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THE ORIGINATION CLAUSE IN THE AMERICAN CONSTITUTION: A COMPARATIVE SURVEY

J. Michael Medina*

The house of representatives can not only refuse, but they alone can propose the supplies requisite for the support of government. They in a word hold the purse; that powerful instrument by which we behold, in the history of the British constitution, an infant and humble representation of the people, gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse, may in fact be regarded as the most compleat and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.¹

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1. THE FEDERALIST No. 58, at 394 (J. Madison) (J. Cooke ed. 1961). One must remember, however, that the avowed purpose of THE FEDERALIST Papers was to convince New York to ratify the Constitution, not to provide a definitive commentary on the Constitution. Consequently, the authors sometimes exaggerated the Constitution's advantages and glossed over its objectionable features. *Id.* at xx (Preface by J. Cooke); *State v. M'Bride*, 24 S.C.L. (Rice) 400 (1839). Nevertheless, the opinions expressed in THE FEDERALIST have traditionally been accorded high respect. *See, e.g.*, *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601, 627 (1895); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 418 (1821); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 433 (1819). For a discerning evaluation of THE FEDERALIST as authority, see Wilson, *The Most Sacred Text: The Supreme Court's Use of The Federalist Papers*, 1985 B.Y.U. L. REV. 65. *See also*, Pierson, *The Federalist in the Supreme Court*, 33 YALE L.J. 728 (1924); A. FURTWÄGLER, THE AUTHORITY OF

I. INTRODUCTION

Thus did Madison grandly describe the power conferred on the House of Representatives by the origination clause of the federal Constitution: that clause requiring all bills for raising revenue to originate in the House of Representatives.² Today, variants of the origination clause are found in twenty state constitutions,³ the federal Constitution,⁴ and the Constitution of Puerto Rico.⁵ At least eighteen states have by specific constitutional provisions rejected or abrogated exclusive house reve-

PUBLIUS: A READING OF THE FEDERALIST PAPERS (1984).

2. One scholar described the reposing of the revenue power in the House as follows: "The House of Representatives was thought of as the heart of the government. Its exclusive power would be the precious one belonging to the people — to lay taxes; that is, to require participation in common activities, at least by paying for them. . . ." R. TUGWELL, *THE EMERGING CONSTITUTION* 66 (1974). Of course, the emergence of a system of permanent revenue exaction has diminished the impact of the origination power. S. MILLER, *LECTURES ON THE CONSTITUTION OF THE UNITED STATES* 205-07 (1893).

This article is restricted to a study of the treatment of revenue bills in terms of origination. The issue of revenue bills, however, in terms of constitutional law, can arise in other contexts. *See, e.g.*, ALASKA CONST. art. II, § 16 (imposing a requirement of three fourths of the membership to override a veto of "[b]ills to raise revenue and appropriation bills or items" as opposed to a two-thirds requirement for other vetoed bills); MISS. CONST. art. 4, § 68 (prohibiting the passage of revenue bills in the last five days of the legislative session); N.C. CONST. art. II, § 23 (providing special legislative procedure for revenue bills).

Furthermore, the origination clause is only one of a variety of constitutional provisions regulating the raising of revenue and expenditure of revenue. As the origination clause to some extent governs the raising of revenue, other constitutional provisions govern the spending of revenue. For example, the federal Constitution, U.S. CONST. art. I, § 9, cl. 7, and most state constitutions, *see, e.g.*, CAL. CONST. art. XVI, § 7; COLO. CONST. art. V, § 33; PA. CONST. art. III, § 24; TENN. CONST. art. II, § 24, provide that public funds can be withdrawn from the treasury only by appropriations made by law. Traditionally, this clause has been interpreted to vest near-exclusive spending power in the legislature. *Harrington v. Bush*, 553 F.2d 190 (D.C. Cir. 1977); *National Ass'n of Regional Councils v. Costle*, 564 F.2d 583 (D.C. Cir. 1977); *Hart's Case*, 16 Ct. Cl. 459 (1880), *aff'd*, 118 U.S. 62 (1886); *State ex rel. Kurz v. Lee*, 121 Fla. 360, 163 So. 859 (1935); *Blaine County Inv. Co. v. Gallet*, 35 Idaho 102, 204 P. 1066 (1922). *See*, Note, *Mandel v. Myers: Judicial Encroachment on Legislative Spending Powers*, 70 CALIF. L. REV. 932 (1982); Miller, *Estoppel and the Public Purse: A New Check on Government Taxing and Spending Powers in Florida Law*, 9 FLA. ST. U.L. REV. 33 (1981); Note, *Judicial Financial Autonomy and Inherent Power*, 57 CORNELL L. REV. 975 (1972).

3. Regarding "bills for raising revenue," see ALA. CONST. art. IV, § 70; COLO. CONST. art. V, § 31; DEL. CONST. art. VIII, § 2; IDAHO CONST. art. III, § 14; IND. CONST. art. 4, § 17; KY. CONST. § 47; MINN. CONST. art. IV, § 10; N.J. CONST. art. IV, § 6, ¶ 1; OKLA. CONST. art. V, § 33; OR. CONST. art. IV, § 18; PA. CONST. art. III, § 14; S.C. CONST. art. III, § 15; TEX. CONST. art. III, § 33; WYO. CONST. art. 3, § 33. Regarding "bills for raising a revenue," see ME. CONST. art. IV, pt. 3, § 9. Regarding revenue and appropriation bills, see GA. CONST. art. III, § VII, ¶ 2; LA. CONST. art. III, § 16. Regarding "money bills," see MASS. CONST. pt. 2, ch. 1, § 3, art. VII; N.H. CONST. pt. 2, art. 18. Regarding "all revenue bills," see VT. CONST. ch. II, § 6. All the constitutional provisions except those of Georgia, Idaho, Indiana, and Oregon specifically permit senate amendment of revenue bills.

4. "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." U.S. CONST. art. I, § 7, cl. 1.

5. "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills." P.R. CONST. art. III, § 17.

nue origination.⁶ The clause, however, has largely been treated as an historical anachronism,⁷ narrowly construed, and enforced only in a handful of decisions.⁸

Justice Story, in his highly influential⁹ *Commentaries on the Constitution of the United States*,¹⁰ set the course for the courts to strictly construe the federal origination clause. Story found that the practical construction given to the origination clause was one of narrow meaning applying only to bills levying taxes in the strict sense, notwithstanding the apparently broader sweep of the clause's language. The practical construction already applied to the clause excluded from its operation bills incidentally raising revenue in pursuit of some other legislative purpose.¹¹

6. FLA. CONST. art. III, § 7; HAW. CONST. art. III, § 6; ILL. CONST. art. IV, § 8(b); IOWA CONST. art. III, § 15; KAN. CONST. art. II, § 12; MD. CONST. art. 3, § 27; MICH. CONST. art. IV, § 22; MISS. CONST. art. 4, § 59; MO. CONST. art. III, § 21; NEV. CONST. art. 4, § 16; N.M. CONST. art. IV, § 15; N.Y. CONST. art. III, § 12; OHIO CONST. art. II, § 15(a); S.D. CONST. art. III, § 20; TENN. CONST. art. II, § 17; VA. CONST. art. IV, § 11; WASH. CONST. art. II, § 20; W. VA. CONST. art. VI, § 28.

7. *See, e.g.,* Lang v. Commonwealth, 190 Ky. 29, 226 S.W. 379, 381 (1920) ("that reason [for lodging power of revenue in the lower house] is not very impressive in this country at the present time."); Mikell v. School Dist., 359 Pa. 113, 58 A.2d 339, 341 (1948) ("its present-day inappropriateness"); Kervick v. Bontempo, 29 N.J. 469, 150 A.2d 34, 39-40 (1959) ("an ancient concept"; "technical insistence").

8. 1 J. NOWAK, R. ROTUNDA, & J. YOUNG, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 10.2(c) (1986). For cases upholding challenges to legislation based on the origination clause, see Weissinger v. Boswell, 330 F. Supp. 615 (M.D. Ala. 1971) (applying Alabama clause); Wofford Oil Co. v. Smith, 263 F. 396 (M.D. Ala. 1920), *appeal dismissed*, 256 U.S. 705 (1921) (applying Alabama clause); Hubbard v. Lowe, 226 F. 135 (S.D.N.Y. 1915), *appeal dismissed*, 242 U.S. 654 (1916); Opinion of The Justices, 379 So. 2d 1267 (Ala. 1980); Opinion of The Justices, 342 So. 2d 787 (Ala. 1977); Glasgow v. Aetna Ins. Co., 284 Ala. 177, 223 So. 2d 581 (1969); Opinion of The Justices, 260 Ala. 81, 68 So. 2d 840 (1953); Opinion of The Justices, 259 Ala. 514, 66 So. 2d 921 (1953); Opinion of The Justices, 249 Ala. 389, 31 So. 2d 558 (1947); Opinion of The Justices, 238 Ala. 289, 190 So. 824 (1939); Opinion of The Justices, 232 Ala. 95, 166 So. 807 (1936); Perry County v. Selma, Marion & Memphis Ry. Co., 58 Ala. 546 (1877); Dumas v. Bryan, 35 Idaho 557, 207 P. 720 (1922); H.A. Thierman Co. v. Commonwealth, 123 Ky. 740, 97 S.W. 366 (1906); Cobb v. Louisiana Bd. of Inst., 237 La. 315, 111 So. 2d 126 (1959); Succession of Sala, 50 La. Ann. 1009, 24 So. 674 (1897); Succession of Givanovich, 50 La. Ann. 625, 24 So. 679 (1897); Morgan v. Murray, 134 Mont. 92, 328 P.2d 644 (1958); State *ex rel.* Davis v. Cox, 105 Neb. 75, 178 N.W. 913 (1920); Thiokol Chem. Corp. v. Morris County Bd. of Taxation, 76 N.J. Super. 232, 184 A.2d 75 (1962), *aff'd*, 41 N.J. 405, 197 A.2d 176 (1964); *Ex Parte* Fuller, 31 Okla. Crim. 289, 238 P. 512 (1925).

9. Among the noteworthy decisions relying extensively on Justice Story are: Twin City Bank v. Nebeker, 167 U.S. 196 (1897); United States v. Norton, 91 U.S. 566 (1875); Anderson v. Ritterbusch, 22 Okla. 761, 98 P. 1002 (1908); Day Land & Cattle Co. v. State, 68 Tex. 526, 4 S.W. 865 (1887).

10. (1st ed. 1833).

11. *Id.* § 880. In considering Story's authoritative dismissal of the origination clause, one must remember that Story's commentaries were published *prior* to the publication of Madison's *Notes of Debates* and were premised only on the records of the motions and votes contained in the Convention's Journal. *See* C. WARREN, THE MAKING OF THE CONSTITUTION 479, 803 (1928).

The origination clause, however, as its parentage would indicate, should not be so lightly dismissed. It was a product of British parliamentary experience under the House of Commons¹² and colonial experience under charter governance.¹³ The clause played a prominent role in the final shaping of the federal Constitution¹⁴ and is, for better or worse, still part of the Constitution. As such, it deserves enforcement.¹⁵ Furthermore, an understanding of the origination clause helps illuminate the constitutional machinery of legislative enactment, as origination clause issues often center on legislative procedure.¹⁶ Consequently, this article

12. Opinion of The Justices, 233 A.2d 59 (Del. 1967); Opinion of The Justices, 126 Mass. 557 (1878); S. MILLER, LECTURES ON THE CONSTITUTION OF THE UNITED STATES 205-08 (1893); Comment, *The Origination Clause, the Tax Equity and Fiscal Responsibility Act of 1982, and the Role of the Judiciary*, 78 Nw. U.L. REV. 419, 421-23 (1983); Sargent, *Bills for Raising Revenue Under the Federal and State Constitutions*, 4 MINN. L. REV. 330, 333 (1920).

13. Comment, *supra* note 12, at 422; Township of Bernards v. Allen, 61 N.J.L. 228, 39 A. 716 (1898). See also J. MAIN, THE UPPER HOUSE IN REVOLUTIONARY AMERICA 1763-1788 (1967); A. KELLY & W. HARBISON, THE AMERICAN CONSTITUTION: ITS ORIGINS AND DEVELOPMENT 30 (1948). Indeed, the independence constitutions drawn in 1776 or shortly thereafter commonly had stricter origination clauses than those adopted in later constitutions. See, e.g., MD. CONST. OF 1776 (House of Delegates empowered "to originate money bills"), noted in Kelly v. Marylanders For Sports Sanity, Inc., 310 Md. 437, 530 A.2d 245 (1987) (money bills included bills providing for the raising of the public revenue and for the making of grants or appropriations of public money in the treasury); N.H. CONST. OF 1776 (all bills for raising, levying, or collecting money to originate in lower house); N.J. CONST. OF 1776 art. VI (upper house may not propose or alter money bills); S.C. CONST. OF 1776 art. VII (money bills may not be originated, altered, or amended by upper house); VA. CONST. OF 1776 (all laws to originate in lower house; upper house may not amend money bills), cited in 4-7 F. THORPE, THE FEDERAL AND STATE CONSTITUTIONS 2451-53, 2596, 3244, 3812-19 (1909); see also W. ADAMS, THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA 262-71 (1980).

14. See *infra* notes 21-31 and accompanying text. It is interesting that even Alexander Hamilton, hardly a democrat, paid homage to the popular appeal of lower house control by including a variant of the origination clause in his written proposal: "Bills for raising revenue, and bills for appropriating monies for the support of fleets and armies, and for paying salaries of the Officers of Government, shall originate in the Assembly; but may be altered or amended by the Senate."; 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 620 (M. Farrand ed. 1937) [hereinafter RECORDS]. Although this written proposal was never submitted to the Convention, important elements were contained in Hamilton's speech to the Convention on June 18, 1787. See 1 RECORDS, *supra*, at 304-11.

15. H. A. Thierman Co. v. Commonwealth, 123 Ky. 740, 97 S.W. 366, 369 (1906); Morgan v. Murray, 134 Mont. 92, 328 P.2d 644, 654 (1958); Thiokol Chem. Corp. v. Morris County Bd. of Taxation, 76 N.J. Super. 232, 184 A.2d 75, 81 (1962), *aff'd*, 41 N.J. 405, 197 A.2d 176 (1964).

16. Crucial to the operation of the origination clause in many instances is the scope of judicial review over the "enrolled bill." An enrolled bill is a bill which "purports to have passed both houses of the legislature and which has been signed by the presiding officers of the two houses." 1 N. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 15.01 (Sands 4th ed. 1985 rev.); BLACK'S LAW DICTIONARY 475-76 (5th ed. 1979). Many states and the federal courts refuse to go behind the enrolled bill to examine legislative journals and other parliamentary materials to determine whether the legislature complied with the appropriate constitutional procedures. The leading case is Field v. Clark, 143 U.S. 649 (1892). See 1 N. SINGER, *supra*, at § 15.03. A minority of states accord the enrolled bill great, but not conclusive, weight. *Id.* § 15.04. A few states either permit attack by extrinsic evidence or reverse the rule entirely, requiring that the enrolled bill affirmatively show compliance with constitutional requirements. *Id.* § 15.06. Absent such a showing, these courts will

is divided into three sections. The first section briefly summarizes the constitutional convention, surveys extensively the judicial decisions construing the federal origination clause, and analyzes the body of congressional precedent. The research reveals a consistent grudging interpretation of the origination clause. The second section canvasses all the state origination clauses and seeks to examine every decision and available attorney general opinion on each state origination clause. The third section briefly explores the concept of the origination clause in other British-influenced nations in order to place the American experience in perspective.

The basic philosophy behind the origination clause should continue to be enforced: accountability for tax legislation must be reposed in the House of Representatives. A requirement that Senate amendments be germane to House revenue bills would appear to be the least intrusive yet still effective means of enforcing the policies behind the origination clause. Future court challenges should be governed by that central theme.

conclusively presume that the proper proceedings were not followed. *Id.* § 15.05. The scope of evidentiary materials in relation to the origination clause is critical since the enrolled bill will normally only show (1) the house where the bill originated, and (2) the text of the bill as finally passed by both houses. The enrolled bill will not show the bill as it existed upon introduction into the originating house, nor will it show the source of amendments to the bill as it journeyed through the legislative process. For discussions of the enrolled bill doctrine in terms of the origination clause, see Comment, *supra* note 12, at 454-59; Annotation, *Application of Constitutional Requirement That Bills for Raising Revenue Originate in Lower House*, 4 A.L.R.2D 973, § 2 (1949). For more general discussions of the enrolled bill doctrine, see Comment, *Judicial Review of the Legislative Process: Louisiana's "Journal Entry" Rule*, 41 LA. L. REV. 1187 (1981); Grant, *Judicial Control of the Legislative Enactment Process: The Federal Rule*, 3 W. POL. Q. 364 (1950); Lloyd, *Judicial Control of Legislative Procedure*, 4 SYRACUSE L. REV. 6 (1952); Dodd, *Judicially Non-Enforceable Provisions of Constitutions*, 80 U. PA. L. REV. 54 (1931); Note, *Pennsylvania's Enrolled Bill Rule: A Reappraisal in Light of HB 1413 and Velasquez v. Depuy*, 75 DICK. L. REV. 123 (1970); Note, *Judicial Review of the Legislative Process of Enactment: An Assessment Following Childers v. Couey*, 30 ALA. L. REV. 495 (1979); cf. Swinton, *Challenging the Validity of An Act of Parliament: The Effect of Enrollment and Parliamentary Privilege*, 14 OSGOODE HALL L.J. 345 (1976) (analyzing Canadian and other commonwealth precedents). A student note suggests a possible constitutional basis for federal and state courts to bypass the enrolled bill doctrine through the use of the guaranty clause of the federal Constitution. Note, *The Rule of Law and the States: A New Interpretation of the Guarantee Clause*, 93 YALE L.J. 561 (1984) (guaranty clause to be used to require states to observe their own constitutions and laws). *But see* Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984), limiting federal courts' jurisdiction to enjoin state from violating its own laws. *Pennhurst* is discussed critically in Shapiro, *Wrong Turns: The Eleventh Amendment and the Pennhurst Case*, 98 HARV. L. REV. 61 (1984), and analyzed approvingly in Althouse, *How to Build a Separate Sphere: Federal Courts and State Power*, 100 HARV. L. REV. 1485 (1987).

For two case studies on legislation, see D. BERMAN, *A BILL BECOMES A LAW: CONGRESS ENACTS CIVIL RIGHTS LEGISLATION* (1966), and S. BAILEY, *CONGRESS MAKES A LAW, THE STORY BEHIND THE EMPLOYMENT ACT OF 1946* (1950). See also J. NOWAK, R. ROTUNDA, & J. YOUNG, *supra* note 8, ch. 10.

II. THE FEDERAL EXPERIENCE: A STRICT READING OF THE ORIGINATION CLAUSE

A. Introduction

The federal origination clause has been strictly construed to apply only to bills designed "to levy taxes in the strict sense of the words."¹⁷ The judicial and the senatorial precedents basically agree on this point. The House of Representatives has understandably taken a slightly more expansive view of its constitutional prerogative.¹⁸ It is more than ironic that the clause, which caused so much debate at the Constitutional Convention and nearly collapsed the convention at one point, is now treated, by and large, as a constitutional backwater.¹⁹ Professor Warren has remarked on the clause's lack of relevance to today's world:

That such importance should have been attached to a matter which today seems of minor importance, can only be understood by realizing how deeply the delegates felt, on the one side or the other, regarding any increase in the powers of the Senate.²⁰

Nevertheless, the clause deserves examination as it represents a principled decision of the framers to repose a particular power in one house of the Congress.

B. The Convention

The origination clause was initially part of the Great Compromise in which the small states obtained equal representation in the Senate.²¹ After the concept of House origination of revenue bills was accepted, the next point of contention concerned the Senate's power to amend revenue bills.²² Earlier drafts of the clause forbade Senate amendment, but the

17. See *United States v. Norton*, 91 U.S. 566, 569 (1875); J. NOWAK, R. ROTUNDA, & J. YOUNG, *supra* note 8, § 10.2(c).

18. See *infra* notes 114-27 and accompanying text.

19. See *Kervick v. Bontempo*, 29 N.J. 469, 150 A.2d 34, 39 (1959), where the New Jersey Supreme Court described the New Jersey origination clause as "an ancient concept . . . [which] had lost much of its meaning." *Id.* The Pennsylvania Supreme Court viewed the clause as inappropriate in the modern world. *Mikell v. School Dist.*, 359 Pa. 113, 58 A.2d 339, 341 (1948).

20. C. WARREN, *supra* note 11, at 670.

21. The reader is directed to the extensive discussions of the convention history contained in Hoffer, *The Origination Clause and Tax Legislation*, 2 B.U.J. TAX L. 1, 2-6, 7-11 (1984); Comment, *supra* note 12, at 423-31; Sargent, *supra* note 12, at 331-34. Charles Warren, in his book, *THE MAKING OF THE CONSTITUTION* 274-78, 435, 664-71 (1928), provides much needed texture to the origination clause issue. See also I F. THORPE, *THE CONSTITUTIONAL HISTORY OF THE UNITED STATES* 427, 494, 504-06 (DaCapo reprint 1901); A. PRESCOTT, *DRAFTING THE FEDERAL CONSTITUTION* 433-51 (1941) (rearranging Madison's notes to provide consecutive development of the origination clause).

22. Hoffer, *supra* note 21, at 8-11.

final version permitted amendment.²³ Finally, the origination clause served as a trade-off for the exclusive powers granted to the Senate: the treaty and appointment confirmation powers.²⁴ The import of the convention's debate and the significance of the origination clause were cogently summarized by a student comment:

[T]he origination clause was adopted on a theory of bicameralism. "The legislative authority was seen by the framers as the most extensive, and therefore, the one most open to abuse." Accordingly, the framers deemed it necessary to design not only extracongressional checks such as the presidential veto, but intracongressional checks as well. The origination clause was an important part of this system of bicameral checks and, as it turned out, was one of the few constitutional provisions that the supporters of the Constitution could cite to rebut the argument that the new republic was in reality an aristocracy.²⁵

The debate thus clearly discloses the origination clause's crucial role in the allocation of distinctive powers to the Senate. Without the reposing of the revenue power in the House, the Senate would most likely have not been granted the appointment and treaty powers.²⁶

It is interesting, and perhaps significant, to note that even during the period of the Constitution's drafting and ratification, the value of the origination clause was subject to question. Some viewed the clause as an important, even determinative, prerogative.²⁷ Others viewed the clause,

23. *Id.* The role that the framers' intent should play in construing the Constitution is the subject of a continuing debate. For a sampling of views see Rehnquist, *The Notion of a Living Constitution*, 54 TEX. L. REV. 693 (1976); Monaghan, *Our Perfect Constitution*, 56 N.Y.U.L. REV. 353 (1981); Simon, *The Authority of the Framers of the Constitution: Can Originalist Interpretation Be Justified?*, 73 CAL. L. REV. 1480 (1985); Powell, *The Original Understanding of Original Intent*, 98 HARV. L. REV. 885 (1985); Perry, *The Authority of Text, Tradition, and Reason: A Theory of Constitutional "Interpretation,"* 58 S. CAL. L. REV. 551 (1985); Fallon, *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 HARV. L. REV. 1189 (1987).

24. In retrospect, the power trade-off between the House and the Senate redounded greatly to the Senate's benefit. See Essay No. 66 of THE FEDERALIST, where Hamilton discusses the relative powers of the two houses, concluding that the House's prerogatives will enable it to be the full match to the other branches of the government. The House's exclusive prerogatives of origination, U.S. CONST. art. I, § 7, cl. 1, and election of the president upon failure of the electoral college, U.S. CONST. art. II, § 1, cl. 3 (as amended by the twelfth amendment), have proven largely valueless. On the other hand, the Senate's powers of advice and consent on appointments and treaties, U.S. CONST. art. II, § 2, cl. 2, and equality on all non-revenue bills have elevated the Senate to a position unique in the world: a second chamber more powerful than the lower house. See D. OLSON, THE LEGISLATIVE PROCESS: A COMPARATIVE APPROACH 23 (1980); THE SENATE INSTITUTION 1 (N. Preston ed. 1969); C. STRONG, A HISTORY OF MODERN POLITICAL CONSTITUTIONS 213 (1963).

25. Comment, *supra* note 12, at 428-29.

26. *Id.*

27. THE FEDERALIST No. 58 (J. Madison) (at least for public consumption); 1 J. TUCKER, THE CONSTITUTION OF THE UNITED STATES § 209 (1899). The origination clause was advanced by the Constitution's publicists as a protection against the aristocratic Senate. See, e.g., the Letter of Cas-

with its approval of Senatorial amendment, as virtually meaningless.²⁸ On balance, however, the most probable view, as noted in a controversial decision,²⁹ was that the House would be a bulwark against the other governmental branches.³⁰ The framers probably assumed that by giving the House the power to originate revenue bills, they granted the House the power to set the legislative agenda.³¹

sus, IX, published in *Massachusetts Gazette* December 18, 1787, reprinted in *ESSAYS ON THE CONSTITUTION OF THE UNITED STATES* 34 (P. Ford ed. 1892):

Sec. 7 provides that all bills for raising revenues shall originate in the house of representatives. Here again must the antifederalists appear weak and contemptible in their assertions that the Senate will have it in their power to establish themselves a complete aristocratic body; for this clause fully evinces that if their inclinations were ever so great to effect such an establishment, it would answer no end, for being unable to levy taxes or collect revenue is a sufficient check upon every attempt of such a nature.

To the same effect, see 2 M. JENSEN, *THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION* 145, 190 (1976); III J. ELLIOT, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA IN 1787* 376-77 (1836). See also IV J. ELLIOT, *supra*, at 172-73; 3 RECORDS, *supra* note 14, at 148, 318 (Madison defends the origination clause's Senatorial amendment provision); Comment, *supra* note 12, at 430; Hoffer, *supra* note 21, at 7-11; C. WARREN, *supra* note 11, at 276-77; C. VAN DOREN, *THE GREAT REHEARSAL* 114-15 (1948).

28. A. PUTNEY, *UNITED STATES CONSTITUTIONAL HISTORY AND LAW* § 133 (1908); C. WARREN, *supra* note 11, at 670-71. Warren felt that the amendment power was crucial:

When, however, the large States surrendered on the point of allowing the Senate to amend the House revenue bills, they really surrendered on the whole proposition; for, as William Grayson (an opponent of the Constitution) pointed out in the Virginia State Convention as early as 1788: "The power of imposing amendments is the same, in effect, as that of originating. The Senate could strike out every word of the bill except the word *whereas*, or any other introductory word, and might substitute new words of their own." Grayson's prophecy constitutes exactly what has taken place, in practice, in the Senate.

Id. See also 3 RECORDS, *supra* note 14, at 265-67 (Senate's power of amendment violated the compromise creating equal representation in the Senate), at 318 (Madison comments in debate on Virginia's ratification that "there is some difference, though not considerable" between the power to originate and the power to amend); M. FARRAND, *THE FRAMING OF THE CONSTITUTION* 172-73 (1913); E. DUMBAULD, *THE CONSTITUTION OF THE UNITED STATES* 103 (1964) ("little practical importance"); A. KELLY & W. HARBISON, *THE AMERICAN CONSTITUTION: ITS ORIGINS AND DEVELOPMENT* 131 (1948) ("of small importance"). The antifederalist argument emphasizing the weakness of the House's origination prerogative is comprehensively documented in *THE ANTIFEDERALISTS* 152-60, 191-95, 209-10, 315-16, 389-92, 409-15 (C. Kenyon ed. 1966); R. KETCHAM, *THE ANTI-FEDERALIST PAPERS AND THE CONSTITUTIONAL CONVENTION DEBATES* 174 (1986). The standard anti-federalist collection is H. STORING, *THE COMPLETE ANTI-FEDERALIST* (1981).

29. *Davi v. Laird*, 318 F. Supp. 478 (W.D. Va. 1970) (unsuccessful suit to declare the Vietnam war unconstitutional).

30. *Id.* at 480; see also 2 D. WATSON, *THE CONSTITUTION OF THE UNITED STATES* 342-51 (1910).

31. Comment, *supra* note 12, at 427-30; Hoffer, *supra* note 21, at 15-16; cf. Sargent, *supra* note 12, at 352 ("Perhaps the greatest present-day advantage of the system is that by it each House is able to concentrate on the preparation of certain kinds of bills, thus assuring more expert knowledge and less duplication than would otherwise exist."). See also 3 M. FARRAND, *supra* note 14, at 201-02 (Luther Martin, in a broadside delivered to the Maryland legislature, criticized the House's origination prerogative, viewing the provision as disabling the Senate from participating in the formulation of policy, noting the potentially broad and undefined nature of the revenue bill); see also *id.*, App. CXLVIb (also setting forth the opinion of Luther Martin on the issue).

C. *Federal Judicial Precedents*

There has been relatively little substantive judicial construction of the federal origination clause, partly as a result of the lack of an advisory opinion procedure,³² and partly as a result of the diligence of the House of Representatives in protecting its constitutional prerogative.³³ There is no question that the enrolled bill doctrine embraced by the United States Supreme Court,³⁴ and the initial restrictive interpretation placed on the origination clause by the federal courts and commentators, have also served to discourage litigation. In fact, in only one instance has a federal statute been held to violate the origination clause.³⁵

1. The Early Cases

a. *Supreme Court*

The Supreme Court has considered the origination clause five times.³⁶ In *United States v. Norton*,³⁷ the act establishing a postal money-order system was held not to be a revenue law for purposes of a statute imposing criminal penalties on persons convicted of crimes arising under the revenue laws of the United States.³⁸ The defendant had been charged with embezzlement of money belonging to the New York money-order office, and several of the offenses charged occurred between two and five years before the indictment was handed down.³⁹ The government therefore desired to prosecute the party under the revenue law criminal statute which had a five year statute of limitations.⁴⁰ The general federal crimi-

32. As will be discussed, the origination clause is frequently involved in advisory opinions sought by the legislature or by the governor. Comment, *supra* note 12, at 432 n.74. The federal courts, on the other hand, have long disclaimed jurisdiction to render advisory opinions. Dahlquist, *Advisory Opinions, Extrajudicial Activity and Judicial Advocacy: A Historical Perspective*, 14 SW. U.L. REV. 45 (1983); Aumann, *The Supreme Court and the Advisory Opinion*, 4 OHIO ST. L.J. 21 (1937); Comment, *The Advisory Opinion and the United States Supreme Court*, 5 FORDHAM L. REV. 94 (1936). Federal cases construing state origination clauses are discussed *infra*, under the particular state section.

