The City Court Of Atlanta And The 1983 Georgia Constitution: Is The Judicial Engine Souped Up Or Blown Up?

Edward C. Brewer

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THE CITY COURT OF ATLANTA AND THE 1983 GEORGIA CONSTITUTION: IS THE JUDICIAL ENGINE SOUPED UP OR BLOWN UP?

Edward C. Brewer, III†

Well, I'm a tail-finned road locomotive from the days of cheap gasoline, [But now I'm sitting] by the side of the road, going nowhere, a Rusty Old American Dream.¹

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INTRODUCTION

Anyone who has ever restored a Chevy Bel Air from the mid-1950s has got to love the City Court of Atlanta. First created in 1955 and redesigned to classic proportions in 1956, newly restored versions of both can be seen on the streets of Atlanta, doing their work handsomely and well. Both are among the more valuable examples of their respective kinds, even in a day when more sleek, computerized chariots of fire can, and sometimes do, circumnavigate Interstate 285 in a matter of minutes. In fact, the City Court of Atlanta, as the traffic court of first and last resort, is intended for the very purpose of dealing with drivers who do just that.

Old-time automobile mechanics will tell you that today’s mechanics cannot fix the old Chevys. Carburetors have given way to fuel injection. The mechanic’s ear for the engine is now his (or her—thankfully, that has changed too) eye for the diagnostic monitor. A major rebuild requires not only parts and gaskets, but also a little computer chip that plugs into a black box. But all mechanics agree on one thing: if you want to restore a ’56 Chevy, the old ways are the best ways because if you don’t rebuild the engine right, it’s going to blow up.

The City Court of Atlanta has blown up. The most urgent question is whether it has simply thrown a rod or destroyed the entire judicial engine. The more interesting question is when and how the engine was damaged, and the answer to that depends upon how one reads the court’s history. The classic Bel Air’s design was last tweaked in 1957, but the City Court of Atlanta had major redesigns in 1967, 1988, and 1996. Either or both of the following changes damaged the City Court: the 1988 amendments expanding the court’s jurisdiction over nontraffic misdemeanors arising from the same occurrence as traffic offenses (“same-occurrence misdemeanors”), and the 1996 amendments “recreating” the traffic court as “a system of state courts of limited jurisdiction.” Those amendments change the nature and jurisdiction of the court in ways not contemplated by the constitutional provisions and amendments upon which the

court’s existence and jurisdiction depend, and not permitted by recent constitutional decisions of the Georgia Supreme Court.

The City Court of Atlanta has perhaps been damaged beyond repair: its very existence is probably not constitutional, and its jurisdiction over same-occurrence misdemeanors is certainly not constitutional. The ultimate question, “how do we fix it,” must be answered by the General Assembly and its Atlanta delegation, but this Article suggests that the best repair would be to place the city court’s entire jurisdiction in a new Traffic Division of the Municipal Court of Atlanta, through a “large-county municipal-court” statute. Although this would mean the end of one of the last examples of the “city courts” that first stood in Darien in 1816, a traffic division within the Municipal Court of Atlanta would be consistent with at least four trends of modern Georgia jurisprudence: the elimination of local constitutional amendments and the near-elimination of population laws in the 1983 Georgia Constitution, the use of general laws to implement Municipal Home Rule, the near-elimination of the special courts of Georgia, and the uniformity of the Georgia court system.

I. THE CITY COURT OF ATLANTA AND ITS JUDICIAL FOREBEARS AND COUSINS

A. The City Courts of Georgia

State-level courts styled as city courts have existed in Georgia for most of the state’s history. Most generally, the city courts were trial courts of city-wide or county-wide geographic jurisdiction and had more limited civil or criminal subject-matter jurisdiction than the Georgia Superior Courts, which are characterized by general trial jurisdiction and appellate jurisdiction by certiorari or appeal over the decisions of inferior courts. The city courts, in their many incarnations over more

5. See infra text accompanying notes 98-99, notes 281-307 and accompanying text.
7. See GA. CONST. art. VI, § 4, ¶ 1.; O.C.G.A. §§ 5-3-1 to -31 (1995) (appeals); id. §§ 5-4-1
than 180 years, have concurrently been a valuable judicial resource tailored to local needs and conditions and a prolific source of narrowly framed questions and fine distinctions of constitutional and procedural law. As of the 1983 Constitution’s reconfiguration of the judicial system, however, Georgia’s willingness to permit local variations from a uniform state-court system has waned to the point that a constitutional provision exists proclaiming that “[t]he judicial power of the state shall be vested exclusively” in certain classes of uniform courts. This is mitigated only by the following: (1) the power to create municipal courts, (2) savings and continuation amendment provisions for a few special courts; and (3) a 1996 amendment permitting non-uniform courts as part of “pilot programs of limited duration.” The modern City Court of Atlanta is the only remaining example bearing the name “city court,” because

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to -20 (certiorari); id. § 15-8-6(3) (1999) (appellate jurisdiction).
8. See infra notes 22-45 (creation), 46-68 (questions and distinctions) and accompanying text.
9. GA. CONST. art. VI, § 1, ¶ 1.
10. See id.
11. See id. § 10, ¶ 1; id. art. XI, § 1, ¶ 4; see MCFADDEN ET AL., supra note 6, §§ 2-15 to 2-21. The term “continuation amendment” in the present context means an amendment under Article XI of the 1983 Constitution that continues the existence of a court created pursuant to amendments to an earlier Georgia constitution but not otherwise provided for in Article VI.
12. GA. CONST. art. VI, § 1, ¶ 10, added by 1991 Ga. Laws 1997, referendum passed, 1997 Ga. Laws vol. III, p. CCCXVI, CCCXVIII (No. 2). The implementing provisions for the pilot court program, found at O.C.G.A. § 15-5-28 (1999), require the submission and evaluation of proposals for pilot programs. A Family Court Division of the Fulton Superior Court has been created. See O.C.G.A. §§ 15-11A-1 to -9 (1999). Contrary inferences could be drawn from Cobb County v. Campbell, 256 Ga. 510, 350 S.E.2d 466 (1986) (holding assignment of different duties to associate state court judges did not violate judicial uniformity), but a constitutional amendment was probably necessary for this project because the drafters of the 1983 Constitution specifically rejected alternatives to GA. CONST. art. VI, § 1, ¶ 1, that would have permitted divisions.

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earlier such courts either no longer exist, or are now properly known as the state courts or municipal courts.

1. The Earliest City Courts

The city courts were preceded in Georgia history by a number of other courts, including courts that survived them into the present day. The earliest court system in Georgia consisted of the superior courts, the courts of ordinary (which became the probate courts), the inferior courts, the justices of the peace, and the courts-merchant. The General Assembly

14. See id. §§ 36-32-1 to -27 (1993); McFadden et al., supra note 6, § 2-14.
15. This reference is to the post-1776 history of the Georgia courts. The colonial courts of Georgia and their relationship to the courts created under the early state constitutions are discussed in Institute of Government, The University of Georgia, Judicial Administration in Georgia: A Case Study 7-8, 43-53 (1972) [hereinafter Judicial Administration].
19. The justice of the peace courts were derived from colonial justice courts established in 1752, which came to be called “courts of conscience.” See Judicial Administration, supra note 15, at 43-44; Albert Berry Saye, A Constitutional History of Georgia, 1732-1945, at 180 (1948); Judicial Council of Georgia, Administrative Office of the Courts, A Short Descriptive Study of the Office of Justice of the Peace in Georgia 7 (1978) [hereinafter Justice of the Peace Study] (seemingly incorrectly tracing the justice of the peace courts back to 1732, when Georgia was a proprietary colony with courts in Savannah and, for a short time, Frederica); Alex M. Hitz, Georgia Militia Districts, 18 Ga. B.J. 283 (1958). The colonial records of Georgia suggest that the first such court was created in 1754, and a reference to “Conscience and Equity” appears as early as 1760. See 7 Allen D. Candler, The Colonial Records of the State of Georgia 50, 55 (1970) (1754 Court of Requests); 18 id. at 372, 373 (1760 court of conscience, with justice of the peace and jury). The 1777 Constitution provided “[t]hat the court of conscience be continued as heretofore practiced, and that the jurisdiction thereof be extended to try causes not amounting to more than ten pounds.” Ga. Const. of 1777, art. XLVI, reprinted in Marbury & Crawford, supra note 10, at 5, 12.
enacted the Judiciary Acts in 1777, 1789, and 1797 to govern the various courts.21

In the earliest years of the nineteenth century, there were three courts that came to be known as city courts.22 First, the Mayor’s Court of Darien was created in 1816 with civil jurisdiction up to fifty dollars, and with the Intendant or Council Members (later the Mayor) as judge.23 Second, the Mayor’s Court of Augusta, created in 1817 with civil jurisdiction,24 became the Court of Common Pleas of the City of Augusta in 1826, with the

section 5. GA. CONST. of 1788, art. III, § 5, reprinted in MARBURY & CRAWFORD, supra note 16, at 20, 28; GA. CONST. of 1789, art. III, § 5, reprinted in MARBURY & CRAWFORD, supra note 16, at 13. Their jurisdiction was changed between 1788 and 1787 through six constitutional revisions. See JUSTICE OF THE PEACE STUDY, supra. The justice of the peace courts were made part of the Magistrate Court system by the 1983 Constitution. See GA. CONST. art. VI, § 10, ¶ 1(6).


21. Consistent with those constitutional provisions, the Judiciary Act of 1777 makes reference to both the inferior courts and the courts of conscience. See Judiciary Act of 1777, reprinted in 1 THE FIRST LAWS OF THE STATE OF GEORGIA (John D. Cushing ed. 1981) [hereinafter FIRST LAWS]. The Judiciary Act of 1789 provided for the inferior courts and justices of the peace. See JUDICIAL ADMINISTRATION, supra note 15, at 45-46. The Judiciary Act of 1797 referred to the inferior county courts and the justice of the peace courts, establishing the former in each county and the latter in each militia or company district. See Judiciary Act of 1797, No. 582, §§ 60-67 (inferior county courts), §§ 68-85 (justice of the peace courts), reprinted in 2 FIRST LAWS, supra, at 619; see, e.g., Nisbet v. Lawson, 1 Ga. 275 (1846) (stating that decisions are appealable to superior court). Earlier statutes governing the court of conscience, 2 FIRST LAWS, supra, at 64, 80, and justices of the peace, id. at 413, also existed. An excellent discussion of Georgia’s early colonial and state courts is in LEAH F. CHANIN, REFERENCE GUIDE TO GEORGIA LEGAL HISTORY AND LEGAL RESEARCH §§ 39-45, at 45-53 (1980). Additional details and local color are found in 1 WARREN GRICE, THE GEORGIA BENCH AND BAR (1911).

22. The early history of the city courts is adapted and expanded from the Georgia Supreme Court’s opinion in Welborne v. State, 114 Ga. 793, 40 S.E. 857 (1902). As noted in Welborne, the name “city court” came from the early digests of Mr. Prince and Mr. Cobb. See id. at 797, 40 S.E. at 859. A fourth special court existed during the same time period, the Police Court of the City of Savannah, which had jurisdiction over misdemeanors and ordinance violations, and whose judge was the Mayor. See 1849 Ga. Laws 83, reprinted in THOMAS R.R. COBB, A DIGEST OF THE STATUTE LAWS OF THE STATE OF GEORGIA (1861) [hereinafter COBB’S DIGEST].


judge elected by the General Assembly. In 1856, it was given misdemeanor jurisdiction and renamed the City Court of Augusta, and then was abolished in 1876. Finally, the Court of Common Pleas and Oyer and Terminer in Savannah was created in 1819, with civil and misdemeanor jurisdiction and with its judge elected by the General Assembly, was renamed the City Court, and became the State Court of Chatham County in 1970. With these and similar variations as to name, jurisdiction, and method of selecting judges, the name “city court,” as will appear, has been attended with critical ambiguities since its first use in the State of Georgia.

A variety of city courts were created in Georgia both before and after the Civil War. The Supreme Court of Georgia held in Daughtry v. State that a city court was “a local and independent court” that “does not belong to any general class of courts now existing in this State, and, therefore, was not subject to the uniformity provisions of the 1877 Constitution. The court observed in Welborne v. State that “the city courts had their origin in the needs of particular localities, growing out of the fact that conditions were different from what they were in

27. See 1876 Ga. Laws 97.
28. See 1819 Ga. Laws 387, vol. III, reprinted in PRINCE'S DIGEST, supra note 23, at 491 and COBB'S DIGEST, supra note 22, at 617. Earlier court systems had existed in Savannah and Frederica. When Georgia was a proprietary colony, Savannah had a town court; when Georgia became a royal colony, it had a general court and an elaborate named “Court of Session of Oyer and Terminer and General Goal Delivery.” JUDICIAL ADMINISTRATION, supra note 15, at 44; see id. at 43-44. The Frederica town court was first created in 1735. See 2 CANDLER, supra note 19, at 231 (Act of Sept. 26, 1735).
31. See O.C.G.A., vol. 42, INDEX TO LOCAL AND SPECIAL LAWS AND GENERAL LAWS OF LOCAL APPLICATION, passim (1993) (current local acts, listed by city and by county). It has been suggested that city courts were sometimes created in the 1880s and 1890s not only to take the load off the superior court judge, but because of conflicts between the superior court judge and attorneys or other citizens in the community. See I ART. VI TRANSSCRIPT (Oct. 15, 1977), at 61 (comments of Judge Kenneth B. Followill).
32. 115 Ga. 819, 42 S.E. 248 (1902).
33. Id. at 822, 42 S.E. at 249.
34. GA. CONST. of 1877, art. XI, § 3, ¶ 1.
35. 114 Ga. 793, 40 S.E. 857 (1902).
other places—conditions generally brought about by growth, increase in population, wealth and business.\(^{36}\)

Lower courts were also needed in jurisdictions other than those in which city courts were created. Both the 1861\(^{37}\) and 1865\(^{38}\) Constitutions authorized the creation of courts, like the city courts, not specifically listed in the Constitution. In 1870, the General Assembly created district courts with misdemeanor jurisdiction\(^{39}\) but then abolished them over the Governor's veto in 1871.\(^{40}\) In 1872, the General Assembly created county courts, with jurisdiction over criminal misdemeanors and civil cases of $100 or less, in all counties in which there was neither a city court nor an earlier-created county court.\(^{41}\) In 1879, the county courts were made subject to uniform procedures\(^{42}\) by a general law that superseded the special laws creating those courts.\(^{43}\) In 1890, the General Assembly authorized the creation of a city court in a county with a population of 10,000 or more upon recommendation of a grand jury, but subject to abolition by the General Assembly.\(^{44}\) The city courts and the county courts were created, changed, and abolished as the circumstances of their communities dictated.\(^{45}\)

\(^{36}\) Id. at 810, 40 S.E. at 885.

\(^{37}\) GA. CONST. of 1861, art. IV, § 1, ¶ 1 (judicial power vested in named courts “and in such other courts as have been or may be established by law”).

\(^{38}\) GA. CONST. of 1865, art. IV, § 1, ¶ 1 (similar language to 1861 Constitution as cited in supra note 37); see also Clark v. Hammond, 134 Ga. 792, 68 S.E. 600 (1910).

\(^{39}\) See 1870 Ga. Laws 32.

\(^{40}\) See 1871-1872 Ga. Laws 68.

\(^{41}\) See id. at 288; Lorentz & Rittler v. Alexander, 87 Ga. 444, 13 S.E. 632, 633 (1891) (stating that 1872 Act was special law). In 1873, the county courts' contract jurisdiction was expanded to $200 when the county judge publicly advertised the terms of court. See 1873 Ga. Laws 35 (Jan. Sess.); Anderson v. Ryan, 82 Ga. 559, 9 S.E. 381 (1889) (stating examples of the jurisdiction and procedures of the county courts); Wheatley v. Blalock, 82 Ga. 406, 9 S.E. 168 (1889); Malone v. State, 27 Ga. App. 53, 107 S.E. 358 (1921); Davison v. Bush, 8 Ga. App. 34, 68 S.E. 495 (1910).

\(^{42}\) See 1878-1879 Ga. Laws 132.

\(^{43}\) See Thorpe v. Butt, 106 Ga. 52, 31 S.E. 793 (1898); Lorentz & Rittler, 87 Ga. 444, 13 S.E. 632 (1891).

\(^{44}\) See 1890-1891 Ga. Laws 96 (formerly codified as amended at Code 1895 §§ 4270-4272); Daughtery v. State, 115 Ga. 819, 42 S.E. 248 (1892). The grand-jury city courts were not subject to the judicial uniformity provisions, Whittendale v. Dixon & Bro., 70 Ga. 721 (1883), but their authorizing statute appears to have been a general law and to have contained jurisdictional and procedural provisions that would have been subject to uniformity requirements.

\(^{45}\) The city courts and the county courts were not equivalents, but had differing jurisdictions and procedures according to their local acts. See Daughtery v. State, 115 Ga.
2. The Nature of the Nineteenth Century City Courts

The 1865 and 1877 Constitutions, which were in force when most of the city courts were created, did not list the city courts as a class of courts, but referenced “other courts” that the General Assembly might create. The characterization of a court as a city court was important for any of five purposes during the nineteenth and early twentieth centuries: (1) the availability of an appeal in the first instance to the Georgia appellate courts; (2) the trial court’s power to grant a new trial; (3) the city court judge’s ability to preside in a superior court and vice versa; (4) the question of uniformity of jurisdiction, powers, proceedings, and practice; and (5) the right to a trial by a twelve-member jury. For example, the 1865 Georgia Constitution provided for an appeal to the supreme court only “from the Superior Courts of the several Circuits, and from the City Courts of the Cities of Savannah and Augusta, and such other like Courts as may hereafter be established in other cities.” Similarly, the City Court of Augusta having been abolished and that of Atlanta created in the interim, the 1877 Constitution provided for an appeal “from the Superior Courts, and from the City Courts of Atlanta and Savannah, and such other like Courts as may be hereafter established in other

819, 42 S.E. 248 (1902); Cooper v. Jackson, 107 Ga. 255, 33 S.E. 609 (1899).
46. GA. CONST. of 1877, art. VI, § 1, ¶ 1 (“The judicial powers of this State shall be vested in a Supreme Court, Superior Courts, Courts of Ordinary, Justices of the Peace, commissioned Notaries Public, and such other Courts as have been or may be established by law.”); GA. CONST. of 1865, Art. IV, § 1, ¶ 1 (providing for the vesting of those powers in a “Supreme Court for the correction of errors, a Superior, Inferior, Ordinary, and Justices’ Courts [sic], and in such other Courts as have been, or may be, established by law”).
47. Prior to 1863, the constitutional uniformity requirements applied to the superior courts, not to the city courts. See GA. CONST. art. VI, § 1, ¶ 5; id. art. VI, § 3, ¶ 1; GA. CONST. of 1976, art. VI, § 6, ¶ 2; id. art. VI, § 7, ¶ 2; id. art. VI, § 9, ¶ 1; GA. CONST. of 1845, art. VI, § 9, ¶ 1; GA. CONST. of 1877, art. VI, § 8, ¶ 1 (uniformity applied to all courts “(except City Courts)”). There were no judicial uniformity provisions in the 1865 Constitution. See GA. CONST. of 1861, art. IV, passim.
49. GA. CONST. of 1865, art. IV, § 1, ¶ 3.
cities."\textsuperscript{50} The 1877 Constitution also provided that "the Superior and City Courts" may "grant new trials on legal grounds."\textsuperscript{51} The constitutional provisions for different treatment of the city courts of Savannah and Augusta or Atlanta and the "other like courts" in other cities required that the unspecified "like" city courts be identified.\textsuperscript{52} The Georgia Supreme Court did so by drawing a distinction between "constitutional city courts" and "statutory city courts."\textsuperscript{53} Applying the provisions of the 1877 Constitution, the supreme court held in \textit{Monford v. State}\textsuperscript{54} that one essential characteristic of a constitutional city court was its provision for a trial by a twelve-member jury.\textsuperscript{55} In \textit{Welbome v. State},\textsuperscript{56} the supreme court further stated that such a court must be constituted in a Georgia city serving as a county seat, but that there were no jurisdictional or other procedural characteristics that had to exist for a court to be a constitutional city court.\textsuperscript{57} The 1877 Constitution was held to permit only one constitutional city court in each city and to preclude the creation of more than one such court in Atlanta,\textsuperscript{58} based upon the provision that the General Assembly could create like courts in other cities.\textsuperscript{59}

A "statutory city court" was, besides its lack of the above features, a state court. The \textit{Monford} court made clear that the General Assembly had the power to create such statutory city

\textsuperscript{50} GA. CONST. of 1877, art. VI, § 2, ¶ 5. Whether the listing of cities was only alphabetical (and varied from the 1885 Constitution in that regard) or reflected some supposed ascendancy of upstart Atlanta over old Savannah is beyond the scope of this Article.

\textsuperscript{51} Id. § 4, ¶ 6.

\textsuperscript{52} Id.


\textsuperscript{54} 114 Ga. 528, 40 S.E. 798 (1902). The City Court of Americus had six-person juries. See 1900-1901 Ga. Laws 93, §§ 26, 28. By way of comparison, the City Courts of Bainbridge and Dublin, created during the same year, had twelve-person juries. See id. §§ 25, 28, at 104 (Bainbridge); id. §§ 21-22, at 117 (Dublin).

\textsuperscript{55} See \textit{Monford}, 114 Ga. at 529, 40 S.E. at 799.

\textsuperscript{56} 114 Ga. 793, 40 S.E. 887 (1902).

\textsuperscript{57} See \textit{id.} at 797, 40 S.E. at 859.

\textsuperscript{58} See \textit{id.}

\textsuperscript{59} See \textit{infra} notes 143-53 and accompanying text (interpreting similar provision of the 1983 Constitution permitting "a state court" in each county).
courts. 60 To the same effect was Grant v. Camp, 61 in which the
Georgia Supreme Court observed that the General Assembly
could create statutory city courts, county courts, or district
courts to exercise jurisdiction over state misdemeanor
offenses. 62 In Barnes v. State, 63 the court held that a
constitutional city court whose juries were reduced from twelve
to five members thereby became a statutory city court. 64
Consequences for a city court’s not being a constitutional city
court included having the court’s judgments reviewed in the
first instance by the superior courts on certiorari 65 and not
having the constitutional power to grant a new trial. 66 But those
consequences arose from the constitutional references to the
city courts of Atlanta and Savannah and not from some
prohibition of, or some organic characteristic of, statutory city
courts. 67 Nor did they arise from the view that the statutory city
courts were somehow not state courts, but rather courts of a
municipality. 68

3. The City Courts’ Transition to the Twentieth Century

The city courts in many Georgia cities had, for the most part,
simple histories compared to their counterparts in Atlanta. 69

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60. 114 Ga. 528, 529, 40 S.E. 798, 799 (1902); see also supra notes 48-47.
61. 105 Ga. 428, 31 S.E. 429 (1888). The holding of Grant v. Camp, that the General
Assembly was prevented by the general-law provisions of the 1877 Constitution from
deleagting authority over state offenses to courts controlled by municipal authorities,
and the broader implications of that decision for what constitutes a “state court” are
addressed infra notes 180-98 and accompanying text.
62. See Grant, 105 Ga. at 430, 31 S.E. at 429.
64. See id. at 469, 86 S.E.2d at 298.
65. See White v. State, 121 Ga. 592, 49 S.E. 715 (1904). Until 1845, the original superior
courts were the sole appellate courts in Georgia. See Judiciary Act of 1797, § 5, 1797 Ga.
Laws 582, reprinted in 2 FIRST LAWS, supra note 21, at 619, 621; MCFADDEN ETAL., supra
note 6, § 1.1.
67. See id. at 715-16, 101 S.E. at 913-14.
68. See generally id.; Monford v. State, 114 Ga. 528, 40 S.E. 798 (1902); Welborne v.
State, 114 Ga. 793, 40 S.E. 857 (1902).
69. See O.C.G.A., vol. 42, INDEX TO LOCAL AND SPECIAL LAWS AND GENERAL LAWS OF
LOCAL APPLICATION, passim (1993) (current and non-current local acts, listed by city and
by county). Some histories, such as that of the City Court of Cleveland in White County,
Georgia, reflect disagreement over whether a city court was needed. See 1917 Ga. Laws
221, repealed, 1918 Ga. Laws 302 (city court established); 1921 Ga. Laws 290, repealed,
Some of the county courts created in 1872 were abolished, and others were replaced by city courts, and a few survived as county courts, later to become part of the state-court system. One of the lengthier histories was that of Clarke County, whose county court became the City Court of Clarke County, followed by name changes to the City Court of Athens, the Civil and Criminal Court of Clarke County, and the State Court of Clarke County.

The history of the courts in the City of Atlanta, as well as those in Fulton and DeKalb Counties, was much more complex even than that of the Clarke County courts. The original City Court of Atlanta was created in 1871, with both civil and misdemeanor jurisdiction throughout the City of Atlanta, and its judges were elected by the Mayor and the Council. The

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71. See, e.g., 1884-1885 Ga. Laws 487 (City Court of Alma); id. at 488 (County Court of Bartow County). In some cases, the county court was replaced by a city court that ceased to exist before the conversion to state courts in 1970. See 1871-1872 Ga. Laws 288 (creating County Court of Brooks County); 1904 Ga. Laws 237 (repealed); 1804 Ga. Laws 188 (establishing City Court of Quitman); 1951 Ga. Laws 3400 (referendum on City Court of Quitman); see also 1993 Ga. Laws 5124 (creating a state court for Brooks County). In other cases, there were "technical difficulties" in changing from a county court to a city court, such as the lack of a "city" at the time the new court was created. White v. State, 121 Ga. 592, 49 S.E. 715 (1905) (noting that County Court of Worth County became statutory City Court of Sylvester); see also 1905 Ga. Laws 369 (reestablishing the City Court of Sylvester as a constitutional city court the next year); 1970 Ga. Laws 3356 (City Court of Sylvester becomes the State Court of Worth County); 1916 Ga. Laws 314.
75. See 1894 Ga. Laws 212.
77. See id. at 680, § 3.
78. See 1871-1872 Ga. Laws 57; Tanner v. O'Neill, 108 Ga. 245, 247, 33 S.E. 884, 885 (1899). The 1871 court's territorial jurisdiction was expanded to include all of Fulton County, 1875 Ga. Laws 40 and 1874 Ga. Laws 84, and the power to appoint its judges was transferred to the Governor, 1874 Ga. Laws 84. That transfer of power saved the court from the fate of those courts whose misdemeanor jurisdiction was held unconstitutional under the general-law provisions of the 1877 Constitution. See Grant v. Camp, 105 Ga. 428, 430, 31 S.E. 429, 430 (1898); Aycock v. Town of Rutledge, 104 Ga. 533, 534, 30 S.E. 815, 816 (1898); infra notes 180-99 and accompanying text.
Criminal Court of Atlanta was created in 1890 to try cases with
five-member juries, and its criminal jurisdiction extended
throughout Fulton County. Its judge was appointed by the
Governor with the advice and consent of the Senate. The
judges of the city court and criminal court were permitted to sit
in one another's courts by agreement or upon disqualification.
The Georgia Supreme Court held in Welborne v. State that,
because there could be only one constitutional city court in
Atlanta, the criminal court was not a constitutional city court
and its judgments could not constitutionally be made directly
appealable to the supreme court. In McFarland v. Donaldson,
the court similarly held that the criminal court was not a "city
court" that had the power to grant a new trial.

