

# JUSTICE AND LEGAL CHANGE ON THE SHORES OF LAKE ERIE

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A HISTORY OF THE  
U.S. DISTRICT COURT  
FOR THE NORTHERN  
DISTRICT OF OHIO

Edited by Paul Finkelman and Roberta Sue Alexander

*Foreword by Solomon Oliver, Jr.*

OHIO UNIVERSITY PRESS  
*Athens*

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# Introduction

Paul Finkelman

**T**HIS BOOK EXAMINES the history of a single federal court—the U.S. District Court for the Northern District of Ohio. This is not a comprehensive, day-to-day or year-to-year history of the court. Nor is it a collection of biographies of the many judges who have served on it. Rather, we have chosen to examine a series of cases and topics that illustrate the nature of the court and the wide-ranging work it does. Some chapters focus on famous cases that began in the district court and went on to the Supreme Court—such as the World War I prosecution of the socialist leader Eugene Victor Debs. Other chapters center on equally famous cases and the events surrounding them that never went beyond this court, including the prosecution of scores of abolitionists after the Oberlin-Wellington fugitive slave rescue and the litigation following the shooting of students by the Ohio National Guard on the Kent State University campus in 1970. In addition to essays on great cases and historic events, the authors of these chapters analyze topics and themes such as the role of this district court in fighting political corruption, protecting the environment, or sorting out incredibly complicated social issues, including school desegregation and the relationship of religion to the government under the First Amendment.

Congress established Ohio's first federal district court on February 19, 1803.<sup>1</sup> Initially, the court met in Chillicothe, but in 1820, it moved to Columbus when that city became the state capital.<sup>2</sup> In its first fifty years of statehood, Ohio grew at an astounding pace. In 1800, there were only about 42,000 settlers in what would become Ohio. The first census after statehood found some 231,000 people in the state. By 1830, Ohio's population had grown to about 938,000, and in the next twenty years, the state would more than double to 1,980,000 in 1850. On the eve of the Civil War, Ohio was the nation's third-largest state, with a population of about 2,340,000. The growth in northern Ohio was particularly dramatic in the four decades leading to the Civil War. For example, in 1820, Cleveland was a mere village, with a population of 600. With an astounding growth of 7,100 percent over the next forty years, the city had more than 43,000 people by 1860. Cincinnati remained the largest city in the state, with just over 160,000 people, but its rate of growth had slowed, especially in contrast to northern Ohio. In 1830, Cincinnati was about twenty times the size of Cleveland; by 1860, its population was a little more than three times Cleveland's. Cincinnati was the nation's sixth-largest city in 1850, but that is where it peaked. By 1920, it would drop to sixteenth, well below Cleveland. Congress could not, of course, have known this outcome in 1855, but it was clear northern Ohio was the focus of the state's growth and thus the region needed its own federal court.

The rapid growth of Cleveland, as well as the emergence of other northern Ohio cities such as Akron, Canton, Toledo, and Youngstown, led to increased legal business in the region. The expansion of Great Lakes shipping meant even more legal business for northern Ohio. Shipping led to admiralty disputes, which often required speedy access to courts. The presence of a federal court in northern Ohio seemed essential to the growing business, lake commerce, and population of that part of the state. On February 10, 1855, Congress recognized these changing needs by creating two separate district courts in the state. The existing court moved to Cincinnati and was now called the U.S. District Court for the Southern District of Ohio; the new court—the U.S. District Court for the Northern District of Ohio—would meet in Cleveland.<sup>3</sup> Thus, the history of this court begins in the 1850s. However, before turning to that history, it is important to explore the origin and role of federal districts courts in American society.

FEDERAL district courts have played a complicated role in American history. Before the modern era, they were often the embodiment of the national government at the local level. Until the Civil War, there was very little federal presence

in most communities, and the majority of Americans rarely encountered a federal official other than the postmaster. In port cities—such as New York, Boston, or Philadelphia—there were large customhouses, collecting revenue to help run the national government, and on the frontier, there were federal land offices. But these offices were mostly administrative, and the people who ran them—postmasters, customs collectors, and land commissioners—were by and large administrators. There was little sense of the power or prestige of the national government attached to them.

From the beginning, the lower federal courts created a more commanding national presence. The district courts offered a forum for the resolution of disputes and the prosecution of lawbreakers. The courts provided a safe and orderly venue where Americans could sort out their differences. A federal district court was, as historian Roberta Sue Alexander has noted, “a place of recourse” for Americans to settle disputes.<sup>4</sup> But a federal judge was more than a referee for disputes; he was also a human face representing the authority and reputation of the national government. Dressed in magisterial robes, presiding over solemn proceedings in often impressive courthouses, surrounded by bailiffs and clerks and marshals, the district judges symbolized the power and prestige of the national government.

