JEFFERSON'S MANUAL

JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE [1]

SEC. I—IMPORTANCE OF ADHERING TO RULES

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

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

[1] Jefferson'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

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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.*

§ 285. Necessity of rules of action.

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.*

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

§ 287. Privileges of members of Parliament.

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-

ance of the Crown, amounts in fact to a perpetual protection against the course of justice. In one instance, indeed, it has been relaxed by the 10 G. 3, c. 50, which permits judiciary proceedings to go on against them. That these privileges must be continually progressive, seems to result from their rejecting all definition of them; the doctrine being, that "their dignity and independence are preserved by keeping their privileges indefinite; and that 'the maxims upon which they proceed, together with the method of proceeding, rest entirely in their own breast, and are not defined and ascertained by any particular stated laws.'" *1 Blackst., 163, 164.*

For a modern discussion of privileges of Members of Parliament, see Report of Joint Committee on Parliamentary Privilege of the House of Commons (H.C. 214–1, Mar. 30, 1999).

§ 288. Privilege of Members of Congress under the Constitution.

It was probably from this view of the encroaching character of privilege that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of "arrest in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either House." *Const. U.S. Art I, Sec. 6.* Under the general authority "to make all laws necessary and proper

for carrying into execution the powers given them," *Const. U.S., Art. II, Sec. 8,* they may provide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground: 1. The act of arrest is void, ab initio. *2 Stra., 989.* 2. The member arrested may be discharged on motion, *1 Bl., 166; 2 Stra., 990;* or by habeas corpus under the Federal or State authority, as the case may be; or by a writ of privilege out of the chancery, *2 Stra., 989,* in those States which have adopted that part of the laws of England. *Orders of the House of Commons, 1550, February 20.* 3. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest. 4. The court before which the process is returnable is bound to act as in other cases of unauthorized proceeding, and liable, also, as in other similar cases, to have their proceedings stayed or corrected by the superior courts.

§ 289. Privilege as to going and returning.

The time necessary for going to, and returning from, Congress, not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, eundo, morando, et redeundo, the House of Commons themselves decided that "a convenient time was to be under-

stood." *(1580,) 1 Hats., 99, 100.* Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct; some necessity perhaps constraining him to it. *2 Stra., 986, 987.*

§ 290. Privilege of Members as related to rights of courts to summon witnesses and jurors.

This privilege from arrest, privileges, of course, against all process the disobedience to which is punishable by an attachment of the person; as a subpoena ad respondendum, or testificandum, or a summons on a jury; and with reason, because a Member has superior duties to perform in another place. When a Representative is withdrawn from his seat by summons, the 40,000 people whom he represents lose their voice in debate and vote, as they do on his voluntary absence; when a Senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does on his voluntary absence. The enormous disparity of evil admits no comparison.

§ 291a. Attitude of the House as to demands of the courts.

The House has decided that the summons of a court to Members to attend and testify constituted a breach of privilege, and directed them to disregard the mandate (III, 2661); but in other cases wherein Members informed the House that they had been summoned before the District Court of the United States for the District of Columbia or other courts, the House authorized them to respond (III, 2662; Feb. 23, 1948, p. 1557; Mar. 5, 1948, p. 2224; Apr. 8, 1948, p. 4264; Apr. 12, 1948, p. 4347; Apr. 14, 1948, p. 4461; Apr. 15, 1948, p. 4529; Apr. 28, 1948, p. 5009; May 6, 1948, pp. 5433, 5451; Feb. 2, 1950, p. 1399; Apr. 4, 1951, p. 3320; Apr. 9, 1951, p. 3525; Apr. 12, 1951, pp. 3751, 3752; Apr. 13, 1951, p. 3915; June 4,

1951, p. 6084; June 22, 1951, p. 7001; Sept. 18, 1951, p. 11571; Sept. 27, 1951, p. 12292; Mar. 5, 1953, p. 1658; Mar. 18, 1953, p. 2085; Mar. 11, 1954, p. 3102; July 19, 1954, p. 10904; Apr. 9, 1956, p. 5970; Apr. 10, 1956, p. 5991). The House, however, has declined to make a general rule permitting Members to waive their privilege, preferring that the Member in each case should apply for permission (III, 2660). Also in maintenance of its privilege the House has refused to permit the Clerk or other officers to produce in court, in obedience to a summons, an original paper from the files, but has given the court facilities for making copies (III, 2664, 2666; Apr. 15, 1948, p. 4552; Apr. 29, 1948, pp. 5161, 5162; May 6, 1948, p. 5432; Jan. 18, 1950, p. 565; Feb. 8, 1950, p. 1695; Feb. 13, 1950, p. 1765; Sept. 22, 1950, p. 15636; Apr. 6, 1951, p. 3403; Apr. 12, 1951, p. 3800; Oct. 20, 1951, p. 13777; Jan. 22, 1953, p. 498; May 25, 1953, p. 5523; Jan. 28, 1954, p. 964; Feb. 25, 1954, p. 2281; July 1, 1955, p. 9818; Apr. 12, 1956, p. 6258; Apr. 24, 1958, p. 7262; Apr. 29, 1958, p. 7636; Sept. 16, 1974, p. 31123; Jan. 19, 1977, p. 1728), but on one occasion, in which the circumstances warranted such action, the Clerk was permitted to respond and take with him certified copies of certain documents described in the subpoena (H. Res. 601, Oct. 29, 1969, p. 32005); and on the rare occasions in which the House has permitted the production of an original paper from its files, it has made explicit provision for its return (H. Res. 1022, 1023, Jan. 16, 1968, p. 80; H. Res. 1429, July 27, 1976, p. 24089). No officer or employee, except by authority of the House, should produce before any court a paper from the files of the House, nor furnish a copy of any paper except by authority of the House or a statute (III, 2663; VI, 587; Apr. 15, 1948, p. 4552; Apr. 30, 1948, pp. 5161, 5162; May 6, 1948, p. 5432; Jan. 18, 1950, p. 565; Feb. 8, 1950, p. 1695; Feb. 13, 1950, p. 1765; Sept. 22, 1950, p. 15636; Apr. 6, 1951, p. 3403; Apr. 12, 1951, p. 3800; Oct. 20, 1951, p. 13777; Mar. 10, 1954, p. 3046; Feb. 7, 1955, p. 1215; May 7, 1956, p. 7588; Dec. 18, 1974, p. 40925). In the 98th Congress, the House adopted a resolution denying compliance with a subpoena issued by a Federal Court for the production of records in the possession of the Clerk (documents of a select committee from the prior Congress), where the Speaker and joint leadership had instructed the Clerk in the previous Congress not to produce such records and where the Court refused to stay the subpoena or to allow the select committee to intervene to protect its interest; the resolution directed the Counsel to the Clerk to assert the rights and privileges of the House and to take all steps necessary to protect the rights of the House (Apr. 28, 1983, p. 10417). On appeal from a subsequent district court judgment finding the Clerk in contempt, the Court of Appeals reversed on the ground that a subpoena to depose a nonparty witness under the Federal Rules of Civil Procedure may only be served in the district (of Maryland) where it was issued. In re Guthrie, 733 F.2d 634 (4th Cir. 1984). If an official of both Houses of Congress is subpoenaed in his official capacity, the concurrence of both Houses by concurrent resolu-

tion is required to permit compliance (H. Con. Res. 342, July 16, 1975, pp. 23144–46).

A resolution routinely adopted up to the 95th Congress provided that when the House had recessed or adjourned Members, officers, and employees were authorized to appear in response to subpoenas duces tecum, but prohibited the production of official papers in response thereto; the resolution also provided that when a court found that official papers, other than executive session material, were relevant, the court could obtain copies thereof through the Clerk of the House (see, *e.g.*, H. Res. 12, Jan. 3, 1973, p. 30). In the 95th Congress, the House for the first time by resolution permitted this same type of general response whether or not the House is in session or in adjournment if a court has found that specific documents in possession of the House are material and relevant to judicial proceedings. The House reserved to itself the right to revoke this general permission in any specific case in which the House desires to make a different response (H. Res. 10, Jan. 4, 1977, p. 73; H. Res. 10, Jan. 15, 1979, p. 19). The permission did not apply to executive session material, such as a deposition of a witness in executive session of a committee, which could be released only by a separate resolution passed by the House (H. Res. 296, June 4, 1979, p. 13180). H. Res. 10 of the 96th Congress was clarified and revised later in that Congress by H. Res. 722 (Sept. 17, 1980, pp. 25777–90) and became the basis for rule VIII, added as rule L in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113, see § 697, *infra*).

§ 291b. Judicial appearances on behalf of House.

Although the statutes provide that the Department of Justice may represent any officer of the House or Senate in the event of judicial proceedings against such officer in relation to the performance of official duties (see 2 U.S.C. 118), and that the Department of Justice shall generally represent the interests of the United States in Court (28 U.S.C. 517), the House has on occasion authorized special appearances on its own behalf by special counsel when the prerogatives or powers of the House have been questioned in the courts. The House has adopted privileged resolutions authorizing the chair of a subcommittee to intervene in any judicial proceeding concerning subpoenas duces tecum issued by that committee, authorizing the appointment of a special counsel to carry out the purposes of such a resolution, and providing for the payment from the contingent fund (now referred to as "applicable accounts of the House described in clause 1(k)(1) of rule X") of expenses to employ such special counsel (H. Res. 1420, Aug. 26, 1976, p. 1858; H. Res. 334, May 9, 1977, pp. 13949–52), authorizing the Sergeant at Arms to employ a special counsel to represent him in a pending action in Federal court in which he was named as a defendant, and providing for the payment from the contingent fund of expenses to employ such counsel (H. Res. 1497, Sept. 2, 1976, p. 28937), and authorizing the chair of the Committee on House Administration to intervene as a party in a pending civil action in the U.S. Court of Claims, to defend on behalf of the House the constitutional authority to make laws

necessary and proper for executing its constitutional powers, authorizing the employment of special counsel for such purpose, and providing for the payment from the contingent fund of expenses to employ such counsel (H. Res. 884, Nov. 2, 1977, p. 36661). The House has authorized the Speaker to take any steps considered necessary, including intervention as a party or by submission of briefs amicus curiae, in order to protect the interests of the House before the court (H. Res. 49, Jan. 29, 1981, p. 1304). The House also has on occasion adopted privileged resolutions, reported from the Committee on Rules, authorizing standing or select committees to make applications to courts in connection with their investigations (H. Res. 252, Feb. 9, 1977, pp. 3966–75; H. Res. 760, Sept. 28, 1977, pp. 31329–36; H. Res. 67, Mar. 4, 1981, pp. 3529–33), including an unreported resolution (adopted by special rule) regarding initiating or intervening in judicial enforcement of committee subpoenas (Feb. 14, 2008, p. __), which authority was continued and expanded in the next Congress (sec. 4(f), H. Res. 5, Jan. 6, 2009, p. __). For a discussion of the Office of General Counsel, which was established to provide legal assistance and representation to the House without regard to political affiliation and in consultation with the Bipartisan Legal Advisory Group, see clause 8 of rule II, § 670*, infra*.

§ 292. Attitude of one House as to demands of the other for attendance or papers.

When either House desires the attendance of a Member of the other to give evidence it is the practice to ask the other House that the Member have leave to attend, and the use of a subpoena is of doubtful propriety (III, 1794). However, in one case the Senate did not consider that its privilege forbade the House to summon one of its officers as a witness (III, 1798). But when the Secretary of the Senate was subpoenaed to appear before a committee of the House with certain papers from the files of the Senate, the Senate discussed the question of privilege before empowering him to attend (III, 2665). For discussion of the means by which one House may prefer a complaint against a Member or officer of the other, see § 373, *infra*.

§ 293. Power of the House to punish for contempts.

So far there will probably be no difference of opinion as to the privileges of the two Houses of Congress; but in the following cases it is otherwise. In December, 1795, the House of Representatives committed two persons of the name of Randall and Whitney for attempting to corrupt the integrity of certain Members, which they considered as a contempt and breach of the privileges of the House; and the facts being proved, Whitney was

detained in confinement a fortnight and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House voted a challenge given to a Member of their House to be a breach of the privileges of the House; but satisfactory apologies and acknowledgments being made, no further proceeding was had. * * *

§ 294. Decision of the court in Anderson's case.

The cases of Randall and Whitney (II, 1599–1603) were followed in 1818 by the case of John Anderson, a citizen, who for attempted bribery of a Member was arrested, tried, and censured by the House (II, 1606). Anderson appealed to the courts and this procedure finally resulted in a discussion by the Supreme Court of the United States of the right of the House to punish for contempts, and a decision that the House by implication has the power to punish, because "public functionaries must be left at liberty to exercise the powers which the people have intrusted to them," and "the interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers" (II, 1607; Anderson *v.* Dunn, 19 U.S. (6 Wheat.) 204, 226, 227 (1821)). In 1828 an assault on the President's secretary in the Capitol gave rise to a question of privilege that involved a discussion of the inherent power of the House to punish for contempt (II, 1615). Again in 1832, when the House censured Samuel Houston, a citizen, for assault on a Member for words spoken in debate (II, 1616), there was a discussion by the House of the doctrine of inherent and implied power as opposed to the other doctrine that the House might exercise no authority not expressly conferred on it by the Constitution or the laws of the land (II, 1619). In 1865 the House arrested and censured a citizen for attempted intimidation and assault on a member (II, 1625); in 1866, a citizen who had assaulted the clerk of a committee of the House in the Capitol was arrested by order of the House, but because there was not time to punish in the few remaining days of the session, the Sergeant-at-Arms was directed to turn the prisoner over to the civil authorities of the District of Columbia (II, 1629); and in 1870 Woods, who had assaulted a Member on his way to the House, was arrested on warrant of the Speaker, arraigned at the bar, and imprisoned for a term extending beyond the adjournment of the session, although not beyond the term of the existing House (II, 1626–1628).

§ 295. Views of the court in Kilbourn's case.

In 1876 the arrest and imprisonment by the House of Hallet Kilbourn, a contumacious witness, resulted in a decision by the Supreme Court of the United States that the House had no general power to punish for contempt, as in a case wherein it was proposing to coerce a witness in an inquiry not within the constitutional authority of the House. The Court also discussed the doctrine of inherent power to punish, saying in conclusion, "We are of opinion that the right of the Houses of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges can derive no support from the precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices. Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation. This latter proposition is one that we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function" (Kilbourn *v.* Thompson, 103 U.S. 168, 189 (1880); II, 1611). In 1894, in the case of Chapman, another contumacious witness, the Supreme Court affirmed the undoubted right of either House of Congress to punish for contempt in cases to which its power properly extends under the expressed terms of the Constitution (II, 1614; In Re Chapman, 166 U.S. 661 (1897)). The nature of the punishment that the House may inflict was discussed by the Court in Anderson's case (II, 1607; Anderson *v.* Dunn, 19 U.S. (6 Wheat.) 204 (1821)).

§ 296. Decision of the court in Marshall *v.* Gordon.

In the case of Marshall *v.* Gordon, 243 U.S. 521 (1917), the Court addressed the following situation:

Appellant, while United States Attorney for the Southern District of New York, conducted a grand jury investigation that led to the indictment of a Member of the House. Acting on charges of misfeasance and nonfeasance made by the Member against appellant in part before the indictment and renewed with additions afterward, the House by resolution directed its Judiciary Committee to make inquiry and report concerning appellant's liability to impeachment. Such inquiry being in progress through a subcommittee, appellant addressed to the subcommittee's chair, and gave to the press, a letter, charging the subcommittee with an endeavor to probe into and frustrate the action of the grand jury, and couched in terms calculated to arouse the indignation of the members of that committee and those of the House generally. Thereafter, appellant was arrested in New York by the Sergeant-at-Arms pursuant to a resolution of the House whereby the letter was characterized as defamatory and insulting and as tending to bring that body into public contempt and ridicule, and whereby appellant in writing and publishing such letter was adjudged to be in contempt of

the House in violating its privileges, honor, and dignity. He applied for habeas corpus.

The court held that the proceedings concerning which the alleged contempt was committed were not impeachment proceedings; that, whether they were impeachment proceedings or not, the House was without power by its own action, as distinct from such action as might be taken under criminal laws, to arrest or punish for such acts as were committed by appellant.

No express power to punish for contempt was granted to the House save the power to deal with contempts committed by its own Members (art. I, sec. 5). The possession by Congress of the commingled legislative and judicial authority to punish for contempts that was exerted by the House of Commons is at variance with the view and tendency existing in this country when the Constitution was adopted, as evidenced by the manner in which the subject was treated in many State constitutions, beginning at or about that time and continuing thereafter. Such commingling of powers would be destructive of the basic constitutional distinction between legislative, executive, and judicial power, and repugnant to limitations that the Constitution fixes expressly; hence there is no warrant whatever for implying such a dual power in aid of other powers expressly granted to Congress. The House has implied power to deal directly with contempt so far as is necessary to preserve and exercise the legislative authority expressly granted. Being, however, a power of self-preservation, a means and not an end, the power does not extend to infliction of punishment, as such; it is a power to prevent acts that in and of themselves inherently prevent or obstruct the discharge of legislative duty and to compel the doing of those things that are essential to the performance of the legislative functions. As pointed out in Anderson *v.* Dunn, 19 U.S. (6 Wheat.) 204 (1821), this implied power in its exercise is limited to imprisonment during the session of the body affected by the contempt.

The authority does not cease when the act complained of has been committed, but includes the right to determine in the use of legitimate and fair discretion how far from the nature and character of the act there is necessity for repression to prevent immediate recurrence, *i.e.*, the continued existence of the interference or obstruction to the exercise of legislative power. In such case, unless there be manifest an absolute disregard of discretion, and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference. The power is the same in quantity and quality whether exerted on behalf of the impeachment powers or of the others to which it is ancillary. The legislative power to provide by criminal laws for the prosecution and punishment of wrongful acts is not here involved.

The Senate may invoke its civil contempt statute (2 U.S.C. 288d) to direct the Senate legal counsel to bring an action in Federal court to compel a witness to comply with the subpoena of a committee of the Senate. The House, in contrast, may either certify such a witness to the appropriate

United States Attorney for possible indictment under the criminal contempt statute (2 U.S.C. 192) or exercise its inherent power to commit for contempt by detaining the recalcitrant witness in the custody of the Sergeant-at-Arms.

(See also McGrain *v.* Daugherty, 273 U.S. 135 (1927); Sinclair *v.* United States, 279 U.S. 263 (1929); Jurney *v.* MacCracken, 294 U.S. 125 (1935); Quinn *v.* United States, 349 U.S. 155 (1955); Groppi *v.* Leslie, 404 U.S. 496 (1972).)

§ 297. Jefferson's statement of arguments for inherent power to punish for contempt.

* * * The editor of the Aurora having, in his paper of February 19, 1800, inserted some paragraphs defamatory of the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted, in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defense; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British Parliament exercise the right of punishing contempts; all the State Legislatures exercise the same power, and every court does the same; that, if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we

must therefore have a power to punish these disturbers of our peace and proceedings. * * *

§ 298. Statement of arguments against the inherent power to punish for contempts.

* * * To this it was answered, that the Parliament and courts of England have cognizance of contempts by the express provisions of their law; that the State Legislatures have equal authority because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their constitutions have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws adopted in each State, by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them, directly, exemption from personal arrest, exemption from question elsewhere for what is said in their House, and power over their own members and proceedings; for these no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, *e.g.*, for the punishment of contempts, of affrays or tumult in their presence, &c.; but, till the law be made, it does not

exist; and does not exist, from their own neglect; that, in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint deputies ad libitum to aid him *3 Grey, 59, 147, 255,* is equal to small disturbances; that in requiring a previous law, the Constitution had regard to the inviolability of the citizen, as well as of the Member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offense. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and, after the fact committed, make its sentence both the law and the judgment on that fact; if the offense is to be kept undefined and to be declared only ex re nata, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. * * *

§ 299. Jefferson's suggestion that a law might define procedure in cases of contempt.

* * * Which of these doctrines is to prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment which is to make and at the same time

apply to the law, is open to question and consideration, as are all new laws. Perhaps Congress in the mean time, in their care for the safety of the citizen, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

In 1837 the House declined to proceed with a bill "defining the offense of a contempt of this House, and to provide for the punishment thereof" (II, 1598). Congress has, however, prescribed that a witness summoned to appear before a committee of either House who does not respond or who refuses to answer a question pertinent to the subject of the inquiry shall be deemed guilty of a misdemeanor (2 U.S.C. 192).

A resolution directing the Speaker to certify to the U.S. Attorney the refusal of a witness to respond to a subpoena issued by a House committee involves the privileges of the House and may be offered from the floor as privileged if offered by direction of the committee reporting the resolution (*e.g.*, Oct. 27, 2000, p. 25200). A committee report to accompany such resolution may therefore be presented to the House without regard to the three-day availability requirement for other reports (see clause 4 of rule XIII; July 13, 1971, p. 24720). A resolution with two resolving clauses separately directing the certification of the contemptuous conduct of two individuals is subject to a demand for a division of the question as to each individual (contempt proceedings against Ralph and Joseph Bernstein, Feb. 27, 1986, p. 3061); as is a resolution with one resolving clause certifying contemptuous conduct of several individuals (Oct. 27, 2000, p. 25200; *contrast*, Deschler-Brown, ch. 30, § 49.1). A contempt resolution may be withdrawn as a matter of right before action thereon (Oct. 27, 2000, p. 25200).

In the 97th Congress, the House adopted a resolution directing the Speaker to certify to the United States Attorney the failure of an official of the executive branch (Anne M. Gorsuch, Administrator, Environmental Protection Agency) to submit executive branch documents to a House subcommittee pursuant to a subcommittee subpoena. This was the first occasion on which the House cited an executive official for contempt of Congress (Dec. 16, 1982, p. 31754). In the following Congress, the House adopted (as a question of privilege) a resolution reported from the same committee certifying to the United States Attorney the fact that an agreement had

been entered into between the committee and the executive branch for access by the committee to the documents that Anne Gorsuch had failed to submit and that were the subject of the contempt citation (where the contempt had not yet been prosecuted) (Aug. 3, 1983, p. 22692). In other cases in which compliance had subsequently been attained in the same Congress, the House has adopted privileged resolutions certifying the facts to the United States Attorney to the end that contempt proceedings be discontinued (see Deschler, ch. 15, § 21). In the 98th Congress, the House adopted a privileged resolution directing the Speaker to certify to the United States Attorney the refusal of a former official of the executive branch to obey a subpoena to testify before a subcommittee (H. Res. 200, May 18, 1983, p. 12720). In the 106th Congress the House considered a resolution directing the Speaker to certify to the United States Attorney the refusal of three individuals to obey a subpoena duces tecum and to answer certain questions while appearing under subpoena before a subcommittee, which resolution was withdrawn before action thereon (H. Res. 657, Oct. 27, 2000, p. 25217). In the 110th Congress, the House adopted (by special rule) a resolution directing the Speaker to certify to the United States Attorney the refusal of White House Chief of Staff to produce documents to a committee, and former White House Counsel to appear, testify, and produce documents to a subcommittee, each as directed by subpoena (Feb. 14, 2008, p. __).

A resolution laying on the table a message from the President containing certain averments inveighing disrespect toward Members of Congress was considered as a question of the privileges of the House as a breach of privilege in a formal communication to the House (VI, 330).

§ 300. Status of Member-elect as to privilege, oath, committee service, etc.

Privilege from arrest takes place by force of the election; and before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn, *Memor., 107, 108. D'Ewes, 642, col. 2; 643, col. 1. Pet. Miscel. Parl., 119. Lex. Parl., c. 23.2 Hats., 22, 62.*

The Constitution of the United States limits the broad Parliamentary privilege to the time of attendance on sessions of Congress, and of going to and returning therefrom. In a case wherein a Member was imprisoned during a recess of Congress, he remained in confinement until the House, on assembling, liberated him (III, 2676).

It is recognized in the practice of the House that a Member may be named to a committee before being sworn, and in some cases Members have not taken the oath until long afterwards (IV, 4483), although in the modern practice Members-elect have been elected to standing committees

effective only when sworn (*e.g.,* H. Res. 26, 27; Jan. 6, 1983, p. 132). In one case, when a Member did not appear to take the oath, the Speaker with the consent of the House appointed another Member to the committee in his place (IV, 4484). The status of a Member-elect under the Constitution undoubtedly differs greatly from the status of a Member-elect under the law of Parliament. In various inquiries by committees of the House this question has been examined, with the conclusions that a Member-elect becomes a Member from the very beginning of the term to which elected (I, 500), that he is as much an officer of the Government before taking the oath as afterwards (I, 185), and that his status is distinguished from that of a Member who has qualified (I, 183, 184). Members-elect may resign or decline before taking the oath (II, 1230–1233, 1235; Jan. 6, 1999, p. 42); they have been excluded (I, 449, 464, 474, 550, 551; VI, 56; Mar. 1, 1967, pp. 4997–5038), and in one case a Member-elect was expelled (I, 476; II, 1262). The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal (V, 6048; VIII, 3122), nor are such Members-elect permitted to vote or introduce bills.

§ 301. Relations of Members and others to privilege.

Every man must, at his peril, take notice who are members of either House returned of record. *Lex. Parl., 23; 4 Inst., 24.*

On Complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the sergeant. *1 Grey, 88, 95.*

The privilege of a Member is the privilege of the House. If the Member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the House. *3 Grey, 140, 222.*

Although the privilege of Members of the House is limited by the Constitution, these provisions of the Parliamentary law are applicable, and persons who have attempted to bribe Members (II, 1599, 1606), assault them for words spoken in debate (II, 1617, 1625) or interfere with them while on the way to attend the sessions of the House (II, 1626), have been arrested by order of the House by the Sergeant-at-Arms, "Wherever to be found." The House has declined to make a general rule to permit Members to waive their privilege in certain cases, preferring to give or refuse permission in each individual case (III, 2660–2662).

In United States *v.* Helstoski, 442 U.S. 477 (1979), the Supreme Court discussed the ability of either an individual Member or the entire Congress

to waive the protection of the Speech or Debate Clause. The Court found first, that the Member's conduct in testifying before a grand jury and voluntarily producing documentary evidence of legislative acts protected by the Clause did not waive its protection. Assuming, without deciding, that a Member could waive the Clause's protection against being prosecuted for a legislative act, the Court said that such a waiver could only be found after an explicit and unequivocal renunciation of its immunity, which was absent in this case. Second, passage of the official bribery statute, 18 U.S.C. 201, did not amount to an institutional waiver of the Speech or Debate Clause for individual Members. Again assuming without deciding whether Congress could constitutionally waive the Clause for individual Members, such a waiver could be shown only by an explicit and unequivocal expression of legislative intent, and there was no evidence of that in the legislative history of the statute. The Speech or Debate clause is not an impediment to the enforcement within the House of the rule prohibiting personalities in debate (clause 1 of rule XVII, May 25, 1995, p. 14436).

§ 302. Parliamentary law as to questioning a Member in another place for speech or debate.

For any speech or debate in either House, they shall not be questioned in any other place. *Const. U.S., I, 6; S. P. protest of the Commons to James I, 1621; 2 Rapin, No. 54, pp. 211, 212. But this is restrained to things done in the House in a parliamentary course. 1 Rush, 663.* For he is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty. *Com. p.*

§ 303. Relation of the courts to parliamentary privilege.

If an offense be committed by a member in the House, of which the House has cognizance, it is an infringement of their right for any person or court to take notice of it till the House has punished the offender or referred him to a due course. *Lex. Parl., 63.*

Privilege is in the power of the House, and is a restraint to the proceeding of inferior courts, but not of the House itself. *2 Nalson, 450; 2 Grey, 399.* For whatever is spoken in the House

is subject to the censure of the House; and offenses of this kind have been severely punished by calling the person to the bar to make submission, committing him to the tower, expelling the House, &c. *Scob., 72; L. Parl., c. 22.*

§ 304. Breach of privilege to refuse to put a question which is in order.

It is a breach of order for the Speaker to refuse to put a question which is in order. *1 Hats., 175–6; 5 Grey, 133.*

Where the Clerk, presiding during organization of the House, declined to put a question, a Member put the question from the floor (I, 67).

§ 305. Parliamentary law of privilege as related to treason, felony, etc.

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance, yet in Parliament a member is privileged as to the mode of proceeding. The case is first to be laid before the House, that it may judge of the fact and of the ground of the accusation, and how far forth the manner of the trial may concern their privilege; otherwise it would be in the power of other branches of the government, and even of every private man, under pretenses of treason, &c., to take any man from his service in the House, and so, as many, one after another, as would make the House what he pleaseth. *Dec'l of the Com. on the King's declaring Sir John Hotham a traitor. 4 Rushw., 586.* So, when a member stood indicted for felony, it was adjudged that he ought to remain of the House till conviction; for it may be any man's case, who is guiltless, to be accused and indicted of felony, or the like crime. *23 El., 1580; D'Ewes, 283, col. 1; Lex. Parl., 133.*

Where Members of the House have been arrested by the State authorities the cases have not been laid first before the House; but when the House has learned of the proceedings, it has investigated to ascertain if the crime charged was actually within the exceptions of the Constitution (III, 2673), and in one case in which it found a Member imprisoned for an offense not within the exceptions it released him by the hands of its own officer (III, 2676).

§ 306. Practice as to Members indicted or convicted.

The House has not usually taken action in the infrequent instances in which Members have been indicted for felony, and in one or two instances Members under indictment or pending appeal on conviction have been appointed to committees (IV, 4479). The House has, however, adopted a resolution expressing the sense of the House that Members convicted of certain felonies should refrain from participation in committee business and from voting in the House until the presumption of innocence is reinstated or until re-elected to the House (see H. Res. 128, Nov. 14, 1973, p. 36944), and that principle has been incorporated in the Code of Official Conduct (clause 10 of rule XXIII). A Senator after indictment was omitted from committees at his own request (IV, 4479), and a Member who had been convicted in one case did not appear in the House during the Congress (IV, 4484, footnote). A Senator in one case withdrew from the Senate pending his trial (II, 1278). After conviction but before the Senator's resignation, and while an appeal for rehearing was pending, the Senate continued its investigation (II, 1282).

§ 307. Parliamentary law as to arrest of a Member.

When it is found necessary for the public service to put a Member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the House, that they may know the reasons for such a proceeding, and take such steps as they think proper. *2 Hats., 259.* Of which see many examples. *Ib., 256, 257, 258.* But the communication is subsequent to the arrest. *1 Blackst., 167.*

§ 308. A breach of privilege for one House to encroach or interfere as to the other.

It is highly expedient, says Hatsel, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach on the other, or interfere in any

matter depending before them, so as to preclude, or even influence, that freedom of debate which is essential to a free council. They are, therefore, not to take notice of any bills or other matters depending, or of votes that have been given, or of speeches which have been held, by the members of either of the other branches of the legislature, until the same have been communicated to them in the usual parliamentary manner. *2 Hats., 252; 4 Inst., 15; Seld. Jud., 53.*

§ 309. Relations of the Sovereign to the Parliament and its Members.

Thus the King's taking notice of the bill for suppressing soldiers, depending before the House; his proposing a provisional clause for a bill before it was presented to him by the two Houses; his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill, were breaches of privilege, *2 Nalson, 743;* and in 1783, December 17, it was declared a breach of fundamental privileges, &c., to report any opinion or pretended opinion of the King on any bill or proceeding depending in either House of Parliament, with a view to influence the votes of the members, *2 Hats., 251, 6.*

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SEC. VI—QUORUM

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§ 310. Necessity of a quorum during business, including debate.

In general the chair is not to be taken till a quorum for business is present; unless, after due waiting, such a quorum be despaired of, when the

chair may be taken and the House adjourned. And whenever, during business, it is observed that a quorum is not present, any member may call for the House to be counted, and being found deficient, business is suspended. *2 Hats., 125, 126.*

In the House the Speaker takes the Chair at the hour to which the House stood adjourned and there is no requirement that the House proceed immediately to establish a quorum, although the Speaker has the authority under clause 7 of rule XX to recognize for a call of the House at any time. The question of a quorum is not considered unless properly raised (IV, 2733; VI, 624), and it is not in order for the Speaker to recognize for a point of no quorum unless the Speaker has put the pending question or proposition to a vote. Although it was formerly the rule that a quorum was necessary for debate as well as business (IV, 2935–2949), in the 94th Congress the House restricted the Chair's ability to recognize the absence of a quorum (clause 7 of rule XX). Clause 5(c) of rule XX permits the House to operate with a "provisional quorum" where the House is without a quorum due to catastrophic circumstances. Title III of the Legislative Branch Appropriations Act, 2006, amended Federal election law to require States to hold special elections for the House within 49 days after a vacancy is announced by the Speaker in the extraordinary circumstance that vacancies in representation from the States exceed 100 (P.L. 109–55; 2 U.S.C. 8).

SEC. VII—CALL OF THE HOUSE

§ 311. Parliamentary rules for call of the House.

On the call of the House, each person rises up as he is called, and answereth; the absentees are then only noted, but no excuse to be made till the House be fully called over. Then the absentees are called a second time, and if still absent, excuses are to be heard. *Ord. House of Commons, 92.*

They rise that their persons may be recognized; the voice, in such a crowd, being an insufficient verification of their presence. But in so small a body as the Senate of the United States, the trouble of rising cannot be necessary.

Orders for calls on different days may subsist at the same time. *2 Hats., 72.*

Rule XX provides for a call of the House. Members do not rise on answering, and quorum calls are normally conducted by electronic device (clause 2(a) of rule XX). Clause 5(c) of rule XX permits the House to operate with a "provisional quorum" where the House is without a quorum due to catastrophic circumstances.

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SEC. IX—SPEAKER

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§ 312. Election of Speaker.

When but one person is proposed, and no objection made, it has not been usual in Parliament to put any question to the House; but without a question the members proposing him conduct him to the chair. But if there be objection, or another proposed, a question is put by the Clerk. *2 Hats., 158.* As are also questions of adjournment. *6 Gray, 406.* Where the House debated and exchanged messages and answers with the King for a week without a Speaker, till they were prorogued. They have done it de die in diem for fourteen days. *1 Chand., 331, 335.*

On October 23, 2000, the House of Commons, pursuant to a Standing Order, elected a new Speaker after rejection of twelve other nominees offered one at a time as amendments to the question. The amendments were offered after refusal of the "Father of the House of Commons" to entertain a motion to change the Standing Order to require a preliminary secret ballot. On March 22, 2001, and on October 29, 2002, the House of Commons adopted Standing Order 1B, requiring that the election of a new Speaker be by secret ballot (*Standing Orders of the House of Commons—Public Business 2003*).

For a discussion of the election of the Speaker of the House of Representatives, see § 27, *supra.*

§313. Election of President pro tempore of the Senate.

In the Senate, a President pro tempore, in the absence of the Vice-President, is proposed and chosen by ballot. His office is understood to be determined on the Vice-President's appearing and taking the chair, or at the meeting of the Senate after the first recess.

In the later practice the President pro tempore has usually been chosen by resolution. In 1876 the Senate determined that the tenure of the Office of a President pro tempore elected at one session does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair; that the death of the Vice President does not have the effect of vacating the Office of President pro tempore; and that the President pro tempore holds office at the pleasure of the Senate (II, 1417). In the 107th Congress the Senate elected two Presidents of the Senate pro tempore for different periods when the majority of the Senate shifted after inauguration of the Vice President (S. Res. 3, Jan. 3, 2001, p. 7).

§314. Parliamentary law as to choice of Speaker pro tempore.

Where the Speaker has been ill, other Speakers pro tempore have been appointed. Instances of this are *1 H., 4.* Sir John Cheyney, and Sir William Sturton, and in *15 H., 6.* Sir John Tyrrel, in 1656, January 27; 1658, March 9; 1659, January 13.

Sir Job Charlton ill, Seymour chosen, 1673, February 18.

Seymour being ill, Sir Robert Sawyer chosen, 1678, April 15.

Not merely pro tem. 1 *Chand., 169, 276, 277.*

Sawyer being ill, Seymour chosen.

Thorpe in execution, a new Speaker chosen, *31 H. VI, 3 Grey, 11;* and March 14, 1694, Sir John

Trevor chosen. There have been no later instances. *2 Hats., 161; 4 Inst., 8; L. Parl., 263.*

The House, by clause 8 of rule I, has provided for appointment and election of Speakers pro tempore. Relying on the Act of June 1, 1789 (2 U.S.C. 25), the Clerk recognized for nominations for Speaker, at the convening of a new Congress, as being of higher constitutional privilege than a resolution to postpone the election of a Speaker and instead provide for the election of a Speaker pro tempore pending the disposition of certain ethics charges against the nominee of the majority party (Jan. 7, 1997, p. 115).

§ 315. Removal of the Speaker.

A Speaker may be removed at the will of the House, and a Speaker pro tempore appointed, *2 Grey, 186; 5 Grey, 134.*

A resolution declaring the Office of Speaker vacant presents a question of constitutional privilege (VI, 35), though the House has never removed a Speaker. It has on several occasions removed or suspended other officers, such as Clerk and Doorkeeper (I, 287–290, 292; II, 1417). A resolution for the removal of an officer is presented as a matter of privilege (I, 284–286; VI, 35). The Speaker may remove the Clerk, Sergeant-at-Arms, and Chief Administrative Officer under clause 1 of rule II.

SEC. X—ADDRESS

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§ 316. Addresses to the President.

A joint address of both Houses of Parliament is read by the Speaker of the House of Lords. It may be attended by both Houses in a body, or by a Committee from each House, or by the two Speakers only. An address of the House of Commons only may be presented by the Whole House, or by the Speaker, *9 Grey, 473; 1 Chandler, 298, 301;* or by such particular members as are of the privy council. *2 Hats., 278.*

In the first years of Congress the President annually delivered an address to the two Houses in joint session, and the House then prepared an address, which the Speaker, attended by the House, carried to the President. A joint rule of 1789 also provided for the presentation of joint addresses of the two Houses to the President (V, 6630). In 1876 the joint rules of the House were abrogated, including the joint rule providing for presen-

tation of the joint addresses of the two Houses to the President (V, 6782–6787). In 1801 President Jefferson transmitted a message in writing and discontinued the practice of making addresses in person. From 1801 to 1913 all messages were sent in writing (V, 6629), but President Wilson resumed the custom of making addresses in person on April 8, 1913, and, with the exception of President Hoover (VIII, 3333), the custom has been followed generally by subsequent Presidents.

SEC. XI—COMMITTEES

§ 317. Appointment of standing committees; and designation and duties of chairs thereof.

Standing committees, as of Privileges and Elections, &c., are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House. *4 inst., 11, 12; Scob., 9; 1 Grey, 122.*

Before the 62d Congress, standing as well as select committees and their chairs were appointed by the Speaker, but under the present form of rule X, adopted in 1911, continued as a part of the Legislative Reorganization Act of 1946, and revised under the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), standing committees and their respective chairs are elected by the House (IV, 4448; VIII, 2178). Owing to their number and size, committees are not usually elected immediately, but resolutions providing for such elections are presented by the majority and minority parties pursuant to clause 5 of rule X as soon as they are able to perfect the lists. A committee may order its report to be made by the chair, or by some other member (IV, 4669), even by a member of the minority party (IV, 4672, 4673), or by a Delegate (July 1, 1958, p. 12871 (Burns of Hawaii)); and the chair sometimes submits a report in which the chair has not concurred (IV, 4670). Clause 2 of rule XIII requires that a report that has been approved by the committee must be filed with the House within seven calendar days after a written request from a majority of the committee is submitted to the committee clerk.

§ 318. Parliamentary law as to debate in standing and select committees.

At these committees the members are to speak standing, and not sitting; though there is reason to conjecture it was formerly otherwise. *D'Ewes, 630, col. 1; 4 Parl. Hist., 440; 2 Hats., 77.*

§ 319. Secrecy of committee procedure.

Their proceedings are not to be published, as they are of no force till confirmed by the House. *Rushw., part 3, vol. 2, 74; 3 Grey, 401; Scob., 39.* * * *

In the House it is entirely within rule and usage for a committee to conduct its proceedings in secret (III, 1694, 1732; IV, 4558–4564; see also clause 2(g) of rule XI), and the House may not abrogate the secrecy of a committee's proceedings except by suspending the rule (IV, 4565). The House has no information concerning the proceedings of a committee not officially reported by the committee (VII, 1015) and it is not in order in debate to refer to executive session proceedings of a committee that have not formally been reported to the House (V, 5080–5083; VIII, 2269, 2485, 2493; June 24, 1958, pp. 12120, 12122; Apr. 5, 1967, p. 8411). However, a complaint that certain remarks that might be uttered in debate would improperly disclose executive-session material of a committee is not cognizable as a point of order in the House if the Chair is not aware of the executive-session status of the information (Nov. 5, 1997, p. 24648). On one occasion a Member was permitted to refer to the unreported executive session proceedings of a subcommittee to justify his point of order that a resolution providing for a select committee to inquire into action of the subcommittee was not privileged (June 30, 1958, p. 12690). In one case the House authorized the clerk of a committee to disclose by deposition its proceedings (III, 2604).

Under clause 2 of rule XI, all hearings and business meetings conducted by standing committees shall be open to the public, except when a committee, in open session, by record vote, with a majority present, determines to close the meeting or hearing for that day for the reasons stated in that clause. In addition, clause 2(k) of rule XI establishes a procedure for closing a hearing because of defamatory, degrading, or incriminating testimony. Clause 11(d) of rule X establishes special rules governing the closing of hearings of the Permanent Select Committee on Intelligence.

§ 320. Reception of petitions by committees.

* * * Nor can they receive a petition but through the House. *9 Grey, 412.*

§ 321. Parliamentary law of procedure when a committee inquiry involves a Member.

When a committee is charged with an inquiry, if a Member prove to be involved, they can not proceed against him but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him. *9 Grey, 523.*

§ 322. Practice of House when a committee inquiry involves a Member.

