Resources for Public Speaking

U.S. Bankruptcy Judges

U.S. Bankruptcy Court seal

Federal Judicial Center
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This resource provides suggested talking points, in outline form, for those wishing to speak about the history of the U.S. bankruptcy judge position. The Nelson Act of 1898 established the position of referee in bankruptcy, from which the modern U.S. bankruptcy judge position evolved. The Bankruptcy Reform Act of 1978 created the office of U.S. bankruptcy judge but was modified in 1984 after a Supreme Court ruling that Congress had extended the office's jurisdiction beyond constitutional limits. Bankruptcy judges play a significant role in the federal judiciary, as bankruptcy cases constitute a large majority of all cases filed in federal court.

In addition to the outline, the resource contains Topic at a Glance, a brief summary in PDF format; a gallery of downloadable images for use in a PowerPoint presentation; links to related resources on the FJC's History of the Federal Judiciary website; a further reading list; and excerpts of historical documents that could be handed out to audience members or incorporated into a presentation. The entire resource is available in PDF format as well.

Topic at a Glance

Introduction. Article I, section 8, of the Constitution gave Congress the authority to make uniform national bankruptcy laws. Bankruptcy was politically divisive in the early republic. Those favoring an economy based on commerce and trade, mainly in the Northeast, advocated bankruptcy laws, believing the credit necessary to such economic activity would not flow freely without a legal system to protect creditors. Agrarian interests in the South and West, more likely to borrow money than to lend it, largely opposed bankruptcy laws, believing they would be overly favorable to creditors. Congress passed bankruptcy laws in 1800, 1841, and 1867, but all were short-lived because of political opposition, leaving bankruptcy law to the states for much of the nineteenth century. In 1898, Congress passed the Nelson Act, the nation's first bankruptcy law with staying power. This summary of the U.S. bankruptcy judge position covers the referee system established under that law and the issues that eventually led to its overhaul, the establishment of the modern bankruptcy judge position in 1978, the Supreme Court's 1982 holding that the 1978 Act was unconstitutional, and the modifications to the bankruptcy system Congress made in 1984.

Referees in Bankruptcy. The Nelson Act of 1898 established the position of referee in bankruptcy, the predecessor of the modern-day U.S. bankruptcy judge. Referees were appointed by the U.S. district courts, which could accept or reject their findings and could remove them at any time. While referees had jurisdiction over bankruptcy proceedings, they did not have the authority to hear any other matters related to the bankruptcy.

The Biggest Flaw of the Referee System. Because referees had jurisdiction over only the bankruptcy itself ("summary" jurisdiction), any related matters ("plenary" jurisdiction) had to be heard in a U.S. district court or a state court. The boundary between the two types of jurisdiction was murky, leading to frequent litigation over where cases should be heard, causing inefficiency, expense, and delay.

The Bankruptcy Reform Act of 1978. The inefficiency of the bankruptcy system became a bigger problem in the 1960s, as consumer credit became more widely available and bankruptcy filings rose. After a lengthy period of study during the 1970s, Congress enacted the Bankruptcy Reform Act of 1978 to overhaul the system completely. The Act formally established the position of U.S. bankruptcy judge. Bankruptcy judges were to be "adjuncts" to the district courts and be presidentially appointed to fourteen-year terms. The Act expanded the bankruptcy judges' jurisdiction substantially, vesting them with jurisdiction over all matters arising in or related to a bankruptcy case.

1978 Act Rule Unconstitutional. The Act's expansive grant of jurisdiction to bankruptcy judges led the Supreme Court to strike it down as unconstitutional a few years later. In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982), the Court ruled that the Act had improperly granted "essential attributes" of the Article III judicial power to judges not possessing constitutional tenure and salary protections. The Court stayed its ruling until the end of 1982 to give Congress time to fix the constitutional defects in the bankruptcy system, after which the courts operated under emergency rules proposed by the Judicial Conference of the United States.

