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PENNSYLVANIA'S STATUTORY IMBROGLIO: THE NEED OF STATUTE LAW REVISION

JEFFERSON B. FORDHAM †

AND

CARROLL C. MORELAND ‡

The Commonwealth of Pennsylvania occupies a unique position with respect to the condition of its statute law. The state has an accumulation of session laws which goes back to colonial days; at no time in its history, however, has there been any official bulk compilation, consolidation, codification or revision of the general and permanent legislation of the jurisdiction. It must be readily apparent that to put the statute law of the state in good shape and thus to pave the way for subsequent law-making within a sound framework would be a large undertaking: it would take a number of years to carry through a revision project and the cost would probably run as high as $1,000,000.

To say that the need to clear out the rubbish and put the statutory house in order is perfectly obvious is to put the matter a little strongly. The authors are not disposed to talk themselves out of court; a study has been made and this is the occasion to share its findings. It is extraordinary, however, that there has never been any successful official

† Dean and Professor of Law, University of Pennsylvania Law School. A.B. 1926, M.A. 1929, J.D. 1929, LL.D. 1953, University of North Carolina; J.S.D. 1930, Yale University.

‡ Professor of Law and Biddle Law Librarian, University of Pennsylvania Law School. A.B. 1924, Princeton University; LL.B. 1927, University of Pittsburgh.

The authors gratefully acknowledge the valuable assistance of David E. Seymour, Class of 1960, University of Pennsylvania Law School.

attack on the problem in this, a major state of the Union and one of the original thirteen. It is strange that the legal profession has not pressed for action and demanded the enactment of an official body of statute law upon which reliance might be placed and in which the standing law might be identified readily. The statute law of Pennsylvania is in an untidy mess, a condition which a good lawyer would not tolerate in the case of important private legal documents. A healthy prod in 1960 is much in order; surely the job can be done before the state celebrates its bicentennial in 1976.

The focus of this Article is not general substantive codification. The civil law conception of codification, with its stress upon statutory embodiment of the basic principles of private law, is appropriate only to a part of the body of law which would be embraced in the *A* to *Z* coverage of a general code.[1] Nor would any theory of extensive substantive revision fit the case.[2] The policy considerations involved in such a revision of the entire body of general and permanent legislation of a state are so great and so extensive that general substantive revision would be beyond the ken of a state legislature and such codification agencies as it might establish. As a practical matter, substantive revision can be managed effectively only on a topical basis.

Revision in General

Although the official language of a legislative act is to be found in the enrolled bill, usually on file in the office of the secretary of state, each state has always published the acts of each legislative session at the conclusion of the session so that the laws could be readily obtained and consulted. But consultation of the large number of volumes of session laws which accumulate over the years is impracticable, if not impossible. Various methods have been adopted to make the accumulated legislative material available in usable and up-to-date form. The most elementary method—one no longer used—is the republication in chronological order of all general statutes in force. A more common method today is the republication of all sections of the general statutes in force, arranged by broad general subjects. Such a publication is properly referred to as a compilation, although this usage is not uniform throughout the United States.

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[1] The French Civil Code, for example, is designed to provide a comprehensive legislative expression of principles of private law. Pound, *Sources and Forms of Law*, 22 Notre Dame Law. 1, 71 (1946).

[2] Jeremy Bentham envisioned sweeping codification in which the law would be expressed with such clarity and certainty that the judicial function of interpretation would be largely eliminated. Bentham, Theory of Legislation 155-57 (Ogden ed. 1931).

Compilations, even when prepared under the direction of the legislature, are only prima facie evidence of the law inasmuch as they are not enacted as the law. The most familiar example of such a compilation is the first edition of the *United States Code.* Unofficial compilations, such as *Purdon's Pennsylvania Statutes Annotated,* have no authority other than usage, although a state may "legalize" such a work as was done, for example, in Maryland.[3]

A third and much more effective method is the one frequently referred to as a codification or revision, although here again usage in this country is not uniform. As used in this Article, revision refers to enactment of the entire body of general and permanent statute law in improved, simplified style and in orderly arrangement. It involves the harmonizing of the language of the entire body of statutory law and the elimination of duplications, contradictions, obsolete provisions, redundant and verbose expressions, acts or parts of acts judicially declared invalid and provisions of law impliedly repealed. It does not make changes in the substance and effect of existing law, but merely provides a well-organized and clarified statement of the complete body of the effective legislation of the state. It requires enactment by the legislature to become effective and upon enactment becomes the law. Any pre-existing general and permanent statutes which are neither included nor preserved by saving clause are repealed.

What we have been describing is, in substance, a process of consolidation of laws, whose function is to bring together the existing general and permanent legislation which is to be continued in force and not to achieve substantive changes. Such is the problem of language, though, that some changes may be wrought unintentionally in an effort to improve style and expression. This is not likely to be a matter of substantial moment, especially if the revisors exercise restraint and care and if the revision expressly declares that no changes in substance are intended.

The Pennsylvania Situation

Unofficial Compilations

For 275 years the colonial and state legislative bodies of Pennsylvania have been enacting statute law. As already observed, not once in that long period has the accumulation of legislation ever been subjected even to a complete official compilation, let alone a consolidation, codification or revision. In this respect Pennsylvania stands

[3] Md. Laws 1957, ch. 23.

alone among the states of the nation.[4] How have its judges, lawyers, public officials and others managed?

Since the ordinary source of the statutory law of the state is the pamphlet laws of the various sessions of the legislature, it early became apparent in Pennsylvania that use of the individual pamphlets or volumes was usually impractical and often impossible. Hence we find the eighteenth century collections, published "under authority" of the legislative assembly.[5] At the beginning of the nineteenth century, *Carey and Bioren's*[6] and *Smith's Laws*,[7] with their chronological arrangement, focused attention on the hodgepodge of existing legislation and on the need for revision. The first abortive attempt at official revision was made in 1812 with respect to the criminal law, followed eighteen years later by a successful effort with respect to some of the civil law.[8] But though portions of the statutory law of the state have been "codified" from time to time,[9] there has never been a complete revision; Pennsylvania is seemingly no nearer that goal now than at the time of *Smith's Laws*.

The early chronological collections of session laws were not satisfactory; they simply reproduced the accumulation of statutes in the

[4] Some states even provide in their constitutions for periodic revision. ALA. CONST. art. IV, § 85; MO. CONST. art. III, § 34; OKLA. CONST. art. V, § 43; S.C. CONST. art. VI, § 5. All these provide for revisions every ten years except Alabama, which requires revision every twelve years.

[5] THE LAWS OF THE PROVINCE OF PENSILVANIA (1714) (collected by order of the Governour and Assembly, printed and sold by Bradford); THE CHARTERS OF THE PROVINCE OF PENNSYLVANIA AND THE CITY OF PHILADELPHIA (1742) (printed and sold by Franklin); THE CHARTERS AND ACTS OF ASSEMBLY OF THE PROVINCE OF PENNSYLVANIA (1762) (printed in 2 volumes by Miller & Co.); THE ACTS OF ASSEMBLY OF THE PROVINCE OF PENNSYLVANIA (1775) (published by order of Assembly, printed and sold by Hall & Sellers); THE ACTS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA (1782) (published by order of the General Assembly, printed and sold by Bailey); LAWS OF THE COMMONWEALTH OF PENNSYLVANIA 1700-1781 (vols. I-III 1797, vol. IV 1801) (republished under the authority of the legislature by Dallas).

[6] LAWS OF THE COMMONWEALTH OF PENNSYLVANIA 1700-1802 (1803) (republished in 6 volumes under the authority of the legislature by Carey & Bioren).

[7] LAWS OF THE COMMONWEALTH OF PENNSYLVANIA 1700-1810 (1810) (republished in 4 volumes under the authority of the legislature with notes and references by Bioren). The author of the notes was Charles Smith. The first four volumes carried the laws down only to the session of 1807-08. A fifth volume was issued in 1812, bringing the laws down to the end of the session of 1811-12. These five volumes form "Smith's Laws."

[8] See Moreland, *The Legislative History of Statutory Revision in Pennsylvania*, 1 AM. J. LEGAL HIST. 197-214 (1957).

[9] The indices of the session laws of the 1953, 1955 and 1957 sessions of the General Assembly list 41 enactments under the heading "codes," including the Administrative Code of 1929, PA. STAT. ANN. tit. 71, §§ 51-732 (1942); the Borough Code of 1927, Pa. Laws 1927, Act 336, as amended, PA. STAT. ANN. tit. 53, §§ 45001-48501 (1957); the County Code of 1955, PA. STAT. ANN. tit. 16, §§ 101-2901 (1956); the Election Code of 1937, PA. STAT. ANN. tit. 25, §§ 2601-3532 (1938); the Penal Code of 1939, PA. STAT. ANN. tit. 18, §§ 4101-5201 (1945); the Public School Code of 1949, PA. STAT. ANN. tit. 25, §§ 1-101 to 27-2702 (1950); and the Uniform Commercial Code of 1953, PA. STAT. ANN. tit. 12A (1954).

order of enactment without other classification. A more helpful method of presenting the statutory law of the state was inaugurated by Collinson Read in 1801 [10] and by John Purdon in 1811.[11] These publications were "digests" or abridgements of the existing laws of the state, arranged by broad general subject. Purdon published three more editions during his lifetime, and subsequent to his death this work has gone through ten more editions. The current edition, the fourteenth, was published by the West Publishing Company in 1930,[12] and is a typical set of West annotated statutes, divided into seventy-seven main titles with subdivisions and elaborate annotations and histories of each section. But despite the merits of the editorial work on the present edition of *Purdon,* the compilation cannot be any better than the statutory material with which the editorial staff must deal. The publisher may have done a good job of lining up its selection of general and permanent laws in a rational order, but it could not have done any legislative pruning or shaping.

