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STATE STATUTES: THE ONE-SUBJECT RULE UNDER THE 1970 CONSTITUTION

INTRODUCTION

For a hundred years the legal digests have been replete with cases testing the validity of state statutes under the title-body clause of the 1870 Illinois Constitution which provides: "No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title."[1] In 1970 the drafters of the new constitution eliminated the title requirement,[2] creating a provision unique among the states.[3]

Judicial construction and application of the new one-subject provision is uncertain in light of the considerable inconsistency exhibited by decisional law under the 1870 Constitution. The purpose of this paper is to place the one-subject rule in a rational context. To that end, it is necessary to examine the historical origin of the title-body provision and its application under the 1870 Constitution.

THE HISTORICAL BASIS

Although the one-subject rule and its counterpart, the title requirement, have been construed by some courts as inextricably related,[4] their historical bases arose independently in response to different political evils. The one-subject rule was designed to prevent the abuses which inhered in an act containing heterogeneous matters. The primary purposes of the requirement that the body shall not embrace more than one subject is to prevent "log-rolling,"[5] to preclude the attachment of legislative

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[1] ILL. CONST. art. 4, §13 (1870).

[2] ILL. CONST. art. 4, §8(d) (1970), which in relevant part provides: "Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject."

[3] With the exception of several New England states and North Carolina, which have no related provisions, the constitutions of all the states have a title-body provision with slight differences in phraseology and application. Thus, with the elimination of the title requirement, the one-subject provision of the 1970 Illinois Constitution finds no counterpart among other state constitutions.

[4] See note 89 *infra* and accompanying text.

[5] As stated by the Supreme Court of Michigan:

> The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the State.

People *ex rel.* Drake v. Mahaney, 13 Mich. 481, 494-95 (1865). *See also* Turner v. Wright, 11 Ill. 2d 161, 142 N.E.2d 84 (1957); People v. Mahumed, 381 Ill. 81, 44 N.E.2d 911 (1942).

"riders,"[6] and to ensure an orderly legislative procedure.[7]

If the evils sought to be remedied by the one-subject rule were substantial, no less formidable was the problem of titles.[8] This constitutional requirement finds its American historical basis in the notorious Yazoo Act of 1795 which smuggled through the legislature, under a deceptive title, a measure granting 500,000 acres of public domain at 50 cents an acre to a company of speculators.[9] The purpose of the title requirement was to prevent surprise to the legislature by the crafty insertion of

[6] The provision is intended 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. J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §1702 (3d ed. 1943). The prevention of legislative riders also protects the veto power of the Governor against encroachment. *See* Turner v. Wright, 11 Ill. 2d 161, 142 N.E.2d 84 (1957).

[7] In the language of the Supreme Court of Louisiana in Walker v. Caldwell, 4 LA. ANN. 297, 298 (1844), speaking of the former practice:

> [I]mportant general provisions were found placed in acts private or local in their operation; provisions concerning matters of practice or judicial proceedings were sometimes in the same statute with matters entirely foreign to them; the result of which was that, on many important subjects, the statute law had become almost unintelligible, as they whose duty it has been to examine, or to act under it, can well testify. To prevent any further accumulation to this chaotic mass was the object of the constitutional provisions under consideration.

It should be noted that the problem of orderly legislative procedure, unlike log-rolling and rider bills, is not directed to eliminate the perversion of the majority vote rule, but rather to avoid rambling deliberations. By limiting each bill to a single subject, its contents can be better understood and more intelligently discussed. Being an institutional problem, regulatory provisions can be found in Senate and House rules. For example, L. DESCHLER, RULES OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, H. R. Doc. No. 529, 89th Cong., 2d Sess. 405 (1967), which provides: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

[8] This problem was effectively presented from two different viewpoints at the Constitutional Convention of New York of 1846.

One delegate spoke as a legislator and recalled an 1841 bill purporting to be for legal reform, but actually increasing the fees of lawyers twenty-five percent. Because of the popular sentiment aroused by the title, it took a great deal of courage on the part of the legislators to vote against it.

Another speaker was an attorney. He recalled that the husband could not obtain a divorce in New York on the ground of cruel treatment by his wife. Representing the wife, he was disagreeably and unexpectedly floored by "[A]n Act for changing the time of holding General Sessions, and for other purposes," carrying a provision granting this ground of divorce to husbands. He appreciated that titles should inform lawyers of the contents of the acts. DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF NEW YORK OF 1846, Vol. I, 176 (1847).

[9] 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 the state to the unappropriated territory thereof, for the protection and support of the frontiers of this state, and for other purposes." The act became a prominent subject of controversy in state politics for many years. Only three years later, the constitution of Georgia contained the first title requirement: "[N]o law or ordinance shall pass containing any matter different from what is expressed in the title thereof." In Mayor of Savannah v. State, 4 Ga. 26, 38 (1848), Justice Lumpkin notes: "[I] would observe that the traditionary history of this clause is, that it was inserted in the Constitution of 1798, at the instance of General James Jackson, and that its necessity was suggested by the Yazoo Act."

provisions unrelated to the title which might not be enacted if the provisions were properly indicated by the title, and to notify the public, through accurate labeling of the bill, so that it may respond to the proposed legislation.[10]

Although Georgia was the first state to enact a legislative title requirement, Illinois had the first constitutional provision prohibiting the omnibus bill. Section 22 of the Illinois Constitution of 1848 limited bills appropriating salaries for members of the legislature and for officers of the government to that subject alone.[11] Section 23 of that Constitution brought the subject matter and title requirements together for the first time,[12] but it was not until the Constitution of 1870 that every state statute was subject to its limitations.[13]

THE 1870 CONSTITUTION

An analysis of the functional relationship of the requirements under the 1870 title-body clause is appropriate not only because of the prospective application of the 1970 provision,[14] but also because judicial application of the new provision will undoubtedly look to precedent formulated under the 1870 Constitution.

The title-body clause of the 1870 Constitution contains a threefold prescription: first, a requisite as to the title of each act; second, a requisite as to the body of each act; and third, a relationship between the title and the body. Unfortunately, judicial expressions of the purposes served by these requirements are often combined into a single statement not only making isolation of the separate purposes difficult,[15] but also resulting in a confusion of their conceptual distinctions.[16] To avoid such confusion, an analysis of each requirement is helpful.

The Title Requirement

Form of the Title

In determining whether the title of an act conforms to the constitutional provision, it should be remembered that the pur-

[10] *E.g.*, People *ex rel.* Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955); People v. Mahumed, 381 Ill. 81, 44 N.E.2d 911 (1942); Galpin v. City of Chicago, 269 Ill. 27, 109 N.E. 713 (1915).

[11] ILL. CONST. art. III, §22 (1848).

[12] ILL. CONST. art. III, §23 (1848), which provided: "No private or local law, which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title."

[13] ILL. CONST. art. IV, §13 (1870).

[14] The new one-subject rule applies only to statutes enacted after July 1, 1971. Statutes enacted prior thereto must still meet the requirements of subject and title under the 1870 Constitution.

[15] *See, e.g.*, People *ex rel.* Royal v. Cain, 410 Ill. 39, 101 N.E.2d 74 (1951); Memorial Gardens Ass'n, Inc. v. Smith, 16 Ill. 2d 116, 156 N.E.2d 587 (1959).

