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CONSTITUTIONAL LIMITATIONS ON LEGISLATIVE PROCEDURE IN WEST VIRGINIA

FRANK E. HORACK JR.  

Attacks on the constitutional validity of legislation are of two kinds: (1) Attacks alleging that the legislature had no power to enact the legislation; (2) Attacks conceding the power of regulation but alleging a failure to comply with the constitutional form and procedure of enactment. The first is the more frequent and generally the more successful method of attack; but the specific objections of defective title, multiple subject matter, and inadequate amendment are familiar tools to those who seek to have a law declared void. Beyond these specific objections, constitutional limitations upon legislative procedure have received little judicial consideration. This may in part be explained by their character. They were formulated by a convention that sought to regulate the functioning of government by elaborate structural details. Consequently many limitations have but little practical significance in the functioning of the legislative process.

To the practicing lawyer these limitations either represent lurking threats of invalidity or fortuitous tools with which to escape the operation of otherwise valid legislation. To the legislator they are but a fetish which demands obedience but which serves no useful purpose. Thus where the limitation does not aid legislative function, and it is not judicially enforceable, its enforcement by the legislature is problematical. In this situation it would be better if the rules of procedure were not sanctified with

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1 If, of course, it can be said that an act passed by an unconstitutional procedure is a law at all. For while it is accurate to say that when the substance of legislative regulation conflicts with the constitution it is merely judicially unenforceable and not void; it is equally correct to say that when the constitutional procedure has not been complied with the act is void. See Field, Effect of an Unconstitutional Statute (1926) 1 Ind. L. J. 1. Apparently the West Virginia court has made no such distinctions — treating for the most part ‘unconstitutional’ and ‘void’ as synonymous terms.

2 It is time a thorough study should be made of the Journal of the Constitutional convention together with the Debates which will soon be available for the first time. See Journal of Constitutional Convention, Charleston (1872). The history and background of the proposals for a unicameral legislature (p. 74), cumulative voting (p. 74), that laws passed by corrupt influence shall be void (p. 142) the judiciary schemes (pp. 32, 42, 43, 73 and appended plans) contain a wealth of tradition, local color, and data of historical importance.
constitutional authority but were left with others of their kind,—in the rules of procedure of the houses of the legislature.\textsuperscript{3}

But too sharp a criticism of these formal and procedural requirements would be both unfair and uncritical. Formality was the accepted creed at the time of their inclusion in the constitution.\textsuperscript{4} To insist that the delegates should have foreseen other standards demands of them an unfair standard of perception. Likewise, the temptation to copy familiar and respected provisions in other constitutions is both natural and irresistible. Thus it is not surprising that of the additional provisions appended to article six of the constitution of 1872, most of them were already included in the constitutions of other states.\textsuperscript{5} And if there is solace in imperfection, it is of comfort to recite that many states have erred far more in the minute detailing of procedure than West Virginia.\textsuperscript{6}

It is now time, however, to examine these restrictions with the view to evaluating their usefulness as protection against ill-considered or even fraudulent legislative action and as a means of gaining judicial relief against statutes improvidently but perhaps not improperly enacted. For convenience these requirements may be classified as follows: (1) Limitations on the legislative term. (2) Limitations on legislative procedure. (3) Limitations on legislative form. (4) Limitations on legislative subject matter.

The value of these limitations is difficult to determine. Litigation is no measure, for its absence may signify either strict

\textsuperscript{3}See, for example, W. VA. LEGISLATIVE HANDBOOK (1931) 143-154. A simplification and unification of these rules seem desirable. At such time the constitutional requirements should be included in the rules of the houses for convenience.

\textsuperscript{4}For example, the rules committee of the constitutional convention, promulgated such detailed regulation of procedure as,

"3. A member about to speak or deliver any matter to the Convention, shall rise from his seat, and without advancing, shall, with due respect, address ‘Mr. President’ confining himself strictly to the point in debate, avoiding all personality and indecent and disrespectful language."

"9. While the President is reporting or putting a question, none shall entertain private discourse, read, stand up, walk into or out of the house.""

At least three members of the rules committee were on The Committee on the Legislative Department. It is not surprising, therefore, to find that similar detailing of procedure found its way into article six of the new constitution. See JOURNAL OF THE CONSTITUTION 20, 25.

\textsuperscript{5}Most constitutional provisions emanate from a comparatively few models. The Oklahoma constitution fixes railway passenger fares. Okla. Const., art. 9, § 37. Railway passes may not be granted to public officers. Ala. Const., § 244; N. M. Const., art. 20, § 14. Instances of this kind are almost without end in the constitutions of western states. For example, the Oklahoma constitution and its annotations occupy one hundred and seventy-one pages in the code. Much of its material is only statutory.
obedience or lax enforcement. Likewise the refusal of the court
to enforce does not of itself deny the legislature's willingness to
obey.7 Nor does the willingness of the court to review establish the
effectiveness of their enforcement.8 The value of each limitation
and the justification of its retention in the constitution must be
demonstrable from experience and not deductible from abstract
theory.

The form of action by which constitutional limitations are en-
forced determine their judicial significance. Thus, it was not
until "due process" was pictured as an action on the case for
the trial of the constitutionality of legislative substance as well
as procedure that it became the dominant form of judicial review.9
Likewise, the procedural requirements of the constitution are use-
ful only so far as the courts find proof available to support their
allegation. Consequently where errors do not exist on the face of
the statute itself, the effectiveness of a constitutional attack is
small in face of the presumption of constitutionality. Thus in
seeking an evaluation of the usefulness of constitutional limita-
tions as a restraint on legislative action it seems more signifi-
cant to consider the requirements in the order of their judicial use-
fulness rather than in the chronology of legislative enactment.
The requirements concerning the form of the statute are of first
importance.

Limitations on Legislative Form

1. The Title

The title of a bill should afford (1) a means of easy reference,
and (2) a source of information concerning its content. Titles
seldom achieve these goals. The usual prolixity of the average
legislative draftsman coupled with the dry and formal interpre-
tation of unsympathetic courts has made the titles to most Amer-
ican legislation intolerable.10 West Virginia legislation has es-

7 Thus there is no apparent difficulty in obtaining the attendance of legis-
lators upon the convening of the legislature. Likewise, convenience and
publicity prompt the legislature to keep accurate journals although the courts
have been reticent to interfere with the legislative product because of emis-
sions in the journal.
8 See p. supra.
9 See Shipman, THE CONSTITUTIONAL DOCTRINES OF STEPHEN J. FIELD
10 For a consideration of the problem in other jurisdictions, see, Notes
(1930) 43 HARV. L. REV. 482, 1143; Fry, CONSTITUTIONAL REGULATION OF LEGIS-
lative Procedure in Colorado (1930) 3 ROCKY MT. L. REV. 38.
aped the worst, ignored the best, practice in this matter.  

The West Virginia provision, similar to the provisions in most jurisdictions, requires that every act must have a title which expresses the subject matter of the act. In Stewart v. Tennant, the court said the purpose of this requirement was

"to prevent the enactment of laws, in a clandestine and stealthy manner, by compelling a statement in the title of the act, of its aim and purpose, to the end that the public as well as members of the legislature may conveniently and certainly know the character of pending legislation. But for this provision, omnibus bills could be put through the legislature, carrying all kinds of measures, concealed in all forms, and neither legislator nor the public could, with any degree of certainty, fully know their contents. Diverse interests would be combined in order to unite members of the legislature who favor one measure incorporated in the bill to vote for it on that account, although containing numerous other measures of which they do not approve."

The evils enumerated by the court certainly require suppression; that the title requirement is effective for this purpose is uncertain. The cynicism of the Colorado court which observed that "Even a casual investigation into the methods adopted by modern legislation will show that the passage of any bill upon its intrinsic merits is of rare occurrence, . . . . " is probably not altogether unfounded.

Compliance with the title requirement, requires that the title set forth both the action and the subject matter of the statute. The title should first indicate how it purports to affect the law; that is, whether it seeks to amend or repeal existing statutes or by an original act add to the legislation already on the books. No constitutional requirement regulates the description of the action in the title but the practical utility of its use makes such requirement unnecessary.