Although the authority of this principle has not been questioned by the House, there have in special instances been deviations from it. Thus, in 1832, when a Member had been slain in a duel, and the fact was notorious that all the principals and seconds were Members of the House, the committee, charged only with investigating the causes and whether or not there had been a breach of privilege, reported with their findings recommendations for expulsion and censure of the Members found to be implicated. There was criticism of this method of procedure as deviating from the rule of Jefferson's Manual, but the House did not recommit the report (II, 1644). In 1857, when a committee charged with inquiring into accusations against Members not named found certain Members implicated, they gave them copies of the testimony and opportunities to explain to the committee, under oath or otherwise, as they individually might prefer (III, 1845), but reported recommendations for expulsion without first seeking the order of the House (II, 1275; III, 1844). In 1859 and 1892 a similar procedure occurred (III, 1831, 2637). But the House, in a case wherein an inquiry had incidentally involved a Member, evidently considered the parliamentary law as applicable, because it admitted as of privilege and agreed to a resolution directing the committee to report the charges (III, 1843). And in cases wherein testimony taken before a joint committee incidentally impeached the official characters of a Member and a Senator, the facts in each case were reported to the House interested (III, 1854). A select committee, appointed to report upon the right of a Member-elect to be sworn (H. Res. 1, 90th Cong., pp. 14–27, Jan. 10, 1967), invited him to appear, to testify, and permitted him to be accompanied by counsel (see H. Rept. 90–27).

§ 323. Inquiries involving Members of other House.

And where one House, by a committee, has found a Member of the other implicated, the testimony has been transmitted (II, 1276; III, 1850, 1852, 1853). Where such testimony was taken in open session of the committee, it was not thought necessary that it be under seal when sent to the other House (III, 1851).

§ 324. Duty of chair of a committee when the House sits.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise instantly, and the members to attend the service of the House. *2 Nals., 319.*

For the current practice of the House, see the annotation following clause 2(i) of rule XI (§ 801, *infra*).

§ 325. Action of joint committees.

It appears that on joint committees of the Lords and Commons each committee acted integrally in the following instances: *7 Grey, 261, 278, 285, 338; 1 Chandler, 357, 462.* In the following instances it does not appear whether they did or not: *6 Grey, 129; 7 Grey, 213, 229, 321.*

It is the practice in Congress that joint committees shall vote per capita, and not as representatives of the two Houses (IV, 4425), although the membership from the House is usually, but not always (IV 4410), larger than that from the Senate (III, 1946; IV, 4426–4431). But ordinary committees of conference appointed to settle differences between the two Houses are not considered joint committees, and the managers of the two Houses vote separately (V, 6336), each House having one vote. A quorum of a joint committee seems to have been considered to be a majority of the whole number rather than a majority of the membership of each House (IV, 4424). The first named of the Senate members acted as chair in one notable instance (IV, 4424), and in another the joint committee elected its chair (IV, 4447).

SEC. XII—COMMITTEE OF THE WHOLE

§ 326. Parliamentary usage as to Committee of the Whole.

The speech, messages, and other matters of great concernment are usually referred to a Committee of the Whole House (*6 Grey, 311*), where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed

by the House are then referred to one or more select committees, according as the subject divides itself into one or more bills. *Scob., 36, 44.* Propositions for any charge on the people are especially to be first made in a Committee of the Whole. *3 Hats., 127.* The sense of the whole is better taken in committee, because in all committees everyone speaks as often as he pleases. *Scob., 49.* * * *

This provision is largely obsolete, the House having by its rules and practice provided specifically for procedure in Committee of the Whole, and having also by its rules for the order of business left no privileged status for motions to go into Committee of the Whole on matters not already referred to that committee. The Committee of the Whole no longer originates resolutions or bills, but receives such as have been formulated by standing or select committees and referred to it; and when it reports, the House usually acts at once on the report without reference to select or other committees (IV, 4705). The practice of referring annual messages of the President to Committee of the Whole, to be there considered and reported with recommendations for the reference of various portions to the proper standing or select committees (V, 6621, 6622), was discontinued in the 64th Congress (VIII, 3350). The current practice is to refer the annual message to the Committee of the Whole House on the state of the Union and order it printed (Jan. 14, 1969, p. 651). Executive communications submitted to implement the proposals contained in the State of the Union Message are referred by the Speaker to the various committees having jurisdiction over the subject matter therein.

§ 327. Selection of Chair of Committee of the Whole.

* * * They generally acquiesce in the chairman named by the Speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question, *Scob., 36; 3 Grey, 301.* * * *

The House (by clause 1 of rule XVIII) gives the authority to appoint the chair of the Committee of the Whole to the Speaker (IV, 4704).

§ 328. Form of going into Committee of the Whole.

* * * The form of going from the House into committee, is for the Speaker, on motion, to put the question that the House do now resolve itself into a Committee of the Whole to take into consideration such a matter, naming it. If determined in the affirmative, he leaves the chair and takes a seat elsewhere, as any other Member; and the person appointed chairman seats himself at the Clerk's table. *Scob., 36.* * * *

This is the form in the House, except that the chair of the Committee of the Whole sits in the Speaker's chair. Clause 1(b) of rule XVIII (former rule XXIII) was adopted to authorize the Speaker, and it is the modern practice, when no other business is pending, to declare the House resolved into Committee of the Whole to consider a measure at any time after the House has adopted a special order of business providing for consideration of such measure (and not require a motion), unless the resolution specifies otherwise (H. Res. 5, Jan. 3, 1983, p. 34).

§ 329. Quorum in Committee of the Whole.

* * * Their quorum is the same as that of the House; and if a defect happens, the chairman, on a motion and question, rises, the Speaker resumes the chair and the chairman can make no other report than to inform the House of the cause of their dissolution. * * *

Until 1890 a quorum of the Committee of the Whole was the same as the quorum of the House; but in 1890 the rule (formerly clause 2 of rule XXIII, current clause 6 of rule XVIII) fixed it at one hundred (IV, 2966). Clause 6 of rule XVIII provides the procedure that is followed in Committee of the Whole in case of failure of a quorum.

§ 330. Rising of committee for reception of messages.

* * * If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not. *2 Hats., 125, 126.*

In the House, the committee rises informally to receive a message, or to enable the Speaker to sign and lay before the House an enrolled bill, at the direction of the Chair without a formal motion from the floor (IV, 4786, footnote; Jan. 28, 1980, p. 888; Feb. 8, 1995, p. 4112); but at this rising the House may not have the message read or transact other business except by unanimous consent (IV, 4787–4791). However, it is the general custom for the Speaker to decline to entertain a unanimous-consent request during an informal rising of the Committee of the Whole (IV, 4789, Apr. 6, 2000, p. 4778).

§ 331. Quarrels in Committee of the Whole, and duty of the Speaker in relation thereto.

In a Committee of the Whole, the tellers on a division differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The Speaker took the chair, the mace was forcibly laid on the table; whereupon the Members retiring to their places, the Speaker told the House "he has taken the chair without an order to bring the House into order." Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every Member was required, standing up in his place, to engage that he would proceed no further in consequence of what had happened in the grand committee, which was done. *3 Grey, 128.*

In the House the Speaker has on several occasions taken the chair "without an order to bring the House into order" (II, 1648–1653), but that being accomplished the Speaker may yield to the chair that the committee may rise in due form (II, 1349). In one instance, the Chair, having been defied and insulted by a Member, left the chair; and, on the chair being taken by the Speaker, he reported the facts to the House (II, 1653). In several cases Members who have quarreled have made explanation and reconciled their difficulties (II, 1651), or have been compelled by the House to apologize "for violating its privilege and offending its dignity" (II, 1648, 1650).

§ 332. Effect of breaking up of Committee of the Whole by disorder.

A Committee of the Whole being broken up in disorder, and the chair resumed by the Speaker without an order, the House was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the House; and it was decided in the House, without returning into committee. *3 Grey, 130.*

This provision is obsolete, because in the practice of the House there is but one Committee of the Whole, which is in its nature a standing committee with calendars of business. It is never dissolved, and bills remain on its calendar until reported in the regular manner after consideration (IV, 4705). After restoring order, the Speaker usually leaves the chair, thus permitting the committee later to rise in due form (II, 1349).

§ 333. Motions for previous question and to adjourn not used in Committee of the Whole.

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise, on a question, the House is resumed, and the chairman reports that the Committee of the Whole have, according to order, had under their consideration such a matter, and have made progress therein; but not having had time to go through the same, have directed him to ask leave to sit again. Whereupon a question is put on their having leave, and on the time the House will again resolve itself into a committee. *Scob., 38.* But if they have gone through the matter referred to them, a member moves that

§ 334. Parliamentary law as to reports from Committee of the Whole.

the committee may rise, and the chairman report their proceedings to the House; which being resolved, the chairman rises, the Speaker resumes the chair, the chairman informs him that the com-

mittee have gone through the business referred to them, and that he is ready to make report when the House shall think proper to receive it. If the House have time to receive it, there is usually a cry of "now, now," whereupon he makes the report; but if it be late, the cry is "to-morrow, to-morrow," or "Monday," etc., or a motion is made to that effect, and a question put that it be received to-morrow, &c. *Scob., 38.*

In the practice of the House the previous question and motion to adjourn are not admitted in Committee of the Whole; but the rules (clause 8 of rule XVIII) provide for closing five-minute debate by motion. When the committee rises without concluding a matter the Chair reports that it "has come to no resolution thereon"; but leave to sit again is not asked in the modern practice. The permission of the House is not asked when the Chair reports a matter concluded in committee. The report is made and received as a matter of course, and is thereupon before the House for action. When the House has vested control of general debate in certain Members, their control may not be abrogated during general debate by another Member moving to rise, unless they yield for that purpose (May 25, 1967, p. 14121; June 10, 1999, p. 12471). A Member yielded time in general debate may not yield to another for such motion (Feb. 22, 1950, p. 2178; May 17, 2000, p. 8200). The motion that the Committee of the Whole rise is privileged during debate under the five-minute rule, and may be offered during debate on a pending amendment, except where a Member has the floor (Aug. 13, 1986, p. 21215; Mar. 22, 1995, p. 8770). The motion to rise may not include restrictions on the amendment process or limitations on future debate on amendments (June 6, 1990, p. 13234). The motion that the Committee of the Whole rise is not debatable (May 17, 2000, p. 8203). For a further discussion of the motion to rise, see § 983, *infra*. For a point of order against the motion to rise and report an appropriation bill to the House where the bill, as proposed to be amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, and procedures for the Committee of the Whole in the event that the point of order is sustained, see § 1044b, *infra*.

§ 335. Duties of Speaker and House as to reception of reports of Committee of the Whole.

The Speaker recognizes only reports from the Committee of the Whole made by the chair thereof (V, 6987), and a matter alleged to have arisen therein but not reported may not be brought to the attention of the House (VIII, 2429, 2430) even on the claim that a question of privilege is involved (IV, 4912; V, 6987). In one instance, however, the committee reported with a bill a resolution relating to an alleged

breach of privilege (V, 6986). When a bill is reported the Speaker must assume that it has passed through all the stages necessary for the report (IV, 4916). When the committee reported not only what it had done but by whom it had been prevented from doing other things, the Speaker held that the House might not amend the report, which stood (IV, 4909). When an amendment is reported by the committee it may not be withdrawn, and a question as to its validity is not considered by the Speaker (IV, 4900). When a committee, directed by order of the House to consider certain bills, reported also certain other bills, the Speaker held that so much of the report as related to the latter bills could be received only by unanimous consent (IV, 4911). When a report is ruled out as in excess of the committee's power, the accompanying bill stands recommitted (IV, 4784, 4907). A report from a Committee of the Whole could not formerly be received in the absence of a quorum (VI, 666; clause 7 of rule XX).

§ 336. Amendments in Committee of the Whole.

The Committee of the Whole, like any other committee, may amend a proposition either by an ordinary amendment or by a substitute amendment (IV, 4899), but these amendments must be reported to the House for action. Amendments rejected by the committee are not reported (IV, 4877). Ordinarily all amendments must be disposed of before the committee may report (IV, 4752–4758); but sometimes a special order of business requires a report at a specified time, in which case pending amendments are reported (IV, 3225–3228) or not (IV, 4910) as the terms of the order may direct. In the 98th Congress, clause 2 of rule XXI was amended to give precedence to the motion that the Committee rise and report a general appropriation bill at the conclusion of its reading for amendment and before or between consideration of amendments proposing certain limitations or retrenchments (H. Res. 5, Jan. 3, 1983, p. 34). The 104th Congress further amended clause 2 to permit only the Majority Leader or a designee to offer that motion (sec. 215(a), H. Res. 6, Jan. 4, 1995, p. 468). The 105th Congress elevated the Majority Leader's preferential motion in clause 2 to take precedence of *any* motion to amend at that stage (H. Res. 5, Jan. 7, 1997, p. 121). The practice of the House, based originally on a rule (IV, 4904), requires amendments to be reported from the Committee of the Whole in their perfected forms, and this holds good even in the case of an amendment in the nature of a substitute, which may have been amended freely (IV, 4900–4903). If a Committee of the Whole amends a paragraph and subsequently strikes the paragraph as amended, the first amendment fails, and is not reported to the House or voted on (IV, 4898; V, 6169; VIII, 2421, 2426), and when the Committee of the Whole adopts two amendments that are subsequently deleted by an amendment striking and inserting new text, only the latter amendment is reported to the House (June 20, 1967, p. 16497). Where two amendments proposing inconsistent motions to strike and insert a pending section are considered as separate first degree amendments (not one as a substitute for the other) before either is finally disposed of under a special procedure permitting the Chair

to postpone requests for a recorded vote, the Chair's order of voting on the matter as unfinished business determines which amendment (if both were adopted) would be reported to the House (Aug. 6, 1998, pp. 19098–107). Normally, if the Committee of the Whole perfects a bill by adopting certain amendments and then adopts an amendment striking all after section one of the bill and inserting a new text, only the bill, as amended by the motion to strike and insert, is reported to the House; but when the bill is being considered under a special rule permitting a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the bill or the committee substitute, all amendments adopted in the Committee are reported to the House regardless of their consistency (May 26, 1960, pp. 11302–04). Where a separate vote is demanded in this type of situation in the House only on an amendment striking a section of a committee substitute, but not on perfecting amendments that have been previously adopted in Committee of the Whole to that section, rejection in the House of the motion to strike the section results in a vote on the committee substitute in its original form and not as perfected, because the perfecting amendments have been displaced in the Committee of the Whole and have not been revived on a separate vote in the House (Speaker O'Neill, Oct. 13, 1977, pp. 33622–24). But if the Committee of the Whole reports a bill to the House with an adopted amendment in the nature of a substitute and the special order of business in question does not provide for separate House votes on amendments thereto, a separate vote may not be demanded on an amendment to such amendment, because only one amendment in its perfected form has been reported back to the House (Nov. 17, 1983, p. 33463).

§ 337. Committee of the Whole amendments in the House.

All amendments to a bill reported from the Committee of the Whole stand on an equal footing and must be voted on by the House (IV, 4871) in the order in which they are reported, although they may be inconsistent, one with another (IV, 4881, 4882), and are subject to amendment in the House unless the previous question is ordered (VIII, 2419). Two amendments being reported as distinct were considered independently, although apparently one was a proviso attaching to the other (IV, 4905); and an entire and distinct amendment may not be divided, but must be voted on by the House as a whole (IV, 4883–4892; VIII, 2426). It is a frequent practice for the House by unanimous consent to act at once on all the amendments to a bill reported from the Committee of the Whole, but it is the right of any Member to demand a separate vote on any amendment (IV, 4893, 4894; VIII, 2419) unless a special rule mandates that sundry amendments be put en gros (June 24, 2009, p. __). Where a special rule permits en bloc consideration of certain amendments in Committee of the Whole, those amendments if reported back to the House may also be considered en bloc for a separate vote in the House on demand of any Member (Speaker O'Neill, Sept. 7, 1978, p. 28425). A Member may demand a separate vote in the House on an amendment to a committee

amendment in the nature of a substitute adopted in the Committee of the Whole where the bill is being considered under a special rule permitting separate votes in the House on any of the amendments adopted in the Committee of the Whole to the bill or committee amendment (Sept. 30, 1971, p. 34337), but where a special rule "self-executes" an amendment as a modification of an amendment in the nature of a substitute to be considered as an original bill, that modification is not separately voted on upon demand in the House (Speaker Foley, Feb. 3, 1993, p. 2043). A Member may withdraw a demand for a separate vote in the House on an amendment reported from Committee of the Whole before the Speaker's putting the question thereon, and unanimous consent is not required (May 28, 1987, p. 14030). When demand is made for separate votes in the House on several amendments adopted in the Committee of the Whole, the amendments are voted on in the House in the order in which they appear in the bill (July 24, 1968, pp. 23093–95; May 28, 1987, p. 14030; June 11, 1997, p. 10654), except when amendments have been considered under a special rule prescribing the order for their consideration where the bill is considered as read, in which case they are voted on upon demand in the order in which considered in Committee of the Whole (Mar. 11, 1993, p. 4733; Mar. 25, 1993, pp. 6358, 6359). For former automatic reconsideration in the House of amendments if the votes of Delegates and the Resident Commissioner were decisive, see § 985, *infra*.

Depending on the will of the House as expressed on the question of ordering the previous question (IV, 4895; V, 5794; VIII, 2419), when a bill is reported with amendments, it is in order to submit additional amendments after disposition of the committee amendments (IV, 4872–4876). However, in modern practice the opportunity to submit amendments is normally foreclosed by the ordering of the previous question under a special rule. The fact that a proposition has been rejected by the Committee of the Whole does not prevent it from being offered as an amendment when the subject comes up in the House (IV, 4878–4880; VIII, 2700). A substitute amendment may be offered to a bill reported from committee, and then the previous question may be ordered on the substitute, on all other amendments, and on the bill to final passage (V, 5472). An amendment in the nature of a substitute reported from committee is treated like any other amendment (V, 5341), and if the House rejects the substitute the original bill without amendment is before the House (VIII, 2426).

§ 338. Bills from Committee of the Whole in the House.

Where a series of bills are reported from Committee of the Whole, the House considers them in the order in which they are reported (IV, 4869, 4870; VIII, 2417). A proposition reported for action has precedence over an independent resolution on the same subject offered by a Member from the floor (V, 6986), and where a bill and a resolution relating to an alleged breach of privilege were reported together the question was put first on the bill (V, 6986). A bill read in full and considered in Committee of the Whole (IV, 3409, 3410), or presumed to have been so read (IV, 4916),

is not read in full again in the House when reported and acted on. The chair of the Committee of the Whole who reports a bill does not become entitled to prior recognition for debate in the House (II, 1453); but on an adverse report an opponent is recognized to offer a motion for disposition of the bill (IV, 4897; VIII, 2430), or for debate (VII, 2629). The recommendation of the committee being before the House, the motion to carry out the recommendation is usually considered as pending without being offered from the floor (IV, 4896), but when a bill was reported with a recommendation that it lie on the table, a question was raised as to whether or not this motion, which prevents debate, should be considered as pending (IV, 4897). The House considers an amendment reported from the Committee of the Whole to the preamble of a Senate joint resolution following disposition of amendments to the text and pending third reading (May 25, 1993, pp. 11036, 11037).

§ 339. Discharge of the Committee of the Whole.

A motion to discharge the Committee of the Whole from the consideration of a matter committed to it is not privileged as against a demand for the regular order (IV, 4917). When the committee is discharged from consideration of a bill the House, in lieu of the report of the chair, accepts the minutes of the Clerk as evidence of amendments agreed to (IV, 4922).

§ 340. Application of House rules in Committee of the Whole.

In other things the rules or proceedings are to be the same as in the House. *Scob., 39.*

The House provides by rule (clause 11 of rule XVIII) that the rules of proceeding in the House shall apply in Committee of the Whole so far as they may be applicable.

SEC. XIII—EXAMINATION OF WITNESSES

§ 341. Common fame as ground for investigation.

Common fame is a good ground for the House to proceed by inquiry, and even to accusation. *Resolution House of Commons, 1 Car., 1, 1625; Rush, L. Parl., 115; Grey, 16–22, 92; 8 Grey, 21, 23, 27, 45.*

In the House common fame has been held sufficient to justify procedure for inquiry (III, 2701), as in a case wherein it was stated on the authority of common rumor that a Member had been menaced (III, 2678). The House also has voted to investigate with a view to impeachment on the basis of common fame, as in the cases of Judges Chase (III, 2342), Humphreys (III, 2385), and Durell (III, 2506).

§ 342. The production of witnesses at an inquiry.

Witnesses are not to be produced but where the House has previously instituted an inquiry, *2 Hats., 102, nor then are orders for their attendance given blank. 3 Grey, 51.*

In the House witnesses are summoned in pursuance and by virtue of the authority conferred on a committee by the House to send for persons and papers (III, 1750). Even in cases wherein the rules give to certain committees the authority to investigate without securing special permission, authority must be obtained before the production of testimony may be compelled (IV, 4316). The rules require that subpoenas issued by order of the House be signed by the Speaker (clause 4 of rule I) and attested and sealed by the Clerk (clause 2 of rule II). However, in clause 2(m) of rule XI the House has authorized any committee or subcommittee to issue a subpoena when authorized by a majority of the members of the committee or subcommittee voting, a majority being present. A committee may also delegate the authority to issue subpoenas to the chair of a full committee. Authorized subpoenas are signed by the chair of the committee or by any other member designated by the committee. Sometimes the House authorizes issue of subpoenas during a recess of Congress and empowers the Speaker to sign them (III, 1806), and in one case the two Houses, by concurrent resolution, empowered the Vice President and Speaker to sign during a recess (III, 1763). See McGrain *v.* Daugherty, 273 U.S. 135 (1927); Barry *v.* U.S. ex. rel. Cunningham, 279 U.S. 597 (1929); Sinclair *v.* United States, 279 U.S. 263 (1929). Under section 2954 of title 5, United States Code, an executive agency, if so requested by the Committee on Government Operations (now Oversight and Government Reform), or any seven members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

§ 343. Examination of witnesses in the House and in committee.

When any person is examined before a committee or at the bar of the House, any Member wishing to ask the person a question must address it to the Speaker or chairman, who repeats the question to the person, or says to him, "You hear the question—answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties to withdraw; for no question can be moved or put or debated while

they are there. *2 Hats., 108.* Sometimes the questions are previously settled in writing before the witness enters. *Ib., 106, 107; 8 Grey, 64.* The questions asked must be entered in the Journal. *3 Grey, 81.* But the testimony given in answer before the House is never written down; but before a committee, it must be, for the information of the House, who are not present to hear it. *7 Grey, 52, 334.*

The Committee of the Whole of the House was charged with an investigation in 1792, but the procedure was wholly exceptional (III, 1804), although a statute still empowers the chair of the Committee of the Whole, as well as the Speaker, chairs of select or standing committees, and Members to administer oaths to witnesses (2 U.S.C. 191; III, 1769). Most inquiries, in the modern practice, are conducted by select or standing committees, and these in each case determine how they will conduct examinations (III, 1773, 1775). Clause 2(k) of rule XI, contains provisions governing certain procedures at hearings by committees (§ 803, *infra*). In one case a committee permitted a Member of the House not of the committee to examine a witness (III, 2403). Usually these investigations are reported stenographically, thus making the questions and answers of record for report to the House. To sustain a conviction of perjury, a quorum of a committee must be in attendance when the testimony is given. Christoffel *v.* United States, 338 U.S. 84 (1949). Certain criminal statutes make it a felony to give perjurious testimony before a congressional committee (18 U.S.C. 1621), to intimidate witnesses before committees (18 U.S.C. 1505), or to make false statements in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States (18 U.S.C. 1001).

Another provision of the Federal criminal code (18 U.S.C. 6005) provides for "use" immunity for certain witnesses before either House or committees thereof.

§ 344. Earlier and later practice as to inquiries at the bar of the House.

The House, in its earlier years, arraigned and tried at its bar persons, not Members, charged with violation of its privileges, as in the cases of Randall, Whitney (II, 1599–1603), Anderson (II, 1606), and Houston (II, 1616); but in the case of Woods, charged with breach of privilege in 1870 (II, 1626–1628), the respondent was arraigned before the House, but was heard in his defense by counsel and witnesses before a standing committee. At the conclusion of that investigation the respondent was brought to the bar of the House while the House voted his punishment (II, 1628). The House also has arraigned at its bar contumacious

witnesses before taking steps to punish by its own action or through the courts (III, 1685). In examinations at its bar the House has adopted forms of procedure as to questions (II, 1633, 1768), providing that they be asked through the Speaker (II, 1602, 1606) or by a committee (II, 1617; III, 1668). And the questions to be asked have been drawn up by a committee, even when put by the Speaker (II, 1633). In the earlier practice the answer of a witness at the bar was not written down (IV, 2874); but in the later practice the answers appear in the journal (III, 1668). The person at the bar withdraws while the House passes on an incidental question (II, 1633; III, 1768). See McGrain *v.* Dougherty, 273 U.S. 135 (1927); Barry *v.* U.S. ex. rel. Cunningham, 279 U.S. 597 (1929); Jurney *v.* MacCracken, 294 U.S. 125 (1935).

§ 345. Procuring attendance of a witness in custody of the other House.

If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. *3 Hats., 52.*

§ 346. Members as witnesses.

A Member, in his place, gives information to the House of what he knows of any matter under hearing at the bar. *Jour. H. of C., Jan. 22, 1744–5.*

At an examination at the bar of the House in 1795 both the written information given by Members and their verbal testimony were required to be under oath (II, 1602). In a case not of actual examination at the bar, but wherein the House was deliberating on a proposition to order investigation, it demanded by resolution that certain Members produce papers and information (III, 1726, 1811). Members often give testimony before committees of investigation, and in at least one case the Speaker has thus appeared (III, 1776). But in a case wherein a committee summoned a Member to testify as to a statement made by him in debate he protested that it was an invasion of his constitutional privilege (III, 1777, 1778; see also H. Rept. 67–1372, and Jan. 25, 1923, pp. 2415–23). In one instance the chair of an investigating committee administered the oath to himself and testified (III, 1821). The House, in an inquiry preliminary to an impeachment trial, gave leave to its managers to examine Members, and leave to its Members to attend for the purpose (III, 2033).

§ 347. Method of obtaining testimony of a Member of the other House.

Either House may request, but not command, the attendance of a Member of the other. They are to make the request by message of the other House, and

to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The House then gives leave to the Member to attend, if he choose it; waiting first to know from the Member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance, unless where it be a case of impeachment by the Commons. There it is to be a request. *3 Hats., 17; 9 Grey, 306, 406; 10 Grey, 133.*

The House and the Senate have observed this rule; but it does not appear that they have always made public ascertainment of the willingness of the Member to attend (III, 1790, 1791). In one case the Senate laid aside pending business in order to comply with the request of the House (III, 1791). In several instances House committees, after their invitations to Senators to appear and testify had been disregarded, have issued subpoenas. In such cases the Senators have either disregarded the subpoenas, refused to obey them, or have appeared under protest (III, 1792, 1793). In one case, after a Senator had neglected to respond either to an invitation or a subpoena the House requested of the Senate his attendance and the Senate disregarded the request (III, 1794). Where Senators have responded to invitations of House committees, their testimony has been taken without obtaining consent of the Senate (III, 1793, 1795, footnote).

§ 348. Admission of counsel.

Counsel are to be heard only on private, not on public, bills and on such points of law only as the House shall direct. *10 Grey, 61.*

In 1804 the House admitted the counsel of certain corporations to address the House on pending matters of legislation (V, 7298), and in 1806 voted that a claimant might be heard at the bar (V, 7299); but in 1808, after consideration, the House by a large majority declined to follow again the precedent of 1804 (V, 7300). In early years counsel in election cases were heard at the bar at the discretion of the House (I, 657, 709, 757, 765); but in 1836, after full discussion, the practice was abandoned (I, 660), and, with one exception in 1841 (I, 659), has not been revived, even for the case of a contestant who could not speak the English language (I, 661). Counsel appear before committees in election cases, however. Where wit-

nesses and others have been arraigned at the bar of the House for contempt, the House has usually permitted counsel (II, 1601, 1616; III, 1667), sometimes under conditions (II, 1604, 1616); but in a few cases has declined the request (II, 1608; III, 1666, footnote). In investigations before committees counsel usually have been admitted (III, 1741, 1846, 1847), sometimes even to assist a witness (III, 1772), and clause 2(k)(3) of rule XI now provides that witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights (§ 803, *infra*). In examinations preliminary to impeachment counsel usually have been admitted (III, 1736, 2470, 2516) unless in cases wherein such proceedings were ex parte. During impeachment investigations against President Nixon and President Clinton, the Committee on the Judiciary admitted counsel to the President to be present, to make presentations and to examine witnesses during investigatory hearings (H. Rept. 93–1305, Aug. 20, 1974, p. 29219; H. Rept. 105–830, Dec. 16, 1998, p. 27819).

At one time the House required all counsel or agents representing persons or corporations before committees to be registered with the Clerk (III, 1771). The Lobbying Disclosure Act of 1995 requires all lobbyists to register with the Clerk of the House and the Secretary of the Senate (2 U.S.C. 1603).

SEC. XIV—ARRANGEMENT OF BUSINESS

§ 349. Advantages of an order of business.

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up; but it is left to his own discretion, unless the House on a question decide to take up a particular subject. *Hakew., 136.*

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual Members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others, having

priority of right to their attention in the general order of business.

* * * * *

In this way we do not waste our time in debating what shall be taken up. We do one thing at a time; follow up a subject while it is fresh, and till it is done with; clear the House of business gradatim as it is brought on, and prevent, to a certain degree, its immense accumulation toward the close of the session.

Jefferson gave as a part of his comment on the law of Parliament the order of business in the Senate in his time. Both in the House and Senate the order of business has been changed to meet the needs of the times. The order of business now followed in the House is established by rule XIV; and this rule, with the rules supplemental thereto, take away to a very large extent the discretion exercised by the Speaker under the parliamentary law.

In the House before committees are appointed it is in order to offer a bill or resolution for consideration not previously considered by a committee (VII, 2103). In the 73d Congress, the House passed before the adoption of rules and election of committees a bill of major importance (providing relief in the existing national emergency in banking), following a message from the President recommending its immediate passage (Mar. 9, 1933, pp. 75–84).

§ 350. Conditions of the old and the modern orders of business.

Arrangement, however, can only take hold of matters in possession of the House. New matter may be moved at any time when no question is before the House. Such are original motions and reports on bills. Such are bills from the other House, which are received at all times, and receive their first reading as soon as the question then before the House is disposed of; and bills brought in on leave, which are read first whenever presented. So messages from the other House respecting amendments to bills are taken up as soon as the

House is clear of a question, unless they require to be printed, for better consideration. Orders of the day may be called for, even when another question is before the House.

In Jefferson's time the principles of this comment would have applied to both House and Senate; but in the House the order of business may be interrupted at the will of the majority only by certain specified matters (see annotations following rule XIV). For matters not thus specified, interruption of the order takes place only by unanimous consent. For a discussion of the Speaker's policy of conferring recognition for such unanimous-consent requests, see § 956, *infra*.

SEC. XV—ORDER

* * * * *

§ 351. Precedent in Parliament and the House.

In Parliament, "instances make order," per Speaker Onslow. *2 Hats., 141.* But what is done only by one Parliament, cannot be called custom of Parliament, by Prynne. *1 Grey, 52.*

In the House the Clerk is required to note all questions of order and the decisions thereon and print the record thereof as an appendix to the Journal (clause 2 of rule II). The Parliamentarian has the responsibility for compiling and updating the precedents (2 U.S.C. 28). The Committee Reform Amendments of 1974 gave the Speaker the responsibility to prepare an updated compilation of such precedents every two years (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The Speaker feels constrained in rulings to give precedent its proper influence (II, 1317), because the advantage of such a course is undeniable (IV, 4045). But decisions of the Speakers on questions of order are not like judgments of courts that conclude the rights of parties, but may be reexamined and reversed (IV, 4637), except on discretionary matters of recognition (II, 1425). It is rare, however, that such a reversal occurs.

SEC. XVI—ORDER RESPECTING PAPERS

§ 352. Safekeeping of papers and integrity of bills.

The Clerk is to let no journals, records, accounts, or papers be taken from the table or out of his custody. *2 Hats., 193, 194.*

Mr. Prynne, having at a Committee of the Whole amended a mistake in a bill without order or knowledge of the committee, was reprimanded. *1 Chand., 77.*

A bill being missing, the House resolved that a protestation should be made and subscribed by the members "before Almighty God, and this honorable House, that neither myself, nor any other to my knowledge, have taken away, or do at this present conceal a bill entitled," &c. *5 Grey, 202.*

After a bill is engrossed, it is put into the Speaker's hands, and he is not to let any one have it to look into. *Town, col. 209.*

In the House an alleged improper alteration of a bill was presented as a question of privilege and examined by a select committee. It being ascertained that the alteration was made to correct a clerical error, the committee reported that it was "highly censurable in any Member or officer of the House to make any change, even the most unimportant, in any bill or resolution which has received the sanction of this body" (III, 2598). Alleged abuse of power in the processing and enrollment of bills has formed the basis of questions of privilege (Feb. 16, 2006, p. 1948; May 22, 2008, p. __). Although engrossing papers must be at the desk, additional copies of a pending measure are not required (June 26, 2009, p. __). The Clerk signs engrossments; the Speaker signs enrollments (1 U.S.C. 106).

SEC. XVII—ORDER IN DEBATE

§ 353. Decorum of Members as to sitting in their places.

When the Speaker is seated in his chair, every member is to sit in his place. *Scob., 6; Grey, 403.*

In the House the decorum of Members is regulated by rule XVII; and this provision of the parliamentary law is practically obsolete.

§ 354. Procedure of the Member in seeking recognition.

When any Member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular Member,

but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks. *Scob., 6; D'Ewes, 487, col. 1; 2 Hats., 77; 4 Grey, 66; 8 Grey, 108.* But Members who are indisposed may be indulged to speak sitting. *2 Hats., 75, 77; 1 Grey, 143.*

This provision has been superseded by clause 1 of rule XVII. The Speaker, moreover, calls the Member, not by name, but as "the gentleman or gentlewoman from ____," (naming the State). As long ago as 1832, at least, a Member was not required to rise from his own particular seat because seats are no longer assigned (V, 4979, footnote).

§ 355. Conditions under which a Member's right to the floor is subjected to the will of the House.

When a Member stands up to speak, no question is to be put, but he is to be heard unless the House overrule him. *4 Grey, 390; 5 Grey, 6, 143.*

Except as provided in clause 4 of rule XVII, no question is put as to the right of a Member to the floor.

§ 356. The parliamentary law as to recognition by the Speaker.

If two or more rise to speak nearly together, the Speaker determines who was first up, and calls him by name, whereupon he proceeds, unless he voluntarily sits down and gives way to the other. But sometimes the House does not acquiesce in the Speaker's decision, in which case the question is put, "which Member was first up?" *2 Hats., 76; Scob., 7; D'Ewes, 434, col. 1, 2.*

In the Senate of the United States the President's decision is without appeal.

In the House recognition by the Chair is governed by clause 2 of rule XVII and the practice thereunder. There has been no appeal from a decision by the Speaker on a question of recognition since 1881, on which occasion Speaker Randall stated that the power of recognition is "just as absolute in the Chair as the judgment of the Supreme Court of the United States is absolute as to the interpretation of the law" (II, 1425–1428), and in the later practice no appeal is permitted (VIII, 2429, 2646, 2762).

§ 357. Right of the Member to be heard a second time.

No man may speak more than once on the same bill on the same day; or even on another day, if the debate be adjourned. But if it be read more than once in the same day, he may speak once at every reading. *Co., 12, 115; Hakew., 148; Scob., 58; 2 Hats., 75.* Even a change of opinion does not give a right to be heard a second time. *Smyth's Comw. L., 2, c. 3; Arcan, Parl., 17.*

But he may be permitted to speak again to clear a matter of fact, *3 Grey, 357, 416;* or merely to explain himself, *2 Hats., 73,* in some material part of his speech, *Ib., 75;* or to the manner or words of the question, keeping himself to that only, and not traveling into the merits of it, *Memorials in Hakew., 29;* or to the orders of the House, if they be transgressed, keeping within that line, and not falling into the matter itself. *Mem. Hakew., 30, 31.*

The House has modified the parliamentary law as to a Member's right to speak a second time by clause 3 of rule XVII and by permitting a Member controlling time in debate to yield to another more than once (Apr. 5, 2000, p. 4497; Oct. 18, 2007, p. 27575). In ordinary practice rule XVII is not rigidly enforced, and Members find little difficulty in making such explanations as are contemplated by the parliamentary law.

§ 358. Participation of the Speaker in debate.

But if the Speaker rise to speak, the Member standing up ought to sit down, that he may be first heard. *Town., col. 205; Hale Parl., 133; Mem. in Hakew., 30, 31.* Nevertheless, though the Speaker may of right speak to matters of order, and be first heard, he is restrained from speaking on any other subject, except where the House have occasion for facts

within his knowledge; then he may, with their leave, state the matter of fact. *3 Grey, 38.*

This provision is usually observed in the practice of the House only with regard to the conduct of the Speaker when in the chair. In several instances the Speaker has been permitted by the House to make a statement from the chair, as in a case wherein his past conduct had been criticized (II, 1369), in a case wherein there had been unusual occurrences in the joint session to count the electoral vote (II, 1372), and in a matter relating to a contest for the seat of the Speaker as a Member (II, 1360). In rare instances the Speaker has made brief explanations from the chair without asking the assent of the House (II, 1373, 1374). Speakers have called others to the chair and participated in debate, usually without asking consent of the House (II, 1360, 1367, footnote, 1368, 1371; III, 1950), and in one case a Speaker on the floor debated a point of order that the Speaker pro tempore was to decide (V, 6097). In rare instances Speakers have left the chair to make motions on the floor (II, 1367, footnote). Speakers may participate in debate in Committee of the Whole, although the privilege was rarely exercised in early practice (II, 1367, footnote).

§ 359. Impertinent, superfluous, or tedious speaking.

No one is to speak impertinently or beside the question, superfluous, or tediously. *Scob., 31, 33; 2 Hats., 166, 168; Hale Parl., 133.*

The House, by clause 1 of rule XVII, provides that remarks must be confined to the question under debate, but neither by rule nor practice has the House suppressed superfluous or tedious speaking, its hour rule (clause 2 of rule XVII) being a sufficient safeguard in this respect.

§ 360. Language reflecting on the House.

No person is to use indecent language against the proceedings of the House; no prior determination of which is to be reflected on by any Member, unless he means to conclude with a motion to rescind it. *2 Hats., 169, 170; Rushw., p. 3, v. 1, fol. 42.* But while a proposition under consideration is still *in fieri,* though it has even been reported by a committee, reflections on it are no reflections on the House. *9 Grey, 508.*

In the practice of the House it has been held out of order in debate to cast reflections on either the House or its membership or its decisions,

whether present or past (V, 5132–5138). A Member who had used offensive words against the character of the House, and who declined to explain, was censured (II, 1247). Words impeaching the loyalty of a portion of the membership have also been ruled out (V, 5139). Where a Member reiterated on the floor certain published charges against the House, action was taken, although other business had intervened, the question being considered one of privilege (III, 2637). It has been held inappropriate and not in order in debate to refer to the proceedings of a committee except such as have been formally reported to the House (V, 5080–5083; VIII, 2269, 2485–2493; June 24, 1958, pp. 12120, 12122), but this rule does not apply to the proceedings of a committee of a previous Congress (Feb. 2, 1914, p. 2782), and the rationale for this limitation on debate is in part obsolete under the modern practice of the House insofar as the doctrine is applied to open committee meetings and hearings.

§ 361. Personalities in debate forbidden.

No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question, &c., *Mem. in Hakew., 3; Smyth's Comw., L. 2, c. 3;* nor to digress from the matter to fall upon the person, *Scob., 31; Hale Parl., 133; 2 Hats., 166,* by speaking reviling, nipping, or unmannerly words against a particular Member. *Smyth's Comw., L. 2, c. 3.* * * *

In the practice of the House, a Member is not permitted to refer to another Member by name (V, 5144; VIII, 2526, 2529, 2536), or to address a Member in the second person (V, 5140–5143; VI, 600; VIII, 2529). The proper reference to another Member is "the gentleman or gentlewoman from ____," (naming the Member's State) (June 14, 1978, p. 17615; July 21, 1982, p. 17314). A mere reference to a Member's voting record does not form a basis for a point of order against those remarks (June 13, 2002, p. 10226, p. 10232).

By rule of the House (clause 1 of rule XVII), as well as by parliamentary law, personalities are forbidden (V, 4979, 5145, 5163, 5169), whether against the Member in the Member's capacity as Representative or otherwise (V, 5152, 5153), even if the references may be relevant to the pending question (Sept. 28, 1996, p. 25778). The House has censured a Member for gross personalities (II, 1251). The Chair may intervene to prevent improper references if it is evident that a particular Member is being described (Nov. 3, 1989, p. 27077).

The Chair does not rule on the veracity of a statement made by a Member in debate (Apr. 9, 1997, p. 4926; Sept. 26, 2008, p. __). Although accusing

another Member of deceit engages in personality, merely accusing another Member of making a mistake does not (Oct. 26, 2000, p. 24921).

Clause 1 of rule XVII has been held to proscribe: (1) referring to an identifiable group of sitting Members as having committed a crime (*e.g.*, stealing an election or obstructing justice) (Feb. 27, 1985, p. 3898; Speaker Wright, Mar. 21, 1989, p. 5016; May 19, 1998, p. 9738; July 15, 2004, p. 15859); (2) referring in a personally critical manner to the political tactics of the Speaker or other Members (June 25, 1981, p. 14056); (3) referring to a particular Member of the House in a derogatory fashion (Nov. 3, 1989, p. 27077); (4) characterizing a Member as "the most impolite Member" (June 27, 1996, p. 15915) or "mean-spirited" (May 13, 1992, p. 11235); (5) questioning the integrity of a Member (July 25, 1996, p. 19170); (6) denunciating the spirit in which a Member had spoken (V, 6981); (7) using a Member's surname as though an adjective for a word of ridicule (June 13, 2002, p. 10232; May 13, 2008, p. __); (8) questioning the decency of another Member (Mar. 21, 2007, p. 7074).

