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PARLIAMENTARY PROCEDURE:
ITS SPECIAL IMPORTANCE TO LEGISLATORS

JOHN Q. TILSON †

Introduction.

IT IS NOT strange that there is no code, written or otherwise, that can be pointed to as the law governing procedure in parliamentary assemblies. It would be strange indeed if there were, for except as it may by chance be restricted or controlled by an outside constitution or other higher law, each assembly is a law unto itself and free to establish its own rules. If a majority of its members should see fit to adopt rules of procedure ridiculous in character, they are nevertheless the law of that particular assembly. The fact that such things rarely happen indicates that there are principles underlying generally accepted rules that make for uniformity in the procedure of assemblies.

In fact, a consistent, workable, effective procedure has been developed from the experience of countless parliamentary assemblies through the centuries, which in all its essentials has been accepted and is being used by the legislative and other parliamentary bodies of at least the entire English-speaking world. There are many differences in details, especially in technique, but when reduced to the lowest terms of purpose and effect, there is remarkable similarity. It is not overstraining the meaning of language to say that there is a well-developed and generally accepted code of parliamentary law. It is not possible to state just how or when it originated, but it is certain that as the Parliament of England gradually developed into an irrepressible force, parliamentary law also took form and substance.

Many persons think of parliamentary law as a code of more or less arbitrary and altogether technical rules. Some go even further and think of such rules as primarily the offspring of the wicked one, a trap for the innocent, and a veritable snare for the feet of the unwary. Few think of it in its true light as one of the most useful handmaidens in the service of free self-government among men. Its special field of greatest usefulness is in shaping legislation, though its application is as

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wide and general as the field of cooperative effort through organized assemblies.

In all legislative bodies it is a matter of primary importance that the subjects to be considered be presented in a form and dealt with in a manner that will best assure the fairest possible consideration and the wisest ultimate action. To enhance the chances of such an outcome it is necessary that in the consideration of the subject there be restrictive rules that will prevent an unhampered roving over limitless fields. As in good pleading, these rules should serve to bring speedily each substantial point to a direct issue. If rules are helpful in this direction, they need no further justification.

To insure concentration on the proposition under consideration, it has been found necessary to strictly limit the motions that may be in order while a matter is under debate. The lists of such motions and their order of precedence are not uniform, though there is a very marked similarity in such lists throughout the legislative bodies of the country. The writer has no hesitation in accepting and recommending for general use by deliberative assemblies of all kinds, great and small, the list and order of motions used for more than fifty years without change in the House of Representatives at Washington. No others have been or could have been so thoroughly tested by actual experience. This list will therefore be used here in explaining the use and purpose of the most frequently used parliamentary motions.

The rule of the House of Representatives is as follows: "When a question is under debate, no motion shall be received, but to adjourn, to lay on the table, for the previous question (which motions shall be decided without debate), to postpone to a day certain, to refer, or to amend or postpone indefinitely; which several motions shall have precedence in the foregoing order."

Keeping in mind the basic purpose of parliamentary law, which is to aid in arriving at beneficial legislation, let us examine this rule and the motions provided under it to see how they operate to serve this purpose. Leaving aside incidental motions having nothing to do with the disposition of the pending matter, it will be observed that the number of different motions that are in order, once a question is under consideration, is reduced to seven. The member of a legislative body who keeps this small list of motions clearly in mind, or whatever variation may have been adopted by the assembly, will have a decided advantage in any parliamentary controversy over an opponent who fails to do so. He should not be content with knowing their rank of precedence and effect; he should, by closely observing the mood and

temper of the assembly at the moment, know when it is opportune or timely to use them.

I.

TO ADJOURN.

Of these seven possible motions, the first mentioned, the motion to adjourn, in no way affects the subject matter or the disposition of the pending question. However, it is usually given first place in the order of precedence and, thus outranking all other motions, it is usually said that a motion to adjourn is always in order.

There are some important exceptions to this general statement. If a continuing assembly has met and has not yet fixed upon a time for reassembling, a simple adjournment would mean a dissolution. In such a situation a motion to fix a time to which the assembly will adjourn would have precedence. Another exception is that if a motion to adjourn has been voted down quite recently and no business has intervened, it will be held dilatory and ruled out on that account. The motion cannot be made while another rightly holds the floor, or while a vote is being taken.

With the exceptions noted, and no other is recalled, the simple unqualified motion to adjourn is always in order. The reason for this rule is that an assembly must be the master of its own time and therefore must be free to pass upon a proposal to cease from its labors if it so desires. As a matter of practice, as well as of courtesy, in a legislative assembly the motion to adjourn is usually made only by the floor leader, if there be one, or by the member in charge of the business under consideration at the time.