The modern system of state-level courts in Atlanta was
created over the next several decades, beginning in 1935 when
the original City Court of Atlanta was abolished. That same
year, the General Assembly renamed the 1890 criminal court as
the Criminal Court of Fulton County. Small civil cases were
also being handled by the Fulton Section of the Municipal Court
of the City of Atlanta, which by then had jurisdiction up to
$2500 throughout Fulton County. That court later was renamed

82. See id. § 17.
83. 114 Ga. 783, 40 S.E. 857 (1902).
84. A similar fate befell the attempt to make the Civil Court of Fulton County's judgments appealable to the Georgia appellate courts. See infra notes 95-98 and accompanying text.
85. 115 Ga. 567, 41 S.E. 1000 (1902).
86. See McFarland, 115 Ga. at 569, 41 S.E. at 1002.
87. See infra notes 459-521 and accompanying text (discussing whether the modern City Court of Atlanta is a "state court").
89. See id. at 496.
90. See infra text accompanying notes 182-88.
91. See 1925 Ga. Laws 370, § 10. In current-dollar terms, this was nearly the same jurisdiction as the city court's $3000 limit.
the Civil Court of Fulton County,\textsuperscript{92} and still later its jurisdictional limit was removed\textsuperscript{93} and (quite belatedly) its judges came to be elected by Fulton County voters.\textsuperscript{94} The Georgia Court of Appeals held in \textit{Allen v. Hix Green Buick Co.}\textsuperscript{95} that the Civil Court of Fulton County was not a city court.\textsuperscript{96} Consistent with its decision in \textit{Welborne v. Donaldson},\textsuperscript{97} the Georgia Supreme Court, in \textit{Gibson v. Gober},\textsuperscript{98} referred to the Criminal Court of Fulton County as a valid county court, not a city court.\textsuperscript{99} Some years later, in 1967, the General Assembly proposed a constitutional amendment declaring that the Criminal Court of Fulton County was a constitutional city court and that its judgments were appealable to the Georgia appellate

\textsuperscript{92} \textit{See} 1939 Ga. Laws 448; 1913 Ga. Laws 145.

\textsuperscript{93} \textit{See} 1946 Ga. Laws 3271; \textit{see also} Walker Elec. Co. v. Walton, 203 Ga. 246, 253, 46 S.E.2d 184, 189 (1948)(constitutional). The Court Study Commission found the resulting overlap in jurisdiction with the superior court worthy of an extended and interesting discussion, with citations to Professors Sutherland and Pound. \textit{See generally FULTON COUNTY—CITY OF ATLANTA COURT STUDY COMMISSION, THE CIVIL COURT OF FULTON COUNTY: REPORT TO THE COURT STUDY COMMISSION 3-8 (INTERIM REPORT NO. 5, 1962) [hereinafter 1962 CIVIL COURT REPORT].}

\textsuperscript{94} \textit{See} 1956 Ga. Laws 3271, § 2.

\textsuperscript{95} 78 Ga. App. 34, 50 S.E.2d 167 (1948).


\textsuperscript{97} 115 Ga. 563, 41 S.E. 899 (1902).

\textsuperscript{98} 204 Ga. 714, 1 S.E.2d 664 (1949).

\textsuperscript{99} \textit{See id.} Consistent with that view, a judgment of the criminal court was reviewed on certiorari by the Superior Court of Fulton County in \textit{Brown v. State}, 82 Ga. App. 678, 62 S.E.2d 732 (1950).
courts. That amendment passed in 1968. Following a similar path, the DeKalb Section of the Municipal Court of Atlanta was renamed the Civil Court of DeKalb County in 1951, with its jurisdictional limit initially set at $1000, then raised to $5000, and then eliminated. That court was renamed the Civil and Criminal Court of DeKalb County in 1958 and became a court of record in 1968.

The city courts moved during the mid-twentieth century toward, and eventually became, the system of courts that today are known as the state courts. The Georgia Supreme Court's holding in Daughtry v. State, that such courts were state courts, had been echoed by Charles J. Bloch in testimony before the 1945 Constitutional Commission, in which he proposed that the city courts should be subject to constitutional uniformity requirements: "[O]ur thought was in the first place city courts—the term 'city court' is a misnomer. . . . Well, of course, we all know that a city court under the judicial system of Georgia is not a police court, but it is really a county court or common law court." Georgia Supreme Court Justice Warren

100. See 1987 Ga. Laws 941, approved, 1989 Ga. Laws 4402, 4422 (No. 82). That amendment was repealed by noncontinuation under GA. CONST. art. XI, § 1, ¶ 4; however, by then both courts had been consolidated into the State Court of Fulton County, 1970 Ga. Laws 3023, and were a part of the state court system that was established in 1983. The constitutional declaration that the criminal court was a constitutional city court was nearly contemporaneous with the first re-creation of the City Court of Atlanta by its 1987 statute, at a time when the 1945 Constitution permitted only one constitutional city court within a given county. See GA. CONST. of 1945, art. VI, § 1, ¶ 1; Welborne v. State, 114 Ga. 793, 40 S.E. 857 (1902); supra text accompanying notes 58-59. That supports the view that the modern City Court of Atlanta was a statutory, not a constitutional city court. See McFadden et al., supra note 6, § 2-21; supra notes 46-68 and accompanying text; infra text accompanying note 334; note 385.


106. See 1958 Ga. Laws 2519; 1951 Ga. Laws 2401. The jurisdiction of the Civil Court of DeKalb County was county-wide and included that part of the City of Atlanta that extended into DeKalb County, formerly the jurisdiction of the DeKalb section of the Municipal Court of Atlanta. See 1939 Ga. Laws 449; infra text accompanying note 168.


109. 1 RECORDS OF CONSTITUTIONAL COMMISSION, supra note 72, at 143; see id. at 142-
Grice observed, with regard to city-court uniformity, that "I would be glad to see it but I imagine you would have the biggest cat and dog fight you ever heard of in your life."\textsuperscript{110} Constitutional Commission Chairman Ellis Arnall concluded that "[o]ne of the finest things that could happen to Georgia would be to have uniform city courts, but it would be a Herculean task to try to harmonize the city courts."\textsuperscript{111} The Commission's report further makes clear that the Commission clearly distinguished between city courts and municipal courts during this latter discussion.\textsuperscript{112} In the end, the cause of uniformity for the city courts was not advanced by the 1945 Constitution.

The city courts then became, in five steps, a system of state courts subject to general law.\textsuperscript{113} First, in 1966, the Civil Practice Act effected some measure of uniformity in practice in the city courts. The Act was treated as a general law superseding any conflicting provisions of the city courts' local acts.\textsuperscript{114} Second, a 1970 statute renamed as "state courts" all city courts that had "concurrent jurisdiction with superior courts to try misdemeanor cases by a jury trial or ha[d] civil jurisdiction unlimited in amount and concurrent with the superior courts . . . or ha[d] both of the above jurisdictions."\textsuperscript{115} Most of the city courts, the remaining county courts, and the Civil and Criminal Court of DeKalb County were included under that statute.\textsuperscript{116}

\begin{footnotesize}
44. The misnomer caused one treatise on municipal law to mistake the nature of the city courts. \textit{See} 2 Howard S. Abbott, \textit{A Treatise of the Law of Municipal Corporations} § 586, at 1437 (1866) [hereinafter Abbott on Municipal Corporations] (citing Darden \textit{v.} State, 74 Ga. 842 (1885), on 1871 court's jurisdiction). Unhappily, the nomenclature "state courts" produces its own problems; a discussion of federal jurisdiction that makes reference to state courts must invariably refer only to state trial courts, not the state courts.

110. \textit{See} 1 Records of Constitutional Commission, \textit{supra} note 72, at 569.


112. \textit{See} 1 Records of Constitutional Commission, \textit{supra} note 72, at 569-70.

113. Earlier statutes that provided a small measure of primarily administrative "uniformity" are now codified at O.C.G.A. §§ 15-8-1 to -5 (1999).


\end{footnotesize}
Third, the Civil and Criminal Courts of Fulton County were consolidated in 1976\textsuperscript{117} and made subject to the state court statute in 1983.\textsuperscript{118} Fourth, the 1983 Constitution provided (as it does still) that "[s]tate courts shall continue as state courts"\textsuperscript{119} and made state courts of the county courts of Baldwin and Putnam counties.\textsuperscript{120} Fifth, the 1983 state court statute\textsuperscript{121} provided that certain courts continued by the 1983 Constitution or created under the 1983 statute were defined as state courts.\textsuperscript{122} Since then, other state courts have been created, and there were sixty-eight Georgia state courts in existence as of 1999, with three courts entirely vacant and one judgeship vacant in a multi-judge court.\textsuperscript{123}

As Georgia moved toward more judicial uniformity\textsuperscript{124} in the second half of the twentieth century, the constitutional significance of the city court label steadily decreased. The 1945

\textsuperscript{117} See 1976 Ga. Laws 3023. The separate character of these courts appears to have been referred to as late as 1989. See 1989 Ga. Laws 3839.

\textsuperscript{118} O.C.G.A. §§ 15-7-1 to -85 (1999).

\textsuperscript{119} GA. CONST. art. VI, § 10, ¶ 1(2). The intervening 1976 Constitution made no express reference to the city courts that had been renamed state courts. See infra note 125 (quoting GA. CONST. art. VI, § 1, ¶ 1).

\textsuperscript{120} See GA. CONST. art. VI, § 10, ¶ 1(6).

\textsuperscript{121} O.C.G.A. §§ 15-7-1 to -85 (1999).

\textsuperscript{122} See id. § 15-7-1. The state court statute supersedes any inconsistent provisions of the local acts creating the state courts. See id. § 15-7-70; see also id. at 15-7-40 (local acts still govern terms of court); Stubbs v. Carpenter, 271 Ga. 327, 519 S.E.2d 451 (1999) (same). The state court statute and related provisions also seems to supersede entirely the "city-court statutes" codified at O.C.G.A. §§ 15-8-1 to -5 (1989) at least as applied to the state courts that formerly were city courts: (1) Code section 15-8-1 is equivalent to Code section 15-7-41; (2) Code section 15-8-2 seems functionally overruled by Code sections 15-7-80 to -85; (3) Code section 15-8-3 is equivalent to Code sections 15-1-9.1 and 15-7-25(c); (4) Code section 15-8-4 is unnecessary in view of Code section 15-6-1.1; and (5) Code section 15-8-5 is equivalent to Code sections 15-6-51, -59(b), -80, and 15-7-48, taken together.

\textsuperscript{123} See 1999 GEORGIA LEGAL DIRECTORY, Government Section, at 77-80 (vacant state courts in Bacon, Henry, and Jenkins Counties; vacant judgeship in Gwinnett County).

\textsuperscript{124} The 1972 Judicial Administration study called for judicial uniformity and provided detailed recommendations on the modernization of Georgia courts. See JUDICIAL ADMINISTRATION, supra note 15, at 5, 10-18. Many of those recommendations were considered in the drafting of the 1983 Constitution. See III ART. VI TRANSCRIPT (June 27, 1980), at 15; II ART. VI TRANSCRIPT (Sept. 1, 1978), at 7. That this process remains incomplete is evidenced by the continuation provisions of GA. CONST. art. XI, § 1, ¶ 4, by the reclassification provisions of GA. CONST. art. VI, § 1, ¶ 10, and by the Select Committee's observation that Article VI "is a step in the right direction toward a truly unified judicial system and toward a system we can be proud of in this State." 1 LEGIS. OVERVIEW COMM. TRANSCRIPT (June 4, 1981), at 95. See generally MCFADDEN ET AL., supra note 6, §§ 2-15 to 2-21 (discussing the remaining special courts of Georgia).
and 1976 Constitutions continued the earlier constitutional practice of referencing the city courts only indirectly as "other" courts created by the General Assembly.\textsuperscript{125} Appellate jurisdiction under the 1945 and 1976 Georgia Constitutions existed in the supreme court and court of appeals "for the trial and correction of errors of law from the superior courts and from the city courts of Atlanta and Savannah, as [they] existed on August 16, 1916, and such other like courts as have been or may hereafter be established in other cities."\textsuperscript{126} The 1983 Constitution does not refer to the city courts in making the state courts a class of constitutional courts.\textsuperscript{127} Instead, it redefines the supreme court's\textsuperscript{128} and the court of appeals\textsuperscript{129} appellate jurisdiction in terms of the types of cases reviewed rather than the courts of origin.

A slightly different progression, in which the state courts are referenced earlier, appears in the constitutional provisions regarding the power to grant a new trial. The 1945 Georgia Constitution provided that "[t]he Superior [] and City Courts may grant new trials on legal grounds."\textsuperscript{130} The 1976 Constitution provided that "[t]he Superior, State and City Courts may grant new trials on legal grounds."\textsuperscript{131} The 1983 Constitution provides that "[e]ach superior court, state court, and other courts of record may grant new trials on legal grounds."\textsuperscript{132} Therefore, by

\textsuperscript{125} The 1976 Constitution provided that "[t]he judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, Superior Courts, Probate Courts, Justices of the Peace, Notaries Public who are ex-officio Justices of the Peace, and such other Courts as have been or may be established by law." GA. CONST. of 1976, art. VI, § 1, ¶ 1. The provisions of the 1945 Constitution substantially had the same effect. See GA. CONST. of 1945, art. VI, § 1, ¶ 1.

\textsuperscript{126} GA. CONST. of 1976, art. VI, § 2, ¶ 4; see GA. CONST. of 1945, art. VI, § 2, ¶ 4.

\textsuperscript{127} The 1983 Constitution provides that "[t]he judicial power of the state shall be vested exclusively in the following classes of courts: magistrate courts, probate courts, juvenile courts, state courts, superior courts, Court of Appeals, and Supreme Court." GA. CONST. art. VI, § 1, ¶ 1; see also infra text accompanying note 231 (quoting the language following this passage, which permits the creation of Municipal Courts). The state courts' origins as city courts are still significant because they continue to exist pursuant to the local acts that created them, to the extent that the local acts are not inconsistent with the general law contained in the State-Court statute. See GA. CONST. art. III, § 6, ¶ 4 (limits on local legislation); O.C.G.A. § 15-7-2, -80 (1999).

\textsuperscript{128} See GA. CONST. art. VI, § 6, ¶¶ 2-3.

\textsuperscript{129} See id. § 5, ¶ 3.

\textsuperscript{130} GA. CONST. of 1945, art. VI, § 4, ¶ 6.

\textsuperscript{131} GA. CONST. of 1976, art. VI, § 4, ¶ 6.

\textsuperscript{132} GA. CONST. art. VI, § 1, ¶ 4.
1983, there was no longer any constitutional reference to the city courts as a class or type of courts, except for specific references to the City Court of Atlanta and general references to the method for continuing its local amendments.\footnote{See supra note 127; infra text accompanying notes 410-24.}

The same cannot be said for the significance of the term “city court” in the jurisdictional and procedural statutes of the Georgia courts. The Appellate Practice Act continues to refer to appeals to the Georgia Supreme Court and Court of Appeals from “the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state.”\footnote{O.C.G.A. § 5-6-34(a) (1995).} Practically speaking, many of the constitutional city courts are those courts now known as the state courts,\footnote{See supra notes 118-23 and accompanying text. The constitutional city courts’ characteristic of a twelve-person jury was blurred to some extent by the provision of the 1976 and 1983 Constitutions permitting five- and six-person juries. See Ga. Const. of 1976, art. VI, § 15, ¶ 1 (allowing five-person juries in courts other than superior courts); Ga. Const., art. I, § 1, ¶ 11(b) (allowing six-person juries in courts of limited jurisdiction and in misdemeanor cases in superior courts); O.C.G.A. § 15-12-122(a) (1999) (allowing six-member juries in state courts); see also McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981) (discussing change in jury provisions). As an historical matter, therefore, either for lack of any relevant mention of “city courts” in the 1983 Constitution or from destruction of their historically most significant feature, there may now be no such thing as a “constitutional city court,” leaving no such court from which an appeal might be taken under the Appellate Practice Act. If so, that would not affect the appeal route for cases originating in the state courts, because Georgia Code section 5-6-34(a) also permits appeals (when the case is not subject to the discretionary application requirements of Code section 5-6-35(a)) to the Georgia appellate courts from “such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state,” while the state court statute provides that appeals from the state courts are subject to the same laws as appeals from superior courts. O.C.G.A. § 15-7-43(a) (1990). It is likely that the local statutes creating the state courts, see id. §§ 15-7-3, -60, also create rights of appeal to the Georgia appellate courts, although verification of that proposition is not necessary to the present inquiry. The maintenance of the term “constitutional city court” (whether moribund or only morbid only) may be consistent with the theory that continued reference to the state courts’ underlying city-court statutes is desirable to avoid an inference that appeals from the state courts have been repealed by implication in all cases, or expressly as to cases arising only under those local statutes. As to the latter point, O.C.G.A. § 15-7-60 suggests otherwise, in that the state-court statute supersedes any inconsistent provisions of the local acts. See 1965 Ga. Laws 18.}

http://readingroom.law.gsu.edu/gsulr/vol15/iss4/1
character. The statute regarding new trials gives or references the power of "[t]he superior, state, and city courts" to grant new trials. The reference to the "state and city courts" was not the product of a regular amendment, but was added during the Official Code of Georgia revision in the last draft of 1981, prior to the submission of the entire Code to the General Assembly for enactment. The timing of that amendment, and the relative consistency of its language with that of the 1945 and 1977 Constitutions, suggest that it may have been intended to refer to the constitutional city courts; but the possibility that it was intended to refer to the statutory city courts as well cannot be excluded based on the records of the State of Georgia. That possibility is supported by the 1955 statute amending present chapter 8 of title 15, the city court statute, to add a provision referring to the City Court of Atlanta, and by the Appellate Practice Act's reference to the "constitutional city courts," as distinguished from the city courts generally.

4. The Modern State Courts and the 1983 Constitution

One remaining issue affecting the former city courts is whether more than one state court could be created in any given county in Georgia. The idea may seem odd in its own right in view of the city and county court histories, but the constitutional language is the primary consideration. The 1983 Constitution provides that "[t]he state shall be divided into judicial circuits, each of which shall consist of not less than one county. Each county shall have at least one superior court, magistrate court, a probate court, and, where needed, a state

137. See, e.g., 1979 Ga. Laws 610 (adding discretionary application provisions to Appellate Practice Act).
139. Id. § 1-1-1 (1990). The Georgia Code codification history does not refer to this amendment and appears to suggest (erroneously) that the amendment to present Code section 5-5-1(a) occurred in 1988, when the large county probate courts were given the power to grant new trials by Code section 5-5-1(b). See Draft of O.C.G.A. § 5-5-1 (Mar. 19, 1981), at 2683, A102, 5.22.
141. See infra note 341 and accompanying text.
142. See supra text accompanying note 134 (quoting O.C.G.A. § 5-8-34(a) (1995) (emphasis added)).
143. See supra notes 37-45 and accompanying text (county courts created only where city courts did not exist).
court and a juvenile court.”^{144} It requires that “[t]he . . . state courts shall have uniform jurisdiction as provided by law.”^{145} It also provides that the state court judges “shall be elected on a nonpartisan basis for a term of four years.”^{146}

The less-than-ideal grammar of the provision enumerating the various courts was a result of changes made to the original draft of Article VI after it was out of the hands of the Article VI Committee and the Legislative Overview Committee. The October 12 and 27, 1980, drafts had provided that “[e]ach county shall have at least one magistrate court, a probate court, and, where needed, a state court.”^{147} The Legislative Overview Committee reviewed similar language, as to which it was observed that each county was to have a magistrate and probate court, and “where needed” a state court, and that each circuit was to have a superior court.^{148} The committees’ goal was to make sure that each county had a court that was readily accessible to the people, rather than a court sitting only occasionally in terms.^{149} From all appearances, the committees added the “superior court” language without also replacing an article adjective for the magistrate court reference.^{150} While the language is less than perfect, the drafters clearly intended to ensure the presence of a magistrate court and a probate court in each county, and that unless the superior court were to sit full-time in the county (which probably would suggest a volume of judicial business sufficient to support lower courts), its availability in term would not comply with the constitutional mandate.^{151}

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^{144} GA. CONST. art. VI, § 1, ¶ 6.
^{146} GA. CONST. art. VI, § 7, ¶ 1.
^{147} III ART. VI TRANSCRIPT (Oct. 27, 1980, Draft), at 2; id. (Sept. 12, 1980, Draft), at 2. It was then contemplated that the Juvenile Court would be a division of the superior court. See id. (Oct. 27, 1980, Draft), at 1.
^{149} See III ART. VI TRANSCRIPT (Aug. 8, 1980), at 80-100.
^{150} Compare GA. CONST. art. VI, § 1, ¶ 6, with III ART. VI TRANSCRIPT (Oct. 3, 1980, Draft), at 1, and id. (Oct. 27, 1980, Draft), at 1.
^{151} See III ART. VI TRANSCRIPT (Memorandum from Melvin B. Hill, Jr., Dec. 22, 1980), Commentary at 3.
The "at least one" provision is most logically read as providing that there shall be at least one court from the entire constitutional list in each county, and that there should be "a" court of probate, state, and juvenile jurisdiction. The plain meaning of the article "a" suggests that there should be no more than one such court in any county and then (as to the state and juvenile courts) only "where needed." This reading is supported by the contemporaneously enacted provision of the state court statute indicating that the General Assembly may "by local law create a state court in any county or counties of this state." 152 It is likewise supported by analogy to the Georgia Supreme Court's decision, under the 1945 Constitution, that there is only one superior court in each county, even where there are multiple judges on that court. 153

The state courts have jurisdiction over, among other things, "[t]he trial of criminal cases below the grade of felony," or put another way, all misdemeanors, and "[t]he trial of civil actions without regard to the amount in controversy, except those actions in which exclusive jurisdiction is vested in the superior courts." 154 Although any given state court must have uniform jurisdiction, there would be nothing to prevent the judges of a particular court from being assigned differing duties. 155 This jurisdiction is considerably broader than that of the City Court of Atlanta. 156

B. The Municipal Courts of Georgia

The constitutional and statutory provisions governing the municipal courts bear on the City Court of Atlanta's nature and authority, and on the form that any solution to its present

153. See Fulton County v. Woodside, 222 Ga. 90, 149 S.E.2d 140 (1966); see also Cobb County v. Campbell, 256 Ga. 519, 350 S.E.2d 466 (1986) (adding that associate state court judges were in fact part of a single state court and could be assigned different duties without violating uniformity-of-courts requirement).
constitutional problems should take, in two ways. First, the history of the pre-1983 municipal courts and their jurisdiction over state misdemeanors under the traffic laws suggests that the City Court of Atlanta may not have been a municipal court at all, until it was so labeled in the 1983 Constitution.\textsuperscript{157} Second, the provisions of the 1983 Constitution and the Georgia code on Municipal Home Rule, uniformity in the jurisdiction of courts, and the use of general, local, or population bills, would constrain the General Assembly in any attempt to treat the City Court of Atlanta as a municipal court or, for that matter, as a state-level court.\textsuperscript{158} These provisions will be discussed in this section as they apply to the municipal courts, and their consequences for the City Court of Atlanta will be discussed in Parts II and III.