A distinction has been drawn between general language, which characterizes a measure or the political motivations behind a measure, and personalities (V, 5153, 5163, 5169). Although remarks in debate may not include personal attacks against a Member or an identifiable group of Members, they may address political motivations for legislative positions (Jan. 24, 1995, p. 2214; Mar. 8, 1995, pp. 7307, 7308; Nov. 17, 1995, p. 33832; June 13, 1996, p. 14043; July 16, 2008, p. __). For example, references to "down-in-the-dirt gutter politics" and "you people are going to pay" were held not to be personal references (Nov. 14, 1995, p. 32388). Similarly, characterizing a pending measure as a "patently petty political terrorist tactic" was held in order as a reference to the pending measure rather than to the motive or character of the measure's proponent (Nov. 9, 1995, p. 31413). The Chair also has held in order a general reference that "big donors" receive "access to leadership power and decisions" because the reference did not identify a specific Member as engaging in an improper quid pro quo (Apr. 9, 1997, p. 4926). A general statement seeming to invoke racial stereotypes but not in a context so inflammatory as to constitute a breach of decorum, was held not unparliamentary (Apr. 9, 2003, p. 9005 (sustained by tabling of appeal)). Likewise, a general statement linking politics with armed conflict in an impersonal way was held not to breach decorum (Oct. 18, 2007, p. 27578).

A Member may not read in debate extraneous material critical of another Member that would be improper if spoken in the Member's own words (May 25, 1995, pp. 14436, 14437; Sept. 12, 1996, p. 22898). Thus, words in a telegram read in debate that repudiated the "lies and half-truths" of a House committee report were ruled out of order as reflecting on the integrity of committee members (June 16, 1947, p. 7065), and unparliamentary references in debate to newspaper accounts used in support of a Member's personal criticism of another Member were similarly ruled out of order (Feb. 25, 1985, p. 3346).

A Member should refrain from references in debate to the official conduct of a Member if such conduct is not the subject then pending before the House by way of either a report of the Committee on Ethics or another question of the privileges of the House (see, *e.g.*, July 24, 1990, p. 18917; Mar. 19, 1992, p. 6078; May 25, 1995, pp. 14434–37; Sept. 19, 1995, pp. 25454, 25455; Apr. 27, 2005, p. 8049); and, although such references are ordinarily enforced by the Chair in response to a point of order, the Chair may take the initiative in order to maintain proper decorum (Apr. 1, 1992, p. 7899; June 17, 2004, p. 12748). This stricture also precludes a Member from reciting news articles discussing a Member's conduct (Sept. 24, 1996, p. 24318), reciting the content of a previously tabled resolution raising a question of the privileges of the House (Nov. 17, 1995, p. 33853; Sept. 19, 1996, p. 23855), or even referring to a Member's conduct by mere insinuation (Sept. 12, 1996, p. 22899). Notice of an intention to offer a resolution as a question of the privileges of the House under rule IX does not render a resolution "pending" and thereby permit references to conduct of a Member proposed to be addressed therein (Sept. 19, 1996, p. 23811).

The stricture against references to a Member's conduct not then pending before the House applies to the conduct of all sitting Members (Apr. 1, 1992, p. 7899), including conduct that has previously been resolved by the Committee on Ethics or the House (Sept. 24, 1996, pp. 24483, 24485; Apr. 17, 1997, p. 5831). This stricture does not apply to the conduct of a former Member, provided the reference is not made in an attempt to compare the conduct of a former Member with the conduct of a sitting Member (Sept. 20, 1995, pp. 25825, 25826; Sept. 12, 1996, pp. 22900, 22901).

Debate on a pending privileged resolution recommending disciplinary action against a Member may necessarily involve personalities. However, clause 1 of rule XVII still prohibits the use of language that is personally abusive (see, *e.g.*, July 31, 1979, p. 21584; Jan. 21, 1997, p. 393) and the Chair may take the initiative to prevent violations of the rule (July 24, 2002, p. 14300). Furthermore, during the actual pendency of such a resolution, a Member may discuss a prior case reported to the House by the Committee on Ethics for the purpose of comparing the severity of the sanction recommended in that case with the severity of the sanction recommended in the pending case, provided that the Member does not identify, or discuss the details of the past conduct of, a sitting Member (Dec. 18, 1987, p. 36271).

In addition to the prohibition against addressing a Member's conduct when it is not actually pending before the House, the Speaker has advised that Members should refrain from references in debate (1) to the motivations of a Member who filed a complaint before the Committee on Standards of Official Conduct (now Ethics) (June 15, 1988, p. 14623; July 6, 1988, p. 16630; Mar. 22, 1989, p. 5130; May 2, 1989, p. 7735; Nov. 3, 1989, p. 27077); (2) to personal criticism of a member of the committee (Apr. 1, 1992, p. 7899; Mar. 3, 1995, p. 6715; Sept. 19, 1996, p. 23812; Sept.

24, 1996, p. 24317); (3) to an investigation undertaken by the committee, including suggestion of a course of action (Mar. 3, 1995, p. 6715; Sept. 24, 1996, p. 24317; Sept. 28, 1996, p. 25778) or advocacy of an interim status report by the committee (Sept. 12, 1996, p. 22900; Sept. 28, 1996, p. 25778).

For precedents applicable to references in debate to the President, see § 370, *infra*, or Members of the Senate, see § 371, *infra*.

§ 362. Criticism of the Speaker.

Complaint of the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters (V, 5188). In a case wherein a Member used words insulting to the Speaker the House on a subsequent day, and after other business had intervened, censured the offender (II, 1248). In such a case the Speaker would ordinarily leave the chair while action should be taken by the House (II, 1366; V, 5188; VI, 565). In the 104th Congress the Chair reaffirmed that it is not in order to speak disrespectfully of the Speaker, and that under the precedents the sanctions for such violations transcend the ordinary requirements for timeliness of challenges (II, 1248; Jan. 4, 1995, p. 552; Jan. 19, 1995, p. 1599). It is not in order to arraign the personal conduct of the Speaker (Jan. 18, 1995, p. 1441; Jan. 19, 1995, p. 1601). For example, it is not in order to charge dishonesty or disregard of the rules (July 11, 1985, p. 18550), to reflect on his patriotism by accusing him of "kowtowing" to persons who would desecrate the flag (June 20, 1990, p. 14877), to refer to him as a "crybaby" (Nov. 16, 1995, p. 33394), or to refer to official conduct of the Speaker that has previously been resolved by the Committee on Standards of Official Conduct (now Ethics) or the House (Apr. 17, 1997, p. 5831). The Chair may take the initiative to admonish Members for references in debate that disparage the Speaker (June 25, 1981, p. 14056; Mar. 22, 1996, p. 6077; May 13, 2008, p. __). Debate on a resolution authorizing the Speaker to entertain motions to suspend the rules may not engage in personality by discussing the official conduct of the Speaker, even if possibly relevant to the question of empowerment of the Speaker (Sept. 24, 1996, p. 24485).

§ 363. Motives of Members not to be arraigned.

* * * The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose to advocate it is a personality, and against order. *Qui digreditur a materia ad personam,* Mr. Speaker ought to suppress. *Ord. Com., 1604, Apr. 19.*

The arraignment of the motives of Members is not permitted (V, 5147–51; Dec. 13, 1973, p. 41270), and Speakers have intervened to prevent it, in the earlier practice preventing even mildest imputations (V, 5161,

5162). However, remarks in debate may address political, but not personal, motivations for legislative positions (Jan. 24, 1995, p. 2214; Mar. 8, 1995, pp. 7307, 7308; Nov. 17, 1995, p. 33832; June 13, 1996, p. 14043) or for committee membership (July 10, 1995, pp. 18257–59). Accusing another Member of hypocrisy has been held not in order (July 24, 1979, p. 20380; Mar. 29, 1995, p. 9675), and characterizing the motivation of a Member in offering an amendment as deceptive and hypocritical was ruled out of order (June 12, 1979, p. 11461). A statement in debate that an amendment could only be demagogic or racist because only demagoguery or racism impelled such an amendment was ruled out of order as impugning the motives of the Member offering the amendment (Dec. 3, 1973, pp. 41270, 41271). However, debate characterizing a pending measure as a "patently petty political terrorist tactic" was held in order as directed at the pending measure rather than the motive or the character of its proponent (Nov. 9, 1995, p. 31413). Although in debate the assertion of one Member may be declared untrue by another, in so doing an intentional misrepresentation must not be implied (V, 5157–5160), and if stated or implied is censurable (II, 1305). A Member in debate having declared the words of another "a base lie," censure was inflicted by the House on the offender (II, 1249).

§ 364. Disorder and interruptions during debate.

No one is to disturb another in his speech by hissing, coughing, spitting, *6 Grey, 322; Scob., 8; D'Ewes, 332, col. 1, 640, col. 2,* speaking or whispering to another, *Scob., 6; D'Ewes, 487, col. 1;* nor stand up to interrupt him, *Town, col. 205; Mem. in Hakew., 31;* nor to pass between the Speaker and the speaking Member, nor to go across the House, *Scob., 6,* or to walk up and down it, or to take books or papers from the table, or write there, *2 Hats., 171, p. 170.*

The House has, by clause 5 of rule XVII, prescribed certain rules of decorum differing somewhat from this provision of the parliamentary law, but supplemental to it rather than antagonistic. In one respect, however, the practice of the House differs from the apparent intent of the parliamentary law. In the House a Member may interrupt by addressing the Chair for permission of the Member speaking (V, 5006; VIII, 2465); but it is entirely within the discretion of the Member occupying the floor to determine when and by whom to be interrupted (V, 5007, 5008; VIII, 2463, 2465). There is no rule of the House requiring a Member having the floor to yield to another Member referred to during debate (Aug. 2, 1984, p. 22241). A Member may ask another to yield from any microphone in the

Chamber, including those in the well, so long as not crossing between the Member having the floor and the Chair (June 5, 1998, p. 11170). The Chair may take the initiative in preserving order when a Member declining to yield in debate continues to be interrupted by another Member, may order that the interrupting Member's remarks not appear in the Record (July 26, 1984, p. 21247), and may admonish Members not to converse with a Member attempting to address the House (Feb. 21, 1984, p. 2758), because it is not in order to engage in disruption while another is delivering remarks in debate (June 27, 1996, p. 15915). On the opening day of the 103d Congress, during the customary announcement of policies with respect to particular aspects of the legislative process, the Chair elaborated on the rules of order in debate with a general statement concerning decorum in the House (Jan. 5, 1993, p. 105). Under this provision, the Chair may require a line of Members waiting to sign a discharge petition to proceed to the rostrum from the far right-hand aisle and require the line not to stand between the Chair and Members engaging in debate (Oct. 24, 1997, p. 23293). Hissing and jeering is not proper decorum in the House (May 21, 1998, p. 10282). For further discussion of interruptions in debate, see § 946, *infra*.

§ 365. Parliamentary method of silencing a tedious Member.

Nevertheless, if a Member finds that it is not the inclination of the House to hear him, and that by conversation or any other noise they endeavor to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattention to a Member who says anything worth their hearing. *2 Hats., 77, 78.*

In the House, where the previous question and hour rule of debate have been used for many years, the parliamentary method of suppressing a tedious Member has never been imported into the practice (V, 5445).

§ 366. The parliamentary law as to naming a disorderly Member.

If repeated calls do not produce order, the Speaker may call by his name any Member obstinately persisting in irregularity; whereupon the House may require the Member to withdraw. He is

then to be heard in exculpation, and to withdraw. Then the Speaker states the offense committed; and the House considers the degree of punishment they will inflict. *2 Hats., 167, 7, 8, 172.*

This provision of parliamentary law should be in conjunction with clause 4 of rule XVII, §§ 960–961, *infra*, particularly as this provision relates to the ultimate authority of the House to determine whether a Member ignoring repeated calls to order should be permitted to proceed in order.

§ 367. Proceedings in cases of assaults and affrays.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see *1 Pet. Misc., 82; 3 Grey, 128; 4 Grey, 328; 5 Grey, 382; 6 Grey, 254; 10 Grey, 8.* Whenever warm words or an assault have passed between Members, the House, for the protection of their Members, requires them to declare in their places not to prosecute any quarrel, *3 Grey, 128, 293; 5 Grey, 280;* or orders them to attend the Speaker, who is to accommodate their differences, and report to the House, *3 Grey, 419;* and they are put under restraint if they refuse, or until they do. *9 Grey, 234, 312.*

In several instances assaults and affrays have occurred on the floor of the House. Sometimes the House has allowed these affairs to pass without notice, the Members concerned making apologies either personally or through other Members (II, 1658–1662). In other cases the House has exacted apologies (II, 1646–1651, 1657), or required the offending Members to pledge themselves before the House to keep the peace (II, 1643). In case of an aggravated assault by one Member on another on the portico of the Capitol for words spoken in debate, the House censured the assailant and three other Members who had been present, armed, to prevent interference (II, 1655, 1656). Assaults or affrays in the Committee of the Whole are dealt with by the House (II, 1648–1651).

§ 368. Parliamentary law as to taking down disorderly words.

Disorderly words are not to be noticed till the Member has finished his speech. *5 Grey, 356; 6 Grey, 60.* Then the person objecting to them, and desiring them to be taken down by the Clerk at the table, must repeat them. The Speaker then may direct the Clerk to take them down in his minutes; but if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the Clerk to take them down, as stated by the objecting Member. They are then a part of his minutes, and when read to the offending Member, he may deny they were his words, and the House must then decide by a question whether they are his words or not. Then the Member may justify them, or explain the sense in which he used them, or apologize. If the House is satisfied, no further proceeding is necessary. But if two Members still insist to take the sense of the House, the Member must withdraw before that question is stated, and then the sense of the House is to be taken. *2 Hats., 199; 4 Grey, 170; 6 Grey, 59.* When any Member has spoken, or other business intervened, after offensive words spoken, they can not be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down at any time the same day. *2 Hats., 196; Mem. in Hakew., 71; 3 Grey, 48; 9 Grey, 514.*

The House has, by clause 4 of rule XVII, provided a method of procedure in cases of disorderly words. The House permits and requires them to be

noticed as soon as uttered, and has not insisted that the offending Member withdraw while the House is deciding as to its course of action.

§ 369. Disorderly words taken down and reported from Committee of the Whole.

Disorderly words spoken in a committee must be written down as in the House; but the committee can only report them to the House for animadversion. *6 Grey, 46.*

This provision of the parliamentary law has been applied to the Committee of the Whole, rather than to select or standing committees, which are separately empowered to enforce rules of decorum (clause 1(a) of rule XI, which incorporates the provisions of rule XVII where applicable). The House has censured a Member for disorderly words spoken in Committee of the Whole and reported therefrom (II, 1259).

§ 370. References in debate to the Executive.

In Parliament, to speak irreverently or seditiously against the King is against order. *Smyth's Comw., L. 2, c. 3; 2 Hats., 170.*

This provision of the parliamentary law is manifestly inapplicable to the House (V, 5086); and it has been held in order in debate to refer to the President of the United States or his opinions, either with approval or criticism, provided that such reference be relevant to the subject under discussion and otherwise conformable to the Rules of the House (V, 5087–5091; VIII, 2500). Under this standard the following references are in order: (1) a reference to the probable action of the President (V, 5092); (2) an adjuration to the President to keep his word (although an improper form of address) (Dec. 19, 1995, p. 37601); (3) an accusation that the President "frivolously vetoed" a bill (Nov. 8, 1995, p. 31785).

Although wide latitude is permitted in debate on a proposition to impeach the President (V, 5093), Members must abstain from language personally offensive (V, 5094; Dec. 18, 1998, p. 27829); and Members must abstain from comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. 27829). Furthermore, when impeachment is not the pending business on the floor, Members may not refer to evidence of alleged impeachable offenses by the President contained in a communication from an independent counsel pending before a House committee (Sept. 14, 1998, p. 20171; Sept. 17, 1998, p. 20758), although they may refer to the communication, itself, within the confines of proper decorum in debate (Oct. 6, 1998, p. 23841).

Personal abuse, innuendo, or ridicule of the President is not permitted (VIII, 2497; Aug. 12, 1986, p. 21078; Oct. 21, 1987, p. 8857; Sept. 21, 1994, p. 25147; Sept. 7, 2006, pp. 17381, 17382). Under this standard it is not

in order to call the President, or a presumptive major-party nominee for President, a "liar" or accuse such person of "lying" (June 26, 1985, p. 17394; Sept. 24, 1992, pp. 27345, 27346; Nov. 15, 1995, p. 32587; June 6, 1996, pp. 13228, 13229; Mar. 18, 1998, p. 3937; Nov. 14, 2002, p. 22370; July 15, 2003, pp. 18172, 18173; Mar. 24, 2004, pp. 5115, 5116). Indeed, any suggestion of mendacity is out of order. For example, the following remarks have been held out of order: (1) suggesting that the President misrepresented the truth, attempted to obstruct justice, and encouraged others to perjure themselves (Feb. 25, 1998, p. 2621); (2) accusing him of dishonesty (July 13, 2004, p. 15275; June 29, 2005, p. 14770) or of failing to be honest (Apr. 14, 2011, p. __), accusing him of making a "dishonest argument" (Sept. 12, 2006, p. 17851), charging him with intent to be intellectually dishonest (May 9, 1990, p. 9828), or stating that many were convinced he had "not been honest" (Mar. 5, 1998, p. 2620); (3) accusing him of "raping" the truth (Apr. 24, 1996, p. 8807), not telling the truth (Oct. 29, 2003, p. 26363), or distorting the truth (Sept. 9, 2003, pp. 21570–73); (4) stating that he was not being "straight with us" (Nov. 19, 2003, p. 29811); (5) accusing him of being deceptive (Mar. 29, 2004, pp. 5523, 5524; Feb. 1, 2006, p. 647) or using "deceptive rhetoric" (Oct. 17, 2007, pp. 27534, 27538), fabricating an issue (July 6, 2004, pp. 14313, 14314), or intending to mislead (Oct. 6, 2004, p. 21053; July 12, 2007, p. 18827); (6) accusing him of intentional mischaracterization, although mischaracterization without intent to deceive is not necessarily out of order (July 19, 2005, p. 16525).

Furthermore, the following remarks have been held out of order as unparliamentary references to the President, or to a presumptive major-party nominee for President: (1) attributing to him "hypocrisy" (Sept. 25, 1992, p. 27674; Apr. 26, 2006, p. 6129); (2) accusing him of giving "aid and comfort to the enemy" (Jan. 25, 1995, p. 2352; May 6, 2004, pp. 8601, 8602); (3) accusing him of "demagoguery" (Jan. 23, 1996, p. 1144; Jan. 24, 1996, pp. 1220, 1221; May 30, 1996, pp. 12646, 12647); (4) calling him a "draft-dodger" (Apr. 24, 1996, pp. 8807, 8808; Sept. 30, 1996, p. 26603) or alleging unexcused absences from military service (May 5, 2004, pp. 8417, 8418), including allegations that the President was "A.W.O.L." (Sept. 22, 2004, p. 18953); (5) describing his action as "cowardly" (Oct. 25, 1989, p. 25817); (6) referring to him as "a little bugger" (Nov. 18, 1995, p. 33974); (7) alluding to alleged sexual misconduct on his part (May 10, 1994, p. 9697; Feb. 25, 1998, p. 1828; Mar. 5, 1998, p. 2620; May 18, 1998, p. 9418); (8) alluding to unethical behavior or corruption (*e.g.*, June 20, 1996, p. 14829; July 9, 2002, p. 12286; Oct. 29, 2003, pp. 26400–402), such as implying a cause-and-effect relationship between political contributions and his actions as President (*e.g.*, May 22, 2001, p. 9028; Sept. 29, 2004, pp. 19976, 19977), including an accusation that the President had "lined the pockets" of his "political cronies" and filled "campaign coffers" (Sept. 14, 2005, pp. 20238, 20239); (9) discussing "charges" leveled at the President or under investigation (Mar. 19, 1998, p. 4094; June 11, 1998, p. 12025), including alluding to "fund-raising abuses" (Mar. 14, 2000, p. 2716) or speculating that the

Vice President might someday pardon the President for certain charges (Apr. 12, 2000, p. 5419); or discussing alleged criminal conduct (Sept. 10, 1998, p. 19976) or "illegal surveillance" (June 20, 2006, p. 11935); (10) discussing personal conduct even as a point of reference or comparison (July 16, 1998, p. 15784; Sept. 9, 1998, p. 19735); (11) asserting that a major-party nominee had done something "disgusting" and "despicable" (Mar. 11, 2004, p. 4033); (12) asserting that a major-party nominee is not "a large enough person" to apologize (Mar. 11, 2004, p. 4086) or that the President does not care about black people (Sept. 8, 2005, p. 19797); (13) describing his action as "arrogant" (Jan. 11, 2007, p. 998; Mar. 22, 2007, p. 7321) or "mean-spirited" (July 15, 2008, p. __); (14) equating his decisions with regard to armed conflict as him having "slaughtered" thousands (Mar. 8, 2007, p. 5815) or that a soldier's death was for his "amusement" (Oct. 18, 2007, pp. 27569, 27570). The Chair may admonish Members transgressing this stricture even after other debate has intervened (Jan. 23, 1996, p. 1144).

A Member may not read in debate extraneous material personally abusive of the President that would be improper if spoken in the Member's own words (Mar. 3, 1993, p. 3958; Nov. 15, 1995, p. 32587; May 2, 1996, p. 10010; Mar. 17, 1998, p. 3799; July 15, 2003, p. 18170; Sept. 16, 2003, pp. 22151, 22152; Oct. 17, 2007, p. 27538). This prohibition includes the recitation of another Member's criticism of the President made off the floor (even if recited as a rebuttal to such criticism) (Dec. 17, 1998, p. 27775).

The Chair has advised that the protections afforded by Jefferson's Manual and the precedents against unparliamentary references to the President, personally, do not necessarily extend to members of his family (July 12, 1990, p. 17206).

References in debate to former Presidents are not governed by these standards (Nov. 15, 1945, p. 10735; June 27, 2002, pp. 11844, 11845).

In the 102d Congress, the Speaker enunciated a minimal standard of propriety for all debate concerning nominated candidates for the Presidency, based on the traditional proscription against personally offensive references to the President even in the capacity as a candidate (Speaker Foley, Sept. 24, 1992, p. 27344); and this policy has been extended to a presumptive major-party nominee for President (*e.g.*, Apr. 22, 2004, pp. 7401, 7402). However, references to the past statements or views of such nominee are not unparliamentary (May 6, 2004, p. 8554).

For discussion of the stricture against addressing remarks in debate to the President, as in the second person, see § 945, *infra*.

On January 27, 1909 (VIII, 2497), the House adopted a report of a committee appointed to investigate the question, which report in part stated:

"The freedom of speech in debate in the House should never be denied or abridged, but freedom of speech in debate does not mean license to indulge in personal abuses or ridicule. The right of Members of the two Houses of Congress to criticize the official acts of the President and other executive officers is beyond question, but this right is subject to proper

rules requiring decorum in debate. Such right of criticism is inherent upon legislative authority. The right to legislate involves the right to consider conditions as they are and to contrast present conditions with those of the past or those desired in the future. The right to correct abuses by legislation carries the right to consider and discuss abuses which exist or which are feared.

"It is, however, the duty of the House to require its Members in speech or debate to preserve that proper restraint which will permit the House to conduct its business in an orderly manner and without unnecessarily and unduly exciting animosity among its Members or antagonism from those other branches of the Government with which the House is correlated."

§ 371. References in debate to the other House and its Members.

It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses. *8 Grey, 22.*

Until former clause 1 of rule XIV (currently clause 1 of rule XVII) was amended in the 100th and 101st Congresses (H. Res. 5, Jan. 6, 1987, p. 6; H. Res. 5, Jan. 3, 1989, p. 72), this principle of comity and parliamentary law as described by Jefferson governed debate in the House to the full extent of its provisions (see generally, V, 5095–5130; VIII, 2501–21; July 31, 1984, p. 21670; Deschler-Brown, ch. 29, § 44). From the 101st Congress through the 108th Congress, clause 1 of rule XVII permitted some factual references that were a matter of public record, references to the pendency or sponsorship in the Senate of certain measures, factual descriptions concerning a measure under debate in the House, and quotations from Senate proceedings relevant to the making of legislative history on a pending measure. In the 109th Congress clause 1 was amended to permit debate to include references to the Senate or its Members but within the general stricture that requires Members to avoid personality (sec. 2(g), H. Res. 5, Jan. 4, 2005, p. 43). Under the new standard, remarks may urge the Senate to take a particular action (Mar. 21, 2010, p. __). For a recitation of precedents under the former rule, see § 371 of the House Rules and Manual for the 108th Congress (H. Doc. 107–284).

Since the adoption of the new rule, the following references to Members of the Senate have been held unparliamentary: (1) accusing Senate Repub-

licans of hypocrisy (May 16, 2005, p. 9757); (2) referring to Senate Democrats as "cowardly" (May 18, 2005, p. 10136); (3) accusing a Senator of making slanderous statements (June 17, 2005, p. 13009; June 21, 2005, p. 13408); (4) attributing to a Senator a list of offenses under investigation by the Securities and Exchange Commission (Oct. 18, 2005, p. 22987); (5) accusing a Senator of giving "aid and comfort" to the enemy (Dec. 13, 2005, p. 28162); (6) accusing a Senator of corruption (Oct. 13, 2009, p. __) or of taking bribes (Jan. 19, 2010, p. __); (7) stating a "low opinion" of the Senate (Apr. 1, 2011, p. __).

It remains the duty of the Chair to call to order a Member who engages in personality with respect to a Senator (see § 374, *infra*), and the Chair may admonish a Member for unparliamentary references even after intervening recognition (Oct. 12, 1999, p. 24954; Nov. 15, 2001, p. 22596). Although the Chair is under a duty to caution Members against unparliamentary references, the Chair will not advise Members on how to construct their remarks to avoid improper references (Feb. 25, 2004, pp. 2409–15).

The prohibition against improper references to Senators includes (1) a reference not explicitly naming the Senator (VIII, 2512; Feb. 23, 1994, p. 2658; June 30, 1995, p. 18153; Feb. 27, 1997, pp. 2768, 2769); (2) the reading of a paper making criticisms of a Senator (V, 5127); (3) a reference to another person's criticism of a Senator (Aug. 4, 1983, p. 23145). Similarly, the Chair has consistently held that if references to the Senate are appropriate, the Member delivering them is not required to use the term "the other body," (Oct. 4, 1984, p. 30047) and, by the same token, references to "the other body" will not cure unparliamentary references directed to the Senate (*e.g.*, Oct. 2, 2002, p. 18913; Apr. 2, 2004, pp. 6394, 6395).

Under the earlier form of the rule, the Chair held that remarks in debate during the pendency of an impeachment resolution may not include comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. 27829) and remarks in debate may not criticize words spoken in the Senate by one not a Member of that body in the course of an impeachment trial (V, 5106). After examination by a committee under the earlier form of the rule, a speech reflecting on the character of the Senate was ordered to be stricken from the Record on the ground that it tended to create "unfriendly conditions between the two bodies * * * obstructive of wise legislation and little short of a public calamity" (V, 5129). Under the earlier form of the rule, where a Member had been assailed in the Senate, he was permitted to explain his own conduct and motives without bringing the whole controversy into discussion or assailing the Senator (V, 5123–5126). Propositions relating to breaches of these principles were entertained as a matter of privilege (V, 5129, 6980).

The precise standard in former clause 1 of rule XIV for references to "individual Members of the Senate" did not apply to references to former Senators (Dec. 14, 1995, p. 36968).

The official policies, actions, and opinions of a Senator who is a candidate for President or Vice President (as, in modern practice, with one who is

not) may be criticized in terms not personally offensive (Speaker Wright, Sept. 29, 1988, p. 26683), but references attacking the character or integrity of a Senator in that context are not in order (Oct. 30, 1979, p. 30150).

References in debate to the Vice President (as President of the Senate) are governed by the standards of reference permitted toward the President, as under the earlier form of the rule. As such, a Member may criticize in debate the policies, or candidacy, of the Vice President but may not engage in personality (Dec. 14, 1995, p. 36968; July 14, 1998, p. 15314; Sept. 20, 2000, p. 18639). For example, it is not in order to allude to "wrongdoings [including] fund-raising telephone calls by the Vice President" (Mar. 14, 2000, p. 2716); to attribute to him a list of offenses under investigation by a special prosecutor (Oct. 18, 2005, p. 22987); to suggest that the House should investigate him in connection with government contracts awarded to his former employer (June 15, 2006, p. 11480); to speculate that he might someday pardon the President (Apr. 12, 2000, p. 5419); to accuse him of lying (Sept. 20, 2000, p. 18639; Sept. 21, 2000, p. 18789; Feb. 16, 2006, p. 1960; Mar. 6, 2007, p. 5412); to suggest "he has a problem with the truth" (Oct. 5, 2000, p. 21014); to allege "unethical behavior" or "corruption" (see, *e.g.*, Oct. 29, 2003, pp. 26400–402; Nov. 4, 2003, pp. 27070, 27071), including innuendo suggesting policy choices were made on the basis of personal pecuniary gain (July 7, 2004, p. 14582; Sept. 13, 2005, pp. 20238, 20239) or accusations of abuse of power (July 14, 2004, p. 15501); to describe him as "arrogant" (June 28, 2007, p. 17926; Sept. 25, 2008, p. __). The rule also precludes the insertion in the Record of a paper making improper references to the Vice President (Sept. 19, 2000, p. 18580).

A Member may not read in debate extraneous material regarding the Vice President that would be improper if spoken in the Member's own words (Feb. 16, 2006, p. 1960).

§ 373. Complaint by one House of conduct of a Member of the other.

Neither House can exercise any authority over a Member or officer of the other, but should complain to the House of which he is, and leave the punishment to them.

In a notable instance, wherein a Member of the House had assaulted a Senator in the Senate Chamber for words spoken in debate, the Senate examined the breach of privilege and transmitted its report to the House, which punished the Member (II, 1622). A Senator having assailed a House Member in debate, the House messaged to the Senate a resolution declaring the language a breach of privilege and requested the Senate to take appropriate action (Sept. 27, 1951, p. 12270). The Senator subsequently asked unanimous consent to correct his remarks in the permanent Congressional Record, but objection was raised (Sept. 28, 1951, p. 12383). But where certain Members of the House, in a published letter, sought to influence

the vote of a Senator in an impeachment trial, the House declined to consider the matter as a breach of privilege (III, 2657). Although on one occasion it was held that a resolution offered in the House requesting the Senate to expunge from the Record statements in criticism of a Member of the House did not constitute a question of privilege, being in violation of the rule prohibiting references to the Senate in debate (VIII, 2519), a properly drafted resolution referring to language published in the Record of Senate proceedings as constituting a breach of privilege and requesting the Senate to take appropriate action concerning the subject has been held to present a question of the privileges of the House (VIII, 2516).

§ 374. Duty of the Speaker to prevent expressions offensive to the other House.

* * * Where the complaint is of words disrespectfully spoken by a Member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of Members. Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder. *3 Hats., 51.*

A rule of comity prohibiting most references in debate to the Senate was first enunciated in Jefferson's Manual and was strictly enforced in the House through the 108th Congress (albeit with certain exceptions adopted in the 100th and 101st Congresses in the former clause 1(b) of rule XVII) (§ 371, *supra* and § 945, *infra*). In the 109th Congress clause 1 was amended to permit references to the Senate or its Members, even critical references, so long as avoiding personality (sec. 2(g), H. Res. 5, Jan. 4, 2005, p. 43). Nevertheless, it remains the duty of the Chair to call to order a Member who violates the rule in debate or through an insertion in the Record.

The Chair has distinguished between engaging in personality toward another Member of the House, as to which the Chair normally awaits a point of order from the floor, and improper references to Members of the Senate, which violate comity between the Houses, as to which the Chair

normally takes initiative (Feb. 27, 1997, pp. 2778, 2779). The Chair may admonish Members to avoid unparliamentary references to the Senate even after intervening recognition (Oct. 12, 1999, p. 24954). Pending consideration of a measure relating to the Senate, the Speaker announced his intention to strictly enforce this provision of Jefferson's Manual prohibiting improper references to the Senate, and to deny recognition to Members violating the prohibition, subject to permission of the House to proceed in order (Speaker O'Neill, June 16, 1982, p. 13843). Under the earlier form of clause 1 of rule XVII, the Chair refused to respond to hypothetical questions as to the propriety of possible characterizations of Senate actions before their use in debate (Oct. 24, 1985, p. 28819). For a further discussion of the Speaker's duties regarding unparliamentary debate, see §§ 960–961, *infra*.

§ 375. Course of the Member when business concerning that Member is under debate.

No Member may be present when a bill or any business concerning himself is debating; nor is any Member to speak to the merits of it till he withdraws. *2 Hats., 219.* The rule is that if a charge against a Member arise out of a report of a committee, or examination of witnesses in the House, as the Member knows from that to what points he is to direct his exculpation, he may be heard to those points before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order or matter arising in the debate, then the charge must be stated (that is, the question must be moved), himself heard, and then to withdraw. *2 Hats., 121, 122.*

In 1832, during proceedings for the censure of a Member, the Speaker informed the Member that he should retire (II, 1366); but this seems to be an exceptional instance of the enforcement of the law of Parliament. In other cases, after the proposition for censure or expulsion has been proposed, Members have been heard in debate, either as a matter of right (II, 1286), as a matter of course (II, 1246, 1253), by express provision (II, 1273), and in writing (II, 1273), or by unanimous consent (II, 1275). A Member against whom a resolution of censure was pending was asked by the Speaker if he desired to be heard (VI, 236). But a Member was

not permitted to depute another Member to speak in his behalf (II, 1273). In modern practice the Member has been permitted to speak in his own behalf, both in censure (June 10, 1980, pp. 13802–11) and expulsion proceedings (Oct. 2, 1980, pp. 28953–78; July 24, 2002, pp. 14299, 14309). A Member-elect has been permitted to participate in debate on a resolution relating to his right to take the oath (Jan. 10, 1967, p. 23).

§ 376. Disqualifying personal interest of a Member.

Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to. *2 Hats., 119, 121; 6 Grey, 368.*

In the House it has not been usual for the Member to withdraw from debate when the Member's private interests are concerned in a pending measure, although clause 1 of rule III addresses voting in such a contingency. In one instance the Senate disallowed a vote given by a Senator on a question relating to his own right to a seat; but the House has never had occasion to proceed so far (V, 5959).

§ 377. Wearing of hats by Members.

No Member is to come into the House with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in or removing, until he be set down in his place. *Scob., 6.*

In 1837 the parliamentary practice of wearing hats during the session was abolished by adoption of current clause 5 of rule XVII. See § 962, *infra*.

§ 378. Adjournment of questions of order.

A question of order may be adjourned to give time to look into precedents. *2 Hats., 118.*

As described in §§ 628 and 628a, *infra*, the Speaker has declined, on a difficult question of order, to rule until taking time for examination (III, 2725; VI, 432; VII, 2106; VIII, 2174, 2396, 3475), and may take a parliamentary inquiry under advisement, especially if not related to the pending proceedings (VIII, 2174; Apr. 7, 1992, p. 8274). However, it is conceivable that a case might arise wherein this privilege of the Chair would require approval of the majority of the House to prevent arbitrary obstruction of the pending business by the Chair. The law of Parliament evidently contemplates that the adjournment of a question of order shall be controlled by the House. On occasion, the Chair has reversed as erroneous a decision previously made (VI, 639; VII, 849; VIII, 2794, 3435).

§ 379. House's control over question of the Speaker.

In Parliament, all decisions of the Speaker may be controlled by the House. *3 Grey, 319.*

The Speaker's decision on a question of order is subject to appeal by any Member (clause 5 of rule I).

SEC. XVIII—ORDERS OF THE HOUSE

§ 380. Keeping of the doors of the House.

Of right, the door of the House ought not to be shut, but to be kept by porters, or Sergeants-at-Arms, assigned for that purpose. *Mod ten. Parl., 23.*

§ 381. Right of the Member to demand execution of the subsisting order.

The only case where a Member has a right to insist on anything, is where he calls for the execution of a subsisting order of the House. Here there having been already a resolution, any person has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it.

As a request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily, a Member has the right at any time to demand the "regular order" (IV, 3058). If the regular order is demanded pending a request for unanimous consent, further reservation of the right to object thereto is precluded (Speaker Foley, Nov. 14, 1991, p. 32128; Nov. 7, 2009, p. __). Occasionally a Member may incorrectly demand the "regular order" to assert that remarks are not confined to the question under debate. On such an occasion the Chair may treat the de-

mand as a point of order requiring a ruling by the Chair (May 1, 1996, pp. 9888, 9889).

§ 382. Parliamentary law for clearing the galleries.

Thus any Member has a right to have the House or gallery cleared of strangers, an order existing for that purpose; or to have the House told when there is not a quorum present. *2 Hats., 87, 129.* How far an order of the House is binding, see *Hakew., 392.*

Absent an existing order for that purpose, a Member may not demand that the galleries be cleared, because this power resides in the House (II, 1353), which has by rule extended the power to the Speaker (clause 2 of rule I) and the chair of the Committee of the Whole (clause 1 of rule XVIII), but not to the individual Member.

§ 383. Parliamentary law as to proceeding with orders of the day.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put, when it is called for, whether the House will now proceed to that matter? Where orders of the day are on important or interesting matter, they ought not to be proceeded on till an hour at which the House is usually full [which in Senate is at noon].

The rule of the House providing for raising the question of consideration (clause 3 of rule XVI) has, in connection with the practice as to special orders of business, superseded this provision of the parliamentary law. The House always proceeds with business at its hour of meeting, unless prevented by a point that no quorum is present (IV, 2732).

§ 384. Orders of the day now obsolete.

Orders of the day may be discharged at any time, and a new one made for a different day, *3 Grey, 48, 313.*

The House found the use of "Orders of the day" as a method of disposing business impracticable as long ago as 1818, and not long after abandoned their use (IV, 3057), although an interesting reference to them survives in clause 1 of rule XIV. The House proceeds under rule XIV unless that

order is displaced by the use of special orders of business or the intervention of privileged business.

§ 385. Business at the end of a session.

When a session is drawing to a close and the important bills are all brought in, the House, in order to prevent interruption by further unimportant bills, sometimes comes to a resolution that no new bill be brought in, except it be sent from the other House. *3 Grey, 156.*

This provision is obsolete so far as the practice of the House is concerned, because business goes on uninterruptedly until the Congress expires (clause 6 of rule XI).

§ 386. Effect of end of the session on existing orders, especially as to imprisonment.

All orders of the House determine with the session; and one taken under such an order may, after the session is ended, be discharged on a habeas corpus. *Raym., 120; Jacob's L. D. by Ruffhead; Parliament, 1 Lev., 165, Pitchara's case.*

The House, by clause 6 of rule XI and the practice thereunder, has modified the rule of Parliament as to business pending at the end of a session that is not at the same time the end of a Congress. A standing order, like that providing for the hour of daily meeting of the House, expires with a session (I, 104–109). The House uses few standing orders. However, in the first session of the 104th Congress, the House continued a standing order regarding special-order and morning-hour speeches for the remainder of the entire Congress (May 12, 1995, p. 12765). In 1866 the House discussed its power to imprison for a period longer than the duration of the existing session (II, 1629), and in 1870, for assaulting a Member returning to the House from absence on leave. Patrick Woods was committed for a term extending beyond the adjournment of the session, but not beyond the term of the existing House (II, 1628).

§ 387. Jefferson's views as to the constitutional power to make rules.

Where the Constitution authorizes each House to determine the rules of its proceedings it must mean in those cases (legislative, executive, or judiciary) submitted to them by the Constitution, or in something relating to these, and necessary to-

ward their execution. But orders and resolutions are sometimes entered in the journals having no relation to these, such as acceptances of invitations to attend orations, to take part in procession, etc. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

§ 388. The House's construction of its power to adopt rules.

The House has frequently examined its constitutional power to make rules, and this power also has been discussed by the Supreme Court (V, 6755). It has been settled that Congress may not by law interfere with the constitutional right of a future House to make its own rules (I, 82; V, 6765, 6766), or to determine for itself the order of proceedings in effecting its organization (I, 242–245; V, 6765, 6766). It also has been determined, after long discussion and trial by practice, that one House may not continue its rules in force to and over its successor (I, 187, 210; V, 6002, 6743–6747; Jan. 22, 1971, p. 132). Congress may bind itself in matters of procedure (II, 1341; V, 6767, 6768), but its ability to so bind a succeeding Congress has been called into doubt (V, 6766). In one case the Chair denied the authority of such a law that conflicted with a rule of the House (IV, 3579). The theories involved in this question have been most carefully examined and decisively determined in reference to the law of 1851, which directs the method of procedure for the House in its constitutional function of judging the elections of its Members; and it has been determined that this law is not of absolute binding force on the House, but rather a wholesome rule not to be departed from except for cause (I, 597, 713, 726, 833; II, 1122). In modern practice, existing statutory procedures, including provisions of concurrent resolutions, are readopted as Rules of the House at the beginning of each Congress (see, *e.g.*, H. Res. 6, Jan. 4, 1995, p. 462). This practice was codified in clause 1 of rule XXVIII (current rule XXIX) when the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 75, see § 1105, *infra*). Where the House amended a standing rule of general applicability during a session and the amended rule did not require prospective application, the rule was interpreted to apply retroactively (Sept. 28, 1993, p. 22719).

As to the participation on occasions of ceremony, the House has entered its orders on its journal; but it rarely attends outside the Capitol building as a body (July 25, 2002, p. 14645), usually preferring that its Members go individually (V, 7061–7064) or that it be represented by a committee (V, 7053–7056) or other delegation (May 28, 1987, p. 14031). It has dis-

cussed, but not settled, its power to compel a Member to accompany it outside the Hall on an occasion of combined business and ceremony (II, 1139). But the House remains in session for the inauguration of the President on the portico of the Capitol (Jan. 20, 1969, pp. 1288–92) and the mace is carried to the ceremony.

SEC. XIX—PETITION

§ 389. Petitions, remonstrances, and memorials.

