



The Judiciary Act of 1789

Time and Grade Level

One 50 minute class period in a Grade 6-8 US history, government or civics classroom.

Purpose of the Lesson

The purpose of this lesson is to teach students about the significance of the Judiciary Act of 1789 in establishing a federal judiciary. By the conclusion of this lesson, students will understand the key provisions of the Judiciary Act of 1789 and the structure of the federal judicial branch.

Critical Engagement Questions & Lesson Objectives

1. How important was the Judiciary Act of 1789 in the establishment of the federal judiciary?
 - **Objective:** Students will understand the structure of the federal judicial system as created by the Judiciary Act of 1789, and they will be able to articulate how the statute relates to the U.S. Constitution.

Standards

[Common Core Standards: English Language Arts Standards-History/Social Studies-Grade 6-8](#)

CCSS.ELA-Literacy.RH.6-8.1 Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-Literacy.RH.6-8.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

CCSS.ELA-Literacy.RH.6-8.4 Determine the meaning of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.

[C3 Standards: Suggested k-12 Pathway for College, Career, and Civic Readiness Dimension 2, Civic and Political Institutions, Perspectives, & Causation and Argumentation](#)

D2.Civ.8.6-8. Analyze ideas and principles contained in the founding documents of the United States, and explain how they influence the social and political system

D2.His.13.6-8. Evaluate the relevancy and utility of a historical source based on information such as maker, date, place of origin, intended audience, and purpose

Overview of the Lesson

Day One
1. Homework: Read “Judiciary Act of 1789 – The Basics” worksheet (Appendix A)
2. Teacher Lesson: Review the Judiciary Act of 1789 and discuss the tensions and motivations the drafters faced in creating the federal judiciary.
3. Activity: Worksheet asking students to compare details of the Judiciary Act of 1789 with provisions of the U.S. Constitution (Appendix B)

Materials

1. The Judiciary Act of 1789 (available [here](#))
2. Printed copies of the worksheets included in Appendices A and B

Student Warm-Up for the Lesson

Prior to the start of the lesson, students should be assigned the following reading:

Day One: “The Judiciary Act of 1789 – the Basics” worksheet

Teacher Warm-Up for the Lesson

KEY VOCABULARY

Admiralty: cases involving ships, the sea, or other navigable waters (also known as maritime)

Alien: a person who is not a citizen; a person who is a citizen of another country or nation

Appeal: a legal process in which a losing party asks a higher court to reverse a lower court’s decision

Civil cases: a law suit that involves private parties; the harm is against an individual, group of individuals, or organization

Criminal cases: a law suit that involves a crime; one party is the government; the harm is against society

Inferior courts: federal courts that are beneath the Supreme Court. Congress has the constitutional authority to establish these lower courts, and first did so in the Judiciary Act of 1789 when it established District Courts and Circuit Courts (which still exist today!)

“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 judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.”

-- Article III, Section 1, U.S. Constitution

Judicial Review: the power of the judiciary to overturn acts of legislation that are inconsistent with the U.S. Constitution

Jurisdiction: the authority of a court to hear a particular case

- Subject-matter jurisdiction: the court’s authority to hear a case dealing with a specific subject matter
- Original jurisdiction: the authority of the court to be the first to hear a case
- Appellate jurisdiction: the court’s authority to hear an appeal of a case

Tort: a wrongful act that causes civil legal harm (not criminal)

Writ of Mandamus: a court order directing a person or agency to do or not do something

OVERVIEW OF THE JUDICIAL BRANCH

Article III of the United States Constitution establishes the judicial branch of federal government. Keep in mind that there are also courts at the state level, and that the discussion of Article III that follows only deals with the national court system. Section 1, also referred to as the “vesting clause” establishes that there is one Supreme Court that sits at the top of the judicial branch, and a network of “inferior courts” below it that Congress has the authority to create. This section also allows that federal judges shall remain in office “during good behavior” (which usually means lifetime tenure), and that Congress cannot lower the judges’ salaries while in office.

