

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 8: The New Deal and Great Society Era—Separation of Powers

Tennessee State Convention, Debate on Legislative Pay (1953)¹

In 1870, Tennessee held a convention to draft a new constitution that included a ban on slavery to be readmitted into the Union after the Civil War. The amendment procedure included in that constitution was quite onerous, and the 1870 constitution endured unchanged until 1953. In that year, a limited convention met to propose constitutional amendments to be put before the voters, and several amendments to the 1870 constitution were successfully proposed and ratified.

Among the amendments adopted in 1953 was reform of the system for determining the compensation of the state legislators. The 1870 constitution specified legislators would be paid \$4 per day that the legislature was in session and \$4 per twenty-five miles in travel allowance to reach the seat of government. This provision gave rise to a number of legislative schemes to improve their compensation, including statutes granting generous “expense” allowances to legislators and awarding one-time “bonuses.” The 1953 amendment immediately raised the pay of the state legislators to \$10 per day and fixed expense allowances for legislators at \$5 per day plus the same travel allowance as was set in the 1870 constitution. More importantly, the legislature was empowered to set the pay of legislators, but any changes must be agreed to by two succeeding legislatures to take effect in the third legislature (which would allow an election between the first and second votes on legislative pay and prevent any legislature from voting on its own pay). This pay structure was further reformed by subsequent constitutional amendments.

Is it appropriate for constitutional drafters to worry about self-interested behavior on the part of legislators? Are elections a sufficient check against legislative self-interest? Is it more appropriate for legislators to set their own pay than for governors or judges to set their own pay? What are the advantages and disadvantages of constitutional conventions setting legislative salaries directly in the constitutional text? Do legislative schemes to work around the 1870 pay provision provide evidence that legislators cannot be trusted or evidence that fixing salaries in the constitutional text is a mistake? Is it more of a mistake to set salaries in the constitutional text than to impose other specific limits on legislative power in the text? The convention delegates disagreed over what the future purchasing power of a dollar would be; can constitution writers avoid making factual assumptions about the future state of the world? How should the fallibility of predictions about the future affect constitution writing?

WILLIAM MOSS of Madison County

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... I think it is unnecessary but certainly not improper to remind you that we are dealing with a Constitution and not with legislation. These conventions don't meet every two years, as the General Assembly does; we meet so far every 83 years. The Constitution fixes the fundamental rules which guide legislation, and the rules by which the members of the General Assembly must be guided in enactment of laws.

Now, I think all of us agree that the people of Tennessee want a change, and an upward revision of the pay or compensation of the members of the General Assembly. . . . I am equally positive myself that the people want not only a change in the rate of pay or compensation, but that they want a change in the system and in the rules governing the General Assembly, so that within reasonable limits and under

¹State of Tennessee Constitutional Convention of 1953, *The Journal and Debates of the Constitutional Convention* (Knoxville, TN: 1955).

proper restrictions the compensation and expense allowance of their legislators may be adjusted by the legislature itself.

In other words, I think they want legislative pay or the compensation of the General Assembly taken out of the strait jacket or vise in which it has been gripped or held since 1870. Now, if we are going to provide some other system of fixing it, what can we do other than to put it in the hands of the members of the General Assembly themselves? . . .

. . . . I know the answer to that argument is that we can't trust the members of the legislature to fix their own pay. The amendment that I have proposed . . . provides that any General Assembly hereafter may fix the compensation and expenses of the succeeding legislature; the amount so fixed would not be effective during the term of those members who enact the legislation. That is almost the exact language of the Constitution of 1834. . . .

. . . .
Now, with the authority granted to the legislature by the Constitution of 1834, the per diem of four dollars a day was never increased from then until 1870. I think that proves historically that we can trust the members of the General Assembly in the matter of their compensating themselves or their successors in office.

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LEWIS POPE of Sumner County

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The idea of leaving the legislature the right to fix their own wages, their own salary, seems to me to be entirely wrong. Someone said that the answer to that is that the legislature this time will fix it for the next legislature; that isn't an answer. Two-thirds of the fellows that are in this legislature expect at least to come back next time, and two-thirds of them will come back if they observe the rules heretofore made, and they will fix their own salary two years ahead.