Inadequate Legislation

Most of the inadequacies of the current *Purdon* are the result of faulty work in the legislative process. The legislature in passing amendments has frequently failed to make appropriate changes in earlier enactments; as a result the current *Purdon* is replete with outmoded or ambiguous sections, simply because the original acts or sections have not been amended, as they should have been. For example, the legislature, by Act of April 9, 1781,[13] set up a state land office and named as officers the secretary of the land office, the receiver general, and the surveyor general. The office of receiver general was abolished and its functions transferred to the secretary of the land office by Act of March 29, 1809,[14] and the office of secretary of the land office was abolished and the duties and powers transferred to the surveyor general by Act of April 17, 1843.[15] In 1874 the con-

[10] AN ABRIDGMENT OF THE LAWS OF PENNSYLVANIA (1801) (a complete digest of all acts of the Assembly as concern the Commonwealth at large, including an appendix containing a variety of precedents (adapted to the several acts) for the use of justices of the peace, sheriffs, attornies and conveyancers).

[11] AN ABRIDGMENT OF THE LAWS OF PENNSYLVANIA 1700-1811 (1811) (with references to reports of judicial decisions in the Supreme Court of Pennsylvania).

[12] PURDON'S PENNSYLVANIA STATUTES ANNOTATED (perm. ed. 1930) (a compilation of the general and permanent laws from the year 1700 to the present time together with annotations from the cases construing those laws, prepared by the editorial staff of the West Publishing Co.).

[13] PA. STAT. ANN. tit. 71, § 917 (1942).

[14] PA. STAT. ANN. tit. 71, § 920 (1942).

[15] PA. STAT. ANN. tit. 71, § 923 (1942).

stitution [16] abolished the office of surveyor general, and the duties were transferred to the secretary of internal affairs. Although the land office as a separate state institution no longer exists, the three sections just mentioned must appear in *Purdon* in order to tie legislative authority to the current cognizant state officer.

The legislature has been a mite slow in taking fully into account the change in currency brought about by the Revolution. An act, passed September 29, 1787, and still in effect, provides that any person in Philadelphia who permits his chimney to "take fire and blaze out at the top, the same not having been swept within the space of one calendar month next before the time of taking such fire," shall forfeit forty shillings.[17] And, while it is unlikely that there will ever again be a ferry in the state using a rope stretched across a stream to draw the "boats carrying travellers over the same," it is comforting to know that any person who cuts such a rope and "shall be thereof legally convicted," shall forfeit the sum of ten pounds.[18]

During the past seventy-five years or so, the legislature has seen fit to "codify" the law with respect to particular subjects; when it has done so, however, it has frequently failed to make logical changes or corrections, with the result that the editors of the current *Purdon* have been forced to make a place outside the "code" for miscellaneous material which should have been taken care of by the code itself. The Penal Code of 1939,[19] somewhat misleadingly entitled "an Act to consolidate, amend and revise the penal laws of the Commonwealth," appears in *Purdon* as title 18, sections 4101 to 5201. This act, by its section 1201, specifically repealed a number of acts "except in so far as the same . . . (b) fix the limitation of time within which persons charged with offenses may be indicted. . . ." One of the acts so repealed was the Act of March 27, 1903,[20] relating to bigamy; however, section 4 of the 1903 act provided that "no indictment which is brought or exhibited under sections two and three of this act shall be barred by any statute of limitation. . . ." As this section comes within exception (b), it is not repealed and appears in *Purdon* as section 613 of title 18, although what it can apply to is a mystery—"sections two and three of this act" were specifically repealed. In the same miscel-

[16] Art. IV, § 19.

[17] PA. STAT. ANN. tit. 18, § 1382 (1945).

[18] PA. STAT. ANN. tit. 18, § 3191 (1945). For other examples of obsolete and anachronistic Pennsylvania laws, see Kessler, *Anachronisms in the Pennsylvania Criminal Laws*, 31 TEMP. L.Q. 97 (1958); Kessler, *Deficient Criminal Laws—Their Impact on Crime*, 19 U. PITT. L. REV. 591 (1958).

[19] Pa. Laws 1939, act 375.

[20] Pa. Laws 1903, act 81.

laneous division of title 18 there are sections from ten other acts, all saved from repeal by the section 1201 exceptions and all referring in similar fashion to "section one of this act" or to an offense "against this act." In each instance "this act" was specifically repealed by the repealing section of the 1939 Penal Code.

These are only a few of the many instances of this kind of vestigial legislation which remains to confuse both lawyer and layman. The legislature itself is frequently confused; it has been known to amend repealed acts, or to refer to nonexistent sections of acts, or wrong sections.[21] Surely one explanation for this legislative ineptitude is the confused and incoherent state in which the statutory law of the Commonwealth is to be found. But perhaps the most serious criticism of the unsatisfactory condition of the statute law is that, for all practical purposes, it is left to a private publishing house to determine what is the controlling statutory law of the state. Although the official source of statutory law is the enrolled bills, deposited with the Secretary of State and published by him at the end of each session of the legislature, it is clear that no one can use this great mass of material effectively or economically; this was so at the time of *Smith's Laws* and is even more evident today.

The problem has been dealt with for the past 145 years by the use of *Purdon* and similar publications. The difficulty with such a solution is not so much the question of the correctness of the text of the unofficially printed versions of the "general and permanent" laws as it is the entirely unofficial determination of what legislation falls within that category and the absence of an official statutory framework for orderly change. Since the volumes of session laws cannot be used with any practicality, reliance must be placed on the unofficial compilation. But here are found only those laws or parts of laws which the *publisher's editors* have determined to be in effect. It is *they* who decide what laws have been repealed by implication or are not general or permanent. That their task is not made easy by the methods employed by the legislature is beside the point. The fact remains that for a century and a half, the courts, lawyers and citizens of a great state have been dependent for the conduct of their business on entirely unofficial compilations of a ragged and bulky accumulation of legislation. If there ever were a clear case for cleaning up and putting in good order the "statute book" of a state, Pennsylvania presents it.

The legislature cannot have been unaware all the while of the unsatisfactory condition of the statutory law and the difficulties pre-

[21] See Commonwealth v. Schulte, 13 Pa. Dist. 294 (Q. Sess. 1903).

sented. Certainly the 1921 legislature had the matter called to its attention.[22] Perhaps the neglect is the result of legislative apathy or indifference. It may be that the experience with respect to the proposed Revised Statutes of 1871 cast a pall over any genuine effort to meet the problem.[23]

The Single-Subject Problem

Some of the past legislative hesitancy may be attributed to a doubt as to the constitutionality of a complete revision of the statute law. Section 3 of article III of the constitution of 1874 provides that "no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in the title." This is almost verbatim the language of section 8 of article XI of the 1837 constitution, which was added by amendment in 1864. It may be helpful to examine the historical background of the provision.

For a short period in the early 1830's the Pennsylvania Senate had a rule as to unity of subject but the House did not. Eventually the Senate embraced the usage of the House, and just prior to the 1837 Constitutional Convention the legislature had been freely enacting bills for the relief of John Smith and "for other purposes," many of those purposes being introduced in the last days of the session by way of amendment, unknown to or unobserved by the legislators. The situation was a cause of great concern among certain groups, and the matter came up in the course of the proceedings of the 1837 Constitutional Convention. The first mention of the one-subject limitation is found in a minority report on the ninth article (Bill of Rights) filed on May 24, 1837, which submitted as one of three additions the following:

> "Section 29. The Legislature shall have no power to combine or unite in any one bill or act, any two or more distinct subjects or objects of legislation, or any two or more distinct appropriations, or appropriations to distinct or different objects, except appropriations to works exclusively belonging to and carried on by the Commonwealth; and the object or subject matter of each bill or act shall be distinctly stated in the title thereof." [24]

Not until January 8, 1838, on the second reading of the first article (which pertains to the legislature), was the subject touched on again.

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[22] Governor Sproul, in his message to the General Assembly, urged the creation of a commission to revise the entire statutory law. 6 PA. LEGISLATIVE J. 39 (1921). A bill to carry out this recommendation was passed but the governor vetoed it inasmuch as the appropriation was "entirely inadequate to carry on such a work." Veto Message No. 112, May 27, 1921.

[23] See Moreland, *supra* note 8, at 211-13.

[24] 1 PROCEEDINGS AND DEBATES OF THE CONVENTION OF THE COMMONWEALTH OF PENNSYLVANIA TO PROPOSE AMENDMENTS TO THE CONSTITUTION 393 (1837).

In support of an amendment prohibiting the granting of divorces by the legislature, Mr. Chambers of Franklin County stated that "the influence of the log-rolling system was felt even here." [25] After the defeat of this amendment, Mr. McCahen of Philadelphia offered a new section 15 of the first article, to read:

> "Section 15. The Legislature shall not combine in any bill two or more distinct and separate objects of legislation, or any two or more distinct appropriations to distinct objects, except appropriations to works belonging to, or carried on by, the commonwealth. And the object or subject of each bill or act shall be distinctly stated in the title thereof." [26]

Objection was made to the incorporation of this section in the first article and it was suggested that the provision belonged in the ninth article. Mr. Fuller expressed the belief that it was proper at the former point, and Mr. McCahen said that "it would prevent that ruinous and corrupt system called log-rolling, which had been so often and justly complained of . . . . [and] the evils arising from this matter of making omnibus bills, and huddling every species of legislation into one act." [27] Mr. Dickey, stating that the proposition was too broad, that it would shackle legislation, and that the amendment was ambiguous, questioned whether it would prevent log-rolling in any event. Mr. Agnew queried whether a bill to revise the penal code would be constitutional under this proposed section. The amendment offered by Mr. McCahen was defeated by a vote of sixty to fifty-five.[28]

Five more unsuccessful attempts to limit hodgepodge legislation were made.[29] The first, aimed at last-minute amendment, provided that the title of a bill should distinctly announce the enactments, and that no bill, having passed one house, should be amended by adding dissimilar or distinct subjects.[30] Three proposed limitations specifically mentioned multiplicity of acts of incorporation as objects of disapproval.[31] And to overcome the frequently-voiced objection that such an amendment would cause litigation in view of uncertainty as to compliance with the one-subject rule, the fifth attempt provided that the legislature was not to act in one bill upon subjects which, in its opinion, were distinct in nature and character.[32] Even this attempt at

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25 9 *id.* at 5 (1838).
26 9 *id.* at 17.
27 9 *id.* at 22-23.
28 9 *id.* at 40.
29 9 *id.* at 44, 61, 86, 112; 12 *id.* at 179 (1839).
30 9 *id.* at 44.
31 9 *id.* at 44, 61, 112.
32 12 *id.* at 179.

limitation was defeated. The majority had no stomach for any curtailment of the power of the legislature to enact bills with as many dissimilar subjects as it might see fit, and the 1837 constitution was presented to the electorate without any single-subject restriction.