A petition prays something. A remonstrance has no prayer. *1 Grey, 58.*

The Rules of the House make no mention of remonstrances, but do mention petitions and memorials (clause 3 of rule XII). Resolutions of State legislatures and of primary assemblies of the people are received as memorials (IV, 3326, 3327), but papers general or descriptive in form may not be presented as memorials (IV, 3325).

§ 390. Signing and presentation of petitions.

Petitions must be subscribed by the petitioners *Scob., 87; L. Parl., c. 22; 9 Grey, 362,* unless they are attending, *1 Grey, 401* or unable to sign, and averred by a member, *3 Grey, 418.* But a petition not subscribed, but which the member presenting it affirmed to be all in the handwriting of the petitioner, and his name written in the beginning, was on the question (March 14, 1800) received by the Senate. The averment of a member, or of somebody without doors, that they know the handwriting of the petitioners, is necessary, if it be questioned. *6 Grey, 36.* It must be presented by a member, not by the petitioners, and must be opened by him holding it in his hand. *10 Grey, 57.*

In the House petitions have been presented for many years by filing with the Clerk (clause 3 of rule XII). Members file them, and petitioners do not attend on the House in the sense implied in the parliamentary law. In cases in which a petition set forth serious changes, the petitioner was required to have his signature attested by a notary (III, 2030, footnote).

§ 391. Parliamentary law for the reception of petitions.

Regularly a motion for receiving it must be made and seconded, and a question put, whether it shall be received, but a cry from the House of "received," or even silence, dispenses with the formality of this question. It is then to be read at the table and disposed of.

Before the adoption of the provisions of clause 3 of rule XII, petitions were presented from the floor by Members, and questions frequently arose as to the reception thereof (IV, 3350–3356). But under the present practice such procedure does not occur.

SEC. XX—MOTION

§ 392. Parliamentary law as to making, withdrawing, and reading of motions.

When a motion has been made, it is not to be put to the question or debated until it is seconded. *Scob., 21.*

It is then, and not till then, in possession of the House, and can not be withdrawn but by leave of the House. It is to be put into writing, if the House or Speaker require it, and must be read to the House by the Speaker as often as any Member desires it for his information. *2 Hats., 82.*

The House has long since dispensed with the requirement of a second for ordinary motions (clause 1 of rule XVI; V, 5304); and the requirement of a second for a motion to suspend the rules was eliminated in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. 39). Clause 2 of rule XVI provides further that a motion may be withdrawn before decision or amendment (see § 904, *infra*); and clause 1 of the same rule provides that the motion shall be reduced to writing on the demand of any Member (see § 902, *infra*). In the practice of the House, when a paper on which the House is to vote has been read once, the reading may not be required again unless the House shall order it read (V, 5260).

§ 393. Interruptions of the Member having the floor.

It might be asked whether a motion for adjournment or for the orders of the day can be made by one Member while another is speaking? It can not. When two Members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order if he departs from it. And the question of order being decided, he is still to be heard through. A call for adjournment, or for the order of the day, or for the question, by gentlemen from their seats, is not a motion. No motion

§ 394. Members required to rise to make motions, call for the order of business, etc.

can be made without rising and addressing the Chair. Such calls are themselves breaches of order, which, though the Member who has risen may respect, as an expression of impatience of the House against further debate, yet, if he chooses, he has a right to go on.

The practice of the House has modified the principle that the Member who rises first is to be recognized (clause 2 of rule XVII); but in other respects the principles of this paragraph are in force.

SEC. XXI—RESOLUTIONS

§ 395. Orders and resolutions of the House.

When the House commands, it is by an "order." But fact, principles, and their own opinions and purposes, are expressed in the form of resolutions.

A resolution for an allowance of money to the clerks being moved, it was objected to as not in order, and so ruled by the Chair; but on appeal to the Senate (*i.e.,* a call for their sense by the

President, on account of doubt in his mind, according to clause 5 of rule XXII) the decision was overruled. *Jour., Senate, June 1, 1796.* I presume the doubt was, whether an allowance of money could be made otherwise than by bill.

§ 396. Concurrent resolutions of the two Houses.

In the modern practice concurrent resolutions have been developed as a means of expressing fact, principles, opinions, and purposes of the two Houses (II, 1566, 1567). Joint committees are authorized by resolutions of this form (III, 1998, 1999), and they are used in authorizing correction of bills agreed to by both Houses (VII, 1042), amendment of enrolled bills (VII, 1041), amendment of conference reports (VIII, 3308), requests for return of bills sent to the President (VII, 1090, 1091), authorizing the printing of certain enrolled bills by hand in the remaining days of a session (Dec. 20, 1982, p. 32875), providing for joint session to receive message from the President (VIII, 3335, 3336), authorizing the printing of congressional documents (July 1, 1969, p. 17948); and fixing time for final adjournment (VIII, 3365). The Congressional Budget Act of 1974 (P.L. 93–344) provides for the adoption by both Houses of concurrent resolutions on the budget that become binding on both Houses with respect to congressional budget procedures (see § 1127, *infra*). A concurrent resolution is binding on neither House until agreed to by both (IV, 3379), and, because not legislative in nature, is not sent to the President for approval (IV, 3483). A concurrent resolution is not a bill or joint resolution within the meaning of clause 5 of rule XXI (requiring a three-fifths vote for approval of such a measure if carrying an increase in a rate of tax on income) (Speaker Gingrich, May 18, 1995, p. 13499). In the 106th Congress the Senate neglected to adopt a House concurrent resolution vacating signatures of the Presiding Officers on an enrolled bill and laying that bill on the table as overtaken by another enactment (H. Con. Res. 234, adopted by the House on Nov. 18, 1999, p. 30719). The Congress subsequently enacted section 1401 of the Miscellaneous Appropriations Act of 2001, which adopted that concurrent resolution (as enacted by P.L. 106–554).

§ 397. Joint resolutions.

Another development of the modern practice is the joint resolution, which is a bill so far as the processes of the Congress in relation to it are concerned (IV, 3375; VII, 1036). With the exception of joint resolutions proposing amendments to the Constitution (V, 7029), all these resolutions are sent to the President for approval and have the full force of law. They are used for what may be called the incidental, unusual, or inferior purposes of legislating (IV, 3372), as extending the national thanks to individuals (IV, 3370), the invitation to Lafayette to visit America (V, 7082, footnote), notice to a foreign government of the abrogation of a treaty (V, 6270), declaration of intervention in Cuba (V, 6321), correction of an error in an existing act of legislation

(IV, 3519; VII, 1092), enlargement of scope of inquiries provided by law (VII, 1040), election of managers for National Soldiers' Homes (V, 7336), special appropriations for minor and incidental purposes (V, 7319), continuing appropriations (H.J. Res. 790, P.L. 91–33); establishing the date for convening of Congress (H.J. Res. 1041, P.L. 91–182); extending the submission date under law for transmittal of a report to Congress by the President (H.J. Res. 635, P.L. 97–469); and extending the termination date for a law (H.J. Res. 864, P.L. 91–59). At one time they were used for purposes of general legislation; but the two Houses finally concluded that a bill was the proper instrumentality for this purpose (IV, 3370–3373). A joint resolution has been changed to a bill by amendment (IV, 3374), but in the later practice it has become impracticable to do so.

Where a choice between a concurrent resolution and a joint resolution is not dictated by law, the House by its vote on consideration of a measure decides which is the appropriate vehicle (and a point of order does not lie that a concurrent rather than a joint resolution would be more appropriate to express the sense of the Congress on an issue) (Mar. 16, 1983, p. 5669).

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SEC. XXIII—BILLS, LEAVE TO BRING IN

§ 398. Obsolete provisions as to introduction of bills.

When a Member desires to bring in a bill on any subject, he states to the House in general terms the causes for doing it, and concludes by moving for leave to bring in a bill, entitled, &c. Leave being given, on the question, a committee is appointed to prepare and bring in the bill. The mover and seconder are always appointed of this committee, and one or more in addition. *Hakew., 132; Scob., 40.* It is to be presented fairly written, without any erasure or interlineation, or the Speaker may refuse it. *Scob., 41; 1 Grey, 82, 84.*

This provision is obsolete because rule XII provides an entirely different method of introducing bills through the hopper. The introduction of bills by leave was gradually dropped by the practice of the House, and after 1850 the present system of permitting Members to introduce at will bills for printing and reference began to develop (IV, 3365).

SEC. XXIV—BILLS, FIRST READING

§ 399. Obsolete requirements as to first reading of bills.

When a bill is first presented, the Clerk reads it at the table, and hands it to the Speaker, who, rising, states to the House the title of the bill; that this is the first time of reading it; and the question will be, whether it shall be read a second time? then sitting down to give an opening for objections. If none be made, he rises again, and puts the question, whether it shall be read a second time? *Hakew., 137, 141.* A bill cannot be amended on the first reading, *6 Grey, 286;* nor is it usual for it to be opposed then, but it may be done, and rejected. *D'Ewes, 335, col. 1; 3 Hats., 198.*

This provision is obsolete, the practice under clause 8 of rule XVI now governing the procedure of the House.

SEC. XXV—BILLS, SECOND READING

§ 400. Obsolete parliamentary law as to second reading.

The second reading must regularly be on another day. *Hakew., 143.* It is done by the Clerk at the table, who then hands it to the Speaker. The Speaker, rising, states to the House the title of the bill; that this is the second time of reading it; and that the question will be, whether it shall be committed, or engrossed and read a third time? But if the bill came from the other House, as it always comes engrossed, he states that the question will be, whether it shall be read a third time? and before he has so reported the state of the bill, no one is to speak to it. *Hakew., 143, 146.*

In the Senate of the United States, the President reports the title of the bill; that this is the second time of reading it; that it is now to be considered as in a Committee of the Whole; and the question will be, whether it shall be read a third time? or that it may be referred to a special committee?

The provisions of this paragraph are to a large extent obsolete, the practice under clause 8 of rule XVI now governing.

SEC. XXVI—BILLS, COMMITMENT

§ 401. Parliamentary law (largely obsolete) as to reference of bills to committees.

If on motion and question it be decided that the bill shall be committed, it may then be moved to be referred to Committee of the Whole House, or to a special committee. If the latter, the Speaker proceeds to name the committee. Any member also may name a single person, and Clerk is to write him down as of the committee. But the House have a controlling power over the names and number, if a question be moved against any one; and may in any case put in and put out whom they please.

This paragraph is to a large extent obsolete. Bills are referred in the first instance by the Speaker to standing committees as prescribed by the rules (rule XII), and references of reported bills to the proper calendar of the House are also made under direction of the Speaker (clause 2 of rule XIII). Reference of a matter under consideration is made by a motion to refer that specifies the committee and may provide for a select committee of a specified number of persons (IV, 4402). But such committee is appointed only by the Speaker (clause 11 of rule I).

Clause 2 of rule XIX provides that the Speaker may entertain a motion to commit to a standing or select committee with or without instructions pending or following the ordering of the previous question.

§ 402. Obsolete provisions as to constitution of committees.

Those who take exceptions to some particulars in the bill are to be of the committee, but none who speak directly against the body of the bill; for he that would totally destroy will not amend it, *Hakew., 146; Town., col., 208; D'Ewes, 634, col. 2; Scob., 47;* or as is said, *5 Grey, 145,* the child is not to be put to a nurse that cares not for it, *6 Grey, 373.* It is therefore a constant rule "that no man is to be employed in any matter who has declared himself against it." And when any member who is against the bill hears himself named of its committee he ought to ask to be excused. Thus, March 7, 1806, Mr. Hadley was, on the question being put, excused from being of a committee, declaring himself to be against the matter itself. *Scob., 46.*

This provision is inapplicable in the House because committees have majority and minority representation (IV, 4467, 4477, footnote).

§ 403. Delivery of bills to committees.

The Clerk may deliver the bill to any member of the committee, *Town, col. 138;* but it is usual to deliver it to him who is first named.

Following introduction, reference, and numbering, bills are sent to the Government Printing Office for printing. Printed copies of all bills are distributed in accordance with law (44 U.S.C. 706) and copies are made available to the committee to which referred.

§ 404. Obsolete provision for ordering a committee to withdraw and bring back a bill.

In some cases the House has ordered a committee to withdraw immediately into the committee chamber and act on and bring back the bill, sitting the House. *Scob., 48.* * * *

This procedure is rarely followed in the House, because the order of business does not provide for such a motion.

When a bill is under consideration, however, the House may on motion commit it with instructions to report forthwith with certain specified amendment (V, 5548, 5549), in which case the chair of the committee reports at once without awaiting action of the committee (V, 5545–5547; VIII, 2730, 2732) and the bill is in order for immediate consideration (V, 5550; VIII, 2735).

§ 405. Commital with directions to report forthwith.

The motion to discharge a committee from the consideration of an ordinary legislative proposition is not privileged under the rules (IV, 3533, 4693; VIII, 2316), but if a matter involves a question of privilege (III, 2585, 2709; VIII, 2316), or is privileged under the rule relating to resolutions of inquiry (clause 7 of rule XIII; III, 1871; IV, 4695) or is provided privilege under statutes enacted under the rulemaking power of the House (see § 1130, *infra*), the motion to discharge is admitted. The motion is not debatable (III, 1868; IV, 4695), except as follows: (1) under statutory procedures; (2) under clause 2 of rule XV; and (3) under modern practice of the House, a motion to discharge a vetoed bill (Mar. 7, 1990, p. 3620; Sept. 19, 1996, p. 23815). The motion may be laid on the table (V, 5407; VI, 415), but the question of consideration may not be demanded against it (V, 4977).

§ 406. Discharge of a committee.

* * * A committee meet when and where they please, if the House has not ordered time and place for them, *6 Grey, 370;* but they can only act when together, and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled.

§ 407. Meetings and action of committees.

For discussion of committee procedure generally, see § 792, *infra*. In the House the standing committees usually meet in their committee rooms, but there is no rule requiring them to meet there, and in the absence of direction by the House, committees designate the time and place of their meetings (VIII, 2214).

Standing committees fix regular weekly, biweekly, or monthly meeting days for the transaction of business (not less frequently than monthly, under clause 2(b) of rule XI), and additional meetings may be called by the chair as deemed necessary or by a majority of the committee in certain circumstances (clause 2(c) of rule XI). If a committee has a fixed date of meeting, a quorum of the committee may convene on such date without call of the chair and transact business regardless of the absence of the chair (VIII, 2214). A committee meeting being adjourned for lack of a quorum, a majority of the members of the committee may not, without

the consent of the chair, call a meeting of the committee on the same day (VIII, 2213). For restrictions on committee action during a joint meeting or joint session, see clause 2(i) of rule XI.

§ 408. Authorization of reports of committees.

The House has adhered to the principle that a report must be authorized by a committee acting together, and a paper signed by a majority of the committee acting separately has been ruled out (IV, 4584; VIII, 2210–2212, 2220; see also clause 2(h) of rule XI).

No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present (clause 2(h) of rule XI). A report is sometimes authorized by less than a majority of the whole committee, some members being silent or absent (II, 985, 986). In a rare instance a majority of a committee agreed to a report, but disagreed on the facts necessary to sustain the report (I, 819). In the situation in which a committee finds itself unable to agree to a positive recommendation, being equally divided, it may report the fact to the House (I, 347; IV, 4665, 4666) and may include evidence, majority and minority views (III, 2403), minority views alone (II, 945), or propositions representing the opposing contentions (III, 2497; IV, 4664).

For each record vote in committee on amending or reporting a public measure or matter, the report to the House must disclose the total number of votes cast for and against and the names of those voting for and against (clause 3 of rule XIII). A resolution alleging that a committee report on a bill contained descriptions of recorded votes on certain amendments as prescribed by clause 3(b) of rule XIII that deliberately mischaracterized the amendments, and directing the chair of the committee to file a supplemental report to change those descriptions, qualified as a question of the privileges of the House (May 3, 2005, p. 8417).

It is the duty of the chair of each committee to report or cause to be reported promptly any measure approved by the committee and to take or cause to be taken necessary steps to bring the matter to a vote (clause 2 of rule XIII); and a report must be filed within seven days following the submission of a written request, signed by a majority of the committee members, directing such filing (clause 2 of rule XIII).

It is not essential that the report of a committee be signed (II, 1274; VIII, 2229), but the minority or other separate views are signed by those concurring in them (IV, 4671; VIII, 2229).

Objection being made that a report had not been authorized by a committee and there being doubt as to the validity of the authorization, the question as to the reception of the report is submitted to the House (IV, 4588–4591). But the Speaker may decide the question if satisfied of the validity or of the invalidity of the authorization (IV, 4584, 4592, 4593; VIII, 2211, 2212, 2222–2224). And in a case wherein it was shown that a majority of a committee had met and authorized a report the Speaker did not heed the fact that the meeting was not regularly called (IV, 4594). A bill improperly reported is not entitled to its place on the calendar (IV,

3117); but the validity of a report may not be questioned after the House has voted to consider it (IV, 4598), or after actual consideration has begun (IV, 4599; VIII, 2223, 2225).

Where a question was raised regarding a chair's alteration of a committee amendment, the Speaker indicated that the proper time to raise a point of order was when the unprivileged report was called up for consideration (or when before the Committee on Rules for a special order of business) and not when filed in the hopper (May 16, 1989, p. 9356). A resolution including an allegation that the chair deliberately and improperly refused to recognize a legitimate and timely objection by a member of the committee to dispense with the reading of an amendment and resolving that the House disapproves of the manner in which the chair conducted the markup and finding that the bill considered at that markup was not validly ordered reported was held to constitute a question of the privileges of the House (July 18, 2003, pp. 18698; July 23, 2003, p. 19171, 19172).

§ 409. The quorum of a select or standing committee.

A majority of the committee constitutes a quorum for business. *Elsynge's Method of Passing Bills, 11.*

A majority quorum is required in certain circumstances, such as reporting a measure or recommendation (clause 2(h) of rule XI); authorizing a subpoena (clause 2(m) of rule XI); closing a meeting or hearing under clauses 2(a) and 2(g) of rule XI (except as provided under clause 2(g)(2)(A) with respect to certain hearing procedures); requesting immunity for a witness (18 U.S.C. 6005); releasing executive-session material (clause 2(k)(7) of rule XI); and proceeding in open session after an assertion under clause 2(k)(5) of rule XI. Each committee may fix the number of its members, but not less than two, to constitute a quorum for taking testimony and receiving evidence; and except for the Committees on Appropriations, the Budget, and Ways and Means, a committee may fix the number of members to constitute a quorum, which shall be not less than one-third of its members, for taking certain other actions (clause 2(h) of rule XI).

A quorum of a committee may transact business and a majority of the quorum, even though it be a minority of the whole committee, may authorize a report (IV, 4586), but an actual quorum of a committee must be present to make action taken valid (VIII, 2212, 2222), unless the House authorizes less than a quorum to act (IV, 4553, 4554). A quorum of a committee must be present when alleged perjurious testimony is given in order to support a charge of perjury. Christoffel *v.* United States, 338 U.S. 84 (1949). The absence of a quorum of a committee at the time a witness willfully fails to produce subpoenaed documents is not a valid defense in a prosecution for contempt if the witness failed to raise that objection before the committee. United States *v.* Bryan, 339 U.S. 323 (1950); United States *v.* Fleischman, 339 U.S. 349 (1950).

§ 410. Presence of a Member of the House in a select committee.

Any Member of the House may be present at any select committee, but cannot vote, and must give place to all of the committee, and sit below them. *Elsynge, 12; Scob., 49.*

In the 95th Congress, clause 2(g)(2) of rule XI was amended to prohibit the exclusion of noncommittee members from nonparticipatory attendance in any closed hearing, except in the Committee on Ethics, unless the House by majority vote authorizes a committee or subcommittee to close its hearings to noncommittee members (H. Res. 5, 95th Cong., Jan. 4, 1977, pp. 53–70). Formerly, a committee could close its doors in executive session meetings to persons not invited or required, including Members of the House who were not members of the committee (III, 1694; IV, 4558–4565; see discussion at IV, 4540).

§ 411. Power of committees over the body and title of a bill.

The committee have full power over the bill or other paper committed to them, except that they cannot change the title or subject. *8 Grey, 228.*

In the House committees may recommend amendments to the body of a bill or to the title but may not otherwise change the text.

§ 412. Parliamentary law governing consideration of bills, etc., in committees.

The paper before a committee, whether select or of the whole, may be a bill, resolutions, draught of an address, &c., and it may either originate with them or be referred to them. In every case the whole paper is read first by the Clerk, and then by the chairman, by paragraphs, *Scob., 49,* pausing at the end of each paragraph, and putting questions for amending, if proposed. In the case of resolutions or distinct subjects, originating with themselves, a question is put on each separately, as amended or unamended, and no final question on the whole, *3 Hats., 276;* but if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address,

or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed; but no question on agreeing to the paragraphs separately; this is reserved to the close, when a question is put on the whole, for agreeing to it as amended or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole; because all parts of the paper, having been adopted by the House, stand, of course, unless altered or struck out by a vote. Even if they are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but must report it back to the House without amendments, and there make their opposition.

In the House it has generally been held that a select or standing committee may not report a bill unless the subject matter has been referred to it (IV, 4355–4360), except that under the modern practice reports filed from the floor as privileged pursuant to clause 5 of rule XIII have been permitted on bills and resolutions originating in certain committees and not formally referred thereto. Pursuant to this paragraph some committees have originated drafts of bills for consideration and amendment before the introduction and referral of a numbered bill to committee(s). In the older practice the Committee of the Whole originated resolutions and bills (IV, 4705); but the later development of the rules governing the order of business would prevent the offering of a motion to go into Committee of the Whole for such a purpose, except by unanimous consent.

§ 413. Order of amending bills in the House.

The natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs; and this order is so strictly adhered to in Parliament, that when a latter part has been amended, you cannot recur back and make an alteration in a former part. *2*

Hats., 90. In numerous assemblies this restraint is doubtless important. But in the Senate of the United States, though in the main we consider and amend the paragraphs in their natural order, yet recurrences are indulged; and they seem, on the whole, in that small body, to produce advantages overweighing their inconveniences.

In the House, amendments to House bills are made before the previous question is ordered, pending the engrossment and third reading (IV, 3392; V, 5781; VII, 1051), and to Senate bills before the third reading (IV, 3393). Amendments may be offered to any part of the bill without proceeding consecutively section by section or paragraph by paragraph (IV, 3392). In Committee of the Whole, bills are read section by section or paragraph by paragraph and after a section or paragraph has been passed it is no longer subject to amendment (clause 5 of rule XVIII; § 980, *infra*; July 12, 1961, p. 12405).

§ 414. Preamble amended after the body of the bill or resolution has been considered.

To this natural order of beginning at the beginning there is a single exception found in parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble till the other parts of the bill are gone through. The reason is, that on consideration of the body of the bill such alterations may therein be made as may also occasion the alteration of the preamble. *Scob., 50; 7 Grey, 431.*

On this head the following case occurred in the Senate, March 6, 1800: A resolution which had no preamble having been already amended by the House so that a few words only of the original remained in it, a motion was made to prefix a preamble, which having an aspect very different from the resolution, the mover inti-

mated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with; but the preamble was received, because we are in fact through the body of the resolution; we have amended that as far as amendments have been offered, and, indeed, till little of the original is left. It is the proper time, therefore, to consider a preamble; and whether the one offered be consistent with the resolution is for the House to determine. The mover, indeed, has intimated that he shall offer a subsequent proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The Rules of the House can only operate on what is before them. The practice of the Senate, too, allows recurrences backward and forward for the purpose of amendment, not permitting amendments in a subsequent to preclude those in a prior part, or *e converso.*

In the practice of the House the preamble of a joint resolution is amended after the engrossment and before the third reading (IV, 3414; V, 5469, 5470; VII, 1064), but the preamble of the joint resolution is not voted on separately in the later practice even if amended, because the question on passage covers the preamble as well as the resolving clause (V, 6147, 6148; Oct. 29, 1975, p. 34283). After an amendment to the preamble has been considered it is too late to propose amendments to the text of the bill (VII, 1065). In Committee of the Whole, amendments to the preamble of a joint resolution are considered following disposition of any amendments to the resolving clause (Mar. 9, 1967, pp. 6032–34; Mar. 22, 1967, pp. 7679–83; May 25, 1993, p. 11036). Where a simple resolution of the House has a preamble, the preamble may be laid on the table without affecting the status of the accompanying resolution (V, 5430). Amendments to the preamble of a concurrent or simple resolution are considered in the House following the adoption of the resolution (Dec. 4, 1973, p. 39337; June 8,

1970, pp. 18668–71). The House considers an amendment reported from the Committee of the Whole to the preamble of a Senate joint resolution following disposition of amendment to the text and pending third reading (May 25, 1993, p. 11036).

§ 415. Directions of a committee for making of its report.

When the committee is through the whole, a Member moves that the committee may rise, and the chairman report the paper to the House, with or without amendments, as the case may be. *2 Hats., 289, 292; Scob., 53; 2 Hats., 290; 8 Scob., 50.*

Clause 2 of rule XIII provides that it shall be the duty of the chair of each committee to report or cause to be reported promptly any measure approved by the committee and to take or cause to be taken necessary steps to bring the matter to a vote; and in any event, the report of a committee must be filed within seven calendar days (exclusive of days when the House is not in session) after a majority of the committee has invoked the procedures of clause 2 of rule XIII. In the House a committee may order its report to be made by the chair (IV, 4669), or by any other member of the committee (IV, 4526), even one from the minority party (IV, 4672, 4673; VIII, 2314). A committee report may be filed by a Delegate (July 1, 1958, p. 12870). Only the chair makes a report for the Committee of the Whole (V, 6987).

§ 416. As to reconsideration of a vote in committee.

When a vote is once passed in a committee it cannot be altered but by the House, their votes being binding on themselves. *1607, June 4.*

This provision of the parliamentary law has been held to prevent the use of the motion to reconsider in Committee of the Whole (IV, 4716–4718; VIII, 2324, 2325) but it is in order in the House as in the Committee of the Whole (VIII, 2793). The early practice seems to have inclined against the use of the motion in a standing or select committee (IV, 4570, 4596), but there is a precedent that authorized the use of the motion (IV, 4570, 4596), and on June 1, 1922, the Committee on Rules rescinded previous action taken by the committee authorizing a report. In the later practice the motion to reconsider is in order in committee so long as the measure remains in possession of the committee and the motion is not prevented by subsequent actions of the committee on the measure, and may be entered on the same day as action to be reconsidered or on the next day on which the committee convenes with a quorum present to consider the

same class of business (VIII, 2213), but a session adjourned without having secured a quorum is a dies non and not to be counted in determining the admissibility of a motion to reconsider (VIII, 2213). This provision does not prevent a committee from reporting a bill similar to one previously reported by such committee (VIII, 2311).

§ 417. Method of noting amendments to a bill in committee.

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself set down the amendments, stating the words which are to be inserted or omitted, *Scob., 50,* and where, by references to page, line, and word of the bill. *Scob., 50.*

This practice is still in force as to Senate bills of which the engrossed copies cannot be in any way interlined or altered by House committees. Original copies of House bills are not referred to committees but are maintained indefinitely by the Clerk. Both House and Senate bills are now printed as referred, and committees may thus report either with proposed amendments. In the official papers (signed engrossed copies), the engrossed House amendments to a Senate bill would still be shown as a separate message attached to the Senate engrossed bill when returned to the Senate.

SEC. XXVII—REPORT OF COMMITTEE

§ 418. Parliamentary method of submitting reports.

The chairman of the committee, standing in his place, informs the House that the committee to whom was referred such a bill, have, according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments (as the case may be), which he is ready to do when the House pleases to receive it. And he or any other may move that it be now received; but the cry of "now, now," from the House, generally dispenses with the formality of a motion and question. He then reads the amendments, with the coherence in the bill, and opens the alter-

ations and the reasons of the committee for such amendments, until he has gone through the whole. He then delivers it at the Clerk's table, where the amendments reported are read by the Clerk without the coherence; whereupon the papers lie upon the table till the House, at its convenience, shall take up the report. *Scob., 52; Hakew., 148.*

This provision is to a large extent obsolete so far as the practice of the House is concerned. Most of the reports of committees are made by filing them with the Clerk without reading (clause 2 of rule XIII), and only the reports of committees having leave to report at any time are made by the chair or other member of the committee from the floor (clause 5 of rule XIII). Except as provided in clause 2(c) of rule XIII, committee reports must be submitted while the House is in session; and this requirement may be waived by only by order of the House (by rule, suspension, or unanimous consent but not by motion) (Dec. 17, 1982, p. 31951). Subject to availability requirements under clause 4 and timing considerations under clause 6 of rule XIII, all reports privileged under clause 5 of rule XIII may be called up for consideration immediately after being filed (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34406). For a discussion of the three-day layover rule, see § 850, *infra*.

§ 419. Reports; dissolution and revival of select committees.

The report being made, the committee is dissolved and can act no more without a new power. *Scob. 51.* But it may be revived by a vote, and the same matter recommitted to them. *4 Grey, 361.*

This provision does not apply now to the Committees of the Whole or to the standing committees. It does apply to select committees, which expire when they report finally, but may be revived by the action of the House in referring in open House a new matter (IV, 4404, 4405). The provision does not preclude a standing committee from reporting a bill similar to one previously reported by such committee (VIII, 2311).

SEC. XXVIII—BILL, RECOMMITMENT

§ 420. Recommittal of a bill to a committee.

After a bill has been committed and reported, it ought not, in any ordinary course, to be recommitted; but in cases of

importance, and for special reasons, it is sometimes recommitted, and usually to the same committee. *Hakew, 151.* If a report be recommitted before agreed to in the House, what has passed in committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed. *3 Hats., 131—note.*

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

Where a matter is recommitted with instructions the committee must confine itself within the instructions (IV, 4404), and if the instructions relate to a certain portion only of a bill, other portions may not be reviewed (V, 5526). When a report has been disposed of adversely a motion to recommit it is not in order (V, 5559). Bills are sometimes recommitted to the Committee of the Whole as the indirect result of the action of the House (clause 9 of rule XVIII; IV, 4784) or directly on motion either with or without instructions (V, 5552, 5553).

§ 421. Division of matters for reference to committees.

A particular clause of a bill may be committed without the whole bill, *3 Hats., 131;* or so much of a paper to one and so much to another committee.

In the usage of the House before the rules provided that petitions should be filed with the Clerk instead of being referred from the floor, it was the practice to refer a portion of a petition to one committee and the remainder to another when the subject matter called for such division (IV, 3359). Clause 2 of rule XII now permits the Speaker to refer bills, and resolutions, with or without time limitations, either (1) simultaneously to two or more committees for concurrent consideration, while indicating one committee of primary jurisdiction (except under extraordinary circumstances), (2) sequentially to appropriate committees after the report of the committee or committees initially considering the matter, (3) to divide the matter for referral, (4) to appoint an ad hoc committee with the approval of the House, or (5) to make other appropriate provisions, in order to assure that to the maximum extent feasible each committee with subject matter jurisdiction over provisions in that measure may consider and report to the House with respect thereto. Under former precedents a bill, resolution, or communication could not be divided for reference (IV, 4372, 4376).

SEC. XXIX—BILL, REPORTS TAKEN UP

§ 422. Consideration and action on reports.

When the report of a paper originating with a committee is taken up by the House, they proceed exactly as in committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to *seriatim, 5 Grey, 366; 6 Grey, 368; 8 Grey, 47, 104, 360; 1 Torbuck's Deb., 125; 3 Hats., 348,* no question needs be put on the whole report. *5 Grey, 381.*

In the House, bills, joint resolutions, concurrent resolutions, and simple resolutions come before the House for action although the written reports accompanying them, which are always printed, do not (IV, 4674), and even the reading of the reports is in order only in the time of debate (V, 5292). The Chair will not recognize a Member during debate on a bill in the House or in the Committee of the Whole for unanimous consent to amend the accompanying committee report in a specified manner, because the House should not change the substance of a committee report upon which it is not called to vote (Apr. 2, 1985, p. 7209; Nov. 7, 1989, p. 27762). In rare instances, however, committees submit merely written reports without propositions for action. Such reports being before the House may be debated before any specific motion has been made (V, 4987, 4988), and are in such case read to the House (IV, 4663) and after being considered the question is taken on agreeing. In such cases the report appears in full on the Journal (II, 1364; IV, 4675; V, 7177). When reports are acted on in this way it has not been the practice of the House to consider them by paragraphs, but the question has been put on the whole report (II, 1364).

§ 423. Action by the House on amendments recommended by committees.

On taking up a bill reported with amendments the amendments only are read by the Clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment. *Elsynge's Mem., 53.* When through the amendments of the committee, the Speaker pauses,

and gives time for amendments to be proposed in the House to the body of the bill; as he does also if it has been reported without amendments; putting no questions but on amendments proposed; and when through the whole, he puts the question whether the bill shall be read a third time?

The procedure outlined by this provision of the parliamentary law applies to bills when reported from the Committee of the Whole; but in practice it is usual to vote on the amendments in gross. But any Member may demand a separate vote (see § 337, *supra*). The principle that the committee amendments should be voted on before amendments proposed by individual Members is recognized (IV, 4872–4876; V, 5773; VIII, 2862, 2863), except when it is proposed to amend a committee amendment. The Clerk reads the amendments and the Speaker does not again read them. Frequently the House orders the previous question on the committee amendments and the bill to final passage, thus preventing further amendment. When a bill is of such nature that it does not go to Committee of the Whole, it comes before the House from the House Calendar, on which it has been placed on being reported from the standing or select committee or pursuant to a special order of business. On being taken from the House Calendar the bill is read through and then the amendments proposed by the committee are read. In modern practice the House may adopt a special order "self-executing" the adoption of the reported committee amendments in the House, and may permit further amendment to the amended text (*e.g.*, H. Res. 245, 106th Cong., July 15, 1999, p. 16216).

SEC. XXX—QUASI-COMMITTEE

§ 424. Procedure "in the House as in Committee of the Whole."

If on motion and question the bill be not committed, or if no proposition for commitment be made, then the proceedings in the Senate of the United States and in Parliament are totally different. The former shall be first stated.

The proceeding of the Senate as in a Committee of the Whole, or in quasi-committee, is precisely as in a real Committee of the Whole, taking no question but on amendments. When

through the whole, they consider the quasi-committee as risen, the House resumed without any motion, question, or resolution to that effect, and the President reports that "the House, acting as in a Committee of the Whole, have had under their consideration the bill entitled, &c., and have made sundry amendments, which he will now report to the House." The bill is then before them, as it would have been if reported from a committee, and the questions are regularly to be put again on every amendment; which being gone through, the President pauses to give time to the House to propose amendments to the body of the bill, and, when through, puts the question whether it shall be read a third time?

The House may proceed "in the House as in Committee of the Whole" only by unanimous consent (IV, 4923) or special rule (Dec. 18, 1974, p. 40858). If the House grants unanimous consent for the immediate consideration of a bill on the Union Calendar, or which would belong on the Union Calendar if reported, the bill is considered in the House as in the Committee of the Whole (Apr. 6, 1966, p. 7749; Aug. 3, 1970, p. 26918; Deschler, ch. 22, § 2.2). In the modern practice of the House an order for this procedure means merely that the bill will be considered as having been read for amendment and will be open for amendment and debate under the five-minute rule (Aug. 10, 1970, p. 28050; clause 5 of rule XVIII), without general debate (IV, 4924, 4925; VI, 639; VIII, 2431, 2432). The Speaker remains in the chair and, when the previous question is moved, makes no report but puts the question on ordering the previous question and then on engrossment and third reading and on passage.

For further description of the procedures applicable to the House as in the Committee of the Whole, and the application of those procedures to committees of the House, see § 427, *infra*.

§ 425. Motion to refer admitted "in the House as in Committee of the Whole."

After progress in amending the bill in quasi-committee, a motion may be made to refer it to a special committee. If the motion prevails, it is equivalent in effect to the several votes, that

the committee rise, the House resume itself, discharge the Committee of the Whole, and refer the bill to a special committee. In that case, the amendments already made fall. But if the motion fails, the quasi-committee stands *in status quo.*

§ 426. Motions and procedure in quasi-committee in Jefferson's time.

How far does this XXVIIIth rule [of the Senate] subject the House, when in quasi-committee, to the laws which regulate the proceedings of Committees of the Whole? The particulars in which these differ from proceedings in the House are the following: 1. In a committee every member may speak as often as he pleases. 2. The votes of a committee may be rejected or altered when reported to the House. 3. A committee, even of the whole, cannot refer any matter to another committee. 4. In a committee no previous question can be taken; the only means to avoid an improper discussion is to move that the committee rise; and if it be apprehended that the same discussion will be attempted on returning into committee, the House can discharge them, and proceed itself on the business, keeping down the improper discussion by the previous question. 5. A committee cannot punish a breach of order in the House or in the gallery. *9 Grey, 113.* It can only rise and report it to the House, who may proceed to punish. The first and second of these peculiarities attach to the quasi-committee of the Senate, as every day's practice proves, and it seems to be the only ones to which the XXVIIIth rule meant to subject them; for it con-

tinues to be a House, and, therefore, though it acts in some respects as a committee, in others it preserves its character as a House. Thus (3) it is in the daily habit of referring its business to a special committee. 4. It admits of the previous question. If it did not, it would have no means of preventing an improper discussion; not being able, as a committee is, to avoid it by returning into the House, for the moment it would resume the same subject there, the XXVIIIth rule declares it again a quasi-committee. 5. It would doubtless exercise its powers as a House on any breach of order. 6. It takes a question by yea and nay, as the House does. 7. It receives messages from the President and the other House. 8. In the midst of a debate it receives a motion to adjourn, and adjourns as a House, not as a committee.

§ 427. Motions and procedure "in the House as in Committee of the Whole."

In the modern practice of the House, the rule of Jefferson's Manual is followed to the extent that the House, while acting "in the House as in Committee of the Whole" may deal with disorder, take the yeas and nays, adjourn, refer to a committee even though the reading by sections may not have begun (IV, 4931, 4932), admit the motion to reconsider (VIII, 2793), receive messages (IV, 4923), and use the previous question (VI, 369; Procedure, ch. 23, § 6.3) (which differs from the previous question of Jefferson's time). The previous question may not be moved on a single section of a bill (IV, 4930), but it may be demanded on the bill while Members yet desire to offer amendments (IV, 4926–4929; VI, 639). Formerly a motion to close debate on the pending section of a bill being read by section for amendment in the House as in the Committee of the Whole was in order (IV, 4935), but under current practice a bill considered "in the House as in Committee of the Whole" is considered as read and open for amendment at any point (Aug. 10, 1970, p. 28050), and a motion is in order "in the House as in Committee of the Whole" to close debate on the bill or on an amendment (June 26, 1973, p. 21314). An amendment may be withdrawn at any time before action has been had on it (IV, 4935; June 26, 1973, p. 21305). An amendment in the nature of a substitute is in order after perfecting amendments have been consid-

ered (IV, 4933, 4934; V, 5788). The title also is amended after the bill has been considered (IV, 3416). A quorum of the House (and not of the Committee of the Whole) is required in the House as in the Committee of the Whole (VI, 639).

The procedures applicable in the House as in the Committee of the Whole generally apply to proceedings in committees of the House, except that a measure considered in committee must be read (by section) for amendment (see § 413, *supra*). Therefore, in committee a motion to limit debate under the five-minute rule must be confined to the portion of the measure then pending.

SEC. XXXI—BILL, SECOND READING IN THE HOUSE

§ 428. Manner of reading a bill the second time.

In Parliament, after the bill has been read a second time, if on the motion and question it be not committed, or if no proposition for commitment be made, the speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; but when through the whole, he puts the question whether it shall be read a third time, if it came from the other house, or, if originating with themselves, whether it shall be engrossed and read a third time. The speaker reads sitting, but rises to put questions. The clerk stands while he reads.

But the Senate of the United States is so much in the habit of making many and material amendments at the third reading that it has become the practice not to engross a bill till it has passed—an irregular and dangerous practice, because in this way the paper which passes the Senate is not that which goes to the other House, and that which goes to the other House as the act of the Senate has never been seen in the Senate. In reducing numerous, difficult, and illegible amendments into the text the Secretary

may, with the most innocent intentions, commit errors which can never again be corrected.

In the House the Clerk and not the Speaker or chair of the Committee of the Whole reads bills on second reading. After the second reading, which is by paragraph or section in the Committee of the Whole, the bill is open to amendment (see § 980, *infra*). Clause 8 of rule XVI, as explained in § 942, *infra*, governs first and second readings of bills in the House and in Committee of the Whole.

§ 429. Test of strength on engrossment after amendment.

The bill being now as perfect as its friends can make it, this is the proper stage for those fundamentally opposed to make their first attack. All attempts at earlier periods are with disjointed efforts, because many who do not expect to be in favor of the bill ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves and to hear what can be said for it, knowing that after all they will have sufficient opportunities of giving it their veto. Its two last stages, therefore, are reserved for this—that is to say, on the question whether it shall be engrossed and read a third time, and, lastly, whether it shall pass. The first of these is usually the most interesting contest, because then the whole subject is new and engaging, and the minds of the Members having not yet been declared by any trying vote the issue is the more doubtful. In this stage, therefore, is the main trial of strength between its friends and opponents, and it behooves everyone to make up his mind decisively for this question, or he loses the main battle; and accident and management may, and often do, prevent a successful rallying on the next and last question, whether it shall pass.

§ 430. Test of strength on a bill before amending.

In the House there are two other means of testing strength: raising the question of consideration when the bill first comes up (clause 3 of rule XVI), and moving to strike the enacting words when it is first open to amendment (clause 9 of rule XVIII). By these methods an adverse opinion may be expressed without permitting the bill to consume the time of the House.

§ 431. Endorsement of the title on an engrossed bill.

When the bill is engrossed the title is to be indorsed on the back, and not within the bill. *Hakew, 250.*

In the practice of the House and the Senate the title appears in its proper place in the engrossed bill, and also is endorsed, with the number, on the back.

SEC. XXXII—READING PAPERS

§ 432. Parliamentary law as to the reading of papers.

