No Law Shall Embrace More Than One Subject

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A one-subject rule for laws has found its way, in one form or another, into the constitutions of forty-one of our states. An examination of the general and state digests, the citators, and the weekly deluge of state advance sheets will disclose that the rule is frequently invoked by litigants to question the validity of a statute. It could be expected that a state constitutional provision so widely adopted and so frequently invoked would have received considerable attention in the periodicals and treatises. Surprisingly, this is not so. It is the purpose of this paper to give this constitutional provision some deserved additional attention. An examination will be made of the history of the provision, its historical purpose, the experience litigants have had in invoking it, and the meaning placed upon it by the courts. An evaluation will be presented of the efficacy of the provision in accomplishing its stated objective.

I. Introduction

The omnibus bill, containing provisions on heterogeneous matters, posed problems for the orderly and rational legislative process as far back as the Romans. Luce tells of the enactment of the Lex Caecilia Didia in 98 B.C.; it forbade the proposal of the lex satura—-a law containing unrelated provisions. While the omnibus bill apparently was a source of dissatisfaction as early as colonial times, the first effort to deal with the problem through constitutional means was a provision in the Illinois constitution, adopted in 1818. It limited bills appropriating salaries for members of the legislature and for officers of the government to that subject. In 1843, Michigan adopted a constitutional amendment limiting laws authorizing the
borrowing of money or the issuance of state stock to a single object. It was not until 1844, however, that any state placed a general one-subject rule in its constitution; in that year New Jersey adopted its provision. The idea gained ready acceptance and was soon placed in the constitutions of most other states. Today, all states except North Carolina and the New England states have some form of one-subject rule in their constitutions. The Minnesota provision is typical: "No law shall embrace more than one subject, which shall be expressed in its title."

Thirty-seven states have adopted substantially the same general requirement of unity of subject matter. Thirty-two of these states declare that no law shall embrace more than one subject, while five announce the rule in terms of object. Two additional states, New York and Wisconsin, have a constitutional one-subject rule which is applicable only to private and local laws. Arkansas and Mississippi have constitutional one-subject provisions applicable only to appropriation bills. Table 1 summarizes these constitutional provisions and also those adopted in a lesser number of states dealing specially with acts making appropriations.

The purpose of the Minnesota provision and its counter-parts is expressed well by the court in *Minnesota v. Cassidy*:

>The well-known object of [section 27 of art. IV] was to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign, and in no way related to or connected with its subject, and by preventing the combination of different measures, dissimilar in character, purposes and objects, but united together with the sole view, by this means, of compelling the requisite support to secure their passage... It was not intended, however, nor should it be so construed as to 'embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and multiplying their number.'

The New Jersey provision, interestingly, contains a statement of its purpose in the provision itself:

> To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other...

3. This paper does not explore related provisions found in the rules of many legislative bodies. Rule XVI, 7, Rules of the House of Representatives of the United States, has been widely copied; it provides: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."


5. 22 Minn. 312, 322 (1875).

The primary and universally recognized purpose of the one-subject rule is to prevent log-rolling in the enactment of laws — the practice of several minorities combining their several proposals as different provisions of a single bill and thus consolidating their votes so that a majority is obtained for the omnibus bill where perhaps no single proposal of each minority could have obtained majority approval separately.  

Another stated purpose for the provision is to prevent "riders" from being attached to bills that are popular and so certain of adoption that the rider will secure adoption not on its own merits, but on the merits of the measure to which it is attached.  

Another purpose served by the one-subject rule is to facilitate orderly legislative procedure. By limiting each bill to a single subject, the issues presented by each bill can be better grasped and more intelligently discussed. Also, limiting each bill to one subject means that extraneous matters may not be introduced into consideration of the bill by proposing amendments not germane to the subject under consideration. It should be noted, however, that this purpose relates to legislative procedure; it does not aim to eradicate devices designed to pervert the rule of majority vote but rather to eliminate rambling, discursive deliberations. This is an internal institutional problem, one that could have been left to the legislative rules to treat.

The constitutional provision embodying the one-subject rule also contains an independent requirement that each bill contain a title and that that title express the subject or object of the bill. However, these requirements have independent operation; independent historical bases; and separate purposes. The constitutional title requirement finds its American historical basis in the notorious Yazoo Act of the Georgia legislature of January 7, 1795. Because it was

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8. 1 Sutherland, op. cit. supra note 1 at 1702.

9. This is, of course, the purpose of the House rule previously quoted; it requires amendments offered to be germane to the bill under consideration.

10. The Yazoo Act was entitled, "An act supplementary to an act for appropriating part of the unlocated territory of this state, for the payment of the late state troops, and for other purposes therein mentioned, and declaring the right of this state to the unappropriated territory thereof, for the protection and support of the frontiers of this state, and for other purposes." The act directed the sale of a considerable portion of the public domain of the state of Georgia to named companies. A deed of January 13, 1795 by the Governor to a Georgia company composed of James Gunn and others of 500,000 acres
felt that the act, making substantial grants to private persons, was smuggled through the legislature under an innocent and deceptive title, public demand arose for a constitutional requirement that each bill contain a title which adequately expresses the subject matter of the bill. At the instance of General James Jackson, a provision to this effect was inserted in the Georgia constitution of 1798.\textsuperscript{11} The primary purpose of the title requirement is to prevent surprise and fraud upon the people and the legislature. If a title fails to express adequately the subject matter of the act or is misleading in its expression of the subject of the act, then a portion or all of the act is held invalid.\textsuperscript{2} While it is the purpose of the title requirement to prevent legislation by stealth, the one-subject rule also aids in the eradication of this practice and complements its sister requirement. Judicial expressions of the purpose of constitutional provisions like that quoted from the Minnesota opinion generally combine in one statement the purposes of the two requirements of these provisions. Thus, the isolation of the separate purposes of the two requirements of the single constitutional provision is often difficult.

II. Judicial Application of the Rule

The one-subject rule is one of the several provisions inserted in state constitutions by the constitution makers to regulate the legislative process.\textsuperscript{18} These provisions regulate the form of laws and legislative procedure. The first question which arises concerning these provisions is whether a party to a lawsuit should be permitted to show that the legislature failed in some particular to comply with one of these provisions and then to contend that the law enacted through this defective process is itself void. Two judicial doctrines insulate from attack laws enacted in violation of one of these constitutional regulations of the legislative process: first, the enrolled bill doctrine, preventing proof of the fact of violation; and second, the

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\textsuperscript{11} See Giddings v. San Antonio, 47 Tex. 548, 555-56, (1887).

\textsuperscript{12} What constitutes an adequate title for purposes of these constitutional provisions and the consequences of the title being inadequate is an independent, extensive, and troublesome subject. It is not treated here. See 1 Sutherland, \textit{op. cit. supra} note 1, § 1708; Manson, \textit{The Drafting of Statute Titles}, 10 Ind. L.J. 155 (1934); Sinclair, \textit{A Constitutional Restraint on Bill Styling}, 2 U. Newark L. Rev. 35 (1937); Comments, 43 Harv. L. Rev. 1143 (1930); 23 Tex. L. Rev. 378 (1945).

\textsuperscript{13} See, \textit{e.g.}, Minn. Const. art. IV, §§ 10, 12, 13, 16, 19-22, 27, 30.
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classification of the constitutional provision as directory instead of mandatory.

The enrolled bill doctrine holds that the enrolled bill, nothing to the contrary appearing on its face, is an absolute verity, is conclusive of its textual content and of its lawful enactment, and cannot be impeached by going behind it to the legislative journals or evidence extrinsic of the journals. Minnesota and some other states follow the journal entry rule, which holds that the enrolled bill is prima facie evidence that the legislature complied with all the constitutional requirements, but the journal is admissible to rebut the presumption and impeach the bill. Neither of these rules can insulate an act from the attack that it violates the one-subject rule because the fact of violation can be determined from the act itself without resort to extrinsic evidence.

It seems, then, that the question of the violation of the one-subject rule can be avoided by the courts only by holding that the rule is merely directory and not mandatory. By holding it directory, judicial review of the legislative action is denied. However, only Ohio holds its one-subject provision to be directory. While there is some evidence that Minnesota may have once declared the provision to be merely directory, it is clear now that it is viewed as mandatory.

Courts have adopted another common technique for reducing judicial interference with legislative action, however. They argue that the constitutional provision should be liberally construed, and that it should be construed so as not to hamper the legislature nor

17. Johnson v. Harrison, 47 Minn. 575, 50 N.W. 923 (1891). The early case of Board of Supervisors of Ramsey County v. Heenan, 2 Minn. 281 (1858), may say that the provision is not mandatory. However, the court determined that the act embraced but one subject and then went on to categorize a classification of the constitutional provision as directory as "senseless," and the classification of it as mandatory as an "advance in the science of government worthy of imitation by all states, ..." The Gilfillen report of Tuttle v. Strout, 7 Gil. 374 (Minn. 1862) reports the court as having said in referring to the Heenan case, "we there held ... that this provision of the constitution was merely directory, ..." However, the Gilfillen report of Minnesota v. Gut, 13 Minn. 341 (1868), aff'd 76 U.S. 35 (9 Wall.) (1869) reports the court as quoting this statement from Tuttle v. Strout but as inserting a "not" between "was" and "merely directory." While this ambiguity exists in the early cases, the number of cases in which the Minnesota Supreme Court has dealt seriously with the contention that an act embraces more than one subject makes it clear that the provision is considered mandatory.
to embarrass honest legislation. This means that the courts will read "subject" or "object" broadly and not narrowly so that the legislature will not be severely limited in what it may include in a single bill. Judge Mitchell expresses lucidly the approach of the courts in these cases when he declares in Johnson v. Harrison:

This provision ... is to be given a liberal, and not a strict, construction. It is not intended nor should it be so construed as to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, or by multiplying their number, or by preventing the legislature from embracing in one act all matters properly connected with one general subject.

The one-subject rule, then, is available to the advocate in the appropriate case as a weapon to strike down an act, and it becomes important to learn what the rule requires. While Minnesota declares that no act may embrace more than one subject, most states declare that no act may contain more than one subject. Whether "embrace" or "contain" is used seems immaterial; no case was found suggesting that there is any difference between the two terms.

Most of these provisions state the unity requirement in terms of "subject." Others state the requirement in terms of "object." The dictionary definition of "subject includes": "an organized body of knowledge," "subject matter" and "logic — that term of a proposition which denotes what the proposition is about . . . the topic of an affirmation or denial." Subject of an act suggests its subject matter or that with which it deals.

The dictionary definition of "object" on the other hand, includes: "that on which the purposes are fixed as the end of action or effort; that which is sought for; end; aim; motive; final cause." The object of an act suggests its purpose or aim; or the persons, institutions or conduct at which the act is aimed. There is an apparent difference between requiring an act to deal with a single subject and to deal with a single object. The first would seem to require a singleness of the matter dealt with, while the latter to require a singleness of purpose.

20. 47 Minn. 575, 577, 50 N.W. 923, 924, (1891).
22. Id. at 1679.
23. In making this examination of the two forms of the constitutional rule by using the dictionary as a tool, I am not unmindful of Judge Learned Hand’s sage advice in Cabell v. Markham, 148 F.2d 737, 739 (2d Cir. 1945) where he declared: “But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.”
One of the best general definitions of "subject" for these purposes is that of Judge Mitchell in *Johnson v. Harrison*:

Subject . . . is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.24

The subject of the act for purposes of the one-subject rule has been variously described as "the leading subject,"25 the "general subject matter,"26 the "core of the statute,"27 and the "one general topic capable of treatment as a unit."28

Five of the thirty-seven states having general unity requirements state the rule in terms of singleness of *object.*29 The object of an act has been variously described as "the aim or purpose of the enactment,"30 the "general purpose of the act,"31 and "the end which the legislative act proposes to accomplish."32

Despite these apparent differences in the character of the unity required of the body of the act, there is no clear differentiation made by the courts. An Indiana court, for example, declared: "while the 'object' of an act may not be interchangeable with 'subject,' still we think the object of an act must be considered in determining whether matters embraced in the act may be reasonably treated as 'one subject.' "33 An Iowa court, in the face of a constitutional requirement of one-subject, declared that: "the unity of object is to be looked for in the ultimate end designed to be attained, and not in the details

24. 47 Minn. at 577, 50 N.W. at 924 (1891).
looking to that end."34 A Missouri court refused to make any sharp distinction between motive, object and subject for purposes of the constitutional requirement of singleness of subject.35 Ex parte Conner,36 though Georgia requires singleness of subject, tests the act's compliance with the constitutional rule by use of the act's avowed purpose and finds plurality because the purpose of the act was to create four separate corporations. While Michigan requires singleness of object, a Michigan case relied heavily upon Ex parte Conner in finding plurality of object in the act under review.37 Virginia, which requires a single object, has declared that for these purposes "object" and "subject" mean substantially the same thing.38

The original Texas constitution of 1845 stated the unity requirement in terms of "subject." The 1861, 1866 and 1869 constitutions, however, stated it in terms of "object." The current constitution, adopted in 1876, returned to the original "subject." While recognizing that there could be a difference in meaning, it has been indicated that no real difference exists and that the older cases are authority under the new constitution.39

Because no real difference was discovered in the courts' handling of the question depending upon whether the unity requirement was stated in terms of "subject" or "object," the cases are not separately treated in the following discussion.40 And for simplicity's sake, the constitutional rule will be spoken of as the one-subject rule, though both forms are referred to.

III. Consequences of Plurality

Before the cases in which courts have found a plurality of subject to exist are examined, it seems wise to discuss the consequences of a finding of plurality. It is important to distinguish the three situations in which plurality may exist: (1) the body of the act may contain two or more subjects and the act's title may adequately express these two or more subjects; (2) the body of the act may

35. Thomas v. Buchanan County, 330 Mo. 627, 51 S.W.2d 95 (1932).
36. 51 Ga. 571 (1874).
40. Manson, supra note 12, at 156-57 n. 3 reaches the same conclusion concerning "object" and "subject" for purposes of the title requirement.
contain two or more subjects and the title express only one of these subjects; and (3) the body of the act may contain only one subject but the act’s title may express two or more subjects. The one-subject rule is clearly violated in only the first of these situations.

Where the body of the act contains two or more subjects and the title expresses but one of these subjects, the sister constitutional provision requiring the title to express the act’s subject comes into play. Violation of the title requirement produces one of two results, depending upon the nature of the violation. If the title fails completely to give notice of the contents of the bill or if the title is misleading as to the contents of the bill, the entire act is invalid. However, if the title gives adequate notice of a portion of the contents of the bill, then only that portion of the act of which the title fails to give adequate notice is invalid. Of course, in order for this rule to apply, the several portions of the act must be severable. The title requirement in several state constitutions contain an express severability clause; in other jurisdictions the same result is reached without aid of a constitutional severability clause.

The application of the title requirement, then, to an act of the kind under discussion will either render the entire act invalid or reduce the act to a single subject. In either case, no plurality of subject question would seem to be presented.

Most of the cases which have dealt with an act containing more than one subject but whose title expresses only one of the subjects have held that the title requirement has the effect of reducing the act to the one subject expressed in the title and that this remaining part of the act is valid. Several cases have found the entire act to be invalid, however. A Nevada act entitled: “An act to provide for the inspection of hides, providing compensation therefore and other matters relating thereto,” provided for the inspection of hides and also regulated the sales of the meat of neat cattle. The court found that this regulation of sales was a different subject from that expressed in the title, that the title was misleading and for that reason the entire act was void. The court then affirmed an order sustaining the accused’s demurrer to an indictment on the ground that the act was unconstitutional because it contained more than one subject. While plurality of subject is the technical basis, it seems that defective title is the real basis for this decision.

41. 1 Sutherland, op. cit. supra note 1, § 1708; Comment, 23 Tex. L. Rev. 378 (1945).
42. Jones v. Thompson’s Ex’r, 75 Ky. (12 Bush) 394 (1876); State ex rel. Daubman v. Smith, 47 N.J.L. 200 (Sup. Ct. 1885).
The fourth opinion of the Nebraska Supreme Court concerning a 1907 act suggests that in a given situation the court may conclude that the second subject in the body of the act (which is not expressed in its title) may have been the inducement for the passage of the act, that therefore the act is not severable and the entire act invalid.\textsuperscript{44}

The Nebraska solution may be the soundest. Plurality of subject matter in the body of the act suggests that log-rolling may have been employed; log-rolling is the evil at which the one-subject rule is aimed; as the evil may have existed in the act’s passage, the act should be declared void. The use of the title requirement to reduce the act to a single subject may employ conceptualism to overlook political realities. The act may well have been considered by legislators as dealing with both of the subjects set out in the body and not merely with the single subject expressed in the title; and the act may have been passed because these two subjects were joined in it. As this may have been the case, the act should be held invalid. This is an appealing argument.

