

Judicial Review of the Legislative Enactment Process: Louisiana's "Journal Entry" Rule

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COMMENTS

JUDICIAL REVIEW OF THE LEGISLATIVE ENACTMENT PROCESS: LOUISIANA'S "JOURNAL ENTRY" RULE

A fundamental concept in American government is that of "separation of powers."¹ The concept as embodied in both the United States and Louisiana Constitutions divides governmental functions among three co-equal branches: executive, legislative, and judicial.² Impliedly, the framers did not intend each branch to act with totally unchecked power,³ and an important qualification on this division of powers has allowed judicial review of executive and legislative activity.⁴

Primarily, the function delegated to the legislature is that of enacting all laws in accordance with the Louisiana Constitution.⁵ In connection with this duty, the constitution invests in each legislative house the inherent right and power to "determine its rules of procedure, not inconsistent with the provisions of the constitution,"⁶ and to keep and have published immediately after the close of each session a journal accurately reflecting all proceedings and all record votes.⁷

In conformity with other jurisdictions, Louisiana declares an act of the legislature to be a valid law only after compliance with all the procedural steps⁸ which are mandated by the constitution⁹ or house rules.¹⁰ Louisiana requires that each bill introduced in either house

1. J. MADISON, THE FEDERALIST NOS. 47-51, at 336-59 (B. Wright ed. 1961).

2. U.S. CONST. arts. I-III; LA. CONST. art. II, § 1.

3. J. MADISON, *supra* note 1, at 338; Sharp, *The Classical American Doctrine of "The Separation of Powers,"* 2 U. CHI. L. REV. 385, 407-13 (1934).

4. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803).

5. See LA. CONST. art. III, § 1.

6. LA. CONST. art. III, § 7(A).

7. LA. CONST. art. III, § 10(B). See U.S. CONST. art. I, § 5.

8. See 1976 MANUAL FOR LOUISIANA LEGISLATORS, RESEARCH STUDY NO. 25, LOUISIANA LEGISLATIVE COUNCIL 131-33 (passage of a House Bill through the legislature); 1980 MANUAL FOR LOUISIANA LEGISLATORS, RESEARCH STUDY NO. 26, LOUISIANA LEGISLATIVE COUNCIL 105-36 [Hereinafter cited as MANUAL].

9. LA. CONST. art. III.

10. RULES OF ORDER OF THE HOUSE OF REPRESENTATIVES, STATE OF LOUISIANA (1980) [Hereinafter cited as HOUSE RULES]; RULES OF ORDER OF THE SENATE, STATE OF LOUISIANA (1980) [Hereinafter cited as SENATE RULES].

be confined to one object,¹¹ contain a brief title of its object,¹² and receive no amendments making a change "not germane to the bill as introduced."¹³ Once filed, each bill must be acted on "only in open, public meeting."¹⁴ It must be read at least by title on three different days in each house,¹⁵ referred to a standing committee,¹⁶ passed by at least a majority of each house by record vote,¹⁷ and enrolled and signed by the Speaker of the House of Representatives and the Secretary of the Senate.¹⁸ This final legislative instrument,¹⁹ known as the "enrolled bill,"²⁰ must be "delivered to the governor within three days after passage."²¹ All duly enacted bills signed by the governor²² become acts of the state and are required to be promulgated and published by the Secretary of State.²³

Although neither body validly may enact legislation under rules which contravene constitutionally prescribed procedures, occasionally in-house procedures are not followed strictly, and legal conflicts arise concerning the validity of legislative enactments.²⁴ The judiciary may then be faced with scrutinizing the legislative process of enactment; however, the enforcement of rules of legislative procedure is a "field in which judicial review has proved particularly inept."²⁵ In light of such potential conflicts, most jurisdictions have limited judicial in-

11. LA. CONST. art. III, § 15(A).

12. LA. CONST. art. III, § 15(A).

13. LA. CONST. art. III, § 15(C).

14. LA. CONST. art. III, § 15(A).

15. LA. CONST. art. III, § 15(D).

16. LA. CONST. art. III, § 15(D).

17. LA. CONST. art. III, § 15(G).

18. LA. CONST. art. III, § 17(A).

19. All legislation having the effect of law must be referred to the Legislative Bureau, which examines the instrument for construction and duplication. The Bureau also may propose amendments. HOUSE RULES: *Joint Rule No. 3*, *supra* note 10, at 51.

Additionally, the Louisiana Law Institute is authorized to make clerical changes in acts (i.e., dividing or rearranging sections; correcting grammatical or typographical errors), but it may not alter the sense or effect of any act. LA. R.S. 24:251-53 (1950).

20. An enrolled bill is one which has passed both houses of the legislature and has been signed by both presiding officers. See J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 15.01, at 407 (4th ed. 1975); HOUSE RULES 7.11, *supra* note 10, at 27-28; SENATE RULES 7.10, *supra* note 10, at 24.

