench, each of the justices might display his peculiar bent as a legal interpreter, but when they were in Washington, sitting together as the nation's highest court, Marshall was determined that they should speak with one voice.

Marshall sought to embody in his own judicial opinions a consensus expression of the Court's institutional view of the Constitution as the supreme law of the land.

As much as possible, Marshall sought to embody in his own judicial opinions a consensus expression of the Court's institutional view of the law and—most important—of the Constitution as the supreme law of the land. Hence, he cultivated a collegial bench founded on mutual respect and accommodation, convinced that one institutional voice would have, as it were, the sound of the Constitution itself. This effort on Marshall's part to establish the Court's institutional position and thereby to strengthen a still-young constitutional order was especially timely in light of the fact that his cousin Jefferson's party had just attained control of both the legislative and executive branches and would hold them for almost a quarter-century.

To a certain extent, the Jeffersonian Republicans were heirs, as were the Jacksonian Democrats who arrived a generation later, of the Anti-Federalists who had opposed the ratification of the Constitution. As such, they were inclined to adopt a very limiting interpretation of the Constitution's grant of powers to the national government, even to the point of arguing, contrary to the plain meaning of Article III and the terms of the first Judiciary Act of 1789, that state courts did not have to submit to Supreme Court appellate review of their decisions on questions of federal law. The fortunes of the new federal government as a whole would therefore rise or fall with the success of Marshall's effort to establish his Court's authority as superior to that of any other legal institution.

Given the central, even commanding place occupied by the modern Supreme Court, it is unsurprising that Marshall is viewed (for good or ill) as an apostle of judicial supremacy—the view that the Court is especially or uniquely the guardian of the whole Constitution, has the last word on its meaning, and is fundamentally a political institution seeking justice under the rubric of constitutional law. But this considerably overstates Marshall's view and the distinctive contribution of his jurisprudence, considered more fully below.

For Marshall, "judicial review" (a phrase not used in his day) of acts of Congress or of the President did not place his Court in a position of decisive and sweeping constitutional authority over these other constitutional actors, much less endow it with any policymaking power. The ambit of judicial power extended to the vindication of individual rights protected by the Constitution and laws and to the preservation of valid federal laws as supreme over conflicting state laws. Had a federal law unconstitutionally encroaching on individual rights or the reserved powers of the states come within the reach of Marshall's Court, it would have been invalidated on similar constitutional grounds. Before the Civil War, however, every serious threat to the constitutional federal–state balance (and they were quite

serious) came from the states, not from the federal government. Therefore, during Marshall's entire tenure, just one minor provision of federal law was held invalid, in *Marbury v. Madison*.[1]

For Marshall, the legislative and executive branches of government were the first, and for many purposes also the last, authoritative interpreters of their own constitutional powers. The judiciary's interpretive authority was truly decisive only with respect to the self-defense of its integrity as the forum where individuals could come for assurance that they were subject to the rule of law and not of arbitrary power.

As important as this was, however, the Court's role as defender of the rule of law did not make it the ruler of the country on every question that could be framed in the language of the law, even the law of the Constitution. Nor was the Court altogether unchecked or necessarily "final" even on the questions properly confided to it; it had to win the respect of the people and their elected public officials in order to see even its correct judgments endure. Marshall's abiding concern was that the Court be and be seen to be legal and not political in its decision-making.

In Marshall's view, therefore, political power was something he no longer exercised from 1801 onward, if by that we understand the rightful power to impose one's will on events and one's choices on the shape of the law. He was henceforth, as he understood himself, not a maker of law but charged with discerning the meaning of laws made by others, above all the law of the Constitution. Statesmanship was the theme of his ambitious *Life of George Washington* (in five volumes, 1804–1807, second edition in two volumes, 1832), based on the papers to which the late President's nephew, Justice Bushrod Washington, gave Marshall access.

But statesmanship was not what Marshall aspired to as a justice unless we consider "judicial statesmanship" as a more limited case of that political art in a constitutional polity—the art of defending, in law and in the rhetoric of judicial opinions, the handiwork of the Framers and ratifiers. Marshall's consistent conviction was that the law and not the judge should govern. If it could be said in truth that the justices of the Court were mere politicians and the Court itself just another political institution where assertions of self-interest or ideological motives could get the better of reasoned arguments, then the judiciary would be fatally corrupted.

Marshall's consistent conviction was that the law and not the judge should govern. If the justices of the Court were mere politicians and the Court itself just another political institution where assertions of self-interest or ideological motives could get the better of reasoned arguments, then the judiciary would be fatally corrupted.

