

Cleveland State University
EngagedScholarship@CSU



Cleveland-Marshall
College of Law Library

Cleveland State Law Review

Law Journals

1964

Parliamentary Procedure for Non-Profit Organizations

John Waldeck

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstrev>

 Part of the [Business Organizations Law Commons](#)

How does access to this work benefit you? Let us know!

Recommended Citation

John Waldeck, Parliamentary Procedure for Non-Profit Organizations, 13 Clev.-Marshall L. Rev. 529 (1964)

This Article is brought to you for free and open access by the Law Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

Parliamentary Procedure for Non-Profit Organizations

John Waldeck*

PARLIAMENTARY PROCEDURE has been called a blind spot in the law.¹

It has not always been so. For the first 100 years of our country's history, parliamentary law was the subject of study and writing exclusively by lawyers, such as Thomas Jefferson,² Luther S. Cushing,³ Rufus Waples,⁴ and Thomas B. Reed,⁵ until 1876. No lawyer has written a substantive book based strictly on parliamentary law for non-legislative use since 1894.

The leading works and articles on parliamentary procedure for the last 88 years have been written by laymen with backgrounds as varied as an army general,⁶ a WAC colonel,⁷ a professor of public speaking,⁸ a psychiatrist,⁹ a veterinarian,¹⁰ a

* Member of the law firm of McMillen & Waldeck of Canton, Ohio; Member, American Institute of Parliamentarians, National Association of Parliamentarians; Graduate-student at Cleveland-Marshall Law School of Baldwin-Wallace College.

[This article was written as a contributed chapter for the Second Edition, now in preparation, of *Oleck, Non-Profit Corporations & Associations* (Englewood Cliffs, N. J.; Prentice-Hall, Inc., 1956). It is part of a thesis for an advanced degree now being written by Mr. Waldeck.]

¹ Maxwell, David F., *Books for Lawyers*, 41 A.B.A.J. 950 (Oct. 1955).

² Jefferson, Thomas, *A Manual of Parliamentary Practice for the Use of the Senate of the United States* (New York: Clark & Maynard, 1874). (First edition 1801.)

³ Cushing, Luther S., *Manual of Parliamentary Practice* (rev. by Frances P. Sullivan) (Baltimore: I. & M. Ottenheimer, 1950). (First edition 1844.)

⁴ Waples, Rufus, *A Handbook of Parliamentary Practice* (Chicago: Callaghan and Co., 1883).

⁵ Reed, Thomas B., *Reed's Parliamentary Rules: A Manual of General Parliamentary Law* (Chicago: Rand McNally and Co., 1898). (First edition 1894.)

⁶ Robert, H. M., *Robert's Rules of Order, Revised* (Chicago: Scott, Foresman and Co., Seventy-Fifth Anniversary Ed., 1951). (First edition 1876.)

⁷ Hobby, Oveta Culp, *Mr. Chairman* (Oklahoma City: Economy Co., 1936).

⁸ O'Brien, Joseph F., *Parliamentary Law for the Layman* (New York: Harper & Bros., 1952).

⁹ Davidson, Henry A., *Handbook of Parliamentary Procedure* (New York: Ronald Press, 1955).

¹⁰ Gilbert, Dr. Gail H., *Parliamentary Procedure in City Councils*, 4 *Parliamentary J.* (1) 19 (Chicago: American Institute of Parliamentarians, Jan. 1963).

sociologist,¹¹ a semanticist,¹² an almanacist,¹³ a priest,¹⁴ a sister,¹⁵ and a lawyer's wife.¹⁶

The laymen writers have produced more than 200 publications on parliamentary procedure¹⁷ with more than 40 currently in print.¹⁸ One of them, *Robert's Rules of Order*, is the oldest non-fiction best seller of all time,¹⁹ at 1,925,000 copies,²⁰ second only to the Bible.

Organization activity in the field of parliamentary procedure has been carried on by associations not of lawyers but of laymen, such as the American Institute of Parliamentarians,²¹ the National Association of Parliamentarians,²² and Toastmasters International,²³ with a combined membership of over 100,000. The membership of the American Bar Association is 115,000.²⁴

Search has revealed no legal case definition of parliamentary procedure. It is defined in Webster's Dictionary as "of, according to, or based upon parliamentary law."²⁵ Parliamentary law has been defined as:²⁶

¹¹ Lehman, Warren, *Parliamentary Procedure* (New York: Doubleday & Co., 1962).

¹² Hayakawa, S. I., *On Conducting Meetings with Ease and Authority*, San Francisco Chronicle (magazine section) This World, May 13, 1951, p. 21.

¹³ Golenpaul, Dan, *Parliamentary Procedure, Information Please Almanac*, 1964, at p. 477 (New York: Simon and Schuster, 1964).

¹⁴ Keller, Father James, *How Parliamentary Law Protects You*, Christopher Notes No. 103 (New York: The Christophers, 18 E. 48th St., 1960).