The Bankruptcy Amendments and Federal Judgeship Act of 1984. Congress enacted a new bankruptcy statute in 1984 to repair the defects the Supreme Court had identified in the prior law. The Act vested the bankruptcy judges, now appointed by the U.S. courts of appeals, with jurisdiction over bankruptcy cases and "core matters" (defined in detail) arising from those cases. In matters considered "non-core," bankruptcy judges were limited to submitting findings of fact and proposed conclusions of law to the district court.

Outline

I. Bankruptcy: Historical Background
   A. Article I, section 8 of the Constitution gave Congress the authority to make uniform bankruptcy laws.
   B. Bankruptcy legislation was politically divisive.
      1. Those favoring an economy based on interstate commerce and trade (such as Alexander Hamilton) believed there could be no national economy without a federal bankruptcy law because the credit necessary to such economic activity would not flow freely without a legal system to protect creditors.
      2. Those envisioning an agricultural society (such as Thomas Jefferson) opposed bankruptcy laws.
      3. These conflicting positions broke down largely along sectional lines. Agrarian interests in the South and West, more likely to borrow money than to lend it, feared that bankruptcy laws would be too favorable to creditors in the Northeast.
      4. Supporters of bankruptcy laws were also divided between those that supported voluntary bankruptcy (initiated by a debtor) only, and those who believed that involuntary bankruptcy (initiated by creditors) should be allowed as well.
   C. Congress passed bankruptcy laws in 1800, 1841, and 1867 in response to financial panics, but there was never sufficient political support to keep a permanent law on the books once the crisis had ended, and these laws were repealed after three, two, and eleven years, respectively.
   D. When the nation lacked a federal bankruptcy law, insolvency laws were left to the states.

II. Referees in Bankruptcy
   A. The Nelson Act of 1898 was the first national bankruptcy law with staying power, remaining in effect (with minor modifications) for eighty years. There were many factors contributing to its success, including:
      1. An economic downturn increased overall support for some kind of bankruptcy law.
      2. The pro-bankruptcy Republican Party had taken control of the presidency and both houses of Congress by 1897 and maintained that control into the early 1910s and again throughout the 1920s.
      3. The act overcame many of the previous objections to bankruptcy legislation by responding to the concerns of farmers and small merchants with debtor-friendly provisions. For example, the laws of the states regarding property exempt from bankruptcy were allowed to remain in force, and debtors subject to involuntary bankruptcy were provided important safeguards, such as the right to a trial by jury.
   B. The Act established the position of referee in bankruptcy, which was the predecessor to the modern U.S. bankruptcy judge.
   C. Referees were appointed by the U.S. district courts and were subject to a significant degree of control by the district judges, who could remove them at any time.
   D. Referees had jurisdiction over the bankruptcy itself but not over related matters, and the district judges could modify or reject their findings.

E. Beginning in 1973, the Supreme Court's bankruptcy procedure rules referred to the referees as "bankruptcy judges." The two terms were used interchangeably until the formal establishment of the bankruptcy judge position in 1978.

III. The Biggest Flaw of the Referee System

A. Because referees had jurisdiction over only the bankruptcy itself (i.e., "summary" matters), any related matters (i.e., "plenary" matters, such as a civil lawsuit brought by or against the bankrupt entity) had to be heard in a U.S. district court or a state court.

B. The boundary between summary and plenary jurisdiction was not always clear, often leading to litigation to determine where a matter should be resolved.

C. The frequent necessity for litigation in multiple forums to resolve a bankruptcy case caused inefficiency, uncertainty, and delay.

IV. The Bankruptcy Reform Act of 1978

A. In the 1960s, with consumer credit widely available and bankruptcy filings rising quickly, the flaws of the referee system, especially its limited jurisdiction, became a bigger problem.

B. In 1970, Congress created a commission to examine the bankruptcy system and recommend improvements. The commission issued its report in 1973 recommending a major expansion of bankruptcy jurisdiction.