Somebody might say the people wouldn't elect them; I think that this Constitution ought to fix definitely and specifically. . . .

Somebody said they didn't change it much back under the old Constitution when they were getting laws made and they had the right to do it; well, as a matter of fact, they allowed themselves what they thought was abundant at that time. . . .

W. M. MILES of Obion County

. . . I do not believe there is a man in this house who would employ a person to work for him in any capacity whatsoever and agree for that person to fix his own compensation. We all know human nature; we know that we are inclined to favor ourselves in matters of that kind. I do not believe that you have any more right to say to the legislature, "You fix your own pay" than you would have to say to the judges of our courts for them to fix their own pay, or the Governor of this State to fix his own pay.

I just do not believe that a man who is interested is a fair judge of what he ought to receive. . . .

HARLAN DODSON of Davidson County

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. . . . I wouldn't be for [an amendment] if we were going to tie this thing down for all time, and . . . if [LEWIS POPE] can show us and convince us that the purchasing power of the dollar is going to remain the same, I would go right along with him that it is incumbent upon us to fix it for time immemorial; but it isn't going to do it, it hasn't done it in the past, and it isn't going to do it in the future; and, ladies and gentlemen, we are dealing with the organic law of this State and we are not sitting here as a legislature. Let's set up the framework by which this thing can stand for years to come; let's set up the framework so as to avoid the very situation in which we now find ourselves, and in which we have found ourselves for a number of years, and that is, that the Constitution had set a dollar figure, not a bushel of potatoes figure, not a pound of butter figure, but a dollar figure. . . .

. . . . I personally am of the opinion that Amendment No. 3 should be adopted; that is the amendment that provides for two legislatures to approve [a pay raise], and in that way certainly we have a safeguard. . . .

CHARLES STAINBACK of Fayette County

. . . . I cannot believe that you should give to the legislature the power to fix the pay of the members of the legislature any more than you should give to any other officials the power to fix their pay. The love of money is the root of all evil; you are placing temptation before young men. . . .

The Constitution should fix the pay as it does in the majority of the states of the Union; the legislature has all power in a representative government unless limited; we limit the legislature in many ways in their power. . . . It is unnecessary to go into particulars, but this proposition would turn them loose without any limitations or restraints or restrictions, on a question of self-interest. It is too much temptation to put before men, be they good or be they bad.

As I say, other states have found that the only proper way is for the Constitution to fix that pay; the fact that the dollar may vary in value, that is speculation; but the soundest economic opinion now is that the dollar is cheaper than it will ever be again, that it will become of more value instead of decreasing, and there is no use of voices crying war and all that kind of alarms that shouldn't enter into this thing. . . .

Oh, but you say the appeal is to the people in the next election; they would have a lot of fellows who would announce, "I am running for the legislature on the sole question of reducing the legislature's pay." He probably wouldn't reduce it after he got here, but he would run on that proposition, "a cheap legislature." . . .

They say from 1834 on the legislature never raised its pay, that is true. Now, gentlemen, I am too old for political ambitions, so I don't have to flatter the legislature as some gentlemen have been doing; I say frankly that the members of the legislature from 1834 to 1870, say, or even a few years thereafter, were much superior in intelligence and character, and in every way, to the legislatures we have had in the last fifty years. . . .

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In the last legislatures in the last few years, I have noticed very few who have risen to other positions. I say the legislature is not what it used to be; and anyhow the dollar from 1834 until 1870 was worth about five dollars; four dollars a day was equal to twenty dollars now; they didn't have to increase their pay, they would live on one dollar a day, and most of them were men of substance, and they didn't have to do it. But look at the legislature for the last half century. How many of them have voted or attempted to vote themselves a bonus, and when they found they couldn't do it, they employed their wives and their daughters and their daughters-in-law, and their mother-in-law at ten dollars a day to stay home and come up here every Saturday night and collect it.

Does that look like the legislature is not out for money; does that look like they don't love money; does that look like they would be patriotic and deny themselves? The history of the legislature for the past quarter century doesn't justify any such assumption.

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