Where papers are laid before the House or referred to a committee every Member has a right to have them once read at the table before he can be compelled to vote on them; but it is a great though common error to suppose that he has a right, *toties quoties,* to have acts, journals, accounts, or papers on the table read independently of the will of the House. The delay and interruption which this might be made to produce evince the impossibility of the existence of such a right. There is, indeed, so manifest a propriety of permitting every Member to have as much information as possible on every question on which he is to vote, that when he desires the reading, if it be seen that it is really for information and not for delay, the Speaker directs it to be read without putting a question, if no one objects; but if objected to, a question must be put. *2 Hats., 117, 118.*

Until the 103d Congress the House, by former rule XXX, had a provision regarding the reading a paper other than that on which the House is called to give a final vote (see §§ 964, 965, *infra*).

§ 433. Papers not necessarily to be read on plea of privilege.

It is equally an error to suppose that any Member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House. *Ib.*

§ 434. Member not always privileged to read a paper in his place.

For the same reason a Member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

A Member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time, and therefore is not refused but where that is intended. *2 Grey, 227.*

§ 435. Reports of committees not read except on order or in debate.

A report of a committee of the Senate on a bill from the House of Representatives being under consideration: on motion that the report of the committee of the House of Representatives on the same bill be read in the Senate, it passed in the negative. *Feb. 28, 1793.*

In the House ordinary reports are read only in time of debate (V, 5292). But in a few cases, in which a report does not accompany a bill or other proposition of action, but presents facts and conclusions, it is read to the House if acted on (II, 1364; IV, 4663).

§ 436. Reading of papers on reference.

Formerly, when papers were referred to a committee, they used to be first read; but of late only the titles, un-

less a Member insists they shall be read, and then nobody can oppose it. *2 Hats., 117.*

Under the rules, petitions, memorials, and communications are referred through the Clerk's desk, so that there is no opportunity for reading before reference, though messages from the President are read (clauses 1 and 3 of rule XII; clause 2 of rule XIV).

SEC. XXXIII—PRIVILEGED QUESTIONS

§ 437. Possession of a bill by the House.

It is no possession of a bill unless it be delivered to the Clerk to read, or the Speaker reads the title. *Lex. Parl., 274; Elysynge Mem., 85; Ord. House of Commons, 64.*

§ 438. Theory as to privileged questions.

It is a general rule that the question first moved and seconded shall be first put. *Scob., 28, 22; 2 Hats., 81.* But this rule gives way to what may be called privileged questions; and the privileged questions are of different grades among themselves.

In the House, by rule and practice, the system of privileged motions and privileged questions has been highly developed (rule IX, clause 5 of rule XIII, clause 1 of rule XIV, and clause 4 of rule XVI).

§ 439. Precedence of the motion to adjourn.

A motion to adjourn simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion can not be received after another question is actually put and while the House is engaged in voting.

The rules and practice of the House have prescribed comprehensively the privilege and status of the motion to adjourn (clause 4 of rule XVI). The motion intervenes between the putting of the question and the voting, and also between the different methods of voting, as between a vote by division and a vote by yeas and nays, as after the yeas and nays are ordered and before the roll call begins (V, 5366). But after the roll call begins it may not be interrupted (V, 6053). Clause 4 of rule XVI was amended in the 93d Congress to provide that a motion that when the House adjourns

on that day it stand adjourned to meet at a day and time certain is of equal privilege with the motion to adjourn, if the Speaker recognizes for that purpose (H. Res. 6, p. 26). In the 102d Congress the motion to authorize the Speaker to declare a recess was given an equal privilege (H. Res. 5, Jan. 3, 1991, p. 39).

§ 440. Obsolete parliamentary law governing orders of the day.

Orders of the day take place of all other questions, except for adjournment—that is to say, the question which is the subject of an order is made a privileged one, *pro hac vice.* The order is a repeal of the general rule as to this special case. When any Member moves, therefore, for the order of the day to be read, no further debate is permitted on the question which was before the House; for if the debate might proceed it might continue through the day and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, "Whether the House will now proceed to the orders of the day?" they must be read and proceeded on in the course in which they stand, *2 Hats., 83;* for priority of order gives priority of right, which cannot be taken away but by another special order of business.

"Orders of the day" were part of the regular and daily order of business (IV, 3151). Although a mention of them has survived in clause 1 of rule XIV, they have disappeared from the practice of the House (IV, 3057) and should not be confused with "special orders of business," which are resolutions reported from the Committee on Rules pursuant to clause 5 of rule XIII to provide for consideration of matters not regularly in order. The term "special orders" is also used separately to describe permission to address the House at the conclusion of legislative business.

§ 441. Jefferson's discussion of certain privileged motions.

After these there are other privileged questions, which will require considerable explanation.

It is proper that every parliamentary assembly should have certain forms of questions, so adapted as to enable them fitly to dispose of every proposition which can be made to them. Such are: 1. The previous question. 2. To postpone indefinitely. 3. To adjourn a question to a definite day. 4. To lie on the table. 5. To commit. 6. To amend. The proper occasion for each of these questions should be understood.

The House by clause 4 of rule XVI has established the priority and other conditions of motions of this kind.

§ 442. Obsolete use of the previous question.

1. When a proposition is moved which it is useless or inexpedient now to express or discuss, the previous question has been introduced for suppressing for that time the motion and its discussion. *3 Hats., 188, 189.*

The previous question of the parliamentary law has been changed by the House into an instrument of entirely different use (V, 5445; clause 1 of rule XIX).

§ 443. The motion to postpone indefinitely.

2. But as the previous question gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely. *3 Hats., 183.* This quashes the proposition for that session, as an indefinite adjournment is a dissolution, or the continuance of a suit *sine die* is a discontinuance of it.

As already explained, in the House the previous question is no longer used as a method of postponement (V, 5445) but a means to bring the pending matter to an immediate vote. The House does use the motion to postpone indefinitely, and in clause 4 of rule XVI and the practice thereunder, has defined the nature and use of the motion.

§ 444. Postponement to a day certain.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or debate is adjourned to such a day within the session as will answer the views of the House. *2 Hats., 81.* And those who have spoken before may not speak again when the adjourned debate is resumed. *2 Hats., 73.* Sometimes, however, this has been abusively used by adjourning it to a day beyond the session, to get rid of it altogether as would be done by an indefinite postponement.

The House does not use the motion to adjourn a debate. But it accomplishes the purpose of such a procedure by the motion to postpone to a day certain, which applies, not to a debate, but to the bill or other proposition before the House. Of course, if a bill that is under debate is postponed, the effect is to postpone the debate. The conditions and use of the motion are treated under clause 4 of rule XVI.

§ 445. Motion to lay on the table.

4. When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

This is the use of the motion to lay on the table that is established in the general parliamentary law, and was followed in the early practice of the House. But by an interesting evolution in the House the motion has now come to serve an entirely new purpose, being used for the final, adverse disposition of a matter (clause 4 of rule XVI; V, 5389). And a matter once laid on the table may be taken therefrom only by suspension of the rules (V, 6288) or similar process, unless it be a matter of privilege (V, 5438, 5439) such as bills vetoed by the President (IV, 3549; V, 5439). A proposition to impeach having been laid on the table, a similar or identical proposition may be again brought up (III, 2049; VI, 541).

§ 446. Delegation of consideration to committee.

5. If the proposition will want more amendment and digestion than the formalities of the House will conveniently admit, they refer it to a committee.

6. But if the proposition be well digested, and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

In the House it is a general rule that all business goes to committees before receiving consideration in the House itself. Occasionally a question of privilege or a minor matter of business is presented and considered at once by the House.

§ 447. Privileged motions in the Senate and in Parliament.

The Senate, in their practice, vary from this regular graduation of forms. Their practice comparatively with that of Parliament stands thus:

FOR THE PARLIAMENTARY: THE SENATE USES:

Postponement indefinite,	Postponement to a day beyond the session.
Adjournment,	Postponement to a day within the session.
Lying on table,	Postponement indefinite. Lying on the table.

In their eighth rule, therefore, which declares that while a question is before the Senate no motion shall be received, unless it be for the previous question, or to postpone, commit, or amend

the main question, the term postponement must be understood according to their broad use of it, and not in its parliamentary sense. Their rule, then, establishes as privileged questions the previous question, postponement, commitment, and amendment.

The House governs these motions by clause 4 of rule XVI.

§ 448. Obsolete provision as to priority of privileged motions.

But it may be asked: Have these questions any privilege among themselves? or are they so equal that the common principle of the "first moved first put" takes place among them? This will need explanation. Their competitions may be as follows:

1. Previous question and postpone
   commit
   amend
2. Postpone and previous question
   commit
   amend
3. Commit and previous question
   postpone
   amend
4. Amend and previous question
   postpone
   commit

In the first, second, and third classes, and the first member of the fourth class, the rule "first moved first put" takes place.

In the first class, where the previous question is first moved, the effect is peculiar; for it not only prevents the after motion to postpone or

commit from being put to question before it, but also from being put after it; for if the previous question be decided affirmatively, to wit, that the main question shall *now* be put, it would of course be against the decision to postpone or commit; and if it be decided negatively, to wit, that the main question shall not now be put, this puts the House out of possession of the main question, and consequently there is nothing before them to postpone or commit. So that neither voting for nor against the previous question will enable the advocates for postponing or committing to get at their object. Whether it may be amended shall be examined hereafter.

Although clause 4 of rule XVI now governs the priority of motions, these provisions of the Manual remain of interest because of the parliamentary theory they present.

§ 449. General principles of priority of motions.

Second class. If postponement be decided affirmatively, the proposition is removed from before the House, and consequently there is no ground for the previous question, commitment or amendment; but if decided negatively (that it shall not be postponed), the main question may then be suppressed by the previous question, or may be committed, or amended.

The previous question is used now for bringing a vote on the main question and not for suppressing it.

The third class is subject to the same observations as the second.

The fourth class. Amendment of the main question first moved, and afterwards the pre-

vious question, the question of amendment shall be first put.

In present practice of the House the question on the previous question would be put first, and being decided affirmatively would force a vote on the amendment and then on the main question.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the main question would be in Parliament. The reason is that the question for amendment is not suppressed by postponing or adjourning the main question, but remains before the House whenever the main question is resumed; and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the House had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing, though last moved shall be first put; because, in truth, it facilitates and befriends the motion to amend. *Scobell* is express: "On motion to amend a bill, anyone may notwithstanding move to commit it, and the question for commitment shall be first put." *Scob., 46.*

These principles of priority of privileged motions are recognized in the House, and are provided for by clause 4 of rule XVI.

§ 450. Applications of the previous question to debatable secondary and privileged motions.

We have hitherto considered the case of two or more of the privileged questions contending for privilege between themselves, when both are moved on the original or main question; but now let us suppose one of them to be moved,

not on the original primary question, but on the secondary one, *e.g.:*

Suppose a motion to postpone, commit, or amend the main question, and that it be moved to suppress that motion by putting a previous question on it. This is not allowed, because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way—by deciding against the postponement, commitment, or amendment. *2. Hats., 81, 2, 3, 4.*

Although the general principle that one secondary or privileged motion should not be applied to another is generally recognized in the House, the entire change in the nature of the previous question (V, 5445) from a means of postponing a matter to a means of compelling an immediate vote, makes obsolete the parliamentary rule. Because the motions to postpone, commit, and amend are all debatable, the modern previous question of course applies to them (clause 1 of rule XIX).

§ 451. Motion to postpone not applicable to other secondary motions.

Suppose a motion for the previous question, or commitment or amendment of the main question, and that it be then moved to postpone the motion for the previous question, or for commitment or amendment of the main question. 1. It would be absurd to postpone the previous question, commitment, or amendment, alone, and thus separate the appendage from its principal; yet it must be postponed separately from its original, if at all; because the eighth rule of the Senate says that when a main question is before the House no motion shall be received but to commit, amend, or pre-question the original question, which is the parliamentary doctrine also.

Therefore the motion to postpone the secondary motion for the previous question, or for committing or amending, can not be received. 2. This is a piling of questions one on another; which, to avoid embarrassment, is not allowed. 3. The same result may be had more simply by voting against the previous question, commitment, or amendment.

Suppose a commitment moved of a motion for the previous question, or to postpone or amend. The first, second, and third reasons, before stated, all hold against this.

The principles of this paragraph are in harmony with the practice of the House, which provides further that a motion to suspend the rules may not be postponed (V, 5322).

§ 452. The motion to amend not applicable to the previous question.

Suppose an amendment moved to a motion for the previous question. Answer: The previous question can not be amended. Parliamentary usage, as well as the ninth rule of the Senate, has fixed its form to be, "Shall the main question be now put?"—*i.e.*, at this instant; and as the present instant is but one, it can admit of no modification. To change it to to-morrow, or any other moment, is without example and without utility. * * *

Although the nature of the previous question has entirely changed, yet the principle of the parliamentary law applies to the new form.

§ 453. Motion to amend applicable to motions to postpone or refer.

* * * But suppose a motion to amend a motion for postponement, as to one day instead of another, or to a special instead of an indefinite time. The useful character of amendment gives it a

privilege of attaching itself to a secondary and privileged motion; that is, we may amend a postponement of a main question. So, we may amend a commitment of a main question, as by adding, for example, "with instructions to inquire," &c. * * *

This principle is recognized in the practice of the House (V, 5521).

§ 454. Amendment in the third degree not in order.

* * * In like manner, if an amendment be moved to an amendment, it is admitted; but it would not be admitted in another degree, to wit, to amend an amendment to an amendment of a main question. This would lead to too much embarrassment. The line must be drawn somewhere, and usage has drawn it after the amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

This rule of the parliamentary law is considered fundamental in the House (clause 6 of rule XVI).

§ 455. Filling blanks; and amendment to numbers.

[In filling a blank with a sum, the largest sum shall be first put to the question, by the thirteenth rule of the Senate, contrary to the rule of Parliament, which privileges the smallest sum and longest time. *5 Grey, 179; 2 Hats., 8, 83; 3 Hats., 132, 133.*] And this is considered to be not in the form of an amendment to the question, but as alternative or successive originals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question

to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of irredeemability of a loan, or the terminus in quem in any other case; then the question must begin a maximo. Or whether the lesser includes the greater, as in questions on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an act shall commence or the terminus a quo in any other case where the question must begin a minimo; the object being not to begin at that extreme which, and more, being within every man's wish, no one could negative it, and yet, if he should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance or recede till you get to a number which will unite a bare majority. *3 Grey, 376, 384, 385.* "The fair question in this case is not that to which, and more, all will agree, but whether there shall be addition to the question." *1 Grey, 365.*

The thirteenth rule of the Senate has been dropped. The House has no rule on the subject other than this provision of the parliamentary law. It is very rare for the House to fill blanks for numbers. When a number in pending text is to be changed by amendment, the practice of the House permits to be pending: the alternative number proposed in the amendment to the text; a second alternative number as an amendment to the amendment; a third as a substitute; and a fourth as an amendment to the substitute. Thus, if the pending text itself states a number, then five alternative numbers may be pending simultaneously. With respect to a concurrent resolution on the budget (which is considered as read and open to amendment at any point and to which amendments must be mathematically consistent under clause 10 of rule XVIII), adoption of a perfecting amendment changing several figures precludes further amendment merely changing those figures, but does not preclude more comprehensive amend-

ments changing other portions of the resolution that have not been amended as well (Apr. 27, 1977, p. 12485). In recent practice an amount in an appropriation bill has been changed by inserting a parenthetical "increased by" or "decreased by" after the amount rather than by directly changing the number.

§ 456. Priority of amendments over motions to strike or agree.

Another exception to the rule of priority is when a motion has been made to strike out, or agree to, a paragraph. Motions to amend it are to be put to the question before a vote is taken on striking out or agreeing to the whole paragraph.

In the House the principle that a text should be perfected before a question is taken on striking it, and that an amendment should be perfected before agreeing to it, is well established. But in considering bills, even by paragraphs, the House does not agree to the paragraphs severally; but after amending one passes to the next, and the question on agreeing is taken only on the whole bill by the several votes on engrossment and passage.

§ 457. Incidental questions, like points of order, that intervene during consideration of the main question.

But there are several questions which, being incidental to every one, will take place of every one, privileged or not; to wit, a question of order arising out of any other question must be decided before that question. *2 Hats., 88.*

This principle governs the procedure of the House, but a question of order arising after a motion for the previous question must be decided without debate (clause 1 of rule XIX).

§ 458. Matters of privilege as intervening questions.

A matter of privilege arising out of any question, or from a quarrel between two Members, or any other cause, supersedes the consideration of the original question, and must be first disposed of. *2 Hats., 88.*

Rule IX and the practice thereunder, confirm and amplify the principles of this provision of the parliamentary law.

§ 459. Intervention of questions relating to reading of papers.

Reading papers relative to the question before the House. This question must be put before the principal one. *2 Hats., 88.*

This provision formerly applied in the House to the reading of papers other than those on which the House was to vote. That was under an earlier form of clause 6 of rule XVII, which now applies only to the use of exhibits in debate. For a history of the former rule on reading papers and an explanation of the earlier practice, see §§ 963–965, *infra*.

§ 460. Withdrawal of motions.

Leave asked to withdraw a motion. The rule of Parliament being that a motion made and seconded is in the possession of the House, and can not be withdrawn without leave, the very terms of the rule imply that leave may be given, and, consequently, may be asked and put to the question.

The House does not vote on the withdrawal of motions, but provides by clause 2 of rule XVI and clause 5 of rule XVIII the conditions under which a Member may of right withdraw a motion.

SEC. XXXIV—THE PREVIOUS QUESTION

§ 461. The previous question of Parliament.

When any question is before the House, any Member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to be put immediately, and no man may speak anything further to it, either to add or alter. *Memor. in Hakew., 28; 4 Grey, 27.*

§ 462. Manner of putting the previous question.

The previous question being moved and seconded, the question from the Chair shall be, "Shall the main question be now put?" and if the nays prevail, the main question shall not then be put.

§ 463. History, use, etc., of the previous question of Parliament.

This kind of question is understood by Mr. Hatsell to have been introduced in 1604. *2 Hats., 80.* Sir Henry Vane introduced it. *2 Grey, 113, 114; 3 Grey, 384.* When the question was put in this form, "Shall the main question be put?" a determination in the negative suppressed the main question during the session; but since the words "now put" are used, they exclude it for the present only; formerly, indeed, only till the present debate was over, *4 Grey, 43,* but now for that day and no longer. *2 Grey, 113, 114.*

Before the question "Whether the main question shall now be put?" any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all. *Mem. in Hakew., 28.*

The proper occasion for the previous question is when a subject is brought forward of a delicate nature as to high personages, &c., or the discussion of which may call forth observations which might be of injurious consequences. Then the previous question is proposed, and in the modern usage the discussion of the main question is suspended and the debate confined to the previous question. The use of it has been extended abusively to other cases, but in these it has been an embarrassing procedure. Its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible.

As explained in connection with clause 1 of rule XIX, the House has changed entirely the old use of the previous question (V, 5445).

SEC. XXXV—AMENDMENTS

§ 465. Right of the Member who has spoken to the main question to speak to an amendment.

On an amendment being moved, a Member who had spoken to the main question may speak again to the amendment. *Scob., 23.*

This parliamentary rule applies in the House, where the hour rule of debate (clause 2 of rule XVII) has been in force for many years. A Member who has spoken an hour to the main question, may speak another hour to an amendment (V, 4994; VIII, 2449).

§ 466. The Speaker not to decide as to consistency of a proposed amendment with one already agreed to.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House, but not within the competence of the Speaker to suppress as if it were against order. For were he permitted to draw questions of consistence within the vortex or order, he might usurp a negative on important modifications, and suppress, instead of subserving, the legislative will.

The practice of the House follows and extends the principle set forth by Jefferson. Thus it has been held that the fact that a proposed amendment is inconsistent with the text or embodies a proposition already voted (II, 1328–1336; VIII, 2834), or would in effect change a provision of text to which both Houses have agreed (II, 1335; V, 6183–6185), or is contained in substance in a later portion of the bill (II, 1327), is a matter to be passed on by the House rather than by the Speaker. It is for the House rather than the Speaker to decide on the legislative or legal effect of a proposition (II, 1323, 1324; VI, 254; VII, 2112; VIII, 2280, 2841), and the change of a single word in the text of a proposition may be sufficient to prevent the Speaker from ruling it out of order as one already disposed of by the House (II, 1274). The principle has been the subject of conflicting decisions, from which may be deduced the rule that the Chair may not rule out the proposition unless it presents a substantially identical proposition (VI, 256; VIII, 2834, 2835, 2838, 2840, 2842, 2850, 2856).

A perfecting amendment offered to an amendment in the nature of a substitute may be offered again as an amendment to the original bill if

the amendment is first rejected or if the amendment in the nature of a substitute as perfected is rejected (Sept. 28, 1976, p. 33075). Rejection of an amendment consisting of two sections does not preclude one of those sections being subsequently offered as a separate amendment (July 15, 1981, p. 15898), and the rejection of several amendments considered en bloc does not preclude their being offered separately at a subsequent time (Deschler, ch. 27, § 35.15; Nov. 4, 1991, p. 29932). A point of order against an amendment to a substitute does not lie merely because its adoption would have the same effect as the adoption of a pending amendment to the original amendment and would render the substitute as amended identical to the original amendment as amended (May 4, 1983, p. 11059).

§ 467. The parliamentary law and the Rules of the House as to germane amendments.

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition by making it bear a sense different from what it was intended by the movers, so that they vote against it themselves. *2 Hats., 79; 4, 82, 84.* A new bill may be ingrafted, by way of amendment, on the words, "Be it enacted," etc. *1 Grey, 190, 192.*

This was the rule of Parliament, which did not require an amendment to be germane (V, 5802, 5825). But the House from its first organization, has by rule required that an amendment should be germane to the pending proposition (clause 7 of rule XVI).

§ 468. The amendment to strike certain words of a bill.

If it be proposed to amend by leaving out certain words, it may be moved, as an amendment to this amendment, to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill. *2 Hats., 80, 9.* The parliamentary question is, always, whether the words shall stand part of the bill.

In the House the question herein described is never put, but is always whether the words shall be stricken; and if there is a desire that certain of the words included in the amendment remain part of the bill, it is expressed, not by amending the amendment, but by a preferential perfecting amendment to strike from the specified words in the text of the bill a portion of them. If this is carried that portion of the specified words is

stricken from the bill and the vote then recurs on the original amendment (V, 5770). Where a motion to strike an entire title of a bill is pending, it is in order to offer, as a perfecting amendment to that title, a motion to strike a lesser portion thereof, and the perfecting amendment is voted on first (June 11, 1975, p. 18435). And when a motion to strike certain words is disagreed to, it is in order to move to strike a portion of those words (V, 5769); but when it is proposed to strike certain words in a paragraph, it is not in order to amend those words by including with them other words of the paragraph (V, 5768; VIII, 2848; June 2, 1976, pp. 16208–10). It is in order to insert by way of amendment a paragraph similar (but not actually identical) to one already stricken by amendment (V, 5760; Sept. 2, 1976, pp. 28939–58).

§ 469. Principles as to perfecting before inserting or striking.

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can by amendments before the question is put for inserting it. If it be received, it cannot be amended afterward in the same stage, because the House has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If on the question it be retained, it cannot be amended afterward, because a vote against striking out is equivalent to a vote agreeing to it in that form.

These principles are recognized as in force in the House, with the exception that clause 5(c) of rule XVI specifically provides that the rejection of a motion to strike shall preclude neither amendment nor motion to strike and insert. However, after an amendment to insert has been agreed to, the matter inserted ordinarily may not then be amended (V, 5761–5763; VIII, 2852) in any way that would change its text. Where a special order of business provides that an amendment inserting a provision in the bill be considered as adopted, an amendment to strike that provision is not in order (May 23, 2002, pp. 8920–24). However, an amendment may be added at the end (V, 5759, 5764, 5765; Dec. 14, 1973, p. 41740; Oct. 1, 1974, p. 33364), even if the perfecting amendment that was adopted struck

out all after the short title of the amendment in the nature of a substitute and inserted a new text (May 16, 1979, p. 11480). Although an amendment that has been adopted to an amendment (in the nature of a substitute) may not be further amended, another amendment adding language at the end of the amendment may still be offered (June 10, 1976, pp. 17368–75, 17381; May 16, 1984, pp. 12566–67), and the Chair will not rule on the consistency of that language with the adopted amendment (June 10, 1976, p. 17381).

Although it may be in order to offer an amendment to the pending portion of the bill that not only changes a provision already amended but also changes an unamended pending portion of the bill, it is not in order merely to amend portions of the bill that have been changed by amendment (Mar. 11, 1999, p. 4335), or to amend unamended portions that have been passed in the reading and are no longer open to amendment (July 12, 1983, p. 18771), or to amend a figure already amended (Deschler, ch. 27, § 33.2; July 17, 1995, p. 19186), even if also changing other matter not already amended, where drafted as though the earlier amendment had not been adopted (Mar. 15, 1995, p. 8025; Mar. 16, 1995, p. 8110; Mar. 16, 1995, p. 8112; July 17, 1995, p. 19196). A point of order that a pending amendment proposes to change portions of the bill that have been changed by earlier amendment may be made after a unanimous-consent request to modify the amendment has been disposed of but before debate has begun (Mar. 11, 1999, p. 4335). Where the vote on an amendment to strike a section and insert new language is postponed by the chair of the Committee of the Whole, an amendment to strike the same section and insert different language is in order; and if both amendments are adopted, the second amendment adopted supersedes the first and is the only one reported to the House (Aug. 6, 1998, p. 19125).

When it is proposed to perfect a paragraph, a motion to strike it, if already pending, must remain in abeyance until the amendments to perfect have been moved and voted on (V, 5758; VIII, 2860; May 5, 1992, p. 10110; Oct. 12, 1995, p. 27816; July 27, 1999, p. 18074). If further proceedings are postponed on the perfecting amendment, debate may continue on the underlying motion to strike (July 27, 1999). While amendments are pending to a section, a motion to strike it may not be offered (V, 5771; VIII, 2861; Sept. 23, 1982, p. 24963; July 25, 1995, p. 20299). The motion to strike may be voted on (if already pending) or subsequently offered after disposition of the perfecting amendment, so long as the provision sought to be stricken has not been rewritten entirely (Sept. 23, 1982, p. 24963; July 25, 1995, p. 20299). While a motion to strike is pending, it is in order to offer an amendment to perfect the language proposed to be stricken (Apr. 24, 1996, p. 8777); such an amendment, which is in the first degree, may be amended by a substitute, and amendments to the substitute are also in order (Oct. 19, 1983, p. 28283), and such perfecting amendment, if agreed to when voted on first, remains part of the bill if the motion to strike is then rejected (Sept. 18, 1986, p. 28123). When a motion to

strike a paragraph is pending and the paragraph is perfected by an amendment, striking and inserting an entire new text, the pending motion to strike must fall, because it would not be in order to strike exactly what has been just voted to insert (V, 5792; VIII, 2854; July 12, 1951, p. 8090; Sept. 23, 1975, p. 29835; Aug. 5, 1986, p. 19059; May 18, 1988, p. 11404; Apr. 24, 1996, p. 8781). A motion to strike and insert a portion of a pending section is not in order as a substitute for a motion to strike the section, but may be offered as a perfecting amendment to the section and is voted on first, subject to being eliminated by subsequent adoption of the motion to strike (July 16, 1981, p. 16057).

§ 470. Reading the motion and putting the question on a motion to strike and insert.

When it is moved to amend by striking out certain words and inserting others, the manner of stating the question is first to read the whole passage to be amended as it stands at present, then the words proposed to be struck out, next those to be inserted, and lastly the whole passage as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out. If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others. *2 Hats., 80, 7.*

Clause 5(c) of rule XVI provides that the motion to strike and insert is not divisible. As to the manner of stating the question, the Clerk reads only the words to be stricken and the words to be inserted.

§ 471. Conditions of repetition of motions to strike and insert.

A motion is made to amend by striking out certain words and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissible, because to strike out and insert A is one proposition. To strike out and insert B is a different proposition. And to

strike out and insert nothing is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case were the first motion divided by putting the question first on striking out, and that negatived; for, as putting the whole motion to the question at once would not have precluded, the putting the half of it cannot do it.

As to Jefferson's supposition that the principle would hold good in case of division of the motion to strike and insert it is not necessary to inquire, because clause 5(c) of rule XVI forbids division of that motion. In a footnote Jefferson expressed himself as follows: "In the case of a division of the question, and a decision against striking out, I advanced doubtingly the opinion here expressed. I find no authority either way, and I know it may be viewed under a different aspect. It may be thought that, having decided separately not to strike the passage, the same question for striking out cannot be put over again, though with a view to a different insertion. Still I think it more reasonable and convenient to consider the striking out and insertion as forming one proposition, but should readily yield to any evidence that the contrary is the practice in Parliament." Where two amendments proposing inconsistent motions to strike and insert a pending section are considered as separate first degree amendments (not one as a substitute for the other) before either is finally disposed of under a special procedure permitting the Chair to postpone requests for a recorded vote, the Chair's order of voting on the matter as unfinished business determines which amendment (if both were adopted) would be reported to the House (Aug. 6, 1998, pp. 19098–107).

§ 472. Application of the motion to strike.

The principle set forth by Jefferson as to repetition of the motion to strike prevails in the House, where it has been held in order, after the failure of a motion to strike certain words, to move to strike a portion of those words (V, 5769; VIII, 2858). When a bill is under consideration by paragraphs, a motion to strike can apply only to the paragraph under consideration (V, 5774).

§ 473. Effect of affirmative vote on motion to strike and insert.

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterward be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would

move to insert B; in which case those who preferred it would join in rejecting A.

This principle controls the practice of the House (July 17, 1985, p. 19444; July 18, 1985, p. 19649; Deschler, ch. 27, § 31.14).

§ 474. Conditions of striking an amendment already agreed to.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition; for then it is resolved into the common case of striking out a paragraph after amending it. Nor does anything forbid a new insertion, instead of A and its coherence.

Although it is not in order to move to strike a provision inserted by amendment (Oct. 9, 1985, p. 26957), a motion to strike more than that provision inserted would be in order (Apr. 23, 1975, p. 11536). But an amendment to strike the pending title of a bill and re-insert all sections of that title except one is not in order if that section has previously been amended in its entirety (Aug. 1, 1975, p. 26946).

§ 475. Amendments filling blanks as to time.

In Senate, January 25, 1798, a motion to postpone until the second Tuesday in February some amendments proposed to the Constitution; the words "until the second Tuesday in February" were struck out by way of amendment. Then it was moved to add, "until the first day of June." Objected that it was not in order, as the question should be first put on the longest time; therefore, after a shorter time decided against, a longer cannot be put to question. It was answered that this rule takes place only in filling blanks for time. But when a specific time stands part of a motion, that may be struck out as well

as any other part of the motion; and when struck out, a motion may be received to insert any other. In fact, it is not until they are struck out, and a blank for the time thereby produced, that the rule can begin to operate, by receiving all the propositions for different times, and putting the questions successively on the longest. Otherwise it would be in the power of the mover by inserting originally a short time, to preclude the possibility of a longer; for till the short time is struck out, you cannot insert a longer; and if, after it is struck out, you cannot do it, then it cannot be done at all. Suppose the first motion had been made to amend by striking out "the second Tuesday in February," and inserting instead thereof "the first of June," it would have been regular, then, to divide the question, by proposing first the question to strike out, and then that to insert. Now, this is precisely the effect of the present proceeding; only, instead of one motion and two questions, there are two motions and two questions to effect it—the motion being divided as well as the question.

The principles of this paragraph have been followed in the House (V, 5763; Aug. 16, 1961, p. 16059), but in one case wherein words embodying a distinct substantive proposition had been agreed to as an amendment to a paragraph, it was held not in order to strike a part of the words of this amendment with other words of the paragraph (V, 5766).

The motion to strike and insert may not be divided in the House (clause 5(c) of rule XVI).

§ 476. Joining and dividing bills.

When the matter contained in two bills might be better put into one, the manner is to reject the one and incorporate its matter into another bill by way of amend-

ment. So if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. * * *

In the modern practice of the House each bill comes before the House by itself; and if it were proposed to join one bill to another it would be done by offering the text of the one as an amendment to the other, without disturbing the first bill in its place on the calendar. The Committee on Rules may report a special order providing for consideration of two bills and, after separate passage of each, "linking" the two by adding the text of the second to the engrossment of the first and tabling the separate version of the second (*e.g.*, June 16, 1999, p. 13080).

§ 477. Transposition of the sections of a bill.

* * * If a section is to be transposed, a question must be put on striking it out where it stands and another for inserting it in the place desired.

This principle is followed in the practice of the House (V, 5775, 5776).

§ 478. Filling blanks left by the other House.

A bill passed by the one House with blanks. These may be filled up by the other by way of amendments, returned to the first as such, and passed *3 Hats., 83.*

§ 479. Clerk amends the section numbers of a bill.

The number prefixed to the section of a bill, be merely a marginal indication, and no part of the text of the bill, the Clerk regulates that—the House or committee is only to amend the text.

In the modern practice of the House, section numbers and other internal references are considered as part of the text that may be altered by amendment. The House sometimes authorizes the Clerk to make appropriate changes in section numbers, paragraphs and punctuation, and cross references when preparing the engrossment of the bill. Such a request is properly made in the House, following passage of the bill (Apr. 29, 1969, p. 10753).

SEC. XXXVI—DIVISION OF THE QUESTION

§ 480. Parliamentary law for division of the question.

If a question contain more parts than one, it may be divided into two or more questions. *Mem. in Hakew., 29.* But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not—where it is complicated—into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House, on a question, unless the House orders it to be divided; as, on the question, December 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each knight. *2 Hats., 85, 86.* So, wherever there are several names in a question, they may be divided and put one by one. *9 Grey, 444.* So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment. *2 Hats., 79.*

The House, by clause 5 of rule XVI and the practice thereunder, has entitled a procedure differing materially from that above set forth. Although a resolution electing Members to committees is not divisible (clause 5 of rule XVI), other types of resolutions containing several names may be divided for voting (Mar. 19, 1975, p. 7344).

§ 481. Jefferson's discussion of division of the question.

The soundness of these observations will be evident from the embarrassments produced by the XVIIIth rule of the Senate, which says, "if the question in debate contains several points, any member may have the same divided."

1798, May 30, the alien bill in quasi-committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section and the provisos, they cannot be divided so as to put the last member to question by itself, for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisos might be left to a second question, after having been decided on once before at the same reading, which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistence. A question to be divisible must comprehend points so distinct and entire that one of them being taken away, the other may stand entire. But a proviso or exception, without an enacting clause, does not contain an entire point or proposition.

May 31.—The same bill being before the Senate. There was a proviso that the bill should not extend—1. To any foreign minister; nor, 2. To any person to whom the President should give a passport; nor, 3. To any alien merchant conforming himself to such regulations as the President shall prescribe; and a division of the question into its simplest elements was called for. It

was divided into four parts, the 4th taking in the words "conforming himself," &c. It was objected that the words "any alien merchant," could not be separated from their modifying words, "conforming," &c., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the two first divisions, the words "any alien merchant" may be struck out, and their modifying words will then attach themselves to the preceding description of persons, and become a modification of that description.

§ 482. Division of question as related to debate or amendment.

When a question is divided, after the question on the 1st member, the 2d is open to debate and amendment; because it is a known rule that a person may rise and speak at any time before the question has been completely decided, by putting the negative as well as the affirmative side. But the question is not completely put when the vote has been taken on the first member only. One-half the question, both affirmative and negative, remains still to be put. See *Execut. Jour., June 25, 1795.* The same decision by President Adams.

Where a division of the question is demanded on a portion of an amendment, the Chair puts the question first on the remaining portions of the amendment, and that portion on which the division is demanded remains open for further debate and amendment (Oct. 21, 1981, p. 24785). However, where neither portion of a divided question remains open to further debate or amendment, the question may be put first on the portion identified by the demand for division and then on the remainder (June 8, 1995, p. 15302).

SEC. XXXVII—COEXISTING QUESTIONS

§ 483. Fundamental principles as to coexisting questions.

It may be asked whether the House can be in possession of two motions or propositions at the same time? so that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the House, and does not stand ipso facto before them at their next meeting, but must come forward in the usual way. So, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question (*e.g.*, the previous question, postponement, or commitment), remove it from before the House. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the House when these are decided. None but the class of privileged questions can be brought forward while there is another question before the House, the rule being that when a motion has been made and seconded, no other can be received except it be a privileged one.

The principles of this provision must, of course, be viewed in the light of a more highly perfected order of business than existed in Jefferson's time (rule XIV). The motion to withdraw is not known in the practice of the House, not being among the motions enumerated in clause 4 of rule XVI, but a motion before the House may be withdrawn by the mover thereof before a decision is reached (clause 2 of rule XVI).

SEC. XXXVIII—EQUIVALENT QUESTIONS

§ 484. Former practice as to rejection and second reading of bills.

If, on a question for rejection, a bill be retained, it passes, of course, to its next reading. *Hakew., 141; Scob., 42.* And a question for a second reading, determined negatively, is a rejection without further question. *4 Grey, 149.* And see *Elsynge's Memor., 42,* in what case questions are to be taken for rejection.

The House has abandoned the question "Shall the bill be rejected?" (IV, 3391), and the question is now taken in accordance with clause 8 of rule XVI. A vote is not taken on the second reading, the first test coming in the modern practice of the House on the engrossment and third reading.

§ 485. Equivalent questions in general.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other. *4 Grey, 157.* Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two Houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

The principles set forth in this paragraph are recognized by the practice of the House; but Jefferson's use of the motion to strike as an illustration is no longer justified, because the practice of the House under clause 5(c) of rule XVI does not permit the negative of the motion to strike to be equivalent to the affirmative of agreeing.

§ 486. Equivalent questions on amendments between the Houses.

A bill originating in one House is passed by the other with an amendment. A motion in the originating House to agree to the amendment is negatived. Does there result from this a vote of disagreement, or must the question on disagreement be expressly voted? The question respecting amendments from another House are—1st, to agree; 2d, disagree; 3d, recede; 4th, insist; 5th, adhere.

In the House and the Senate the order of precedence of motions is as given in the parliamentary law, and the motions take precedence in that order without regard to the order in which they are moved (V, 6270, 6324). But a motion to amend an amendment of the other House has precedence of the motion to agree or disagree either before the stage of disagreement has been reached or after the House has receded from its disagreement (V, 6164, 6169–6171; VIII, 3203) even after the previous question has been ordered on both motions before the question is divided (Feb. 12, 1923, p. 3512). See also the discussion in § 525, *infra*. But it has been held that when the previous question has been demanded or ordered on a motion to concur, a motion to amend is not in order (V, 5488). The motion to refer also takes precedence of the motions to agree or disagree (V, 6172–6174), but the demanding or ordering of the previous question does not prevent a motion to refer (V, 5575). The motion to refer takes precedence of the motions to agree or disagree and, under clause 2 of rule XIX is in order pending a demand for or after the ordering of the previous question, before the stage of disagreement has been reached (V, 5575, 6172–6174), but not after the stage of disagreement when the most preferential motion tending to bring the two Houses together is already pending (Speaker Albert, Sept. 16, 1976, p. 30887).

§ 487. The motions to agree and disagree as related to motions to amend.

1st. To agree; 2d. To disagree.—Either of these concludes the other necessarily, for the positive of either is exactly the equivalent to the negative of the other, and no other alternative remains. On either motion amendments to the amendment may be proposed; *e.g.*, if it be moved to disagree, those who are for the amendment have a right

to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

3d. To recede.—You may then either insist or adhere.

§ 488. No equivalent questions on motions to recede, insist, and adhere.

4th. To insist.—You may then either recede or adhere.

5th. To adhere.—You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote the other way. It does not raise so necessary an implication as may authorize the Secretary by inference to enter another vote; for two alternatives still remain, either of which may be adopted by the House.

Under the earlier practice in the House it was held that voting down the motion to recede and concur was tantamount to insistence but not the equivalent of adherence (Speaker Clark, July 2, 1918, p. 8648). But the more recent practice is that when the House disagrees to a motion to recede and concur in a Senate amendment some further action must be taken to dispose of the amendment (Speaker Bankhead, July 9, 1937, p. 7007; Speaker McCormack, Sept. 19, 1962, p. 19945) and the question may recur on a pending motion to insist or such a motion is then entertained from the floor.

SEC. XXXIX—THE QUESTION

§ 489. Putting the question.

The question is to be put first on the affirmative, and then on the negative side.

Clause 6 of rule I provides more fully for putting the question.

§ 490. Effect of putting the question in ending debate.

After the Speaker has put the affirmative part of the question, any Member who has not spoken before to the question may rise and speak before the

negative be put; because it is no full question till the negative part be put. *Scob., 23; 2 Hats., 73.*

After the Chair has put the affirmative part of the question, any Member who seeks to debate the matter or offer a motion may be recognized (V, 5925; June 22, 2006, pp. 12298, 12299), and such recognition is not subject to appeal (June 22, 2006, p. 12299). On one occasion, the Chair refused to entertain a motion to lay on the table after putting the affirmative part of the pending question where the Chair had affirmed the admissibility of that motion before putting the main question, and that motion nevertheless was not then offered (Sept. 20, 1979, p. 25512). Where not pertinent to the pending parliamentary situation, a parliamentary inquiry regarding whether the Chair heard the ayes on a prematurely-commenced vote by voice was not entertained (June 22, 2006, p. 12299).

§ 491. Informal putting of the question.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, &c., the Speaker most commonly supposes the consent of the House where no objection is expressed, and does not give them the trouble of putting the question formally. *Scob., 22; 2 Hats., 79, 2, 87; 5 Grey, 129; 9 Grey, 301.*

SEC. XL—BILLS, THIRD READING

§ 492. Obsolete requirements as to reading and passage of bills.

To prevent bills from being passed by surprise, the House, by a standing order, directs that they shall not be put on their passage before a fixed hour, naming one at which the house is commonly full. *Hakew., 153.*

The usage of the Senate is not to put bills on their passage till noon.

A bill reported and passed to the third reading, cannot on that day be read the third time and passed; because this would be to pass on two readings in the same day.

§ 493. Obsolete parliamentary law as to third reading.

