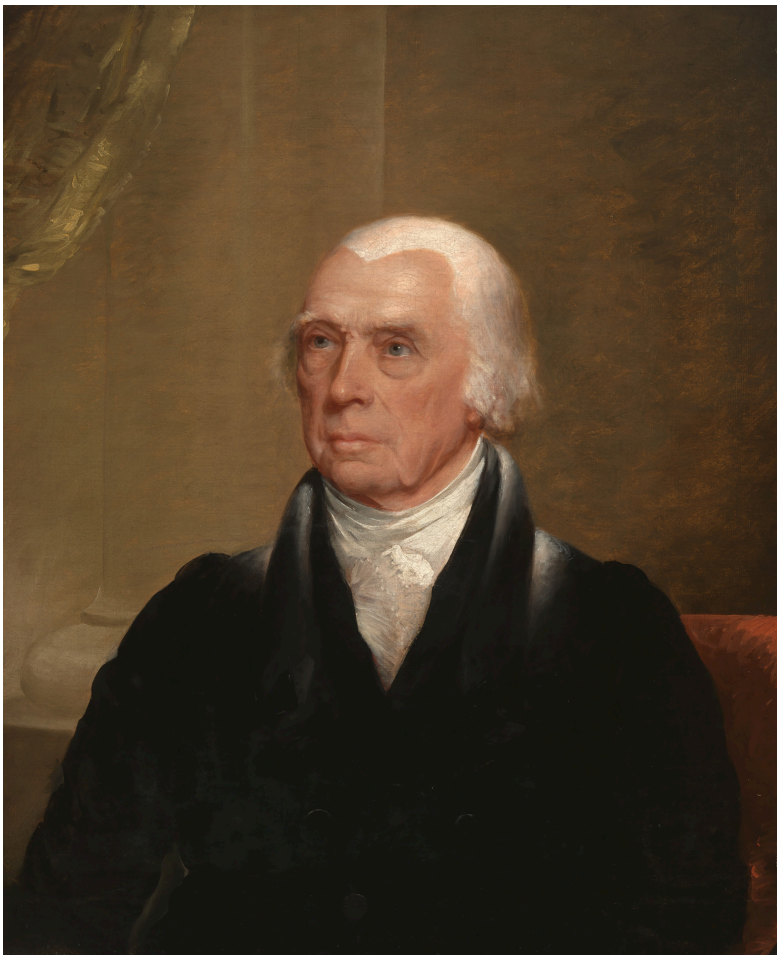
Resources for Public Speaking

Differences Between Federal and State Courts



President James Madison

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As a product of the federalist structure established by the Constitution, the United States has a national judiciary as well as a separate judicial system for each state. While the state and federal judiciaries overlap in the kinds of cases they hear, the laws they apply, and the geographical areas over which they have jurisdiction, there are important differences between the systems as well. This resource provides suggested talking points, in outline form, for those wishing to speak about differences between federal and state courts.

In addition to the outline, the resource contains Topic at a Glance, a brief summary in PDF format; a gallery of downloadable images for use in a PowerPoint presentation; links to related resources on the FJC's History of the Federal Judiciary website; a further reading list; and excerpts of historical documents that could be handed out to audience members or incorporated into a presentation. The entire resource is available in PDF format as well.

Topic at a Glance

Introduction. As a product of the federalist structure established by the Constitution, the United States has a national judiciary as well as a separate judicial system for each state. While the state and federal judiciaries overlap in the kinds of cases they hear, the laws they apply, and the geographical areas over which they have jurisdiction, there are important differences between the systems. This summary of some of those differences covers questions regarding the relationship between these two types of courts at the founding, structural differences between the court systems, and the allocation to both systems of federal question and criminal jurisdiction.