Article III, Section 2 details the jurisdiction of the Supreme Court. “Jurisdiction” refers to the types of cases the court is allowed to hear, and when it is allowed to hear them. Firstly, the Supreme Court has “original” jurisdiction (meaning that it is the first court to hear the case) in cases involving public officials or ambassadors, or those cases where a state is a party. More broadly though, the Supreme Court has “appellate” jurisdiction (meaning that it hears a case that has already been decided in a lower court when one of the parties wants to question the outcome). The Supreme Court gets to decide which of these appeals it wants to hear. Perhaps

most importantly, Section 2 also guarantees that all criminal trials (at all levels, not just the Supreme Court) are entitled to a jury, which helps ensure fair treatment.

Section 3 of Article III deals with treason, which is the crime of betraying your country. Conviction for treason requires confession in open court, or the testimony of two witnesses. Congress is reserved the authority to punish those convicted of treason.

While Article III sets out the confines discussed above, it clearly does not anticipate all of the issues that face the federal judiciary. Most obviously, it does not create the framework of the federal judiciary beyond the Supreme Court. As is discussed in the following “Overview” section, Congress has defined the contours of the federal judiciary since the very first Congress was assembled under the new Constitution, as Article III gave it authority to do.

OVERVIEW OF THE JUDICIARY ACT OF 1789¹

At the time of the Constitutional Convention, delegates were deeply divided over the creation of federal courts, and what authority those courts would have. The categories of cases that the federal courts would be able to hear (known as “federal subject-matter jurisdiction”) could determine the extent of power of the federal courts, and implicates the federalism concern of allocation of power between state and federal governments. One plan for the new Constitution, the Virginia Plan, suggested a far more expansive federal judiciary than any other plan. Some key aspects to the Virginia Plan’s treatment of the federal judiciary include: broad subject-matter jurisdiction, a supreme court, and a wide-ranging framework of inferior courts.

This broad judiciary plan was met with resistance from some delegates, such as John Rutledge of South Carolina and Roger Sherman of Connecticut, who argued against federal encroachment on the power of state courts. As a compromise between those who wanted a powerful judiciary, and those who wanted to preserve the authority of state courts, a motion was passed to give the legislature the power to establish inferior courts. This compromise gave flexibility to the system, by giving the new Congress the discretion of whether to establish these lower federal courts. In deciding subject-matter jurisdiction, the Convention ultimately gave the Supreme Court original jurisdiction (the power to hear the case first) over cases involving foreign diplomats and cases in which a state is a party, and appellate jurisdiction (the power to hear an appeal of a case) in other cases, including, for example cases involving federal law,

¹ Works cited: Judiciary Act, Sept. 24, 1789, 1 Stat. 73; Casto, William R. The Supreme Court in the Early Republic: The Chief Justiceships of John Jay and Oliver Ellsworth. Columbia, SC: University of South Carolina, 1995.

admiralty cases, and cases involving diversity of citizenship and aliens. Also important, the Constitution did not limit the Supreme Court's ability to review state court decisions.

By 1789 the Constitution was ratified, and the new federal government was ready to govern. One of the first legislative actions commenced when the Senate created a Grand Committee consisting of one Senator from each state to draft a bill to design the federal judiciary. One of the major concerns on the mind of those drafting the new bill was national security. Coming out of the weak Articles of Confederation, the drafters wanted to ensure the federal judiciary had power over prize cases (an outdated type of admiralty case), law suits involving federal revenue laws, and cases involving federal crimes.

Admiralty jurisdiction was a critical issue in the creation of the federal judiciary. At the time, admiralty cases were frequent and critical to trade and national security. Thus, there was not much controversy over the idea that the federal courts should have jurisdiction over admiralty cases, and due to their frequency, it became clear that having only a Supreme Court was not an option. This helped immensely in the fight for the establishment of federal trial courts. However, the non-admiralty subject-matter jurisdiction to be given to federal trial courts raised much debate.

One of the biggest problems in drafting the new bill was interpreting the Constitution's clause that granted jurisdiction for cases "arising under" federal law. The difficulty was this: even if a case dealt primarily with state law, any question, no matter how small, that invoked a federal law could be construed as "arising under" federal law. This gave teeth to the fear that federal courts would swallow up the state courts. Oliver Ellsworth, the chair of the drafting committee, chose not to furnish the federal trial courts with general jurisdiction over cases arising under federal law, thereby ignoring the arising under clause altogether in the new bill. Rather, Ellsworth carved out specific areas of subject-matter jurisdiction that clearly arose under federal law, such as alien tort cases, revenue collection cases including seizure of property, and criminal cases.

