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PROCEDURE IN STATE LEGISLATURES

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FOREWORD

This study is a hopeful beginning of researches which will help greatly to solve some of the problems of legislative procedure. Such studies are necessary preliminaries to the popularization of the problems as well as the solution and nothing is more needed in governmental research than the basic facts underlying the legislative process, for it is undeniable that the legislative machinery does not function properly in the states or in the Congress of the United States.

Mr. Dodds has done well to go below the surface of things and tell how the legislatures actually do some of their important work. In doing so he has been plowing virgin soil a good deal of the time and the way has not been smooth. He has had to find his facts in obscure sources and to weigh and sift a vast amount of scattered material.

There are plenty of articles and books descriptive of legislative bodies but there is a dearth of descriptions of the way legislatures are organized and how they work. Everyone intimately in touch with a legislative body knows that there is a vast difference between theory and practice. Mere analyses of constitutional forms and limitations tell very little; in fact they mislead grossly. Take, for example, the provision that every bill shall be read in full on three separate days. If that were followed literally, the legislature would spend its entire time listening to the reading of bills. The actual practice is not followed anywhere and, of course, could not be, yet every general treatise on legislatures treats it as a part of the actual practice of legislatures. Many constitutional forms are merely paper provisions and that fact lends importance to Mr. Dodds' study. New light is thrown on many subjects which writers have heretofore been content to pass over in general terms because of the difficulties of detailed research.

One of the most interesting phases of Mr. Dodds' work is his discussion of the powers of a legislative body and of the separate houses. Strangely enough, no one has considered this subject sufficiently important for careful study and yet in 1913 in one of

our leading states all of the principal officers and some members of the legislature were indicted for violating a law which attempted to fix the number of employes. The court rightly held that the houses of a legislature could not be bound by such a law because it interfered with their inalienable powers. Laws in violation of this principle are on the statute books of several states.

Another subject which has not had the attention which it deserves is treated in this study, namely, the validity of the enrolled bill. There is some confusion of legal authority on this point, a majority holding that the enrolled bill cannot be impeached, while a few would allow the journals as evidence. Either conclusion leads to absurdities. If the journals or parol evidence cannot be used to impeach an act, then acts which never passed either house may become laws by the signature of the presiding officers and the governor, as actually happened in Indiana in 1913, through the trickery of some unknown person. The doctrine of the validity of the enrolled bill would make such an act valid in spite of the plain evidence that it never passed. On the other hand, if the journals are to be used as evidence, the law may be made to depend upon the accuracy of the work of legislative clerks, who are seldom known for their efficiency. Instead of taking the act from the statute books as it stands each act would have to be traced back through the journals. The doctrine that "ignorance of the law excuses no one" would truly become a joke under such circumstances.

It is just such questions as these that most need analysis and careful treatment. The physiology of legislatures should be studied rather than their anatomy. The following study tells more about how the houses are organized, how the committees work and how a bill travels through the process than has heretofore been brought together, which material is compacted into a few pages. Scarcely a superfluous word is used to describe important processes. The study will be of great basic value in the inevitable reform of legislative processes.

JOHN A. LAPP.

CHAPTER I

THE LEGISLATURE'S INHERENT POWERS IN MATTERS OF PROCEDURE

The methods and forms by which legislative business is carried on are notoriously lax. Rules designed to protect the rights of the minority, to secure due deliberation and publicity for all legislative acts, and to introduce order into the performance of legislative duties are known to be frequently disregarded. Judgments of presiding officers in direct contravention of the rules have been sustained by majority vote, and legislative houses, in flagrant violation of their own law, have overruled correct decisions. To such loose and chaotic practice was due, in no small degree, the growing popular distrust which so boldly marked the nineteenth century attitude towards our state legislatures. Successive constitutions reflect the decline of confidence in representative assemblies by defining and restricting in great detail the powers which the legislature may exercise. Relief from the prevailing extravagance and recklessness was sought by designating the forms and procedure by which the legislature must act. Thus the newer constitutions, in an effort to insure order and deliberation in the work of the legislatures, or at least to prevent repetitions of certain gross frauds, came to include specific provisions governing parliamentary practice. Today provisions that a bill must be read three times on separate days are common, and numerous regulations concerning introduction of bills, signing by presiding officers, functions of committees, et cetera, occur in many organic laws.

Occasionally the legislature itself, in the spirit of repentance, elevated a rule of procedure to the plane of statute law. Thus the requirement that local or private bills must be published in the district which they affect found a place on the statute books. In like manner, improved methods of handling contested election cases were attempted by acts delegating disposition of them to the courts. The purpose of course was to establish by legislative action a few fundamental parliamentary rules to control the whims of the legislature without the observance of which no action could be deemed legal.

Inherent Powers Defined

But when the aid of the courts was summoned to apply these provisions, whether embodied in the constitution or occurring merely in the statute law, the doctrine of inherent powers and privileges of legislative bodies was seen to be involved. Historically this is a very ancient doctrine. It takes its source in the long struggle in England between King and Parliament, when the matter of gaining and securing recognition of a privilege was a tremendously important thing. A privilege once established, the Commons were at that point secure from royal interference; either directly by agents of the king or through the processes of the courts. But it is one of the curious developments of history that a principle, employed to protect the representatives of the people against coercion and intimidation by an autocratic power, should today remove them from all legal liability so far as the forms by which they conduct themselves are concerned.

Legal theory recognizes that each department of government possesses certain inherent powers of which it cannot be deprived by a coördinate branch. This is the doctrine of inherent powers. Speaking generally, these powers are such that if the free exercise of them were obstructed the effective discharge of the duties of the constituent branch would be seriously impaired. It is generally accepted that no explicit constitutional provision is necessary to the exercise of these powers and privileges upon the part of the legislature, but that they are implied in the general grant of legislative power and are necessary if that body is to fulfill its function. The broadest expression given to such rights describes them as inherent in the law-making branch and capable of being ascertained primarily by an examination of common parliamentary law. They are not derived from express provisions in the constitutions. On the contrary, they arise from the very nature of a legislative body. Indeed the constitution is not a grant but a restriction upon this power.[1] In

[1] *Ex parte* McCarthy, 29 Cal. 395. This follows closely the English theory of *lex et consuetudo Parliamenti* as outside the common law. See Blackstone's "Commentaries," Bk. I, c. 2; "But the maxims on which they (the two houses of Parliament) proceed, together with the method of proceeding, rest entirely in the breast of parliament itself and are not defined or stated by any particular stated law." Coke also, 4 Inst. 15, "Judges ought not to give any opinion of a matter of privilege, because it is not to be decided by the common laws but *secun-*

the light of this principle, provisions which read, "Each house shall have all other powers necessary for a branch of a legislature of a free state," can add nothing to prerogatives already enjoyed.[2] It is worth while to examine the nature of these inherent rights, which can be restricted only by the constitution itself and in the exercise of which a legislature cannot bind itself any more than an individual can bargain away his freedom.

The Power to Determine the Qualifications of Members is Exclusive

The right to judge of the elections and qualifications of its own members is expressly conferred upon each house by the constitutions of forty-six states.[3] Originally developed by the House of Commons as a protection against encroachment by the king, it would exist today, in the absence of any constitutional grant, as an inherent power "necessary to the legislature to enable it to perform its high function." "It is the power of self-protection."[4] The right being exclusive, the legislature cannot refer ultimate decision to any other tribunal. The courts can enter no judgment. Their decision is merely advisory, if indeed they can act in the matter at all.[5] Neither will the courts inquire the reason for the expulsion of a member, no matter how arbitrary and unfair the action of the legislature.[6] In no case will the courts examine the returns to see who was

dum leges et consuetudinem Parliamenti." American courts have declared that in general the two houses are organized and governed in accordance with the recognized principles of parliamentary law. *Ex parte* Screws, 49 Ala. 57; *State* v. *Rogers*, 56 N. J. L. 480. The accepted opinion in Congress is that until rules have been adopted each Congress operates under what Speaker Reed termed common parliamentary law, in which the practice of the House constitutes a principal part. 5 Hinds 6759–6763.

[2] Such provisions occur in thirteen state constitutions.

[3] *See* Index-Digest of State Constitutions, prepared for New York Constitutional Convention, 1915, pp. 885–6 and 925–6.

[4] *Hiss* v. *Bartlett*, 69 Mass. 473; *French* v. *State*, 146 Cal. 604.

[5] *In re* Contested Election of Senator, 111 Pa. St. 235. In *State* v. *Gilmore*, 20 Kan. 551, an act empowering a court to vacate a seat of a member who upon trial was found to have been intoxicated in a public place was declared void. The legislature's exclusive power to judge of the qualifications of its members is not exhausted by admission to a seat. In *Dinan* v. *Swig*, 112 N. E. 91 (Mass. 1916) the power of a court to render even an advisory opinion is denied. Also in *State* v. *District Court*, 50 Mont. 134 (1914).

[6] *Hiss* v. *Bartlett, supra; French* v. *State, supra; Auditor-General* v. *Board*, 51 N. W. 483 (Mich.).

legally elected, the legislature being the sole judge of all questions of law or fact involved.[7] The courts will exercise no supervision over justices of the peace authorized by statute to take testimony in contested elections of members of the legislature. The powers of these officials when so acting are not judiciary, but rather in the nature of the work of a committee of the house.[8]

Since the courts refuse to review in any manner the action of the legislature in admitting or expelling members, the binding force of statutes defining the methods of contesting elections rests solely in the will of the house. This is in harmony with the view adopted by Congress that such an act is only a wholesome rule not to be departed from without cause, and that a petition failing to proceed according to law is not without remedy.[9] Such laws must be viewed as convenient aids to the legislative house and cannot exist as a check upon the legislature's power to adopt any other procedure at will. In fact it has been recently declared that a statute attempting to define the procedure to be followed would be void.[10]

The Power to Punish for Contempt is a Prerogative

A second inherent right is the power of a house to punish contempts of its authority. Following English precedents[11] our courts at first held that this was a general power necessary to the exercise of legislative functions and the adjudication of the house was sufficient to establish the fact of contempt.[12] This exclusive jurisdiction, however, was restricted in the opinion, rendered in the famous English case of *Stockdale* v. *Hansard*, which declared that, although no court could relieve a person committed for contempt from punishment lawfully inflicted, the question of the jurisdiction of the house is always open to inquiry.[13] The United States Supreme Court finally accepted this view and in the case of *Kilburn* v. *Thompson*

[7] *O'Donnel* v. *Judges*, 40 La. Ann. 598; *People* v. *Mahaney*, 13 Mich. 481; *Bingam* v. *Jewett*, 66 N. H. 382; *Dalto* v. *State*, 43 Ohio St. 652; *Corbett* v. *Naylor*, 25 R. I. 520.