One significant role of the district courts was to oversee the process of naturalizing aliens. In a nation of immigrants, this aspect of the court’s business has always been particularly significant. For immigrants seeking naturalization, the federal district court was not a place to be feared or a palace of oppression—like the courts in much of Europe. Rather, the federal district court was a temple of justice where the tired and poor, “the huddled masses” of the world “yearning to be free,”<sup>5</sup> became American citizens, with the right to vote and participate in self-government.<sup>6</sup>

From the beginning of the American nation, the idea of national courts was both important and controversial. Initially, there was no system of national courts. Most leaders in the new nation saw this as one of the defects of the government under the Articles of Confederation. Indeed, the Framers of the Constitution in 1787 insisted that national courts be established to resolve disputes between citizens of different states, to enforce the laws of the nation, and to provide a mechanism for bringing the authority of the national government to the people.

When the Constitutional Convention began in late May 1787, Governor Edmund Randolph of Virginia offered an outline for a new system of government. Called the Randolph Plan or the Virginia Plan, this document, largely

written by James Madison, proposed that “a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature.”<sup>7</sup> On June 4, the convention unanimously agreed that “a National Judiciary be established.” Without any debate, the delegates also agreed that the judiciary should consist of “one supreme tribunal, and of one or more inferior tribunals.”<sup>8</sup> The next day, the convention had a full-blown debate over the court system. The convention began by eliminating the clause that required the creation of “inferior tribunals”—that is, what would eventually become the lower federal courts. The vote was close, with five states voting for the change, four against, and two delegations divided. Significantly, the three Deep South states opposed the idea of federal district courts, as did two small northern states, Connecticut and New Jersey. Edward Rutledge, a wealthy South Carolina slave owner, argued that the state courts “[are the most proper] to decide in all cases of first instance.”<sup>9</sup> The South Carolinians, always fearful of national power, initially resisted the creation of federal courts. After a long debate over the nature of a national court system, James Madison of Virginia and James Wilson of Pennsylvania proposed “that the National Legislature be empowered to institute inferior tribunals.” Under their proposal, the creation of lower federal courts would be discretionary, not mandatory. This debate revealed both the importance of district courts to the Framers and the high quality of their deliberations. In what was essentially a reconsideration of the earlier vote, eight states now voted for federal courts, one state (New York) remained divided, and only South Carolina and Connecticut voted no.<sup>10</sup>

On July 18, 1787, the convention once again considered the creation of courts under the new national government. The provision before the convention was the one Madison and Wilson had proposed a month earlier: “Resol: that Natl. (Legislature) be empowered to appoint inferior tribunals.”<sup>11</sup> Like his South Carolina colleague Rutledge, Pierce Butler opposed the motion, noting he “could see no necessity for such tribunals.” Butler believed that the state courts “might do the business” of the federal government. He supported a strong national government, but at the same time, as a wealthy slave owner who vociferously argued throughout the convention for the protection of slavery, he may have had at least some fear of national courts.<sup>12</sup> After Butler made his objection to federal courts, Luther Martin, who would ultimately oppose the Constitution and argue against ratification, supported him. Martin believed national courts would “create jealousies” in the states because the national courts would interfere with state jurisdiction.

There is some irony in the opposition to federal courts on the part of the southerners, especially Butler. Near the end of the convention, Butler authored the fugitive slave clause of the Constitution, which ultimately embroiled the federal courts in enormous conflicts with some northern states, as the federal courts were used to *protect* the interests of slave owners.<sup>13</sup> In the 1850s, there would indeed be conflicts and jealousies between federal district courts and the state courts because the federal courts would be the primary forums for the enforcement of the Fugitive Slave Law of 1850. Meanwhile, some state courts in the 1850s would be called on to stymie that law in order to protect the liberty of free blacks or fugitive slaves in the northern states or to protect abolitionists—black and white—who resisted the law. In 1854, the Wisconsin Supreme Court directly challenged the jurisdiction of the federal courts in fugitive slave cases.<sup>14</sup> Because of state jealousies, it would take five years for this case to reach the U.S. Supreme Court: the Wisconsin Supreme Court simply refused to forward the record of the case to the U.S. Supreme Court. Thus, the nation’s highest court was unable to decide the matter until the Wisconsin Supreme Court published its opinions. Then, the U.S. Supreme Court unanimously overruled the state court.<sup>15</sup> The prediction that federal courts would stimulate state jealousies also proved true for the Northern District of Ohio. Indeed, the first great case to come before that court was the prosecution of abolitionists after the Oberlin-Wellington fugitive slave rescue. While the rescue cases were pending in the Northern District Court, the Ohio Supreme Court was considering whether to issue a writ of habeas corpus ordering the U.S. marshal to bring the Oberlin rescuers into the state courts. In *Ex parte Bushnell, Ex parte Langston*,<sup>16</sup> the Ohio Supreme Court, by a single vote, failed to challenge the jurisdiction of the federal courts. Had there been a different ruling, there might have been a constitutional crisis of enormous proportions emanating from the Northern District.