21. LA. CONST. art. III, § 17(A).

22. LA. CONST. art. III, §§ 17-18. Cf. *Whited v. Lewis*, 25 La. Ann. 568, 572 (1873) (bills becoming law without the governor's signature must be promulgated as well as those with his signature).

23. LA. CONST. art. IV, § 7. LA. R.S. 43:19; 43:22 (Supp. 1980).

24. However, the courts have held that the legislature may deviate from or disregard its own procedures. *State v. Gray*, 221 La. 868, 60 So. 2d 466 (1952). See also R. LUCE, LEGISLATIVE PROCEDURE 392 (1922).

25. Grant, *Judicial Control of the Legislative Process: The Federal Rule*, 3 WEST. POL. QUARTERLY 364, 389 (1950).

quiry by the use of presumptions²⁶ which attach to the enrolled bill²⁷ (the "enrolled bill rule") and the legislative journals²⁸ (the "journal entry rule"). In Louisiana, judicial inquiry has been limited by a form of the "journal entry rule."

Enrolled Bill Rule

To understand the distinctions between the "enrolled bill rule" and the "journal entry rule," the nature of the two documents in the legislative process must be understood.

An enrolled bill is a final product of the entire legislative enactment process.²⁹ After a proposed bill is read, amended, and passed in the house of origin, the bill is "engrossed"³⁰ and presented to the second house, where the bill is approved or amended and returned to the house of origin for concurrence.³¹ At this stage the bill consists of one or more pieces of paper containing the original bill and attachments of each duly approved amendment, endorsed at each stage in the enactment procedure.³² During enrollment by the house of origin,³³ all amendments are incorporated into one document—the "enrolled bill."³⁴

In jurisdictions honoring the enrolled bill rule,³⁵ this legislative

26. LA. R.S. 15:433 (1950) provides: "A conclusive presumption is one against which no proof can be admitted, such as the presumption that attaches to *res adjudicata*, to the recitals contained in legislative acts and to the official journals of legislative proceedings." (Emphasis added).

27. See note 20, *supra*.

28. See LA. CONST. art. III, § 10(B); MANUAL, *supra* note 8, at 65-67.

29. See MANUAL, *supra* note 8, at 105-37.

30. The engrossed or re-engrossed bill incorporates all amendments adopted by the house of origin. The opposite house may adopt amendments, which must be concurred in by the house of origin, but cannot engross the bill. See HOUSE RULES 7.8-7.10, *supra* note 10, at 27; SENATE RULES 7.8-7.9, *supra* note 10, at 23-24; J. SUTHERLAND, *supra* note 20, § 15.01, at 401.

31. See LA. CONST. art. III, § 15(F).

32. HOUSE RULES 7.7, *supra* note 10, at 27; SENATE RULES 7.7, *supra* note 10, at 23.

33. HOUSE RULES 7.11, *supra* note 10, at 27-28; SENATE RULES 7.10, *supra* note 10, at 24.

34. Cf. *In re Buquet*, 184 So. 2d 288, 293 (La. App. 1st Cir.), *cert. denied*, 249 La. 198, 186 So. 2d 159 (1966) (all amendments incorporated into the enrolled bill are of equal authority and force).

35. In *Field v. Clark*, 143 U.S. 649 (1892), the Supreme Court declared as the federal rule that the congressional record of proceedings, reports of committees, and other papers of Congress were not competent evidence to impeach an enrolled bill which allegedly omitted a section passed by Congress; the bill itself was authentic, complete, and unimpeachable. However, reference to the congressional journal has been allowed to prove the existence of a quorum under House rules, which were beyond judicial scrutiny, though no parol evidence was allowed to impeach the journal entry. *United States v. Ballin*, 144 U.S. 1 (1892). *But see* *Christoffel v. United States*,

instrument is accorded absolute verity and is conclusively presumed to have been validly adopted. Therefore, the court is prevented from looking beyond the enrolled bill to determine if a statute was validly enacted.³⁶ Though open to criticism³⁷ as "capable of producing results which do not accord with fact,"³⁸ the rule has been supported by several theories. Traditionally the doctrine of separation of powers was the underlying support for the rule. Under this doctrine the courts are kept from being placed in the position of reviewing the work of a supposedly equal branch of government.³⁹ Other practical considerations have been advanced to support the rule. Certain defects are apparent on the face of the enrolled bill itself,⁴⁰ but other judicial attacks on the status of legislation could undermine stability in the law and would confuse the trial of substantive issues.⁴¹ Often, such attacks would be totally out of proportion to any serious constitutional violations.⁴² Flagrant disregard for constitutional duties is better remedied by internal legislative procedures or by the electorate.⁴³ The enrolled bill rule is further justified by the argument that legislative journals are subject to error and fraud,⁴⁴ whereas enrollment includes "certification by the presiding officers . . . witnessed by other present members . . . [furnishing] adequate protection against the risk of error in the process of certification itself."⁴⁵

338 U.S. 84 (1949) (evidence was admitted at trial to contradict the record that a House committee had a duly constituted quorum when petitioner's testimony was heard); See also J. SUTHERLAND, *supra* note 20, § 15.03, at 413 n.11; Grant, *supra* note 25.

