

## When Judges Order a Raise

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The first — and, the New York Times reports, “probably only” — public hearing on the pay of the judges of New York State will be held Wednesday at Albany. The hearing will be held by a new commission that the legislature set up to decide on whether and by how much the salary of New York’s judges should be increased. By our lights the commission itself is an unconstitutional delegation of a legislative function. There’s no one left to make that ruling, however, because the commission was set up as the result of a lawsuit in which the judges sued in their own courts and ordered the state to give them a raise.

The legislature set up the commission because it didn’t have the gumption to give the judges a raise, which they haven’t had in 12 years. So it set up this commission that will determine how much judges should be paid. The chief judge himself gets to name two members of the commission that will decide his compensation and that of other judges. It is reckoned this is not a scandal because, in theory, the legislature can over-rule them. Fat chance of that. The fact is that whatever this commission decides in respect of judges’ pay, the money is going to be found by, in effect, sneaking into the bedroom of the New York State taxpayer and removing the money from his or her wallet while he or she is asleep. Try taking the matter to court.

Having said all that, we don’t mind adding that in our opinion the commission is likely to give the judges a raise that is too small. This is because the predicament the judges have been in is not just that they haven’t received a raise in 12 years. It is that their salary has been *diminished*, which is a prima facie violation of the Constitution of New York State. It says that the compensation of a judge can never be diminished during his or her term of office. That’s not unusual; the United States Constitution says the same thing in respect of federal judges. This goes back to the grievance the American revolutionaries listed, in the Declaration of Independence, against the British tyrant, George III, who had made judges dependent on his will alone for their remuneration.

So what happens if — to use a hypothetical example — New York is paying a judge in the year 2001 with a dollar that is worth a 265<sup>th</sup> of an ounce of gold and a decade later is paying the judge with a dollar that is worth barely more than a 1,600<sup>th</sup> of an ounce of gold? Has the judge’s pay been diminished? We’ve asked that question a number of times before in these columns. The answer, by our lights, is clearly yes, for gold and silver are the most reliable measures of value. They are, along with copper for limited purposes, the only forms of specie nominated by the Founding Fathers for use as money in the new republic. They are the constitutional money the Founders were referring when they twice in the Constitution used the word “dollars.”

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The startling fact is that using constitutional money New Yorkers would require increasing judges' pay significantly — by something on the order of *six times* — just to make up for the collapse in the value of the dollar since President George W. Bush acceded took office in January, 2001. The judges aren't going to get that kind of raise, however much it is deserved. They have only themselves to blame. When they advanced their case they shrank from confronting the problem of legal tender, preferring instead more situational claims related to separation of powers between the legislature and the judiciary. So the betting is that the commission on judicial pay will give the judges a raise that, in terms of fiat money, fails even to double their pay. Those who have been on the bench these recent years will continue to have to suffer an unconstitutional diminishment in pay until Congress or the Supreme Court addresses the legal tender laws that require us all to accept government scrip at face value and in lieu of the money the Founders had in mind when they wrote the Constitution.

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This editorial has been corrected to remove an inaccurate reference to judges themselves being part of the composition of the commission.