



Legislative Rules: Part One A Brief History of Parliamentary Law

INTRODUCTION

The framers of the Wisconsin Constitution granted the members of the assembly and the senate the power to create the legislative rules that guide their work and decorum. According to article IV, section 8, of the Wisconsin Constitution, each house of the legislature has the power to “determine the rules of its own proceedings.”

Legislative rules are based on English parliamentary law. Their content, therefore, is for the most part well established. Each biennial session, legislators rely on historical precedent to determine the rules that will guide their future. Parliamentary law is a part of the historical precedent for legislative rules.

Parliamentary law is the historic compilation of English government organizational procedures. This compilation consists of the customs, both written and unwritten, that structure peaceful and just assemblies. In the United States, a definitive written source of these customs is *Jefferson’s Manual*. *Jefferson’s Manual*, written by Thomas Jefferson and published in 1801, was created to ensure that the legislature was a fair forum.

ENGLISH PARLIAMENTARY LAW

The root of government as we know it and the source of legislative rules began with the earliest-known European political unit, the

tribe. Anglo-Saxon tribes began their migration to the island of Britain in the fifth century. In these tribes, assemblies of elders or fighting men administered justice and made decisions on matters of importance. Over the course of approximately 200 years these assemblies became known as “Shire Courts.”

Shire Courts were an instrument of local government. Local governments were subject to supervision by the king. The king, in turn, held national assemblies. These national assemblies advised the crown and were known as the “witan” or “witenagemot.” The witenagemot was composed of court officials: major landholders, elder men, king’s officers, bishops, and abbots. The witenagemot was not a democratic institution, but the king relied on its consent for his authority.

The Norman invasion of 1066 changed the administrative power of Britain but did not change the nature of the witenagemot, only its name. The general assembly of court officials became known as the Great Council. Norman kings of the eleventh century assembled Great Councils of English barons to offer advice on matters of the kingdom.

The word “parliament” was first used during the twelfth century in

England to describe any important meeting held for the purpose of discussion. The word “parliament” was first applied to the Great Council in the time of Henry III (1216–1272). The Parliaments gave the barons the opportunity to express their opinions about the “state of the realm” and the business of “king and kingdom.”

Members of these early parliaments found that their discussions, to be fruitful, needed to be orderly and

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Thomas Jefferson in the preface to *Jefferson’s Manual*.

respectful. Parliamentary custom established that orderly and respectful discussions required procedures and rules. Minority members of early parliaments, in particular, discovered that, in order for their interests to be protected and their voices to be heard, a uniform system of procedural rules or parliamentary law needed to be adopted.

Over time, parliamentary customs and rules became more uniform. The first established written source of parliamentary law was the *Journal of the House of Commons* written by the clerk of the house in 1547. The *Journal* was given the

status of an official document of the Commons in 1623. This was the first written source of precedent on matters of parliamentary procedure.

EXAMPLES OF PARLIAMENTARY LAW

Examples from the *Journal of the House of Commons* illustrate the organizational nature of parliamentary law. The 1604 rule regarding decorum and avoidance of personalities in debate reads, "He that digresseth from the Matter to fall upon the Person, ought to be suppressed by the Speaker... No reviling or nipping words must be used."

The speaker, or presiding officer, plays an important part in keeping the assembly orderly. This includes confining the debate to the point at issue and keeping the debate civil. A 1610 rule reads, "[A] Member speaking, and his speech, seeming impertinent, and there being much hissing and spitting, it was conceived for a Rule, that Mr. Speaker may stay impertinent Speeches."

These rules illustrate the necessity and continued importance of legislative rules. Although hissing and spitting may no longer be an issue in government, keeping debate impersonal and applicable to the issue at hand is central to decorum of the legislature, and the speaker continues to be central in maintaining this decorum.

PARLIAMENTARY LAW IN AMERICA

English colonists brought the seeds of parliamentary law with them to the New World. Each colony looked to parliamentary law as it established its individual charter. The colonists used parliamentary procedure during meetings between colonies to address issues of com-

mon interest. Once the colonies had secured their freedom, and as democracy began to take root, Thomas Jefferson, as president of the senate (1797–1801), recognized the need to compile similar procedural rules to assist in the day-to-day workings of the new legislature.