The constitutional limitation of one subject, clearly expressed in the title, came into being during the Civil War. The legislative journals of the years 1863 and 1864, when the amendment was considered by the legislature, are not too informative as to the reasons for its proposal. On January 22, 1863, Senate Bill 101, which provided for submission to the electorate of a constitutional amendment to grant the right of suffrage to those in military service, was introduced.[33] The bill passed the Senate unanimously on February 11, 1863,[34] and went to the House. It remained in the House Judiciary Committee until it was reported out without amendment on April 11, just four days before adjournment.[35] On second reading, Representative Cessna offered as amendments two additional sections, one being the single-subject restriction. He said: "I do not offer them for the purpose of embarrassing the bill . . . I offer them in good faith." [36] The bill, after further amendment and a conference committee report, was passed on April 14, 1863.[37] The bill as passed was introduced in the Senate on January 5, 1864, as Senate Bill 5.[38] When it was reported out and discussed on March 9,[39] the debate dealt with the necessity of giving the right of suffrage to those in military service. Only Senator Wallace raised his voice against the other sections of the bill:

> "I am also opposed to the propositions contained in the remaining amendments. They are in substance a restraint upon the lawmaking power, upon subjects that are not [sic] vitally important to the well being of the State . . . if these amendments be incorporated into the constitution, they will, in my judgment, prove serious impediments to just and proper legislation." [40]

Despite this warning the bill was passed and section 8 of article XI was adopted by the people at the November 1864 election.

The proceedings of the 1873 Constitutional Convention are no more informative with respect to the purpose and meaning of the

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[33] LEGISLATIVE RECORD 60 (1863).
[34] *Id.* at 166.
[35] *Id.* at 843.
[36] *Id.* at 875.
[37] *Id.* at 911 (House); *id.* at 912 (Senate).
[38] *Id.* at 3 (1864).
[39] *Id.* at 335.
[40] *Id.* at 339.

present section 3 of article III. The section produced little comment, and for the most part the discussion centered on the iniquities of omnibus appropriation bills. However, Mr. Buckalew noted that the then recently adopted constitution of New York provided that revisions should be exempt from such a restriction, and he suggested the inclusion of some similar expression in the new constitution, since the legislature would have many occasions to codify and revise existing laws during the next few years.[41] Mr. Harry White pointed out, in reply, that if a saving clause were deemed necessary, it could be taken care of when the convention considered the schedules or later sections of the legislative portion of the constitution. Evidently Mr. Buckalew's concern was but a passing one, for no further reference to the subject can be found in the convention proceedings. This section, along with the rest of the constitution, was adopted by the Constitutional Convention on November 3, 1873, and was ratified at a special election held December 16, 1873.

While the question of the constitutionality of a complete revision has never been before the Supreme Court of Pennsylvania, examination of the situation in other jurisdictions should be helpful in identifying and evaluating the considerations bearing upon a Pennsylvania response to the question. A constitutional provision that "no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in the title" is not unique to Pennsylvania. Thirty-eight other state constitutions[42] now have similar provisions, although five, those of Louisiana, Michigan, New Jersey, Virginia and West Virginia, use the word "object" rather than "subject." Ten[43] of these thirty-eight states have specifically exempted general revisions from this stricture. Michigan, on the other hand, prohibits a general revision of the laws.[44] The South Carolina[45] and

[41] 5 DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 1872-1873, at 243-46 (1873).

[42] ALA. CONST. art. IV, § 45; ALASKA CONST. art. II, § 13; ARIZ. CONST. art. IV, pt. 2, § 13; CAL. CONST. art. IV, § 24; COLO. CONST. art. V, § 21; DEL. CONST. art. II, § 16; FLA. CONST. art. III, § 16; GA. CONST. art. III, § 7, para. 8; HAWAII CONST. art. III, § 15; IDAHO CONST. art. III, § 16; ILL. CONST. art. IV, § 13; IND. CONST. art. IV, § 19; IOWA CONST. art. III, § 29; KAN. CONST. art. II, § 16; KY. CONST. § 51; LA. CONST. art. III, § 16; MD. CONST. art. III, § 29; MICH. CONST. art. V, § 21; MINN. CONST. art. IV, § 27; MO. CONST. art. III, § 23; MONT. CONST. art. V, § 23; NEB. CONST. art. III, § 14; NEV. CONST. art. IV, § 17; N.J. CONST. art. IV, § 7, para. 4; N.M. CONST. art. IV, § 16; N.D. CONST. art. II, § 61; OHIO CONST. art. II, § 16; OKLA. CONST. art. V, § 57; ORE. CONST. art. IV, § 20; S.C. CONST. art. III, § 17; S.D. CONST. art. III, § 21; TENN. CONST. art. II, § 17; TEX. CONST. art. III, §§ 35, 43; UTAH CONST. art. VI, § 23; VA. CONST. art. IV, § 52; WASH. CONST. art. II, § 19; W. VA. CONST. art. VI, § 30; WYO. CONST. art. III, § 24.

[43] Alabama, Alaska, Louisiana, Montana, New Jersey, New Mexico, Oklahoma, Texas, Utah, Wyoming.

[44] MICH. CONST. art. V, § 40.

[45] S.C. CONST. art. VI, § 5.

Missouri[46] constitutions have one-subject provisions but expressly call for revisions at least every ten years. Florida exempts general revisions only from the necessity of being read three times,[47] and Maryland refers to amending the "Code of laws of this State."[48]

Frequent attacks have been made on the constitutionality of codifications or revisions passed in the face of single-subject restrictions. The leading case, though not the earliest in the field, is *Central of Ga. Ry. v. State*,[49] where the constitutionality of the Georgia Code of 1895 was challenged. The Georgia legislature, by Act of December 19, 1893,[50] conferred on the code commissioners the power to "codify and arrange in systematic and condensed form the laws now in force in Georgia, from whatever source derived." The report of the commissioners was examined and approved by a joint committee of both houses of the legislature which passed an "adopting act" on December 16, 1895.[51] This act, entitled "an Act to approve, adopt, and make of force the Code of laws prepared under the direction and by authority of the General Assembly . . .," declared in its first section that "the Code of laws prepared under its authority by John L. Hopkins, Clifford Anderson and Joseph R. Lamar, and revised, fully examined and identified by the certificate of its joint committee, and recommended and reported for adoption, and with the Acts passed by the General Assembly of 1895 added thereto by the codifiers, be, and at the same is, hereby adopted and made of force as the Code of Georgia." It was contended that this adopting act violated article III, section 7, paragraph 8 of the constitution, which provided that "no law or ordinance shall pass which refers to more than one subject-matter, or contains matter different from what is expressed in the title thereof." The court noted that the purpose of the latter provision was to prevent a repetition of the fraud of the "Yazoo Act" of 1795; the object was to prevent surreptitious, not comprehensive, legislation. As to the one-subject provision, the court said:

> "An act, however, adopting a code, or a system of laws, obviously does not fall within any of the classes of mischiefs which this restriction in the constitution was intended to remedy. No one need be misled by a title to an act which declares that its purpose is to adopt a certain code, or system of laws; nor is there anything in such an act to occasion any alarm that it would pass

[46] Mo. Const. art. III, § 34.
[47] Fla. Const. art. III, § 17.
[48] Md. Const. art. III, § 29.
[49] 104 Ga. 831, 31 S.E. 531 (1898).
[50] Ga. Laws 1893, pt. 1, tit. 10, no. 320.
[51] Ga. Laws 1895, pt. 1, tit. 8, no. 189.

> contrary to the wishes of the people by virtue of improper combinations among members of the legislature. What the constitution looks to is unity of purpose. It does not mean by one subject-matter only such subjects as are so simple that they can not be subdivided into topics; but it matters not how many subdivisions there may thus exist in a statute or how many different topics it may embrace, yet if they all can be included under one general comprehensive subject which can be clearly indicated by a comprehensive title, such matter can be constitutionally embodied in a single act of the legislature." [52]

The court concluded that there was unity of subject—namely, the adoption of a code. This, it is to be noted, was dictum; the decision turned on a question as to venue. And while the court made nothing of it with respect to singleness of subject, one noteworthy element in this case was that the code was not simply a consolidation but wrought changes in substance. This is reserved for later comment.[53]

Although the Georgia court spoke of a trend of judicial decisions, not all of the cases it cited as indicative of that trend are directly in point. The Minnesota case of *Johnson v. Harrison* [54] was concerned, not with a complete revision, but with "an Act to establish a Probate Code," and the Nebraska case, *Van Horn v. State ex rel. Abbott*,[55] dealt with the constitutionality of an act consolidating the law governing townships. While the language of the courts in these two cases was broad enough to cover the situation in *Central of Georgia,* it was not necessary to the decisions. In the West Virginia case of *State v. Mines*,[56] the problem before the court was the constitutionality of an act to amend and re-enact chapter 35 of the Code of West Virginia of 1868; the basic issue of the constitutionality of the code was dismissed with the court noting that no claim was made that the original enactment of this chapter as a part of the code was unconstitutional. However, *Marston v. Humes* [57] was a square ruling on the constitutionality of the Washington Code of 1881, which had been adopted by the territorial legislature.

