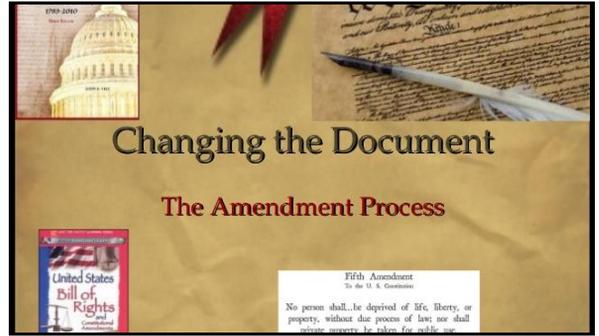




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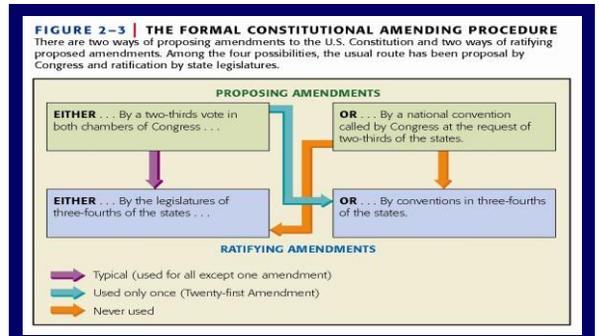


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### The Formal Amendment Process

- Every government needs to be able to cope with any new and unforeseen problem. Any Constitutional change should, however, be taken on with extreme caution. If the process to amend the Constitution is rigorous, there should be ample time to consider the merits of such a change.

3



4

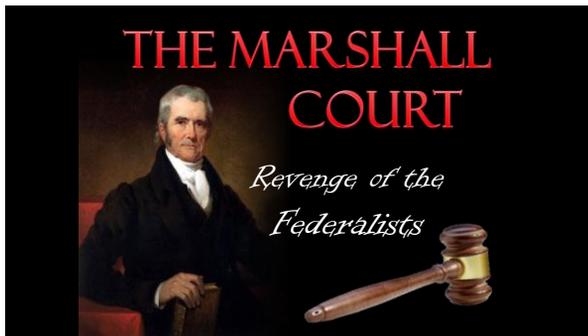
### Amending the Constitution

- Although 11,000 amendments have been considered by Congress, only 33 have been submitted to the states after being approved, and only 27 have been ratified since 1789.
  - Recent amendments have usually been accompanied by time limits for ratification.
  - *The National Convention Provision.* Such a convention could be called and could rewrite the entire Constitution. The product of such a convention, however, would have to be ratified by the states in the same way as any amendment.

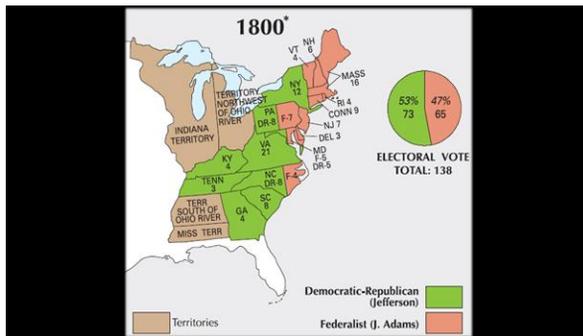
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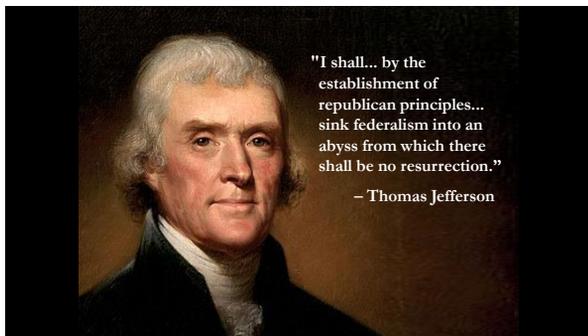
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9

### V. The "Dead Clutch" of the Judiciary

- **Judiciary Act of 1801**
  - One of last laws passed by Federalists:
    - Created 16 federal judgeships and other offices
    - Adams signed some commissions for Federalist "**midnight judges**" on last night in office
    - Aroused bitter resentment for "packing" lifetime posts with anti-Jeffersonians



John Marshall

10

### THE DOOMSDAY CLOCK

After their devastating defeat in the Election of 1800, "doomsday" was quickly approaching for John Adams and the Federalist Party.

