Sec. 1—Judicial Power, Courts, Judges

In 1933, nevertheless, the Court abandoned all previous dicta on the subject and found the courts of the District of Columbia to be constitutional courts exercising the judicial power of the United States,[100] with the result that it assumed the task of reconciling the performance of nonjudicial functions by such courts with the rule that constitutional courts can exercise only the judicial power of the United States. This task was accomplished by the argument that, in establishing courts for the District, Congress performs dual functions pursuant to two distinct powers: the power to constitute tribunals inferior to the Supreme Court, and its plenary and exclusive power to legislate for the District of Columbia. However, Article III, § 1, limits this latter power with respect to tenure and compensation, but not with respect to vesting legislative and administrative powers in such courts. Subject to the guarantees of personal liberty in the Constitution, "Congress has as much power to vest courts of the District with a variety of jurisdiction and powers as a state legislature has in conferring jurisdiction on its courts." [101]

In 1970, Congress formally recognized two sets of courts in the District: federal courts (the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia, created pursuant to Article III), and courts equivalent to state and territorial courts (including the District of Columbia Court of Appeals), created pursuant to Article I.[102] Congress's action was sustained in *Palmore v. United States*.[103] When legislating for the District, the Court held, Congress has the power of a local legislature and may, pursuant to Article I, § 8, cl. 17, vest jurisdiction to hear matters of local law and local concerns in courts not having Article III characteristics. The defendant's claim that he was denied his constitutional right to be tried before an Article III judge was denied on the basis that it was not absolutely necessary that every proceeding in which a charge, claim, or defense based on an act of Congress or a law made under its authority need be conducted in an Article III court. State courts, after all, could hear cases involving federal law as could territorial and military courts. "[T]he requirements of Art. III, which are applicable where laws of national applicability and affairs of national concern are at stake, must in proper circumstances give way to accommodate plenary grants

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[100] O'Donoghue v. United States, 289 U.S. 516 (1933).

[101] 289 U.S. at 545. Chief Justice Hughes in dissent argued that Congress's power over the District was complete in itself and the power to create courts there did not derive at all from Article III. Id. at 551. *See* the discussion of this point of *O'Donoghue* in National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582 (1949). *Cf.* Hobson v. Hansen, 265 F. Supp. 902 (D.D.C. 1967) (three-judge court).

[102] Pub. L. 91–358, 84 Stat. 475, D.C. Code § 11–101.

[103] 411 U.S. 389 (1973).