At the third reading the Clerk reads the bill and delivers it to the Speaker, who states the title, that it is the third time of reading the bill, and that the question will be whether it shall pass. Formerly the Speaker, or those who prepared a bill, prepared also a breviate or summary statement of its contents, which the Speaker read when he declared the state of the bill, at the several readings. Sometimes, however, he read the bill itself, especially on its passage. *Hakew., 136, 137, 153; Coke, 22, 115.* Latterly, instead of this, he, at the third reading, states the whole contents of the bill verbatim, only, instead of reading the formal parts, "Be it enacted," &c., he states that "preamble recites so and so—the 1st section enacts that, &c.; the 2d section enacts," &c.

But in the Senate of the United States, both of these formalities are dispensed with; the breviate presenting but an imperfect view of the bill, and being capable of being made to present a false one; and the full statement being a useless waste of time, immediately after a full reading by the Clerk, and especially as every member has a printed copy in his hand.

None of the restrictions are of effect in the modern practice of the House. Clause 8 of rule XVI permits a bill to be read a third time and passed on the same day, and it is in order to proceed with a bill at any time, unless the absence of a quorum be shown.

In the House there is no practice justifying the presentation of an abbreviated summary; and the procedure on third reading is definitely prescribed by clause 8 of rule XVI.

§ 494. Committal of a bill on third reading.

A bill on the third reading is not to be committed for the matter or body thereof, but to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual. *Hakew., 156.* Thus, *27 El., 1584,* a bill was committed on the third reading, having been formerly committed on the second, but is declared not usual. *D'Ewes, 337, col. 2; 414, col. 2.*

In the House it is in order to commit a bill after the engrossment and third reading if the previous question is not ordered (V, 5562); and by clause 2 of rule XIX the House has preserved this opportunity to commit even after the previous question has been ordered.

§ 495. Obsolete parliamentary practice as to riders.

When an essential provision has been omitted, rather than erase the bill and render it suspicious, they add a clause on a separate paper, engrossed and called a rider, which is read and put to the question three times. *Elsynge's Memo., 59; 6 Grey, 335; 1 Blackst., 183.* For examples of riders, see *3 Hats., 121, 122, 124, 156.* Every one is at liberty to bring in a rider without asking leave. *10 Grey, 52.*

This practice is never followed in the House.

§ 496. Obsolete requirements as to reading of amendments.

It is laid down, as a general rule, that amendments proposed at the second reading shall be twice read, and those proposed at the third reading thrice read; as also all amendments from the other House. *Town., col. 19, 23, 24, 25, 26, 27, 28.*

In the practice of the House, amendments, whether offered in the House or coming from the other House, do not come under the rule requiring different readings.

§ 497. Amendments before the third reading.

It is with great and almost invincible reluctance that amendments are admitted at this reading, which occasion erasures or interlineations. Sometimes a proviso has been cut off from a bill; sometimes erased. *9 Grey, 513.*

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

In the House bills are amended after the second reading (IV, 3392), and before the engrossment and third reading (V, 5781; VII, 1051, 1052) but not afterwards. Under modern practice of the House, readings are governed by clause 8 of rule XVI and clause 5 of rule XVIII.

§ 498. Debate in relation to the third reading.

At this reading the bill is debated afresh, and for the most part is more spoken to at this time than on any of the former readings. *Hakew., 153.*

The debate on the question whether it should be read a third time, has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the House; they have had time to meet them with new arguments, and to put their old ones into new shapes. The former vote has tried the strength of the first opinion, and furnished grounds to estimate the issue; and the question now offered for its passage is the last occasion which is ever to be offered for carrying or rejecting it.

In the House it is usual to debate a bill before and not after the engrossment and third reading, probably because of the frequent use of the previous question, which prevents all debate after it is ordered. When the previous question is not ordered, debate may occur pending the vote on passage.

§ 499. Putting the question on the passage of a bill.

When the debate is ended, the Speaker, holding the bill in his hand, puts the question for its passage, by saying, "Gentlemen, all you who are of opinion that this bill shall pass, say aye;" and after the answer of the ayes, "All those of the contrary opinion, say no." *Hakew., 154.*

In the House the bill is usually in the hands of the Clerk. The Speaker states that "The question is on the passage of the bill," and puts the question in the form prescribed by clause 6 of rule I.

§ 500. Bills not altered after their passage.

After the bill is passed, there can be no further alteration of it in any point. *Hakew., 159.*

This principle controls the practice of the House. However, a bill may be changed if the votes on passage, engrossment, and ordering the previous question have been reconsidered. In addition, the Clerk may be authorized to make changes in the engrossed copy by unanimous consent or by special order of business. Title amendments are transacted following passage (§ 512, *infra*).

SEC. XLI—DIVISION OF THE HOUSE

§ 501. Division of the House after determination by sound.

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if before any other Member comes into the House, or before any new motion made (for it is too late after that), any Member shall arise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House. *Scob., 24; 2 Hats., 140.*

This practice is provided for in different language by clause 6 of rule I.

§ 502. Parliamentary provisions as to division, not applicable in the House.

When the House of Commons is divided, the one party goes forth, and the other remains in the House. This has made it important which go forth and which remain; because the latter gain all the indolent, the indifferent, and inattentive. Their general rule, therefore, is that those who give their vote for the preservation of the orders of the House shall stay in, and those who are for introducing any new matter or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions and modifications. *2 Hats., 134; 1 Rush., p. 3, fol. 92; Scob., 43, 52; Co., 12, 116; D'Ewes, 505, col. 1; Mem. in Hakew., 25, 29.*

The one party being gone forth, the Speaker names two tellers from the affirmative and two from the negative side, who first count those sitting in the House and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth as they come in and report the number to the Speaker. *Mem. in Hakew., 26.*

In modern practice in the House of Commons, once the Chair determines a sufficient request for a "division," all Members leave the Chamber and are recorded in the yes and no division lobbies. In the House of Representatives, the provision in former clause 5 of rule I that provided for teller votes was repealed by the 103d Congress. Under the former procedure tellers took their place at the rear of the center aisle when named by the Chair, and Members passed between them to be counted but not recorded by name. Clause 1(b) of rule XX provides for taking a recorded vote by means of the electronic voting system when supported by one-fifth of a quorum.

§ 503. Correction of a vote by tellers after the report.

A mistake in the report of the tellers may be rectified after the report made. *2 Hats., 145, note.*

* * * * *

§ 504. Voting by yeas and nays.

When it is proposed to take the vote by yeas and nays, the President or Speaker states that "the question is whether, *e.g.*, the bill shall pass—that it is proposed that the yeas and nays shall be entered on the journal. Those, therefore, who desire it will rise." If he finds and declares that one-fifth have risen, he then states that "those who are of opinion that the bill shall pass are to answer in the affirmative; those of the contrary opinion in the negative." The Clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the President or Speaker, who declares the result. In the Senate if there be an equal division the Secretary calls on the Vice-President and notes his affirmative or negative, which becomes the decision of the House.

In the House tellers were sometimes, though rarely, ordered to determine whether one-fifth joined in the demand for the yeas and nays (V, 6045) but in the later practice the Speaker's count is not subject to verification (VIII, 3114–3118), and it is not in order to demand a rising vote of those opposed on a count by the Speaker to ascertain if one-fifth concur in demand for yeas and nays (VIII, 3112, 3113). Clause 1 of rule XX provides the method for taking the yeas and nays in the modern practice; but under clause 2 of that rule both the yeas and nays and calls of the House are taken by means of the electronic voting system unless the Speaker discretionarily orders the utilization of other prescribed procedures.

§ 505. Parliamentary law as to giving of votes.

In the House of Commons every member must give his vote the one way or the other, *Scob., 24*, as it is not permitted to anyone to withdraw who

is in the House when the question is put, nor is anyone to be told in the division who was not in when the question was put. *2 Hats., 140.*

This last position is always true when the vote is by yeas and nays; where the negative as well as affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds pari passu. It is true also when the question is put in the usual way, if the negative also has been put; but if it has not, the member entering, or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question be greatly deferred. And as some who have answered aye may have been changed by the new arguments, the affirmative must be put over gain. If, then, the member entering may, by speaking a few words, occasion a repetition of a question, it would be useless to deny it on his simple call for it.

Clause 1 of rule III requires Members to vote; but no rule excludes from voting those not present at the putting of the question, and this requirement of the parliamentary law is not observed in the House. No attempt is made to prevent Members from withdrawing after a question is put, unless there be a question as to a quorum, when the House proceeds under clauses 5 and 6 of rule XX.

§ 506. Movements of Members during voting.

While the House is telling, no member may speak or move out of his place, for if any mistake be suspected it must be told again. *Mem. in Hakew., 26; 2 Hats., 143.*

This rule applies in the House on a vote by division, where the Speaker counts; but did not apply to the former vote by tellers, where Members passed between tellers at the rear of the center aisle to be counted.

§ 507. Decisions of points of order during a division.

If any difficulty arises in point of order during the division, the Speaker is to decide peremptorily, subject to the future censure of the House if irregular. He sometimes permits old experienced members to assist him with their advice, which they do sitting in their seats, covered, to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours. *2 Hats., 143.*

Members no longer sit with their hats on (clause 5 of rule XVII) and rise to speak; respectfully addressing their remarks to the Speaker (clause 1 of rule XVII).

§ 508. Decision by voice of majority; and tie votes.

The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, &c., where not otherwise expressly provided. *Hakew., 93. But if the House be equally divided, semper presuamtur pro negante;* that is, the former law is not to be changed but by a majority. *Towns., col. 134.*

The House provides also by rule (clause 1 of rule XX) that in the case of a tie vote the question shall be lost.

§ 509. Two-thirds votes.

The House, however, requires a two-thirds vote on a motion to suspend the rules (clause 1 of rule XV), on a motion to dispense with the call of the Private Calendar on the first Tuesday of each month (clause 5 of rule XV), and to consider a special rule immediately (clause 6 of rule XIII), and the Constitution of the United States requires two-thirds votes for the expulsion of a Member, passing vetoed bills, removing political disabilities, and passing joint resolutions proposing amendments to the Constitution.

§ 509a. Three-fifths votes.

The standing rules also require a three-fifths vote for passage or adoption of a bill, a joint resolution, an amendment thereto, or a conference report thereon, if carrying a Federal income tax rate increase (clause 5(b) of rule XXI).

§ 510. Business suspended by the failure of a quorum.

When from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. *2 Hats., 126.*

Although under the rules first adopted in the 95th Congress it is not in order to make or entertain a point of no quorum unless the question has been put on the pending motion or proposition, if a quorum in fact does not respond on a call of the House or on a vote, even the most highly privileged business must terminate (IV, 2934; VI, 662) and even debate must stop until a quorum is established (see IV, 2935–2949). No motion is entertained in the absence of a quorum other than a motion relating to the call of the House or to adjourn (IV, 2950; VI, 680). Even in the closing hours of a Congress business has been stopped by the failure of a quorum (V, 6309; Oct. 18, 1972, p. 37199).

§ 511. Change of a vote.

1606, May 1, on a question whether a Member having said yea may afterwards sit and change his opinion, a precedent was remembered by the Speaker, of Mr. Morris, attorney of the wards, in *39 Eliz.,* who in like case changed his opinion. *Mem. in Hakew., 27.*

The House is governed in this respect by the practice under clause 2 of rule XX.

SEC. XLII—TITLES

§ 512. Amendments to the title of a bill.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

The House by clause 6 of rule XVI embodies this principle with an additional provision as to debate.

SEC. XLIII—RECONSIDERATION

§513. Early Senate practice as to reconsideration.

1798, Jan. A bill on its second reading being amended, and on the question whether it shall be read a third time negatived, was restored by a decision to reconsider that question. Here the votes of negative and reconsideration, like positive and negative quantities in equation, destroy one another, and are as if they were expunged from the journals. Consequently the bill is open for amendment, just so far as it was the moment preceding the question for the third reading; that is to say, all parts of the bill are open for amendment except those on which votes have been already taken in its present stage. So, also, it may be recommitted.

The rule permitting a reconsideration of a question affixing it to no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on which it is passed has been parted with, there can be no reconsideration, as if a vote has been for the passage of a bill and the bill has been sent to the other House. But where the paper remains, as on a bill rejected, when or under what circumstances does it cease to be susceptible of reconsideration? This remains to be settled, unless a sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done

with, should induce them to reform this anomalous proceeding.

The House provides for reconsideration by clause 3 of rule XIX.

§ 514. Parliamentary law as to reconsideration.

In Parliament a question once carried can not be questioned again at the same session, but must stand as the judgment of the House. *Towns., col. 67; Mem. in Hakew., 33.* * * *

§ 515. A bill once rejected not to be brought up again at the same session.

* * * And a bill once rejected, another of the same substance can not be brought in again the same session. *Hakew., 158; 6 Grey, 392.* But this does not extend to prevent putting the same question in different stages of a bill, because every stage of a bill submits the whole and every part of it to the opinion of the House as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, *e.g.*, report of an address, the same question is before the House, and open for free discussion. *Towns., col. 26; 2 Hats., 98, 100, 101.* So orders of the House or instructions to committees may be discharged. So a bill, begun in one House and sent to the other and there rejected, may be renewed again in that other, passed, and sent back. *Ib., 92; 3 Hats., 161.* Or if, instead of being rejected, they read it once and lay it aside or amend it and put it off a month, they may order in another to the same effect, with the same or a different title. *Hakew., 97, 98.*

In the House, with its rule for reconsideration, there is rarely an attempt to bring forward a bill once rejected at the same session. One instance

is recorded (IV, 3384), but the House has declined to consider a bill brought forward after a rejection (IV, 3384; Mar. 9, 1910, p. 2966). The Committee on Rules may report as privileged a resolution making in order the consideration of a measure of the same substance as one previously rejected and to rescind or vacate the action whereby the House had rejected a measure (VIII, 3391; Mar. 17, 1976, p. 6776); and a special order of business nearly identical to one previously rejected by the House, but providing a different scheme for general debate, was held not to violate this section (July 27, 1993, p. 17115).

§ 516. Expedients for changing the effect of bills once passed.

Divers expedients are used to correct the effects of this rule, as, by passing an explanatory act, if anything has been omitted or ill expressed, *3 Hats., 278,* or an act to enforce and make more effectual an act, &c., or to rectify mistakes in an act, &c., or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of supply. *2 Hats., 194, 6.* Or the session may be closed for one, two, three, or more days and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin de novo. *2 Hats., 94, 98.* Or a part of the subject may be taken up by another bill or taken up in a different way. *6 Grey, 304, 316.*

§ 517. Exceptions to the rule against bringing up a matter once rejected.

And in cases of the last magnitude this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether. *2 Hats., 92, 98.* Thus when the address on the preliminaries of peace in 1782 had been lost by a majority of one, on account of the importance of the question and smallness of the majority, the

same question in substance, though with some words not in the first, and which might change the opinion of some Members, was brought on again and carried, as the motives for it were thought to outweigh the objection of form. *2 Hats, 99, 100.*

§ 518. Passage of supplementary bills.

A second bill may be passed to continue an act of the same session or to enlarge the time limited for its execution. *2 Hats., 95, 98.* This is not in contradiction to the first act.

The House has by a joint resolution corrected an error in a bill that had gone to the President (IV, 3519).

SEC. XLIV—BILLS SENT TO THE OTHER HOUSE

§ 519. Laying on the table bills from the other House.

A bill from the other House is sometimes ordered to lie on the table. *2 Hats., 97.*

This principle is recognized in the practice of the House, both as to Senate bills (IV, 3418, 3419; V, 5437), and as to House bills returned with Senate amendments (V, 5424, 6201–6203). The motion to lay on the table Senate amendments to a House bill does not take precedence over the motion to recede and concur, because the motion would table the entire bill (Speaker Longworth, Jan. 24, 1927, p. 2165), but the motion to lay on the table a motion to recede and concur in a Senate amendment does not carry the amendment and bill to the table, and other motions are in order to dispose of the Senate amendment (Feb. 22, 1978, p. 4072).

§ 520. Requests for information from the other House.

When bills passed in one House and sent to the other are ground on special facts requiring proof, it is usual, either by message or at a conference, to ask the grounds and evidence, and this evidence, whether arising out of papers or from the examination of witnesses, is immediately communicated. *3 Hats., 48.*

The Houses of Congress transmit with bills accompanying papers, which are returned when the bills pass or at final adjournment (V, 7259, footnote). Sometimes one House has asked, by resolution, for papers from the files of the other (V, 7263, 7264). Testimony is also requested (III, 1855).

SEC. XLV—AMENDMENTS BETWEEN THE HOUSES

§ 521. Parliamentary principles as to disagreeing, insisting, and adhering.

When either House, *e.g.*, the House of Commons, send a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose to keep the question open. But the first adherence by either renders it necessary for the other to recede or adhere also; when the matter is usually suffered to fall. *10 Grey, 148.* Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. *3 Hats., 268, 270.* The term of insisting, we are told by Sir John Trevor, was then (1679) newly introduced into parliamentary usage by the Lords. *7 Grey, 94.* It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first instance; *10 Grey, 146;* but it is not respectful to the other. In the ordinary

parliamentary course there are two free conferences, at least, before an adherence. *10 Grey, 147.*

The House and the Senate follow the principles set forth in this paragraph of the parliamentary law, and sometimes dispose of differences without resorting to conferences (V, 6165).

§ 522. Insisting and adhering in the practice of the House.

If both Houses insist and neither ask a conference nor recede, the bill fails (V, 6228). If both Houses adhere, the bill fails (V, 6163, 6313, 6324, 6325) even though the difference may be over a very slight amendment (V, 6233–6240). In rare instances in Congress there have been immediate adherences on the first disagreement (V, 6303); but this does not preclude the granting of the request of the other House for a conference (V, 6241–6244). Sometimes the House recedes from its disagreement as to certain amendments and adheres as to others (V, 6229). A House having adhered may at the next stage vote to further adhere (V, 6251). Sometimes the House has receded from adherence (V, 6252, 6401) or reconsidered its action of adherence (V, 6253), after which it has agreed to the amendment with or without amendment (V, 6253, 6401).

§ 523. Parliamentary law as to receding.

Either House may recede from its amendment and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment; for here the disagreement and receding destroy one another, and the subject stands as before the disagreement. *Elysnge, 23, 27; 9 Grey, 476.*

§ 524. Practice of the House as to receding from its own amendment to a bill of the other House.

In the practice of the two Houses of Congress the motion is to recede from the amendment without at the same time agreeing to the bill, for the bill has already been passed with the amendment, and receding from the amendment leaves the bill passed (V, 6312). But where the House has previously concurred in a Senate amendment with an amendment, the House does not by receding from its amendment agree to the Senate amendment, because the House may then (1) concur in the Senate amendment or (2) concur in the Senate amendment with another amendment (VIII, 3199; Oct. 12, 1977, pp. 33448–54). The House may not through one motion, however, recede from its amendment with an amendment (V, 6212; see § 526, *infra*). A motion in the House to recede from a House amendment to a Senate amendment, and concur in the Senate amendment, is divisible (VIII, 3199). One House has receded from its own

amendment after the other House had returned it concurred in with an amendment (V, 6226). However, this has been held insufficient to pass the bill without further action by the House that concurred with an amendment (VIII, 3177; June 26, 1984, p. 18733).

Where one House has receded from an amendment, it may not at a subsequent stage recall its action in order to form a new basis for a conference (V, 6251). Sometimes one House has receded from its amendment although it previously had insisted and asked a conference, which had been agreed to (V, 6319). After the Senate has amended a House amendment it is not proper for the House to recede from its amendment directly, but the Senate may recede from its amendment and then the House recede from its amendment (Speaker Reed, June 12, 1890, p. 5981). The motion to recede takes precedence over the motion to insist and ask a conference (V, 6270).

§ 525. Practice of the House as to receding from disagreement to amendment of the other House.

By receding from its disagreement to an amendment of the Senate the House does not thereby agree to it (V, 6215); but the Senate amendment is then open to amendment precisely as before the original disagreement (V, 6212–6214). The stage of disagreement having been reached, the motion to recede and concur takes precedence of the motion to recede and concur with an amendment (V, 6219–6223; VIII, 3198, 3200, 3202); but a motion to recede and concur is divisible (VIII, 3199) and being divided and the House having receded, a motion to amend has precedence of the motion to concur (V, 6209–6211; VIII, 3198), even after the previous question is ordered on both motions before being divided (Feb. 12, 1923, p. 3512).

The motion to recede and concur in a Senate amendment with an amendment takes precedence of a motion to insist further on the House's disagreement to the Senate amendment (V, 6224; VIII, 3204), and a motion to lay certain amendments on the table (Speaker Longworth, Jan. 24, 1927, p. 2165). It has been held that after the previous question has been moved on a motion to adhere, a motion to recede may not be made (V, 6310); and after the previous question is demanded or ordered on a motion to concur, a motion to amend is not in order (V, 5488); but where the previous question has been demanded on a motion to insist, a motion to recede and concur has been admitted (V, 6208, 6321a).

§ 526. One House not to recede from its own amendment with an amendment; or depart from form fixed by adherence.

But the House can not recede from or insist on its own amendment, with an amendment; for the same reason that it can not send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, be-

cause they have never assented to it; but they can not amend their own amendment, because they have, on the question, passed it in that form. *9 Grey, 363; 10 Grey, 240.* In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lord's proposed amendments become, by delay, confessedly necessary. The Commons, however, refused them as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way. *3 Hats., 256, 266, 270, 271.* But the Lords refused, and the bill was lost. *1 Chand., 288.* A like case, *1 Chand., 311.* * * *

In the House it is a recognized principle that the House may not recede from its own amendments with an amendment (V, 6216–6218). The House may not amend its own amendment to a Senate amendment to a House bill (Mar. 16, 1934, p. 4685). However, the stage of disagreement having been reached on a House amendment to a Senate amendment to a House proposition, the House may first recede from its amendment and, having receded, may then concur in the Senate amendment with a different amendment without violating this paragraph (Speaker O'Neill, Oct. 12, 1977, pp. 33448–54).

* * * So the Commons resolved that it is unparliamentary to strike out, at a conference, anything in a bill which hath been agreed and passed by both Houses, *6 Grey, 274; 1 Chand., 312.*

§ 527. Text to which both Houses have agreed not to be changed.

The practice of the two Houses has confirmed this principle of the parliamentary law and established the rule that managers of a conference may not change the text to which both Houses have agreed (V, 6417, 6418, 6420; VIII, 3257; see clause 9 of rule XXII), and neither House, alone, may empower the managers by instruction to make such a change (V, 6388). In the earlier practice, when it was necessary to change text already agreed to, the managers appended a supplementary paragraph to their report, and this was agreed to by unanimous consent in the two Houses (V, 6433–6436); or the two Houses agreed to a concurrent resolution giving the managers the necessary powers (V, 6437–6439; Dec. 17, 1974, p. 40472). Under the current practice the House considers a conference report that changes text already agreed to by unanimous consent, under suspension of the rules, or by report from the Committee on Rules waiving clause 9 of rule XXII.

To change text finally agreed to by both Houses, each House may adopt a concurrent resolution directing the Clerk of the House or the Secretary of the Senate to correct the enrollment.

The further principle has been established in practice of the House that it may not, even by unanimous consent (V, 6179), change in the slightest particular (V, 6181) the text to which both Houses have agreed (V, 6180; VIII, 3257). And this prohibition extends, also, to a case wherein it is proposed to add a new section at the end of a bill that has passed both Houses (V, 6182).

§ 528. Consideration of Senate and House amendments; precedence of motions.

A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

This is the rule of the House if the stage of disagreement has not been reached (V, 6164, 6169–71; VIII, 3202), or if the House has receded from its disagreement to the amendment in question (VIII, 3196, 3197, 3203). The following discussion summarizes the precedence and consideration of motions to dispose of Senate or House amendments in contemporary practice.

§ 528a. Consideration of Senate or House amendments.

When Senate amendments are before the House for the first time, or when the Senate has returned a bill with House amendments to which it has disagreed (and on which the House has not insisted), no privileged motion is in order in the House except a motion pursuant to clause 1 of rule XXII, made by direction of the committee with subject-matter jurisdiction, to disagree to the Senate amendments or insist on the House amendment and request or agree to a conference with the Senate (see Oct. 11, 1984, p. 32308). Other motions to dispose of amendments between the Houses are not privileged until the stage of disagreement has been reached on a bill with amendments of the other House (clause 4 of rule XXII; IV, 3149, 3150; VI, 756; VIII, 3185, 3194). The stage of disagreement is not reached until the House has either disagreed to Senate amendments or has insisted on its own amendments to a Senate bill, and has notified the Senate. Further House action can only occur when the House has received the papers back from the Senate (Sept. 16, 1976, p. 30868).

Before the stage of disagreement, an amendment to a Senate amendment to a House-passed measure on the Speaker's table is not in order until an order is entered for consideration of the Senate amendment in the House (Speaker O'Neill, June 19, 1986, pp. 14638–40).

If the House does agree to consider a bill with Senate amendment before the stage of disagreement has been reached, by unanimous consent or special order of business, a motion to amend takes precedence over the motion to agree. However, the usual practice in such a situation is to consider a request, either by unanimous consent, suspension of the rules, or special order of business reported by the Committee on Rules, simultaneously providing for consideration and disposition of the Senate amendment (thus precluding the consideration of other requests to dispose of the amendment (see Deschler-Brown, ch. 32, § 5)).

It should be noted that a small category of Senate amendments, those not requiring consideration in the Committee of the Whole, may be taken from the Speaker's table and disposed of by motion pursuant to clause 2 of rule XXII before the stage of disagreement has been reached, but the vast majority of legislation does affect the Treasury (as described in clause 1 of rule XIII) and requires consideration in Committee of the Whole.

§ 528b. Precedence of motions before the stage of disagreement.

Should the House consider Senate amendments before the stage of disagreement, the precedence of nonprivileged motions is as follows (disregarding the privileged motion to disagree and send to conference by direction of the committee): (1) to concur with amendment; (2) to concur; (3) to disagree and request or agree to a conference; and (4) to disagree. With respect to consideration of House amendments before the stage of disagreement, the precedence of motions is (1) to recede; (2) to insist and request or agree to a conference; and (3) to insist. Although the House may adhere, adherence is seldom utilized (because it precludes a conference unless receded from) and is extremely rare on first disagreement (see § 522,

supra; see also the discussion of adherence in Deschler-Brown, ch. 32, § 12). A motion to adhere is the least privileged motion.

It was formerly held that a motion to send to conference yielded to the simple motion to disagree, or to insist (see Cannon's Procedure in the House of Representatives, p. 120). In current practice, however, the compound motion to disagree to Senate amendments and request or agree to a conference, or to insist on House amendments and request or agree to a conference, has replaced the two-step procedure for getting to conference and, because it brings the two Houses together, takes precedence over simple motions to insist or disagree (or to adhere).

Notwithstanding the foregoing precedence of motions, the ordinary motions applicable to any question that is under debate—to table, to postpone to a day certain, and to refer—remain available under clause 4 of rule XVI. A motion to table Senate amendments brings the bill to the table (V, 5424, 6201–6203; Sept. 28, 1978, p. 32334). It must also be noted that before consideration of any motions to dispose of Senate amendments, the Speaker has the discretionary authority, under clause 2 of rule XIV, to refer such amendments to the appropriate committee, with or without a time limitation for committee consideration. It has been held that before the stage of disagreement, the motion to table the Senate amendment or amendments (V, 6201–6203) or the motion to refer the Senate amendment or amendments (V, 5301, 6172, 6174) take precedence (in that order) over motions to amend, agree, or disagree. And if the previous question has been ordered on another motion to dispose of the Senate amendment, a motion to refer is in order (V, 5575).

§ 528c. Reaching the stage of disagreement.

The House has reached the stage of disagreement on a bill when it is again in possession of the papers thereon, having previously disagreed to Senate amendments or insisted on House amendments (with or without requesting or agreeing to a conference). Only previous insistence or disagreement by the House itself places the House in disagreement (and not merely disagreement, insistence, or amendment by the Senate). For example, if the House has concurred in a Senate amendment to a House bill with an amendment, insisted on the House amendment and requested a conference, and the Senate has then concurred in the House amendment with a further amendment, the matter is privileged for further disposition in the House because the House has communicated to the Senate its insistence and request for a conference (Sept. 16, 1976, p. 20868). Of course, if the Senate has agreed to a House request for a conference, the bill is committed to conference and motions are not in order for its disposition until after the conferees have reported (the House may unilaterally discharge its conferees and consider the bill, if in possession of the papers, only by unanimous consent, special order, or suspension of the rules, and not by motion).

Once the stage of disagreement has been reached on a bill with amendments, the House remains in the stage of disagreement until the matter is finally disposed of and motions for its disposition are privileged whenever

the House is in possession of the papers. This principle applies both where the stage of disagreement is reached without a conference, and where matters remain in disagreement after conferees have reported. It is possible, therefore, for motions to be privileged because the House is in disagreement on the bill, but for the House to have receded from its disagreement or insistence on a particular amendment or to have received a new Senate amendment for the first time. In those cases motions remain privileged, but the precedence of motions on the amendment in question reverts to the precedence of motions before the stage of disagreement, as set forth in § 528b, *supra* (see discussion below of the effect of the House's receding). The two Houses having permitted the amendment process to go beyond the second degree, a motion to concur in a Senate amendment (in the 4th degree), the stage of disagreement having been reached, is privileged but is subject to the motion to lay on the table (Mar. 18, 1986, p. 5217).

§ 528d. Precedence of motions after the stage of disagreement.

Generally, after the stage of disagreement has been reached on a Senate amendment, the precedence of motions is as follows: (1) to recede and concur; (2) to recede and concur with an amendment or amendments; (3) to insist on disagreement and request a (further) conference; (4) to insist on disagreement; and (5) to adhere. The Chair may examine the substance of a pending motion to determine the precedence thereof in relation to another motion, even though in form it may appear preferential. Thus, a proper motion to concur with an amendment to a Senate amendment reported from conference in disagreement (the House having receded) has been offered and voted on before a pending motion drafted as one to concur with an amendment but in actual effect a motion to insist on disagreement to the Senate amendment, because simply reinserting the original House text without change (Deschler-Brown, ch. 31, § 8.12). The ordinary motion to table under clause 4 of rule XVI may be applied to a Senate amendment but carries the bill to the table. When applied to a motion to dispose of a Senate amendment, the motion to table carries to the table only the motion to dispose and not the amendment or bill (see Deschler-Brown, ch. 32, § 7.27). With respect to the motion to refer (or recommit), a simple motion to refer or recommit only takes precedence over a motion to adhere, after the stage of disagreement has been reached on the bill. After the previous question is ordered on a pending motion to dispose of a Senate amendment, a motion to recommit (pursuant to clause 2 of rule XIX) may only be offered if it constitutes, in effect, a motion that takes precedence over the pending motion to dispose of a Senate amendment. Thus, after the stage of disagreement has been reached on a Senate amendment, a motion to recommit with instructions to report back forthwith with an amendment may not be offered after the previous question has been ordered on a motion to recede and concur, a motion of higher privilege (see Deschler-Brown, ch. 32, § 7.5). However, after the House has receded from disagreement to a Senate amendment, a motion to amend is preferential over a motion to agree, and thus after the previous question is ordered

on a motion to concur, the House having already receded, a motion to recommit with instructions to amend would be in order (VIII, 2744). Motions to postpone, either to a day certain or indefinitely, have the lowest privilege with respect to a Senate amendment after the stage of disagreement has been reached. For old examples in which the House postponed indefinitely consideration of Senate amendments, see V, 6199, 6200 (in the latter case the Senate had adhered). Clause 8(b)(3) of rule XXII makes preferential and separately debatable a motion to insist on disagreement to a Senate amendment to a general appropriation bill, if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chair of a committee of jurisdiction or a designee.

Where the matter in question is a House amendment or amendments after the stage of disagreement has been reached, the precedence of motions is (1) to recede; (2) to further insist on the amendment and request a (further) conference; and (3) to adhere. For discussion of possible options of the House, having receded from its amendment or amendments, see § 524, *supra,* and Deschler-Brown, ch. 32, § 7. If the House recedes from its amendment to a Senate bill, the bill is passed unless otherwise specified. If the House recedes from its amendment to a Senate amendment, the bill is not passed unless the House takes another step, either to concur in the Senate amendment or amend it. The House having receded from its amendment to a Senate amendment, it is no longer in disagreement on the amendment (although it is on the bill if the stage of disagreement has previously been reached), and the motion to amend the Senate amendment takes precedence over the motion to concur therein. Until the House recedes, however, a motion to recede from the House amendment and concur in the Senate amendment is preferential. A conference report held to violate clause 9 of rule XXII was vitiated, after which a privileged motion to recede and concur in a Senate amendment with an amendment incorporating by reference the text of an introduced House bill was offered (Nov. 14, 2002, p. 22409).

The same principle as to the precedence of motions after a division of the question applies to a motion to recede and concur in a Senate amendment, the stage of disagreement having been reached. Although the motion to recede and concur takes precedence over the motion to recede and concur with an amendment, the former motion may be divided on the demand of any Member and each portion may be separately debatable (Oct. 5, 1978, 33698–701). If the House agrees to recede, a motion to concur with an amendment then takes precedence over the motion to concur, is considered as pending if part of the original motion, and is voted on first (Sept. 30, 1988, pp. 27265–74; Oct. 11, 1989, p. 24097). As indicated in Deschler-Brown, ch. 32, § 8.2, a Member offering a preferential motion does not thereby gain control of the debate, which remains in the control of the floor manager recognized to offer the original motion to dispose of amend-

ments between the Houses (and which is divided equally between the majority and minority floor managers with respect to amendments reported from conference in disagreement under clause 7(b) of rule XXII). Recognition to offer a preferential motion goes to the senior committee member seeking the floor who is not the offeror of a displaced motion of lesser privilege (Nov. 16, 1989, p. 29565). Although the manager of a conference report is entitled to prior recognition to offer motions to dispose of amendments in disagreement, the manager should not be entitled to offer two motions, one preferential to the other, to be pending at the same time. However, where the manager's first motion to insist on disagreement has been superseded by the House's voting to recede from disagreement, then the initial motion is no longer pending; and the manager may be recognized to offer another motion to concur with an amendment, which would be preferential to the remaining portion of another Member's divided motion to concur (Deschler-Brown, ch 32, § 8.2). This is to be contrasted with the situation in which the bill manager offers a motion to dispose of a Senate amendment that is rejected by the House, in which case recognition to offer a subsequent motion to dispose of the pending Senate amendment shifts to another Member who led the opposition to the rejected motion (see § 954, *infra*).

§ 529. Degree of amendments between the Houses.

A bill originating in one House is passed by the other with an amendment. The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment, that being only in the 2d and not the 3d degree; for, as to the amending House, the first amendment with which they passed the bill is a part of its text. It is the only text they have agreed to. The amendment to that text by the originating House therefore is only in the 1st degree, and the amendment to that again by the amending House is only in the 2d, to wit, an amendment to an amendment, and so admissible. Just so, when, on a bill from the originating House, the other, at its second reading, makes an amendment; on the third reading this amendment is

become the text of the bill, and if an amendment to it be moved an amendment to that amendment may also be moved, as being only in the 2d degree.

This principle is followed in the practice of the House (V, 6176–6178). For a discussion of the attitude of the Senate on this topic, see October 31, 1991 (p. 29494).

SEC. XLVI—CONFERENCES

§ 530. Parliamentary law as to asking conferences.

It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. *3 Hats., 31; 1 Grey, 425.*

The House follows the principles set forth in this paragraph of the parliamentary law. A conference may be asked on only a portion of the amendments in disagreement, leaving the differences as to the remainder to be settled by the action of the two Houses themselves (V, 6401). In very rare instances conferences have been asked by one House after the other has absolutely rejected a main proposition (IV, 3442; V, 6258). A difference over an amendment to a proposed constitutional amendment may be committed to a conference (V, 7037).

§ 531. Conferences over matters other than differences as to amendments.

Although conferences between the two Houses of Congress are usually held over differences as to amendments to bills, occasionally differences arise as to the respective prerogatives of the Houses (II, 1485–1495) or as to matters of procedures (V, 6401), as in impeachment proceedings (III, 2304), which are referred to conference. In early and exceptional instances conferences have been asked as to legislative matters when no propositions relating thereto were pending (V, 6255–6257).

§ 532. Conferences by means of select committees.

In very rare cases, also, the Houses interchange views and come to conclusions by means of select committees appointed on the part of each House (I, 3). Thus, in 1821, a joint committee was chosen to consider and report to the two Houses whether or not it was expedient to provide for

the admission of Missouri into the Union (IV, 4471), and in 1877 similar committees were appointed to devise a method for counting the electoral vote (III, 1953).

§ 533. Requests for conferences.

The parliamentary law provides that the request for a conference must always be by the House that is in possession of the papers (V, 8254). It was formerly the more regular practice for the House disagreeing to amendments of the other to leave the asking of a conference to that other House if it should decide to insist (V, 6278–6285, 6324); but it is so usual in the later practice for the House disagreeing to an amendment of the other to ask a conference that an omission to do so has even raised a question (V, 6273). Yet it cannot be said that the practice requires a request for a conference to be made by the House disagreeing to the amendments of the other (V, 6274–6277). One House having asked a conference at one session, the other House may agree to the conference at the next session of the same Congress (V, 6286).

§ 534. Requests for conferences declined or neglected.

In rare instances one House has declined the request of the other for a conference (V, 6313–6315; Mar. 20, 1951, p. 2683), sometimes accompanying it by adherence (V, 6313, 6315). In one instance, in which the Senate declined a conference, it transmitted, by message, its reasons for so doing (V, 6313). Sometimes, also, one House disregards the request of the other for a conference and recedes from its disagreement, thereby rendering a conference unnecessary (V, 6316–6318). And in one case, in which one House has asked a conference to which the other has assented, the asking House receded before the conference took place (V, 6319). Also, a bill returned to the House with a request for a conference has been postponed indefinitely (V, 6199).

§ 535. Motions to request conferences.

After the stage of disagreement has been reached, a motion to ask a conference is considered as distinct from motions to agree or disagree to amendments of the other House (V, 6268) and the motions to agree, recede, or insist are considered as preferential (V, 6269, 6270). Where a motion to request a conference at this stage has been rejected, its repetition at the same stage of the proceedings, no other motion to dispose of the matter in disagreement having been considered, has not been permitted (V, 6325). Where a conference results in disagreement, a motion to request a new conference is privileged (V, 6586). Sometimes disagreements are voted on by the House and conferences asked through the medium of special orders of business (IV, 3242–3249).

Before the stage of disagreement, any motion with respect to amendments between the two Houses is without privilege, except for motions with respect to the limited number of amendments that qualify under clause 2 of rule XXII or motions under clause 1 of rule XXII, to disagree to Senate amendments (or insist on House amendments) and to request or agree to an initial conference if the motion is authorized by the primary

committee and all reporting committees of initial referral and if the Speaker chooses to recognize for that purpose. Under clause 2(a)(3) of rule XI, a committee may adopt a rule providing that the chair be directed to offer a motion under clause 1 of rule XXII. A motion under the latter clause may be repeated, if again authorized by the relevant committees, and if the Speaker again agrees to recognize for that purpose, even though the House has once rejected a motion to send the same matter to conference (Speaker Albert, Oct. 3, 1972, p. 33502).

§ 536. Managers of conferences.

Although usual, it is not essential that one House, in asking a conference, transmit the names of its managers at the same time (V, 6405). The managers, properly so called (V, 6335), constitute practically two distinct committees, each of which acts by a majority (V, 6334). The Speaker appoints the managers on the part of the House (clause 11 of rule I) and has discretion as to the number to serve on a given bill (V, 6336; VIII, 2193) but must appoint (1) a majority of Members who generally support the House position, as determined by the Speaker; (2) Members who are primarily responsible for the legislation; and (3) to the fullest extent feasible the principal proponents of the major provisions of the bill as it passed the House (clause 11 of rule I). Although the practice used to be to appoint three managers from each house (V, 6336), in the absence of joint rules each House may appoint whatever number it sees fit (V, 6328–6330). The two Houses have frequently appointed a disparate number of managers (V, 6331–6333; VIII, 3221); and where the Senate appointed nine and the House but three, a motion to instruct the Speaker to appoint a greater number of managers on the part of the House was held out of order (VII, 2193). In appointing managers the Speaker usually consults the Member in charge of the bill (V, 6336); and where an amendment in disagreement falls within the jurisdiction of two committees of the House, the Speaker has named Members from both committees and specified the respective areas on which they were to confer (Speaker Albert, Nov. 30, 1971, p. 43422). In appointing conferees on the general appropriation bill for fiscal year 1951, Speaker Rayburn appointed a set of managers for each chapter of the bill and four Members to sit on all chapters (Aug. 7, 1950, p. 11894). Although the appointment of conferees, both as to their number and composition, is within the discretion of the Chair (Speaker Garner, June 24, 1932, p. 13876; Speaker Martin, July 8, 1947, p. 8469), and although a point of order will not lie against the exercise of this discretion (VIII, 2193, 3221), the Speaker normally takes into consideration the attitude of the majority and minority of the House on the disagreements in issue (V, 6336–6338; VIII, 3223), the varying views of the Members of the House (V, 6339, 6340), and does not necessarily confine the appointments to members of the committee in charge of the bill (V, 6370). In one case, in which the prerogatives of the House were involved, all of the managers were appointed to represent the majority opinion (V, 6338). See also § 637, *infra*.

§ 537. Reappointment of, at second and subsequent conferences.

Where there were several conferences on a bill, it was the early practice to change the managers at each conference (V, 6288–6291, 6324), and so fixed was this practice that their reappointment had a special significance, indicating an unyielding temper (V, 6352–6368); but in the later practice it is the rule to reappoint managers (V, 6341–6344) unless a change be necessary to enable the sentiment of the House to be represented (V, 6369).

§ 538. Vacancies, etc., in managers of conferences.

Managers of a conference are excused from service either by authority of the House (V, 6373–6376; VIII, 3224, 3227) or, since the 103d Congress, by removal by the Speaker (clause 11 of rule I). The absence of a manager may cause a vacancy, which the Speaker fills by appointment (V, 6372; VIII, 3228). If one House makes a change in its managers, it informs the other House, by message (V, 6377, 6378). According to the later practice the powers of managers who have not reported do not expire at the termination of a session, unless it be the last session (V, 6260–6262).