[16] *See, e.g.*, People *ex rel.* Longenecker v. Nelson, 133 Ill. 565, 575, 27

pose of the title requirement is simply to give notice to the legislature and the public as to the subject matter of the act.[17] A literal reading of the provision — that *the single subject* be stated in the title — not only fails to appreciate its historical purpose, but unduly restricts the manner in which notice may be given. Although some courts have adhered to a strict verbal interpretation,[18] the majority of cases have construed the provision in light of its purpose. Consequently, assuming that the title adequately indicates the subject matter, the legislative drafters are allowed a certain amount of flexibility in the form of the title. Descriptively, the title of an act need not, although it may,[19] be an index of its contents;[20] nor, on the other hand, is comprehensiveness of title objectionable[21] provided that it is not so broad that it will not give a fair idea as to the substance of the body of the bill.[22]

The distinction between a literal and a liberal reading of the title requirement is significant when the act in question contains various specific provisions, all of which are portions of one subject for purposes of the one-subject rule, and the title enumerates the sub-topics rather than stating the one heading under which the various specific provisions can be grouped. For example, assume a criminal code is entitled "An act to define and punish abduction, abortion, . . . " inserting a catalog of every distinct species of crime known to the law. A strict reading of the title requirement would invalidate the act since its subject — criminal

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N.E. 217, 218 (1890), in which the court stated:

> The generality of a title is therefore no objection to it, so long as it is not made to cover legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection.

This statement confuses the single subject requirement with the title requirement. The purpose of the title requirement is simply to give notice of the contents of the act. This purpose is not frustrated when the title gives notice of two subjects. The invalidity of such legislation rests solely upon the one-subject requirement.

[17] *E.g.*, Department of Public Works and Buildings v. Chicago Title & Trust Co., 408 Ill. 41, 95 N.E.2d 903 (1951); Cloyd v. Vermilion County, 360 Ill. 610, 196 N. E. 802 (1920).

[18] *E.g.*, City of Quensboro v. Hazel, 229 Ky. 752, 17 S.W.2d 1031 (1929), where the court invalidated an act dealing with the city manager form of government on the ground that although the provisions all related to city government, which were specifically expressed in the title, the failure to use the term "city government" in the title itself violated the rule that the "single" subject be expressed in the title.

[19] *E.g.*, People v. Sargent, 254 Ill. 514, 98 N.E. 959 (1912).

[20] *E.g.*, International Business Machines Corp. v. Department of Revenue, 25 Ill. 2d 503, 185 N.E.2d 257 (1962); People *ex rel.* Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1957).

[21] *See, e.g.*, Baim v. Fleck, 406 Ill. 193, 199, 92 N.E.2d 770, 774 (1950). "[T]he legislature must determine for itself how broad and comprehensive the object of the subject shall be . . . . "

[22] *E.g.*, Rouse v. Thompson, 228 Ill. 522, 81 N.E. 1109 (1907).

It should be noted that it is possible for an act to be so general as to fail to express any subject at all. For example: "An act for the general welfare of the people of the State of Illinois."

jurisprudence — is not expressly stated in the title. Under this construction, the act would be valid only if entitled: "An act in relation to criminal jurisprudence." However, a more sound interpretation would uphold the act under either of the titles since both fulfill the notice requirement. In the latter case, the breadth of the title is not objectionable because it gives notice of every imaginable offense against the public law; similarly, in the former title, there is still no constitutional objection, for although the title is overly specific, the requisite notice is given.

Although a literal reading of the title-body clause may lead to the conclusion that the one subject with which the act deals must be stated in the title, it reaches the anomalous result that a bill which is limited to one subject and gives notice of that subject in the title may still be held unconstitutional. This result obviously loses sight of the purposes of the provision. The one-subject rule is designed to prevent log-rolling by limiting each act to a single subject. If the act has unity, then the purpose of this rule is satisfied. The title requirement seeks to provide notice of a bill to interested persons and thereby prevent deception through the use of misleading titles. Regardless of its form, if the title gives adequate notice, the purpose of the title requirement is satisfied. The title-body clause states two rules embodying independent purposes and if the separate purposes are fulfilled in the particular case, the act should be held valid.

Scope of the Title

Not only is the form of the title left to the discretion of the legislature, but the title may also define the object and the scope of the act with such particularity of definition as the legislature deems best.[23] Accordingly, the legislature may make the title restrictive and thus exclude many matters from the act which might have been properly embraced within it under a broader title. The consequences of a constricted title are clear:

> [I]f the title is restricted to include not the entire subject but a particular branch thereof, the court cannot enlarge the scope of the title or uphold the provisions not within that particular branch even though the subjects are germane and are departments or branches of a single subject, so that they might have been included under one title if such title had been made broad enough.[24]

In other words, the title of an act may express either a general subject or a subdivision thereof. In both cases, the title

[23] Sutter v. Peoples Gas Light & Coke Co., 284 Ill. 634, 643, 120 N.E. 562, 566 (1918). "It is, however, practically a matter of legislative discretion whether the subject expressed in the title shall be general or specific, embracing only a particular branch of the general subject." See also People *ex rel.* Sanitary District of Chicago v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945); Stolze Lumber Co. v. Stratton, 386 Ill. 334, 54 N.E.2d 554 (1944); People *ex rel.* Gage v. Village of Wilmette, 375 Ill. 420, 31 N.E.2d 774 (1941).

[24] People *ex rel.* Stuckart v. Chicago B.&Q. R.R., 290 Ill. 327, 334, 125

also limits the maximum scope of the act. Although there is a relationship between the two, they should not be confused;[25] the former case generally presents questions of both title and subject,[26] while the latter involves only a title problem.[27]

Accuracy of Title

Another area of inquiry involves the question of whether the title of a bill, stated in general terms, adequately expresses both its principle and incidental provisions. Although, as previously noted,[28] there is no constitutional objection to a title summarizing or indexing its contents, there is a clear preference for the use of general terms.[29] Efforts to list or index contents may give rise to such lengthy titles that one may just as well read the body of the act in full.[30] Furthermore, unnecessary particularity in

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N.E. 310, 313 (1920). See also Rouse v. Thompson, 228 Ill. 522, 81 N.E. 1109 (1907) where the court invalidated a statute dealing with the selection of both party candidates and delegates to a party convention at a primary election. The act was entitled: "An act to provide for the holding and the regulation of primary elections of delegates to nominating conventions . . . . " The court noted that although both topics were germane to each other, the use of the restrictive title precluded the inclusion of provisions concerning party candidates. Had the act been entitled "An act to provide for the holding of primary elections by political parties or organizations," the title requirement would have been satisfied.

For an unduly technical construction of the provision see People *ex rel.* Gage v. Village of Wilmette, 375 Ill. 420, 31 N.E.2d 774 (1941), where the court held that under an act entitled "An act to provide for the annexation of unincorporated territory which is entirely surrounded by incorporated territory," the legislature could not include a provision providing for the annexation of territory which is bounded on one side by a navigable body of water.

[25] In speaking of restrictive titles, the courts sometimes refer to the title as expressing a "subject." See Stolze Lumber Co. v. Statton, 386 Ill. 334, 54 N.E.2d 554 (1944). In this context, "subject" is not used in its constitutional sense, but refers to the topic of the act. The use of the word "subject" in its topical sense has resulted in some confusion, particularly in amendatory acts.