The constitution, however, requires that the object of the legislation "be expressed in the title" and that any subject not

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21 For a discussion of West Virginia titles, and the cases interpreting them, see Note (1932) 39 W. Va. L. Q. 70.
22 W. Va. Const., art. 6, § 30. The requirement of a title exists in the constitution only by necessary implication. "No act hereafter passed, shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act which is not so expressed, the act shall be void only as to so much thereof, as shall not be so expressed, . . . ."
24 52 W. Va. 559, 569, 44 S. E. 223, 227 (1903).
25 Catron v. County Court, 18 Colo. 553, 558, 33 Pac. 513, 514 (1893).
embraced is void." Most courts have liberally construed the word "object" so that wherever a statute has a *unified purpose* even though the manner of accomplishment is diverse, its constitutionality will be sustained." Consequently there is little reason for long titles. A title is but a warning of the contents of the statute. A good warning is brief. But brevity cannot be obtained without judicial sanction, for the title provision is the most frequently reviewed limitation on legislative procedure.

The West Virginia court has wisely encouraged brevity. 26 Although the judges have definitely assumed responsibility for the enforcement of this provision and have with great consistency declared the constitutional provision is mandatory 27 they have freely indulged in the presumption of validity of legislative action to sustain nearly every title that has been submitted for review. 28 Thus only five titles have been found defective in over twenty cases presented for judicial disapproval. 29 Complex titles result more from the timidity or verbosity of legislative draftsmen than for the interference of the judiciary.

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26 See n. 12, supra.
27 See n. 23, infra.
29 Simms v. Sawyers, 85 W. Va. 245, 101 S. E. 467 (1919), overruling so much of Shields v. Bennett, supra n. 18, as held the constitutional provisions directory only. Bedford Corp. v. Price, 166 S. E. 380 (W. Va., 1932).
30 " . . . it is the duty of the courts, in considering whether the object of the act is expressed in the title, to lean in favor of validity, unless its constitutionality is established, and made manifest and clear beyond all reasonable doubt." Chesapeake & O. R. R. Co. v. Patton, infra n. 21, at 654. Likewise the court in State v. Mines, 38 W. Va. 125, 137, 18 S. E. 470, 474 (1893), said "We must in every case presume an act constitutional and in doubt hold it so." See also, State v. Haskins, 92 W. Va. 632, 115 S. E. 720 (1923); Heath v. Johnson, 36 W. Va. 782, 15 S. E. 980 (1892); Shields v. Bennett, supra n. 18.
31 Cases in which the title has been sustained: Brozka v. County Court, supra n. 13; Bent v. Weaver, 108 W. Va. 399, 150 S. E. 738 (1926); State v. Furr, 101 W. Va. 175, 132 S. E. 504 (1926); State v. Siers, 103 W. Va. 34, 136 S. E. 504 (1927); Casto v. School Board, 94 W. Va. 513, 110 S. E. 470 (1923); State v. Thompson, 80 W. Va. 698, 93 S. E. 810 (1917); Hoed v. City of Wheeling, 85 W. Va. 575, 102 S. E. 259 (1920); McEldowney v. Wyatt, 44 W. Va. 711, 30 S. E. 239 (1899); Price v. Moundsville, 43 W. Va. 528, 27 S. E. 218 (1897); Roby v. Sheppard, 42 W. Va. 286, 26 S. E. 273 (1895); State v. Mines, supra n. 20; State v. Brookover, 38 W. Va. 141, 18 S. E. 476 (1893); Heath v. Johnson, supra n. 20; C. & O. R. R. Co. v. Patton, 9 W. Va. 648 (1876); Slack v. Jacob, 8 W. Va. 612 (1875); Shields v. Bennett, supra n. 18.
32 Cases in which the title was found deficient: Bedford Corp. v. Price, supra n. 19; State v. Cordi, 103 W. Va. 632, 115 S. E. 720 (1923); State v. Haskins, supra n. 20; Simms v. Sawyers, supra n. 19; Stewart v. Tennant, supra n. 14; McNeely v. Oil Co., 52 W. Va. 617, 44 S. E. 508 (1903) (holding the same act unconstitutional as was held bad in the Stewart case.)
The court has uniformly applied the test: Does the title give "fair and reasonable" information concerning the contents of the statute.\textsuperscript{22} Sometimes they have said that if the title is an "index" of the contents it is sufficient,\textsuperscript{23} at others they have said that it need not be an "index."\textsuperscript{24} Clearly "index" is not a happy word; it suggests too often greater detail than the title, which is little more than a head line need contain. But as applied by the court no harm has ever resulted, for peculiarity of title has not invalidated an act of which the public has had fair and reasonable, though pragmatically ineffective, warning.\textsuperscript{25}

The problem of the title is separable into two parts according to the character of the legislation. The title problem in original legislation is distinct from the problem in amendatory acts. Thus in the case of original acts titles may be defective because they are too narrow or too broad. It is argued in the case of the broad title that the generality of its description gives no warning of the actual operation of the statute.\textsuperscript{26} While this objection is logical the situation will seldom arise where the court will find it applicable.\textsuperscript{27} Conversely, the mere fact that the title is broader than the material contained in the body or purview of the act will not invalidate the act if from the title knowledge of its operation can be obtained.\textsuperscript{28}

The narrow title is more vulnerable to attack.\textsuperscript{29} But a narrow title is not necessarily a short one. Lengthy titles may be, in fact

\textsuperscript{22} "The purpose of this constitutional provision is to prevent concealment of the real purposes of an act thereby causing the members of the legislature and the people to be mislead." Brozka v. County Court, supra n. 18.

\textsuperscript{23} "The title of an act is sufficient (under the constitutional requirement), though general in terms, if it serves as a fair and reasonable index to the purposes of the legislation." Bent v. Weaver, supra n. 21, at 301. "The title of an act is simply an index of what is contained therein and need not descend to particularity." Casto v. Board, supra n. 21, at 520; State v. Thompson, supra n. 21.

\textsuperscript{24} "It (the title) need not index the details of the act ...." McEldowney v. Wyatt, supra n. 21; Brozka v. County Court, supra n. 18; State v. Mines, supra n. 21, at 138.

\textsuperscript{25} The probability of these provisions actually protecting the public or the legislature is very doubtful. The value is convenience rather than protection. It does not protect those who do not care to investigate; it is only helpful to those who inquire.

\textsuperscript{26} "... a general title cannot be used to conceal legislation incongruous in itself, or which by no fair intendment can be considered as having a necessary or proper connection with the title." State v. Haskins, supra n. 20, at 644; Stewart v. Tennant, supra n. 14; McEldowney v. Wyatt, supra n. 21, at 713.

\textsuperscript{27} "There is no constitutional inhibition as to the scope or magnitude of the single object of the act." Casto v. District, supra n. 21, at 520.

\textsuperscript{28} Objects not expressed in the title are void. Shields v. Bennett, supra n. 12; State v. Cordi, supra n. 21; State v. Haskins, supra n. 21.
usually are, more confined than short ones. The moment the title seeks to detail in *ipsimissi verbis* the purview of the act itself the danger that it has enumerated some, omitted other provisions, is increased. At this point we may venture, "there is safety in generality." Where the title has with great redundancy set forth the details of the act the addition of such phrases as "and so forth" will not save it from attack. Inclusio unius est exclusio alterius, battle scarred slogan of many battles of interpretation, is brought forward to strike down the offending act.

If the purview of the act contains more subject matter than the title expresses the whole act is not invalid, but only so much as is not expressed in the title. If the title contains more than one subject, however, the whole act is invalid. But results such as these are of infrequent occurrence. With liberality of construction the court usually finds the material reasonably connected with the major purpose expressed in the title, so that they are included in the title by implication. Thus enumeration of a repealing clause need not be included in the title, nor is it necessary to specify that the act provides for penalties.