¹⁵ Anger, Sister Mary A., *Introductory Course in Parliamentary Procedure*, 5 *Parliamentary J.* (1) 3 (Chicago: American Institute of Parliamentarians, Jan. 1964).

¹⁶ Sturgis, Alice F., *Sturgis' Standard Code of Parliamentary Procedure* (New York: McGraw-Hill Book Co., 1950).

¹⁷ English, Robert W. (Ed.), *Parliamentary Bibliography*, 226 titles (Chicago: American Institute of Parliamentarians, 1961).

¹⁸ Prakken, S. L. (Ed.), *Subject Guide to Books in Print*, 1328 (New York: Bowker Co., 1963).

¹⁹ Hackett, Alice P., *60 Years of Best Sellers 1895-1955*, at p. 76 (New York: Bowker Co., 1956).

²⁰ Robert, *op. cit. supra* n. 6, at title page (1964).

²¹ American Institute of Parliamentarians, Inc., Chicago, Illinois.

²² National Association of Parliamentarians, Inc., Kansas City, Missouri.

²³ Toastmasters International, Inc., Santa Anna, California.

²⁴ Report of Board of Governors, 50 *A.B.A.J.* (4), 390 (April 1964).

²⁵ Webster's Dictionary, Unabridged, 1643 (Springfield, Mass.: Merriam Co., 1961).

²⁶ *Landes v. State ex rel. Matson*, Pros. Atty., 160 Ind. 479, 67 N. E. 189 (1903).

The rules and usages of parliament or of deliberative bodies by which their procedure is regulated. A rule of parliamentary law is a rule created and adopted by the legislative or deliberative body it is intended to govern.

The ambivalent nature of parliamentary law is shown in its definition as applying both to public legislatures and to private deliberative bodies.

Parliamentary procedure has developed for over 1000 years from the time of the first English parliament in 959, called together by King Edgar.²⁷ The word "parliament" is derived from the French "parler," meaning "to speak" or to "parley" between parties.²⁸ These British procedures were used in the legislatures of colonial America and were the natural source of rules of procedures in the government of the new nation.

The Lawyer-Writers

Among the innovations of Thomas Jefferson was the first American manual of parliamentary law, *Jefferson's Manual*.²⁹ In 1796 he was a presidential candidate and, receiving the second largest number of votes, became Vice-President. One of his duties was to preside over the meetings of the United States Senate, and it was for this purpose that he wrote his famous manual. In a letter from Philadelphia to his old law professor George Wythe, he wrote, on February 20, 1800:³⁰

So little has the parliamentary branch of the law been attended to, that I not only find no person here, but not even a book to aid me. I had at an early period of life read a good deal on the subject, and common-placed what I read. This common-place has been my pillow.

Jefferson prepared his manual for legislative use of the United States Senate based on rules developed by the British Parliament and by the legislatures of the several States of the new nation. Its basic principle was the rule of majority vote. He said:³¹

²⁷ Dietz, Frederick C., *Political and Social History of England, 18-31* (New York: MacMillan Co., 1937).

²⁸ Webster's Dictionary, *op. cit. supra* n. 25.

²⁹ Jefferson, *op. cit. supra* n. 2.

³⁰ Mayo, Bernard, *Jefferson Himself, 203* (Boston: Houghton Mifflin Co., 1942).

³¹ Jefferson, *op. cit. supra* n. 2, at 91.

The voice of the majority decides; for the *lex majoris partis* is the law of all councils, and elections . . . where not otherwise expressly provided.

It is ironic that Jefferson's *Manual* has not been adopted as part of the rules of the Senate³² but is the parliamentary authority of the House where debate is closed by majority vote.³³ A recent nationwide poll revealed that 63 per cent of public opinion favored a curb on filibusters, a parliamentary tactic possible under the Senate rule that allows one-third plus one vote to delay closing debate and making a decision.³⁴

Jefferson's *Manual* served as a bridge from the British practices to the American rules, and as a basis for both legislative and non-legislative rules of procedure in the United States today, except for the laymen writers who follow *Robert's Rules of Order* written by an army general in 1876. The next development in parliamentary procedure was the adaptation of legislative rules to the use of non-legislative deliberative bodies.

The first writer in America to prepare a manual of parliamentary procedure for the use of non-legislative assemblies was Luther S. Cushing, an outstanding lawyer, who wrote his popular *Manual of Parliamentary Practice* in 1844.³⁵ It is still in print. Cushing (1803-1856) was a graduate and professor of Harvard Law School. He prepared an outstanding work on legislative rules of procedure entitled *Lex Parliamentaria Americana* published in 1856.³⁶ It was from this work that Cushing prepared his *Manual* for non-legislative groups, based on what he considered to be common parliamentary law. Cushing cited no legal decisions but based his rules on Jefferson's work, the rules of Congress and of other legislative bodies, and common parliamentary law. Cushing warned that his manual was based on common parliamentary law, and was not intended for use in legislative bodies where the common law was modified or controlled by special rules.

