thought the statute to be an appropriate exercise of the power of Congress to legislate for the District of Columbia pursuant to this clause without regard to Article III.[1698] Two others thought that *Hepburn v. Ellzey* had been erroneously decided and would have overruled it.[1699] But six Justices rejected the former rationale and seven Justices rejected the latter one; since five Justices agreed, however, that the statute was constitutional, it was sustained.

It is not disputed that the District is a part of the United States and that its residents are entitled to all the guarantees of the United States Constitution including the privilege of trial by jury[1700] and of presentment by a grand jury.[1701] Legislation restrictive of liberty and property in the District must find justification in facts adequate to support like legislation by a state in the exercise of its police power.[1702]

Congress possesses over the District of Columbia the blended powers of a local and national legislature.[1703] This fact means that in some respects ordinary constitutional restrictions do not operate; thus, for example, in creating local courts of local jurisdiction in the District, Congress acts pursuant to its legislative powers under clause 17 and need not create courts that comply with Article III court requirements.[1704] And when legislating for the District Con-

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[1698] 337 U.S. at 588–600 (Justices Jackson, Black and Burton).

[1699] 337 U.S. at 604 (Justices Rutledge and Murphy). The dissents were by Chief Justice Vinson, id. at 626, joined by Justice Douglas, and by Justice Frankfurter, id. at 646, joined by Justice Reed.

[1700] Callan v. Wilson, 127 U.S. 540 (1888); Capital Traction Co. v. Hof, 174 U.S. 1 (1899).

[1701] United States v. Moreland, 258 U.S. 433 (1922).

[1702] Wright v. Davidson, 181 U.S. 371, 384 (1901); *cf.* Adkins v. Children's Hospital, 261 U.S. 525 (1923), overruled in West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937).

[1703] Kendall v. United States ex rel. Stokes, 37 U.S. (12 Pet.) 524, 619 (1838); Shoemaker v. United States, 147 U.S. 282, 300 (1893); Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 435 (1932); O'Donoghue v. United States, 289 U.S. 516, 518 (1933).

[1704] In the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. 91–358, 111, 84 Stat. 475, D.C. Code, § 11–101, Congress specifically declared it was acting pursuant to Article I in creating the Superior Court and the District of Columbia Court of Appeals and pursuant to Article III in continuing the United States District Court and the United States Court of Appeals for the District of Columbia. The Article I courts were sustained in Palmore v. United States, 411 U.S. 389 (1973). *See also* Swain v. Pressley, 430 U.S. 372 (1977). The latter, federal courts, while Article III courts, traditionally have had some non-Article III functions imposed on them, under the "hybrid" theory announced in O'Donoghue v. United States, 289 U.S. 516 (1933). *E.g.*, Hobson v. Hansen, 265 F. Supp. 902 (D.D.C. 1967), appeal dismissed, 393 U.S. 801 (1968) (power then vested in District Court to appoint school board members). *See also* Keller v. Potomac Elec. Co., 261 U.S. 428 (1923); Embry v. Palmer, 107 U.S. 3 (1883).