That the purpose of these rules and limitations is essentially protection raises some doubt as to their value for such purposes when the act may be amended during passage without change in the title; or the title itself may be amended at any time during passage. This result is not as severe as it seems, however, for the

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25 "... where the title includes both subjects of legislation embraced in the act, the whole act must fail for the very sufficient reason that it is improper for the court to choose between the two." Simms v. Sawyers, *supra* n. 21, at 256.

26 "... when the principal object of an act is expressed in the title, and the act embraces with such object other auxiliary objects, the act if not otherwise objectionable, is valid, not only as to the principal but likewise as to the auxiliary objects. Shields v. Bennett, *supra* n. 18 at 86. Affirmed in Simms v. Sawyers, *supra* n. 21, at 250." The court held that the act ... simply legislated upon two phases of the same subject, and we think this conclusion was entirely correct.

27 This, of course, because it is inherently a part of the general policy of amendment and revision. See n. 23, *supra*.

28 See, 1 LEWIS SUTHERLAND, STATUTORY CONSTRUCTION (2d ed. 1904) ¶ 136.

29 The court makes an interesting suggestion in Price v. Moundsville, *supra* n. 21, at 527. "If the original title is sufficient, the legislature does not vitiate the legislation by rendering such title more specific during the progress of enactment, if the object of the bill is not thereby essentially changed." *Quaere*, is the converse true? Apparently the court does not suggest that the title must be sufficient at all stages of its legislative journey and yet unless
purpose of the title is not to tell the operation of the act but to inform the legislature of the subject matter that is regulated by the act. If the legislature in considering a subject changes the method or effect of regulation the legislator must keep informed of that activity; it is not the duty of the sponsor of the legislation constantly to amend the title to warn of changes in the body of the act. Legislative procedure must be kept as simple as possible; human ingenuity and inquisitiveness must afford some protection.

Title to amendatory acts are of the most practical importance because most modern legislation is amendatory in form.77 Great liberality of construction has been employed by the court in testing the validity of titles to these acts. Thus where a title refers only to the section to be amended and contains no reference to the subject matter of the section the court has sustained the title on the ground that an adequate means for discovering its subject matter had been provided.78 This result is manifestly desirable. When most legislation was original in form the only means of determining the subject of its regulation was either to read the bill itself or to read its title. Permanent codes provide a ready source of information so that a mere reference to a code section carries with it sufficient means of knowledge to protect legislators against surprise.

Where the amendatory act amends a former act and not a provision of the code similar rules should apply. Reference to the title of the original act should be sufficient if its title was sufficient.79

that is true it affords little protection to the legislators. The popular belief, however, is that the title may be amended at any time prior to the enactment of the bill.

77 More West Virginia legislation is original in form than the legislation of other states. This probably is because of the relative newness of an official code. When the condition of the law is uncertain, as it always is without a code the safest procedure is to make each act original in form, even though it tends to increase uncertainty and confusion. Since the adoption of the official code in every possible instance legislation should be amendatory in form so that it will easily and conveniently fit into the code.

In the regular session of 1929 eighty-five acts were original, seventy-seven amendatory, and two repealing; in the regular session of 1931, forty-two were original, sixty-three amendatory, and two repealing. If this is a tendency let legislators make the most of it.

78 "... when the amendment in its title points not only to the chapter which is to be amended, but to the very section, it seems to us to amount to a sufficient expression of the object of the law to prevent any of the evils which the constitutional provision was intended to remedy." Heath v. Johnson, supra n. 20.

79 Apparently no more elaborate reference is necessary. Note (1930) 38 W. Va. L. Q. 71, nn. 9-12.
These rules as applied by the court produce for the most part satisfactory results. Consideration, however, should be given to improved title form which will aid in fitting new legislation into the code. Alteration in the house rules or even legislation designed to require all bills to bear a code citation would be particularly useful in making legislation orderly and efficient. If the legislation is new and obviously does not fit into any existing code section the attorney general after its adoption should have the duty of affixing a code section number to it. In this fashion it would seem unnecessary to explain the subject matter of amendatory legislation further than by the implied explanation that the code number would carry with it.

There is another possibility, however. It perhaps would be more desirable to omit from the title of the act all reference to code sections and merely refer to the subject matter of the act, leaving for the purview the description of the sections amended. Either method appears workable and both have the advantage of brevity and simplicity that the present system does not. It seems little short of ridiculous that a title should elaborate in monotonous detail innumerable sections to be amended, conclude with a statement of the purpose of the enactment, be followed by the enacting clause and then immediately duplicate the title and its abracadabra of sections, purpose, and object. The present method is not only

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6 This system works very successfully in Ohio. Ohio Gen. Code (Page, 1936) § 342-1. "The attorney-general shall be the codifier of the laws of the state. When an act of a general and permanent nature is passed by the general assembly and has been enrolled and signed by the necessary officers and before it is filed with the secretary of state, the attorney-general shall examine the same.

7 If there is no sectional numbering in the act or such numbering is not in conformity to the General Code he shall give each section of the act so passed its proper sectional or supplemental sectional number by writing or printing on the left-hand margin of the enrolled bill such proper number or numbers, and the number so designated by him shall be the official number. Such numbers so placed shall be published in the session laws and in any publication of the General Code. It shall be a sufficient reference to any section to refer to it by such official number.

8 See Note (1930) 48 Harv. L. Rev. 1183, 1185.

9 E. g., W. Va. Acts 1931, c. 10. "An Act to amend and re-enact sections one, two, three, four and five of article seven of chapter seven of the code of one thousand nine hundred thirty-one, relating to the salaries of county officers. Be it enacted, etc., That sections one, two, three, four and five of the code, relating to the salary of county officers be amended and re-enacted so as to read as follows:

A simpler, more effective form would be: "An Act relating to the salaries of county officers. Be it enacted, etc., That sections one, two, three, four and five of the code of 1931 (note, there is no reason for laboriously writing the date at length) be amended to read as follows:"
costly, but it is a waste of time and effort to the draftsman. We are fortunate in West Virginia to have a court that has been judiciously liberal in the interpretation of statutes; legislators should accept this opportunity to make statutes and particularly the titles to statutes intelligently clear and refreshingly brief.

2. The Enacting Clause

The constitutional direction to the legislature that the style of all bills must be "Be it enacted by the Legislature of West Virginia" is mandatory. Thus the legislature cannot by either joint or concurrent resolution, give legal effect to that which is the proper subject matter for statutory supervision. There is no difficulty with the rule that only that which bears the caption, "Be it enacted," is law; but it is quite another matter to determine an improper subject for treatment by resolution."

3. Single Subject Matter

The constitution declares that "no act shall embrace more than one object, and that shall be expressed in the title." The purpose of this provision was to insure careful consideration of one subject at one time; to prevent incongruous matter from being slipped into a bill, to gain its passage because of the popularity or necessity of the passage of the original bill. Some constitutions use the words "one subject" others "one object." Whether it was ever intended that they had different meanings is doubtful. It seems more likely both were used to express the same limitation.

More serious is the question: What is one subject? Some constitutions have sought for elasticity by permitting one bill to

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43 W. Va. Const. art. 6, § 1. "The legislative power shall be vested in a Senate and House of Delegates. The style of their Acts shall be, 'Be it enacted by the Legislature of West Virginia.'" In Boyers v. Crane, 1 W. Va. 176 (1865), the court held that a joint resolution was void in so far as it attempted to accomplish a result which was properly the subject of legislative regulation.

44 The cases all say that "According to ordinary parliamentary practice a resolution is a very different thing from a law or an ordinance." Cape Girardeau v. Fougen, 30 Mo. App. 551, 556 (1888). Further, the cases say that a resolution is but the expression of an opinion. Resolutions are apparently valid in handling less formal matters. But what are expressions of opinion? What are formal matters? Are resolutions invalid if a statute might be enacted? The cases and the text writers give but little information.

45 See supra n. 12.

46 Stewart v. Tennant, supra n. 14.
contain one subject "and matters properly connected therewith." "
Is a bill adopting a new revision of the code a bill with a single
subject?" Does a revenue bill which seeks many sources of revenue
have but a single subject?"