C. The National Conference of Bankruptcy Judges, whose members had been excluded from the commission, made its own recommendations. The judges agreed that jurisdiction should be expanded but disagreed on other matters, such as bankruptcy administration and how bankruptcy judges should be appointed.

D. The congressional commission favored appointment by the president with Senate confirmation to attract more qualified candidates to the bench. The bankruptcy judges feared this would inject politics into the appointment process, placing existing judges who had been forced to avoid politics at a disadvantage; they favored appointment by the circuit councils.

E. The parties settled on a compromise bill in 1977. The bill made concessions to the judges on administrative matters but provided that bankruptcy judges would be appointed by the president and confirmed by the Senate with tenure during good behavior pursuant to Article III.

F. The House passed the bill, but the Senate passed a bill without a provision for Article III status. The bill that emerged from the conference between the two houses did not provide bankruptcy judges with Article III status.

G. Chief Justice Warren Burger's influence played a role in the outcome of the bill. He opposed Article III bankruptcy judges, believing that the prestige of existing Article III judgeships would be diminished.

H. The Bankruptcy Reform Act of 1978 provided that the bankruptcy judges would constitute the U.S. bankruptcy court for their district and would serve as "adjuncts" to the U.S. district courts. The bankruptcy judges would be appointed by the president and confirmed by the Senate to fourteen-year terms.

I. The Act dramatically expanded the power of bankruptcy judges, giving them the power to hear not only bankruptcy cases but a wide range of other civil cases related to the bankruptcy laws or a bankruptcy case.

V. 1978 Act Ruled Unconstitutional

A. *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982) was a breach of contract and misrepresentation case. Because Northern Pipeline was in bankruptcy, the case was a civil proceeding related to a bankruptcy case, giving the bankruptcy court jurisdiction.

B. Marathon moved to dismiss the case on the grounds that the 1978 Act had unconstitutionally delegated the Article III judicial power to non-Article III bankruptcy judges.

C. The case reached the Supreme Court, which agreed with Marathon's position, declaring the Act unconstitutional.

D. The Act had given the bankruptcy judges all of the ordinary powers of U.S. district courts without providing them with the tenure and salary protections of Article III, which were meant to ensure judicial independence.

E. By exercising "the essential attributes" of judicial power, the bankruptcy judges were exercising powers far beyond those of other adjuncts (such as U.S. magistrate judges) the Supreme Court had approved in earlier cases.

F. The Court stayed its ruling to give Congress time to fix the constitutional defects in the bankruptcy system. The stay expired at the end of 1982 before Congress could act, however, and the bankruptcy courts then operated under emergency rules proposed by the Judicial Conference of the United States until new legislation was enacted in 1984.

VI. The Bankruptcy Amendments and Federal Judgeship Act of 1984

A. After *Northern Pipeline*, some policymakers again advocated that bankruptcy judges be granted Article III status, but the statute that emerged took a different approach.

B. The 1984 Act declared each bankruptcy judge "a judicial officer of the district court" and provided that the bankruptcy judges would constitute "a unit of the district court to be known as the bankruptcy court for that district."

C. The Act gave bankruptcy judges jurisdiction over bankruptcy matters as well as "core proceedings" (defined in detail by the statute) arising from those matters.

D. To address the problems identified in the *Northern Pipeline* case, bankruptcy judges were limited to submitting findings of fact and proposed conclusions of law to the district court in "non-core" proceedings.

E. The Act also provided that the U.S. courts of appeals, and not the president, would appoint the bankruptcy judges.

F. The 1984 Act provided for 232 bankruptcy judgeships. As of 2025, Congress had increased that number to 345, including 316 permanent and 29 temporary judgeships.