[8] *State* v. *Peers*, 33 Minn. 81.

[9] Case of *Williamson* v. *Sickles*, 1 Hinds 776.

[10] *Dinan* v. *Swig*, *supra*.

[11] *See* May, "Practice and Usages of Parliament," 10 ed. p. 131 *et seq.*

[12] *Anderson* v. *Dunn*, 6 Wheat. 204, followed in a series of cases until *Kilburn* v. *Thompson*, 103 U. S. 168. *See* also *Coffin* v. *Coffin*, 4 Mass. 35.

[13] 9 Ad. & E. 1, and 11 Ad. & E. 253.

inquired into the jurisdiction of the House of Representatives, denying at the same time that the right to punish for contempt could derive any authority from English precedents, since from time immemorial Parliament has been a High Court of Judicature. The Court asserted that, if the House of Representatives is to punish for contumacy as a witness, the testimony must be required in a matter in which the House can properly proceed. In the case in question the investigation was found to be of a judicial nature and in excess of the power of the House. The warrant for the prisoner's arrest was therefore void.

The state courts were quick to adopt the reasoning in *Kilburn* v. *Thompson* and to inquire into the lawfulness of legislative contempt. The principle followed was that the houses of the legislature are free to punish recusant witnesses only if the information sought is in the aid of legislation, otherwise such punishment is an invasion of the judicial department.[14] But the doctrine that the power to command respect is obviously so essential to the enlightenment and guidance of the legislature that it has always been exercised without question remained unshaken. The constitution does not create the power, but fixes and limits the mode and duration of punishment for disobedience.[15]

The Attitude of the New York Courts

The New York courts of late years have seemed unwilling to concede to the legislature an inherent or even a common law right to punish for contempt. The constitution of this state, contrary to prevailing form, does not authorize in specific terms a single house of the legislature to punish for contempt or to expel members, and is likewise silent as to a member's privilege from arrest, although elsewhere these prerogatives are generally held to inhere without express constitutional grant. Since 1830 these powers have been

[14] *In re* Chapman, 166 U. S. 661; *In re* Gunn, 50 Kan. 155; *Burnham* v. *Morissey*, 80 Mass. 226; *People* v. *Keeler*, 99 N. Y. 463; Matter of Barnes, 204 N. Y. 108; *People* v. *Webb*, 5 N. Y. Supp. 855; *Ex parte* Parker, 74 S. C. 466; *Sullivan* v. *Hill*, 79 S. E. 670 (W. Va.); *Ex parte* Watters, 144 S. W. 531 (Tex.).

[15] *Ex parte* McCarthy, 29 Cal. 395; *Lowe* v. *Summers*, 69 Mo. App. 637; *State* v. *Matthews*, 37 N. H. 450; *Ex parte* Dalton, 44 Ohio St. 142; *Ex parte* Parker, *supra*; *Sullivan* v. *Hill*, *supra;* The power to punish may be delegated to committees by statute. *Ex parte* Parker, and *Sullivan* v. *Hill;* also strong dissenting opinion, *In re* Davis, 58 Kan. 368.

provided for by general statute, and the offenses enumerated in the acts have been declared to be the only ones which either house is authorized to punish as contempts and to take the place of the numerous offenses treated by Parliament as such. The statute conferring the power, judicial in nature, is not void, however, as invading the judiciary department since it is necessary and appropriate to legislative action.[16] More recently the Code of Civil Procedure[17] has given over the duty of punishing recusant witnesses to the courts, and the Court of Appeals holds that in so doing the legislature demonstrated its lack of an inherent power to punish for contempt in disobedience to its process.[18] This is a serious inroad upon the prevailing theory of prerogative, if indeed the concept is not completely shattered. The legislature is considered to have acquired through its general legislative power the privileges not specifically conferred by the constitution. They are not exclusive or inalienable and are defined by statute law.[19]

Parliamentary Procedure not Subject to Judicial Review

With a view towards maintaining the effective independence of the coördinate departments of government in the discharge of their appropriate duties, the courts have generally permitted the legislatures themselves to interpret constitutional provisions concerning methods of procedure. For example, the courts of several states will not admit evidence to impeach the validity of an act on the ground that some constitutional requirement as to the manner of passage has not been observed. If the act is regularly enrolled, authenticated by the presiding officers of both houses, and signed by the governor, the evidence is conclusive that all constitutional

[16] *People* v. *Keeler, supra; See* also *People* v. *Webb, supra.* The legislature has only such powers to punish as have been conferred upon it by statute.

[17] ¶ 854 to ¶ 856.

[18] Matter of Barnes, 204 N. Y. 108.

[19] In a recent Texas case the court held that in accordance with the doctrine of the separation of powers the legislature's right to punish for contempt was derived solely from the constitutional grant, Art. III, sec. 15, which authorizes each house to punish persons not members for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings. Failure to answer the questions of a committee does not constitute obstruction of legislative proceeding and the legislature was not competent to adjudge for contempt for so doing. *Ex parte* Walters, 144 S. W. 531. This denies to the legislature the right to punish indirect contempts.

provisions governing procedure have been fulfilled, and it cannot be impeached by the journals. The theory adopted is that the legislators are bound by their oaths to support the constitutional mode of procedure and, although disregard constitutes breach of duty, the presumption must always be that the coördinate branch has fulfilled its duty.[20] Any other interpretation leads to uncertainty as to what is law and ends logically in the power to impugn the journals.[21]

This follows the English precedent, established in 1617, that the Journals of Parliament are not records but "remembrances for the form of proceeding to the record," and cannot weaken or control the statute, which is a record to be controlled only by itself. "When the act is passed the Journal is expired!"[22] It is interesting to notice the circumstances which surrounded this decision. The case involved a statute passed in the reign of Henry VIII. As no journal was kept for the Commons until the time of Edward VI, the journal of the House of Lords was pressed to show from entries thereon that the bill came up from the lower house with an amendment which was a prerequisite to the latter's approval of the measure. The bill, as passed by the Lords and enrolled under the Great Seal, contained this amendment cancelled and suit was brought to invalidate the act, but without success. In the absence of any record from the lower house it is not strange that the act as delivered to the Chancery should be held to be the only true record, yet many of our state courts still follow this precedent by refusing to admit the journals to impeach a properly certified act.[23]

Journals Presumed Favorable to the Act

Another view, which has been expressed by the courts of more than half the states, is that the properly certified act is only *prima*

[20] *Kilgore* v. *McKee*, 85 Pa. St. 401.

[21] *State* v. *Jones*, 6 Wash. 452. In *Field* v. *Clark* (143 U. S. 649) the Supreme Court considered that it was advisable to make the certificate of the presiding officers the evidence instead of journals kept by minor officials, who were liable to make mistakes.

[22] *Rex* v. *Arundel*, Hobart 109.

[23] *Yolo County* v. *Colgan*, 132 Cal. 265; *Eld* v. *Gorham*, 20 Conn. 16; *Miller* v. *Oclwein*, 55 Iowa 706; *Schutt* v. *State*, 173 Ind. 689; *Owensboro* v. *Barclay*, 102 Ky. 16; *Swann* v. *Buck*, 40 Miss. 268; *State* v. *Beck*, 25 Nev. 68; *Power* v. *Kitching*, 10 N. D. 254; *Mason* v. *Cranbury Twp.*, 68 N. J. L. 149; *Narregang* v. *Brown County*, 14 S. D. 357. It is believed that the above comprise those states holding the enrolled act conclusive.

facie evidence of its validity and that recourse may be taken to the journals to see if all constitutional provisions relative to procedure have been observed. The presumption, of course, is always favorable to the act, but this may be overthrown by affirmative evidence on the journals. But it must appear affirmatively and beyond all doubt that the act was not properly passed. If the journals are silent or ambiguous it must be presumed that the constitution was followed. For example, if the journals show that a bill failed to receive a constitutional majority on final passage and the words "so the bill failed to pass" were entered, the bill never became law, although this could not be presumed from mere silence.[24] In like manner the courts will not consider the fact that notice of introduction of a local or private act was omitted although the constitution may require it to be published. The advertisement of such notice in the constitutional manner will be presumed and the journals need not show it.[25]

Although it usually cannot be assumed that constitutional requirements were omitted because a record of every step stipulated

[24] *Currie* v. *Southern Pacific Co.*, 21 Ore. 571. The following cases illustrate the points involved: *C. B. & Q.* v. *Smythe*, 103 Fed. 376; *Gibson* v. *Anderson*, 131 Fed. 376. *In re* Duncan, 139 U. S. 449 (Federal Courts adopt adjudication of state courts). For acts of Congress the enrolled bill is sufficient, *Field* v. *Clark*, 143 U. S. 649. *Ex parte* Howard & Co., 119 Ala. 484; *Andrews* v. *People*, 33 Colo. 193; *State* v. *Francis*, 26 Kan. 724; *Attorney-General* v. *Rice*, 64 Mich. 385; *State* v. *Field*, 119 Mo. 593; *Colburn* v. *Mcdonald*, 72 Neb. 431; *Territory* v. *O'Conner*, 37 N. W. 765; *State* v. *Smith*, 44 Ohio St. 348; *Hiskell* v. *Knox Co.*, 177 S. W. (Tenn. 1915) 483. Of course if the constitution stipulates entry in the journal the journal must show the entry.

[25] *Vann* v. *State*, 65 Fla. 160; *Critcher* v. *Crawford*, 105 Ga. 108; *Bray* v. *Williams*, 137 N. C. 387. In order to make the requirement of notice effective Alabama included in her constitution, adopted in 1901, a clause which prescribes that the evidence of the publication of notice shall be spread on the journals and directs the courts to pronounce void any private or local law for which the journals do not show that notice was published. Numerous acts have thus been nullified. *See Kumpfe* v. *Irwin*, 140 Ala. 460.