Federal and State Courts at the Founding. In debates at the Constitutional Convention, Anti-Federalists opposed the creation of lower federal courts, fearing that they would overwhelm the state courts and put justice at too great a physical distance for many people. The Madisonian Compromise left it to Congress to decide whether to create federal trial courts. Congress did so in 1789 but did not give federal courts full federal question jurisdiction until 1875; until then, state courts heard many cases arising under federal law. Primarily as a matter of convenience, Congress directed federal courts to follow the procedures of the states in which they sat until the Federal Rules of Civil Procedure brought about uniformity in 1938.

Structural Differences. While state-court systems evolved differently over time, most but not all states currently have a three-tiered judicial system similar to the federal judiciary, with trial courts, intermediate appellate courts, and a supreme court. State judges, most of whom serve for limited terms, are selected by a variety of methods, including gubernatorial appointment, legislative appointment, and partisan or nonpartisan elections. No state follows the federal model of executive appointment, legislative confirmation, or tenure during good behavior.

Federal Question Jurisdiction. Article III of the Constitution included federal question jurisdiction within the judicial power of the United States. Congress was not obligated to grant federal courts the full range of jurisdiction permitted by the Constitution and did not permanently vest the federal courts with general federal question jurisdiction until 1875. Until then, federal courts could hear federal question cases only when Congress had made a specific grant of jurisdiction, and state courts heard most cases involving federal law when the parties were citizens of the same state. The main aim of the 1875 law was to establish a more uniform system of justice to benefit commerce and to protect large business interests from alleged bias in state courts. The grant to the federal courts of general federal question jurisdiction helped transform them over time into institutions fundamentally devoted to adjudicating cases involving federal law and individual rights.

Criminal Jurisdiction. In the nation's early history, the body of statutory federal criminal law was very small, and the Supreme Court ruled in *United States v. Hudson and Goodwin* (1812) that federal courts could not hear cases involving common-law crimes. The criminal jurisdiction of the federal courts expanded during Reconstruction, as Congress vested them with exclusive jurisdiction to enforce statutes protecting the civil and voting rights of freed African Americans. In 1875, Congress made jurisdiction over all federal criminal laws exclusive to federal courts. Prosecutions for Prohibition violations flooded the federal courts in the 1920s, as the Volstead Act gave state courts concurrent jurisdiction over suits for injunctive relief but made criminal prosecutions exclusive to the federal courts. The 1930s saw a major shift as Congress, targeting the large criminal organizations that had emerged during Prohibition, made crimes such as murder, theft, bank robbery, kidnapping, extortion, and possession of illegal firearms—traditionally subjects of state and local law enforcement—federal offenses their commission involved crossing state lines. In the second half of the twentieth century, Congress accelerated the "federalization" of criminal law, establishing federal penalties for more acts that had previously been prosecuted only by the states, frequently by using its power to regulate behavior that affected interstate commerce.

Outline

I. Federal and State Courts at the Founding
   A. State courts had been in operation for several years before the establishment of the federal courts, having been created by state constitutions to replace colonial courts beginning in 1776. State judicial branches served as a model for the federal Constitutional Convention.
   B. In debates at the Convention, Anti-Federalists feared that federal courts with extensive jurisdiction would overwhelm the state courts and put justice at too great a physical distance from many people.
   C. Proposals to give the federal courts jurisdiction over cases between citizens of different states (also known as diversity jurisdiction), which would allow them to hear cases raising only state-law issues, were seen as especially threatening by Anti-Federalists.
   D. Some Constitutional Convention delegates did not want to create lower federal courts so that state courts would be the trial courts of first instance for all cases.
   E. The Madisonian Compromise, which provided for a supreme court but left it to Congress to decide whether and how to create inferior federal courts, left open the possibility that state courts would hear at least some, and perhaps all, cases involving federal law.
   F. The Judiciary Act of 1789 established the federal courts: the Supreme Court of the United States, the U.S. circuit courts as primary trial courts with limited appellate jurisdiction, and the U.S. district courts to hear admiralty cases as well as minor civil and criminal matters.
   G. The Madisonian Compromise left lower-court jurisdiction up to Congress as well. The act of 1789 did not grant the federal courts the general federal question jurisdiction contemplated in the Constitution (i.e., the ability to hear cases "arising under" the Constitution, federal laws, and treaties). Until Congress made such a grant in 1875, state courts heard most cases arising under federal law where the parties were citizens of the same state.
   H. Under the Process Act of 1792 and the Conformity Act of 1872, federal courts generally followed the procedural rules of the states in which they sat until 1938, when the promulgation of the Federal Rules of Civil Procedure brought about uniformity in the federal system.