36. 72 AM. JUR. *States* § 46 (1974); 73 AM. JUR. *Statutes* § 90 (1974); 4 J. WIGMORE, EVIDENCE § 1350 (1972).

37. See Note, *Pennsylvania's Enrolled Bill Rule: A Reappraisal in Light of HB 1413 and Velasquez v. Depuy*, 75 DICK. L. REV. 123, 130-36 (1970).

38. J. SUTHERLAND, *supra* note 20, § 15.03, at 411.

39.

The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the act so authenticated, is in conformity with the constitution.

Field v. Clark, 143 U.S. 649, 672 (1892).

40. Defects apparent on the face of the act might include those in title, style, object, etc.

41. See *Louisiana State Lottery Co. v. Richoux*, 23 La. Ann. 743, 745 (1871).

42. See J. SUTHERLAND, *supra* note 20, § 15.03, at 411.

43. See *Christian Defense League v. State*, No. 227, 354, at 12 (La. 19th Dist. Ct. 1980). See also J. SUTHERLAND, *supra* note 20, § 15.03, at 411-12; Note, *supra* note 37, at 134.

44. See Note, *supra* note 37, at 135-36 (the same accusation is made against the enrolled bill rule at 137).

45. See J. SUTHERLAND, *supra* note 20, § 15.03, at 411; HOUSE RULES 7.11, *supra* note 10, at 27-28; SENATE RULES 7.10, *supra* note 10, at 24.

Journal Entry Rule

In accord with a majority of jurisdictions, Louisiana mandates constitutionally that each house keep and publish a journal, a chronological record of the body's daily proceedings.⁴⁶ The Clerk of the House of Representatives and the Secretary of the Senate are charged with the responsibility for entering all proceedings "in the Journal as concisely as possible,"⁴⁷ taking care "to detail a true and accurate account of the proceedings."⁴⁸ In Louisiana most requirements regarding journal content and form are provided by house rule.⁴⁹ However, the journals are not detailed or verbatim records, but are merely "bare-bones" accounts of all matters coming before the house and of action thereon. Daily copies of the journal are distributed to all legislators,⁵⁰ and copies also are available to the public.⁵¹ Reading and correction of the daily journal are provided by rule,⁵² with final responsibility for accuracy, coupled with authority to make corrections where necessary, being vested in the clerk and secretary respectively.⁵³ The official legislative journal for each session consists of the bound printed compilation of all duly corrected daily journals.⁵⁴ The journal entry rule, where adopted, provides that "courts may have recourse to journals of either house of the legislature for ascertaining whether a law has in fact been passed in accordance with constitutional requirements"⁵⁵ and that the "journals import absolute verity."⁵⁶

This rule has taken a variety of forms. Three general categories have been delineated:⁵⁷ 1) the "pure" journal entry rule,⁵⁸ a conclusive

46. LA. CONST. art. III, § 10(B). See 72 AM. JUR. STATES § 46 (1974).

47. HOUSE RULES 12.1, *supra* note 10, at 40; SENATE RULES 14.1, *supra* note 10, at 60.

48. *Id.*

49. HOUSE RULES 12.1-12.5, *supra* note 10, at 40; SENATE RULES 14.1-14.5, *supra* note 10, at 60-61. See 72 AM. JUR. STATES § 46 (1974); 73 AM. JUR. STATUTES §§ 88-89 (1974).

The Louisiana Constitution only requires that the journal reflect all record votes. See LA. CONST. art. III, §§ 10(B), 15(F) & (G).

50. See MANUAL, *supra* note 8, at 66.

51. See LA. R.S. 43:14; 43:18 (1950). See also HOUSE RULES 12.6-12.7, *supra* note 10, at 40-41; SENATE RULES 14.6-14.7, *supra* note 10, at 61.

52. See HOUSE RULES 12.5, *supra* note 10, at 40; SENATE RULES 14.5, *supra* note 10, at 61.

53. See HOUSE RULES 2.9, *supra* note 10, at 4-7; SENATE RULES 3.7, *supra* note 10, at 15-17. See also LA. CONST. art. III, § 7(C); 73 AM. JUR. STATUTES § 89 (1974).

54. See *State v. Mason*, 43 La. Ann. 590, 9 So. 776 (1891).

55. See 72 AM. JUR. STATES § 46 (1974).

56. See 73 AM. JUR. STATUTES § 88 (1974).

57. See J. SUTHERLAND, *supra* note 20, § 15.02, at 408.

58. *Id.*, § 15.05, at 415.

presumption that the enrolled bill is valid only if it is in accordance with procedures recorded in the journal and the constitution; 2) the "affirmative contradiction" rule,⁵⁹ a determination that the enrolled bill is valid unless the journals affirmatively show a statement that there has not been compliance with constitutional requirements;⁶⁰ and 3) the "extrinsic evidence" rule,⁶¹ a prima facie presumption of validity to the enrolled bill, permitting attacks by evidence from the journal or other extrinsic sources to establish non-compliance with constitutional mandates.