But acts have been held invalid because the requirement of notice was not observed, *Ashbrook* v. *Shaub*, 60 S. W. (Mo.) 1085; *Attorney-General* v. *Tuckerton*, 67 N. J. L. 120; *Chalfant* v. *Edwards*, 173 Pa. St. 246; here the fact of no notice was admitted by both parties and the court accepted their admission. In New Jersey this was held insufficient to overthrow the *prima facie* evidence of the act (*Freeholders* v. *Stevenson*, 46 N. J. L. 173). The fact of no notice is hard to show if the courts accept the journals as final.

in the constitution does not appear in the journals,[26] the situation changes when certain facts are obliged to appear thereon. Such facts can be shown in no other way and their failure to appear on the journals will invalidate the act, and no presumption arises from the enrollment of the act.[27]

The trend of recent decisions has been towards permitting resort to the journals to ascertain if the constitutional forms of procedure were observed, and away from the English view that the act is the only record. Indeed the courts of two states have gone so far as to demand that the journals must show affirmatively every step prescribed by the constitution. Failure to do so is conclusive evidence that the step was not taken, regardless of whether or not the constitution explicitly orders entry thereof. Therefore, the express provision of the constitution for the entry of the ayes and noes on the journal does not imply that other steps need not be taken, the conclusion being that if facts are not set forth they did not transpire.[28]

This would seem the sensible view if effect is to be given to articles in the constitution designed to cure flagrant evils in parliamentary practice. If recourse is had to the journals they should be considered as a true and complete account of the legislative body, and omission therefrom of a step made mandatory by the constitution should be conclusive evidence that it was not taken. Journals might then be kept with greater care, and this in turn would promote closer adherence to constitutional methods.

Constitutional Provisions Sometimes Directory

The view sometimes taken by the courts that constitutional directions concerning procedure are directory merely and not man-

[26] Presumed that ayes and nays were taken on final passage of a bill although journal was silent, *State* v. *Rogers*, 22 Ore. 348. The same when journals fail to show three readings required by the constitution. *See* 44 Cent. Digest; Statutes, par. 17.

[27] *Ex parte* Howard, 119 Ala. 484; *State* v. *Swan*, 51 Pac. (Wyo.) 209. *Cotton Mills* v. *Waxhaw*, 130 N. C. 293.

[28] *Cohn* v. *Kingsley*, 5 Idaho 416. In *Brown* v. *Collector*, 5 Idaho 589, the journal did not show that the bill had been read by sections as the constitution required. *See* also *Spangler* v. *Jacoby*, 14 Ill. 297. In *Ryan* v. *Lynch*, 68 Ill. 160, the journal did not show that the bill had been read on three different days. *People* v. *Bowman*, 247 Ill. 276; *Neiberger* v. *McCullough*, 253 Ill. 312. The journal must show that the bill and amendments were printed.

datory gives the legislatures still greater freedom in their application. This doctrine is borrowed from the principle that, when the provisions for carrying out a statute were not designed to operate as a condition to its performance and do not to the judicial mind appear essential, they will be regarded as directory. In such cases the proceedings under the act will be held valid, although the command of the act as to form and time has not been strictly observed; the time and manner not being the essence of the thing required to be done.[29]

In many cases this is the reasonable attitude towards constitutional prescriptions, since the execution of the legislative function is more important than the method. Accordingly it is usual to hold that an incorrect enacting clause will not invalidate the law, the form set forth in the constitution being considered directory.[30] Constitutional provisions that bills shall be enacted into clauses and sections are viewed in the same light.[31] In situations such as these the will of the framers of the constitution may be accomplished without strict adherence to constitutional standards, for the questions are purely ones of form, but when methods of procedure are involved the situation is more serious. Requirements such as that a bill shall be read on three separate days exist to insure deliberation and to check flagrant evils. As Cooley[32] well points out, the interpretation of constitutional prescriptions which renders them merely directory is charged with dangerous elements. The fundamental law does not generally undertake to prescribe rules of proceeding except where such rules are looked upon as essential to the thing to be done.

Sections which require that every bill shall have three readings on separate days have sometimes been held mandatory, sometimes merely directory,[33] and the same is true of the provision that all

[29] Potter's, "Dwarris on Statutes," p. 222 and p. 226 note. *See* also *People* v. *Spruance*, 8 Colo. 307.

[30] *McPherson* v. *Leonard*, 29 Md. 377; *Cape Giraudeau* v. *Riley*, 52 Mo. 424; *Swann* v. *Buck*, 40 Miss. 368; *State* v. *Burrow*, 119 Tenn. 376; But in *State* v. *Rogers*, 10 Nevada 250, the omission of one word from the enacting clause rendered the act void. The Court was moved to this extreme view by Cooley on "Constitutional Limitations," 7 ed., p. 214.

[31] *County Commissioners* v. *Meckens*, 50 Md. 28.

[32] Cooley, "Constitutional Limitations," 7 ed., pp. 213–214.

[33] Mandatory, *Ryan* v. *Lynch*, 68 Ill. 160; *Board of Supervisors* v. *Heenan*, 2 Minn. 330; In the latter case the court considered that since the constitution

bills shall be signed by the presiding officers and the fact entered in the journals.[34] Although clauses requiring that bills have but one subject clearly expressed in the title are generally mandatory, a few decisions have declared them to be merely directory.[35]

The rule has been applied that the constitutional prescription is directory where there is no clause declaring the act void if the direction be not followed,[36] whereas if the reading is that "no bill shall become a law" unless a certain procedure is followed the provision is mandatory.[37] However this rule is not general, for affirmative clauses have often been held mandatory, largely under the influence of the attitude taken by Cooley. From the viewpoint of legislative procedure the question is not of prime importance as long as courts refuse to invalidate an act other than by affirmative statements on the journal.

Parol Evidence Inadmissible to Overthrow Journals

The courts have consistently refused to admit parol evidence to overthrow the favorable presumption towards an act, the journal being the only evidence competent to impeach it.[38] The integrity of the journal cannot be assailed for fraud or deceit. When approved by the house it becomes the act of the house itself and to inquire into its veracity would be to invade a coördinate department

provided that the necessity for three readings on separate days could only be suspended by a two-thirds vote, it was demonstrated that the framers of the fundamental law attached great importance to the manner of passing an act. Directory, *Miller and Gibson* v. *State*, 3 Ohio St. 475.

[34] Mandatory, *State* v. *Glenn*, 18 Nev. 34; *State* v. *Keisewetter*, 45 Ohio St. 254; *Burrit* v. *Commissioners*, 120 Ill. 322. Directory, *In re* Roberts, 5 Colo. 525; *Leavenworth* v. *Higginbotham*, 17 Kan. 62 (otherwise the presiding officers would have the veto power); *State* v. *Mason*, 155 Mo. 486; *Telegraph Co.* v. *Nashville*, 118 Tenn. 1.

[35] *Washington* v. *Page*, 4 Cal. 388; *In re* Boston Mining Co., 51 Cal. 624; *Ohio* v. *Corrington*, 29 Ohio St. 102.

[36] *People* v. *Supervisors*, 27 Barb. (N. Y.) 584; *People* v. *Supervisors of Chenango*, 8 N. Y. 317; *McClinch* v. *Sturgis*, 72 Maine 288; *State* v. *Meade*, 71 Mo. 266.

[37] *Larkin* v. *Simmons*, 155 Ala. 273; *Cummins* v. *Gaston*, 109 S. W. (Tex.) 476.

[38] *Ames* v. *U. P. Rwy. Co.*, 64 Fed. 165; *State* v. *Brody*, 148 Ala. 381; *People* v. *Hatch*, 33 Ill. 9; *Brays* v. *Williams*, 137 N. C. 387; *Auditor-General* v. *Board*, 51 N. W. 483 (Mich.).

of government. If the journal contains errors the house itself is the only tribunal competent to correct them.[39]

This freedom from judicial inquisition is granted the legislature as a right inherent in an independent department of government. Where the constitution has imposed restrictions upon it as to the methods by which it shall act, it claims the prerogative of applying these restrictions. If, during the passage of an act, the constitution has been violated, attention is called to the breach by raising a point of order on the floor. Thus a point of order that notice had not been given for a private bill as ordered by the constitution is fatal if sustained.[40] Presiding officers refuse to rule on the constitutionality of a measure unless a point of order is involved. It is then their duty to do so.[41] The Missouri Constitution (Section 37, Article III) empowers five members of either house to protest that the constitution has been violated in the passage of a bill, which protest is to be noted on the journal. The courts hold, therefore, that in the absence of such protest it will be presumed that the legislature was not remiss.[42] But as the same courts have ruled that to nullify an act the journals must show affirmatively and beyond all doubt that the constitution was not followed, it is difficult to see how a parliamentary objection would have much weight.[43]

The Validity of Parliamentary Rules

The constitutions of all the states except Georgia empower their legislatures to make their own rules of procedure, although nothing is clearer than that this prerogative would inhere without express constitutional grant. From this it follows that no court will review any infraction of the legislative rules, and if the houses choose to ignore them completely the validity of their acts is in no

[39] *State* v. *Smith*, 44 Ohio St. 348. Here a spurious and false journal accomplished the validity of an act; protests and affidavits spread on the journal at a later date were of no effect. *See* also *Taylor* v. *Beckham*, 108 Ky. 278, where it was averred that in an election contest following the murder of Goebel the journals were fraudulently made out pursuant to a conspiracy. *See* further *Wise* v. *Briggs*, 79 Va. 269.

[40] Penna. House Journal, 1876, p. 790 *et passim.*

[41] For a complete discussion *see* Mass. Senate Journal, 1869, p. 341.

[42] *McCafferty* v. *Mason*, 155 Mo. 486.

[43] *State* v. *Field*, 119 Mo. 593.

way affected.[44] A house may adopt any procedure it sees fit, and change it at any time without notice, but it cannot bind itself by establishing unchangeable rules.[45] In this respect joint rules are no more binding than the rules of a single house, their observance likewise resting upon the discretion of the legislature.[46]

The constitution of Minnesota contains a clause obviously designed to increase the authority of the rules of the two houses. Bills, passed in conformity to the rules of each house and to the joint rules, are to be presented to the governor. (Section 21, Article IV.) In an early case the Supreme Court of the State discussed the probability that by this recognition the rules were designed to be placed on the same footing with the rules incorporated in the constitution.[47] Nevertheless, no court has nor will any court be apt to test the possibilities of this provision because of the doctrine that no act can be impeached except by affirmative evidence on the journal.[48]

The Authority of Statutes Regulating Procedure

Brief reference has already been made to frequent attempts to secure a more refined procedure by incorporating certain rules in the statute law, the thought being that once a rule has received the approval of the governor in the form of a legislative act, its observance rests no longer upon the whim of the legislature. Following the passage of such laws, the question arose whether or not a binding authority higher than a mere parliamentary rule had been attained in any manner which the courts were bound to respect. The general verdict has been that these self-inflicted restraints have no higher validity than a rule of practice of a single house. Thus a statute directing that every bill shall have three readings on separate days was merely directory and its suspension by less than a two-thirds vote, although forbidden by the act, did not invalidate legislative action on a bill. Such a statute receives its entire force from legislative sanction and exists only at legislative pleasure. It is no more than a rule of procedure adopted by the legislature to

[44] *McDonald* v. *State*, 80 Wis. 407; *Brays* v. *Williams*, 137 N. C. 387; *Wise* v. *Bigger*, 79 Va. 269.