The trend noted by the Georgia court in 1898 has gained force. Since that time, the highest courts of thirteen states have had before them the constitutionality of complete revisions under constitutions which restrict bills to one subject and which do not exempt revisions

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52 104 Ga. at 846, 31 S.E. at 536.

53 See note 72 *infra* and accompanying text.

54 47 Minn. 575, 50 N.W. 923 (1891).

55 46 Neb. 62, 64 N.W. 365 (1895).

56 38 W. Va. 125, 18 S.E. 470 (1893).

57 3 Wash. 267, 28 Pac. 520 (1891).

from that restriction; in no case has the revision been declared unconstitutional.[58] In view of this long line of decisions, one might feel reassured as to Pennsylvania's treatment of the question. Examination of cases involving the interpretation of section 3 of article III of the Pennsylvania constitution throws some light on the probable course which the Supreme Court of Pennsylvania would follow.

The first case involving the single-subject restriction to come before that court was *Blood v. Mercelliott*.[59] While the court sought insight as to the purpose of the 1864 amendment, the opinion did not refer to the legislative history. It turned, instead, to decisions of courts of other states and quoted with approval the language of a Maryland case, *Parkinson v. State*:[60]

> "It cannot be doubted, that this restriction upon the Legislature, was designed to prevent an evil which had long prevailed in this State, as it had done elsewhere; which was the practice of blending, in the same law, subjects not connected with each other, and often entirely different. This was not unfrequently resorted to for the purpose of obtaining votes, in support of a measure, which could not have been carried without such a device. And in bills of a multifarious character, not inappropriately called *omnibus* bills, provisions were sometimes smuggled in and passed, in the hurry of business, toward the close of a session, which, if they had been presented singly would have been rejected." [61]

Two years later the Pennsylvania Court, speaking through Justice Sharswood, said in *Commonwealth v. Green*:[62] "The intention of the constitutional amendment was to require that the real purpose of a bill should not be disguised or covered by the general words 'and for other purposes,' which was formerly so common, but should be fairly stated. . . ."

Perhaps as good an expression of the purposes of the constitutional provision as can be found appears in *Dorsey's Appeal*,[63] decided in 1872:

[58] Ellery v. State, 42 Ariz. 79, 22 P.2d 838 (1933); *In re* Interrogatories of the House of Rep., 127 Colo. 160, 254 P.2d 853 (1953); Monacelli v. Grimes, 48 Del. 122, 99 A.2d 255 (1953); Cook v. Marshall County, 119 Iowa 384, 93 N.W. 372 (1903); State *ex rel.* Griffith v. Davis, 116 Kan. 211, 225 Pac. 1064, *opinion reported*, 116 Kan. 663, 229 Pac. 757 (1924); Fidelity & Columbia Trust Co. v. Meek, 294 Ky. 122, 171 S.W.2d 41 (1943); State *ex rel.* Colmer v. Benvenutti, 162 Miss. 313, 137 So. 537 (1931); State v. Czarnicki, 124 N.J.L. 43, 10 A.2d 461 (Sup. Ct. 1940); State v. Nagel, 75 N.D. 495, 28 N.W.2d 665 (1947); State v. Habig, 106 Ohio 151, 140 N.E. 195 (1922); Chumbley v. Peoples Bank & Trust Co., 166 Tenn. 35, 60 S.W.2d 164 (1933); McClain v. Commonwealth, 189 Va. 847, 55 S.E.2d 49 (1949); Elite Laundry Co. v. Dunn, 126 W. Va. 858, 30 S.E.2d 454 (1944).

[59] 53 Pa. 391 (1866).

[60] 14 Md. 184 (1859).

[61] *Id.* at 193.

[62] 58 Pa. 226, 234 (1868).

[63] 72 Pa. 192 (1872).

> "The purpose of the amendment is to prevent a number of different and unconnected subjects from being gathered into one act, and thus to prevent unwise or injurious legislation by a combination of interests. Another purpose was to give information to the members and others interested, by the title of the bill, of the contemplated legislation; and thereby to prevent the passage of unknown and alien subjects, which might be coiled up in the folds of the bill." [64]

As has been noted, the courts of other states have uniformly found that general statute law revision does not violate the one-subject restriction.[65] The fact that there may be more than one subject, in the sense that there are constituent parts which could be separated, does not violate the requirement if the parts are germane to the overall purpose of the enactment.[66] And the Pennsylvania courts have upheld the constitutionality of a number of "codes," [67] which clearly could have been subdivided into what could be termed "subjects."

The constitutional requirement with respect to the title presents no problem. A short statement which identifies the subject in general terms is enough. It has been said that the requirement is met if the title will lead a reasonably inquiring mind into the body of the act,[68] or if the title gives notice of the subject dealt with so that a reasonably inquiring state of mind would lead one to examine the body of the act.[69] And it has always been held in Pennsylvania, as in other jurisdictions, that the title need not be an index to the contents of the bill.[70]

When viewed in the light of Pennsylvania decisions, and with the decisions of the courts of other states in mind, a bulk formal revision, such as is contemplated by this Article, is not at odds with the purpose of the single-subject provision. When the revision of the

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[64] *Id.* at 195.

[65] See note 58 *supra* and accompanying text. Whether the constitution restricts a bill to one object or to one subject, the legal effect is the same. While it may be said that the object of a bill is the purpose to be accomplished, and the subject the means by which the object is pursued, this seems to be nothing more than an exercise in semantics.

[66] Gilbert's Estate, 227 Pa. 648, 76 Atl. 428 (1910).

[67] See, *e.g.*, Commonwealth v. Solley, 384 Pa. 404, 121 A.2d 169 (1956) (State Highway Law of 1945); Lancaster City Annexation Case (No. 1), 374 Pa. 529, 98 A.2d 25 (1953) (Third Class City Code of 1951); Commonwealth *ex rel.* Raker v. Macelwee, 294 Pa. 569, 144 Atl. 751 (1929) (General Township Act of 1917); Commonwealth *ex rel.* Woodruff v. Snyder, 279 Pa. 234, 123 Atl. 792 (1924) (Administrative Code of 1923); Minsinger v. Rau, 236 Pa. 327, 84 Atl. 902 (1912) (Public School Code of 1911); Commonwealth v. Evans, 156 Pa. Super. 321, 40 A.2d 137 (1944) (Election Code of 1937); Borough of Williamsburg v. Bottonfield, 90 Pa. Super. 203 (1927) (Borough Code of 1915).

[68] Lancaster City Annexation Case (No. 1), *supra* note 67.

[69] Ewalt v. Pennsylvania Turnpike Comm'n, 382 Pa. 529, 115 A.2d 729 (1955).

[70] *In re* Soldiers' and Sailors' Memorial Bridge, 308 Pa. 487, 162 Atl. 309 (1932); Blood v. Mercelliott, 53 Pa. 391 (1867).

entire body of the statutory law of a state is the subject of a bill, there is no likelihood of log-rolling: everything that is to be the law is in the bill—literally or by reference—and there is not the practical setting for a combination of legislators formed for the purpose of passing an act containing sections which might not stand on their own merit. Nor could one be misled by such a title as Kentucky employed: "an Act revising the statute laws of the Commonwealth, enacting the revised statutes as the law of the Commonwealth, repealing all prior statute laws of a general and public nature, and prescribing the effective date of this Act." [71]

If a codification or revision is but a consolidation, the plurality of subject objection is on its weakest footing, for in a consolidation no change in substantive policy is intended. A code enactment, on the other hand, may involve substantive changes in the law as in the *Central of Georgia* case.[72] Such changes, scattered through a proposed code, would be acted upon by the legislature as part of a package and would not be the subject of independent legislative consideration. While this would hardly involve log-rolling in its traditional sense, it would not allow independent action on disparate subjects on their particular merits.

It could be urged, even as to a consolidation with the force of law, that the repeal of various disparate statutory provisions would involve plurality of subject matter even though the "code" would otherwise have but the unitary purpose of consolidation. This is a point; but the situation is not the same as repeal in a new law of related pre-existing legislation. Nevertheless, the repeal is a part of a unitary plan of identifying and continuing in consolidated form the general and permanent legislation which is neither obsolete nor defective. A "code" clearly intended to be comprehensive would have the effect of repealing any pre-existing statutory material left out, either by express repealers or, in their absence, by implication.

The Pennsylvania Commission on Constitutional Revision has proposed that section 3 of article III be amended to exempt codification of existing law from the one-subject requirement,[73] in order to remove "any doubt that it is permissible to adopt an official code, bringing together the entire body of Commonwealth statutory law of a general and permanent nature." In view of the cost of a revision, the legislature might hesitate to embark on such a project without some such constitutional provision. If all doubt could not be downed, revision could still be pursued through the admittedly rough and ready device of

[71] Ky. Acts 1942, ch. 208.

[72] Central of Ga. Ry. v. State, 104 Ga. 831, 31 S.E. 531 (1898).

[73] REPORT OF THE PA. COMMISSION ON CONSTITUTIONAL REVISION 62 (1959).

preparing a complete revision and enacting each of the major subject divisions separately.[74]

Experience in Other States

In General

The experience of other states with respect to the official treatment of general and permanent legislation can provide useful information on the process and mechanics of revision. The two new members of the Union aside,[75] all of the states except Pennsylvania have made some type of official codification or revision at one time or another; many have done so within relatively recent years. Thirty-two states have enacted codes or revisions which have the force of law,[76] and eleven have adopted official compilations.[77] California and New York occupy a distinct position in the present connection. California has a system which, in the composite, amounts to general codification. Its general and permanent legislation is found in several major codes which have been separately enacted.[78] The New York Consolidated Laws, which have been separately enacted over a period of a good many years, are in both design and effect a consolidation of the substantive statute law of the state.[79]

The only two jurisdictions which are in a posture at all comparable to that of Pennsylvania are Illinois and Indiana; while the former did achieve a revision in 1874 [80] and the latter in 1852,[81] neither of these states has produced an official compilation, codification or revision since those early efforts.