The determination of this question is in the first instance with
the legislature, but is subject to judicial review in nearly all juris-
dictions. While judicially reviewable, a dictum in an early West
Virginia case indicated that the provision was only directory and
so long as all objects in the bill were expressed in its title the act
would be sustained. 

In Simms v. Sawyer, however, this dictum was expressly over-
rulled: The court stated the provision was mandatory and required
compliance. Consequently duality of subject matter since that date
has been fatal to the validity of legislation.

The difficulty of making such a determination is immediately
apparent; for considered from one view a bill may have many sub-
jects while from another its subject is singular. Thus the subject
of the revenue bill, viewed from its effect on individual businesses
is plural; viewed from the need for money for the operation of
government it is singular. Thus perhaps the test is: What does
the act intend to accomplish; not how does the act intend to ac-
complish it.

Judicial review based upon so indefinite a test as this must of
necessity be uncertain, and unfortunately upon a question where
there is great need for predicability for the legislature and its
draftsmen must know the judicial requirements. At present the

" Fla. Const. (1885) art. 4 § 14; Ida. Const. (1889) art. 3 § 23; Ind. Const.
(1851), art 4, § 19; Nev. (1864), art 4, § 17.

"A title might be so framed as to cover the whole Code.'" Stewart v.
Tennant, supra n. 14, at 571. This was in fact done in 1868 — "AN ACT
establishing a code of laws for this state." See Casto v. Board, supra n. 21,
at 520; Johnson v. Harrison, 47 Minn. 575, 50 N. W. 928 (1891); City Council
v. Birdsong, 126 Ala. 632, 28 So. 523 (1899); but see Lewis v. Dunne, 134
Cal. 291, 66 Pac. 478 (1901).

Rosenbloom v. State, 64 Neb. 342, 89 N. W. 1053 (1902).

Only the early cases in Ohio and California treated the provision as direc-
tory. It has been the almost universal experience that without review these
provisions are meaningless. "... The conscience of legislator... (binds
them) not to secure legislation by vicious methods... but the thing that
was needed was... something that would prevent the result of corrupt bargains
brought about in this way from having any effect." Simms v. Sawyer,
supra n. 19 at 251, 252.

Syllabus one, of Shields v. Bennett, supra n. 18, declared that the consti-
tutional provision "does not invalidate an act containing more than one object
when the objects are expressed in the title."

See n. 19, supra.
judicial policy seem to be none other than a policy to sustain in every reasonable instance legislation with a unified purpose.\(^3\)

Although there is inherent uncertainty in this test, the weakness is not serious for it is essentially a matter of good judgment whether details are germane to a single object. Further, most difficulties of this character have arisen not because of judicial arbitrariness, or legislative inexpertness, but because there have been attempts to tamper with legislation for the purpose of including material not originally intended.

4. Amendments

The constitution provides that "No law shall be revived, or amended, by reference to its title alone; but the law revived, or the section amended, shall be inserted at large, in the new act."\(^4\) The purpose of this limitation was to prevent the adoption of improvident legislation by "blind" amendment.\(^5\) The chief desire was to gain protection from amendments of uncertain operation and to make for convenience in consideration of amendments earlier enacted. When codes were not of general use and circulation (and their use is far from universal today) unless some provision was made for setting forth a statute in full it was almost impossible to tell the effect or content of a statute which had been frequently amended.

By interpretation courts have generally held that constitutional provisions of this type require: (1) reference to the title of the original enactment, or the original enactment as amended, or the last amendment, and (2) require that the section as amended be set forth in full.\(^6\) The citation of opinions and the comparison of their effect is not particularly helpful in resolving the problem of amendments. It is perhaps worthwhile, however, to note that different problems arise when the amendment merely adds additional sections to the old act,\(^7\) when it attempts to amend a void or

\(^3\) See n. 23, supra.
\(^4\) W. Va. Const. art. 6, § 1.
\(^5\) That is, amendments which gave no indication of the subject matter affected. See Iowa Acts 1931, c. 3, § 1.
\(^6\) For a general consideration of this problem, see 1 Lewis’ Sutherland, op. cit. supra, n. 35, § 231. See also Note (1930) 43 Harv. L. Rev. 482, which discusses the replacement theory of amendments; Note (1932) 39 W. Va. L. Q. 70: State v. Vendetta, 86 W. Va. 186, 108 S. E. 58 (1920).
\(^7\) "... The constitution does not require any part of the act, to which the section or sections are added, to be printed at length in the amendatory act where there is no change made in the general law except to add a section or
unconstitutional act,\textsuperscript{18} where it attempts to amend only a sub-section,\textsuperscript{19} where additional material is added not to the whole act but to a particular section,\textsuperscript{20} and where the amendment is by implication only.\textsuperscript{21} All of these problems are treated dryly and with no particular originality in the standard texts. Briefly, the court will indulge in the same favorable presumptions that it does to support the title and single subject requirements of the constitution.\textsuperscript{22}

The amendment requirement should be studied from the standpoint of its function rather than of its structure. Concretely, the writer believes that it is doubtful whether the constitutional requirement insisting on the complete republication of the old law as amended has accomplished the result that it sought. Is it not possible that the republication of amended sections, pages in length, with but minor alterations tends more to destroy both the ability and the desire for discovering the change than did the blind amendment which if it did nothing more pointed with clarion clearness to the proposed alteration? For example, to amend chapter twenty, article fourteen, section eleven of the code, to eliminate the exemption of aeroplanes from the gasoline tax it would only be necessary to remove a single word—"aeroplane"—from the statute. By use of the blind amendment the effect of the amendment would be immediately apparent. But because of the "inserted at length" requirement of the constitution the whole section, approximately forty lines long must be republished, with only the omission of the word "aeroplane." Only the slowest and most careful comparison of the proposed bill with the original code provision would indicate this change and that this was the

\textsuperscript{17} Maulding v. District, 311 Ill. 216, 217, 145 N. E. 227, 228 (1929).
\textsuperscript{20} On this point there is conflict, see Beatrice v. Masslich, \textit{supra} n. 58. Where the section amended was not subdivided no additions could be made without setting forth the section in full. Barrett's Appeal, 116 Pa. St. 480, 10 Atl. 36 (1887).
\textsuperscript{21} \textit{Supra} n. 57.
\textsuperscript{22} Boby v. Shepard, \textit{supra} n. 21; State v. Cain, 8 W. Va. 720 (1875); Shields v. Bennett, \textit{supra} n. 18; Forqueran v. Donnelly, 7 W. Va. 114 (1874).
\textsuperscript{23} See n. 23, \textit{supra}.
only change. It is futile to expect many legislators to take the
time to make this investigation.

Another use of the amendatory form is to add additional
material to existing statutes. If no change was made in the exist-
ing law it is obvious that the whole act need not be republished,
and even the old cases so held. But if the amendatory material
is appended to a single section even though it does not change the
effect of that section the existing part of the section must be re-
published. The distinction is not clear. In fact to a certain
degree every act is amendatory. For clearly every regulation except
statutes declaratory of the common law, change existing law in
some manner. The necessity or desirability of singling out a par-
ticular form of enactment, calling it amendatory, and subjecting
it to this special constitutional requirement is doubtful.

A third form of altering the statute law is by process of codi-
fication and revision. Amendments in seeking to clarify the law
may be so numerous and diverse and yet legally insignificant
(because of no change in substance or regulation) that to apply
the blind amendment procedure would be both unsatisfactory and
impractical. Where there is a general revision of the statute the
only practical method is to set forth the new provisions in full.

In other words each particular problem requires particular
treatment and to seek protection through a requirement that the
statute as amended be set forth at length may in fact destroy what
little protection the blind amendment procedure afforded without
substituting new safeguards. To avoid this difficulty some states
have required that in addition to setting forth the amendment in
full, the omitted provisions must be retained but run through with
a line indicating that the provision is omitted. New material
substituted by the amendment must be italicized. This procedure
pictorially sets forth the effect of the amendment. On first con-
sideration the suggested plan seems admirable. But there are
dangers: What remedy in case an important word in the amend-
ment is accidentally left unitalicized? What if it is intentionally
left unmarked? Will new remedies be necessary to protect both
legislators and the public from unscrupulous manipulations of this
form?

