

## Sec. 1—Judicial Power, Courts, Judges

protected by Article III's guarantees by giving jurisdiction to unprotected entities that, being subjected to influence, would be bent to the popular will?

Attempts to explain or to rationalize the predicament or to provide a principled limiting point have resulted from *Canter* to the present in "frequently arcane distinctions and confusing precedents" spelled out in cases comprising "landmarks on a judicial 'darkling plain' where ignorant armies have clashed by night, as Justice White apparently believes them to be."<sup>56</sup> Nonetheless, Article I courts are quite common entities in our judicial system.<sup>57</sup>

**Power of Congress Over Legislative Courts.**—In creating legislative courts, Congress is not limited by the restrictions imposed in Article III concerning tenure during good behavior and the prohibition against diminution of salaries. Congress may limit tenure to a term of years, as it has done in acts creating territorial courts and the Tax Court; it may subject the judges of legislative courts to removal by the President;<sup>58</sup> and it may reduce their salaries during their terms.<sup>59</sup> Similarly, it follows that Congress can vest in legislative courts nonjudicial functions of a legislative or advisory nature and deprive their judgments of finality. Thus, in *Gordon v. United States*,<sup>60</sup> there was no objection to the power of the Secretary of the Treasury and Congress to revise or suspend the early judgments of the Court of Claims. Likewise, in *United States v. Ferreira*,<sup>61</sup> the Court sustained the act conferring powers on the Florida territorial court to examine claims rising under the Spanish treaty and to report its decisions and the evidence on which they were based to the Secretary of the Treasury for subsequent action. "A power of this description," the Court said, "may constitutionally be

<sup>56</sup> *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90, 91 (1982) (Justice Rehnquist concurring).

<sup>57</sup> In addition to the local courts of the District of Columbia, the bankruptcy courts, and the U.S. Court of Federal Claims, considered *infra*, these include the United States Tax Court, formerly an independent agency in the Treasury Department, but by the Tax Reform Act of 1969, § 951, 83 Stat. 730, 26 U.S.C. § 7441, made an Article I court of record, the Court of Veterans Appeals, Act of Nov. 18, 1988, 102 Stat. 4105, 38 U.S.C. § 4051, and the courts of the territories of the United States. Magistrate judges are adjuncts of the District Courts, *see infra*, and perform a large number of functions, usually requiring the consent of the litigants. *See Gomez v. United States*, 490 U.S. 858 (1989); *Peretz v. United States*, 501 U.S. 923 (1991). The U.S. Court of Military Appeals, strictly speaking, is not part of the judiciary but is a military tribunal, 10 U.S.C. § 867, although Congress designated it an Article I tribunal and has given the Supreme Court *certiorari* jurisdiction over its decisions.

<sup>58</sup> *McAllister v. United States*, 141 U.S. 174 (1891).

<sup>59</sup> *United States v. Fisher*, 109 U.S. 143 (1883); *Williams v. United States*, 289 U.S. 553 (1933).

<sup>60</sup> 69 U.S. (2 Wall.) 561 (1864).

<sup>61</sup> 54 U.S. (13 How.) 40 (1852).