There has been one revision of the acts of Congress. In 1874 Congress enacted a revision of the permanent public laws in force on

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[74] As was done in the case of the Illinois revision of 1874.

[75] While still territories, both Alaska and Hawaii enacted codes or revisions. Alaska Comp. Laws Ann. (1949), enacted by Alaska Laws 1951, ch. 101; Hawaii Rev. Laws (1955), enacted by Hawaii Laws 1957, act 2, § 1.

[76] Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

[77] Arkansas, Idaho, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, New Mexico, Utah, and Wyoming.

[78] Kleps, *The Revision and Codification of California Statutes, 1849-1953*, 42 Calif. L. Rev. 766, 790-802 (1954); Stanton, *The California Law Revision Commission*, 29 Calif. S.B.J. 196 (1952).

[79] Report of the N.Y. Law Revision Commission (1957); MacDonald, *The New York State Law Revision Commission: A Legislative Aid*, 35 A.B.A.J. 512 (1949).

[80] The Revised Statutes of the State of Illinois (1874).

[81] The Revised Statutes of the State of Indiana (1852).

December 1, 1873.[82] The *Revised Statutes of the United States* repealed any act adopted prior to December 1, 1873, any part of which was embraced in the revision. Another revision project was launched in 1919; however, many errors were found in the draft which was introduced in Congress in 1920. In view of this, the West Publishing Company and the Edward Thompson Company were retained to prepare the codification. Errors were found even in this new draft and Congress did not enact it into law.[83] As finally approved, the *United States Code* was made merely prima facie evidence of the law—an official compilation which leaves the original statutes controlling. Congress has also engaged in not a little substantive revision on a topical basis—for example, the Judicial Code, the Internal Revenue Code, and a penal code entitled Crimes and Criminal Procedure.[84]

This brief summary of the revision situation at the federal level and in other states is a rather compelling indication of the store laid by the "shaping up" of legislation in the country as a whole.

The Revision Process

While there is a considerable body of literature on the subject of revision of statutes,[85] it seems desirable briefly to outline here what is

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[82] Act of June 22, 1874, 18 Stat. 1-1092.

[83] Dwan & Feidler, *The Federal Statutes—Their History and Use*, 22 MINN. L. REV. 1008, 1018-19 (1938).

[84] The titles of the USC which have been separately enacted into law are: 1 (General Provisions); 3 (The President); 4 (Flag and Seal, Seat of Government, and the States); 6 (Official and Penal Bonds); 9 (Arbitration); 10 (Armed Forces); 13 (Census); 14 (Coast Guard); 17 (Copyrights); 18 (Crimes and Criminal Procedure); 23 (Highways); 28 (Judiciary and Judicial Procedure); 32 (National Guard); 35 (Patents); 38 (Veterans' Benefits).

[85] Adams, *Recodification of the North Carolina Statutes*, 19 N.C.L. REV. 27 (1940); Bennett, *Louisiana Revised Statutes of 1950*, 11 LA. L. REV. 4 (1950); Brossard, *The Wisconsin Plan of Permanent Statute Revision*, 9 Mo. B.J. 37 (1938); Brossard, *Wisconsin's Continuous Statute Revision*, 10 A.B.A.J. 305 (1924); Campbell, *Code Revision in Ohio*, 24 OHIO B. 123 (1951); Campbell, *Continuous Code Revision in Ohio*, 11 OHIO ST. L.J. 533 (1950); Choate, *The 1947 Codes of Montana*, 7 MONT. L. REV. 19 (1946); Corrick, *The Establishment and Operation of the Office of Revisor of Statutes in Kansas*, 6 J.B.A. ST. KAN. 284 (1938); Cullen, *The Advantages of a System of Continuous Statutory Revision*, 10 Mo. L. REV. 113 (1945); Cullen, *Revision of the Oregon Statutes*, 28 ORE. L. REV. 120 (1949); Cullen, *Mechanics of Statutory Revision—A Revisor's Manual*, 24 ORE. L. REV. 1 (1944); Cullen, *The New Kentucky Statutes*, Ky. S.B.J., Dec., 1939, p. 33; Cullen, *What the Revision of the Statutes Means to the Kentucky Bar*, 1939 PROCEEDINGS KY. ST. B.A. 66; *Report of the Revised Code Commission*, 2 DEL. CODE ANN. at ix (1953); Giles, *The New Revised Code—A Lawyers' Code*, 4 W. RES. L. REV. 122 (1953); Goodenough, *Report to Interim Committee on Revision of Statutes*, 25 ORE. L. REV. 36 (1945); Hagar, *Helpful Statute Finders Prepared by Code Commission Simplify Research*, 16 CALIF. S.B.J. 325 (1941); Hebert, *A State Law Institute as an Agency for Code Revision and Law Reform*, 4 MERCER L. REV. 342 (1953); James, *The Work of the 1943 Statute Commission*, 20 NEB. L. REV. 306 (1941); Kleps, *The Revision and Codification of California Statutes, 1849-1953*, 42 CALIF. L. REV. 766 (1954); Mackoy, *The New Kentucky Statutes*, Ky. S.B.J., June, 1943, p. 16; Mackoy, *The New Kentucky Statutes*, Ky. S.B.J., June, 1939, p. 13; McIntosh, *Work of the Commission*

involved in the revision process itself. And inasmuch as the responsible revision agency must be tailored to the job, an understanding of the process is a prerequisite to the creation of the revising agency.

It seems that the preparation of a plan for the order, classification and arrangement of a code should take precedence over the identification and assembling of the existing statute law, inasmuch as the plan provides a framework within which existing legislation can be arranged as it is identified and assembled. The availability of an unofficial compilation, such as *Purdon's Statutes* in Pennsylvania, is a significant aid: such a collection of statutes provides an ample foundation, along with the codes and revisions of other states, for the thinking out of a unified scheme.

The master file of all general statutes which may still be in force is commonly called the statute plant. The selection of statutes to be included in the plant is a crucial step which marks the bounds of the revision. In order to ensure that all laws actually in force are contained in the statute plant, it is desirable to include all those with respect to which there is doubt as to current force, noting them for future independent review by the revising agency.[86] In compiling the statute plant, resort must be had to the enrolled bills in the office of the secretary of state or other custodian as the authoritative expressions of the statute law. Although in some states, courts will go behind an enrolled bill to ascertain whether it was enacted pursuant to constitutional procedures [87] or whether it conforms as to substance to what was passed by the legislature,[88] such judicial inquiry is precluded in Pennsylvania by adherence to the enrolled bill doctrine.[89]

The initial steps in making up the statute plant are mechanical. To avoid reproduction errors, photocopies may be made of enrolled bills; the copies are then mounted on cards or sheets of stiff paper on which

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on Revision and Consolidation of Public Statutes, N.J.S.B.A.Q., Jan., 1934, p. 33; McIntosh, *The Revised Statutes of New Jersey*, 1938 N.J.S.B.A. YEARBOOK 165; Mitchem, *A Revision of Statutes for Colorado*, 28 DICTA 165 (1951); Phillips, *Tennessee Code Annotated*, 23 TENN. L. REV. 268 (1954); Poldervaart, *Statute Law in the Field of Legal Research*, 50 L. LIB. J. 504 (1957); Tribble, *Statutory Revision in Florida*, 26 A.B.A.J. 498 (1940); Wheeler & Wheeler, *Statute Revision: Its Nature, Purpose and Method*, 16 TUL. L. REV. 165 (1942); OHIO BUREAU OF CODE REVISION, GENERAL PROVISIONS AND COMPARATIVE TABLES OF THE REVISED CODE TO BE SUBMITTED TO THE SENATE AND HOUSE OF REPRESENTATIVES (1952).

[86] See Cullen, *Mechanics of Statutory Revision—A Revisor's Manual*, 24 ORE. L. REV. 1, 3-5 (1944).

[87] 1 SUTHERLAND, STATUTES & STATUTORY CONSTRUCTION § 1406 (3d ed. Horack 1943).

[88] State *ex rel.* Foster v. Naftalin, 246 Minn. 181, 74 N.W.2d 249 (1956); Freeman v. Goff, 206 Minn. 49, 287 N.W. 238 (1939).

[89] Mikell v. School Dist., 359 Pa. 113, 58 A.2d 339 (1948).

blank spaces are provided for notations. These cards, or work sheets,[90] are then assigned to the appropriate division of the revision plan, duplicate disposition records being maintained to show both the source in the enrolled bills of each section in the revision plan and, conversely, the place in the plan where each section of the enrolled bills may be found.[91] Expressly repealed sections are then identified and assigned to a separate file, with appropriate entries made in the disposition record.

The sections in a division under the plan are arranged in a tentative order, thus bringing the work to the stage of intensive, section-by-section review and editorial treatment. If a substantial staff is available, as plainly would be needed in Pennsylvania, the divisions of legislative materials are parceled out to the editorial members or revisors. Each revisor examines and acts upon every section in his assigned materials, taking into account implied repeals or amendments and judicial decisions as to the validity of statutory provisions. This process involves, to a substantial degree, the exercise of editorial judgment. It is important that repeals by implication be identified and their effect determined. Obviously, what is commonly described as an implied repeal may in substance be an amendment. Only so much of an earlier act as cannot be squared with a later one is repealed by implication unless the part repealed is a crucial provision without which the remainder of the act could not be given rational effect.[92]

The elimination of "unconstitutional" material presents problems. Should the revisors be authorized to carry their work to the point of cutting out acts or provisions which they consider unconstitutional even though the issue has not been adjudicated? Apparently this was done in Kentucky at least as to formal constitutional defects, such as pluralness of subject matter.[93] The major objection to such a procedure is that it involves the exercise by the revisors of a judicial function or, put more accurately, it is the making by the revisors of a prediction as to what the courts would do on questions of constitutional interpretation. It is true that determining the question of implied repeal can be said to

[90] It is advantageous to have two sets of these cards or work sheets; the duplicate may be used for notations with regard to the disposition of sections.