[26] For example: "An act in relation to criminal jurisprudence." Since the possible scope of the act expressed by its title is comprehensive, questions of invalidity would also involve a violation of the one-subject rule.

[27] For example: "An act in relation to juvenile criminal jurisprudence." The scope of this act is limited to provisions governing juveniles. Provisions concerning criminal acts by adults would be germane in the constitutional sense, but could not be sustained under this restrictive title.

[28] Cases cited note 20 *supra.*

[29] After all, the title is in the nature of a label, or a mark of identification, and is intended to give notice of the subject or object of the act. Hence, an elaborate statement is not required, or, in fact desirable. Indeed a few well chosen words suggestive of the general subject is always to be preferred.

E. CRAWFORD, THE CONSTRUCTION OF STATUTES §99 (1940).

A title is not defective because it fails to set forth the details of an enactment. Numerous provisions may be included under a brief, general title, and the title need not, indeed, for purpose of readability, should not, be made an index to or abstract of the contents of a statute.

J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §1716 (3d ed. 1943).

[30] *E.g.*, Burke v. Monroe County, 77 Ill. 610 (1875), where the court stated:

It is not to be expected, neither is it possible for the title of the act to contain all the various provisions of the act itself . . . . if such was the case, the title to the act would have to be as comprehensive

the title can prove hazardous because some provisions may not be specially indicated, thus inviting attack on the ground that the title is misleading or too narrow.[31] Therefore, the use of a brief title expressing the general object not only facilitates the notice requirement, but will more readily be construed to encompass auxiliary and incidental matters.[32]

Notwithstanding the basic concept that a general title will encompass all "germane" provisions,[33] the court will occasionally invalidate an admittedly germane provision falling under a broad title. In *People v. Levin*,[34] a provision which made it a felony for a trustee to dispose of goods held under a trust receipt and fail to account for the proceeds was held invalid in a statute entitled the "Uniform Trust Receipts Act." However, in *Italia American Shipping Corp. v. Nelson*,[35] the court upheld a provision making it a felony for violating any provision of a statute entitled "An act in relation to the buying and selling of foreign exchange . . . . " The apparent inconsistency between the decisions lies in the factual similarity of both cases: each involved commercial transactions, both contained germane penalty provisions, and in each case the title was general. However, a close reading of the opinions indicates that the opposite results accord with the concept of notice.

In the *Italia Shipping* case, the statute affected a particular class — bankers and those dealing in foreign exchange. Traditionally, statutes dealing with banking and exchange transactions have contained penal provisions since such acts are regulatory in nature and "could not be made effective without the imposition of a penalty."[36] Since those dealing in foreign exchange should reasonably expect a penal provision in a regulatory act, it cannot be said that they are without notice simply because the title doesn't specify the penalty. As stated by the court:

> [W]hen the title of an act is general and is of such a nature that the natural inference is that the act is regulatory and that penal-

as the act itself. Such was not the object or intent of the constitution. *Id.* at 613.

[31] *E.g.*, Rouse v. Thompson, 228 Ill. 522, 81 N.E. 1109 (1907).

[32] People *ex rel.* Longenecker v. Nelson, 133 Ill. 565, 577, 27 N.E. 217, 219 (1890). "[I]t is clear that the broader and more general the subject, the greater the number of particular or subordinate subjects which will be embraced within it."

[33] *E.g.*, American Badge Co. v. Lena Park Improvement Ass'n, 246 Ill. 589, 92 N.E. 972 (1910); People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953); People *ex rel.* Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1957). For discussion of the judicial definition of "germane" see page 370 *infra*.

[34] 412 Ill. 11, 104 N.E.2d 814 (1952).

[35] 323 Ill. 427, 154 N.E. 198 (1926).

[36] *Id.* at 432, 154 N.E. at 200. See also People v. Mueller, 352 Ill. 124, 185 N.E. 239 (1933), where the court held that a statute entitled "An act to revise the law in relation to banks and banking" could validly contain a penal provision.

ties are a proper incident to its enforcement, the constitutional limitation is not violated.[37]

In the *Levin* case, the court held the penalty provision invalid on the ground that it was not expressed in the title.[38] The groundwork of the decision was a survey of the evolution of trust receipts as a security device.[39] The court found that, historically, the trust receipt problem was directed merely to a standard definition of its essential attributes and its use and application in uniformity with other states. Since it was non-regulatory in nature, the Act was not of the type in which a penalty provision is logically expected to be found[40] absent some special indication in the title.

Both the *Levin* and *Italia Shipping* decisions, although perhaps contradictory on their face, are conceptually reconcilable. In each, the court had to decide whether notice of a germane provision was imparted by the use of a general title. While the results differed, the ultimate question was one of notice, implying that the concept of germane provisions is subject to different standards for purposes of title and body requirements. In relation to the body requirement, a germane provision is one that has a legitimate connection with the general subject of the act. But for purposes of a general title, a germane provision is one that is not merely legitimate, but also has a natural or ordinary connection with the title of the act. Even though a provision is legitimate, it may be so unusual or extraordinary in relation to the subject that the use of a general title does not impart notice of it. Such extraordinary provisions, although germane to the subject, require special indication in the title. As exemplified by the *Levin* and *Italia Shipping* cases, this distinction, between ordinary and extraordinary, depends upon custom and usage as influenced by legislative and legal practices.[41]

The One-Subject Rule

Under the 1870 Constitution, no act passed by the General

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[37] 323 Ill. at 432, 154 N.E. at 200.

[38] 412 Ill. at 18, 104 N.E.2d at 818.

[39] Since its inception, the court noted that the trust receipt had caused considerable confusion in that the judiciary was "ever more" undecided whether to recognize a trust receipt as a security device *sui generis* or to classify it as one of the existing and established security instruments. The problem was solely one of definition, prompting the National Conference of Commissioners on Uniform State Laws to promulgate the Uniform Trust Receipts Act as a *final definition of the content and applicability* of the trust receipt device. It was this Act that the Illinois General Assembly purported to enact, but with the addition of the felony provision.

[40] 412 Ill. at 18, 104 N.E.2d at 818.

[41] A further variable is whether the provision in question is civil or criminal in nature. Penal statutes must measure up under the rule of strict construction. See Allardt v. People, 197 Ill. 501, 64 N.E. 533 (1902). Non-criminal statutes are accorded a presumption which favors validity. *E.g.*, Campe v. Cermak, 330 Ill. 463, 161 N.E. 761 (1928); People v. Mc-

Assembly could embrace more than one subject.[42] Judicial application of the rule is perhaps the most elusive problem raised by the title-body clause. Because of the vague and broad terms in which it is defined, the personal prejudices and subjective considerations of the court are apt to come into play.[43]

The dictionary definition of "subject" includes: "the theme of a discourse or predication," "the identical reference of related thoughts," and "the underlying theme or topic of a branch of knowledge or study."[44] Judicially, it is said that the subject of an act means the matter or thing which forms the basis or groundwork of the act.[45] Such language is too vague to provide any intelligible guides; if the concept of one-subject is to have any meaningful application to legislative acts, some clarification is required.