[45] *French* v. *State Senate*, 146 Cal. 604.

[46] *Railway Co.* v. *Gill*, 54 Ark. 101.

[47] *Board of Supervisors* v. *Heenan*, 2 Minn. 335.

[48] *State* v. *Hastings*, 24 Minn. 78.

govern its own proceedings.[49] Neither can one legislature bind another by a particular mode of repealing or amending statutes, for no form can be prescribed for legislative action which the constitution does not lay down.[50]

The position of the courts is further revealed by their attitude towards acts which have been called out by the numerous evils attending special and local legislation. In states where no constitutional mandate exists it has been common to provide by statute that notice of intention to introduce any special or local act must be published in approved form. The universal opinion of the courts has been that such statutory requirements may be disregarded since they can exist only for the legislature's guidance and convenience.[51]

The practice of Congress conforms to the theory prevailing in the states. A rule of procedure accordingly is not controlled by any act of a preceding Congress,[52] although a law passed by the then existing Congress has been recognized as binding in such matters.[53] It need hardly be pointed out, however, that, when the question of suspension comes up, statutes of the sort under discussion have a validity higher than a simple rule, inasmuch as the prestige of a statute is greater than that of a mere rule of practice.

In an effort to assure the actual presence of members at the final passage of a bill and to escape the "short roll call," New York

[49] *Sweitzer* v. *Territory*, 5 Okla. 297.

[50] *Brightman* v. *Kernor*, 22 Wis. 54.

The New York Commission to recommend changes in methods of legislation (appointed by the Governor, 1895) urged that certain provisions of the joint rules be enacted into statutes that they might at least be binding on each house taken separately. (N. Y. Assembly Documents No. 20, Session of 1896.) This is an incorrect statement of law.

[51] *Manigault* v. *Ward*, 123 Fed. 707 (affirmed 199 U. S. 473, although this point did not come up). *Derby & Turnpike Co.* v. *Parker*, 10 Conn. 522; *Chamlee* v. *Davis*, 115 Ga. 266; Opinion of the Justices, 63 N. H. 625; *Sherman* v. *Benford*. 10 R. I. 559.

In *Chalfant* v. *Edwards*, 156 Pa. St. 246, the court spoke with disfavor of the opinion that one legislature might disregard at pleasure the directions of its predecessor concerning the publication of notices of private bills, and pointed out that although the power to repeal the act could not be doubted yet it had not been exercised, and the citizens of any locality had the right to rely on the observance of its provisions. The case, however, was decided on other grounds.

[52] 4 Hinds 3298, 3579, 3819.

[53] 5 Hinds 6767, 6768.

passed an act which directs the presiding officers of each house to certify to the presence of a constitutional quorum and passage by a constitutional majority.[54] No bill was to be deemed passed unless so certified, and the certificate was to be conclusive evidence of the fact of passage. Yet this law has been declared void. If the journals show a constitutional quorum present and the necessary affirmative votes, the act is good,[55] and a defective certificate can be supplemented by the journals.[56] Here again the legislature is forbidden the right to bind itself in matters of form and the conclusion must be that the success of measures such as we have been discussing must be judged by their moral effect upon the legislature's conduct of business, and not by their legal force.

The experience of those states which try to keep their codes complete illustrates the futility of attempts to control legislative practice, as it were from the outside. For example the Political Code of California (Sec. 249–250) requires that each bill proposing an addition to the general laws shall be codified by the judiciary committee of one of the houses, but although this codification is omitted the validity of such acts cannot be questioned.[57]

Legislative Employes

Attempts to regulate by statute the number and compensation of legislative employes have likewise involved the power of the separate houses to manage their own affairs in their own way, without being amenable to any other department of government. The multiplication of legislative sinecures has been a common method of rewarding the faithful, and many states, profiting by experience, have set forth by statute the specific number of employes allowed each house and their compensation. Clearly, however, the observance of such laws rests with the houses of the legislature and varies widely in different states. It can be truthfully said that they are passed largely for moral effect. In Massachusetts the provisions

[54] Now known as Chap. 37, ¶ 40, Laws of 1909.

[55] *In re* Stickney's Estate, 185 N. Y. 107.

[56] *People* v. *Supervisors of Chenango*, 8 N. Y. 317.

[57] Statement of N. W. Thompson, President pro tem of the California Senate, 41st Session, in Legislative Manual for California, 1915. Mr. Thompson also suggests that laws of this nature are contrary to the provision of the constitution which empowers each house to determine the rules of its own proceedings.

of the statutes are followed scrupulously in the employment and payment of legislative helpers.[58] Vermont reports that considerable was accomplished by embodying such provisions in the laws rather than leaving them to the independent action of the two houses, and that they have failed of observance only in unimportant details.[59] On the other hand, it is common elsewhere for the legislature to disregard such regulations on the ground that they infringe upon the legislative prerogative.[60] The method prevailing of old in New Jersey was for each house to employ a great number of unnecessary aids and to take the chance that their compensation would be provided for in the bill which passed at the close of the session to meet unexpected expenses. Since the passage of the act defining the number and compensation of employes this abuse has to a great extent disappeared, although the scheme has not been entirely successful.[61]

Indiana's recent experience is an extreme illustration of the situation. By an act of 1895 the number and pay of the legislature employes were strictly limited, but for several years the allowance for employes had been increasing in both houses contrary to the statute, until finally in the session of 1913 the amount spent for help exceeded all previous records.[62] Following this session

[58] Statement of Mr. Henry D. Coolidge, Clerk of Massachusetts Senate.

[59] Mr. John M. Avery, Legislative Reference Librarian, Vermont.

[60] Miss Ida M. Anding, Legislative Reference Librarian, South Dakota, states that subsequent legislatures have disregarded for the above reason an act regulating employes. In Illinois both houses have violated similar provisions (Mr. Finley F. Bell, Legislative Reference Librarian). Because the number of employes at the 1913 session had been more than double that provided by statute, the Progressive element of the 1915 House tried to get the committee on contingent expenses on record as to how many would be added in excess of the statute during the session upon which they were entering (Illinois House Debates, 1915, p. 149). The attempt failed and the usual conditions prevailed. In New York, in order to bring the law into conformance with practice, the legislative statute was amended in 1915 to permit either house to increase at will the number of its employes (Laws of 1915, c. 483). In the majority of states excess employes are paid from the contingent fund.

[61] Mr. John P. Dullard, New Jersey State Librarian.

[62] In 1913, although the statute allowed forty-five employes in House and Senate, the actual number was approximately one hundred and fifty. Between 1907 and 1913 the sum expended for "help" in the Senate increased from $36,668 to $61,572. The allowance for doorkeepers increased more than seven thousand dollars, and the added employes performed only nominal duties (*See* Senate

several members and officers of both houses were indicted and tried in criminal court for making out fraudulent warrants to pay men employed contrary to law. The question considered by the court was whether the Senate and House acting separately had the right to employ assistants in excess of the numbers named in the act.[63] The court did not accept the contention that the act of 1895 was binding on the two houses until repealed. The power of each house to fix the number of employes was not conferred by the General Assembly, but came in the nature of an inherent right which the General Assembly acting as a law-making body cannot curtail or limit. Therefore the act was never binding.

This opinion represents fairly well the usual attitude of legislators toward statutes which seek to control legislative employes. Freedom to determine the number and allowance of employes is a prerogative, similar to the power of judging of the qualifications of members or of punishing for contempt, and is indispensable.[64]

In accord with this doctrine, a joint committee of the Montana Legislature appointed to make provision for the payment of employes recently reported that the section of the constitution[65] which requires the legislature to provide by law the number and compensation of employes is fulfilled if the legislature leaves by law to each house the right to designate the number of assistants as the times demand.[66]

In opposition to the above, is the view that the right to employ clerks and assistants at will is not inherent, but can be restricted by law. The legislature, although the law-making power, is itself regulated and controled by law. Therefore, if employes are desired in addition to those specified by statutes, the law must be so

Journals, 1907 and 1913). As was pointed out at the time, there had been no increase in the size of the floors to sweep or in the number of spittoons to clean. The session of 1915 managed to function with a material reduction in the number of employes.

[63] From the opinion of the trial judge, rendered in the Marion County Criminal Court, Dec. 17, 1914.

[64] Supported in *Cliff* v. *Parsons*, 90 Iowa 665; in *Cook* v. *Auditor-General*, 129 Mich. 48, the court specifically refused to take the position that payments to legislative employes made by resolution and properly endorsed were illegal although contrary to a clearly expressed statute.

[65] Sec. 28, Art. V.

[66] Montana House Journal, 1915, p. 65.

framed or amended as to authorize their employment.[67] Such a law, it is urged, is binding on the houses to the same extent as on a private individual, and can be repealed or disregarded only by the concurrent action of the two houses and the approval of the governor.[68] Contrary to the action of Montana, the legislature of Colorado fulfilled the constitutional requirement that no payments should be made to employes except those appointed in pursuance to law, by specifying by statute the number and rate of compensation. The Supreme Court has held that, in view of this, the houses cannot by separate resolution fix the compensation of employes at a rate higher than that allowed by existing law. The constitutional prescription is a mandate to the legislature to fix it by law, since it is a provision essential to the protection of public rights, and when such a law has been enacted the legislature cannot ignore it.[69]

The number of times the question of the right of the legislature to employ clerks and assistants has been considered by the courts is small, and it is not possible to cite precedent that is conclusive, yet the view that the legislature in this connection is at all times a law unto itself is more in keeping with the decisions of the courts concerning statutes seeking to control other phases of legislative procedure. Granted that the legislature has the right under the constitution to employ assistance that it may discharge its business most expeditiously, it is difficult to see how it can be restricted by self-imposed law. Any other view extends the control of the executive, whose approval would be necessary to a removal of the restriction, beyond mere approval or disapproval of the legislative product to a share in the internal management of the business of the houses, a result certainly never anticipated by the framers of our state constitutions.[70]

[67] *State* v. *Wallichs*, 14 Neb. 439. Yet the Legislature has not felt itself bound, and in a number of cases has exceeded the statute limit. (Statement of Mr. A. E. Sheldon, Director Nebraska Legislative Reference Bureau.)

[68] *State* v. *Auditor-General*, 61 Mo. 229. *See* also *Walker* v. *Coulter*, 113 Ky. 814, although here the constitution strictly specifies the number of employes and the point under discussion was not necessary to the decision.

