**Establishment of the Federal judicial system and the setting of the balance between the Federal and the local judicial branches of power**

With the Judiciary Act of 1789, Congress first implemented the constitutional provision that “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.” Although subsequent legislation altered many of the 1789 Act’s specific provisions, and the 1891 Circuit Courts of Appeals Act effected a major change, the basic design established by the 1789 Act has endured: a supreme appellate court to interpret the federal Constitution and laws; a system of power federal courts, separated geographically by state boundaries and exercising basically the same jurisdiction; and reliance on state courts to handle the bulk of adjudication in the nation. However, Article III and its implementing legislation also reveal the clash of major disagreements over the optimal extent of federal jurisdiction and the optimal federal court structure to accommodate that jurisdiction. .

The Constitutional Convention’s decisions in 1787 about the national government’s court system were few but important. The framers agreed that there would be a separate federal judicial power and that to exercise it there would be a Supreme Court and there could be other federal courts. They specified the jurisdiction those courts could exercise, subject to congressional exceptions. They prescribed the appointment procedure for Supreme Court judges, and they sought to protect all federal judges from reprisals for unpopular decisions: Judges’ compensation could not be reduced, and judges could not be removed from office other than by legislative impeachment and conviction. Putting flesh on this skeleton fell to the First Congress. The Judiciary Act and the Bill of Rights same forces that contended over the writing and ratification of the Constitution in 1787 and 1788 sparred in the First Congress in 1789 over the nation’s judicial system. Federalists generally supported the Constitution and the policies of President Washington’s administration, and they wanted to establish a lower federal judiciary. Anti-Federalists opposed the Constitution— or at least wanted significant changes in it— and favored at best only a very limited federal judiciary. After the Constitution went into effect in 1789, outright opposition to it diminished quickly. Democratic Republicans, or “Jeffersonians,” emerged as a counter to the Federalists in power. department will be oppressive.” The star chamber of British legal history lingered in some people’s minds, and many more remembered how state courts issued judgments against debtors during the economic turmoil under the Articles of Confederation. Charles Warren identified four main changes that opponents sought in the Constitution’s judiciary provisions: guaranteeing civil as well as criminal trial juries, restricting federal appellate jurisdiction to questions of law, eliminating or radically curtailing congressional authority to establish lower federal courts, and eliminating the authorization for federal diversity jurisdiction. Many who had supported the Constitution, however, believed a federal court system was necessary but doubted the need for a bill of rights. To them, the Constitution, in Hamilton’s famous phrase, “is itself, in every rational sense, and to every useful purpose, a bill of rights.” The Constitution as ratified contained specific limitations on the national government (e. g., Article III’s provision for criminal jury trials), and in a broader sense, it established an energetic national government, extending over a large republic, that would be capable of protecting people from the oppression of local factions. Courts would also protect rights. As Chief Justice John Jay later told the grand juries of the Eastern Circuit, “nothing but a strong government of laws irresistibly bearing down [upon] arbitrary power and licentiousness can defend [liberty] against those two formidable enemies.” To many Federalists, state courts under the Articles of Confederation had too easily yielded to popular pressures; the Federalists believed that a separate set of federal courts was necessary to achieve “a strong government of laws.”.

Thus, the First Congress faced these interrelated questions: What provisions should a bill of rights contain? Should Article III’s provisions governing federal judicial organization and jurisdiction be altered? How should Article III be implemented? From April to September of 1789, the First Congress addressed them all. Early in the first session of the House of Representatives, James Madison, the principal architect of the Constitution, put together a proposed bill of rights drawn from state proposals and constitutional provisions. Madison had opposed a bill of rights a year earlier, claiming that “parchment barriers” were no protection against “the encroaching spirit of power,” but he knew the importance of honoring commitments made in the ratification debates. More over, he told the House, if a bill of rights is incorporated into the Constitution, “independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights.” Madison guided his proposed amendments through legislative revisions and around colleagues who thought they were unnecessary or unwise, and he eluded other legislators who wanted to add provisions to curtail severely the contemplated federal judicial system. Meanwhile, the Senate quickly took up the organization and jurisdiction of the federal courts. The principal drafters of Senate Bill were three lawyers: Oliver Ellsworth of Connecticut, William Paterson of New Jersey, and Caleb Strong of Massachusetts. Ellsworth and Paterson had served in the Constitutional Convention, and Ellsworth served on the committee of the Continental Congress that heard appeals in prize cases. He had a special appreciation of the role that a federal judiciary, properly constituted, might serve. (Ellsworth and Paterson went on to serve on the U. S. Supreme Court, Ellsworth as Chief Justice.) On September 24, 1789, Washington signed “An Act to Establish the Federal Courts of the United States” and sent his nominations for the first federal judges to the Senate. On the same day, the House accepted the conference report on the proposed Bill of Rights. The Senate followed suit the next day, and twelve amendments went to the states for ratification. Ten of them became part of the Constitution in 1791. .