§ 539. Parliamentary law as to free and simple conferences.

Conferences may be either simple or free. At a conference simply, written reasons are prepared by the House asking it, and they are read and delivered, without debate, to the managers of the other House at the conference, but are not then to be answered. *4 Grey, 144.* The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied they resolve then not satisfactory and ask a conference on the subject of the last conference, where they read and deliver, in like manner, written answer to those reasons. *3 Grey, 183.* They are meant chiefly to record the justification of each House to the nation at large and to posterity and in proof that the miscarriage of a necessary measure is not imputable to them. *3 Grey, 255.* At free conferences the managers discuss, viva voce and freely, and interchange propositions for such modifications as may be made in a parliamen-

tary way, and may bring the sense of the two Houses together. * * *

§ 540. Free and simple conferences in modern practice.

This provision of the parliamentary law bears little relation to the modern practice of the two Houses of Congress, and that practice has evolved a new definition: "A free conference is that which leaves the committee of conference entirely free to pass upon any subject where the two branches have disagreed in their votes, not, however, including any action upon any subject where there has been a concurrent vote of both branches. A simple conference—perhaps it should more properly be termed a strict or a specific conference, though the parliamentary term is 'simple'—is that which confines the committee of conference to the specific instructions of the body appointing it" (V, 6403). And where the House had asked a free conference it was held not in order to instruct the managers (V, 6384). But it is very rare for the House in asking a conference to specify whether it shall be free or simple.

§ 541. Instruction of managers of a conference.

In their practices as to the instruction of managers of a conference, the House and the Senate do not agree. Only in rare instances has the Senate instructed (V, 6398), and these instances are at variance with its declaration, made after full consideration, that managers may not be instructed (V, 6397). And where the House has instructed its managers, the Senate sometimes has declined to participate and asked a free conference (V, 6402–6404). In the later practice the House does not inform the Senate when it instructs its managers (V, 6399), the Senate having objected to the transmittal of instructions by message (V, 6400, 6401). In one instance in which the Senate learned indirectly that the House had instructed its managers, it declared that the conference should be full and free, and instructed its own managers to withdraw if they should find the freedom of the conference impaired (V, 6406). But the House holds to the opinion that the House may instruct its managers (V, 6379–6382), although the propriety of doing so at a first conference has been questioned (V, 6388, footnote). And in rare instances in which a free conference is asked instruction is not in order (V, 6384). At a new conference the instructions of a former conference are not in force (V, 6383; VIII, 3240). And instructions may not direct the managers to do that which they might not otherwise do (V, 6386, 6387; VIII, 3235, 3244), as to effect a change in part of a bill not in disagreement (V, 6391–6394) or change the text to which both Houses have agreed (V, 6388). Although managers may disregard instructions, their report may not for that reason be ruled out of order (V, 6395; VIII, 3246; June 8, 1972, p. 20282), and when a conference report is recommitted with instructions the managers are not confined to the instructions alone (VIII, 3247).

The motion to instruct managers should be offered after the vote to ask for or agree to a conference and before the managers are appointed (V,

6379–6382; VIII, 3233, 3240, 3256). The motion to instruct may be amended unless the previous question is ordered (V, 6525; VIII, 3231, 3240); thus a motion to instruct House conferees to agree to a numbered Senate amendment with an amendment may be amended, upon rejection of the previous question, to instruct the conferees to agree to the Senate amendment (June 9, 1982, pp. 13027, 13028, 13039, 13049). A Member may not be recognized for a unanimous-consent request to modify a pending motion to instruct unless yielded to for that purpose by the proponent (Mar. 29, 2006, p. 4377). The motion to instruct may be laid on the table without carrying the bill to the table (VIII, 2658). The motion is debatable (see clause 7(b) of rule XXII) unless the previous question is ordered (VIII, 2675, 3240), which the proponent may not move until those allotted time under clause 7(b) have yielded back (Oct. 3, 1989, p. 22842). After a motion to ask or agree to a conference is agreed to, only one valid motion to instruct is in order (VIII, 3236; Speaker Wright, Feb. 17, 1988, p. 1583); and the ruling out of such a motion does not preclude the offering of a proper motion (VIII, 3235; Dec. 7, 2005, p. 27706); but one motion having been considered and disposed of, further motions are not in order (VIII, 3236). The restriction on further motions does not apply to a motion to instruct under clause 7(c) of rule XXII (Aug. 22, 1935, pp. 14162–64).

A member of the minority is first entitled to recognition for a motion to instruct conferees (Speaker Bankhead, Oct. 31, 1939, pp. 1103–05; Speaker Albert, Oct. 19, 1971, pp. 36832–35), and if two minority members of the reporting committee seek recognition to offer a motion to instruct conferees before their appointment, the Chair will recognize the senior minority member of the committee (Oct. 10, 1986, p. 30181; Speaker Wright, Feb. 17, 1988, p. 1583).

§ 542. Parliamentary law as to reports of managers of a conference.

* * * And each party report in writing to their respective Houses the substance of what is said on both sides, and it is entered in their journals. *9 Grey, 220; 3 Hats; 280.* This report can not be amended or altered, as that of a committee may be. *Journal Senate, May 24, 1796.*

§ 543. Forms of conference reports.

In the two Houses of Congress conference reports were originally merely suggestions for action and were neither identical in the two Houses nor acted on as a whole (V, 6468–6471). In the House clause 7(a) of rule XXII provides that conference reports may be received at any time, except when the Journal is being read, while the roll is being called, or the House is dividing. They are privileged on or after the third calendar day (excluding Saturdays, Sundays, or legal holidays) after they have been filed and printed in the Record, together with the accompanying statement (clause 8 of rule XXII).

The early reports were not signed by the managers (IV, 3905); but in the later practice the signatures of the majority of the managers of each House is required (V, 6497–6502; VIII, 3295). Sometimes a manager indorses the report with a conditional approval or dissent (V, 6489–6496, 6538). However, signatures with conditions are not counted toward a majority (Nov. 18, 1991, p. 32689) and in the modern practice are not printed in the report. Supplemental reports or minority views may not be filed in connection with conference reports (VIII, 3302). The name of an absent manager may not be affixed, but the two Houses by concurrent action may authorize the manager to sign the report after it has been acted on (V, 6488). The minority portion of the managers of a conference have no authority to make either a written or verbal report concerning the conference (V, 6406). In the later practice reports of managers are identical, and made in duplicate for the two Houses, the House managers signing first the report for their House and the Senate managers signing the other report first (V, 6323, 6426, 6499, 6500, 6504). Under certain circumstances managers may report an entirely new bill on a subject in disagreement, but this bill is acted on as part of the report (V, 6465–6467; see also clause 9 of rule XXII). A quorum among the managers on the part of the House at a committee of conference is established by their signatures on the conference report and joint explanatory statement (Oct. 4, 1994, p. 27662).

§ 544. Partial conference reports.

Managers may report an agreement as to a portion of the numbered amendments in disagreement, leaving the remainder to be disposed of by subsequent action (V, 6460–6464). Where a Senate amendment to the title of a House bill was in conference, but inadvertently omitted from the conference report, the House adopted the report, and, by unanimous consent, insisted on its disagreement to the putatively reported amendment and agreed to a concurrent resolution that deemed the conference report to have "resolved all disagreements" (Oct. 10, 2002, p. 20333).

§ 545. Reports of inability to agree.

Where managers of a conference are unable to agree, or where a report is disagreed to in either House, another conference is usually asked (V, 6288–6291). When managers report that they have been unable to agree, the report is not acted on by the House (V, 6562; VIII, 3329; Aug. 23, 1957, p. 15816). Although under the earlier practice, when conferees reported in complete disagreement, the amendments in disagreement were considered available for immediate disposition (VIII, 3299, 3332), the current practice (as a result of the amendment to clause 8(a) of rule XXII that became effective in the 93d Congress) is to require the matter to lay over until the third calendar day (excluding Saturdays, Sundays, or legal holidays) after the report in disagreement is filed and printed in the Record. In the earlier practice reports of inability to agree were made verbally or by unsigned written reports (V, 6563–6567); but in later practice they are written, in identical form, and signed by the managers of the two Houses (V, 6568, 6569).

§ 546. Managers restricted to the disagreements of the two Houses.

The managers of a conference must confine themselves to the differences committed to them (V, 6417, 6418; VIII, 3252, 3255, 3282), and may not include subjects not within the disagreements (V, 6407, 6408; VIII, 3253–3255, 3260, 3282, 3284), even though germane to a question in issue (V, 6419; VIII, 3256; Speaker Albert, Dec. 20, 1974, p. 41849). But they may perfect amendments committed to them if they do not in so doing go beyond the differences (V, 6409, 6413). Thus, where an amendment providing an appropriation to construct a road had been disagreed to, it was held in order to report a provision to provide for a survey for the road (V, 6425). Managers may not change the text to which both Houses have agreed (V, 6417, 6418, 6420, 6433–6436). But if the amendment in issue strikes all of the bill after the enacting clause and substitutes a new text, the managers have the whole subject before them and may exercise a broad discretion as to details (V, 6424; VIII, 3266), and may even report an entirely new bill on the subject (V, 6421, 6423; VIII, 3248, 3263, 3265, 3276; § 1088, *infra*). If the amendment in disagreement proposes a substitute differing greatly from the House provision they may eliminate the entire subject matter (Speaker Gillett, Sept. 14, 1922, p. 12598).

§ 547. Remedy where managers exceed their authority.

In the House the Speaker may rule out a conference report if it be shown that the managers have exceeded their authority (V, 6409–6416; VIII, 3256; Oct. 4, 1962, p. 22332; Nov. 14, 2002, pp. 22408, 22409). In the House points of order against reports are made or reserved after the report is read and before the reading of the statement (V, 6424, 6441; VIII, 3282, 3284, 3285, 3287), or consideration begins (V, 6903–6905; VIII, 3286), and comes too late after the report has been agreed to (V, 6442); and in case the statement is read in lieu of the report the point of order must be made or reserved before the statement is read (VIII, 3256, 3265, 3285, 3288, 3289). Where clause 8(c) of rule XXII applies, points of order must be made before debate begins on the report (Nov. 14, 2002, p. 22408).

A conference report held to violate clause 9 of rule XXII was vitiated, after which a privileged motion to recede and concur in a Senate amendment with an amendment incorporating by reference the text of an introduced House bill was offered (Nov. 14, 2002, p. 22409).

Under the former practice of the Senate, the Chair did not rule out conference reports, but the Senate itself expressed its opinion on the vote to agree to the report (V, 6426–6432). However, on March 8, 1918, the Senate adopted a "scope" rule providing for a point of order against conferees inserting matter not committed to them or changing the text agreed to by both Houses. This rule of the Senate was strictly construed (VIII, 3273, 3275) until the 104th Congress when the Senate overturned on appeal a ruling of its presiding officer that the inclusion of a special labor-law provision in a conference report exceeded the scope of conference (Oct. 3, 1996, pp. 27147–51). The Chair interpreted that action as tantamount

to a change in the Senate rules until the 107th Congress. Public Law 106–553 provided that at the beginning of the 107th Congress the Presiding Officer of the Senate would apply precedents under Senate rule XXVIII as in effect at the end of the 103d Congress. Public Law 110–81 amended it to provide a new procedure (see, e.g., Nov. 7, 2007, p. __).

§ 548. Meeting and action of managers.

The managers of a conference may not report before the other House is notified of their appointment and a meeting is held (V, 6458). Conferences are generally held in the Capitol, and formerly with closed doors, although in rare instances Members and others were admitted to make arguments (V, 6254, footnote, 6263). Clause 12 of rule XXII now provides for at least one open conference meeting except if the House determines by record vote that all or part of the meeting may be closed to the public. The same rule now provides for a point of order in the House against the report and for an automatic request for a new conference if the House managers fail to meet in open session following appointment of the Senate conferees (Dec. 20, 1982, p. 32896). For a discussion of open conference meetings, see § 1093, *infra*. Rarely, also, papers in the nature of petitions have been referred to managers (V, 6263). The managers of the two Houses vote separately (V, 6336). Clause 12(a)(3) of rule XXII provides additional statements on the meetings, discussions, and signatures of House managers. Clause 13 of rule XXII provides a point of order against consideration of a conference report that differs in a non-clerical manner from the version placed before the House managers for signature.

§ 549. Action on a conference report in the two Houses.

The report of the managers of a conference goes first to one House and then to the other, neither House acting until it is in possession of the papers, which means the original bill and amendments, as well as the report (V, 6322, 6518–6522, 6586; VIII, 3301). The report must be acted on as a whole, being agreed to or disagreed to as an entirety (V, 6472–6480, 6530–6533; VIII, 3304, 3305; Speaker Bankhead, Aug. 22, 1940, p. 10763; Speaker Albert, Nov. 10, 1971, p. 40481); and until the report has been acted on no motion to deal with the individual amendments is in order (V, 6323, 6389, 6390; Speaker Rayburn, Mar. 16, 1942, pp. 2502–04). Under a special order of business recommended by the Committee on Rules, the House has considered a single, indivisible motion to adopt not only a conference report but also sundry motions to dispose of amendments reported from conference in disagreement (June 18, 1992, p. 15453). Although ordinarily reports are agreed to by majority vote, a two-thirds vote is required on a report relating to a constitutional amendment (V, 7036). Conference reports must be acted on in both Houses and, in a case in which the Senate had adopted a report recommending that it recede from its amendments to a House bill, the House rejected the report and then agreed to the Senate amendments (Mar. 21, 1956, p. 5278). A conference report being made up but not acted on at the expiration of a Congress, the bill is lost (V,

6309). One House has, by message, reminded the other of its neglect to act on a conference report; but this was an occasion of criticism (V, 6309).

§ 550. Motions in order during action on a conference report.

When a conference report is presented, the question on agreeing is regarded as pending (V, 6517; VIII, 3300), and as the negative of it is equivalent to disagreement, the motion to disagree is not admitted (II, 1473; V, 6517; VIII, 3300). The reading of the amendments to which the report relates is not in order during its consideration (V, 5298). The report may not be amended on motion made in either House alone (V, 6534, 6535; VIII, 3306), but amendment is sometimes made by concurrent action of the two Houses (V, 6536, 6537; VIII, 3308). A motion to refer to a standing committee (V, 6558) or to lay on the table is not entertained in the House (V, 6538–6544); and a conference report may not be sent to Committee of the Whole on suggestion that it contains matter ordinarily requiring consideration in that committee (V, 6559–6561). It is in order on motion to recommit a conference report if the other body, by action on the report, have not discharged their managers (V, 6545–6553, 6609; VIII, 3310), and by concurrent resolution a report may be recommitted to conference after each House has acted thereon (VIII, 3316), but such a proposition would not be privileged in the House (V, 6554–6557; VIII, 3309).

A bill being recommitted to the committee of conference, no further action is taken by the House until it is again reported by the managers (VIII, 3326, 3327), and when reported is subject to another motion to recommit (VIII, 3325). Because instructions included in a motion to recommit a conference report are not binding, adoption of such a motion opens to further negotiation all issues committed to conference (Apr. 21, 1988, p. 8198). A motion to recommit a conference report may not instruct House managers to exceed the scope of conference (§ 1088, *infra*); and, under clause 7(d) of rule XXII, a motion to instruct may not contain argument (§ 1079, *infra*).

§ 551. Effect of disagreement to a conference report.

When either House disagrees to a conference report the matter is left in the position it was in before the conference was asked (V, 6525), and the amendments in disagreement come up for further action (II, 1473), but do not return to the state they were in before disagreement, so that they need not be considered in Committee of the Whole (V, 6589). Motions for disposition of Senate amendments, sending to conference and instruction of conferees, are again in order (VIII, 3303). However, if a conference report is considered as rejected pursuant to the provisions of clause 10 of rule XXII because of the inclusion of nongermane matter, the pending question is as specified in that clause and, depending on the nature of the text in disagreement, may be to recede and concur with an amendment, to insist on the House position, or to insist on disagreement (see §§ 1089, 1090, *infra*).

§ 552. Custody of papers when a conference is asked before disagreement.

A conference may be asked, before the House asking it has come to a resolution of disagreement, insisting or adhering. *3 Hats., 269, 341.* In which case the papers are not left with the other conferees, but are brought back to the foundation of the vote to be given. And this is the most reasonable and respectful proceeding; for, as was urged by the Lords on a particular occasion, "it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade." *3 Hats., 226.*
* * *

In the Houses of Congress conferences are sometimes asked before a disagreement, and while the rule as to retention of the papers undoubtedly holds good, neglect to observe it has not been questioned (V, 6585).

§ 553. Relations of adherence and conference under the parliamentary law.

* * * So the Commons say, "an adherence is never delivered at a free conference, which implies debate." *10 Grey, 137.* And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons that nothing was more parliamentary than to proceed with free conferences after adhering, *3 Hats., 269,* and we do in fact see instances of conference, or of free conference, asked after the resolution of disagreeing, *3 Hats., 251, 253, 260, 286, 291, 316, 349;* of insisting, *ib., 280, 290, 299, 319, 322, 355;* of adhering, *269, 270, 283, 300;* and even of a second or final adherence. *3 Hats., 270.* * * *

§ 554. Relations of adherence and conference under the practice of the two Houses of Congress.

The two Houses not observing the parliamentary distinctions as to free and other conferences, their practice in case of adherence is also different. Conferences are not asked after an adherence by both Houses, but have often been asked and granted where only one House has adhered (V, 6241–6244). A vote to adhere may not be accompanied by a request for a conference (V, 6303; VIII, 3208), because the House that votes to adhere does not ask a conference (V, 6304–6308). The request for a conference in such a case is properly accompanied by a motion to insist (V, 6308). And the House that has adhered may insist on its adherence when it agrees to the conference (V, 6251). But it is not considered necessary either to recede or insist before agreeing to the conference (V, 6242, 6244, 6310, 6311).

§ 555. Custody of the papers after an effective conference.

* * * And in all cases of conference asked after a vote of disagreement, &c., the conferees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them they were left on the table in the conference chamber. *Ib., 271, 317, 323, 354; 10 Grey, 146.*

This principle of the parliamentary law is recognized in both Houses, and is customarily followed in cases wherein the managers of the conference come to an agreement on which a report may be based (July 31, 1981, p. 18884). If conferees of House agreeing to conference surrender papers to House asking conference, the report can be received first by House asking the conference (VIII, 3330). In the 101st Congress, where a report following a successful conference was filed in both Houses, an objection to a unanimous-consent request in the Senate prevented the release of papers held at the Senate desk to the House, where the Senate in the normal course of events was scheduled to act first on the report (June 28, 1990, p. 16249).

§ 556. Custody of papers when managers of a conference fail to agree.

Where a conference breaks up without reaching any agreement the managers for the House that requested the conference, who have the papers by right, are justified in retaining them and carrying them back to the House (IV, 3905, footnote; V, 6246, 6254, 6571–6584; VIII, 3332). And in one case wherein under such circumstances the papers were taken back to the Senate, which was the body agreeing to the conference, the Senate after consideration sent them to the House, because it seemed proper for the asking House to take the first action (V, 6573).

But sometimes managers have brought the papers to the agreeing House without question (V, 6239, footnote; July 14, 1988, p. 18411).

§ 557. Free or instructed conferences.

After a free conference the usage is to proceed with free conferences and not to return again to a conference. *3 Hats., 270; 9 Grey, 229.*

After a conference denied a free conference may be asked. *1 Grey, 45.*

The House instructs its managers whenever it sees fit, without regard to whether or not the preceding conference has been free or instructed.

§ 558. Parliamentary law as to purposes for which conferences may be held.

When a conference is asked, the subject of it must be expressed or the conference not agreed to. *Ord. H. Com., 89; 1 Grey, 425; 7 Grey, 31.* They are sometimes asked to inquire concerning an offense or default of a member of the other House. *6 Grey, 181; 1 Chand., 304.* Or the failure of the other House to present to the King a bill passed by both Houses. *8 Grey, 302.* Or on information received and relating to the safety of the nation. *10 Grey, 171.* Or when the methods of Parliament are thought by the one House to have been departed from by the other a conference is asked to come to a right understanding thereon. *10 Grey, 148.* So when an unparliamentary message has been sent, instead of answering it they ask a conference. *3 Grey, 155.* Formerly an address or articles of impeachment or a bill, with amendments, or a vote of the House, or concurrence in a vote, or a message from the King were sometimes communicated by way of conference. *6 Grey, 128, 300, 387; 7 Grey, 80; 8 Grey, 210, 255; 1 Torbuck's Deb., 278; 10 Grey,*

293; 1 Chandler, 49, 287. But this is not the modern practice. *8 Grey, 255.*

§ 559. Obsolete provision as to conference on first reading.

A conference has been asked after the first reading of a bill. *1 Grey, 194.* This is a singular instance.

The House has no procedure conforming to this provision.

SEC. XLVII—MESSAGES

§ 560. Messages sent only when both Houses are sitting.

Messages between the Houses are to be sent only while both Houses are sitting. *3 Hats., 15.* * * *

Formerly this rule was observed (V, 6603, 6604), but since the 62d Congress messages have been received by the House when the Senate was not in session (VIII, 3338). Clause 2 of rule II was added in the 97th Congress, and amended in the 111th Congress, to authorize the Clerk to receive messages at any time that the House is not in session (H. Res. 5, Jan. 5, 1981, p. 98) or in recess (H. Res. 5, Jan. 6, 2009, p. __).

§ 561. Messages received during debate.

* * * They are received during a debate without adjourning the debate. *3 Hats., 22.*

In the House messages are received during debate, the Member having the floor yielding on request of the Speaker.

§ 562. Reception of messages during voting, in absence of a quorum, etc.

In Senate the messengers are introduced in any state of business, except: 1. While a question is being put. 2. While the yeas and nays are being called. 3. While the ballots are being counted. The first case is short; the second and third are cases where any interruption might occasion errors difficult to be corrected. So arranged June 15, 1798.

In the House messages are not received while a question is being put or during a vote by division. However, they are received during the call of the yeas and nays, during consideration of a question of privilege (V, 6640–6642), during a call of the House (V, 6600), during debate on a motion

to approve the Journal (Sept. 13, 1965, p. 23607), and before the organization of the House (V, 6647–6649). But the Speaker exercises discretion about interrupting the pending business (V, 6602).

§ 563. Informal rising of Committee of the Whole to receive a message.

In the House, as in Parliament, if the House be in committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into committee without any question or interruption. *4 Grey, 226.*

§ 564. Salutation of messengers by the Speaker.

Messengers are not saluted by the Members, but by the Speaker for the House. *2 Grey, 253, 274.*

The practice of the House as to reception of messages is founded on this paragraph of the parliamentary law and on the former joint rules (V, 6591–6595). The Speaker, with a slight inclination, addresses the messenger, by title, after the messenger, with an inclination, has addressed the Speaker (V, 6591).

§ 565. Correction and return of messages.

If messengers commit an error in delivering their message, they may be admitted or called in to correct their message. *4 Grey, 41.* Accordingly, March 13, 1800, the Senate having made two amendments to a bill from the House, their Secretary, by mistake, delivered one only, which being inadmissible by itself, that House disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The Secretary was sent to the other House to correct his mistake, the correction was received, and the two amendments acted on de novo.

A request of one House for the return of a bill messaged to the other, or the request of one House to correct an error in its message to the other, may qualify as privileged in the House or may be disposed of by unanimous consent (III, 2613; V, 6605; Deschler, ch. 32, § 2; Oct. 1, 1982, p. 27172; May 20, 1996, p. 11809). For example: (1) the House by unanimous consent agreed to a request from the Senate for the return of a Senate bill, to

the end that the Senate effect a specified (substantive) change in its text (May 7, 1998, p. 8386) or to the end that the bill be recommitted to committee (July 15, 2004, p. 15890); (2) the House by unanimous consent directed its Clerk to correct an error in a message to the Senate (V, 6607); (3) the House, upon receipt of a request by the Senate to return a bill during consideration of the conference report accompanying that bill, laid the conference report aside and agreed to the Senate request (V, 6609); (4) the House requested the return of a message indicating passage of a Senate joint resolution after learning that both Houses had previously passed an identical House Joint Resolution, so that it could indefinitely postpone action thereon (Nov. 16, 1989, p. 29587); (5) the Speaker laid before the House as privileged a message from the Senate requesting the return of a message where it had erroneously appointed conferees to a bill after the papers had been messaged to the House, so that the message could be changed to reflect the appointment of Senate conferees (May 20, 1996, p. 11809); (6) the Speaker laid before the House as privileged a message from the Senate requesting the return of a Senate bill that included provisions intruding on the constitutional prerogative of the House to originate revenue measures (Oct. 19, 1999, p. 25901; Sept. 28, 2004, p. 19724; Sept. 30, 2004, p. 20045); (7) where the engrossment failed to depict certain action of the House, the House considered and agreed to a privileged resolution requesting the Senate to return the engrossment of a House bill (July 15, 2004, p. 15890) and a House-passed Senate bill (Oct. 8, 2004, p. 22630); (8) the Speaker laid before the House as privileged a message from the Senate requesting the return of Senate amendments to a House bill where the engrossment failed to properly depict the action of the Senate (July 14, 2005, p. 15932).

§ 566. Disposal of messages after reception.

As soon as the messenger who has brought bills from the other House has retired, the Speaker holds the bills in his hand; and acquaints the House "that the other House have by their messenger sent certain bills," and then reads their titles, and delivers them to the Clerk to be safely kept till they shall be called for to be read. *Hakew., 178.*

In the House the message goes to the Speaker's table for disposition under clause 2 of rule XIV. The Speaker does not acquaint the House, because it has already heard the message.

§ 567. Information by message as to bills passed.

It is not the usage for one House to inform the other by what numbers a bill is passed. *10 Grey, 150.* Yet they have sometimes recommended a bill, as of great importance, to the consideration of the House to which it is sent. *3 Hats., 25.* * * *

The Houses of Congress do not communicate by what numbers a bill is passed, or otherwise recommend their bills.

§ 568. Information by message as to rejection of bills.

* * * Nor when they have rejected a bill from the other House, do they give notice of it; but it passes sub silentio, to prevent unbecoming altercations. *1 Blackst., 183.*

But in Congress the rejection is notified by message to the House in which the bill originated.

In the two Houses of Congress the fact of the rejection of a bill is messaged to the House in which the bill originated, as in the days of Jefferson, although the joint rule requiring it has disappeared (IV, 3422; V, 6601). And in a case wherein the House had stricken the enacting words of a Senate bill, the Senate was notified that the bill had been rejected (IV, 3423; VII, 2638; Oct. 4, 1972, pp. 33785–87).

§ 569. Questions asked by conference, not by message.

A question is never asked by the one House of the other by way of message, but only at a conference; for this is an interrogatory, not a message. *3 Grey, 151, 181.*

In 1798 the House asked of the Senate a question by way of conference, but this appears to be the only instance (V, 6256).

§ 570. Messages as to neglected bills.

When a bill is sent by one House to the other, and is neglected, they may send a message to remind them of it. *3 Hats., 25; 5 Grey, 154.* But if it be mere inattention, it is better to have it done informally by

communication between the Speakers or Members of the two Houses.

It does not appear that either House of Congress has by message reminded the other of a neglected bill.

§ 571. Messages from the President to the two Houses.

Where the subject of a message is of a nature that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both on the same day. But where a message was accompanied with an original declaration, signed by the party to which the message referred, its being sent to one House was not noticed by the other, because the declaration being original, could not possibly be sent to both Houses at the same time. *2 Hats., 260, 261, 262.*

The King having sent original letters to the Commons afterward desires they may be returned, that he may communicate them to the Lords. *1 Chandler, 303.*

A message of the President of the United States is usually communicated to both Houses on the same day when its nature permits (V, 6590); but an original document accompanying can, of course, be sent to but one House (V, 6616, 6617). The President having by inadvertence included certain papers in a message, was allowed to withdraw them (V, 6651). In the House the Speaker has the discretion, which is rarely exercised, to suspend a roll call in order to receive a message from the President.

SEC. XLVIII—ASSENT

§ 572. Parliamentary law as to presenting a bill for the King's assent.

The House which has received a bill and passed it may present it for the King's assent, and ought to do it, though they have not by message notified to the other their passage of it. Yet the notifying by message is a form which ought to be

observed between the two Houses from motives of respect and good understanding. *2 Hats., 242.* Were the bill to be withheld from being presented to the King, it would be an infringement of the rules of Parliament. *Ib.*

In the House it was held that where there had been no unreasonable delay in transmitting an enrolled bill to the President, a resolution relating thereto did not present a question of privilege (III, 2601), but a resolution seeking such a determination may be privileged (Oct. 8, 1991, p. 25761).

§ 573. Parliamentary law as to enrollment of bills.

When a bill has passed both Houses of Congress, the House last acting on it notifies its passage to the other, and delivers the bill to the Joint Committee on Enrollment, who sees that it is truly enrolled in parchment. When the bill is enrolled it is not to be written in paragraphs, but solidly, and all of a piece, that the blanks between the paragraphs may not give room for forgery. *9 Grey, 143.* * * *

§ 574. Practice of the two Houses of Congress as to enrollment of bills.

Formerly the enrollment in the House and the Senate was in writing (IV, 3436, 3437); but in 1893 the two Houses, by concurrent resolution, provided that bills should be enrolled on parchment by printing instead of by writing, and also that the engrossment of bills before sending them to the other House for action should be in printing (IV, 3433), and in 1895 this concurrent resolution was approved by statute (IV, 3435; 1 U.S.C. 106). In the last six days of a session of Congress the two Houses, by concurrent resolution, may permit the enrolling and engrossing to be done by hand (IV, 3435, 3438; H. Con. Res. 436, Dec. 20, 1982, p. 32875; H. Con. Res. 375, Oct. 11, 1984, p. 32149), and such a concurrent resolution is privileged for consideration in the House during the last six days of the session (see 1 U.S.C. 106 for authority to waive ordinary printing requirements at the end of a session), but before the last six days, a joint resolution waiving the law to permit hand enrollments is required and may be considered in the House by unanimous consent (Dec. 10, 1985, p. 35741) or by special order of business (H. Res. 580, Oct. 8, 1998, p. 24735). The two Houses have by joint resolution authorized not only a "hand enrollment" of a time-sensitive bill but also a parchment enrollment of the same measure, to be prepared at a later time for deposit

in the National Archives with the original (P.L. 100–199, Dec. 21, 1987; P.L. 100–454, Sept. 29, 1988). Where an enrolled bill enacts another numbered bill by reference, that same law may require the Archivist to include as an appendix to that law the text of the referenced bill (see, *e.g.,* P.L. 106–554). Only in a very exceptional case have the two Houses waived the requirement that bills shall be enrolled (IV, 3442). The enrolling clerk should make no change, however unimportant, in the text of a bill to which the House has agreed (III, 2598); but the two Houses may by concurrent resolution authorize the correction of an error when enrollment is made (IV, 3446–3450), and this seems a better practice than earlier methods by authority of the Committee on Enrolled Bills (IV, 3444, 3445).

§ 575. Signing of enrolled bills for presentation to the President.

* * * It is then put into the hands of the Clerk of the House to have it signed by the Speaker. The Clerk then brings it by way of message to the Senate to be signed by their President. The Secretary of the Senate returns it to the Committee of Enrollment, who present it to the President of the United States. * * *

The practice of the two Houses of Congress for the signing of enrolled bills was formerly governed by joint rules, and has continued since those rules were abrogated in 1876 (IV, 3430). The bills are signed first by the Speaker, then by the President of the Senate (IV, 3429). Where errors are found in enrolled bills that have been signed, the two Houses by concurrent action may authorize the cancellation of the signatures and a reenrollment (IV, 3453–3459), and in the same way the signatures may be cancelled on a bill prematurely enrolled (IV, 3454).

§ 576. Authority of pro tempore presiding officers to sign enrolled bills.

A Speaker pro tempore elected by the House (II, 1401), or whose designation has received the approval of the House (II, 1404; VI, 277; clause 8 of rule I), signs enrolled bills (see clause 4 of rule I); but a Member merely called to the chair during the day (II, 1399, 1400; VI, 276), or designated in writing by the Speaker, does not exercise this function (II, 1401).

The Senate, by rule, has empowered a presiding officer by written designation to sign enrolled bills (II, 1403).

§ 577. Presentation of enrolled bills to the President.

In early days a joint committee took enrolled bills to the President (IV, 3432); but in the later practice the chair of the committee in each House that had responsibility for the enrollment of bills also had the responsibility of presenting the bills from that House, and submitted from his committee daily a report of the bills presented for entry in the Journal

(IV, 3431). In the 107th Congress the responsibility in the House for enrolled bills was transferred from the Committee on House Administration to the Clerk (sec. 2(b), H. Res. 5, Jan. 3, 2001, p. 25). Enrolled bills pending at the close of a session have, at the next session of the same Congress, been ordered to be treated as if no adjournment had taken place (IV, 3487–3488). Enrolled bills signed by the presiding officers at one session have been sent to the President and approved at the next session of the same Congress (IV, 3486). Enrollments presented at the close of the 97th Congress were signed by the President after the convening of the 98th Congress.

SEC. XLIX—JOURNALS

* * * * *

§ 578. Obsolete provisions as to entry of motions in the journal.

If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote; but when suppressed by the previous question, the first question must be stated, in order to introduce and make intelligible the second. *2 Hats., 83.*

This provision of the parliamentary law is superseded by clause 1 of rule XVI, which requires every motion entertained by the Speaker to be entered on the Journal.

§ 579. Journal entries of questions postponed or laid on the table.

So also when a question is postponed, adjourned, or laid on the table, the original question, though not yet a vote, must be expressed in the journals, because it makes part of the vote of postponement, adjourning, or laying it on the table.

In the House a question is not adjourned, except in the sense that it may be left to go over as unfinished business by reason of a vote to adjourn.

§ 580. Entry of amendments in the Journal.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as finally agreed to by the House. The rule of entering in the journals only what the House has agreed to, is founded in great prudence and good sense, as there may be many questions proposed which it may be improper to publish to the world in the form in which they are made. *2 Hats., 85.*

In the practice of the House a motion to amend is entered on the Journal as any other motion, under clause 1 of rule XVI.

* * * * *

§ 581. Entry of votes in journal of the House of Commons.

The first order for printing the votes of the House of Commons was October 30, 1685. *1 Chandler, 387.*

§ 582. The Journal as an official record.

Some judges have been of opinion that the journals of the House of Commons are no records, but only remembrances. But this is not law. *Hob., 110, 111; Lex. Parl., 114, 115; Jour. H. C., Mar. 17, 1592; Hale, Parl., 105.* For the Lords in their House have power of judicature, the Commons in their House have power of judicature, and both Houses together have power of judicature; and the book of the Clerk of the House of Commons is a record, as is affirmed by act of Parl., *6 H. 8, c. 16; 4 Inst., 23, 24;* and every member of the House of Commons hath a judicial place. *4 Inst., 15.* As records they are open to every person, and a printed vote of either House is sufficient ground for the other to notice it. Either may ap-

point a committee to inspect the journals of the other, and report what has been done by the other in any particular case. *2 Hats., 261; 3 Hats., 27–30.* Every member has a right to see the journals and to take and publish votes from them. Being a record, every one may see and publish them. *6 Grey, 118, 119.*

The Journal of the House is the official record of the proceedings of the House (IV, 2727), and certified copies are admitted as evidence in the courts of the United States (IV, 2810; 28 U.S.C. 1736). A Senate committee concluded that the Journal entries of a legislative body were conclusive as to all the proceedings had, and might not be contradicted by ex parte evidence (I, 563).

§ 583. Correction of the Journal through a committee.

On information of a misentry or omission of an entry in the journal, a committee may be appointed to examine and rectify it, and report it to the House. *2 Hats., 194, 195.*

SEC. L—ADJOURNMENT

§ 584. Parliamentary law as to adjournment of the Commons and Lords.

The two Houses of Parliament have the sole, separate, and independent power of adjourning each their respective Houses. The King has no authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either House to comply with his requisition, or not, as they see fitting. *2 Hats., 232; 1 Blackst., 186; 5 Grey, 122.*

* * * * *

§ 585. Motion to adjourn not to be amended.

A motion to adjourn, simply cannot be amended, as by adding "to a particular day;" but must be put simply "that this House do now adjourn;" and if

carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution, "that at its rising it will adjourn to a particular day," and then the House is adjourned to that day. *2 Hats., 82.*

The modern practice of the House adheres to this principle (§§ 912, 913, *infra*). Clause 4 of rule XVI admits at the discretion of the Speaker a separate motion of equal privilege that when the House adjourns on that day it stand adjourned to a day and time certain (consistent with article I, section 5, clause 4 of the Constitution, not in excess of three days).

§ 586. Motion for a recess.

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c., it adjourns during pleasure; *2 Hats., 305;* or for a quarter of an hour. *4 Grey, 331.*

An adjournment during pleasure is effected in the House by a motion for a recess. A recess may not be taken by less than a quorum (IV, 2958–2960), and consequently the motion for it is not in order in the absence of a quorum (IV, 2955–2957). When the hour previously fixed for a recess arrives, the Chair declares the House in recess even in the midst of a division or when a quorum is not present (IV, 664; V, 6665, 6666); but a roll call is not in this way interrupted (V, 6054, 6055). Where a special order requires a recess at a certain hour of a certain day, the recess is not taken if the encroachment of a prior legislative day prevents the existence of said certain day as a legislative day (IV, 3192). And an adjournment at a time before the hour fixed for a recess vacates the recess (IV, 3283). A motion for a recess must, when entertained, be voted on, even though the taking of the vote may have been prevented until after the hour specified for the conclusion of the proposed recess (V, 6667). A Committee of the Whole takes a recess only by permission of the House (V, 6669–6671; VIII, 3362). The motion for a recess is not privileged (V, 4302, 5301, 6740), in the House or in Committee of the Whole (June 26, 1981, p. 14356) against a demand that business proceed in the regular order (V, 6663; VIII, 3354–3356). However, beginning in the 102d Congress a motion to authorize the Speaker to declare a recess was given a privilege equal to that of the motion to adjourn (clause 4 of rule XVI); and beginning in the 103d Congress the Speaker was authorized to declare a recess "for a short time when no question is pending" (clause 12 of rule I). For the Speaker's authority to declare an emergency recess when notified of an imminent threat to the safety of the House, see § 639, *infra*.

§ 587. Adjournment pronounced by the Speaker.

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it. *5 Grey, 137.* And from courtesy and respect, no member leaves his place till the Speaker has passed on.

SEC. LI—A SESSION

§ 588. Sessions of Parliament.

Parliament have three modes of separation, to wit: by adjournment, by prorogation or dissolution by the King, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act was passed. In this case all matters depending before them are discontinued, and at their next meeting are to be taken up de novo, if taken up at all. *1 Blackst., 186.* Adjournment, which is by themselves, is no more than a continuance of the session from one day to another, of for a fortnight, a month, &c., ad libitum. All matters depending remain in statu quo, and when they meet again, be the term ever so distant, are resumed, without any fresh commencement, at the point at which they were left. *1 Lev., 165; Lex. Parl., c. 2; 1 Ro. Rep., 29; 4 Inst., 7, 27, 28; Hutt., 61; 1 Mod., 252; Ruffh. Jac., L. Dict. Parliament; 1 Blackst., 186.* Their whole session is considered in law but as one day, and has relation to the first day thereof. *Bro. Abr. Parliament, 86.*

§ 589. Sitting of committees in recesses and creation of commissions to sit after Congress adjourns.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. *5 Grey, 374; 9 Grey, 350; 1 Chandler, 50.* Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.

The House may empower a committee to sit during a recess that is within the constitutional term of the House (IV, 4541–4543), but not thereafter (IV, 4545). A commission created by law may operate beyond the term of the Congress in which it was created (IV, 4545). Under clause 2(m)(1)(A) of rule XI, all committees are authorized to sit and act anywhere within the United States, and to issue subpoenas, whether the House is in session or has adjourned to a date certain or adjourned sine die, even after the second regular session of a Congress until the end of the constitutional term. Under clause 1(b)(4) of rule XI, all committees are authorized to file investigative reports and annual activities reports following adjournment sine die.

§ 590. Sessions and recesses of Congress.

Congress separate in two ways only, to wit, by adjournment, or dissolution by the efflux of their time. What, then, constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes the President, "on extraordinary occasions to convene both Houses, or either of them." *I. 3.* If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So if it meets under the clause of the Constitution which says, "the Congress shall assemble at least once in every year, and such

meeting shall be on the first Monday in December, unless they shall by law appoint a different day." *I. 4.* This must begin a new session; for even if the last adjournment was to this day the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed landmarks for determining sessions. * * *

The twentieth amendment to the Constitution, clause 2, now provides that the Congress shall assemble at least once in every year, at noon on the 3d day of January, unless they shall by law appoint a different day. Section 132 of the Legislative Reorganization Act of 1946, 60 Stat. 812, as amended by section 461 of the Legislative Reorganization Act of 1970, 84 Stat. 1140, provides that except in time of war the two Houses shall adjourn sine die not later than the last day of July (Sundays excepted) unless otherwise provided by the Congress. (For form of resolution used to continue in session past July 31, see H. Con. Res. 648, 92d Cong., July 25, 1972, p. 25145.) The same section contemplates an adjournment of Congress from the thirtieth day before to the second day following Labor Day in the first session of a Congress (each odd-numbered year) in lieu of an adjournment sine die. See § 1106, *infra*. Congress is adjourned for more than three days by a concurrent resolution (IV, 4031, footnote), and such adjournments to a day certain, within the session, do not terminate the session (V, 6676, 6677). In one instance the two Houses by concurrent resolution provided for adjournment to a day certain with the provision that if there be no quorum present on that day the session should terminate (V, 6686). Before the adoption of the twentieth amendment it had become established practice that a meeting of Congress once within the year did not make uncertain the constitutional mandate to meet on the first Monday of December (I, 10, 11). And where a special session continued until the time prescribed by the Constitution for the annual meeting without an appreciable intervening time (V, 6690, 6692), a question arose as to whether there had actually been a recess of Congress (V, 6687, 6693), with the conclusion that a recess was a real and not an imaginary time (V, 6687).