[69] *People* v. *Spruance*, 8 Colo. 307.

[70] The legislature's independence in matters relating to employes is somewhat restricted by constitutional prohibitions upon increases of compensation after the service is rendered. *See Robinson* v. *Dunn*, 77 Cal. 473; *State* v. *Williams*, 34 Ohio St. 218; *State* v. *Chatam*, 21 Wash. 437.

Recently the Illinois Supreme Court refused to allow an appropriation for

In the light of the foregoing the following generalizations may be made. If the legislature has the power to act under the constitution (the power may be inherent in the very nature of the legislative function), it possesses full competence to decide what methods of procedure it will employ. The courts will review the right to exercise the power but will leave the application of constitutional directions concerning procedure in the hands of the legislatures themselves. If the legislative bodies are determined to evade checks placed in the fundamental law, the evasion must appear affirmatively on the journals. If legislatures are remiss in interpreting constitutional provisions the remedy "which the constitution provides by the opportunity for frequent renewals of the legislative bodies is far more efficacious than any which can be afforded by the jury." In the last analysis we must look to the legislature itself to give living content to any rules, constitutional or otherwise. This does not signify, however, that constitutional requirements concerning procedure are without effect. Usually they are respected to the letter even if the spirit be not always fulfilled, and where the intention of the framers is not accomplished there is ordinarily a good practical reason for the failure to do so.

telephone fees of members or for the mileage of members. It denied that these expenses were incidental to the discharge of the legislature's business. (*Fergus* v. *Russell*, 270 Ill. 304 and 626.) Nevertheless it may be argued with reason that the telephone is as necessary as are pages and stenographers.

CHAPTER II

THE ORGANIZATION OF THE HOUSES

The first step in the organization of a new legislature is of necessity the preparation of a temporary roll. If the certificates of the members-elect are all regular and uncontested this is a mere clerical duty. But if the majority of one party is small and doubtful, and conflicting election certificates have been presented, the power to draw up the roll is open to abuse, since it is highly desirable to either party to construct an organization which will favor its interests in the contests which are to follow.

The Make-up of the Roll

Contrary to the practice of Congress, the legislatures of many states have taken the make-up of the roll out of the hands of the clerk of the preceding session and placed the duty upon the secretary of state, who certifies to the correctness of the list of names which he presents. He is presumed to be a more responsible officer than the clerk and any member named on the roll is entitled to his seat until action is taken unseating him.[1]

In other states the temporary clerk calls the roll of counties and members-elect present their certificates as their districts are called.[2] Or the duty may be left with the clerk of the last session, with the specification that only members holding proper election certificates shall be placed on the roll.[3] In Colorado and Nebraska permanent organization is delayed until the report of a committee on credentials[4] but this does not destroy the advantage gained by the possession of a majority on the temporary roll or the importance

[1] Clerk's Manual, New York Assembly (1916), p. 509, and Assembly Journal, 1914, p. 30 *et seq.* Also Legislative Decision No. 25, Michigan Manual (1915), p. 645. Members are, with few exceptions, sworn according to this temporary roll. *See* journals of any state.

[2] Fixed by statute in California, Indiana, Minnesota, Montana, Ohio and Texas.

[3] Fixed by statute in Arizona, Iowa, Maryland, Nebraska and North Dakota.

[4] Colorado, Annotated Statutes ¶ 2897; Nebraska, Revised Statutes (1913), ¶ 3742–3743, and the Blue Book (1915), p. 470.

of the clerk's power in making up the same. With these two exceptions, persons appearing on the roll upon which the house is organized take the oath and participate in the permanent organization, and remain members until removed by the house. In New Hampshire, however, no name is to be entered for any district from which conflicting certificates of election have been returned.[5]

The method of making up the roll is usually prescribed by statute. In Illinois, however, it has been left to custom, and confusion sometimes results. At the organization of the 1915 session the president of the Senate of that state refused to admit the roll prepared by the secretary of state, which would have deprived his party of control, on the ground that no statute made this the official roll. The parties were evenly matched, and, as no roll could be agreed upon, permanent organization was delayed for more than six weeks, or until a special committee had completed a recount in the doubtful districts.[6]

Contested Elections

One of the first questions to engage the attention of the houses is the disposition of contested elections. As shown in the chapter above, this right is exclusive with each house and perhaps no power has led to graver abuses. In no state are such contests dealt with in a systematic way, nor have party organizations hesitated to strengthen their position by high-handed practices in unseating members. Where no immediate decision is necessary to party advantage the contest may drag on for weeks. In 1915 the Assembly Committee on Privileges and Elections in New York spent in two election cases $9,075.98 for hotel expenses alone.[7] In 1914 a contested election before the same body was not decided until the day of adjournment, and the duly elected representative served but part of one day. Thus two men drew full salaries for the same office.[8]

Inasmuch as control by the legislature of the election of its members is no longer necessary as a defense against executive encroachment, England has outgrown the conviction that the power

[5] Public Statutes, Chap. 4, Sec. 6.

[6] Illinois Senate Debates (1915), pp. 4, 5, *et passim.*

[7] Itemized account approved by the speaker, New York *Times*, Jan. 26, 1916.

[8] Report of the Citizens' Union Committee on Legislation for 1914, p. 4.

of decision in contested cases is an inviolable parliamentary privilege, and since 1868 such cases have been referred to the courts.[9] But the American courts will not permit our legislatures to part with this jurisdiction. The constitution of Pennsylvania directs that the trial of contested elections of members of the General Assembly shall be by courts of law [10] and in conformity to this the legislature designated the courts and the manner of holding trials. The Supreme Court held, however, that by this the legislature was not deprived of the power, granted in another section of the constitution, of judging of the election of its own members. The purpose of the constitution and the statute was merely to provide a method of procuring and presenting to the respective houses evidence necessary for an intelligent decision. Final judgment must rest with the house.[11]

More recently in two important cases the power of the courts to render even advisory opinions has been denied. The Corrupt Practices Acts of Massachusetts and of Montana provided that cases of contested elections of members of the legislature should be heard by the courts upon the presentation of proper petitions. The judge was to return the findings to the secretary of state to be transmitted to the house for which the contestant was a candidate, and decrees were to be entered in favor of the one shown to be lawfully elected. But in reviewing these provisions the highest courts of both states held that if it was their purpose to give final jurisdiction to the courts, they were void as invading an exclusive prerogative of which the legislature could not divest itself. Moreover, if the decree of the court was to be advisory merely, a non-judicial duty was imposed on the courts. They were made nothing other than the agent of the legislature, and their opinion at best could be only tentative. In accordance with the principle of the separation of the powers of government such use cannot be made of the courts.[12]

[9] *See* Parliamentary Debates, July 6, 1906, where a danger is disclosed in the English system. A strong element in Commons wished to drive a justice to resign because of his conduct in an election case. The Prime Minister's indictment of the old method prior to 1868 could be applied word for word to present conditions in our state legislatures.

[10] Art. III, Sec. 17.

[11] *In re* Contested Election of McNeill, 111 Pa. St. 235.

[12] *Dinan* v. *Swig*, 112 N. E. 91 (Mass. 1916); *State* v. *District Court*, 50 Mont. 134 (1914).

Thus it is seen that escape from the almost farcical proceedings before election committees by following English example is rendered impossible through our unique doctrine of the relation of the departments of government.

Selection of Employes

The selection of legislative employes is the third important step in the business of organization. While the needs of different legislatures vary it is generally admitted that, were the selections made on the basis of skill and training, fewer men would do the work more efficiently. The general report from the states is that clerks and employes are chosen solely on grounds of political expediency. Indiana follows the happy plan of making appointments for half the session, employing a new corps for the last thirty days. The following indictment by the Governor of Idaho could apply quite generally:

> There has been a general increase in the expenses of succeeding legislative sessions out of proportion to the increase in membership. Previous legislatures have placed upon the pay rolls many more employes than were strictly necessary in the transaction of their legitimate business. Much higher salaries have been paid than would have been necessary to secure similar services by any corporation or individual.[13]

Two years later Governor Clark of Iowa arraigned the legislature in more severe language. Much of the money, he asserted, which was expended for legislative "help" was "pure, unadulterated graft." A dozen doorkeepers were employed where none was needed and clerks sat around the chambers in luxurious ease. The system was reprehensible and indefensible, and he called upon the General Assembly to reform.[14] In the Missouri House it is the custom to allow each majority member to name one clerk. Thus the number of employes bears a strict ratio to the size of the party majority.[15] In Indiana it has been estimated that one-third of the employes could do the work.[16]

[13] Message to the Twelfth Legislature (1913).

[14] Biennial Message of the Governor (Iowa), 1915.

[15] Kansas City *Times*, January 9, 1913. At this session the Democratic majority was the largest in history and approximately 120 clerks were engaged.

[16] Statement of Legislative Reference Bureau in reply to questionnaire of Nebraska Legislative Reference Bureau, 1913.

Wisconsin has solved the problem of legislative help by adopting the civil service principle under the direction of the chief clerk and the sergeant-at-arms of each house, who make the selections from an eligible list furnished by the civil service commission of the state.[17] The number of employes has likewise been reduced to the minimum necessary to carry on the work with maximum efficiency.[18]

The officers and employes may be chosen by the house, as is done in Ohio and Pennsylvania,[19] but it is more usual for the house to elect only the more important officers and to delegate to the speaker or the clerk or the sergeant-at-arms the selection of a host of minor officials.[20] When the power of appointment to desirable positions with nominal duties is lodged with the speaker his position of leadership is strengthened. In Massachusetts the sergeant-at-arms, who is an officer of both houses and appoints numerous minor officials, possesses a great deal of patronage and is a powerful man.[21] Sometimes the selection of the rank and file of employes is entrusted to a committee, not infrequently referred to as the "plunder committee" whose nominations are accepted by the house.[22]

Where the personnel of members changes as rapidly as in the state legislatures the securing of expert help is of prime importance. An experienced clerk and a skilled assistant may be instrumental in bringing system and order into an otherwise chaotic body of inexperienced legislators. To this end permanency of tenure and a graduated order of promotions are absolutely essential. Such a simple reform would result speedily in an improved legislative product, whereas the prevailing situation makes one or two overworked individuals responsible for the legislative routine while a great number of other employes bask in idleness.

It may be noted here that statutes regulating the manner of organization or method of selection of employes have no binding power, should the house choose to ignore them; and the point of order, that the house is proceeding contrary to law, will not

[17] Wisconsin Statutes, Chap. X, Sec. 111g, and House Rule 9, and Senate Rule 93.