³² Senate Procedure, 85th Congress, 2nd Session, Senate Document No. 93, 264 (1958).

³³ Rules and Manual, United States House of Representatives, 85th Congress, 2nd Session, House Document No. 485, 499 (1959).

³⁴ Harris, Louis, Harris Survey, Cleveland Plain Dealer, April 27, 1964, p. 22.

³⁵ Cushing, *op. cit. supra* n. 3.

³⁶ Cushing, Luther S., *Lex Parliamentaria Americana* (Boston: Little, Brown and Co., 1856).

The popularity of *Robert's Rules* overshadowed the next parliamentary writer, Rufus Waples, LL.D., who wrote *A Handbook of Parliamentary Practice* published in 1883.³⁷ In the preface to his handbook, Waples said that the book was prepared for the use of non-legislative associations, and was based on common parliamentary law as founded on well established usage and custom. Waples did not cite case law to support his system of parliamentary procedure, saying that judicial decisions did not cover the field, were not sufficiently uniform, and merely covered the issue in litigation.³⁸ But Waples pointed out that there was no rule in parliamentary law, however seemingly unimportant, on which important litigation might not turn.³⁹

The next writer in the field of parliamentary law for the use of non-legislative organizations was Thomas B. Reed (1839-1902) who served as Speaker of the House of Representatives and had been educated as a lawyer. His work was entitled *Reed's Rules: A Manual of General Parliamentary Law*, published in 1894.⁴⁰ Reed said that the purpose of the book was to present the rules of general parliamentary law in such a way as to be understood by those who presided over meetings, and by those who wished to participate in the proceedings of deliberative bodies. He carefully pointed out that changes had been made in the rules of the House of Representatives that were a departure from the general parliamentary law.

The first work on parliamentary law for non-legislative organizations to cite case law was the 1914 edition of *Cushing's Manual* as edited by Albert S. Bolles.⁴¹ This edition had an added section entitled "Rules of Procedure in Business Corporation Meeting," which cited judicial decisions on parliamentary procedure involving corporate meetings.

The Laymen Writers

The laymen writers have taken over the writing and teaching of parliamentary procedure, beginning with Henry Martyn Robert (1837-1923), who published his famous *Rules of Order* in 1876, starting the trend away from the law and lawyers. Robert

³⁷ Waples, *op. cit. supra* n. 4.

³⁸ *Id.* at 258.

³⁹ *Id.* at 255.

⁴⁰ Reed, *op. cit. supra* n. 5.

⁴¹ Cushing, *Cushing's Manual of Parliamentary Practice* (rev. by Albert S. Bolles) (Philadelphia: John C. Winston Co., 1914).

was a graduate of West Point in 1857, fourth in a class of thirty-eight, and rose to the rank of general. He had a distinguished career in the Corps of Engineers, serving in the Washington Territory and the defenses of Washington, D. C. during the Civil War.⁴² Robert did not follow the law of majority rule but created his own special rules of two-thirds vote requirements. Robert declared that the fundamental principles of parliamentary law required a two-thirds vote in certain situations,⁴³ of which he listed seventeen.⁴⁴ The rules of the House of Representatives require a two-thirds vote in only four instances.⁴⁵

This is contrary to the principle of law referred to by Jefferson that the majority rules. This is the fundamental difference between Jefferson, Cushing, Waples and Reed, the legal writers, and Robert and his school of laymen-writers, who follow and copy his special rules. Robert based his theories on special rules adopted by Congress, and on what he thought was required for harmony in ordinary societies.⁴⁶ Robert's theory allows one-third plus one vote to prevent the majority from closing debate and from making a decision, giving a veto power to less than a majority. The courts have applied the rule of "lex majoris partis" as authority for action by the majority, instead of following a rule requiring a two-thirds vote.⁴⁷

Robert also invented a rule that members not voting are to be counted as voting in the affirmative.⁴⁸ The courts have held otherwise.⁴⁹ Likewise, Robert said that a plurality vote never elects anyone to office.⁵⁰ The courts have held the common law rule to be that a plurality elects.⁵¹ Robert also devised his own rules on debate, limiting speeches to ten minutes each, and that a member could speak only twice during debate.⁵²

Robert created a special rule on actions to reconsider, saying a motion to reconsider had to be moved by a member who

⁴² Smedley, Ralph C., *The Great Peacemaker* (Los Angeles: Borden Co., 1955).

⁴³ Robert, *op. cit. supra* n. 6, at 109.

⁴⁴ *Id.* at 205.

⁴⁵ House Rules, *op. cit. supra* n. 33, at 247.

⁴⁶ Robert, *op. cit. supra* n. 6, at 183.

⁴⁷ Crawford v. Gilchrist, 64 Fla. 41, 59 So. 963 (1912).

