ing" inquiry as to whether Congress is encroaching inordinately on judicial functions, whereas the concern is not so great where "public" rights are involved.[81]

However, in a subsequent case, *Granfinanciera, S.A. v. Nordberg*, the distinction was pronounced determinative not only of the issue whether a matter could be referred to a non-Article III tribunal, but whether Congress could dispense with civil jury trials.[82] In so doing, however, the Court vitiated much of the core content of "private" rights as a concept and left resolution of the central issue to a balancing test. That is, "public" rights are, strictly speaking, those in which the cause of action inheres in or lies against the Federal Government in its sovereign capacity, the understanding since *Murray's Lessee*. However, to accommodate *Crowell v. Benson*, *Atlas Roofing*, and similar cases, seemingly private causes of action between private parties will also be deemed "public" rights when Congress, acting for a valid legislative purpose pursuant to its Article I powers, fashions a cause of action that is analogous to a common-law claim and integrates it so closely into a public regulatory scheme that it becomes a matter appropriate for agency resolution with limited involvement by the Article III judiciary.[83] Nonetheless, despite its fixing by Congress as a "core proceeding" suitable for an Article I bankruptcy court adjudication, the Court held the particular cause of action at issue (fraudulent conveyance) was a private issue as to which the parties were entitled to a civil jury trial, necessarily sug-

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[81] "In essence, the public rights doctrine reflects simply a pragmatic understanding that when Congress selects a quasi-judicial method of resolving matters that 'could be conclusively determined by the Executive and Legislative Branches,' the danger of encroaching on the judicial powers is reduced." Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568, 589 (1985) (quoting *Northern Pipeline*, 458 U.S. at 68 (plurality opinion)).

[82] 492 U.S. 33, 51–55 (1989). A Seventh Amendment jury-trial case, the decision is critical to the Article III issue as well, because, as the Court makes clear what was implicit before, whether Congress can submit a legal issue to an Article I tribunal and whether it can dispense with a civil jury on that legal issue must be answered by the same analysis. "[T]he question whether the Seventh Amendment permits Congress to assign its adjudication to a tribunal that does not employ juries as factfinders requires the same answer as the question whether Article III allows Congress to assign adjudication of that cause of action to a non-Article III tribunal . . . ." Id. at 52–53.

[83] 492 U.S. at 52–54. The Court reiterated that the government need not be a party as a prerequisite to a matter being of "public right." Id. at 54. Concurring, Justice Scalia argued that public rights historically were and should remain only those matters to which the Federal Government is a party. Id. at 65. *See also* Stern v. Marshall, 564 U.S. ___, No. 10–179, slip op. at 25 (2011) ("[W]hat makes a right 'public' rather than private is that the right is integrally related to particular Federal Government action").