fined."[76] This scheme was permissible, the Court said, because in cases arising out of congressional statutes, an administrative tribunal could make findings of fact and render an initial decision on legal and constitutional questions, as long as there is adequate review in a constitutional court.[77] The "essential attributes" of decisions must remain in an Article III court, but so long as it does, Congress may use administrative decisionmakers in those private rights cases that arise in the context of a comprehensive federal statutory scheme.[78] In *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, discussed *infra*, the Court reasserted that the distinction between "public rights" and "private rights" was still important in determining which matters could be assigned to legislative courts and administrative agencies and those that could not be, but there was much the Court plurality did not explain.[79]

The Court continued to waver with respect to the importance of the public rights/private rights distinction. In two cases following *Marathon*, it rejected the distinction as "a bright line test," and instead focused on "substance"—*i.e.*, on the extent to which the particular grant of jurisdiction to an Article I court threatened judicial integrity and separation of powers principles.[80] Nonetheless, the Court indicated that the distinction may be an appropriate starting point for analysis. Thus, the fact that private rights traditionally at the core of Article III jurisdiction are at stake leads the Court to a "search-

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[76] 285 U.S. at 51. On the constitutional problems of assignment to an administrative agency, *see* Atlas Roofing Co. v. OSHRC, 430 U.S. 442 (1977); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48 (1937).

[77] 301 U.S. at 51–65.

[78] 301 U.S. at 50, 51, 58–63. Thus, Article III concerns were satisfied by a review of the agency fact finding upon the administrative record. Id. at 63–65. The plurality opinion denied the validity of this approach in Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 86 n.39 (1982), although Justice White in dissent accepted it. Id. at 115. The plurality, rather, rationalized *Crowell* and subsequent cases on an analysis seeking to ascertain whether agencies or Article I tribunals were "adjuncts" of Article III courts, that is, whether Article III courts were sufficiently in charge to protect constitutional values. Id. at 76–87.

[79] 458 U.S. 50, 67–70 (1982) (plurality opinion). Thus, Justice Brennan observes that "a matter of public rights must at a minimum arise 'between the government and others,'" but "that the presence of the United States as a proper party to the proceeding is a necessary but not sufficient means of distinguishing 'private rights' from 'public rights.'" Id. at 69 & n.23. Crowell v. Benson, however, remained an embarrassing presence.

[80] Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568 (1985); CFTC v. Schor, 478 U.S. 833 (1986). The cases also abandoned the principle that the Federal Government must be a party for the case to fall into the "public rights" category. *Thomas*, 473 U.S. at 586; *see also* id. at 596–99 (Justice Brennan concurring).