The journal entry rule, as modified and applied, appears to provide a compromise between unlimited judicial oversight of enactment procedures and no oversight at all. Legislative stability is not undermined by limiting judicial inquiry to the journal, attendant with the presumption that all procedures were duly complied with absent affirmative evidence to the contrary. Furthermore, protection from abuse of power is provided by preventing the legislature from ignoring constitutional requirements.

Louisiana Jurisprudence

Judicial Inquiry into Textual Validity of Acts

Louisiana, following a form of the affirmative contradiction rule,⁶² coupled with in-house reform⁶³ and recent constitutional revision,⁶⁴ provides a strong presumption in favor of the validity of

59. *Id.*, § 15.04, at 404.

60. As Professor Sands points out,

as a practical matter it would be remarkable for the journal to recite affirmatively that the bill was not read or a vote was not taken or that any required procedural step was not carried out. The practical issue in these cases is whether or not an inference should arise from the legislature's failure to record procedure in the constitutional form or whether it should be presumed that the procedure was taken, but through neglect, misadventure, or inadvertence, a proper record was not made.

Id., § 15.04, at 414.

Legislative autonomy and a realistic appreciation of practical obstacles to precise record keeping during a hectic session provide strong support for such presumptions. However, the question has been raised whether the presumptions will dissolve when legislatures, through computers, acquire "the capacity for regularity in fact." Caldwell, *Legislative Record Keeping in a Computer-Journal*, 5 HARV. J. LEG. 1, 3 (1967).

61. See J. SUTHERLAND, *supra* note 20, § 15.06, at 416-17.

62. *Wall v. Close*, 203 La. 345, 14 So. 2d 19 (1943).

63. See THE LEGISLATIVE PROCESS IN LOUISIANA, RESEARCH STUDY NO. 1, LOUISIANA LEGISLATIVE COUNCIL (1953). See also J. SUTHERLAND, *supra* note 20, § 15.10, at 422.

64. See Edwards, *The 1974 Constitution: A New Beginning*, 21 LOY. L. REV. 1 (1975); Poynter, *Constitutional Limitations on Legislative Procedure: An Analysis of the 1974 Louisiana Constitution* (unpublished paper, Aug. 1975).

legislative enactments. In Louisiana the enrolled bill, not the promulgated act,⁶⁵ is the true act and valid law of the state.⁶⁶ This question was settled by the court in the context of a criminal prosecution for distribution of marijuana.⁶⁷ An act⁶⁸ amending and reenacting the Uniform Controlled Dangerous Substances Law⁶⁹ was published⁷⁰ and printed in the bound volume of the 1973 Acts,⁷¹ omitting a certain set of asterisks which had appeared in the enrolled bill.⁷² According to the style manual for legislative drafting in use at the time,⁷³ this omission could have effected a repeal of the penalty for distribution of marijuana as a felony.⁷⁴ In fact, the district court, on its own motion, held the crime was chargeable only as a misdemeanor.⁷⁵ The Louisiana Supreme Court reversed the trial court's decision and held that the "logical and rational answer" was to find the enrolled bill, the instrument officially passed and signed which *did* contain the three asterisks, to be the true act.⁷⁶

Consistent with the presumptions afforded the enrolled bill is the position that an act, on its face containing a clause that notice of intent to apply for passage of the act has been published,⁷⁷ "must be accepted as the final and conclusive proof of such notice . . . and that such proof was exhibited in the General Assembly,"⁷⁸ based on the theory that "no extrinsic proof is admissible for the purpose of contradicting recitals contained in a legislative Act."⁷⁹ Neither can a legislative act successfully be attacked under the requirement that a

65. See LA. CONST. art. IV, § 7.

66. *State v. St. Romain*, 292 So. 2d 531 (La. 1974).

67. LA. R.S. 40:966(A) (Supp. 1972). The penalty is provided for in LA. R.S. 40:966(B)(2) (Supp. 1980).

68. 1973 La. Acts, No. 207.

69. LA. R.S. 40:961 (Supp. 1970).

70. All acts are published in the official journal of the state (presently the *Baton Rouge State-Times*), to be distinguished from the journal of the legislative proceedings of each house. LA. CONST. art. III, § 19; LA. R.S. 43:81 (Supp. 1980).

71. See LA. R.S. 24:173 (1950 & Supp. 1976); 25:125 (1950); 43:19 (Supp. 1980).

72. *State v. St. Romain*, 292 So. 2d 531, 534 (La. 1974).