[18] Statement from Legislative Reference Library.

[19] Of course the nominees are selected by a "slate committee."

[20] For example, New York and Massachusetts.

[21] Frothingham, "A Brief History of the Constitution and Government of Massachusetts," p. 97.

[22] For example, Indiana H. J. 1915, p. 73; Kansas and Washington also.

usually be entertained. For this the states have Congressional precedent.[23]

It is usual to adopt the rules of the last session with perhaps minor changes reported by the rules committee. Until the rules are adopted the house operates under general parliamentary law. On these grounds a motion for the previous question was entertained in the New York Senate and is the only instance on record of such a motion being considered by that body.[24]

The organization of each house completed and the fact sent by message to the other house, it is customary to appoint a joint committee to wait upon the governor to inform him that the legislature is ready to proceed to business.

[23] *See* 1 Hinds 82, 242, 245.
[24] Clerk's Manual, 1916, p. 650.

CHAPTER III

INTRODUCTION OF BILLS

It is generally recognized that our present legislative machinery was not designed to meet the heavy burdens placed upon it in the form of hundreds of measures introduced each session. Legislative channels are congested by countless bills of individual members, and no satisfactory methods have been devised to stem the torrent. Indeed it is not strange that a procedure developed to secure deliberation for measures introduced by the tens should prove inadequate when measures are presented by the thousands. At a time when legislation is increasing rapidly in complexity and technical detail there exist no limits, except the self-imposed restrictions of individual members, to the number of bills which a house must consider.[1]

Early Methods of Introduction

The right of a member to demand consideration for a legislative proposal has not always been so clear as at present. In the early days of our state legislatures, following the practice of Parliament, bills could be introduced only by motion for leave or by order of the house, and in either case action by a committee was necessary.[2] A member seeking to introduce a bill would, after one day's notice, state to the house its general nature and move for leave. Leave being granted, a committee, of which the proponent was always made chairman, was appointed to prepare and bring in the bill.[3]

[1] *See* Bulletin of Nebraska Legislative Reference Bureau, "Legislative Procedure in the Forty-eight States," pp. 10–11, for a table of number of bills introduced each session from 1909–1913. Each successive session shows an increase.

[2] Clark, "Assembly Manual for New York" (1816); Sutherland, "Legislative Manual for Pennsylvania" (1830). *See* also the journals of New York, Pennsylvania, Massachusetts and Virginia for about the year 1800. For a complete discussion of this method *see* Debates of Congress, 1 Sess., 20 Cong., 823–827.

[3] Earlier practice in Pennsylvania had allowed a member to introduce a bill in place. The rule was, "Any member may read a bill in his place, and by permission of the house present it to the chair; it shall then be proceeded upon as if presented by a committee." (Rule 14, Pa. H. J. 1805, p. 28.) Yet the right was

Closely related to the above method was the order of inquiry, which was simply an order to a committee to consider the expediency of legislating along a certain line.[4] It was grounded on a presumed lack of knowledge and was an investigation started by the legislature to secure information which could not otherwise be obtained.[5] At one time generally employed,[6] this form survived in Massachusetts alone, where it was not abolished until 1893.[7] By that time it had become the normal way of introducing measures for consideration, but having lost all traces of its original purpose, it remained only as a cumbersome method of initiating legislation. Committees were charged with preparing measures when, because of the great increase in the number presented, their normal function was to sift measures, and great delay resulted.

A petition often formed the basis of a bill in the earlier days. Indeed the chief work of standing committees was the consideration of petitions. Originally, a committee reporting favorably recommended that a select committee be appointed to bring in a bill along the lines of the petition. Reference of a petition, however, soon came to confer authority to introduce a bill formally, although theretofore the committee in possession of the petition had not been able to report by bill unless empowered to do so by a special resolution.[8] Introduction by petition is still common in some New Eng-

restricted by requiring leave to be obtained. An examination of the journals will show that but few were introduced in this manner and that practically all bills were presented by a committee pursuant to order. So strong was the feeling that measures introduced should first be subjected to review that later the privilege of introducing bills in place was withdrawn, and the colonial practice of introduction solely by committee was restored.

[4] In Congress it was "a most common form" for measures other than those initiated by petition. (Debates of Congress, 2 Sess., 19 Cong., Col. 776; and statement of Mr. Polk, Speaker, Debates of Congress, 2 Sess., 24 Cong., Col. 1340. *See* also the journals of the time.)

[5] Report of the Special Rules Committee, Massachusetts House Documents, No. 5, Session of 1893.

[6] *See* journals of the legislatures of the first quarter of the nineteenth century, in particular the journals of Pennsylvania.

[7] Massachusetts S. J. 1893, p. 155. Today an order of inquiry merely authorizes an investigation and not the introduction of a bill. (Ruling of the Speaker, H. J. 1898, p. 456.)

[8] *See* journals of Pennsylvania, Massachusetts or Virginia about 1800. No committee was authorized to report a bill unless granted by resolution the privilege "to report by bill or otherwise." In course of time this was granted to cer-

land states and is required in Massachusetts for all private bills. The petition, however, must be accompanied by a draft of the bill, and although it is in itself a mere survival, only a fraction of even the general measures in Massachusetts are introduced without it.[9] The point of order that a bill is broader in its scope than the petition will be entertained.[10]

The cumbersome method of appointing a committee to prepare and bring in a bill gave place, as the pressure of business increased, to introduction of the complete measure from the floor, upon leave, and after one day's notice.[11] At first debate might occur upon the motion for leave but it soon became common to grant leave to all by unanimous consent. Thereupon introduction at will without the formality of securing leave came to be permitted.[12]

From this brief historical survey it is clear that originally the privilege of a member to introduce measures for consideration was not the unregulated right which it is today. The prevailing doctrine was that the consent of the house, or at least of a committee thereof, must be gained before a bill could be admitted for consideration, and in granting assent real deliberation was involved.[13] The

tain standing committees for the session, and later it was extended to all by a blanket resolution. Afterwards it was incorporated in the rules.

[9] Massachusetts Senate Rule 22, House Rule 29.

[10] Notes on Rulings, Massachusetts Manual 1916, p. 634. The method permits measures to be proposed without a member being recognized as sponsor, for although some member must endorse each one, he is not thereby made advocate for it. (Frothingham, "Brief History of the Constitution and Government of Massachusetts," p. 93.)

[11] As early as 1808 introduction by members from the floor was permitted in the New York Senate. When first recognized by the rules the method was employed but little, the great bulk of proposed measures coming in by petition.

[12] In 1843 in Pennsylvania; House Resolution No. 31. In 1868 the New York Assembly adopted the order of introduction of bills on call of counties (A. J., p. 94). Several states still adhere to introduction by leave in which case one member can compel a motion to grant leave.

[13] The question was fully discussed in Congress in 1827 when a proposal was up to amend the rules to make it clear that no bill should be introduced except upon the report of a committee, the old rule being so worded as to lead some to fear that bills might be brought in without committee action thereon. The reason given why the House usually admitted notice of intention to introduce a bill was that the judgment of the committee which would report on its expediency would be accepted since the committee exercised a discretion in the matter. In the course of the debate Mr. Archer said: "But if a member of the House may,

sifting forces of the house were thus applied before legislative proposals assumed the dignity of bills. Bills were introduced as the result of committee deliberation and, with the exception of consideration in the committee of the whole, were not usually sent again to a committee.

Personal Responsibility of Members for Introducing Measures

In our legislatures, where nothing like a responsible ministry has been developed, action must be inaugurated by the private member. With the exception of appropriation bills, measures are rarely introduced by committee action. Members are proverbially careless about exercising their right. They are not impressed with the value of the legislature's time nor are they conscious that, by their failure to select carefully what measures they will propose, they render deliberation upon them a mockery. A recent investigation carried on among the members of the Nebraska Legislature revealed that only 40 per cent of the bills introduced were the result of the members' own initiative or study of the subject. Sixty per cent were introduced at the request of individuals or societies.[14]

Permitting the words "by request," to be endorsed upon a bill, as is done in many states, favors the introduction of trivial measures by relieving the proponent of responsibility. The practice reaches a real abuse in Missouri, where in 1915, 15 per cent of the House bills were "by request." Very rarely in any state do such measures become law. Generally they are never reported favorably from committee. In Pennsylvania such an endorsement means the death warrant of a bill, as members argue that there must be something wrong if the sponsor is unwilling to identify himself with it.[15]

on leave, bring in any bill which suits his particular views, and that bill must of necessity pass immediately to its first and second reading, all sound legislation would be at an end." (Debates of Congress 1 Sess., 20 Cong., Col. 823 to 827.) Quoted by Chester Lloyd Jones, Proc. A. P. S. A.; 1913–14; p. 191.

[14] Bulletin of the Nebraska Legislative Reference Bureau, "Legislative Procedure in the Forty-eight States," p. 9.

[15] Statement of Mr. Scott, Chairman of Committee on Committees, Penna. House, 1913. Illinois and Kansas are notable offenders. The Illinois Voters' League strongly urges prohibition of the practice. (*See* Bulletin of December 20, 1914.) The rule in the Washington Senate is that such bills are not to be printed unless by special order.

The rule that no member shall introduce a bill which he is unwilling to defend and support personally on the floor, although difficult of enforcement, is a good one and should be followed conscientiously.[16] Nevertheless bills are often dropped in "sight unseen." For example, a representative lately confessed that he did not remember who had handed him a bill of far-reaching effect which he had introduced, except that he believed that it had been a woman.[17]

Either carelessly or through a desire to be identified with popular legislation, members introduce many duplicate measures. In the 1913 session of the Michigan Legislature, nine "blue sky" laws were introduced.[18] The same year 112 bills were introduced in duplicate in the Nebraska Legislature, and some even in triplicate, one being introduced twice by the same senator and once by a member of the House.[19] Naturally if there is a healthy representation of two parties, both will strive to introduce bills on important subjects; but attempts to facilitate passage by introducing identical measures in both houses are more common and less easy to defend. Legislative reference bureaus have rendered important service in urging members to combine measures and in calling attention to duplicate bills.[20] The rules of California permit the committee on engrossment to substitute a bill of the other house identical with one on their own calendar,[21] and in Oregon a committee exists to pass on all bills before printing and thus avoid duplication.[22] For

[16] This is Nebraska House Rule 34.

[17] Indianapolis *Star*, March 2, 1915.

The following colloquy over a bill up for final passage took place at a recent session of the Illinois Senate.

Mr. Dailey: "What is the purpose of the bill?"

Mr. Meeker: "I don't know; the bill was handed to me."

Mr. Dailey: "You are merely the foster-father?"