Where the body of the act contains only one subject but its title expresses two or more subjects, a different question is presented. It is often stated that the one-subject rule is concerned with plurality in the body of the act, and not in its title. Thus, it is held that an act of this type is valid.\textsuperscript{45} Of course, the plurality of subjects in the title could lead a court in some cases to find that the title was misleading and so conclude that the act is invalid.\textsuperscript{46} Where the title is not misleading, however, it seems that the act should be held valid. The plurality of subjects in the title is insufficient evidence of log-rolling to justify a court to strike down the act because it violates the one-subject rule.

It seems, then, that the issue of violation of the one-subject rule is squarely presented only where the body of the act contains two or more subjects and the act’s title adequately expresses these sub-

\textsuperscript{44} McShane v. Douglas County, 96 Neb. 664, 148 N.W. 569 (1914). The three previous opinions are McShane v. Nebraska, 93 Neb. 54, 139 N.W. 852 (1913); State ex rel. County of Douglas v. McShane, 93 Neb. 46, 139 N.W. 850 (1913); McShane v. Douglas County, 95 Neb. 699, 146 N.W. 979 (1914).

\textsuperscript{45} Illinois v. McBride, 234 Ill. 146, 84 N.E. 865 (1908). See Judson v. City of Bessemer, 87 Ala. 240, 6 So. 267, 268, (1889); Eaton v. Guarantee Co., 11 N.D. 79, 80-81, 88 N.W. 1029, 1030 (1902). Stewart v. Hadley, 327 Pa. 66, 193 Atl. 41 (1937) seems to say that the act in question is invalid merely because its caption contains two subjects; however, the result can be better explained either on the ground that the caption is misleading or that the form of the amendments undertaken is defective.

\textsuperscript{46} Colonial Inv. Co. v. Nolan, 100 Fla. 1349, 1353-54, 131 So. 178, 180 (1930) at one point seems to say that mere plurality in the title is enough to invalidate the act, but at another point refers to the \textit{Judson} case with approval.
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jects. In these cases, the courts generally hold the entire act void. The courts usually declare that they cannot choose between subjects in order to hold one valid and the remainder invalid; as they cannot determine which subject the legislature wished to be law, the courts find themselves unable to use the doctrine of severability\(^7\) and must declare the entire act invalid. Several cases, however, have suggested that the court should determine whether one of the subjects is of greater dignity or is the dominant subject so that it can be concluded that the legislature wished that subject to be law over the others or that the other subjects furnished no special inducement for the passage of the act. The portion of the act dealing with the dominant subject would thus be found valid and the other portions invalid.\(^8\)

It is very doubtful that the doctrine of severability is applicable to an act containing two or more subjects adequately expressed by its title. Where a portion of an act is unconstitutional, the doctrine of severability saves the constitutional portions and gives them effect, where to do so will carry out the legislative purpose. Unconstitutionality generally flows from lack of legislative power. The one-subject rule is not concerned with substantive legislative power. It is aimed at log-rolling. It is assumed, without inquiring into the particular facts, that the unrelated subjects were combined in one bill in order to convert several minorities into a majority.\(^9\) The one-subject rule declares that this perversion of majority rule will not be tolerated. The entire act is suspect and so it must all fall.\(^49\) If this is the rationale for the constitutional rule—and it certainly is the principal one stated by the courts, then it is manifestly unsound to employ severability to save the provisions dealing with one of the subjects. The necessary assumption that this will carry out the legislative purpose, assented to by a majority of the legislators, cannot be made.

There is one circumstance, however, in which it may be proper


\(^{49}\) To avoid impugning the motives of the legislators who sponsored the act under consideration, it is often said that it is not suggested that there was any log-rolling in the enactment of the act under question but that this is the kind of act which must be held void to avoid the possibility of log-rolling in the future.

\(^{49a}\) State ex rel. Hueller v. Thompson, 316 Mo. 272, 278, 289 S.W. 338, 341 (1926). In fact, the only case found in which an entire general appropriation act was invalidated because it violated the one subject rule is Power, Inc. v. Huntley, 39 Wash. 2d 191, 235 P.2d 173 (1951). For a discussion of the special circumstances in that case see footnote 193 and its text.
to find that an act deals with more than one subject and invalidate
the provisions dealing with all but one of the subjects. It is said
that one of the purposes of the one-subject rule is to prevent riders
from being attached to popular bills so as to secure adoption of the
rider not on its own merits but upon those of the remainder of the
bill. The general appropriation act has, historically, presented a
special temptation for the attachment of these riders. Where it is
clear that a provision dealing with an unrelated subject had this
tactical relationship to the rest of the act, it seems to be consistent
with the rationale of the one-subject rule to hold only the rider
invalid. The troublesome question, though, would seem to be one of
determining when this situation exists.

IV. MUST THE ONE SUBJECT BE STATED IN THE TITLE?

A literal interpretation of the typical one-subject provision is
that the constitution requires (1) that the act contain only one sub-
ject and (2) that this single subject be expressed in the act's title.
While singleness of subject may permit a number of topics or sub-
jects to be treated by a single act so long as these various subjects
are all under one generic heading, the title provision of the constitu-
tion would seem to require that this single subject be stated in the
title.

Surprisingly, this question seems to have been squarely raised in
only a few cases. The determination of the question of singleness of
subject and the determination of the question whether the title to
the act gives adequate notice of its subject appear to be largely
independent inquiries in the cases. In the limited number of cases
which have dealt with the precise question, the results have been
diverse.

Several cases have taken the constitutional provision at its
apparent face value and required the statement of the single subject
in the caption. City of Owensboro v. Hazel50 involved an act that
had several different provisions relating variously to the city man-
ger form of government, the commission form of city government
and the machinery for changing to and from these forms. In a
declaratory judgment action the court held this statute to be uncon-
stitutional. The court declared, "it cannot be argued successfully that
the real subject of the act here is 'city government,' for the title
to the act instead of being that broad, as perhaps it might have been,
is restrictive in its nature to certain dissimilar forms of govern-

50. 229 Ky. 752, 17 S.W.2d 1031 (1929).
ment." Thus, the court indicates that the various provisions of this act might be all considered one part of one subject—city government, but this subject cannot be used to satisfy the singleness of subject requirement because it is not stated in the title.

On the other hand, some cases have found various specific provisions of an act all to be portions of one subject for purposes of the one-subject rule and held the act constitutional even though the caption did not state the one heading under which the various specific provisions can be grouped. In Mayor v. Gass, the constitutionality of a 1907 act entitled:

An act to authorize municipalities of Tennessee having a population by the census of 1900, or any subsequent federal census, of not less than thirty thousand nor more than forty thousand to issue $165,000 of coupon bonds, with which to fund the floating debts of said cities, to increase and improve the fire department, to widen the streets, and pay damage to property holders caused by the erection of viaducts and bridges; also to authorize said cities to issue $15,000 of coupon bonds with which to build sewers.

The argument that this involved two subjects was rejected by a finding that the subject of the act was the issuance of bonds for municipal purposes. It should be noted that the caption gives adequate notice of the contents of this act. It does not literally state that the subject is the issuance of bonds for municipal purposes. The specifics stated in the title, however, are clearly examples of the subject found by the court.

"Plurality of the title is not an objection when the several plural provisions deal with, and by necessary construction are but, constituent parts of one subject." The Minnesota Supreme Court has lined up with this group of courts and declared that "the general subject need not be stated in the title if it is clearly disclosed or can be readily inferred from the details expressed [in the title]."

However, the mere fact that the various provisions of an act may properly be placed under one subject heading does not mean that the act complies with the one-subject rule. A Pennsylvania case

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51. Id. at 762, 17 S.W.2d at 1035.
52. 119 Tenn. 438, 440, 104 S.W. 1084 (1907).
53. Illinois v. McBride, 234 Ill. 146, 84 N.E. 865 (1908) reaches a similar conclusion.
54. Kizer v. State, 140 Tenn. 582, 589, 205 S.W. 423, 425 (1918) (quoted with approval in Trotter v. City of Maryville, 191 Tenn. 510, 235 S.W.2d 13 (1950)).
respected the legislature's classification of the subject matter of the act as relating to two distinct subjects. The act was entitled:

An act to regulate the practice of the profession of engineering and of land surveying; creating a state board for the registration of professional engineers and land surveyors; defining its powers and duties; imposing certain duties upon the Commonwealth and political subdivisions thereof in connection with public work; and providing penalties.

It was argued that the act violated the one-subject rule because it dealt with at least two subjects—engineering and land surveying. The court's language and its reasoning in concluding that the act violated the constitutional mandate is very instructive:

Thus far we have considered the act as though it dealt with only a single subject, the profession of engineering; but, both in its title and throughout all its provisions, this statute is written as treating of at least two subjects, first, 'engineering' and next, 'land surveying'. As the act is drawn, the latter occupation is not treated as a mere subordinate branch of the former. . . . Furthermore, the act repeatedly refers to 'a professional engineer' and to 'a land surveyor' and really treats them as separate subjects of legislation. . . . Thus it apparently sets up two subjects of legislation in one statute, which, of course, is forbidden by our Constitution. It is no answer to say . . . that a land surveyor can justifiably be regarded as a minor engineer, for the legislature here designedly chose to treat him as otherwise.56

While a literal reading of the constitutional provision may justify the conclusion that the one subject with which the act deals must be stated in the title, it seems that the conclusion fails to take full account of the purposes of the provision.57 The one-subject rule is aimed at log-rolling; to prevent log-rolling it limits each act to a single subject. If the act has unity, then the purpose of this rule is satisfied. The title requirement is designed to give interested persons notice of the subject of a bill and prevent deception through use of misleading titles. If the title gives adequate notice, the purpose of the title requirement is satisfied. Two independent purposes are served by this constitutional provision, stating the two rules. If the two purposes are fulfilled in the particular case, the act should be held valid. A court should not permit a justifiable verbal interpretation to let it lose sight of the purposes of the provision.

57. Judge Learned Hand has wisely observed, "[T]here is often no surer way to misconceive the meaning of a statute or any other writing than to construe it verbally. . . ." Brooklyn Nat. Corp. v. Commissioner, 157 F.2d 450, 451 (2d Cir. 1946).
V. Judicial Finding of Plurality of Subject

There are literally hundreds of cases in which the courts have been called upon to discuss whether a particular act deals with more than one subject. In the great bulk of these cases, the court concludes that the act deals with only one subject. Only a representative sample of these cases were read in preparing this paper. However, an effort was made to find and read substantially all of the cases in which the court finds that the act contains more than one subject. This approach was taken because it is believed that an understanding of what the courts consider a "subject" for purposes of this constitutional provision can be best obtained by a careful examination of this second type of case. An attempt follows to organize these cases into various logical groupings.

A. An Act Concerning Two Named Entities.

Before the widespread adoption of constitutional prohibitions against special and local legislation and their more specific counterparts—such as those providing that private corporations be incorporated only under general law, and that divorce may not be granted by legislative act—a fairly common legislative act was one incorporating a named corporation. The clearest cases of plurality of subject are those acts which incorporated two or more named corporations or chartered two or more named cities.

Perhaps the leading case is People ex rel. Estes v. Denahy, its opinion having been written by Judge Cooley. A Michigan act which in three separate provisions appropriated certain non-resident highway taxes for the improvement of three different state roads was there held to contain three subjects. Another widely cited case is Ex parte Conner. It held a Georgia act which incorporated a volunteer corps of infantry in the City of Macon and extended the provisions of the act to the Floyd Rifles, the French Rifles and the Irish Volunteers, invalid as containing more than one subject. Perhaps the clearest case is one which involved an act incorporating two named banks. An Illinois case is somewhat puzzling. A 1927

58. E.g., Minn. Const. art. IV, § 33 (1857); Tex. Const. art. III, § 56, 57 (1876). For a good discussion of these provisions see Anderson, Special Legislation in Minnesota, 7 Minn. L. Rev. 133 (1923); Cloe & Marcus, Special and Local Legislation, 24 Ky. L.J. 351 (1936); Comment, 28 Tex. L. Rev. 829 (1950).
59. 20 Mich. 349 (1870).
60. 51 Ga. 571 (1874).
61. Council v. Brown, 151 Ga. 564, 107 S.E. 867 (1921). The 1870 act involved in this case was entitled, "an act to incorporate the Peoples Bank of Macon—also the Bank of Southwestern Georgia at Americus." Admitting that it was deciding the case more on instinct than ratiocination, an earlier
The act was construed to authorize any county with a population over 500,000 to establish and maintain a municipal hall and to grant the same powers to cities situated in such counties. While it was urged that the purpose of the act was to enable construction of a jointly used building, the court found that the cities and counties are different types of local government, voluntary and involuntary local subdivisions, and that the act embraced more than one subject in granting these powers to the two subdivisions. This reader is of the opinion that the court's concern over the financial improvidence of the construction program influenced its conclusion.

The principle of these cases should, of course, be applied not only where the several entities are being created by the act but also where the legislative charters of several entities are being changed in a single act. For this reason a Michigan court invalidated an act amending the charters of four different villages situated adjacent to Detroit.

The opinions in both the Denahy and Conner cases noted that the acts before the court, involving private and local benefits, were the kind that could create the evil at which the constitutional provision was aimed. Judge Cooley remarked in the Denahy case:

[T]here appear to be three distinct objects of legislation [represented by these three roads]... These objects have certainly no necessary connection, and being grouped together in one bill, legislators are not only preclude[d] from expressing by their votes their opinion upon each [bill] separately; but they are so united, as to invite a combination of interests among the friends of each, in order to secure the success of all, when, perhaps, neither could be passed separately. The evils of that species of omnibus legislation which the constitution designed to prohibit, are all invited by acts thus framed...

The only Minnesota case in which an act has been declared to violate the constitutional rule is Winona & St. Peter R.R. v. Waldron. Among other things, the validity of a special act of 1865, entitled, "an act to authorize the Winona & St. Peter Railway Com-

Georgia court held valid an act creating a Board of Commissioners of Roads and Revenue in six named counties. Spier v. Morgan, 80 Ga. 581, 5 S.E. 768 (1888). Note the doubts expressed about the Spier case in Christie v. Miller, 128 Ga. 412, 414, 57 S.E. 697, 698 (1907), where an act which established a fee bill in civil cases for the magistrates and constables in the City of Savannah and provided for the payment of costs in criminal cases to officers of Chatham County was found unconstitutional. The act dealt with local matters for two different localities — the county and one of the cities in the county.

64. 20 Mich. at 351-52.
65. 11 Gil. 392 (Minn. 1866).
pany to consolidate with the Minnesota Central Railroad Company, and to bridge the Mississippi River," was questioned. In response to the landowner-respondent's argument that the act embraced more than one subject, namely consolidation, bridging the Mississippi and taxation, the court declared without explanation that this objection must be sustained. It seems reasonable to conclude that this act combines two distinct local and private matters; if this is so then the act bears the earmarks of possible log-rolling and should be invalidated.66

The conclusion in these cases seem to carry out the purposes of the constitutional rule. An act which deals with several distinct local or private interests is suspect; it has the earmarks of log-rolling—of combining several minority interests to get a majority vote for the whole. The mere fact that all of the local or private interests relate to a single general subject, such as local militia, bank incorporations, state roads or powers of municipal government, should not dissuade the court from finding the act invalid. The combining of these provisions, all of which could reasonably be grouped under one general subject or heading, was likely the result of a marriage of convenience only and not intellectual affinity.

Where, however, the act represents a coordinated attack upon a single general subject but deals with a number of specific situations affecting directly several local and private interests, the act should probably be sustained. The legislature should not be forced to fashion fragmentary solutions. The real difficulty here, though, is in determining whether the act in question is of this kind or of the kind just condemned.

B. An Act Containing a Repealer.

Acts whose only purpose is to repeal certain laws or whose purpose includes this purpose have run afoul of the constitutional one-subject rule. Repeal may be viewed as an independent subject.