II. Structural Differences
   A. Like the federal government, most states currently have a three-tiered court system with trial courts (usually called circuit or district courts), intermediate appellate courts, and a supreme court, but there is considerable variation within this broad framework in terms of how courts are organized and what specific jurisdiction they exercise. (Some states have a four-level court system; for example, there may be county courts to hear smaller matters below a set of larger regional trial courts of general jurisdiction.)
   B. Since Congress established the Court of Claims in 1855 to hear monetary claims against the federal government, the federal judiciary has had several specialized courts. States also have courts devoted to handling certain types of matters, such as probate courts and family courts.
   C. As provided for by Article III of the Constitution, federal judges are nominated by the president, confirmed by the U.S. Senate, and appointed "during good behavior" with

protection against any reduction in salary. No state judiciary has precisely followed this model of judicial appointment.

D. State judges have been selected by several different methods, including appointment by the governor, appointment by the legislature, partisan elections, and non-partisan elections.
E. In the early years of the republic, all states selected judges through gubernatorial or legislative appointment. When Mississippi entered the union in 1832, it became the first state to use partisan judicial elections. By 1909, thirty-five states had partisan judicial elections.
F. Nonpartisan judicial elections gained favor as a Progressive Era reform and were adopted by nineteen states in the 1910s and 1920s.
G. In the second half of the twentieth century, merit selection, typically involving the vetting of candidates by a nominating commission followed by gubernatorial appointment, became more popular. Today, twenty-three states and the District of Columbia use this method for their highest courts.
H. Early on, many states appointed their judges with life tenure. Today, most state-court judges serve for limited terms of six to twelve years with the possibility of reelection or reappointment. Only Massachusetts, New Hampshire, and Rhode Island have terms of indefinite length for judges on their courts of last resort, but the former two states have a mandatory retirement age of seventy.

III. Federal Question Jurisdiction

A. Article III of the Constitution included federal question jurisdiction, i.e., all cases "arising under" the Constitution, federal statutes, and treaties, within the judicial power of the United States.
B. Article III's definition of the "judicial power" has always been interpreted as setting the boundaries of the jurisdiction Congress may choose to grant to the federal courts and not as a mandate that Congress grant the full range of jurisdiction described.
C. Except for the short-lived Judiciary Act of 1801 (abolished in 1802), Congress made no general grant of federal question jurisdiction to the federal courts until the Jurisdiction and Removal Act of 1875.
D. The longtime absence of general federal question jurisdiction reflected the belief of many legislators that the federal courts should not be too powerful and that most cases should begin in state courts.
E. Before Congress vested general federal question jurisdiction in the federal courts, they could hear cases arising under federal law only where Congress had made a specific grant of jurisdiction (for example, the Patent Act of 1793 gave the U.S. circuit courts jurisdiction over patent infringement cases).
F. With Congress not yet having vested the federal courts with general federal question jurisdiction, the state courts heard most civil cases involving questions of federal law when both parties were citizens of the same state.
G. As the culmination of a series of acts that expanded federal jurisdiction after the Civil War (in part to protect freed African Americans from unfair treatment in state courts), Congress in 1875 vested the federal courts with full federal question jurisdiction when more than $500 was at stake.