11

### "LAME DUCK" SESSION

1801

ELECTION ← → SUCCESSOR'S TERM

In a "lame duck" session, the outgoing Congress meets and passes laws before the newly-elected members of Congress can take their seats.

12

From Article III,  
Section 1

*We the People*

*The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.*

13

**THE JUDICIARY ACT OF 1801**

The "Midnight Judges" Act

Sixteen new federal circuit judges



Sixteen federal judges with life tenure would be able to undermine Jefferson and the Republicans from the bench.

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V. The "Dead Clutch" of the Judiciary

- **Judiciary Act of 1801**
  - New Congress quickly repealed Judiciary Act of 1801

15

V. The "Dead Clutch" of the Judiciary (cont.)

- Jeffersonians were also after new Chief Justice John Marshall:
  - Served 34 years under various presidents
  - Dominated Supreme Court by intellect and personality
  - Shaped American legal tradition more than any other figure
  - Committed to strengthening power of federal government

16

**JOHN MARSHALL**



- Federalist
- Secretary of State (Adams Administration)
- Chief Justice of the Supreme Court  
"Midnight" Appointment

17

V. The "Dead Clutch" of the Judiciary (cont.)

- "Midnight judges" presented Marshall with historical opportunity:
  - William Marbury appointed a justice of the peace by Adams
  - Sued when he learned commission would not be delivered
  - Marshall dismissed Marbury's suit
  - *Marbury v. Madison* (1803) enabled Marshall to address question of who had final authority to determine meaning of Constitution

18

*MARBURY V. MADISON* (1803)



William Marbury  
(Midnight Judge)

James Madison  
(Secretary of State)

19

*MARBURY V. MADISON* (1803)

Writ of  
**MANDAMUS**

as per Judiciary Act of 1789

20

*From The Federalist No. 78*



*The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution...*

21

*MARBURY V. MADISON* (1803)



John Marshall  
Chief Justice

Marshall's Dilemma



22

*MARBURY V. MADISON* (1803)



John Marshall  
Chief Justice

Marshall's Decision

JUDICIARY ACT OF 1789 IS  
**UNCONSTITUTINAL**

23

**JUDICIAL REVIEW**

IT IS EMPHATICALLY THE PROVINCE AND DUTY OF THE JUDICIAL DEPARTMENT TO SAY WHAT THE LAW IS.

MARBURY v. MADISON  
1803

24

### V. The “Dead Clutch” of the Judiciary (cont.)

- Marshall promoted principle of “judicial review”—
  - Supreme Court alone had final word on questions of constitutionality
  - Marshall inserted keystone into arch that supports tremendous power of Supreme Court in American life
- Jefferson urged impeachment of Justice Samuel Chase, but effort failed
- Established precedent of judicial independence

25

## Marbury v. Madison

Supreme Court Briefs



26

## JUDICIAL REVIEW



John Marshall  
Chief Justice

**Marshall:**

**The Supreme Court can declare laws to be unconstitutional.**

*– (in this case, a federal law passed by Congress)*

27

## COMPARING JEFFERSON & MARSHALL



Marshall  
(Federalist)



Jefferson  
(Republican)

<i>Strong Central Government</i>	Federalism	<i>States' Rights</i>
<b>Loose</b>	Strict / Loose Construction?	<b>STRICT</b>
<i>Constitutional</i>	National Bank?	<i>Unconstitutional</i>
<i>Commerce</i>	Favored Economic Pursuit?	<i>Agriculture</i>
<i>Marbury v. Madison:</i> <b>SUPREME COURT</b>	Who interprets the Constitution?	Kentucky Resolution: <b>STATES</b>

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