

## Background to the Marshall Court

In response to the questionable Alien and Sedition Acts of 1798, which passed into law during the presidency of the Federalist John Adams, Republicans looked to the states to preserve people's liberties by standing up to what they regarded as Federalist tyranny. James Madison and Thomas Jefferson, both leaders of the Republican Party, drafted protests that were passed by the Virginia and Kentucky legislatures. Madison and Jefferson, both Virginians, were already famous Americans—Madison had been a major player at the Constitutional Convention and then in the House of Representatives, and Jefferson, besides being the author of the Declaration of Independence, had been the Secretary of State under George Washington and then Vice President under John Adams. The Virginia and Kentucky Resolutions claimed that the Alien and Sedition Acts violated the Constitution and, therefore, could not be enforced within their states. The Kentucky Resolution, authored by Jefferson, further suggested that states might nullify—legally overturn—federal laws considered unconstitutional. Both resolutions supported the principle that came to be known as “states’ rights.” This principle held that, even with the adoption of the United States Constitution, the bulk of governmental authority remained with the states, and this included the power to determine constitutionality.

Jefferson's views on states' rights went further than Madison's and even included the possibility of secession. Jefferson saw the Constitution as a “compact” among the states with “no common judge.” As a result, each state had the “right to judge for itself” the constitutionality of federal laws, and “where powers are assumed (by the federal government) which have not been delegated, a nullification of the act (by the states) is the rightful remedy (Jefferson's Draft of the Kentucky Resolutions, 1798).” Many years later Jefferson affirmed that a state may feel compelled, if the federal government should become one of “unlimited powers,” to take the final step of withdrawing from the Union (Declaration and Protest, 1825). Promulgated by Jefferson, the doctrine of states' rights would go on to form the theoretical basis for southern secession in 1860.

John Marshall, a Federalist from Virginia who had been Secretary of State under John Adams, was appointed Chief Justice of the U.S. Supreme Court in 1801. Through clear and reasoned opinions, Marshall's court is credited with putting the federal government as well as the federal judicial branch on a solid footing, even though the Court's decisions were frequently assailed at the time. Marshall and his fellow justices believed that the Constitution required the federal courts to exercise judicial review, whereby the federal judiciary nullifies laws that violate the Constitution. Marshall's court also made important rulings regarding federalism, or how power is to be shared between the federal and state governments. Marshall and his court outlined the nationalist or unionist point of view, which opposed the ideas of states' rights; in fact, states' rights ideas were sometimes presented by one of the two sides in a Supreme Court case, and the Court would respond to them in its decision. In addition, the Marshall court made rulings related to Native Americans, and in the process expounded the unique history and position of Native Americans in the United States. The following excerpts include important points from three memorable Supreme Court decisions.