1. The Nineteenth and Early Twentieth Century Municipal Courts of the City of Atlanta

The original 1843 charter of the Town of Marthasville did not expressly provide for a municipal court, but authorized the town commissioners “to make . . . bylaws and regulations, and inflict such penalties for the violation of the same.”\textsuperscript{159} The 1847 charter, which enlarged the former Marthasville boundaries and incorporated the City of Atlanta, provided that “the Mayor and in his absence any three members of the City Council shall have full power and authority to impose such fines, not to exceed fifty dollars, for the violation of any or all of the by-laws and ordinances of said city within the corporate limits of the same.”\textsuperscript{160} The 1874 charter for the City of Atlanta created a Mayor’s Court with “full power and authority . . . for the trial of offenders against the ordinances of said city” and provided the

\textsuperscript{157} See infra notes 180-206 and accompanying text.
\textsuperscript{158} See infra notes 245-330 and accompanying text.
\textsuperscript{159} 1843 Ga. Laws 84, § 3. It appears that the name “Terminus” was never the legal name of the territory now within the City of Atlanta. A more detailed history of the Atlanta Municipal Court is found in FULTON COUNTY–CITY OF ATLANTA COURT STUDY COMMISSION, THE MUNICIPAL COURT OF ATLANTA 9-12 (INTERIM REPORT NO. 2, 1982) [hereinafter 1982 MUNICIPAL COURT REPORT].
\textsuperscript{160} 1847 Ga. Laws 50, § 15, at 55. This provision was substantially similar to that regarding the original Mayor’s Court of Darien. See supra notes 20-21 and accompanying text.
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Mayor and Council with the discretion to elect a Recorder to serve as the judge of that court.161

In 1912, a proposed constitutional amendment provided for the substitution of a system of municipal courts having the same civil jurisdiction as the justice of the peace courts but not subject to the uniformity provisions of the 1877 Constitution.162 In 1913, the General Assembly created the Municipal Court of Atlanta, with the same jurisdiction as the justice of the peace courts, and with other civil and criminal jurisdiction.163 The jurisdiction of that court was increased to $2500 in 1925.164 The Georgia Supreme Court held in Dillon v. Continental Trust Co.165 that the 1913 Municipal Court "[was] not a city court like the city court of Atlanta or that of Savannah," but that the General Assembly could constitutionally provide for direct appeals to the Georgia appellate courts.166 That power did not extend, however, to destroying the then-constitutional right of certiorari in the superior court.167 As noted above, in 1939 the jurisdiction of the Municipal Court of Atlanta's Fulton Section and DeKalb Section was given to the Civil Court of Fulton County and the Civil Court of DeKalb County, respectively.168

The recorder's court, "also known as" the municipal court, continued to exist and exercise criminal jurisdiction in Atlanta as of 1955.169 The creation of the Traffic Court of Atlanta in 1955 complicated both the jurisdictional and, to a lesser extent, the operational system for state traffic misdemeanors and Atlanta traffic ordinance violations.170 On the municipal court side, a

161. 1874 Ga. Laws 116, §§ 5-6, at 117; see id. at 141-43. The 1874 charter also provided that the 1871 City Court of Atlanta was "continued, as now established." Id. § 78, at 135-36.
162. See GA. CONST. of 1877, art. VI, § 7, ¶ 1; 1912 Ga. Laws 30; Robinson v. Odom, 168 Ga. 51, 52, 147 S.E. 569, 571 (1929).
165. 179 Ga. 196, 175 S.E. 652 (1934) (holding, notwithstanding, that a direct appeal lay to the court of appeals under the local law and a 1927 constitutional amendment).
166. Id. at 200, 175 S.E. at 654.
168. See supra notes 90-96 and accompanying text.
169. Johnson v. Willingham, 212 Ga. 310, 312, 92 S.E.2d 1, 3 (1956); see Baker v. City of Atlanta, 211 Ga. 34, 83 S.E.2d 682 (1954) (stating that recorder's court is also known as the municipal court); see also White v. Hornsby, 191 Ga. 462, 12 S.E.2d 875 (1941).
170. See 1962 MUNICIPAL COURT REPORT, supra note 159, at 14-16.
1956 amendment to the 1874 Atlanta Charter amended "all previous charter provisions relating to the Municipal Court of the City of Atlanta," but "neither limit[ed] nor enlarge[d] the jurisdiction of said court as it now exists."171 It confirmed the then-existing division of the Municipal Court into "one general division of said court and one traffic division."172 The clerks of the Municipal Court were charged with the duty of keeping both the general docket and traffic dockets,173 and there was created a "violations bureau" whose purpose was "to provide a means by which those charged with a violation of a traffic ordinance of the City of Atlanta may pay directly to the violations bureau a fine . . . without being required to make an appearance in court pursuant to a summons or accusation."174 The nature and operation of the Traffic Division of the Municipal Court and its relationship to the Traffic Court of Atlanta were addressed by the 1962 Municipal Court Report, which is analyzed below.175

The modern Municipal Court of Atlanta was created under the 1973 Charter of the City of Atlanta,176 and again in the 1996 Charter.177 The 1996 Charter provides that the Municipal Court has jurisdiction to "[t]ry and punish violations of this charter, all city ordinances, and such other violations as provided by law, except those relating to and regulating traffic."178 The 1996 Charter also provides that "[a]ny judge of the City Court of Atlanta may preside in the Municipal Court of Atlanta as provided by ordinance and, when so presiding and acting as judge, have full power and authority in all matters pending in such court."179

172. Id. § 4, at 3369; see 1 CHARTER & RELATED LAWS, CITY OF ATLANTA, GEORGIA §§ 5.5.1, 5.5.2 (1985).
174. Id. § 13, at 3374.
175. See infra notes 360-80 and accompanying text.
179. Id. § 4-108(c), at 4519.
2. The Municipal Courts' Jurisdiction Over State Misdemeanors

The Georgia Supreme Court held in *Grant v. Camp*\(^{180}\) and *Aycock v. Town of Rutledge*\(^{181}\) that, under the general-law provisions of the 1877 Georgia Constitution,\(^{182}\) it was unconstitutional to vest jurisdiction over state misdemeanor offenses in the courts of municipalities because there was a general law granting jurisdiction over such offenses to the state courts.\(^{183}\) In so holding, the supreme court applied a "control" test to determine the nature of the court: that is, the supreme court looked to the nature of the authority that administered the court and appointed its personnel. The *Grant* court regarded the City Court of Griffin, which had been created by a charter amendment, as a municipal court because its judges were appointed by municipal authorities and its operations were otherwise subject to municipal control.\(^{184}\) Because the *Grant* court's discussion of the General Assembly's power to grant misdemeanor jurisdiction to a municipal court began by citing the general-law provisions and closed by citing *Aycock*, however, and because *Aycock* was grounded solely in the general-law provisions of the 1877 Constitution, it would be fair to read both decisions as imposing no limitation grounded in the nature of the court or its control by municipal authorities over such a grant of misdemeanor jurisdiction.\(^{185}\)

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181. 104 Ga. 533, 535, 30 S.E. 815, 816 (1898).
182. GA. CONST. of 1877, art. VI, § 2, ¶ 2.
184. See *Grant*, 105 Ga. at 431, 31 S.E. at 429-30; *Aycock*, 104 Ga. at 535, 30 S.E. at 816.
185. The narrow view of *Grant* is supported by the provisions of the 1871 City Court of Atlanta statute, which provided for the appointment of the judge by the Mayor and Council until that act was amended in 1874. See supra note 78 and accompanying text. The 1878 Constitution did not contain general-law requirements, GA. CONST. of 1868, art. III, § 6, ¶ 15-16; id. art. XII, ¶ 3-4 (provisions for local laws), although it did contain judicial uniformity requirements, GA. CONST. of 1868, art. VI, § 9, ¶ 1. Absent further historical research, which this Article does not undertake, the inferences from the 1874 amendment must be regarded as inconclusive, because most city court statutes provided for appointment by the Governor, see supra notes 69-71 (statutes cited), but it may be that the 1874 statute was regarded as avoiding a risk that the city court's...
The *Grant* court's analysis was arguably broader than the application of the general-law provisions, however. The court observed that the General Assembly could grant misdemeanor jurisdiction either to constitutional city courts or to other state courts such as statutory city courts, county courts, or district courts.\textsuperscript{188} The court reasoned that:

when so established, these are State courts, and we think that the legislature has no power to establish a hybrid court like the one now under consideration, the intention being to establish a municipal or police court and make it subordinate to the will of the municipal authorities, and, at the same time, to confer upon it jurisdiction to try offenses against the State, when committed within the limits of the corporation. That portion of the act which gives jurisdiction over State offenses committed in the city is, therefore, unconstitutional.\textsuperscript{187}

The unconstitutionality of the jurisdiction was, to that extent, arguably a matter of the court's nature, although this conclusion is open to question since the court cited no authority for the broader proposition, and the general rule of the day was that, absent a contrary constitutional provision, a municipal court could be granted jurisdiction over a state misdemeanor offense.\textsuperscript{188} The court, however, in *Clarke v. Johnson*,\textsuperscript{189} *City of

\textsuperscript{186} See *Grant*, 165 Ga. at 481, 31 S.E. at 429-30.

\textsuperscript{187} *Id.* The only objection theretofore raised to municipal jurisdiction over state offenses, however, had been that the municipal courts had no power to grant jury trials, see *City of Savannah v. Hussey*, 21 Ga. 80 (1857) (Lumpkin, C.J.), and nothing in *Hussey* suggests that the court regarded the lack of jury trial machinery as rendering such a grant of jurisdiction constitutionally impossible. On the other hand, the trial court's opinion, which is also reported, pointed out that the then-current constitution granted "exclusive jurisdiction in all criminal cases" to the superior courts. *Id.* at 81.

\textsuperscript{188} See *Abbott on Municipal Corporations*, supra note 109, § 586, at 1437; 2 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 744, at 1117 (5th ed. 1911); 3 EUGENE M. MCQUILLIN, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 1030, at 2291 (1912). The General Assembly's power to grant municipal jurisdiction over state offenses was frequently confounded by the question of whether municipalities had the power to enact ordinances that defined state-law offenses as municipal violations, as illustrated by McQuillin's citation of two Georgia decisions on the latter issue in support of the former proposition. See *Williams v. City of Augusta*, 111 Ga. 849, 36 S.E. 607 (1900); *Reich v. State*, 53 Ga. 74 (1874).

\textsuperscript{189} 199 Ga. 163, 164, 33 S.E.2d 425, 427 (1945).
1999]  IS THE JUDICIAL ENGINE SOUPED UP OR BLOWN UP?  969

Atlanta v. Landers, State v. Millwood, and Gordon v. Green, later interpreted Grant as standing for this broader rule of law. The General Assembly may have read Grant broadly, since it later provided by constitutional amendment for municipal jurisdiction over state traffic misdemeanors.

Despite the constitutional restrictions, the General Assembly needed to grant the municipal courts jurisdiction over misdemeanors under the Georgia State Highway Patrol Act of 1937. The Highway Patrol Act created the Department of Public Safety and the State Patrol, provided for drivers' licenses, and defined misdemeanor offenses for license-related violations. A constitutional amendment was proposed to give jurisdiction over misdemeanors under the Highway Patrol Act to Courts of Ordinary (now known as Probate Courts) "in all counties in which there is no city or county court," and to give "like jurisdiction" to Municipal Courts and Police Courts. The amendment was ratified on June 8, 1937, and the General Assembly passed an act granting such jurisdiction in 1938.

The General Assembly interpreted the 1937 amendment as permitting it to grant jurisdiction to courts of ordinary only where there was no city or county court, but did not understand the "no city or county court" limitation to apply to Municipal Courts or Police Courts. Accordingly, the jurisdictional provisions of the 1938 Act granted jurisdiction to "all Municipal Courts and Police Courts" in misdemeanor cases under the

192. 228 Ga. 505, 186 S.E.2d 719 (1972). The Gordon court observed:
A clear distinction is made by the cases between an attempt by the legislature to confer upon a municipal court power and authority to punish for a State offense and the delegation in a general Act of authority to the municipality to enact an ordinance making an act which is a criminal offense under the State law a crime under the municipal ordinance and to punish for a violation of the municipal ordinance.
Id. at 509, 186 S.E.2d at 722. In the former grant of authority, the uniformity and exclusivity provisions limited the ability to create non-uniform courts. See id.
193. See infra text accompanying notes 196-98. The only voice to the contrary is DAVIS & SHULMAN, supra note 53, § 365, at 412 & n.110, which refers, without citation to supporting authority, to the municipal courts as "state courts."
195. See id. (arts. I, II & IV).
196. Id. at 1116-17.
197. 1937 Georgia Executive Minutes 252 (No. 9).
Highway Patrol Act. The statute provided that "[t]he term Police Courts shall be construed to include Mayor's Court or Recorder's Court, or like Municipal Court by whatever names called."  

The question thus arose whether the Recorder's Court of Atlanta had jurisdiction over such misdemeanors, because Atlanta had its Criminal Court of Fulton County. In Clarke v. Johnson and Gibson v. Gober, the Georgia Supreme Court held that the "no city or county court" limitation was incorporated into the phrase "like jurisdiction" and therefore applied to Municipal Courts and Police Courts. Since the Criminal Court of Fulton County was a county court, the Recorder's Court of Atlanta could not constitutionally be granted state misdemeanor jurisdiction.  

An alternative to providing for municipal enforcement of state traffic laws was to permit municipalities to pass ordinances defining state offenses as municipal violations. The Georgia Supreme Court held in Giles v. Gibson that a municipality could not adopt an ordinance to punish the same conduct as the misdemeanor, and that the ordinance must require an additional element that distinguished the offense as one against the municipality. In 1953, the General Assembly passed the Uniform Act Regulating Traffic on Highways (UART), which among other things prohibited driving under the influence. In 1954, the 1945 Constitution was amended to provide for

199. Id. at 559, §3.
200. Id.
201. See supra notes 70-86 and accompanying text.
203. 204 Ga. 714, 716, 51 S.E.2d 664, 666 (1949).
204. See Clarke, 199 Ga. 163, 33 S.E.2d 45; Gibson, 204 Ga. 714, 51 S.E.2d 664.
205. See supra notes 83-86 and accompanying text.
206. See Clarke, 199 Ga. at 165, 33 S.E.2d at 427.
207. In 1941, the General Assembly delegated to counties the power to make traffic rules and regulations outside the limits of incorporated municipalities. See 1941 Ga. Laws 422. In 1949, the General Assembly required the Department of Public Safety to authorize Fulton County (using a 300,000 person population bracket) to erect traffic signage at its own expense. See 1949 Ga. Laws 974.
208. 208 Ga. 850, 69 S.E.2d 774 (1952).
209. See id.
Municipal Home Rule. Pursuant to that amendment, in 1955 the General Assembly granted cities and local authorities in counties having a population of 108,000 or more as of the 1950 census the power to adopt ordinances prohibiting the same conduct as the UART misdemeanor provisions. The delegation statute applied in Bibb, Chatham, Fulton, Muscogee and Richmond counties. In Gordon v. Green, the Georgia Supreme Court upheld the constitutionality of that statute. The 1955 statute was enacted at about the same time that the Traffic Court of Atlanta was created.

The need for misdemeanor jurisdiction in the municipal courts was not limited to state traffic violations, particularly as the 1960s and 1970s arrived. The lessons of Grant, Aycock and Clarke apparently forgotten, the General Assembly attempted to provide for municipal-court jurisdiction over possession of one ounce or less of marijuana. That statute was declared unconstitutional in State v. Millwood because “the only courts with authority or jurisdiction under our Constitution to try ‘State cases,’ or persons charged with the violation of State laws, are State courts, is firmly established by the previous decisions of this court.” The General Assembly eventually tired of the problems caused by these particularized constitutional

213. See id.
214. 228 Ga. 505, 186 S.E.2d 719 (1972). The Gordon court applied the “conflicts” test of Jenkins v. Jones, 209 Ga. 758, 75 S.E.2d 815 (1953), to the question whether the population bill was a general or a special law. See R. Perry Senell, Jr., When Is a Law Unlawfully Special?, in STUDIES IN GEORGIA STATUTORY LAW 71, 79-80 (OFFICE OF LEGISLATIVE COUNSEL 1997). Although the Gordon court stated that there was “a clear distinction” between the General Assembly’s delegation of regulatory authority and its empowering Municipal Courts to try state misdemeanor offenses, 228 Ga. at 509, 186 S.E.2d at 722, both types of statutes reflect the General Assembly’s attempts to permit the trial of traffic offenses in municipal courts.
215. See infra notes 341-48 and accompanying text.
218. Id. at 246, 248 S.E.2d at 644. This discussion of municipal courts omits the intervening history of the City Court of Atlanta. The Millwood court cited, in addition to Wellborne, Grant, and related decisions, the decision in City of Atlanta v. Landers, 213 Ga. 111, 90 S.E.2d 583 (1955). The Landers decision, which declared the 1955 Traffic Court of Atlanta statute unconstitutional, is addressed infra at notes 349-55 and the accompanying text.
provisions and the need to provide municipal courts with appropriate constitutional authority in state misdemeanor cases. But a general solution for misdemeanor jurisdiction was not addressed in the 1976 Constitution, and was only found (to one extent or another) in the 1983 Constitution.


a. Generally

The Municipal Courts in Georgia are not created by the 1983 Constitution and are not constitutionally empowered to exercise the judicial power of the state. The same provision, however, that lists the constitutional classes of courts that are the “exclusive” repositories of that power,219 authorizes the General Assembly to create municipal courts and, as the Georgia Supreme Court held in *Kolker v. State*,220 to give them jurisdiction over state misdemeanor cases.

The earliest drafts from 1977 of the 1983 Constitution did not contain express provisions for municipal courts, and would have established a unitary system of superior courts with Associate Judges to perform the functions of the “lower courts.”221 Early objection was made to this approach as destroying the local courts that were most responsive to the people.222 In 1978, it was observed that “city court” judges would become Magistrates,223 and that municipal courts would be abolished.224 A set of

219. See GA. CONST. art. VI, § 1, ¶ 1; cf. supra note 187 (identifying superior courts as having exclusive jurisdiction over criminal cases under 1789 Constitution). This reading of Paragraph I is supported by several other paragraphs in the judicial article, particularly Article VI, Section III, paragraph I, which refers to the “classes of courts of limited jurisdiction” and lists the magistrate, juvenile, state, and probate courts, but does not mention the municipal courts at all. See GA. CONST. art. VI, § 3, ¶ 1; see also id. § 1, ¶ 6. The point was expressly made in descriptions of the last draft of Article VI that went to the General Assembly. III ART. VI TRANSCRIPTS (Memorandum from Melvin B. Hill, Jr., dated Dec. 22, 1980), Questions and Answers, Item 1, Commentary at 1.


221. See I ART. VI TRANSCRIPT (Sept. 9, 1977), at 6-10. But see id. (Aug. 5, 1977), at 19 (reference to municipal courts as "city courts").


223. See II ART. VI TRANSCRIPT (Sept. 1, 1978), at 19 (comments of Dean Ralph Beaird). Some municipal courts are still referred to as "city courts" despite the general law to the contrary. See MCPADDEN ET AL., supra note 6, § 2-14.

224. See II ART. VI TRANSCRIPT (Sept. 1, 1978), at 52-53 (comments of Mayor Medlock). The response to this objection was that the municipalities would be permitted to
alternative drafts was circulated for a series of town meetings in late 1978, of which only Draft B provided for "municipal magistrates." At nearly every town meeting, objections were raised to the abolition of the municipal courts. A Municipal Courts Study Group was established, which provided a detailed report to the Article VI Committee. The result was that the next draft of Article VI provided for municipal courts with both ordinance and state traffic misdemeanor jurisdiction, but subsequent drafts of the Constitution contained only provisions for municipal courts that could be empowered by the General Assembly to try ordinance violations, without mentioning state misdemeanors.

The 1983 Constitution as currently in force, after having created the Superior, State, Probate, Juvenile, and Magistrate Courts, continues as follows:

In addition, the General Assembly may establish or authorize the establishment of municipal courts and may authorize administrative agencies to exercise quasi-judicial powers. Municipal courts shall have jurisdiction over ordinance violations and such other jurisdiction as provided by law. Except as provided in this paragraph and in Section X, municipal courts, county recorder's courts and civil courts in existence on June 30, 1983, and administrative agencies shall not be subject to the provisions of this article.

establish municipal courts. Id. at 53 (comments of Chairman Snow).
225. See id. (Alternative Drafts from Nov. 2 to Dec. 1, 1978 Meetings).
228. See III ART. VI TRANSCRIPT (June 27, 1980), at 9-15.
229. See id. (Aug. 5, 1980, Draft), at 1. This language apparently was removed after objection was made during the Committee's deliberations. See id. (Aug. 8, 1980), at 11-15, 24-25, 36-43.
230. See id. (Oct. 27, 1980, Draft), at 1; id. (Oct. 3, 1980, Draft), at 1; id. (Sept. 12, 1980, Draft), at 1. Objection was made to the first two ordinance-only drafts stating that the municipalities should have jurisdiction over state traffic offenses. See id. (Oct. 3, 1980), at 4-12. The September 12 draft provided that the municipalities could empower their courts to handle state traffic misdemeanors, and the October 27 draft gave the General Assembly control of that empowerment. See id. (Memorandum from Melvin B. Hill, Jr., dated Dec. 22, 1980), Commentary at 1. The Legislative Overview Committee stated, however, that the municipal courts would be preserved "to handle those questions relative to ordinances that may come up in those courts." III LEGIS. OVERVIEW COMM. TRANSCRIPT (Aug. 7, 1981), at 4; id. (Murphy Draft of Constitution), at 1.
The General Assembly shall have the authority to confer "by law" jurisdiction upon municipal courts to try state offenses.231

Except for Paragraphs 1 and 10, the remainder of Section 1 of the judicial article, Article VI, makes no mention of the municipal courts.232 Similarly, when general provision is made in Section 3 for the constitutional "classes" of courts, there is no mention of the municipal courts.233 The municipal courts, therefore, are fundamentally different from the constitutional classes of courts in regard to their exercise of the state judicial power, and as to the particular constitutional attributes of those classes of courts.

The confirmation in 1990 of the municipal courts' power over state misdemeanors, and the source of the italicized language above, involves an intriguing series of judicial and legislative events that explains the curious quotation marks around the words "by law." The August 5, 1980 draft of Article VI permitted municipalities to establish courts with jurisdiction over "ordinances and state traffic violations."234 That language was removed by a motion hostile to municipal jurisdiction over misdemeanors, but it was observed that municipalities had the power to duplicate state traffic offenses by ordinance.235 It remained deleted from the Article VI committee's last draft,236 which was described as providing for ordinance jurisdiction only, with the practical effect diluted somewhat by the municipal power to adopt traffic ordinances.237 On balance, the history of that passage lends support to the position that municipal courts could not be granted misdemeanor jurisdiction under the constitutional provisions ratified in 1983.

That point soon became moot. The Georgia Court of Appeals held, in Kolker v. State238 (over a dissent by Justices Deen and Beasley, both of whom were involved in drafting Article VI), that

231. GA. CONST. art. VI, § 1, ¶ 1 (emphasis added). The language preceding the above passage is quoted supra at note 127.
232. See GA. CONST. art. VI, § 1, ¶¶ 1-10.
233. See id. § 3, ¶ 1.
235. See id. (Aug. 8, 1980), at 24-43.
237. See id. (Memorandum from Melvin B. Hill, Jr., Dec. 22, 1980), Commentary at 1.
in the context of a provision vesting the judicial power of the state "exclusively" in the five constitutional classes of courts, the existing language, "such other jurisdiction as provided by law," was ambiguous as to whether a municipal court could be granted jurisdiction over state misdemeanors. The court of appeals noted the State's argument that paragraph I "also authorizes the General Assembly to confer 'by law' jurisdiction upon municipal courts to try state offenses." The General Assembly acted promptly to correct that perceived ambiguity by a constitutional amendment, approved April 8, 1990, that essentially added the passage quoted above from *Kolker*—down to the quotation marks—to the main text of the 1983 Constitution. A little more than a month later, on May 11, 1990, the Georgia Supreme Court held in *Kolker v. State* that the existing language was not ambiguous and permitted the General Assembly to authorize municipal courts to exercise jurisdiction over state misdemeanors. By then, however, the constitutional amendment process had been set in motion, and the amendment was ratified at the 1990 general election.

**b. The Scope of the Problem: Home Rule, Uniformity, and General Laws**

An understanding of the modern municipal courts' jurisdiction and a determination whether the General Assembly is subject to any type of uniformity or general-law requirements in legislating for those courts requires reference to three sets of provisions in the 1983 constitution: the Municipal Home Rule provisions in Article IX; the judicial uniformity provisions in Article VI; and the general, special, and population law provisions in Article III. None provides a complete solution to the problems of municipal court jurisdiction, but each of them,

239. *Id.*
240. *Id.* at 308, 387 S.E.2d at 598.
243. See *id.*
244. See 1991 Ga. Laws CCCXXVIII, CCCXXXII (No. 7).
246. See *id.* art. VI, § 5; *id.* § 3, ¶ 1.
considered separately and taken together, bears on the questions presented in this Article. The question presented under each provision is whether the General Assembly must proceed by general or uniform law to grant jurisdiction to the municipal courts over state misdemeanor offenses, a question whose answer further depends in part upon the statutory provisions of the Municipal Home Rule Act and the general laws granting such jurisdiction as to specific offenses.

**c. Municipal Home Rule**

Municipal home rule was first provided for, apart from limited provisions governing local debt and earlier unsuccessful attempts at general municipal home rule, by a 1954 amendment to the 1945 Constitution, which stated that

> [t]he General Assembly is authorized to provide by law for the self-government of municipalities and to that end is hereby expressly given the authority to delegate its powers so that matters pertaining to municipalities upon which, prior to the ratification of this amendment, it was necessary for the General Assembly to act, may be dealt with without the necessity of action by the General Assembly. Any powers granted as provided herein shall be exercised subject only to statutes of general application pertaining to municipalities.

The amendment apparently was made in response to the Georgia Supreme Court's holding in *Phillips v. City of Atlanta* that an earlier, local home-rule act permitting the City of Atlanta to annex land violated the general-law requirement.

The 1983 Constitution provides for Municipal Home Rule in Article IX, Section 2 and, in particular, in the provision that "[t]he General Assembly may provide by law for the self-government of municipalities and to that end is expressly given

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250. See Ga. Const. of 1945, art. XV, § 1, ¶ 1.
253. See Phillips, 210 Ga. 72, 77 S.E.2d 723.
the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly." The new Home Rule provisions further create "supplementary powers": "(a) In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services." Fourteen specific areas of law are then described in a numbered list, none of which expressly pertains to municipal courts or to their jurisdiction. The Home Rule provisions go on to state the following:

(c) Nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the subject matters listed in subparagraph (a) of this Paragraph or to prohibit the General Assembly by general law from regulating, restricting, or limiting the exercise of the powers listed therein; but it may not withdraw any such powers.

(d) Except as otherwise provided in subparagraph (b) of this Paragraph [relating to counties and cities exercising authority within one another's territory], the General Assembly shall act upon the subject matters listed in subparagraph (a) of this Paragraph only by general law.

The above provisions contain a critical ambiguity, in that it is not clear whether the phrase "the subject matters listed in subparagraph (a) of this Paragraph" refers both to the "all powers" and to the fourteen areas of law, or only to the latter. As a grammatical matter, the term "all powers" is referred to in paragraph 3(a), but it is not entirely clear that the "all powers" are "listed" therein. Further structural ambiguity exists as to whether jurisdiction conferred on a municipal court is a "power conferred" on the municipality (and therefore within the purview of subparagraph (a) at all), and as to whether the answer to that question changes if the municipal court is created by separate statute rather than the municipal charter.

255. GA. CONST. art. IX, § 2, ¶ 3(a).
256. Id. ¶ 3(c)-(d).
The statutory provisions on Municipal Home Rule include a general law containing specific provisions for municipal courts, referred to in this Article as the Municipal-Court statute. A municipal court is authorized to have "jurisdiction over the violation of municipal ordinances and over such other matters as are by general law made subject to the jurisdiction of municipal courts." 257 The Municipal-Court statute applies to all municipal courts, "whether established by the municipal corporation under authority granted to the municipal corporation or established by the local law relating to a particular municipal corporation." 258 Related limitations in the Municipal Home Rule statute prohibit, among other things, a municipality from taking "[a]ction affecting the jurisdiction of any court," but provide that "such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution." 259 This last reference to "local Acts" in the general home-rule provisions arguably has no application to the jurisdiction of municipal courts, in view of the statutory provisions on that issue, and would seem to permit local Acts only with respect to other subject matters covered by the statute.