[Notes and citations]

See n. 57, supra.

See n. 59, supra.

Note (1930) 43 HARV. L. REV. 1183. In Wisconsin upon final publication
the new material remains italicized, the "hatched" material is omitted and
the omission indicated by asterisks. Thus, Wis. Laws 1919, c. 8, reads:
Despite these difficulties this plan commends itself because it requires no change in the constitution. It can be put into effect by inclusion in the rules of the houses of the legislature.

5. Special Legislation

Special legislation practices are condemned by critics because they grant privileges rather than make law, because "they consume time, they sap energy, they discourage talent, they conceal iniquities, they make law a by-word, they transform legislatures into tribunals of adjudication and . . . . into quack commissions with mongrel duties." But historically all legislative activities were strictly private in character and essentially adjudicative in form. General legislation is a comparatively recent development. There is still time to question whether the social welfare of the state is better served by legislative activity imposing general rules for universal observance than by legislation directed primarily to the alleviation of local ailments, whether general legislation should result from the concurrence of local conditions rather than from the generalization of a single local demand. Probably all legislation emanates essentially from private interest, and consequently to classify some acts as general and others as special is unsatisfactory for many purposes.

But when the form relieves a large part of society from the

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"Section 1. The introductory paragraph of subsection (1) of section 20.04 of the statutes is amended to read:

"(20.04) (1) Annually, beginning July 1, . . . . 1919, . . . . fifty thousand dollars. . . . ."

Special legislation in America may for convenience be divided into four general classes: (1) local, (2) private, (3) judicial and (4) legalizing acts. Local acts concern primarily the administration, taxation, and operation of municipalities and other governmental subdivisions, treating them individually by special statute rather than by general regulation. Private acts largely concern the granting of special charters and incorporations to corporate bodies; legislative divorce was also a possible but not common type of special legislation in some states during the first half of the nineteenth century. Judicial acts usually provide for the indemnification of persons who have no legal claim for compensation but who the legislature is willing to award as a special gratuity. Legalized acts are most frequently used in states where local laws are prohibited and are usually used for the purpose of validating the acts of local officials. Legalized acts have also been used as a means of clearing or settling title in an individual who holds an uncontested but defective title from the state. Although for convenience these are called the four main classes of special acts, there appears to be no intrinsic difference in subject matter between general and special laws — the difference is only in treatment — the one universalizing, the other individualizing the particular problem brought to the legislative notice.

Orth, Special Legislation, 97 ATLANTIC MONTHLY 69.
operation of the law it removes the best safeguard against hasty and ill-advised action. Thus vote trading and log-rolling become common practice ultimately resulting in the pilfering of the public treasury. That such a result is undesirable is, of course, obvious. Our only concern is with the most effective and desirable method of curbing the evil. Two remedies suggest themselves: (1) A prohibition of all special, local, and private legislation; (2) controlled special legislation procedure.

West Virginia in common with most of the other states has relied on the first method of control and has by constitutional provision prohibited special legislation on seventeen enumerated subjects and declared that as to all others special legislation shall not be valid where a general law would apply, or where courts have jurisdiction of the case.60

So far as the subjects specifically enumerated are concerned the court treats the constitutional requirement as mandatory;61 but where a choice is permitted between a general and special act the court will not review the legislative determination.62 Likewise the court treats curative legislation as beyond the intendment of

60 W. Va. Const. art. 6, § 39. "The legislature shall not pass local or special laws in any of the following enumerated cases; .... The legislature shall provide by general laws, for the foregoing and all other cases for which provision can be so made; and in no case shall a special act be passed, where a general law would be proper, and can be made applicable to the case, nor in any other case in which the courts have jurisdiction of the case."

61 West Virginia follows the doctrine announced in Morrison v. Bachert, 113 Pa. St. 322, 5 Atl. 739 (1886). "It was a wise provision and will be sternly enforced. It is our purpose to adhere rigidly to that instrument, that the people may not be deprived of its benefits. It ought to be unnecessary for this court to make this judicial declaration, but it is proper to do so, in view of the amount of legislation which is periodically placed upon the statute book in entire disregard of the fundamental law." But see Feemster v. Tupelo, 121 Miss. 733, 83 So. 804 (1920). "Whatever mischief may lie in the passing of special bills or laws of the kind here involved (and it may be conceded that such acts are not wholesome as a rule), the Constitution .... vests in the legislature, and not in the courts, the function of deciding this question, and we cannot refuse to enforce any law because merely in our judgment a general law would be better than a special one."

62 "Whether a special act or a general law is proper is generally a question for legislative determination; and the court will not hold a special act void unless it clearly appears that a general law would have accomplished the legislative purpose as well." Woodall v. Darst, 77 W. Va. 350, 77 S. E. 264 (1915); State v. Harden, 62 W. Va. 313, 58 S. E. 715 (1907); Roby v. Sheppard, supra n. 21.
the constitutional limitation.7 In short, the special legislation limitation is of little practical effect in West Virginia.7

A similar condition apparently exists even where the court will judicially review the legislative determination that a special act is proper.7 Thus it appears that some other means of regulating special legislation may be more effective than its prohibition. A few states either by joint rule or house rule attempt to individualize special legislative procedure. Claims committees are given special direction and special procedures are established for the investigation and determination of the validity of claims.4 A few states require publication of intention to submit private bills and require proof of compliance before the introduction of the bill7 or the report of the committee.7 Massachusetts, operating under the joint committee system, requires that all parties affected by private or

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7 The reassessment act is a curative statute. . . . Such statutes are everywhere held to be within the legislative power unless the constitution forbids retroactive or retrospective legislation.” Elkins v. Harper, 82 W. Va. 377, 95 S. E. 1033 (1918).

7 The two opinions quoted in footnote 69 stress the ineffectiveness of constitutional prohibition as a means of securing or preventing ill advised and unscrupulous private and special legislation. For a very careful critique of the results of special legislation in West Virginia see Note (1933) 39 W. Va. L. Q. 255.

7 See Morrison v. Bachert, supra n. 69.

7See, for example, Iowa Official Register, Joint Rules of the Senate and House, which provides: “No. 18. It shall be the duty of the committee on claims in each house to keep a book of record, in which shall be entered each claim for money against the state referred to them, whether presented in favor of private persons or municipal or other corporations, entering therein the name of the claimant, the amount of the claim, the grounds therefor, with note of the evidence offered in support of the same, and the final conclusion of the committee thereon. At the close of the session said book of record shall be deposited with the auditor of state, to be kept by him, and he shall provide an index showing the names of the claimants recorded therein. At any subsequent session the same shall be delivered, when desired, to the like committee having jurisdiction of such claims and shall always be open to the examination of the said committee of either house.”

7 Alabama, Joint Rules of the Two Houses of the Legislature. “3. That no local or special bill shall be introduced into either house unless the member who introduces it discloses at the time the fact that the notice required by the constitution and laws have been given. . . .”

7 Pennsylvania. Rules of the Senate, No. 37; Rules of the House, No. 59. “. . . . No local or special bill shall be reported unless the same be accompanied by proof of the publication of notice thereof, in accordance with law, and of section eight of article three of the Constitution; and proof of such publication shall be certified to by the president or secretary of the committee reporting the bill.”

7 The activity of conference committees, rules and steering committees in the late days of the legislative session testifies to their efficiency and necessity. See Horack, The Committee System (1918) 3 IOWA APPLIED HIST. SER. 535. The adoption of the joint committee system is the most practical method of gaining the advantage of unicameral action.
special legislation be given notice of the consideration of the legislation or show that notice has been waived." These requirements do not seek to limit the amount of special legislation except as the insistence upon its trustworthiness tends to decrease its volume.

