

Sec. 1—Judicial Power, Courts, Judges

of power to Congress to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment.”¹⁰⁴

Bankruptcy Courts.—After extended and lengthy debate, Congress in 1978 revised the bankruptcy act and created a bankruptcy court as an “adjunct” of the district courts. The court was composed of judges vested with practically all the judicial power of the United States, serving for 14-year terms, subject to removal for cause by the judicial councils of the circuits, and with salaries subject to statutory change.¹⁰⁵ The bankruptcy courts were given jurisdiction over not only civil proceedings arising under the bankruptcy code, but all other proceedings arising in or related to bankruptcy cases, with review in Article III courts under a clearly erroneous standard.

This broad grant of jurisdiction, however, brought into question what kinds of cases could be heard by an Article I court. In *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, a case in which a company petitioning for reorganization made a claim against another company for breaches of contract and warranty—purely state law claims—the Court held that the conferral of jurisdiction upon Article I judges to hear state claims regarding traditional common law actions such as existed at the time of the drafting of the Constitution was unconstitutional.¹⁰⁶ Although the holding was extremely narrow, a plurality of the Court sought to rationalize and limit the Court’s jurisprudence of Article I courts.

According to the plurality, a fundamental principle of separation of powers requires the judicial power of the United States to be exercised by courts having the attributes prescribed in Article III. Congress may not evade the constitutional order by allocating this judicial power to courts whose judges lack security of tenure and compensation. Only in three narrowly circumscribed instances may judicial power be distributed outside the Article III frame-

¹⁰⁴ 411 U.S. at 407–08. See also *Pernell v. Southall Realty Co.*, 416 U.S. 363, 365–365 (1974); *Swain v. Pressley*, 430 U.S. 372 (1977); *Key v. Doyle*, 434 U.S. 59 (1978). Under *Swain*, provision for hearing of motions for post-judgment relief by convicted persons in the District, the present equivalent of *habeas* for federal convicts, is placed in Article I courts. That there are limits to Congress’s discretion is asserted in dictum in *Territory of Guam v. Olsen*, 431 U.S. 195, 201–202, 204 (1977).

¹⁰⁵ Bankruptcy Act of 1978, Pub. L. 95–598, 92 Stat. 2549, codified in titles 11, 28. The bankruptcy courts were made “adjuncts” of the district courts by § 201(a), 28 U.S.C. § 151(a). For citation to the debate with respect to Article III versus Article I status for these courts, see *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 61 n.12 (1982) (plurality opinion).

¹⁰⁶ The statement of the holding is that of the two concurring Justices, 458 U.S. at 89 (Justices Rehnquist and O’Connor), with which the plurality agreed “at the least,” while desiring to go further. *Id.* at 87 n.40.