33. See *infra* notes 114-27 and accompanying text.

34. *Field v. Clark*, 143 U.S. 649 (1892). The enrolled bill doctrine in the context of the origination clause is discussed in Comment, *supra* note 12, at 454-59. The author advocates the abandonment of the enrolled bill doctrine. See also *supra* note 16 and accompanying text.

35. *Hubbard v. Lowe*, 226 F. 135 (S.D.N.Y. 1915), *appeal dismissed*, 242 U.S. 654 (1916).

36. See also Justice Clifford's dissent in *The Legal Tender Cases*, 79 U.S. (12 Wall.) 457, 631 (1870), where he enumerates the constitutional limitations on the Federal Taxation power, including the origination clause.

37. 91 U.S. 566 (1875).

38. *Id.* at 569.

39. *Id.* at 567.

40. *Id.*

nal statute of limitations otherwise applicable was two years.⁴¹ The Court examined the purpose for establishing the postal money-order system, which was to insure greater security in the transmission of money in the mail.⁴² The fees to be charged for the service did not indicate a desire to raise revenue.⁴³ Applying the standards for revenue bills under the origination clause, the Court determined that the offenses charged in violation of the postal money act were subject to the two year statute of limitations.⁴⁴ The Court referred to Congress' interpretation of the origination clause to only include "bills to levy taxes in the strict sense of the words, and . . . not . . . to extend to bills for other purposes which incidentally create revenue."⁴⁵

In *Twin City Bank v. Nebeker*,⁴⁶ a federal act which provided a national currency secured by bonds and which imposed a tax on the notes

41. *Id.*

42. *Id.* at 567-68.

43. *Id.* at 568.

44. *Id.* at 569.

45. *Id.* at 569, quoting Justice Story. The federal courts have often employed origination clause analysis in other revenue contexts. The Court assumed that Congress was familiar with the construction given "bills for raising revenue." As the *Norton* Court observed, "[b]ills for raising revenue" when enacted into laws, become *revenue laws*." *Id.* See, e.g., (1) cases under former 28 U.S.C. § 76 permitting officers acting by authority of a United States revenue law to remove cases brought against them in state court to federal court: *Smith v. Gilliam*, 282 F. 628 (W.D. Ky. 1922) (National Prohibition Act not a revenue law, relying on *Norton*, since purpose was not to raise revenue but to enforce prohibition); *Twin Falls Canal Co. v. Foote*, 192 F. 583 (D. Idaho 1911) (Reclamation Act is not a revenue law permitting removal; court finding revenue law to be substantial equivalent of "bills for raising revenue"); *People's United States Bank v. Goodwin*, 162 F. 937 (E.D. Mo. 1908) (post office assistant attorney general sued for libel not acting under revenue laws of the United States; court noting that a distinction could be drawn between revenue acts and "bills for raising revenue," but not reaching the issue); and (2) criminal statutes enforcing the revenue laws: *United States v. McConnell*, 10 F.2d 973 (E.D. Pa. 1926) (National Prohibition Act not a revenue law within meaning of statute prescribing penalties against officers acting under authority of the revenue laws who conspire to defraud the United States; discussing many of the early federal origination clause cases and concluding that the National Prohibition Act's potential for raising revenue was only incidental to the main purpose of enforcing the eighteenth amendment); *United States v. Mayo*, 26 F. Cas. 1230, 1231 (C.C.D. Mass. 1813) (No. 15,755) (Justice Story determined that penalties provided under the Embargo Act were not subject to the longer statute of limitations available for revenue laws; noting that "revenue laws" mean "such laws as are made for the direct and avowed purpose for creating and securing revenue or public funds for the service of the government."); *The Nashville*, 17 F. Cas. 1176, 1178 (D.C.D. Ind. 1868) (No. 10,023) (prosecution for penalties under statute regulating the carriage of passengers on steamships not a revenue bill for purposes of statute authorizing in rem action to enforce laws: "I suppose that 'bills for raising revenue' are, when passed, 'revenue laws' . . ."). But see *United States v. James*, 26 F. Cas. 577 (C.C.S.D.N.Y. 1875) (No. 15,464), where the court distinguished an earlier Supreme Court decision (*United States v. Bromely*, 53 U.S. (12 How.) 43 (1851)), which had held an act to reduce rates of postage was a revenue act within the writ of error statute concerning revenue laws. In *James*, the court found that a Senate amendment (raising the postage rate) to a House appropriations bill was not a "bill for raising revenue." Compare *United States v. Jin Fuey Moy*, 241 U.S. 394 (1916), where the Court upheld the Opium Registration Act as constitutional, deciding that it was a revenue measure, not a police measure.

46. 167 U.S. 196 (1897) (adopted in *Lumberman's Bank v. Huston*, 167 U.S. 203 (1897)).

held by national banking associations was determined not to be a revenue bill. The act had originated in the House, but the tax provision had been inserted by the Senate.⁴⁷ Relying on Justice Story's definition of the revenue bill. The Court held that the act was not a revenue bill. The act's main purpose was to provide a national currency for the United States, the tax being merely a means to effectuate the act's general purpose.⁴⁸

Twin Cities was followed in *Millard v. Roberts*,⁴⁹ where the Court found that the act of Congress authorizing payment to railroads of funds raised by taxing property in the District of Columbia was not a revenue bill.⁵⁰ The taxes imposed were "but means to the purposes provided by the act."⁵¹

In *Flint v. Stone Tracy Co.*,⁵² the House had passed a general bill for the collection of revenue which contained an inheritance tax. The Senate deleted the inheritance tax and inserted a corporation tax; the act was then passed as amended. The Court rejected the challenge that the Senate's action violated the origination clause and found that the Senate amendment was germane to the subject matter of the House bill.⁵³

The Court returned to the Senate's power of amendment in its brief opinion in *Rainey v. United States*.⁵⁴ Adopting the opinion of the court below on the issue, Chief Justice White found the Senate's addition

47. *Twin Cities*, 167 U.S. at 198, 200. The Court found this fact reflected in the legislative journals, but cautioned that the disposition of the case did not require the Court to consider the issue of whether such journals could be used to attack an enrolled bill showing no defect on its face. *Id.* at 203. Prior to making this cautionary statement, the Court discussed its earlier decision of *Field v. Clark* which had adopted the enrolled bill doctrine. *Id.* at 200-01.

48. *Id.* at 202. The Court specifically declined to provide a general rule as to what bills would be encompassed within the origination clause, finding that "it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject." *Id.*

49. 202 U.S. 429 (1906).

50. *Id.* at 436-37.

51. *Id.* at 437. The Court's reasoning is criticized by Sargent, *supra* note 12, who claimed that the purpose of the bill could not have been accomplished except by the raising of revenue. *Id.* at 388. The revenue aspects of the bill were not incidental; they were crucial to the successful implementation of the bill's objectives. *Id.*

52. 220 U.S. 107 (1911).

53. *Id.* at 143. The Court reasoned:

The bill having properly originated in the House, we perceive no reason in the constitutional provision relied upon why it may not be amended in the Senate in the manner which it was in this case. The amendment was germane to the subject-matter of the bill, and not beyond the power of the Senate to propose.

The Court derived the fact of Senate amendment from the government's brief. The Court again cautioned that it was not holding that legislative journals could be used to invalidate an act complying with the requirements of an enrolled bill. *Id.* The requirement that Senate amendments be germane is convincingly articulated in Hoffer, *supra* note 21, at 13-18. The Senate rules do not currently require that amendments be germane. 1 J. NOWAK, R. ROTUNDA, & J. YOUNG, *supra* note 8, § 10.5.

54. 232 U.S. 310 (1914).

of a revenue amendment to a House-originated revenue bill unobjectionable.⁵⁵

b. Lower Federal Courts

In the influential case of *United States ex rel. Michels v. James*,⁵⁶ the court considered a Senate amendment increasing the rate of postage which had been added to a House appropriations measure. In deciding whether a particular bill was a bill for raising revenue, the principle behind the origination clause had to be considered.⁵⁷

The court reasoned that revenue bills are bills which either directly or indirectly impose taxes, duties, imposts, or excises for the government's use.⁵⁸ The revenues so derived are exacted with no direct equivalent value being returned. It was therefore reasonable that the House of Representatives, being the house most accountable to the people, would have the exclusive power to originate revenue legislation.⁵⁹ The safeguard of popular accountability would ensure that the House would be especially watchful for the interests of those whom they represented.⁶⁰ Under this reasoning, an amendment increasing the postage rate would not be within the origination clause.

But the reason fails in respect to bills of a different class. A bill regulating postal rates for postal service, provides an equivalent for the money which the citizen may choose voluntarily to pay. He gets the fixed service for the fixed rate, or he lets it alone, as he pleases and as his own interests dictate. Revenue, beyond its cost, may or may not be derived from the service and the pay received for it, but it is only a

55. *Id.* at 317. The Court preceded its adoption of the lower court opinion with the admonition that it was not intimating that the Court had the power, after an act of Congress had been promulgated, "to inquire in which House it originated for the purpose of determining its validity." *Id.* A student comment extensively analyzes the justiciability issues and concludes that origination clause challenges should be heard by the courts. Comment, *supra* note 12, at 431-54.

56. 26 F. Cas. 577 (C.C.S.D.N.Y. 1875) (No. 15,464).

In addition to the cases discussed in the text, see *Varney v. Warehime*, 147 F.2d 238 (6th Cir.), *cert. denied*, 325 U.S. 882 (1945) (milk product assessment regulation and authorizing statute not a revenue bill); *Bertelsen v. White*, 65 F.2d 719 (1st Cir. 1933) (Merchant Marine Act not a bill to raise revenue, but one to establish American merchant marine on a firm and permanent basis; furthermore, the incidental tax provisions diminish, not increase, the revenue of the government); *United States v. Lucius Beebe & Sons*, 122 F. 762 (1st Cir. 1903) (noting that tariff act was a revenue bill within origination clause); *United States v. Billings*, 190 F. 359 (S.D.N.Y. 1911), *rev'd on other grounds sub nom.*, *Pierce v. United States*, 232 U.S. 290 (1914) (In *Billings* the Senate tax amendment to House revenue bill was not invalid; not for court to determine whether the amendment was outside the purposes of the original bill).

57. *James*, 26 F. Cas. at 578.

58. *Id.*

59. *Id.*

60. *Id.*

very strained construction which would regard a bill establishing rates of postage as a bill for raising revenue, within the meaning of the constitution. This broad distinction existing in fact between the two kinds of bills, it is obviously a just construction to confine the terms of the constitution to the case which they plainly designate.⁶¹

Hubbard v. Lowe,⁶² is the only case striking down a federal law on the basis of violation of the origination clause. Ironically, the enrolled bill doctrine helped seal the fate of the statute, as the enrolled bill doctrine will in many instances preclude an origination clause challenge.⁶³ The Cotton Futures Act originated in the Senate as requiring the use by cotton exchanges of a form of contract for cotton futures.⁶⁴ The law's sanction would exclude from the mails all exchange business not using the statutory contract.⁶⁵ The House struck out the entire bill after the enacting clause and substituted a new act with a destructive excise tax as the penalty for non-compliance.⁶⁶ As the parties in *Hubbard* had conceded that the Cotton Futures Act as passed was a revenue bill,⁶⁷ the court found the bill to have been originated in the Senate, as reflected in the enrolled bill.⁶⁸ The court recognized that its action in striking down

61. *Id.* In contrast, in 1925, a Senate bill to reclassify postal salaries and increase postal rates, similar to the statute upheld in *James*, was returned by the House to the Senate after the House sustained a point of order that the bill infringed on its prerogative. 6 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES § 317 (1935) [hereinafter CANNON'S PRECEDENTS]. The Senate had earlier rejected a point of order on the same ground. The reasoning of the *James* court was criticized in Sargent, *supra* note 12, at 338.

62. 226 F. 135 (S.D.N.Y. 1915), *appeal dismissed mem.*, 242 U.S. 654 (1916).

63. Under the enrolled bill doctrine, the only document examined by the court is the enrolled bill, signed by the President of the Senate and the Speaker of the House, and, in most cases, by the President. *See supra* note 16. Thusly limited, the court would be unable to discern when the bill became a "bill for raising revenue." The enrolled bill only documents the house of origin of the initial bill and the final text, not any amendments or deletions that occurred as the bill journeyed through the legislative process. In *Twin City Bank v. Nebeker*, 167 U.S. 196 (1897) and *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1910), for example, an origination clause challenge would have been totally precluded under the enrolled bill doctrine. As the court in *Hubbard* observed, the intervening congressional process in enacting the bill does not affect the origination issue. "What the Constitution requires to originate in the House of Representatives is not the final product of the legislative will, not the statute, but a project for a statute, which may by amendment take a very different shape by the time it is ready for promulgation as law." *Hubbard*, 226 F. at 138. *See also* Zeak v. United States, 84-1 U.S. Tax Cas. (CCH) ¶ 9340 (S.D. Ohio 1984) (discussing *Hubbard*).

64. United States Cotton Futures Acts, ch. 255, 38 Stat. 693 (1914).

65. *Hubbard*, 226 F. at 138.

66. *Id.*

67. *Id.* at 137. The Court observed that even though raising revenue was not the real purpose for the Cotton Futures Act, the Supreme Court decision of *McCray v. United States*, 195 U.S. 27 (1904), upholding a punitive tax on the sale of oleomargarine, prevented the court from examining the motives of Congress. The Cotton Futures Act was really meant to prohibit certain activity by the imposition of onerous taxes; however, the statute was described in its title as a tax bill and the statute provided the machinery of levy and collection. *Hubbard*, 226 F. at 137.

68. *Id.* at 138-39. The constitutional necessity for the enrolled bill showing its origination is compelled by article 1, section 7, clause 2 of the Constitution, which requires the President, if he

a federal law as violating the origination clause was unprecedented: “[i]t has not heretofore been found necessary to condemn an act of Congress for this kind of careless journey work, though it sometimes required a good deal of mental strain to demonstrate that some piece of legislation originating in a Senate was not a ‘bill for raising revenue.’”⁶⁹ The court then found the act unconstitutional.⁷⁰

2. Recent Cases

a. TEFRA

The peculiar legislative history surrounding passage of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)⁷¹ has led to a large number of origination clause cases. The courts have uniformly upheld TEFRA as not violating the origination clause.⁷² TEFRA originated in the House of Representatives as the Miscellaneous Revenue Act of 1981.⁷³ As passed by the House, the net effect of the act would have been

objects to a proposed bill, to return the bill and his objections “to that House in which it shall have originated.” See generally, McGowan, *The President's Veto Power: An Important Instrument of Conflict in Our Constitutional System*, 23 SAN DIEGO L. REV. 791 (1986); Zinn, *The Veto Power of the President*, 12 F.R.D. 207 (1952). The court felt that *Field v. Clark*, 143 U.S. 649 (1892), was controlling; but even if not controlling, was well-based and should be followed. *Hubbard*, 226 F. at 139. In dicta, the court observed that assuming the legislative journals to be competent evidence, the result of unconstitutionality would remain. *Id.* The House substituted by amendment. Under accepted parliamentary procedure, substitution by amendment does not change the origin of the bill. The alternative for the House was to reject the Senate bill, and pass its own bill on the subject. *Id.* at 139-40. To avoid the extra parliamentary steps that process would invoke, the House substituted by amendment. “This was legitimate amendment, as that word is used in parliamentary law, and though an amendment may be the most important part of an act, it remains formally only an addition or subtraction; it has no independent parliamentary vitality.” *Id.* at 140.

69. *Id.* (rejecting an apparent argument that the origination clause was not mandatory). As the Court noted “[i]f these courts had not assumed that a revenue bill of Senate origin was a nullity, why spend so much time in proving that the act under consideration was not such a bill?” *Id.* But see *Mikell v. School Dist.*, 359 Pa. 113, 58 A.2d 339 (1948), where the Pennsylvania Supreme Court first found the challenged act not to be a bill for raising revenue, and then gratuitously opined that the origination clause, in any event, was only directory. *Id.* at ___, 58 A.2d at 341-44.

70. *Hubbard*, 226 F. at 141. “It is one of those legislative projects which, to be law, must originate in the lower house.” *Id.* Rejecting the argument that the Supreme Court’s admonition in *Rainey* (see *supra* notes 54-55 and accompanying text) precluded the court from considering the act’s constitutionality, the court responded by noting that its actions were consistent with the enrolled bill doctrine as set forth in *Field v. Clark*, 143 U.S. 649 (1892). Looking behind the enrolled bill was unnecessary; the enrolled bill itself conclusively established its origination in the Senate. *Hubbard*, 226 F. at 141.

71. Pub. L. No. 97-248, 96 Stat. 324 (1982).

72. Several courts have also rejected TEFRA origination clause challenges on the procedural basis that the plaintiff pursued the wrong remedy. See *Graham v. United States*, 573 F. Supp. 848 (E.D. Pa. 1983) (Anti-Tax Injunction Act precluded injunctive relief); *Klingler v. Executive Branch*, 572 F. Supp. 589 (M.D. Ala. 1983) (declaratory relief and injunctive relief precluded by the Anti-Tax Injunction Act).

73. The legislative history is narrated in *Moore v. House of Representatives*, 553 F. Supp. 267,

to reduce revenues by \$976 million over five years.⁷⁴ Upon receipt by the Senate, however, the Finance Committee struck most of the House bill after the enacting clause, renamed it TEFRA, and substituted tax provisions designed to *raise* revenue in the amount of \$99 billion over three years.⁷⁵ TEFRA, as so designated, passed the Senate, and the Senate subsequently sought a conference with the House. In response, Representative Rousselot offered a privileged resolution declaring that it was the House's opinion that the Senate's action violated the House's constitutional prerogative.⁷⁶ The resolution was tabled by a substantial majority upon motion by the chairman of the House Ways and Means Committee.⁷⁷ The chairman, Dan Rostenkowski, then moved that the House send the bill to conference with the Senate. The motion passed after a considerable debate on constitutional issues.⁷⁸ Subsequently, a conference bill which was substantially similar to the Senate bill was reported to the House.⁷⁹ Representative Rousselot filed a second resolution asserting the House's prerogative, but the resolution was voted down.⁸⁰ The conference bill passed both houses, and was signed into law by President Reagan.⁸¹

In *Armstrong v. United States*,⁸² the leading appellate decision,⁸³ the

269-70 (D.D.C. 1982), *aff'd on other grounds*, 733 F.2d 946 (D.C. Cir. 1984), *cert. denied*, 409 U.S. 1106. See also Hoffer, *supra* note 21, at 18-20. The peculiar legislative history was compelled by political events. The democratic-controlled House did not want to bear responsibility for originating a massive tax increase, and by relinquishing its constitutional prerogative, permitted the republican Senate and President to assume that burden. While perhaps a wise political decision, the House's action was directly contrary to the principle of the origination clause: to place responsibility for revenue bills directly on the House, which is the body most accountable to the people. Comment, *supra* note 12, at 449-50.

TEFRA is not the first revenue act passed with an eye towards expediency and in disregard of the House's constitutional prerogatives. In 1883, for example, the House permitted the Senate to add to a minor bill affecting the tobacco industry a whole plan of tariff revision. See Sargent, *supra* note 12, at 350; 2 HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES § 1491 (1907) [hereinafter HINDS' PRECEDENTS].

74. *Moore*, 553 F. Supp. at 269.

75. *Id.*

76. A resolution asserting the House's constitutional prerogatives is the usual way to legislatively assert origination clause issues. 3 DESCHLER'S PRECEDENTS OF THE UNITED STATES HOUSE OF REPRESENTATIVES § 13 (1974) [hereinafter DESCHLER'S PRECEDENTS].

77. *Moore*, 553 F. Supp. at 269.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 270.

82. 759 F.2d 1378 (9th Cir. 1985).

83. Other appellate decisions affirming the constitutionality of TEFRA on the merits include *Hudson v. United States*, 766 F.2d 1288 (9th Cir. 1985); *Jolly v. United States*, 764 F.2d 642 (9th Cir. 1985); *Boday v. United States*, 759 F.2d 1472 (9th Cir. 1985); *Harris v. United States*, 758 F.2d 456 (9th Cir. 1985); *Wardell v. United States*, 757 F.2d 203 (8th Cir. 1985); *Heitman v. United*

court of appeals rejected a claim by a taxpayer seeking a refund of a portion of an airplane excise tax. The court first found that the taxpayer had presented a justiciable controversy.⁸⁴ The taxpayer claimed that since the tax bill which eventually became TEFRA had originated in the House as a revenue-reducer, and had been amended in the Senate to increase revenue, the bill had originated in the Senate as a bill "for raising revenue."⁸⁵ The taxpayer sought to restrict the origination clause to bills increasing revenue.⁸⁶ The court rejected the claim, finding that the origination clause applied as well to bills decreasing revenue.⁸⁷

The court based its construction on the accepted legislative practice that the Senate may not initiate any "bill for raising revenue."⁸⁸ Furthermore, the taxpayer's position would cause immense practical difficulties, since members of Congress could have differences on whether a particu-

States, 753 F.2d 33 (6th Cir. 1984).

84. The government had contended that Congress' determination that TEFRA had originated in the House should be given deference. The court rejected the contention, observing that "[a]lthough Congress has an obligation to enact legislation that it deems to be constitutional, its determination that a particular statute is constitutional does not foreclose or relieve this court from conducting its own analysis of that issue." *Armstrong*, 759 F.2d at 1380. The court examined the criteria set forth in *Baker v. Carr*, 369 U.S. 186 (1962), to determine whether the origination clause issue was a non-justiciable political question, noting that the historical sequence was undisputed, thus relieving the court of the necessity to delve into the "internal records or workings of Congress." *Armstrong*, 759 F.2d at 1380. The court concluded that the Supreme Court in *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911), had implicitly determined origination clause questions to be justiciable. In *Texas Ass'n of Concerned Taxpayers v. United States*, 772 F.2d 163 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 2265 (1986), however, the court found an origination clause challenge to TEFRA to be non-justiciable. Finding the term "raising revenue" to be ambiguous, the court found no judicially discoverable standards of resolution superior to the determinations made by Congress. *Id.* at 166. Restricting the clause to bills increasing revenue would create uncertainty. *Id.* The House debates on TEFRA's constitutionality were also entitled to deference by the court. *Id.* Finally, the court relied on the enrolled bill doctrine. *Id.* Justices White and Brennan would have granted certiorari to resolve the justiciability issue, noting that in *Flint*, 220 U.S. 107, a case distinguished by the Fifth Circuit, the Court addressed an origination clause case on the merits. *Texas Ass'n*, 106 S.Ct. at 2266. See generally Comment, *supra* note 12 (historical analysis of policy considerations behind adoption of the origination clause which is used to determine proper interpretation and application of the clause).

85. *Armstrong*, 759 F.2d at 1381.

86. *Id.*

87. *Id.* "We cannot accept this restrictive and strained reading of the origination clause. The term 'Bills for raising Revenue' does not refer only to laws *increasing* taxes, but instead refers in general to all laws *relating to* taxes." *Id.* (emphasis in original). It is somehow appropriate that the court *expansively* construed the origination clause in order to sustain the statute. Federal and state courts normally have construed the origination clause narrowly to sustain acts, sometimes employing "a good deal of mental strain." *Hubbard v. Lowe*, 226 F. 135, 140 (S.D.N.Y. 1915), *appeal dismissed mem.*, 242 U.S. 654 (1916). The state courts have split on whether a bill that decreases revenue falls within the origination clause. The cases are collected in Annotation, *supra* note 16, at 977 § 4. Compare, *Perry County v. Selma, Marion & Memphis Ry. Co.*, 58 Ala. 546 (1877) (yes) with *In re Paton's Estate*, 114 N.J. Eq. 324, 168 A. 422 (Prerog. Ct. 1933) (no).

88. *Armstrong*, 759 F.2d at 1381, *citing* 2 HINDS' PRECEDENTS, *supra* note 73, § 1489.

lar bill would increase or decrease revenue.⁸⁹ Indeed, the same revenue bill could have varying effects from year to year.⁹⁰ Finally, the court was unwilling to accept a construction which would prohibit the Senate from amending a House bill lowering revenue so as to transform the bill into one increasing revenue.⁹¹ The Senate's power of amendment, as contained in the origination clause, was not that limited.⁹²

In *Moore v. United States House of Representatives*,⁹³ the District of Columbia Circuit Court of Appeals first reversed the district court's de-

89. *Armstrong*, 759 F.2d at 1381.

90. *Id.*

91. *Id.*

92. *Id.* The origination clause permits the Senate "to propose or concur with amendments as on other bills." *Id.* (emphasis by court). The *Armstrong* court found that the Senate amendments, although far-reaching, were "germane to the subject matter of the bill," which was the reform of the tax system. *Id.* at 1382. The Senate's power of amendment is critically analyzed in Hoffer, *supra* note 21, at 7-18. The scope of the amendment power has been the source of considerable congressional discussion. The House has properly insisted on a germaneness restriction upon the Senate's power of amendment. See 2 HINDS' PRECEDENTS, *supra* note 73, § 1489. Representative Garfield (soon to be President) articulated the House's position:

True we sent to the Senate a bill of three or four lines, and they have sent back a bill of twenty printed pages. I do not deny their right to send back a bill of a thousand pages as an amendment to our two lines. But I do insist that their thousand pages must be on the subject-matter of our bill.

Cong. Globe, 42nd Cong., 1st Session, 2716 (1872). See also *supra* note 53.

The court in *Armstrong* found the Supreme Court decision in *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911) influential, if not controlling. The district court decisions validating TEFRA have, for the most part, relied primarily on *Flint*. See, e.g., *Schoffner v. United States*, 627 F. Supp. 167 (S.D. Ohio 1985); *Morris v. United States*, 616 F. Supp. 246 (E.D. Mich. 1985); *House v. United States*, 593 F. Supp. 139 (W.D. Mich. 1984), *aff'd mem.*, 787 F.2d 590 (6th Cir. 1986); *Vaughn v. United States*, 589 F. Supp. 1528 (W.D. La. 1984); *Liljenfeldt v. United States*, 588 F. Supp. 966 (E.D. Wis.), *aff'd mem.*, 753 F.2d 1077 (7th Cir. 1984); *Karpowycz v. United States*, 586 F. Supp. 48 (N.D. Ill. 1984); *Scull v. United States*, 585 F. Supp. 956 (E.D. Va. 1984); *Rowe v. United States*, 583 F. Supp. 1516 (D. Del. 1984), *aff'd mem.*, 749 F.2d 27 (3d Cir. 1984); *Aune v. United States*, 582 F. Supp. 1132 (D. Ariz. 1984), *appeal dismissed in part, judgment aff'd mem.*, 765 F.2d 148 (9th Cir. 1985); *Brennan v. Commissioner*, 581 F. Supp. 28 (E.D. Mich. 1984); *Ueckert v. United States*, 581 F. Supp. 1262 (D.N.D. 1984) (Senate action precisely the kind of change and compromise contemplated by the origination clause); *Gimelli v. United States*, 84-1 U.S. Tax Cas. (CCH) ¶ 9289 (E.D. La. 1984); *Stamp v. Commissioner*, 579 F. Supp. 168 (N.D. Ill.), *aff'd*, 752 F.2d 187 (6th Cir. 1984); *Milazzo v. United States*, 578 F. Supp. 248 (S.D. Cal. 1984); *Kloes v. United States*, 578 F. Supp. 270 (W.D. Wis. 1984) (All the Constitution requires is that the House, the body closest to the people, make the original decision to introduce and pass a revenue raising bill. Only two possible constructions of the clause are practical: either the Senate can amend at will, or it cannot amend at all. The Convention chose to permit the Senate full participation in the process, once the House has passed a revenue bill; otherwise, a cloud would exist any time the Senate amended a revenue bill in any manner.); *Tibbetts v. Secretary of the Treasury*, 577 F. Supp. 911 (W.D.N.C. 1984); *Bearden v. Commissioner*, 575 F. Supp. 1459 (D. Utah 1983); *Frent v. United States*, 571 F. Supp. 739 (E.D. Mich. 1983), *appeal dismissed and remanded mem.*, 734 F.2d 14 (6th Cir. 1984).

93. 733 F.2d 946 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1106 (1985).

The question of standing is beyond the scope of this article. See generally, Comment, *supra* note 12 (criticizing the district court decision in *Moore*). The issue of congressional standing is analyzed in Dessem, *Congressional Standing to Sue: Whose Vote is this, Anyway?*, 62 NOTRE DAME L. REV. 1 (1986).

termination that House members did not have standing to raise an origination clause issue, but then refused to grant relief.⁹⁴ The court exercised its remedial discretion⁹⁵ to conclude that court intervention was inappropriate. The court was concerned about possible misuse by members of Congress in shifting their intermural disputes to the courts.⁹⁶ The doctrine of remedial discretion permitted the court to avoid meddling in the internal affairs of the legislature by evaluating the separation of powers concerns raised by suits of congressional members against their colleagues.⁹⁷ However, the court observed that denial of relief in this case would not preclude origination clause challenges by private taxpayers.⁹⁸

b. *Non-TEFRA Cases*

In *Mulroy v. Block*,⁹⁹ a New York dairy farmer sought to enjoin the Secretary of Agriculture from collecting sums pursuant to amendments to the milk price support system. Among other contentions, the farmer claimed that the penalties sought to be imposed were actually a tax, and that the act authorizing the penalties was therefore a bill "for raising revenue" which required House origination.¹⁰⁰ The court first found the

94. *Moore*, 733 F.2d at 955-56.

95. *Id.* (relying on *Brillhart v. Excess Insurance Co.*, 316 U.S. 491 (1942); *Wilderness Soc'y v. Morton*, 479 F.2d 842 (D.C. Cir.), *cert. denied*, 411 U.S. 917 (1973)). Judge (now Justice) Scalia would have affirmed the district court on standing grounds and objected vigorously to the remedial discretion doctrine. *Moore*, 733 F.2d at 956-65. Invocation of the remedial discretion principle in origination clause challenges was criticized in the context of *Moore* in Comment, *supra* note 12, at 442-43. See also Henken, *Is there a "Political Question" Doctrine?*, 85 YALE L.J. 597 (1976).