The bill split the federal trial courts into two categories: district courts, and circuit courts. District courts would primarily hear admiralty cases, and also minor crimes where the punishment did not exceed "thirty stripes" of whipping, a fine of more than one hundred dollars, or imprisonment of more than six months. In practice, these limits made it such that most crimes were heard by the circuit courts. Circuit courts were also given jurisdiction over civil cases in which an alien is a party, or a citizen of one state sues a citizen of another state.

The Judiciary Act created thirteen district courts, comprised of one federal district judge who resided in that district. The circuit courts, however, were comprised of three judges: the resident district judge, and two Supreme Court justices, who would "ride circuit." This arrangement lent the authority of the Supreme Court to circuit court cases and made the Supreme Court justices accessible to litigants without involving expensive and time-consuming travel.

Ultimately, the Judiciary Act of 1789 passed through Congress with relative ease, garnering a Senate vote of 14 to 6, and a House of Representatives vote of 37 to 16. To this day, the federal judiciary is set up in a manner that maintains many of the key features established by the Judiciary Act of 1789.

RESOURCES FOR BACKGROUND ON THE JUDICIAL BRANCH

Primary Source Documents (ConSource):

- ConSource Documents related to the establishment of the judiciary:
 - [James Madison's Notes of the Constitutional Convention \(June 5, 1787\)](#)
 - [James Madison's Notes of the Constitutional Convention \(June 13, 1787\)](#)
 - [The Federalist No. 78 \(June 14, 1788\)](#)
 - [Brutus XV \(March 20, 1788\)](#)
 - [The Virginia Plan \(1787\)](#)
 - [The New Jersey Plan \(1787\)](#)
 - [The Pinckney Plan \(1787\)](#)
 - [The Hamilton Plan \(1787\)](#)
 - To see all ConSource documents relating to:
 - [The Judicial Power clause](#)
 - [The Supreme Court clause](#)
 - [The Inferior Courts clause](#)
 - [The Good Behavior clause](#)
 - [The Judicial Compensation clause](#)

Document (ConSource’s U.S. Constitution for Kids)

The [U.S. Constitution for Kids](#) offers educators and students the opportunity to read the original text of the Constitution alongside unbiased translations that are easy for students to understand. The document also includes useful background information and primary source links, which help to place each clause in historical context.

Website (The National Constitution Center)

View the National Constitution Center’s interactive Constitution [here](#), which includes the Annenberg classroom’s interpretation of Article III.

Activity

Activity	Description
<p>Day One Judiciary Act of 1789 and the U.S. Constitution Comparison Activity</p>	<p>Split the students into pairs or small groups, and give them 20 minutes to complete the Judiciary Act of 1789 and the U.S. Constitution comparison activity worksheet.</p>

Activity	Description
Class Discussion of Activity	Have the class use the remainder of class time for discussion of the comparisons between the Judiciary Act of 1789 provisions and the Constitution excerpts. In particular, focus on how the Judiciary Act of 1789 follows from the framework set in the Constitution, and emphasize the fact that many of the same men who debated the Constitution also drafted and voted the Judiciary Act into law, and how their knowledge of the Constitutional debates may have informed their decisions.

Homework

Day One: Have students read “The Judiciary Act of 1789 – the Basics” worksheet in preparation for the comparison exercise (Appendix A).

Appendix A. The Judiciary Act of 1789 – the Basics

The Act Established federal courts including:

Supreme Court	District Courts	Circuit Courts
One Supreme Court	Thirteen Districts	Three Circuits
6 Justices (1 Chief Justice, and 5 Associate Justices)	Each District Court has 1 judge	Consists of any 2 justices of the Supreme Court and 1 District Judge (this is called “riding circuit”)
Holds 2 sessions per year	Holds 4 sessions per year	Holds 2 sessions per year

NOTE: The Supreme Court is the only court created by the Constitution. All other courts throughout American history have been created by acts of legislation, including the first – the Judiciary Act of 1789.



