which were limited to a four-year term in office. Chief Justice Marshall wrote for the Court: "These courts, then, are not constitutional courts, in which the judicial power conferred by the constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the constitution, but is conferred by congress, in the execution of those general powers which that body possesses over the territories of the United States."[52] The Court went on to hold that admiralty jurisdiction can be exercised in the states only in those courts that are established pursuant to Article III, but that the same limitation does not apply to the territorial courts, for in legislating for them "Congress exercises the combined powers of the general, and of a state government."[53]

Canter postulated a simple proposition: "Constitutional courts exercise the judicial power described in Art. III of the Constitution; legislative courts do not and cannot."[54] A two-fold difficulty attended this proposition, however. Admiralty jurisdiction is included within the "judicial power of the United States" specifically in Article III, requiring an explanation how this territorial court could receive and exercise it. Second, if territorial courts could not exercise Article III power, how might their decisions be subjected to appellate review in the Supreme Court, or indeed in other Article III courts, which could exercise only Article III judicial power?[55] Moreover, if in fact some "judicial power" may be devolved upon courts not having the constitutional security of tenure and salary, what prevents Congress from undermining those values intended to be

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[52] 26 U.S. at 546.

[53] 26 U.S. at 546. In Glidden Co. v. Zdanok, 370 U.S. 530, 544–45 (1962), Justice Harlan asserted that Chief Justice Marshall in *Canter* "did not mean to imply that the case heard by the Key West court was not one of admiralty jurisdiction otherwise properly justiciable in a Federal District Court sitting in one of the States. . . . All the Chief Justice meant . . . is that in the territories cases and controversies falling within the enumeration of Article III may be heard and decided in courts constituted without regard to the limitations of that article. . . ."

[54] Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 106 (1982) (Justice White dissenting).

[55] That the Supreme Court could review the judgments of territorial courts was established in Durousseau v. United States, 10 U.S. (6 Cr.) 307 (1810). *See also* Benner v. Porter, 50 U.S. (9 How.) 235, 243 (1850); Clinton v. Englebrecht, 80 U.S. (13 Wall.) 434 (1872); Balzac v. Porto Rico, 258 U.S. 298 (1922).