The Great Chief Justice: John Marshall and the Rule of Law (American Political Thought (University Press of Kansas))

Charles F. Hobson
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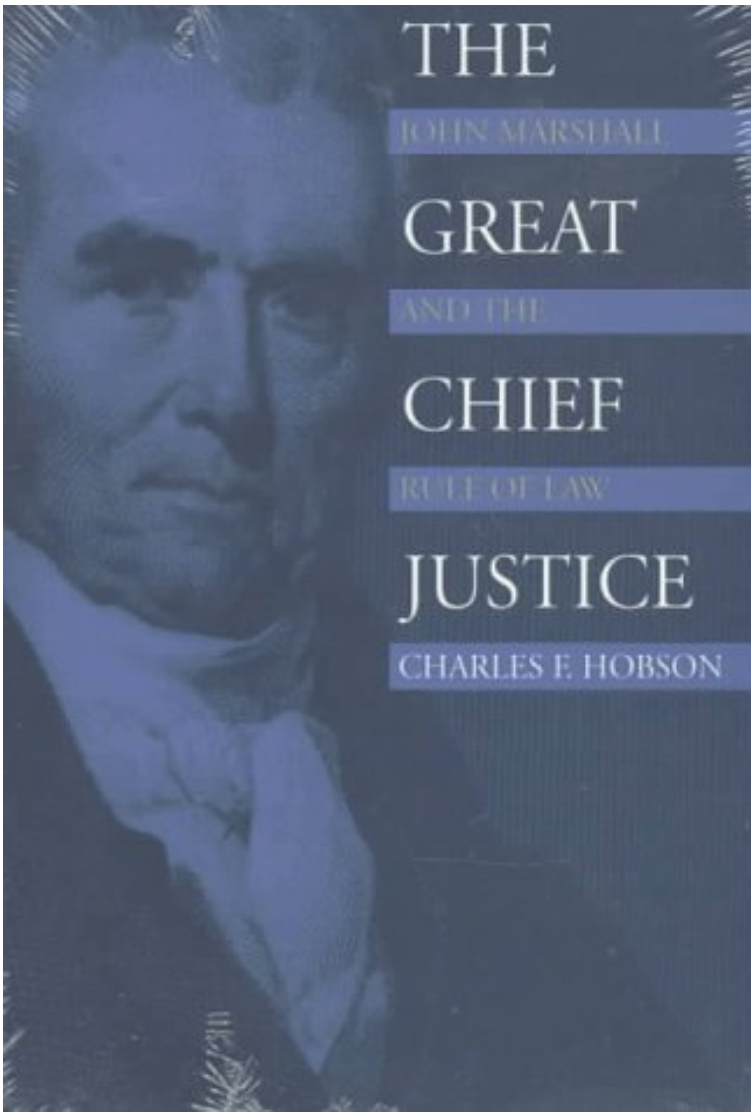

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Charles F. Hobson : The Great Chief Justice: John Marshall and the Rule of Law (American Political Thought (University Press of Kansas)) before purchasing it in order to gage whether or not it would be worth my time, and all praised The Great Chief Justice: John Marshall and the Rule of Law (American Political Thought (University Press of Kansas)):

9 of 9 people found the following review helpful. The Origins of Judicial ReviewBy Leonard J. WilsonThe Great