The Federalists made important concessions to get a federal judicial system. The Judiciary Act bowed to the Anti- Federalists in two general ways: It restricted federal jurisdiction more than the Constitution required, and it tied the federal courts to the legal and political cultures of the states. .

The Act limited federal trial court jurisdiction mainly to admiralty, diversity, and U. S. plaintiff cases, and to federal criminal cases. There was little dispute about the need to create national admiralty courts. Even opponents of the Constitution recognized the importance of maritime commerce and the government’s inability under the Articles of Confederation to provide an adequate judicial forum for resolving admiralty disputes. (Pursuant to an authorization in the Articles of Confederation, the Continental Congress in 1780 had established a U. S. Court of Appeals in Cases of Capture, but that court had been undermined by widespread refusal to honor its mandates.) When proposals to abolish Congress’s Article III authority to establish federal courts were made in the state ratifying conventions and in the First Congress, there was usually an exception for courts of admiralty. A major concession to the Anti- Federalists concerned jurisdiction over cases arising under the federal Constitution or laws: For the most part, unless diversity was present, such federal- question cases could be filed only in state court. The Act made some specific grants to federal courts: the admiralty jurisdiction, for example, and jurisdiction over treaty rights cases. Section 14 authorized federal judges to issue writs of habeas corpus concerning the legality of federal detentions. Congress added incrementally to federal courts’ federal- question jurisdiction— starting in 1790 with certain patent cases —but it didn’t grant federal courts a general federal- question jurisdiction until 1875. The absence of such a grant meant less in 1789 than it would mean today or in 1875 because federal statutory law was so limited in the early years. Other provisions of the Act reflected the same fear of overbearing judicial procedures that was reflected in the Bill of Rights. For example, to alleviate fears that citizens would be dragged into court from long distances, section 3 specified places and terms of holding court in each district, and section 11 provided that civil suits must be filed in the defendant’s district of residence. Sections 9 and 12 protected the right to civil and criminal juries in the district and circuit courts, as the Sixth and Seventh Amendments would later do, and section 29 shielded juror selection and qualifications from federal judicial control by directing courts to use the methods of their respective states. Sections 22 and 25 protected jury verdicts from appellate review; these sections responded to vigorous attacks on Article III’s qualified grant to the Supreme Court of “appellate jurisdiction, both as to law and fact.” And, as noted earlier, section 14 authorized federal judges to issue writs of habeas corpus to inquire into instances of federal detention..

A major nationalist victory in the Act was the implementation of the constitutional authorization of jurisdiction in cases “between citizens of different States” and cases involving aliens. Under section 11, the circuit courts, like the state courts, could hear suits when “an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State.” Why did the Federalists want this federal diversity of citizenship jurisdiction? It was not simply— perhaps not even mainly— out of fear that state courts would be biased against out- of- state litigants..

Rather, Federalists worried about the potential for control over judges by state legislatures, which selected judges in most states and had the authority to remove them in more than half the states. Given the influence of debtor interests in state legislatures, the Federalists worried that state judges might be reluctant to enforce unpopular contracts or generally to foster the stable legal conditions necessary for commercial growth. Diversity jurisdiction was necessary to avoid a return to the conditions under the Articles of Confederation. Anti-Federalists fought the diversity of citizenship jurisdiction; they believed it “would involve the people of these States in the most ruinous and distressing law suits.” To quiet these fears, the Act established a jurisdictional minimum of $ 500, so that defendants would not have to travel long distances in relatively minor cases, and made state laws the rules of decision in the absence of applicable federal law. .