H. The 1875 act also expanded the right of parties to remove cases with diversity of citizenship from state to federal court.
I. In passing the 1875 act, Congress was motivated primarily by the desire to establish a more uniform national system of justice to benefit commerce as well as to protect large business interests from alleged bias in state courts.
J. After 1875, state courts retained the power to hear cases arising under federal law wherever federal jurisdiction, as provided by the Constitution or a statute, was not exclusive (*Claflin v. Houseman* (1876)).
K. State courts were required to enforce federal claims over which they had jurisdiction and could not decline jurisdiction. In *Second Employers' Liability Cases* (1912), for example, the Supreme Court held that Connecticut courts could not decline to enforce the Federal Employers' Liability Act on the grounds that it conflicted with state policy; the federal government is a concurrent and supreme sovereign; therefore, its laws are the laws of the state.
L. Over the course of the twentieth century, the federal courts gradually evolved into institutions fundamentally devoted to adjudicating cases involving federal law and individual federal rights, although state courts continued to hear cases involving federal issues.
    1. In the Progressive Era, Congress created new causes of action and new federal remedies in a broad range of regulatory statutes. In statutes passed to regulate railroad rates and safety, food and drugs, and labor conditions, among other areas, Congress permitted citizens to file suits for damages in federal court for violations of the law.
    2. The growth of the administrative state during the Progressive Era and the New Deal created the potential for more federal question lawsuits. In 1946, the Administrative Procedure Act allowed plaintiffs to challenge the action of a federal regulatory agency if they had suffered a "legal wrong"—such that an interest protected by the common law or a statute was at stake—or if a "relevant statute" conferred standing upon them by authorizing those "adversely affected or aggrieved" to sue.
    3. The 1960s and 1970s saw another era of burgeoning federal regulation which further increased federal question caseloads. Congress established new regulations over consumer products and the environment that vastly expanded the range of rights and federal remedies that Americans could claim in federal courts.
    4. *Brown v. Board of Education* (1954), which ruled the racial segregation of public schools to violate the Equal Protection Clause, was followed by other key Supreme Court decisions and laws such as the Civil Rights Act of 1964 and Voting Rights Act of 1965 that expanded the federal courts' role as a forum for the enforcement of federal constitutional and statutory civil rights.
    5. By the end of the twentieth century, federal question suits represented the largest component of federal district court caseloads and over half of all civil suits in federal court.
M. Beginning in the 1970s, the Supreme Court established new standing doctrines that narrowed somewhat the suits that could be brought against a federal agency under a cause of action created by Congress. In *Association of Data Processing Organizations v.*

Camp (1970), for example, the Court made it more difficult for a plaintiff to challenge regulatory action by requiring a showing of actual injury rather than a mere threat to a legally protected interest.

IV. Criminal Jurisdiction

A. The body of federal criminal law in the early republic was quite limited. Some scholars have asserted that there was no true national system of criminal justice before the advent of Prohibition (1920-1933). In the twentieth century, the federal government assumed jurisdiction over an increasing number of crimes, shifting to the federal courts many prosecutions that would traditionally have been brought in state courts.

B. Early Republic to the Civil War

1. In the 1790s and early 1800s, most of the criminal prosecutions in the federal courts were for the few crimes specified by congressional statutes, such as the Crimes Act of 1790, which focused on enforcing federal government authority in areas like commerce, foreign affairs, and collection of revenue.
2. District attorneys (now known as U.S. attorneys) also sought indictments in the 1790s for crimes defined under the common law. Many district judges and Supreme Court justices sitting on circuit courts assumed that the courts had jurisdiction over common-law crimes, such as bribery of federal officers, based on the federal government's inherent power under the law of nations. The Supreme Court ruled in *United States v. Hudson and Goodwin (1812), however,* that the federal courts possessed jurisdiction only over statutory crimes. This ruling assured that most criminal prosecutions would continue to be brought in state courts.
3. Although the Judiciary Act of 1789 stated that federal criminal jurisdiction was generally to be exclusive of the state courts, Congress allowed, and sometimes mandated, state courts to enforce particular federal criminal statutes. In the early nineteenth century, however, some state courts ruled that such concurrent jurisdiction was an unconstitutional infringement of the sovereignty of the states.
4. In *Prigg v. Pennsylvania*, an 1842 case involving enforcement of the Fugitive Slave Act, the Supreme Court held that states could not be obligated to enforce federal law but could do so if no state law prohibited it.

