

Sec. 1—Judicial Power, Courts, Judges

in other words, is inherently judicial, and other acts that Congress may vest in courts or in other agencies. “[T]here are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.”⁶⁸

In essence, the Court distinguished between those acts that historically had been determined by courts and those that had both been historically resolved by executive or legislative acts and comprehended matters that arose between the government and others. Thus, Article I courts “may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it. The mode of determining matters of this class is completely within congressional control.”⁶⁹ Among the matters susceptible of judicial determination, but not requiring it, are claims against the United States,⁷⁰ the disposal of public lands and claims arising therefrom,⁷¹ questions concerning membership in the Indian tribes,⁷² and questions arising out of the administration of the customs and internal revenue laws.⁷³ Other courts similar to territorial courts, such as consular courts and military courts martial, may be justified on like grounds.⁷⁴

The impact of the “public rights” distinction, however, has varied dramatically over time. In *Crowell v. Benson*,⁷⁵ the Court approved an administrative scheme for determining, subject to judicial review, maritime employee compensation claims, although it acknowledged that the case involved “one of private right, that is, of the liability of one individual to another under the law as de-

⁶⁸ 59 U.S. at 284.

⁶⁹ *Ex parte Bakelite Corp.*, 279 U.S. 438, 451 (1929).

⁷⁰ *Gordon v. United States*, 117 U.S. 697 (1864) (published 1885); *McElrath v. United States*, 102 U.S. 426 (1880); *Williams v. United States*, 289 U.S. 553 (1933). On the status of the then-existing Court of Claims, see *Glidden Co. v. Zdanok*, 370 U.S. 530 (1962).

⁷¹ *United States v. Coe*, 155 U.S. 76 (1894) (Court of Private Land Claims).

⁷² *Wallace v. Adams*, 204 U.S. 415 (1907); *Stephens v. Cherokee Nation*, 174 U.S. 445 (1899) (Choctaw and Chickasaw Citizenship Court).

⁷³ *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716 (1929); *Ex parte Bakelite Corp.*, 279 U.S. 438 (1929).

⁷⁴ See *In re Ross*, 140 U.S. 453 (1891) (consular courts in foreign countries). Military courts may, on the other hand, be a separate entity of the military having no connection to Article III. *Dynes v. Hoover*, 61 U.S. (20 How.) 65, 79 (1858).

⁷⁵ 285 U.S. 22 (1932).