First, the subject of an act, in the constitutional sense, is generally broader than the particular topic or subject matter

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Bride, 234 Ill. 146, 84 N.E. 865 (1908). A determination of whether a specific provision is "expressed" in a general title is undoubtedly strongly affected by the presumption. *See, e.g.*, Pickus v. Board of Education of The City of Chicago, 9 Ill. 2d 599, 138 N.E.2d 532 (1956), upholding a non-communist oath provision in "An Act in relation to State finance"; People *ex rel.* Brenza v. Gebbie, 5 Ill. 2d 565, 587, 126 N.E.2d 657, 668 (1955) stating,

> [T]he tendency has been to adopt a liberal rather than a strict construction to the end that the beneficial purposes for which the provision was adopted will not be defeated.

Under the strict rule of construction, even where the title of an act specifically dealt with criminal behavior, it has been held that if a new crime is created, this fact must be indicated in the title. See Milne v. People, 224 Ill. 125, 79 N.E. 631 (1906) where the court held that an act entitled "An act for the punishment of crimes against children" could not validly contain a provision creating a new crime (the taking of indecent liberties with children under the age of sixteen). The court noted, however, that if the title had included the words "to define and punish" it would have been sufficient. See also People v. Mahumed, 381 Ill. 81, 44 N.E.2d 911 (1942), where the court held that "An Act in relation to certain causes of action conducive to extortion and blackmail . . . . " could not validly contain a penalty for identifying, without court approval, the co-respondent in suits for divorce or separate maintenance.

[42] ILL. CONST. art. IV, §13 (1870).

[43] *See, e.g.*, O'Leary v. County of Cook, 28 Ill. 534 (1862), where the court upheld a clause in a private act incorporating a university, which prohibited the sale of ardent spirits within a distance of four miles from the university. The majority felt that the moral influences of a barroom were germane to the protection of students which, in turn, is germane to the objects of a university. The dissent found it "as incongruous as it is possible to imagine" that a provision of a public nature should be found in a private act.

In addition to the problem of deciding *to what* a particular provision must be germane, is the problem of *construing* the word "germane" itself. See People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 624, 111 N.E.2d 626, 640 (1953), where the dissenting opinion bemoaned the fact that "[N]o two subjects are so wide apart that they may not be brought into a common focus if the point of view be carried back far enough."

[44] Webster's Third New International Dictionary of the English Language 2275 (1961).

[45] *E.g.*, Pickus v. Board of Education of The City of Chicago, 9 Ill. 2d 599, 138 N.E.2d 532 (1956); Union Cemetery Ass'n of City of Lincoln v. Cooper, 414 Ill. 28, 110 N.E.2d 239 (1953); People v. Levin, 412 Ill. 11, 104 N.E.2d 814 (1952); Michaels v. Barrett, 355 Ill. 175, 188 N.E. 921 (1934).

of any given act.[46] Consequently, the term "subject" is comprehensive in its scope and may be as broad as the General Assembly chooses,[47] provided it constitutes, in the constitutional sense, a single subject rather than several subjects.[48]

Second, in determining the "groundwork" of any particular act, it is important to distinguish between principal and incidental provisions.[49] Provisions of an act are often dissimilar categorically and invocation of the one-subject rule becomes particularly appealing when a statute contains both criminal and civil provisions[50] or when provisions involving first amendment rights are found in a statute dealing with state finance.[51] However, in the case of incidental provisions, mere diversity of matter is not objectionable unless the dissimilar provisions also evidence a different purpose.[52] As stated by the court in *American Badge*

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[46] *See, e.g.*, People v. Kelly, 357 Ill. 408, 192 N.E. 372 (1934).

Although the terms "subject" and "subject matter" or "topic" are often used interchangeably, a distinction should be recognized. The "subject matter" or "topic" of an act is defined by the language used therein, while the "subject" of an act is limited solely by the conceptual basis or groundwork of which the particular language is only a part. The distinction becomes more than academic in the case of amendatory statutes. (For a general discussion of amendatory statutes, see Comment, *State Statutes: Constitutional Subject-Title And Amendatory Requirements*, 24 U. CHI. L. REV. 723 (1957).) For example, a statute dealing with larceny is enacted and entitled "An act to define and punish larceny." The "subject matter" or "topic" of this act is larceny, while its "subject" is criminal jurisprudence. Consequently, if the statute is later amended, and the amendatory act also includes the definition and punishment of embezzlement, there is no violation of the one-subject requirement since both larceny and embezzlement are within the "subject" of criminal jurisprudence.

On the other hand, if the amendatory statute included a provision imposing a use tax on property, the one-subject rule would be violated since there is now a plurality of subjects in the constitutional sense — the groundwork of one provision is criminal jurisprudence, while the groundwork of the other is taxation.

[47] *E.g.*, People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953); People *ex rel.* City of Chicago v. Board of Commissioners of Cook County, 355 Ill. 244, 189 N.E. 26 (1934).

[48] Co-ordinated Transport Inc. v. Barrett, 412 Ill. 321, 106 N.E.2d 510 (1952).

[49] Principal provisions are those relating to an area of the law which is the object of the legislation, while incidental provisions are the auxiliary matters or means which effectuate the general object.

[50] *E.g.*, Italia American Shipping Corp. v. Nelson, 323 Ill. 427, 154 N.E. 198 (1926).

[51] *See* Pickus v. Bd. of Education of The City of Chicago, 9 Ill. 2d 599, 138 N.E.2d 532 (1956).

[52] It was pointed out in note 46 *supra* that the inclusion of a provision defining and punishing larceny in a statute imposing a use tax on property would violate the one-subject rule. The violation occurs not because of the dissimilarity between penal and non-penal provisions, but rather, because the distinct purposes expressed by the two provisions indicate a plurality of bases. If a statute imposing a use tax on property also imposes a penalty for the failure to make payment, there is no violation of the rule since the purpose of the penalty provision is a means reasonably adapted to accomplish the main purpose of the act. See also People *ex rel.* Broomell v. Hoffman, 322 Ill. 174, 152 N.E. 597 (1926), where the court held that the punishment of judges and clerks of elections for misbehavior in the conduct of an election is germane to the object and purpose of an act regulating the holding of elections.

Co. v. Lena Park Improvement Ass'n:[53]

> Every act must embrace but a single subject, but it may include other provisions not foreign to the general subject, which legitimately tend to accomplish the legislative purpose as to that subject. An act may contain many provisions and details for the carrying out of its purpose. The object of this provision of the constitution is to prevent the joining in one act of incongruous or unrelated matters. It was not designed to embarrass legislation by making laws unnecessarily restrictive in their scope and operation.[54]

It is not only a legitimate construction of the one-subject rule which commends the *American Badge* rationale, but its reasoning is bred of necessity. To require that every end and means necessary to the accomplishment of the general object should be provided for by a separate act relating to that alone would not only be senseless, but would render legislation impossible. Consequently, a statute may include every matter germane, referable, auxiliary, incidental, or subsidiary to, but not inconsistent with, or foreign to, the general subject or object of the statute, without violating the constitutional provision.[55]

For example, in *Pickus v. Board of Education of the City of Chicago*,[56] the court held that an act dealing with state finance could validly contain a provision withholding compensation from state employees who refused to sign non-Communist loyalty oaths. The subject of the Act was state finance, while its object was the expenditure or disbursement of state funds. Since the provision in question was a condition precedent to the making of certain payments from appropriations, it is reasonably related to the object of the Act even though it may also result in determining the character of state employees which, absent the financial relationship, might well be deemed a different subject.