[91] Cullen, *The New Kentucky Statutes*, Ky. S.B.J., Dec., 1939, pp. 33, 35; Hagar, *Helpful Statute Finders Prepared by Code Commission Simplify Research*, 16 CALIF. S.B.J. 325 (1941); Kleps, *The Revision and Codification of California Statutes, 1849-1953*, 42 CALIF. L. REV. 766, 794-95 (1954); McIntosh, *Work of the Commission on Revision and Consolidation of Public Statutes*, N.J.S.B.A.Q., Jan., 1934, pp. 33, 37-39; Mitchem, *A Revision of Statutes for Colorado*, 28 DICTA 165, 167-68 (1951); Wheeler & Wheeler, *Statute Revision: Its Nature, Purpose and Method*, 16 TUL. L. REV. 165, 196 (1942).

[92] 1 SUTHERLAND, *op. cit. supra* note 87, § 2012, at 464.

[93] Wheeler & Wheeler, *supra* note 91, at 173-74.

be similar in nature: in both situations there is exercise of judgment as to questions of law, but as to repeal the question is entirely at the legislative level.

In cases where there has been an adjudication of unconstitutionality, the effect of the decision must be considered. In some instances there may be large gray areas as where a court refuses, on constitutional grounds, to enforce a particular provision of an act applicable to the challenging party but finds it unnecessary to determine whether the remainder of the act is separable. The holding of an act unconstitutional, moreover, does not erase it from the statute books.[94] If the adverse decision is later overruled, the act can be enforced without reenactment.[95] The revisor, however, does not have to stand on his own judgment as to these matters—he can always recommend repeals of statutes which he has classified as unconstitutional.[96]

Assuming a broad enough grant of authority to the revising agency, the editorial work may go well beyond matters of form, such as spelling, capitalization, punctuation, and the elimination of needless verbiage (for example, "null and" in "null and void"), to include the combination of repetitious sections, the breaking-up of long multitopic sections, the resolution of conflicts between sections, the deletion of obsolete sections, and the exclusion of provisions appropriate only to an original enactment, such as legislative titles, enacting and effective date clauses, temporary provisions and saving clauses.[97] The editorial work should include the conforming of referential language to the revision structure: references in particular laws to "this act" or "this law" must give way to references to "this chapter," and references to offices and agencies should be brought up to date in order to reflect changes in the governmental structure. An editorial team faced with these tasks will need guidance as to matters involving the exercise of judgment on legal questions, as well as on matters of form, style and accuracy of reference; it thus behooves the revision agency to provide, at a relatively early stage, a manual or set of rules for the guidance of the revision team.

The proposal that a revision agency be authorized to redraft legislation to conform to judicial interpretation has been the subject of discussion.[98] It is patent that such redrafting is not needed in order to

[94] Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 374 (1940).
[95] Jawish v. Morlet, 86 A.2d 96 (D.C. Munic. Ct. App. 1952).
[96] *E.g.*, Ohio Laws 1947, at 25, 27-28, 239; Ohio Laws 1949, at 202. Campbell, *Continuous Code Revision in Ohio*, 11 OHIO ST. L.J. 533, 539 (1950).
[97] *E.g.*, Tenn. Pub. Acts 1953, ch. 80, § 4, at 272. See Giles, *The New Revised Code—A Lawyers' Code*, 4 W. RES. L. REV. 122, 126 (1953); Phillips, *Tennessee Code Annotated*, 23 TENN. L. REV. 268, 271-72 (1954).
[98] McIntosh, *supra* note 91, at 39.

obviate any question with respect to whether or not the revision will actually be governed by previous judicial interpretation—if substantive change is not contemplated in the revision, and none is actually made in the language used, the effect of revision is simply to continue the pre-existing law, and prior interpretations would be unaffected.[99] Because of the limitations of human understanding and the vagaries of semantics, there is a danger that in changing the language of pre-existing legislation so as to give judicial interpretations express recognition in the revised statutes, unintended changes in substance will be made. On the whole, it is not evident that any substantial benefit is gained from an attempt to make the revised statutes take express account of judicial interpretation, and there are possibilities of actual loss from such an attempt.

The Revision Agency

The agency which undertakes statutory revision is neither a research organization nor a policy-generating institution. Its function is to conceive and execute a plan of complete, formal revision. Ordinarily, primary responsibility is vested in an officer or board which is assisted by a professional staff. Inasmuch as the real work is done by the staff, success depends upon its technical competence. While formal revision does not call for special mastery of particular legislative subject matter, it does bespeak good general competence in the law, with skill in statutory interpretation, in drafting, and in exacting, thorough editorial work. The spade work is, in short, a job for good lawyers with the capacity for the technical editorial work involved.

It is for the revision officer or body to provide general direction for the staff and to review the work done by the staff. This, again, does not call for special competence in any particular branch of the law, but rather requires a good general grasp of legislative materials, an understanding of and sympathy for revision objectives, and a zeal to get the job done. Review of the experience of other states with revision discloses that there has been anything but consistency in the makeup of revision agencies. Frequently, an existing legislative or executive department, agency or office has been utilized or a new one created for the particular purpose.[100] On one occasion, a state supreme court was

[99] WIS. STAT. § 990.001(7) (1957). See Guse v. A. O. Smith Corp., 260 Wis. 403, 51 N.W.2d 24 (1952).

[100] In Connecticut the Legislative Commissioner was assigned the task of revising the statutes. CONN. GEN. STAT. REV. § 2-56 (1958). In Mississippi the attorney general's office was given the assignment. MISS. CODE ANN. § 3 (1957). In North Carolina a new agency was created within the department of justice. N.C. GEN. STAT. § 114-9 (1952).

called upon to serve as the revision agency.[101] Two or all three of the branches of the state government may have participated in appointing the membership of the agency or in its work.[102] In some cases state bar associations have also had a hand in designating members.[103] A study of recent revision in ten states shows that each selected a different type of agency to do the job.[104]

It is highly questionable whether a responsibility of this sort should be reposed entirely in judicial hands. As a matter of fact, there may be doubt as to whether it could be done constitutionally in some states within the applicable doctrine of separation of powers.[105] Judges, as

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[101] Nevada. See note 104 *infra.*

[102] *E.g.*, Colorado and Ohio. See note 104 *infra.*

[103] *E.g.*, Oregon. See note 104 *infra.*

[104] *Arizona:* chairman of the House and Senate Judiciary Committees, the secretary of state and the president of the state bar association, with the chief justice and two lawyers serving in an advisory capacity. See Ariz. Laws 1951, 1st Reg. Sess., ch. 103, § 1, at 249, as amended, ARIZ. REV. STAT. ANN. § 41-1301 (1956). *Colorado:* a justice of the supreme court, the attorney general and two members of each house of the legislature. See COLO. REV. STAT. ANN. § 135-3-1 (1953). *Delaware:* three lawyers in private practice appointed by the governor. See Del. Laws 1949, ch. 377, §§ 1, 2, at 814, as amended, DEL. CODE ANN. tit. 29, § 1302 (1953); REPORT OF THE REVISED CODE COMMISSION ON THE 1953 DELAWARE CODE 5 (1952). *Louisiana:* Louisiana State Law Institute. See LA. REV. STAT. § 24:251 (1950). See generally Hebert, *A State Law Institute as an Agency for Code Revision and Law Reform,* 4 MERCER L. REV. 342, 345-49 (1953). *Nevada:* justices of the supreme court. See NEV. REV. STAT. § 220.020 (Supp. 1959). *North Carolina:* specially created division in the department of justice, assisted first by a committee composed of the deans of the state's three law schools and prominent members of the bar and, later, by a commission composed of members of the legislature. See N.C. GEN. STAT. § 114-9 (1952); Adams, *Recodification of the North Carolina Statutes,* 19 N.C.L. REV. 27 (1940). *Ohio:* Legislative Service Commission composed of six members of the House of Representatives appointed by the speaker, six members of the Senate appointed by the president pro tempore, the speaker of the House and the president pro tempore of the Senate. See OHIO REV. CODE ANN. § 103.11 (Page 1953). *Oregon:* seven member revision council, four members being appointed from a list of eight submitted by the state bar association, one chosen from the House of Representatives, one designated from the Senate, and one selected from the public. See Ore. Laws 1949, ch. 317, § 1, at 445. *Tennessee:* permanent code commission composed of the chief justice, the attorney general and three members of the bar, assisted by an advisory committee of the state bar association. See Tenn. Pub. Acts 1953, ch. 80, § 1, at 270; Phillips, *supra* note 97, at 270-71. *Virginia:* the attorney general, the director of the division of statutory research and drafting, a judge of a local Richmond court appointed by the governor, and a member of each house of the General Assembly appointed by the presiding officer. See VA. CODE ANN. § 9-67 (1950).

The authors are grateful to the following individuals for generously responding to inquiries about revision in their states: Jules M. Klagge, Director of the Legislative Council of Arizona; Charles M. Rose, Revisor of Statutes of Colorado; S. Samuel Arsht, who served as Chairman of the Delaware Revised Code Commission; Dale E. Bennett, Professor of Law, Louisiana State University and coordinator of the Louisiana revision; Ann Rollins, chief assistant, Statute Revision Commission of Nevada; Harry W. McGalliard, assistant attorney general of North Carolina; Willard D. Campbell, who directed the Ohio revision; Sam R. Haley, Legislative Counsel of Oregon; Harry Phillips, executive secretary, Tennessee Code Commission; Armistead L. Boothe, Chairman of the Virginia Code Commission; and John B. Boatwright, Jr., Secretary of the Virginia Code Commission.