A 1955 Kansas act repealed an act concerning the registration of motor vehicles belonging to non-residents, provisions of the general statutes establishing the Kansas Board of Review for movie censorship and provisions of the general statutes imposing certain fees upon the movie industry. The argument that the single subject of this act was repeal, and that therefore the act was constitutional, was rejected and the act was held to deal with more than one sub-

66. One of the few Texas cases suggesting that an act contains more than one subject is similar to the Waldron case; however, the act's title is found misleading and the act is held invalid for that reason and so the court does not really get to the plurality question. San Antonio v. Gould, 34 Tex. 49 (1871).
ject. The court considered the subject matter of the acts repealed as the subject of the 1955 act for purposes of the one-subject rule. As the subject matter of the acts repealed do not fall under one general heading, the court's conclusion that the act dealt with more than one subject seems sound. Important social and economic consequences can flow from the repeal as well as the enactment or amendment of a law. Therefore, a court should be as sensitive to the possibility of log-rolling in an act making repeals as in one enacting or amending a law.

Two Alabama cases and an earlier Kansas one involve acts containing certain substantive provisions and a repealer clause. The early Alabama case found that the express repealer was a second subject and that the act was therefore void. The court does not explain the contents of the two sections of the revised code which were expressly repealed. The other Alabama case involved an act providing for the form of government for cities with a population between 50,500 and 100,000 by amending the existing law by, among other things, changing the population bracket. One of the effects of this change was to deprive towns and cities under 1,000 population and between 50,000 and 50,500 of the option of adopting the commission form of city government. The court found that this repeal was a second subject and that the act was therefore void. The Kansas case involved an act containing a number of provisions concerning county government in Dickinson County and a section repealing an act regulating the salaries of certain county officers in Norton County. The court concluded that the act violated the one-subject rule, the repealer being a second subject. The two Alabama cases seem doubtful. Repeal, in the abstract, is not a subject; the subject matter of the acts repealed should be considered the subject of the repealer. Only if the subject matter of the acts repealed was distinct from that of the substantive provisions of the act is the case sound. The repealed law in the case seems to be on the same subject as the rest of the act — adoption of forms of city government — and so the act should be held unconstitutional. The repealer in the Snow case, however, does introduce a different

68. Weaver v. Lapsley, 43 Ala. 224 (1869).
69. Pillans v. Hancock, 203 Ala. 570, 84 So. 757 (1919). It should be noted that the court first declared the act void because it had a misleading and uncertain title; thus, the determination that the act contained two subjects may be considered as unnecessary to the decision.
70. Board of Comm'rs of Norton County v. Snow, 45 Kan. 332, 25 Pac. 903 (1891). The court also found the title defective; it indicated that the act dealt only with Dickinson County.
subject; the analysis made of the cases concerning two or more named entities seems persuasive of this conclusion.

State v. Wright\(^7\) presents a related situation. An 1876 act incorporated the City of Astoria and granted it authority to issue liquor and other licenses. An 1885 act regulated the sale of intoxicating beverages, established the licensing procedure and fee, and provided that no license may be granted by any city or town for less than $300 per year. Wright, who had a license from Astoria, was prosecuted for selling intoxicating beverages without a license, the state contending that the 1885 act supersedes the Astoria ordinance insofar as the ordinance fixes a different license fee. The court declared the 1885 act unconstitutional, finding, among other things, that the act contained more than one subject. The court declared that if the act were construed as the state argued it would affect every municipal charter in the state and that an act which amends all municipal charters in the state violates the one-subject rule.\(^7\) If the court meant that the act is multi-subject because it affects every city in the state, then the decision appears doubtful.\(^7\) General legislation dealing with the liquor traffic problem on a state-wide basis would seem preferable to a number of acts dealing with it as it relates to one or a few cities. The mischief at which the one-subject rule is aimed is not present in the former but may be in the latter.

C. An Act Concerning Two Matters Treated Elsewhere in the Law as Distinct Subjects.

Several cases have based their conclusion that the act in question embraces more than one subject upon the fact that the jurisprudence of the state considers several of the matters treated by the act as separate, distinct subjects. This approach involves two assumptions: (1) that some body of the state's jurisprudence for some purpose considers the subjects as distinct and separate; and (2) that this dichotomy is also applicable to the question at hand — compliance with the one-subject rule.

Two cases have looked to provisions of the constitution, found that they classified certain matters dealt with by the act in question

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\(^7\)14 Ore. 365, 12 Pac. 708 (1887).

\(^7\) The common constitutional requirement that, "no act shall be revised or amended by mere reference to its title, but the act revised or amended shall be set forth and published at full length" was relied upon in reaching the conclusion that the act was unconstitutional. This seems a firmer basis for the result. See, for example, Tex. Const. art. III, § 36 (1876).

\(^7\) Another defect of the act was that the title gave no notice that the legislative charter of Astoria and other cities would be affected by the act. In light of this defect and the act's failure to comply with constitutional rules as to amendments, the court's conclusions on the one subject rule may not be very important.
as distinct, separate subjects, and then held the act void. A Louisiana case involved the validity of an act entitled, "an act prescribing the manner of changing parish lines and of removing parish seats." The Louisiana constitution provided, "all laws changing parish lines or removing parish seats shall, before taking effect, be submitted . . . ." The disjunctive "or" apparently convinced the court that the constitution classified the changing of parish lines and the removing of parish seats as distinct subjects.\(^7\) The disjunctive here appears to be a slender reed indeed upon which to base the conclusion that the constitution classifies these two subjects as distinct. The conclusion in an Illinois case, however, seems very sound. The Illinois constitution expressly made one of the subjects dealt with by the act in question a separate subject of legislation when it provided that acts appropriating money for certain salaries could deal with no other subject.\(^5\)

Several cases have looked to past legislative practice in dealing with the matters included in the bill under discussion and, finding that there was a settled legislative practice of treating them separately, have declared the acts to contain more than one subject. A New Jersey case found that the legislative practice for over thirty years had been to treat taxation of steam railroads and taxation of street railroads as separate subjects and that therefore an act combining both subjects violated the one subject rule.\(^7\) A Missouri case found that the settled legislative practice was to classify railroads, railroad property and railroad employees as separate from manufacturing, mechanical and mercantile establishments, their property and employees and that therefore an industrial safety act applicable to all was unconstitutional.\(^7\) While the title for both of these acts may have been defective and the discussion of the one-subject rule thus unnecessary, the two cases illustrate the approach. The one-subject rule is directed at log-rolling. It attacks log-rolling by striking down unnatural combinations of provisions in acts — those dealing with more than one subject — on the theory that the best explanation for the unnatural combination is a tactical one — log-rolling. The fact that the matters have always been dealt with separately in the past does suggest that the reason for their being com-

\(^5\) Ritchie v. Illinois, 155 Ill. 98, 40 N.E. 454 (1895). This case is discussed more fully in the section of this paper devoted to the constitutional provisions dealing specially with acts appropriating money.
\(^7\) Williams v. Atchison, T. & S.F. Ry., 233 Mo. 666, 136 S.W. 304 (1911).
A related approach is that taken in a Pennsylvania case which declared that an act embraced more than one subject because the act treated two matters as separate subjects. While the court recognized that land surveying could be treated as a branch of engineering, the fact that the act regulated professional engineers and land surveyors as separate callings induced the court to treat them as separate subjects for purposes of the one subject rule. This seems very doubtful reasoning.

Use has been made in a group of cases of the classification of subjects in the law—the common law or the revised statutes—to determine that the act in question embraces more than one subject. An early Louisiana act entitled, "an act relative to slaves and free colored persons," dealt with a wide range of matters in its ninety-nine sections. Upon appeal by a slave from his conviction by a tribunal created by this act for killing another slave, it was held that this act was unconstitutional. The court declared that the slave and the free colored person are two classes which it is impossible to confound in legal parlance. Another Louisiana case involved an act which made it a crime to make certain threats, these included threats to commit nearly all the acts defined as crimes in the titles of the statutes dealing with offenses against the person and against property. Because the act ranged across so many categories of crime, it was found to embrace more than one subject. A Florida act condemned as a crime certain conduct which had been classed as arson at common law and certain conduct which had not; this act was viewed as embracing more than one subject. An Idaho act dealt with the sale of general fund treasury notes and of state refunding bonds; it was held that these were two subjects, the latter relating to state indebtedness and the former not. For purposes of constitutional restrictions on state debt, the court was probably correct in its classification. An Indiana act revised the laws relating to registration and regulation of motor vehicles and provided that the revenues from the inheritance tax shall be deposited in the general

81. William v. Florida, 100 Fla. 1054, 132 So. 186 (1930); Sawyer v. Florida, 100 Fla. 1603, 132 So. 188 (1931). Again, an adequate basis for the result in these two cases is that the title was misleading.
revenue fund. Viewing motor vehicles law and inheritance tax law as separate subjects, the court held the act invalid. The dissent argued that history showed a pragmatic connection between these matters and that the act should be considered valid; it was pointed out that prior law dedicated a portion of the revenue from this tax to highway purposes and that this act terminated this allocation. An 1863 Kentucky act dealt with appeals from justice and police courts and with duties and fees of deputy clerks of the quarterly court; with little explanation, this was classed as two subjects. An 1883 Michigan act provided for the incorporation of merchants mutual insurance companies and for the regulation of insurance business conducted by manufacturers mutual insurance companies. Viewing the act, apparently, as dealing with the subjects of private corporations and of insurance, the court declared the act invalid. A Texas act made the fraudulent taking of a chicken or turkey a felony or a misdemeanor; declaring that a purpose of the one subject rule is to prevent the combination of incongruous enactments, the court held this act invalid. Plurality of subject does not seem to be the vice of this act, rather it seems to be fatal ambiguity. A Florida act sought to compel tax returns to be filed by owners and custodians of real and tangible personal property and provided that no deed or bill of sale could be filed unless the post office address of the grantee was given. This was viewed as dealing with recording acts and with ad valorem taxation and to contain more than one subject. This conclusion was reached though it was argued by the dissent that the purpose of the address requirement was to aid tax enforcement and so this requirement was germane to tax provisions. An Alabama act designated certain transfers by debtors of substantially all of their property to a creditor general assignments and

84. Hind v. Rice, 73 Ky. (10 Bush) 528 (1874).
87. Two other Texas cases dealing with the same statute should be noted here. An act entitled, "an act to punish unlawful interference with private property or private rights," which was enacted to check impressment of private property for public use, was declared to embrace more than one subject. However, neither case explains its conclusion. State v. Shadle, 41 Tex. 404 (1874); Bills v. State, 42 Tex. 305 (1875).
88. Colonial Inv. Co. v. Nolan, 100 Fla. 1349, 131 So. 178 (1930). The severity of the sanction for failing to comply with the address requirement and the fact that the inclusion of this provision in a tax act may conceal this may have been influential here.
so made this property available to pay the claims of all creditors and also prescribed penalties for persons conveying property in fraud of creditors. Declaring that these were independent subjects, made separate and distinct by legislation, judicial decision and inherent character, the court held the act to be invalid.80

The unquestioning use of the classification of subjects in the law as a basis for determining compliance with the one-subject rule is, of course, unsound. Subjects are organized and classified as such in the law for a variety of reasons—for reasons of history, legal theory, convenience, functional relationships and the like. Not all of the reasons are of the kind that indicate that any joining of subjects in a single bill is most probably for log-rolling purposes. The approach of the Florida cases, for example, in looking at what was arson at common law and what was not seems unsound. However, it is said that the law is largely accumulated experience; as such, it is a pretty practical guide as to what has a reasonable relationship and what one of tactical convenience only.

D. An Act Concerning Fragments Only of a Subject.

A final group of cases have been examined where the various provisions of an act all dealt with the same general subject, but the individual provisions had no connection. A number of cases have declared that an act may contain any number of subjects or topics so long as they are all germane to each other or so long as they all fall under one general heading.80 A provision that introduces a topic which is but a means for accomplishing the subject of the act does not add a second subject.91 This points up that the one-subject rule is not directed literally at plurality but at disunity of subject matter. State ex rel. Test v. Steinwedel expresses this position well:

[The one-subject rule does not] contemplate a metaphysical singleness of idea or thing, but rather that there must be some rational unity between the matters embraced in the act, the unity being found in the general purpose of the act and the practical problems of efficient administration. . . . matters which ordinarily would not be thought to have any common features or character-

91. Toole v. State, 170 Ala. 41, 54 So. 195 (1910). An unusual case is Thomas v. State, 16 Ala. App. 145, 75 So. 821 (1917). In an act imposing certain taxes to enable the construction of county roads, it was provided that the drafter of the act should obtain a certain per cent of the tax collected for the first year as his compensation. The act was held to contain two subjects, though the provision for the drafter's compensation could be viewed merely as a means to accomplish the bill's general subject.
istics may for purposes of legislative treatment, be grouped to-
gether and treated as one subject. For purposes of legislation, 'subjects' are not absolute existences to be discovered by some sort of *a priori* reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attain-
ing the general purpose of the particular legislative act.92

An Idaho case found that an act containing a variety of provi-
sions relating to labor unions had no unity of purpose or core and that the act was therefore void.93 A Georgia act concerned election returns for certain statewide offices and the term of office of these officers. The court acknowledged that the two provisions related to state officers but, finding no relationship between the two provisions, held the act invalid.94 A Nebraska act contained amendments on a variety of topics on the general subject of property law, but the court could find no relationship among the topics and so held the act in-
valid.95 It was argued that a New Mexico act dealt with the single subject of betterment of state properties; however, the court found that the subject was the capitol and its grounds and that the provi-
sions concerning other state properties, including parks, elsewhere had no connection to the first group of provisions.96 A 1927 Illinois act established the debt limit for certain classes of municipalities and prescribed the duties of the county clerk in the extension or scaling of taxes. While it is admitted that these two provisions dealt with the single subject of revenue, the court could find no connection between the topics and so held the act invalid.97 The Louisiana case, men-
tioned earlier, which held invalid an act making it a crime to threaten to commit a wide range of acts which acts are themselves a wide range of crimes, could be considered as falling in this group of cases.98

The rationale suggested for the preceding group of cases seems applicable to this group. The absence of some common purpose or other relationship between the specific topics treated in the act sug-
gests that there were no practical, rational, and legitimate reasons for combining the provisions in a single act. That suggests that the provisions were combined only for tactical reasons, for purposes of log-rolling. That being so the act is invalid.

92. 203 Ind. 457, 467-68, 180 N.E. 865, 868 (1932).
95. Trumble v. Trumble, 37 Neb. 340, 55 N.W. 869 (1893). Among the provisions of the act were ones giving the guardian of an insane wife the power to convey her prospective property interests during her husband's life-
time, providing for the descent of realty, providing for the distribution of personality, providing for the disposition of homestead interests, and abolishing the estates of dower and curtesy.
VI. ACTS SPECIALLY PRESENTING THE PLURALITY QUESTION

Before an evaluation is made of the one-subject rule, it seems desirable to look at several types of acts which seem especially susceptible to the charge that they embrace more than one subject. Considerable attention is given to acts appropriating money, especially general appropriation acts. This is explained by the fact that eighteen states have special constitutional provisions concerning these acts and that these acts have been the source of considerable litigation on this score. Acts embodying codes or revisions of a substantial group of statutes and omnibus revenue acts will also be examined.

A. Appropriation Acts

History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption. Because this special temptation is yielded to from time to time and because eighteen states have adopted constitutional provisions dealing specially with the contents of appropriation acts, it seems wise to give considerable attention to the unity of subject problem as it arises with respect to acts appropriating money. The problem will be examined first in the context of the constitutional provisions dealing specially with acts appropriating money and then in the context of the general one-subject provisions.

Several factors in the enactment of a general appropriation act may permit the attachment of a rider which may represent the point of view of only a minority of the legislature. The sheer bulk of the act itself may mean approval with no real attention being given to the rider. In such a case the rider represents, in fact, the point of view of no more than a majority of the committee. While the power does exist in the house itself to remove these riders by a simple majority vote, similar power does not exist in other circumstances. For example, where the rider is attached by the conference committee, the houses of the legislature must accept or reject the whole bill. The rider would have to be very obnoxious to induce a house to reject the entire bill because it disapproves of a rider. The governor when he passes upon the bill must also accept or reject the entire bill. While it is true that the constitutions of many states permit the governor to disapprove individual items of appropriation without disapproving the entire act, this is generally held not to

99. E.g., Minn. Const. art. 4, § 11; Tex. Const. art. 4, § 14.
include the power to disapprove provisions of the act which do not make appropriations. Arizona and Wisconsin, on the other hand, do hold that their provisions grant the governor authority to veto any separable portion of the appropriation act.

In short, a substantial danger does exist that the principle of majority rule may be subverted in the general appropriation act. This fact and the accumulated experience with appropriation acts undoubtedly explains why eighteen states have adopted constitutional provisions specially dealing with the permissible contents of acts making appropriations — both general appropriation acts and other appropriation acts. Seven of these eighteen states expressly except "general appropriation bills" from the operation of the one-subject rule and then go on to prescribe the permissible contents of the general appropriation bills and to declare that all other appropriations shall be by separate bill embracing but one subject.

