

Sec. 1—Judicial Power, Courts, Judges

nal statutes of the United States.¹³ Originally, the Court consisted of a Chief Justice and five Associate Justices.¹⁴ The number was gradually increased until it reached a total of ten under the act of March 3, 1863.¹⁵ As one of the Reconstruction Congress's restrictions on President Andrew Johnson, the number was reduced to seven as vacancies should occur.¹⁶ The number actually never fell below eight before the end of Johnson's term, and Congress thereupon made the number nine.¹⁷

Proposals have been made at various times for an organization of the Court into sections or divisions. No authoritative judicial expression is available, but Chief Justice Hughes, in a letter to Senator Wheeler in 1937, expressed doubts concerning the validity of such a device and stated that "the Constitution does not appear to authorize two or more Supreme Courts functioning in effect as separate courts."¹⁸ Congress has also determined the time and place of sessions of the Court. It exercised this power once to change the Court's term to forestall a constitutional attack on the repeal of the Judiciary Act of 1801, with the result that the Court did not convene for fourteen months.¹⁹

Inferior Courts

Congress also provided in the Judiciary Act of 1789 for the creation of courts inferior to the Supreme Court. Thirteen district courts were constituted to have four sessions annually,²⁰ and three circuit courts were established. The circuit courts were to consist of two Supreme Court justices each and one of the district judges of such districts, and were to meet twice annually in the various districts comprising the circuit.²¹ This system had substantial faults in operation, not the least of which was the burden imposed on the Justices, who were required to travel thousands of miles each year un-

¹³ Act of September 24, 1789, 1 Stat. 73. The authoritative works on the Act and its working and amendments are FELIX FRANKFURTER & JAMES LANDIS, *THE BUSINESS OF THE SUPREME COURT* (1928); Charles Warren, *New Light on the History of the Federal Judicial Act of 1789*, 37 HARV. L. REV. 49 (1923); see also J. Goebel, *supra* at ch. 11.

¹⁴ Act of September 24, 1789, 1 Stat. 73, § 1.

¹⁵ 12 Stat. 794, § 1.

¹⁶ Act of July 23, 1866, 14 Stat. 209, § 1.

¹⁷ Act of April 10, 1869, 16 Stat. 44.

¹⁸ *Reorganization of the Judiciary: Hearings on S. 1392 Before the Senate Judiciary Committee*, 75th Congress, 1st Sess. (1937), pt. 3, 491. For earlier proposals to have the Court sit in divisions, see F. Frankfurter & J. Landis, *supra* at 74–85.

¹⁹ 1 CHARLES WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* 222–224 (rev. ed. 1926).

²⁰ Act of September 24, 1789, 1 Stat. 73, §§ 2–3.

²¹ *Id.* at 74, §§ 4–5.