Chief Justice by Charles Hobson is a biography of John Marshall focused primarily on Marshall's judicial career and decisions. It also provides a thorough description of the evolution of the American legal system that influenced the development of Marshall judicial philosophy early in his career and then was shaped by the decisions of the Supreme Court under his leadership. Hobson has produced an excellent and scholarly work. However, it is not light reading - I found myself referring to Black's Law Dictionary every few pages - so I'll digress for a brief description of two other excellent books on Marshall.* Readers seeking a thorough description (524 pages plus notes) of Marshall's life would probably be better served reading Jean Edward Smith's John Marshall - Definer of a Nation which provides a thorough biography of Marshall's life outside the court as well as a solid description of the court's operations and decisions during his tenure as chief justice.* Those looking for a more concise treatment (301 pages) of Marshall's career might want to consider James Simon's What Kind of Nation which describes the conflicts (philosophical, political, legal, and personal) between Chief Justice Marshall and President Thomas Jefferson who both took office in 1801. Their struggle over the interpretation of the Constitution was nearly as fundamental to the evolution of our current constitutional framework as were the constitutional convention and state ratifying conventions.Back to Hobson's The Great Chief Justice. One of my goals in studying Marshall was to develop an appreciation of the origins of judicial review, the authority of the court to declare laws enacted by congress and signed by the president to be unconstitutional and therefore null and void. Hobson provided copious background.Under English common law, dating back perhaps to Magna Carta (1215), judges decisions were based on precedents set by the decisions in prior cases. With a growing multitude of available precedents, the selection of the prior cases most relevant to a situation became more and more complex. Small differences in the particular facts underlying a new case required judicial discretion in the selection the relevant precedents. Different judges could easily apply their discretion to select different precedents and reach different decisions, thereby further complicating the decisions of future judges. Judicial discretion in common law was established well before the American colonies.The concept of judicial review of the constitutionality of laws never took root in England for the simple reason that England doesn't have a written constitution. Nevertheless, the possibility of judicial review was alluded to by noted English jurists Sir Edward Coke who suggested that the common law could control the acts of parliament (case of Dr. Bonham, 1610) and Sir William Blackstone who suggested that if a statute created an unintended consequence that was unreasonable, judges could "expound the statute by equity" to avoid the consequence.In the 169 years between Jamestown and the Declaration of Independence, bodies of case law and statutes grew up in the thirteen colonies and slowly diverged from English common law. The tradition of judicial discretion became firmly rooted in the colonies as judges sought the relevant statutes and precedents to individual cases.The basis for most colonial laws derived from the royal charters granted by the Stuart kings when the colonies were founded. The early Stuarts (prior to 1688) viewed themselves as absolute monarchs and issued their colonial charters without reference to parliament. Typical of these charters was that of Virginia in which James I granted the colony the authority to establish its own laws (1607). The Glorious Revolution (1688) led to the removal of James II from the throne by parliament and the declaration that "The Parliament of England is that supreme and absolute power, which gives life and motion to the English government" (Earl of Shaftesbury). However, no modifications were made to the royal colonial charters which remained the basis for colonial laws. In effect, the royal colonial charters served as prototype constitutions. The conflict between the self-governing colonies and parliament's "supreme and absolute power" came to a head in the American Revolution. The colonists effectively declared that certain acts of parliament were inconsistent with the colonies rights under their royal colonial charters. In other words, such acts of parliament were declared "unconstitutional" by the Continental Congress which was the sole representative of the separate colonial governments.Under the Articles of Confederation, the newly independent states retained complete sovereignty, including control of the only systems of courts. There was little need for judicial review of laws enacted by the Confederation Congress since the states could generally ignore them with impunity.Within the states, however, the concept of judicial review took root prior to the framing and ratification of the US Constitution. In 1782, Chancellor George Wyeth of the Virginia High Court of Chancery observed that it was the duty of a judge "to point to the constitution [of Virginia]" and say to an overreaching legislature, "Here is the limit of your authority; and, hither, shall you go, but no further."The basis for judicial review under the US Constitution is embedded in Articles VI and III. Article VI states that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land." Implicit in this statement is the proviso that an act of congress that is not "in Pursuance" of the Constitution is not the "supreme Law of the Land." Article III states that "...the supreme Court shall have appellate jurisdiction both as to Law and Fact...". Appellate jurisdiction as to Law gives the court the authority to determine the applicability and meaning of laws to individual cases. Combining this authority with the text quoted above from Article VI convinces me that the court would be justified in declaring an act of congress that conflicted with the Constitution to be "not the law supreme law of the land", null and void, unconstitutional.Now we can jump forward to 1803 and the Marbury versus Madison decision of the Marshall Court. I won't summarize the case here but do plan to do so in my review of James Simon's book cited at the beginning of this review. In that decision, the court held that the Judiciary Act of 1789 had granted original jurisdiction to the Supreme Court in cases other than specified in Article III, Section 2, of the Constitution. Since that paragraph of the Constitution goes on to say that in all