**d. Judicial Uniformity and General Laws**

Turning from the Municipal Court Home Rule provisions, either the judicial-uniformity provisions in Article VI or the general, local/special, and population law provisions in Article III of the 1983 Constitution have potential application to the municipal courts. Simply put, Article VI, Section 3, Paragraph 1 of the 1983 Constitution does not require uniformity of jurisdiction among the municipal courts. 260 The broader

258. Id. § 36-32-1(b).
259. Id. § 36-35-6(a)(6).
260. See GA. CONST. art. VI, § 3, ¶ 1. Numerous comments were received in late 1978 on judicial uniformity for municipal courts in the town meetings on the 1983 Constitution drafts. See II ART. VI TRANSCRIPT (Dec. 1, 1978), at 27 (explaining special court provisions); id. (Nov. 30, 1978), at 23-24 (expressing no conclusion about uniformity); id. (Nov. 17, 1978), at 73-74 (favoring uniformity). There was disagreement on the point at the committee meetings. See III ART. VI TRANSCRIPT (Sept. 12, 1980), at 65-66, 83, 89, 93, 103, 113 (presenting conflicting views); id. (Sept. 12, 1980, Discussion Agenda), at 2, item
uniformity provisions of Article VI, Section 1, Paragraph 5 similarly do not apply to the municipal courts.\textsuperscript{261} Article VI makes clear that only Section 1, Paragraph 1, and Section 10 apply to the municipal courts.\textsuperscript{262} This potentially has the paradoxical effect of giving the municipal courts a closer "family resemblance" to the flexible, locally tailored system of pre-1970 city courts than to the state courts, which are their literal lineal descendants that are now subject to the constitutional uniformity restrictions.\textsuperscript{263}

Article VI, Section 1, Paragraph 1 empowers the General Assembly to confer misdemeanor jurisdiction on the municipal courts "by law,"\textsuperscript{264} but does not speak clearly to any requirement of uniformity or legislating only by general law. One literal reading of that provision is that it requires neither, particularly given the circumstances of the constitutional amendment.\textsuperscript{265} The phrase "by law" is used in Article VI, Section 3, Paragraph 1, where the words "uniform jurisdiction" were thought necessary to require uniformity.\textsuperscript{266} The constitutional home rule provisions, while ambiguous in Paragraph 2 as to the municipal courts, are specific in Article IX, Section 2, Paragraph 1, when referring to the general law on the one hand or the local law on the other.\textsuperscript{267}

The application of the Article III general-law provisions to municipal court jurisdiction thus might be open to question to the extent that the provisions on Municipal Home Rule do not fully resolve that issue, but the Georgia Supreme Court's decisions strongly suggest that those provisions do apply. That court held in \textit{Cochran v. City of Rockmart}\textsuperscript{268} that the general law

\footnotesize

4 (focusing uniformity); \textit{id.} (Aug. 22, 1980), at 118-21 (presenting conflicting views, vote for uniformity fails).

\textsuperscript{261} See GA. CONST. art. VI, § 1, ¶ 5.

\textsuperscript{262} See \textit{id.} ¶ 1.

\textsuperscript{263} \textit{id.} § 3, ¶ 1.

\textsuperscript{264} \textit{id.} § 1, ¶ 1. On the derivation of this language, see supra notes 234-44 and accompanying text.

\textsuperscript{265} See supra notes 234-44 and accompanying text.

\textsuperscript{266} GA. CONST. art. VI, § 3, ¶ 1.

\textsuperscript{267} See GA. CONST. art. IX, § 2, ¶ 1 (setting forth county home rule), ¶ 2 (setting forth municipal home rule).

\textsuperscript{268} 242 Ga. 732, 251 S.E.2d 259 (1978). The general law and judicial uniformity provisions of the 1976 Constitution are at GA. CONST. art. VI, § 2, ¶ 4 (setting forth general law), and \textit{id.} § 9, ¶ 1 (addressing judicial uniformity), respectively.
providing for review by certiorari superseded local-law provisions for the de novo appeal of a municipal court decision, under the general law requirement of the 1976 Constitution. The supreme court held in Hawkins v. State that the 1983 general-law requirements do not apply to the state courts because of the specific constitutional provisions for judicial uniformity. The Hawkins decision, however, relied entirely on a textual examination of the 1983 Constitution and the application of a specific provision to the exclusion of a general provision, without citing case law or engaging in historical analysis.

The Georgia Supreme Court later left the same question open with regard to the special courts of Georgia in Wojcik v. State. The Wojcik decision cites Lorentz & Rittler v. Alexander, which suggested in dicta that a court-related statute might violate the general-law provision of the 1877 Constitution. The 1877 Constitution contained both general-law and judicial uniformity provisions (as the supreme court’s later decision in Thorpe v. Butt pointed out), so Alexander and Wojcik support the proposition that the general-law requirement and the restriction on local laws apply to courts despite the reasoning in Hawkins. Moreover, under Thompson v. Talmadge, the Georgia Supreme Court reasoned that the General Assembly’s use of a provision from a former constitution suggests that it intended the provision to have a consistent application. That proposition is further supported by the supreme court’s decision in Gresham v. Symmers, where the court applied the general-law provisions of the 1945 Constitution to a court-related statute even though that constitution also had judicial uniformity

270. See generally Hawkins, 255 Ga. 172, 336 S.E.2d 220.
272. 87 Ga. 444, 13 S.E. 632 (1881).
273. See Wojcik, 280 Ga. at 281-82, 392 S.E.2d at 527.
274. See Ga. Const. of 1877, art. I, § 4, ¶ 1 (setting forth general-law provisions); id. art. VI, § 9, ¶ 1 (setting forth judicial provisions).
275. 106 Ga. 52, 31 S.E. 793 (1898).
276. 201 Ga. 867, 41 S.E.2d 883 (1947) (stating that General Assembly’s use of provision from former constitution suggests it intended consistent application).
277. See id.
requirements. Finally, if the municipal courts are not subject to any provisions of Article VI other than Section 1, Paragraph 1 and Section 10, it would follow that the judicial uniformity provisions are inapplicable, and that the Hawkins analysis does not extend, and that the general-law provisions therefore apply, to the municipal courts.

**e. The General-Law Limitation and Population Bills**

Article III, Section 6, Paragraph 4(a) provides that “no local or special law shall be enacted in any case for which provision has been made by an existing general law” with exceptions for local exercise of the police power. The General Assembly has acted by general law to provide for municipal jurisdiction over a number of state offenses, including state traffic misdemeanors. If the City Court of Atlanta is to be treated for any purpose as a municipal court, however, it must be noted that it was by means of a population bill that in 1988 the General Assembly granted further jurisdiction to the City Court of Atlanta over same-occurrence misdemeanors. To the extent that any problem is found with the jurisdiction presently granted to the City Court of Atlanta, the General Assembly might want to proceed by a population bill in correcting any constitutional problems with those statutes. For all of these reasons, the population-bill provisions of the 1983 Constitution must be understood.

Article III, Section 6, Paragraph 4(b) provides, in part, that “[n]o population bill, as the General Assembly shall define by general law, shall be passed.” The implementing legislation defines “population bill” to mean “any bill using classification by population as a means of determining the applicability of any bill or law to any political subdivision or group of political subdivisions of the state.” The term “political subdivision” includes municipalities and “any other geographical area of the

279. *See id.*; GA. CONST. of 1945, art. VI, § 9, ¶ 1.
280. *See GA. CONST. art. VI, § 1, ¶ 1.*
281. GA. CONST. art. III, § 6, ¶ 4(a).
282. *See infra* notes 308-30 and accompanying text.
283. *See infra* text accompanying notes 430-37, 510.
284. *See infra* text accompanying notes 594-97.
285. GA. CONST. art. III, § 6, ¶ 4(b).
state which does not include the entire area of the state." 287
There are six exceptions to the definition of a "population bill," which could be said to swallow the rule, but which have defined purposes and may not be used together: 288 combination or tiered; 289 three-area/less-than; 290 three-area/more-than (including amendments to any pre-July 1, 1988 "more than" laws involving fewer than three areas); 291 three-SMSA/more-than (applicable only to post-July 1, 1988 laws); 292 population-change; 293 and repealing 294 provisions.

The constitutional and implementing provisions on population bills were born of a desire of some drafters of the 1983 Constitution to eliminate entirely the population bill as a method of legislation. 295 The implementing provisions place

287. Id. § 28-1-15(b).  
288. See id. § 28-1-15(c).  
289. See id. § 28-1-15(c)(1).  
290. See id. § 28-1-15(c)(2). These admittedly awkward labels are nevertheless more accurate than the labels "small-area" and "large-area," which would reflect the most narrow application of the provisions. "More than" benchmarks have been used primarily, although not exclusively, to pass legislation for the City of Atlanta and Fulton County. See O.C.G.A., vol. 42, INDEX TO LOCAL AND SPECIAL LAWS AND GENERAL LAWS OF LOCAL APPLICATION, passim (1993). Some "more than" population laws apply to most political subdivisions in Georgia; however, others, such as the requirement for annual audits apply to all municipalities having a population of more than 1500. See 1994 Ga. Laws 1033 (codified as amended at O.C.G.A. § 38-81-7 (1993)). Other, more esoteric "more-than" provisions include 1984 Ga. Laws 776 (amending O.C.G.A. § 47-17-7 (1993)), which treats guards as peace officers in municipalities of 70,000 or more under the 1950 or later censuses.  
291. See O.C.G.A. § 28-1-15(c)(3) (1997). The statute granting jury-trial and new-trial powers to the Large-County Probate Courts is an example of legislation permitted under this exception because that statute affects ten Georgia counties. See MCFADDEN ET AL., supra note 6, § 2-9.  
292. See O.C.G.A. § 28-1-15(c)(4) (1997). The statute uses the pre-1983 terminology "standard metropolitan statistical area," or SMSA, as an undefined term. Since 1983, federal law has provided that a "metropolitan statistical area," or MSAs, includes at least one city or urbanized area of 50,000 people or more, and a total metropolitan population of at least 100,000. See U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMIN., BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES, 837 app. II (16th ed. 1980). The Georgia MSAs (with the number of counties in parentheses) are Albany (2), Athens (3), Atlanta (20), Augusta-Aiken (3 in Ga., 2 in S.C.), Chattanooga (2 in Tenn., 3 in Ga.), Columbus (3 in Ga., 1 in Ala.), Macon (5), and Savannah (3). See id. at 938-44. The Georgia statute does not make clear how this provision is to be applied to MSAs that lie only partly in Georgia.  
293. See id. § 28-1-15(c)(5).  
294. See id. § 28-1-15(c)(6).  
295. See SELECT COMM. TRANSCRIPT (Oct. 2, 1979), at 134-35 (remarks of Speaker Tom Murphy); id. (Oct. 12, 1979), at 169-73; id. (Dec. 17, 1979), at 206; I ART. IX TRANSCEP
substantial limitations upon, but do not eliminate the method, so they are at best a preliminary step toward a system of general laws for the State of Georgia. As applied to the municipal courts and to the problems of jurisdiction in the Atlanta area, the following points are significant. Population bills affecting areas with “less than” a benchmark population may not be amended except by general law, although “more than” population bills can be amended by a population law. A special limitation applies to laws whose constitutionality depends upon a “continuation amendment” enacted under Article XI, Section 1, Paragraph 4 of the 1983 Constitution. The Georgia Supreme Court held in Lomax v. Lee that a statutory change made pursuant to a constitutional amendment continuing an earlier amendment not only may not take action that would not have been permitted under the original amendment, it also may not change the application provisions (in that case, the population bracket) that define the political subdivision that is subject to the amendment.

The historical decisions, as well as the current practice of the General Assembly in enacting court-related legislation, solidly outweigh any textual reasons supporting nonapplication of the general-law provisions to questions of municipal-court jurisdiction. The judicial-uniformity provisions are specific, as the Hawkins court pointed out, and, in the case of Article VI, Section 1, Paragraph 5, detailed in regard to both the inferior courts that are subject to uniformity and the features of those


298. See id. § 28-1-5(c)(3).


301. See infra text accompanying notes 430-35.


303. See supra text accompanying notes 288-80.

304. See supra notes 308-30 and accompanying text.
courts that must be uniform. But the treatment of general-law and uniformity provisions in Alexander and Gresham and the consistency principle of Thompson, as well as the better policy arguments, all weigh in favor of universal application of Article III, Section 6, Paragraph 4.

Such a conclusion would not affect the General Assembly's ability to legislate effectively for the City Court of Atlanta. Uniformity and general laws are different concepts: for example, a combination or tiered population bill is a general law, but might well not provide for state-wide uniformity. The General Assembly has already embraced the general-law approach in the Large-County Probate Court amendments, rendering probate jurisdiction non-uniform on a state-wide basis. But the General Assembly has followed both the general-law approach and (at least as to jurisdiction) uniformity in the Municipal Court Act. The General Assembly would be provided with ample flexibility for tailoring the jurisdiction and processes of municipal courts to the needs of local communities, even larger areas like Atlanta and the other major cities of Georgia, if the Georgia Supreme Court were to hold the general-law requirements applicable to court-related statutes.

f. Modern Municipal-Court Jurisdiction and General Laws

The practical significance of the distinction between court-related statutes and other statutes is reduced for the municipal courts, because of the general-law provisions in the Municipal-Court statute. The General Assembly has declared that municipal courts will have jurisdiction over non-ordinance matters "as are by general law made subject to the jurisdiction of municipal courts", it has granted misdemeanor jurisdiction by general law, and it has provided that the statute "shall apply equally to all municipal courts." Thus the argument that the general-law requirement does not extend to municipal court

305. See Ga. Const. art. VI, § 3, ¶ 1.
307. See infra notes 308-30 and accompanying text.
309. See id. §§ 36-32-8 to -10.1.
310. Id. § 36-32-1(b).
jurisdiction would have to get past not only the Cochran, Alexander, and Gresham decisions, but also the General Assembly's own declarations regarding the meaning of the Municipal Home Rule provisions of the 1983 Constitution. If anything, the "general-law-only" statute is not a statute governing municipal courts, as to which the application of Article III, Section 6, Paragraph 4 is in question, but a statute governing the General Assembly's own lawmaking processes, and therefore one to which the general-law requirements are fully applicable. Thus any arguments that jurisdiction provided to one municipal court is not subject to a general-law requirement, or that granting city-court jurisdiction over misdemeanors other than those granted to municipal courts generally does not "conflict" with that misdemeanor jurisdiction, seem not to be well taken.

The above provisions seem to require the General Assembly to proceed by general law if it wishes to grant state misdemeanor jurisdiction to a municipal court. On the question of whether the general-law provisions apply to the municipal courts, the General Assembly either believes that they do apply or has committed itself to a statutory course of proceeding only by general law. It may be conceded that, with the origins of the municipal courts in local law, some aspects of the municipal court system remain non-uniform, including their presence in a given municipality, the method of selecting judges, and the maximum punishments for offenses, while some measure of uniformity in power and procedures is granted by the Municipal-Court statute. But more importantly, the General Assembly has acted by general law to grant misdemeanor jurisdiction to the municipal courts over specific classes of cases. Specifically, the municipal courts have jurisdiction over "any and all criminal laws of this state relating to traffic upon the public roads, streets, and highways of this state . . . where the penalty for the offense does not exceed that of the grade of

311. See supra text accompanying 268-80.
312. See supra notes 308-30 and accompanying text.
313. See GA. CONST. art. III, § 6, ¶ 4.
314. See supra notes 280-79 and accompanying text.
316. See id. §§ 36-32-1(b), -2(a), -3 to -5.
317. See supra notes 281-307 and accompanying text.
Municipal courts also have been granted jurisdiction over the offenses of possession of one ounce or less of marijuana, operating a motor vehicle without effective insurance or a certificate of emission inspection, shoplifting of $100 or less, and certain alcoholic-beverage violations. They also had jurisdiction in the absence of a state court over criminal trespass violations, until that jurisdiction was removed in 1998. The municipal courts do not, however, have general misdemeanor jurisdiction, and they do not have jurisdiction such as that of the City Court of Atlanta over misdemeanors arising out of the same occurrence as a traffic offense.

Most municipalities have recognized that they lack power to affect the jurisdiction of their respective municipal courts, and most home-rule ordinances on misdemeanor jurisdiction reflect the view that the General Assembly must (or at least will) proceed by general law. Some home-rule ordinances enacted since the 1983 Constitution provide for jurisdiction to the extent granted by general law, with occasional references to particulars such as traffic violations. Others are unclear as to their coverage of municipal or state offenses, or as to the local or general-law source of the power; although whether this is a product of drafting ambiguities or uncertainty about the
contours of the jurisdiction of municipal courts is not known.\textsuperscript{328} Only a few such home-rule ordinances provide for jurisdiction over "all misdemeanor offenses," in some cases where the defendant waives a jury trial.\textsuperscript{329} One appears to have been enacted with little thought for constitutional niceties.\textsuperscript{330} The dominant theme of these ordinances is clearly that the municipalities expect that whatever jurisdiction is conferred on the municipal courts will be conferred by general law.

\textit{C. The City Court of Atlanta}

Since the Atlanta area has its state courts to handle its "great volume of business, resulting from mercantile, manufacturing, and other interests,"\textsuperscript{331} it is perhaps fitting that the modern City Court of Atlanta has been constituted and defined by the other great need of the city, the resolution of traffic-law violations.\textsuperscript{332} Unlike the earlier court that bore that name,\textsuperscript{333} the modern City Court of Atlanta is not and has never been a constitutional city court, but instead was a "statutory city court."\textsuperscript{334} The critical questions presented by the City Court's history are (1) whether the court was ever a "municipal court" prior to the 1983 Constitution, (2) whether the court has been treated consistently as a "municipal court" under the 1983 Constitution and in the General Assembly's later enactments, and (3) whether the court's nature and history can constitutionally support its current jurisdiction. Those questions will be addressed after the court's history is described.

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{331} Wight & Weslosky Co. v. Wolff & Happ, 112 Ga. 169, 171, 37 S.E. 385, 386 (1900); \textit{see also supra} notes 78-107, 116-17 and accompanying text.
  \item \textsuperscript{332} The Atlanta area's need for specifically tailored courts has existed through most of its history. \textit{See} Welborne v. State, 114 Ga. 793, 40 S.E. 857 (1902) (citing local needs as reasons for city courts). The peculiarity of that need has become a constitutional liability under the 1983 Constitution, at least so far as the general-law principles are concerned. \textit{See supra} notes 260-79 and accompanying text.
  \item \textsuperscript{333} \textit{See supra} notes 78-89 and accompanying text.
  \item \textsuperscript{334} \textit{See} MCFADDEN ET AL., \textit{supra} note 6, \textsection 2-21; \textit{see also supra} notes 46-68, 97-101 and accompanying text.
\end{itemize}
\end{footnotesize}
1. The 1955 Statute and 1956 Constitutional Amendment

In 1953, the General Assembly, by amendment to the Atlanta Charter of 1874, created the Atlanta Traffic Law Enforcement Commission “to study the problems of traffic law enforcement in the courts of the City of Atlanta and Fulton and DeKalb Counties in connection with offences committed within the corporate limits of the City of Atlanta.” The Commission’s report was due on or before November 1, 1953. Although the Author has not located a copy of the report, two things seem clear. The first is that the Commission must have known, based on the limitations of the 1937 Highway Patrol amendment, of the existence of the Criminal Court of Fulton County and the decision in Gibson v. Gober which held that any court created to handle traffic misdemeanors in Fulton County could not be a municipal court. The second is that whatever work the Commission did, its timing was such that it appears to have resulted in the creation of the Traffic Court of Atlanta, the predecessor to the City Court of Atlanta.

The Traffic Court of Atlanta was first created in 1955 and met its first constitutional challenge during that same year. Two statutes created and empowered the court. First, the General Assembly enacted a city-court statute permitting judges of city courts in “cities having more than 350,000 population according to the last or any future census of the United States . . . to serve in the municipal court of that city and preside at the trials of ordinance violations.” Second, on the same day, the General

336. Id. § 2.
337. See id. § 3. The commissioners were Charlie Mathias, Ed S. White, E.A. Wright, Herbert T. Jenkins, Robert R. Snodgrass, and J.J. Nicholson. Of these six, Ed S. White and E.A. Wright were attorneys. See Martindale-Hubbell Law Directory 442 (1953). The Martindale’s entries for Atlanta and surrounding cities do not indicate that any of the other commissioners was an attorney, see id. at 428-43 (Atlanta), 448 (College Park), 451 (Decatur), 452 (East Point), 459 (Marietta), suggesting that they probably were either court clerks, police officers, or other citizens.
338. See 1937 Ga. Laws 322; see also supra notes 194-208 and accompanying text.
339. See supra notes 79-86, 97-101 and accompanying text.
340. 204 Ga. 714, 51 S.E.2d 864 (1949). The 1962 Municipal Court Report, supra note 159, suggests that one alternative to the traffic court had been to create a municipal court instead. See infra notes 372-76 and accompanying text.
Assembly enacted a population law treated as a general law entitled "Traffic Courts in Certain Cities," whose preamble provided for "a system of traffic courts . . . for each city of this State having a population of more than 300,000 by the Federal census of 1950, or by any future Federal census" and whose enacting language created "in each city of this State having a population of 300,000 or more . . . a court to be known as the traffic court of such city."\textsuperscript{342} The traffic court was a court of record\textsuperscript{343} with subject-matter jurisdiction over "all crimes and offenses under the laws of the State of Georgia relating to and regulating traffic not above the grade of misdemeanor and which are not exclusively cognizable in the superior courts thereof."\textsuperscript{344} Its judges were to be chosen by the mayor of the City of Atlanta with the City Council's approval,\textsuperscript{345} its juries consisted of five members,\textsuperscript{346} and its decisions were subject to review by certiorari in the Superior Court.\textsuperscript{347} The only city meeting the population description, of course, was the City of Atlanta.\textsuperscript{348}

\textsuperscript{342} 1955 Ga. Laws 2318 (repealed 1987) [hereinafter 1955 traffic court statute].
\textsuperscript{343} See id. The City Court of Atlanta, which remains a court of record, applies that provision somewhat more loosely than other courts of record, in that it does not maintain a court reporter; court reporting services are available only to litigants who bring their own court reporter. See McFadden et al., supra note 6, § 2-42 nn.12-13 and accompanying text.
\textsuperscript{344} 1955 Ga. Laws 2319, § 1. The Traffic Court of Atlanta had concurrent jurisdiction with the Criminal Court of Fulton County over traffic misdemeanors. Just as the superior court deferred to the criminal court as to the former's misdemeanor jurisdiction, so the criminal court deferred to the traffic court in traffic misdemeanor cases. See 1982 Criminal Court Report, supra note 80, at 1-2, 15.
\textsuperscript{345} See 1955 Ga. Laws 2318, § 2, at 2319.
\textsuperscript{346} See id. § 11, at 2322.
\textsuperscript{347} See id. § 13, at 2323.
\textsuperscript{348} See O.C.G.A., vol. 42, p. 1321 (1993). No other Georgia city of the day had a 300,000 population, and none is likely to have any time soon, since the second-largest city, Columbus, had a population of 178,683 as of the revised 1990 census data. See O.C.G.A. vol. 42, p. 1321 (1993); id. at p. 152 (Supp. 1998).
The Chief Financial Officer of the City of Atlanta, R. Earl Landers, immediately challenged the 1955 traffic-court statute under the 1945 Georgia Constitution, a challenge that was upheld in City of Atlanta v. Landers.\textsuperscript{349} The Georgia Supreme Court held the statute unconstitutional by reasoning that (1) the 1945 Georgia Constitution created a system of state courts,\textsuperscript{350} (2) only the General Assembly may create state courts to try state misdemeanors, and (3) municipal corporations may not punish violations of state law or exercise delegated power to choose the judges of a state court.\textsuperscript{351} Citing Grant v. Camp and other cases,\textsuperscript{352} the court reasoned that when a court's judges are chosen and its personnel employed by municipal authorities, and when its jurisdiction is limited to the city boundaries, "the conclusion is demanded that the courts . . . are municipal courts, and not state courts."\textsuperscript{353} The General Assembly was not authorized to bestow misdemeanor jurisdiction on a municipal court. The court betrayed one further reason for its result, however, in its observation that

the conclusion is inescapable that the primary object sought to be accomplished is to place in the treasury of the municipalities . . . the revenues arising from fines and forfeitures imposed upon those convicted or charged with violating State traffic laws, many of whom are arrested by city police officers for violations within the corporate limits of the municipality. State courts are not created for financial gain. They are a necessary branch of government for the protection of life, liberty, and property, and the cost of enforcement of State law cannot be considered in the administration of justice.\textsuperscript{354}

The loftier policies of traffic enforcement notwithstanding, one wonders whether the efficient transfer of money from the State

\textsuperscript{349} 212 Ga. 111, 90 S.E.2d 583 (1955).
\textsuperscript{350} See Ga. Const. of 1945, art. VI, § 1, ¶ 1. This judicial article provided: "The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, Superior Courts, Courts of Ordinary, Justices of the Peace, Notaries Public who are ex-officio Justice of the Peace, and such other Courts as have been or may be established by law.” Id.
\textsuperscript{351} The Landers court's approach was consistent with the broad interpretation of Grant v. Camp. See supra notes 180-93 and accompanying text.
\textsuperscript{352} See supra note 187 and accompanying text.
\textsuperscript{353} Landers, 212 Ga. at 114, 90 S.E.2d at 588.
\textsuperscript{354} Id. at 115, 90 S.E.2d at 588.
of Georgia and Fulton County to the City of Atlanta as a result of the 1955 statute had as much to do with the court’s result as did the court’s reasoning.\textsuperscript{355}

The General Assembly responded with equal celerity at the 1956 session. A proposed general constitutional amendment authorized “a new court or system of courts in and for each city having a population of more than 300,000” with jurisdiction over “all misdemeanor cases arising under any law of the State regulating the ownership or operation of motor vehicles.”\textsuperscript{356} The amendment “ratified, validated and confirmed” the 1955 traffic-court statute (but not the 1955 city-court statute) and permitted delegation of the powers “necessary and appropriate for the establishment, operation and maintenance of such court” to the municipality.\textsuperscript{357} The amendment was approved by the electorate at the 1956 election.\textsuperscript{358} At the same time, the General Assembly amended the provisions of the Atlanta Charter of 1874 relating to the municipal court of the City of Atlanta in two regards: first, the statute confirmed the division of the court into a general division and a traffic division, and second, it created a traffic violations bureau so that fines for ordinance violations could be paid without a court appearance.\textsuperscript{359}

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\item<sup>355</sup> The authors of the 1962 report on the courts in Atlanta, discussed more fully below, observed that “[p]erhaps the most important section of the [1955] act provides that all monies collected in such court shall be deposited to the treasury of the city.” 1962 MUNICIPAL COURT REPORT, supra note 158, at 25-26.
\item<sup>356</sup> 1956 Ga. Laws 415.
\item<sup>358</sup> See 1956 Ga. Laws, Executive Minutes, p. 253 (No. 3). On the nature of the amendment as a general amendment, the provisions of Article XIII of the 1945 Georgia Constitution (requirements for local amendments) may be compared to the method by which the amendment’s ratification was memorialized in the Executive Minutes. On whether this amendment would be regarded today as a local amendment, see infra text accompanying notes 430-35 (discussion of Lomax v. Lee).
\item<sup>359</sup> See 1956 Ga. Laws 3368, §§ 4, 13; supra text accompanying notes 171-75. The
\end{enumerate}
\end{footnotesize}
2. The 1962 Municipal and Criminal Court Reports

In 1962, a series of five interim reports was issued by the Fulton County–City of Atlanta Courts Study Commission, the second of which pertained to Atlanta’s municipal court (the 1962 Municipal Court Report),\textsuperscript{360} and the fourth of which pertained to the Criminal Court of Fulton County (the 1962 Criminal Court Report).\textsuperscript{361} The provisions for jurisdiction and service of judges on other courts in Atlanta, which had grown up over the years, had become complex. Both the criminal court and the municipal court deferred to the Traffic Court of Atlanta as to traffic prosecutions within the latter’s misdemeanor and ordinance jurisdiction, and the traffic court was highly efficient and effective in that function.\textsuperscript{362} As to judicial assignments, the judges of the traffic court were authorized to sit as judges of the municipal court.\textsuperscript{363} The judges of the municipal court were authorized to sit as judges of the criminal court.\textsuperscript{364} It was not mentioned in the reports, but the judges of the criminal court had been authorized by the 1890 statute to sit as judges of the former city court, which might have applied to the Traffic Court of Atlanta if one assumed that the 1955 court was a “city court” as referenced in the first five sections of the “city court” statute.\textsuperscript{365} No such conclusion was drawn by the drafters of the 1962 Criminal Court Report, and references to the service of


360. See 1962 MUNICIPAL COURT REPORT, supra note 159.

361. See 1962 CRIMINAL COURT REPORT, supra note 80. The Criminal Court of Fulton County had concurrent jurisdiction with the City Court of Atlanta over traffic misdemeanors occurring within the city limits. See Gibson v. Gober, 204 Ga. 714, 51 S.E.2d 664 (1949).