II.

LAY ON THE TABLE.

The motion to lay on the table ranks next to the motion to adjourn in the hierarchy of motions in most assemblies. The effect of this motion, if carried, is to immediately lay aside the pending matter without further debate and without further amendment. It is the most drastic of all parliamentary devices used for the disposition of motions. It is a necessary and proper means, if properly used, by which an assembly may protect itself against the waste of time and effort in considering matters deemed unwise, unnecessary, or undesirable in the judgment of the majority.

It also enables the assembly to make its choice without delay between consideration of the proposed matter and some other which

may be preferred to it. It is a weapon that can be used only by a majority, and in the hands of an arrogant and ruthless majority may be used to unduly restrict subjects for consideration by the assembly. Naturally, minorities stand in dread of it, because when used it gives no opportunity for a voice to be raised against it. The use of it as a vehicle for crushing unwelcome proposals is often referred to, especially by those feeling its pressure, as "steam-roller" tactics.

Considering the nature and possible effects of this motion, wise discretion is called for in making decisions as to when, where and how to use it; for while it is a necessary and proper implement for parliamentary use, it is also capable of misuse. The matter may be broadly stated by saying that qualities of leadership approaching statesmanship furnish the surest guaranty against error in this direction.

III.

THE PREVIOUS QUESTION.

The motion for ordering the previous question usually ranks next in the order of precedence. It can be made at any time except when a motion of higher rank, that is, to adjourn or to lay on the table, is pending; but when the previous question has been ordered, no additional motion is in order except to adjourn. The reason is patent, for having just agreed to a motion the effect of which is to require an immediate vote, it would be idle to admit a motion to lay on the table which, if carried, would nullify the preceding vote. Nor is it in order to move to lay on the table the motion for ordering the previous question, because precisely the same effect comes from voting down the motion for the previous question which requires one vote less, since by a tie vote a motion is lost, whereas a majority is required to pass it.

The purpose and effect of ordering the previous question is to bring the bill, resolution or other motion to an immediate vote without further debate or amendment. The motion must be specific as to what is included, since it may cover a single amendment or it may include the main question, bill or resolution and all amendments thereto. When not otherwise specified it will be construed to cover only the motion to be first voted upon which must be included in the motion.

The history of this motion presents an instance of reverse English. Its initial form in the English Parliament was "Shall the main question be put." The motion was made by an opponent of the pending question and a negative vote was desired. If the "Nays" prevailed, the measure

was laid aside for the session. In this form the purpose served was much the same as our present motion to postpone indefinitely.

Later on the word "now" was inserted, so that the motion read "Shall the main question be *now* put." In this form it became useless to the opponents since a negative vote delayed a final decision only temporarily. The change, however, made the motion useful to the proponents of the measure if they were ready for an immediate show-down. Its effect being immediate, it put an end to both debate and amendment, thus becoming an ideal and efficacious means of cloture. This was the form in use at the time of the American Revolution and as subsequently taken over by our own House of Representatives. It has been adopted by at least one branch of most of our state legislatures and by other assemblies quite generally.

It is apparent that this motion, of all motions, is the one most liable to misuse and the one most liable to abuse by reckless or power-drunk majorities. Liberal debate giving opportunity for adequate discussion of legislative proposals is one of the basic requisites of free parliamentary government. It should be evident that undue abridgment of this opportunity is fraught with danger to any parliamentary assembly representing a self-governing people; and yet, as Mr. Speaker Reed once said, "The purpose of a legislative body is to legislate." Of necessity there must be an end to mere oratory. Unlimited debate in a numerically large assembly having strictly limited time in which to consider a vast amount of business would mean that a sizable militant minority might readily prevent all legislation. It is therefore deemed necessary that some means be found for finally permitting the majority to work its will. The previous question is the generally accepted parliamentary device for serving this purpose.

In the application of this motion, due care and caution should always be used. Fair play and good sportsmanship on the part of a majority usually, and in the long run, produce the best results. As already indicated, this motion readily lends itself to abuse, and it is a fact that it is all too frequently so used. Even the proper and necessary application of the rule is frequently described by those feeling its repression as "gag rule," and these words have come to have an unfortunate and sinister connotation. Wise legislators will avoid as far as possible even an excuse for the application of this opprobrious term.