The English practice, after which the Massachusetts practice is in part modeled, is even more restrictive." The procedure is in all respects judicial. Notice, similar to that filed in judicial proceedings must be filed prior to the convening of Parliament. Private persons are not permitted to appear in behalf of such legislation unless called as witnesses. The members of Parliament may not act as legislative counsel for the proponents of the bill and while a member, if a member of the committee, may sit at the hearing he may not vote if he has an interest in the legislation. The hearings are conducted with the same formality that accompanies judicial hearings and in the House of Lords all testimony must be under oath. When the bills are reported out of committee at least one day's notice must be given before they may be considered.

The English system has these apparent superiorities: It provides for judicial consideration of the merits of proposed legislation, prevents committee hearings from being dominated by outside

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78 Joint Rules of the Two Branches. "7. Whenever, upon any application for an act of incorporation or other legislation, the purpose for which such legislation is sought can be secured without detriment to the public interests by a general law or under existing laws, the committee to which the matter is referred shall report such general law, or 'leave to withdraw' or 'ought not to pass.' " 79. No legislation affecting the rights of individuals or the rights of a private or municipal corporation, otherwise than as it affects generally the people of the whole Commonwealth or the people of the city or town to which it specifically applies, shall be proposed or introduced except by a petition, nor shall any bill or resolve embodying such legislation be reported by a committee except upon a petition duly referred, nor shall such a bill or resolve be reported by a committee, whether on an original reference or on a recommittal with instructions to hear the parties, until it is made to appear to the satisfaction of the committee that proper notice of the proposed legislation has been given by public advertisement or otherwise to all parties interested, without expense to the Commonwealth, or until evidence satisfactory to the committee is produced that all parties interested have in writing waived notice. A committee reporting leave to withdraw or reference to the next annual session for want of proper notice or of a waiver thereof shall set forth this fact in its report, and no bill or resolve shall be in order as a substitute for, or amendment of, such report. Objection to the violation of this rule may be taken at any stage prior to that of the third reading."

Sections 7A, 7B, 7C and 9 refer to special cases in which consideration of matters of local concern must be referred to the next session of the General Court unless certain evidences of assent to the introduction of the bill accompany the petition for legislative action.

79 See Landers, Private Bills; Private Bill Reports (1899) Eyre and Spottiswoode, London.
groups, insures adequate protection of private interests and because of its considerable expense tends to deter private individuals from wasting the legislature's time with inconsequential legislation.\textsuperscript{b}

The adoption of some modified form of procedure modeled after these plans seems desirable. But we must sadly admit the doubtful value of changes in constitutional provisions, legislative procedure or statutory form as a means of limiting the amount or improving the character of special legislation when we must recognize that for many legislators a special act is the most prized bacon that he can bring home to his constituents. Legislators will seldom be more interested in the public welfare than those they represent and it is only as their constituents take interest in the legislative work that the legislators themselves will respond with legislative reform and improvement.

Proper professional encouragement, however, might result in improved legislative procedure for the consideration of special acts. In devising such a procedure consideration should be given to these regulatory devices: Publication of notice of the proposed legislation; classification of private legislation into functional groups; examination of witnesses under oath; a committee report attesting to the truth of all facts necessary to the validity and justice of the special act; restriction of the special committee to members not interested in the particular legislation.\textsuperscript{a}

Considerations of this character would at least aid in the purification of special legislation but it must, of course, at all times be realized that any system is dependent on the will of those who operate it and the purpose for which it was constructed will be achieved only if they are in sympathy with it. Thus the evils of special legislation will hardly be remedied by any single change in procedure. The advantages of these proposals, then, are not that they will make legislators virtuous or purify their products but that such changes will give uniformity to legislative practice subjected to greater publicity and thereby provide greater public scrutiny of its activity.

\textsuperscript{a} E.g., Md. Laws 1929, c. 20: "Whereas, the school children of Montgomery County have decided in a voting contest, that the cardinal is the most popular bird in the County; therefore

"Section 1. Be it enacted by the General Assembly of Maryland, That the cardinal, commonly called red bird, be and is hereby adopted as the County Bird of Montgomery County."

\textsuperscript{b} See n. 79, supra.
6. Time of Taking Effect

At common law all statutes took effect from the first day of the legislative session and thus were retroactive in effect.2d By the Act of 33 Geo. III, chapter 13, statutes became effective on the date endorsed on the enrolled bill which indicated the granting of the royal assent. The effect of either system was unfortunate in that it frequently gave no opportunity for persons to adjust their affairs to the new law or might impose a penalty for the violation of a law that they had had no opportunity to discover.

Consequently most state constitutions provided that laws should take effect either at some specified date in the future2e or a certain number of days after enactment.2f The West Virginia provision provides that "... . . . No act of the Legislature, . . . . shall take effect until the expiration of ninety days after its passage, unless the Legislature shall by a vote of two-thirds of the members elected to each House, taken by yeas and nays, otherwise direct."2g

This provision has one weakness. It tends to make the date of the operation of the act uncertain. When has ninety days elapsed? Is the day of enactment included or excluded? Does the law become effective on the ninetieth day or the day following? The court following the usual canons of construction has held that either the day of enactment or the ninetieth day may be excluded but not both.2h If there is a conflict between the date endorsed on the bill, and the date entered on the journal the court will apparently give effect to the bill and not the journal.

It should be noticed that there is no constitutional requirement that the date of passage must be indorsed on the enrolled bill, but it is always done. Apparently the safety of having the record on

2d Note (1931) 44 Harv. L. Rev. 851; 1 Lewis' Sutherland, op. cit. supra n. 35, § 308.
2e Ill. Const., art. 4, § 13 (July 1st after passage); Iowa Const., art. 3, § 20 (July 4th after passage); Md. Const., art. 3, § 31, art. 16, § 2 (June 1st after passage).
2f Ky. Const., § 55 (90 days after session); Mass. Const., art. 47, (90 days after became law); Ohio Const., art. 5, § 58 (90 days after filing with Secretary of State); Tenn. Const., art 2, § 20 (40 days after passage); Va. Const., § 53 (90 days after session).
2g W. Va. Const., art. 6, § 30. Note that the West Virginia provisions are relatively less certain, — laws take effect ninety days from passage rather than ninety days from adjournment of the session.
the bill itself results both from the demands of convenience and the recognition that courts will give effect to the constitutional provisions for their compliance is observable from the statute itself more readily than where extrinsic sources must be searched to prove compliance.

For the public to determine when a bill has passed the legislature and then calculate the ninety day interval before it become effective seems to place a needless burden upon those who are already too busy or those who are customarily too careless to record such changes. The simplicity and certainty of having laws enacted at regular sessions take effect at a fixed and certain date in advance is clear. The regular session normally adjourning sometime during the month of March a convenient date for putting new laws into effect would be July first. It is the beginning of the fiscal year for the government and for many private businesses. Certain changes are always anticipated at this time and it might be useful to fix as the date a time which accords with other business changes. The West Virginia provision has one advantage over the provision of its contemporaries. It does not provide for an emergency clause but rather permits the legislature by a two-thirds vote to determine the date on which legislation shall take effect. This prevents strange declarations of emergency where convenience and not emergency dictates the operation of the law.\(^{29}\)

Apparently the constitution anticipated that only occasionally should laws take immediate effect and thus inserted the two-thirds requirement. Practically, however, the two-thirds requirement is of little importance for even the most bitter opponents of a bill will vote for its immediate adoption if they have failed in their original attack of the adoption of the measure. Consequently the provision seems to be of little importance.

*Limitations on Procedure Not Evident on the Face of the Act*

All constitutional limitations on the procedure and form of the enactment of legislation are addressed primarily to the legislators themselves and as they take an oath among other things to enforce these very provisions of the constitution some urge there is no need for review. Theoretically, however, all omissions in this regard are judicially reviewable. Actually the court has limited its review out of respect for a co-ordinate branch of the government.\(^{30}\) Thus

\(^{29}\) See Note (1931) 44 Harv. L. Rev. 851, 854.