96. *Moore*, 733 F.2d at 956.

97. *Id.*

98. *Id.*

99. 569 F. Supp. 256 (N.D.N.Y. 1983), *aff'd*, 736 F.2d 56 (2d Cir. 1984), *cert. denied*, 469 U.S. 1159 (1985); see also *Moon v. Freeman*, 379 F.2d 382 (9th Cir. 1967) (in dicta, the court found that provisions of two agriculture acts requiring purchase of wheat marketing export certificates were not revenue provisions, noting that Congress had faced the issue and acted as if the provisions were enacted pursuant to the commerce power); *United States v. Ramos*, 624 F. Supp. 970 (S.D.N.Y. 1985) (statute authorizing special assessments on convicted persons not a revenue measure requiring House origination, because statute's purpose was to punish convicted criminals, not to raise revenues); *Sperry Corp. v. United States* 12 Cl. Ct. 736 (1987) (revenue raising aspects of Senate-originated Iran claims Act, permitting the United States to deduct and to retain a specified percentage from any award of Iran claims tribunal, was only incidental to the main purposes of the act: to expedite settlement of claims against Iran and to pass on the cost of maintaining the claims tribunal to those who ultimately received the greatest benefit from the claims procedure). In *Leary v. United States*, 395 U.S. 6, 21 (1969), the Court observed that the Marijuana Tax Act was a taxing measure properly originating in the House. *Cf. State v. Block*, 717 F.2d 874 (4th Cir. 1983), *cert. denied*, 465 U.S. 1080 (1984) (Secretary of Agriculture's action in imposing a fifty cent deduction on proceeds derived from sales of commercially produced milk not a tax requiring origination in the House of Representatives).

100. *Mulroy*, 569 F. Supp. at 265.

act in question not to be one for raising revenue, noting that a bill which incidentally creates revenue is not automatically a bill for raising revenue.¹⁰¹ The court determined that the principal purpose of the act's penalties was the regulation of milk production, not the raising of revenue. "[W]hatever assessments are imposed are but means to the purpose provided by the Act."¹⁰²

Examining the legislative history, the court proceeded to find that the act did in fact originate in the House.¹⁰³ The House bill did not include the assessment which was added by the Senate. Nevertheless, as the Senate amendment was germane to the subject matter of the House bill, the legislation did not violate the origination clause.¹⁰⁴

In *Swearingen v. United States*,¹⁰⁵ a taxpayer maintained an action seeking to recover taxes assessed by the United States. The taxpayer claimed that an international executive agreement implementing the Panama Canal Treaty, as well as the treaty itself, exempted from taxation certain income derived by employees of the Panama Canal Commission.¹⁰⁶ The court first found the executive agreement provision invalid as conflicting with the Internal Revenue Code.¹⁰⁷ The court then determined that the treaty itself contained no such exemptions.¹⁰⁸ In dicta, the court observed that even if such an exemption were construed to be part of the treaty, that exemption would still be invalid as being "in contravention of the exclusive constitutional authority of the House of Representatives to originate all bills for raising revenues."¹⁰⁹

101. *Id.* (quoting *United States v. Norton*, 91 U.S. 566, 569 (1875), which in turn quoted J. STORY, COMMENTARIES ON THE CONSTITUTION, § 880).

102. *Id.*

103. *Id.* The court quoted the disclaimer of the Supreme Court in its *Flint* decision. In making a determination that the House had indeed originated the Act, the court did *not* hold that the legislative journals could be reviewed to invalidate an act of Congress properly evidenced by the enrolled bill. *Id.* The Court did specifically invoke the enrolled bill doctrine to preclude a challenge based on the House and Senate's alleged failure to comply with their internal rules forbidding the insertion of new matter into conference bills. *Id.* at 266. In its actions, as opposed to its words, the court seemed to properly draw a distinction between *constitutional* procedural requirements and *legislative* or *internal* procedural requirements. Application of the enrolled bill doctrine is properly applied in a more vigorous manner in the latter case than in a case involving a constitutional provision. See *Opinion of the Justices*, 233 A.2d 59, 61 (Del. 1967).

104. *Mulroy*, 569 F. Supp. at 266.

105. 565 F. Supp. 1019 (D. Colo. 1983).

106. *Id.* at 1020.

107. *Id.* at 1021.

108. *Id.*

109. *Id.* at 1022 (citing *Edwards v. Carter*, 580 F.2d 1055, 1058 (D.C. Cir.), *cert. denied*, 436 U.S. 907 (1978)). The court therefore implicitly accepted the view that bills which have the effect of reducing revenue are nevertheless bills "for raising revenue." In *Edwards*, the court upheld the Panama Canal Treaty against a challenge that in disposing of American property, the treaty required

D. *Federal Parliamentary Precedent*

While legislative construction of constitutional provisions is not controlling upon the courts,¹¹⁰ legislative construction is entitled to substantial deference in the judicial construction of the particular clause in question.¹¹¹ Congressional precedent concerning the scope of the origination clause should be particularly relevant.¹¹² The precedents of both houses establish that, in general, Congress has been attuned to the policies which led to inclusion of the origination clause in the Constitution¹¹³ as these policies have been construed by the federal courts.

1. House of Representatives

A challenge to a Senate-originated bill as violating the House's constitutional prerogative is addressed to and decided by the House, not the

House concurrence. In discussing the issue, both the majority, *Edwards*, 580 F.2d at 1058, and the dissent, *id.* at 1070, agreed that the origination clause restricted the scope of the treaty clause, prohibiting "the use of the treaty power to impose taxes." *Id.* at 1070. See Sargent, *supra* note 12, at 342-45.

110. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); *The Propeller Genesee Chief v. Fitzhugh*, 53 U.S. (12 How.) 233 (1851); 16 AM. JUR. 2D *Constitutional Law* § 126 (1979); see also *May v. Rice*, 91 Ind. 546 (1883). In addition, executive constructions of a constitutional provision may also be persuasive. 16 AM. JUR. 2D *Constitutional Law* § 127 (1979). Research was therefore undertaken to ascertain if the United States Attorney General had ever issued an opinion on the origination clause. Only one opinion was found where the clause was mentioned, even in passing. 43 Op. Att'y Gen. 18 (1977). As to the ability of an attorney general to declare a statute unconstitutional, see Gornish, *The Attorney General's Authority to Advocate and Advise the Constitutional Invalidity of Statutes*, 82 DICK. L. REV. 635 (1978) (concerning Pennsylvania attorney general). See also Rhodes, *'Opinions of the Attorney General' Revived*, 64 A.B.A.J. 1374 (1978); Comment, *An Attorney General's Standing Before the Supreme Court to Attack the Constitutionality of Legislation*, 26 U. CHI. L. REV. 624 (1959); Comment, *The Confrontation of the Legislative and Executive Branches: An Examination of the Constitutional Balance of Powers and the Role of the Attorney General*, 11 PEPPERDINE L. REV. 331 (1984). The Office of Legal Counsel to the United States Attorney General has addressed the attorney general's duty to defend the constitutionality of statutes in two recent opinions: 5 Op. Off. Legal Counsel 25 (1981); 4A Op. Off. Legal Counsel 55 (1980).

111. *The Pocket Veto Case*, 279 U.S. 655 (1929); *Field v. Clark*, 143 U.S. 649, 683 (1892); *United States v. Norton*, 91 U.S. 566, 569 (1875) ("[t]he construction of this limitation [the origination clause] is practically well settled by the uniform action of Congress"); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); 16 AM. JUR. 2D *Constitutional Law* § 126 (1979).

112. As the origination clause primarily is an issue of the relative powers of the two branches of Congress, the legislative precedents should be particularly relevant. Cf. Glennon, *The Use of Custom in Resolving Separation of Powers Disputes*, 64 B.U.L. REV. 109 (1984) (developing criteria under which custom is to be used in evaluating disputes concerning separation of powers). Congressional precedent involving the origination clause is discussed in Hoffer, *supra* note 21, at 11-12; Sargent, *supra* note 12, at 341-42, 347-48.

113. It is perhaps this attitude, in conjunction with the lack of advisory opinions in federal court, that reduces the possible number of origination clause challenges. See Comment, *supra* note 12, at 432 n.74 (noting use of advisory opinions in state courts to address origination clause disputes). But see 2 W. WILLOUGHBY, *CONSTITUTION OF THE UNITED STATES* § 365 (2d ed. 1929) (noting conflicts between the two houses).

speaker.¹¹⁴ It is a privileged motion.¹¹⁵ If the House decides that the bill trespasses upon its prerogative, the House will return the bill to the Senate with a resolution communicating the House's position.¹¹⁶ In many instances the House has objected to Senate-originated measures as being revenue bills.¹¹⁷ Examples of bills and joint resolutions returned to the Senate include: (1) a Senate bill proposing to amend the Silver Purchase Act;¹¹⁸ (2) a Senate bill proposing to amend tariff legislation;¹¹⁹ (3) a Senate bill proposing to exempt from taxation Olympic game receipts;¹²⁰ (4) a Senate joint resolution authorizing the President to make a redetermination of the Cuban Sugar Quota;¹²¹ (5) a Senate bill authorizing the President to raise the duty on fishery products;¹²² and (6) Senate amendments adding revenue measures to House non-revenue bills.¹²³

The House advocates that it has the "sole and exclusive privilege to originate all bills directly affecting the revenue, whether such bills be for the imposition, reduction or repeal of taxes, . . . subject to the right of the Senate to 'propose or concur with amendments, as in other bills.'" ¹²⁴

114. 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 13 (1974); 2 HINDS' PRECEDENTS, *supra* note 73, § 1490.

115. 3 DESCHLER'S PRECEDENTS, *supra* note 76, §§ 14.1, 14.2; 2 HINDS' PRECEDENTS, *supra* note 73, § 1487.

116. 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 13. In *Zeak v. United States*, 84-1 U.S. Tax Cas. (CCH) 83,789 (S.D. Ohio 1984), the Court found persuasive that the House, after considerable debate, defeated on two separate occasions resolutions declaring TEFRA violative of the House's constitutional prerogatives. "Although it is not conclusive, it is certainly relevant and persuasive evidence suggesting the constitutionality of section 6702 [of TEFRA]." *Id.* at 83,793. Alternatively, the House may elect to pass a House bill instead of a pending Senate bill. 3 DESCHLER'S PRECEDENTS, *supra* note 76, §§ 13, 18.1-18.4. The action of the House in reporting out a House bill will resolve any judicial issue concerning the origination clause, as the courts will not look behind the bill number. *Id.* § 13.

117. In addition to the instances cited in the text, see also 6 CANNON'S PRECEDENTS, *supra* note 61, § 316 (Senate bill proposing gasoline tax for District of Columbia), § 317 (Senate bill proposing increase in postage rates); 2 HINDS' PRECEDENTS, *supra* note 73, § 1481 (Senate bill enlarging scope of House bill), § 1487 (Senate bill to repeal part of income tax law), § 1489 (Senate substitution of bill generally revising import duty and internal tax provisions for House bill repealing existing duties on tea and coffee); 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 15.7 (Senate bill to amend National Firearms Act). Additional citations to House rejection of Senate bills can be found in F. RIDDICK, *SENATE PROCEDURE: PRECEDENTS AND PRACTICES* 985 n.1 (1974).

118. 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 15.1.

119. *Id.* §§ 15.2, 15.6.

120. *Id.* § 15.3.

121. *Id.* § 15.4.

122. *Id.* § 15.5.

123. *Id.* § 15.8; 2 HINDS' PRECEDENTS, *supra* note 73, § 1485 (Senate Revenue amendment to House appropriation bill), § 1493 (same), § 1495 (House bill to establish postal routes amended by Senate to provide franking privilege; setting new postal rates deemed by House to be a revenue measure); see also 2 W. WILLOUGHBY, *supra* note 113, § 365.

124. 2 HINDS' PRECEDENTS, *supra* note 73, § 1489 (quoting the House resolution addressing its constitutional prerogative, passed unanimously in 1872 in response to the Senate's action in originat-

However, the House has also taken the position, although not consistently, that the presence of a revenue section incidental to the main purpose of the statute is not a violation of its constitutional prerogative.¹²⁵ A controversy exists over whether the origination clause applies to appropriations bills.¹²⁶ In general, the construction placed by the House on its constitutional prerogative is, understandably, a broader one than that placed upon the clause by the courts — but only slightly so.¹²⁷

2. The Senate

As in the House, a question concerning the constitutionality of a

ing a bill reducing internal taxes).

125. See 6 CANNON'S PRECEDENTS, *supra* note 61, § 315. *But see id.* § 317 (objecting to Senate bill with incidental provisions relating to revenue).

126. The controversy is reviewed in Sargent, *supra* note 12, at 345-59 (concluding that Senate does have power to originate appropriation bills); T. NICOLA, PARLIAMENTARY LAW AND PROCEDURE REGARDING ORIGINATION OF REVENUE LEGISLATION 16-17 (Congressional Research Service Report No. 222A). Appropriation bills, unlike revenue bills, are bills in which Congress "earmarks funds already in the treasury for specific governmental purposes." Comment, *supra* note 12, at 421 n.14. The few federal and state cases on this point are collected in Annotation, *supra* note 16, at 973, 978. The House has taken the position that legislative custom, if not constitutional prescription, requires general appropriation bills to be introduced into the House. See 3 DESCHLER'S PRECEDENTS, *supra* note 76, §§ 20, 20.2, 20.3; 2 HINDS' PRECEDENTS, *supra* note 73, §§ 1500, 1501; 6 CANNON'S PRECEDENTS, *supra* note 61, §§ 319-22. The Senate has disagreed, most notably in a resolution addressing the issue. 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 20.1. See Sargent, *supra* note 12, at 345-49. See also 2 W. WILLOUGHBY, *supra* note 113, § 366 (noting custom that important appropriation bills are introduced into the House, although there is no constitutional compunction to do so); S. MILLER, *supra* note 12, at 204-05 (supporting Senate's right to originate appropriation bills); 1 J. TUCKER, *supra* note 27, § 211 (examining legislative dispute and concluding that reason for reposing revenue origination in House does not exist as to appropriations, as the burdens on the taxpayers remain the same); A. PRESCOTT, *supra* note 21, at 433-51, 733 (Madison chronicles deletion of provision requiring appropriation bills to originate in House, originally part of origination clause; later motion to require appropriation bills to originate in House as part of what eventually became U.S. CONST. art. I, § 9, cl. 6; defeated 10-1); J. PRESSMAN, HOUSE V. SENATE: CONFLICT IN THE APPROPRIATION PROCESS 2 (1966) (noting tradition of House origination of appropriation bills).

127. In addition to the obvious institutional pressure on the House to broadly interpret the scope of its prerogative, another reason for a greater Congressional assertion than is supported by the judicial precedents is that while a statute carries a presumption of constitutionality before the courts (as well as the protection of the enrolled bill doctrine), a bill reported to the Senate or House carries no equal presumption. T. NICOLA, *supra* note 126, at 10-11. See *supra* note 61 and accompanying text (noting disparate judicial and House treatment of postal legislation). In the following instances, the House rejected a resolution asserting an origination clause challenge. 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 16.1 (Senate amended House bill relating to excise tax rates by adding general surtax on income), § 17.1 (Senate joint resolution authorizing Secretary of Treasury to use proceeds from certain securities to effectuate English-American debt agreement subject to House privilege resolution; the House resolution was referred to committee from which it never emerged; the Senate joint resolution was eventually passed); 6 CANNON'S PRECEDENTS, *supra* note 61, § 322 (bond bill); 2 HINDS' PRECEDENTS, *supra* note 73, § 1490 (Senate amendment authorizing governmental obligations), § 1491 (Senate substituted act reducing internal revenue taxation for House bill on same general matter), § 1496 (Senate amendment to House tax bill). See also discussion on TEFRA, *supra* notes 71-98 and accompanying text.

measure originating in the Senate as being a bill for raising revenue is one for the Senate, not the chair, to decide.¹²⁸ The Senate has, on several occasions, determined that proposed measures violated the House's constitutional prerogative.¹²⁹ However, the Senate has determined that it has the constitutional authority to add to House bills, for example, regarding tax refund provisions, a tax on a commodity not set forth in the original House bill, and an amendment repealing the 1911 reciprocity act with Canada to a bill amending a tariff act.¹³⁰ The relatively slight number of disputes reported in the congressional authorities suggests that a fairly close reading of the origination clause is shared by the two houses.¹³¹

128. F. RIDDICK, *supra* note 117, at 43; 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 19.1.

129. 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 19.3 (Senate revenue amendment to Senate bill granting independence to the Philippines), § 19.4 (Senate amendment to House bill to repeal certain provisions relating to the publicity of income statements), § 19.5 (Senate deleted a tariff schedule it had previously proposed, and which had been returned by the House), § 19.6 (amendments to Internal Revenue Code deleted from Senate bill to make equity capital and long-term credit more readily available for small business concerns); 6 CANNON'S PRECEDENTS, *supra* note 61, § 316 (Senate bill providing gas tax for District of Columbia); 2 HINDS' PRECEDENTS, *supra* note 73, § 1482 (Senate bill to abolish duties and reduce taxes), § 1483 (motion for leave to introduce bill for gradual abolition of the duty on alum salt defeated), § 1486 (Senate revenue amendment deleted), § 1493 (after House objection, Senate deleted revenue amendment to House appropriation bill), § 1497 (Senate bill to suspend duty on coal for ninety days); *see also* F. RIDDICK, *supra* note 117, at 985.

130. F. RIDDICK, *supra* note 117, at 987; *see also* 2 HINDS' PRECEDENTS, *supra* note 73, § 1485 (Senate insisted on right to add revenue amendment to appropriation bill taking position that Senate has power to amend House revenue bills with any amendment which would be in order under Senate rules), § 1487 (Senate bill to repeal portions of act reducing internal taxes), § 1489 (Senate amendments to House revenue bill), § 1494 (Senate right to pass bills with incidental revenue provisions), § 1495 (Senate amendments providing new mailing fees to House bill setting postal routes).

131. *See* 3 DESCHLER'S PRECEDENTS, *supra* note 76, § 19.2 (Senate bill containing incidental revenue provision does not violate House prerogative). Deschler reports that the common understanding is that the Senate amendment power is broad, but not unlimited. *Id.* § 19. The Senate may substitute one kind of tax for one proposed by the House, but may not impose a tax if one had not originally been proposed by the House. *Id.* Furthermore, the Senate has conceded that the Senate's authority to attach revenue-raising amendments to House bills applies only to revenue bills. 2 HINDS' PRECEDENTS, *supra* note 73, § 1489. As to the Senate's power of amendment in the context of the origination clause, *see* Hoffer, *supra* note 21, at 7-20 (especially the discussion of congressional precedents at 11-12); Sargent, *supra* note 12, at 349-52. *See also* 1 N. SINGER, *supra* note 16, § 9.05. One treatise concludes that the Senate has used its power of amendment to undermine the House's origination prerogative by originating revenue measures under the guise of amendments. 1 J. NOWAK, R. ROTUNDA, & J. YOUNG, *supra* note 8, § 10.2(c). There have been at least two proposals to amend the Constitution to require that every act shall embrace but one subject matter, with an additional requirement that the subject be embraced within the title. Neither proposal went very far in the legislative process. H. AMES, *THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES* 251 (1896, reprint in 1970). Many state constitutions do contain limitations of this nature. *See* INDEX DIGEST OF STATE CONSTITUTIONS 603-04 (2d ed. 1959) & 170 (Cum. Supp. 1971).

III. THE STATES' EXPERIENCE: THE FEDERAL EXPERIENCE REPEATED

A. Introduction

The state courts have construed their respective origination clauses strictly.¹³² Indeed, most of the state courts have adopted the narrow reading of the origination clause employed by the federal courts in construing the federal origination clause.¹³³ By less strictly construing their respective clauses, Alabama, Idaho, and Louisiana appear to be exceptions to the general rule.¹³⁴ In contrast, Pennsylvania has literally read the clause out of its constitution.¹³⁵ Under the strict construction commonly employed, the following are not revenue bills: bills delegating taxing authority to local institutions,¹³⁶ bills which only incidentally raise

132. The availability of the advisory opinion mechanism in some state courts has facilitated challenges based on origination clause grounds. Of the states having origination clauses, Alabama, Colorado, Delaware, Maine, Massachusetts, and New Hampshire provide for advisory opinions. See ALA. CODE § 12-2-10 (1975); COLO. CONST. art. VI, § 3; DEL. CODE ANN. tit. 10, § 141 (1974); ME. CONST. art. VI, § 3; MASS. CONST. pt. 2, ch. 3, art. II; N.H. CONST. pt. 2, art. 74. See Field, *The Advisory Opinion — An Analysis*, 24 IND. L.J. 203 (1949); Stevens, *Advisory Opinions — Present Status and an Evaluation*, 34 WASH. L. REV. 1 (1959); Comment, *The State Advisory Opinion in Perspective*, 44 FORDHAM L. REV. 81 (1975); Note, *Advisory Opinions on the Constitutionality of Statutes*, 69 HARV. L. REV. 1302 (1956).

133. See, e.g., *Opinion of the Justices*, 102 N.H. 80, 150 A.2d 813 (1959); *Northern Counties Inv. Trust v. Sears*, 30 Or. 388, 41 P. 931 (1895); *Day Land & Cattle Co. v. State*, 68 Tex. 526, 4 S.W. 865 (1887); *Andrews v. Lathrop*, 132 Vt. 256, 315 A.2d 860 (1974). The extent to which a state court should rely on federal precedent construing a similar federal provision is a question of some controversy. See Matlz, *The Dark Side of State Court Activism*, 63 TEX. L. REV. 995 (1985); Williams, *In the Supreme Court's Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result*, 35 S.C.L. REV. 353 (1984); 2A N. SINGER, *supra* note 16, § 52.04 (use of construction of similar constitutional provisions in other states); 16 C.J.S. *Constitutional Law* § 33 (use of federal and state constitutional counterparts). A sample of the burgeoning literature on state constitutional law includes NettikSimmons, *Towards a Theory of State Constitutional Jurisprudence*, 46 MONT. L. REV. 261 (1985); Comment, *Rediscovering State Constitutions for Individual Rights Protection*, 37 BAYLOR L. REV. 463 (1985); Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977); Linde, *First Things First: Rediscovering the States' Bill of Rights*, 9 U. BALT. L. REV. 379 (1980); Linde, *E Pluribus-Constitutional Theory and State Courts*, 18 GA. L. REV. 165 (1984); Sager, *Foreword: State Courts and the Strategic Space Between the Norms and Rules of Constitutional Law*, 63 TEX. L. REV. 959 (1985).

134. See 1972-1974 Op. Att'y Gen. 159 (January 18, 1973) (Vt.) noting that Alabama has a long tradition of broad construction of the clause, and observing that Montana, Idaho, and Kentucky also have cases more liberally construing their respective origination clauses. Alabama's liberality in construing its origination clause may stem from the existence of the flexible Alabama advisory opinion practice. The advisory opinion permits the court to provide an early adjudication (especially when the bill is still in the legislative process) so as to minimize the disruption entailed when a bill is opined to violate the constitution. Comment, *supra* note 12, at 420 n.9. See also Note, *supra* note 132, at 1303-05. Louisiana's origination clause includes appropriation bills within its ambit. See *infra* notes 229-39 and accompanying text.

135. See *infra* notes 332-40 and accompanying text.

136. See cases collected in Annotation, *supra* note 16, at 984-86; 71 AM. JUR. 2D *State and Local Taxation* § 9; 82 C.J.S. *Statutes* § 12; 59 C.J. *Statutes* § 24; Sargent, *supra* note 12, at 338-40.

revenue pursuant to an exercise of the state's police or regulatory power;¹³⁷ and acts regulating or enforcing the collection of taxes.¹³⁸ In general, only bills which directly raise revenue for the state, which revenue is deposited into the state treasury to be used for general state purposes, are likely to be considered revenue bills.¹³⁹

The following survey is a detailed and comprehensive state-by-state analysis of origination clauses currently in effect.¹⁴⁰ The survey was designed to be exhaustive.¹⁴¹

137. See cases collected in Annotation, *supra* note 16, at 981-84; 1 N. SINGER, *supra* note 16, § 9.06; 71 AM. JUR. 2D *State and Local Taxation* § 9; 82 C.J.S. *Statutes* § 12; 59 C.J. *Statutes* § 24; Sargent, *supra* note 12, at 338-40.

138. See cases collected in Annotation, *supra* note 16, at 986-87.

139. 1 N. SINGER, *supra* note 16, § 9.06; 71 AM. JUR. 2D *State and Local Taxation* § 9; 59 C.J. *Statutes* § 24; 82 C.J.S. *Statutes* § 12; see, e.g., *Andrews v. Lathrop*, 132 Vt. 256, 315 A.2d 860 (1974); Opinion of the Justices, 249 Ala. 389, 31 So. 2d 558 (1947); Opinion of the Justices, 116 N.H. 351, 358 A.2d 667 (1976) (declaring tax statutes not within origination clause because revenue generated was to be used for a particular purpose).

140. The one exception in the survey is Montana. Montana no longer has an origination clause. However, the significance of the Montana court's decisions was such that inclusion of the Montana case law in the survey rather than relegation to a footnote seemed appropriate. Puerto Rico's constitution also contains an origination clause, P.R. CONST. art. III, § 17, which has apparently not been judicially construed.

Other states which at one time had an origination clause include Arkansas, ARK. CONST. OF 1868 art. V, § 19; Iowa, IOWA CONST. OF 1846 art. 3 § 16; Kansas, KAN. CONST. OF 1859 art. 2, § 12, *repealed*, 1864 (requiring all bills to originate in House of Representatives); Maryland, MD. CONST. OF 1776 pt. 2, art. X (requiring origination of all money bills in lower house); Mississippi, MISS. CONST. OF 1832 art. III, § 23; Nebraska, NEB. CONST. OF 1875 art. III, § 9, *repealed*, 1934 (requiring only *appropriation* bills to originate in House of Representatives); and Virginia, VA. CONST. OF 1830 art. III, § 10 (requiring all bills to be introduced into lower house; Senate's power of amendment dependent on lower house's consent). In addition, the Constitution of the Confederate States of America also contained an origination clause identical to the federal clause, CONFEDERATE CONST. OF 1861 art. I, § 7(1), *reprinted in* 20 ALA. LAW. 325 (1959). See W. SWINDLER, *SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS* (1987) for these repealed articles. Another useful series of reference materials is F. THORPE, *THE FEDERAL AND STATE CONSTITUTIONS* (1909). Two noteworthy cases not otherwise covered by the survey are *Fletcher v. Oliver*, 25 Ark. 289 (1868) (law authorizing levy of tax to build bridges and roads not revenue bill since taxes levied not to be used for general government purposes), and *State ex rel. Davis v. Cox*, 105 Neb. 75, 178 N.W. 913 (1920) (Senate bill appropriating money out of state treasury to enable school districts to purchase equipment struck down).

141. In an effort to canvass all the available interpretive law, the office of the attorney general of each state having an origination clause was contacted. The attorney general opinions so obtained are incorporated in appropriate parts of the survey. As to the opinion function of the state attorney general, see Abraham & Benedetti, *The State Attorney General: A Friend of the Court?*, 117 U. PA. L. REV. 795 (1969); Heiser, *The Opinion Writing Function of Attorneys General*, 18 IDAHO L. REV. 9 (1982); Larson, *The Importance and Value of Attorney General Opinions*, 41 IOWA L. REV. 351 (1956); Thompson, *Transmission or Resistance: Opinions of State Attorneys General and the Impact of the Supreme Court*, 9 VAL. U.L. REV. 55 (1974); Powers, *Duties and Operations of State Attorneys General*, 175-93 (National Ass'n of Atty's Gen. 1977). A useful though dated discussion of the availability of state attorney general opinions, with helpful bibliographical notes, can be found in Chanin, *The Opinions of the State Attorneys General*, 69 LAW. LIBR. J. 210 (1976).

B. Survey

1. Alabama

Alabama's origination clause¹⁴² has received extensive judicial

142. All bills for raising revenue shall originate in the house of representatives. The governor, auditor, and attorney general shall, before each regular session of the legislature, prepare a general revenue bill to be submitted to the legislature, for its information, and the secretary of state shall have printed for the use of the legislature a sufficient number of copies of the bill so prepared, which the governor shall transmit to the house of representatives as soon as organized, to be used or dealt with as that house may elect. The senate may propose amendments to revenue bills. No revenue bill shall be passed during the last five days of the session.