C. Post-Civil War

1. Criminal cases became a larger portion of federal court caseloads after the Civil War. Congress granted federal courts exclusive jurisdiction over prosecutions for violations of the Civil Rights Acts and Enforcement Acts passed between 1866 and 1875 to protect the civil and voting rights of freed African Americans. Congress in the Revised Statutes of 1875 made jurisdiction over all federal criminal laws exclusive to federal courts.
2. In the late nineteenth and early twentieth centuries, the largest portion of federal criminal prosecutions were for violations of the revenue laws, especially failure to pay excise taxes on liquor. The government also prosecuted hundreds of cases under the customs, land, and immigration laws.

D. Twentieth Century

1. The federal courts entered a new era in criminal enforcement in the 1920s during America's experiment with the prohibition of alcohol. The Volstead Act granted state

courts concurrent jurisdiction over suits to enjoin activity prohibited by the statute, but prosecutions for criminal penalties under the act were exclusive to federal court.

2. The nature of criminal cases in the federal courts changed in the second half of the twentieth century as Congress expanded its authority under the Commerce Clause to establish federal penalties for what traditionally had been subjects of local and state law enforcement. Many new federal criminal laws duplicated crimes already defined by state laws.
    a. Beginning in the 1930s, Congress targeted large and mobile criminal organizations, which had emerged during Prohibition, with statutes that made crimes such as murder, kidnapping, theft, bank robbery, extortion, and possession of illegal firearms federal crimes if commission of them involved crossing state lines or the use of facilities of interstate commerce.
    b. Between the 1960s and 1990s, Congress passed laws establishing federal jurisdiction over crimes that "affected" interstate commerce, no matter how indirectly, in such areas as civil rights, drugs, gambling, loan sharking, sexual abuse, and violence against minority groups.
    c. The "federalization of crime" led to a rapid growth in criminal caseloads in the late twentieth century. The number of federal criminal cases grew rapidly in the 1960s, from around 30,000 in 1960 to a peak of almost 50,000 in 1972. Prosecutions fell back to their early 1960s low by 1980 but then began a steady climb over the next decade. Criminal caseloads grew by 70 percent between 1980 and 1992. The area of largest growth was in drugs and firearms offenses.
    d. Despite the growth in federal criminal caseloads, the vast majority of criminal prosecutions still occur in state courts. In 2018, for example, state courts reported 83.5 million incoming criminal cases while fewer than 70,000 were filed in the federal courts.

Related FJC Resources

Jurisdiction: Criminal

Jurisdiction: Federal Question

Ragsdale, Bruce A. *Debates on the Federal Judiciary, Vol. I (1787–1875)*. Washington, D.C.: Federal Judicial Center, 2013.

Resources for Public Speaking: Constitutional Origins

Resources for Public Speaking: Legal Interactions Between Federal and State Courts

Further Reading

Beale, Sara Sun. "Federalizing Crime: Assessing the Impact on Federal Courts." *American Academy of Political and Social Science Journal* 543, (January 1996): 39–51.

Chemerinsky, Erwin. *Federal Jurisdiction,* 6th Edition. New York: Wolters Kluwer, 2012.

Friedman, Lawrence M. *Crime and Punishment in American History.* New York: Basic Books, 1993.

Friendly, Henry J. *Federal Jurisdiction: A General View.* New York: Columbia University Press, 1973.

Henderson, Dwight F. *Congress, Courts, and Criminals: The Development of Federal Criminal Law, 1801–1829.* Westport, CT: Greenwood Press, 1985.

Holt, Wythe. "The First Federal Question Case." *Law and History Review* 3 (1985): 169–89.

Mishkin, Paul. "The Federal 'Question' in the District Courts." *Columbia Law Review* 53 (1953): 157–96.

Preyer, Kathryn. "Jurisdiction to Punish: Federal Authority, Federalism and the Common Law of Crimes in the Early Republic." *Law and History Review* 4 (1986): 223–66.