Constitutional Provisions Summarized.

The most common form of the special provisions relating to the contents of appropriation acts is that found in the Pennsylvania constitution:

The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on the public debt and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject.

The special provisions in the constitutions of Montana, North Dakota, and Wyoming are identical, while those of Arizona, Arkansas, Colorado, and Mississippi are substantially like the Pennsylvania provision. The New Mexico provision is substantially the same as the Pennsylvania one but adds the phrase, "other expenses required by existing law," to the list of items permitted in the gen-

100. Fulmore v. Lane, 104 Tex. 499, 140 S.W. 405 (1911).
101. Callaghan v. Boyce, 17 Ariz. 433, 153 Pac. 773, 783 (1915); State ex rel. Wisconsin Tel. Co. v. Henry, 218 Wis. 302, 260 N.W. 486 (1935). The Wisconsin Court, after pointing out that the Wisconsin one-subject provision applies only to local and private bills and that the Wisconsin constitution grants authority to veto a "part" instead of an "item," reasoned that the governor's power of partial veto is co-extensive with the legislature's power to include separable pieces of legislation in the appropriation act.
102. Table I lists the states having these provisions, gives the citations to the constitution, and presents some data concerning the provisions. The eighteen states are Ala., Ariz., Ark., Cal., Colo., Fla., Ga., Ill., Miss., Mont., Neb., N.M., N.D., Okla., Pa., S.D., W.Va., and Wyo.
eral appropriation bill. The South Dakota provision is also substantially the same except that it adds the phrase, "the current expenses of state institutions." The Florida constitution seems also to state a one-subject rule for appropriation bills, though in somewhat different terms.

The Illinois and Nebraska provisions impose greater limitations on appropriation bills for certain purposes. The Illinois constitution provides: "Bills making appropriations for the pay of members and officers of the general assembly, and for the salaries of the officers of the government, shall contain no provision on any other subject." This requires that the bill making appropriations for salaries deals with only that matter; it imposes a greater limitation on the legislature than would exist if the legislature were functioning under just the general one-subject provision of the Illinois constitution.

The Alabama constitutional provision is like that of Pennsylvania with an important qualification; the legislature's power in the general appropriation bill is limited by the following: "The salary of no officer or employe shall be increased in such bill, nor shall any appropriation be made therein for any officer or employe unless his employment and the amount of his salary have already been provided for by law." Apparently, rather specific authority for all appropriations must be found in general law. Oklahoma borrowed its provision from Alabama. A somewhat similar limitation on the legislature's power to make specific changes relating to government administration is contained in the Georgia provision, where it is declared:

The General appropriation bill shall embrace nothing except appropriations fixed by previous laws, the ordinary expenses of the Executive, Legislative and Judicial Departments of the Government, payment of the public debt and interest thereon, and for support of the public institutions and educational interests of the State.

The West Virginia Budget Amendment of 1917 goes far beyond merely prescribing the permissible contents of bills appropriating

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105. S.D. Const. art. 12, § 2. Interestingly, it requires that appropriations by separate bills must be enacted by a two-thirds vote of all the members of each house.
106. Fla. Const. art. 3, § 30, "Laws making appropriations for the salaries of public officers and other current [sic] expenses of the State shall contain provisions on no other subject."
108. W. Va. Const. art. 6, § 42, is identical; but was replaced by the more extensive provision, W. Va. Const. art. 6, § 51, in 1917.
moneys. It establishes a Board of Public Works, composed of the governor, secretary of state, auditor, treasurer, attorney general, superintendent of free schools, and commissioner of agriculture and imposes upon it the duty to prepare a state budget and a budget bill. The budget bill is divided into “governmental appropriations” and “general appropriations,” but no limit is placed upon the purposes for which appropriations may be made in the budget bill. The legislature may consider no other appropriation measure until the budget bill is finally acted upon by both houses. Appropriation measures other than the budget bill are designated supplementary appropriation bills; these bills are “limited to some single work, object or purpose therein stated.”

In 1922, California adopted a provision similar to the West Virginia Budget Amendment except that it imposes the duty to prepare a budget and the budget bill upon the Governor. There is no limit on the subject matter of the proposed expenditures which may be contained in the budget bill. A bill making appropriations, other than the budget bill, however, may contain no more than one item of appropriation and that for a single and certain purpose expressed in the bill.

In addition to these eighteen states, there are four states in which the general one-subject provision expressly excepts appropriation bills from the constitutional rule.

It will be recalled that the general structure of the special constitutional provisions dealing with appropriations acts is to prescribe the permissible contents of the general appropriation act and then to limit all other acts making appropriations to one subject. Thus, in

111. State ex rel. Key v. Bond, 94 W. Va. 255, 118 S.E. 276 (1923), declares that the general one-subject rule does not apply to appropriation bills because they are governed by the Budget Amendment.

112. W. Va. Const. art. 6, § 51C(1).

113. Cal. Const. art. 4, § 34.

114. Del. Const. art. 2, § 16; Mo. Const. art. 3, § 23; Tex. Const. art. 3, § 35; Utah Const. art. 6, § 23. Of these four states Delaware grants the broadest exception excepting “bills appropriating money for public purposes.” Utah excepts “general appropriation bills.” Missouri and Texas except “general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated.” The Missouri and Texas constitutional provisions on their face make it clear that the exception is technically not an exception but instead a declaration that the appropriation bill deals with but one subject. While the constitutional provision in the other two states, Delaware and Utah, expressly excepts general appropriation bills from the one-subject rule, it seems that this exception amounts to no more than a declaration that a general appropriation bill deals with but one subject. Harris v. State ex rel. Williams, 228 Ala. 100, 151 So. 858 (1934), so concludes with respect to the exception of “general revenue bill.”

115. This is the structure of the provisions for all of the states listed in note 102 except five. Florida simply limits laws making appropriations for current expenses of the state to that subject. Fla. Const. art. 3, § 30. Illinois and
the construction of these special provisions, the first problem to be solved is the determination of what may be included in the general appropriation act.

**General Appropriations Act.**

Nine states designate as one of the permitted subjects in the general appropriation act appropriations for "the *ordinary expenses* of the executive, legislative and judicial departments of the government."¹¹⁶ A few cases develop what is an ordinary expense for purposes of this limitation. A Montana case decided that an appropriation for the payment of fire insurance premiums on insurance policies covering the state capitol and certain other state buildings was an appropriation for an ordinary expense. "Any expense which recurs from time to time and is to be reasonably anticipated as likely to occur in order for the proper operation and maintenance of the departments of the state government is an ordinary expense."¹¹⁷ A Colorado case declares that an appropriation to pay for the printing of 3,000 copies of the state engineer's report for distribution to the public would not be one for the ordinary expenses of the executive department, though printing for the necessary and actual use of any of the three departments of the government would be.¹¹⁸ While the court does not explain this classification, it apparently views this educational effort on the part of a state agency as not a part of its usual, ordinary function. The dissemination of information by a state agency is apparently classed as an extraordinary activity. It is very doubtful that the same result would be reached today; this seems like an ordinary and important function of state government.

No discussion was found in the cases explaining the limitation of "ordinary expenses." An apparent explanation is that the general appropriation act should contain only those items which are usual because the policy wisdom of these expenditures has already been

Nebraska provides that appropriations for the salaries of officers of the government and of members and officers of the general assembly shall deal with no other subject. Ill. Const. art. 4, § 16; Neb. Const. art. 3, § 22. California and West Virginia place no limit on the purposes for which appropriations may be made in the general appropriation bill, the budget bill, but limit all other bills making appropriations to one subject. Cal. Const. art. 4, § 34; W. Va. Const. art. 6, § 51.

¹¹⁸. Collier & Cleaveland Lithographing Co. v. Henderson, 18 Colo. 259, 32 Pac. 417 (1893). There is dicta also in People *ex rel.* Richardson v. Spruance, 8 Colo. 530, 9 Pac. 628 (1886), that an appropriation to a state horticultural society constituted by law the Bureau of Horticulture to carry out its duties could not be made in the general appropriation act, but the reason for this is not stated.
decided; that is, there is no substantial question as to whether expenditures should be made for these purposes. Therefore, these appropriations need not depend upon their association with the necessary appropriations for adoption but are acceptable on their own merits. Appropriations, however, for new or unusual projects have not, by definition, been tested and found legislative acceptance. To permit them to be included in the bill is to permit them to gain approval, in some cases, as a result of the reflected glory flowing from being a part of an act providing the usual and necessary appropriations. The purpose of the limitation under discussion, then, is to make new proposals for expenditures gain acceptance on their own merit.\textsuperscript{119} The underlying assumption is that there is a continuity in legislative policy—that when the legislature has for a number of years decided to expend money for a given purpose this decision has become a part of permanent policy. All that remains to be done each time the legislature appropriates is to decide “how much” and not “whether.”

If the purpose of the limitation is that suggested here, then whether a particular item may be included depends upon whether it has been previously included a sufficient number of times so that its inclusion has become a permanent policy. Is not one way of defining ordinary that which has occurred often enough to become usual?

Three states designate as one of the permitted subjects of the general appropriation act appropriations for “the expenses of the executive, legislative and judicial department.”\textsuperscript{120} Arizona lists this permitted subject simply as appropriations for “the different departments of the state.” It seems that these four provisions add up to the same thing—the appropriations are not limited to those for an ordinary expense, but they must be for one of the three departments of government.

What is an appropriation for “interest on the public debt” and for the “public schools” seems not to have been litigated. There would seem to be few debatable questions concerning what constitutes an appropriation for “interest on the public debt.” If the debt is one which the state may assume, then it would seem to be public. What constitutes interest presents no real question. There may be a question whether “public schools” means public free schools or includes public institutions of higher learning as well. The answer

\textsuperscript{119} Substantially this rationale is given for another type of limitation on appropriation bills by Fergus v. Russel, 270 Ill. 304, 319, 110 N.E. 130, 137 (1915).

\textsuperscript{120} N.M., N.D., and Okla.
to this would have to be worked out for each state in light of the history of the appropriate constitutional provisions and of the public education program and of the practical construction given to the constitution. South Dakota uses the term "common schools" instead of "public schools." It would seem that this term does not include colleges and universities and so this question may not exist in South Dakota.

There may also be some question whether the appropriations must be ordinary or usual expenditures for public school purposes. A textual interpretation can be made to the effect that there is no such limit because the fact that such a limit is expressly imposed on the appropriations for the expenses of the three branches of government, and is not imposed on the item being discussed indicates that there is no such limitation intended on public school appropriations. The narrow view could be taken that appropriations for the expenses of state administration of the public free school program is not an appropriation for "public schools" as it does not go directly into the local school program, but this seems to be a mechanical and unrealistic view.

One may wonder why it was necessary to mention this subject of appropriation at all; it seems to be an ordinary expense of the executive department. Perhaps the constitutional provision reflects the thinking of a number of educators who consider education the fourth department of state government.

The significance of the added phrase, "other expenses required by existing law," in the New Mexico provision has not been suggested in any reported opinion. Prima facie, it seems that most appropriations referred to by this phrase are appropriations for "ordinary expenses of the executive, legislative and judicial departments." If the interpretation of "ordinary expenses" suggested earlier is correct, it may be that the phrase under discussion would permit the inclusion of appropriations being made for the first time which otherwise would have to be made by a special appropriation bill. When is an expense "required" by a law? When a law requires an officer or agency to carry out a certain program? Or must the law not only require a certain program but rather specifically require the item of expenditure? To the extent that the answer to this question is in terms of a specific legislative mandate the phrase under discussion would seem to add nothing. If the rationale of the "ordinary expense" rule is as suggested, then the specific legislative mandate could be considered the decision which makes the expense an
“ordinary” one and so authorized by the earlier phrase in the constitution.

The South Dakota provision lists as one of the permissible subjects of appropriation in the general appropriation act those for “the current expenses of state institutions.” While the Supreme Court of South Dakota has not passed on the question, it seems safe to conclude that any appropriation within this phrase would also be an appropriation for “ordinary expenses of the executive department.” Thus, this additional phrase seems redundant. It may have been added, out of abundant caution, because appropriations for this purpose represent in most states one of the major items of expenditure.

The Florida provision limits the general appropriation act to appropriations for “current expenses of the state.” This seems to do little more than limit the appropriation act to appropriations; the general one-subject provision of the constitution would seem to do that. However, it may be that significance should be given to “current” so as to place a limit in terms of time on the objects of appropriations. Thus, it may be that appropriations to pay claims against the state are not for “current expenses” and so must be made by a special appropriation act. Because a tort or contract claim grows out of some past event, an appropriation to pay such a claim may be considered not to accomplish some objective of the current fiscal year. What limitation upon appropriations acts is imposed by this provision of the Florida constitution has not been explored in reported cases.

The Alabama and Oklahoma constitutions place severe limitations upon what the general appropriations act may do with respect to the salaries of officers and employees. It has been held that these limitations apply only to general appropriations bills and not special ones.121 No reported case deals with the question of what amounts to an increase in the salary of an officer or employee; thus whether an increase in a per diem travel allowance or in a food or housing allowance is an increase in salary cannot be answered on the basis of the cases. It would seem that any reimbursement for expenses incurred in order to carry out duties owed the state would not be payment of salary, but that all other payments arising out of the office or employment would be. The limitation that an appropriation for the salary of an officer or employee may not be made unless his employment and the amount of his salary has already been provided for by law has been dealt with by the Oklahoma court. The purpose

of this requirement of previous law is said to be to reduce the pressure for increased expenditures.\textsuperscript{122} The appropriations for salaries of the necessary and required officers and for other expenses have very vigorous and effective support. If this support could be used in behalf of new positions and increased salaries for old ones, the pressure for increased expenditures could be very considerable. This constitutional provision prevents the combination of political pressure through the general appropriation act. Because the evil does not exist where the new position is provided for or salaries raised in a separate appropriation bill explains why the constitutional limitation is held not to apply to such a bill. The 1933 Oklahoma general appropriation act contained the item, "Public Utilities — Appraisal, Audit and Litigation $50,000." In an original action for a mandamus to compel the state auditor to audit and allow certain claims for salaries out of this appropriation, the court held that salaries of accountants, engineers, clerks and stenographers of the Corporation Commission could be paid out of this item if their employment and the amount of their salary was provided by previous law.\textsuperscript{122a} The constitutional limitation was held applicable to special as well as regular employees. A provision of the Oklahoma constitution generally charging the Commission with responsibility for utility regulation was found to authorize the Commission to carry out its duties by employing experts, which includes accountants, engineers, clerks and stenographers. This authority by implication also gave the Commission authority to fix the salaries for such employees, which the Commission had done by its order. Thus, the requirement of previous law authorizing the employment and setting the salary was found to have been met. This case indicates that the constitutional limitation is not strict; it does not require specific previous law. General authority seems to be enough, at least where the agency concerned has then set the salary by its order.

Illinois and Nebraska provide that acts making appropriations for the salaries of officers and members of the general assembly and of officers of the government may contain no other subject. This means, of course, that appropriations for these purposes may not be included in the general appropriation act. The amount of these salaries are fixed, and the salaries must be paid; this factor of necessity and the natural interest of the legislator in these appropriations means that an act containing these appropriations will most certainly be enacted. The purpose of this constitutional provision is to

\textsuperscript{122} Bryan v. Menefee, 21 Okla. 1, 10, 95 Pac. 471, 475 (1908).
\textsuperscript{122a} State \textit{ex rel.} Hudson v. Carter, 167 Okla. 32, 27 P.2d 617 (1933).
prevent combining other appropriations and matters with these appropriations so as to gain more certain and ready adoption of the other matters.\textsuperscript{123}

In \textit{Fergus v. Russel}\textsuperscript{124} an assistant attorney general in charge of the inheritance tax office in Cook County was held to be one of the "officers of the state government" so that the appropriation to pay his salary in the general appropriations was invalid. The court concluded that the remainder of the act was not affected by the invalidity of this appropriation. Where there is an admixture of provisions in violation of this constitutional provision, the court declares that the provisions concerning the dominant purpose of the bill will be held valid and the other provisions held invalid. Concluding that the officer's salary appropriation was included in the bill through an error as to who is an officer, the court determined that the remainder of the act embodied its dominant purpose and so should be given effect and that this salary appropriation should be held invalid. The dominant purpose test to determine severability may not be sound. If the appropriations constituting a minor purpose of the act were sufficient to invite a significant number of votes for the measure, then the evil of log-rolling at which the constitutional provision is aimed may be potentially present. If that circumstance exists, then the entire act should be held invalid. The dominant purpose test should be used very sparingly, if at all.