ALA. CONST. art. IV, § 70. Thus, the term revenue bill comes up in two contexts: (1) "bills for raising revenue" must originate in the house and (2) "revenue bills" cannot be passed during the last five days of the legislative session. Oklahoma has a similar provision, OKLA. CONST. art. V, § 33, which, however, does not have the requirement that a general revenue bill be submitted. Oklahoma has construed the two terms to be synonymous and co-extensive. *Anderson v. Ritterbusch*, 22 Okla. 761, 98 P. 1002 (1908). The Alabama court, however, has gone a different way. In *Opinion of the Justices*, 223 Ala. 369, 136 So. 589 (1931), the justices construed a house originated act imposing a gasoline tax. The act was passed in the last five days of the legislative session. The justices first found that the act was not one for raising revenue, but was passed in the exercise of the police power. *Id.* at ___, 136 So. at 590. The justices observed that the former constitution simply followed the federal origination clause. *Id.* The 1901 Convention which drafted the current constitution added the provisions concerning submission of a general revenue bill by the state officers before commencement of the session and concerning passage during the last five days of the session. The convention records indicated that the five day restriction was meant to provide the governor with adequate time to consider the general revenue bill, and if such bill in any part were vetoed, to provide time for the legislature to respond. The justices therefore concluded that the term "revenue bill" as used in the last sentence of the clause should be limited to general revenue bills, and not bills concerning a specific tax. *Id.* One dissenting justice would have found the gasoline tax bill in question to be within the house's exclusive originating jurisdiction. *Id.* at ___, 136 So. at 591. This restrictive reading of "revenue bill," as contrasted with the more liberal construction accorded "bills for raising revenue," has been repeatedly followed. See *Opinion of the Justices*, 269 Ala. 679, 115 So. 2d 464 (1959) (house bill proposing to authorize additional license and excise taxes in certain counties not a revenue bill, but is a bill "for raising revenue"); *Opinion of the Justices*, 270 Ala. 38, 115 So. 2d 484 (1959) (house bill proposing to levy additional license tax on alcoholic liquor sold in certain counties not a revenue bill); *Dorsky v. Brown*, 255 Ala. 238, 51 So. 2d 360, cert. denied, 342 U.S. 818 (1951) (house bill which imposed a tax on coin operated radios was a "bill for raising revenue," but not a revenue bill); *Opinion of the Justices*, 233 Ala. 463, 172 So. 661 (1937) (house originated bill to provide a sales tax was a bill "for raising revenue," but not a "revenue bill"); *Harris v. State ex rel. Williams*, 228 Ala. 100, 151 So. 858 (1933) (bill to amend the revenue law in respect to specific taxes not a revenue bill, although it is one to raise revenue); *State ex rel. Dally v. Woodall*, 225 Ala. 178, 142 So. 838 (1932) (statute regulating practice of cosmetology not a revenue bill nor a bill for raising revenue); *Woco Pep Co. v. Butler*, 225 Ala. 256, 142 So. 509 (1932) (act imposing excise tax on gasoline distributors, retailers and stores not a revenue bill; constitutional restriction only applies to general revenue bills); *State ex rel. Ward v. Henry*, 224 Ala. 224, 139 So. 278 (1931) (establishing commissioner of license in certain counties and providing for assessment of ad valorem tax on automobiles not a revenue bill); *State ex rel. Franklin County v. Hester*, 224 Ala. 460, 140 So. 744 (1932) (revenue bill restriction does not extend to every bill whose chief aim is to raise revenue; bill in question neither a revenue bill nor a bill raising revenue in reallocating the revenue derived from the trial tax since revenue neither increased or decreased). This dichotomous reading of the origination clause was criticized as inducing chaos and defeating the purpose of the five day limitation in Reynolds, *The Alabama Constitution of 1901: The Antithesis of States' Rights After 71 Years*, 3 CUMB. L. REV. 33, 39-40 (1972). See also *Opinion of the Justices*, 511 So. 2d 505 (Ala. 1987) (house bill which imposed environmental protection fees upon motor fuels, such fees to be used to provide

construction¹⁴³ and has been liberally construed.¹⁴⁴ Alabama courts, however, have also employed the terminology and reasoning used by other states to find challenged acts and bills not to be “bills for raising revenue.”¹⁴⁵

environmental protections for polluted ground water, was not a revenue bill; the justices used the incidental revenue test more commonly employed in determining that a certain bill was not a “bill for raising revenue”). See *infra* note 145 and accompanying text.

143. Alabama’s statutory advisory opinion procedure, ALA. CODE § 12-2-10 (1975), has been extensively utilized in origination clause cases. Although advisory opinions are technically not decisions of the Alabama Supreme Court and therefore bind no one, Opinion of the Justices, 373 So. 2d 1051 (Ala. 1979); Alabama Educ. Ass’n v. James, 373 So. 2d 1076 (Ala. 1979), they are almost universally followed and treated, in practical terms, the same as adversary opinions of the court. Sands, *Government by Judiciary-Advisory Opinions in Alabama*, 4 ALA. L. REV. 1, 13-16, 24-31 (1951).

144. In addition to the cases discussed in the text, in the following cases, statutes or proposed bills were found to be violative of the origination clause: Weissinger v. Boswell, 330 F. Supp. 615 (M.D. Ala. 1971) (senate act which lowered ad valorem assessment rate on property should have originated in house); Wofford Oil Co. v. Smith, 263 F. 396 (M.D. Ala. 1920), *appeal dismissed mem.*, 256 U.S. 705 (1921) (senate act which required dealers to pay a fee per gallon was a bill “for raising revenue” and thus unconstitutional); Opinion of the Justices, 379 So. 2d 1267 (Ala. 1980) (proposed senate bill to provide for excise tax rate on gasohol is act “raising revenue” which should originate in house, distinguishing “raising revenue” from “revenue bill”); Opinion of the Justices, 342 So. 2d 787 (Ala. 1977) (senate bills allowing carry back and carry forward of net operating losses and deductions from gross income were bills “raising revenue” as the effect of the bills is to decrease taxable income of those taxpayers affected, thereby decreasing revenue to the state); Glasgow v. Aetna Ins. Co., 284 Ala. 177, 223 So. 2d 581 (1969) (senate act which imposed a premium tax of 1% of the gross premium receipts on specified types of policies, and required payment of the tax to the Alabama Fire Fighters Pension Fund, invalid as being a bill “raising revenue”); Opinion of the Justices, 260 Ala. 81, 68 So. 2d 840 (1953) (senate bill exempting certain oil, gas, and mineral interests from ad valorem tax and levying a mineral documentary tax was for purpose of raising revenue, and not an exercise of the police power incidentally affecting revenue); Opinion of the Justices, 238 Ala. 289, 190 So. 824 (1939) (senate bill to amend sales tax act to exempt prescription medicine and inexpensive caskets decreases amount of revenue, and is thus within origination clause; senate’s right to propose amendments to revenue measures only extends to revenue bills then pending which have originated in house, not to such measures after they have been passed into law); Opinion of the Justices, 232 Ala. 95, 166 So. 807 (1936) (bill to amend existing revenue act must originate in house; senate bill thus violates origination clause); *cf.* Hornbeak v. Hamm, 283 F. Supp. 549 (M.D. Ala. 1968), *aff’d mem.*, 393 U.S. 9 (1968) (senate-originated act permitting ad valorem assessment at rates of 1% to 30% was challenged on the basis of federal equal protection; in his dissent on other grounds, Chief Judge Johnson observed that the act, having originated in the senate, violated § 70. *Id.* at 556 n.1). See also *supra* note 142, contrasting the interpretation of “bills for raising revenue” and “revenue bills.”

145. Thomas v. Alabama Mun. Elec. Auth., 432 So. 2d 470 (Ala. 1983) (act creating State Municipal Electricity Authority and permitting authority to charge fees not a bill raising revenue where chief purpose of act was to create the authority, not to raise revenue); Yancey & Yancey Const. Co. v. DeKalb County Comm., 361 So. 2d 4 (Ala. 1978) (act authorizing county commission to impose tax upon coal severance activities not within clause as the act does not levy a tax, but merely permits counties to so levy); Opinion of the Justices, 357 So. 2d 331 (Ala. 1978) (senate bill providing for annual distribution to local governmental units of percentage of moneys paid by federal agencies in lieu of tax only reallocated revenue, and did not increase, decrease, or raise revenue); Heck v. Hall, 238 Ala. 274, 190 So. 280 (1939) (Merit System Act does not violate origination clause); Beeland Wholesale Co. v. Kaufman, 234 Ala. 249, 174 So. 516 (1937) (state unemployment compensation act whose main purpose is to enact scheme through police power, not within origination clause even though it incidentally does raise revenue); Dearborn v. Johnson, 234 Ala. 84, 173 So. 864 (1937)

The foundation case is *Perry County v. Selma, Marion & Memphis Railway Co.*¹⁴⁶ At issue was a senate-originated amendment that exempted railroad property from county taxation.¹⁴⁷ The court, acknowledging the case to be one of first impression,¹⁴⁸ first rejected the argument that the distinction between the British governmental system, from which the power of revenue in the lower house arose, and Alabama's popularly-elected bicameral legislature, indicated that the origination clause should be construed as directory and not mandatory.¹⁴⁹ "But whether there be a reason for its maintenance or not, it has been a canon . . . of the Constitution of this state from the time of its birth. A rule thus sanctioned and preserved — thus imbedded in the very marrow of our system — we feel not at liberty to disregard."¹⁵⁰

The court then rejected the argument that the constitutional phrase "for raising revenue" should be limited to bills *increasing* the state revenue, and not, as in this case, a bill actually decreasing revenue by creating exemptions.¹⁵¹ "The precise meaning in this clause is, to levy a tax, as a

(senate act to provide for more economical and uniform tax collection and assessment system neither bill "for raising revenue" nor "revenue bill" as the act is one of administration); *Houston County v. Covington*, 233 Ala. 606, 172 So. 882 (1937) (senate act authorizing Houston County board of revenue to impose excise tax on motor fuels not within § 70; act only concerned with municipal power to enact ordinance, with revenue to be used for purely local purposes); *Kenamer v. State*, 150 Ala. 74, 43 So. 482, 483 (1907) (act which in part authorized Jackson County commissioners to require license for hauling logs or to require timber concerns to maintain public roads was not within clause; simply compelled "those enjoying a special benefit . . . to pay a reasonable sum for the privilege given."); *Sheppard v. Dowling*, 127 Ala. 1, 28 So. 791 (1900) (act whose principal purpose was to provide for dispensing of liquors by municipality was exercise of police power; act only provided that municipalities dispensing liquor shall pay to state the same tax paid by other dealers); *Dunbar v. Frazer*, 78 Ala. 538 (1885) (senate act regulating the granting of licenses to sell liquors and providing a tax thereon not an act to raise revenue); *Bozeman v. State*, 7 Ala. App. 151, 61 So. 604, *cert. denied*, 183 Ala. 91, 63 So. 201 (1913) (motor vehicle registration act imposing a license fee was an exercise of the police power, not a revenue measure, even though revenue generated in excess of administrative expenses); *cf.* *Opinion of the Justices*, 232 Ala. 60, 166 So. 710 (1936) (governor's call for extraordinary session to provide revenue for schools and government should not be limited to "revenue bills," but should encompass bills to raise revenue; however, house bill to regulate sale of alcoholic beverages, to impose a license upon their sale, and to levy an excise tax was not a bill to raise revenue, although it may have that incidental effect, and thus was not within the governor's call).

146. 58 Ala. 546 (1877).

147. *Id.*

148. *Id.* at 557.

149. *Id.* at 556.

150. *Id.* The court quoted and approved Cooley's warning:

[C]ourts tread upon very dangerous ground when they venture to apply the rules, which distinguish directory and mandatory statutes to the provisions of a constitution If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed that it should be exercised in that time and mode only.

Id. See T. COOLEY, A TREATISE ON CONSTITUTIONAL LIMITATIONS 78-79 (1st ed. 1868).

151. *Perry County*, 58 Ala. at 557. The court examined the legislative journals to determine the

means of collecting revenue.”¹⁵² The court then found the challenged statute violative of the origination clause and unconstitutional.¹⁵³

A severely split court found in *Opinion of the Justices*¹⁵⁴ that a senate-originated act providing for a refund of the state sales tax on gasoline, when the gasoline purchased was to be used exclusively for agricultural purposes, did not constitute a bill for raising revenue; rather, the act was an appropriation measure not subject to the origination clause. The majority recognized that an act to amend an existing revenue act was subject to the origination clause if the amendment affected the amount of revenue which flowed into the state treasury.¹⁵⁵ The majority concluded that the act’s language was one of appropriation: the person intended to benefit must first pay the tax.¹⁵⁶ The act then provided a means by which qualified tax-payers could obtain a refund.¹⁵⁷ Justice Lawson, dissenting,¹⁵⁸ found *Perry* directly controlling and relied on an earlier advisory opinion¹⁵⁹ to conclude that the senate act’s chief purpose was to provide a tax refund, and that the appropriation made came out of the tax money collected by the state.¹⁶⁰ The justice would have found the act violative of the origination clause.¹⁶¹

The Alabama Supreme Court returned to a liberal construction of the clause in its advisory opinion of August 11, 1953.¹⁶² A pending senate bill would have levied an additional license and excise tax on gross retail sales made in Franklin County to be used for constructing agricultural and school buildings.¹⁶³ The court found the bill to be a “bill for raising revenue.”¹⁶⁴ Any bill to levy a tax as a means of collecting reve-

origination of the act. In Alabama, the courts go behind the enrolled bill to examine the legislative journals, according the enrolled bill only a prima facie presumption of constitutionality. See Note, *Judicial Review of the Legislative Process of Enactment: An Assessment Following Childers v. Couey*, 30 ALA. L. REV. 495 (1979).

152. *Perry County*, 58 Ala. at 557.

153. *Id.* at 558.

154. *Opinion of the Justices*, 249 Ala. 389, 31 So. 2d 558 (1947) (a 4-3 decision).

155. *Id.* at ___, 31 So. 2d at 559.

156. *Id.*

157. *Id.*

158. *Id.* at ___, 31 So. 2d at 560.

159. *Opinion of the Justices*, 238 Ala. 289, 190 So. 824 (1939) (discussed *supra* note 144).

160. *Opinion of the Justices*, 249 Ala. at ___, 31 So. 2d at 560.

161. *Id.* at ___, 31 So. 2d at 561. The Justice noted that the majority’s construction of the act as an appropriation measure would probably doom the bill, if passed, as an impermissible appropriation of public monies to private individuals for non-governmental purposes. *Id.*

162. *Opinion of the Justices*, 259 Ala. 514, 66 So. 2d 921 (1953).

163. *Id.* at ___, 66 So. 2d at 922.

164. *Id.* at ___, 66 So. 2d at 923 (distinguishing the more restrictive construction placed upon “revenue bills”).

nue was found to be within the clause.¹⁶⁵ The court distinguished those cases in which the exercise of the police power incidentally served to raise revenue.¹⁶⁶

In those cases,¹⁶⁷ the people who derived special benefits from the expenditure of the revenue collected were required to bear the heavier burden created by the revenue raising measure. Therefore, the power to collect the revenue derived from the state's police power, not its revenue power. In contrast, the bill considered in the advisory opinion sought to impose the burdens on the general public, in order to raise revenue for a specific purpose. "Therefore, it is designed to impose a general burden for special benefits rather than 'special burdens for special benefits,' " and thus fell squarely within the limitations of the origination clause.¹⁶⁸

2. Colorado

The Colorado Supreme Court has narrowly construed its origination clause¹⁶⁹ in several opinions. The court has used the incidental revenue theory to exclude various statutes and bills from operation of the origination clause.¹⁷⁰ In the leading case of *Colorado National Life Assurance Co. v. Clayton*,¹⁷¹ the court held that an insurance statute requiring all insurance companies in the state to pay the insurance commissioner two percent of premiums received in the state was not a revenue bill.¹⁷²

The court reasoned that a bill with the incidental effect of raising

165. *Id.*

166. *Id.*

167. *Kenamer v. State*, 150 Ala. 74, 43 So. 482 (1907) (discussed *supra* note 145); *Houston County v. Covington*, 233 Ala. 606, 172 So. 882 (1937) (discussed *supra* note 145); *Opinion of the Justices*, 223 Ala. 369, 136 So. 589 (1931) (discussed *supra* note 142).

168. *Opinion of the Justices*, 259 Ala. at ___, 66 So. 2d at 923.

169. "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in the case of other bills." COLO. CONST. art. V, § 31. It is interesting to note that this provision has been used by the courts to strike down administrative tax regulations which the courts find to have gone beyond the legislative authorization. *See, e.g.*, *Miller Int'l, Inc. v. State*, 646 P.2d 341 (Colo. 1982); *Cohen v. State*, 197 Colo. 385, 593 P.2d 957 (1979); *Weed v. Occhiato*, 175 Colo. 509, 488 P.2d 877 (1971); *Meyer v. Charnes*, 705 P.2d 979 (Colo. Ct. App. 1985).

170. In addition to the other Colorado cases discussed, see *In re Interrogatories of the Governor Concerning Initiated Amendment No. 4*, 99 Colo. 591, 65 P.2d 7 (1937) (old age pension constitutional amendment does not conflict with origination clause). Colorado's unusual advisory opinion process and the Colorado Supreme Court's reluctance to issue advisory opinions are discussed in *Robinson, Limitations upon Legislative Inquiries Under Colorado Advisory Opinion Clause*, 4 ROCKY MTN. L. REV. 237 (1932); *See also Note, Has the Colorado IRA Met an Advisory Death?*, 8 ROCKY MTN. L. REV. 140 (1936).

171. 54 Colo. 256, 130 P. 330 (1913).

172. *Id.* at ___, 130 P. at 332.

revenue would not be, by that fact alone, a revenue bill.¹⁷³ A bill whose principal purpose is not to raise revenue, but the enforcement of which does produce revenue, therefore, would not be subject to the origination clause.¹⁷⁴ Revenue bills are limited to those bills which have for their purpose the levying of taxes in the strict sense of the words.¹⁷⁵ The court also found that the primary purpose of the act was to regulate insurance companies and the insurance business and *not* to raise revenue, even though the statute provided that any excess revenue was to be turned over to the state's general fund.¹⁷⁶

The court followed *Clayton* in *Chicago, B. & Q. R. R. Co. v. School Dist. No. 1*,¹⁷⁷ where the court addressed a challenge to senate-originated bills establishing a system of free schools and providing for the levy of a tax to support them. The court rejected the origination clause challenge and found that the revenue produced would only go to maintaining the public schools and not to defray the general expenses of the state government.¹⁷⁸

3. Delaware

Delaware does not have much authority on its origination clause.¹⁷⁹

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.* Other Colorado cases adopting the incidental revenue or municipal/local taxation approaches include: *May v. Supreme Court of Colorado*, 374 F. Supp. 1210 (10th Cir. 1974), *cert. denied*, 422 U.S. 1008 (1975) (state court rule requiring registration fees of attorneys sought to be invalidated on basis that rule violates revenue-raising power found in origination clause; held that any violation of state's separation of powers principle was purely a matter of state, not federal, constitutional law); *Geer v. Board of Comm'rs*, 97 F. 435 (8th Cir. 1899) (statute enabling counties to refund bonded debt and providing for the levy and collection of taxes to fund the refunding not a revenue bill); *Public Utilities Comm'n v. Manley*, 99 Colo. 153, 60 P.2d 913 (1936) (senate act regulating use of highways for commercial enterprise and providing that revenue generated from a tax imposed upon such use is to be split between administration costs, the state highway department, and the counties was not a revenue bill); *Opinion of the Justices*, 94 Colo. 215, 29 P.2d 75 (1934) (act titled to provide revenue for unemployed but actually providing for comprehensive regulation of liquor not a revenue bill). See also *In re McNichols Interrogatories*, 142 Colo. 188, 350 P.2d 811 (1960) (majority declined to render opinions; two justices opined that senate bill permitting cities and counties to levy a retail sales tax did not violate origination clause); *cf. Western Heights Land Corp. v. Fort Collins*, 146 Colo. 464, 362 P.2d 155 (1961) (ordinance charging rates for municipal service not a tax since not a revenue measure, as chief purpose was to defray expense of operating a utility by charging those desiring to use service); *Ard v. People*, 66 Colo. 480, 182 P. 892 (1919) (motor vehicle act requiring a license fee not a tax within meaning of uniformity of taxation clause [COLO. CONST. art. X, § 3] and not a revenue measure disguised as a police power measure, being only a charge in the nature of compensation for damage done to the roads by driving).

177. 63 Colo. 159, 165 P. 260 (1917).

178. *Id.* ___, 165 P. at 262-63.

179. DEL. CONST. art. VIII, § 2 provides:

All bills for raising revenue shall originate in the House of Representatives; but the Senate

In *Yourison v. State*,¹⁸⁰ the superior court rejected an origination clause challenge to a statute requiring a license to carry fishing parties for hire in boats. The court examined cases from other jurisdictions, and accepted Professor Cooley's narrow definition of the revenue bill.¹⁸¹ Finding that the license bill did not serve to defray the general expenses of the state government, the court concluded that the bill was not a revenue bill.¹⁸² Furthermore, the bill did not require someone to *do* anything; if the person wanted to hire out his boat for fishing parties, then and only then was a license required.¹⁸³ The court found the bill to be an exercise of the police power, observing that in a law directed towards raising revenue, the citizen subject to the law must pay the tax imposed: he has no choice.¹⁸⁴ In contrast, a law requiring payment of a fee for a license to engage in a business affords the citizen the choice of whether or not to engage in that business.¹⁸⁵

The Delaware Supreme Court adopted the narrow construction of the origination clause in their advisory opinion of September 12, 1967.¹⁸⁶

may propose alterations as on other bills; and no bill from the operation of which, when passed into a law, revenue may incidentally arise shall be accounted a bill for raising revenue; nor shall any matter or cause whatever not immediately relating to and necessary for raising revenue be in any manner blended with or annexed to a bill for raising revenue.

Id. It would therefore seem that the drafters of the Delaware Constitution intended for a strict construction to apply, given the proviso that incidental raising of revenue shall not be construed to convert a bill into a bill for raising revenue. The Delaware courts, however, have not specifically cited this proviso in adopting a narrow construction of the clause.

180. 33 Del. 577, 140 A. 691 (1928).

181. *Id.* "Revenue bills are those which have for their object the levying of taxes in the strict sense of the term. They are those which take money from the people without giving a direct equivalent in return therefor." *Id.* at ___, 140 A. at 692, quoting COOLEY *Taxation* § 498.

182. *Id.*

183. *Id.*

184. *Id.* at ___, 140 A. at 693.

185. *Id.* *Yourison* was discussed in *Conard v. State*, 41 Del. 107, 16 A.2d 121, 124 (Del. Super. Ct. 1940), where a statute substantially similar to the boat license of *Yourison* was involved. In *Conard*, however, the Court determined the license fee to be a revenue measure because the payment of the fee by itself entitled the person to a license. *Id.* at ___, 16 A.2d at 125. A license act passed under the police power, on the other hand, would permit the government to refuse the license or would impose restrictions in addition to the payment of a fee, such as an examination of boating skills. *Id.* *Conard* did not involve the origination clause, but was a challenge under the Fourteenth Amendment of the United States Constitution and the Uniformity of Taxation clause of the Delaware Constitution.

186. Opinion of the Justices, 233 A.2d 59 (Del. 1967). The opinion was rendered pursuant to DEL. CODE ANN. tit. 10, § 141 (1975), which at the time authorized the supreme court to render advisory opinions upon request of the governor in limited situations, including the constitutionality of statutes. In 1983, the statute was amended to permit advisory opinions upon request of a majority of either house of the general assembly. The supreme court has narrowly construed the advisory opinion provision, Opinion of the Justices, 413 A.2d 1245 (Del. 1980); Opinion of the Justices, 382 A.2d 1364 (Del. 1978); Opinion of the Justices, 305 A.2d 608 (Del. 1973), while finding the provision constitutional, Opinion of the Justices, 47 Del. 117, 88 A.2d 128 (Del. 1952). Advisory opinions of the Delaware court are technically not binding precedent, Opinion of the Justices, 424 A.2d 663

In the advisory opinion, the justices opined that an act empowering county vocational technical high schools or technical center districts to levy and collect taxes for local school purposes was not within the origination clause.¹⁸⁷ To be a revenue bill, an act must raise revenue that is available for defraying the state's *general* governmental expenses and obligations.¹⁸⁸ Thus, laws granting authority to local governmental units to levy and collect taxes for *local* purposes are not "bills for raising revenue" within the origination clause.¹⁸⁹

(Del. 1980); Opinion of the Justices, 324 A.2d 211 (Del. 1974), but are more than just advice. Since the advisory opinion emanates from members of the state's highest court, the opinion is authoritative in a practical sense. Opinion of the Justices, 413 A.2d 1245 (Del. 1980).

187. *Opinion of the Justices*, 233 A.2d at 61. The justices noted that under the enrolled bill doctrine, the senate origination of the bill would be irrelevant. *Id.* Since the bill was enacted and authenticated by the general assembly and signed by the governor, the regularity of the legislative action ordinarily would be conclusively presumed. *Id.* However, because the issue concerned a constitutional question, the justices of the supreme court declined to apply the enrolled bill doctrine in this case, although noting its continued vitality under ordinary circumstances. *Id.* For a discussion of the enrolled bill doctrine in the context of the federal origination clause, see Comment, *supra* note 12, at 454-59.

188. *Opinion of the Justices*, 233 A.2d at 61. In a brief historical excursus, the court traced the evolution of the origination clause to the exclusive right held by the British House of Commons to originate money bills. Justification for reposing this power in the federal house of representatives was based on the senate's composition of 2 representatives for each state selected by that state's legislature. *Id.* With passage of the seventeenth amendment, of course, senators are now popularly elected. The court noted that in Delaware this traditional reason for reposing the revenue power in the house did not exist, since both the Delaware house and senate have always been popularly elected. *Id.* at 62. The Delaware court's reasoning was flawed. Although both houses of the Delaware Legislature are popularly elected, the lower house has a two year term and is renewed during each general election, while the upper house only faces staggered elections. Under the principle of tax accountability, therefore, the origination clause still retains vitality. The Delaware court should have followed the reasoning of the Montana Supreme Court in *Morgan v. Murray*, 134 Mont. 92, 328 P.2d 644, 653-54 (1958), where a similar historical argument was advanced and rejected. The Montana court found the origination clause to be a substantive interdict. *Id.* The Delaware court missed another important reason for enforcing the origination clause: the balance of power between the two houses. For instance, in Delaware, the senate has the power to consent to appointments made by the governor, DEL. CONST. art. III, § 9, including members of the judiciary, DEL. CONST. art. IV, § 3, and the state board of agriculture, DEL. CONST. art. XI, § 3. For an analysis of the development of the federal origination clause in the context of the balance of power between the house and senate, see Comment, *supra* note 12, at 437-40; Hoffer, *supra* note 21, at 2-11. The fact that a house of representatives in a particular case may fail to protect its prerogative is no reason for the court to ignore the constitutional provision. Passing political conditions (for example, both houses being controlled by the same political party) can account for the lower house's willingness to waive its constitutional prerogative. See *supra* note 73. Courts in similar situations have rejected this type of argument. See, e.g., *Buckley v. Valeo*, 424 U.S. 1 (1976) (where the Court declared part of the legislation creating the Federal Election Commission void as infringing on the President's powers, even though the legislation had been signed by the President); *H.A. Thierman Co. v. Commonwealth*, 123 Ky. 740, 97 S.W. 366 (1906) (in finding act unconstitutional as violating origination clause, court rejected defense that since house had passed measure, the house must have determined the bill did not violate its constitutional prerogative).

189. *Opinion of the Justices*, 233 A.2d at 61. See also the dissenting opinion of Justice McNeilly in Opinion of the Justices, 385 A.2d 695, 707 (Del. 1978), reaching the origination clause issue not reached by the majority and opining that a senate bill authorizing pool and pari-mutual wagering on

4. Georgia

Georgia's origination clause, like that of Louisiana,¹⁹⁰ encompasses both revenue and appropriation bills.¹⁹¹ The Georgia Supreme Court has not discussed the provision extensively. The few cases have cursorily held that senate origination of municipal charters granting taxing power,¹⁹² the creation of a state bridge building authority with the power to issue bonds,¹⁹³ and the creation of a state toll bridge authority having the power to both issue bonds and exact tolls,¹⁹⁴ were neither revenue nor appropriation bills. In *Shadrick v. Bledsoe*,¹⁹⁵ the supreme court permitted the senate's substitution of its version of the revenue tax act on alcoholic beverages for the house's version, noting that substitution is one method of amendment, and that the origination clause specifically permits senate amendment.¹⁹⁶

5. Idaho

Idaho's origination clause¹⁹⁷ has been construed liberally. In the leading case of *Dumas v. Bryan*,¹⁹⁸ the Idaho Supreme Court struck down a senate-originated measure which provided for the transfer of a state-supported school and imposed a state-wide property tax to fund the building of the new facility.¹⁹⁹ The court rejected the argument that the

jai-alai exhibitions and providing for payments to the state from the monies generated from the jai-alai operations was not a revenue bill within the meaning of the origination clause. *Id.* at 714. Furthermore, the dissenting justice would rely on the enrolled bill doctrine to preclude challenge to the measure. *Id.*

190. LA. CONST. art. III, § 16 (B).

191. "All bills for raising revenue, or appropriating money, shall originate in the House of Representatives." GA. CONST. art. III, § V, ¶ 2 (Code § 2-1002).

192. *Harper v. Comm'rs of Elberton*, 23 Ga. 566 (1857). "[T]he delegation of the power to tax, and the laying of a tax, are two things. This Act does the first, the last it does not do. The constitutional provision applies to an Act which does the last, and does not apply to an Act which does the first." *Id.* at 570.

193. *McLucas v. State Bridge Bldg. Auth.*, 210 Ga. 1, 77 S.E.2d 531 (1953).

194. *State v. State Toll Bridge Auth.*, 210 Ga. 690, 696, 82 S.E.2d 626 (1954).

195. *Shadrick v. Bledsoe*, 186 Ga. 345, 198 S.E. 535 (1938).

196. *Id.* at ___, 198 S.E. at 543. The court also invoked the enrolled bill doctrine. The origination clause was subsequently revised in the 1982 constitution to omit the phrase "but the Senate may propose or concur in amendments, as in other bills." The editorial note to the clause states that the phrase was deleted as being unnecessary and inherent in the legislative process.

197. "Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives." IDAHO CONST. art. III, § 14. The court in *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922), observed that the purpose of Idaho's origination clause was to reserve the right to determine the necessity of the burden of taxation on that body of the legislature which came most directly from the people. *Id.* at ___, 207 P. at 722.

198. 35 Idaho 557, 207 P. 720 (1922).

199. *Id.* at ___, 207 P. at 723.

tax was merely incidental to the act's main purpose of transferring the school.²⁰⁰

Section 5 of this act is a measure for raising revenue; that is, it is a revenue bill, or money bill, as those terms are usually used. It provides for levying a direct tax against all property in the state, for governmental purposes. It requires no argument to prove that the state maintains the Albion normal school in its governmental capacity. It will not do to say that this tax represents a mere incident to the main purpose of the bill, for this would be a mere evasion. Most revenue bills could in the same manner be made incidental. The amount of the tax levied is immaterial, for the Constitution requires that all bills for raising revenue shall originate in the House.²⁰¹

In the more recent decision of *Worthern v. State*,²⁰² the court construed the Idaho origination clause to permit senate amendment of a house-originated revenue bill. Unlike the federal clause which specifically permits Senate amendments,²⁰³ the court found Idaho's clause to be silent.²⁰⁴ The court concluded, however, that in the absence of an express prohibition against amendment, the normal principles of legislative process should obtain, permitting senate amendment.²⁰⁵

200. *Id.* The court followed *Hubbard v. Lowe*, 226 F. 135 (S.D.N.Y. 1915), *appeal dismissed mem.*, 242 U.S. 654 (1916), and distinguished the following cases from other jurisdictions: *Chicago, B. & Q. R. Co. v. School Dist. No. 1*, 63 Colo. 159, 165 P. 260 (1917); *Evers v. Hudson*, 36 Mont. 135, 92 P. 462 (1907); *United States v. James*, 26 F. Cas. 577 (C.C.S.D.N.Y. 1875) (No. 15,464).