362. See 1962 CRIMINAL COURT REPORT, supra note 80, at 1-2, 5; 1962 MUNICIPAL COURT REPORT, supra note 159, at 2-4, 26-27, 28.


365. See O.C.G.A. §§ 15-8-1 to -5 (1999). In State v. Kirkland, 212 Ga. App. 672, 442 S.E.2d 491 (1994), the Georgia Court of Appeals quashed warrants, issued for the search of a home in Coweta County, signed in error by a City Court of Atlanta judge instead of a superior court judge. This suggests that the rest of the city-court statute does not apply to the City Court of Atlanta and that the codification of the 1855 city-court statute in O.C.G.A. § 15-8-6 is aberrant.
"city court" judges in that report support the inference that the 1955 traffic court’s judges did not sit in the criminal court. 366

The 1962 Municipal Court Report referred to the Traffic Court of Atlanta as follows:

The Atlanta municipal court is composed of two separate divisions. The general division is charged with processing and adjudicating all violations of municipal ordinances (except traffic violations) and serves as a committing court for state offenses. The traffic division is charged with processing and adjudicating all violations of municipal traffic ordinances. Additionally, one segment of the traffic division, hereinafter referred to as the “ad hoc traffic division,” has been given jurisdiction over state traffic misdemeanors committed within the City of Atlanta. 367

The report also referred to the divisions as “three courts,” and to the “peculiar ad hoc state misdemeanor jurisdiction” of the traffic court. 368 The authors were clearly of the view that the Traffic Court of Atlanta was a municipal court, since the report stated that “[m]unicipal courts are not ordinarily designed for the handling of state affairs,” but added in a footnote, “[h]owever, see Detroit’s Recorder’s court . . . and the ad hoc division of the Atlanta traffic court.” 369 The schematic representation of the courts having jurisdiction over Atlanta belied some confusion about the court’s origins, however, because it inaccurately described the “Traffic Division” and its state traffic misdemeanor jurisdiction as arising under the Atlanta Charter of 1874. 370 Moreover, the authors’ detailed analysis of the Traffic Court of Atlanta stated that the court was a “dual creature,” an “ad hoc judiciary designed to try state traffic misdemeanants,” and “an ad hoc creation possessed of jurisdiction over all traffic offenses of the grade of misdemeanor committed within the boundaries of the City of Atlanta in violation of state traffic laws.” 371

366. See 1962 CRIMINAL COURT REPORT, supra note 80, at 7, 8-9.
367. 1962 MUNICIPAL COURT REPORT, supra note 159, at 1.
368. Id. at 1, 3.
369. Id. at 7; see id. at 8 n.13.
370. See id. at 35.
371. Id. at 22-35.
The authors saw the Traffic Division of Atlanta's municipal court and the City Court of Atlanta as separate entities, whatever their views as to the latter's nature. The authors observed that the General and Traffic Divisions of the municipal court "were originally intended to possess equal jurisdiction and to be of equal rank in all respects," but that "the separate development of the traffic division of the municipal court by constitutional amendment, legislative enactment, Charter Amendment and general city ordinance has resulted in a deviation from the original intention." \[372\] The authors stated that "the separate establishment" of the traffic court "would prima facie indicate the creation of a separate municipal traffic court to have misdemeanor jurisdiction over state traffic offenses committed within the city boundaries." \[373\] Interestingly, the authors suggested that "[t]he original arrangement apparently contemplated the utilization of the existing traffic division of the municipal court" for state traffic misdemeanors, but that, instead, "the General Assembly created a separate traffic court." \[374\] Perhaps in 1955 two solutions to traffic jurisdiction in Atlanta were being pursued—a tentative supposition since the authors refer to 1956 amendments to the Atlanta Charter of 1874 but cite 1955 sources therefor. \[375\] Be that as it may, the conclusion that a "separate traffic court" was created was clearly correct. \[376\]

The 1962 Municipal Court Report concluded with suggestions for improvements to the judicial administration of state misdemeanor offenses and city ordinance violations, including those relating to traffic laws and ordinances. The alternatives proposed were: integrating all state and municipal civil and criminal courts; integrating the criminal courts; integrating general criminal courts and leaving the traffic division separate; providing misdemeanor jurisdiction to the municipal court; and no change. \[377\] No direct link has been found between the 1962


\[373\] 1962 MUNICIPAL COURT REPORT, supra note 158, at 15 (emphasis omitted).

\[374\] Id. at 16.


\[376\] Id. at 22-35.

\[377\] See id. at 4, 30-32.
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reports and the 1967 statutes affecting both the Traffic Court of Atlanta and the Criminal Court of Fulton County, but it is apparent that further thought was given to the matter because, apart from consolidation of the traffic function, none of those broader proposals was adopted.

3. The 1967 Constitutional Amendment and Statute

In 1967, a new constitutional amendment was proposed to make three changes to the 1956 amendment, and a new statute was enacted to replace the 1955 statute and to create the City Court of Atlanta. The 1967 amendment did not include any provision for repeal or supersession of the 1956 amendment. The new amendment authorized the General Assembly to create "a new court or system of courts in and for each city of this State having a population of more than 300,000" under the 1960 or later censuses, which court or system was not subject to constitutional uniformity requirements, and to confer subject-matter jurisdiction in the following classes of cases:

(1) In all misdemeanor cases arising under the Act known as the Georgia State Highway Patrol Act of 1937, as the same exists or may hereafter be amended, and all other traffic laws of the State, as the same exist or may hereafter be amended,[,]

(2) In all misdemeanor cases arising under any law of the State regulating the ownership and operation of motor vehicles within its territorial jurisdiction, as the same exists on January 1, 1969, or as may thereafter be extended, and

378. See infra notes 386-403 and accompanying text.
379. See supra notes 100-01 and accompanying text.
380. A miscellaneous report in 1966 did not mention the city court, and its descriptions of municipal courts (as having civil jurisdiction) and mayor's, police, and recorder's courts (as lacking state misdemeanor jurisdiction) makes clear that the city court was not seen as belonging to either of those categories. See State Bar of Georgia, Citizens' Conference on Modernization of Georgia Courts, Reading Materials 12, 18-19 (Apr. 21-23, 1966).
381. See 1967 Ga. Laws 963. The amendment will be referred to as the "1967 amendment" to avoid confusion due to the appearance of its text in the 1967 Georgia Laws.
382. See id. at 415.
(3) In all cases arising under any charter provision or ordinance of any such city regulating traffic or the ownership or operation of motor vehicles.\textsuperscript{383}

The 1967 amendment also provided for the City Court's territorial jurisdiction to follow any changes in the Atlanta city limits and for exceptions from the jurisdiction of other courts for cases within the City Court of Atlanta's jurisdiction.\textsuperscript{384} The 1967 amendment was approved at the general election in 1968 as a general constitutional amendment.\textsuperscript{385}

The 1967 amendment permitted the City Court of Atlanta to have the same traffic law jurisdiction that existed under the 1955 legislation and the 1956 amendment,\textsuperscript{386} and further permitted the transfer to that court of the traffic-ordinance jurisdiction that had been vested in the Traffic Division of the Municipal Court of Atlanta in 1956.\textsuperscript{387} It also solidified the City Court of Atlanta's traffic law jurisdiction against the arguments that such laws were not within the 1956 amendment's scope of "regulating the ownership or operation of motor vehicles."\textsuperscript{388}

The 1967 statute,\textsuperscript{389} which was a population law enacted as a general law,\textsuperscript{390} became effective in 1969 conditioned on the passage of the constitutional amendment.\textsuperscript{391} The 1997 statute made numerous changes to the court. It continued to describe "a system of traffic courts . . . for each city of this State having a population of more than 300,000,"\textsuperscript{392} changed the court's name

\begin{footnotes}
\item[383] Id. at 963, 964, § 1 (emphasis added).
\item[384] See id.
\item[385] See 1969 Ga. Laws, Executive Minutes, 4402, 4406 (No. 23). In contrast to the issue of the constitutional amendment as a general amendment, the amendment making the Criminal Court of Fulton County a "constitutional city court," see supra notes 100-01 and accompanying text, was treated as a local amendment. See 1969 Ga. Laws 4409, 4422 (No. 82); see also GA. CONST. of 1945, art. XIII.
\item[386] See supra notes 343-44 and accompanying text.
\item[387] See supra text accompanying notes 171-75.
\item[388] See supra notes 356-58 and accompanying text.
\item[390] See id.
\item[391] See id. § 35.
\item[392] Id. §§ 60-61. More specifically, the preamble made reference to "a system of traffic courts . . . for each city" and the enacting language stated that "there is hereby established in each city" of more than 300,000 "a court to be known as the city court of such city." 1967 Ga. Laws 3360, 3360-61. The 1871 City Court of Atlanta statute similarly "established in the City of Atlanta a Court to be known as the City Court of Atlanta." 1871-1872 Ga. Laws 57, § 1.

While the angels are dancing on the pins, a stickler for detail would insist that the
from the "Traffic Court" to the "City Court," made judges subject to retention elections rather than mayoral appointments, provided for case initiation by summons as well as by information or accusation, and changed the appeal route so that misdemeanor cases went by appeal to the appropriate appellate court and all other cases (that is, those involving ordinance violations) by certiorari to the superior court. The 1967 court was a court of record and had a five-person jury.

The new statute provided for jurisdiction over "all crimes and offenses under the laws of the State relating to and regulating traffic, not above the grade of misdemeanor and not exclusively cognizable in the superior courts," and "all offenses against the duly enacted laws and ordinances of such city relating to and regulating traffic." Consistent with the 1967 constitutional amendment, the jurisdiction and pending
cases involving traffic ordinances were transferred from the Municipal Court of Atlanta\textsuperscript{400} to the now-called City Court of Atlanta.\textsuperscript{401} Finally, the 1955 traffic-court statute, as amended, was repealed.\textsuperscript{402} The 1967 statute contained a severability clause, which put the new city court at some risk, however theoretical, that if the court had been crippled by a determination that an essential statutory feature was unconstitutional, the repealer might have stood, leaving the City of Atlanta without a functioning traffic court.\textsuperscript{403} Fortunately, that did not occur.

In 1972, an American Bar Association study proposed that the City Court of Atlanta’s traffic jurisdiction be extended to the unincorporated areas of Fulton County.\textsuperscript{404} That proposal was not adopted, but the study is interesting because it described the city court as a “Constitutional Court” that was “unique because it may try all traffic cases whether arising under state law or municipal ordinances.”\textsuperscript{405} The report clearly distinguished among the city court (and one other court of that name), the municipal courts, and mayor’s or recorder’s courts.\textsuperscript{406} It also treated the city court as a “state-type” court, as distinguished from the “local-type” mayor’s and recorder’s courts.\textsuperscript{407} The study suggests a developing or continuing ambiguity in the term “municipal court” since the term had been used to refer to two state-level courts and two recorder’s courts.\textsuperscript{408} In the context of the State Highway Patrol Act’s earlier references to municipal

\begin{thebibliography}{999}
\bibitem{} See supra text accompanying notes 171-75.
\bibitem{} Id. § 32.
\bibitem{} American Bar Ass’n, Traffic Court Program, A Study of Georgia Courts Trying Traffic Cases, Part I, xix-xx, 28 (June 30, 1972) [hereinafter ABA Traffic Court Program].
\bibitem{} Id. at 16; see id. Part II, at 51-57, 81 passim.
\bibitem{} See id. Part I, at 18, 19-21, 24 (chart), 25, 32, 36-38; id. Part II, at 55-57.
\bibitem{} See id. Part I, at 232-95, 298.
\bibitem{} See id. Part I, at 20-21, 38; id. Part II, at 55-57.
\end{thebibliography}
courts, the term was used to refer to both state and local courts.


In 1976 and 1983, Georgia had two new constitutions, the latter of which contained new provisions on the uniform system of courts in Georgia. These intervening constitutions were significant because of the need to preserve and carry forward the local amendments to the 1945 Constitution authorizing the City Court of Atlanta. The 1976 Georgia Constitution continued in effect all local amendments to the 1945 Constitution, which included the 1967 city court amendment. The 1983 Constitution’s treatment of the City Court is more complex.

The 1983 Constitution arguably addresses the City Court of Atlanta in two sets of provisions. First, it expressly refers to the City Court of Atlanta as a municipal court. Article VI, Section 10, Paragraph 1(5) provides that “municipal courts not otherwise named herein, of whatever name, shall continue as and be denominated municipal courts, except that the City Court of Atlanta shall retain its name.” Article VI, Section 1, Paragraph 1 empowers the General Assembly to create municipal courts and continues the existence of certain special courts of Georgia, among which the City Court of Atlanta may or may not have been included. Second, the 1983 Constitution contains general provisions for continuation of local constitutional amendments, which implicitly pertain to the City Court of Atlanta because of its origin in and dependence upon such an amendment. Article XI, Section 1, Paragraph 4, is narrower than its 1976 counterpart, and required a local constitutional amendment no later than July 1, 1987, continuing any pre-1976 amendments.

409. See supra text accompanying notes 197, 199.
410. See GA. CONST. art. XIII, § 1, ¶ 2.
411. See infra notes 448-521 and accompanying text.
412. GA. CONST. art. VI, § 10, ¶ 1(5); see infra notes 448-58 and accompanying text.
413. See GA. CONST. art. VI, § 1, ¶ 1 (quoted supra in text accompanying note 231).
414. See infra notes 459-521 and accompanying text.
415. See GA. CONST. art. XI, § 1, ¶ 4.
The first textual reference to the City Court of Atlanta in the constitutional drafts was in the August 20, 1981, draft of the full Constitution, reported out by the Legislative Overview Committee. The last draft reported by the Article VI committee, dated October 27, 1980, earlier had referred to municipal courts, but not to the City Court of Atlanta. This change reflects a careful attempt to identify all of the special courts of Georgia that needed to be dealt with in the transition provisions of Article VI, Section 10. A chart of the pre-1983 Georgia court system as of October 15, 1980, prepared as part of the Article VI Committee’s final report, did not make specific reference to the City Court of Atlanta, and, to the extent it had been identified at that point, the City Court was most likely intended to be included among the municipal courts listed as having “traffic jurisdiction.” In the committee hearings and meetings there is only one reference to the City Court of Atlanta as a municipal court, although there are other non-specific references to “city courts” as municipal courts.

In 1986, the City Court of Atlanta’s 1967 amendment was continued in force by a timely local constitutional amendment. There was no change to the 1967 statute at that time. The 1983 Constitution provided that all continuation amendments were to be accomplished by local amendment, so this provision was not inappropriate even though the City

416. See III LEGISLATIVE OVERVIEW COMMITTEE TRANSCRIPT (Aug. 20, 1981 Draft), at 51 (draft provision numbered Art. VI, § IX, ¶ I(6)).
417. III ART. VI TRANSCRIPT (Oct. 27, 1980 Draft), at 10 (draft provision numbered Art. VI, § X, ¶ I(6)).
418. See III ART. VI TRANSCRIPT (Aug. 22, 1980), at 110-11, (Oct. 3, 1980), at 149. A study ordered by then-Governor Jimmy Carter, reported as COMMISSION ON JUDICIAL REFORM, GEORGIA COURTS PLAN (1981), has not been located. It does not appear to have been mentioned, at least by name, by the Legislative Overview Committee.
420. See I ART. VI TRANSCRIPT (Nov. 17, 1978), at 85 (Judge Brock, Justice of the Peace).
421. See I ART. VI TRANSCRIPT (Aug. 5, 1977), at 19; id. (Sept. 1, 1978), at 19 (Dean Ralph Beard).
422. See 1967 Ga. Laws 963. There was no need to continue the 1956 amendment since, although the 1967 amendment had not repealed it, it had effectively superseded and replaced it. See supra notes 381-85 and accompanying text.
424. See GA. CONST. art. XI, § 1, ¶ 2(a).
Court had been created and maintained by population laws treated as general laws. Thereafter, there were several miscellaneous statutory changes relating to the City Court of Atlanta. The 1986 Municipal-Court statute provided that “[a]ny reference in this Code or in any local law to a corporate court, police court, recorder’s court, mayor’s court, or any such court known by any other name which has jurisdiction over the violation of municipal offenses shall be deemed to mean a municipal court.” In 1987, the statute was amended to provide that the variant names for municipal courts were stricken, “[e]xcept in this Code section and in the laws relating to the City Court of Atlanta.” The reference to the City Court could mean only that the drafters believed that the City Court was a municipal court and they were attempting to maintain the court’s name in the same manner that the 1983 Constitution had done.

In 1987, the provisions of the State Highway Patrol Act granting jurisdiction to municipal courts over traffic offenses were amended to provide that, for purposes of the prosecution of traffic offenses, “the term ‘municipal courts’ shall be construed to include municipal courts of the incorporated municipalities of this state and the City Court of Atlanta.” In 1994 that statute was amended to delete the reference to the City Court of Atlanta. One potential explanation for the latter amendment is that it was thought unnecessary to exclude the City Court of Atlanta from a reference to the municipal courts, although another explanation is that the reference was thought unnecessary since the city court’s traffic-misdemeanor jurisdiction was provided under its own statute.

5. The 1988 and 1996 Statutes and Intervening Authorities

Two determinations, one by the Georgia Supreme Court and one by the Attorney General of Georgia, define the legal

427. Ga. CONST. art. VI, § 10, ¶ 1(5).

Second, in 1991, in \textit{Lomax v. Lee},\footnote{261 Ga. 575, 408 S.E.2d 788 (1991), \textit{appeal after remand sub nom. City of Atlanta v. Lee}, 262 Ga. 461, 421 S.E.2d 705 (1992).} the supreme court held that Article XI places limits on the General Assembly's ability to pass amendments to a statute whose constitutionality depends upon a continued constitutional amendment.\footnote{\textit{See supra notes 381-85 and accompanying text, text accompanying note 415.}} The question in \textit{Lomax} was whether property tax assessments in the City of Atlanta and Fulton County could be made subject to an arbitration procedure instead of a joint city and county board of tax appeals and equalization. The court held that because the 1952 amendment to the 1945 Georgia Constitution, continued by a 1986 amendment, provided for the joint-board approach and not for arbitration, a statutory amendment providing for arbitration was unconstitutional and void.\footnote{\textit{Id.} at 577-78, 408 S.E.2d at 790 (citing Tift v. Bush, 209 Ga. 769, 771, 75 S.E.2d 805 (1953)); \textit{accord City of Atlanta v. Gower}, 216 Ga. 388, 116 S.E.2d 738 (1960) (same). \textit{But cf.} Gordon v. Green, 228 Ga. 505, 188 S.E.2d 719 (1972) (stating that population bracket at 108,000 would permit other political subdivisions to become affected).} Thus, the 1967 constitutional amendment, as continued by the 1986 amendment, defines the City Court of Atlanta from 1986 forward, and the City-Court statutes may be amended only as to matters within the scope of the 1967 constitutional amendment, not to accomplish goals not permitted by that amendment.\footnote{\textit{See supra notes 336-40, infra notes 494-508 and accompanying text.}}

The 1988 amendment to the 1967 City-Court statute expanded the City Court's misdemeanor jurisdiction from crimes under state laws "relating to and regulating traffic" to include "all other crimes and offenses arising out of the same occurrence as
such traffic offense." The same statute expanded the court's municipal jurisdiction to include violations not only of ordinances "relating to and regulating traffic," but also "all other offenses against laws and ordinances of such city arising out of the same occurrence as such traffic offense." 

In 1996, the General Assembly "re-created" the City Court of Atlanta by means of a population law with a 300,000-or-more bracket, enacted as a general law. The provisions of the 1996 statute are pertinent here in four respects. First, the General Assembly acted "[p]ursuant to the provisions of Article VI, Section I of the Constitution of the State of Georgia, as amended, and the provisions of that constitutional amendment [of 1967, as continued in 1986]," to create "a system of state courts." Like that of the 1967 act, the enacting language provides that the law "established in each city of this state having a population of 300,000 or more . . . a court to be known as the city court of such city. Such courts shall be considered courts of record." Second, the 1988 provisions expanding the City Court's non-traffic misdemeanor and ordinance jurisdiction were retained. Third, the court's five-person jury was replaced by a provision that the court should follow the state court jury system, which provides for six-member juries in criminal cases. Fourth, the statute does not contain a non-severability clause.

D. The City Court of Atlanta as a Municipal Court (or Not)

The further analysis of the constitutionality of the 1988 and 1996 City Court of Atlanta statutes depends upon the answers to

437. Id.
442. See id. § 3(a), (b).
443. See id. § 10.
444. The state courts use six-person juries with an exception, not applicable in the City Court of Atlanta, for civil cases over $10,000 where a party demands a jury of twelve. See O.C.G.A. § 15-12-122(a)(1)-(2) (1999); see also GA. CONST. art. I, § 1, ¶ 11.
several related questions. Is the City Court of Atlanta a municipal court, or is it not? If it is or was ever a statutory city court, and therefore a state court rather than a municipal court, when was it a statutory city court and does that now affect its nature or attributes under the 1983 Constitution? Must the City Court of Atlanta respond to the Caterpillar’s question in Lewis Carroll’s *Alice’s Adventures in Wonderland*, “[w]ho are you?” with Alice’s answer, “I—I hardly know, Sir, just at present—at least I know who I was when I got up this morning, but I think I must have been changed several times since then.”446 And if the last is the case, what is the City Court of Atlanta’s response to the Caterpillar’s next demand, “[e]xplain yourself.”447

1. The City Court of Atlanta Is a Municipal Court

The 1983 Constitution expressly treats the City Court of Atlanta as a municipal court in Article VI, Section 10, Paragraph 1(5), in the provision that “[m]unicipal courts not otherwise named herein, of whatever name, shall continue as and be denominated municipal courts, except that the City Court of Atlanta shall retain its name.”448 The term “municipal court” had been used for courts with city-wide jurisdiction as early as the State Highway Patrol Act of 1938.449 The court’s constitutional name and status are consistent with the “control” test of *Grant v. Camp*,450 with its historical treatment as evidenced by *City of Atlanta v. Landers*451 and the 1962 Municipal Court Report;452 with the language of the 1967 constitutional amendment, which permits a court “in and for” the City of Atlanta; and with the 1967 statute, which describes a court “for” the city and creates it “in” the city.453 Its judges are

447. Id.
448. GA. CONST. art. VI, § 10, ¶ 1(5).
449. See supra text accompanying note 199.
450. 105 Ga. 428, 31 S.E. 429 (1898); see supra notes 180-93 and accompanying text.
451. See supra notes 349-55 and accompanying text.
452. See supra notes 360-80 and accompanying text.
453. See 1987 Ga. Laws 983; supra text accompanying notes 382-83, 393. But see infra notes 466-89 and accompanying text.
authorized to sit as judges of the Municipal Court of Atlanta.\textsuperscript{454} After the adoption of the 1983 Constitution, the 1987 amendment to the Municipal-Court statute treats the City Court as a municipal court even if the 1986 statute was ambiguous in that regard.\textsuperscript{455} Similarly, the 1987 grant of traffic-misdemeanor jurisdiction so treats the City Court, and the 1994 repeal of that statute is best interpreted to mean only that any reference to the City Court was unnecessary because the city-court statutes provided for its traffic jurisdiction.\textsuperscript{456} The treatment of the City Court of Atlanta as a municipal court in the 1983 Constitution, therefore, was fully consistent with its history and with the constitution and laws of Georgia as interpreted and applied by the Georgia Supreme Court.

The foregoing analysis is not only reasonable, but is further supported in that the same or a similar conclusion was reached when the city court was included among the non-uniform courts in the provisions of Article VI, Section 10, of the 1983 Constitution.\textsuperscript{457} Since any suggestion that the City Court was not, prior to 1983, a municipal court must reckon with the convincing force of that history, this Article will address the constitutionality of the 1988 and 1996 statutes based upon the view that the City Court of Atlanta was, is, and ever shall be a municipal court.\textsuperscript{458}

2. The City Court of Atlanta Is a Hybrid Court and Not a Municipal Court

Would that life were so simple as the preceding argument suggests. The argument that the City Court was, in fact, not a municipal court, but was and is a special hybrid court of a

\textsuperscript{454} See supra note 341 and accompanying text.
\textsuperscript{455} See supra notes 422-27 and accompanying text.
\textsuperscript{456} 1987 Ga. Laws 3; 1994 Ga. Laws 604; see supra notes 428-29 and accompanying text.
\textsuperscript{457} See supra text accompanying note 412. At least one modern source refers to the city court as a municipal court and, as did the court of appeals in \textit{City of Lawrenceville v. Davis}, 233 Ga. App. 1, 502 S.E.2d 794, 797 (1998), truncates the history of the city courts by stating that a city court is a municipal court with traffic misdemeanor jurisdiction. See JOSPEH P. QUIRK & MARTIN G. QUIRK, GEORGIA METHODS OF PRACTICE, § 1.8, at 27 n.4 & 28 n.14 (WEST 1989 & SUPP. 1994).
\textsuperscript{458} See infra text accompanying notes 578-79.
nature presaged by *Grant v. Camp* \(^{459}\) is supported by the history, intent, and language of the various city-court statutes, including particularly the most recent 1988 and 1996 statutes. Furthermore, it is consistent with the statutory choices that the General Assembly had available to it (and in fact made) in 1955, 1988, and 1996, when these statutes were passed, and, albeit more ambiguously, in 1967, when the penultimate incarnation of the City Court was fashioned under a special constitutional amendment. \(^{460}\) The details of the argument are as follows.