\textit{Hibbard v. Cornel}\textsuperscript{125} illustrates a literally correct but substantively erroneous application of this constitutional provision, A Nebraska act regulated certain food products, including imitation dairy products, created a food commission to carry out the regulation, created the office of deputy food commissioner, and made an appropriation to pay, among other things, his salary. The appropriation to pay his salary was held invalid as an appropriation of an officer's salary. While this appropriation is within the literal limitation of the constitution, it is very doubtful that the appropriation falls within the mischief at which the limitation is aimed. Combining the appropriation for this officer's salary with the other provisions of the bill very probably did not aid in the enactment of the bill. As this act created the office, there could be no officer at the time of the act's passage and there could be neither any pressure from the officer and his political friends nor any legal necessity to pass the appropriation. In fact, it is quite likely that the entire appropriations section of the

\textsuperscript{123} Fergus v. Russel, 270 Ill. 304, 319, 110 N.E. 130, 137 (1915); Rein v. Johnson, 149 Neb. 67, 82, 30 N.W.2d 548, 557 (1947).

\textsuperscript{124} 270 Ill. 304, 320, 110 N.E. 130, 137 (1915).

\textsuperscript{125} State \textit{ex rel.} Hibbard v. Cornel, 60 Neb. 276, 83 N.W. 72 (1900).
act was the bitter medicine which the sponsors needed to convince the legislature to take in order to get the benefits alleged for the substantive program. To the extent that this analysis is sound, acts like the one involved in the Cornell case should be found to fall outside the constitutional limitation.

Thirteen state constitutions declare that the "general appropriation bill shall embrace nothing but appropriations" for designated purposes. Three more provide substantially the same rule, and two limit bills making certain appropriations to that subject alone. These provisions naturally raise the question of what, for these purposes, is an appropriation.

No court has applied these constitutional limitations in a strict, literal sense; the appropriations act is not limited to a bare statement of the amounts appropriated and the purposes or objects of the appropriation. Provisions that are an incidental and necessary regulation of the expenditure of the money appropriated may be included. It has been said that the appropriation act may contain appropriations of money for specific purposes and such other provisions as are merely incidental and necessary to seeing that the money appropriated is properly expended for the purposes designated; or such other matters which are germane to and naturally and logically connected with the expenditure of the moneys provided in the bill, being in the nature of a detail.

The following provisions have been held to be proper, incidental, and necessary regulations: a provision limiting reimbursement for lodging and subsistence to $5 per day; a provision authorizing the employment of a clerk in the office of the prothonotaries of the supreme court and appropriating moneys to pay his salary; a provision authorizing the issuance of certificates of indebtedness to provide funds for the payment of the appropriation made in two preceding sections of the act for the payment of certain deficiencies and for the construction of certain buildings.

128. Ill. and Neb.
134. State ex rel. Lucero v. Marron, 17 N.M. 304, 128 Pac. 485 (1912).
The following provisions have been held to be improper: a rider declaring that both husband and wife may not be included on the payrolls mentioned in the act and thus establishing a new general qualification for state employees paid by authority of the general appropriation act;\textsuperscript{135} a provision making certain comptroller's warrants and treasurer's certificates receivable for all except designated state dues;\textsuperscript{136} a provision that certain items appropriated were to be expended only by and with the approval of the governor;\textsuperscript{137} a provision that all receipts of the State Corporation Commission, including all receipts of the insurance department of the state, shall \textit{hereafter} be covered into the State Salary Fund;\textsuperscript{138} and a provision which either attempted to create a new state office or to legislate one person out of office and to put another in.\textsuperscript{139}

The provisions held invalid as contravening the constitutional limitation were characterized as an attempt to establish a permanent policy by appropriation rider,\textsuperscript{140} as an attempt to confer authority which previously did not exist,\textsuperscript{141} and as an attempt to enact general legislation.\textsuperscript{142}

A related attack upon riders in the general appropriation act is that the rider conflicts with general law or that it attempts to repeal a general law. Where the subject of the rider is not sufficiently connected with appropriations to permit its inclusion in an appropriations act, the rider would be invalid, in any case, whether it conflicted with general law or not.\textsuperscript{143} Several cases involve conflicts where the general law deals with a subject appropriate to an appropriation bill; these cases clearly raise the question whether the fact of conflict with a general law alone is enough to invalidate the appropriation provision.

In \textit{State v. Angle},\textsuperscript{144} the general appropriation act specified the salaries for certain state employees. Acting under authority of a

\textsuperscript{135} Caldwell v. Board of Regents, 54 Ariz. 404, 96 P.2d 401 (1939).
\textsuperscript{136} In the Matter of the 3d Section of Appropriation Bill, 14 Fla. 283 (1872).
\textsuperscript{137} State \textit{ex rel.} Hudson v. Carter, 167 Okla. 32, 27 P.2d 617 (1933).
\textsuperscript{138} State \textit{ex rel.} Delgado v. Sargent, 18 N.M. 131, 134 Pac. 218 (1913).
\textsuperscript{139} People \textit{ex rel.} Fulton v. O'Ryan, 71 Colo. 69, 204 Pac. 86 (1922).
\textsuperscript{140} State \textit{ex rel.} Delgado v. Sargent, 18 N.M. 131, 134 Pac. 218 (1913).
\textsuperscript{141} State \textit{ex rel.} Hudson v. Carter, 167 Okla. 32, 27 P.2d 617 (1933).
\textsuperscript{142} Caldwell v. Board of Regents, 54 Ariz. 404, 96 P.2d 401 (1939).
\textsuperscript{143} Sellers v. Frohmiller, 42 Ariz. 239, 24 P.2d 666 (1933), involves a provision of the 1933 general appropriation act providing that no expenditure could be made by certain agencies for operation or travel out of the amounts appropriated until approval was granted by the governor. This changed the previous law; under it the governor had no duty to pass upon these expenditures. The court held the provision invalid as legislation in a general appropriation bill. It was also contrary to the previous general law; and so the rider would seem to be void on two grounds.
\textsuperscript{144} 54 Ariz. 13, 91 P.2d 705 (1939).
previous general law, the Highway Commission had fixed minimum wages for these employees in excess of the amounts specified in the general appropriation act. In a suit brought against the state to recover the difference between the amount paid and the minimum fixed, it was held that the general appropriation act was ineffective as a repeal of the minimum wage law, a general law, and that these state employees were entitled to judgment for the difference. The appropriation act may properly set the salaries or maximum salaries to be paid employees under the act; therefore, absent the conflict with the minimum wage law, the appropriation act here would have been effective to fix the wages. Thus, the fact that the subject is treated by an existing general law is alone enough to prevent its treatment in the general appropriation act.

Callaghan v. Boyce, an earlier Arizona case not cited in Angle, may appear inconsistent. The general appropriation act there contained an item for the salary of the citizen member of the Board of Control and also declared that paragraph 4460 of the Civil Code was repealed. Paragraph 4460 was an annual continuing appropriation for the salary of this officer and other purposes. The court held that, while the express repealer was ineffective as to subjects other than that contained in the item of which the repealer was a part, the repealer was effective as to the salary of the citizen member. Essentially, the question was whether the appropriation for the citizen member's salary in paragraph 4460 or in the general appropriation act is the legal appropriation. Normally, the later act is the law, unless the legislature lacks the power to adopt it. As the general appropriation act seems in this particular to be within the constitutional limitation that it "embrace nothing but appropriations," there would seem to be no lack of power. In addition, to hold that a permanent appropriation law, one making a continuing appropriation, cannot be replaced by a provision in a general appropriation act would very seriously interfere with and impede the normal biennial appropriation process.

The rationale of a West Virginia case is inconsistent with the Angle case. An 1882 law provided that the secretary of state may spend no more than $1,100 per year for clerk hire. The subsequently adopted general appropriation act of 1882 appropriated more than $1,100 for this purpose. In a suit testing the right of a clerk to her

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145. It should be noted that the constitutions of a number of states do not permit continuing appropriations. Texas, for example, provides that no appropriation may be made for a longer term than two years. Tex. Const. art. 8, § 6.

salary, it was held, in effect, that the subsequent appropriation act repealed by implication the prior 1882 law and that the clerk was entitled to be paid in accordance with the general appropriation act. If the correct rule is that mere conflict with general law invalidates the appropriation provision, then this case is wrong; it gives effect to a conflicting appropriation provision. It should be noted that the general law here establishes a maximum for future appropriations for a given purpose; this is an interference with future legislatures' exercise of the very essence of the appropriation power — the determination of how much shall be spent for a purpose already authorized by general law. The court, in this case, holds that a general law shall not so interfere with the appropriation process. Also, isn't the appropriation act well within the limitation that it "embrace nothing but appropriations" in this case?

It should be noted that all these cases involve provisions in the general appropriations act making appropriations and not regulating appropriations made. It is also noteworthy that in none of the three cases did the court hold the appropriations item ineffective to make the appropriation.

**Special Appropriation Acts.**

After describing the permissible contents of the general appropriation act, the constitutions of eleven states declare that "all other appropriations shall be made by separate bills, each embracing but one subject." The South Dakota provision is identical except that it speaks of "object" instead of "subject." The substance of the New Mexico provision is the same, although it omits the final clause. California declares that bills, other than the budget bill, making appropriations shall contain no more than one item of appropriation and that limited to one single and certain purpose expressed in the bill. West Virginia limits the supplementary appropriation bill "to some single work, object or purpose therein stated." These constitutional provisions raise the question of what is a subject, work, object or purpose, as the case may be, for purposes of these provisions.

The first question that arises is whether the special appropriation act may contain more than one item of appropriation. Only the California constitution speaks directly to this question; it limits acts making appropriations, other than the budget bill, to "one item of

147. The court reasoned that as the 1882 law was not to take effect until 90 days after its passage and as the 1882 general appropriation act took effect immediately upon passage and before these 90 days had expired, the 1882 law was prevented from taking effect as law. Subsequent general appropriation acts in conflict with the 1882 law continued this ban on it becoming law.

appropriation." This somewhat mechanical rule has been enforced to the letter. Thus, a special appropriation act containing two items of appropriation, both serving the same purpose — the encouragement of the cultivation of ramie in the state, was held to violate the constitutional provision. However, the California courts have permitted the legislature to indicate the different objects or subpurposes for which the one item of appropriation shall be expended. Thus, a 1944 act which appropriated ten million dollars for a matching grant-in-aid program of public works to be engaged in by cities and counties in the prevention and relief of unemployment which may follow the end of World War II and which then prescribed that seven million of this be used as the state’s share of the costs of preparing plans, nearly three million for the state’s share of costs of acquiring sites and rights of way, and about $100,000 for the administrative costs to certain state departments was held not to violate the constitutional limitation. The court concluded that neither the singleness of the appropriation item nor the singleness or certainty of the express purpose were violated. The court declared that the fact that the amount appropriated is to be spent in installments or for subsidiary objects looking to the execution of the primary purpose of the act does destroy the singleness of item of appropriation or of purpose. It would seem that any other construction by the California court would require the legislature to make its special appropriations either in a lump sum which delegated very considerable discretion to the agency with little meaningful fiscal guidance from the legislature or by a number of separate bills for each purpose. Either alternative is undesirable.

Apart from California, however, it seems clear that the special appropriation act may contain more than one item of appropriation; that is, there may be more than one amount of money appropriated. Of course, the various items must all relate to one subject, object, or purpose.

An Alabama case declares that special appropriation acts may contain nothing but appropriations. However, all of the other

References:
151. Miller Ins. Agency v. Porter, 93 Mont. 567, 20 P.2d 643 (1933); Winter v. Barrett, 352 Ill. 441, 186 N.E. 113 (1933); Hill v. Rae, 52 Mont. 378, 158 Pac. 826 (1916).
152. Woolf v. Taylor, 98 Ala. 254, 13 So. 688 (1893). This seems to be merely dicta; the court held that the title did not express the subject of the appropriation and that it should have. See also Trotter v. Frank P. Gates & Co., 162 Miss. 569, 139 So. 843 (1932).
cases found declare that special appropriation acts are not limited to making appropriations; or to put it more accurately, an act other than a general appropriation act may make an appropriation without being limited merely to appropriating. For example, an act creating a farm loan department, prescribing the conditions for obtaining a loan, and otherwise outlining the loan program could also make an appropriation for administrative expenses and for the guaranty fund for the program.\textsuperscript{153} An act establishing a system of uniform grading of certain agricultural products, creating the state agency to administer the program, imposing duties upon certain state officers, and imposing sanctions for violation of the act could also make an appropriation for salaries of the officers and employees engaged in the program.\textsuperscript{154} An act regulating the use of motor vehicles, providing for their registration, and providing for licensing of drivers may also dedicate the license and registration fees to the construction, maintenance, and repair of the state highways.\textsuperscript{155} If the appropriation is but an incident to the single subject of the act, then the inclusion of the appropriation does not violate the constitutional provision.\textsuperscript{156} If the appropriation is the means by which the purpose of the act is carried out, the appropriation does not destroy the singleness of subject.\textsuperscript{157} An act which creates a state agency and defines its program may contain an appropriation for its operation.\textsuperscript{158} The disposition of money raised by a tax or fee is clearly germane to the subject of the tax and so is an appropriation to administer the tax.\textsuperscript{159}

An Illinois case deserves special comment. An act regulating the conditions of employment in manufacturing establishments, setting maximum hours for women and minors, and establishing the administrative machinery also contained an appropriation to pay the salaries of the factory inspectors authorized in the act. While the court seems to say that this appropriation introduces a second subject, the real obstacle for this appropriation seems to be the fact that these inspectors are officers and the Illinois constitution provides that bills containing appropriations for the salaries of officers of the government shall contain no provision on any other subject.\textsuperscript{160} The

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\item \textsuperscript{153} Hill v. Rae, 52 Mont. 378, 158 Pac. 826 (1916).
\item \textsuperscript{154} State \textit{ex rel.} Gaulke v. Turner, 37 N.D. 635, 164 N.W. 924 (1917).
\item \textsuperscript{155} Commonwealth \textit{ex rel.} Bell v. Powell, 249 Pa. 144, 94 Atl. 746 (1915).
\item \textsuperscript{156} State \textit{ex rel.} Blume v. State Board of Education, 97 Mont. 371, 34 P.2d 515 (1934) (dictum).
\item \textsuperscript{157} Mills v. Stewart, 76 Mont. 429, 247 Pac. 332 (1926).
\item \textsuperscript{158} Hill v. Rae, 52 Mont. 378, 158 Pac. 826 (1916); Rupe v. Shaw, 286 P.2d 1094 (Okla. 1955).
\item \textsuperscript{159} Winter v. Barrett, 352 Ill. 441, 186 N.E. 113 (1933).
\item \textsuperscript{160} Ritchie v. People, 155 Ill. 98, 40 N.E. 454 (1895).
\end{itemize}
court concludes that this provision of the constitution makes appropriations for salaries of officers a subject so that the inclusion of other material adds a second subject. Except for this constitutional determination that such an appropriation is a subject, the court seemed willing to conclude that the appropriation was germane to the regulatory provisions of the act and so not a separate subject.

Thus, unlike the general appropriation acts, the special or supplementary appropriation acts are not limited to making appropriations. As pointed out earlier, even the general appropriation act may contain more than just the items of appropriations; the subject appropriations is broader than just the items of appropriations. This being so, of course, the special appropriation acts may contain those provisions in addition to the items of appropriation which are proper to be included in a general appropriation act. That is, provisions which set out the conditions upon which the money appropriated may be drawn from the treasury and the machinery for administering the funds may be included in any special appropriation act. Provisions of this kind would be proper even in those jurisdictions which would limit the special appropriation acts to making appropriations.

*State ex rel. Jensen v. Kelly* concerns an act regulating the manufacture, sale, and distribution of intoxicating liquor, imposing license fees and taxes, and appropriating certain funds derived from the license fees to the use of the Liquor Control Commission and the Department of Justice and Public Safety. The appropriation to the department was not limited to paying the expenses of its enforcement of this liquor control act. Because the act contained affirmative regulatory provisions of a permanent character, the act could not be considered a general appropriation act; therefore, the act is a special appropriation act which is required to be limited to one object. As the appropriation is not limited to expenses of administration of liquor regulation, the act is not for a single object or purpose. The court then concluded that the attempted appropriation was void and prohibited the disbursement of funds under the act for the support of the Department.