201. *Dumas*, 35 Idaho at ___, 207 P. at 723. In the later case of *State v. Workmen's Compensation Exch.*, 59 Idaho 256, 81 P.2d 1101 (1938), the court found that the workman's compensation statute was not transformed into a revenue bill simply by the inclusion of a provision remitting to the state \$1,000 upon the death of a dependentless covered employee. *See also* *State v. Workmen's Compensation Exch.*, 59 Idaho 265, 81 P.2d 1105 (1938) (companion case); *Op. Att'y Gen. No. 73-132* (Feb. 12, 1973) (bill in the nature of a mandatory minimum price law regulating relationship between distributors and retailers of beverages was not a revenue bill, as the proposed bill did not provide for the levying of any tax by the state on the collection of monies to defray its expenses).

202. 96 Idaho 175, 525 P.2d 97 (1974).

203. U.S. CONST. art. I, § 7, cl. 1 provides: "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other bills." *See supra* notes 32-131 and accompanying text for a discussion of the federal clause and its interpretation.

204. *Worthern*, 96 Idaho at ___, 525 P.2d at 960-61. The court noted that Idaho had a long-held position that legislative journals are to be consulted in determining whether an act was constitutionally passed. *Id.* at 958. Idaho therefore goes beyond the enrolled bill itself. *See, e.g.*, *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922); *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985 (1897).

205. *Worthern*, 96 Idaho at ___, 525 P.2d at 961. Compare, however, Idaho Atty. Gen. Legal Guidance Letter (February, 15, 1984), where the question was whether the senate could amend a house non-revenue bill by attaching a revenue amendment. The Idaho Attorney General concluded that such an amendment would violate the origination clause. *Id.* Otherwise, the origination clause's purpose in reposing in the house the power to originate revenue bills would be rendered negatory. *Id.* Compare the dissenting opinion of Chief Justice Shepard in *Worthern*, 96 Idaho at ___, 525 P.2d at 963, where, in concurring with the majority's determination on the origination clause issue, the chief justice stressed the fact that in *Worthern* the revenue measure originated in the house. *Id.*

6. Indiana

Indiana's origination clause²⁰⁶ has been narrowly construed to include only acts levying taxes in the strict sense of the words and to exclude bills incidentally raising revenue.²⁰⁷ In *Orbison v. Welch*,²⁰⁸ the court held the Indiana Port Commission Act constitutional because it was not a bill for raising revenue. The Act, in creating the Indiana Port Commission, provided for the maintenance of the port from the proceeds of tolls, rentals, fees, and charges to be assessed against the users of the port.²⁰⁹ In rejecting the origination clause challenge, the court determined that the purpose of the Act was not primarily for the raising of revenue, but for the construction and operation of a modern port on Lake Michigan.²¹⁰

The interesting case of *Stith Petroleum Co. v. Department of Audit and Control*²¹¹ raised a unique origination clause issue. The appellant contended that although the senate-originated gasoline inspection fee act was arguably a regulatory measure when enacted in 1919, the enormous

206. "Bills may originate in either House, but may be amended or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives." IND. CONST. art. 4, § 17. The Indiana Attorney General has construed this provision to forbid the practice of "bill-stripping," that is completely stripping a bill and replacing it with text concerning an entirely different matter. Ind. Att'y Gen. Rep. 156 (1979) (senate bill as introduced concerned judgeships in certain counties; house stripped bill and substituted provision concerning property tax deductions); Ind. Att'y Gen. Rep. 276 (1979) (house bill concerned medical licensing; senate stripped bill and substituted provisions authorizing department of natural resources to purchase materials for rehabilitation or repair of an improvement within department's control).

In *May v. Rice*, 91 Ind. 546, 548 (1883), the Indiana Supreme Court observed that to guard against extravagant and unjust impositions of public burdens by raising revenue, drafters of the constitutions, both federal and state, reposed the power to originate revenue bills in the branch of the legislature nearest the people. *Id.* The court expressed grave doubts about construing constitutional provisions to be directory only. *Id.* at 553. The court also indicated that appropriation bills could not be passed by joint resolution, perhaps suggesting that appropriation bills must also originate in the house. *Id.*

207. In addition to cases discussed in the text see also the following cases adopting a narrow construction: *Patrons v. School City of Kendallville*, 244 Ind. 675, 194 N.E.2d 718 (1963) (School Corporation Reorganization Act constitutional); *Ennis v. State Highway Comm'n.* 231 Ind. 311, 108 N.E.2d 687 (1952) (act providing for establishment of toll roads and creating commission was constitutional); *Rosencranz v. Evansville*, 194 Ind. 499, 143 N.E. 593 (1924) (statute authorizing creation of port city of Evansville constitutional, as the taxation provisions in the statute were incidental to the statute's real purpose). *But see* Ind. Att'y Gen. Rep. 109 (1977) (act to amend statute to provide that fees collected for personalized license plates will be deposited with state treasurer clearly revenue bill and cannot originate in senate); Ind. Att'y Gen. Rep. 113 (1977) (bill permitting county park and recreation boards to establish cumulative building funds, and authorizing county councils to levy a tax on taxable property clearly a revenue bill).

208. 242 Ind. 385, 179 N.E.2d 727 (1962).

209. *Id.* at ___, 117 N.E.2d at 730.

210. *Id.* at ___, 117 N.E.2d at 743.

211. 211 Ind. 400, 5 N.E.2d 517 (1937).

increase in the use of gasoline in the succeeding years converted the act into a revenue measure.²¹² The increase in use of gasoline resulted in a surplus being paid into the general fund of the state treasurer. The Indiana Supreme Court properly rejected the contention.²¹³ In determining whether a given act was a revenue measure, the court must examine the act itself and the facts existing at the time of passage. Subsequent events cannot change the act's character and convert it into a revenue measure.²¹⁴

7. Kentucky

Kentucky's origination clause²¹⁵ has been construed strictly in accordance with the majority view.²¹⁶ However, the Kentucky courts have enforced the clause when appropriate.²¹⁷ In the early case of *Common-*

212. *Id.*

213. The court primarily relied on the United States Supreme Court decision in *Pure Oil Co. v. Minnesota*, 248 U.S. 158 (1918), sustaining a similar Minnesota provision. The Minnesota provision also generated, in years succeeding its passage, a substantial surplus. The United States Supreme Court rejected the contention that the act constituted a revenue measure offending the commerce clause of the federal Constitution.

214. *Stith*, 211 Ind. at ___, 5 N.E.2d at 521.

215. "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments thereto: Provided, No new matter shall be introduced, under color of amendment, which does not relate to raising revenue." KY. CONST. § 47. Maine and Delaware have similar provisions restricting amendments. See ME. CONST. art. IV, pt. 3, § 9; DEL. CONST. art. VIII, § 2. Other constitutions contain general limitations on the amending process. See, e.g., TEX. CONST. art. III, § 30; WYO. CONST. art. 3, § 20; LA. CONST. art. III, § 15(c); see also INDEX DIGEST OF STATE CONSTITUTIONS 605 (2d ed. 1959) (listing 13 states).

216. In addition to the cases discussed in the text, see also: *City of Louisville v. Miller*, 697 S.W.2d 164 (Ky. 1985) (Mass Foreclosure Act, passed to provide simplified, cost-effective method for cities to enforce delinquent tax liens, not a revenue bill as it does not involve the levying of taxes); *Walton v. Carter*, 337 S.W.2d 674 (Ky. 1960) (act providing for submission to voters of question of issuing bonds was not a revenue measure); *Dalton v. State Property and Bldgs. Comm'n*, 304 S.W.2d 342 (Ky. 1957) (use of license fees, excise taxes, and fees already collected to pay bond issue debt was not revenue measure, but rather was an appropriation measure appropriating revenues already being raised and committing the state to continue such taxes as may be necessary to pay the bonds and interest); *Ravitz v. Steurele*, 257 Ky. 108, 77 S.W.2d 360 (1934) (act regulating those in business of making loans and requiring license tax to obtain license not revenue bill; tax incidental to purpose of regulation); *Cassady v. Oldham County*, 246 Ky. 773, 56 S.W.2d 368 (1933) (act conferring power upon school district to levy school tax, no proceeds of which goes to state treasury, not revenue bill); *Livingston County v. Dunn*, 244 Ky. 460, 51 S.W.2d 450 (1932) (statute prescribing sheriff's duties in collecting school taxes and making settlement not a revenue measure); *Central Constr. Co. v. City of Lexington*, 162 Ky. 286, 172 S.W. 648 (1915) (act providing for submission to voters of question of incurring a debt to build sewage disposal plant and storm water system not revenue bill within state statute requiring such measures to be originated in board of councilmen and not board of aldermen; although the ordinance provided that a tax be levied, it did not fix or indicate the amount of the tax. The actual levying of the tax would have to originate in the board of councilmen); *Rankin v. Henderson*, 9 Ky. L. Rptr. 861, 7 S.W. 174 (1888) (statute authorizing cities to impose license tax upon certain occupations, the tax being for municipal purposes only, not a revenue bill.)

217. See, in addition to *H.A. Thierman Co., infra*, the following: *Farris v. Shoppers Village Liquors, Inc.*, 669 S.W.2d 213 (Ky. 1984) (senate amendment to house-passed alcoholic beverage tax

wealth v. Bailey,²¹⁸ the court of appeals (then Kentucky's highest court) rejected the argument that a statute regulating the fees and salaries of public officers constituted a revenue bill. The court adopted the view that revenue bills were bills to levy taxes in the strict meaning of the words.²¹⁹ A bill which required the officers to remit to the trustee of the jury fund amounts received in excess of \$3,000 was therefore not a revenue bill.²²⁰

In *Lang v. Commonwealth*,²²¹ the court applied the incidental revenue test to hold that an act regulating the admission of inmates to houses of reform and requiring the county to pay to the state \$100 for maintenance of each inmate was not a revenue bill. The court nevertheless observed, somewhat grudgingly, that the clause was part of the constitution and should be enforced in appropriate cases.²²² The statute in question did not impose any tax, but could have required the counties to levy a tax in the future to meet its requirements. The incidental revenue to the state was not a tax within the meaning of the constitution.²²³

In *H.A. Thierman Co. v. Commonwealth*,²²⁴ however, the court struck down as violative of the Kentucky origination clause a senate-

which provided for regulation of wholesaler invoices and allowances struck down as violating both § 51 of the Kentucky Constitution, requiring one subject per act, and § 47 of the constitution, since senate amendment did not relate to the subject matter of the house bill); *Legislative Research Comm'n v. Brown*, 664 S.W.2d 907 (Ky. 1984) (statute requiring budget to be introduced as joint resolution was unconstitutional as violating §§ 47 and 48 of the constitution concerning revenue and appropriation bills; these sections construed to require that such budget be introduced as a bill). The *Brown* case is extensively analyzed in Snyder & Ireland, *The Separation of Governmental Powers under the Constitution of Kentucky: A Legal and Historical Analysis of L.R.C. v. Brown*, 73 KY. L.J. 165 (1984) (noting at 225 that § 47 is part of the constitutional framework reposing the power of the purse in the legislature). See also *Sancho v. Valiente & Co.*, 93 F.2d 327 (1st Cir. 1937) (joint resolution providing for tax invalid as violating Puerto Rico Organic Act requiring laws to be passed as bills). See also Ky. Op. Att'y Gen. No. 26 (1979) (a revenue bill, if such, remains a revenue bill, regardless of whether the bill increases or decreases the tax rate). For a discussion of the Kentucky Attorney General's opinion function see Akers, *The Advisory Opinion of the Attorney General*, 38 KY. L.J. 561 (1951). See also Montague, *The Office of Attorney General in Kentucky*, 49 KY. L.J. 194 (1960).

218. 81 Ky. 395 (1883).

219. *Id.* at 398-99.

220. *Id.* at 400. The court had earlier opined that appropriation bills were not within the origination clause's domain. *Id.* at 399.

221. 190 Ky. 29, 226 S.W. 379 (1920).

222. *Id.*

[T]hat reason for lodging power of revenue in lower house] is not very impressive in this country at the present time, as all members of both the upper and lower houses of Legislature are elected by the people and answerable to them, but, whatever the reason for retention in our Constitution, its enforcement is incumbent upon the courts.

Id. at ___, 226 S.W. at 381.

223. *Id.* at ___, 226 S.W. at 381-82.

224. 123 Ky. 740, 97 S.W. 366 (1906).

originated bill providing for the equivalent of a sales tax on blended spirits. The court rejected the state's attempt to portray the bill as a regulatory matter which only had the incidental benefit of raising revenue.²²⁵ The bill did not seek to regulate the manufacture or sale of liquor; all it imposed was a tax.²²⁶ Even the title of the bill provided that it was "an act relating to revenue and taxation, providing for license taxes. . . ." ²²⁷ Significantly, the court refused to be bound by the fact that the house, in passing the senate bill, did not view the bill as an infringement on its prerogative.²²⁸

8. Louisiana

Louisiana's origination clause encompasses *both* revenue and appropriation bills,²²⁹ so it is somewhat surprising to find that few cases have construed the clause.²³⁰ In *Succession of Sala*²³¹ and *Succession of Givanovich*,²³² the Louisiana Supreme Court declared invalid as violating the origination clause an act imposing a succession tax on foreign heirs and legatees inheriting property located in Louisiana. The proceeds of the tax were to benefit New Orleans Charity Hospital.²³³ The court found that the legislation was both a revenue measure in imposing the tax and an appropriation measure in appropriating the revenue raised to the

225. *Id.* at ___, 97 S.W. at 369.

226. *Id.*

227. *Id.* at ___, 97 S.W. at 366.

228. *Id.* As the Court tellingly reasoned:

It is insisted by appellee that it is a delicate duty for the court to declare an act unconstitutional; that, in case of doubt, the doubt should be resolved in favor of the validity of the act in a case of this sort; that, if the House had deemed the act an infringement of its prerogative, it might have refused to consider it when it came to it from the Senate; that, if the Governor had deemed it unconstitutional, he might have vetoed it after it had passed both houses; and that after the act had been concurred in by both houses, and had been approved by the Governor, if there is any construction of it, which may reasonably be adopted, rendering it constitutional, that construction should be followed. This is true. A legislative act should never be held unconstitutional, if its validity can be, by any reasonable construction, upheld. But, in the case before us, the only construction that can be given the act in question is that it is an act for revenue, pure and simple; and, originating, as it did, in the Senate, it was passed in violation of the plain provision of the Constitution.

Id. at ___, 97 S.W. at 369.

229. "All bills for raising revenue or appropriating money shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills." LA. CONST. art. III, § 22.

230. The Louisiana court's aversion to advisory opinions might be one reason so few origination clause cases appear. See Note, *Advisory Opinions and the Requisites of Justiciability in Louisiana Courts*, 35 LA. L. REV. 898 (1975).

231. 50 La. Ann. 1009, 24 So. 674 (1897).

232. 50 La. Ann. 625, 24 So. 679 (1897).

233. *Sala*, 50 La. Ann. at 1009, 24 So. at 674; *Givanovich*, 50 La. Ann. at 625, 24 So. at 679.

Charity Hospital.²³⁴ In a subsequent decision,²³⁵ the Louisiana Supreme Court held a bill void which waived sovereign immunity of the state so as to authorize a particular plaintiff to initiate suit and which also directed that payment of any judgment so obtained should be paid out of the state revolving fund or out of any state funds not otherwise appropriated. The bill was void because the act originated in the senate.²³⁶ The court determined that the bill constituted an appropriation bill and refused to sever the offending part from the remainder of the bill.²³⁷ Louisiana's courts, at least as evidenced by the tenor of the few reported cases,²³⁸ are not inclined to read the origination clause as narrowly as most other courts.²³⁹

234. In *Sala*, the act was defended as being neither a revenue or appropriation bill but only a legal limitation on the right of inheritance. *Sala*, 50 La. Ann. at ___, 24 So. at 677. It was argued that the bill was not an appropriation bill, since the money appropriated was that of individual heirs and legatees. The origination clause was meant to assure accountability of the legislature in reposing the right to originate revenue bills in the legislative house closest to the people. *Id.* The bill was therefore not a revenue bill since the revenue raised was not from the citizens of the state, but from foreigners. *Id.* The supreme court properly rejected these arguments, noting that the beneficiary of the revenue raised, the Hospital, was a public institution sustained almost entirely by public appropriations. *Id.* at ___, 24 So. at 677-78. The separate opinion of Justice McEnery in *Givanovich* noted that the sums appropriated for the support of the Hospital must first come into the treasury and then be appropriated. *Givanovich*, 50 La. Ann. at ___, 24 So. at 680. The money appropriated therefore belonged to the state, not the foreign individuals. *Id.* On rehearing in *Sala*, the court distinguished the succession tax from a bill whose incidental effect was to raise revenue. *Sala*, 50 La. Ann. at ___, 24 So. at 679.

235. *Cobb v. Louisiana Bd. of Insts.*, 237 La. 315, 111 So. 2d 126 (1958).

236. *Id.* at ___, 111 So. 2d at 129-31.

237. *Cobb* arose in a unique legislative context. Under a constitutional article since amended, the legislature alone was empowered to waive sovereign immunity. The governor's signature was not required. The waiver in *Cobb*, originating in the senate, was passed by the legislature but vetoed by the governor. In its original opinion, the court implicitly assumed the ineffectiveness of the governor's veto and held the entire bill invalid as a senate-originated appropriation bill. *Id.* at ___, 111 So. 2d at 130-31. The dissenters also assumed the invalidity of the appropriation part of the bill, but argued that it should either be severed, *id.* at ___, 111 So. 2d at 131 (Justice Hamiter); *id.* at ___, 111 So. 2d at 132 (Justice Hawthorne), or construed as merely directory, *id.* at ___, 111 So. 2d at 132 (Justice Tate). The court, in an opinion on rehearing, shifted ground and held that the appropriation provision of the bill made the bill more than just a legislative waiver immune from gubernatorial veto, but rather, a legislative statute, which when vetoed by the governor, never became law. *Id.* at ___, 111 So. 2d at 137-38. For an examination of the Louisiana legislative immunity waiver power, see McMahon & Miller, *The Crain Myth — A Criticism of the Duree and Stephens Cases*, 20 LA. L. REV. 449 (1960).

238. In *Excelsior Planting & Mfg. Co. v. Green*, 39 La. Ann. 455, 1 So. 873 (1887), however, the supreme court found a bill establishing a levee district, vesting the district's board of commissioners with the power to levy a tax on property, to be neither an appropriation nor a revenue bill.

239. The office of the attorney general also expansively construes the clause. *See* Op. Att'y Gen. No. 798 (Dec. 11, 1986) (bill adding charge to be imposed for handling of renewal of registration or license by mail revenue bill); Op. Att'y Gen. No. 588 (June 1, 1978) (bill to remove tax exemption revenue bill requiring house origination); Op. Att'y Gen. No. 1486 (Oct. 12, 1976) (senate amendment appropriating money to a house originated non-appropriation bill violative of both origination and germane amendment provisions of the constitution); *cf.* Op. Att'y Gen. No. 550 (April 23, 1980) (joint resolution to amend constitution so as to authorize legislature to increase annual fees may be

9. Maine

The Maine courts have rarely addressed²⁴⁰ construction of the state's origination clause.²⁴¹ The leading case²⁴² held that senate origination of the Quahog Tax Act was not impermissible because the re-enactment was meant merely to correct a legislative error in section assignment.²⁴³ In dictum, the court indicated that a bill to repeal the tax would not be within the constitutional prohibition, while a bill to enact such a tax would be.²⁴⁴ In another case, the Supreme Judicial Court of Maine held that a proposed statute increasing the resident hunting and fishing license fees was not a revenue bill, but was a regulatory act.²⁴⁵

introduced in senate, but bill actually increasing the annual fee must originate in the house). Two general commentaries on the legislative process in Louisiana are: Owen, *The Concept of Legislative Power in Louisiana Constitutions*, 14 LA. L. REV. 764 (1954) and Comment, *Judicial Review of the Legislative Enactment Process: Louisiana's "Journal Entry" Rule*, 41 LA. L. REV. 1187 (1981) (noting that Louisiana goes beyond the enrolled bill doctrine and permits reliance on the legislative journals to determine the validity of the legislative process).

240. The Maine Attorney General has issued at least three opinions on the clause. In *Op. Att'y Gen.* (May 11, 1977), the attorney general, in an extensive analysis of the precedents, determined that a senate bill providing for creation of a criminal justice training fund and providing for an amount to be deposited into the fund by any defendant seeking bail was not a revenue bill. The attorney general concluded that in Maine the origination clause was to be strictly construed, and was not applicable to acts which have a legitimate purpose independent of generating revenue. *Id.* Thus, the senate bill was constitutional (in a later part of the opinion, the attorney general concluded the deposit requirement violated Maine's excessive bail prohibition) because the primary purpose was to develop the means for training of law enforcement personnel. *Id.* See also *Op. Att'y Gen.* (July 22, 1977). The attorney general found that a senate bill to provide exemption of sales of turbojet fuel for international flights from sales tax was not a revenue bill, since the primary purpose of the exemption was to foster economic development. *Id.* In addition, by stating that a bill that decreases revenue was not a "bill for raising revenue," the attorney general refused to follow Alabama precedent to the contrary. Furthermore, the attorney general found that a senate amendment to the committee bill to increase gasoline taxes as a partial substitute for the loss of revenue caused by the exemption was also not a revenue bill, relying on *Andrews v. Lathrop*, 132 Vt. 256, 315 A.2d 860 (1974). *Id.* In *Op. Att'y Gen.* No. 17 (Feb. 11, 1981) the attorney general found that senate co-sponsorship of a revenue bill did not violate the origination clause so long as control of the house over the revenue bill was the same as it would be without senate co-sponsorship.

241. "[A]ll bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other cases; provided that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue." ME. CONST. art. IV, pt. 3, § 9.

242. *State v. Lasky*, 156 Me. 419, 165 A.2d 579 (1960).

243. *Id.* at ___, 165 A.2d at 581-82. The court did note, in dictum, that the original house-introduced act was a bill to raise revenue, since the purpose of the act was not to regulate the shell fish dealers, but to provide funds for the benefit of the state. *Id.*

244. *Id.* at ___, 165 A.2d at 581. The court specifically reserved the issue of the justiciability of origination clause issues, distinguishing its earlier case of *Opinion of the Justices*, 133 Me. 537, 178 A. 620 (1935), on the basis that in the earlier case the legislature requested advice concerning the course of the legislative process. The court thus may have made a distinction between justiciability when an advisory opinion is sought (at least, if sought by a branch of the legislature) and justiciability when the case is at issue.

245. *Opinion of the Justices*, 133 Me. 537, 178 A. 620 (1935). In the case, the justices criticized the frequency of advisory opinion requests. For a discussion of the Maine advisory opinion proce-

10. Massachusetts

Given its long history, Massachusetts' origination clause²⁴⁶ has received little construction. There are only three advisory opinions²⁴⁷ of the Massachusetts Supreme Judicial Court which address the issue.

In the leading case, *Opinion of the Justices*,²⁴⁸ the justices undertook a detailed examination of the power of the lower house of the legislature to originate money bills. The justices examined precedent from British parliamentary procedure, from the federal constitutional convention, and from prior Massachusetts legislative practice in determining whether the Massachusetts origination clause included appropriation bills.²⁴⁹ After the historical review, the justices concluded that the term "money bills" used in the state constitution was meant to parallel the term "bills for raising revenue" used in the federal Constitution²⁵⁰ and advised the legislature that:

[T]he exclusive constitutional privilege of the House of Representatives to originate money bills is limited to bills that transfer money or property from the people to the State, and does not include bills that appropriate money from the Treasury of the Commonwealth to particular uses of the government, or bestow it upon individuals or cor-

pure, see Comment, *The Validity of the Restrictions on the Modern Advisory Opinion*, 29 ME. L. REV. 305 (1978). One other case deserves notation. In *Board of Overseers of the Bar v. Lee*, 422 A.2d 998 (Me. 1980), the supreme judicial court rejected a challenge to its imposition of registration fees on Maine attorneys, finding that such a fee was not a revenue bill within the proscriptions of the origination clause.

246. "All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills." MASS. CONST. pt. 2, ch. 1, § 3, art. VII. New Hampshire has a similar provision. See N.H. CONST. pt. 2, art. 18.

247. These opinions were issued pursuant to MASS. CONST. pt. 2, ch. 3, art. II, providing that the governor, council, and either branch of the legislature shall have the authority to require opinions of the justices of the supreme judicial court. See Goodman, *Advisory Opinions*, 11 ANN. SURVEY OF MASS. L. 95 (1964); Goodman, *Effect of Advisory Opinions*, 11 ANN. SURVEY OF MASS. L. 108 (1964); Goodman, *Factual Bases for Advisory Opinions*, 11 ANN. SURVEY OF MASS. L. 110 (1964); Goodman, *Functions of Advisory Opinions*, 11 ANN. SURVEY OF MASS. L. 113 (1964); Note, *supra* note 132; Note, *Extra-Judicial Opinions*, 10 HARV. L. REV. 50 (1896).

248. 126 Mass. 557 (1878).

249. *Id.* at 593-94.

250. *Id.* The court had earlier discussed its advisory opinions, issued in 1781, reprinted in 126 Mass. 547, where the individual justices gave their opinions on whether the senate had an equal privilege with the house to originate an inquiry for the purpose of enforcing property tax valuation. The majority of the justices concluded that the senate could originate such an inquiry. See *Opinion of Cushing*, 126 Mass. at 548-49 (noting that unlike in England, the upper chamber in Massachusetts is popularly elected; money bill is a bill imposing a direct tax on the people); *Opinion of Sargent*, *id.* at 550-51 (senate action not act of legislation, but only a rule to assist in legislation); *Opinion of Sewall*, *id.* at 552-53 (settling a valuation list is a previous business to passage of a money bill, since no money is raised, levied, or granted by settling such a list); *Opinion of Sullivan*, *id.* at 553-56 (settlement of a valuation not an act of legislation).

porations.²⁵¹

In a later advisory opinion,²⁵² the justices of the supreme judicial court interpreted the clause in light of proposed legislation authorizing payment of money to a railroad company for an option to purchase facilities to be held by the commonwealth. The legislation provided that the funds to pay for the option and the related continuance of service were to be raised by local taxation in the annual property tax assessment and by assessments on certain cities.²⁵³ The justices examined federal precedent²⁵⁴ and the earlier advisory opinion²⁵⁵ and determined that “money bills” and “bills for raising revenue” were equivalents.²⁵⁶ The justices further opined that the assessments, being imposed locally to reimburse the commonwealth, were “purely incidental to the main objects of the bill.”²⁵⁷

11. Minnesota

Minnesota’s origination clause²⁵⁸ has only been construed in two cases and neither case exhaustively discusses the issue. In one case, the Minnesota Supreme Court held that a bill appropriating funds for the purchase of textbooks for the public schools was not a revenue bill, even though the appropriation might in the future lead to the necessity of taxation.²⁵⁹ In the other case, the supreme court preemptorily held that a nuisance statute that imposed a \$300 penalty was not a revenue bill, even though the statute provided that the penalty was to be collected in the same manner as a tax.²⁶⁰

251. *Id.* at 601. The court emphasized, in distinguishing the power of the House of Commons in England from the origination provision of the Massachusetts constitution, the unelected nature of the House of Lords. *Id.* at 600. See *infra* notes 421-30 and accompanying text for more detailed discussions of the British parliamentary conventions.

252. Opinion of the Justices, 377 Mass. 800, 152 N.E.2d 90 (1958).

253. *Id.*

254. *Id.* at ___, 152 N.E.2d at 95. Specifically, the justices discussed *Millard v. Roberts*, 202 U.S. 429 (1905); *Twin City Nat’l Bank v. Nebeker*, 167 U.S. 196 (1897); *United States v. Norton*, 91 U.S. 566 (1875).

255. Opinion of the Justices, 126 Mass. 557 (1878).

256. *Opinion*, 377 Mass. at ___, 152 N.E.2d at 95.

257. *Id.* at ___, 152 N.E.2d at 96.

258. MINN. CONST. art. IV, § 18 provides “all bills for raising revenue shall originate in the house of representatives, but the senate may propose and concur with the amendments as on other bills.”

259. *Curryer v. Merrill*, 25 Minn. 1, 33 Am. Rep. 450 (1878).

260. *State v. Stroup*, 131 Minn. 308, 155 N.W. 90 (1915). See also Op. Att’y Gen. (March 8, 1939) (appropriation bill not within origination clause); Op. Att’y Gen. No. 734 (Biennial Report, 1933) (bill whose main purpose was to assist counties and other municipalities in taking care of their financial obligations was not a revenue bill; tax levy provision only incidental to the other provisions of the act); Williams, *A Legislative History of the Minnesota “Superfund” Act*, 10 WM. MITCHELL L.

12. Montana

Montana's origination clause,²⁶¹ since abandoned,²⁶² was construed in an extensive and thorough opinion in the case of *Morgan v. Murray*.²⁶³ The senate-originated act in *Morgan* concerned submitting to the people for their approval a measure authorizing the state to become indebted over the constitutional maximum.²⁶⁴ The indebtedness, incurred through the sale of bonds, was to provide funds for the construction of facilities for the University of Montana.²⁶⁵ The bonds were to be redeemed through imposition of a property tax which was to be paid into the state treasury. The taxes were then to be used exclusively for the payment of principal and interest on the bonds.²⁶⁶ The court struck down the act as violating the origination clause.

After reviewing the precedents,²⁶⁷ the court excluded from the origination clause bills which have for their primary purpose a policing function and which only incidentally raise revenue.²⁶⁸ The court also excluded from coverage acts authorizing or delegating to local authorities the power to levy taxes for local purposes.²⁶⁹ For a revenue bill to be

REV. 851, 871 n.113 (1984) (Superfund Act subject to origination clause as act included revenue-raising measure).