So what cases can the courts hear under this Act?

- **Supreme Court**
 - The only court that can hear cases between two states, between a state and the United States, and law suits against ambassadors and diplomats (this means anyone who represents his or her government in a foreign country)
 - Can hear appeals from cases that were originally heard in the federal circuit courts, and some cases heard by the state courts (an appeal is when a second court hears the same case over again to look for mistakes the first court might have made)
 - For example: The Supreme Court can hear appeals from cases heard by the highest court of the state when those cases involve questions of the constitutionality of state or federal laws
- **District Court**

- The first court to hear cases involving crimes that took place within the district or on the high seas where the punishment is one of the following: whipping of “thirty stripes” or less, a fine of \$100 or less, or imprisonment for six months or less
- The first court to hear civil cases, for example, admiralty and maritime (“civil” cases are those law suits that do not involve crimes)
- May also hear civil cases where the United States is plaintiff and the amount in controversy exceeds \$100
- **Circuit Court**
 - The first court to hear civil cases where the matter of dispute exceeds \$500, and the United States is plaintiff, or an alien (someone who is not a U.S. citizen) is a party, or the suit is between citizens of different states
 - May also hear the same criminal cases as the district courts over crimes they may hear, and crimes not included in district courts’ jurisdiction
 - May hear appeals of cases originally heard in district court

The Act grants federal court judges powers including, for example:

- Issue writs of *habeas corpus* (document requiring a person who is under arrest to appear in court), and other necessary writs as the judge finds necessary to keep order in the court
- Require the parties to a trial to submit written evidence (such as documents, letters, books, etc.)
- Administer oaths or affirmations (these are promises to tell the truth)
- Punish contempt of court by fine or imprisonment (contempt is when someone does not cooperate with court orders)

Arrest criminal offenders by the rules in the state where the crime was committed, and imprison the offender until trial

Appendix B. Comparison Worksheet

Directions: Using “The Judiciary Act of 1789 – The Basics” worksheet, write down the details of the Judiciary Act of 1789 that are related to these Constitutional provisions (in red). ConSource’s “Constitution for Kids” version of the Constitutional provisions (in blue) have also been provided below for easier understanding. For access to the full ConSource United States Constitution for Kids click [here](#).

1. 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 judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

---Article III, Section 1

Constitution for Kids:

The supreme judicial power of the United States is given to the Supreme Court. Congress has the power to create any and all inferior (lower) courts. Judges of both the supreme and lower federal courts have lifetime appointments and can only be removed if they do not maintain their "good behavior." Congress sets the level of pay for Federal judges, which cannot be reduced while the judge is in office.

How is the Judiciary Act of 1789 similar?

2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

---Article III, Section 2

Constitution for Kids:

The Federal Judiciary’s power covers any and all cases that arise because of questions about the Constitution, the laws of the United States, and treaties made by the government. The Federal Court also has the power to try cases involving foreign ambassadors (representatives of foreign governments); disputes in which the United States government is a party; disputes between states, and those between the citizens of a state and foreign states or citizens of said foreign states. Also between citizens of the same state who both claim lands under the grant of a different state.

How is the Judiciary Act of 1789 similar?

3. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

---Article III, Section 2

Constitution for Kids:

In cases trying representatives of foreign governments or disputes between states, the Supreme Court can hear the case directly, without the need to appeal from a lower court. In all other cases, a lower court must first hear the case, and then the Supreme Court can hear the dispute once it is appealed to them.

How is the Judiciary Act of 1789 similar?

4. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

---Article III, Section 2

Constitution for Kids:

With the exception of impeachment trials for public officials, all criminal trials will have juries. These trials will be held in the state in which the crime was committed, but when the crime is committed in no particular state, Congress determines the location of the trial.

How is the Judiciary Act of 1789 similar?

5. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

---Article III, Section 3

Constitution for Kids:

Treason consists of making war against the United States and aiding its enemies. No one accused of treason can be convicted of the crime unless they confess in open court, or there are two witnesses to the act of treason in question.

How is the Judiciary Act of 1789 similar?
