writs or procedures is often left unexplored. In *Missouri v. Jenkins*,[254] for example, the Court, rejecting a claim that a federal court exceeded judicial power under Article III by ordering local authorities to increase taxes to pay for desegregation remedies, declared that "a court order directing a local government body to levy its own taxes" is plainly a judicial act within the power of a federal court.[255] In the same case, the Court refused to rule on "the difficult constitutional issues" presented by the state's claim that the district court had exceeded its constitutional powers in a prior order directly raising taxes, instead ruling that this order had violated principles of comity.[256]

Common Law Powers of District of Columbia Courts.— The portion of § 13 of the Judiciary Act of 1789 that authorized the Supreme Court to issue writs of mandamus in the exercise of its original jurisdiction was held invalid in *Marbury v. Madison*,[257] as an unconstitutional enlargement of the Supreme Court's original jurisdiction. After two more futile efforts to obtain a writ of mandamus, in cases in which the Court found that power to issue the writ had not been vested by statute in the courts of the United States except in aid of already existing jurisdiction,[258] a litigant was successful in *Kendall v. United States ex rel. Stokes*,[259] in finding a court that would take jurisdiction in a mandamus proceeding. This was the circuit court of the United States for the District of Columbia, which was held to have jurisdiction, on the theory that the common law, in force in Maryland when the cession of that part of the state that became the District of Columbia was made to the United States, remained in force in the District. At an early time, therefore, the federal courts established the rule that mandamus can be issued only when authorized by a constitutional statute and within the limits imposed by the common law and the separation of powers.[260]

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[254] 495 U.S. 33 (1990).

[255] 495 U.S. at 55, citing Griffin v. Prince Edward County School Bd., 377 U.S. 218, 233–34 (1964) (an order that local officials "exercise the power that is theirs" to levy taxes in order to open and operate a desegregated school system "is within the court's power if required to assure . . . petitioners that their constitutional rights will no longer be denied them").

[256] 495 U.S. at 50–52.

[257] 5 U.S. (1 Cr.) 137 (1803). *Cf.* Wiscart v. D'Auchy, 3 U.S. (3 Dall.) 321 (1796).

[258] McIntire v. Wood, 11 U.S. (7 Cr.) 504 (1813); McClung v. Silliman, 19 U.S. (6 Wheat.) 598 (1821).

[259] 37 U.S. (12 Pet.) 524 (1838).

[260] In 1962, Congress conferred upon all federal district courts the same power to issue writs of mandamus as was exercisable by federal courts in the District of Columbia. 76 Stat. 744, 28 U.S.C. § 1361.