By the end of his long career, Marshall might have had some reason to doubt the efficacy of his life's work as President Andrew Jackson's Democratic Party, representing a resurgent states' rights reading of the Constitution, gave voice to centrifugal forces of American federalism that Marshall had sought to contain for three decades (though Jackson, to his credit, did move to quash the "nullification doctrine" of John C. Calhoun). A quarter-century after Marshall's death, the nation would tear itself apart in a conflict inflamed by his successor, Roger B. Taney, in just the second Supreme Court ruling to invalidate a provision of federal law, the *Dred Scott* decision of 1857.[2] Yet Marshall's achievement is real and durable down to the present day, consisting mostly of lesson after elegant lesson in how to read the Constitution.

Marshall's Jurisprudence: The Rule of Law and Preservation of Union

Two dominant themes in Marshall's thought emerge from his opinions: the defense of individual rights under the rule of law and the endurance of the American Union as a new kind of federalism with self-governing states coexisting with a limited but powerful central government.

"It is emphatically the province and duty of the judicial department, to say what the law is," Mar-

1. *Marbury v. Madison*, 5 U.S. 137 (1803).
2. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

shall said in the most quoted sentence from his most famous opinion, *Marbury v. Madison*.[3] It is also the sentence most frequently taken out of context and inflated beyond all reasonable proportions (not least by the modern Supreme Court).

The power we now call judicial review, a power to disregard legislative acts as unconstitutional, was uncontroversial in 1803 when *Marbury* was decided. (And "disregarding" a law in the decision of a case was just what courts did and thought they were doing, not "striking down" laws as though they were entitled to revise the statute books.) The presumption that the power was readily inferred from Articles III and VI of the Constitution was woven into the Judiciary Act of 1789, which established the initial structures and processes of the new federal courts. It had formed part of the debate over the Constitution, with advocates on both sides recognizing the power's existence and no one denying it.

But what was the scope of the power? In 1800, while serving in Congress, Marshall had warned in a speech on the House floor that the judicial power should not be considered as extending to "every *question* under the constitution," for then it could be said that "the other departments would be swallowed up by the judiciary."[4] We have no reason to believe that Marshall's view of this matter changed when he became Chief Justice. Courts of law do indeed "say what the law is," but this power is tethered to the duty of judges to decide controversies that take a proper shape as cases involving persons' rights.[5] As Marshall said elsewhere in *Marbury* in the only other passage in which he referred to the courts' "province" in our constitutional order, "[t]he province of the court is solely to decide on the rights of individuals."[6]

Courts exist to vindicate rights, redress injuries, and offer remedies that accomplish these ends. They do not exist to adjust all of the boundaries of power in our constitutional order where executives and legislatures may clash. Nor do courts exist to impose layers of technical legalisms on a relatively simple Constitution or to invent and bestow new rights on people in the name of a "living Constitution." The judges have no special access as seers and prophets.

Grasping Marshall's limited version of judicial review as a power to preserve the courts' own integrity and the authentic legal rights of individuals that are adjudicated there will help to shed light on much of the conflict his Court endured over the years with the advocates of states' rights, whose intellectual center was his own state of Virginia. The politicians and judges advancing a "sovereign states" theory of the Constitution wanted, among other things, to free the state judiciaries from appellate review by the Supreme Court of their decisions on questions of federal law. This effort was rebuffed by the Marshall Court more than once, as in *Cohens v. Virginia*,[7] where he remarked that the success of the "sovereign states" theory "would prostrate...the government and its laws at the feet of every State in the Union."[8] "If such be the Constitution, it is the duty of the Court to bow with respectful submission to its provisions. If such be not the Constitution, it is equally the duty of this Court to say so, and to perform that task which the American people have assigned to the judicial department."[9]

Marshall avoided using the words "sovereign" and "sovereignty" unless he could employ them with utmost precision, but his consistent view was that the state and national governments had their legitimate and distinct spheres of authority. The federal government, unlike the state governments, did not possess a general "police power" over persons and property, but only the more limited powers delegated to it in the federal Constitution. There was no question that some of the national government's powers had been given to it by a kind of subtraction from the powers of the states, a choice made by the sovereign will of the whole American people. It was equally true that what had not been handed over to the federal government was retained by the states or the people (a principle underscored by the Tenth Amendment).

