not over localities," a presumption arises that the status of such a tribunal is constitutional rather than legislative.[91] The other four Justices expressly declared that *Bakelite* and *Williams* should not be overruled,[92] but two of them thought that the two courts had attained constitutional status by virtue of the clear manifestation of congressional intent expressed in the legislation.[93] Two Justices maintained that both courts remained legislative tribunals.[94] Although the result is clear, no standard for pronouncing a court legislative rather than constitutional obtained the adherence of a majority of the Court.[95]

Status of Courts of the District of Columbia.—Through a long course of decisions, the courts of the District of Columbia were regarded as legislative courts upon which Congress could impose nonjudicial functions. In *Butterworth v. United States ex rel. Hoe*,[96] the Court sustained an act of Congress which conferred revisory powers upon the Supreme Court of the District in patent appeals and made its decisions binding only upon the Commissioner of Patents. Similarly, the Court later sustained the authority of Congress to vest revisory powers in the same court over rates fixed by a public utilities commission.[97] Not long after this the same rule was applied to the revisory powers of the District Supreme Court over orders of the Federal Radio Commission.[98] These rulings were based on the assumption, express or implied, that the courts of the District were legislative courts, created by Congress pursuant to its plenary power to govern the District of Columbia. In dictum in *Ex parte Bakelite Corp.*,[99] while reviewing the history and analyzing the nature of the legislative courts, the Court stated that the courts of the District were legislative courts.

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[91] 370 U.S. at 548, 552.

[92] 370 U.S. at 585 (Justice Clark and Chief Justice Warren concurring), 589 (Justices Douglas and Black dissenting).

[93] 370 U.S. at 585 (Justice Clark and Chief Justice Warren).

[94] 370 U.S. at 589 (Justices Douglas and Black). The concurrence thought that the rationale of *Bakelite* and *Williams* was based on a significant advisory and reference business of the two courts, which the two Justices now thought insignificant, but what there was of it they thought nonjudicial and the courts should not entertain it. Justice Harlan left that question open. Id. at 583.

[95] Aside from doctrinal matters, Congress in 1982 created the United States Court of Appeals for the Federal Circuit, giving it, *inter alia*, the appellate jurisdiction of the Court of Claims and the Court of Customs and Patent Appeals. 96 Stat. 25, title 1, 28 U.S.C. § 41. At the same time Congress created the United States Claims Court, now the United States Court of Federal Claims, as an Article I tribunal, with the trial jurisdiction of the old Court of Claims. 96 Stat. 26, as amended, § 902(a)(1), 106 Stat. 4516, 28 U.S.C. §§ 171–180.

[96] 112 U.S. 50 (1884).

[97] Keller v. Potomac Elec. Co., 261 U.S. 428 (1923).

[98] Federal Radio Comm'n v. General Elec. Co., 281 U.S. 464 (1930).

[99] 279 U.S. 438, 450–455 (1929).