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The Lower Federal Courts in the Early Republic:

Rhode Island, 1790-1812

by

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Thesis

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ABBREVIATIONS

DHSC	*Documentary History of the Supreme Court*
JRC	State of Rhode Island and Providence Plantations Supreme Court Judicial Records Center

INTRODUCTION

One of the first items of business that the newly elected First Congress took up when it convened in New York in 1789 was the creation of a national judiciary. The Constitution had provided for a Supreme Court, but had left the establishment of any inferior federal courts to the discretion of Congress. The structure of the national court system that was hammered out during that first session-a three-tiered arrangement consisting of a Supreme Court, circuit courts, and district courts-is essentially the same basic design that the federal judiciary has today, though there have been many modifications since the original courts were created. And yet, in spite of its remarkable endurance, the federal court system remains a notably understudied American institution. Perhaps because it has endured, we have assumed a familiarity with the federal judiciary of the early national period based on its seeming similarities to our modern courts. But the national authority that pervades the present system was nowhere to be found when the federal judiciary was created; it had to be invented. For the citizens to feel the authority of the

national government, they had to experience its institutions. Chief among those institutions was the federal judiciary, particularly the lower federal courts (the district and circuit courts). These courts functioned as the principal means through which national authority reached the people. They exerted a significant nationalizing influence on the citizens and states of the new American nation. Specifically, the lower federal courts were instrumental in establishing and maintaining national supremacy and in steadily enhancing the power of the national government.

The various ways in which nations develop and maintain a sense of nationalism has become a topic of keen interest in the modern era. What does it mean to belong to a nation? And how are loyalties to it secured and sustained? In his study of the making of American nationalism, David Waldstreicher makes the point that nationalism is only one of several competing ideologies; it exists simultaneously with regionalism and localism, all of which complemented and contested one another at different times in different ways. He stresses cultural practices over the structures of governance. Through fourth of July parades, patriotic speeches, and public toasts, he argues, "Americans practiced nationalism before they had a fully developed national

state."[1] Although such cultural practices may well have brought a unifying tendency to the nation, nationalism is about more than identity or loyalty; it is about authority. Nations are not built through cultural practices alone, as significant as those practices may be. Rather, it is the ability to govern that makes a nation possible. While public toasts, speeches, and parades may have given people a sense of belonging to a nation, it was the interaction with the new nation's institutions, such as the federal courts, that made the nation a force in the lives of its citizens.

Given the importance of these institutions to the meaning of the nation, why do we still know so little about them? In their 1928 study of the Supreme Court, Felix Frankfurter and James Landis stated that "our national history will not have been adequately written until the history of our judicial systems can be adequately told through monograph studies of individual courts." With the notable exception of Mary Tachau's book on the lower federal courts in Kentucky, the call for further study, at least where the federal courts during the early republic are concerned, has gone unheeded. The role of the inferior

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[1]David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill and London: University of North Carolina Press, 1997), 6 and 113.

federal courts in American history continues virtually unexplored for at least two reasons. First, to the extent that the federal judiciary has been seen as having a nationalizing influence, the focus has been on the Supreme Court in the post-1815 period. The lower federal courts have thus lived in the shadow of the Supreme Court and have been considered "inferior" courts in every sense. Beginning in 1922 with Charles Warren's groundbreaking work, *The Supreme Court in United States History*, legal historians have focused on the significance of the Supreme Court, its decisions, and its justices.

In fact, not only have the lower courts been ignored, their significance has even been questioned. In 1830 the *Niles' National Register* published what it dubbed some "curious statistics . . . illustrating very plainly the proverbial uncertainty of the law." The uncertainty centered around the number of lower court decisions that had been reversed by the Supreme Court. Of the 754 total reported cases that had been reviewed by the high Court, only 425 (or fifty-six percent) were affirmed; the remaining 329 cases (or forty-four percent) were reversed. In the early twentieth century, Warren took these statistics as an illustration of the "precarious reliance to be placed on the

decisions of the inferior federal courts."[2] What Warren failed to account for, however, is the fact that many of these cases that were appealed to the Supreme Court would have come directly from the state supreme courts; thus, the number of decisions that the Supreme Court reversed cannot without qualification be taken as an indictment of the lower federal courts. Moreover, even without accounting for those state court decisions, the average number of decisions reviewed by the Supreme Court was approximately one per district per year. In other words, when we consider the number of cases in which the lower federal courts pronounced the final decision, reliance on them is strikingly less precarious. Indeed, it is remarkable how much of the time, and for how many of the people, the federal district and circuit courts were in fact the final word.

The absence of significant scholarship on the lower federal courts is also a function of how historians and legal scholars approach their study. On one hand, legal historians have tended to focus on the law itself, stressing precedent and the development of legal doctrines. On the other hand, social historians have utilized court records to

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[2]Charles Warren, *A History of the American Bar* (Boston: Little, Brown, and Company, 1911), 406. *Niles' National Register*, April, 10, 1830. Charles Warren, *The Supreme Court in United States History* (Boston: Little, Brown, and Company, 1922).

get at issues involving race, class, and gender relations, but have failed to address the significance of the legal institutions themselves. Although there are studies that evaluate the need for the lower federal courts and the thinking that went into their creation, missing still is an understanding of how they functioned and what their impact really was.