These conflicts between northern state courts and federal district courts over slavery were of course not on the horizon as the delegates in Philadelphia debated whether to have national courts sitting in the states. In the debate at the Philadelphia convention, Nathaniel Gorham of Massachusetts noted that there were “already” national courts established under the Articles of Confederation to adjudicate cases of piracy and that “no complaints have been made by the States or the Courts of the States.” Lower federal courts, he believed, would get the same respect and function in the same way. Governor Randolph of Virginia was even more emphatic about the need for a system of lower federal courts, declaring that the state courts “can not be trusted with the administration of the

National laws.” He envisioned a conflict between state and national laws and understood that national courts were necessary to ensure the enforcement of national laws. He may have also understood from personal experience that the Virginia courts might not be willing to enforce federal law, especially if they were under the control of staunch opponents of a strong national government, such as Patrick Henry. His Virginia colleague, George Mason, was skeptical about a strong national government and ultimately would not sign the Constitution. Yet he too supported the idea of lower federal courts, noting that “many circumstances might arise not now to be foreseen, which might render such a power absolutely necessary.”<sup>17</sup> Thus, at that point in the deliberations, all the state delegations at the convention unanimously endorsed the idea of Congress having the discretionary power to create lower federal courts.

A month later, on August 17, the convention agreed without debate or dissent that Congress would have the power to “constitute inferior tribunals.”<sup>18</sup> On August 27, the delegates considered what was emerging as the final language of the Constitution: “The Judicial Power of the United States shall be vested 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.” By then, even the South Carolina delegates supported the clause.<sup>19</sup> It may be that these Deep South delegates were finally persuaded that lower federal courts were necessary. But the vote may also have reflected South Carolina’s huge victory in the previous session, when the convention had adopted the slave trade clause, preventing Congress from ending the African slave trade until at least 1808.<sup>20</sup> On August 29, two days after approving a system of federal courts, the convention adopted, without debate, what became the fugitive slave clause of the Constitution. As I noted earlier, this clause would eventually have an enormous impact on the federal courts and lead to the jealousies that delegates such as Pierce Butler feared.

THE members of the First Congress quickly used their constitutionally created discretion to devise a court system that included lower federal courts. The first substantive measure introduced in the Senate led to the Judiciary Act of 1789. The bill quickly moved through the Senate but took longer in the House. On September 24, President George Washington finally signed the bill creating the federal courts. This was the twentieth act passed by Congress. The 1789 act created a three-tiered system. At the top was the Supreme Court, with six justices.

At the bottom were the district courts and their judges. Initially, every state had one district judge, except for Massachusetts and Virginia. At the time, the modern state of Maine was part of Massachusetts and the modern state of Kentucky was part of Virginia. The First Congress recognized that the geography of these two states required an extra district judge for Maine and Kentucky. As new states entered the Union, Congress would create new district judges. Thus, in 1803, Congress created a district court for Ohio.

In addition to the district courts and the Supreme Court, Congress created a hybrid circuit court. Initially this consisted of a district judge sitting with two Supreme Court justices. With confusing nomenclature, the district judge would be called the circuit judge when sitting in the circuit court, and a Supreme Court justice riding circuit would be called the circuit justice. After 1802, only a single Supreme Court justice was assigned to the circuit court. More important, under this law the district judge could preside over the circuit court even if no Supreme Court justice was present. As a consequence, the distinction between the district court and the circuit court was not particularly clear to the average American. Often, the same individual presided over both courts on the same day. In the morning, he might be a district judge, and in the afternoon, he might be the circuit judge.<sup>21</sup> The main difference between the two courts centered on the kinds of cases they heard and the importance of those cases. Most of the district courts' early cases consisted of private suits where the matter in controversy involved \$500 or less and minor criminal cases where the fine was not more than \$100 or the possible jail time not more than six months. District judges also heard admiralty cases. The circuit courts had jurisdiction over larger private suits as well as more significant criminal cases.