In 1955, the General Assembly knew that it could not create a municipal court in Atlanta to handle state traffic violations because of *Clarke v. Johnson* \(^{461}\) and the presence in Atlanta of a county court (i.e. the Criminal Court of Atlanta, according to the Georgia Supreme Court in *Gibson v. Gober* \(^{462}\)). Although the yet-unfound 1953 report of the traffic commission might tell a different tale, \(^{463}\) any argument that the General Assembly had simply forgotten about the limitations of its powers under the 1937 State Highway Patrol amendment is simply not tenable on the presently available record. Thus, the General Assembly initially created the City Court with the intent that it be a “statutory city court,” even if it was controlled by the municipal authorities. \(^{464}\) The General Assembly was reasonable in reading *Grant v. Camp* narrowly rather than broadly, and it likewise was aware of *Clarke* and *Gibson*. If, alternatively, it was concerned about the broader rule of *Grant*, the General Assembly decided to violate *Grant* rather than those more recent decisions. Finally, the fact that the judges’ salaries were paid by the city rather than the state treasury is not determinative of the nature

\(^{459}\) 108 Ga. 428, 31 S.E. 429 (1888); *see supra* notes 180-83 and accompanying text.

\(^{460}\) *See supra* notes 335-445 and accompanying text.

\(^{461}\) 199 Ga. 163, 33 S.E.2d 425 (1945); *see supra* text accompanying notes 104-206.

\(^{462}\) 204 Ga. 714, 51 S.E.2d 684 (1949); *see supra* notes 83-86 and accompanying text.

\(^{463}\) *See supra* notes 335-340 and accompanying text.

\(^{464}\) The 1955 City Court statute, adding O.C.G.A. § 15-8-6 to those codified provisions pertaining to city courts, can be read as supporting the separate natures of the city court and the municipal court of Atlanta since it was thought necessary to empower the City Court of Atlanta judge to sit in the municipal court. The inferences from that enactment are not so strong, however, since they could have been necessitated by the fact that each court had been created by its own statute. *See supra* notes 189-75, 341-348 and accompanying text. The “family resemblance” of the provision to the present statute permitting state-court judges to serve as municipal-court judges by contract, O.C.G.A. §§ 15-7-80 to -85 (1999), supports the former interpretation.
of the court, as the Georgia Supreme Court made clear in Clark v. Hammond.\footnote{465}

The 1956 constitutional amendment may be analyzed both textually and contextually. It is arguable that the language of the 1956 constitutional amendment permitting a court “in and for” the city suggests that, as of 1956, the Traffic Court of Atlanta was intended to be a municipal court. Although appealing as a textual matter, that argument does not withstand closer analysis given the history and operative provisions of the amendment. First, the General Assembly had not intended to create a municipal court when it enacted the 1955 Traffic Court statute.\footnote{466} Second, the 1956 amendment made no pretense of changing the limitations of the 1937 amendment or the nature of the 1955 court, but “ratified, validated and confirmed” the 1955 statute.\footnote{467} Third, the Georgia Supreme Court’s characterization of the Traffic Court as a municipal court in City of Atlanta v. Landers\footnote{468} was fairly trumped by the General Assembly’s resort to a constitutional amendment,\footnote{469} which controlled the supreme court in the same breath as it constitutionalized the Traffic Court. Fourth, the General Assembly had used various combinations of “in,” “for,” and “in and for” when it created city courts that clearly were state-level courts “in and for” the various cities and counties where those courts were located.\footnote{469} Put another way, the language “in,” “for,”

\footnote{465. 134 Ga. 792, 66 S.E. 600 (1910) (stating that salary for judges of 1871 City Court of Atlanta paid by Fulton County).}

\footnote{466. See supra notes 335-48 and accompanying text.}

\footnote{467. See supra notes 356-58 and accompanying text.}

\footnote{468. Id.}

\footnote{469. The “City Court of Pembroke in and for the County of Bryan” was created by 1837-1838 Ga. Laws 714 (Extra Session) (emphasis added). That court became a state court in 1870 under 1970 Ga. Laws 679. See O.C.G.A., vol. 42, INDEX TO LOCAL AND SPECIAL LAWS AND GENERAL LAWS OF LOCAL APPLICATION, at 99 (1993). The “City Court of Ellaville in and for the County of Schley” was created by 1906 Ga. Laws 233 (emphasis added), amended, 1967 Ga. Laws 2884. The “City Court of Cairo in Grady County” was created by 1906 Ga. Laws 191 (emphasis added), amended, 1967 Ga. Laws 2389, and became a state court in 1970. See O.C.G.A. vol. 42, at 581. The City Court of Louisville, Georgia, for the County of Jefferso was created by 1911 Ga. Laws 277, amended, 1967 Ga. Laws 2321, and became a state court in 1970. See O.C.G.A., vol. 42, INDEX TO LOCAL AND SPECIAL LAWS AND GENERAL LAWS OF LOCAL APPLICATION, at 654-55 (1993). The argument that these uses of “in” and “for” are inconclusive because counties (unlike municipalities) are political subdivisions of the state is unconvincing when it is considered that superior courts are created “for” or “of” their circuits, O.C.G.A. §§ 15-6-1 to -2, 15-8-4 (1999); state courts “in” their counties, id. § 15-7-2; probate courts “for” their
and "in and for" has been descriptive rather than normative language in the Georgia statutes.

Thus, in 1955 and 1956, the General Assembly created what, over a half-century before, the Georgia Supreme Court in *Grant v. Camp* had referred to hypothetically as a "hybrid court." It granted jurisdiction over state traffic misdemeanors to a court controlled by municipal authorities. The process differed from that by which the police courts and recorders' courts were granted jurisdiction over state traffic misdemeanors under the 1937 Highway Patrol amendment because those courts, or at least a number of them, were created as municipal courts before they were so empowered, and their empowerment was accomplished in express constitutional terms, leaving unchanged (and indeed assuming) their essential nature as municipal courts. The Traffic Court of Atlanta, instead, was created and constitutionalized differently than the police and recorder's courts, in both regards assuming that it was not a municipal court.

Other historical evidence suggests that the City Court of Atlanta was never a municipal court prior to 1983. The municipal court of Atlanta was created under that name in 1913, at a time when the former City Court of Atlanta existed as a constitutional city court. A recorder's or municipal court of Atlanta existed in 1955 and had traffic-ordinance jurisdiction that was reconfirmed in 1956. The Atlanta Charter of 1996 contains provisions for the present municipal court, whose

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470. See supra notes 180-93 and accompanying text. Such a court would have been hypothetical as of 1898 because there was no constitutional amendment permitting its creation in the face of the rule under the 1877 Constitution that municipal courts could not be granted misdemeanor jurisdiction. Id.

471. See supra notes 194-206 and accompanying text.

472. See supra notes 335-48, 356-58 and accompanying text.


475. See supra text accompanying notes 169-75.

476. See 1996 Ga. Laws 4469, §§ 4-101(1), 4-109(c); supra text accompanying notes 177-79.
predecessor under the 1973 Charter coexisted briefly with the Civil and Criminal Courts of Fulton County and thereafter with the State Court of Fulton County. One or the other of the recorder's court and the municipal court has coexisted since its creation with the City Court of Atlanta or its predecessor Traffic Court of Atlanta.

The 1962 Municipal Court Report in part concedes the problems with its characterization of the Traffic Court as a municipal court, in its references to an “ad hoc” court, and the imprecision of the report's analysis calls that characterization into question. To the extent that it treats the Traffic Court as a municipal court, therefore, it is reasonable to read that treatment as arising from the court's operation and not from its constitutional nature. The influence of the 1983 Constitution's characterization of the then-City Court of Atlanta will have to be considered in due course, but as of 1955 and 1956 there is a compelling argument that the Traffic Court of Atlanta was a unique and specialized hybrid court, and not a municipal court.

The 1967 amendments effectively completed the process of "hybridization" by recreating the City Court as a court authorized to exercise jurisdiction not only over state traffic misdemeanors, but also over ordinance violations, creating a fully "hybrid court" beyond even that of which the Georgia Supreme Court had spoken in Grant v. Camp. The same arguments as to the General Assembly's creation of this court "in and for" the city that applied to the 1955 and 1956 statute and amendment apply to the 1967 statute and amendment. Beyond that, there is no evidence to suggest that the General Assembly intended to change the nature of the City Court of

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478. See supra notes 360-80 and accompanying text. The 1972 Judicial Administration report is best read as having overlooked or ignored the city court. The report's charts did not list a “city court” in Fulton County. See JUDICIAL ADMINISTRATION, supra note 15, at 202. The city court was, of course, not included in references to certain civil municipal courts. See id. at 10, 52, 202. However, the only references to municipal courts in the sense of courts of municipalities were to mayors, recorders, and police courts created by municipal charters, which the city court was (and is) not. See id. at 10, 51-52, 56, 84-85.
479. 105 Ga. 428, 429-30, 31 S.E. 429, 429 (1898).
480. See supra text accompanying notes 382-83, 393, 453; notes 466-69 and accompanying text.
Atlanta. Rather, the purpose manifestly was to bring all traffic cases within the jurisdiction of a single court. 481

3. The 1983 Constitution’s Ambiguous Answers About the Nature of the City Court of Atlanta

That brings us, then, back to the provisions of the 1983 Constitution, which address the municipal courts and, to one extent or another, the City Court of Atlanta. The 1983 Constitution’s treatment of the City Court of Atlanta as a municipal court creates a deep paradox as to the court’s nature and authority because under pre-1983 law a statutory city court and a municipal court were not the same thing. If the City Court of Atlanta was not a “municipal court” as that term had been used prior to the 1983 Constitution, then what did it become as a result of the provisions applicable to it? There are no fewer than four possibilities for answering these questions.

It will be recalled 482 that the 1983 Constitution creates two paths by which the City Court of Atlanta may have continued to exist: the judicial article, Article VI, which created the municipal courts, and the miscellaneous provisions of Article XI, by which amendments to earlier constitutions could be continued. 483 The City Court of Atlanta’s continuation under Article XI is not subject to reasonable doubt. 484 Its treatment as a municipal court under Article VI, however, requires closer examination.

It is clear enough that the 1983 Constitution expressly refers to the City Court of Atlanta as a municipal court. It is less clear

481. Recognizing the city court’s history, the ABA TRAFFIC COURT PROGRAM, supra note 404, treated the court as a “unique” entity, and clearly distinguished it from both state- and local-level municipal courts. See supra text accompanying notes 404-09. Still later, the continued existence of most of the “city-court statute,” O.C.G.A. §§ 15-8-1 to -5 (1999) (Code section 15-8-6 clearly applies to the city court), can be explained only by its application, at least in part, to the City Court of Atlanta, since it is not needed for the state courts. See supra note 122. Whether it is needed given the provisions of the 1987 and then the 1996 local laws recreating the City Court of Atlanta seems equally unlikely, see supra text accompanying notes 389-403, 438-445, but that does not require detailed consideration here.
482. See supra text accompanying notes 381-403 and accompanying text.
483. See supra notes 410-29 and accompanying text.
484. See supra notes 422-24 and accompanying text. A critical caveat to the continuation principle, however, is that the City Court of Atlanta continued to exist with significant organic limitations in its city-court incarnation. See supra text accompanying notes 430-435.
whether the Constitution does so on a prospective basis or whether the General Assembly intended to refer to the City Court as having been a municipal court prior to July 1, 1983. Article VI, Section 10, Paragraph 1 states that "[m]unicipal courts not otherwise named herein, of whatever name, shall continue as and be denominated municipal courts, except that the City Court of Atlanta shall retain its name."\textsuperscript{485} Article VI, Section 1, Paragraph 1 provides that "[e]xcept as provided in this paragraph and in Section X, municipal courts, county recorder's courts and civil courts in existence on June 30, 1983, and administrative agencies shall not be subject to the provisions of this article."\textsuperscript{486} That reference is more equivocal since it does not expressly mention the City Court of Atlanta, although the City Court was one of the remaining special courts and, thus, a court that one would have expected to see referenced in that provision of Article VI.\textsuperscript{487}

The four possible interpretations of the 1983 Constitution may be addressed in light of the above background. Under Article VI, the first possibility is that no City Court of Atlanta that was a municipal court was in existence on June 30, 1983, at least as those terms had theretofore been used by the General Assembly, and that the city court never became a municipal court.\textsuperscript{488} The existence of the court according to its original legislation and constitutional amendments was ensured by the miscellaneous provisions of Article XI permitting the continuation of amendments to earlier constitutions and by the 1986 constitutional amendment thereunder.\textsuperscript{489} That would make the court subject to such provisions of Article VI, if any, as might apply to it as a city court. That possibility is contradicted, at least as to the post-1983 city court, by the constitutional language.\textsuperscript{490}

The second possibility is to read the reference to municipal courts as meaning those courts that were municipal courts, and accurately so described by the 1983 Constitution. Since the court

\textsuperscript{485} Ga. Const. art. VI, § 10, ¶ 1.
\textsuperscript{486} Id. § 1, ¶ 1.
\textsuperscript{487} See McFadden et al., supra note 6, §§ 2-15 to 2-21 (four county recorder's courts, two civil courts, one City Court of Atlanta, and the municipal court of Columbus).
\textsuperscript{488} See supra text accompanying notes 459-521.
\textsuperscript{489} See supra notes 410-29 and accompanying text.
\textsuperscript{490} See supra text accompanying note 412.
was a municipal court as of July 1, 1983, as Article VI, Section 10, Paragraph 1 clearly states, it would be subject to all those provisions of Article VI applicable to municipal courts, including those empowering the General Assembly to grant jurisdiction over state misdemeanors to the municipal courts.

As a third possibility, if the City Court was a statutory city court or a “hybrid court” prior to July 1, 1983, the General Assembly may be heard as having declared that the City Court of Atlanta was theretofore a municipal court.\textsuperscript{491} Can this be so? The 1983 Constitution took effect by its own terms on July 1, 1983.\textsuperscript{492} It is not entirely clear how to resolve the question, given that general principles of prospectivity and retroactivity are Euclidean constructs that may well have no application in the relativistic and transmutational context of a constitutional revision. As a working premise, however, there is no reason not to apply those principles, as they presumably were on the minds of the constitutional drafters.\textsuperscript{493}

The Georgia Supreme Court held in \textit{Donaldson v. Department of Transportation},\textsuperscript{494} with regard to a constitutional amendment restoring sovereign immunity to insured state agencies, that “[i]t is a well settled principle of law that acts of the General Assembly are ordinarily given prospective effect unless the language of the act imperatively requires retroactive application.”\textsuperscript{495} Neither provision of Article VI is so compelling as that, and certainly neither is expressly retrospective, leading to the conclusion that the characterization of the City Court of Atlanta as a municipal court should be prospective only.

If one were to acknowledge that the provisions might have some retrospective construction, still there would be no reason to attribute a counterfactual statement or revisionist intent to the General Assembly in its treatment of the City Court. There is no indication that the General Assembly attempted to take advantage of a constitutional revision to re-cast the history of a court, even if it had perceived some need to do so, and the view

\textsuperscript{491} \textit{Cf.} Griggs v. City of Macon, 154 Ga. 519, 114 S.E. 899, 903 (1922) (holding city council may not declare to be that which is not supported by the facts).

\textsuperscript{492} \textit{See} GA. CONST. art. XI, § 1, ¶ 8.


\textsuperscript{494} 262 Ga. 49, 414 S.E.2d 638 (1992).

\textsuperscript{495} \textit{Id.} at 52, 414 S.E.2d at 641.
that the General Assembly had used the processes of constitutional history to rewrite the City Court’s history would be to stretch the philosophical underpinnings of the legislative-fact doctrine well past the breaking point.496

As a fourth possibility, therefore, a prospective interpretation of those Article VI provisions leads to the conclusion that the 1983 Constitution transfigured the City Court of Atlanta into one of three new creatures: a municipal court, a hybrid court, or a hybrid court of dual nature, being at once a municipal court and a miscellaneous continuation of its earlier incarnation as a statutory city court. The hybrid-court/dual-nature interpretation has the upper hand for three reasons. First, the 1983 Constitution treats the City Court of Atlanta in both Article VI and Article XI without any provision reconciling the differences or contradictions in those two articles.497 Second, the City Court was continued under Article XI with no express change in its

496. The doctrine of legislative fact usually arises in equal protection cases, where one of the questions is whether the facts supporting the legislature’s determination are true. See, e.g., Vance v. Bradley, 440 U.S. 93 (1979); City of Atlanta v. Wilson, 287 Ga. 185, 475 S.E.2d 896 (1996). “Legislative facts” are those determinations about public policy or social condition that underlie a legislative rule of law. See Advisory Committee Note to Fed. R. Evid. 201, 28 U.S.C. App., pp. 683-84; Archibald Cox, The Role of Congress in Congressional Determinations, 40 U. Cinc. L. Rev. 187, 229-30 (1971); see also Bi-Metallic Investment Co. v. State Bd. of Equalization, 239 U.S. 441 (1915); Londoner v. Denver, 210 U.S. 373 (1908). Under rational basis review, the truth of the legislature’s findings is irrelevant. See FCC v. Beach Communications, 508 U.S. 307 (1993). It is not entirely clear that the doctrine can or should be extended, however, even (or perhaps especially) during a constitutional revision, to legislative “findings” of historical fact as to the nature, jurisdiction, and power of a judicial entity that are demonstrably and unequivocally not true. To be sure, there is precedent for the contrary proposition, that the theory can be applied to false legislative “findings.” In George Orwell, Animal Farm (1949) (Signet ed. 1974), the processes of constitutional change worked the most fundamental of shifts in historical fact, from the principle that “[a]ll animals are equal” to “[a]ll animals are equal, but some animals are more equal than others.” The possibility of a quantum shift in the nature of the City Court of Atlanta would be somewhat less radical, but if the court was indeed a “municipal court” it would prompt the student of that court’s history to wonder, as did Clover the horse and Muriel the goat in Animal Farm, why it was that “somehow or other, the last two words had slipped out of the animals’ memory” from 1955 to 1983. Id. at 88; see id. at 39. But as to the City Court of Atlanta, the real answer to that question probably lies not in constitutional revisionism, but in an approach best summed up by Squealer the pig’s observation, “Tactics, comrades, tactics!,” id. at 62, born of the General Assembly’s historical need to avoid the limitations on the city court created by other statutes and constitutional provisions.

497. See supra notes 410-29 and accompanying text.
nature, as was necessarily the case under that provision.\footnote{See GA. CONST. art. XI, § 1, ¶ 4.} Third, nothing was done (or has ever been done) to refashion the City Court’s organic, jurisdictional, or empowering provisions, and both its historical statutes and the 1988 and 1996 acts are inconsistent with any view that the court is purely a municipal court.\footnote{See supra notes 436-45 and accompanying text.} The one exception to the comment that nothing was done to refashion the City Court might be the 1986, 1987, and 1994 statutes referring to the City Court of Atlanta,\footnote{See supra notes 422-28 and accompanying text.} but those statutes do not create or define the City Court, they are subject to some conflicting inferences, and even their operational significance is at best ambiguous.

The view of the City Court as a hybrid court of dual nature, however much prey to Justice Holmes’s fallacy of the crystalline word,\footnote{Towne v. Eisner, 246 U.S. 418, 425 (1918) ("A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.").} is nevertheless useful in explaining three related phenomena: the 1983 Constitution’s treatment of the City Court in two sets of provisions; the conflicting decisions of the Georgia Court of Appeals as to the nature of the City Court; and the General Assembly’s view as expressed in 1988 and 1996. After having correctly classified the court as a matter of appellate procedure in \textit{Williams v. City of Atlanta},\footnote{153 Ga. App. 323, 498 S.E.2d 362 (1996) (Beasley, J., with two judges concurring in judgment only). Judge Beasley’s opinion points out that since it is a municipal court, only Article VI, Section I, Paragraph I applies to the City Court of Atlanta.} the Georgia Court of Appeals had problems with the court’s taxonomy shortly after the adoption of the 1983 Constitution. A court of appeals panel incorrectly declared in \textit{Parnell v. City of Atlanta}\footnote{173 Ga. App. 602, 327 S.E.2d 568 (1985).} that the City Court of Atlanta was a “constitutional city court” whose decisions were appealable to the Georgia appellate courts under the Appellate Practice Act.\footnote{See supra notes 46-48 and accompanying text, text accompanying supra note 394, and note 385. See McFadden et al., supra note 6, § 2-21.} More recently, panels of the court of appeals have described the City Court of Atlanta as a municipal court, in \textit{Waller v. State},\footnote{http://readingroom.law.gsu.edu/gsulr/vol15/iss4/1} and as “a system of state
courts," in *City of Lawrenceville v. Davis*.\(^{508}\) For its part, the General Assembly has continued to treat the City Court as a miscellaneous continuation of its former statutory-city-court self.\(^{507}\)

As the preceding analysis suggests, and as will appear below, the *Waller* court is either right or half right under the 1983 Constitution, and the *Davis* court agrees with the General Assembly’s own view of what it was doing in the 1996 “re-creation” of the City Court of Atlanta as “a system of state courts.” But both propositions suggest that, instead of “re-creating” a new and more potent judicial engine in 1996, the General Assembly has instead “blown up” a perfectly serviceable ’56 Chevy—a Chevy that was expertly rebuilt in 1967, that puttered through the difficult 1970s and 1980s with minor repairs,\(^{508}\) and that received a 1983-vintage constitutional chip that was not properly plugged into the black box, which in turn wreaked havoc when the City Court went in for its two most recent overhauls in 1988 and 1996.

The most important indicia of the nature of the City Court of Atlanta, however—or at least of the General Assembly’s most recent views on the matter—are found in the 1988 statute granting “same-occurrence” misdemeanor jurisdiction and the 1996 statute “re-creating” the City Court of Atlanta with that same expanded jurisdiction.\(^{509}\) While the 1988 statute may have been treated as a general law in form, it is a local law in substance, makes no mention of the City Court as a municipal court, and instead amends the 1967 statute.\(^{510}\) Therefore, the 1988 statute depends primarily for its constitutional legitimacy upon the proposition that the City Court of Atlanta is being treated as a “statutory city court” and not a municipal court.

The 1996 statute flatly declares that it “recreates” the City Court of Atlanta as “a system of state courts,” and makes no pretense whatsoever of treating the City Court as a municipal

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506. 233 Ga. App. 1, 502 S.E.2d 794 (1998) (Ruffin, J.) (dicta). The Author respectfully offers his appreciation for the *Waller* and *Davis* opinions, whose differences were the inspiration for this Article.
507. *See supra* notes 436-45 and accompanying text.
509. *See supra* notes 436-45 and accompanying text.
510. *See supra* text accompanying notes 430-37.
court.\textsuperscript{511} The search for a reason for this language is not a long one. The arguable requirements of the 1983 Constitution that the General Assembly legislate by general law for Municipal Home Rule,\textsuperscript{512} and the more certain requirements of the Municipal Home Rule statute,\textsuperscript{513} put the General Assembly in a position where it either could not constitutionally grant same-occurrence misdemeanor jurisdiction\textsuperscript{514} to the City Court of Atlanta as a municipal court, or was at extreme risk if it attempted to legislate solely for that court in a population bill.\textsuperscript{515} The Georgia Supreme Court had very recently suggested in \textit{Lomax v. Lee}\textsuperscript{516} that it would treat a population law with a 300,000 bracket as a local law within the contemplation of Article III, Section VI, Paragraph IV, of the 1983 Constitution\textsuperscript{517} and the implementing legislation defining population bills.\textsuperscript{518} The alternative of treating the City Court of Atlanta as "a system of state courts,"\textsuperscript{519} going so far even as to conform the City Court's jury trial practice from its over forty years of five-member juries\textsuperscript{520} to the six-member jury required for state courts,\textsuperscript{521} was a clearly preferable alternative to driving the curved and difficult roads of Municipal Home Rule.

The foregoing analysis, like that concluding that the City Court of Atlanta is and always has been a municipal court, establishes with some level of convincing force the equal and opposite proposition that the City Court of Atlanta was prior to the 1983 Constitution, and remained thereafter at least in part, a statutory city court. Accordingly, the constitutionality of the court will be addressed alternatively, based on the view that it either was not a municipal court or was not treated as such at the time of the 1988 and 1996 statutes.

\textsuperscript{511} See supra notes 438-45 and accompanying text.
\textsuperscript{512} See supra text accompanying notes 248-59.
\textsuperscript{513} See supra notes 281-307 and accompanying text.
\textsuperscript{514} See supra text accompanying notes 248-59.
\textsuperscript{515} See supra text accompanying notes 304-07.
\textsuperscript{516} See supra text accompanying notes 430-35.
\textsuperscript{517} See supra text accompanying notes 281, 285.
\textsuperscript{518} See supra notes 281-307 and accompanying text.
\textsuperscript{519} See supra text accompanying note 439.
\textsuperscript{520} See supra text accompanying notes 348, 398.
\textsuperscript{521} See supra notes 443-44 and accompanying text.
II. The Questionable Constitutionality of the 1988 and 1996 City Court of Atlanta Statutes

The City Court of Atlanta is in deep constitutional and statutory trouble for as many as six reasons, whether one elects to treat the court as purely a municipal court, as purely a state or city court, as purely a hybrid court, or as a hybrid court of dual nature under the 1983 Constitution. First, the General Assembly's 1996 re-characterization of the court as "a system of state courts of limited jurisdiction" is inconsistent with the exclusive-power provisions of the 1983 Constitution and with Article VI's treatment of the court as a municipal court.522 Second, the General Assembly has, if it has done anything in the 1996 act, created a non-uniform state court in violation of the Article VI uniformity provisions.523 Third, the General Assembly's expanding the City Court's jurisdiction in 1988 and 1996, from traffic offenses to "all crimes and other offenses arising out of the same occurrence as such traffic offense, not above the grade of misdemeanor" and the similar expansion of ordinance jurisdiction, is fatally inconsistent with the 1967 and 1986 amendments and runs afoul of the principle stated in Lomax v. Lee.524 Fourth, if the population-bill restrictions apply to court-related legislation, the change in the nature of the court in the 1996 law is not permitted by the General Assembly's implementing legislation. Moreover, the 1996 statute does not purport to amend, but rather supersedes the 1967 statute and "recreates" the City Court.525 Fifth, the 1996 law violates the Yazoo Fraud subject-matter requirements because the preamble of the bill does not fairly describe the broadening of the court's jurisdiction or, if the bill was intended to create a municipal court, the nature of that court.526 Sixth, even assuming that the General Assembly might have treated the City Court of Atlanta as a municipal court in the 1996 Act, to have granted same-occurrence-misdemeanor jurisdiction by local law instead of a combination or tiered population bill would have violated the

522. See infra notes 528-52 and accompanying text.
523. See infra notes 533-58 and accompanying text.
524. See infra notes 557-72 and accompanying text.
525. See infra text accompanying notes 573-77.
526. See infra text accompanying notes 578-90.
general-law provisions to the extent those apply to court-related legislation.\textsuperscript{527}

A. The System-of-State-Courts Defect

The first inquiry into the 1996 law’s constitutionality begins by identifying the court that the General Assembly expressly “re-created” therein as the City Court of Atlanta. Both the terms “state court” and “city court” have had specific (or in the case of the latter, constitutionally cabined) meanings in the language of constitutions and statutes for twenty-five years in the case of the former term and nearly 150 years in the case of the latter.\textsuperscript{528} Under the language of the 1996 act, the City Court of Atlanta is either a “state court” under Article VI “to be known as a city court”\textsuperscript{529} or a “statutory city court” subject to its continuation amendment under Article XI.\textsuperscript{530}

Simply put, the City Court of Atlanta is not a state court within the meaning of the 1983 Constitution.\textsuperscript{531} It cannot be fairly described as a court with misdemeanor jurisdiction concurrent with the superior courts, within the meaning of the 1970 or the 1983 State Court statute. Rather, its jurisdiction is limited to traffic and same-occurrence misdemeanors and ordinance violations. That the City Court is somehow a state court is no better an argument after the 1988 amendments than it was before the amendments, a time when it still lacked same-occurrence misdemeanor jurisdiction. In this regard, the City Court is like the Civil Courts of Bibb\textsuperscript{532} and Richmond\textsuperscript{533}

\textsuperscript{527} See infra text accompanying notes 591-99.