Historical Documents

Constitutional Convention, debate on inferior federal courts, 1787

Early in the Convention, delegates agreed that there would be a single supreme court and one or more inferior courts, but that decision about inferior courts was soon reversed. Many delegates, including William Paterson, proposed that the state courts serve as the courts of first instance, or trial courts, in cases raising federal issues. After the delegates rejected a proposal to establish inferior federal courts, they accepted the proposal of James Madison and James Wilson to give the Congress authority to establish inferior courts, thus leaving open the option that state courts might serve as trial courts for many questions arising under federal laws or the Constitution. The new Congress would determine the organization of the court system.

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June 5. In Committee of the Whole

Mr. Rutlidge having obtained a rule for reconsideration of the clause for establishing inferior tribunals under the national authority, now moved that that part of the clause in proposition 9 should be expunged: arguing that the State Tribunals might and ought to be left in all cases to decide in the first instance the right of appeal to the supreme national tribunal being sufficient to secure the national rights & uniformity of Judgments: that it was making an unnecessary encroachment on the jurisdiction of the States, and creating unnecessary obstacles to their adoption of the new system....

Mr. Madison observed that unless inferior tribunals were dispersed throughout the Republic with final jurisdiction in many cases, appeals would be multiplied to a most oppressive degree; that besides, an appeal would not in many cases be a remedy. What was to be done after improper Verdicts in State tribunals obtained under the biassed directions of a dependent Judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar would oblige the parties to bring up their witnesses, tho' ever so distant from the seat of the Court. An effective Judiciary establishment commensurate to the legislative authority, was essential. A Government without a proper Executive & Judiciary would be the mere trunk of a body without arms or legs to act or move.

Mr. Wilson opposed the motion on like grounds. He said the admiralty jurisdiction ought to be given wholly to the national Government, as it related to cases not within the jurisdiction of particular states, & to a scene in which controversies with foreigners would be most likely to happen.

Mr. Sherman was in favor of the motion. He dwelt chiefly on the supposed expensiveness of having a new set of Courts, when the existing State Courts would answer the same purpose.

Mr. Dickinson [John Dickinson of Delaware] contended strongly that if there was to be a National Legislature, there ought to be a national Judiciary, and that the former ought to have authority to institute the latter.

On the question for Mr. Rutlidge's motion to strike out "inferior tribunals."

Massachusetts divided, Connecticut ay. New York divided. New Jersey ay. Pennsylvania no. Delaware no. Maryland no. Virginia no. North Carolina ay. South Carolina ay. Georgia ay. [Ayes – 5; noes – 4; divided – 2.]

Mr. Wilson & Mr. Madison then moved, in pursuance of the idea expressed above by Mr. Dickinson, to add to Resolution 9 the words following "that the National Legislature be empowered to institute inferior tribunals." They observed that there was a distinction between establishing such tribunals absolutely, and giving a discretion to the Legislature to establish or not establish them. They repeated the necessity of some such provision.

Mr. Butler. [Pierce Butler of South Carolina] The people will not bear such innovations. The States will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must follow the example of Solon who gave the Athenians not the best Government he could devise; but the best they would receive.

Mr. King [Rufus King of Massachusetts] remarked as to the comparative expence that the establishment of inferior tribunals would cost infinitely less than the appeals that would be prevented by them....

July 18. In Convention

12. Resolution "that National Legislature be empowered to appoint inferior tribunals."

Mr. Butler could see no necessity for such tribunals. The State Tribunals might do the business.

Mr. Luther Martin concurred. They will create jealousies & oppositions in the State tribunals, with the jurisdiction of which they will interfere.

Mr. Ghorum. There are in the States already federal Courts with jurisdiction for trial of piracies &c. committed on the Seas. No complaints have been made by the States or the Courts of the States. Inferior tribunals are essential to render the authority of the National Legislature effectual.

Mr. Randolph observed that the Courts of the States can not be trusted with the administration of the National laws. The objects of jurisdiction are such as will often place the General & local policy at variance.