other cases the Supreme Court shall have appellate jurisdiction, the section of the Judiciary Act granting expanded original jurisdiction conflicts with the Constitution. In Marbury vs Madison, the court declared that portion of the Judiciary Act unconstitutional.This was the first time that the Supreme Court had declared an act unconstitutional. Marshall was exceptionally sensitive to the possible repercussions and wisely chose the case in which to assert the court's authority of judicial review. Negating the relevant section of the Judiciary Act reduced the authority of the Supreme Court itself, but had no direct impact on congressional or presidential authority.Hobson paints a vivid picture of why Marshall's sensitivity was warranted. In the years from 1798 to 1801, the nation went through the most traumatic political turmoil in its history (with the exception of the Civil War). This was the time of the Alien and Sedition Acts which were enacted in response to the quasi-war with France and the attempts of the French minister to the US, "Citizen" Genet, to arouse the American people against their government. These Acts were blatantly unconstitutional. The Alien Act gave the president authority to deport any non-citizen based only on his judgment, with no justification required, and without any form of due process. The Sedition Act declared criticism of the president or congress a crime and enabled the government to fine or jail US citizens. These acts were passed by the Federalist controlled congress and signed by President Adams. Vice President Jefferson and the Republican party took strenuous exception to these acts. Jefferson and James Madison covertly drafted documents that became the Kentucky and Virginia Resolutions which challenged the constitutionality of the acts and, in the case of Jefferson's draft of the Kentucky Resolution, declared them null and void within that state. (Jefferson's draft was provided to John Breckenridge who softened the language slightly before submitting it to the Kentucky legislature.) Meanwhile, all federal judges at the time were Federalist appointees, many of whom took on highly active and partisan roles in enforcing the acts on Republican defendants. Supreme Court Justice Samuel Chase, the only Supreme Court Justice ever impeached (but not convicted), was known to tell juries in these cases that a defendant's attempt to prove the truth of his criticisms was, in fact, evidence of his guilt under the Sedition Act. It is no wonder that Jefferson referred the Federalist controlled government (president, congress, and courts) collectively as "the reign of witches".The federal judiciary, including the Supreme Court, was suffering from self-inflicted wounds when Marshall, another Federalist, was appointed Chief Justice by the lame duck President Adams and confirmed by the lame duck Federalist Senate. Marshall, to his eternal credit, devoted himself to avoiding further political turmoil and restoring the reputation of the courts.In fairness to the author, I must add that the above review only covers the first half of his book. The topics which follow (property rights and the contract clause, national supremacy and states' rights, limits of judicial power) depend so heavily on the Marbury decision that I feel that I've covered the most important points. And, this review is already too long. My thanks to anyone who reads this far.13 of 13 people found the following review helpful. Excellent judicial biographyBy jca360This is an excellent, accessible, readable judicial biography of our greatest Supreme Court justice. At the same time, it is a masterly exposition of Marshall's judicial philosophy and development by one of the greatest scholars of John Marshall, the editor of the Marshall papers (and also the James Madison papers). The book is essential for understanding Marshall's thought and his contributions to the nation. Places Marshall's writings and his judicial philosophy in their historical context, stripping away the anachronistic assumptions that mar much judicial discussion of the great Marshall opinions. I disagree with the previous reviewer's statement that only historians and lawyers can understand the book; it is accessible to general readers in my opinion.2 of 2 people found the following review helpful. Not a bio, but a study of Marshall's legal thought process.By Glenn D. RobinsonChief Justice Marshall was a leader when the country needed a strong forward thinking Chief Justice of the Supreme Court. The rule of law might not have happened without his long stay on the bench. This is an excellent book that delved into his decision making thought process on a variety of cases. Not a bio-but more legal and decision making thought process. In addition to his famous cases, many lesser known, but precedent setting cases. Not being a lawyer, I appreciated the book for going into the parts of law that are meaningful for me as a business owner and for the thought process to make the decisions. He made sure that the Supreme Court was not a pawn of either party or of either the other two branches of the government. It was worth my while and well researched.