As indicated by the *Pickus* decision, provisions which may be classified as different subjects of law, may still comply with the rule if a functional relationship is established. This points up that the one-subject rule is directed at *disunity* of subject matter, rather than at literal *plurality* of subject matter. Occasionally, it is stated that the one-subject rule is not "a limitation on the comprehensiveness of the subject; rather, it prohibits the inclusion of 'discordant provisions that by no fair intendment can be considered as having any legitimate relation

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[53] 246 Ill. 589, 92 N.E. 972 (1910).

[54] *Id.* at 590, 92 N.E. at 973. See also Hoyne v. Ling, 264 Ill. 506, 106 N.E. 349 (1914); Perkins v. Board of County Commissioners of Cook County, 271 Ill. 449, 111 N.E. 580 (1916); People v. O'Brien, 273 Ill. 485, 113 N.E. 34 (1916).

[55] Co-ordinated Transport Inc. v. Barrett, 412 Ill. 321, 106 N.E.2d 510 (1952).

[56] 9 Ill. 2d 599, 138 N.E.2d 532 (1956).

to each other.' "[57] Impliedly, the focus of this test, like that applied to incidental provisions, is not on the "groundwork" of the act, but on its object or purpose. When applied to principal portions of an act, this test may differ substantially from those decisions which hold that provisions are "germane" so long as they fall under one general heading. Here, the test is the rational unity between the matters embraced in the act which may not be satisfied by having the same "groundwork."

For example, in *Michaels v. Hill*,[58] the court invalidated a statute even though all the provisions dealt with the subject of revenue, on the ground that no rational connection existed between the topics. The act in question established the debt limit for certain classes of municipalities and also prescribed the duties of the county clerk in the extension or scaling of taxes. The decision resulted from a careful analysis of the term "germane":

> Literally, "germane" means "akin," "closely allied." It is only applicable to persons who are united to each other by the common tie of blood or marriage. When applied to inanimate things, it is, of course, used in a metaphorical sense, but still the idea of a common tie is always present. Thus, when properly applied to a legislative provision the common tie is found in the tendency of the provision to promote the object and purpose of the act to which it belongs. Any provision not having this tendency which introduces new subject matter into the act is clearly obnoxious to the constitutional provision in question. It is an error to suppose that two things are in a legal sense germane to each other merely because there is a resemblance between them or because they have some characteristics common to them both. One might with just as much reason contend that two persons are necessarily akin because they are of the same complexion or in other particulars alike.[59]

The court then looked to the purposes of both topics and concluded that they were wholly independent and hence, not germane.

The rationale is appealing. When the topics of an act have no rational connection, it can be assumed that they were brought together only for tactical purposes. That being so, the act should be declared invalid, notwithstanding the fact that, topically, both provisions can be tied to the same groundwork.

Consequences of Plurality

The consequences of a finding of subject plurality are dependent upon the title-body relationship. There are three different situations in which plurality can be found: the body of the act may be limited to one subject, but the title of the act

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[57] *E.g.*, People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 608, 111 N.E.2d 626, 632 (1953).

[58] 328 Ill. 11, 159 N.E. 278 (1927).

[59] *Id.* at 17, 159 N.E. at 281.

may express two or more subjects; the body of the act may contain two subjects only one of which is expressed in the title; and the body of the act may contain two subjects both of which are expressed in the title. In Illinois, only the last two involve problems of invalidity, and, curiously enough, only in the last situation is there a violation of the one-subject rule.

In the first situation, where the title of an act expresses two subjects but the body contains a single subject, the entire act is valid. The one-subject rule is concerned with plurality in the body of the act, and not in its title. Therefore, where there is but one subject in the act, and the title expresses more than one, the subject expressed in the title and not embraced within the act is regarded as mere surplusage.[60]

In the second situation, where the body contains two subjects and only one is expressed in the title, the part not contained in the title is void. This result is obtained, in part, with the aid of the severability clause in the constitution which provides: "But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed . . . ."[61] Whether this addition to the title-body clause was necessary[62] or whether it mandates[63] only partial invalidity is not entirely clear. However, Illinois courts have literally construed the proviso,[64] treating the problem as one of title alone, when, in fact, the act may violate both the title and one-subject requirements.

The difficulty with the Illinois position is that one of the purposes of the single subject requirement was to prevent log-rolling.[65] The use of the partial invalidity rule to reduce the act to

[60] *See* People v. Solomon, 265 Ill. 28, 106 N.E. 458 (1914); People v. McBride, 234 Ill. 146, 84 N.E. 865 (1908).

Plurality of subject should, of course, be distinguished from a mere listing of topical provisions all of which relate to one subject. In the latter case, there is no problem of plurality.

[61] ILL. CONST. art. IV, §13 (1870).

[62] One opinion as to this addition was expressed by a delegate of the Illinois Constitutional Convention of 1870, when he quoted Cooley's CONSTITUTIONAL LIMITATIONS to the effect that this "statement in state constitutions is not necessary" and does not amount to anything, because the courts construe subjects not expressed as invalid and sustain the one expressed, thus obtaining the same result whether this addition is present or not. DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF ILLINOIS OF 1870, Vol. I, 547 (1869-70).

[63] At the time of the 1870 Constitutional Convention, there was still some question as to whether the title-body provision was mandatory or merely directive. The delegate referred to in note 62 *supra* felt that the addition, although not necessary, would clearly indicate that the title-body clause was mandatory. Therefore, it is arguable that the addition does not make it mandatory upon the courts to hold valid that part of the act expressed in the title. It could be interpreted as creating a presumption of partial validity to be rebutted by evidence of log-rolling.

[64] *See, e.g.*, Campe v. Cermak, 330 Ill. 463, 161 N.E. 761 (1928); Sutter v. Peoples Gas Light & Coke Co., 284 Ill. 634, 120 N.E. 562 (1918).

[65] See note 5 *supra*.

a single subject may well employ conceptualism while overlooking political realities.[66] Although some states invalidate the entire act,[67] this is not always a satisfactory result either. In cases where the separate subject is a "rider"[68] or merely the product of discursive legislation,[69] the partial invalidity doctrine sustains not only majority rule, but preserves legislative intent as well. The failure of the Illinois courts to distinguish the three types of "separate subjects" is a result of the difficulty in ascertaining which device, if any, was employed.[70]

Of the three situations discussed, the last is the only one in which the issue of the one-subject rule is clearly presented. Where the body of the act contains two subjects both of which are expressed in the title, the entire act is invalid. Since the title expresses both subjects, the doctrine of severability is inapplicable. Being unable to determine which subject the legislature desired to be law, the court cannot choose between them in order to hold one valid and the other invalid.[71]

THE 1970 ILLINOIS CONSTITUTION

The Elimination of the Title Requirement

The 1970 Illinois Constitution provides: "Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject."[72] The new provision, unique among the states,[73] raises the fundamental question of whether the dropping of the title mandate is an intelligent "streamlining" of constitutional safeguards. The *Committee*

[66] Plurality of subject in the body of the act suggests that log-rolling may have been employed. The use of the title requirement overlooks the fact that the act may 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 only because these two subjects were joined within it. In such a case, a perversion of the majority vote rule can be prevented only by invalidating the entire act.

