

Sec. 1—Judicial Power, Courts, Judges

In *Evans v. Gore*,³³ the Court invalidated the application of a 1919 income tax law to a sitting federal judge, over the strong dissent of Justice Holmes, joined by Justice Brandeis. This ruling was extended in *Miles v. Graham*³⁴ to exempt the salary of a judge of the Court of Claims appointed subsequent to the enactment of the taxing act. *Evans v. Gore* was disapproved and *Miles v. Graham* was in effect overruled in *O'Malley v. Woodrough*,³⁵ where the Court upheld section 22 of the Revenue Act of 1932, which extended the application of the income tax to salaries of judges taking office after June 6, 1932. Such a tax was regarded neither as an unconstitutional diminution of the compensation of judges nor as an encroachment on the independence of the judiciary.³⁶ To subject judges who take office after a stipulated date to a nondiscriminatory tax laid generally on an income, said the Court, “is merely to recognize that judges are also citizens, and that their particular function in government does not generate an immunity from sharing with their fellow citizens the material burden of the government whose Constitution and laws they are charged with administering.”³⁷

Formally overruling *Evans v. Gore*, the Court in *United States v. Hatter* reaffirmed the principle that judges should “share the tax burdens borne by all citizens.”³⁸ “[T]he potential threats to judicial independence that underlie [the Compensation Clause] cannot justify a special judicial exemption from a commonly shared tax.”³⁹ The Medicare tax, extended to all federal employees in 1982, is such a non-discriminatory tax that may be applied to federal judges, the Court held. The 1983 extension of a Social Security tax to then-sitting judges was “a different matter,” however, because the judges were required to participate while almost all other federal employees were given a choice about participation.⁴⁰ Congress had not cured the constitutional violation by a subsequent enactment that raised judges’ salaries by an amount greater than the amount of Social Security taxes that they were required to pay.⁴¹

Courts of Specialized Jurisdiction

By virtue of its power “to ordain and establish” courts, Congress has occasionally created courts under Article III to exercise a

³³ 253 U.S. 245 (1920).

³⁴ 268 U.S. 501 (1925).

³⁵ 307 U.S. 277 (1939).

³⁶ 307 U.S. at 278–82.

³⁷ 307 U.S. at 282.

³⁸ 532 U.S. 557, 571 (2001).

³⁹ 532 U.S. at 571.

⁴⁰ 532 U.S. at 572.

⁴¹ 532 U.S. at 578–81.