§ 591. Manner of closing a session by action of the two Houses.

* * * In other cases it is declared by the joint vote authorizing the President of the Senate and the Speaker to close the session on a fixed day, which is usually in the following form: "Resolved by the

Senate and House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the ____ day of ____."

In the modern practice the resolving clause of the concurrent resolution is in form different from that given by Jefferson. For a history and chronology of adjournment resolutions, see § 84, *supra*.

§ 592. Parliamentary law as to business at the termination of a session.

When it was said above that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued, of course, to the next session. *Raym., 120, 381; Ruffh. Fac., L. D., Parliament.*

Impeachments stand, in like manner, continued before the Senate of the United States.

For a discussion of continuance of impeachments, see § 620, *infra*.

SEC. LII—TREATIES

* * * * *

§ 593. General nature of treaties.

Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power; and there, also, if they touch the laws of the land they must be approved by Parliament. Ware *v.* Hylton, *3 Dallas's Rep., 223.* It is acknowledged, for in-

stance, that the King of Great Britain cannot by a treaty make a citizen of an alien. *Vattel, b. 1, c. 19, sec. 214.* An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament; but a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty. *4 Russell's Hist. Mod. Europe, 457; 2 Smollet, 242, 246.*

§ 594. Jefferson's discussion of treaties under the Constitution.

By the Constitution of the United States this department of legislation is confined to two branches only of the ordinary legislature—the President originating and the Senate having a negative. To what subjects this power extends has not been defined in detail by the Constitution; nor are we entirely agreed among ourselves. 1. It is admitted that it must concern the foreign nation party to the contract, or it would be a mere nullity, res inter alias acta. 2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and can not be otherwise regulated. 3. It must have meant to except out of these the rights reserved to the States; for surely the President and Senate can not do by treaty what the whole Government is interdicted from doing in any way. 4. And also to except those subjects of legislation in which it gave a

participation to the House. This last exception is denied by some on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the executive alone, the subjecting to the ratification of the representatives such articles as are within their participation is no more inconvenient than to the Senate. But the ground of this exception is denied as unfounded. For examine, *e.g.*, the treaty of commerce with France, and it will be found that, out of thirty-one articles, there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions.

§ 595. General action of the House as to treaties.

The participation of the House in the treaty-making power has been often examined since Jefferson's Manual was written. The House has in several instances taken action in carrying into effect, terminating, enforcing, and suggesting treaties (II, 1502–1505, 1520–1522), although sometimes the propriety of requesting the executive to negotiate a treaty has been questioned (II, 1514–1517).

§ 596. Authority of the House as to treaties in general.

The exact authority of the House in the making of general treaties has been the subject of differences of opinion. In 1796 the House affirmed that, when a treaty related to subjects within the power of Congress, it was the constitutional duty of the House to deliberate on the expediency of carrying such treaty into effect (II, 1509); and in 1816, after a discussion with the Senate, the House maintained its position that a treaty must depend on a law of Congress for its execution as to such stipulations as relate to subjects constitutionally entrusted to Congress (II, 1506). In 1868 the House's assertion of right to a voice in carrying out the stipulations of certain treaties was conceded in a modified form (II, 1508). Again, in 1871, the House asserted its prerogative (II, 1523). In 1820 and 1868 there were discussions of the House's functions as to treaties ceding or acquiring

foreign territory (II, 1507, 1508), and at various other times there have been discussions of the general subject (II, 1509, 1546, 1547; VI, 324–326).

§ 597. Authority of the House as to revenue treaties.

After long and careful consideration the Judiciary Committee of the House decided, in 1887, that the executive branch of the Government might not conclude a treaty affecting the revenue without the assent of the House (II, 1528–1530), and a Senate committee after examination concluded that duties were more properly regulated with the publicity of congressional action than by treaties negotiated by the President and ratified by the Senate in secrecy (II, 1532). In practice the House has acted on revenue treaties (II, 1531, 1533); and in 1880 it declared the negotiation of a revenue treaty an invasion of its prerogatives (II, 1524). At other times the subject has been discussed (II, 1525–1528, 1531, 1533).

§ 598. House approves Indian treaties.

After long discussion the House, in 1871, successfully asserted its right to a voice in approving Indian treaties (II, 1535, 1536), although in earlier times this prerogative had been jealously guarded by the executive (II, 1534).

There have been various conflicts with the executive over requests of the House for papers relating to treaties (II, 1509–1513, 1518, 1519, 1561).

§ 599. Treaties abrogated by law.

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798.

Notice to a foreign government of the abrogation of a treaty is authorized by a joint resolution (V, 6270). A resolution alleging an unconstitutional abrogation of a treaty by the President, and calling on the President to seek the approval of Congress before such abrogation, does not constitute a question of the privileges of the House under rule IX (June 6, 2002, pp. 9492–98 (sustained by tabling of appeal)).

§ 600. Procedure of the Senate as to treaties.

It has been the usage for the Executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiators. This having been omitted in the case of the Prussian treaty, was asked by a vote of the House of February 12, 1800, and was obtained.

And in December, 1800, the convention of that year between the United States and France, with the report of the negotiations by the envoys, but not their instructions, being laid before the Senate, the instructions were asked for and communicated by the President.

The mode of voting on questions of ratification is by nominal call.

The Senate now has rules governing its procedure on treaties.

SEC. LIII—IMPEACHMENT

* * * * *

§ 601. Jurisdiction of Lords and Commons as to impeachments.

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject:

Jurisdiction. The Lords can not impeach any to themselves, nor join in the accusation, because they are the judges. *Seld. Judic. in Parl., 12, 63.* Nor can they proceed against a commoner but on complaint of the Commons. *Ib., 84.* The Lords may not, by the law, try a commoner for a capital offense, on the information of the King or a private person, because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of the offense; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict.

So the Lords do only judge, but not try the delinquent. *Ib., 6, 7.* But Wooddeson denies that a commoner can now be charged capitally before the Lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the Lords remitted the prosecution to the inferior court. *8 Grey's Deb., 325–7; 2 Wooddeson, 576, 601; 3 Seld., 1604, 1610, 1618, 1619, 1641; 4 Blackst., 25; 9 Seld., 1656; 73 Seld., 1604–18.*

§ 602. Parliamentary law as to accusation in impeachment.

Accusation. The Commons, as the grand inquest of the nation, becomes suitors for penal justice. *2 Wood., 597; 6 Grey, 356.* The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The person signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the peers will take order for his appearance. *Sachev. Trial, 325; 2 Wood., 602, 605; Lords' Journ., 3 June, 1701; 1 Wms., 616; 6 Grey, 324.*

§ 603. Inception of impeachment proceedings in the House.

In the House various events have been credited with setting an impeachment in motion: charges made on the floor on the responsibility of a Member or Delegate (II, 1303; III, 2342, 2400, 2469; VI, 525, 526, 528, 535, 536); charges preferred by a memorial, which is usually referred to a committee for examination (III, 2364, 2491, 2494, 2496, 2499, 2515; VI, 543); a resolution introduced by a Member and referred to a committee (Apr. 15, 1970, p. 11941; Oct. 23, 1973, p. 34873); a message from the President (III, 2294, 2319; VI, 498); charges transmitted from the legislature of a State (III, 2469) or territory (III, 2487) or from a grand jury (III, 2488); or facts developed and reported by an investigating com-

mittee of the House (III, 2399, 2444). In the 93d Congress, the Vice President sought to initiate an investigation by the House of charges against him of possibly impeachable offenses. The Speaker and the House took no action on the request because the matter was pending in the courts and the offenses did not relate to activities during the Vice President's term of office (Sept. 25, 1973, p. 31368; III, 2510 (wherein the Committee on the Judiciary, to which the matter had been referred by privileged resolution, reported that the Vice President could not be impeached for acts or omissions committed before his term of office)). On the other hand, in 1826 the Vice President's request that the House investigate charges against his prior official conduct as Secretary of War was referred, on motion, to a select committee (III, 1736). On September 9, 1998, an independent counsel transmitted to the House under 28 U.S.C. 595(c) a communication containing evidence of alleged impeachable offenses by the President. The House adopted a privileged resolution reported by the Committee on Rules referring the communication to the Committee on the Judiciary, restricting Members' access to the communication, and restricting access to committee meetings and hearings on the communication (H. Res. 525, Sept. 11, 1998, p. 20020). Later, the House adopted a privileged resolution reported by the Committee on the Judiciary authorizing an impeachment inquiry by that committee (H. Res. 581, Oct. 8, 1998, p. 24679). The authority to appoint an independent counsel under 28 U.S.C. 573 expired on June 30, 1999.

§ 604. A proposition to impeach a question of privilege.

A direct proposition to impeach is a question of high privilege in the House and at once supersedes business otherwise in order under the rules governing the order of business (III, 2045–2048, 2051, 2398; VI, 468, 469; July 22, 1986, p. 17294; Aug. 3, 1988, p. 20206; May 10, 1989, p. 8814; Sept. 23, 1998, pp. 21560–62; Nov. 6, 2007, p. 29817; June 10, 2008, p. __; July 15, 2008, p. __; see Deschler, ch. 14, § 8). It may not even be superseded by an election case, which is also a matter of high privilege (III, 2581). It does not lose its privilege from the fact that a similar proposition has been made at a previous time during the same session of Congress (III, 2408; July 15, 2008, __ (see June 10, 2008, __)), previous action of the House not affecting it (III, 2053). As such, a report of the Committee on the Judiciary accompanying an impeachment resolution is filed from the floor as privileged (Dec. 17, 1998, p. 27819), and is called up as privileged (Dec. 18, 1998, p. 27828). The addition of new articles of impeachment offered by the managers but not reported by committee are also privileged (III, 2401), as is a proposition to refer to committee the papers and testimony in an impeachment of the preceding Congress (V, 7261). To a privileged resolution of impeachment, an amendment proposing instead censure, which is not privileged, was held not germane (Dec. 19, 1998, p. 28107). On several occasions the Committee on the Judiciary, having been referred a question of impeachment, reported a recommendation that impeachment was not warranted and, thereafter, called up the report as a

question of privilege (Deschler, ch. 14, § 1.3). Under 28 U.S.C. 596(a) an independent counsel appointed to investigate the President may be impeached; and a resolution impeaching such independent counsel constitutes a question of the privileges of the House under rule IX (Sept. 23, 1998, p. 21560).

Propositions relating to an impeachment already made also are privileged (III, 2400, 2402, 2410; July 22, 1986, p. 17294; Dec. 2, 1987, p. 33720; Aug. 3, 1988, p. 20206), such as resolutions providing for selection of managers of an impeachment (VI, 517; Dec. 19, 1998, p. 28112), proposing abatement of impeachment proceedings (VI, 514), reappointing managers for impeachment proceedings continued in the Senate from the previous Congress (Jan. 3, 1989, p. 84; Jan. 6, 1999, p. 14), empowering managers to hire special legal and clerical personnel and providing for their pay, and to carry out other responsibilities (Jan. 3, 1989, p. 84; Dec. 19, 1998, p. 28112; Jan. 6, 1999, p. 240), and replacing an excused manager (Feb. 7, 1989, p. 1726); but a resolution simply proposing an investigation, even though impeachment may be a possible consequence, is not privileged (III, 2050, 2546; VI, 463).

Where a resolution of investigation positively proposes impeachment or suggests that end, it has been admitted as of privilege (III, 2051, 2052, 2401, 2402), such as a resolution reported by the Committee on the Judiciary authorizing an impeachment inquiry by that committee and investing the committee with special investigative authorities to facilitate the inquiry (III, 2029; VI, 498, 528, 549; Deschler, ch. 14, §§ 5.8, 6.2; H. Res. 581, Oct. 8, 1998, p. 24679). A committee to which has been referred privileged resolutions for the impeachment of an officer may call up as privileged resolutions incidental to consideration of the impeachment question, including conferral of subpoena authority and funding of the investigation from the contingent fund (now referred to as "applicable accounts of the House described in clause 1(k)(1) of rule X") (VI, 549; Feb. 6, 1974, p. 2349). Similarly, a resolution authorizing depositions by committee counsel in an impeachment inquiry is privileged under rule IX as incidental to impeachment (Speaker Wright, Oct. 3, 1988, p. 27781).

§ 605. Investigation of impeachment charges.

The impeachment having been made on the floor by a Member (III, 2342, 2400; VI, 525, 526, 528, 535, 536), or charges suggesting impeachment having been made by memorial (III, 2495, 2516, 2520; VI, 552), or even appearing through common fame (III, 2385, 2506), the House has at times ordered an investigation at once. At other times it has refrained from ordering investigation until the charges had been examined by a committee (III, 2364, 2488, 2491, 2492, 2494, 2504, 2513) or has referred to committee an impeachment resolution raised as a question of privilege (Nov. 6, 2007, p. 29820; June 11, 2008, p. __). Under the later practice, resolutions introduced through the hopper that directly call for the impeachment of an officer have been referred to the Committee on the Judiciary, but resolutions calling for an investigation by that committee or by a select committee with a view to-

ward impeachment have been referred to the Committee on Rules (Oct. 23, 1973, p. 34873). Upon receipt of a communication from an independent counsel transmitting to the House under 28 U.S.C. 595(c) a communication containing evidence of alleged impeachable offenses by the President, the House adopted a resolution reported by the Committee on Rules referring the communication to the Committee on the Judiciary to conduct a review (H. Res. 525, 106th Cong., Sept. 11, 1998, p. 20020). Later, the House adopted a privileged resolution reported by the Committee on the Judiciary authorizing an impeachment inquiry by that committee (H. Res. 581, Oct. 8, 1998, pp. 24679, 24735).

§ 606. Procedure of committee in investigating.

The House has always examined the charges by its own committee before it has voted to impeach (III, 2294, 2487, 2501). This committee has sometimes been a select committee (III, 2342, 2487, 2494), sometimes a standing committee (III, 2400, 2409). In some instances the committee has made its inquiry ex parte (III, 2319, 2343, 2366, 2385, 2403, 2496, 2511); but in the later practice the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine (III, 2445, 2471, 2518), and be represented by counsel (III, 2470, 2501, 2511, 2516; 93d Cong., Aug. 20, 1974, p. 29219; H. Rept. 105–830, Dec. 16, 1998). The Committee on the Judiciary having been directed by the House to investigate whether sufficient grounds existed for the impeachment of President Nixon, and the President having resigned following the decision of that committee to recommend his impeachment to the House, the chair of the committee submitted from the floor as privileged the committee's report containing the articles of impeachment approved by the committee but without an accompanying resolution of impeachment. The House thereupon adopted a resolution (1) taking notice of the committee's action on a resolution and Articles of Impeachment and of the President's resignation; (2) accepting the report and authorizing its printing, with additional views; and (3) commending the chair and members of the committee for their efforts (Aug. 20, 1974, p. 29361).

§ 606a. Procedure of House in considering.

During the pendency of an impeachment resolution, remarks in debate may include references to personal misconduct on the part of the President but may not include language generally abusive toward the President and may not include comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. 27829). A resolution setting forth separate articles of impeachment may be divided among the articles (*e.g.*, Dec. 19, 1998, p. 28110; Mar. 11, 2010, p. __).

§ 607. Impeachment carried to the Senate.

Its committee on investigation having reported, the House may vote the impeachment (III, 2367, 2412; VI, 500, 514; Mar. 2, 1936, pp. 3067–91), and, after having notified the Senate by message (III, 2413, 2446), may direct the impeachment to be presented at the bar of the Senate by a single Member (III, 2294), or by two (III, 2319, 2343, 2367), or five (III, 2445) or nine

(July 22, 1986, p. 17306) or 13 (Dec. 19, 1998, p. 28112). These Members in two notable cases represented the majority party alone (*e.g.*, Dec. 19, 1998, p. 28112), but ordinarily include representation of the minority party (III, 2445, 2472, 2505). Under early practice the House elected managers by ballot (III, 2300, 2323, 2345, 2368, 2417). In two instances the Speaker appointed the managers on behalf of the House pursuant to an order of the House (III, 2388, 2475). Since 1912 the House has adopted a resolution appointing managers. In the later practice the House considers together the resolution and articles of impeachment (VI, 499, 500, 514; Mar. 2, 1936, pp. 3067–91) and following their adoption adopts resolutions electing managers to present the articles before the Senate, notifying the Senate of the adoption of articles and election of managers, and authorizing the managers to prepare for and to conduct the trial in the Senate (VI, 500, 514, 517; Mar. 6, 1936, pp. 3393, 3394; July 22, 1986, p. 17306; Aug. 3, 1988, p. 20206). These privileged incidental resolutions may be merged into a single indivisible privileged resolution (H. Res. 614, Dec. 19, 1998, p. 28112; H. Res. 10, Jan. 6, 1999, p. 240).

§ 608. Impeachment process in the Senate.

Process. If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he appear not, his goods may be arrested, and they may proceed. *Seld. Jud. 98, 99.*

§ 608a. Senate impeachment proceedings against President Clinton.

Under an order of the Senate, the Secretary of the Senate informed the House and the Chief Justice that it was ready to receive the House managers for the purpose of exhibiting articles of impeachment against President Clinton (Jan. 6, 1999, p. 37). At the appointed hour the House managers were announced and escorted into the Senate chamber by the Senate Sergeant-at-Arms (Jan. 7, 1999, p. 272). The managers presented the articles of impeachment by reading two resolutions as follows: (1) the appointment of managers (H. Res. 10, Jan. 7, 1999, p. 272); and (2) the two articles of impeachment (H. Res. 611, Jan. 7, 1999, p. 273). Thereupon, the managers requested the Senate take order for trial (Jan. 7, 1999, p. 273).

The Senate adopted a resolution governing the initial impeachment proceedings of President Clinton (S. Res. 16, Jan. 8, 1999, p. 349). Later it adopted a second resolution governing the remaining proceedings (S. Res. 30, Jan. 28, 1999, p. 1843). The first resolution issued the summons in the usual form. It also provided a timetable for (1) the filing of an answer by the President; (2) the filing of a reply by the House, together with the record consisting of publicly available materials that had been submitted

to or produced by the House Judiciary Committee (the resolution further directed that the record be admitted into evidence, printed, and made available to Senators); (3) the filing of a trial brief by the House; (4) the filing of any motions permitted under the rules of impeachment (except for motions to subpoena witnesses or to present evidence not in the record); (5) the filing of responses to any such motions; (6) the filing of a trial brief by the President; (7) the filing of a rebuttal brief by the House; and (8) arguments on such motions. The resolution then directed the Senate to dispose of any such motions and established a further timetable for (1) the House to make its presentation in support of the articles of impeachment (such argument to be confined to the record); (2) the President to make his presentation in opposition to the articles of impeachment; and (3) the Senators to question the parties. The resolution directed the Senate, upon completion of that phase of the proceedings, to dispose of a motion to dismiss, and if defeated, to dispose of a motion to subpoena witnesses or to present any evidence not in the record. The resolution further provided that, if the motion to call witnesses were adopted, the witnesses would first be deposed and then the Senate would decide which witnesses should testify. It further provided that if the Senate failed to dismiss the case, the parties would proceed to present evidence. Finally, the resolution directed the Senate to vote on each article of impeachment at the conclusion of the deliberations. The evidentiary record (summons, answer, replies, and trial briefs) was printed in the Record by unanimous consent (Jan. 14, 1999, p. 357). Pursuant to the previous order of the Senate (S. Res. 16, Jan. 8, 1999, p. 349), the House managers were recognized for 24 hours to present their case in support of conviction and removal (Jan. 14, 1999, p. 521); counsel for the President was then recognized for 24 hours to present the President's defense (Jan. 19, 1999, p. 1055); and Senators submitted questions in writing of either the House managers or the President's counsel (which were read by the Chief Justice, alternating between parties) for a period not to exceed 16 hours (Jan. 22, 1999, p. 1244). The Chief Justice ruled that a House manager could not object to a question although he could object to an answer (Jan. 22, 1999, p. 1250; Jan. 23, 1999, p. 1320). The Senate adopted a motion to consider a motion to dismiss in executive session (Jan. 25, 1999, p. 1339), and the motion to dismiss was defeated (Jan. 27, 1999, p. 1397). The Senate adopted a motion to consider a motion of the House managers to subpoena witnesses in executive session (Jan. 26, 1999, p. 1370). The Senate adopted that motion, which: (1) authorized the issuance of subpoenas for depositions of three witnesses; (2) admitted miscellaneous documents into the trial record; and (3) petitioned the Senate to request the appearance of the President at a deposition (Jan. 26, 1999, p. 1370).

The Senate subsequently adopted a resolution governing the remaining impeachment proceedings as follows: (1) establishment of a timetable for conducting and reviewing depositions, resolving any objections made during the depositions, and considering motions to admit any portions of the

depositions into evidence; (2) consideration of motions for additional discovery (if made by the two Leaders jointly); (3) disposition of motions governing the presentation of evidence or witnesses before the Senate and motions by the President's counsel (specifically precluding a motion to reopen the record and specifically permitting a motion to allow final deliberations in open session); (4) establishment of a timetable to vote on the articles of impeachment; and (5) authorization to issue subpoenas to take certain depositions and to establish procedures for conducting depositions (S. Res. 30, Jan. 28, 1999, p. 1453). The Senate adopted two parts of a divided motion as follows: (1) permitting the House managers to admit transcripts and videotapes of oral depositions into evidence (Feb. 4, 1999, p. 1817); and (2) permitting the parties to present before the Senate for an equally divided specified period of time portions of videotapes or oral depositions admitted into evidence, having first rejected a preemptive motion to restrict the House managers' presentation of evidence to written transcripts (Feb. 4, 1999, p. 1817). The Senate rejected the portion of the divided motion that would have authorized a subpoena for the appearance of a named witness (Feb. 4, 1999, p. 1827). During debate on the motion, the Senate, by unanimous consent, permitted the House managers and counsel for the President to make references to videotaped oral depositions (Feb. 4, 1999, p. 1817). The Senate rejected two additional motions as follows: (1) a motion to proceed directly to closing arguments and an immediate vote on the articles of impeachment (Feb. 4, 1999, p. 1827); and (2) a motion that the House managers provide written notice to counsel for the President by a time certain of those portions of videotaped deposition testimony they planned to use during their evidentiary presentation or during closing arguments (Feb. 4, 1999, p. 1827). By unanimous consent the Senate printed certain deposition transcripts in the Record and transmitted to the House managers and the counsel for the President deposition transcripts and videotapes (Feb. 4, 1999, p. 1827). The Chief Justice held inadmissible a portion of a videotaped deposition not entered as evidence into the Senate record (other portions of which were admitted under an order of the Senate), and a unanimous-consent request nevertheless to admit that portion of a deposition was objected to (Feb. 6, 1999, p. 1954). After closing arguments, the Senate adopted a motion to consider the articles of impeachment in closed session (Feb. 9, 1999, p. 2055). After closed deliberations the Senate Clerk read the articles of impeachment in open session, and each Senator voted "guilty" or "not guilty" on each article (Feb. 12, 1999, p. 2375). By votes of 45–55 and 50–50 respectively, the Senate adjudged President Clinton not guilty on each article of impeachment (Feb. 12, 1999, p. 2375). The Senate communicated to the House and the Secretary of State the judgment of the Senate (Feb. 12, 1999, p. 2375).

See S. Doc. 93–102, "Procedure and Guidelines for Impeachment Trials in the United States Senate," for precedents relating to the conduct of Senate impeachments.

§ 609. Exhibition and form of articles.

Articles. The accusation (articles) of the Commons is substituted in place of an indictment. Thus, by the usage of Parliament, in impeachment for writing or speaking, the particular words need not be specified. *Sach. Tr., 325; 2 Wood., 602, 605; Lords' Journ., 3 June, 1701; 1 Wms., 616.*

Having delivered the impeachment, the committee returns to the House and reports verbally (III, 2413, 2446; VI, 501). Formerly, the House exhibited its articles after the impeachment had been carried to the bar of the Senate; in the later practice, the resolution and articles of impeachment have been considered together and exhibited simultaneously in the Senate by the managers (VI, 501, 515; Mar. 10, 1936, pp. 3485–88; Oct. 7, 1986, p. 29126; Jan. 7, 1999, p. 272). The managers, who are elected by the House (III, 2300, 2345, 2417, 2448; VI, 500, 514, 517; Mar. 2, 1936, pp. 3393, 3394) or appointed by the Speaker (III, 2388, 2475), carry the articles in obedience to a resolution of the House (III, 2417, 2419, 2448) to the bar of the Senate (III, 2420, 2449, 2476), the House having previously informed the Senate (III, 2419, 2448) and received a message informing them of the readiness of the latter body to receive the articles (III, 2078, 2325, 2345; Aug. 6, 1986, p. 19335; Jan. 6, 1999, p. 240). Having exhibited the articles the managers return and report verbally to the House (III, 2449, 2476).

The articles in the Belknap impeachment were held sufficient, although attacked for not describing the respondent as one subject to impeachment (III, 2123). In the proceedings against Judge Ritter, objections to the articles of impeachment, on the ground that they duplicated and accumulated separate offenses, were overruled (Apr. 3, 1936, p. 4898; Apr. 17, 1936, p. 5606). These articles are signed by the Speaker and attested by the Clerk (III, 2302, 2449), and in form approved by the practice of the House (III, 2420, 2449, 2476).

Articles of impeachment that have been exhibited to the Senate may be subsequently modified or amended by the House (VI, 520; Mar. 30, 1936, pp. 4597–99), and a resolution proposing to amend articles of impeachment previously adopted by the House is privileged for consideration when reported by the managers on the part of the House (VI, 520; Mar. 30, 1936, p. 4597).

For discussion of substantive charges contained in articles of impeachment and the constitutional grounds for impeachment, see § 175, *supra* (accompanying Const., art. II, sec. 4). For a discussion of the presentation of the House managers in support of the impeachment of President Clinton, and related matters, see § 608a, *supra*.

§ 610. Parliamentary law as to appearance of respondent.

Appearance. If he appear, and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a lord in his place, a commoner at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him, till he finds sureties to attend, and lest he should fly. *Seld. Jud., 98, 99.* A copy of the articles is given him, and a day fixed for his answer. *T. Ray.; 1 Rushw., 268; Fost., 232; 1 Clar. Hist. of the Reb., 379.* On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney. *Seld. Jud., 100.* The general rule on accusation for a misdemeanor is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer. *Ib., 101.* If previously committed by the commons, he answers as a prisoner. But this may be called in some sort judicium parium suorum. *Ib.* In misdemeanors the party has a right to counsel by the common law, but not in capital cases. *Seld. Jud., 102, 105.*

§ 611. Requirements of the Senate as to appearance of respondent.

This paragraph of the parliamentary law is largely obsolete so far as the practice of the House and the Senate are concerned. The accused may appear in person or by attorney (III, 2127, 2349, 2424), and take the stand (VI, 511, 524; Apr. 11, 1936, pp. 5370–86; Oct. 7, 1986, p. 29149), or may not appear at all (III, 2307, 2333, 2393). In case the accused does not appear the House does not ask that the accused be compelled to appear (III, 2308), but the trial proceeds as on a plea of "not guilty." The writ of summons to the accused recites the articles and notifies the accused to appear at a fixed time and place and file an answer (III, 2127). In all cases respondent may appear by counsel (III, 2129), and in one trial, when a petition set forth that respondent was insane, the counsel

of his son was admitted to be heard and present evidence in support of the petition, but not to make argument (III, 2333). For a discussion of answers, arguments, and presentations of the respondent in the Clinton impeachment proceedings, see § 608a, *supra*.

The chair of the committee impeaches at the bar of the Senate by oral accusation (III, 2413, 2446, 2473), and the managers for the House attend in the Senate after the articles have been exhibited and demand that process issue for the attendance of respondent (III, 2451, 2478), after which they return and report verbally to the House (III, 2423, 2451; VI, 501). The Senate thereupon issue a writ of summons, fixing the day of return (III, 2423, 2451; S. Res. 16, Jan. 8, 1999, p. 349); and in a case wherein the respondent did not appear by person or attorney the Senate published a proclamation for him to appear (III, 2393). But the respondent's goods were not attached. In only one case has the parliamentary law as to sequestration and committal been followed (III, 2118, 2296), later inquiry resulting in the conclusion that the Senate had no power to take into custody the body of the accused (III, 2324, 2367).

§ 612. Answer of respondent.

Answer. The answer need not observe great strictness of the form. He may plead guilty as to part, and defend as to the residue; or, saving all exceptions, deny the whole or give a particular answer to each article separately. *1 Rush., 274; 2 Rush., 1374; 12 Parl. Hist., 442; 3 Lords' Journ., 13 Nov., 1643; 2 Wood., 607.* But he cannot plead a pardon in bar to the impeachment. *2 Wood., 615; 2 St. Tr., 735.*

In the Senate proceedings of the impeachment of President Andrew Johnson, the answer of the President took up the articles one by one, denying some of the charges, admitting others but denying that they set forth impeachable offenses, and excepting to the sufficiency of others (III, 2428). The form of this answer was commented on during preparation of the replication in the House (III, 2431). In the Senate proceedings on the impeachment of President Clinton, the answer of the President also took up the articles one by one, denying some of the charges and admitting others but denying that they set forth impeachable offenses (Jan. 14, 1999, pp. 359–361). Blount and Belknap demurred to the charges on the ground that they were not civil officers within the meaning of the Constitution (III, 2310, 2453), and Swayne also raised questions as to the jurisdiction of the Senate (III, 2481). The answer is part of the pleadings, and exhibits in the nature of evidence may not properly be attached thereto (III, 2124). The answer of the respondent in impeachment proceedings is messaged

to the House and subsequently referred to the managers on the part of the House (VI, 506; Apr. 6, 1936, p. 5020; Sept. 9, 1986, p. 22317).

For a chronology of arguments and presentations of the respondent in the Clinton impeachment proceedings, see § 608a, *supra*.

§ 613. Other pleadings.

Replication, rejoinder, &c. There may be a replication, rejoinder, &c. *Sel. Jud., 114; 8 Grey's Deb., 233; Sach. Tr., 15; Journ. H. of Commons, 6 March, 1640–1.*

A replication is always filed (for the form of replication in modern practice, see Sept. 26, 1988, p. 25357), and in one instance the pleadings proceeded to a rejoinder, surrejoinder, and similiter (III, 2455). A respondent also has filed a protest instead of pleading on the merits (III, 2461), but there was objection to this and the Senate barely permitted it. In another case respondent interposed a plea as to jurisdiction of offenses charged in certain articles, but declined to admit that it was a demurrer with the admissions pertinent thereto (III, 2125, 2431). In the Belknap trial the House was sustained in averring in pleadings as to jurisdiction matters not averred in the articles (III, 2123). The right of the House to allege in the replication matters not touched in the articles has been discussed (III, 2457). In the Louderback (VI, 522) and Ritter (Apr. 6, 1936, p. 4971) impeachment proceedings, the managers on the part of the House prepared and submitted the replication to the Senate without its consideration by the House, contrary to former practice (VI, 506). The Senate may consider in closed session various preliminary motions made by respondent (*e.g.*, to declare the Senate rule on appointment of a committee to receive evidence to be unconstitutional, to declare beyond a reasonable doubt as the standard of proof in an impeachment trial, and to postpone the impeachment trial) before voting in open session to dispose of those motions (Oct. 7, 8, 1986, pp. 29151, 29412).

For a chronology in the Senate of disposition of motions permitted under Senate impeachment rules, see § 608a, *supra*.

§ 614. Examination of witnesses.

Witnesses. The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the House, or such as the committee in their discretion shall demand. *Seld. Jud., 120, 123.*

In trials before the Senate witnesses have always been examined in open Senate, although examination by a committee has been suggested (III,

2217) and utilized (S. Res. 38, 101st Cong., Mar. 16, 1989, p. 4533). In the 74th Congress, the Senate amended its rules for impeachment trials to allow the presiding officer, upon the order of the Senate, to appoint a committee to receive evidence and take testimony in the trial of any impeachment (May 28, 1935, p. 8309). In the trial of Judge Claiborne the Senate directed the appointment of a committee of twelve Senators to take evidence and testimony pursuant to rule XI of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials (S. Res. 481, Aug. 15, 1986, p. 22035); and in Nixon *v.* United States, 506 U.S. 224 (1993), the Supreme Court refused to declare unconstitutional the appointment of such a committee to take evidence and testimony.

For a chronology of motions to subpoena witnesses during the Senate impeachment proceedings against President Clinton, see § 608a, *supra*.

§ 615. Relation of jury trial to impeachment.

Jury. In the case of Alice Pierce, *1 R., 2,* a jury was impaneled for her trial before a committee. *Seld. Jud., 123.* But this was on a complaint, not on impeachment by the Commons. *Seld. Jud., 163.* It must also have been for a misdemeanor only, as the Lords spiritual sat in the case, which they do on misdemeanors, but not in capital cases. *Id., 148.* The judgment was a forfeiture of all her lands and goods. *Id., 188.* This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt, if the delinquent doth put himself on the trial of his country, a jury ought to be impaneled, and he adds that it is not so on impeachment by the Commons, for they are in loco proprio, and there no jury ought to be impaneled. *Id., 124.* The Ld. Berkeley, *6 E., 3,* was arraigned for the murder of L. 2, on an information on the part of the King, and not on impeachment of the Commons; for then they had been patria sua. He waived his peerage, and was tried by a jury of Gloucestershire and Warwickshire. *Id., 126.* In *1*

H., 7, the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament. *Id., 133.* They have been generally and more justly considered, as is before stated, as the grand jury; for the conceit of Selden is certainly not accurate, that they are the patria sua of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try; for they examine witnesses as to the facts, and acquit or condemn, according to their own belief of them. And Lord Hale says, "the peers are judges of law as well as of fact;" *2 Hale, P. C., 275;* Consequently of fact as well as of law.

No jury is possible as part of an impeachment trial under the Constitution (III, 2313). In 1868, after mature consideration, the Senate overruled the old view of its functions (III, 2057), and decided that it sat for impeachment trials as the Senate and not as a court (III, 2057), and eliminated from its rules all mention of itself as a "high court of impeachment" (III, 2079, 2082). However, the modern view of the Senate as a court was evident during the impeachment trial of President Clinton. There the Senate convened as a "Court of Impeachment" (see, *e.g.*, Jan. 7, 1999, p. 272). In response to an objection raised by a Senator, the Chief Justice held that the Senate was not sitting as a "jury" but was sitting as a "court" during the impeachment trial of President Clinton. As such, the House managers were directed to refrain from referring to the Senators as "jurors" (Jan. 15, 1999, p. 580).

§ 615a. The presiding officer.

An anxiety lest the Chief Justice might have a vote in the approaching trial of the President seems to have prompted this earlier action (III, 2057). There was examination of the question of the Chief Justice's power to vote (III, 2098); but the Senate declined to declare his incapacity to vote, and he did in fact give a casting vote on incidental questions (III, 2067). Under the earlier practice, the Senate declined to require that the Chief Justice be sworn when about to preside (III, 2080); but the Chief Justice had the oath administered by an associate justice (III, 2422). The President pro tempore of the Senate, pursuant to an earlier order of the Senate, appointed a committee to escort the Chief Justice into the Senate chamber to preside over the impeachment trial of President Clinton, administered the oath to him,

and the Chief Justice in turn administered the oath to the Senators (Jan. 7, 1999, p. 272).

In impeachments for officers other than the President of the United States the presiding officer of the Senate presides, whether being Vice President, the regular President pro tempore (III, 2309, footnote, 2337, 2394) or a special President pro tempore chosen to preside at the trial only (III, 2089, 2477).

§ 615b. Oath and quorum.

Senators elected after the beginning of an impeachment trial are sworn as in the case of other Senators (III, 2375). The quorum of the Senate sitting for an impeachment trial is a quorum of the Senate itself, and not merely a quorum of the Senators sworn for the trial (III, 2063). The vote required for conviction is two-thirds of those Senators present and voting (Oct. 20, 1989, p. 25335). In 1868, when certain States were without representation, the Senate declined to question its competency to try an impeachment case (III, 2060). The President pro tempore of the Senate administered the oath to the Chief Justice presiding over the impeachment trial of President Clinton, and the Chief Justice in turn administered the oath to the Senators (Jan. 7, 1999, p. 272).

§ 616. Attendance of the Commons.

Presence of Commons. The Commons are to be present at the examination of witnesses. *Seld. Jud., 124.* Indeed, they are to attend throughout, either as a committee of the whole House, or otherwise, at discretion, appoint managers to conduct the proofs. *Rushw. Tr. of Straff., 37; Com. Journ., 4 Feb., 1709–10; 2 Wood., 614.* And judgment is not to be given till they demand it. *Seld. Jud., 124.* But they are not to be present on impeachment when the Lords consider of the answer or proofs and determine of their judgment. Their presence, however, is necessary at the answer and judgment in case capital *Id., 58, 158,* as well as not capital; *162.* * * *.

§ 617. Attendance of the House of Representatives.

The House has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount, Swayne, Archbald, Louderback, and Ritter (III, 2318, 2483; VI, 504, 516); and after attending at the answer of Belknap, decided

that it would be represented for the remainder of the trial by its managers alone (III, 2453). At the trial of the President the House, in Committee of the Whole, attended throughout the trial (III, 2427), but this is exceptional. In the Peck trial the House discussed the subject (III, 2377) and reconsidered its decision to attend the trial daily (III, 2028). While the Senate is deliberating the House does not attend (III, 2435); but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend (III, 2383, 2388, 2440). Although it has frequently attended in Committee of the Whole, it may attend as a House (III, 2338).

§ 618. Voting on the articles in an impeachment trial.

* * * The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth to be most generally agreed on. *Seld. Jud., 167; 2 Wood., 612.*

The question in judgment in an impeachment trial has occasioned contention in the Senate (III, 2339, 2340), and in the trial of the President the form was left to the Chief Justice (III, 2438, 2439). In the Belknap trial there was much deliberation over this subject (III, 2466). In the Chase trial the Senate modified its former rule as to form of final question (III, 2363). The yeas and nays are taken on each article separately (III, 2098, 2339) in the form "Senators, how say you? is the respondent guilty or not guilty?" (Oct. 9, 1986, p. 29871). But in the trial of President Johnson the Senate, by order, voted on the articles in an order differing from the numerical order (III, 2440), adjourned after voting on one article (III, 2441), and adjourned without day after voting on three of the eleven articles (III, 2443). In other impeachments, the Senate has adopted an order to provide the method of voting and putting the question separately and successively on each article (VI, 524; Apr. 16, 1936, p. 5558). For a discussion of the vote of the Senate on each article of impeachment of President Clinton, see § 608a, *supra*.

§ 619. Judgment in impeachments.

Judgment. Judgments in Parliament, for death have been strictly guided per legem terrae, which they can not alter; and not at all according to their discretion. They can neither omit any part of the legal judgment nor add to it. Their sentence must be secundum non ultra legem. *Seld. Jud., 168, 171.*

This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevailed; for impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment, therefore, is to be such as is warranted by legal principles or precedents. *6 Sta. Tr., 14; 2 Wood., 611.* The Chancellor gives judgment in misdemeanors; the Lord High Steward formerly in cases of life and death. *Seld. Jud., 180.* But now the Steward is deemed not necessary. *Fost., 144; 2 Wood., 613.* In misdemeanors the greatest corporal punishment hath been imprisonment. *Seld. Jud., 184.* The King's assent is necessary to capital judgments (but *2 Wood., 614,* contra), but not in misdemeanors, *Seld. Jud., 136.*

The Constitution of the United States (art. I, sec. 3, cl. 7) limits the judgment to removal and disqualification. The order of judgment following conviction in an impeachment trial is divisible for a separate vote if it contains both removal and disqualification (III, 2397; VI, 512; Apr. 17, 1936, p. 5606), and an order of judgment (such as disqualification) requires a majority vote (VI, 512; Apr. 17, 1936, p. 5607). Under earlier practice, after a conviction the Senate voted separately on the question of disqualification (III, 2339, 2397), but no vote is required by the Senate on judgment of removal from office following conviction, because removal follows automatically from conviction under article II, section 4 of the Constitution (Apr. 17, 1936, p. 5607). Thus, the presiding officer directs judgment of removal from office to be entered and the respondent removed from office without separate action by the Senate where disqualification is not contemplated (Oct. 9, 1986, p. 29873). A resolution impeaching the President may provide only for removal from office (H. Res. 1333, 93d Cong., Aug. 20, 1974, p. 29361) or for both removal and disqualification from holding any future office (H. Res. 611, 105th Cong., Dec. 19, 1998, p. 27828).

§ 620. Impeachment not interrupted by adjournments.

Continuance. An impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament. *T. Ray 383; 4 Com. Journ., 23 Dec., 1790; Lord's Jour., May 15, 1791; 2 Wood., 618.*

In Congress impeachment proceedings are not discontinued by a recess (III, 2299, 2304, 2344, 2375, 2407, 2505, see also § 592, *supra*). The following impeachment proceedings extended from one Congress to the next: (1) the impeachment of Judge Pickering was presented in the Senate on the last day of the Seventh Congress (III, 2320), and the Senate conducted the trial in the Eighth Congress (III, 2321); (2) the impeachment of Judge Louderback was presented in the Senate on the last day of the 72d Congress (VI, 515), and the Senate conducted the trial in the 73d Congress (VI, 516); (3) the impeachment of Judge Hastings was presented in the Senate during the second session of the 100th Congress (Aug. 3, 1988, p. 20223) and the trial in the Senate continued into the 101st Congress (Jan. 3, 1989, p. 84); (4) the impeachment of President Clinton was presented to the Senate after the Senate had adjourned sine die for the 105th Congress (Jan. 6, 1999, p. 14), and the Senate conducted the trial in the 106th Congress (Jan. 7, 1999, p. 272); (5) the impeachment inquiry of Judge Porteous was authorized in the 110th Congress (Sept. 17, 2008) and continued in the next Congress (Jan. 13, 2009). Although impeachment proceedings may continue from one Congress to the next, the authority of the managers appointed by the House expires at the end of a Congress; and the managers must be reappointed when a new Congress convenes (Jan. 6, 1999, p. 15).