[67] State v. Payne, 53 Nev. 193, 295 P. 770 (1931).

Also, at the Illinois Constitutional Convention of 1870, the following addition to the title-body clause was proposed but not adopted: " . . . if a subject shall be embraced in an act which is not expressed in the title thereof, such act shall be entirely void." DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF ILLINOIS OF 1870, Vol. I, 537 (1869-70).

[68] Unlike the problem of log-rolling, when a legislative rider is present, it can be assumed that the non-rider portion was passed in accordance with the majority vote rule.

[69] This is not a problem of majority rule, but merely one of careless legislation.

[70] Not a single Illinois case has stated that its finding of a separate subject was a product of log-rolling, legislative riding, or simply sloppy legislation. The position that most cases of plurality are caused by the latter, lends support to the Illinois view.

[71] *E.g.*, Campe v. Cermak, 330 Ill. 463, 161 N.E. 761 (1928); Michaels v. Hill, 328 Ill. 11, 159 N.E. 278 (1927).

[72] Art. IV, § 8(d). This provision became effective July 1, 1971.

[73] See note 3 *supra*.

Proposals, quite confidently, suggest an affirmative response:

> The requirement that all bills pertain to a single subject and that the subject be expressed in the title has been modified. The "single subject" rule has been retained, but the requirement that the complete bill be expressed somehow in the title is eliminated. The reason for this change is very simple. The complexity of many bills considered today defies a *thorough expression* in the title. Since the judicial branch may review challenges that the "single subject" rule has been violated, both members of the General Assembly and the public retain sufficient protection from a provision in a bill which may be unrelated to the overall thrust of the bill.[74]

The committee's omission of the title requirement finds support in several criticisms ranging from unreasoned vituperatives[75] to allegations of specific instances of abuse.[76] Perhaps the most balanced appraisal of the constitutional provision comes from the following conclusions reached by Professor Freund:

> The requirements regarding title and subject-matter undoubtedly inculcate a sound legislative practice . . . .
>
> Conceding that these requirements of style have had on the whole a beneficial effect upon legislative practice and the clearness of statutes, they have had a reverse side which must not be ignored. They have given rise to an enormous amount of litigation; they have led to the nullification of beneficial statutes; they embarrass draftsmen, and through an excess of caution they induce undesirable practices, especially in the prolixity of titles, the latter again multiplying the risks of defect. While the courts lean to a liberal construction, they have in a minority of cases been indefensibly and even preposterously technical, and it is that minority which produces doubt, litigation, and undesirable cumbrousness to avoid doubt and litigation.
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> The requirements were introduced to protect legislatures from fraud or surprise and to stop the practice of logrolling. The experience of those states which have not adopted the provisions would probably show that they are less necessary now than seventy-five years ago, that better practices have been compelled by public

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[74] REC. OF PROC., SIXTH ILL. CONST. CONV., *Legislative Comm.*, Vol. VI at 1385-86 (1969-70) (emphasis added).

[75] One author felt that the restrictions of the 1870 Constitution on the passage of bills — including the bill-reading requirement, the title and subject rule, the prohibition on revision or amendment by reference, and some of the restrictions on the appropriations process — were the results of "naive do-gooders." Braden, *The 1870 Illinois Constitution Dissected,* in STATE CONSTITUTION REVISION: THE ILLINOIS OPPORTUNITY 19 (S. Gove ed. 1970).

[76] Another author felt that title objections are generally made after the fact by litigants who are not misled by the title, but are opposed to the merits of the law and are merely taking advantage of a procedural defect to defeat the measure. In support, he notes that title attacks against the Public Utilities Act, the Workmen's Compensation Act, the Wage Loan Corporation Act, and the Public Utility Tax Act, in the main were carried on by persons who lobbied against the bill in the legislature. The author suggested that the title requirement be omitted entirely or if retained it should be made clear that invalidity would follow only if the title deliberately misrepresented the contents of the bill. Elson, *Constitutional Revision and Reorganization of the General Assembly,* 33 ILL. L. REV. 15, 28 (1938).

> opinion, and that the benefits of the improvement may be enjoyed without the attendant risks and evils.[77]

To place the diverse criticisms in their proper perspective, a few observations are in order. First, the *Committee Proposals* would have us believe that the complexity of contemporary bills "defies a thorough expression" in the title. Its conclusion, however, rests upon an apparent misapprehension which finds little support in law or in fact. Notwithstanding the intricacies of any bill, sound legislative practice as well as the one-subject rule dictate that the bill be directed to a single object or purpose. It is this single object or purpose that is to be expressed and the complexity of a bill is of no consequence. For example, the prolixity of state financing is obvious; yet, every provision which legitimately promotes that object can be "thoroughly expressed" in the title "An act in relation to state financing."[78]

Similarly, in support of the title requirement omission, the authors of the *Constitutional Commentary* cite *Rouse v. Thompson*[79] as illustrative of the difficulty in "thoroughly expressing" the subject of a bill in its title.[80] However, in *Rouse,* and indeed in most statutes invalidated because of the title rule, the drafters employed restrictive language in the title; no problem of complexity was presented.

The problem of restrictive titles leads to a second criticism. It is said that the title provision embarrasses draftsmen. This is not totally untrue. Those who are embarrassed, however, are not the skilled draftsmen. Since the body of a bill is limited to one subject, an able draftsman is capable of expressing that subject in a relatively brief and concise statement.

Another conclusion reached by Freund was that the title requirement has given rise to excessive litigation. However, the *number* of cases citing the rule is not, of itself, a convincing argument for its abolition. While the rule is invoked in hundreds of cases, it is seldom the sole issue, and only occasionally one of the main issues. More typically, the constitutional question is incidental to a more important argument or is merely the "tenth contention" of a weak case. This infers that the title rule is not directly responsible for much litigation; and when the question of a title violation is frivolous, expended judicial energy has been minimal. Therefore, the benefits of the title requirement have

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[77] E. FREUND, STANDARDS OF AMERICAN LEGISLATION, 155-56 (U. Chi. Press 1917).

[78] Pickus v. Bd. of Education of The City of Chicago, 9 Ill. 2d 599, 138 N.E.2d 532 (1956).

[79] 228 Ill. 522, 81 N.E. 1109 (1907).

[80] R. Helman and W. Whalen, *Constitutional Commentary,* 155, S.H.A. CONST. art. 4, §8; see also note 24 *supra.*

been obtained without excessively burdening the judicial machinery.

The criticism that some of the cases have been indefensibly technical seems to find some support,[81] but no more than in other areas of the law, and certainly not to an extent which gives rise to an indictment of the courts in this regard.

Finally, it is contended that the abuses at which the title requirement is directed, are no longer existent in contemporary legislative bodies. It is true that the limitations on the enactment of legislation were born in a time of legislative distrust. Equally true is the contemporary absence of any serious assault on legislative integrity. In fact, the small number of cases invalidating statutes bespeaks of a remarkable compliance with the spirit and letter of the rule. Further, although compliance with the majority rule may have been initially forged by constitutional mandate, present-day legislative practices are no doubt equally tempered by political and public pressures as well as legislative integrity. The same rationale, however, is likewise applicable to the one-subject rule and its attendant evils; yet, the one-subject rule has not left the constitutional fold. As to the single-subject requirement, the implication must be that the mere possibility of majority rule perversion is sufficient to impose the sanction of constitutional mandate. The only explanation for the dropping of one requirement while retaining the other, is the Legislative Committee's concern with the technical impossibility of "thoroughly expressing" the subject in the title. Assuming capable draftsmenship and intelligent application, it is submitted that their apprehensions are unfounded.