73. *Id.* at n.3. STYLE FORM FOR THE LOUISIANA LEGISLATURE, LEGISLATIVE BUREAU 1 (1972): "8. Asterisks when used, are used only to denote those parts of the section or subsection not being amended or reenacted."

74. See LA. R.S. 40:966(B)(2) (Supp. 1980).

75. *State v. St. Romain*, 292 So. 2d 531, 532 (La. 1974).

76. Moreover, based on the court's construction of section 27 of article three of the 1921 Constitution, the court found the act had taken effect prior to its publication, thereby validly being applied to the defendant in question. *Id.* at n.2. See *Jones v. State*, 336 So. 2d 59 (La. App. 1st Cir.), *cert. denied*, 336 So. 2d 515 (La. 1976) (promulgation versus publication).

77. LA. CONST. art. III, § 13; LA. CONST. art. IV, § 6 (1921).

78. *State v. Murray*, 47 La. Ann. 1424, 1427, 17 So. 832, 834 (1895).

79. *Id.* See *Hollingsworth v. Thompson*, 45 La. Ann. 222, 12 So. 1 (1893).

bill contain only one object⁸⁰ where the title expressing a general object introduces a bill containing varied subdivisions of that object.⁸¹

When an act is promulgated as required by the constitution, judicial review is limited to whether the substantive provisions contained within the act are unconstitutional.⁸² There is "no authority in the judiciary department to look behind [the act] and determine its validity or invalidity from the proceedings of the General Assembly in adopting it."⁸³ As early as 1873, the court stated that it seemed a settled question in Louisiana that "whether or not [an act had] regularly passed through all the stages necessary for its passage as a law . . . [was] a subject confined to other departments of government."⁸⁴

Judicial Inquiry into Enactment Procedures

Though great weight is accorded the legislative act, Louisiana, consistently with jurisdictions following a form of the affirmative contradiction rule,⁸⁵ permits judicial reference to the legislative journals as conclusive proof of their contents.

The official journals . . . kept by the houses of the General Assembly are prescribed and regulated by the constitution. They constitute official records and import presumptive verity. High authorities maintain the right of courts to refer to them, in order to ascertain the purpose and intent of the statute when not clearly expressed.⁸⁶

Louisiana courts consistently have refused to consider extrinsic evidence to vary or contradict an affirmative recital in the journal that a procedural step was followed. In 1935, the Louisiana Supreme Court⁸⁷ dealt with the allegation that a certain instrument was never

80. LA. CONST. art. III, § 15(A).

81. *State v. Hincy*, 130 La. 620, 58 So. 411 (1912).

82. *Louisiana State Lottery Co. v. Richoux*, 23 La. Ann 743, 744 (1871).

83. *Id.*

84. *Whited v. Lewis*, 25 La. Ann 568, 569 (1873). It has also been held that constitutional requirements for other legislative instruments are not applicable to concurrent resolutions. *Joint Leg. Comm. v. Fuselier*, 174 So. 2d 817 (La. App. 1st Cir. 1965). Understandably, however, a mere clerical or verbal error in an act will be corrected by the court whenever necessary to carry out the intention of the legislature as gathered from the entire act. *State v. Rogers*, 148 La. 653, 658, 87 So. 504, 506 (1921); *City of Crowley v. Police Jury*, 138 La. 488, 70 So. 487 (1915), *cert. dismissed*, 245 U.S. 637 (1918). See LA. R.S. 1:5 (1950).

85. See text at note 59.

86. *Barnard v. Gall & Pharr*, 43 La. Ann 959, 962, 10 So. 5, 6 (1891).

87. *State v. Smith*, 184 La. 263, 166 So. 72 (1935). See J. SUTHERLAND, *supra* note 20, § 15.08, at 420-21 (the rule in most jurisdictions prohibits the introduction of parol evidence to attack either the enrolled bill or journal records).

"read in full" in compliance with the constitution.⁸⁸ A finding that the daily journal of each house showed the bill had been read in full ended the judicial inquiry. The court stated:

The official Journals of the House and Senate, when published and preserved, constitute the ultimate proof of verity of the proceedings. No extrinsic proof is admissible for the purpose of contradicting the facts therein recited. . . . It is well settled that the Journal of the proceedings of each House is a public record, of which the courts are at liberty to take judicial notice.⁸⁹

Additionally, the courts are not competent to review the exact form of a journal entry. The charge that an amendment, passed before a bill's third reading, was not entered in full on the journals of the House and Senate was held not well founded.⁹⁰ Regarding, as constitutionally sound, that an entry in the journal was of a character sufficient to identify the matter under consideration with that ultimately adopted, the supreme court stated the policy that

[w]hat is intended to be guarded against is undue haste in the consideration of matters of legislation. The purpose of the requirement is that the subject-matter of the bill or amendment should be brought to the attention of both houses on a certain number of occasions, rather than that the details in each section should be placed each time before the houses.⁹¹

Likewise, the court would not enjoin a bond sale conducted under authority of a joint resolution⁹² which was never set forth "in full," in its final form, on the pages of the journals.⁹³ The court determined that the legislation was validly enacted, as the journals did set forth in full, though separately, the bill and all adopted amendments. The constitution only required "that a reference sufficiently identifying the amendment proposed to be acted upon be entered on the Journals."⁹⁴ Equally unsuccessful was an attempt to invalidate a statute on an alleged discrepancy between the title adopted in the House and the Senate.⁹⁵

88. LA. CONST. art. III, § 15(D) (1974) (reading at least by title is required); LA. CONST. art. III, § 24 (1921).

89. *State v. Smith*, 184 La. 263, 280-81, 166 So. 72, 77-78 (1935).