Furthermore, because the focus has been on the Supreme Court, the scholarship has given much of the credit for what the judiciary achieved to individuals such as John Marshall, who served as chief justice from 1801 until his death in 1835. No less a legal scholar than Chief Justice William Rehnquist has said of his most famous predecessor that "through his leadership and his written opinions, Marshall was able to build the Court and the Judiciary into a truly co-equal branch of the federal government."[3] While there can be no doubt that Marshall's contribution strengthened national authority, the judicial nationalism associated with the Marshall Court during the twenty years following the War of 1812 owes much to the work of the lower federal courts prior to the war. The nationalizing thrust exerted by the lower federal courts during the new nation's first quarter

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[3]William H. Rehnquist, "The Lawyer-Statesman in American History," *Harvard Journal of Law and Public Policy* 9, no. 3 (1986): 544.

century not only brought a federal presence to bear in the states, but it also brought an independent federal judiciary to the fore. In the process of bringing a nationalizing influence to the entire nation, the federal courts themselves became stronger national institutions. Thus, it was the daily operation of the federal courts in each of the states, rather than the efforts of a single individual or even the results of a series of Supreme Court cases, that allowed the judiciary to emerge as an equal branch of government.

To illustrate how the federal judiciary brought a federal presence and national authority to bear in the states, this thesis will look at the operation of the lower federal courts in Rhode Island. Rhode Island is a good place to test the parameters of national authority in part because of its initial resistance to federal union, a condition that made the national presence more conspicuous. Rhode Island's embrace of the federal Constitution and the national government it created was far from enthusiastic. The road to ratification in the new nation's smallest state had been anything but smooth. Long derided as a haven for the unorthodox (both in matters religious and economic), Rhode Island entered the nation via a turbulent transition marked by external pressure and internal division. The

question, then, is whether Rhode Island can be considered representative enough to provide any insights that might apply to the experience of the federal courts generally. If Rhode Island was an exceptional place, as observers both then and now tend to concur that it was, then what can it tell us about the impact of the federal courts throughout the rest of the country? The perception that Rhode Island was out of step would seem to limit its usefulness as a case study. And yet, it is precisely its exceptionalism that makes Rhode Island the logical site for this kind of study. Although the example of one state cannot stand for the experience in all of the states, the central premise of this thesis is that if national authority could take root in Rhode Island, it could take root anywhere.

The ways in which the federal courts were able to establish national authority in Rhode Island is the subject of the following chapters, which will look in turn at the state's culture, the structure of the federal courts, and finally the actual work of the courts. Chapter One will explore the nature of Rhode Island's exceptionalism. Because of Rhode Island's unique founding, as a dumping ground for Bay Colony exiles, Rhode Islanders never experienced ties to strong central authority. The legacy of local control that marked colonial Rhode Island contributed

to the state's negative reputation. More than any other characteristic, democracy defined Rhode Island, both culturally as well as structurally. The state's government was dominated by the powerful General Assembly. The result was a weak and dependent state judiciary that was at its best uncertain and at its worst dysfunctional. The state judiciary was important in terms of the state's reception of national authority because the federal courts offered a contrasting alternative to Rhode Island's own judicial system. The differences in the two systems was especially significant for the members of the legal profession. The higher standards practiced in the federal courts reinforced the bar's internal efforts to professionalize, the thrust of which centered around the system of legal education. By controlling entrance into the profession through the apprentice system, the bar could maintain an element of professional integrity, which supported lawyers in their increasingly public role. Because the federal judiciary was an important medium of communication between the state and the nation, the judges and lawyers who worked in the federal courts served as the mediators between the new central authority and the state's trademark, and jealously guarded, local autonomy.

At the heart of the federal judiciary's success as a nationalizing institution was the ability to bring local autonomy and national authority together. Chapter Two will examine how the structure of the federal courts made this confluence possible. The story of the lower federal courts is the story of federalism-of shared power, of overlapping jurisdictions, of intersecting identities. The district and circuit courts had both local and national characteristics. This allowed them to take on many of the qualities of a local institution, while at the same time exerting a strong nationalizing influence. Because the impact of the Supreme Court was not as dramatic during the new nation's first couple of decades as it was to become, we have mistakenly assumed that the impact of the entire federal judiciary was negligible. The Supreme Court justices, however, were extremely active during the early years. Twice a year individual Supreme Court justices came to each state and sat with the district judge there and held circuit court. This brought Rhode Island lawyers and judges into regular contact with the nation's most distinguished jurists, which provided a very direct link to national authority. The circuit system was one of the few available institutional ties that held the nation together as one whole. The nexus of state and national authorities, the circuit courts were the

embodiment of federalism, literally the point at which the internal and the external converged: the district judge and the Supreme Court justices, state and federal law, local and national law enforcement. The result was at times a blurring of the lines between state and federal function that in our own time are unquestionably sharp. But the early republic was a getting-acquainted period-a time when the meaning of federalism was as yet unclear. Thus, the structure and operation of the federal judiciary, and the circuit system in particular, shed light on the nature of national governance and its relationship to that of the states. It is not a simple tale of the dominance of national institutions over local ones. States and nation coexisted within a shared dominion. Within that sphere, however, circumstance and design naturally allowed one to assume the leadership role.

Central to the evaluation of the federal judiciary's impact on the state is an analysis of the cases that were heard in both the district and circuit courts. Chapter Three will look at the kinds of cases heard in each court and present both a quantitative and qualitative portrait of what the courts actually did. Because the courts had distinct jurisdictions, they served different purposes. The district courts were involved primarily with enforcing the