261. "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments, as in the case of other bills." MONT. CONST. OF 1889, art. V, § 32. In *Op. Att'y Gen. No. 2* (March 3, 1967), the Montana Attorney General opined that the origination clause applied to extraordinary sessions of the legislature, as well as to regular sessions.

262. The Montana Constitution of 1972 does not contain an origination clause.

263. 134 Mont. 92, 328 P.2d 644 (1958).

264. *Id.* at ___, 328 P.2d at 646.

265. *Id.*

266. *Id.*

267. *See, e.g., State v. Driscoll*, 101 Mont. 348, 54 P.2d 571 (1936) (statute prohibiting sale of intoxicating liquor except by the state, providing for establishment of state liquor stores, for sale and issuance of permits to individuals and licenses to beer clubs, and for disposition of surplus profits was not revenue bill; the court analyzed the precedents, especially of *Justice Story*, in concluding that the revenue features of the bill were incidental to the main purpose of limiting and regulating the sale of intoxicating liquors); *Evers v. Hudson*, 36 Mont. 135, 92 P. 462 (1907) (act establishing free high schools and providing for a county property tax to supply funds for the county high school so established was not a revenue bill, because the tax was confined to the county in which the high school was established and funds from such tax did not make their way into the state treasury); *State v. Bernheim*, 19 Mont. 512, 49 P. 441 (1897) (senate bill regulating sale and redemption of transportation tickets of common carriers not made a revenue bill by inclusion in bill of license fee charged to each person seeking the right to sell tickets as agent for the common carriers; primary purpose of bill was to regulate the sale of the tickets, to prevent fraudulent practices upon the public, and to provide for the redemption of certain tickets by carriers). *See also Carey v. McFatrige*, 115 Mont. 278, 142 P.2d 229, 238 (1943) (Adair, J., dissenting) (citing and discussing *Driscoll* in context of revenue bill).

268. *Morgan*, 134 Mont. at ___, 328 P.2d at 648. The bill was submitted to the people through the referendum provision, art. V, § 1, and the indebtedness provision, art. XIII, § 2, of the constitution.

269. *Id.* at ___, 328 P.2d at 648-49.

within the origination clause, the purpose of the bill must be to raise money for defraying the expenses of the general government and such moneys must be paid into the state treasury.²⁷⁰ Applying this test, the court concluded that the act at issue was a revenue bill and thus void.²⁷¹ The court specifically found that the tax was not incidental to the primary purpose of the bill and noted its statewide application, the conferring of no special benefit to the property taxpayer, and the essential element of the tax to the bill in general.²⁷²

The court then rejected the contention that the origination clause was procedural only, declining to follow *Mikell v. School Dist.*²⁷³ The court concluded that the origination clause “was a substantive interdict.”²⁷⁴ Furthermore, the origination clause was not rendered inapplicable because the bill was to be voted upon by the people.²⁷⁵ “The *origin* of revenue bills must be the same. . . . No distinction exists between statutes enacted by the people or those enacted by the legislature.”²⁷⁶

13. New Hampshire

New Hampshire’s origination clause²⁷⁷ has been narrowly construed in a series of advisory opinions by the New Hampshire Supreme Court.²⁷⁸ In one advisory opinion, the justices, relying on Massachu-

270. *Id.* at ___, 328 P.2d at 648.

271. *Id.* at ___, 328 P.2d at 654.

272. *Id.* at ___, 328 P.2d at 650. The court relied heavily on *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922), in which the court struck down a similar Idaho act. See *supra* notes 198-201 and accompanying text.

273. 359 Pa. 113, 58 A.2d 339 (1948), discussed *infra* at notes 332-40 and accompanying text. *Morgan* also relied in part on art. III, § 29, which makes the provisions of the constitution mandatory and prohibitory except as otherwise specifically provided.

274. *Morgan*, 134 Mont. at ___, 328 P.2d at 654.

275. *Id.*

276. *Id.* Justice Angstman dissented, plausibly observing that the reason for the origination clause was to repose the power of taxation on the legislature closest to the people and the one being most often renewed by elections, *citing* *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922). *Morgan*, 134 Mont. at ___, 328 P.2d at 654. As the people were to vote on the bill, the protection for the people found in the origination clause was not needed. The justice concluded, noting that the referendum provisions were added to the 1889 Constitution in 1906, “it is my view that section 32 of article V. . . was intended to apply to such bills only when the entire legislative process is based upon action of the two houses of the Legislative Assembly, i.e., the bill originating and terminating in the Legislative Assembly, and has no application to referendum measures such as that involved here.” *Id.* at ___, 328 P.2d at 655. The justice would also have found the tax provision incidental to the primary purpose of the bill which was to seek authority to exceed the constitutional limit of indebtedness. *Id.*

277. “All money bills shall originate in the house of representatives; but the senate may propose, or concur with, amendments, as on other bills.” N.H. CONST. pt. 2, art. 18.

278. N.H. CONST. pt. 2, art. 74 provides that each branch of the legislature, as well as the governor and council, may require the opinions of the justices of the supreme court upon important

setts' precedent,²⁷⁹ excluded appropriation bills from operation of the clause.²⁸⁰ In a subsequent opinion, the justices held that a senate-originated bill to increase license fees for pharmacies and pharmacists was not a money bill, limiting money bills to "bills which raise money by direct taxation."²⁸¹ In a more recent opinion the justices upheld a senate amendment to a house sweepstakes commission bill which would authorize the commission to operate a game in which eligible purchasers would attempt to select the winners of sporting events.²⁸² The justices noted that the effect of the amendment would be to raise money by a "voluntary act of the purchaser, not of an enforced contribution to provide for the support of government, the standard definition of a tax."²⁸³ Most recently, a tax on pari-mutuel pools was held to not be within the definition of a money bill.²⁸⁴

14. New Jersey

New Jersey's origination clause²⁸⁵ has been the focus in a variety of

questions of law and upon solemn occasions.

279. Opinion of the Justices, 126 Mass. 557 (1878).

280. Opinion of the Justices, 70 N.H. 642, 50 A. 329 (1901).

281. Opinion of the Justices, 102 N.H. 80, 150 A.2d 813, 815 (1959). In the later decision of *Niemiec v. King*, 109 N.H. 586, 258 A.2d 356, 358 (1969), the court cited this case and observed that imposition of a reimbursement charge to be paid into the general fund as unrestricted revenue was not subject to the origination clause. In *Opinion of the Justices*, the justices examined federal precedents and noted that the limited and strict construction of the origination clause was supported by the overwhelming weight of authority. *Opinion*, 102 N.H. at ___, 150 A.2d at 815. Although the house objected to the senate's request for an opinion, the house having already taken the position that the bill was a money bill, the court proceeded to issue the opinion, advising the legislature that the opinion expressed by the court did not "detract from the power of the house to settle the rules of proceedings in their own house." *Id.* at ___, 150 A.2d at 816.

282. Opinion of the Justices, 115 N.H. 304, 339 A.2d 721 (1975).

283. *Id.* at ___, 339 A.2d at 722 (quoting, in part, *United States v. State Tax Comm'n*, 421 U.S. 599 (1975), and reaffirming its position that appropriations bills were not money bills).

284. Opinion of the Justices, 116 N.H. 351, 358 A.2d 667 (1976). *See also* Op. Att'y Gen. (May 20, 1957) (bill setting forth ratio for assessment of property which is to be followed in certain cases where valuation of property is required was not a revenue bill, since, as a matter of fact, the bill raised no money and no state tax was raised on the classes set forth in the bill); Op. Att'y Gen. (Jan. 30, 1957) (two bills, one establishing a fund for persons killed or injured by accidental shooting and one establishing a fund for towns and cities for deer killed therein, not revenue bills; the bills amended statutes whose purposes were not primarily for revenue raising and thus were not themselves revenue bills). *But see* Op. Att'y Gen. (July 29, 1955) (bill reducing the rate of tax on interest and dividends was a revenue bill, citing *Perry County v. R.R. Co.*, 58 Ala. 546 (1877); also noting the New Hampshire parliamentary practice permitting senate-originated amendments to existing revenue statutes could be taken into account by the courts in concluding that the senate bill did not fall within the origination clause).

285. "All bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills." N.J. CONST. art. IV, § 6, ¶ 1. In *Township of Bernards v. Allen*, 61 N.J.L. 228, 39 A. 716 (1898), the court traced the evolution of the power of revenue from Norman law through the Magna Carta to its emergence in colonial constitutions and

factual contexts, due in part to New Jersey's unique statutory enactment reference provision.²⁸⁶ The general approach of the New Jersey courts is to narrowly construe the definition of a revenue bill.²⁸⁷ Thus, one case held that a bill exempting certain transfers from tax was not a revenue

finally in the state constitution. Typically, the lower house of colonial assemblies had the exclusive power to originate a revenue bill, the upper (commonly non-elected) chamber the power only to defeat (not amend) the revenue bill. *Id.* at ___, 39 A. at 717-18.

286. In N.J. STAT. ANN. § 1:7-1 to -7 (West Supp. 1985), the legislature provided a method by which a statute could be challenged as not having been duly passed by both houses of the legislature or approved by the governor. Either the attorney general or two citizens of the state may apply to the Appellate Division of the Superior Court of New Jersey for resolution of issues concerning the machinery of enactment. *Id.* The operation of this statutory mechanism is discussed in detail in Application of McCabe, 81 N.J. 462, 409 A.2d 1158 (1980), and was obviously meant to overcome the enrolled bill doctrine. The referenced procedure was invoked in *In re Ross*, 86 N.J.L. 387, 94 A. 304 (1914), where a revenue bill originated in the senate, was sent to the house, was recast as an assembly substitute and treated as a new bill, then was sent to the senate where it passed and was signed into law. The court held the origination clause to be satisfied, finding that both the house and senate considered the assembly substitute to be an original house bill. *Id.* at ___, 94 A. at 306. The court did not find determinative the fact that the house substitute was captioned as a substitute for the senate bill. See Marder, *Power of New Jersey Supreme Court to Give Advisory Opinions*, 74 N.J.L.J. 305, 310 (1951).

287. In *Kervick v. Bontempo*, 29 N.J. 469, 150 A.2d 34 (1959), noted with approval on this issue in Biunno & Meanor, *Constitutional Law*, 14 RUTGERS L. REV. 304, 320-21 (1960), the supreme court held that although the bond legislation was a revenue bill, the specific debt limitation provision of the New Jersey Constitution, art. VIII, § 2, ¶ 3, removed the bond bill from operation of the origination clause. That provision provides that it operates "regardless of any limitation relating to taxation in this Constitution." *Id.* The supreme court revealed its cramped understanding of the origination clause when it sought to reconcile the two constitutional provisions:

When the delegates met in 1792 they sought to create a living document embodying their high concepts of democratic government for themselves and oncoming generations. They generally avoided the pitfalls which had resulted from the inflexible provisions in the State's earlier Constitution by replacing them with general expressions of modern governmental principles. *Where, as when dealing with the bill origin clause, they bowed to history and determined to retain an ancient concept though it had lost much of its meaning, their judgment must of course be honored; but they would be the last to suggest that its sweep should be any broader than dictated by its antecedents or that it should now be imported into the independent debt limit clause.* The Constitution was made to serve and protect the people of the State and all of its language must be sensibly construed with that uppermost in mind. A bond issue preceded by the safeguarding steps in the debt limit clause necessarily has the support of each branch of the Legislature and the favorable expression of the people of the State. *The technical insistence that it also originate by an Assembly rather than a Senate bill could serve no public purpose whatever and we are satisfied that the Constitution imposed no such requirement.*

Kervick, 29 N.J. at ___, 150 A.2d at 39-40 (emphasis added). *Contra Morgan v. Murray*, 134 Mont. 92, 328 P.2d 644 (1958). There is nothing in the debt limitation clause that is directly contrary to a requirement that such bills originate in the lower house, however, and the two clauses could have been equally well reconciled by requiring bond legislation to originate in the lower house. The origination clause, being the more specific provision, should have been held to be controlling. See 16 AM. JUR. 2D *Constitutional Law* § 103; 16 C.J.S. *Constitutional Law* § 28; cf. Hoffer, *supra* note 21, at 15 (in conflict between federal origination clause limitation and the proceedings clause grant of power to each house to determine its own rules of proceedings, origination clause should prevail); 2 RESTATEMENT (SECOND) OF CONTRACTS § 203(c) (in construing contract, specific clause governs general).

bill.²⁸⁸ Subsequently, in *State v. Thermoid Co.*,²⁸⁹ the New Jersey Supreme Court held that a bill providing for an alternate method of escheat to the state was not a revenue bill. The court recognized that the escheat acts were motivated by a desire to increase the state's funds, but found that merely because the bill was for the purpose of increasing the state's revenue it was not necessarily a bill for raising revenue within the meaning of the origination clause.²⁹⁰ The court observed that there existed a distinction between the state's assumption of custody over abandoned property and the production of revenue.²⁹¹ The escheat statute imposed neither a tax nor a levy.²⁹²

More recently, a New Jersey court construed an act which imposed a tax equal to the total amount of non-vested pension benefits of employees having served fifteen or more years upon certain employers who were ceasing operations in New Jersey.²⁹³ The tax was to provide a fund to which employees having completed fifteen years of service could make a claim for the current value of their non-vested pension benefits.²⁹⁴ While finding the act unconstitutional on other grounds,²⁹⁵ the court rejected an origination clause challenge.²⁹⁶

In *Thiokol Chemical Corp. v. Morris County Board of Taxation*, however, the court struck down as violating the origination clause a bill for assessment of leasehold interest privately used for profit in property otherwise exempt.²⁹⁷ The court found that in New Jersey, taxes collected by the municipalities were state taxes even though they were collected by

288. *In re Paton's Estate*, 114 N.J. Eq. 324, 168 A. 422 (Prerog. Ct. 1933). The court noted that the contrary rule obtained in England, but found no American support. The court overlooked *Perry County v. Selma, Marion & Memphis Ry. Co.*, 58 Ala. 546 (1877), which directly holds that a bill decreasing revenue falls within the origination clause. See also *Armstrong v. United States*, 759 F.2d 1378 (9th Cir. 1985) (bill to decrease revenue within federal origination clause definition of revenue bill).

289. 16 N.J. 274, 108 A.2d 421 (1954), noted with approval in Heckel, *Constitutional Law*, 10 RUTGERS L. REV. 28-29, 305-06 (1955).

290. *Thermoid Co.*, 16 N.J. at ___, 108 A.2d at 423.

291. *Id.* at ___, 108 A.2d at 424.

292. *Id.*

293. *Raybestos-Manhattan, Inc. v. Glaser*, 144 N.J. Super. 152, 365 A.2d 1 (1976), *aff'd*, 56 N.J. Super. 513, 384 A.2d 176 (1978).

294. *Id.*

295. The lower court found the statute invalid on the basis that the classifications employed by the Act were arbitrary and without rational basis, thus violating special legislation provisions of the New Jersey Constitution. *Glaser*, 144 N.J. Super. at ___, 365 A.2d at 15-21. The appellate division affirmed on the additional ground that the act constituted a prohibited private purpose tax. *Glaser*, 56 N.J. Super. at ___, 384 A.2d at 177. See also *French v. City of Camden*, 77 N.J. Eq. 151, 76 A. 980 (N.J. Ch. 1910) (senate act authorizing city's assessment not subject to origination clause).

296. *Glaser*, 144 N.J. Super. at ___, 365 A.2d at 24.

297. 76 N.J. Super. 232, 184 A.2d 75, 82 (1962), *aff'd*, 41 N.J. 405, 197 A.2d 176 (1964).

the municipality under power granted by the state.²⁹⁸ Refusing to sterilize the constitutional provision, the court asserted that the clause, as part of the constitution, must be enforced.²⁹⁹

15. Oklahoma

Oklahoma has a wealth of interpretive law³⁰⁰ construing its origina-

298. *Id.* at ___, 184 A.2d at 82. The court rejected the argument that the origination clause only encompassed bills for the raising of revenues for state purposes which were paid into the treasury of the state. *Id.* at ___, 184 A.2d at 81.

299. There is a tendency in many places to belittle the bill origin clause in the State Constitution on the theory that there is no practical need for such a provision in these days in our State. However, the fact remains that it is a part of the Constitution and must be observed and enforced.

Id. at ___, 184 A.2d at 82. The court distinguished *In re Ross*, 86 N.J.L. 387, 94 A. 304 (1914), as not involving the same fact situation. In *Thiokol*, the senate originated the basic bill and the assembly only added an amendment. See also *Atlantic City Casino Hotel Ass'n v. Casino Control Comm'n*, 203 N.J. Super. 203, 496 A.2d 714 (N.J. Super. Ct. App. Div. 1985) (origination clause cited in case striking down proposal to increase permit fees; finding that such commission action was really a revenue-raising measure, and that such power vested in the general assembly and was not delegable to non-governmental bodies without explicit standards).

300. In addition to the case law discussed in this section, the Oklahoma Attorney General, pursuant to his statutory duty, OKLA. STAT. tit. 74, § 18b (e) (1982), to give his opinion upon request by designated state officers and agencies, has rendered a substantial number of opinions on Oklahoma's origination clause. The attorney general has construed the clause narrowly. See 15 Op. Att'y Gen. 330 (1983) (bill which authorized Employment Security Commission to assess a surcharge on employers in certain instances was not a revenue bill, as the principal object of the bill was to revamp the employment security program); 15 Op. Att'y Gen. 363 (1983) (bill which effects major change in the Oklahoma Tax Commission was not made a revenue bill by inclusion within bill of provisions relating to calculation of depreciation of assets and defining consideration in relation to taxes on real estate deeds and instruments); 10 Op. Att'y Gen. 164 (1977) (comprehensive senate bill restructuring motor vehicle registration system, making appropriations, and modifying license fee provisions, was not a revenue bill); Op. Att'y Gen. No. 240 (May 19, 1965) (senate amendment to house bill the effect of which would be to raise revenue not barred); Op. Att'y Gen. No. 138 (Feb. 23, 1965) (since principal purpose of senate bill regulatory and not the raising of revenue, the senate bill did not violate the origination clause); Op. Att'y Gen. No. 135 (Feb. 23, 1965) (origination clause construed strictly; since proposed bill did not levy a tax but merely rendered a previously levied tax inapplicable under certain conditions, not barred); Op. Att'y Gen. No. 514 (May 14, 1959) (house may amend a senate bill so as to include a revenue-raising measure); Op. Att'y Gen. No. 313 (Mar. 13, 1957) (senate bill to authorize school districts to raise revenue by vote of the people not within origination clause); Op. Att'y Gen. No. 520 (May 20, 1955) (although revenue bill may not be passed within last five days of session, the bill may be signed by the presiding officers of the legislature during that period); Op. Att'y Gen. (Apr. 5, 1961) (senate-originated legislation to repeal exemptions from sales tax valid). But see 14 Op. Att'y Gen. No. 100 (1982) (senate bill providing for increased assessments to fund a law enforcement training fund may be revenue bill).

The opinions of the attorney general are binding on the state officers affected thereby, unless the opinion declares a state law unconstitutional. In that instance, the opinion is advisory only. *State ex rel. York v. Turpen*, 681 P.2d 763 (Okla. 1984). The attorney general's opinion is generally accorded substantial, though not controlling, weight by the Oklahoma courts. *Goodin v. Board of Educ.*, 601 P.2d 88 (Okla. 1979); *Lowery v. Oklahoma Alcoholic Beverage Control Bd.*, 584 P.2d 724 (Okla. 1978). See generally Sparling, *Opinions of the Oklahoma Attorney General: An Analysis*, 6 OKLA. CITY U.L. REV. 373 (1981); Comment, *Attorney General: The Effect of the Attorney General's Opinion in Oklahoma*, 28 OKLA. L. REV. 106 (1975).

tion clause.³⁰¹ The Oklahoma provision, like the Alabama one,³⁰² provides that (1) bills for raising revenue shall not originate in the senate, and that (2) revenue bills shall not be passed within the last five days of the legislative session.³⁰³ The Oklahoma courts have strictly construed the origination provision limiting its operation to acts levying taxes in the strict sense for a state-wide purpose.³⁰⁴

301. "All bills for raising revenue shall originate in the House of Representatives. The Senate may propose amendments to revenue bills. No revenue bill shall be passed during the five last days of the Session." OKLA. CONST. art. V, § 33.

302. ALA. CONST. art. IV, § 70. *See supra* note 142 and accompanying text.

303. The Oklahoma Supreme Court considers "bills for raising revenue" for purposes of house origination to be synonymous with "revenue bill" for purposes of the five day limitation. *Anderson v. Ritterbusch*, 22 Okla. 761, 98 P. 1002 (1908). Thus, no distinction is made in this section between the two phrases and cases involving either provision shall be considered within the scope of this article.

304. In addition to the cases discussed in the text, in the following cases the Oklahoma appellate courts rejected an origination clause challenge: *Board of County Comm'rs v. Oklahoma Pub. Employees Retirement Sys.*, 405 P.2d 68 (Okla. 1965) (statute providing for the establishment of a retirement system for state and county employees does not levy taxes nor does it contain provisions for revenue; principal purpose was to establish retirement system); *Pure Oil Co. v. Oklahoma Tax Comm'n*, 179 Okla. 479, 66 P.2d 1097 (1936), *appeal dismissed*, 302 U.S. 635 (1937) (statute imposing tax on motor vehicle doing inter-city business; purpose of statute was to regulate use of highways and the tax was only incidental to that purpose); *Thompson v. Huston*, 170 Okla. 195, 39 P.2d 524 (1935) (statute reducing interest rate on delinquent real estate taxes); *Jones v. Blaine*, 149 Okla. 153, 300 P. 369 (1931) (cemetery tax levy); *Wallace v. Gassaway*, 148 Okla. 265, 298 P. 867 (1931) (senate bill providing for the resale of realty for delinquent taxes by the county treasurer); *Fullerton v. State*, 140 Okla. 122, 282 P. 674 (1929), *appeal dismissed*, 281 U.S. 705 (1930) (statute providing for taxation of lands sold by commissioners of land office); *Protest of Chicago, R.I. & P. Ry. Co.*, 137 Okla. 186, 279 P. 319 (1929) (bills authorizing municipalities to levy taxes to establish public library and to levy taxes to construct and maintain cemeteries not revenue bills, as the taxes only authorized, not levied, and are for local, not state, governmental expenses); *Ex Parte Sales*, 108 Okla. 29, 233 P. 186 (1924) (provision of Motor Vehicle Act requiring payment of license fee for privilege of operating transportation services on public highways only incidental to main purpose of act, to regulate common carriers and use of public highways); *Ex Parte Tindall*, 102 Okla. 192, 229 P. 125 (1924) (companion case to *Sales*); *Ryan v. State*, 102 Okla. 168, 228 P. 521 (1924) (law providing for correction of the tax rolls, refunding taxes illegally levied, and authorizing emergency tax levy if approved by the people of the city not a revenue bill); *Dickey v. State*, 90 Okla. 106, 217 P. 145 (1923) (origination clause did not apply to bills which authorize a municipality to raise revenue to defray municipality's expenses; clause limited to bills raising revenue for state government expenses; quoting *Harper v. Comm'rs of Elberton*, 23 Ga. 566 (1857) to the effect that delegating power to tax was different from laying of a tax); *Lusk v. Ryan*, 69 Okla. 165, 171 P. 323 (1918) (section providing a procedure for recovery of illegal taxes paid, severing section from unconstitutional provisions); *In re Okla. Nat'l Life Ins. Co.*, 68 Okla. 219, 173 P. 376 (1918) (severs recovery procedure from portions of statute unconstitutional as being revenue bill); *In re Sprankle Co.*, 69 Okla. 178, 170 P. 1147 (1917) (same holding as in *Lusk*, fact that section incidentally may have effect of raising revenue not determinative); *In re Lee*, 64 Okla. 310, 168 P. 53 (1917) (law providing for a docket fee not a revenue measure, but designed to compensate for service rendered to public); *Trustees', Ex'rs.' & Secs.' Ins. Corp. v. Hooton*, 53 Okla. 530, 157 P. 293 (1916) (registration tax on recording of mortgages); *Johnson v. Grady County*, 50 Okla. 188, 150 P. 497 (1915) (statute relating to office of county assessor and the assessment and equalization of property for taxation); *Cornelius v. State*, 40 Okla. 733, 140 P. 1187 (1914) (statute providing for exemption of certain realty and imposing tax on mortgages not a revenue bill as the statute's principal purpose was not the raising of revenue); *Meek v. State*, 54 Okla. Crim. 415, 22 P.2d 933 (1933) (act regulating sale of securities which provided

The foundation Oklahoma case is *Anderson v. Ritterbusch*.³⁰⁵ In *Anderson*, a statute providing for the discovery of property not listed for taxation, its assessment, and the subsequent collection of taxes thereon, was attacked both because the act was a senate-originated revenue bill and because the act was passed during the last five days of the legislative session.³⁰⁶ Quoting extensively from Judge Story,³⁰⁷ the court distinguished the seminal Alabama case of *Perry County v. Selma, Marion & Memphis Ry. Co.*,³⁰⁸ on the grounds that the Alabama act actually levied a tax.³⁰⁹ The statute before the Oklahoma court only provided for a means to enforce the already established tax laws against property which for some reason had been omitted from taxation.³¹⁰ Thus, "such a law is in no sense a bill for raising revenue, although it may incidentally have that effect. It does not belong to that class of revenue bills mentioned by Judge Story as those that levy taxes in the strict sense of the word."³¹¹

The Oklahoma Criminal Court of Appeals,³¹² however, in *Ex Parte Fuller*, struck down as violative of the origination clause a provision providing for a license tax for vending machines operated in a public place.³¹³ The defendant had failed to obtain a license and was fined the

collection of fees not a revenue bill as principal purpose of act was to prevent fraud in the sale and disposition of securities); *Ex Parte Ambler*, 11 Okla. Crim. 449, 148 P. 1061 (1914) (Medical Practices Act which incidentally required a payment of a fee to obtain certificate to practice). In addition, several separate opinions have addressed the origination clause. See *State v. Oklahoma Tax Comm'n*, 462 P.2d 536, 544 (Okla. 1969) (McInerney, J., dissenting) (in dicta, observing that gasoline and sales tax were revenue laws whose principal purpose was the raising of revenue for general state purposes); *Oklahoma City v. Griffin*, 403 P.2d 463, 467 (Okla. 1965) (Blackbird, J., dissenting) (joint resolution providing that portion of traffic fines collected by cities deposited with state for driver education not a revenue bill); *Carter v. Rathburn*, 85 Okla. 251, 257, 209 P. 944, 964 (1922) (Elting, J., dissenting) (origination clause controls revenue bills, not appropriation bills); cf. *Chickasha Cotton Oil Co. v. Grady County*, 177 Okla. 240, 242, 58 P.2d 590, 592 (1936) (act of levying taxes under revenue laws to be collected and used in future different from collecting of debt already due).

305. 22 Okla. 761, 98 P. 1002 (1908).

306. *Id.* at 765, 98 P. at 1004.

307. *Id.* at 768-70, 98 P. at 1005-07.

308. 58 Ala. 546 (1877).

309. *Anderson*, 22 Okla. at 771, 98 P. at 1006. The supreme court approved the result reached in *Perry*, noting that the Alabama law was one that levied a tax for state purposes. The court noted that the senate act in *Perry* actually would lower the rate of taxation. Nevertheless, *Perry* was "clearly right." *Id.*

310. *Id.* at 771-72, 98 P. at 1006.

311. *Id.*

312. Now the Oklahoma Court of Criminal Appeals. The Oklahoma Constitution, like that of Texas, creates two separate courts of last resort: the supreme court and the court of criminal appeals. OKLA. CONST. art. VII, § 4. Unlike the Texas system, however, the Oklahoma Constitution specifically empowers the Oklahoma Supreme Court to decide any conflict as to jurisdiction. *Carter v. Court of Criminal Appeals*, 595 P.2d 416 (Okla. 1978). See Fraser, *Oklahoma's New Judicial System*, 2 OKLA. L. REV. 373 (1968).

313. 31 Okla. Crim. 289, 238 P. 512 (1925).

sum of \$25.00. Upon his refusal to pay the fine, the defendant was placed in custody.³¹⁴ He filed an original proceeding in habeas corpus, seeking his discharge on the basis that the act in question, a revenue bill, had been passed in the last five days of the legislative session and was thus void.³¹⁵ The court sustained the claim and granted relief, rejecting the state's claim that the statute was an exercise of the police power and not a revenue measure.³¹⁶ The court observed that it sometimes is difficult to distinguish between the exercise of the police power and the exercise of the taxing power, but that the act in question did not present such difficulties.³¹⁷ The exercise of the police power is regulatory in nature, and the fee or tax charged is in theory compensation to the state for the regulatory service.³¹⁸ The act in question, however, did not regulate anything.

No limitation is placed upon the number of machines that may be installed. Their location is not limited to any particular place of business or location. No qualifications of the persons operating such devices are provided for. No duty is imposed upon the person owning such machines. No system of inspection is provided. The act provides only for the payment of the license tax, and on the failure to pay a penalty by way of fine is imposed. This act is a revenue measure; its purpose was the raising of revenue and not that of regulation, and, since it was enacted within five days of the close of the legislative session, falls clearly within the inhibition of section 33, art. 5, of the Constitution, and is invalid.³¹⁹

The supreme court returned to the strict construction of the origination clause in *Leveridge v. Oklahoma Tax Commission*.³²⁰ The house bill under challenge had been passed in the last five days of the legislative session.³²¹ The bill lifted the tax exemption on certain late model cars owned by used car dealers.³²² Since the house bill did not, "within its four corners," levy a tax, but rather removed a tax exemption, it was not a revenue bill.³²³

These cases, and the numerous cases discussed in the footnotes,

314. *Id.* at 290, 238 P. at 512.

315. *Id.* at 291, 238 P. at 512-13.

316. *Id.* at 293-94, 238 P. at 513.

317. *Id.*

318. *Id.* at 293, 238 P. at 513.

319. *Id.* at 294, 238 P. at 513.

320. 294 P.2d 809 (Okla. 1956).

321. *Id.* at 810.

322. *Id.* at 811.