G. The bankruptcy courts created under the 1984 Act play a significant role within the federal judiciary, as bankruptcy cases constitute the vast majority of cases filed in federal courts. In the ten-year period from 2008 through 2017, for example, bankruptcy cases made up 76.3% of all cases filed, compared to 15.9% for private civil cases, 4.6% for criminal cases, and 3.1% for civil cases where the United States was a party.

Related FJC Resources

Cases that Shaped the Federal Courts: *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982)

Court Officers and Staff: Bankruptcy Referees

Jurisdiction: Bankruptcy

Kobrick, Jake and Daniel S. Holt. *Debates on the Federal Judiciary, Vol. III (1939–2005)*. Washington, D.C.: Federal Judicial Center, 2018: 30–55.

Landmark Legislation: U.S. Bankruptcy Courts

Rules of Practice and Procedure in the Federal Courts: Federal Rules of Bankruptcy Procedure

U.S. Bankruptcy Judgeships

Further Reading

Balleisen, Edward J. *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America*. Chapel Hill: University of North Carolina Press, 2001.

Brubaker, Ralph. "On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory." *William and Mary Law Review* 41, no. 3 (2000): 743–941.

Countryman, Vern. "Scrambling to Define Bankruptcy Jurisdiction." *Harvard Journal on Legislation* 22, no. 1 (1985): 1–45.

Mann, Bruce H. *Republic of Debtors: Bankruptcy in the Age of American Independence*. Cambridge: Harvard University Press, 2002.

Mussman, William E. and Stefan A. Riesenfeld. "Jurisdiction in Bankruptcy." *Law and Contemporary Problems* 13 (1948): 88–113.

Skeel, David A., Jr. *Debt's Dominion: A History of Bankruptcy Law in America*. Princeton: Princeton University Press, 2001.

_____. "The Genius of the 1898 Bankruptcy Act." *Bankruptcy Developments Journal* 15, no. 2 (1999): 321–342.

Warren, Charles. *Bankruptcy in United States History*. Cambridge: Harvard University Press, 1935.

Historical Documents

Judge John T. Copenhaver, Support for Expanded Bankruptcy Jurisdiction, Testimony Before House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, July 10, 1975

John Copenhaver, who served as a bankruptcy judge in the Southern District of West Virginia from 1973 to 1976, and thereafter as a judge of the U.S. district court, spoke to Congress in support of expanded bankruptcy jurisdiction. According to the judge, the resolution of bankruptcy cases was being hindered by the narrow jurisdictional limits imposed on the bankruptcy judge, who was permitted to hear only disputes involving property in the debtor's possession unless the creditor consented to jurisdiction over other matters. Bankruptcy judges were frequently required to hold a trial on the issue of jurisdiction prior to hearing a case on its merits, or to refer the matter in question to a state court (or a U.S. district court) that would not have as much incentive to resolve the issue quickly, so that the entire bankruptcy case could be settled. Under the proposed law, bankruptcy judges would have clear jurisdiction over all matters arising from or related to the bankruptcy case—called "pervasive jurisdiction"—thereby eliminating lengthy and costly disputes over where such matters should be heard.

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[T]he bankruptcy court's jurisdiction presently is based on either possession or consent. If the bankrupt has possession of an asset at the outset of the proceeding, when it is filed, then the court has jurisdiction to determine all disputes which arise or may arise with respect to that particular asset.

In addition, even though the bankruptcy court does not have possession of the asset, if the creditor either expressly consents or by taking some action in the case is deemed to have consented to the court's jurisdiction, the court hears the matter.

Under the proposed act, no longer would the court's jurisdiction be dependent upon questions of possession or consent, but rather the court would have the jurisdiction to determine the matters independently....

Now, under the new act the bankruptcy court, as it would be constituted, would then ... possess pervasive jurisdiction with respect to all of these matters. It would, in effect, possess jurisdiction to decide any controversy that would be necessary to the settlement of the estate. By according the bankruptcy court that jurisdiction it will simply mean that the bankruptcy court has been relieved on the one hand in a number of cases, particularly fraud cases, of having to try a case twice, once to determine whether it has jurisdiction, and the other to determine the case on the merits....