3. *John Marshall: Writings*, ed. Charles F. Hobson (New York: Literary Classics of the United States, 2010), p. 250.
4. Ibid., pp. 167–168 (emphasis in original).
5. Ibid., p. 250.
6. Ibid., p. 243.
7. *Cohens v. Virginia*, 19 U.S. 264 (1821).
8. *John Marshall: Writings*, p. 534.
9. Ibid., p. 529.

When the proponents of the states' rights reading of the Constitution were not trying to prevent Supreme Court review of state court judgments, they were complaining that Marshall's Court did not exercise its power of judicial review vigorously enough against acts of Congress. The Court gave an appropriately generous and deferential reading of Congress's enumerated and implied powers in *McCulloch v. Maryland*,[10] upholding the constitutionality of the Bank of the United States, which had been vigorously debated in 1791 in Congress and in the Cabinet of George Washington. Equally important, the Court shielded that vital federal institution from the potentially destructive power of state taxation.

Marshall avoided using the words "sovereign" and "sovereignty" unless he could employ them with utmost precision, but his consistent view was that the state and national governments had their legitimate and distinct spheres of authority.

The critical reaction in Marshall's own Virginia was that his Court was out of control because it had not accepted arguments for destroying the Bank or permitted states to destroy it. So perturbed was Marshall by this overreaction, which sacrificed the governing authority of the whole American people to the narrow interests of states or particular regions of the country, that he authored two series of pseudonymous newspaper essays responding to Richmond critics and defending the Court and its understanding of the Constitution.

Similarly extreme complaints that the Marshall Court was the engine of nationalistic "consolidation" that endangered self-government in the states greeted his opinion in *Gibbons v. Ogden*,[11] in which he gave a commonsense reading of Congress's Article I, Section 8 power "to regulate Commerce with foreign Nations, and among the several States." One of the principal aims of the Constitution's Framers had been to lower the barriers to trade among the states, foster a national economy capable of serving the interests of every region of the country, and empower the new Congress with the tools to advance American interests in world markets. The competing "police power" of states over local economic activity, which would unavoidably overlap with Congress's power over the general economy, could not be employed to trump valid federal laws made pursuant to the Constitution.

In keeping with his practice of deciding no more than was necessary to resolve a case, Marshall did not lay down an absolute barrier to state economic regulations with such overlapping effect where Congress had not legislated but had power to do so, but in cases such as *Gibbons* and *McCulloch*, he held steadfastly to federal supremacy in cases of outright conflict between national and state institutions openly claiming incompatible powers to govern the same matters, because the Constitution had plainly provided congressional powers to act in the contested domains. This was not some "nationalism" of Marshall's own; it was the plain principle of the Constitution's own hybrid federalism and hierarchical institutional structure. The people of each state governed themselves, but for its own more limited but vital purposes, the government of the whole Union represented a single self-governing American people.

Another concern of the Framers was that state legislatures were more prone to despotism, corruption, and folly—again, as the likelier captives of single-minded interest groups—than the new Congress would be. Hence, in addition to abuses of legislative power prohibited at either level such as *ex post facto* laws, bills of attainder, or titles of nobility, they specified further prohibitions applying to state power alone. Under Article I, Section 10, states were forbidden to coin their own money, issue paper money or compel the acceptance of banknotes in payment of debts, lay taxes at their ports, or make any law "impairing the Obligations of Contract."

This last prohibition, the Contract Clause, when laid alongside the power given to Congress to make "uniform Laws on the subject of Bankruptcies," indicates the different degrees of trust the Framers had in each level of government when it came to the protec-

10. *McCulloch v. Maryland*, 17 U.S. 360 (1819).

11. *Gibbons v. Ogden*, 22 U.S. 1 (1824).

tion of property rights. Examining Marshall's interpretation of this limitation will shed more light on his devotion to individual rights under the rule of law.

Marshall's opinions in his many landmark constitutional cases were almost invariably unassailable, grounded in a solid understanding of the text and the application of orthodox common law modes of reasoning about the law's meaning.

The Contract Clause was the ground of the first case in which the Supreme Court invalidated a state law as unconstitutional, *Fletcher v. Peck*.[12] *Fletcher*'s significance was that it held that the contracts a state legislature could not legally impair included those to which the state itself was a party. This was a conclusion driven less by evidence of the Framers' intention than by the simple text they wrote, which made no self-dealing exception for states when it came to their grants to and contracts with private parties. Thanks to this clause of the Constitution, those parties had a legal right to a level playing field in dealing with their counterpart in contracts, even when it was a state government.