[105] LA. CONST. art. VII, § 3.

such, are not specially qualified for the planning, supervising and reviewing work of revision, and there is some risk that they might tend to place undue emphasis on shaping legislation for judicial reading. Obviously, the courts have to be kept in mind in the drafting of legislation, but statutes are not drafted just for the courts. Statutes are drafted for all, including public officials who are to administer particular statutes, members of the legal profession, businessmen, and others who are expected to be governed by the law.[106] Responsibility for revision should be placed in an official body composed largely of experienced members of the legal profession with the qualifications previously indicated. It would be useful to have one experienced member from each house of the legislature, both because of his knowledge of the legislative process and because of the likelihood that he would still be a member—and one well informed on statute revision—at the time the legislature considers the end product.

The prospect of a strong commission is greater when the appointing power is vested in the governor rather than left in the hands of the presiding officers of the two houses. While the governor cannot be assumed to be above partisan considerations, he is more in the public spotlight and more clearly a state figure. It might be possible to get such a proposal through a politically divided legislature in view of the fact that the commission would not be dealing with substantive revision and of the unlikelihood that the members of the commission would be paid a salary or other compensation.

A number of law book publishers have been participating actively in statute law revision in this country. The extent of such participation has varied, of course, but in at least one state the entire compilation job was done under contract by a law book publisher.[107] In a number of instances of full-fledged revision, private publishers have had active roles in the editorial work. In the case of Louisiana, a major law book company was given the assignment of providing the statute plant.[108] There is no evident reason why a private law book publisher should not be called upon to some extent in a statute revision project, particularly if private publication of the work is contemplated. The responsibility for code revision, however, should definitely be reposed in an officer or body with official status. This is not an undertaking in which everything can simply be farmed out. There ought to be public responsibility and accountability for the work done.

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[106] Conard, *New Ways To Write Laws*, 56 YALE L.J. 458 (1947).

[107] Md. Acts 1957, ch. 23, at 27.

[108] *Report to Accompany the "Project for Louisiana Revised Statutes of 1950,"* 1 LA. REV. STAT. 1, 3 (1950); Hebert, *supra* note 104, at 352.

Manner of Adoption

As has been noted, the adoption of revised statutes is by enactment. There are two well known methods of enacting a code or revision. The first is the regular enactment of the entire body of statutes as a bill.[109] The second is the enactment of a brief statute which adopts the revised statutes by reference to the official revision document.[110] If there is substantial question as to whether a constitutional single-subject requirement would be violated, the laborious process of separate enactment of the various titles or chapters of the revision can be pursued.[111] Where, in the total clean-up process, it appears desirable to repeal old laws outright, resort can be had to repeal measures independent of the revision law.[112]

In Pennsylvania the constitutional requirement as to the reading of bills [113] would not create a problem in the enactment of a revision as a bill: the General Assembly simply does not obey the requirement. But the separate requirement that bills be printed [114] is honored. If it were not feasible to use printed bills as the means of publishing the revision, adoption by reference of a typewritten revision document would keep down printing costs.[115]

Continuous Revision

Statutory revision affords the legislature and the rest of us a fresh starting point in the further development of the law. This does not mean, of course, that study providing groundwork for legislative changes would not penetrate behind a revision; obviously it would. Equally plainly, a formal revision does not replace the old law; what the revision does is to continue the old law as changed.[116] The point is that the revision is the legislative expression of the statute law, and modifications can and should be made by reference to it rather than to

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109 *E.g.*, ARIZ. REV. STAT. ANN. § 1-101 (1956); Ky. Acts 1942, ch. 208, § 1; La. Acts 1950, 1st Extra Sess., act 2, at 4; Nev. Laws 1957, ch. 2, § 1; N.H. REV. STAT. ANN. § 624:1 (1955); S.D. Laws 1939, ch. 226, at 256; Tenn. Pub. Acts 1955, ch. 6, at 53; Vt. Acts 1947, no. 202, at 300.

110 *E.g.*, Ala. Acts 1939, no. 628, § 1, at 995-96; COLO. REV. STAT. ANN. § 135-4-1 (1953); Conn. Pub. Acts 1959, act 3, at 9; MINN. STAT. ANN. at iii (1946) (preface to vol. 1).

111 The California codes were enacted in this manner. The *Government Code*, for instance, was enacted by Cal. Stat. 1943, ch. 134, at 896.

112 *E.g.*, Ky. Acts 1940, ch. 191.

113 PA. CONST. art. III, § 4.

114 *Ibid.*

115 In Pennsylvania it is the practice to print bills without punctuation, adding the punctuation after enactment. Inasmuch as this is a matter of legislative discretion, however, it presents no legal obstacle. See PA. STAT. ANN. tit. 71, § 274 (1942).

116 See note 92 *supra* and accompanying text.

the prior session laws. Amendments are made to the code or revised statutes.[117] This is also true of amendments to original legislation which postdates the revision, for, if the procedure here outlined has been followed, that legislation will have been, upon enactment, assigned a place in the revised statutes in keeping with the structural plan of the revision which should allow for the fitting in of new legislation.[118] As a matter of legislative mechanics, this is rather handy. It is easy to identify a code section which is being amended, and an appropriate title for the amendatory act can usually be drawn with facility and in brief terms. This contrasts with the Pennsylvania practice of quoting the title of the law being amended in the title and enacting provision of the amendatory act, and of amending the title of the former if the amendment is calculated to broaden the subject beyond the reach of the original title.[119]

These techniques help to preserve the integrity of the plan of revised statutes—but they are not enough. Without some system and a responsible continuing agency to carry it through, a rather imperfect job of identifying new legislation with the revised statutes is likely. There is need of an official attack on this problem. The response in over half the states—beginning with Wisconsin in 1909[120]—has been the adoption of some form of so-called continuous revision.

The Wisconsin system is partly a function of publication of statutes. The revisor of statutes fits statutory amendments and additions into the code framework in accordance with an established decimal system of numbering. The entire body of statutes, as so brought up to date, is published biennially in two volumes, thus putting the standing law in a convenient package at the elbows of lawyers and others. The

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117 *E.g.*, Ariz. Laws 1959, 1st Reg. Sess., ch. 48; Colo. Laws 1959, ch. 35; N.D. Laws 1959, ch. 252.

118 Ohio made provision for the insertion of new material in its code by skipping the even numbers in numbering titles, chapters and sections. See OHIO BUREAU OF CODE REVISION, GENERAL PROVISIONS AND COMPARATIVE TABLES OF THE REVISED CODE TO BE SUBMITTED TO THE SENATE AND HOUSE OF REPRESENTATIVES 40-41 (1952).

119 *E.g.*, Pa. Laws 1955, act 535.

120 ARIZ. REV. STAT. ANN. § 41-1304.01 (1956); ARK. STAT. ANN. § 1-301 (1956); CAL. GOV'T CODE § 10330; CONN. GEN. STAT. REV. § 2-56 (Supp. 1959); DEL. CODE ANN. tit. 1, § 201 (Supp. 1958); FLA. STAT. ANN. § 16.43 (1955); IOWA CODE § 14.3 (1958), as amended, IOWA CODE § 14.3 (Supp. 1959); KAN. GEN. STAT. ANN. §§ 77-301 to -302 (1949), as amended, KAN. GEN. STAT. ANN. § 77-301 (Supp. 1959); KY. REV. STAT. §§ 7.130-.140 (1959); ME. REV. STAT. ANN. ch. 10, §§ 26-27 (1954), as amended, ME. REV. STAT. ANN. ch. 10, §§ 26-27 (Supp. 1959); MINN. STAT. §§ 482.01-.02 (1957); MISS. CODE ANN. § 3828.01 (1956); NEB. REV. STAT. § 49-701 (1952); NEV. REV. STAT. §§ 220.020-.040 (1957); N.J. STAT. ANN. §§ 52:11-17 to -18 (1955); N.J. STAT. ANN. § 52:11-8 (Supp. 1959); N.Y. LEGIS. LAWS § 70; N.C. GEN. STAT. §§ 114-9, -9.1 (1952); OHIO REV. CODE ANN. § 103.11 (Page 1953); ORE. REV. STAT. § 173.150 (1957); R.I. GEN. LAWS ANN. § 42-8-16 (1956); S.C. CODE §§ 1-301, -305 (Supp. 1959); TENN. CODE ANN. § 1-101 (1955); VA. CODE ANN. § 9-67 (1956); WASH. REV. CODE §§ 1.08.001-.013 (1956); WIS. STAT. § 43.07 (1957).

biennial "revision," which is not enacted, is an editorial product of the revisor; thus, if all or part of a law is overlooked in the revision, the omission does not affect its force as law.[121]

In the Wisconsin continuing revision system the revisor focuses on topics. Topical revision goes on in manageable proportions within the bulk revision framework, the latest bulk revision dating from 1898. Bills to revise the law on particular subjects are submitted to the legislature as the work is completed.[122]

Formal bulk revision provides a splendid framework for topical substantive revision. Continuous revision is an appropriate process for improvement in substance as well as form. Once bulk revision has been achieved, there is likely to remain considerable room for more intensive and meticulous revision, both formal and substantive, on a topical basis. A number of states recognize this by authorizing their permanent revision agencies to perform the function.[123]

Closely related to continuous revision is the drafting of new legislation. The integrity of the revision plan demands that subsequent legislation be drafted in accordance with revision standards, and be deliberately keyed to the basic revision. This takes systematic doing by a responsible agency. The purpose can be served by legislative rule and practice under which all new legislation is subjected to review as to form by the revisor of statutes at a suitable stage in the legislative process. The revisor's office can also be made the official bill-drafting agency.[124]

Pennsylvania affords good examples of the ragged legislative development which is likely to take place, absent continuing attention to systematic revision. The Statutory Construction Act[125] provides a separability clause with reference to which all subsequent legislation will be considered to have been enacted unless otherwise provided therein.[126] It also contains a long list of definitions in aid of subsequent

121 WIS. STAT. 3 (1957) (preface).

122 Wis. Laws 1909, ch. 546; Brossard, *Wisconsin's Continuous Statute Revision*, 10 A.B.A.J. 305-08, 321 (1924).

123 See, *e.g.*, ARIZ. REV. STAT. § 41-1304.01 (1956); CAL. GOV'T CODE § 10330; FLA. STAT. ANN. § 16.44 (1959); KAN. GEN. STAT. ANN. § 77-302 (1949); KY. REV. STAT. §§ 7.120, .122 (1959); LA. REV. STAT. §§ 24:204, :251 (1950); NEB. REV. STAT. § 49-702 (1952); NEV. REV. STAT. § 220.080 (1957); ORE. REV. STAT. § 173.150 (1957); TENN. CODE ANN. § 1-114 (1955); VA. CODE ANN. § 9-77.1 (1956); WASH. REV. CODE § 1.08.026 (1956); WIS. STAT. § 43.08 (1957).

