work: in territories and the District of Columbia, that is, geographical areas in which no state operated as sovereign and Congress exercised the general powers of government; courts martial, that is, the establishment of courts under a constitutional grant of power historically understood as giving the political branches extraordinary control over the precise subject matter; and the adjudication of "public rights," that is, the litigation of certain matters that historically were reserved to the political branches of government and that were between the government and the individual.[107] In bankruptcy legislation and litigation not involving any of these exceptions, the plurality would have held, the judicial power to process bankruptcy cases could not be assigned to the tribunals created by the act.[108]

The dissent argued that, although on its face Article III provided that judicial power could only be assigned to Article III entities, the history since *Canter* belied that simplicity. Rather, the precedents clearly indicated that there is no difference in principle between the work that Congress may assign to an Article I court and that which must be given to an Article III court. Despite this, the dissent contended that Congress did not possess plenary discretion in choosing between the two systems; rather, in evaluating whether jurisdiction was properly reposed in an Article I court, the Supreme Court must balance the values of Article III against both the strength of the interest Congress sought to further by its Article I investiture and the extent to which Article III values were undermined by the congressional action. This balancing would afford the Court, the dissent believed, the power to prevent Congress, were it moved to do so, from transferring jurisdiction in order to emasculate the constitutional courts of the United States.[109]

No majority could be marshaled behind a principled discussion of the reasons for and the limitation upon the creation of legislative courts, not that a majority opinion, or even a unanimous one,

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[107] 458 U.S. at 63–76 (Justice Brennan, joined by Justices Marshall, Blackmun, and Stevens).

[108] The plurality also rejected an alternative basis, a contention that as "adjuncts" of the district courts, the bankruptcy courts were like United States magistrates or like those agencies approved in Crowell v. Benson, 285 U.S. 22 (1932), to which could be assigned fact-finding functions subject to review in Article III courts, the fount of the administrative agency system. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 76–86 (1982). According to the plurality, the act vested too much judicial power in the bankruptcy courts to treat them like agencies, and it limited the review of Article III courts too much.

[109] 458 U.S. at 92, 105–13, 113–16 (Justice White, joined by Chief Justice Burger and Justice Powell).