For guidance, Jefferson studied English documents on parliamentary law. An important source, *Precedents of Proceedings in the House of Commons*, was published in 1781 by John Hatsell, a clerk of the House of Commons. This publication is considered the best authority on eighteenth century parliamentary procedure and was of great use to Jefferson.

Jefferson determined, by studying parliamentary law, that effective government required certain basic elements. These basic elements included a presiding officer, a recording officer, and "some established rules or customs." Jefferson concluded that the established rules and customs of English parliamentary proceedings, though "crude, multiform and embarrassing" were "constantly advancing toward uniformity and accuracy."

Using the wise and ever advancing uniformity and accuracy of English parliamentary law as an example, Jefferson established legislative rules for the senate. This rule compilation was published in 1801 as *Manual of Parliamentary Practice*, commonly known as *Jefferson's Manual*. Jefferson acknowledged that in compiling these rules he had,

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.

Although published over 200 years ago, *Jefferson's Manual* continues to be a resource for the practice and procedure of today's federal and state legislatures, including Wisconsin's legislature. Federal and state governments use *Jefferson's Manual* to help create and interpret legislative rules which guide and ensure fair government practice.

CONTINUED IMPORTANCE

English Parliament, Thomas Jefferson, and others have acknowledged the importance of rules to help create and maintain an orderly, respectful, and just assembly.

Publications that have relied and expanded on English parliamentary law and *Jefferson's Manual* include Paul Mason's *Mason's Manual of Legislative Procedure*, a timely resource well used by governments, and General Henry M. Robert's *Roberts Rules*, published to assist non-governmental assemblies with order, decorum, and fairness.

As prefaced in *Jefferson's Manual*, "It is very material that order, decency and regularity be preserved in the dignified public body." The precedence of parliamentary law helps to ensure that government assemblies generally, and the Wisconsin Legislature specifically, can achieve order, decency, regularity, and dignity.

Governing Wisconsin: "Parliamentary Law"

Study Questions

1	What is the source of modern legislative rules?	
2	How do legislative rules and parliamentary law assist a diverse group to accomplish a common goal?	
3	How would the presiding officer of an assembly use rules to maintain order if one member called another member a name?	
4	In ruling on questions of rule interpretation or parliamentary procedure, why does the presiding officer follow precedent?	
5	In what way would parliamentary rules be modified regarding the use of cell phones?	
6	Would parliamentary rules work better if the legislature did not have authority to suspend or change them? Why or why not?	

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Study Questions in the Cognitive Domain

1	What is the source of modern legislative rules?	The rules are based on English parliamentary law.	Cognition
2	How do legislative rules and parliamentary law assist a diverse group to accomplish a common goal?	Rules help the group stay focused on relevant issues. The rules provide for certain minority rights to ensure that all views will be considered before the group reaches a decision.	Comprehension
3	How would the presiding officer of an assembly use rules to maintain order if one member called another member a name?	The presiding officer would rule the member who was name-calling out of order. Personal attacks, such as name-calling, are irrelevant to the debate, interfere with rational decision making, and cause unnecessary disruption.	Application
4	In ruling on questions of rule interpretation or parliamentary procedure, why does the presiding officer follow precedent?	Following precedent increases the chances that a decision will be correct. Staying consistent with the logic of older rulings gives the decision more authority and makes it less likely that a ruling will be based on personalities or other preferences of the presiding officer.	Analysis
5	In what way would parliamentary rules be modified regarding the use of cell phones?	Cell phone use would be prohibited during meetings because talking on a cell phone distracts a member from paying attention to the proceedings and shows disrespect for others present.	Synthesis
6	Would parliamentary rules work better if the legislature did not have authority to suspend or change them? Why or why not?	No. Although a legislative body closely follows the established rules, it can suspend the rules when the body has reached general agreement on an issue to speed up the proceedings. The body can change the rules to better fit its situation.	Evaluation