⁴⁸ Robert, *op. cit. supra* n. 6, at 193.

⁴⁹ Caffey v. Veale, Mayor, 193 Okl. 444, 145 P. 2d 961 (1944).

⁵⁰ Robert, *op. cit. supra* n. 6, at 191.

⁵¹ Lawrence v. Ingersoll, 88 Tenn. 52, 12 S. W. 422 (1889).

⁵² Robert, *op. cit. supra* n. 6, at 178.

voted with the prevailing side.⁵³ Thus, those not on the prevailing side were without remedy to reconsider an action. The action of a majority in disregard of this rule has been upheld by the courts.⁵⁴

Among other special rules on reconsidering action, Robert invented a motion to reconsider and to be entered on the minutes of the next meeting.⁵⁵ This motion, according to Robert, could be made by a mover and seconder without being voted on until the next meeting, and until then all action on the subject matter was suspended.

The success of *Robert's Rules of Order*, in various editions up to the present Seventy-Fifth Anniversary edition, has been outstanding, with 1,925,000 copies sold as of the latest printing in 1963 and 400,000 copies sold since 1955.⁵⁶

Robert's Rules has dominated the field of parliamentary procedure for over 80 years. It is the basis used by the majority of laymen writers who have produced almost all of the 226 titles shown in a bibliography of the subject prepared by the American Institute of Parliamentarians.⁵⁷ The *Subject Guide to Books in Print*, 1963 shows that 45 publications on parliamentary procedure are currently in print.⁵⁸ An examination of these lists, and of the books involved, shows that, with few exceptions, the books are written by laymen who follow the special rules of Robert.

The Critics

The present state of parliamentary procedure has been criticized by a past president of the American Bar Association, David F. Maxwell, in an article in the Association's *Journal*.⁵⁹ He said, in reviewing recent books on parliamentary procedure, that it was amazing that not one of the six books was produced by a lawyer since parliamentary procedure is as much a part of the law as are civil or criminal procedure. He pointed out

⁵³ *Id.* at 156.

⁵⁴ *People ex rel. John C. Locke v. Common Council of City of Rochester*, 5 *Lans. S. C. Rep. (N. Y.)* 11 (1871).

⁵⁵ Robert, *op. cit. supra* n. 6, at 165.

⁵⁶ Hackett, *op. cit. supra* n. 19.

⁵⁷ English, *op. cit. supra* n. 17.

⁵⁸ Prakken, *op. cit. supra* n. 18.

⁵⁹ Maxwell, *op. cit. supra* n. 1.

that lawyers had written much on the latter procedures in recent years but had left the field of parliamentary law almost exclusively to laymen.

Maxwell, who has been called "one of the few great lawyer-parliamentarians,"⁶⁰ said that formerly parliamentary procedure was in the hands of men trained in the law, and that the founding fathers would not have suffered such professional usurpation by laymen. He found that parliamentary law was neglected by the law schools, only six of the larger universities offering courses in the subject. The rapid growth of voluntary organizations in the United States, numbering over 200,000, has created a widespread and continuing demand for guidance in the conduct of meetings. Urging that every lawyer have a working knowledge of parliamentary law, Maxwell said that while lawyers were trained and active in the legal formation of private organizations, it was high time that the law profession became active in the field of parliamentary law on the conduct of meetings of voluntary organizations.

Paul Mason, an attorney, and parliamentarian to the Senate of California, has pointed out that many of Robert's rules are not parliamentary law, and that this defect is serious when disputes arise about procedure because the courts will apply the rules of parliamentary law as laid down by judicial decisions and not according to General Robert.⁶¹ In another article, Mr. Mason stated that many of the rules in parliamentary manuals, by Robert or other laymen, are not parliamentary law, and that there is no assurance that an organization can follow them and have its actions upheld by a court of law.⁶²

The practice of adoption of highly technical and complex rules of procedure as by-laws, as found in *Robert's Rules*, has been criticized by Richard A. Givens, a lawyer, in an article in the *Labor Law Journal*.⁶³

This dissatisfaction has not been limited to lawyers, but includes laymen. In an article entitled "There Is A Revolution

⁶⁰ Carmack, Paul A., *Evolution in Parliamentary Procedure*, 11 *The Speech Teacher* (1) 35 (Jan. 1962).

⁶¹ Mason, Paul, *The Nature of Rules*, State Government, National Legislative Conference, Spring 1963, p. 101.

⁶² Mason, Paul, *The Legal Side of Parliamentary Procedure*, *Today's Speech* (November 1956), p. 9.

⁶³ Givens, Richard A., *The Landrum-Griffin Act and Rules of Procedure for Union Meetings*, 12, *Labor Law J.* 477 (June 1961).