90. *See Porterie v. Board of Liquidation of State Debt*, 190 La. 520, 182 So. 661 (1938).

91. 190 La. at 554, 182 So. at 673.

92. The state constitution may only be amended by a joint resolution, LA. CONST. art. XIII, § 1, which is subject to the same legislative procedures as a bill, but not to gubernatorial action. HOUSE RULES 7.1, *supra* note 10, at 25; SENATE RULES 7.1, *supra* note 10, at 22.

93. *Miller v. Greater Baton Rouge Port Comm'n*, 225 La. 1095, 74 So. 2d 387 (1954).

94. 225 La. at 1100, 74 So. 2d at 389.

95. *Whited v. Lewis*, 25 La. Ann. 568 (1873).

As discussed above,⁹⁶ the only constitutional requirement presently placed on the contents of the legislative journals is that the "journal shall accurately reflect the proceedings of that house, including all record votes."⁹⁷ Other requirements are imposed by rule alone.⁹⁸ Where the constitution does not require the journal to show affirmatively that a specific action was taken or procedure was followed, silence in the journal will create a presumption that the legislature observed its obligation to follow all procedures.⁹⁹ An early attack was launched against an act creating the Department of Finance where the claimed defect was that the House and Senate had not passed the identical act.¹⁰⁰ The claim was based on the fact that the House Journal recited merely that the "bill as amended [by the Committee of the Whole] was finally passed,"¹⁰¹ but did not affirmatively show the adoption of floor amendments offered in the Committee of the Whole.¹⁰² Again the court held that the journal need only show that constitutional requirements were met, all other enactment procedures being presumed to have been followed absent an affirmative contradiction. The weight of jurisprudence in Louisiana was found to support the rule that when the constitution does not require a procedure to be recorded in the journal, then it is "left to the discretion of either house to enter it or not; and the silence of the journal on the subject ought not to be held to afford evidence that the act was not done."¹⁰³

96. See note 46, *supra*.

97. LA. CONST. art. III, § 10(B).

98. See HOUSE RULES ch. 12, *supra* note 10, at 40-41; SENATE RULES ch. 14, *supra* note 10, at 60-61.

99. See *Wall v. Close*, 203 La. 345, 14 So. 2d 19 (1943); *Hollingsworth v. Thompson*, 45 La. Ann 222, 12 So. 1 (1893).

100. *Wall v. Close*, 203 La. 345, 14 So. 2d 19 (1943).

101. 203 La. at 355, 14 So. 2d at 23.

102. The Committee of the Whole is provided for by the House of Representatives. HOUSE RULES 6.20, *supra* note 10, at 22. This procedure permits the entire membership to become members of a committee to consider matters of interest to the entire body. Persons outside the legislature may address the committee, a procedure not available during House floor debates. Generally, more informal debate and discussion is allowed. The Senate rules do not provide for a Committee of the Whole.

103. *State v. Joseph*, 139 La. 734, 736-37, 72 So. 188, 189 (1916), quoting *Illinois v. Illinois Central R.R. Co.*, 33 Fed. 730, 762-63 (Cir. Ct. Ill. 1888, *aff'd*, 146 U.S. 387 (1892)). On a previous occasion the Louisiana Supreme Court stated:

"We have uniformly held that, when the *Constitution does not require* the journals to affirmatively show that a particular thing, necessary to the validity of the legislative action, was done, *mere silence* will not invalidate; and in such case we will presume that the Legislature observed their obligation, and did not pass such bill without sufficient proof that the proper notice was given. The unconstitutionality of an act enrolled, authenticated by signatures of the presiding officers, and approved and signed by the Governor, must be *affirmatively and clearly* shown, before the *courts* are authorized to treat it as void, because not being

An earlier attack on the validity of an acreage tax on cotton authorized by an allegedly extrinsically unconstitutional act¹⁰⁴ was defeated in the courts.¹⁰⁵ The argument was made that the House Journal failed to show concurrence on one of five amendments and, therefore, that the amendment had not been "called up, read, or voted on in said House"¹⁰⁶ as required by the constitution. Plaintiff, acknowledging the journals to be the "best and exclusive evidence of the proceedings of said house,"¹⁰⁷ protested that the journals must affirmatively show compliance with all required procedures. The court, after finding the final act did include the disputed amendment and the journal did show the House concurred in Senate amendments, stated that there was no constitutional requirement that amendments be printed in the journal of proceedings; the only requirement was that the *votes* be recorded.¹⁰⁸

