> By an enacting clause, the makers of the Constitution intended that the General Assembly should make its impress or seal, as it were, upon each enactment for the sake of identity, and to assume and show responsibility. While the Constitution makes this a necessity, it did not originate it. The custom is in use practically everywhere, and is as old as parliamentary government, as old as king's decrees, and even they borrowed it. The decrees of Cyrus, King of Persia, which Holy Writ records, were not the first to be prefaced with a statement of authority. The law was delivered to Moses in the name of the Great I Am, and the prologue to the Great Commandments is no less majestic and impelling. But, whether these edicts and commands be promulgated by the Supreme Ruler or by petty kings, or by the sovereign people themselves, they have always begun with some such form as an evidence of power and authority.[22]

Much of what is often regarded as law, or common law, depends upon what has proven to be legally soundly and commonly used in history. Thus many legal authorities have recognized the historical legacy of using an enacting clause, thus indicating it is a concept of fundamental law.

> Written laws, in all times and all countries, whether the edicts of absolute monarchs, decrees of King and Council, or the enactments of representative bodies, have almost invariably, in some form, expressed upon their face the authority by which they were promulgated or enacted. The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority.[23]

> The propriety of an enacting clause in conformity to this ancient usage was recognized by the several states of the Union after the American Revolution, when they came to adopt Constitutions for their government, and without exception, so far as we can ascertain, express provision was made for the form to be used by the legislative department of the state in enacting laws.[24]

Laws, whether by God or man, have at all times in history used an enacting statement to show the source and authority of the law enacted.

Mandatory Requirement of an Enacting Clause

The question has often been raised as to whether constitutional provisions that call for a particular form and style of laws, or procedure for their enactment, are to be regarded as directory or mandatory. The question is critical since its use will have an affect on the *validity* of a statute or law. If such provisions are directory, then they are treated as legal advice which those in government can decide whether or not to follow. But if mandatory such provisions must be strictly followed or else the resulting act or law is unconstitutional and invalid.

While a few courts at an early period held that such provisions were merely directory, the great weight of authority has deemed them to be mandatory. In speaking on the mandatory character of enacting clause provisions one legal textbook states:

> [T]he view that this provision is merely directory seems to conflict with the fundamental principle of constitutional construction that whatever is prohibited by the constitution, if in fact done, is ineffectual. And the vast preponderance of authority holds such provisions to be mandatory and that a failure to comply with them renders a statute void.[25]

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22 *Commonwealth v. Illinois Cent. R. Co.,* 170 S.W. 171 175, 160 Ky. 745 (1914).

23 *Sjoberg v. Security Savings & Loan Assn,* 73 Minn. 203, 212, 213 (1898); *State v. Kozer,* 239 Pac. 805, 807, (Ore. 1925); *Joiner v. State,* 155 S.E.2d 8, 9, 223 Ga. 367 (1967); 25 *Ruling Case Law,* "Statutes," § 22, p. 775, 776; *City of Carlyle v. Nicolay,* 165 N.E. 211, 216, 217 (Ill. 1929); *Joiner v. State,* 155 S.E.2d 8, 9, 223 Ga. 367 (1967).

24 *State v. Burrow,* 104 S.W. 526, 529, 119 Tenn. 376 (1907).

25 *Ruling Case Law,* vol. 25, "Statutes," § 84, p. 836.