Going On," Ernest S. Wooster criticized *Robert's Rules of Order* as out-dated in operation, and as to the archaic terminology and the need for reform.⁶⁴ The manual of procedure for meetings of the Parent-Teachers Association, with 12 million members, has been criticized by a member, William C. Kvaraceus, professor of education, in a national magazine.⁶⁵

The Reform Movement

The defects in parliamentary procedure, of ancient terminology and complex and divergent rules, have led some modern laymen writers to attempt reform by the use of new terms and by explaining and simplifying the rules.

One of the strongest efforts towards reform, by modernizing terms and return to case law has been made by Alice F. Sturgis of California, in her book *Standard Code of Parliamentary Procedure*, published in 1950.⁶⁶ While she is not a lawyer, she consulted with members of the American Bar Association, deans and professors of universities and law schools, and parliamentarians of state and federal branches of legislatures, who formed an advisory committee for publication and future revisions. The book has a foreword by Harold H. Burton, and an introduction by Owen J. Roberts, dean of the Law School of the University of Pennsylvania, both of whom were former Associate Justices of the Supreme Court and who endorsed a return of parliamentary procedure to law. A revision is now being prepared, showing applicable statutory law. Some of her manuscript has been read by Howard L. Oleck, Associate Dean of Cleveland-Marshall Law School of Baldwin-Wallace College. He found her revision-draft to be excellent, and has made some suggestions as to it.

Dean Oleck is the author of *Non-Profit Corporations and Associations*, which, besides covering the organization and operation law of the subject, deals with the legal aspects of procedure of voluntary organizations.⁶⁷ His book is a major reference for parliamentary law, among parliamentarians and law-

⁶⁴ Wooster, Ernest S., *There's A Revolution Going On*, The Toastmaster, Toastmasters International (Santa Anna, California, Oct. 1961), p. 12.

⁶⁵ Kvaraceus, William C., *The P.T.A. Is A Waste of Time*, Saturday Evening Post (May 2, 1964), p. 6.

⁶⁶ Sturgis, *op. cit. supra* n. 16.

⁶⁷ Oleck, Howard L., *Non-Profit Corporations and Associations* (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1956).

yers. A second edition now is being prepared by him, to which this article is being contributed.

Joseph F. O'Brien, a professor of public speaking at Pennsylvania State College, has written a textbook entitled *Parliamentary Law for the Layman*, published in 1952.⁶⁸ O'Brien has developed a new classification of return motions. He feels that knowledge of how parliamentary procedure relates to law is less important than skill in parliamentary methods.

Marguerite Grumme is the author of *Basic Principles of Parliamentary Law and Protocol*,⁶⁹ for non-legislative organizations. It is based on *Robert's Rules of Order, Revised* as simplified and modernized by the author. The popularity of this attempt at reform is attested to by the fact the book has gone through a second edition and thirteen printings with a new edition published in 1963.

Henry A. Davidson, M.D., a psychiatrist, is the author of *Handbook of Parliamentary Practice*, published in 1955.⁷⁰ It is based on his experience as Parliamentarian of the American Psychiatric Association, and on the psychiatric needs of participants in meetings. He urges that the rules of procedure be readily changed as new needs arise. Dr. Davidson states that he followed the general parliamentary rules in some instances but departed from them to invent new rules.

The laymen writers usually suggest that their respective books be adopted by organizations in the by-laws, by reference, as the parliamentary authority to govern the conduct of meetings.

Among the national organizations active in the improvement of parliamentary procedure is the American Institute of Parliamentarians, with a membership consisting primarily of teachers of high school and college level, as well as of instructors in adult education.⁷¹ Its program includes the teaching and examination of members for certification as professional parliamentarians. Another national organization is the National Association of Parliamentarians, which has a quarterly publication devoted to parliamentary questions.⁷² The answers or opin-

⁶⁸ O'Brien, *op. cit. supra* n. 8.

⁶⁹ Grumme, Marguerite, *Basic Principles of Parliamentary Law and Protocol* (St. Louis: Revell Co., 1960).

⁷⁰ Davidson, *op. cit. supra* n. 9.

⁷¹ *Supra* n. 21.

⁷² *Official Opinions, Parliamentary Journal* (National Association of Parliamentarians, Kansas City, Missouri).

ions are carefully researched, are based on the authority of *Robert's Rules of Order, Revised* and *Parliamentary Law* and have recently been published in book form.⁷³ It also has a program of instruction and registration for professional parliamentarians.

An international organization active in instruction in parliamentary procedure is Toastmasters International, with 3,700 clubs in 51 countries, and over 100,000 members.⁷⁴ A membership publication, *The Toastmaster*, appears monthly, containing educational articles on parliamentary procedure.