\textsuperscript{528} See City of Thomaston v. Bridges, 264 Ga. 4, 439 S.E.2d 908 (1994); Bibb County v. Hancock, 211 Ga. 429, 432, 86 S.E.2d 511 (1955); supra notes 22-123 and accompanying text; text accompanying notes 154-56. Any ambiguities in the name “city court” as relates to the municipal courts are not germane to whether the city court is a proper state court.

\textsuperscript{529} See supra notes 438-45 and accompanying text.

\textsuperscript{530} See supra notes 335-445, 459-521 and accompanying text.

\textsuperscript{531} See supra notes 121-22, 438-45 and accompanying text; text accompanying notes 154-166; see also III ART. VI TRANS. (Memorandum from Melvin B. Hill, Jr., Dec. 22, 1980), Commentary at 3 (constitutional classes of courts cannot be abolished and their fundamental nature cannot be changed).


Counties, which did not become state courts in 1970 or 1983 because of their limited criminal jurisdiction. With equal simplicity, the 1983 Constitution is unequivocal in denying the General Assembly any power to create any other class of "state courts" than those listed in the Constitution. The judicial power as to trial jurisdiction is "vested exclusively" in the superior, state, juvenile, probate, and magistrate courts. The General Assembly lost the power to create "other courts" that had been granted by every other Georgia Constitution since that of 1789. The explicit prohibition of the "vested exclusively" language is far too powerful in its own right to be ignored, and the drafting history serves only to underscore the point. In June 1980, the Article VI drafters specifically considered language like that in prior Constitutions that would have given the General Assembly the power to create additional classes of state courts, but eliminated that language from the later drafts. The drafters' comments make clear that the chosen language would prevent the creation of additional classes of state courts. If the City Court of Atlanta is a state court as the 1996 statute indicates, it is, therefore, unconstitutionally "recreated" by that statute.

Turning to the express language of the 1983 Constitution on the City Court as a municipal court, the city court's 1996 statute and its constitutional amendments do not admit of any construction that would permit the conclusion that the General Assembly had "re-created" a municipal court. The Georgia Supreme Court held in Early v. Early that the intent of the General Assembly is to be determined from a statute's plain and unambiguous language and that "judicial construction is not

534. See MCFADDEN ET AL., supra note 6, §§ 2-18, 2-19.
535. GA. CONST. art. VI, § 1, ¶ 1. Cf supra note 187 (superior courts as having exclusive jurisdiction in criminal cases under 1789 Constitution).
536. See supra notes 18, 37-38, 46, 125, 127 and accompanying text (1868 and 1845 constitutions not quoted).
538. See III ART. VI TRANSCRIPT (Aug. 8, 1980), at 30-32; id. (June 27, 1980), at 55-56, 82-83.
only unnecessary but is forbidden" in such circumstances. An exception for a "saving construction" applies under the rule of City of Jesup v. Bennett, in which the supreme court held that it would not apply the plain-meaning rule when giving the statute its literal meaning (the General Assembly's inimitable use of "west" when it meant "east") would amount to "ascribing to the legislature a wholly unreasonable intention or an intention to do a futile and useless thing." In Housing Authority v. Greene, the supreme court used the Bennett rule to help the General Assembly avoid "wholly unreasonable" results, and in the process required that the General Assembly's language create an absurdity.

The present circumstance is significantly different, and lies well beyond the limits of the Bennett rule. The General Assembly's decision to re-create the City Court of Atlanta as a "system of state courts" not only can be rationally explained, but the changes from the 1967 language bespeak an intentionality that goes beyond the "obvious misdescription" of Bennett and the "wholly unreasonable" result in Greene. The 1983 Constitution provided the General Assembly with the following three theories as to the nature of the City Court of Atlanta: a purely municipal court, a hybrid court, and a hybrid, dual-natured municipal court, the last two requiring continuation under the miscellaneous amendment provisions. The General Assembly instead purported to create in 1996 a "system of state courts," which is defensible only on the basis of the "miscellaneous continuation" theories. The Georgia

542. Id. at 609, 176 S.E.2d at 83.
544. See supra notes 448-521 and accompanying text.
545. See supra notes 459-521 and accompanying text. The interpretation of the 1996 Act, that the General Assembly might have been using its power under "Article VI, Section I," to legislate for the City Court of Atlanta as a "municipal court," does not withstand analysis. Article VI, Section I also gives the General Assembly the power to legislate for the "state courts." Any "municipal court" interpretation of 1996 Ga. Laws 627, is effectively eliminated by the General Assembly's inconsistent recharacterization of the court as "a system of state courts." Even a continued reference to the court as "a system of traffic courts" might have permitted (or at least might not have excluded) the inference that the "traffic-court" reference was to a "municipal court" consistent with the court's express constitutional nature under Article VI, but the contrary change in
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Supreme Court's Bennett and Greene decisions do not contemplate judicial blue-pencilling simply because the General Assembly happens to have made an unconstitutional choice.\textsuperscript{546} If that were the rule, decisions such as Lomax v. Lee\textsuperscript{547} would never be rendered because the supreme court would simply rewrite the statute to accomplish some perceived, different legislative intent from that provided in the statute.

The Georgia Court of Appeals held in Hannah v. State\textsuperscript{548} that "[c]onstitutions are the result of popular will, and their words are to be understood ordinarily in the sense they convey to the popular mind."\textsuperscript{549} The words of Article VI, Section I, Paragraph I are plain and readily understood. The superior, state, and other enumerated courts are the "exclusive" repositories of state judicial power, and that provision precludes the creation of a different "system of state courts" that are not among those courts, or of a nonconstitutional "city court" not authorized by a continuation amendment under Article XI.\textsuperscript{550} The City Court of Atlanta is not a state court under the 1983 Constitution or the 1983 State-Court statute,\textsuperscript{551} and to the extent it purports to have become a "city court," Article VI does not permit the General Assembly to create such a court. If the City Court of Atlanta qua city court is to be the subject of post-July 1, 1986 legislation, therefore, that legislation can be justified, if at all, only under its 1967 and 1986 constitutional amendments.\textsuperscript{552}

\textbf{B. The Non-Uniformity Defect}

The second constitutional defect in the 1988 and 1996 laws does not require extended explanation. If the City Court of Atlanta is now "a system of state courts," or even a "state court"

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language must be presumed to be significant. As the supreme court observed in Denton v. Con-Way Southern Express, Inc., 261 Ga. 41, 44, 402 S.E.2d 289, 271 (1991), "it is not to be supposed that any words have been employed without occasion . . . ."
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\textsuperscript{548} 97 Ga. App. 188, 102 S.E.2d 624 (1958).

\textsuperscript{549} \textit{Id.} at 190, 102 S.E.2d at 628.

\textsuperscript{550} \textit{See supra} notes 145, 414-15 and accompanying text.

\textsuperscript{551} \textit{See supra} notes 121-22 and accompanying text; text accompanying notes 154-56.

\textsuperscript{552} \textit{See supra} notes 381-85 and accompanying text; text accompanying note 415; infra notes 557-72 and accompanying text.
in the singular, in its jurisdiction and procedures, as a cursory review of the State Court statute and the 1996 City Court of Atlanta statute makes clear. The 1983 Constitution prohibits non-uniformity in state courts’ jurisdiction in two provisions, Article VI, Section 1, Paragraph 5, and Article VI, Section 3, Paragraph 1. This problem cannot be corrected by making the City Court of Atlanta a state court because a state court exists within a county and the City of Atlanta exists in both Fulton and DeKalb counties, and because Fulton and DeKalb Counties already have state courts and the better argument is that there may be only one state court per county.

C. The Continuation-Amendment Defect

The unequivocal holding of Lomax v. Lee is that the General Assembly may not legislate outside the boundaries of a pre-1983 constitutional amendment continued under Article XI of the 1983 Constitution. The 1967 constitutional amendment is expressly limited to misdemeanor cases “arising under” state traffic laws, state laws regulating ownership and operation of motor vehicles, and city charter provisions and

553. See Lomax v. Lee, 261 Ga. 575, 579, 408 S.E.2d 788, 791 (1991) (200,000 city population bracket could have been intended only for the City of Atlanta); City of Atlanta v. Gower, 216 Ga. 368, 116 S.E.2d 738 (1960) (same). But see Adair v. Ellis, 83 Ga. 464, 10 S.E. 117 (1889) (population law applicable to Atlanta was general law). But cf. Gordon v. Green, 228 Ga. 505, 510, 186 S.E.2d 719, 722 (1972) (population bracket of 108,000 would permit other political subdivisions to become affected).

554. Compare O.C.G.A. §§ 15-7-1 to 88 (1999), with 1966 Ga. Laws 627. The same would be true, of course, for a comparison between the 1996 law and any statute of the other constitutional classes of courts. On the question of vesting the state courts with ordinance jurisdiction, which has not been done, see Poole v. State, 229 Ga. App. 408, 494 S.E.2d 251 (1997); O.C.G.A. § 18-1-4 (1999); infra note 680.

555. See Ga. Const. art. VI, § 1, ¶ 5; id. § 3, ¶ 1. The decision in Dillon v. Continental Trust Co., 179 Ga. 198, 175 S.E.2d 652 (1934), approved the non-uniformity of the then municipal court of Atlanta in the face of the uniformity provision of the 1877 Constitution because of that court’s local constitutional amendment. The distinction from the present case is that the City Court of Atlanta has gone outside its 1897 and 1966 constitutional amendment. See infra notes 381-445 and accompanying text; see also Wojcik v. State, 260 Ga. 260, 392 S.E.2d 525 (1990); MCFADDEN ET AL., supra note 6, § 2-10.

556. See supra notes 143-53 and accompanying text; infra notes 600-81 and accompanying text.


558. See supra text accompanying notes 414-15.
ordinances regulating either of those subjects. The 1986 continuation amendment simply incorporates the earlier amendment by reference and description. The 1988 and 1996 laws purport to go beyond those limits by granting jurisdiction to the City Court of Atlanta over "all other crimes and offenses arising out of the same occurrence as such traffic offense [and] all other offenses against laws and ordinances of such city arising out of the same occurrence as such traffic offense." The 1988 and 1996 statutes are unconstitutional to that extent.

The 1988 and 1996 statutes purport to work a grammatically, logically, and constitutionally insupportable change from the 1967 and 1986 amendments. The significant matter, for all three purposes, is the change in the participial phrase from "arising under the traffic laws" to "arising out of the same occurrence." The Georgia appellate courts have consistently interpreted the phrase "arising under" as applying to the object immediately following the preposition "under," whether the phrase was used in a statute, in a judicial decision to describe a statute, or in a judicial decision to describe some circumstance such as a contract. In particular, the courts have used the phrase "arises

559. See supra notes 381-85 and accompanying text.
560. See supra notes 422-24 and accompanying text.
561. 1996 Ga. Laws 627, § 3(1)-(2), at 629-30 (emphasis supplied); 1988 Ga. Laws 261, § 3 (emphasis supplied); see supra notes 436-45 and accompanying text.
under” to distinguish between two different sources of two rules of law. An “offense arising under the traffic laws” and an “offense arising out of the same occurrence” simply do not mean the same thing, either verbally or analytically. That difference compels the conclusion that the expansion of jurisdiction was unconstitutional.

A city court defendant raising the continuation-amendment issue could expect the argument that the 1967 statute covers misdemeanors under laws “relating to and regulating traffic,” and that the italicized phrase is broad enough to include non-traffic, same-occurrence misdemeanors. The first response is that the 1967 constitutional amendment, not the statute, controls. Neither the 1967 amendment nor the 1986 continuation amendment used that language; the latter continued the former, but did not by its terms continue the 1967 statute. Similarly, the notice of the constitutional amendments did not use the “relating to” language. The second response is that the use of the statutory phrase amounts to nothing more than a contemporaneous interpretation of the constitutional language “arising under,” as shown both by the scope of the 1967 statute and the twenty-one years (thirty-three years from the 1955 statute) in which the court’s jurisdiction remained unchanged. The language “arising under” is


568. See id.


570. See supra notes 335-437 and accompanying text. Although the language is not
narrower and therefore requires a narrowing construction of the language "relating to and regulating." The third response is that any same-occurrence-misdemeanor law does not "relate" to traffic, but to whatever offense is defined, and that the coincidence of the offense and a traffic violation is just that, a coincidence that is both textually and legally irrelevant to the definition of the offense.

D. The Population-Bill Defect

If the general-law requirement, local-law limitations, and population-law limitations of Article III apply to court-related legislation, the change in the City Court's nature from "a system of traffic courts" called a city court or from a municipal court to "a system of state courts" with expanded same-occurrence misdemeanor jurisdiction is improper, because it is a change in "specific subject-matter" for population-law purposes. The implementing provisions state that amendments to pre-July 1, 1988 population laws affecting political subdivisions having "more than" a benchmark population are permitted only "with respect to specific subject matter contained in such bills on July 1, 1988." The specific subject-matter of the 1967 Act, traffic jurisdiction, was timely amended in 1988 to add "same-occurrence misdemeanor" and "same-occurrence-ordinance" jurisdiction, but that amendment is unconstitutional for other reasons. The 1996 statute does not literally amend the earlier statute, but purports to replace

*identical, such that the presumption of constitutional and statutory congruence might not be as strong as in Gwinnett County v. Yates, 285 Ga. 504, 458 S.E.2d 791 (1995), still the broader principle of Yates suggests that the heavy burden of persuading the courts that a constitutional "arising under" should be interpreted by reference to a statutory "relating to and regulating" should be placed on the proponent of that novel position. See Whaley v. State, 280 Ga. 384, 393 S.E.2d 681 (1990) (stating that constitutional provision controls statute).

571. See supra notes 260-330 and accompanying text.
572. See supra notes 281-307 and accompanying text.
574. See supra notes 528-72 and accompanying text.
the statute and "recreate" the court.\textsuperscript{577} The 1996 statute violates the implementing provisions to that extent.

\textbf{E. The Yazoo-Fraud Defect}

Article III, Section V, Paragraph III of the 1983 Constitution provides that "[n]o bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof."\textsuperscript{578} The provision traces its lineage to the 1798 Constitution,\textsuperscript{579} and is known as the "Yazoo Fraud" provision because it arose from the surprise legislation by which Mississippi and Alabama were carved out of the territory of Georgia.\textsuperscript{580} The cases declare that the provision is to be applied "reasonably,"\textsuperscript{581} and it must be conceded that the Georgia Supreme Court has seldom struck down a statute for a Yazoo-Fraud violation. If the Yazoo-Fraud provisions ever had any significance for the State of Georgia beyond the famous event that gave rise to them, however, then they should be applied in the case of the 1996 City-Court statute.

The Georgia Supreme Court has determined compliance with the Yazoo-Fraud requirements by examining the title or preamble of the proposed law and has distinguished between the general\textsuperscript{582} and particular\textsuperscript{583} subjects of the law. In \textit{Gainer v. Ellis},\textsuperscript{584} the supreme court upheld a law against the challenge that a judicial position had been misdescribed in the preamble, holding that the public had adequate notice of the content of the law.\textsuperscript{585} In \textit{Cowan v. City of Atlanta},\textsuperscript{586} the court struck down an amendment to the 1874 Atlanta Charter because it did not give notice in the title that the act contained not only amendments

\textsuperscript{577} See supra notes 438-45 and accompanying text.
\textsuperscript{578} Ga. Const., art. III, § 5, ¶ 3.
\textsuperscript{579} See Mayor of Macon v. Hughes, 110 Ga. 795, 36 S.E. 247 (1900); Savannah v. State ex rel. Green, 4 Ga. 26 (1848).
\textsuperscript{580} See Mead Corp. v. Collins, 258 Ga. 239, 239-40 n.2, 387 S.E.2d 700, 702 n.2 (1989); Cady v. Jardine, 185 Ga. 9, 10, 193 S.E. 869, 870 (1937); Sade, supra note 18, at 147-54.
\textsuperscript{581} Cady, 185 Ga. at 10, 193 S.E. at 870.
\textsuperscript{582} See id.
\textsuperscript{585} See id.
\textsuperscript{586} 177 Ga. 470, 170 S.E. 356 (1933).
to the city charter but also amendments to ordinances enacted by the city council.\textsuperscript{587}

Whether a Yazoo-Fraud defect exists in the 1996 law might depend upon which arguments were advanced to sustain the law as constitutional. There are two subjects of argument: the nature of the court and the expansion of jurisdiction. As to the latter, the Solicitor in a same-occurrence-misdemeanor case would necessarily have to argue that the court had jurisdiction over the same-occurrence misdemeanor. That argument would fail because the 1996 preamble makes no reference whatsoever to jurisdiction over offenses other than traffic violations.\textsuperscript{588} The former becomes an issue if the Solicitor were to argue that the City Court was in fact a municipal court as of 1996 and was so treated under the statute. There is no mention of the term municipal court in the preamble, and nothing therein that might give notice that the General Assembly was basing its action upon the City Court’s status as a municipal court.\textsuperscript{589} Presumably the argument would be made that under \textit{Gainer} there was at worst a misnomer as to the court’s nature, and no one was misled thereby. To the contrary, it would appear that because the General Assembly had a choice to make among at least two alternatives in describing the basis for its actions,\textsuperscript{590} there was all the more reason to insist upon clear notice in the preamble of what the General Assembly was doing.

\textit{F. The Municipal-Court Defect}

The constitutional defects in the 1988 and 1996 statutes are not cured by analyzing the problem as though the City Court of Atlanta is, always was, or has been since 1983, a municipal court. Rather, the City Court thereby simply runs into a different set of problems. The simplest defect of the City-Court-as-municipal-court theory under the 1988 and 1996 statutes is a textual rather than a constitutional defect. The General Assembly did not treat

\textsuperscript{587} See \textit{id. But see} Porter v. Calhoun County Bd. of Comm’rs., 252 Ga. 446, 314 S.E.2d 649 (1984) (application of Magistrate Court Act to terminated small claims court not mentioned in caption).
\textsuperscript{588} See 1996 Ga. Laws 627 (Preamble).
\textsuperscript{589} See \textit{id}.
\textsuperscript{590} See supra notes 448-521 and accompanying text.
the City Court of Atlanta as a municipal court in either statute. The second defect is that, under *Lomax v. Lee*, the 1967 constitutional limitation of the City Court to traffic-related offenses renders the court, as it now exists and even as a municipal court, an irretrievably insufficient vehicle for carrying same-occurrence misdemeanor jurisdiction.

Because the general-law provisions probably apply to grants of misdemeanor jurisdiction to the municipal courts, it is clear that the 1988 and 1996 statutes granting “same-occurrence” misdemeanor jurisdiction to the City Court are not constitutional for two reasons. First, those statutes are population bills treated as general statutes, but they are not proper amendments to the 1967 statute under the implementing provisions and the treatment of 300,000-bracket laws as local laws in *Lomax v. Lee*. Second, because the exception for amendments to existing population statutes cannot be used, one of the other exceptions in the implementing legislation must be used. However, unlike the Large-County Probate-Court statute, which affects ten counties, the 1988 and 1996 statutes cannot reasonably be described as combination or tiered population laws and do not affect three or more geographic areas and, therefore, are not proper population laws under the implementing legislation.

Any solution to the City Court’s unconstitutionality must, however, consider how the statute should be drafted assuming that the City Court were converted to or otherwise properly treated as a municipal court. If the City Court of Atlanta could have been recreated as a municipal court, it may be that the General Assembly could have granted “other misdemeanor” and “other ordinance” jurisdiction to the court by using its power under Article VI, Section 1, Paragraph 1 to empower the court as a municipal court, and then, by an appropriate amendment to the Atlanta Charter of 1996, withdrawing that

591. *See supra* notes 436-45 and accompanying text.
593. *See id.*
594. *See supra* notes 219-330 and accompanying text.
595. *See supra* notes 281-307 and accompanying text.
596. *See supra* text accompanying notes 430-35.
597. *See supra* notes 288-302 and accompanying text.
598. *See supra* notes 448-521 and accompanying text.
jurisdiction from the municipal court of Atlanta. Such a statute would have to comply with the general-law requirements of Article III, Section 6, Paragraph 4, which would mean legislating either for three or more geographic areas or for combination or tiered classes of municipal courts, not simply for the City Court of Atlanta.\(^{599}\) Such an undertaking is both more complex and more demanding than the General Assembly’s undertakings in the 1988 and 1996 sessions, but therein lies the potential to correct the problem.

### III. The Consequences of Unconstitutionality

The unconstitutionality of the City Court’s re-creation as a “state court” in 1996, on the one hand, and the unconstitutionality of the 1988 same-occurrence misdemeanor jurisdiction, on the other, raise separate and distinct problems. Defendants in the City Court have an excellent argument, subject only to five counter-arguments of which only the fifth is even potentially viable, that the former renders the court’s very existence unconstitutional from April 4, or July 1, 1996 onward, vitiating any and all of its judgments. The argument against the 1988 statute all but certainly renders the City Court’s same-occurrence misdemeanor judgments from March 24, or July 1, 1988, \textit{pro tanto} void and without effect for want of subject-matter jurisdiction.\(^{600}\) The arguments for and against these conclusions will be considered in turn.

#### A. The Unconstitutionality of the 1996 Statute

The conclusion that the City Court’s re-creation under the 1996 statute is unconstitutional raises a further question: whether the court has been replaced by operation of law with its 1967 predecessor, or whether the court has simply ceased to exist as a constitutional and statutory entity. The answer to this further, existential inquiry depends upon the construction and application of Georgia Code section 1-1-3 in light of the lack of

\(^{599}\) \textit{Id.}  
\(^{600}\) \textit{See infra} notes 612, 644 (effective dates of statutes). The consequences of the City Court’s unconstitutionality will be further addressed by the Author in a forthcoming article, \textit{The Procedural Alternatives for Litigation Over the Unconstitutional Organization and Jurisdiction of the City Court of Atlanta}. 
a “non-severability” clause in the 1996 statute. The straightforward application of the law leads to the conclusion that the City Court of Atlanta no longer exists. Code section 1-1-3 provides, in pertinent part, as follows:

Except as otherwise specifically provided in this Code or in an Act or resolution of the General Assembly, in the event any title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, item, sentence, clause, phrase, or word of this Code or of any Act or resolution of the General Assembly is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Code or of such Act or resolution, which shall remain of full force and effect as if such portion so declared or adjudged invalid or unconstitutional were not originally a part of this Code or of such Act or resolution.... The General Assembly further declares that it would have enacted the remaining parts of any other Act or resolution [i.e., other than the 1981 Official Code of Georgia Annotated] if it had known that such portion thereof would be declared or adjudged invalid or unconstitutional unless such Act or resolution contains an express provision to the contrary.\(^{601}\)

Prior to the enactment of the Official Code of Georgia Annotated in 1981, under \textit{Martin v. Ellis}\(^{602}\) and \textit{City Council v. Mangelly}\(^{603}\) the effect on a statute of a determination that one or more provisions were unconstitutional was determined without regard to the presence or absence of a severability clause. The Georgia Supreme Court's “mutual dependence” test stated that “the severability clause does not change the rule that in order for one part of a statute to be upheld as severable when another is stricken as unconstitutional, they must not be mutually dependent on one another.”\(^{604}\) The City of Atlanta could be expected to argue that, in light of the legislative determination of a public need for the City Court of Atlanta,\(^{605}\)

\(^{601}\) O.C.G.A. § 1-1-3 (1990) (emphasis added).
\(^{604}\) \textit{Id.} at 363-64, 254 S.E.2d at 319-20 (Hill, J., dissenting).
\(^{605}\) \textit{See} 1996 Ga. Laws 627, 628. Section 2 determines that the problems of traffic-law enforcement are “particularly acute” in areas of “densely concentrated populations,” that those laws are best enforced by specialized courts that are “state courts of limited
use of the "mutual dependence" test would have resulted in a holding that the General Assembly intended that the 1996 statute's repealing provisions should have no effect in the event that the "system of state courts" was not constitutionally created.

After 1981, the exact opposite is true under Code section 1-1-3, such that unless a post-1981 statute contains a "non-severability" clause, the unconstitutional provision is treated as never having been enacted, and the remainder of the legislation remains in force. What this means for the City Court of Atlanta under the 1996 statute is first that, because the provisions of the preamble and sections 1, 2, and 29 "re-creating" or re-"constituting" the City Court of Atlanta as "a system of state courts" are unconstitutional, they are treated as never having been enacted. Second, and more critically, it means that the specific repealer in section 30 of the 1996 statute, which repeals the 1967 statute and all amendments thereto, and the general repealer in section 31, remain in full force and effect. A simple repealer of a statute eliminates the law formerly contained therein. It follows that the City Court of Atlanta no longer exists as a constitutional and statutory matter, and that

jurisdiction," and that the 1996 statute will promote the public welfare. \textit{Id.} 606. \textit{See infra} notes 607, 609-10.