Under the proposed act, the bankruptcy court would be accorded jurisdiction, of course, from the outset, and know that it held that jurisdiction from the outset. But what happens now too frequently is that the court, as it may when it is confronted with a question of that nature simply remits the matter to another State or Federal court which unquestionably would have jurisdiction over the matter. What happens in turn is that many cases which ought to be heard, and would be heard in the bankruptcy court, hearing them expeditiously so that the entire estate might be closed promptly, are allowed to linger on the State court calendar for years and years without action. Frequently the State courts are not as interested in disposing of these matters as is the bankruptcy court.

The State court is not charged with the duty of seeing to the prompt administration of the estate, whereas the bankruptcy court is, so that very often those cases are allowed to languish without action for a considerable period of time. The result is that many disputes, whether to recover accounts receivable or otherwise, and which ought to be heard with promptness within the framework of a single court sitting in bankruptcy, are either settled by the trustee for a pittance, or they are abandoned entirely rather than risk the costly delay to which that litigation is usually subjected in a nonbankruptcy forum, which so often is lacking in enthusiasm for bankruptcy cases in particular, and the complexity and apparent novelty of bankruptcy disputes in general.

[Document Source: U.S. House of Representatives, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, Hearings on H.R. 31 and H.R. 32, Bankruptcy Act Revision, 94th Cong., 1st sess., Part 1, 1975, 140, 144–145.]

Ad Hoc Committee on Bankruptcy Legislation of the Judicial Conference of the United States, Opposition to Expanded Bankruptcy Jurisdiction, Testimony Before the Senate Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, November 28, 1977

The Judicial Conference of the United States, the governing board of the federal judiciary in administrative matters, was one of the few interested parties to oppose the idea of having the bankruptcy judges constitute a separate court with expanded jurisdiction. The Conference's ad hoc committee pointed out that giving bankruptcy judges the power to hear any matter arising from or related to a bankruptcy case meant that bankruptcy judges would have jurisdiction over any type of civil case, in effect creating two completely separate systems of district courts and resulting in inefficiency, confusion, and waste.

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The Commission on Bankruptcy Laws has pointed out that most of the work of the Offices of referees in bankruptcy is administrative in character. The Commission endeavored to classify those functions which are administrative and those that are judicial in character, but there appears to be no unanimity of opinion on what is administrative and what is judicial. Nevertheless the Commission advocated a separation of the administrative and judicial functions of referees. In order to effect separation the Bankruptcy Commission proposed the creation of a separate "bankruptcy administration" and the establishment of a "separate court" with expanded jurisdiction over "plenary suits". The expanded jurisdiction would include jurisdiction of all cases and controversies "arising under or related to" the pending bankruptcy case. The Commission felt that this arrangement would expedite the administration of estates and minimize controversies over questions of summary and plenary jurisdiction. The new court was visualized as a specialized court for bankruptcy.

The Judicial Conference and the Ad Hoc Committee respectfully disagree with this concept. First of all, a separate court would not really be specialized. Its jurisdiction would extend to every type of civil action in which a bankrupt estate might conceivably be involved. Through a grant of "plenary" jurisdiction the new court could hear and determine tort cases, contract cases, admiralty cases, antitrust cases, patent suits, and every type of case over which federal courts now have jurisdiction, except criminal cases. Furthermore the new court would interpret and apply state law, although state courts alone can finally determine state law. In effect there would be two United States district courts in each district, one for solvent litigants and one for cases involving insolvent litigants. There would be concurrent and

overlapping jurisdiction. There would be two separate clerks' offices in each district, each maintaining separate records, and members of the public would be inconvenienced by having to search records in two courts rather than one. There would be a duplication in the administration of the jury system in each court. All of this is contrary to the principle of a "unified" trial court system strongly advocated by the American Bar Association and embodied in the Standards Relating to Court Organization which were developed by the American Bar Commission on Standards of Judicial Administration.