The moral duty of a member to learn the rules of parliamentary procedure, and to speak up and participate in meetings has been the subject of a pamphlet entitled *How Parliamentary Law Protects You*, printed in 1,250,000 copies by a national religious organization.⁷⁵

The Courts and Parliamentary Procedure

The courts, faced with complex and diverse rules of parliamentary procedure, have looked to the common law origins. They have recognized and applied common parliamentary law in the following situations: where an organization had not adopted rules of parliamentary procedure,⁷⁶ in the absence of an adopted rule,⁷⁷ gaps in the rules of procedure,⁷⁸ where the by-laws did not provide adequate parliamentary rules,⁷⁹ and to test the action taken at a meeting.⁸⁰ Common parliamentary law has been defined as the ordinary custom and usage of parliamentary procedure; and the courts have accepted as authorities on the point involved such writers as Jefferson,⁸¹ Cushing,⁸² Reed,⁸³

⁷³ National Association of Parliamentarians, *Parliamentary Questions and Answers* (Kansas City: Graphic Laboratory, 1962).

⁷⁴ *Supra*, n. 23.

⁷⁵ Keller, *op. cit. supra* n. 14.

⁷⁶ Ostrom v. Greene, 161 N. Y. 353, 55 N. E. 919 (1900).

⁷⁷ Young v. Jebbett, 211 N. Y. S. 61 (Ct. App. 1925).

⁷⁸ Mixed Local of Hotel & Restaurant Employees Union Local No. 458 & Others v. Hotel & Restaurant Employees International Alliance and Bartenders International League of America, 212 Minn. 587 (1942).

⁷⁹ In Re Election of Directors of Bushwick Savings and Loan Ass'n., 70 N. Y. S. 2d 478, 189 Misc. 316 (1947).

⁸⁰ Marvin v. Manash, 153 P. 2d 251 (Ore. Sup. Ct. 1944).

⁸¹ Frederick Miller v. State of Ohio, 3 Ohio St. 475 (1854); Kimball v. Marshall, 44 N. H. 465 (1863); Alfred O. Hicks v. Long Branch Commission,

(Continued on next page)

Trow,⁸⁴ and Robert.⁸⁵ However, it has been held that *Robert's Rules of Order* is not binding, and need not be followed by any and all corporations in conducting a stockholders' meeting.⁸⁶

Judicial decisions have been made as to the nature and effect of motions and rules of parliamentary procedure, such as a motion to amend,⁸⁷ a substitute motion,⁸⁸ a second to a motion,⁸⁹ to postpone indefinitely,⁹⁰ to table,⁹¹ to close debate,⁹² call for a division,⁹³ a point of order,⁹⁴ appeal the decision of the chair,⁹⁵ point of information,⁹⁶ adjourn,⁹⁷ recess,⁹⁸ to fix the time of

(Continued from preceding page)

69 N. J. L. 300 (1903); *Wood v. Town of Milton*, 197 Mass. 531, 84 N. E. 332 (1908).

⁸² *Brake v. Callison*, 122 F. 722 (S. D. Fla. 1903); *Hill v. Goodwin*, 56 N. H. 441 (1875); *Richardson v. Union Congregational Society of Frankestown*, 58 N. H. 187 (1877); *State ex rel. Alfred G. Southey v. Benjamin F. Lashar*, 71 Conn. 540 (1899); *Kimball v. Marshall*, *supra* n. 81; *State ex rel. Attorney General v. Anderson*, 45 Ohio St. 196, 12 N. E. 656 (1887); *Wood v. Town of Milton*, *supra* n. 81; *Alfred O. Hicks v. Long Branch Commission*, *supra* n. 81; *Rushville Gas Company v. City of Rushville*, 121 Ind. 206, 23 N. E. 72 (1889); *State ex rel. Laughlin v. Porter*, 113 Ind. 79 (1887); *William O'Neil v. R. S. Tyler*, 3 N. D. 47, 53 N. W. 434 (1892).

⁸³ *Wood v. Town of Milton*, *supra* n. 81.

⁸⁴ *Strain v. Mims*, 123 Conn. 275, 193 A. 754 (1939); Trow, Cora W., *The Parliamentarian* (New York: Gregg Publishing Co., 1933).

⁸⁵ *Shelby v. Burns*, 153 Miss. 392, 121 S. 113 (1929); *Marvin v. Manash*, *supra* n. 80.

⁸⁶ *Abby Properties Co., Inc. v. Presidential Insurance Company*, 119 So. 2d 74 (Fla. C. A. 1960).

⁸⁷ *T. E. Hood v. City of Wheeling*, 85 W. Va. 578, 102 S. E. 259 (1920); *State ex rel. Clarence A. Davis v. Esker M. Cox*, 105 Neb. 75, 178 N. W. 913 (1920).

⁸⁸ *Casler v. Tanzer, Mayor*, 234 N. Y. S. 571 (1929).

⁸⁹ *Commonwealth of Pennsylvania ex rel. Jacques H. Fox, District Attorney v. Arthur A. Chace, Appellant*, 403 Pa. 117, 168 A. 2d 569 (1961); *Robert G. Shoults v. Harry E. Alderson*, 55 Cal. App. 527, 203 P. 809 (1921).