Mr. Meeker: "Yes, I am the medium through which the bill was introduced."

It may be added that the bill received a majority of the votes of those present but failed to receive the constitutional number and thus failed. (Senate Debates for 1915, p. 1130.)

[18] Reply to questionnaire of Nebraska Legislative Reference Bureau.

[19] Statement from the Nebraska Legislative Reference Bureau.

[20] The South Dakota Legislative Reference Library reports particular success along this line.

[21] Assembly Rule 9; Senate Rule 3.

[22] Statement in reply to Nebraska Questionnaire, 1913.

the same purpose the printing committees of the Washington houses are instructed to scan all bills.[23]

Restrictions upon the Free Introduction of Measures

The increasing number of bills presented has led to discussion as to the feasibility of establishing some form of censorship upon their introduction. But as brought out by the Massachusetts committee to revise legislative procedure, the duty of the censor would necessarily be more than clerical. Consequently it could not be delegated to anyone outside the legislature, although it is unlikely that any group of members could exercise any material power of selection without incurring the dislike of their colleagues and becoming the victims of political scheming.[24] A proposal, recommended by a joint committee of the Massachusetts Legislature in 1910,[25] designed to sift measures by limiting the number one member might introduce, did not meet with the favor of the two houses, inasmuch as they were unwilling to restrict their present unlimited right. Any innovation with this purpose in view is apt to run counter to the accepted belief that the channel should at all times be kept open in order that the overtures of the most humble citizen may easily attain legislative consideration.

There are numerous provisions of one kind or another limiting the time in which bills may be introduced, but their purpose is rather to protect against hasty legislation than to restrict the quantity. In two states, however, rules have been adopted designed to decrease the number which each member may propose. Introduction of bills in the Georgia House is in order but three days a week, and a member can present but one bill of a general nature each day.[26] In Illinois a member may introduce three bills a day during the first three weeks; thereafter on Tuesdays only.[27] But the efficacy of these provisions is greatly weakened by the custom of granting unanimous consent to introduce bills at any time.[28]

[23] *Ibid.*

[24] Report of the Massachusetts Committee to Revise the Rules, 1915, p. 29.

[25] *Ibid.*, p. 28.

[26] House Rule 40.

[27] House Rule 18.

[28] Mr. E. D. Shurtleff, member of the Rules Committee of Illinois House, states that he has never known such consent to be refused.

From California comes the latest novelty in the form of a constitutional

Present-Day Methods of Introduction

The procedure followed in introducing a bill varies somewhat in the different states. In a few the rules require that the old formality of asking for leave be carried out.[29] In others introduction by roll call of counties is still observed.[30] Under the latter procedure a member rises as his county is called and notifies the speaker that he has a bill to introduce. A page then hurries a copy to the clerk who reads the title to the house.[31] In Illinois bills are introduced upon a roll call of members.[32] The more general practice permits members to secure recognition from the presiding officer when the house is under the proper order of business, and to send the bill to the clerk who reads the title. This constitutes the first reading. If, however, the constitution requires three readings in full, a pretense of reading the text is made.

To escape the useless waste of time involved in the above procedure, several states, after the example of Congress, provide a box in which bills are deposited,[33] or have required that they be filed

amendment offered in a resolution to the Assembly. Bills are to be presented to the Supreme Court before the legislature convenes, which shall render an advisory opinion as to their merits. The number which members may initiate after the session opens is greatly restricted. (Assembly Constitutional Amendment, No. 57, Feb. 3, 1913.)

The effect of California's first "split session" was an increase of over one thousand bills presented. The first thirty days were largely devoted to introduction of measures. (Statement from State Library to Nebraska Questionnaire, 1913.) But in 1915 the number swung back to normal. (Key to Chaptered Laws for 1915.)

[29] True of Connecticut, Delaware, Iowa, Louisiana, Nebraska, and New Jersey Senate.

[30] Georgia, Indiana, Kentucky and Ohio.

[31] Hughes, "Guide to Parliamentary Practice in Ohio". (1913). This follows the early practice of Congress when motions for leave or resolutions of inquiry were introduced upon a call of the states. Debates of Congress, 2 Sess., 24 Cong., Col. 1341.

[32] House Rule 18, and "Law Making in Illinois," pamphlet issued by Illinois Legislative Reference Bureau.

[33] Maine, New Hampshire House, New York, North Carolina Senate. In 1914 New York adopted the requirement that before a bill is placed in the box it must be stamped by the clerk to show that it was presented personally by a member. This was to prevent bills from being dropped in by other persons, chiefly clerks.

beforehand with the speaker or clerk.[34] Thus bills receive their first reading and reference to committee one day after they have been presented to the house, the speaker being given time to select the appropriate committees.[35] Otherwise his reference is the result of a snap judgment. The reading of titles on introduction and oral reference by the presiding officer, consumes precious time. The whole order of business is gone through in the most perfunctory manner. Members pay no attention, relying upon the printed journals or calendars to learn all they want to know. And inasmuch as the printed journal of the day's proceedings appears the next morning there is no reason why introduction and reference should consume any time of the house whatever. Notice in the journal would be sufficient and, where no constitutional obstacle prevents, following the practice of Congress, could be counted as first reading.

It is required by the constitutions of nine states that notice of intention to introduce a private or local bill be published,[36] and the legislative law of seven other states requires that notice be published or served.[37] In Massachusetts and South Carolina private bill legislation must be founded upon petition,[38] and thus is retained a trace of the ancient practice when all legislation was based upon petitions for redress of grievances. In this connection it has been urged that a return to the practice of initiating private measures by petition and the numbering of them in a series distinct from public bills, would prove the first step towards developing a special procedure in private and local matters.[39] This is indeed a consummation devoutly to be wished. Since a bill for the particular benefit of certain persons or of a special locality may prove injurious to others, the passage of such a measure involves a judicial inquiry

[34] Minnesota, Pennsylvania, and Virginia.

[35] New York Assembly Rule 6; Pennsylvania House Rule 10.

[36] Index-Digest of State Constitutions. They are: Alabama, Arkansas, Florida, Georgia, Louisiana, Missouri, Oklahoma, Pennsylvania and Texas. North Carolina and New Jersey simply require notice before passage.

[37] Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and West Virginia. Connecticut, Maine, New Hampshire and Rhode Island require publication before the beginning of the session.

[38] Massachusetts Senate Rule 15, House Rule 31. Code of South Carolina (1912) ¶ 34–38.

[39] *See* article by J. David Thompson, "An Analysis of Present Methods of Congressional Legislation," Proceedings A. P. S. A., Vol. X, p. 168.

and determination, rather than a decision on public policy. Recognizing this fact, the English Parliament treats it very much as a lawsuit would be treated, and the preliminaries attending its introduction closely resemble the pleadings in a civil suit. We have, however, made but feeble progress in dealing with private bill procedure, nor has the mere provision that they be accompanied by petitions availed anything in Massachusetts. If the petition were required to set forth the scope and object of the bill and opportunity were given for adverse interests to file a counter petition something approaching a civil pleading would be attained. These claims and counter claims could then accompany a bill throughout its legislative progress.[40] South Carolina has gone so far as to require that the petition must set forth the merits of the case and why the purpose cannot be accomplished by general law, and a statement that all parties known to be concerned have had the requisite notice must be included.[41] Connecticut statutes provide that petitions of an adversary nature must be accompanied with a citation to the adverse parties to appear, and twelve days notice must be given before the day of appearance.[42] School fund petitions are returnable a month before the session opens and are heard by a special commission which reports to the General Assembly.[43]

[40] Recommended by the Governor's Commission of New York (1895). *See* New York Assembly Document No. 20, 1896.

[41] Code of South Carolina, *supra.*

[42] General Laws of Connecticut (1902) ¶ 7.

[43] *Ibid.*, ¶ 15.

The procedure which promoters of private bills in Parliament must observe before application is made are given in the Standing Orders of the House of Commons, Part II. They exist unchanged today as summarized by May, "Parliamentary Practice," pp. 679–684. It will be seen that petitioners must furnish complete information for the guidance of the committee which is to carry on the investigation. Proof that all conditions have been fulfilled must be exhibited to one of the Examiners of Petitions for Private Bills, who are officers appointed by the Speaker. (S. O. No. 2.)

The Canadian legislatures have followed the English precedent. The rules of the Ontario Legislature, which have served as models for the western provinces, specify in detail what the petition shall contain and what additional matter shall be deposited with the clerk. The Committee on Standing Orders reports on the sufficiency of the notice, and the clerk certifies that the necessary documents have been deposited with him. No motion for the suspension of these rules is entertained unless reported by the Committee on Standing Orders. (Rules of the Ontario House, 51–59.)

In view of the meager information conveyed by the title there has been some agitation in favor of requiring an explanatory note to accompany each bill on introduction. New Jersey adopted a rule which reads: "Each member when introducing a bill shall submit with each copy a statement setting out the objects proposed to be accomplished by its enactment and the localities or persons the bill will affect, which statement shall be referred to the committee with the bill."[44] These statements are pasted on the printed copies of the bills in the hands of the members and, although not considered an integral part of these documents, are very helpful to all. The speaker of a recent session reports that the rule has been particularly useful in cases where the statute proposed contains no language except that which repeals an existing law. Where the proposed legislation affects special localities or individuals the notice informs the reader at once. The Wisconsin House requires a similar synopsis to be presented with the bill, but it does not appear on the printed copy.[45] When it is remembered that the modern legislator has thousands of pages of printed matter before him, much of which is of an amendatory nature, on which he is supposed to assert an opinion, the value of a trustworthy summary of the provisions of the bills on his file is obvious.

[44] House Rule 71. It is optional in the Senate; Rule 36.

[45] Rule 40. Bills in the Illinois Senate sometimes have explanatory statements appended to them but they amount to little. A rule similar to the New Jersey one, proposed by Progressives in the 1913 session of the New York Assembly, failed of adoption. (Journal, p. 17.)

CHAPTER IV

COMMITTEES

The real work of the legislature upon which the quality of legislation depends is fundamentally the work of the committees. With them rests the burden of sifting from the innumerable bills presented those worthy of consideration by the whole house, and upon them is laid the duty of revising, amending and presenting these measures in what is usually their final form. They are the only agents, as yet developed in this country for this purpose, upon which responsibility can be lodged.