A Colorado bill providing for the levy of a tax and then separate appropriations of the revenues for each of the following institutions, 161. Booth & Flinn, Ltd. v. Miller, 237 Pa. 297, 85 Atl. 457 (1912); Trotter v. Frank P. Gates & Co., 162 Miss. 569, 139 So. 843 (1932).
162. 65 S.D. 345, 274 N.W. 319 (1937), 23 Iowa L. Rev. 131.
163. It will be recalled that South Dakota uses "object" instead of "subject." In the Kelly case, the court declared that "subject" is the matter of public or private concern for which the law is enacted, while "object" is the aim or purpose of an act. The court concludes that "object" is used in this provision of the constitution in the sense of "purpose."
the agricultural school, the state school of mines, the state normal school, and the state institutes for the mute and the blind, was held to deal with more than one subject. Because the bill contained a permanent levy of the tax it could not be classed as a general appropriation act; nothing of a permanent nature can be included in such an act. The court concluded that the appropriation for each of the four institutions each constitute a separate and distinct purpose that should be made to depend for its passage or defeat solely upon its own merits. The court assumed that each of the four institutions were educational and yet classed the appropriations to each as a separate subject. It may be questioned whether this is not a too narrow reading of "subject." The fact that this was an advisory opinion dealing with a bill under consideration and not a decision concerning an act already adopted may have affected the result. The court knew that no program would be totally disrupted by its decision; the legislature could take its final action to conform to the constitutional requirements as seen by the court. It is noteworthy that this and the Kelly case are the only reported decisions from these eighteen states finding a special appropriation act to contain more than one subject of appropriation.

With this differentiation between what a general appropriation act may contain and what other acts making appropriations may contain, it becomes important to determine what "the general appropriation bill" is. Is this a single bill? Can there be more than one general appropriation bill for each appropriation period—fiscal year or biennium? A common practice is to pass one omnibus bill making appropriations for all of the state programs. There may be additional bills, but they are narrow in scope. Some states have used four general appropriations bills—one each for the judiciary, legislature, executive departments and agencies, and education. The two cases which have addressed themselves to the question declare that the legislature is not limited to passing one general appropriation act. The Colorado House Bill 168 could not be classified as a general appropriation bill because it contained a permanent levy of a tax and

165. A Pennsylvania act containing a special appropriation to the welfare department to be paid by it to named hospitals at the rate of $3 per day for services rendered to persons entitled to the service free of charge was held to deal with only a single subject of legislation. The fact that two or more hospitals may be reimbursed does not destroy the singleness of subject. Constitutional Defense League v. Waters, 309 Pa. 545, 164 Atl. 613 (1932).
166. See In re House Bill 168, 21 Colo. 46, 39 Pac. 1096 (1895); State ex rel. McDonald v. Holmes, 19 N.D. 286, 123 N.W. 884, 888 (1909). State ex rel. Jensen v. Kelly, 65 S.D. 345, 351, 274 N.W. 319, 322-23 (1937), seems to admit that there may be more than one general biennial appropriations act.
so had to be treated as a special appropriation act. If it had not contained the imposition of the tax in a temporary or permanent form, it could have been classified as a general appropriation act and held valid. If it is held that there can be only one general appropriation bill for each appropriation period, then all other bills making appropriations are special and must be confined to appropriations for one subject. But if more than one general appropriation bill is permitted, it becomes difficult to determine whether a particular bill is a general or special appropriation bill. As the Colorado case illustrates, however, the question becomes crucial only as to those bills which contain only appropriations but which make appropriations for several different objects or purposes. If such a bill is considered a general one, then it is valid, but if not it is invalid because it embraces more than one subject.

There may be and probably should be no mechanical answer to this question. Where there is more than one major act containing appropriations, it would seem that all of the appropriations acts should have some unity. Thus, an act making appropriations for the various institutions of higher education or for the various state hospitals and special schools comprising the state's eleemosynary institutions is properly classed as a general appropriation act. There is a unity in such an act. However, one containing appropriations for the operation of the insurance department, the barbers' licensing board, the watermelon marketing program, the district attorney's salary for the 30th district, and the interim legislative committee on atomic energy would seem not to be a general act. The mischief of combining diverse interests in a single bill seems, on the face of the bill, to exist in this measure. It does not seem to be a coordinated approach to the financial support for all of some segment of the state program; to be a general appropriation bill it would seem that it should deal with all or substantially all of some segment of state activity, such as public free schools, higher education, or the judiciary.

On several occasions courts have been called upon to decide whether an act dedicating or earmarking the revenue from a particular source was thereby making an appropriation so that the act fell under the one-subject requirement applicable to special appropriation acts. An Alabama case held that a provision designating into two funds the revenue from the tax imposed by the act did not make an appropriation.\textsuperscript{167} As the purposes served by the two funds were quite different, appropriations for the two purposes probably could

\textsuperscript{167} Nachman v. State Tax Comm'n, 233 Ala. 628, 173 So. 25 (1937).
not be joined in a single special bill. However, the act apparently only earmarked the revenues for the two funds; other legislation granted the authority to make expenditures from the funds for the designated purpose, that is, made the appropriations. A Pennsylvania case declared that the appropriation acts provision of the constitution does not apply to an act creating a fund for a special, described purpose and dedicating revenues to the fund. In this case, however, the purposes served by the fund and the other provisions of the act could easily be grouped under the one general subject of highways. Thus, even had the earmarking been considered an appropriation there would have been singleness of subject.

A 1943 South Dakota act, popularly called the tithing law, provided that ten per cent of the gross receipts of eighteen designated boards and commissions, mostly licensing boards, should be transferred each year to the general revenue fund. In response to the argument that this was a special appropriation act containing more than one object, the court decided that the act was not an appropriations act as it did not authorize the disbursement of public funds. This is true even though its effect is to reduce by ten per cent the continuing appropriations of the agencies affected. The court does not deal with the question whether this act violates the general one-subject rule of the South Dakota Constitution, but, as suggested below, there seems to be a single subject.

The Alabama and South Dakota cases seem sound. The subject of the Alabama act, for example, seems to be taxation of retail stores and not homesteads and education—the objects of the dedicated funds. As the tax question presents a single general subject, the evils at which the constitutional provision is aimed do not seem to be present. While taxation itself has certain regulatory effects, it is not imposed just to get revenue, but to get revenue to carry on some governmental program. Should this purpose for which the tax is imposed be considered as introducing an additional subject or subjects? If so, then there is duplicity in almost every tax bill. While a legislator's interest in a particular tax measure may depend upon his enthusiasm for the need for the measure, it would seem that the log-rolling evil is not substantially present.

168. Commonwealth ex rel. Bell v. Powell, 249 Pa. 144, 94 Atl. 746 (1915). It has been argued that the Powell case holds that the appropriation acts provision applies only to appropriations from general revenues. While that statement is contained in the opinion, the context in which it appears would seem not to justify such a sweeping statement as the court's holding. State ex rel. Jensen v. Kelly, 85 S.D. 345, 352, 274 N.W. 319, 323 (1937), rejects this suggested limitation of the constitutional provision and holds that it applies to all appropriations, whatever the source of the funds appropriated.

The South Dakota provision requiring special appropriation acts to be enacted by a two-thirds vote of all members of each house creates another reason for determining whether an act makes an appropriation or not. *State ex rel. Mills v. Wilder* illustrates the problem. A 1950 act imposed an additional two cent motor fuel tax, allocated one cent of it to the use of the State Highway Commission and the other one cent to the use of the counties and townships for feeder and farm-to-market roads, and provided for its administration. The court concluded that the act authorized money to be paid out of the state treasury and did not merely dedicate the revenues from the tax to designated funds or purposes; therefore, the act made an appropriation. As it made an appropriation and was not a general appropriation act, it must be enacted with the necessary two-thirds vote to be effective. It did not receive such a vote. It seems quite clear that this act dealt with only one subject and that its appropriations were probably for only one object. But the act fell afoul of the special vote requirement.

**General One-Subject Provisions and Appropriation Acts.**

Twenty-one of the thirty-seven states which have general one-subject provisions in their constitutions have no special ones applicable to appropriation acts. In these states, then, the contents of bills making appropriations are regulated by the general one-subject provision. Earlier, it was noted that four of these states expressly except appropriation bills from the one-subject rule. Utah excepts “general appropriation laws” from its one-subject rule. A textual interpretation of the Utah exception could lead to the conclusion that a general appropriation law could contain any number of subjects but that a special one must be confined to one subject. However, it may be questioned whether an act making appropriations for all state departments and containing riders purporting to make or to change general law would be properly classified as a general appropriations law. The Utah court has declared that, despite the exception, a general appropriation act may not modify, amend, or repeal existing substantive law. The Utah court, thus,
reaches the conclusion which is reached in most states having a general one-subject rule without an exception for appropriation laws. With respect to a special appropriations act, Utah assumes that the act must be limited to one subject.\textsuperscript{174}

Delaware, making what seems the broadest exception, excepts "bills appropriating money for public purposes." A textual interpretation could lead to the conclusion that any act appropriating money, whether a general or special appropriations act, could contain any number of subjects. The question would be raised, though, whether acts containing more than appropriations and related provisions remain "bills appropriating money for public purposes." Doesn't the exception impose a limitation on the bill that it only appropriate money? Remarkably, no Delaware case dealing with this question was found.

Missouri and Texas except "general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated." On its face this is not a complete exception of general appropriation bills from the one-subject rule; it seems to state that these bills are excepted from the rule and then to specify the permissible contents of the bills.\textsuperscript{175} In short, this seems to be not an exception in the technical sense, but rather a declaration that a general appropriation act deals with a single subject. Both the Missouri and Texas courts have concluded that the one-subject provision, including its exception, preclude legislation of a general character from an appropriation act. The rationale is that inclusion of this general legislation in the act adds a second subject to the act, the first being appropriations, and that the one-subject provision limits the act to a single subject.

The question most frequently arises where it is contended that a provision of the general appropriations act is in conflict with a pre-}

\textsuperscript{175} This approach is explicitly recognized in State \textit{ex rel.} Hueller v. Thompson, 316 Mo. 272, 277-78, 289 S.W. 338, 340-41 (1926), and Conley v. Daughters of the Republic, 151 S.W. 877, 884 (Tex. Civ. App. 1912), \textit{rev'd}, 106 Tex. 80, 156 S.W. 197 (1913).
existing general law. For example, a 1934 Missouri general appropriations act appropriated $3,000 from the general revenue fund to pay salaries and expenses of the Board of Barber Examiners. The act creating the Board provided that warrants for the operation of the Board should be paid only out of its fund. The court concluded that the appropriations provision attempts to change the general law and because general law cannot be included in an appropriations act that the provision is void. 176

State ex rel. Hueller v. Thompson 177 involved a provision in the 1925 Missouri general appropriation act which limited the salaries of officers and employees whose salary was not definitely fixed by general law to the amount paid during the preceding biennium. The existing law was found to give to a certain board the authority to fix the salaries of certain of its employees. The appropriations act provision conflicts with the general law. While the provision would seem to be invalid because of this conflict, the language of the opinion suggests that the fixing of salaries is not a proper subject of an appropriations act because this is general legislation. In Conley v. Daughters of the Republic, 178 it was argued that a 1911 appropriations act provision directing that a $5,000 appropriation be expended under direction of Superintendent of Buildings and Grounds for the improvement of the Alamo repealed by implication a 1905 act under which the governor had given custody of the Alamo to the Daughters. This argument was rejected and it was asserted that even had this been the legislative intent it could not be given effect because it would violate the one-subject rule.

The general rule that an appropriation rider may not amend, repeal, or conflict with a prior law should not be read to mean that a general appropriations act may not be inconsistent with a prior general law. For example, the appropriations act may fail to provide the funds to carry out an act and thus the act die of inanition; this does not invalidate the general appropriations act in any way. 179

176. State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S.W.2d 828 (1934). To the same effect is State ex rel. Gaines v. Canada, 342 Mo. 121, 113 S.W.2d 783 (1938), rev’d on other grounds, 305 U.S. 337 (1938).

177. 316 Mo. 272, 289 S.W. 338 (1926).

178. 151 S.W. 877 (Tex. Civ. App. 1912), rev’d, 106 Tex. 80, 156 S.W. 197 (1913). The Texas Supreme Court concluded that there was no conflict between the appropriation act and the 1905 act, that both the Superintendent and the Daughters could carry out their duties under the law and that, contrary to the view of the other courts, the Daughters were not entitled to an injunction to restrain the Superintendent from entering upon the Alamo grounds. King v. Sheppard, 157 S.W.2d 682, 687-88 (Tex. Civ. App. 1941), recognizes the rule that an appropriation rider may not amend prior law.

Also, under some circumstances at least, a limitation may be placed upon an appropriation which is inconsistent with a prior law and yet the limitation be held effective. *Linden v. Finley*\(^{180}\) involved the validity of a limitation on an appropriation in the 1897 Texas general appropriation act permitting the comptroller to approve payments of fees and costs to district attorneys of only a single fee where a single defendant is convicted in two or more cases unless the sentences were made cumulative. Prior law gave the district attorney his fees in each such case whether the sentences were concurrent or cumulative. In an action for a writ of mandamus to compel the comptroller to make payment in accordance with prior law, the court concluded that the rider did not purport to change the existing law but to limit the payment of fees out of the appropriation made. It was said that the one-subject provision does not prohibit the legislature from limiting the appropriations it makes. The court expressly noted that it did not decide whether the district attorney was entitled to his fees in cases resulting in concurrent sentences; it merely decided that he could not be paid those fees out of the appropriations made in the 1897 act.

*State ex rel. Gaines v. Canada*\(^{181}\) involved an appropriation in the general appropriation act for out-of-state tuition grants to Negro students. The general law established this program and granted the full tuition to qualified college students but the appropriation act contained a proviso limiting the total amount paid to the difference between the out-of-state college's tuition and the tuition charged at the University of Missouri for residents. The Missouri court found this proviso was unconstitutional as an attempt to change general legislation in an appropriation bill. While the distinction in *Linden v. Finley* is tenable, the general law is amended by the rider for all practical purposes, and so is not the *Canada* decision the sounder?

It is also held that the general appropriations act may not contain general legislation. *Moore v. Sheppard*\(^{182}\) involved a provision of the 1945 appropriations act requiring all clerks of the courts of civil appeals to deposit with the state treasury all sums collected for furnishing unofficial copies of opinions of the court and providing that the comptroller may not issue salary warrant to such a clerk unless the clerk has executed a monthly affidavit stating he has retained no such money. The court held that this provision was a

\(^{180}\) 92 Tex. 451, 49 S.W. 578 (1899).
\(^{181}\) 342 Mo. 121, 113 S.W.2d 783, 790 (1938), *rev'd on other grounds*, 305 U.S. 337 (1938).
\(^{182}\) 144 Tex. 537, 192 S.W.2d 559 (1946).
matter of general legislation and thus a subject for purposes of the one-subject rule and that, therefore, the provision is invalid. As this provision is invalid, no duty to account for this money is imposed and the clerks are entitled to their salary warrants though they have not executed the affidavit. It appears that the rider was drafted so as to take advantage of *Linden v. Finley*, but the court did not view this as a mere limitation on the appropriation made. While this may be its form, the court saw that its practical effect was to enact a new rule of conduct; the rider did not merely prescribe the conditions under which the appropriations made may be disbursed. Missouri recognizes this general rule, too.183

The remaining seventeen184 of these twenty-one states regulate the contents of appropriations acts through the simple mandate, "no law shall embrace more than one subject."

It is not seriously argued now that a general appropriations act violates the general one-subject rule; an act making appropriations for the operation of the various departments and agencies of government deals with a single subject even though a large number of appropriation items concerning the entire range of governmental programs is included.185 As pointed out earlier, there seems also to be no serious doubt about the power of the legislature to include in a general appropriations act, in addition to the items of appropriation, provisions regulating the circumstances under which the moneys appropriated may be disbursed and provisions safeguarding the disbursements made. The doubts concerning the validity of riders in appropriations acts arise when it is questioned whether the legislature has in the particular case gone further than this and when it is asked whether the legislature may go further. The validity of the rider is solved by most courts by determining whether the rider introduces a second subject into the act so that the act then violates the single subject limitation.186

The clearest instance of violation of the purpose of constitutional rule and of the introduction of a second subject occurs where the rider purports to enact permanent legislation not in any way connected with appropriations. The Miller-Tydings Act, which author-

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ized the state fair trade laws was a rider to a congressional appropriations act and is a classic example. The rider may, in such a case, get acceptance because of the necessity of passing the appropriations act; this epitomizes log-rolling.

