given "diversity jurisdiction" in one form or another to the federal courts since the Judiciary Act of 1789.[1058] The traditional explanation remains that offered by Chief Justice Marshall. "However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the Constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states." [1059] Other explanations have been offered and controverted,[1060] but diversity cases constitute a large bulk of cases on the dockets of the federal courts today, though serious proposals for restricting access to federal courts in such cases have been before Congress for some time.[1061] The essential difficulty with this type of jurisdiction is that it requires federal judges to decide issues of local import on the basis of their reading of how state judges would decide them, an oftentimes laborious process, which detracts from the time and labor needed to resolve issues of federal import.

The Meaning of "State" and the District of Columbia Problem.—In *Hepburn v. Ellzey*,[1062] Chief Justice Marshall for the Court confined the meaning of the word "state" as used in the Constitution to "the members of the American confederacy" and ruled that a citizen of the District of Columbia could not sue a citizen of Virginia on the basis of diversity of citizenship. Marshall noted that it

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[1058] 1 Stat. 78, 11. The statute also created alienage jurisdiction of suits between a citizen of a state and an alien. *See* Holt, *The Origins of Alienage Jurisdiction*, 14 OKLA. CITY L. REV. 547 (1989). Early versions of the statute conferred diversity jurisdiction only when the suit was between a citizen of the state in which the suit was brought and a citizen of another state. The Act of March 3, 1875, § 1. 18 Stat. 470, first established the language in the present statute, 28 U.S.C. § 1332(a)(1), merely requiring diverse citizenship, so that a citizen of Maryland could sue a citizen of Delaware in federal court in New Jersey. The statute also sets a threshold amount at controversy for jurisdiction to attach; the jurisdictional amount was as low as $3,000 in 1958, but set at $75,000 in 1996. 28 U.S.C. § 1332(a). Snyder v. Harris, 394 U.S. 332 (1969), held that in a class action in diversity the individual claims could not be aggregated to meet the jurisdictional amount. Zahn v. International Paper Co., 414 U.S. 291 (1974), extended *Snyder* in holding that even though the named plaintiffs had claims of more than $10,000, the extant jurisdictional amount, they could not represent a class in which many of the members had claims for less than $10,000. A separate provision on diversity and class actions sets the jurisdictional amount at $5 million. 28 U.S.C. § 1332(d).

[1059] Bank of the United States v. Deveaux, 9 U.S. (5 Cr.) 61, 87 (1809).

[1060] Summarized and discussed in C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS 23 (4th ed. 1983); AMERICAN LAW INSTITUTE, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 99–110, 458–464 (1969).

[1061] The principal proposals are those of the American Law Institute. Id. at 123–34.

[1062] 6 U.S. (2 Cr.) 445 (1805).