\(^{30}\) N. 20, supra; n. 97, infra.
with a reticency to review legislation and a desire, expressed in terms of presumption of constitutionality, not to interfere with the legislature, the courts seldom disturb legislation because of alleged defects in its enactments. Even when the defect appears upon the statute itself, the court is reticent; and when the judges must look behind the statute to its legislative history they are still more cautious. If the court makes any show of enforcing these provisions it seeks as a source of its review the legislative journals as the most reliable evidence of the legislative actions. The journals thus become a significant judicial tool.

1. The Journals

By section forty-one, article six of the constitution each house is enjoined to "keep a journal of its proceedings, and cause the same to be published from time to time; . . . ." Thus the admissibility of the journal becomes important when the constitutionality of legislative procedure is questioned.

The English cases and the older United States Supreme Court cases uniformly refused to admit the journal to derogate from the validity of the legislative enactment. In King v. Arundel it was urged that there was no more solemn record than the duly authenticated statute and that no evidence written or oral was admissible to jeopardize it. These early cases very apparently influenced the West Virginia result.

In Osburn v. Staley the court recognized the authority of these cases but sought to distinguish them on the basis that England had no written constitution, and that there are no requirements concerning a majority necessary to pass a statute in the federal constitution. The court asserted that where they had the duty to enforce constitutional limitations violation of which did not appear on the face of the statute itself, it was necessary that they have access to the journals. Whether this distinction is real is perhaps doubtful; but there is little question that the court felt that there were times that the discovery of the truth was as important as the protection of the legislative action.

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[footnotes]

100 W. Va. Const., art. 6, § 41.
101 See J. Lewis' Sutherland, op. cit. supra n. 35, §§ 30, 53.
102 Hobart 109, 80 Eng. Reprint 258 (1617).
104 Poffenbarger, J., in Anderson v. Bowen, infra n. 96, at 561, said, "My personal opinion is not in accord with the authorities on the interpretation of the constitutional provision involved. (Every bill must have three readings). That it is mandatory there can be no doubt, and I think it is equally clear that the journal should affirmatively show compliance (italics ours) with it . . . ."
In the few cases in which this point has been raised the court has as yet not found evidence in the journal sufficient to overthrow the enactment, the court having applied the rule that they will not invalidate a statute unless it *affirmatively appears* in the journal that there has *not* been compliance with the constitutional requirements. Thus in *Anderson v. Bowen* the court said that if the journal showed only a first and third reading of the bill and recorded an objection that it was not read a second time, the record still was not sufficient because it did not state affirmatively that the bill was not read a second time. Such a result is, of course, ridiculous, for practically we know the journal will show by omission the lack of performance, but it will be seldom indeed that the omission will be affirmatively recorded. It would seem more persuasive if the court would place their decision on the ground that as the provision was directed to "a coordinate department of the state government, invested by the constitution with legislative power, it is not subject to supervision and revision by the courts as to those rules of procedure prescribed by the constitution for its observance, because, while those rules are all *authoritative* and *mandatory* to legislators, who are sworn to note and observe them they exhaust themselves upon the legislators, and are not for the consideration of courts . . . ." The court " . . . . is not an overseer of the legislature during its labors, but it takes its completed work and tries it by the constitution, starting with the conclusive and irrebuttable presumption, that, as to all the requirements of that instrument, they who swore to observe it did so."

Parol evidence will not be admitted to explain or contradict the journal. This, however, is of little importance when the court will always indulge in the presumption of constitutionality to sustain a statute and the procedure of its enactment. Thus, it is interesting to observe that the court while reprimanding the senate for not following its constitutional duty refused to declare an act unconstitutional which had obviously been adopted without compliance with the constitution. Although the court will admit the journal, as evidence, its limited use makes it unimportant as a means of attacking a statute.

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99 78 W. Va. 559, 89 S. E. 577 (1916).
100 Hunt v. Wright, 70 Miss. 298, 11 So. 608 (1892).
101 Capito v. Topping, 65 W. Va. 587, 64 S. E. 845 (1909), and cases cited.
102 Osburn v. Staley, *supra* n. 93. In the language of the legendary justice of the peace, about to release a friend from a larceny charge, "Nobody had done nothing but he had better not do it again."
2. Three Readings

Generally speaking there are three types of constitutional provisions requiring the reading of bills. (1) Bills must be read three times. (2) Bills must be read on three different days. (3) Bills must be read in full on three different days. The West Virginia requirement that before a bill becomes a law it must be "fully and distinctly read, on three different days, in each House" is of the third type. Attempts to enforce this requirement judicially have been infrequent, and the journal failing to show affirmatively any non-compliance the attempts have been futile.

Particularly futile as a source of judicial authority is the phrase "fully and distinctly". The effect of such a provision is exhausted on the legislature alone, for objective proof of complete and understandable reading seems impossible, and a standard dependent on the testimony of participants seems manifestly unsound. If objection is to be made it should be made at the time and place of the infraction. Even a record on the journal would be of little help. What remedy would there be in case a reading clerk omitted a word, a paragraph, or even a section. The omission of a reading clerk acquiesced in by the legislature hardly seems to afford a valid basis for attacking a statute long after its enrollment. The return of the committee on enrollment should be conclusive.

The provision is only at best an historical survival from the time legislative illiteracy and slow and inadequate printing methods made the dissemination of information through publication both difficult and uncertain. Today, legislative procedure could be expedited without danger to the process, by the elimination of this requirement. In its place the printing of all bills might be required. But the experience of other states suggest that little is gained by including such a provision in the constitution. If the provision is workable it is as effective in the rules of the assembly as in the constitution and there it is less embracing to suspend its oper-

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300 W. Va. Const., art. 6, § 29.
301 In every case the statute has been sustained. See Price v. Moundsville, supra n. 21; Anderson v. Bowen, supra n. 96; Osburn v. Staley, supra n. 93; Boyers v. Crane, supra n. 43.
302 That is merely giving legislative or constitutional effect to the improved educational capacities of the legislators.
303 Colo. Const., art. 6, § 20; N. Y. Const., art. 3, § 15. "No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified to the necessity of its immediate passage . . . ." The governor certifies to the existence of a necessity almost an innumerable number of times each session.
ation in case of emergency than to indulge in some strained interpretation of the constitution in order to consider a bill that has not been formally printed.

A special problem exists in the case of substitute measures and amendments. If the purpose of the reading requirement is to familiarize the members of the legislature with the proposed legislation then the court’s suggestion that the requirement need not apply to the substitute bill or to the amendment is not entirely sound. In Smith v. Mitchell104 the court suggested that if the subject matter was sufficiently germane to be covered by the same title the provision was satisfied. Note, however, that late in the session bills may be introduced by title only, or with only the first section or the substitute may completely change the purport and effect of the bill — of this the legislators would have no notice. Practically, however, we must recognize that the legislators do not depend upon the reading of the bills for their information. Reading of bills on the floor of the House is but an appendage of an outworn system. Thus although there is mere dictum to the effect that substitute measures and amendments need not be re-read three times in each house the dictum will probably be followed.

Some states, however, reach a contrary result.105 But this does not seem to be the intent of our constitution. Is it necessary to read the amendment on three different days or the bill and the amendment on three different days? Must the bill or amendment be read on different days in each house, that is, six days in all? This hardly seems intended.106 If it were, then adjournment might both be a welcome and unattainable goal. And the reward would be slight. Even the present procedure, unless the rules are suspended, is not notable for its celerity.

3. Voting Requirements

The original constitution required that a majority of the members elected to each house of the legislature must vote favorably upon a bill before it could become a law.107 In Osburn v. Staley108 the court determined that they would go behind the enrolled bill to determine whether there had been compliance with this pro-

105 Miller v. State, 8 Ohio St. 476 (1854); Claywell v. Board, 173 N. C. 657, 92 S. E. 481 (1917). But there is normally a presumption that the amendment was not material and the reading thus unnecessary.
106 See W. W. Va. Const., art. 6, § 32.
108 Supra n. 93.
Having done so they found ambiguity in the meaning of "member elected" and resolved it in favor of the constitutionality of the statute. The constitutional convention of the following year to prevent this difficulty from again arising defined "a majority of the members elected" to mean "a majority of the whole number of members to which each House is, at the time, entitled, under the apportionment of representation, established by the provisions of this Constitution." Apparently this rule has eliminated all difficulty of interpretation on this point.

