Historical Background

Recorded history fails to tell us when parliamentary procedures were first adopted by man, though they were no doubt foreshadowed even in early tribal customs. "In the whole history of law and order," wrote noted jurist Curtis Bok, "the longest step forward was taken by primitive man when, as if by common consent, the tribe sat down in a circle and allowed only one man to speak at a time."[4]

Rudimentary parliamentary procedures have been traced as far back as the fifth century, A.D. to Anglo-Saxon or Germanic tribes prior to their migration to the Island of Britain.[5] In the centuries that followed, the elementary rules devised at that time were revised, refined, and adjusted. Thus, when the first English parliament was called together in 959, over 1,000 years ago, a somewhat more structured but still primitive system of parliamentary procedure was adopted to enable individuals with conflicting interests to gather and discuss their grievances in a fair and orderly manner.[6]

The Norman Conquest in 1066 imposed French control over England, and the Norman kings assembled councils composed of individuals of their choice, but the structure of Anglo-Saxon parliamentary machinery was left largely intact. The conversion of these councils into what we now know as Parliament, and the adoption by it of the councils' procedural rules. came about during the 13th and early 14th centuries.[7]

The 16th century saw a period of sustained conflict over the prerogatives of Parliament—as opposed to those of the King—

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4. Whitney, *Parliamentary Procedure* (Washington, D.C., Robert B. Luce Incorporated, 1962) p. vi.

5. Dietz, *Political and Social History of England,* 18 (N.Y., Macmillan Co., 1937).

6. Thomas Jefferson described the English parliamentary system of the time in the following language: "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." See *House Rules and Manual* § 284 (1973).

7. The term "parliamentary law" is derived from the adoption of procedural rules for the English Parliament. The term "parliament" itself is derived from the Freneh word *parler* meaning "to speak."

resulting in numerous modifications of parliamentary procedure, especially in the House of Commons. This conflict was to have a profound influence on Thomas Jefferson and the other founding fathers and on the form of the parliamentary rules that were subsequently to be adopted by Congress.[8]

It was Jefferson who concluded that the procedural rules of the English Parliament would provide the most practical model for the U.S. Congress. They had already served as prototypes for many of the existing state legislatures, where they had been adopted with modifications, and provided a model with which many of the founding fathers were already familiar. And it was Jefferson, too, who drafted the first statement, based on English precedents, of parliamentary rules for use in the U.S. Senate. This document, published under the title *Jefferson's Mannal,*[9] became the first to define and interpret parliamentary principles for use in America and to offer a basic model of uniform rules for use at both the federal and state level.

It is ironic that *Jefferson's Manual,* while not part of the formal rules of the Senate, is a parliamentary authority of the House. In 1837 the House, by rule which 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

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8. When Jefferson asserted in his *Summary View,* in 1774, that the King "is no more than the chief officer of the people, appointed by the laws and circumscribed with definite powers, to assist in working the great machine of government," he voiced a theory of executive power which, while not entirely consistent with historical fact, ultimately gained the support of the draftsmen of the first American constitutions. Andrew C. McLaughlin, *A Constitutional History of the United States,* 81 (1935).

9. Jefferson was a Presidential candidate in 1796, and having received the second largest number of votes, became Vice President. As such, it was his duty to preside over the Senate, and it was for this purpose that he wrote his now famous manual, largely from memory. In a letter from Philadelphia to his former law professor, George Wythe, Jefferson wrote on Feb. 20, 1800: "So little has the parliamentary branch of the law been attended to, that I not only find no person here, but not even a book to aid me. I had at an early period of life read a good deal on the subject, and common-placed what I read. This common-place has been my pillow." Mayo, *Jefferson Himself,* 203 (Boston, Houghton Mifflin Co., 1942).

not inconsistent with the standing rules and orders of the House." [10]

Precedents as Law

Asher Hinds noted in the introduction to his work on the precedents of the House that the great majority "of the rules of all parliamentary bodies are unwritten law; they spring up by precedent and custom; these precedents and customs are this day the chief law of both Houses of Congress."[11]

On the theory that a government of laws is preferable to a government of men, the House has repeatedly recognized the importance of following its precedents and obeying its well-established procedural rules.[12] In looking to precedents to resolve a point of order or other procedural question, the House is applying a doctrine familiarly known to appellate courts as "stare decisis," under which a judge in making a decision will look to earlier cases involving the same question of law. In the same way, the House adheres to settled rulings, and will not lightly disturb procedures which have been established by prior decision of the Chair. If the will of the majority is to be determined in an orderly and democratic way, questions must be resolved by established procedures, with all Members knowing what to expect.

Thomas Jefferson believed that the Members' awareness of the rules was as important as the rationale of the rules themselves. He wrote: "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." [13]

Parliamentary law has come to be recognized as *law*, in the sense that it is binding on the assembly and its members except as it may be varied by the adoption by the membership of

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10. Rule XLII, *House Rules and Manual* § 938 (1973).

11. 1 Hinds' Precedents at p. iii.

12. As early as 1842, recognition was given in the House to the value of precedents by Chairman George W. Hopkins, of Virginia, in the course of a ruling made in the Committee of the Whole. He said he felt constrained to follow precedents until they were reversed, especially when settled by a solemn decision of the House. 2 Hinds' Precedents § 1317.

13. *House Rules and Manual* § 285 (1973).