An evaluation of the title requirement suggests that it is deserving of further consideration. Although no longer a constitutional mandate, it is recommended that both houses adopt a rule requiring the subject of a bill to be expressed in its title. A legislative rule does not impose the sanctions of a constitutional provision, but does impose an internal limitation and encourages self-regulation in an area conducive to an orderly and fair legislative process.

The One-Subject Provision

Conflicting Case Law

The previous discussion of the title-body provision attempted to analyze the two requirements separately to the end that not only would a conceptual approach best serve in understanding its application to statutes enacted prior to July 1, 1971, but also to facilitate a meaningful comprehension of the 1970 Constitution's

[81] Note 24 *supra* for a discussion of overly technical construction.

one-subject provision. However, any attempt to formulate a projected application of the new rule, must reckon with the concept of "subject" as defined by decisional law under the 1870 title-body provision. Stated briefly, a case-law approach presents the following problem. Although most cases have treated questions of subject and title as independent inquiries, others have dealt with the two as inextricably related, resulting in the title clause being definitive of the subject clause.[82] In view of the present omission of the title requirement in the new constitution, the precedent value of the latter category of cases carries with it the seminal potential of *ad hoc* decisions resting upon judicial subjectivism.[83]

Perhaps the most disturbing aspect of defining subject matter in terms of its title, is the expression of the principle in the most recent Illinois Supreme Court pronouncement on the matter. In *Dee-El Garage Inc. v. Korzen*,[84] the court invalidated a statute on the grounds that it violated both the title and subject clauses of the 1870 Constitution. The original Act was entitled "An act to revise the law in relation to the assessment of property and the levy and collection of taxes . . . . " Section 26 of the Act provided that when tax-exempt property is leased to one not entitled to tax-exempt status, his leasehold interest shall be listed as real estate for the purposes of taxation.[85] In 1969, section 26 was amended to provide that a party who used tax-exempt property for a use not otherwise exempt would be taxed on that use in the same manner as though he were the owner of the property.[86] The form, not the substance, of the section changed: under the old section, the occupant was required to treat his leasehold interest as real estate, and thus, an *ad valorem* tax was placed on his interest; under the new section the occupant was subject to a use tax on his leasehold interest.

The court first held that the title of the act "clearly" relates to the assessment, levy and collection of taxes on property, and therefore, section 26, dealing with a use tax, was not expressed in its title.[87] By way of dicta, the court indicated that had the

[82] Basically, the line of logic in these cases is that the title is descriptive of the scope of the "subject" as that word is used in its constitutional sense. Therefore, if the body of the act contains a provision not expressed in the title, that provision constitutes a second subject.

[83] Under these decisions, the concept of subject matter was a fluid one, waxing and waning with the breadth or narrowness of the title. The title, in effect, served as a guide in determining subject matter. Under the new constitution that guide may no longer be used, leaving subject matter an amorphous concept.

[84] 53 Ill. 2d 1, 289 N.E.2d 431 (1972).

[85] ILL. REV. STAT. ch. 120, §507 (1967).

[86] *Id. as amended by* P.A. 76-1346, §1 *effective* Sept. 16, 1969.

[87] 53 Ill. 2d at 7, 289 N.E.2d at 435.

The conclusion reached by the court was based upon a rather unusual rationale. It should be noted that in the title of the act, the prepositional

title of the Act been amended to express the amendatory provision, the Act would have been constitutional.[88]

Next, the court found that the Act also violated the subject clause of the 1870 Constitution. It stated:

> The general test to be applied in determining whether the inclusion in the act of various provisions violates the constitutional prohibition against plurality of subject matter is that of determining whether the various provisions are germane to the subject expressed in the title . . . .[89]

Applying the "general test" to this particular act, it was clear that the amendatory section added new subject matter to that expressed in the title and therefore violated the prohibition of plural subjects.[90]

The decision is rather puzzling. First, the tests employed by the court for determining compliance with both the title and subject requirement are almost identical[91] when, in fact, two different concepts are involved. Second, the court indicates that the Act would have been valid had the title been amended, implying that the evils to be prevented by the one-subject rule[92] can be remedied merely by the notice requirement. Finally, the summary fashion in which the court concludes that a provision dealing with a use tax in a particular circumstance is a subject different from the imposition of an *ad valorem* tax, intimates that the court was not concerned with the object of the Act, but was impressed with the semantical or topical differences between the provisions.

The implications of the case as to subject matter are rather troublesome and with the present omission of the title requirement, judicial application of the one-subject rule under the new constitution remains uncertain.

An Alternative Approach

If the subject provision of the 1970 Constitution is to be a useful and predictable tool of constitutional safeguard, rather than a means for the expression of judicial subjectivism, a rational foundation is needed. In attempting to formulate a rationale, the utterance of Judge Learned Hand, relative to an in-

phrase "of property" modifies only the word "assessment" not "the levy and collection of taxes." However, the court looked into the body of the act and found that "taxes" was defined as "(a)ny tax, special assessments or costs, interests or penalty imposed *upon property*" (emphasis added). Therefore, the levy and collection of taxes referred to property taxes.

It is submitted that the general purport of the statute is to be considered only in light of the title. Defining the scope of the title in terms of the body of the act comes dangerously close to a denial of the need for any title at all.

[88] 53 Ill. 2d at 8, 289 N.E.2d at 435.

[89] *Id.* at 9, 289 N.E.2d at 436.

[90] *Id.* at 10, 289 N.E.2d at 436.

[91] See text accompanying notes 87 and 89 *supra*.

[92] See notes 5, 6 and 7 *supra*.

terpretation of words contained within a statute, should be kept in mind: "[U]nless they explicitly forbid it, the purpose of a statutory provision is the best test of the meaning of the words chosen."[93] As applied to the subject provision,[94] the starting point is clear: it was enacted to prevent log-rolling, legislative riders, and discursive legislation; yet, it was not intended to frustrate legitimate legislation,[95] and every presumption will be indulged in to uphold the validity of a statute. Therefore, it is within this framework only that a viable concept of "subject" can emerge.

Some of the cases speak of "subject" as the matter or thing which forms the "groundwork" of the act.[96] To the extent that the term "groundwork" connotes a topical interpretation of the constitutional provision, it should be avoided because the unqualified use of the classification of topics in the law, as a basis for determining compliance with the one-subject rule, is, quite simply, misleading. Topics may be brought together in the law for a number of reasons — for reasons of history, legal theory, convenience, functional relationship and the like. Not all of the reasons indicate that the joining of different topics in a single bill was employed as a result of log-rolling.

Nor, on the other hand, is the fact that all the provisions relate to one "groundwork" conclusive of the act's compliance with the one-subject rule. In the *Michaels*[97] case, although both provisions dealt with the same groundwork, the absence of some common purpose or other relationship between the provisions indicates that there was no practical, rational, or legitimate reason for their joining in a single act, which, in turn, suggests that the provisions were combined only for tactical purposes.