[Document Source: U.S. Senate, Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, Hearings on S. 2266 and H.R. 8200, Bankruptcy Reform Act of 1978, 95th Cong., 1st sess., 1977, 369.]

Bankruptcy Reform Act of 1978

The Bankruptcy Reform Act of 1978 established United States bankruptcy courts in each federal judicial district and made the new panels courts of record. The act gave the bankruptcy judges dramatically expanded powers compared with those held by their predecessors, the referees in bankruptcy. The new judges were granted exclusive jurisdiction over all cases arising under the bankruptcy laws as well as original, but not exclusive, jurisdiction over "all civil proceedings arising under" the bankruptcy laws or "arising in or related to" a bankruptcy case. It was this substantial grant of jurisdiction—to bankruptcy judges lacking the Article III attributes of "tenure during good behavior" and a salary that could not be diminished, both of which were meant to foster judicial independence—that led the Supreme Court to declare the act unconstitutional in 1982. In 1984, Congress responded to the ruling with an act (98 Stat. 333) that gave bankruptcy judges jurisdiction over bankruptcy matters as well as certain "core proceedings" arising from those matters.

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92 Stat. 2549, 2657
November 6, 1978

TITLE II-AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE AND TO THE FEDERAL RULES OF EVIDENCE

SEC. 201. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 5 the following:

"CHAPTER 6-BANKRUPTCY COURTS

SEC.

151. Creation and composition of bankruptcy courts.

152. Appointment of bankruptcy judges.

153. Tenure and residence of bankruptcy judges.

…

151. Creation and composition of bankruptcy courts

(a) There shall be in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district.

(b) Each bankruptcy court shall consist of the bankruptcy judge or judges for the district in regular active service. Justices or judges designated and assigned shall be competent to sit as judges of the bankruptcy court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a bankruptcy court with respect to any action, suit or proceeding may be exercised by a single bankruptcy judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other bankruptcy judges.

152. Appointment of bankruptcy judges

The President shall appoint, by and with the advice and consent of the Senate, bankruptcy judges for the several judicial districts. In each instance, the President shall give due consideration to the recommended nominee or nominees of the Judicial Council of the Circuit within which an appointment is to be made.

153. Tenure and residence of bankruptcy judges

(a) Each bankruptcy judge shall hold office for a term of 14 years, but may continue to perform the duties of his office until his successor takes office, unless such office has been eliminated.

(b) Removal of a bankruptcy judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability. Removal shall be by the judicial council of the circuit or circuits in which the bankruptcy judge serves, but removal may not occur unless a majority of all the judges of such circuit council or councils concur in the order of removal. Before any order of removal may be entered, a full specification of the charges shall be furnished to the bankruptcy judge, and he shall be accorded an opportunity to be heard on the charges. Any cause for removal of any bankruptcy judge coming to the knowledge of the Director of the Administrative Office of the United States Courts shall be reported by him to the chief judge of the circuit or circuits in which he serves, and a copy of the report shall at the same time be transmitted to the circuit council or councils and to the bankruptcy judge."

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SEC. 241. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 89 the following:

"CHAPTER 90-DISTRICT COURTS AND BANKRUPTCY COURTS

SEC.

1471. Jurisdiction.

…

1471. Jurisdiction

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case."

Justice William J. Brennan, Plurality Opinion in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, June 28, 1982

Justice William Brennan wrote a plurality opinion in Northern Pipeline*, which was joined by three other justices, while two others concurred separately. Brennan's opinion holding the Bankruptcy Reform Act of 1978 unconstitutional because it delegated excessive power to non-Article III judges required Congress to hastily reformat the bankruptcy system, a task that was not completed until 1984.*

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[T]his Court has identified three situations in which Art. III does not bar the creation of legislative courts. In each of these situations, the Court has recognized certain exceptional powers bestowed upon Congress by the Constitution or by historical consensus. Only in the face of such an exceptional grant of power has the Court declined to hold the authority of Congress subject to the general prescriptions of Art. III.