The 1919 Kansas general appropriations act contained a provision declaring that no one may be appointed to any office or position in any branch of the government who is related by blood or marriage to the head or chief or the chief assistant or secretary. It was held that this provision was in form a general law fixing qualifications for certain offices and as such introduced a second subject and so was void.187 The court declared, however, that the act could validly have provided that none of the money appropriated could be paid to any person so related to certain officers; this provision, declared the court, would not be a separate and distinct subject from appropriations; it would be but a limitation on the appropriations made. The questions raised earlier whether the form of the provision should be as important as the Kansas court suggests seem applicable here, too.

The other instance in which a violation of the constitutional rule may occur is where the rider is in conflict with an existing act of the legislature. It is generally said that such a rider purports to amend or repeal the prior law, that such amendment or repeal is a separate subject of legislation, and that therefore the rider is void because it violates the one-subject rule.188 Sometimes it is simply declared that the legislature may not enact, amend, or repeal general law in an appropriation act. The nature of the conflict and the character of the legislative rule under consideration varies; and perhaps the result should depend upon the precise circumstances.

_Hailey v. Huston_189 involves a general appropriations act, one item of which was alleged to increase the salaries of a librarian and his assistant over that prescribed in a section of the revised statutes. The court concluded that if the provision did have that effect then a second subject was introduced into the act; as this violates the constitution, the provision does not raise the salaries. While the suit questioned only the librarians' right to the increased salaries, the court seems to assume that the appropriation was effective as such, though not effective to raise the salary above the statutory limit. It is questionable whether the decision is sound; the amount of an officer's or employee's salary seems very germane to the appropri-

189. 25 Idaho 165, 136 Pac. 212 (1913).
tions and not to introduce a second subject. If this is true, does it matter that there is an existing law setting the salary? Further, the log-rolling evil does not seem to exist in this case. Appropriating involves deciding what to spend money for and how much; is not deciding the salary a central part of this process? This case demonstrates that it is a mistake to include maximum salaries in general laws. To change them the law must be amended; that may require the legislature to consider a particular officer's salary as an individual matter and not in the context of the general salary structure.190

The result reached in a pair of South Carolina cases may be more sound.191 However, the South Carolina court does not squarely face the objection based on the one-subject rule. The court does note, though, that the general appropriation act is generally the most studied bill each session and that it is unlikely that the substantial appropriation involved did not receive adequate consideration on its merits.

The only Minnesota case which has considered the validity of riders in general appropriations acts is State v. Duluth.192 At the time the general appropriations act for 1948 and 1949 was enacted the statutes provided that various local units of government should reimburse the public examiner for his examination of their records and the like, except that the charge for salaries of examiners shall not exceed $10 per day. The appropriation act established a revolving fund to finance the operations of the public examiner and provided for full reimbursement for the expenses of examination, without the limit contained in the prior statute. The court concluded the appropriation act provision was intended to be a permanent law and that the legislature may enact such a provision. The

190. Texas solves this problem by passing at each regular session of the legislature an act suspending for the ensuing biennium the limitations on salaries fixed in the various general laws and providing that the salaries shall be those set in the general appropriation act for the ensuing biennium. See, e.g., Tex. Gen. & Spec. Sess. Laws 1957, c. 4.
191. Brooks v. Jones, 80 S.C. 443, 61 S.E. 946 (1908). The general law set the clerk of Supreme Court's salary at $800 per year; the 1908 general appropriation act prescribed a salary of $1,000. Without discussion the court affirmed the circuit court's order directing the Comptroller General to issue his warrant in accordance with the appropriation act. Plowden v. Beattie, 185 S.C. 229, 193 S.E. 651 (1937), involved an appropriation act provision which reduced the amount of the state's two-thirds share of the county auditors' salary by a stated per cent of that prescribed in a prior law. This appropriation act was given effect. The court quoted with approval from the circuit judge's decree which was affirmed in the Brooks case to the effect that although an appropriation act is generally of temporary duration, it has equal effect and force of a permanent statute. The title-subject clause is quoted, and it decided that the title is adequate.
192. 238 Minn. 128, 56 N.W.2d 416 (1952).
court reasoned that implied repeal of the prior law is an effect and not a subject; thus, the appropriations act is limited to the single subject of appropriations and is entirely valid. The court quite properly notes that for it to hold that an implied repeal is a separate subject would be to preclude any implied repeal in a general appropriations act. The traditional answer is that a repeal or amendment, implied or express, of a prior law is a separate subject. Minnesota is alone in saying it is an effect and not a subject. If the court is saying that any implied repeal or amendment is merely an effect, then any rider which has this effect may be included in a general appropriation act. Supposedly, a rider enacting a new general law would be invalid, but one repealing or amending a prior one would not. Such a distinction is not appealing; it seems to be a distinction without any real difference. If the Duluth case is as broad as suggested, evils at which the one-subject rule was aimed will be tolerated by that case. However, the court's statement that the one subject of the act is “appropriation of money for the operation of state government” strongly suggests that the case is much narrower. If the riders are germane to the subject of appropriations, then they are valid even though they conflict with prior general law. This may be the true holding of the case. If it is, then the Duluth case is the most reasonable solution of the question. If a rider could properly be included in the appropriation act, the fact alone that it conflicts with a prior law ought not render it invalid under the one-subject rule.

*Power, Inc. v. Huntley*193 is interesting on several scores. A 1951 law passed at an extraordinary session contained in its first two sections general appropriations and in sections three through forty-four a corporate excise tax. After concluding that the tax provisions were unconstitutional for other reasons, the court concluded that the act embraced two subjects. In reaching this conclusion, the court examined legislative history to learn that these two portions had failed of passage as separate measures but had passed after being joined. This is the only case found in which the court found that log-rolling had in fact been used in the enactment of the act in question. The court seems almost to use the fact of log-rolling to find plurality of subjects which enables it to strike down the act. Quite correctly, the court concludes that the entire act must fall. Also, this is the only case found which invalidated the entire general appropriation act for violation of the one-subject rule. In the other cases, though, the vice was attachment of an improper rider and not combination of two major measures into one.

South Carolina has taken the position that provisions for raising the revenue to pay the appropriations made may be included in the general appropriations act, viewing these provisions merely as means to consummate the primary object of the act.\(^{194}\)

With respect to special appropriation acts, the requirement that "no law shall embrace more than one subject" seems to be the equivalent of the requirement discussed earlier that "all other (i.e., other than general) appropriations be made by separate bills, each embracing but one subject." Thus, the cases previously discussed from the jurisdictions having this latter provision seem applicable in the jurisdictions presently under examination.\(^{195}\)

There seems to be no serious contention that an appropriation is in itself a second subject; therefore, an act may, for example, establish an agency, set out the regulatory program, and make an appropriation for the agency without violating the one-subject rule.\(^{196}\)

Similar Minnesota and Texas acts received quite different treatment in the courts. A 1933 Minnesota act appropriated all revenues from an intoxicating beverages tax, just enacted, to be used by the state board of control for direct and work relief and authorized the board to undertake various public projects, such as flood control, water supply, soil conservation, and reforestation. While the act contained a number of topics, the court concluded that the act related to the single object of appropriating funds for direct and work relief to alleviate the distress caused by the depression.\(^{197}\) A 1940 Texas act granted to five counties one-half of state property taxes to be collected for five years to be used for a number of purposes, including soil conservation, general relief, and joint projects with the W.P.A. It was held that each purpose for which the tax money was appropriated to the counties was a separate subject and that the act was invalid.\(^{198}\) The purpose of the Texas act seems, also, to have been the relief of unemployment and destitution flowing from the depression. This would give the act unity and render its subject single. Prima facie, there seems to have been no log-rolling here.

\(^{194}\) Crouch v. Benet, 198 S.C. 185, 17 S.E.2d 320 (1941).
\(^{195}\) The seventeen states listed in footnote 181 \textit{supra} and all of the four states listed in footnote 169, \textit{supra}, except Delaware, deal with questions of the permissible contents of bills making appropriations, except general appropriation acts, by using the general one-subject rule.
\(^{196}\) See State \textit{ex rel.} Olsen v. Board of Control of State Institutions, 85 Minn. 165, 88 N.W. 533 (1902).
\(^{197}\) Moses v. Olson, 192 Minn. 173, 255 N.W. 617 (1934).
\(^{198}\) McCombs v. Dallas County, 136 S.W.2d 975 (Tex. Civ. App. 1940). Error was refused in County v. McCombs, 135 Tex. 272, 140 S.W.2d 1109 (1940).
B. Codes and Revisions

More and more our law is becoming statutory. A number of factors explain this. We are turning more frequently to the legislature for solutions of social and economic problems. Reform and further development of the common law has been largely taken over by the legislature. Desire for greater certainty often leads to demands for codification of bodies of the common law. All this legislative activity creates another need—the need for periodic revision of the statutory law to provide greater coherence and consistency, to remove conflicts, and simply to compile. Statutory revision, whether it purports to change the substance or only the form, generally encompasses a substantial body of law. Because the act containing a code, revision, or compilation deals with a wide range of topics, it may encounter the objection that it embraces more than one subject.

A leading case is Johnson v. Harrison. An 1889 act, entitled, "An act to establish a Probate Code," is divided into 21 chapters, contains 326 sections, and deals with the procedure in proceedings before the probate court and with estates of deceased persons and persons under guardianship. Reversing the probate court, Judge Mitchell held the act to embrace but one subject, declaring:

All that is required is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one general subject. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification.

The term 'Probate Code' may and should be construed as meaning 'the body or system of law relating to the estates of deceased persons and of persons under guardianship. In common understanding, this is as distinct and clearly defined a branch of the law as is criminal law or corporation law, and in popular signification the term 'probate law' includes all matters of which probate courts generally have jurisdiction, among which is 'estates of deceased persons'. An examination of this act will show that all of its provisions are connected with this general subject. The fact that some of them relate to matters of mere procedure, while others define and fix right of property, is no valid objection to the law. The same objection might be urged

199. 47 Minn. 575, 50 N.W. 923 (1891).
against many acts the constitutionality of which has never been questioned. Neither is the fact important that a law contains matters that might be, and usually are, contained in separate acts, or would be more logically classified as belonging to different subjects, provided only they are germane to the general subject of the act in which they are put. The legislature is not limited to the most logical or philosophical classification. The law of wills and of title to property by descent is a part of the law relating to the estates of deceased persons, and hence is, in popular understanding, if not logically, a part of the general subject of probate law.\textsuperscript{200}

The approach that a code or revision deals with a single subject and so complies with the rule is more sound than that the one-subject rule is not intended to apply to general code revisions, as a Virginia case declared.\textsuperscript{201} The constitutional provision does not justify the conclusion that this exception exists. Also, this approach means that if the act is a revision there is no limit on what may be included. The Virginia court's concern that the provisions of the act have a natural connection indicates that it did not intend to announce an exception but merely to declare that such an act satisfies the one subject rule.

The view expressed by Judge Mitchell is certainly sound. Both substantive and formal statutory revision are most important legislative activities. The combination of provisions on a large number of topics is not for purposes of log-rolling but for purposes of bringing greater order and cohesion to the law or of getting a coordinated improvement of the law's substance. There is a rational and practical reason for the combination of topics on the subject of private corporations, for example, and so the private corporations code should be held constitutional.

C. Revenue Acts

For practical legislative reasons, some legislatures use the omnibus tax bill. When it wishes to create a tax or to change the rates or other provisions of existing taxes, instead of passing a separate act for each tax dealt with during a legislative session, the legislature places all or practically all of its tax legislation for the session in a single bill.\textsuperscript{202}

Taxes are imposed to produce revenue to carry on the business of government. Where it is necessary to increase taxes to provide

\footnotesize{\textsuperscript{200} Id. at 578-79, 50 N.W. at 924-25.}\n
\footnotesize{\textsuperscript{201} See Macke v. Commonwealth, 156 Va. 1015, 1019, 159 S.E. 148, 149 (1931).}\n
the revenue to meet increased expenditures for the next fiscal period, there is often an understandable desire on the part of the legislature to spread equally the increased burden among all the different groups of taxpayers. Placing provisions making equitable increases in the rates of all of the major taxes in a single bill makes this end less difficult to attain than using separate bills would. The assumption that the organized pressure groups will resist additional taxes less if they feel assured others are sharing in the increased burden may also account for the use of this device. This device permits the decision as to the rates for all taxes, for example, to be made in the same bill.

Where the omnibus tax act has been questioned it has been held valid. The 1941 Texas Omnibus Tax Law contained twenty-one sections, nineteen of which imposed a different tax. Declaring that an act may contain more than one subject if they are all germane or subsidiary to the main subject, the court held this act valid. The court declared that a general revenue measure may cover the entire field for assessing revenue, set up machinery for collecting it, allocate it to stated purposes, and make all necessary provisions incidental to revenue collection. Minnesota has also approved the general revenue act.

VII. Laws Exempt from One-Subject Rule

A number of the provisions setting out the constitutional one-subject rule contain express exceptions. The Alabama and Oklahoma constitutions, for example, except "general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes." Two questions arise concerning these exceptions. First, what must be the character of an act for it to fit the description in the exception and so be free of the one-subject limitation? Secondly, are they true exceptions or merely declarations that acts fitting the description comprise a single subject?

General Appropriations Acts. The most common exception is the one for general appropriation acts. It is found in eleven constitutions. This exception was explored earlier in the portion of this paper devoted to appropriation acts.

Code, Digest, or Revision. Two states except "bills adopting a

205. Ala. Const. art. 4, § 45; Okla. Const. art. 5, § 57.
code, digest, or revision of statutes,"\textsuperscript{207} and four states except "bills for the codification and revision of the laws."\textsuperscript{208} The question that immediately arises is: what is a code, digest, codification, or revision for purposes of these provisions?

The Alabama court seems to say that it is an act making a formal revision of some body of the existing law.\textsuperscript{209} That is, an act making substantive changes, not mere changes in language and arrangement, is not a code for purposes of the exception. The court declares that a bill to be within the exception must state in its title its subject substantially in the terms of the exception. Then as a bill "to adopt a code" it will direct the legislator's attention elsewhere for the contents of the code; that elsewhere is the existing law. Thus, apparently, the bill must follow the existing law. The court readily pointed out that this does not mean that the legislature may not enact a bill making a substantive revision of a substantial body of the law. However, in doing so, the legislature must comply with the one-subject requirement.

Mention of the exception is made in a Utah case.\textsuperscript{210} A 1909 act, replacing a complete title of the compiled laws and a chapter of another title, substituted a single county road commissioner for several road supervisors and a $2 road poll tax for two days labor or a $3 payment and re-enacted the substance of the laws relating to county road finance, administration, maintenance, and improvement. The court found that the act dealt with a single subject and did not discuss what was a codification and general revision of the laws for purposes of the exception. The court declared, however, that consolidations, codifications, and revisions must comply with the one-subject rule. The exception was said to show that the one-subject rule was directed primarily at new legislation. The exception seems to prevent the court from classifying an act as dealing with two subjects merely because it has consolidated in one act material the legislature has previously dealt with separately — a fact which has sometimes inclined a court to find two or more subjects are involved. It seems to have little other effect.

The exception seems not to be a true exception at all; it seems to be a declaration that acts having the described purpose relate to but one subject.\textsuperscript{211} If the express exception were a true exception,

\textsuperscript{207} Ala. and Okla.  
\textsuperscript{208} Mont., N.M., Utah, and Wyo.  
\textsuperscript{209} Gibson v. State, 214 Ala. 38, 106 So. 231 (1925).  
\textsuperscript{210} Salt Lake City v. Wilson, 46 Utah 60, 148 Pac. 1104 (1915).  
\textsuperscript{211} See Harris v. State ex rel. Williams, 228 Ala. 100, 103, 151 So. 858, 861 (1934). It suggests as much as to acts which adopt codes and states as much as to revenue bills.
a bill to adopt a revision of the laws would be constitutional even though it dealt with two or more subjects and even though it had no title or a defective one. However, both the Gibson and Wilson cases reject this; in fact, the Gibson case declares that an act adopting a code relating to game and fish and to fertilizers would be invalid because it contains two subjects. These cases, then, are consistent only with the view that the exception is not a true exception.