An alternative to the pitfalls inherent in a topical approach is the concept that the term "subject," in its constitutional context, be synonymous with the "object" or "purpose" of a particular bill. The evils sought to be prevented by the one-subject rule are all predicated upon the joining together of different legislative purposes, not upon the joining of different topics which have one common object or purpose. Under this approach, the court

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[93] Cawley v. U.S., 272 F.2d 443, 445 (2d Cir. 1959).

[94] It should be noted that rules of statutory construction are not always applicable to constitutional provisions; and this is especially true as to the weight to be given the proceedings of the constitutional convention. For the constitution does not derive its force from the convention which framed it, but from the people who ratified it, and the intent to be arrived at is that of the people. However, when the inquiry is directed at ascertaining the mischief designed to be remedied, or the purpose sought to be accomplished by a particular provision, it is proper to examine the proceedings of the convention which framed the instrument. T. COOLEY, CONSTITUTIONAL LIMITATIONS, 142-43 (8th ed. 1927).

[95] *E.g.*, People v. McBride, 234 Ill. 146, 84 N.E. 865 (1908).

[96] Cases cited note 45 *supra*.

[97] Michaels v. Hill, 328 Ill. 11, 159 N.E. 278 (1927).

must first make a determination of the object or purpose of the legislation. The validity of any particular provision must be viewed in light of this determination. In each case, the decisive question is whether the specific provision can be said to be reasonably related to, or in furtherance of, the object or purpose of the act. If it is, then it is valid, notwithstanding the fact that it may deal with a different topic.

For example, in the *Dee-El Garage* case, the court invalidated the statute because it concluded that a use tax and an *ad valorem* tax were two different "subjects." However, the court failed to appreciate the context in which the use tax arose. The legislature had for its purpose the taxation of real property. Certain property, however, due to the status of the owner, was exempt. To avoid the inequities which would follow from leasing tax-exempt land to a non-exempt party, the legislature chose to impose a tax upon its use. The implication of the court's holding is that the use tax provision was the result of log-rolling or possibly a legislative rider. The more reasonable conclusion is that the provision was an incidental one,[98] reasonably related to the object of the Act, even though the nature of the tax is dissimilar from the overall object. The important consideration is that, in this context, the use tax has a rational and legitimate connection to the object of the Act — the taxation of real property. The implication of a tactical relationship is simply untenable.

If we accept the proposition that the meaning of the one-subject rule is best determined in light of its historical purpose, it becomes a limitation on the legislative process only where the objective manifestations of any statute suggest that it was enacted through the perversion of the majority vote rule. Since a court cannot make a judgment on the motives of legislators, it can act only upon the objective manifestations of the enactment itself; consequently, enactments which are merely the product of sloppy legislation, but which share the attributes of log-rolling, must be judged accordingly. However, notwithstanding the possible application of the limitation on legislation enacted by majority rule, the essential focal point of the rule should not be forgotten. Furthermore, the integrity of legislative bodies is not to be taken lightly, and therefore, the presumption-of-validity rule casts a heavy burden upon one attacking the constitutionality of an act.

If the one-subject rule is to effectively mediate between the presumption of validity and the perversion of majority rule, it seems clear that the unquestioning use of a topical analysis will

[98] If the provision is merely incidental and not substantive, then special mention of the use tax need not be made in the title. See note 29 *supra*.

stand it in poor stead. That is not to say that the concept of "object" or "purpose" will invariably produce a steadfast result, for obviously, the initial determination of the object or purpose will be influenced by judicial subjectivity. But the virtue of the "object" or "purpose" criteria lies in the fact that it offers a conceptual approach not stigmatized by labels and can effectively deal with the complexity of present-day legislation in light of the evils sought to be prevented by the constitutional prohibition.

Consequences of Plurality

Under the 1870 Constitution the consequences of subject plurality were well settled: if the act contained two subjects it was entirely invalid only if both subjects were expressed in the title;[99] but if the title expressed only one subject, the severability clause gave rise to only partial invalidity.[100] In short, the consequences of plurality were determined by the title. The elimination of the title clause now raises the question of whether a finding of plurality will result in total or only partial invalidity.

Because of the absence of any clear guidelines, this is undoubtedly the most speculative aspect of the new one-subject rule. However, notwithstanding the lack of judicial or constitutional standards, one fundamental premise seems clear — some acts should be declared invalid *in toto,* while others should be held only partially invalid. For example, if an act should have for its "subject" provisions relating both to larceny and to the imposition of a use tax on property, the "objective manifestations" of the act clearly evidence log-rolling. But assume that an act comprehensively regulates the sale of firearms, with the exception of one provision which makes it a crime to carry concealed weapons. A court deciding the case under the new rule would be hard pressed to nullify the beneficial effect of the legislation because of one unrelated provision. Nor does the one-subject rule command such a result, since it is predicated upon several theories — log-rolling, legislative riders, and discursive legislation — only the first of which commends total invalidity. The practical problem, of course, is attributing one of the theories to a given factual situation.

One possibility lies in the employment of a presumption. It is well-settled that there is a presumption in favor of the validity of a statute to be rebutted only by a clear showing of plurality of subjects. Once such a showing is made, it is no strain of logic to say that there is a presumption in favor of partial validity unless rebutted by a clear showing that the objective manifesta-

[99] Cases cited note 71 *supra.*
[100] Cases cited note 64 *supra.*

tions of the act indicate that the two subjects were of equal dignity and that the passage of the act was dependent upon the presence of both. Partial validity would occur when one of the subjects is of greater dignity or so dominates the act that it can reasonably be concluded that a legislative desire to enact the dominating subject can be inferred and a conclusion that the other subject furnished no special inducement for the passage of the act can be reasonably supported.

An alternative approach is for the courts to seek the legislative intent through the use of titles. In jurisdictions which have a title-body provision, but no severability clause, the same result of partial validity is reached on the theory that the expression of one subject in the title evidences the intention of the legislature that the expressed portion of the bill be held valid.[101] Under this theory, the title of an act, even though no longer a constitutional requirement, could conceivably be employed for purposes of severability. As stated by Chief Justice Marshall:

> Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case, the title claims a degree of notice, and will have its due share of consideration.[102]

Although this approach provides a manageable standard, it does have one serious flaw. It assumes that the title of the act evidences the intent and purpose of the legislature. However, as earlier noted,[103] it cannot always be assumed that the expressed purpose was assented to by a majority of the legislators.

CONCLUSION

Application of the one-subject rule under the 1870 Constitution has been something less than a judicial verity. The subjective nature of the concept, the sometime-forgotten purpose of the rule, and the confusion of subject and title requirements have all contributed to the decisional inconsistencies. The advent of the 1970 Constitution and the elimination of the title requirement will force some judicial reconsideration. When the first major Illinois Supreme Court decision on the new one-subject rule is handed down, hopefully it will not be based on the rubrics of title-subject decisions like the *Dee-El Garage* case, nor on subjective rubbings from the philosopher's stone, but rather on those fundamental premises consistent with the purpose of the rule.

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[101] J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §1708 (3d ed. 1943).

[102] United States v. Fisher, 6 U.S. (2 Cranch) 358, 385 (1805).

[103] See note 66 *supra*.