So jealous are American assemblies of the freedom of debate that many organized bodies have adopted parliamentary rules requiring a two-thirds vote to order the previous question. This is a violation of

the principle of majority rule, but except in legislative bodies such a rule, or even one requiring a greater proportion of the assembly, would probably cause little inconvenience. It is certain, however, that in this country where the two-party system prevails in our legislative bodies and where the division between the two parties is often close and tightly drawn, the usual principle of majority rule, in this as in other matters, has been found best fitted to the purpose to be served. The United States Senate is a notable exception, due to exceptional circumstances connected with its history and growth in numbers. It has never adopted the rule for ordering the previous question; but as the amount of business grows in magnitude and importance, other means of limiting debate are being necessarily, though quite gradually, developed even in that august body.

IV.

POSTPONE TO A DAY CERTAIN.

The motion ranking next in the order of precedence is to postpone to a day certain. Sometimes it is called a motion to fix orders of the day. It is favored with this high preference because parliamentary law favors a procedure looking toward a disposition of the pending matter, and this motion, if carried, definitely establishes a time at which it is to be acted upon. The motion does not open the main question to debate on its merits or to unlimited amendment. The limited debate and amendment permitted relate only to reasons for the postponement and the time to be fixed for renewing the consideration of the question.

V.

REFER OR COMMIT.

The motion next in rank is to refer or commit. It is frequently used in legislative bodies for the purpose of sending the pending matter to a committee or other smaller body to be considered in less formal session and reported back to the parent assembly for final action. In the course of adopting numerous amendments, the pending measure often becomes so complex and complicated as to render it difficult to follow without confusion. In such a situation often the best remedy is to send the entire question to a smaller group where, in less formal session around the table, the measure may be rewritten.

The committee or other body to which such matters are usually referred, being only the creature of the parent body, possesses no powers beyond those conferred by its creator. The advantage to be

gained is in the probability that a smaller group sitting informally is better adapted to the task of whipping a complex subject matter into final shape for legislative action.

The motion to refer does not open the main question to debate on its merits. It may be debated as to the body to which the subject matter is to be referred, or to any incidental instructions to be given. It is also subject to limited amendment only as to the composition of the body, instructions regarding its action, or to the time for making a report.

VI.

AMEND.

The parliamentary rules governing motions to amend are the most important of all. It is the fundamental purpose of all discussion and all action on legislative proposals to prepare them in the best possible shape for final enactment. In order to do this in a free legislative assembly, amendment, as well as debate, should be provided for to a liberal degree. In order to serve this purpose as far as possible and yet make it practicable for an assembly to transact all the business required of it, certain rules have been evolved and developed through many long years of trial and error. To the layman or parliamentary novice some of these provisions may seem technical, unnecessary or unduly restrictive. However, when submitted to the acid test of actual use in legislative assemblies, it is doubtful whether they could be materially improved or made more capable of effective service. A few of the more important and necessary of the rules governing amendments are referred to here.

When a motion or proposition is under consideration, an amendment and an amendment to this amendment are in order. Further amendments are forbidden by the rule against amendments to the third degree. The reason for this restriction should be evident. It helps to simplify the issue. To allow more than one amendment to a pending amendment, would surely tend to confuse, rather than help present a definite issue. When the secondary amendment has been disposed of, another amendment to the original amendment may be proposed, and so on, each subject to the same restriction. The effect of this rule is to hold the assembly to one single point which, for the time being, is the proposed amendment, and to permit no other until the original amendment is disposed of.

An apparent exception or relaxation of the rule, though it is really an addition to it, is a more recent device found to be useful and thus

becoming quite generally accepted as good parliamentary law. Its acceptance indicates that parliamentary law is by no means static, though substantial changes are slow of acceptance. The device consists in making it in order, while the original amendment, even with a proposed amendment to it, is pending, to offer a substitute amendment for the first amendment. The proposed substitute also may be amended by amendments offered singly. While it would thus appear that four separate propositions may be pending, in violation of the basic principle of parliamentary procedure, "one thing at a time," nevertheless the conflict is more apparent than real.

A clear, definite rule for the order in which these four possible motions are to be disposed of, if followed, removes the danger of confusion. This order provides that all amendments to the original amendment must be voted upon, either eliminating them or making them a part of the original amendment, before any action is in order on the substitute or any amendment thereto. The language of the original amendment must be first "perfected," which is parliamentary language for any final change that may be made in it. The proposed substitute must be "perfected" in the same manner. The substitute is then ready for comparison with the original amendment as it may have been amended, and the first vote is to decide between the two proposals in their "perfected" stage. Whichever may be chosen as between the two must also be voted upon before it is valid because it may well be that while a majority of the assembly may prefer one as a choice between the two, a majority, perhaps otherwise composed, may prefer that no amendment whatever be made to the original proposition.