Over the next seventy-five years, Congress tinkered with the court system, expanding the jurisdiction of the district courts. For example, in 1842, the district courts were given concurrent jurisdiction with the circuit courts for all noncapital federal crimes.<sup>22</sup> In addition to changing the jurisdiction of the courts, Congress increased the number of these courts and the number of judges. Starting in 1801, it divided some district courts, recognizing that it was almost impossible for people in certain areas to reach the only district court in their state. Under this process, a district judge would hold court in different sections of a state, and though there might be court clerks, bailiffs, or other functionaries in more than one place, the judge himself had to travel. By 1838, for example, Tennessee had three district courts, all served by the same judge.<sup>23</sup> In 1812, Congress authorized

the appointment of a second district judge in New York, recognizing that the nation's largest state had such a huge docket of cases that no single judge could handle it.<sup>24</sup> Eastern and western districts or northern and southern districts soon appeared in a number of states.<sup>25</sup> Meanwhile, starting with Tennessee in 1802, Congress began to create multiple districts in the same state.<sup>26</sup>

By 1850, Ohio, with nearly 2 million people, was ripe for a new federal court. Residents of Columbus not surprisingly objected to the creation of a second district court because this would hurt business in their city. The federal court supplied clients for local attorneys, while litigants, witnesses, and visiting lawyers patronized hotels, restaurants, and other enterprises. Opening a new federal court in Cleveland would take some of this commerce out of Columbus. But in the context of the nineteenth century, the creation of the U.S. District Court for the Northern District of Ohio was an obvious and logical outcome of the phenomenal growth of the state and the rapid expansion of its northern part. The creation of the new court also symbolized the change that had taken place in Ohio in the previous half century. At statehood, Ohio was an outcropping of the South, with a plurality of its settlers coming from Virginia and Kentucky and most of its population focused on Ohio River traffic and the growing city of Cincinnati, which by 1830 was the eighth-biggest city in the nation. But by 1850, the population in the northern part of the state was growing faster, with most of that section's residents coming from New England, New York, or Europe.<sup>27</sup> Lake traffic now competed with river traffic as canals fed commerce north to Lake Erie as well as south to the Ohio River.<sup>28</sup> For many in the state, the focus of commerce and transportation was no longer the Ohio River, the Mississippi River, and the port of New Orleans. Rather, it was the state's huge canal system and the Cuyahoga River, flowing into Lake Erie and taking the produce of the state to New York's Erie Canal and ultimately the port of New York.

The creation of the new court in Cleveland symbolized the shift in population and power in the state. Four American presidents—Rutherford Hayes, James Garfield, William McKinley, and Warren Harding—would come out of the counties that constituted the Northern District of Ohio. In the next century and a half, northern Ohio would become an industrial powerhouse—the home and even the birthplace of new industries, businesses, and technologies. Glass, steel, and rubber would flow from Toledo, Youngstown, Cleveland, and Akron. Before World War I, factories in northern Ohio would run second only to those

in Detroit in the production of automobiles. Scales from Toledo would help weigh the produce of the nation, oatmeal boxed in Akron with a smiling Quaker as its logo became an American standard, and more Americans lit their morning stoves with matches manufactured in nearby Barberton than from any other city. Much of the grain, ore, and finished goods from Ohio and the American heartland traveled on giant transports built at Lake Erie shipyards. The industry that provided the major fuel for the new industrial American economy would be born in Cleveland in 1870, when a local entrepreneur, John D. Rockefeller, created the Standard Oil Company, which quickly became the largest refiner of petroleum products in the United States.

As the economy of northern Ohio expanded, the demographics of the region changed. Most of the region was first settled by New Englanders, relocating to northeast Ohio to claim land in the Western Reserve. In 1840, northern Ohio was almost entirely populated by white Protestants from New England and upstate New York whose ancestors had migrated from Great Britain. But starting in the 1840s, Irish, German, and central European immigrants began moving to the region. After 1870, millions of immigrants and migrants from eastern and southern Europe, the Middle East, Appalachia, and the American South poured into northern Ohio. A century later, the region had one of the most ethnically, racially, and religiously heterogeneous populations in the nation. In 1860, Cleveland ranked twenty-first among American cities; by 1920, it was fifth. And as late as 1950, with just under a million people, it would rank seventh in the nation. In that year, Toledo, Youngstown, Akron, and Canton were also among the hundred largest cities in the country.