John Marshall remains one of the towering figures in the landscape of American law. From the Revolution to the age of Jackson, he played a critical role in defining the "province of the judiciary" and the constitutional limits of legislative action. In this masterly study, Charles Hobson clarifies the coherence and thrust of Marshall's jurisprudence while keeping in sight the man as well as the jurist.Hobson argues that contrary to his critics, Marshall was no ideologue intent upon appropriating the lawmaking powers of Congress. Rather, he was deeply committed to a principled jurisprudence that was based on a steadfast devotion to a "science of law" richly steeped in the common law tradition. As Hobson shows, such jurisprudence governed every aspect of Marshall's legal philosophy and court opinions, including his understanding of judicial review.The chief justice, Hobson contends, did not invent judicial review (as many have claimed) but consolidated its practice by adapting common law methods to the needs of a new nation. In practice, his use of judicial review was restrained, employed almost exclusively against acts of the state legislatures. Ultimately, he wielded judicial review to prevent the states from undermining the power of a national government still struggling to establish sovereignty at home and respect abroad.No chief justice and only one associate

justice (William Douglas) served longer on the Supreme Court. But, as Hobson clearly shows, Marshall's deserved place in the pantheon of great American jurists rests far more upon principles than longevity. This book better than any other tells us why that's true and worthy of our attention.

From Publishers WeeklyThis biography of John Marshall's life and thought revises the revisionism. Early biographies of Marshall (chief justice of the Untied States, 1801-1835) tended to be blindly respectful. Then came the four-volume biography by Albert J. Beveridge that appeared between 1916 and 1919. Beveridge popularized Marshall as an intelligent bumpkin, whose willful ignorance of legal precedent allowed him to practice creative jurisprudence. Hobson believes otherwise. The premise of this book is that Marshall had a masterful understanding of precedent. Hobson makes a convincing case, aided by his editorship, beginning in 1979, of Marshall's papers. (To date, eight volumes of those papers have been published.) Hobson gained additional insight into Marshall's times and thought by serving as editor of James Madison's papers. The way Madison's thought illuminates Marshall's thought, and vice versa, is fascinating. At one point, Hobson comments that the vision of a new nation inspiring Madison was the same vision inspiring Marshall as chief justice several decades later. That shared vision meant continuity in American jurisprudence until the presidency of Andrew Jackson, when a communal society began turning into an individualistic quasi-democracy. Hobson's research is impressive and his writing clear. This is not the book to read for an understanding of Marshall's life outside the courtroom. It is the book to read if the goal is understanding the life of Marshall's mind. Copyright 1996 Reed Business Information, Inc.From Library JournalSince 1990, there have been a number of new biographies of Supreme Court justices from Hugo Black to Thurgood Marshall. So it is no surprise that John Marshall, chief justice from 1801 until his death in 1835 and the principal founder of the American system of constitutional law, should receive renewed attention. Certainly, Marshall has not been ignored by historians and biographers. Albert Beveridge's The Life of John Marshall (1916-19) remains the classic, and briefer works, both with the title John Marshall, have been authored by Leonard Baker (1974) and Francis Stite (1981). Hobson, chief editor of "The John Marshall Papers" documentary project at the College of William and Mary since 1979, combines a historian's perspective with experience in document editing. Editing Marshall's papers gave Hobson an appreciation for Marshall's vigorous constitutional vision, which he examines in this judicial biography. Hobson writes of Marshall's jurisprudence in the areas of judicial review, the contract clause, and national supremacy. This excellent work is strongly recommended for academic, law, and larger public libraries.?Jerry E. Stephens, U.S. Court of Appeals Lib., Oklahoma CityCopyright 1996 Reed Business Information, Inc. "Learned, deft, concise, economical, and, appropriately enough, judicious. A remarkably thoughtful appraisal."Jack N. Rakove, Virginia Magazine of History and Biography "This splendid book illuminates the pragmatic and practical side of Marshall's jurisprudence, helping us to understand how this greatest of all American judges separated law from politics without ever losing sight of the importance of constitutional law and jurisprudence for the world of politics."Kermit L. Hall, author of The Magic Mirror: Law in American History "No student of our legal history, lay or professional, should miss this book."Edwin M. Yoder, Jr., Washington Post columnist "A learned, lucid, and insightful work that will be welcomed by a wide audience."--Noble E. Cunningham, Jr., author of The Presidency of James Monroe "Will become the standard work on Marshall."--Robert Allen Rutland, author of James Madison and the American Nation