We discern no such exceptional grant of power applicable in the cases before us. The courts created by the Bankruptcy Act of 1978 do not lie exclusively outside the States of the Federal Union, like those in the District of Columbia and the Territories. Nor do the bankruptcy courts bear any resemblance to courts-martial, which are founded upon the Constitution's grant of plenary authority over the Nation's military forces to the Legislative and Executive Branches. Finally, the substantive legal rights at issue in the present action cannot be deemed "public rights." . . . Appellant Northern's right to recover contract

damages to augment its estate is "one of private right, that is, of the liability of one individual to another under the law as defined." . . .

Recognizing that the present cases may not fall within the scope of any of our prior cases permitting the establishment of legislative courts, appellants argue that we should recognize an additional situation beyond the command of Art. III, sufficiently broad to sustain the Act. Appellants contend that Congress' constitutional authority to establish "uniform Laws on the subject of Bankruptcies throughout the United States," Art. I, § 8, cl. 4, carries with it an inherent power to establish legislative courts capable of adjudicating "bankruptcy-related controversies." . . .

Appellants' contention, in essence, is that pursuant to any of its Art. I powers, Congress may create courts free of Art. III's requirements whenever it finds that course expedient. This contention has been rejected in previous cases. . . .

The flaw in appellants' analysis is that it provides no limiting principle. It thus threatens to supplant completely our system of adjudication in independent Art. III tribunals and replace it with a system of "specialized" legislative courts. . . .

Appellants advance a second argument for upholding the constitutionality of the Act: that "viewed within the entire judicial framework set up by Congress," the bankruptcy court is merely an "adjunct" to the district court, and that the delegation of certain adjudicative functions to the bankruptcy court is accordingly consistent with the principle that the judicial power of the United States must be vested in Art. III courts. . . .

First, it is clear that when Congress creates a substantive federal right, it possesses substantial discretion to prescribe the manner in which that right may be adjudicated—including the assignment to an adjunct of some functions historically performed by judges. . . . Second, the functions of the adjunct must be limited in such a way that "the essential attributes" of judicial power are retained in the Art. III court. . . .

Many of the rights subject to adjudication by the Act's bankruptcy courts . . . are not of Congress' creation. . . . Accordingly, Congress' authority to control the manner in which that right is adjudicated, through assignment of historically judicial functions to a non-Art. III "adjunct," plainly must be deemed at a minimum. Yet is equally plain that Congress has vested the "adjunct" bankruptcy judges with powers over Northern's state-created right that far exceed the powers that it has vested in administrative agencies that adjudicate only rights of Congress' own creation. . . .

[T]he Act vests "all essential attributes" of the judicial power of the United States in the "adjunct" bankruptcy court. . . . [T]he subject-matter jurisdiction of the bankruptcy courts encompasses not only traditional matters of bankruptcy, but also "all civil proceedings arising under title 11 or arising in or *related to* cases under title 11." . . . [T]he bankruptcy courts exercise "*all* of the jurisdiction" conferred by the Act on the district courts . . . exercise all ordinary powers of district courts . . . [and] issue final judgments, which are binding and enforceable even in the absence of an appeal. In short, the "adjunct" bankruptcy courts created by the Act exercise jurisdiction behind the façade of a grant to the district courts. . . .

We conclude that [the Act] has impermissibly removed most, if not all, of "the essential attributes of the judicial power" from the Art. III district court, and has vested those attributes in a non-Art. III adjunct.

Such a grant of jurisdiction cannot be sustained as an exercise of Congress' power to create adjuncts to Art. III courts.

[Document Source: *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 70–73, 76–77, 80–81, 84–87 (1982).]