With all this change came enormously complicated and interesting legal issues. Cases involving the rights of workers, the changing notions of land use, pollution and environmental waste, demands for racial justice, immigration, expanding notions of due process and criminal justice, protests over the draft and national foreign policy during World War I and the Vietnam War, the changing and expanding rights of women, conflicts over religion and public life, and political corruption all were adjudicated in the U.S. District Court for the Northern District of Ohio. The chapters in this book teach us how that court developed and grew, how it affected the region and the nation, and how in turn it changed as the region and the nation changed. In essence, these essays tell some of the story of America at the local level. It is a story that instructs us about our past, enhances our understanding of our present, and helps us prepare for our future.

## Notes

1. 2 Stat. 201 (1803). For a history of the U.S. District Court for the Southern District of Ohio, see Roberta Sue Alexander, *A Place of Recourse: A History of the U.S. District Court for the Southern District of Ohio, 1803–2003* (Athens: Ohio University Press, 2005).
2. An act altering the place of holding the circuit and district court of the district of Ohio, 3 Stat. 544 (1820).
3. 10 Stat. 604 (1855). For a history of the Ohio federal court before this division, see Alexander, *Place of Recourse*. See also chapter 1 of this volume.
4. Alexander, *Place of Recourse*.
5. Emma Lazarus, “The New Colossus” (1883).
6. However, as the case on John Demjanjuk shows, the court can also be a place where fraudulent paths to citizenship can be undone and where those who do not merit inclusion in society can face deportation. See chapter 12.
7. Max Farrand, ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven, Conn.: Yale University Press, 1966), 1:21.
8. *Ibid.*, 1:104–5.
9. *Ibid.*, 1:119.
10. *Ibid.*, 1:125.
11. *Ibid.*, 2:45. The quotations in the rest of this paragraph come from this source (2:45–47).
12. *Ibid.*, 2:45. Earlier in the convention, John Rutledge of South Carolina had also opposed the creation of lower federal courts; see Farrand, *Records*, 1:119. For a discussion of Butler’s proslavery arguments at the convention, see Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, 2nd ed. (Armonk, N.Y.: M. E. Sharpe, 2001), chap. 1.
13. Finkelman, *Slavery and the Founders*, chap. 4.
14. *In re Booth and Rycraft*, 1 Wis. 3 (1854). For a history of this case, see H. Robert Baker, *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (Athens: Ohio University Press, 2006).
15. *Ableman v. Booth*, 62 U.S. 506 (1859).
16. 9 Ohio St. 77 (1859).
17. Farrand, *Records*, 2:45–47.
18. *Ibid.*, 2:314.
19. *Ibid.*, 2:428.
20. *Ibid.*, 2:416.
21. *In Pollard v. Dwight*, 8 U.S. (4 Cr.) 421 (1808), the Supreme Court affirmed that a district judge could preside over the circuit court without a U.S. Supreme Court justice being present and a Supreme Court justice could preside over a circuit court without a district judge being present. See also chapter 1 of this volume.
22. Act of August 23, 1842, 5 Stat. 517 (1842).
23. See Erwin C. Surrency, *History of the Federal Courts*, 2nd ed. (Dobbs Ferry, N.Y.: Oceana Press, 2002), 69.
24. Act of April 29, 1812, 2 Stat. 719 (1812).
25. See Surrency, *History of the Federal Courts*, 2nd ed., 69.
26. Act of April 29, 1802, 2 Stat. 165. For greater details on the creation of the new court, see chapter 1.
27. The changing demographics of the state and the emerging power of its northern part can be seen in Ohio’s regulation of race. Shortly after achieving statehood, Ohio passed

a series of racially discriminatory laws, known as Black Laws, that were designed to limit, as much as possible, the growth of the state's black population. In 1849, almost all these laws were repealed, illustrating the power of antislavery in the state as well as the growing influence and increasing population of northern Ohio. See Paul Finkelman, "Race, Slavery, and the Law in Antebellum Ohio," in *The History of Ohio Law*, 2 vols., ed. Michael Les Benedict and John F. Winkler (Athens: Ohio University Press, 2004), 2:748–81, and Finkelman, "The Strange Career of Race Discrimination in Antebellum Ohio," *Case Western Reserve Law Review* 55 (2004): 373–408.

28. For a classic study that helps explain the growth of Ohio and the eventual need for a northern district court, see Harry N. Scheiber, *Ohio Canal Era: A Case Study of Government and the Economy, 1820–1861* (Athens: Ohio University Press, 1969).

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