Other voting problems arising from constitutional restrictions have not received judicial interpretation. And they are only of formal importance in the procedure of the houses of the legislature. Thus, although the constitution requires a two-thirds vote, taken by yea and nay, to make an act effective other than ninety days after its passage; by gentleman's agreement, bills seldom languish for want of the necessary two-thirds vote. It is also provided that upon the amendment of a bill by one house the originating house must re-vote upon the bill by yea and nay and spread the results upon the journal. And upon the call of one-tenth of the members present the yeas and nays on any question may be required to be recorded in the journal. Elections in the legislature shall be by viva voce vote and entered on the journal.

4. Origin of Bills

Historically the origin of revenue and appropriation bills was restricted to the "lower" house of legislative assemblies as a means of protecting or preserving their equality with the upper house. And the inclusion of the permission to originate bills in either house is the recognition of the desirability of a more flexible system of the safety of permitting either house to originate, in short, of the change in conditions, so that both houses of the legislature are equally representative of popular will.


In addition to the provisions which have some rather easily demonstrable relation to particular legislative enactments there are

109 W. Va. Const., art. 6, § 32.
110 But see Smith v. Mitchell, supra n. 104, concerning the right of a house to reconsider its vote.
111 See supra p. 31d.
112 W. Va. Const., art. 6, § 31.
113 Ibid., § 41.
114 Ibid., § 44.
115 Ibid., § 28.
numerous constitutional provisions which mark out the general organization and operation of the legislature. Thus section twenty-four of the sixth article grants to the legislature the authority to determine its own rules, choose a presiding officer, judge its own elections. Being grants of power which affect only the legislature, there is of course less reason for judicial review of these provisions.

Structurally, the constitution provides that the legislature shall assemble biennially on the second Wednesday in January. The effectiveness of the limitation to biennial meetings is only in part accomplished; but even the constitution recognizes the need for extraordinary sessions in case of special circumstance.

The place of meeting, the state capitol, is a requirement of no special concern to lawyer or legislator. The real difficulty is not with the time or place of convening the legislature but with its adjournment. It is much easier to get legislators to meet than to get them to adjourn. The most effective method that experience has as yet devised is by fixing the amount of compensation rather than by fixing the date of adjournment and paying on a per diem basis.

The split session idea no longer has constitutional sanction; but as West Virginia was one of the pioneers in this field, it deserves more than passing mention. In 1920 the constitution was amended to require the legislators to submit all proposed legislation during the first days of the session. After a recess until Wednesday

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218 Money bills in many states could only originate in the lower house — it was thought to be the chief source of independence of the more popularly elected lower house.
219 It is unfortunate that this grant of power has not been put to more constructive use by the legislature. Through carefully developed rules most of the benefits which come through constitutional amendment and legislative enactment can be achieved more quickly with less exercise and with a flexibility, which gives them continued usefulness. For example, through expansion of the rules, the advantages of unicameral legislation can be accomplished through joint legislative committees and “responsible” government through co-ordinated executive participation in committees, even the development of “flexible legislation” through administrative orders and the expansion of the resolution as a means of regulation is possible.
220 W. Va. Const., art. 6, § 18.
221 Ibid., § 19.
222 See supra n. 113. Under section 21 of article six the “Governor may convene the legislature at another place, when in his opinion, it can not safely assemble at the Seat of Government, and the Legislature may, when in session, adjourn to some other place, when in its opinion, the public safety or welfare, or the safety of the members, or their health shall require it.”
223 In 1920 a fixed compensation of five hundred dollars a year was substituted for a per diem basis of payment. See W. Va. Const., art. 6, § 33.
224 The idea was carried into the constitution by an amendment adopted in 1920 but was abandoned by a further amendment in 1928.
following the second Monday in May they reconvened to consider
the final adoption of the proposals. The theory of the split session
idea was a good one. It permitted the introduction of bills at an
early date; it offered to the representatives an opportunity to
study the bills and to plumb the depths of public sentiment; but
the plan did not work. In theory there was no difficulty. In prac-
tice a bill might be and often was amended upon the re-conven-
ing of the legislature so that all the study and popular support of the
original bill was valueless in the consideration of the bill as amended.
Likewise, the practice of introducing a bill by title, and per-
haps the first section, was not unknown. The fifteen day session
became a farce. The legislature complied with the form of the
constitution, but with its spirit it found it impossible to cooperate.
Consequently in 1928 the amendment of 1920 was repealed and the
legislative session under the original constitution was lengthened
from forty-five to sixty days.\footnote{See the note to article 6, sec. 22 of the constitution as set out in the Official Code of 1931.}

Even the sixty day limitation is not entirely effective. Stop-
ping the clock is a familiar practice and perhaps not a harmful
one — but it is clearly not within the spirit of the constitution.
But the court said they would not "judicially know how much
business can be transacted in twenty minutes."

The provision that adjournment must be by concurrence of
both houses seeks to protect each house from the adjournment of
the other.\footnote{\textit{Ibid.} Note that even lengthening the session to sixty days has not solved the
problem — at least extraordinary sessions (perhaps the result of unsettled
economic conditions, perhaps the result of legislative unwillingness to come to
decisions within the allotted period) have been unusually frequent.}
Although no adjournment is actually moved, the effi-
cency of the legislature may easily be impaired by the recess of one
house. So far difficulties that may have arisen of this kind have
not presented themselves for judicial consideration.

\textit{Conclusion}

The constitutional restrictions on legislative procedure were
adopted to provide a regular and uniform system of legislative pro-
cedure to the end that statutes would be more intelligently con-
sidered and the opportunities for fraud reduced. The usefulness
of many of these provisions does not warrant their retention in the
constitution. They receive no legislative sanction and consequently
the court must indulge in beneficial presumptions to insure the

\footnote{Capito v. Topping, \textit{supra} n. 98, at 594.}
validity of the legislative product. Other requirements demonstrate themselves unworkable in modern legislatures. Consequently, the protection of the legislative system demands: (1) improved legislative procedure, (2) limited judicial review.

A complete, workable, and flexible system of legislative procedure is necessary. It should be drafted by legislators and draftsmen familiar with present legislative methods but with an imagination capable of perceiving their defects. They should seek to remove present limitations from the constitution rather than add to those already there. A model code of legislative procedure should be the goal. Improvement in the form and usefulness of titles, simplification and clarification of methods of amendment, and a permanent system of code revision are the most needed changes.

These suggestions all treat of the improvement in the legislative technique. There is equal need for improvement in the scope of judicial review. The Court of Appeals has admirably handled the dozens of cases that have arisen in whole or in part from an alleged violation or omission of some constitutional requirement concerning legislative procedure. The court has wisely turned an unsympathetic ear to most claims. Most objections arise because a litigant wishes to avoid the responsibilities imposed upon him by the substance of the law. He does not allege, indeed, he usually cannot allege, that he has suffered injury because of the manner of the adoption of the statute. He merely does not like the law and is seeking a loop-hole through which to escape. He should be denied his action. By denying an action it is not intended to make the constitutional provisions merely directory. Rather it is hoped more strictly to enforce mandatory compliance with their requirements, by providing an action to be brought in the name of the state (preferably by a member of the legislature voting against the bill's enactment) to determine whether there had been compliance with the procedure. In this fashion, statutes would not live a Damoclesian existence, and yet the salutary effective of judicial review as a means of enforcing legislative standards, would be preserved. An action of not more than six months duration would protect deserving interests, give actual effect to many provisions now unenforceable and at the same time protect the legislative will against attacks by uninjured litigants who seek private gain.

Footnote 129 Freund apparently first suggested this type of remedy in his Standards of American Legislation (1917) 156, 157. See also Note (1932) 39 W. VA. L. Q. 70, 75.