

**Sec. 1—Judicial Power, Courts, Judges**

Not until 1913 did Congress again exercise its power to abolish a federal court, this time the unfortunate Commerce Court, which had disappointed the expectations of most of its friends.<sup>28</sup> But this time Congress provided for the redistribution of the Commerce Court judges among the circuit courts as well as a transfer of its jurisdiction to the district courts.

**Compensation**

***Diminution of Salaries.***—“The Compensation Clause has its roots in the longstanding Anglo-American tradition of an independent Judiciary. A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government.”<sup>29</sup> Thus, once a salary figure has gone into effect, Congress may not reduce it nor rescind any part of an increase, although prior to the time of its effectiveness Congress may repeal a promised increase. This latter holding was rendered in the context of a statutory salary plan for all federal officers and employees under which increases went automatically into effect on a specified date. Four years running, Congress interdicted the pay increases, but in two instances the increases had become effective, raising the barrier of this clause.<sup>30</sup>

Also implicating this clause was a Depression-era appropriations act reducing “the salaries and retired pay of all judges (except judges whose compensation may not, under the Constitution, be diminished during their continuance in office),” by a fixed amount. Although this provision presented no constitutional questions, it required an interpretation as to which judges were excepted. Judges in the District of Columbia were held protected by Article III,<sup>31</sup> but the salaries of the judges of the Court of Claims, a legislative court, were held subject to the reduction.<sup>32</sup>

<sup>28</sup> The Court was created by the Act of June 18, 1910, 36 Stat. 539, and repealed by the Act of October 22, 1913, 38 Stat. 208, 219. See Frankfurter & Landis, *supra* at 153–174; W. Carpenter, *supra* at 78–94.

<sup>29</sup> *United States v. Will*, 449 U.S. 200, 217–18 (1980). Hamilton, writing in *THE FEDERALIST*, No. 79 (J. Cooke ed., 1961), 531, emphasized that “[i]n the general course of human nature, a power over a man’s subsistence amounts to a power over his will.”

<sup>30</sup> *United States v. Will*, 449 U.S. 200, 224–30 (1980). In one year, the increase took effect on October 1, although the President signed the bill reducing the amount during the day of October 1. The Court held that the increase had gone into effect by the time the reduction was signed. *Will* is also authority for the proposition that a general, nondiscriminatory reduction, affecting judges but not aimed solely at them, is covered by the clause. *Id.* at 226.

<sup>31</sup> *O’Donoghue v. United States*, 289 U.S. 516 (1933).

<sup>32</sup> *Williams v. United States*, 289 U.S. 553 (1933). But see *Glidden Co. v. Zdanok*, 370 U.S. 530 (1962).