Still more significant was *Trustees of Dartmouth College v. Woodward*,[13] which built on *Fletcher* by holding that corporations chartered by state law could hold states to the contractual terms of their charters and were thus protected from ideological changes in a legislature's makeup or sudden panics driven by events. Protecting private Dartmouth College from a hostile takeover by the New Hampshire legislature, Marshall announced a principle that offered security to other colleges and nonprofits (as we call them today) but that also did much to encourage the rise of the business corporation as a legal entity. Such corporations could count on protection within the terms of their charters; by the same token, legislatures learned to enact general incorporation laws that reserved to themselves considerable regulatory power when granting such charters. Both sides gained the advantage of predictability in the rule of law.

Marshall was not in the majority in every case his Court decided, but he was nearly so. After writing for the Court in *Sturges v. Crowninshield*,[14] voiding a state law that relieved debtors of some past obligations dating from before the law's enactment, Marshall recorded his only dissent in a constitutional case in *Ogden v. Saunders*,[15] which offered similar relief from debts contracted after the legislation was passed. (Congress had yet to enact any bankruptcy laws, so no conflict between federal and state statutes was present.) For Marshall, this was prospective impairment of contracts, which was no better than retrospective impairment; for the majority, it was a law giving advance notice of how rigorously private contracts would be enforced.

Yet Marshall was not dogmatically pro–property rights where the Constitution did not plainly offer its protection. In *Barron v. Baltimore*,[16] he held for a unanimous Court that states and local governments were not bound by the Takings Clause of the Fifth Amendment, which requires "just compensation" when the power of eminent domain is used, because none of the amendments collectively known as the Bill of Rights applied to the states. Those amendments, as he knew, had been passed only to limit the powers of the national government. It is only since the addition of the Fourteenth Amendment in 1868 that the Court has subjected the states to most of the strictures of the Bill of Rights, though this is still controversial with some scholars.

Late in his tenure, Marshall attempted a defense of the legal rights of a whole people—the Cherokee nation—that was doomed to fail because of the combined hostility of state and federal officials who were hungry for the lands the Cherokee held in the Georgia uplands. The Court's ineffectual ruling in *Worcester v. Georgia*[17] was a lesson in the limits of

12. *Fletcher v. Peck*, 10 U.S. 87 (1810).
13. *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819).
14. *Sturges v. Crowninshield*, 17 U.S. 122 (1819).
15. *Ogden v. Saunders*, 25 U.S. 213 (1827).
16. *Barron v. Baltimore*, 32 U.S. 243 (1833).
17. *Worcester v. Georgia*, 31 U.S. 515 (1832).

judicial power when political actors are willing to flout the rule of law. When the government of Georgia, the Congress, and President Andrew Jackson were determined to set the Cherokee on the infamous Trail of Tears to the western Indian territory, there was nothing mere judges issuing legal rulings could do to stop them.

Marshall's Place in Constitutional History

Although some historians, even admiring biographers, have viewed Marshall as result-oriented in his jurisprudence, the case for that conclusion requires an initial judgment that he regularly read the Constitution erroneously, for who can complain of a judge whose desire for "results" coincides with the correct legal principles driving the outcomes of his decisions? And Marshall's opinions in his many landmark constitutional cases were almost invariably unassailable, grounded in a solid understanding of the text and the application of orthodox common law modes of reasoning about the law's meaning. As for public policy, it was to be made by others under their own constitutional authority—as when Andrew Jackson vetoed the recharter of the Bank of the United States that Marshall's Court had helped to preserve.

This makes John Marshall a curious subject for students of American political thought. His thought is emphatically legal and constitutional thought, traveling in the categories of jurisprudence and not those of high statesmanship. We think of the highest statesmen as "lawgivers," but that was not Marshall's view of himself, and we should respect his view as capturing a real insight.

We call George Washington "father of his country," and we call James Madison "father of the Constitution." They truly framed the nation's laws. Marshall undertook to give a clear voice to those laws in keeping with the design the Framers had stamped on them. In this, he proved himself a judge's judge, the very model of sober, manly, eloquent defense of the rule of law within the limits of what judicial power allows. He fully deserves the magnificent bronze statue on display in today's Supreme Court, depicting him robed on the judgment seat, which was executed in 1884 by sculptor William Wetmore Story, the son of his dearest friend on the Court, Justice Joseph Story.

*—**Matthew J. Franck, PhD,** is the director of the William E. and Carol G. Simon Center on Religion and the Constitution at the Witherspoon Institute, Princeton, New Jersey; professor emeritus of political science at Radford University; and visiting lecturer in politics at Princeton University.*