⁹⁰ *John S. Zeiler v. Central Railway Company*, 84 Md. 304, 35 A. 932 (1896); *Wood v. Town of Milton*, *supra* n. 81.

⁹¹ *Wright v. Wiles*, 173 Tenn. 384, 117 S. W. 2d 736, 119 A. L. R. 456 (1938); *Goodwin v. State Board of Administration*, 210 Ala. 453, 102 So. 718 (1925).

⁹² *Wall v. London & Northern Assets Corp., Eng. Law Rep. Chancery Div. 469* (1898 W. 1178) (1898).

⁹³ *Pevey v. Aylward*, 205 Mass. 102, 91 N. E. 315 (1910); *Kimball v. Lamprey*, 19 N. H. 2d 215 (1848).

⁹⁴ *State ex rel. Alfred G. Southey v. Benjamin F. Lashar*, *supra* n. 82.

⁹⁵ *People ex rel. John C. Locke v. Common Council of City of Rochester*, 5 Lans. S. C. Rep. (N. Y.) 11 (1871); *American Aberdeen-Angus Breeders' Association v. S. C. Fullerton*, 325 Ill. 323, 156 N. E. 314 (1927); *Duffy v. Loft, Inc.*, 17 Del. Ch. 140, 151 Atl. 223 (1930).

⁹⁶ *Meyer Field v. Nugent R. Oberwortmann and V. W. Becking*, 16 Ill. App. 2d 376, 148 N. E. 2d 600 (1958).

⁹⁷ *Harrison L. Vogel v. William J. Parker, Clerk of the Borough of Fair Lawn*, 118 N. J. L. 521 (1937); *Strain v. Mims*, *supra* n. 84.

⁹⁸ *Shelby v. Burns*, *supra* n. 85; *Ex Parte U. Mirande, on Habeas Corpus*, 73 Cal. 265 (1887).

the next meeting,⁹⁹ reconsider,¹⁰⁰ reconsider and enter on the minutes,¹⁰¹ and to rescind.¹⁰² However, as Rufus Waples forecast in 1883, the court decisions have not been broad enough or sufficiently uniform to develop a system of parliamentary procedure based on case law.

The courts have held that adopted rules of parliamentary procedure are a contract and have taken jurisdiction and given relief accordingly. The articles or constitution, regulations, and rules of an association constitute a contract between a member and the association,¹⁰³ and among the members.¹⁰⁴ The majority have the power to adopt a set of rules that becomes a contract binding on all the members.¹⁰⁵ Becoming a member is an agreement to be governed by the constitution, by-laws and rules of procedure of an organization.¹⁰⁶ If a parliamentary manual is adopted by reference as a part of the by-laws, the rules therein become the law applicable and are enforceable as a contract right by a member.¹⁰⁷

Code Law and Parliamentary Procedure

The development of modern codes has replaced much of parliamentary procedure with law. The Model Non-Profit Corporation Act,¹⁰⁸ as adopted in part by Ohio in 1955,¹⁰⁹ and ten

⁹⁹ *In Re Election of Directors of Bushwick Savings & Loan Ass'n.*, *supra* n. 79; *Noremac, Inc. v. Centre Hill Court, Inc.*, 178 S. E. 877 (Va. 1935); *Clark v. Oceano Beach Resort Co.*, 106 Cal. App. 579, 289 P. 946 (1930).

¹⁰⁰ *Sagness v. Farmers Co-Operative Creamery Co.*, of Baltic and Dell Rapids, a Corporation, 67 S. D. 379, 293 N. W. 365 (1940); *Mansfield v. O'Brien*, 273 Mass. 515, 171 N. E. 487 (1930).

¹⁰¹ *First Buckingham Community, Inc. v. Malcolm*, 177 Va. 710, 15 S. E. 2d 54 (Va. App. 1941).

¹⁰² *United States v. Interstate R. Co.*, 14 F. 2d 328 (D. C. W. D. Va. 1926).

¹⁰³ *Rueb v. Rehder*, 24 N. M. 534, 174 P. 992 (1918).

¹⁰⁴ *St. Regis Candies, Inc. v. Hovas*, 8 S. W. 2d 574 (Tex. Civ. App. 1928).

¹⁰⁵ *B. P. Cheney v. C. A. Canfield*, 158 Cal. 342, 111 P. 92 (1910).

¹⁰⁶ *Max Rosen v. District Council No. 9 of New York City of The Brotherhood of Painters, Decorators & Paperhangers of America*, 198 F. Supp. 46 (S. D. N. Y. 1961).

¹⁰⁷ *People ex rel. Thomas Godwin, agt. v. The American Institute of City of New York*, 44 How. Prac. 486 (N. Y. 1873).

¹⁰⁸ Committee on Corporate Laws, American Bar Association, Model Business Corporation Act; Published by the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association, Philadelphia; (Revised 1959). Handbook D, Model Non-Profit Corporation Act.