The amendments in question were printed in full on the pages of the Senate Journal; however, only four were printed in the House Journal, followed by the declaration that the House concurred in the Senate amendments by a unanimous vote.¹⁰⁹ The House Journal made no mention of the fifth—and disputed—amendment. The court ultimately concluded that the failure was a clerical or printing error and not the failure of the House to express its approval of the amendment. Moreover, concurrence by one house in an amendment made by the other was only required to be evidenced by a majority vote of all members.¹¹⁰

Plaintiff had objected to defendant's introducing into evidence "the original engrossed House bill . . . , with all indorsements thereon, including the original Senate amendments attached thereto,"¹¹¹ on the grounds that nothing outside the journal was admissible as evidence of the House proceedings. The court ruled that the engrossed bill was properly received as the "res."¹¹² Though not

passed in accordance with the rules of parliamentary law prescribed in the Constitution. (Italics ours.)"

Hollingsworth v. Thompson, 45 La. Ann 222, 231, 12 So. 1, 4 (1893); quoting Hill v. Steele, 2 So. 650, 651 (Ala. 1887).

104. 1892 La. Acts, No. 89.

105. Hollingsworth v. Thompson, 45 La. Ann. 222, 12 So. 1 (1893).

106. 45 La. Ann. at 225, 12 So. at 2.

107. 45 La. Ann. at 229, 12 So. at 3.

108. 45 La. Ann. at 230, 232-33, 12 So. at 4, 5.

109. 45 La. Ann. at 230, 12 So. at 2-3.

110. 45 La. Ann. at 231, 12 So. at 4.

111. 45 La. Ann. at 229, 12 So. at 3.

112. "On reason and authority we regard the engrossed house bill as a proper subject for consideration, in connection with the journals kept of legislative proceedings. It is the res; the very subject-matter then under legislative consideration. It proves rem ipsam, if it proves nothing more." 45 La. Ann. at 230, 12 So. at 3.

denominating the engrossed bill as *intrinsic evidence*, the court relied on its decision¹¹³ rendered two years earlier admitting journal proofsheets as evidence *existing intrinsically*¹¹⁴ where no *extrinsic* proof was admissible to contradict the facts established by the journals.¹¹⁵

Arguably, the supreme court had relaxed the stated rule on this occasion¹¹⁶ by accepting evidence (proofsheets of the daily journal) in support of an allegation that the journals had been altered without authority. However, as the court pointed out, the attack was allowed only on the basis of *intrinsic, not extrinsic, proof*.¹¹⁷

The true distinction to be taken, in our opinion, is that no *extrinsic* proof is admissible to contradict the facts which are established by the journals; but fraud, error, mistake or the improper exercise of judgment, on the part of a State agent or representative, *existing intrinsically*, may be shown. This is not a question of what proof is furnished by the journals as contradistinguished from other proof of a given state of facts; but it is a question of the journals being, in themselves, a correct exposition of the facts as they happened.¹¹⁸

Furthermore, the court established that the bound volumes of the journal, as deposited with the Secretary of State,¹¹⁹ are the official legislative journals of the state.¹²⁰ Finding no requirement that the proofsheets were to be corrected, preserved, or published, the court determined "[t]hey [did] not constitute 'a record'."¹²¹ The court stated that "published journals of legislative proceedings should be the ultimate proof of their verity, and such we take the bound volumes . . . to be."¹²²

Louisiana's most recent judicial expression of adherence to the journal entry rule is contained in an unreported district court opinion.¹²³ Plaintiff sought a declaratory judgment¹²⁴ that Louisiana's

113. *State v. Mason*, 43 La. Ann. 590, 9 So. 776 (1891).

114. 43 La. Ann. at 616, 9 So. at 782.

115. *Id.* See J. SUTHERLAND, *supra* note 20, § 15.07, at 417 nn. 5-6.

116. *State v. Mason*, 43 La. Ann. 590, 9 So. 776 (1891).

117. Poynter, *supra* note 4.

118. *State v. Mason*, 43 La. Ann. 590, 616, 9 So. 776, 782 (1891) (emphasis added).

119. See HOUSE RULES 2.9(A)(1), *supra* note 10, at 4; SENATE RULES 3.7(B)(1), *supra* note 10, at 15.

120. *State v. Mason*, 43 La. Ann. 590, 614, 9 So. 776, 781 (1891).

121. 43 La. Ann. at 615, 9 So. at 781.

122. *Id.*

123. *Christian Defense League v. State*, No. 227, 354 (La. 19th Dist. Ct. 1980).