323. *Id.* at 811-12. For a discussion of the legislative process in Oklahoma, see S. KIRKPATRICK, *THE LEGISLATIVE PROCESS IN OKLAHOMA: POLICY MAKING, PEOPLE & POLITICS* (1978).

place Oklahoma squarely in the mainstream of contemporary construction of the origination clause: a strict construction is employed to exclude all but bills levying taxes to be used for general governmental purposes.

16. Oregon

Oregon's origination clause³²⁴ has been strictly construed to include only measures raising revenue for general state purposes.³²⁵ In *Northern Counties Investment Trust v. Sears*,³²⁶ the court upheld a statute prescribing fees to be paid to sheriffs and court clerks for particular services, such fees to be turned over to the county treasury, against an origination clause attack. Relying principally upon federal precedents,³²⁷ the Oregon Supreme Court found the statute not to be one for the levying of taxes in the strict sense but to be incidental to the primary purpose of the legislation which was to prescribe the compensation and duties of clerks and sheriffs.³²⁸ In the earlier federal case of *Dundee Mortgage Trust Investment Co. v. Parrish*,³²⁹ the federal court found that the mortgage tax law was not a revenue bill. The bill only provided the procedure for valuation; it did not authorize or provide for the levying of any tax.³³⁰ In addition to judicial construction, the origination clause has been the subject of a considerable number of attorney general opinions.³³¹

324. "Bills may originate in either house, but may be amended or rejected in the other: except that bills for raising revenue shall originate in the House of Representatives." OR. CONST. art. IV, § 18. In *Northern Counties Inv. Trust v. Sears*, 30 Or. 388, 403, 41 P. 931, 936 (1895), the Oregon Supreme Court applied to the Oregon clause the construction applied to the federal clause by the federal courts. The court in a later opinion observed the following: "[O]bjections to unconstrained taxation have been perennial mainsprings of constitutionalism. The American colonists demanded 'no taxation without representation,' not representation in the abstract, and American constitutions still insist that revenue bills begin in the more popular house of their legislatures, where members also face the most frequent elections." *Oregon State Homeowner's Ass'n v. Roberts*, 299 Or. 460, —, 703 P.2d 954, 957 (1985).

325. In addition to the other cases discussed, see also *State v. Wright*, 14 Or. 365, —, 12 P. 708, 712, (1887), *overruled on other grounds*, *Warren v. Crosby*, 24 Or. 558, 34 P. 661 (1893) (bill providing for an increase in license fee for sale of liquor not a bill for raising revenue, but an exercise of the police power of the state to regulate a business "detrimental to the public morals"); *Barnum v. Dep't of Revenue*, 5 Or. Tax 508 (1974), *aff'd*, 270 Or. 867, 530 P.2d 28 (1974) (applying incidental revenue test and reiterating strict construction of origination clause).

326. 30 Or. 388, 41 P. 931 (1895).

327. *Id.* at 401-02, 41 P. at 935.

328. *Id.* at 402-03, 41 P. at 935-36.

329. 24 F. 197 (D. Or. 1885), *appeal dismissed*, 140 U.S. 690 (1890).

330. *Id.* at 201. The court discusses the Oregon case of *Mumford v. Sewall*, 11 Or. 67, 4 P. 585, 587 (1883), where the Oregon court expressed reservations concerning the constitutionality of the law in terms of the origination clause, as the act originated in the senate. The federal court had no such doubts. "But I am clear that this is not a bill for raising revenue." *Parrish*, 24 F. at 201.

331. See Op. Att'y Gen. No. 7632 (June 7, 1978) (bill originating in senate which eliminates tax

17. Pennsylvania

In the influential decision of *Mikell v. School Dist.*, the Pennsylvania Supreme Court went to great lengths to emasculate the state's origination clause.³³² The court first held that the senate act, which imposed a personal property tax upon the residents of certain school districts for public school purposes, was not a "bill for raising revenue" within the clause.³³³ The court noted that to be a revenue bill, "the revenue derived from the tax imposed should be coverable into the treasury of the exacting sovereign for its own general governmental uses."³³⁴ The court was on solid precedential ground for this part of its analysis.³³⁵

The court then, however, gratuitously found the origination clause to be a purely procedural directive and not a substantive interdict.³³⁶

exempt status of floating homes and households not a revenue bill; clause to be construed to the "narrowest possible terms" so that existence of a non-revenue raising purpose to bill would remove it from the origination clause); Op. Att'y Gen. No. 6387 (Nov. 8, 1967) (origination clause does not prohibit creation of joint ways and means committee); Op. Att'y Gen. No. 2365 (Mar. 3, 1953) (bill amending corporate excise tax to broaden the tax base and therefore increase the revenue generated should originate in house, distinguishing *Mumford v. Sewall*, on basis that in *Mumford*, act regulated classification, collection, or enforcement of taxes while proposed senate bill imposed a tax and raised revenue); Op. Att'y Gen. No. 1657 (Jan. 22, 1951) (bill amending provisions for licenses and fees for race meets was a revenue bill that should originate in house of representatives; one point to consider is that the amount generated by the fee will far exceed the cost of regulation); Op. Att'y Gen. 258 (Mar. 15, 1939) (bill declaring sale of motor vehicle fuels a public utility and providing for rates, prices, and fees for obtaining permits, proceeds of which were to be credited to special fund, not a revenue bill because not to be used for payment of general expenses of the state government); Op. Att'y Gen. (Mar. 13, 1939) (bill which levies a tax for special purpose, and not to raise revenue for general expenses of state government not a revenue bill); Op. Att'y Gen. (Feb. 13, 1939) (extensive discussion of the limitations of the origination clause); Op. Att'y Gen. (Mar. 4, 1935) (bill relating to pilots and pilot commissioners and authorizing collection of fees not a revenue bill, since it is not directed towards raising revenue; even if it were, not subject to the origination clause as it does not impose taxes generally upon all of the property or people of the state); Op. Att'y Gen. (Feb. 11, 1931) (bill authorizing incorporated cities and towns to levy and collect a privilege tax on privately owned and operated public utilities operating without a franchise was a revenue bill because amount generated was beyond that necessary to cover the costs of regulation). The Oregon position on the enrolled bill rule and the mandatory nature of constitutional provisions is extensively discussed in Note, *Constitutional Provisions Regulating the Mechanics of Statutory Enactment in Oregon - Effect of Enrollment*, 27 OR. L. REV. 46 (1947).

332. 359 Pa. 113, 58 A.2d 339 (1948). The origination clause is found in art. III, § 10 of the Pennsylvania Constitution: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills." PA. CONST. art. III, § 10.

333. *Mikell*, 359 Pa. at ___, 58 A.2d at 341.

334. *Id.* The court communicated its view of the origination clause when, after tracing briefly the history of the revenue power, the court disclaimed, "[b]ut, we need not base our decision with respect to the particular constitutional provision, now under consideration, upon its present-day inappropriateness." *Id.*

335. See, involving school property taxation, *Chicago, B. & Q. R.R. Co. v. School Dist. No. 1*, 63 Colo. 159, 165 P. 260 (1917); *Patrons of Noble County School Corp. v. School City*, 244 Ind. 675, 194 N.E. 2d 718 (1963); *Cassady v. Oldham County*, 246 Ky. 773, 56 S.W. 2d 368 (1933); *Evers v. Hudson*, 36 Mont. 135, 92 P. 462 (1907).

336. *Mikell*, 359 Pa. at ___, 58 A.2d at 344.

The remedy for infringement of such a directive would not be judicial; a point of order in the legislative chamber was the remedy found by the court.³³⁷ “A failure of the legislature to follow a directory provision of the Constitution, respecting the introduction and passage of legislation, does not present a justiciable question, and, in no event, does it impair the validity of a duly certified enactment.”³³⁸ Finding refuge in the en-

337. *Id.* (rejected in *Morgan v. Murray*, 134 Mont. 92, 328 P.2d 644 (1958)). Dicta in a later decision of the Pennsylvania Supreme Court, however, casts some doubt on *Mikell's* continued force. In *Sweeney v. Tucker*, 473 Pa. 493, 375 A.2d 698 (1977), an action finding justiciable the question of whether a member of the Pennsylvania House of Representatives was properly expelled, the court observed that “[s]pecific limitations on the Legislature’s power to determine its internal operating procedures are imposed elsewhere in the Constitution. See PA. CONST. art. III, §§ 1-13 [which includes the origination clause]. These limitations are judicially enforceable.” *Id.* at ___, 375 A.2d at 708-09. The court cited two of its early decisions to support its observation: *Scudder v. Smith*, 331 Pa. 16, 200 A. 601 (1938) (constitution requires bills, not joint resolutions) and *Stewart v. Hadley*, 327 Pa. 66, 193 A. 41 (1937) (statute violates provision requiring only one subject). Neither case was cited in *Mikell*.

338. *Mikell*, 359 Pa. at ___, 58 A.2d at 344. The court, in finding the origination clause directory, disregarded the general rule that constitutional provisions are construed to be mandatory. 2 N. SINGER, *supra* note 16, § 57.13; H. BLACK, *HANDBOOK OF AMERICAN CONSTITUTIONAL LAW* § 59 (4th ed. 1927) (constitutional provisions almost invariably mandatory); 16 AM. JUR. 2D *Constitutional Law* § 136; 16 C.J.S. *Constitutional Law* § 52. The Pennsylvania court erred in eviscerating the constitutional provision. The Idaho court noted in *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985 (1897), where the state attorney general argued that the constitution’s technical procedural requirements were directory only:

It is true that the doing of these things is a matter of procedure. But by what right shall any one be permitted to say that any of the things required by the constitution to be done are “insignificant,” and may therefore be omitted? Has anyone more right to say that one of the things required by the constitution is insignificant and may be omitted than he has to say that any other thing required is insignificant and may therefore be omitted? If the right to ignore one provision exists, the right to ignore all exists. If the court must wink at one violation of the constitution, it must wink at other violations of it. . . . We think that safety and security demand that we stick to the letter and spirit of the constitution, that we obey all of its mandates, until the people, the source of all power, who made it, change its provisions.”

Id. at 431-32, 49 P. at 490. The court noted that Sutherland’s original work on statutory construction criticized the directory approach: “whatever constitutional provision can be looked upon as directory merely is very likely to be treated by the legislature as if it was devoid of moral obligation, and to be therefore habitually disregarded.” *Cohn*, 5 Idaho at ___, 49 P. at 990. See also 16 AM. JUR. 2D *Constitutional Law* § 136. Judge Cooley warned that

the courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of the Constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding except when such rules are looked upon as essential to the thing to be done, and they must be regarded in the light of limitations upon the power to be exercised.

T. COOLEY, *A TREATISE ON CONSTITUTIONAL LIMITATIONS* 78-9 (1st ed. 1868). See also *Perry County v. Selma, Marion & Memphis Ry. Co.*, 58 Ala. 546 (1877) (quoting Judge Cooley with approval). The danger of which Judge Cooley warned is amply illustrated by two Mississippi cases. *Hunt v. Wright*, 70 Miss. 298, 11 So. 608 (1892), involved constitutional provisions which prohibited passage of revenue and appropriation bills during the last five days of the legislative session and required a three-fifths vote to pass revenue measures. In dicta, the court observed that the courts would not enforce either provision and then remanded their enforcement to the conscience of the legislature. *Id.* at ___, 11 So. at 610-11. In *Green v. Weller*, 32 Miss. 650, 691 (1856), the Mississippi court refused to consider the validity of a constitutional amendment against the claim that it had

rolled bill doctrine,³³⁹ the court concluded that since the certified enactment did not disclose the origin of the act, the challenge had to fail in any event.³⁴⁰

18. South Carolina

South Carolina's origination clause³⁴¹ has been the subject of few judicial constructions.³⁴² In *State ex. rel. Coleman v. Lewis*, the court held the state highway commission act was not a revenue bill because its only revenue-producing measure was a license tag charge.³⁴³ Furthermore, the license tag feature had originated in the house bill, although

failed to receive the vote of two-thirds of all the members of the senate, as required by the constitution. *But see* Dodd, *supra* note 16, at 54-56 (criticizing view that all constitutional provisions mandatory). One must observe that the issue of whether a constitutional provision is mandatory or directory must be distinguished from the separate issue of what evidence will be examined to determine compliance with the constitutional provision. *Field v. Clark*, 143 U.S. 649, 670 (1891). It is in this context that the enrolled bill doctrine comes into play.

339. *Mikell*, 359 Pa. at ___, 58 A.2d at 345-46.

340. See *Velasquez v. Depuy*, 46 Pa. D. & C.2d 587 (1969) for an extensive discussion of the Pennsylvania enrolled bill rule. In the early case of *McCoy v. Washington County*, 15 F. Cas. 1341 (C.C.W.D. Pa. 1862) (No. 8,731), Justice Grier, riding circuit, stated in dicta that a Pennsylvania act authorizing the citizens of Washington County to decide whether commissioners should buy stock in a railroad, to borrow the necessary funds, and to issue loan certificates was not a revenue bill for purposes of Pennsylvania's origination clause. *Id.* at 1344.

341. "Bills for raising revenue shall originate in the House of Representatives, but may be altered, amended or rejected by the Senate; all other Bills may originate in either house, and may be amended, altered or rejected by the other." S.C. CONST. art. III, § 15. The section was cited, but not discussed, in *Jackson v. Breeland*, 103 S.C. 184, 88 S.E. 128 (1916) (court found objection that drainage act originated in senate a misapprehension of the facts); *Crouch v. Benet*, 198 S.C. 185, 17 S.E.2d 320 (1941) (clause provides that bills may be amended by either house).

342. The origination clause, however, has received considerable discussion in attorney general opinions. These opinions reflect the South Carolina Supreme Court's strict construction of the origination clause to include only bills raising revenue for the state. *See* Op. Att'y Gen. No. 95 (Sept. 3, 1985) (annual state appropriations bill may be introduced simultaneously into house and senate, since an appropriation bill is not a revenue bill; the opinion noted that it was the historical custom to introduce the general appropriation bill in the house, and the decision on whether to continue that custom was with the legislature); Op. Att'y Gen. (May 15, 1981) (bill to confer authority on school districts to levy and collect a sales tax may originate in senate since the funds raised will not go into the state treasury); Op. Att'y Gen. (March 23, 1981) (bill to enable local governmental units to finance redevelopment projects through bond issues not a revenue bill since the revenue raised not for the state, but for local purposes); Op. Att'y Gen. (March 23, 1981) (bill to enable localities to levy a joint county-municipal sales tax not a revenue bill as merely delegating authority to local government units to levy taxes for local purposes); Op. Att'y Gen. (March 1, 1979) (bill amending procedure by which annual budget report is submitted to the legislature and amending procedure of annual appropriations bill not a revenue bill, but only a procedural bill); Op. Att'y Gen. (March 23, 1970) (senate bill provided for extensive modification of gasoline tax not revenue bill; proceeds to go to highway purposes, and not to general state funds); Op. Att'y Gen. (March 15, 1965) (bill whose primary purpose was to make capital improvements in Aiken County not a revenue measure as a result of provision to permit county to sell bonds; the origination clause must be strictly construed to only include those measures which raise revenue for the state treasury and are used for the state's general governmental uses).

343. 181 S.C. 10, ___, 186 S.E. 625, 628 (1936).

the senate had amended the bill in other respects.³⁴⁴ In *State v. Stanley*, the court found a statute regulating the trapping, shipping, and transportation of furs was not a revenue bill because fines were provided only for violations of the statute.³⁴⁵

19. Texas

The Texas origination clause³⁴⁶ has been narrowly construed by both the courts³⁴⁷ and the Texas Attorney General's Office.³⁴⁸ In the

344. *Id.* at ___, 186 S.E. at 628. The court in *Lewis* reviewed the legislative journal and established that the bill originated in the house. The court did invoke the enrolled bill doctrine to reject a challenge based upon the constitutional provision requiring an act to be read three times in each house. *Id.* at ___, 186 S.E. at 629. Compare *State ex. rel. Richards v. Moorer*, 152 S.C. 455, 150 S.E. 269 (1929), *cert. denied*, 281 U.S. 691 (court declined to look behind enrolled bill to determine whether state highway system bill originated in house or senate; rejecting origination clause challenge on basis that enrolled bill showed no facial defect); *Wingfield v. South Carolina Tax Comm'n*, 147 S.C. 116, 144 S.E. 846 (1928) (court declined to review journals to determine whether license tax act originated in senate, relying on enrolled bill to reject origination clause claim); *Hicks v. Cleveland*, 106 F. 459, 466 (4th Cir. 1901) (act incorporating a railroad and providing for a railroad tax constitutional on alternative bases that enrolled bill doctrine prevents use of legislative journals to establish origination and because act was not a revenue bill in any event but was to incorporate railroad and promote its construction).

345. 131 S.C. 513, ___, 127 S.E. 574, 575 (1925). See also, *Pineland Club v. Berg*, 110 S.C. 505, 96 S.E. 915 (1918), where the court, in dictum, found that the license tax involved was not a revenue measure, but merely an instrumentality to the main purpose of the act which was regulating the raising and protecting of fish and game. *Id.* at ___, 96 S.E. at 917.

346. "All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills." TEX. CONST. art. III, § 33. The Texas Constitution in an earlier section somewhat misleadingly provides that "[b]ills may originate in either House, and, when passed by such House, may be amended, altered or rejected by the other." TEX. CONST. art. III, § 31. There appears to be no discussion of the relationship between these two constitutional provisions, either in case law or commentaries. Mississippi's Constitution of 1832 also contained both clauses. MISS. CONST. art. III, §§ 23, 24. The interpretative commentary to § 33 notes that the origination clause was borrowed from the practice of the British House of Commons and carried over to Texas, as the lower house more directly represents the people and is renewed by more frequent elections.

347. In addition to the cases discussed in the text, see also the following: *Smith v. Davis*, 426 S.W.2d 827 (Tex. 1968) (senate bill which authorized creation of hospital district with power to levy taxes not a revenue bill since taxes not to be used for general purposes, and revenue raising not principal purpose of bill); *Yeary v. Bond*, 384 S.W.2d 376 (Tex. Civ. App. 1964, writ ref'd n.r.e.) (hospital district act constitutional because revenue generated was only incidental to main purpose which was to create hospital district); *Stuard v. Thompson*, 251 S.W. 277 (Tex. Civ. App. 1923, n.w.h.) (poll tax not revenue bill because principal purpose of statute was to set forth qualifications of women voters); *Raymond v. Kibbe*, 95 S.W. 727 (Tex. Civ. App. 1906, writ ref'd) (act imposing tax on fishing boats and on fish taken for market not revenue bill); *cf. Utter v. State*, 571 S.W.2d 934 (Tex. Crim. App. 1978) (license fee imposed by municipality on wrecker operator was regulatory measure, not prohibited occupation tax); *Atkins v. State Highway Dep't*, 201 S.W. 226 (Tex. Civ. App. 1918, writ dismissed) (vehicle registration fee not a tax).

348. See, e.g., Op. Att'y Gen. No. 5212 (1943) (bill which would not raise revenue, but which either reduced or abolished existing tax could originate in senate); Op. Att'y Gen. No. 4061 (1941) (senate bill amending a prior enacted revenue bill not invalid; bill decreasing revenue not within meaning of origination clause). As to the role of the Texas attorney general's opinion function, see Dickson, *Vital Crucible of the Law: Politics and Procedures of the Advisory Opinion Function of the*

early case of *Day Land & Cattle Co. v. State*,³⁴⁹ the Texas Supreme Court validated against an origination clause attack a bill which set apart one-half of the unappropriated public domain in Greer County for the benefit of public schools and the other half for the payment of the public debt. The Texas Supreme Court held that such an act was not a revenue bill, for “[i]t merely withdrew that land from the body of unappropriated lands and reserved it for specific uses, leaving it to some future legislature to determine when and how the proceeds of those lands should be brought into the state treasury.”³⁵⁰ The court adopted Judge Story’s position that the origination clause should be strictly confined to bills levying taxes in “the strict sense of the words.”³⁵¹

The Texas Court of Criminal Appeals³⁵² later adopted the same narrow test in *Gieb v. State*.³⁵³ The court found that a statute authorizing towns to levy taxes was not subject to the origination clause, observing that the origination clause is directed towards acts of the legislature raising revenue for general purposes and towards funding appropriations made by the legislature.³⁵⁴ The origination clause does not apply to laws of special or local character; neither does it apply to police regulations voted on by the people in particular locations.³⁵⁵ Therefore, if the law is local in its operation, and the tax only incidental to the law, or if the tax will be raised by a municipality for local purposes, the law will not be deemed a bill for raising revenue within the ambit of the origination clause.³⁵⁶

The Austin Court of Civil Appeals, in a case subsequently reversed on other grounds,³⁵⁷ noted the limitations imposed by the enrolled bill doctrine on review of enacted legislation.³⁵⁸ The court found that a stat-

Texas Attorney General, 9 HOUS. L. REV. 495 (1972). Attorney general opinions are customarily accorded great weight in Texas. 7 TEX. JUR. 3D *Attorney General* § 11 (1980).

349. 68 Tex. 526, 4 S.W. 865 (1887).

350. *Id.* at 545, 4 S.W. at 874.

351. *Id.*

352. In Texas two courts of last resort exist, the supreme court for civil cases (TEX. CONST. art. V, § 3) and the court of criminal appeals for criminal matters. (TEX. CONST. art. V, § 5). As the interpretive commentary on art. V, § 5 notes, there have been instances of disagreement between these courts as to the constitutionality of statutes. See Justice, *The Texas Judicial System: Historical Development and Efforts Towards Court Modernization*, 14 S. TEX. L.J. 295, 299-302 (1972).

353. 31 Tex. Crim. 514, 21 S.W. 190 (1893).

354. *Id.* at 514, 21 S.W. at 190.

355. *Id.*

356. *Id.*

357. *James v. Gulf Ins. Co.*, 179 S.W.2d 397 (Tex. Civ. App. 1944), *rev'd on other grounds*, 43 Tex. 424, 185 S.W.2d 966 (1945) (reversed on basis that purpose of act not sufficiently expressed in title in violation of TEX. CONST. art. III, § 35).

358. *Id.* at 401-02, 406. Texas applies the enrolled bill doctrine strictly, limiting the court's

ute providing for the transfer of portions of certain taxes, license fees, or assessments already deposited in special funds or in accounts in the state treasury for the General Revenue Fund was not a revenue bill.³⁵⁹ The primary purpose of the act was not to increase revenue, which it did not in any event do, but to provide for the disposition of surpluses.³⁶⁰

20. Vermont

In the only published case construing Vermont's origination clause, *Andrews v. Lathrop*,³⁶¹ the Vermont Supreme Court recognized the issue as one of first impression³⁶² and found that a land gains tax act did not violate the clause. The tax was imposed in addition to all other taxes on gains derived from the sale or exchange of land held by a transferor for less than six years.³⁶³ The revenue generated by the tax was to be used for funding property tax relief for basic housing.³⁶⁴ After rejecting challenges based on the Equal Protection Clause of the Constitution, the court warily approached the origination clause issue. The court observed that "[s]erious questions have arisen elsewhere as to the extent to which the judicial branch may intrude upon the legislative process to declare an act, duly approved by both houses and signed by the executive, void for procedural infirmities."³⁶⁵ Nevertheless, the court concluded that the land gains tax was not a revenue bill and narrowly construed the constitutional provision to include only bills purporting to raise revenue appli-

review to only the bill itself. *Day Land & Cattle Co.*, discussed *supra* notes 349-51 and accompanying text; 12 TEX. JUR. 3D *Constitutional Law* § 45 (1980).

359. *James*, 179 S.W.2d at 406-07.

360. *Id.*

361. 132 Vt. 256, 315 A.2d 860 (1974). The Vermont Attorney General, however, had in a comprehensive opinion earlier opined that Vermont's origination clause should be strictly construed to exclude bills incidentally raising revenue and bills delegating taxing powers to municipalities. Delegation bills do not, in themselves, raise revenue, but merely grant the power to do so. Bills that have the effect of decreasing revenue, such as a bill providing for additional tax exemptions, would also not be a revenue bill. 1972-1974 Op. Att'y Gen. 159 (January 18, 1973).

Vt. CONST. ch. II, § 6 provides in pertinent part: "[a]ll Revenue bills shall originate in the House of Representatives; but the senate may propose or concur in amendments, as on other bills." In an unusual reverse origination clause, the Vermont Constitution, in ch. II, § 79 reposes exclusive authority in the senate to propose constitutional amendments. *See* 1970-72 Op. Att'y Gen. 299 (House may not amend amendment proposal, but may only concur or refuse).

362. *Andrews*, 132 Vt. at 265, 315 A.2d at 861.

363. *Id.* at 258, 315 A.2d at 861.

364. *Id.* at 259, 315 A.2d at 862.

365. *Id.* at 265, 315 A.2d at 865 (citing *Field v. Clark*, 143 U.S. 649 (1892)). The court also mentioned the Pennsylvania Supreme Court decision of *Mikell v. School Dist.*, 359 Pa. 113, 58 A.2d 339 (1948), and intimated that the Vermont Supreme Court favored the Pennsylvania court's determination that origination clause disputes were non-justiciable, and that the only remedy would be by way of point of order on the legislative floor prior to enactment. *See generally* Stern, *The Political Question Doctrine in State Courts*, 35 S.C.L. REV. 405, 412-15 (1984).

cable to meeting the general expenses and obligations of the government.³⁶⁶ The primary purpose of the bill was not to meet the state's general obligations but to provide for tax relief to certain taxpayers.³⁶⁷ The Vermont court's construction of its origination clause reflects the majority inclination to strictly construe the constitutional provision.³⁶⁸

21. Wyoming

The author did not find any cases interpreting or applying Wyoming's origination clause.³⁶⁹ However, one Wyoming Attorney General's opinion stated that a senate bill to decrease taxes would violate Wyoming's origination clause.³⁷⁰

IV. THE ORIGINATION CLAUSE IN OTHER NATIONS

A. Introduction

The origination clause³⁷¹ is prominently featured and plays a vital role in many countries which derive their constitutional foundations from the British.³⁷² Indeed, a selective examination of these nations'

366. *Andrews*, 132 Vt. at 266, 315 A.2d at 866.

367. *Id.*

368. The Vermont court observed that the origination clause came from the House of Commons and was adopted in the federal Constitution at a time when members of the Senate were elected by the state legislatures. *Id.* at 265-66, 315 A.2d at 866.

369. "All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills." WYO. CONST. art. 3, § 33. The clause was cited in *Hansen v. Smith*, 395 P.2d 944 (Wyo. 1964), but not applied.

370. Op. Att'y Gen. No. 005 (Feb. 13, 1986). The attorney general relied on the reasoning of the Ninth Circuit in *Armstrong v. United States*, 759 F.2d 1378 (9th Cir. 1985), where the court held that the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) did not violate the federal origination clause, despite TEFRA originating in the House as a tax-lowering measure, and being amended in the Senate to be a tax increase. The constitutionality of TEFRA is addressed in *Hoffer*, *supra* note 21 (concluding that most of TEFRA was unconstitutional). See also *Comment*, *supra* note 12 (constitutionality not addressed; issue of origination clause a justiciable controversy). The federal cases discussing TEFRA in connection with the federal origination clause are discussed *supra* at notes 71-98 and accompanying text.

371. In the context of this section, the term "origination clause" is meant to refer to any special power over revenue or other financial bills constitutionally enjoyed by the lower house of a bicameral legislature. Less than half the nations of the world have bicameral legislatures. See 2 *PARLIAMENTS OF THE WORLD: A COMPARATIVE REFERENCE COMPENDIUM* 881 (2d ed. 1986); J. BLONDEL, *COMPARATIVE LEGISLATURES* 32-35 (1973); see also K. WHEARE, *LEGISLATURES* (1963); M. MEZEY, *COMPARATIVE LEGISLATURES* (1979).

372. Sargent, *supra* note 12, at 335 n.11. Former British colonies with unicameral legislatures include Singapore, Sudan, Sri Lanka, and New Zealand. The leading collection of constitutions is A. BLAUSTEIN & G. FRANZ, *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (1971). The specific emphasis on revenue and other financial bills is by no means restricted to English related nations. 2 *PARLIAMENTS OF THE WORLD: A COMPARATIVE REFERENCE COMPENDIUM* 881-907 (2d ed.

constitutional frameworks and unwritten conventions reveals that the United States and its constituent states are unique in their restrictive and grudging construction of the revenue (supply) power embodied in the origination clause.³⁷³ The prominence of restrictions placed upon the upper chambers' power to affect money bills (a term considerably broader than the term "bills for raising revenue" used in most American origination clauses) highlights the unique status enjoyed by the United

1986) (Table 30). For example, the Austrian Constitution (art. 42(5)) forbids the upper house (Federal Council, elected by the state legislatures) from objecting to federal budget estimates, accepting final budget accounts, or disposing of federal property. *See* W. KOHN, *GOVERNMENTS AND POLITICS OF THE GERMAN-SPEAKING PEOPLE 180-90* (1980); C. KESSLER, *THE AUSTRIAN FEDERAL CONSTITUTION* (1983). In France, finance bills must be introduced in the lower house, the directly elected National Assembly. The indirectly elected Senate has power to reject finance bills, which are treated no differently than any other bill. However, the deadlock provision in art. 45 permits the government, if it favors the National Assembly version of the bill, to ask the National Assembly to rule definitively on the matter, which in effect overrides the Senate. Only the government has this power. Thus, the Senate, at the government's option, can cast an absolute veto. *See* I. D. PICKLES, *THE GOVERNMENT AND POLITICS OF FRANCE 44-68* (1972); R. PIERCE, *FRENCH POLITICS & POLITICAL INSTITUTIONS 74-100* (1968); A. DRAGNICH & J. RASMUSSEN, *MAJOR EUROPEAN GOVERNMENTS 215-19* (4th ed. 1974); C. STRONG, *supra* note 24, at 208-10.

In Japan, the Kenpo requires that the government's budget bill first be submitted to the House of Representatives, the lower house. KENPO ch. IV, art. 60. The House of Councillors, the elected upper chamber, can reject, amend, or ignore a bill passed by the lower house. If the bill is not a budget bill, the lower house can override the House of Councillors by a two-thirds vote of those present. KENPO ch. IV, art. 59. However, if the bill is a budget bill, then the bill, if rejected by the House of Councillors, is nevertheless considered passed if passed by the House of Representatives. *Id.* art. 60. *See* 2 *MODERN LEGAL SYSTEMS CYCLOPEDIA Japan* § 2.4(A)(2) (K. Redden ed. 1984) [hereinafter *CYCLOPEDIA*]; R. WARD, *JAPAN'S POLITICAL SYSTEM 151-54* (1978); Williams, *Japanese Diet Under the New Constitution*, 42 *AM. POL. SCI. REV.* 927 (1948).