The Federalists achieved their goal of establishing a federal trial judiciary rather than leaving all trials in the state courts. But the federal courts that the Act created were not designed to be completely free of the influence of their states’ politics and legal culture. The federal judiciary’s fierce independence in protecting national legal rights against occasional state encroachment has been sustained by factors other than the geographic structure of the national court system. It seems axiomatic today that no district or circuit boundary should cross a state line, because (with one minor exception 28 ) none does. The 1789 Judiciary Act set this precedent, just as it required the district judges to reside in their districts. These requirements create inevitable relationships between federal courts and the states in which they are located. But state boundaries are not the only way that federal court boundaries could be defined. The creators of the federal judiciary might have established separate judicial administrative divisions that would ensure roughly equal allocation of workload and would be subject to realignment to maintain the allocation. In 1800, a last- gasp Federalist bill to revamp the judicial system would have divided the United States into nine circuits and twenty-nine districts, each district with a distinctive name and bearing no direct relation to state boundaries. For example, in the northern part of what is now the Second Circuit there would have been the district of Champlain, and in the western part of what is now the Fourth Circuit would have been the district of Cumberland. Whatever administrative sense this arrangement might have made, it ran counter to the strong preference that federal courts have ties to the states in which they are located..

To observers today, the most curious aspect of the 1789 Judiciary Act was Congress’s decision to create a major federal trial court but not to create any separate judgeships for it. The Act directed the two Supreme Court justices assigned to each circuit to travel to the designated places of holding circuit court, to be joined there by the district judge. This requirement, along with a sparse Supreme Court caseload in the early period, meant that the early Supreme Court justices spent most of their time serving as trial judges. Circuit riding was common in the states. It was attractive to Congress for three reasons. First, it saved the money a separate corps of judges would require. In 1792, the Georgia district court judge reported that Congress declined to create separate circuit judgeships partly because “the public mind was not sufficiently impressed with the importance of a steady, uniform, and prompt administration of justice,” and partly because “money matters have so strong a hold on the thoughts and personal feelings of men, that everything else seems little in comparison.” Second, circuit riding exposed the justices to the state laws they would interpret on the Supreme Court and to legal practices around the country— it let them “mingle in the strife of jury trials,” as a defender of circuit riding said in 1864. Third, it contributed to what today we call “nation building.” It would, according to Attorney General Edmund Randolph, “impress the citizens of the United States favorably toward the general government, should the most distinguished judges visit every state.” (In fact, they did more than visit. The justices’ grand jury charges explained the new regime to prominent citizens all over the country, winning praise from the Federalist press and barbs from the Jeffersonian press. Whatever logic supported circuit riding, the justices themselves set about almost immediately to abolish it. They saw themselves as “traveling postboys.” They doubted, in the words of a Senate ally, “that riding rapidly from one end of this country to another is the best way to study law.” Furthermore, they warned President Washington, trial judges who serve also as appellate judges are sometimes required to “correct in one capacity the errors which they themselves may have committed in another . . . a distinction unfriendly to impartial justice.” The 1789 Act prohibited district judges from voting as circuit judges in appeals from their district court decisions but placed no similar prohibition on Supreme Court justices. The justices themselves agreed to recluse themselves from appeals from their own decisions unless there was a split vote (a rare occurrence). Congress’s only response to their complaints was a 1793 statute reducing to one the number `of justices necessary for a circuit court quorum..

Nowdays many things that the First Judiciary Act required have been swept aside. But other features it provided are so intrinsic to US system of justice that the Americans rarely give them a second thought: a separate set of courts for the national government, arranged geographically according to state boundaries, deciding matters of national interest. When the Act was approaching its third year, Chief Justice John Jay, sitting as a judge of the Circuit Court for the Eastern Circuit, undertook in his charge to the grand juries of that circuit to describe something of this new system of federal courts. Those who created the federal courts faced a formidable task, he observed, because “no tribunals of the like kind and extent had heretofore existed in this country.” In that environment of experimentation, Jay reminded the grand jurors— and his words could well be a charter for contemporary efforts— that “the expediency of carrying justice, as it were, to every man’s door, was obvious; but how to do it in an expedient manner was far from being apparent.”