son and Madison thereupon moved to authorize Congress "to appoint inferior tribunals,"[7] which carried the implication that Congress could in its discretion either designate the state courts to hear federal cases or create federal courts. The word "appoint" was then adopted, but over the course of the Convention the phrasing was changed again so as to suggest somewhat more of an obligation to vest such powers in inferior federal courts.[8]

The requirement that judges hold their Officer during "good behavior" excited no controversy during the Convention,[9] although the lack of an enforcement mechanism for this provision resulted in impeachment under Article II becoming the primary mechanism for removal of a federal judge.[10] And finally, the only substantial dispute that arose regarding the denial to Congress of the power to reduce judicial salaries (a power which could be used to intimidate judges) came on Madison's motion to bar increases as well as decreases.[11]

One Supreme Court

While the Convention specified that the Chief Justice of the Supreme Court would preside over any Presidential impeachment trial in the Senate,[12] decisions on the size and composition of the Supreme Court, the time and place for sitting, its internal organization, and other matters were left to the Congress. The Congress soon provided these details in the Judiciary Act of 1789, one of the semi-

---

[7] Madison's notes use the word "institute" in place of "appoint," id. at 125, but the latter appears in the Convention Journal, id. at 118, and in Yates' notes, id. at 127, and when the Convention took up the draft reported by the Committee of the Whole "appoint" is used even in Madison's notes. 2 id. at 38, 45.

[8] On offering their motion, Wilson and Madison "observed that there was a distinction between establishing such tribunals absolutely, and giving a discretion to the Legislature to establish or not establish them." 1 id. at 125. The Committee on Detail provided for the vesting of judicial power in one Supreme Court "and in such inferior Courts as shall, when necessary, from time to time, be constituted by the legislature of the United States." 2 id. at 186. Its draft also authorized Congress "[t]o constitute tribunals inferior to the Supreme Court." Id. at 182. No debate is recorded when the Convention approved these two clauses, Id. at 315, 422–23, 428–30. The Committee on Style left the clause empowering Congress to "constitute" inferior tribunals as was, but it deleted "as shall, when necessary" from the Judiciary article, so that the judicial power was vested "in such inferior courts as Congress may from time to time"—and here deleted "constitute" and substituted the more forceful—"ordain and establish." Id. at 600.

[9] The provision was in the Virginia Plan and was approved throughout, 1 id. at 21.

[10] *See* Article II, Judges, *supra*.

[11] Id. at 121; 2 id. at 44–45, 429–430.

[12] Article I, § 3, cl. 6.