

JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE ¹

SEC. I—IMPORTANCE OF ADHERING TO RULES

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, “It was a maxim he had often heard when he was a young man, from old

§283. Rules as related to the privileges of minorities.

¹Jefferson's Manual was prepared by Thomas Jefferson for his own guidance as President of the Senate in the years of his Vice Presidency, from 1797 to 1801. In 1837 the House, by rule that still exists, provided that the provisions of the Manual should “govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House.” Rule XXIX, § 1105, *infra*. In 1880 the committee that revised the Rules of the House declared in their report that the Manual, “compiled as it was for the use of the Senate exclusively and made up almost wholly of collations of English parliamentary practice and decisions, it was never especially valuable as an authority in the House of Representatives, even in its early history, and for many years past has been rarely quoted in the House” (V, 6757). This statement, although sanctioned by high authority, is extreme, for in certain parts of the Manual are to be found the foundations of some of the most important portions of the House's practice.

§284. The Manual as a statement of parliamentary law. The Manual is regarded by English parliamentarians as the best statement of what the law of Parliament was at the time Jefferson wrote it. Jefferson himself says, in the preface of the work:

“I could not doubt the necessity of quoting the sources of my information, among which Mr. Hatsel's most valuable book is preeminent; but as he has only treated some general heads, I have been obliged to recur to other authorities in support of a number of common rules of practice, to which his plan did not descend. Sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of the text, the residue being inferred from known rules and principles. For some of the most familiar

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and experienced Members, that nothing tended more to throw power into the hands of administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority, and that they were, in many instances, a shelter and protection to the minority, against the attempts of power." So far the maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted as they were found

forms no written authority is or can be quoted, no writer having supposed it necessary to repeat what all were presumed to know. The statement of these must rest on their notoriety.

"I am aware that authorities can often be produced in opposition to the rules which I lay down as parliamentary. An attention to dates will generally remove their weight. The proceedings of Parliament in ancient times, and for a long while, were crude, multiform, and embarrassing. They have been, however, constantly advancing toward uniformity and accuracy, and have now attained a degree of aptitude to their object beyond which little is to be desired or expected.

"Yet I am far from the presumption of believing that I may not have mistaken the parliamentary practice in some cases, and especially in those minor forms, which, being practiced daily, are supposed known to everybody, and therefore have not been committed to writing. Our resources in this quarter of the globe for obtaining information on that part of the subject are not perfect. But I have begun a sketch, which those who come after me will successively correct and fill up, till a code of rules shall be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality."

necessary, from time to time, and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities, *2 Hats., 171, 172.*

And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body. *2 Hats., 149.*

§ 285. Necessity of rules of action.

Jefferson also says in his preface, as to the source most desirable at that time from which to draw principles of procedure:

§ 286. Relations of the parliamentary law to the early practice of Congress.

“But to what system of rules is he to recur, as supplementary to those of the Senate? To this there can be but one answer: To the system of regulations adopted for the government of some one of the parliamentary bodies within these States, or of that which has served as a prototype to most of them. This last is the model which we have all studied, while we are little acquainted with the modifications of it in our several States. It is deposited, too, in publications possessed by many, and open to all. Its rules are probably as wisely constructed for governing the debates of a deliberative body, and obtaining its true sense, as any which can become known to us; and the acquiescence of the Senate, hitherto, under the references to them, has given them the sanction of the approbation.”

Those portions of the Manual that refer exclusively to Senate procedure or that refer to English practice wholly inapplicable to the House have been omitted. Paragraphs from the Constitution of the United States have also been omitted, because the Constitution is printed in full in this volume.

Whether the House is in order so that a Member may proceed in debate is determined by the Chair (Apr. 23, 2008, p. __). Alleged partiality in making such a determination has been renounced (July 31, 2008, p. __). The comportment of a presiding officer has formed the basis of a question of privilege (Aug. 3, 2007, p. 22783).

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SEC. III—PRIVILEGE

The privileges of members of Parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never yielding pace. Claims seem to have been brought forward from time to time, and repeated, till some example of their admission enabled them to build law on that example. We can only, therefore, state the points of progression at which they now are. It is now acknowledged, 1st. That they are at all times exempted from question elsewhere, for anything said in their own House; that during the time of privilege, 2d. Neither a member himself, his, *order H. of C. 1663, July 16*, wife, nor his servants (*familiares sui*), for any matter of their own, may be, *Elsynge, 217; 1 Hats., 21; 1 Grey's Deb., 133*, arrested on mesne process, in any civil suit: 3d. Nor be detained under execution, though levied before time of privilege: 4th. Nor impleaded, cited, or subpoenaed in any court: 5th. Nor summoned as a witness or juror: 6th. Nor may their lands or goods be distrained: 7th. Nor their persons assaulted, or characters traduced. And the period of time covered by privilege, before and after the session, with the practice of short prorogations under the conniv-

§ 287. Privileges of members of Parliament.