ity of limited judicial review of the arbitrator's findings and determination for fraud, misconduct, or misrepresentation, and for due process violations, preserved the "'appropriate exercise of the judicial function.'" [125] Thus, the Court concluded, Congress in exercise of Article I powers "may create a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary." [126]

In *Schor*, the Court described Art. III, § 1 as serving a dual purpose: to protect the role of an independent judiciary and to safeguard the right of litigants to have claims decided by judges free from potential domination by the other branches of government. A litigant's Article III right is not absolute, the Court determined, but may be waived. This the litigant had done by submitting to the administrative law judge's jurisdiction rather than independently seeking relief as he was entitled to and then objecting only after adverse rulings on the merits. But the institutional integrity claim, not being personal, could not be waived, and the Court reached the merits. The threat to institutional independence was "weighed" by reference to "a number of factors." The conferral on the CFTC of pendent jurisdiction over common law counterclaims was seen as more narrowly confined than was the grant to bankruptcy courts at issue in *Marathon*, and as more closely resembling the "model" approved in *Crowell v. Benson*. The CFTC's jurisdiction, unlike that of bankruptcy courts, was said to be confined to "a particularized area of the law;" the agency's orders were enforceable only by order of a district court,[127] and reviewable under a less deferential standard, with legal rulings being subject to *de novo* review; and the agency was not empowered, as had been the bankruptcy courts, to exercise "all ordinary powers of district courts."

Granfinanciera followed analysis different from that in *Schor*, although it preserved *Union Carbide* through its concept of "public rights." State law and other legal claims founded on private rights could not be remitted to non-Article III tribunals for adjudication unless Congress, in creating an integrated public regulatory scheme, has so taken up the right as to transform it. It may not simply relabel a private right and place it into the regulatory scheme. The Court is hazy with respect to whether the right itself must be a

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[125] *Thomas*, 473 U.S. at 591, 592 (quoting Crowell v. Benson, 285 U.S. 22, 54 (1932)).

[126] 473 U.S. at 594.

[127] *Cf. Union Carbide*, 473 U.S. at 591 (fact that "FIFRA arbitration scheme incorporates its own system of internal sanctions and relies only tangentially, if at all, on the Judicial Branch for enforcement" cited as lessening danger of encroachment on "Article III judicial powers").