¹⁰⁹ Ohio Rev. Code, Ch. 1702. Non-Profit Corporation Law.

other states,¹¹⁰ has sections that apply to actions formerly covered by the rules of parliamentary procedure such as rescinding,¹¹¹ call for meetings, place of meetings, notice of meeting, time of meeting, adjourning, waiver of notice, voting,¹¹² quorums,¹¹³ time of notice,¹¹⁴ rights of members,¹¹⁵ officers duties¹¹⁶ and nominations and elections.¹¹⁷ The Illinois non-profit statute apparently was the model for The Model Non-Profit Corporations Act. Codes of other states, of course, have similar effects.

For example, another modern code to apply law to the conduct of meetings of non-profit corporations and associations is the Membership Corporations Laws of New York,¹¹⁸ with sections applying to membership, voting, meetings, notice of meetings,¹¹⁹ quorums,¹²⁰ and other elements of meetings.

Federal statutory law has been created to control the parliamentary procedure of labor unions, in the "Bill of Rights" of the Landrum-Griffin Act of 1959.¹²¹ The act provides equal rights for union members to nominate candidates, to vote in elections or referendums, to attend meetings, to participate in deliberations, and for voting on the business of meetings, subject to reasonable rules pertaining to the conduct of meetings.¹²²

However, the rise of modern code law has stopped short of providing detailed rules for the conduct of meetings. It is in this legal vacuum that the parliamentary manuals of laymen are still used.

¹¹⁰ Ill. Anno. Stat. Ch. 32 § 163a, et seq. (1943) (preceding the Model Act); Wis. Stat., Ch. 181 (1953); Mo. Rev. Stat., Ch. 355 (1955); Ala. Code Re-comp., Tit. 10, Ch. 10 (1955); No. Car. Gen. Stat., Ch. 55 A (1955); Va. Code, Tit. 13.1, Ch. 2 (1956); No. Dak. Century Code, Ch. 10-24 (1959); Neb. Rev. Stat., Ch. 21, Art. 19 (1959); Tex. Civ. Stat., Ch. 9, Art. 1396 (1959); Ore. Rev. Stat., Ch. 61 (1959); Distr. of Columbia Code, Tit. 29, Ch. 10 (1962); Utah Code Anno., Tit. 16, Ch. 6 (1963).

¹¹¹ Ohio Rev. Code, § 1702.24.

¹¹² *Id.*, §§ 1702.17-1702.20.

¹¹³ *Id.*, § 1702.22.

¹¹⁴ *Id.*, § 1702.02.

¹¹⁵ *Id.*, § 1702.13.

¹¹⁶ *Id.*, § 1702.34.

¹¹⁷ *Id.*, § 1702.26.

¹¹⁸ New York, Membership Corp. L.; Lawyers Coop., Consolidated Laws of New York, Anno., Ch. 35 (1951, with 1963 cum. supp.).

¹¹⁹ *Id.*, §§ 40-43.

¹²⁰ *Id.*, § 20.

¹²¹ 73 Stat. 522 (1959); 29 U. S. C. § 411.

¹²² *Id.*, § 101(a) (1).

Deliberative bodies have the right and power to make rules of procedure, given to them by general laws, statutes, and constitutional provisions, or by inherent power.¹²³ The Model Corporation Act sets forth authority for the corporate by-laws or regulations to include rules for the conduct of meetings. These are employed in the parts adopted by Ohio, for example.¹²⁴ It is in this area of rule making power that the problems of parliamentary procedure can be solved.

Conclusion

To bring the conduct of meetings of organizations under reliable law, there are three possible solutions. First, to reform existing parliamentary procedure in order to make it correspond with the law. This is not practical. It is too slow and would not be uniform, as is shown by the experience of the attempted reform movement by laymen.

Second, to return to the legal origins of parliamentary law. The legal origins are obscure, the case law meager and the common parliamentary law too indefinite to encourage such an effort.

Third, to adopt new, modern, simple rules of procedure, based on law, both case and code. This approach is both realistic and practical and can include the experience of reform experiments and legal origins. From these rules, a uniform system of parliamentary procedure can be developed. Such a project is one for the legal profession.

Establishment of a uniform system of parliamentary procedure-law based on law, will require research by the bar associations and by teachers of corporate and other parliamentary law. From such a system, the practicing lawyer could draw rules of procedure for adoption in the by-laws of an organization, to fit the needs of the particular type of organization and the requirements of the law.

This is both a challenge and an opportunity for lawyers to return to the study, research and writing of parliamentary law. Because of the public interest in the democratic processes of parliamentary procedure, it is the duty of the legal profession to apply all the resources of juridical science to the curing of this blind spot in the law.

¹²³ *Witherspoon v. State ex rel. West.*, 138 Miss. 310, 103 S. 134 (1925).

¹²⁴ Ohio Rev. Code, § 1702.11.