New York makes its one-subject rule, among others, inapplicable "to any bill . . . which shall be recommended to the legislature by commissioners or any public agency appointed or directed pursuant to law to prepare revisions, consolidations or compilations of statutes." The New York provision applies only to private or local bills. As private or local bills are permitted under the New York constitution in only certain circumstances, the operation of the one-subject rule and thus of this exception is quite limited. The exception provision was adopted in 1874 to free a revision commission from what was felt to be the unnecessary restrictions in such cases of the one-subject rule, rule as to amendments and prohibition of private and local laws. Apparently, it is felt that the danger of log-rolling is not materially present in the product of such a public, non-political body. Unlike the exception in other constitutions, this seems to be a true exception.

General Revenue Bills. Alabama and Oklahoma except "general revenue bills" from the one-subject rule. Only Alabama appears to have announced the meaning of this exception. Again, the court takes the position that the provision is not a true exception but, in effect, a declaration that a general revenue bill deals with one subject.

Resolutions. While none of the one-subject provisions expressly except resolutions, several make the provision applicable to resolutions. Delaware makes the rule applicable to a "joint resolution" and South Carolina to a "resolution." Louisiana and Texas have determined that their one-subject rules are not applicable to resolutions but to laws only. Because of the interpretation of the state constitution in a number of jurisdictions that resolutions can have

212. N.Y. Const. art. 3, § 21.
213. N.Y. Const. art. 3, § 17.
214. NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, PROBLEMS RELATING TO LEGISLATIVE ORGANIZATION AND POWERS 100-02 (1938).
215. Harris v. State ex rel. Williams, 228 Ala. 100, 151 So. 858 (1934).
no law-making effect, the question whether the one-subject rule applies to resolutions is of limited importance.

Ordinances. Only Georgia seems to deal expressly with the question whether the one-subject rule is applicable to the ordinances of the subordinate units of government within the state. Georgia makes the one subject rule applicable to a “law or ordinance.” While the Minnesota provision refers only to “law,” the Minnesota court considers that the provision applies to city ordinances.

VIII. Evaluation of the One-Subject Rule

When the one-subject rule is examined from the purely pragmatic point of view of the advocate, the rule appears as a weak and undependable arrow in his quiver. The most remarkable fact that emerges from this investigation is that, while the rule has been invoked in hundreds of cases, in only a handful of cases have the courts held an act to embrace more than one subject. This seems to justify courthouse lore to the effect that an argument based on the one subject rule is often the argument of a desperate advocate who lacks a sufficiently sound and persuasive one. To the extent that this argument is considered the hallmark of a weak case, the advocate may consider it wise to use it very sparingly.

It may be of some interest to speculate upon the reasons for this small number of cases holding an act to embrace more than one subject. The simple answer may be that legislatures have shown a remarkable compliance with the spirit and letter of the rule. A legislator may be well advised to make his bill as narrow and as brief as he can because often the narrower the issue presented by the bill the easier it is to pass. This is a practical legislative consideration working as a counter-force to log-rolling through the omnibus bill

218. A majority of state constitutions provide that no law shall be passed except by bill and that to become law a bill must contain the prescribed enacting clause, must be read on three several days in each house, must have only one subject which shall be expressed in the title, and must be referred to and reported from committee. As resolutions do not contain the constitutional enacting clause appropriate only for bills and frequently do not follow the prescribed procedure for the enactment of bills, it is held in a number of jurisdictions that a resolution can have no law making effect. For an excellent survey of the state constitutional provisions and of this troublesome question see Comment, 31 Texas L. Rev. 417 (1953).

219. Duluth v. Cerveny, 218 Minn. 511, 16 N.W.2d 779 (1944); Sverker son v. Minneapolis, 204 Minn. 388, 283 N.W. 555 (1939).

220. Sinclair, in his excellent survey of the New Jersey cases dealing with both the title and one-subject requirements, concludes that there was not a single New Jersey case in which the real vice was plurality of subject and that all of the cases of invalidity under the title-body clause can be attributed to failure of expression in the title. Sinclair, The Operation of a Constitutional Restraint on Bill-Styling, 2 U. Newark L. Rev. 25, 58 (1937).
and it may help explain the phenomenon. Certainly one explanation is the broad definition of subject adopted by the courts and their understandable reluctance to apply the rule so as to find that an act violates it. The common presumption of constitutionality — a kind of judicial deference to the legislature's judgment as to what the constitution requires — helps to account for this. The one-subject and other rules regulating form of enactments and legislative procedure pose, in their enforcement in the courts, the question of judicial-legislative relations in somewhat aggravated form. In finding that the legislature has violated the one-subject rule the court may impute that an irregularity occurred in the conduct of the business of the legislature — an irregularity offensive to the principle of majority rule. It is understandable that a court would be reluctant to make such a charge, even by implication.

The principal purpose of the one-subject rule is said to be to prevent log-rolling. And log-rolling is itself offensive because it subverts the principle of majority rule by enabling two minorities to combine their legislative strengths to obtain a majority vote for their respective proposals. While in one sense no rule of law prevents the conduct it condemns but only deters it, it can be said in a still different sense that the one-subject rule does not prevent log-rolling. The one-subject rule by its very terms does not proscribe log-rolling; it only proscribes the combining of separate subjects in a single bill. The reason, of course, that it condemns bills which embrace more than one subject is that it is assumed that the subjects were combined in one bill for log-rolling purposes, there being no other reasonable or practical reason. The approach of the constitution is quite clearly indirect. It is noteworthy that no case was found which held an act void because it was found that log-rolling was practiced in its passage.\footnote{221. It is true, however, that the finding that log-rolling made possible the passage of the act in question was influential in the court's determination that the act embraced two subjects and that the entire act, including general appropriations provisions, was invalid in Power, Inc. v. Huntley, 39 Wash.2d 191, 235 P.2d 173 (1951).}

The constitution is not only indirect but also is only partial in its efforts to stamp out log-rolling. It condemns only that log-rolling which uses a single bill combining provisions on several subjects. It does not strike at the log-rolling which uses two or more bills. Thus, three minorities may agree to support each other's bills on three different subjects and in this way enact three bills which otherwise could not obtain a majority vote. These three bills do not fall under the constitutional rule aimed at log-rolling — the one-subject
rule—because they each deal with a single subject. Also where the three minorities are interested in three different measures relating to the same subject, they may combine their measures in a single bill without running afoul of the one-subject rule.\textsuperscript{222}

In view of all this, it may be questioned whether the one-subject rule makes a sufficient contribution toward the preservation of the principle of majority rule to deserve retention. Freund, recognizing their beneficial effects, has wisely pointed out that these constitutional requirements as to style, including the title-body clause, have produced negative results as well. They have produced an enormous amount of litigation, resulted in the nullification of beneficial laws, created serious drafting problems, and served as technical loopholes of escape from the law.\textsuperscript{222} While Freund’s criticism is more pertinent to the title and other requirements, it does raise the question whether the benefits obtained from the one-subject rule sufficiently outweigh its negative results to justify the retention of the rule.

It is an oversimplification to conclude that the one-subject rule reaches only the form and not the substance of log-rolling. If the rule is viewed simply as compelling a log-rolling coalition to use three bills instead of one, the rule must still be considered a significant deterrent to log-rolling, or at least to successful log-rolling.\textsuperscript{224} No matter how meritorious a bill is, its enactment is not automatic. It takes considerable effort by its proponents to get any bill passed. The presiding officer must be encouraged to send it to a favorable committee, the chairman needs to be coaxed to set it for hearing at an advantageous time, the most persuasive witnesses must be arranged for, the sub-committee must be encouraged to reject unfavorable amendments and report the bill favorably to the full committee, the full committee must be encouraged to report the bill out favorably as soon as practicable, and so on through every step of the way through the signing of the bill by the governor. In some cases, it may be largely a question of overcoming inertia and getting attention directed to the bill instead of to the number of other bills demanding attention. Generally speaking, it will take more effort to get three bills passed than to get one. The one-subject rule—

\begin{itemize}
\item \textsuperscript{222} It should be remembered, however, that there is a group of cases holding invalid acts dealing with a single general subject where there was no unity among the several provisions of the act.
\item \textsuperscript{223} Freund, Standards of American Legislation 155-57 (1917).
\item \textsuperscript{224} While I assume the responsibility, I want to express my gratitude to the members of the Texas legislature who counselled me for the information and insights they gave me as to the practical legislative considerations which aided me in making the following analysis. I am especially indebted to Hon. Barefoot Sanders of Dallas and Hon. J. C. Zbranek of Daisetta of the Texas House of Representatives for conferences with them.
\end{itemize}
rule may force the coalition to expend three times the effort to pass its three bills than it would have had to expend to pass a single omnibus bill. By increasing the effort required of the coalition, the rule reduces the probability that the coalition will meet with full success.

By forcing this coalition to use three bills instead of one, the one-subject rule increases, for still another reason, the probability that the coalition will not attain all of its objectives. A bicameral legislature, contemplating a complete re-consideration in each house, places a number of hurdles in the way of each bill which must be negotiated before it becomes a law. Every session of any American state legislature sees a number of bills fail of enactment which would have received majority approval had they been able to gain attention and action at each of the way stations. This means that, no matter how hard the coalition labors for each bill, it is probable that some of the coalition's bills will be sidetracked or be blocked by some bottleneck. The fact that the coalition must use three bills instead of one may increase by three the probability that they may fail because of some fortuitous circumstance inherent in the legislative process.

The foregoing factors mean that the one-subject rule by forcing the coalition to use three bills instead of one to put over its joint program makes successful log-rolling more difficult. Several other factors may even discourage the formation of the coalition. The mere fact that the probability of success for each of the participants in the joint enterprise is thus made doubtful may, of itself, discourage formation of the coalition. Another factor may deter formation, too. By requiring the coalition to use three bills instead of one, the one-subject rule makes it known to the participants that success will not come to each at the same time. While one bill is receiving the governor's signature, another may still be awaiting final committee action in the first house. It is likely that the ardor of the participant whose bill has been enacted into law will cool; as soon as he obtains his objective, he may leave the remaining tasks largely up to the others. Anyone experienced in legislative matters knows of this likelihood and will therefore be reluctant to enter a joint enterprise that entails this risk. Still another factor may operate to deter persons from entering into such a joint enterprise. By requiring three separate bills, the one-subject rule forces the participants in the coalition to acknowledge openly their participation in a coalition; if, however, a single bill could be used, their support of it could be explained simply in terms of their interest in one portion.
Because the one-subject rule may force the participants of a coalition to admit openly their participation in a log-rolling, vote-trading scheme, and because legislative tradition condemns vote-trading, the one-subject rule may deter the formation of a coalition.

Another important purpose of the one-subject rule is said to be to facilitate an orderly and rational legislative process. It is certainly true that the one-subject rule is important to a proper legislative process. However, the question should be asked whether this rule should not be placed only in the legislative rules instead of in the constitution. To answer this question an examination must be made of the purposes and effects of the inclusion of rules governing legislative procedure in a constitution.

The constitution makers very probably included the various provisions regulating form and procedure so as to provide a minimum guarantee for an orderly and fair legislative process. A way for the people to make certain that the legislature will have a particular rule of procedure is to prescribe it in the constitution. It may be doubted, however, whether it is necessary to put the one-subject rule in the constitution in order to insure that the legislature has the benefits of it for its own procedure. The House of Representatives adopted, on its own initiative, the rule requiring amendments to be germane in 1789. Likewise, the legislatures of several of the states which have no constitutional one-subject rule have placed the House of Representatives rule on germane amendments in their rules.225

However, even if it is assumed that the rule need not be put into the constitution to insure that the legislature has it, the fact that it is in the constitution instead of the rules is significant. If the rule is in the legislative rules only, violation of it may not be invoked in the courts to strike down the ill-gotten gains of the rule-flaunting conduct. However, if the rule is in the constitution, then it can be invoked in the courts.226 The sanction for the one-subject rule is, obviously, substantially greater where the rule is placed in the constitution.

There is still another particular in which it makes a difference that the one-subject rule is in the constitution instead of only in the legislative rules. If a rule is only a legislative rule, then the legisla-

225. Both the Massachusetts House and Senate have copied the congressional rule, House Rule 90 and Senate Rule 50, MANUAL FOR THE GENERAL COURT 1957-8, as has the Rhode Island House, Rule 20, Rules of the House of Representatives, RHODE ISLAND MANUAL 1951-1952. However, neither of the houses in the legislatures of Connecticut, North Carolina and Vermont have done so nor do they have any equivalent.

226. See the previous discussion of the kind of legislative conduct alleged to fail to conform to constitutional rule which is subject to judicial review and the extent of the review.
ture may suspend it. If it is in the constitution, then, except where the constitution authorizes it, the legislature may not suspend it, and a minority of one can invoke the rule by raising the point of order. As the one-subject rule, in part at least, is for the protection of a temporary minority, it is important that the rule cannot be suspended by a majority willing to disregard traditional procedures.

Freund's criticism that the constitutional rules regulating the form of laws produce litigation seems not to be especially telling as to the one-subject rule. While the rule is involved in hundreds of cases, it is rarely the sole issue and only occasionally one of the principal issues. This indicates that the one-subject rule does not invite much litigation. Therefore, its benefits are obtained at comparatively little cost in negative results. While the one-subject rule is indirect and only partial in its attack on the mischief at which it is aimed and while it does produce some negative results, it seems to exert a sufficiently wholesome influence to deserve being retained in the state constitutions.
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<td>Art. II, Sec. 16</td>
<td>1897</td>
<td>Subject General Appropriations Bills; General Revenue Bills; &amp; Bills Adopting a Code, Digest or Revision of Statutes</td>
<td>Art. V, Sec. 56</td>
<td>1897</td>
<td>Specified</td>
<td>One Subject</td>
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<td>Oklahoma</td>
<td>Art. V, Sec. 57</td>
<td>1897</td>
<td>Subject General Appropriations Bills; General Revenue Bills; &amp; Bills Adopting a Code, Digest or Revision of Statutes</td>
<td>Art. V, Sec. 56</td>
<td>1897</td>
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<td>One Subject</td>
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<td>Oregon</td>
<td>Art. IV, Sec. 20</td>
<td>1899</td>
<td>Subject General Appropriation Bills</td>
<td>Art. III, Sec. 16</td>
<td>1894</td>
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<td>Rhode Island</td>
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<td>1868</td>
<td>Subject None</td>
<td>None</td>
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<td>None</td>
<td>None</td>
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<td>South Carolina</td>
<td>Art. III, Sec. 17</td>
<td>1868</td>
<td>Subject None</td>
<td>None</td>
<td>1868</td>
<td>None</td>
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<td>South Dakota</td>
<td>Art. III, Sec. 21</td>
<td>1869</td>
<td>Subject None</td>
<td>Art. XII, Sec. 2</td>
<td>1869</td>
<td>Specified</td>
<td>One Subject</td>
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<td>Tennessee</td>
<td>Art. II, Sec. 17</td>
<td>1870</td>
<td>Subject None</td>
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<td>Texas</td>
<td>Art. III, Sec. 56</td>
<td>1845</td>
<td>Subject General Appropriation Bills</td>
<td>None</td>
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<td>None</td>
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<td>Utah</td>
<td>Art. VI, Sec. 23</td>
<td>1895</td>
<td>Subject General Appropriation Laws and Bills for Codification and General Revision of Laws</td>
<td>None</td>
<td>1895</td>
<td>None</td>
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<td>Vermont</td>
<td>None</td>
<td>1902</td>
<td>Subject None</td>
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<td>Virginia</td>
<td>Art. IV, Sec. 62</td>
<td>1869</td>
<td>Subject None</td>
<td>None</td>
<td>1869</td>
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<td>Washington</td>
<td>Art. II, Sec. 19</td>
<td>1869</td>
<td>Subject None</td>
<td>None</td>
<td>1869</td>
<td>None</td>
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<td>West Virginia</td>
<td>Art. VI, Sec. 30</td>
<td>1872</td>
<td>Subject None</td>
<td>Art. VI, Sec. 61(c) (1917)²</td>
<td>1872</td>
<td>Specified</td>
<td>A Single work, object or purpose Budget Bill prepared by Board must be acted upon first</td>
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<td>Wisconsin</td>
<td>Art. IV, Sec. 18</td>
<td>1848</td>
<td>Subject General Bills (Provision Applies Only to Private or Local Bills)</td>
<td>None</td>
<td>1848</td>
<td>None</td>
<td>None</td>
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<td>Wyoming</td>
<td>Art. III, Sec. 24</td>
<td>1900</td>
<td>Subject General Appropriation Bills and Bills for the Codification and General Revision of Laws</td>
<td>Art. III, Sec. 34</td>
<td>1900</td>
<td>Specified</td>
<td>One Subject</td>
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</tr>
</tbody>
</table>

¹Adopted a general one-subject provision in 1868, but has since repealed it.
²Substantially revised during this year.
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