124 See, *e.g.*, CONN. GEN. STAT. REV. § 2-56 (1958); N.J. STAT. ANN. § 52:11-18 (1955).

125 PA. STAT. ANN. tit. 46, § 555 (1952).

126 See, *e.g.*, Pa. Laws 1955, act 222, § 13. It is to be noted that the instant separability clause, unlike that in the Statutory Construction Act, expressly covers particular applications of a part of the statute as well as the part as such. While one may question the value of separability clauses in general, it does seem that a standard form should be employed if they are to be used.

legislation.[127] Both the separability clause and the definitions, however, are commonly ignored by repetition in new legislation.[128] And a Pennsylvania act of 1947, which forbids public employees to strike, provides a glaring example of awkward statutory form: in one section the definition of a strike is followed, in the same paragraph, by a long substantive provision on grievance procedure.[129] Patently the enacting matter should have been set out in a separate section; it certainly is no part of the definition.

While there has been statutory recognition in Pennsylvania of the revision function, it has not had practical significance. Responsibilities with respect to statutory revision are imposed both upon the Department of Justice and upon the Legislative Reference Bureau. The Administrative Code grants power to and imposes a duty upon the Department of Justice to prepare for submission to the General Assembly, from time to time, revisions and codifications of the laws of Pennsylvania or any part of them as may be deemed advisable.[130] The director of the Legislative Reference Bureau is enjoined by statute to cause to be prepared, for legislative consideration, "codes, by topics, of the existing general statutes" and to assist in or supervise, when called upon by any proper authority or when directed by the General Assembly, the compilation and preparation of any general revisions and codifications of the existing laws of the Commonwealth.[131] These provisions have not been fruitful; it takes money and staff to do revision work and those resources have not been provided.

Publication

Vital to the success of statute law revision, and therefore demanding attention in the development of the basic revision plan, are first, the initial publication which facilitates the finding of the law, and second, a followup publication which will preserve the advantages of the revision despite the enactment of subsequent legislation.

There are at least five well known approaches to the publication problem. Wisconsin, the birthplace of continuous revision, uses biennial publication of all its general and permanent legislation, with new matter

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[127] PA. STAT. ANN. tit. 46, § 601 (1952).

[128] *Compare* Pa. Laws 1947, act 476, §§ 3(1), (2), *with* PA. STAT. ANN. tit. 46, §§ 601(70), (84) (1952).

[129] Pa. Laws 1947, act 492, § 1(a).

[130] PA. STAT. ANN. tit. 71, § 295 (1942).

[131] PA. STAT. ANN. tit. 46, § 457 (1952).

fitted in by the revisor of statutes.[132] In order to preserve a convenient two-volume size, the Wisconsin practice is to publish separately cumulative annotations prepared by the revisor. A second method is to publish individual or cumulative supplemental volumes as the session laws are ground out.[133] A third, used in several states, is the issuance—as the extent and importance of legislative developments dictate—of replacement volumes embodying new legislative material.[134]

A fourth method is the use of pocket-parts. Ordinarily, pocket-parts are prepared on a cumulative basis and contain all legislative developments intervening between the publication of the original volume and that of its supplement.[135] Colorado and Tennessee employ an interesting variation of the pocket-part plan as a device to keep their statutes up to date. At the beginning of each regular session of the legislature, the revision agency submits bills to codify the acts of the previous session as they appeared in pocket-parts during the interval between sessions.[136] The enactment of these bills makes the new legislation the law of the state in codified form, just as if it had appeared in a code in the first instance. This device also provides a solid, rational basis for uniformly enacting the law by reference to code sections.

Finally, a new method, originated in Oregon and embraced by Kentucky and Nevada, is the loose-leaf plan. This method is not carried to the point of substitution of individual pages, as is common in the law services, but rather involves the reprinting of an entire chapter in which there has been any change and the substitution of the fresh printing for the chapter as it previously appeared. The chapter reprintings are designed to obviate the evils of mistake and carelessness with respect to the insertion of particular pages and to provide the substitute material in a manageable unit without blank pages. The cost of reprinting is kept down by preserving the original type and changing it only to the extent required by new legislative action. The Oregon plan is a rather attractive one; it keeps all the general and permanent statutes up to date and does this in a way which minimizes the risks of carelessness and error in the substitution of new material.

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132 Florida and Michigan also republish their general and permanent laws biennially. In Iowa the statutes are republished every four years.

133 This method is used by Kansas, Louisiana, Michigan, Missouri, Nebraska (partially), New Jersey, North Dakota, Oklahoma, South Dakota, Texas and West Virginia.

134 Arkansas, Idaho, Montana, Nebraska, New Jersey, North Carolina and Virginia.

135 This method is used by Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Idaho, Maine, Maryland, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Utah, Virginia and Wyoming.

136 Colo. Laws 1959, ch. 249 (enacting 1957 supplement); Tenn. Pub. Acts 1959, ch. 1 (enacting 1959 cumulative supplement).

There is a practical choice between official publication and publication by a private publisher, similar to the one between having editorial work done by an official staff on the one hand and by the staff of a private publisher on the other. While a state revision agency duly authorized to make use of the facilities of a private publisher will benefit from the publisher's considerable experience, the authors favor both editorial work done by an official staff and also an official publication, if the responsible state agency can assemble and maintain a staff of the requisite competence. A major consideration in favor of original revision by an official staff is the establishment of a competent unit which will be able to bear the burden of continuous revision.

Cost

At the outset, it was assumed that general statute revision in Pennsylvania might cost as much as $1,000,000. While it is difficult to estimate cost, that figure is probably conservative in view of the uniquely great accumulation of session laws in the state. Comparative data may provide a more accurate picture of cost, and inquiries directed to the revision agencies of ten states in which there has been recent revision have met with generous responses. Unfortunately, because of the variations in organization and method of revision work, dimensional differences in the jobs of different states and the general upward trend of cost, the data supplied have not been particularly helpful.

The Oregon experience with the *Oregon Revised Statutes of 1953* is perhaps the comparison with most significance for Pennsylvania. Working from the basis of a 1930 code, the Oregon revisers took a little under three years to prepare the revision of 1953. During that period there were engaged in the project as many as nine full-time lawyers, assisted by an office staff. The reported total cost of this bulk revision was $556,728.99. Of this, however, $225,000 represented publication and distribution costs, which were expected to be recouped by the sale of the published statutes, and another substantial part represented work of the revision agency not actually devoted to the bulk revision project. The actual cost of the bulk revision work apparently ran to about $200,000.[137]

By way of comparison, it would appear that bulk revision in Pennsylvania would cost four or five times as much as it did in Oregon. Certainly the volume of work would at least double inasmuch as the revisors would have to go all the way back to colonial times. And the current cost of professional services in Pennsylvania would substantially

[137] Letter from Sam R. Haley, Legislative Counsel of the State of Oregon, to Jefferson B. Fordham, Sept. 4. 1959.

double the Oregon figures for 1953.[138] Thus, quite apart from the cost of publication and distribution, the Pennsylvania commitment might be expected to run to a minimum of $800,000. It must be borne in mind that cost is cumulative in character—that is, it would be relatively high since Pennsylvania has spent no funds for revision up to this time. Pennsylvania, moreover, has at least six times the population of Oregon and doubtless a more complex legal structure. But when compared to the need for revision and the public benefit which would result from such a project, the problem of cost is relatively insubstantial.

CONCLUSION

Pennsylvania needs statute law revision and needs it badly. This includes both initial bulk revision and subsequent continuous revision. The undertaking should not be postponed; it should be embraced and launched by appropriate enactment at the 1961 session of the General Assembly, with the creation of a revision agency and the appropriation of the requisite funds. But there is no prospect of legislative action unless the case for revision is clearly made and strongly supported.

It seems clear that the initiative lies with the legal profession, with its special responsibility for improvements in the law and the legal system. Certainly this responsibility includes improving the condition of the statute law. It is an area, incidentally, where the private interests of lawyers are entirely in common with the public interests of the people of the state. While individual lawyers can be helpful, the onus rests with the organized bar, and the obvious unit to take the leadership is the Pennsylvania Bar Association. Here is an opportunity for the Association and the legal profession to render a public service of great and continuing benefit to the entire state.

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[138] By 1960 Pennsylvania standards, the 1950-53 Oregon cost of professional services was quite low. For instance, the revisor was paid about $700 a month; the assistant revisor $400; the chief indexer $300; the chief annotator $275; law clerks were paid $250 monthly. OREGON STATUTE REVISION COUNCIL, PROPOSED BUDGET FOR 1949-1950 FISCAL BIENNIUM (1949).