124. Plaintiffs also requested an injunction to prohibit the promulgation and enforcement of Act 480 of 1979.

sex education act¹²⁵ was null based on the allegation that the final vote was in violation of both the constitution and the House *Rules of Order*.¹²⁶ Noting that it was well-established in other jurisdictions,¹²⁷ as well as Louisiana,¹²⁸ that broad powers of review of internal legislative rules are not vested in the judiciary,¹²⁹ the court concluded that it was without power to review violations of House rules.¹³⁰ Citing prior jurisprudence, the court said:

[I]t is well settled that an act of the Legislature will not be declared void or invalid for failure of the legislative body to observe its own rules of procedure. Such rules are usually formulated or adopted by the legislative body itself, and the observance of these rules is a matter entirely within its control and discretion *and is not subject to review by the courts as long as the legislative action does not violate some constitutional provision*.¹³¹

As to the constitutional attack, the court recognized that the constitution requires that only members may vote, but is silent as to the manner in which this is to be accomplished.¹³² In the instant case, the official journal of the House of Representatives¹³³ reflected a majority record vote in favor of the bill in question. In specifically holding the proffered parol evidence¹³⁴ as to the alleged failure of the House to follow its own rules to be inadmissible, the court noted that "[t]hough not numerous, the decisions are uniform on [the] point"¹³⁵ that "Louisiana courts have consistently refused to consider evidence to vary an affirmative recital in the Journal that a particular step was followed."¹³⁶

125. 1979 La. Acts., No. 480.

126. Plaintiff argued that "during the final record vote on House passage. . . Representative Joseph Delpit was . . . not in the House chamber and did . . . not vote his machine for passage of said Bill." Pre-trial brief for plaintiff at 3, *Christian Defense League v. State*, No. 227, 354 (La. 19th Dist. Ct. 1980).

127. See J. SUTHERLAND, *supra* note 20, § 7.04, at 264-66.

128. *State v. Gray*, 221 La. 868, 60 So. 2d 466 (1952).

129. *Christian Defense League v. State*, No. 227, 354, at 4 (La. 19th Dist. Ct. 1980).

130. *Id.*

131. *State v. Gray*, 221 La. 868, 874-75, 60 So. 2d 466, 468 (1952) (emphasis added) (the court cited various treatises and out-of-state cases).

132. *Christian Defense League v. State*, No. 227, 354, at 6 (La. 19th Dist. Ct. 1980).

133. OFFICIAL JOURNAL OF THE PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF LOUISIANA, 5th Reg. Sess. at 2416-23 (July 2, 1979).

134. The plaintiffs sought to introduce affidavits of witnesses in the House Chamber to support their allegations that Rep. Delpit was absent from the House Chamber during the record vote on said bill.

135. *Christian Defense League v. State*, No. 227, 354, at 10 (La. 19th Dist. Ct. 1980).

136. *Id.*

A question remains, however, which the Louisiana Supreme Court has not had the opportunity to address. Which document should be given effect when 1) the text of an amendment, affirmatively stated¹³⁷ in the journal as duly adopted by both houses, conflicts with 2) the text of the same amendment attached to the engrossed bill and incorporated into the final signed act?

Arguably, the firm line of jurisprudence affording absolute verity to the legislative journals necessarily would require the invalidation of the act on the grounds that the bill signed by the governor was not duly passed by both houses of the legislature.¹³⁸ Conversely, a copy of the bill which could be reconstructed from the full journal¹³⁹ could not be given the effect of law because that form of the bill was neither formally enrolled nor signed by the governor. As neither document would be clothed with all the constitutional formalities, it is submitted that neither could be given effect.¹⁴⁰

The foregoing review of the scant Louisiana authorities in this area of judicial review of the legislative body evidences the strength of the conclusive presumption afforded the official legislative journal by state courts. The annual Louisiana legislative session is often hectic, with a growing number of legislative instruments being introduced each session. However, increased sophistication in enactment procedures, enhanced efficiency of legislative staff, and a higher level of care in keeping and correcting daily journals have all combined to insure accurate legislative records which may continue to support this conclusive presumption and its valid underlying public policies.

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137. See text at notes 108-115, *supra*.

138. See text at notes 8-23, *supra*.

139. The enrolled bill can be checked against a "paste up" which consists of a copy of the original bill as introduced, pieced together with the text of all amendments adopted by both houses, clipped from the journals.

140. The engrossed bill with attached amendments was introduced into evidence and given full effect in *Hollingsworth v. Thompson*, 45 La. Ann. 222, 12 So. 1 (1893). However, in that instance the attached Senate amendments were in complete accord with the Senate journal and merely evidenced an omission in the House journal. There was no affirmative contradiction between the enrolled or engrossed bill and the legislative journals.

If the two houses fail to pass the same bill the enrollment is not conclusive and the bill is not valid as law. The same invalidity results where the bill approved by the governor differs from the bill passed by both houses. In states following a form of the journal entry rule, the enrolled bill should not control in this situation. See J. SUTHERLAND, *supra* note 20, §§ 15.16-15.17, at 427-29.