Countries which have patterned their constitutions on the American model have origination clauses similar to that found in the United States Constitution. *See, e.g.,* LIBERIA CONST. (App. Rev. Draft) ch. V, art. 36(d)(i) ("[A]ll revenue bills, whether subsidies, charges, imposts, duties or taxes, and other financial bills, shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills."); PARAGUAYAN CONST. art. 153(2); VENEZUELAN CONST. ch. III, art. 153.

373. One additional explanation for the expansive definition given the revenue or money origination provisions of many constitutions is the existence of a parliamentary system in which the lower, but not the upper, house can dismiss the government by either a vote of confidence or by a defeat on a major bill. The power of supply, which is the power to provide the government with money, is crucial to the lower house's ability to control the government. *See* 2 *PARLIAMENTS OF THE WORLD: A COMPARATIVE REFERENCE COMPENDIUM 1091-1174* (2d ed. 1986) (Tables 38-40); Driedger, *Money Bills and the Senate*, 3 *OTTAWA L. REV.* 25, 28-40 (1968). In addition, the budget bill, while voting the money necessary to support the government, almost always involves modifications of the taxation system. *See* S. MILLER, *LECTURES ON THE CONSTITUTION OF THE UNITED STATES 205-07* (1893) (noting distinctions between American and English practice on scope of revenue bills); Sargent, *supra* note 12, at 347. *See, e.g.,* Japan, KENPO ch. IV, art. 67. In England, the power to control revenue was the House of Commons' trump card in its struggle with first the Crown and then the House of Lords. *See* Sargent, *supra* note 12, at 334-36; L. CUSHING, *ELEMENTS OF THE LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES* § 2299 (1874); C. STRONG, *supra* note 24, at 196-20; C. WESTON, *ENGLISH CONSTITUTIONAL THEORY AND THE HOUSE OF LORDS* (1965); *see also infra* notes 421-30 and accompanying text.

States Senate, which is the most powerful upper chamber in the world.³⁷⁴ It is perhaps ironic that the origination clause of the United States Constitution, based in part upon the then existing British parliamentary conventions,³⁷⁵ should be so emasculated while its cousins remain vigorous and enforced.³⁷⁶

B. *Australia*

The Australian Constitution creates a bicameral, federal parliamentary system. The members of both the House of Representatives and the Senate are popularly elected with the House members selected on a strict population basis for three years and the Senate members selected on an equal representation by state basis for six years.³⁷⁷ The Senate is given equal lawmaking power with the House, except where appropriation and tax bills are concerned.³⁷⁸ These bills must be introduced in the House,³⁷⁹ and may not be amended by the Senate.³⁸⁰ Additionally, the Senate may not amend a proposed law so as to increase any House proposed charge or burden on the people.³⁸¹ An unsettled issue is whether the Senate may *reject* an appropriation or revenue bill.³⁸²

374. "The powers of the Senate are very great. Probably no Second Chamber in the world today has an influence so real and direct, not only in obviously national concerns, such as foreign affairs, but down to the very minutest business of federal legislation, including finances." C. Strong, *supra* note 24, at 213. See also D. OLSON, *THE LEGISLATIVE PROCESS: A COMPARATIVE APPROACH* 23 (1980) (Senate is unique); *THE SENATE INSTITUTION* 1 (N. Preston ed. 1969) ("The Senate is the great curiosity of the American political system. Alone among the so-called upper houses of the world, it enjoys great power, greater than that of its popular opposite chamber.").

375. Opinion of the Justices to the Senate and House of Representatives, 126 Mass. 557, 561 (1879); *Perry County v. Selma, Marion & Memphis Ry. Co.*, 58 Ala. 546, 555-56 (1877); *Andrews v. Lathrop*, 132 Vt. 256, 265-66, 315 A.2d 860, 866 (1974); Comment, *supra* note 12, at 421-23. But see Hoffer, *supra* note 21, at 9 n.63 (concluding that the British practice was not the reason for the origination clause in the federal Constitution; rather, the existing state and colonial provisions were the basis).

376. Compare especially the American, Canadian, and Australian constitutions on this point.

377. AUSTL. CONST. pt. II, § 7, & pt. III, §§ 24, 28. See 2 *CYCLOPEDIA*, *supra* note 372, *Australia* § 1.2(B) for a brief summary of the constitutional provisions. See also Thomson, *State Constitutional Law: American Lessons for Australian Adventures*, 63 *TEX. L. REV.* 1225 (1985).

378. AUSTL. CONST. pt. V, § 53; 2 *CYCLOPEDIA*, *supra* note 372, *Australia* § 1.2(C).

379. AUSTL. CONST. pt. V, § 53. As defined in § 53, a bill does not become an appropriation or revenue bill merely by reason of the bill containing fines, penalties, or license fees.

380. *Id.* The Senate may, however, transmit to the House a message specifying the amendments the Senate desires or the deletions it advocates. These changes do not become amendments to the bill. It is within the House's discretion to either accept or reject any and all of the Senate's recommendations. If the House accepts a recommendation, only then does it become a part of the bill.

381. *Id.* Section 56 provides that the House of Representatives may pass laws for the appropriation of revenues or money only if the government has approved the purpose for the appropriation. Sections 54 and 55 define and limit the contents of taxation and annual service bills.

382. See Richardson, *The Legislative Power of the Senate in Respect of Money Bills*, 50 *AUSTL. L.J.* 273 (1976) (Senate has the power of rejection); O'Brien, *The Power of the House of Representa-*

In the event of a deadlock between the houses on any bill, including appropriation and revenue bills, the Constitution provides a deadlock mechanism. If the House passes a bill which the Senate rejects or unacceptably amends, and the same result occurs after at least a three month interval, the government may request from the Governor-General a double dissolution.³⁸³ A double dissolution dissolves both houses, permitting the people to restaff the legislature.³⁸⁴ If after new elections the deadlock continues, the Prime Minister may order a joint sitting of the legislature. The members would then vote on the last proposed version of the bill offered by the House.³⁸⁵ If the bill receives an absolute majority of the joint sitting, the bill is deemed to have passed both houses.³⁸⁶

C. Canada

The Canadian Constitution³⁸⁷ provides for a bicameral federal system with parliamentary governance similar to the British model.³⁸⁸ The House of Commons is popularly elected and is the dominant branch of the legislature.³⁸⁹ The drafters of the Canadian Constitution attempted to recreate in Canada an upper house version of the House of Lords. The effort, denominated the Senate, has been widely accepted as a total fail-

lives Over Supply, 3 MONASH U.L. REV. 8 (1976); Nicholas, *Appropriation and the Senate*, 26 AUSTRAL. L.J. 398 (1952); Sampford, *Some Limitations on Constitutional Change*, 12 MELB. U.L. REV. 210, 239 (1979).

383. AUSTRAL. CONST. pt. V, § 57; 2 CYCLOPEDIA, *supra* note 372, *Australia* § 1.2(C).

384. 2 CYCLOPEDIA, *supra* note 372, *Australia* § 1.2(C).

385. *Id.*

386. The double dissolution process is summarized in 2 CYCLOPEDIA, *supra* note 372, *Australia* § 1.2(C). Of course, all things being equal, a joint sitting presumably favors the more numerous House of Representatives. See O'Brien, *Double Dissolution of Federal Parliament—the Fifth Double Dissolution*, 14 MELB. U. L. REV. 37 (1983); Note, *The Double Dissolution and Joint Sitting of Federal Parliament*, 8 SYDNEY L. REV. 223 (1977); Lane, *Double Dissolution of Federal Parliament*, 47 AUSTR. L.J. 290 (1973); Lane, *Double Dissolution of Federal Parliament: The Third Double Dissolution*, 48 AUSTR. L.J. 515 (1974); Nygh, *Federal Deadlocks: Origin and Operation of Section 57*, 1 TASMANIAN L. REV. 706 (1962); C. STRONG, *supra* note 24, at 214-15.

387. The Canadian Constitution consists of the 1867 British North America Act (30 & 31 Victoria, ch.3), renamed the Constitution Act of 1867, as amended by the Constitution Act of 1982. 1 CYCLOPEDIA, *supra* note 372, *Canada* § 1.2(C). See T. HOCKIN, *GOVERNMENT IN CANADA* 14-30, 172-73 (1975) for a discussion of the British North America Act and its limitations as a constitutional document. A principal limitation was the legal inability of Canada to amend its constitutional charter, as the British North America Act was a statute of the British Parliament. 1 CYCLOPEDIA, *supra* note 372, *Canada* § 1.2(C). The process of patriation, that is, reverting control over the British North America Act back to Canada from the British Parliament, is discussed in Symposium, *The New Constitution and the Charter*, 8 QUEEN'S L.J. 7 (1982); Symposium, *The New Canadian Constitution*, 32 AM. J. COMP. L. 221 (1984); Recent Development, *Constitutional Law: Patriation of Canadian Constitution*, 23 HARV. INT'L L.J. 395 (1983).

388. See R. DAWSON, *THE GOVERNMENT OF CANADA* (5th ed. 1970).

389. *Id.* at 279-303; 1 CYCLOPEDIA, *supra* note 372, *Canada* § 1.7(C)(4)(a).

ure.³⁹⁰ The Senate members are appointed from the provinces (the numbers from each province are set in the Constitution) for life or until the member reaches the age of seventy-five.³⁹¹ All bills appropriating part of the public revenue, or imposing a tax or impost, must originate in the House.³⁹² The better view is that the Senate does not even have the power to amend such a bill.³⁹³ Although the Constitution places no other restrictions on the power of the Senate, the Senate's power is very limited in practice.³⁹⁴

D. *India*

The Indian Constitution also creates a federal bicameral system with an overlay of parliamentary democracy.³⁹⁵ The lower house, the House of the People, is popularly elected.³⁹⁶ The upper house, the Council of States, is partially nominated and partially elected by the state legislative assemblies.³⁹⁷ Bills other than money bills may originate in either house³⁹⁸ and a special deadlock provision is applicable in cases where the houses disagree on non-money bills.³⁹⁹ Money bills, as defined in the Constitution⁴⁰⁰ and certified by the speaker of the lower house,⁴⁰¹ are not subject to the deadlock provisions. Money bills may not be introduced in the Council of States.⁴⁰² Once passed by the lower house, the Council of

390. C. STRONG, *supra* note 24, at 202-04; T. HOCKIN, *supra* note 387, at 174; 1 CYCLOPEDIA, *supra* note 372, *Canada* § 1.7(C)(4)(b).

391. British North America Act, art. IV, § 21.

392. *Id.* at § 53; 1 CYCLOPEDIA, *supra* note 372, *Canada* §§ 1.7(C)(4)(b), 1.8(B).

393. Driedger, *Money Bills and the Senate*, 3 OTTAWA L. REV. 25 (1968).

394. 1 CYCLOPEDIA, *supra* note 372, *Canada* § 1.7(C)(4)(b); R. DAWSON, *supra* note 388, at 279-303. T. HOCKIN, *supra* note 387, at 173-74 (1975). *See also* F. KUNTZ, *THE MODERN SENATE OF CANADA* (1965).

395. INDIA CONST. pt. V, ch. 11, § 81.

396. *Id.*

397. *Id.* § 80.

398. *Id.* § 107.

399. *Id.* § 108. The deadlock provision resembles that of the Australian Constitution except that it does not include money bills. Under § 108, the President, acting on the recommendation of the government, may convene a joint sitting of the two houses. If the disputed bill is passed by a majority of the members of the joint sitting, the bill is deemed to have passed both houses. As the lower house (maximum of 545 members) is twice as populous as the upper house (maximum of 250), the lower house would normally have a decided advantage in any joint sitting.

400. *Id.* Section 110 defines a money bill to generally include tax bills, borrowing or loan guarantees, appropriation bills, and matters incidental to these areas. An important limitation, contained in § 110(1)(g) provides that the inclusion of fines, payments of fees for licenses, and fees for services rendered will not make a bill a money bill. Furthermore, the same subsection excludes bills providing for the imposition, abolition, alteration, or regulation of any tax by local authorities for local purposes from the definition of a money bill.

401. *Id.* § 110(3). The Speaker's determination is conclusive.

402. *Id.* § 109(1).

States has fourteen days to either accept the bill or propose amendments.⁴⁰³ The bill, with any proposed amendments, is returned to the lower house which may either accept or reject the bill. If the lower house rejects the Council amendments, the money bill is deemed to have passed in the form favored by the House.⁴⁰⁴

E. *Ireland*

The Irish Constitution creates a bicameral legislature composed of the Dail Eireann (House of Representatives) and Seanad Eireann (Senate).⁴⁰⁵ The Senate consists partly of nominees and partly of persons elected from electoral panels which represent various interests and constituencies.⁴⁰⁶ The Senate has no power to reject any legislation; it can only cast a suspensive veto of ninety days when ordinary legislation is involved.⁴⁰⁷ Although the Senate has the power to originate non-money legislation,⁴⁰⁸ this authority is rarely used.⁴⁰⁹ The Senate's power is even more limited when a money bill, as defined in the Constitution⁴¹⁰ and certified by the Chairman of the House of Representatives,⁴¹¹ is passed by the House and sent to the Senate. The Senate has twenty-one days to return the bill to the House with any recommendations it may have. The House may accept or reject the recommendations in its discretion and the money bill will be considered passed in the form the House desires.⁴¹² As a result of the extensive limitations on the Senate, the Senate plays a

403. *Id.* § 109(2). See A. HANSON & J. DOUGLAS, *INDIA'S DEMOCRACY* 98 (1972).

404. INDIA CONST. pt. V, ch. 11, § 109 (3)-(5). The political role of the upper house is a subject of considerable debate in India. A. HANSON & J. DOUGLAS, *supra* note 403, at 101-02. For another work concerning the Indian Constitution, see generally R. L. HARDGRAVE, *INDIA: GOVERNMENT AND POLITICS IN A DEVELOPING NATION* (2d ed. 1975).

405. IR. CONST. art. 15; see 3 *CYCLOPEDIA*, *supra* note 372, *Ireland* §§ 1.2(C)(4)(a) & (b).

406. IR. CONST. art. 18; see 3 *CYCLOPEDIA*, *supra* note 372, *Ireland* §§ 1.2(C)(4)(b).

407. IR. CONST. art. 23; see 3 *CYCLOPEDIA*, *supra* note 372, *Ireland* § 1.3(B)(1). The Senate in non-money bill situations has ninety days from the date a bill passes the House to pass, reject, or amend the bill. The Senate's action may be accepted or rejected by the House, whose decision is final. Failure to act within ninety days will constitute passage in the Senate if the House so resolves. See Delany, *The Constitution of Ireland: Its Origins and Development*, 12 U. TORONTO L.J. 1, 12 (1957); C. STRONG, *supra* note 24, at 206-07.

408. IR. CONST. art. 20(1) & (2).

409. M. AYEARST, *THE REPUBLIC OF IRELAND: ITS GOVERNMENT AND POLITICS* 109-14, 143-48 (1970).

410. IR. CONST. art. 22(1)1 defines a money bill to include bills concerning taxes, supply, appropriations, loan guarantees, and audits of accounts of public moneys, and matters subordinate and incidental to these subjects. A bill is not a money bill simply because it concerns taxation, money, or loans raised by local authorities for local purposes.

411. *Id.* art. 22(2).

412. *Id.* art. 21(2)1-2. The legislative process is summarized in 3 *CYCLOPEDIA*, *supra* note 372, *Ireland* § 1.3(B)(1). Inaction constitutes acceptance. Delany, *supra* note 407, at 1, 12; C. STRONG, *supra* note 24, at 206-07.

very insignificant role in the governance of Ireland.⁴¹³

F. *Jamaica*

Jamaica's constitutional provisions regarding the legislature resemble those of the United Kingdom. Jamaica's legislature is bicameral: the House of Representatives is popularly elected⁴¹⁴ while the Senate is nominated by the Prime Minister and the Leader of the Opposition.⁴¹⁵ Bills may originate in either house,⁴¹⁶ although money bills must originate in the House of Representatives.⁴¹⁷ On non-money bills, the Senate essentially has a six-month suspensive veto.⁴¹⁸ However, on money bills⁴¹⁹ passed by the House, the Senate has only thirty days to pass the bill. If not passed by the Senate within thirty days, the bill is presented to the Governor-General for his signature.⁴²⁰

413. For example, the Senate sits for only twenty-five days a year, while the House sits for around seventy-five days. 3 *CYCLOPEDIA*, *supra* note 372, *Ireland* §§ 1.3(B)(2), 1.2(C)(4)(b). *See also* M. AYEART, *supra* note 409, at 109-14, 143-48; C. STRONG, *supra* note 24, at 206-07; B. CHUBB, *THE CONSTITUTION OF IRELAND* (7th ed. 1970).

414. JAMAICA CONST. ch. V, pt. 1, art. 36.

415. *Id.* art. 35(1). Thirteen are appointed by the Prime Minister, eight by the Governor-General acting in accord with the advice of the Leader of the Opposition.

416. JAMAICA CONST. ch. V, pt. 2 art. 55(2).

417. *Id.* ch. V, pt. 1, art. 55(2).

418. *Id.* ch. V, pt. 1, art. 57(1)(a) & (b). If the House passed a non-money bill twice in the same session and it was rejected both times by the Senate (the period separating passage being no less than six months), or passed in two consecutive sessions and was rejected both times by the Senate, the bill can then be presented to the Governor-General for his assent.

419. Article 58 defines a money bill to include tax bills, appropriation measures, audits of accounts, guarantees of loans, and some other matters. Bills providing for taxation imposed, debt incurred, fund or money provided, or loan raised by local authorities for local purposes are not money bills. The Speaker of the House determines if a bill is a money bill. JAMAICA CONST. ch. V, pt. 2, art. 56(2) and his determination is conclusive. *Id.* art. 58(4).

420. *Id.* ch. V, pt. 1, art. 56. Malaysia has a similar constitutional framework. The upper house, mostly nominated by the King, has effectively a one year suspensive veto on non-money bills. MALAYSIA CONST. pt. IV, ch. 5, § 68(2). On money bills, the Senate has only a one month suspensive veto. *Id.* ch. 5, § 68(1). Money bills are defined in *id.* ch. 5, § 68(6), in a manner similar to the provisions in the Jamaican Constitution. *See* R. MILNE & D. MAUZY, *POLITICS AND GOVERNMENT IN MALAYSIA* 239-40 (1980 rev. ed.); Jaya Kamras, *Constitutional Limitations on Legislative Power in Malaysia*, 9 MALAYSIAN L. REV. 96 (1967); Groves, *The Constitution of Malaysia and the Malaysian Act*, 5 MALAYSIAN L. REV. 245 (1963).

Swaziland introduces a new wrinkle in the money bill process. Under the Swaziland Constitution, appropriation bills must be considered by the Senate (which is half elected, half appointed by the King) within five days. In any event, the House bill becomes law. SWAZILAND CONST. pt. V, C, § 62(1). All other money bills become law thirty days after passage by the House. *Id.* § 63(1). Non-money bills may be both originated and rejected in the Senate. The deadlock provision of the joint sitting is utilized to reach a decision. *Id.* § 65. Inaction by the Senate for a period of ninety days constitutes assent. *Id.* § 65(3).

G. *United Kingdom*

The two houses of the Parliament in the United Kingdom could not be more different, both in power and in composition.⁴²¹ The House of Commons is popularly elected for a nominal five year term.⁴²² Political power resides in the House of Commons.⁴²³ The House of Lords, on the other hand, is composed primarily of hereditary peers, with a sprinkling of archbishops and bishops from the Anglican church, life peers, and law lords.⁴²⁴ Although until the passage of the Parliament Act of 1911 the Lords were formally equal with the Commons in legislative power, the Lords had long since lost the right to originate or even amend money bills.⁴²⁵ After the constitutional crisis of 1910,⁴²⁶ the Parliament Act of

421. The United Kingdom does not have a written constitution as such. Certain acts of Parliament and royal decrees (the Magna Carta, the Charter of Rights, the Bill of Rights, and the Habeas Corpus Act) are deemed more fundamental than other parliamentary and royal legislation, but there exists no legal impediment to a repeal of any law of Parliament. W. JENNINGS, *THE LAW AND THE CONSTITUTION* 36-41, 64-79 (5th ed. 1959). See generally, as to the English Constitution, W. JENNINGS, *THE BRITISH CONSTITUTION* (5th ed. 1968); R. SCHUYLER, *BRITISH CONSTITUTIONAL HISTORY SINCE 1832* (1957). A useful collection of fundamental English statutes can be found in C. STEPHENSON & F. MARCHAM, *SOURCES OF ENGLISH CONSTITUTIONAL LAW* (1937). New Zealand follows the English constitutional model. 2 *CYCLOPEDIA*, *supra* note 372, *United Kingdom* § 1.2.

422. 2 *CYCLOPEDIA*, *supra* note 372, *United Kingdom* § 1.2.

423. *Id.*

424. The composition of the House of Lords is unique among the legislative chambers of the world. The basic characteristic is wealth, not aristocracy, R. NEUMANN, *EUROPEAN AND COMPARATIVE GOVERNMENT* 100 (1955), although some are created peers in recognition of services in science, art, and public service. *Id.* at 107.

The presence of the law lords, appointed by the government, is indicative of another function served by the House of Lords: it is the final court of appeal in civil and criminal cases in England and Northern Ireland and civil cases in Scotland. Theoretically, all peers are entitled to participate in cases. In reality, however, only the law lords, the Lord Chancellor (who presides), the Lord Chief Justice, and those others who have held high judicial office, participate. A. DRAGNICH, *MAJOR EUROPEAN GOVERNMENTS* 82-83 (1966); R. NEUMANN, *supra*, at 116-17.

The material available on the House of Lords is voluminous. In addition to the texts specifically cited, see also H. STOUT, *BRITISH GOVERNMENT* 110-25 (1953); D. VERNEY, *BRITISH GOVERNMENT AND POLITICS* 148-57 (1966); C. WESTON, *ENGLISH CONSTITUTIONAL THEORY AND THE HOUSE OF LORDS* (1965); S. BAILEY, *BRITISH PARLIAMENTARY DEMOCRACY* 33-55 (2d ed. 1966); C. STRONG, *supra* note 24, at 196-202; W. JENNINGS, *PARLIAMENT* (2d ed. 1957); Hadfield, *Whether or Whither the House of Lords*, 35 N. IR. L.Q. 313 (1984).

425. Comment, *supra* note 12, at 421-22; Sargent, *supra* note 12, at 334. See also 1 J. TUCKER, *supra* note 27, §§ 209-10; L. CUSHING, *ELEMENTS OF THE LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES* § 2299 (1874).

426. In 1909, the Lords ventured to attack the fiscal supremacy of the House of Commons, and therefore assumed the right to dismiss the Ministry. R. MUIR, *HOW BRITAIN IS GOVERNED* 247 (1930). The vehicle for this assumption of power was the rejection of the Lloyd George budget of 1909. After the Lords' rejection of the budget, the King dissolved Parliament. The voters returned the Liberals. *Id.* The Lords then passed the budget, but by this time the Liberal ministry was resolved to limit the Lords' power and find some means of overriding the Lords. The government, therefore, introduced the Parliament Act of 1911. *Id.* (The bill was introduced in 1909, but was passed in 1911). The bill passed the Commons, but was faced with certain defeat in the Lords. The

1911 was passed. The Parliament Act of 1911 removed any control of finance from the Lords. A money bill, certified as such by the Speaker of the House,⁴²⁷ if passed by the Commons, may be submitted to the Royal Assent and become law one month later. All other bills, with the important exception of a bill to extend the life of Parliament, can become law if passed by the Commons in three successive sessions; the time span was set at a minimum of two years. In 1949, the span was reduced to one year and two sessions.⁴²⁸ The Lords remains an active, although minor, part of the English legislative process.⁴²⁹ One commentator has described the House of Lords as follows: "In summation, they are responsible to no one — but then no one is responsible to them. The life of the government depends in no way on the wishes of the House of Lords."⁴³⁰

H. Summary

This comparative excursus into the treatment of money bills and the

cabinet then obtained a conditional pledge from King George V to create enough new Liberal peers to pass the measure if a second election, fought specifically on the limitation of the Lords' powers, returned a Liberal ministry. *Id.* The second 1910 election did exactly that; the King made public his pledge, and the bill passed the Lords. G. ARTHUR, *GEORGE V* 131-61 (1930); P. ROWLAND, *DAVID LLOYD GEORGE* 215-24, 230-42, 248-49 (1975); M. KNAPPEN, *CONSTITUTIONAL AND LEGAL HISTORY OF ENGLAND* 554-55 (1964). The 1911 Act merely put into law what had become a reality: when faced by a determined majority in the Commons, the Lords must yield. W. JENNINGS, *THE LAW AND THE CONSTITUTION* 90 (5th ed. 1959). This has been evident since 1712 when Queen Anne created twelve tory peers to pass the Treaty of Utrecht, and especially since 1832, when William IV threatened to use the Royal Prerogative to pass the Reform Bill. R. NEUMANN, *supra* note 424, at 105; W. JENNINGS, *THE BRITISH CONSTITUTION* 104 (15th ed. 1968); M. KNAPPEN, *supra*, at 545-47.

427. The Speaker's certificate is conclusive and cannot be challenged in court. W. JENNINGS, *THE LAW AND THE CONSTITUTION* 104 (5th ed. 1959). The Speakers have, however, used a strict construction in defining a money bill; furthermore, established convention prevents the Commons from tacking non-financial riders onto a money bill. W. JENNINGS, *THE LAW AND THE CONSTITUTION* 147 n.1 (5th ed. 1959). Ironically, the Budget Bill, rejection of which precipitated the constitutional crisis leading to passage of the Parliament Act, would not have been certified as a money bill. 17 *ENCYCLOPAEDIA BRITANNICA Parliament* 381 (1969).

428. Parliament Act of 1949. *See* W. JENNINGS, *THE LAW AND THE CONSTITUTION* 141-43 (5th ed. 1959).

429. While the limited power of delay can be viewed derisively, the significance of this delay is that it permits more careful consideration of these bills. The Lords has more time to debate the lesser political issues, and it can approach some of the larger issues with a less obvious partisan manner, since the life of government is not at stake and less emphasis is placed on party loyalty and more on personal principle. *See* R. NEUMANN, *supra* note 424, at 103.

The Lords can also save the more pressed Commons much time through a careful working out of the less controversial bills. The treatment of private bills by the Lords is far superior to that of the Commons. In the private field there is need of much committee work, which can often be done better in the Lords. A. DRAGNICH, *supra* note 424, at 82; W. JENNINGS, *THE LAW AND THE CONSTITUTION* 143 (5th ed. 1959); W. JENNINGS, *THE BRITISH CONSTITUTION* 102-11 (15th ed. 1968).

430. R. NEUMANN, *supra* note 424, at 103.

relative powers of the two houses of the legislature indicates the variety of constitutional treatments afforded revenue and other financial bills in the legislative framework. America stands at one extreme, giving little actual precedence to revenue bills and according the more immediate legislative voice of the people less constitutional prerogative than other nations.⁴³¹

The noted constitutional historian Charles Beard accurately characterized the perceived status and value of the origination clause: "It can hardly be said that it constitutes any safeguard against careless and corrupt finance in legislatures; and it must be admitted also that it has slowly been declining in public esteem."⁴³² The clause, however, should not be entirely negated. The Founding Fathers, both state and federal, placed the origination power in the lower house, the body most accountable to the people.

The principal reason why the Constitution has made this distinction [the origination prerogative] was, because they [the members of the House of Representatives] were chosen by the People, and supposed to be best acquainted with their interests, and ability. In order to make them more particularly acquainted with these objects, the democratic branch of the Legislature consisted of a greater number, and were chosen for a shorter period, so that they might revert more frequently to the mass of the People.⁴³³

431. See Comment, *supra* note 12, at 421 n.14; Sargent, *supra* note 12, at 345-47; J. TUCKER, *supra* note 27, § 211.

432. C. BEARD, *AMERICAN GOVERNMENT & POLITICS, 706-07* (1910), *quoted in* Sargent, *supra* note 12, at 352. Beard wrote the classic work, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES* (1913).

433. 3 RECORDS, *supra* note 14, at 356 (quoting James Madison speaking in the House of Representatives on May 15, 1789). Also see J. MADISON, *THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES* 218 (1920), stating Benjamin Franklin's position:

[I]t was always of importance that the people should know who had disposed of their money, & how it had been disposed of. It was a maxim that those who feel, can best judge. This end would, he thought, be best attained, if money affairs were to be confined to the immediate representatives of the people.

Id. George Mason agreed, *id.* at 217, 362; so did Edmond Randolph, *id.* at 393-34. Elbridge Gerry noted: "Taxation and representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses." *Id.* at 391. The fact that Senators are now popularly elected does not destroy or alter the constitutional design. Federal Senators are elected for six-year staggered terms and the apportionment of Senators is not based on population, but is premised on state equality. Consequently, Senators are less *immediately* accountable to the people than are representatives. See W. SKOUSEN, *THE MAKING OF AMERICA: THE SUBSTANCE AND MEANING OF THE CONSTITUTION* 355 (1985); Hoffer, *supra* note 21, at 21. In most states, the same staggered pattern obtains, with senators commonly elected for four years and house members for two years. INDEX DIGEST OF STATE CONSTITUTIONS 639 (1959), 182 (Supp. 1986). Of course, since the Court's decision of *Reynolds v. Sims*, 377 U.S. 533 (1964), state senatorial districts are governed, unlike the federal Senate, by the one-man, one-vote principle.

It is clear that the Framers wanted the taxation powers of the government subject to the power of the people.

V. CONCLUSION

At the very least, the origination clause should be construed to effectuate the modest goal of maximum response to the popular will. Thus, for example, TEFRA should have been declared unconstitutional as a non-germane amendment to the original House revenue bill. The origination clause should be construed in the future to effectuate the constitutional design that the House of Representatives be held accountable for originating bills for raising revenue.