Mr. Gouverneur Morris urged also the necessity of such a provision.

Mr. Sherman was willing to give the power to the Legislature but wished them to make use of the State Tribunals whenever it could be done with safety to the general interest.

Col. Mason thought many circumstances might arise not now to be foreseen, which might render such a power absolutely necessary.

On question for agreeing to 12. Resolution empowering the National Legislature to appoint "inferior tribunals". Agreed to nemine contradicente [unanimously].

[Document Source: Farrand, ed., Records of the Federal Convention, 1:124–25; 2:45–46.]

Representative James Jackson of Georgia, in support of a motion to omit district courts from the plan for the federal judiciary, August 29, 1789

Although the Constitution empowered Congress to create lower federal courts, it was not a given that Congress would do so. Before passage of the Judiciary Act of 1789, some members of Congress argued that lower federal courts were not needed, the state courts being sufficient for the trial of all cases. Representative James Jackson of Georgia, known later as a Jeffersonian Republican, asserted that state courts would be more protective of individual liberty, more familiar to litigants, and more accessible to the poor as well as the wealthy.

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The Constitution does not absolutely require inferior jurisdictions: It says, 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." The word may is not positive, and it remains with Congress to determine what inferior jurisdictions are necessary, and what they will ordain and establish, for if they chuse, or think no inferior jurisdictions necessary, there is no obligation to establish them. It then remains with the Legislature of the Union to examine the necessity or expediency of those courts only. Sir, on the subject of expediency, I for my part, cannot see it, for I am of opinion that the State courts will answer every judiciary purpose....

I hold that the harmony of the people, their liberties and properties will be more secure under the legal paths of their ancestors, under their modes of trial, and known methods of decision. They have heretofore been accustomed to receive justice at their own doors in a simple form. The system before the house has a round of courts, appellate from one to the other, and the poor man that is engaged with a rich opponent, will be harassed in the most cruel manner, and although the sum be limited for appeals, yet, Sir, the poor individual may have a legal right to a sum superior to that limitation, say above a certain amount of dollars, and not possess fortune sufficient to carry on his law suit: He must sink under the oppression of his richer neighbor. I am clearly of opinion that the people would much rather have but one appeal, and which in my opinion would answer every purpose: I mean from the State courts, immediately to the supreme court of the continent.

[Document Source: *Documentary History of the First Federal Congress*, vol. 11, *Debates in the House of Representatives, First Session: June-September 1789*. Eds., Bickford, Bowling, and Veit. Baltimore: Johns Hopkins University Press, 1992. 1353-54.]

Representative Fisher Ames of Massachusetts, in opposition to a motion to omit district courts from the plan for a federal judiciary, August 29, 1789

Federalist representative Fisher Ames argued for the necessity of inferior federal courts. In his view, it would be nonsensical for the federal government to make laws without establishing mechanisms to enforce them. The enforcement of federal laws, he asserted, should not be left solely to judges not appointed by accountable to the federal government.

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A government which may make, but not enforce laws, cannot last long, nor do much good. By this power too, the people are gainers. The administration of justice is the very performance of the social bargain on the part of government. It is the reward of their toils-the equivalent for what they surrender. They have to plant, to water, to manure the tree, and this is the fruit of it. The argument therefore, a priori, is strong against the motion, for while it weakens the government it defrauds the people. We live in a time of innovation; but until miracles shall become more common than ordinary events; and surprize us less than the usual course of nature, I shall think it a wonderful felicity of invention to propose the expedient of hiring out our judicial power, and employing courts not amenable to our laws, instead of instituting them ourselves as the constitution requires. We might as properly negociate and assign over our legislative as our judicial power; and it is not more strange to get the laws made for this body than after their passage to get them interpreted and executed by those, whom we do not appoint, and cannot controul.

[Document Source: *Documentary History of the First Federal Congress*, vol. 11, *Debates in the House of Representatives, First Session: June-September 1789.* Eds., Bickford, Bowling, and Veit. Baltimore: Johns Hopkins University Press, 1992. 1356-57.]