607. 1996 Ga. Laws 627, 627-28, 639. Section 1 creates the new City Court of Atlanta, and the preamble and section 2 state that the court is to be a "state court of limited jurisdiction." Section 29 provides that the 1987 court "is continued in existence, but on and after the effective date of this Act shall be constituted as provided in this Act." This language provides that the 1987 City Court of Atlanta was re-"constituted" just as the City Court was "re-created," \textit{i.e.}, as "a system of state courts," which renders section 29 just as unconstitutional as the preamble and sections 1 and 2. The unconstitutionality of this continuation provision distinguishes the present case from \textit{Robinson v. State}, 256 Ga. 564, 350 S.E.2d 464 (1986), where (had a non-abatement provision been included in the statute), the statute would not have extinguished pending prosecutions.

608. \textit{See supra} notes 528-90 and accompanying text.

609. \textit{See} 1996 Ga. Laws 627, 639. Section 30 provides, expressly and unequivocally, and without exception or provision for non-severability, that "[a]n Act to create a system of traffic courts... approved April 21, 1967 (1987 Ga. Laws 3360), and all amendatory Acts thereto, are repealed in their entirety." \textit{Id.}

610. \textit{See id.} Section 31 provides, expressly and unequivocally, and without exception or provision for non-severability, that "[a]ll laws and parts of laws in conflict with this Act are repealed." \textit{Id.}

the City Court has not existed since April 4, 1996, the effective date of the 1996 statute.\textsuperscript{612}

The hard lesson of this analysis in the context of a statute replacing one judicial entity with another is that the failed creation of the new entity and the severable repealer of the old entity result in no judicial entity at all. Since 1981, when the General Assembly expressly so provided in Code section 1-1-3 as part of its comprehensive and painstaking enactment of the Official Code of Georgia, a non-severability clause is required to create a juridical link between the creation language and the repealer language, such that if the former is declared unconstitutional the latter will fall with it as a matter of statutory interpretation. Under the express language of the 1996 statute, because such a juridical link is absent \textit{ab initio}, the repealer stands as a severable provision. The City Court therefore has been abolished by repealer, and does not exist, or at least does not exist in a form that is capable of the constitutional exercise of judicial power. It would do violence to apply a different rule of law under the express language of Code section 1-1-3 and the express language of the 1996 statute, however salutary the sentiments of section 2(1) and (3) of the 1996 statute in describing the public need for the City Court of Atlanta, because Georgia courts historically have rejected a public-policy rationale to avoid the consequences of constitutional and statutory analysis.\textsuperscript{613}

\textsuperscript{612} 1996 Ga. Laws 627, § 31, at 639. This effective date assumes that the 1996 statute is treated as local legislation under the rationale of \textit{Lomax v. Lee.} See 261 Ga. 575, 408 S.E.2d 789 (1991). \textit{Lomax} holds that a population bill affecting only Atlanta is local legislation, and thus comes within the provision of O.C.G.A. § 1-3-4(b) that states local legislation is effective immediately. See \textit{id}. If the 1996 statute were treated as the general legislation that it nominally purports to be, its effective date would have been July 1, 1996. See O.C.G.A. § 1-3-4(a)(1) (1990).

No one likes hard lessons, of course, and defendants in traffic misdemeanor cases can expect all manner of effort to be expended in avoiding the conclusion that the City Court of Atlanta does not exist. The prosecution must argue of necessity that Code section 1-1-3 does not have the effect described above. There are several potential arguments to support the prosecution’s position, which will be addressed in turn. All five are bad arguments, but the fifth provides enough plausibility that there is a risk of its acceptance.

The prosecution’s first position will be that Code section 1-1-3 was not intended to replace both the “mutual dependence” test in constitutional cases and the presumption of entirety and non-severability in statutory-interpretation cases, both of which preceded the enactment of the 1981 Code. In the language of the Mangelly decision, at least in statutory cases, a severability clause is simply an “aid to construction” to determine whether the court’s enforcement of some part of a statute is consistent with legislative intent. Three defects are fatal to this argument.

The first defect is that the Georgia Supreme Court applied the statute according to its terms in Jekyll Island–State Park Authority v. Jekyll Island Citizens Ass’n and in Collins v. Woodham to uphold the remainders of partially unconstitutional statutes, leaving only the question of whether the supreme court will apply the statute when the results are not so desirable. The second defect is that the distinction drawn in Mangelly between the rules of constitutional adjudication and statutory interpretation is completely obliterated by the express language of Code section 1-1-3, that the General Assembly intends for an unconstitutional statutory provision to be severable from the remainder of the statute unless the statute “contains an express provision to the contrary.”

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615. See id. at 363, 254 S.E.2d at 320.
third defect is that, although there is a dearth of written legislative history, Code section 1-1-3 is likely to have been intended to supersede the "mutual dependence" test established by the supreme court's then-recent 1978 and 1979 decisions in Martin and Mangelly, both of which were high-profile cases involving the taxation power of county governments. There is, further, the fact that the 1981 Code was the first major recodification since 1933. The first argument thus falls victim not only to the Georgia Supreme Court's application of the statute, but also to the plain language of Code section 1-1-3 and probably to the statute's history as well.

The prosecution's second position will be that Code section 1-1-3 improperly creates a rule of decision for constitutional adjudication and that the provision violates basic principles of separation of powers.619 Such a holding would leave the Georgia Supreme Court free to continue applying the "mutual dependence" test of Martin and Mangelly in constitutional cases. The short and sufficient answer is that Code section 1-1-3 is cast not in terms of a rule of decision imposed on the supreme court, but in terms of an expression of the General Assembly's intent, thus taking away even a colorable objection that Code section 1-1-3 infringes on the judicial province of constitutional adjudication.620 Moreover, the supreme court did not suggest that any such problem existed when it applied the statute in the Jekyll Island and Collins cases.621 If anything, a failure to apply the statute according to its terms might itself be a violation of separation of powers under the Georgia Constitution, which

619. See GA. CONST: art. I, § 2, ¶ 3 ("The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.").

620. Cf. CTC Finance Corp. v. Holden, 221 Ga. 809, 809-10, 147 S.E.2d 427, 428 (1966) (stating that General Assembly may not control or interfere with courts' grant of new trials); Northside Manor, Inc v. Vann, 219 Ga. 298, 302, 133 S.E.2d 32, 34 (1963) (stating that General Assembly may not exercise judicial power of construing court judgment. This article does not seek to determine whether Holden or Vann, both written by Chief Justice Duckworth, remain good law on the boundaries of the judicial function, since the only issue here is whether O.C.G.A. § 1-1-3 might be said to intrude on that function. Clearly, it does not.

621. See supra text accompanying notes 618-17. The court has limited the severability principle where its application would be unfair to persons not parties to the litigation. See State v. Moore, 259 Ga. 139, 142, 376 S.E.2d 877, 879-80 (1989).
would be improper even were one to assume that the General Assembly might prove exceedingly grateful for the intrusion.

The prosecution's third position will be that Code section 1-1-3 simply creates a rebuttable presumption of severability. Assuming that the argument gets past the plain language of Code section 1-1-3 and past the fact that the statute does not use the words “presumption” or “rebuttable”—or any words like them—this attempt to save the City Court from oblivion could find some purchase. Code section 1-1-3 is an introductory principle of general application in the Official Code of Georgia Annotated, and it arguably shares some features of the “code” provisions of the Original Code of 1863. Specifically, to the extent that the provisions of Code section 1-1-3 could be said to have judicial origins, the Georgia Supreme Court might have more leeway in its application. This argument could be grounded in the general notion that the courts develop principles of statutory construction, or in the narrower notion that the General Assembly in enacting Code section 1-1-3 was simply strengthening and broadening the rule of *Martin* and *Mangelly*.

However, several analytical objections to this approach exist. First, the general notion ignores both the categorical and specific language of Code section 1-1-3 and the General Assembly's intent as to general statutory construction in Code section 1-3-1. Second, the narrower notion ignores the fact that in Code section 1-1-3, the General Assembly was reversing, not changing, a judicially created principle of statutory construction and then broadening its own principle. Third, the *Martin* and

622. *See* Atlanta & West Point R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940) (stating that where a statute is plain, unambiguous, and positive, and not capable of two constructions, the court may not construe it according to some otherwise unexpressed intent of the General Assembly).
625. The argument from Code section 1-3-1 has reduced force to the extent that one believes that the principles of construction are judicial rather than legislative creatures. If the goal of statutory interpretation is to ascertain the intent of the General Assembly, however, see, e.g., *Lamons v. Yarbrough*, 206 Ga. 50, 55 S.E.2d 551 (1949), it would be incongruous for the courts to ignore the General Assembly's statements about how its intent should be determined. *See generally* R. Perry Sentell, Jr., *The Canons of Construction in Georgia: "Anachronisms" in Action*, 25 GA. L. REV. 365 (1991).
Mangelly courts themselves stated that the “aid to construction” principle had no application to constitutional adjudication, so Code section 1-1-3 in fact does not derive directly from judicial sources. At the end of the day, therefore, the question remains whether the supreme court will concede that the General Assembly said what it meant and must be presumed to have meant what it said in Code section 1-1-3 and in the 1996 statute.

The prosecution’s fourth position will be that the legislative determination in section 2 and the continuation provision in section 29 of the 1996 statute are the “express provisions” demanded by Code section 1-1-3 that state the various sections of the 1996 statute are not intended to be severable. The difficulty with this argument is that neither of those provisions says anything about the severability or the entirety of the 1996 statute, although they may generally suggest an intent to maintain some sort of court for the adjudication of traffic misdemeanors and ordinance violations. The prosecutor’s response will be that, even if these sections are not an “express” provision of the sort demanded by Code section 1-1-3, the implicit intent of sections 2 and 29 may be sufficient to suggest that the supreme court should not give effect to the repealer provisions in sections 30 and 31 when it declares that sections 1 and 29 of the 1996 statute are unconstitutional. But that argument must account for what sort of court sections 2 and 29 contemplate—and that is where the 1996 statute runs into trouble again. Section 2’s legislative determination is that “such courts [the system of traffic courts] are state courts of limited jurisdiction,” and section 29 treats the 1967 statute as “continued” but “constituted as provided in this act,” which according to the preface and section 2 means “a system of state courts of limited jurisdiction.” There is nothing in that language that suggests an intent to maintain the 1967 City Court as a “city court” within the bounds of its 1967 and 1986 constitutional amendments or as a municipal court.

626. See supra notes 607, 609.
The prosecution’s fifth position will be that the 1967 statute would be revived by a determination of the 1996 statute’s unconstitutionality under the Georgia Supreme Court’s decision in Lomax v. Lee.629 The supreme court held in Lomax that when an unconstitutional act is void and of no effect, a determination of its unconstitutionality revives the earlier act that it either replaced or amended.630 Applying the decision, the City Court of Atlanta would enjoy a phoenixian return to its earlier state as a special court under the 1967 statute, as amended, and the 1967 and 1986 constitutional amendments. That would mean, among other things, that any traffic misdemeanor or ordinance convictions would stand as proper judgments to the extent that they are within the subject-matter jurisdiction of the City Court under the 1967 statute. It may be that Lomax v. Lee can be read as stating a broad proposition outside Code section 1-1-3, that, absent express direction from the General Assembly, the supreme court will not permit a repealer provision to survive the unconstitutionality of a statute, particularly where the new statute establishes a judicial or quasi-judicial system whose unconstitutionality would result in a vacuum of power over the subject-matter. A distinction between severability of substantive provisions and non-severability or entirety of repealer provisions would not be entirely inconsistent with Code section 1-1-3 to the extent that the latter was intended to save only substantive provisions, not repealer provisions.

There are three critical problems with this application of Lomax v. Lee. The first problem is that such a holding would run afoul of the plain and express language of Code section 1-1-3.631 Code section 1-1-3 is broad enough to cover not only statutes with multiple substantive provisions, but also statutes, like the 1996 City Court statute, with combined substantive and repealer provisions; thus, Code section 1-1-3 supersedes the principle that Lomax v. Lee derived from earlier decisions, that an unconstitutional act is void and has no effect on the prior act.632

630. See 261 Ga. at 581, 408 S.E.2d at 783.
631. See supra text accompanying note 601.
632. The Lomax v. Lee court cited Studstill v. Gary, 216 Ga. 268, 116 S.E.2d 213 (1960), which held that a pre-existing general law is effective where a conflicting special law is declared unconstitutional, and Clark v. Reynolds, 138 Ga. 817, 72 S.E. 254 (1911), where
The second problem is that no vacuum of power would result from the 1996 City-Court statute's unconstitutionality, because the State Courts of Fulton and DeKalb County would have jurisdiction over both traffic and same-occurrence misdemeanors, consistent with their sole jurisdiction over the latter prior to 1988. The third problem is that the 1953 and later statutory amendments to the Atlanta tax-dispute-resolution statute at issue in *Lomax v. Lee* were enacted prior to 1981, during the reign of *Martin* and *Mangelly*, and were not subject to the provisions of Code section 1-1-3 requiring a non-severability clause.

The Georgia Supreme Court held in *Continental Casualty Co. v. Swift & Co.*, that an express and unqualified repealer of a statute will be enforced even where the new statute is declared unconstitutional. Chief Justice Duckworth, writing for a unanimous court, held that in its earlier decision in *Lloyd Adams, Inc. v. Liberty Mutual Insurance Co.*, the court "respected the power of the legislature to enact or repeal any law within constitutional limitations. We thereby yielded without hesitancy to the legislature, and acknowledged the judicial incompetence to enact, repeal, or revive a dead law." The supreme court applied *Lloyd Adams* as recently as *Miller v. Medical Ass'n of Georgia*, holding that where an unconstitutional statute repealed an earlier unrelated statute, the apparent legislative intent was that the repealer should take effect independent of the unconstitutionality of the new statute.

The intent of the General Assembly as to the City Court, as determined under the binding provisions of Code section 1-1-3,
seems clearly to be that the City of Atlanta was to have a “state court of limited jurisdiction” or nothing for its traffic court, as seems to follow from the language of the preface and sections 1, 2, and 29 through 31. It follows that the City Court of Atlanta could find itself abolished by the repealer of the 1967 statute. The analytical soundness of that result must, however, reckon with the decisional utility of a principle that avoids repeals and permits revivals of predecessor statutes that were (when in force) constitutional so that Lomax v. Lee may save the day for the city court as an entity, even as the decision vitiates the grant of same-occurrence misdemeanor jurisdiction. Although the better argument is that the unconstitutionality of the 1996 law destroyed the court as a judicial entity, the Georgia Supreme Court could hold that, under Lomax v. Lee, the court remains a viable legal entity, albeit one lacking the 1998 and 1996 jurisdiction over same-occurrence misdemeanors.

B. The Unconstitutionality of the 1988 and 1996 Same-Occurrence Misdemeanor Jurisdiction

The unconstitutionality of the 1988 and 1996 provisions granting the City Court jurisdiction over same-occurrence misdemeanors renders fatally defective all judgments of conviction for non-traffic misdemeanors rendered after March 24, 1988. This Author can discern no reasonable ground for an argument supporting the City Court’s jurisdiction over same-occurrence misdemeanors. Any “same-occurrence” misdemeanor convictions, that is all those other than state traffic violations, could be vacated as illegal for judgments after the effective date of the 1988 amendment. The reasons for this are as follows.

The unconstitutionality of the 1988 and 1996 same-occurrence jurisdiction gives rise to a lack of subject-matter jurisdiction over same-occurrence misdemeanors in the City Court of

640. See supra notes 607, 609-10.
641. See supra notes 87-107 and accompanying text.
642. See infra notes 601-41 and accompanying text.
644. See 1988 Ga. Laws 261, § 1, at 282. The alternate effective dates are March 24, 1988, for a local law under O.C.G.A. § 1-3-4(b), and July 1, 1988, for a general law under O.C.G.A. § 1-3-4(a)(1). See supra note 612 (effective date of statute).
645. See supra notes 528-99 and accompanying text.
Atlanta. Generally, “[s]ubject matter jurisdiction is simply a power that is conferred by law upon [sic] a class of cases that authorizes a court within such class to grant a particular form of relief that might be sought by, or accorded to, a party before it.” In *Rose v. Mayor & Aldermen of the Town of Thunderbolt*, the Georgia Court of Appeals held that a municipal court did not have jurisdiction over state misdemeanors and that because the prosecution was based on an alleged statutory offense rather than an ordinance violation, the court had “no jurisdiction of the subject matter involved” and the judgment was void. In *Griggs v. City of Macon* and *Wallace v. State*, the respective appellate courts held that a recorder’s court lacked jurisdiction over the prosecution of alleged statutory offenses, and the *Wallace* court made expressly clear that the lack was one of “subject-matter” jurisdiction. Likewise the Georgia Supreme Court in *Metropolitan Street Railroad v. Powell* treated the 1871 City Court of Atlanta’s pre-1890 empowerment to try criminal cases as a case involving that court’s “power,” a term which historically has meant, at least in pertinent part, subject-matter jurisdiction. To similar effect are the decisions on the scope of

647. 89 Ga. 509, 80 S.E.2d 725 (1954).
648. *Id.* at 601, 80 S.E.2d at 727.
649. 154 Ga. 519, 114 S.E. 899, 902 (1922).
651. 89 Ga. 601, 16 S.E. 118 (1892).
652. See *supra* notes 78-79 and accompanying text.
653. The *Powell* court described the issue before it as one of the 1871 City Court of Atlanta’s “power” over criminal cases, but as shown by the definition quoted *supra* in text accompanying note 646 and by the decision in *Schueler v. Faut*, 239 Ga. 520, 522, 239 S.E.2d 65, 67 (1977), the Georgia courts have included subject-matter jurisdiction within the concept of “power.” The Supreme Court held in *Bibb County v. Hancock*, 211 Ga. 429, 441, 88 S.E.2d 511, 520 (1955), that the word “power” in the judicial-uniformity provisions of the 1845 Constitution meant subject-matter jurisdiction. The court has also described the probate courts “power” over DUI cases where there is a jury-trial waiver as a question of personal jurisdiction. *See* *Nicholson v. State*, 261 Ga. 197, 403 S.E.2d 42 (1991). But the decision is not apposite to the present argument because the same-occurrence misdemeanor jurisdiction addresses the power of the City Court in a class of cases and cannot be characterized as involving a specific defendant’s personal jurisdiction, personal rights, or waivers thereof.
appellate jurisdiction in *Welborne v. State*\(^{654}\) and *Burson v. Bishop*.\(^{655}\)

**C. The Results of the 1988 and 1996 Defects**

Code section 17-9-4 provides that "[t]he judgment of a court having no jurisdiction over the person or subject matter, or void for any other cause, is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it."\(^{656}\) One such "other cause" for a collateral attack on a judgment is where the law upon which the prosecution is based is unconstitutional.\(^{657}\) The constitutional and jurisdictional defects in the 1988 and the 1996 provisions granting the City Court jurisdiction over same-occurrence misdemeanors and the 1996 provisions recreating the City Court as a state court render judgments having either or both defects subject to both direct\(^ {658}\) and collateral\(^ {659}\) attack.

**CONCLUSION**

This mechanic's diagnosis of the judicial engine that was the City Court of Atlanta is fairly simple, for all the complexities that must inform the identification and solution of the 1988 and 1996 laws' unconstitutionality. The City Court of Atlanta has proven its worth and utility for forty-five years, and the City of Atlanta continues to need its efficient and effective handling of traffic citations. That does not, however, justify its exercise of jurisdiction in the face of a lack of constitutional existence since 1996 and a lack of same-occurrence misdemeanor jurisdiction since 1988. In the context of comprehensive legislation for the

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\(^{654}\) 114 Ga. 793, 40 S.E. 857 (1902) (acknowledging jurisdiction of Supreme Court over appeals from city courts).

\(^{655}\) 117 Ga. App. 602, 161 S.E.2d 518 (1968) (discussing jurisdiction of Civil and Criminal Court of Clayton County over appeal from decision by Department of Public Safety).

\(^{656}\) O.C.G.A. § 17-9-4 (1997); cf. id. §§ 9-11-60(a), (f) (1993); id. § 9-12-16.

\(^{657}\) *See Riley v. Garrett*, 219 Ga. 345, 133 S.E.2d 387 (1963). Although *Riley* involved a statute whose substantive provisions were unconstitutional, there is no apparent reason that the same principle should not apply to a statute whose jurisdictional provisions are unconstitutional, at least for state-law purposes.


\(^{659}\) *See O.C.G.A.* § 17-9-4 (1997); cf. id. § 9-12-16 (1993).
municipal courts, the General Assembly should turn the City Court of Atlanta into the Traffic Division of the Municipal Court of the City of Atlanta, transfer all remaining city court cases to that new court's docket, and be done with it. The reasoning behind this conclusion is as follows.

First, making the City Court of Atlanta a state court will not work for two reasons. The first reason is that the City Court cannot be treated as a state court given the limitation of its jurisdiction to traffic and same-occurrence misdemeanors (and giving non-uniform ordinance jurisdiction to a state court would create other problems).\(^660\) If there may be only one state court in a given county, the City Court cannot become a state court in any event. The second reason is that a state court has jurisdiction only within a county,\(^661\) and a court serving the entire city must be able to exercise jurisdiction in both Fulton and DeKalb counties. The history of the civil and criminal courts of Fulton and DeKalb counties suggests that the experience with divided jurisdiction over cases arising in the City of Atlanta was not a good one, and there is no apparent reason to repeat that experiment.

Second, maintaining the City Court of Atlanta as a statutory city court adds nothing to its adjudicatory abilities, with the possible exception of the court's ability to conduct misdemeanor jury trials in the same manner as the state courts. Certainly, that ability would ease the workload of the State Court of Fulton County and, to a lesser extent, the State Court of DeKalb County, in which those cases would otherwise have to be tried when the defendant elects a jury trial. As shown immediately below, however, that ability can be preserved by other means that do not require the unconstitutional, Rube-Goldberg device of the present City Court of Atlanta laws.

Third, the re-creation (one more time) of the City Court of Atlanta as the Traffic Division of the Municipal Court of the City

\(^660\) O.C.G.A. § 15-7-82, which permits the judges and officers of a state court, pursuant to a contract, to serve as such in municipal courts, does not appear to contemplate the court's sitting simultaneously as both a state and a municipal court. There is no uniformity problem with state courts having ordinance jurisdiction if one believes that an ordinance violation is a misdemeanor; but in this regard, Judge Erilde seems clearly to have the better of the argument in his dissent in Poole v. State, 229 Ga. App. 406, 404 S.E.2d 291 (1991), in which he argued that an ordinance violation is not a misdemeanor.

of Atlanta is legally permissible and would be consistent with Georgia’s determined progress toward a uniform state court system. This could occur, for example, within the context of a rebuilding of the Municipal Court of Atlanta, and even a rethinking of a system of municipal—not state—courts.

A traffic division would appear to be both practically workable and, potentially, equally or more efficient, and would provide better justice than the present system. The General Assembly has the ability to provide for differing jurisdiction of the municipal courts of the State either by a three-or-more-area law or by a combination or tiered population law. The former method would permit it to provide “same-occurrence-misdemeanor” jurisdiction in Atlanta and two other geographic areas, while the latter method would permit such jurisdiction in Atlanta with more limited misdemeanor jurisdiction in other cities. Following the example of the large-county probate courts, such a “large-city municipal court” could be given the power to conduct jury trials, grant new trials, and be treated as a court of record (perhaps even with court reporters) and could have such other procedural features as the City Court of Atlanta now has, all within the limits of the Municipal-Court statute. Unless the constitutional history pertaining to divisions of the superior courts were deemed to trump the Georgia Supreme Court’s holding in Cobb County v. Campbell, the ability to assign specific classes of cases to divisions within a court would not violate the general-law or uniformity provisions, even if those do apply to the municipal courts. As to the question of better justice, there is a disturbing paradox about the ready availability of a jury trial in the City Court of Atlanta while the defendant who wants a jury trial in other misdemeanor cases filed in the Municipal Court of Atlanta must seek a transfer to the State Court of Fulton or DeKalb County, with all the

662. See supra notes 280-330 and accompanying text.
663. See supra notes 308-30 and accompanying text (referencing current jurisdiction of municipal courts).
664. Cf. O.C.G.A. §§ 15-9-120 to -127 (1989) (large-county probate courts); see supra notes 281-307 and accompanying text, text accompanying supra notes 598-99. Although the suggestion by the American Bar Association that the City Court had the power in 1972 to conduct a jury trial seems clearly incorrect, see ABA TRAFFIC COURT PROGRAM, supra note 404, the probate experience suggests that the idea may be worthwhile.
665. 256 Ga. 519, 350 S.E.2d 498 (1986); see supra 12.
666. See supra notes 280-330 and accompanying text.
attendant expense, delay, and inconvenience of reappearing in the state court proceeding. Further, there is just not much difference between shoplifting inside a convenience store and stealing the same item from the clerk at the drive-through window and failing to stop on the way out.

Finally, a proper rebuilding of the City Court of Atlanta would avoid significant problems with that court’s dockets as these issues are raised in pending same-occurrence misdemeanor prosecutions. An appellate or habeas challenge to the City Court’s jurisdiction would throw its current operations into doubt, particularly in same-occurrence misdemeanor cases. When successful, that challenge would require the undoing of large numbers of the City Court’s traffic and same-occurrence-misdemeanor judgments and the retrial of numerous cases in a different court. Avoiding a glut of cases and Speedy Trial Act problems in the State Courts of Fulton and DeKalb Counties could require emergency legislation by the General Assembly to empower a court or additional judges if the Municipal Court of Atlanta were deemed to lack (as it probably would) residual authority to handle the same-occurrence misdemeanors.

These issues need attention from the General Assembly. The issues are not new; indeed, the 1962 Municipal Court Report recommended more sweeping changes than those adopted in 1967 or proposed here, and that era’s desirable change has become today’s constitutional necessity. But the need to rebuild the City Court of Atlanta will require more comprehensive legislation than that to which the General Assembly has been accustomed in its legislative programs for the courts in Atlanta. If the General Assembly finally gives up the business of local legislation disguised as general laws, as *Lomax v. Lee* seems to

687. It has been suggested colloquially that one benefit of a separate traffic court is that “mere” traffic violators have a separate court and clerk’s office where they can deal with citations and fines, without the necessity of commingling with the “real criminals” whose cases appear in the municipal court. A similar view is reflected in the 1962 report on the municipal court of Atlanta, that “the traffic offender is basically a different type.” 1962 MUNICIPAL COURT REPORT, supra note 159, at 27. Whatever the historic validity of that supposition, the assignment of “real” same-occurrence-misdemeanor cases to the City Court has *pro tanto* vitiated any such separation of the sheep and the goats since 1988.

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demand, it not only will have accepted the imperatives of the
1983 Constitution, it will also have seized an opportunity to
legislate for the municipal courts in the most effective and most
lasting manner. Whatever the General Assembly decides to do,
the hope is respectfully expressed that it take effective action
soon. There is no reason to play "chicken" with a restored '55
Chevy, and every reason to get this one rebuilt and back on the
road as soon as possible.