Another rule restrictive of amendments is what is known as the "rule of germaneness," which is well stated as follows: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

The reason for this rule is to prevent a jumbled medley of legislation in a single enactment. It gives rise to more parliamentary controversy than any other rule. Its purpose is to be highly commended, but the application of it is far from easy. What constitutes "a subject different from that under consideration"? There is plenty of room for strict and liberal construction in ruling upon proposed amendments. What might be termed a "leading case" on the subject was one deciding that where the proposition was to admit one territory as a state of the Union, it was not in order to amend by adding another territory. A broad statement of this rule is that if the "subject under consideration" is a single object, to add another object is not in order, but if the

“subject under consideration” is a class of objects, any object within the class is admissible. The principle involved is to concentrate effort upon a single point until it is brought to an issue.

VII.

POSTPONE INDEFINITELY.

Little need be said in regard to this lowest ranking of motions in the order of precedence, although in some assemblies it is given a higher rank. It is a motion rarely used because there is little occasion for its use. It might be left entirely out of the list with little loss to parliamentary procedure. It does, however, permit legislators to get rid of an embarrassing proposal without actually voting against it. A motion to postpone indefinitely is a form of anesthetic for putting a measure to sleep without having committed the unfriendly act of voting it down.

Any one of the foregoing motions may be made while any of the lower ranking motions are pending. Again this seems to violate the parliamentary principle of “one thing at a time,” but it is not so. At any given stage in the consideration of a question under debate there is one question and one only that can be properly submitted to vote at that particular stage.

Two other rules, though involving no motion or other formal action by an assembly, are sufficiently important in connection with the shaping of legislation to deserve a brief reference. They relate specifically to debate and may be described as germaneness of debate and courtesy in debate.

VIII.

GERMANENESS OF DEBATE.

The rule requiring germaneness in debate has been boiled down to eight words, the speaker “. . . shall confine himself to the question under debate.” This terse statement of the rule, however, is very far from furnishing a definite guide for applying the rule. Here, again, there is ample room for strict or liberal construction. If too narrowly construed, much may be lost by unduly restricting the scope of the discussion. If too broadly interpreted, the range of the debate may be so wide and the discussion so diffuse as to become ineffective, if not positively confusing. The criterion here, as in every provision of the accepted code of parliamentary procedure, should be: Does it lend itself to the better consideration of and final action upon questions requiring the attention of legislative assemblies? The best that can

be said is that the principle underlying the rule is clear, but that its reasonable application must be left: first, to the good judgment of the presiding officer; and ultimately, to the common sense of the assembly.

IX.

COURTESY IN DEBATE.

The parliamentary rule requiring courtesy in debate is general in its application and of great importance in shaping legislation. It is adequately stated in just two words tacked on to the closing paragraph of the rule of the House of Representatives requiring germaneness in debate, reading: ". . . and shall confine himself to the question under debate, *avoiding personality.*" Upon these two words has been built up quite an elaborate structure relating to courtesy in debate. Legislative bodies quite properly lay considerable stress upon this provision, though it may be stretching the necessity just a bit to taboo all reference to a fellow member by name. However, it sounds impressive to say "the gentleman from Connecticut," and it does no harm. The reason for the rule is fundamental and of real importance in parliamentary procedure. The proper and inevitable controversies in legislative bodies are apt to become heated at times. If debate is carried to the point where more heat than light is generated, bad blood is developed and the useful purpose of sober parliamentary discussion is lost. It is not a wholesome atmosphere in which to legislate. Such a situation is not conducive to the best legislative results, which, after all, is the end to be sought.

Conclusion.

Thus we have completed the list of rules which have been found necessary or useful in the consideration of matters which must be discussed and resolved upon if decisions are to be made in accordance with acceptable democratic processes. Legislative bodies cannot efficiently or successfully perform their function without an accepted code of such rules applicable and suited to the nature of the business to be transacted. No legislator who is conscientious in his desire to serve the people he represents effectively, as well as his state and nation, can afford to stop short of a thorough mastery of the rules of procedure governing the body of which he is a member. Nor should he stop here. If he would reach the pinnacle of usefulness as a Solon he should give sufficient time and study to become acquainted with the principles underlying the accepted rules of procedure. They will shed light upon and help to solve many troublesome problems apt to arise in legislative halls.