In our state legislatures a meeting of the body of the house has lost much of its deliberative character. Discussion, save on occasional matters of political importance, has almost disappeared. Members in their desire to get business done are impatient and hostile to speech making, and a too conscientious member who tries to thresh out measures on the floor falls quickly into disfavor. The individual must consequently depend upon the judgment of a committee, inasmuch as pressure of time allows but little parliamentary discussion of even the most important legislation, and it is a physical impossibility for him to read the mass of printed matter prepared for his information and guidance.[1] The committees must therefore be little parliaments in very fact, and it is no exaggeration to say that they are the most important factor in legislative procedure. Nowhere are experience and intellectual power better rewarded than in the detailed discussion possible around a table in a committee room.

Early Function of Standing Committees

In the early days when bills passed through the censorship of a select committee before introduction, the need for standing committees was not great. In 1800 there were but seven standing committees in the New York Assembly,[2] and their duty was solely

[1] A prominent member of the Pennsylvania Legislature states that at the close of a session he once piled on the floor the printed matter he had been expected to peruse. The pile was more than four feet high.

[2] Journal of the New York Assembly (1800), p. 35.

to report upon petitions referred to them. If the petition was worthy, the standing committee reported a resolution that a select committee be appointed to bring in a bill. Because of the increasing number of petitions, the standing committees had by 1830 increased to twenty-nine, and had been granted the right to introduce measures based upon petitions.[3] However a bill might be introduced, it went immediately to the committee of the whole for consideration; for even private members' bills introduced on leave without the mediation of a committee escaped reference to a standing committee. If, after debate in the committee of the whole, imperfections remained, a bill might be committed to a standing committee, but such aid was seldom demanded. As, in the course of time, private members came more and more to introduce measures upon their own responsibility, the question of keeping clear the calendar of the committee of the whole became serious. Hence arose the modern practice of referring measures upon introduction to standing committees. Thereafter only select measures ever reached the committee of the whole.

In Pennsylvania it was not until 1813 that standing committees were recognized by general resolution empowering the speaker to appoint them,[4] and it was not until 1827 that they were made a regular institution by the rules.[5] Their chief function was to undertake orders of inquiry at the command of the House, but their power to report by bill had to be authorized by specific resolution. By 1825, however, it had become the custom to grant this authorization by blanket resolution, and by 1830 the right of standing committees to report by bill was embodied in the rules.[6] Repeating the experience of New York, reference to a committee upon introduction became the regular procedure when individual members began to present measures freely from the floor.

Selection of Committees

The appointment of committees is today a principal source of the speaker's power, for the practice of selection of committees by the house has met with negligible acceptance. The Nebraska House,

[3] *Ibid.*, 1830, pp. 37–39.
[4] Pennsylvania House Journal, 1813, p. 10.
[5] House Rules (1827) No. 28.
[6] Sutherland's Manual for Pennsylvania (1830), p. 81.

however, is an exception in that it has a committee on committees whose selections it approves, and the same is true of Utah. Pennsylvania after one trial of this system in 1913, when a strong progressive element sat in the House, has returned to the old method of appointment by the speaker.

Methods of appointment of senate committees differ more widely. In the majority of cases the selection rests, under the rules, with the president, but since in most states he holds his office by virtue of the fact that he is lieutenant-governor and may be of a political faith in opposition to the majority, this prerogative is sometimes denied him. In Oklahoma the constitution prescribes that senate committees shall be elected by majority vote,[7] and in five other states the rules specify that the choice shall be by the senate.[8] In the Senates of Kansas and Nebraska, committees are selected upon the recommendation of a committee on committees. The committees of the Vermont Senate are chosen by a group of three, viz., the president, the president pro tem, and one member elected by the body, but the right to overrule their appointments is reserved. In Connecticut, Delaware, Missouri, and Pennsylvania the selections are made by the president pro tem, who is also the majority leader.

Since the president of the senate is not usually a member of that body, his committee appointments are apt to be dictated by the party leader. Indeed the actual power of selection is so commonly surrendered that a recent attempt of the president of the New York Senate actually to exercise his parliamentary prerogative evoked surprise. Objecting that he had not been consulted regarding certain appointments which he did not approve, he refused to accept the responsibility of promulgating them. The party organization thereupon took the appointing power out of his hands and, having vested it in the Senate, put through the slate as voted in caucus. However, the responsibility for the appointments was lodged clearly where it belonged.[9]

The minority members of committees in New York, Illinois and elsewhere are customarily chosen by the minority leader, the speaker

[7] Oklahoma Constitution, Art. V., Sec. 28.

[8] Illinois, Ohio, Rhode Island, Virginia and Wisconsin.

[9] Albany Knickerbocker Press, January 14, 15, 1915. New York *Times*, January 14, 15, 1915.

being satisfied with exercising his control over members of his own party.[10]

Usually the member first named upon the committee becomes chairman. Because of the loose manner in which committee business is conducted, the chairman exercises an influence greatly in excess of that enjoyed by similar officials in Congress. The power to designate who they shall be is, therefore, highly prized by the speaker. In view of the abuse to which this power may so easily be put, committees should be permitted to choose their own chairmen, as is done in both houses in Rhode Island and Wisconsin, and in the West Virginia Senate.[11]

Few phases of legislative procedure have evoked more criticism than that which vests the committee appointing power in the speaker. Without doubt it renders him a very powerful official, not only because it gives him control over measures placed in the hands of trusted worthies, but because, by granting or denying committee places as rewards and punishments, his position as leader is strengthened.[12] Nevertheless, it is possible that much of this criticism is unmerited in view of the difficulties of apportioning desirable committee berths among aspiring candidates. In addition to due care for party interests, consideration must be given to ability, experience, geographic distribution, et cetera, and regardless of the effort expended, the conscientious speaker is apt to find that his selections contain sinister combinations. The chairman of the committee on committees in the Pennsylvania House of 1913, who figured largely in the reform of the rules at that session, reports that his committee worked night and day in an attempt to distribute places fairly and honestly, yet the result of their labor drew the common charge that corrupt interests had prevailed.

Number and Size of Committees

In many states the very number and size of committees defeats the purpose of their existence. The energy of members is dissipated

[10] At the 1915 session of the Illinois House the speaker for the first time in years named full committees himself, refusing to recognize any leaders in the badly disorganized minority.

[11] Under the Pennsylvania Rules of 1913 each committee elected its own chairman, but this feature was dropped when in 1915 the legislature returned to the old method of committee appointments.

[12] Illustrations are familiar to all. They appear clearly whenever the selection of a speaker has exposed the party to factional disturbances.

by service on many committees. Meetings must often be scheduled at inconvenient hours and conflicts occur constantly. Amid such circumstances a reduction in number through combination and elimination becomes the first condition of reform. To cite extreme examples: the Iowa House has sixty-one committees, ranging in size from nine to forty members, membership on eight being the minimum for any one representative. In addition to a committee on agriculture of thirty-nine members there are committees on dairy and food, animal industry, drainage, horticulture, and agricultural college. There are nine dealing with different phases of education, in addition to one on educational institutions with twelve members, and one on schools and text books with twenty-eight members.[13] The Kansas House has fifty-five committees. In addition to several useless ones, such as federal relations and immigration, there are six dealing with subjects which could more easily be handled by the committee on agriculture, six dealing with matters of education and five with municipal affairs.[14] The Michigan Senate with thirty-two members has sixty-two committees, fifteen of which could be grouped under one on education.[15] The Kentucky House boasts seventy committees, each member serving on six, and in Georgia members serve on an average of nine. Although, as has been stated, these examples are somewhat extreme, Pennsylvania's average of five places per member is typical of the vast majority of states.

Such an endless multiplication of committees would of course be impossible if it were not that the burden of work is confined to a few of the more important while others meet but irregularly throughout the session. Everywhere the committees on appropriations, judiciary, and municipal affairs will be found crowded with work. Of less importance, although with plenty to do, will be found committees dealing with agriculture, banking, county affairs, education, corporations, railroads, fish and game, and roads and bridges. Then follow the committees whose work is almost negligible. It has been stated by members of experience that twenty-three of the forty-one committees of the Pennsylvania House are of no importance and could readily be abolished. Of the thirty-eight com-

[13] House Rules for 1915.
[14] Rules for 1915.
[15] Rules for 1915.

mittees of the Ohio House of 1915, there were sixteen which considered less than ten bills each out of a total of nine hundred and twelve introduced.[16] In the session of the same year twelve committees of the Vermont House, eleven of the Senate, and six joint committees, received less than ten bills each.[17] Evidently some readjustment is needed. A few committees are overwhelmed; others never meet.

On the other hand, the distribution of business among the joint committees in Massachusetts is much more equitable, only seven of the thirty in a recent session receiving less than forty bills.[18] Vermont attempted reform at the 1917 session by combining sixteen committees into seven, but no attempt was made to relieve the more congested. In Wisconsin the reform has been worked out to its logical conclusions. Senate standing committees have been reduced to five with no member serving on more than one, and the number in the House which consider legislation is now fifteen with a total of but 112 places for 100 members.[19] In Rhode Island, also, members serve as a rule on but one committee.

The advantages of the plan are obvious. Each committee becomes an important part in the legislative system, performing a decent amount of the legislative business. Full attendance at meetings is possible because members are not bothered by conflicting committee schedules, and chairmen do not have to exert themselves to secure a quorum.[20] In those states where capitol space is limited the simple matter of finding rooms for a multitude of meetings is serious, preventing a committee from enjoying permanent quarters.[21] While under a system of few committees there would still be degrees of importance; and experience and capacity would still be rewarded by places upon the leading committees, each would have sufficient work to do. Meetings could be held at regularly scheduled hours when members are fresh for the work. By devoting their whole attention to the business of one committee, legislators could become

[16] Ohio H. J. 1915, pp. 1947 *et seq.*

[17] Report of Joint Committee, 1917, pp. 6, 7.

[18] Report of Joint Committee on Procedure, 1915, p. 36.

[19] S. Rule 20; H. Rule 22. This was accomplished at the 1913 session when the number of committees was cut in half. (Ass. J. pp. 98–99.)

[20] It is a general complaint that committee meetings are not well attended. Congress has the same difficulty.

[21] North Carolina and Vermont report specific difficulty of this kind.

specialists along the lines of their service. Committee proceedings would possess weight and dignity, so sadly lacking in our state legislatures, but without which no deliberation can be a success.

The opposition to a rearrangement along the lines indicated comes from a desire to multiply honors. Representatives are loath to surrender the prestige and perquisites derived from membership on many committees. The recent progressive wave in the Illinois House spent itself when the number of committees had been reduced from sixty-seven to thirty-three, with each member serving on from five to eight,[22] and at the 1915 session of the Kansas Senate a motion to authorize a reduction from forty-one to twenty-one failed without a roll call.[23]

Reference of Bills

Upon introduction and before consideration by the House, a bill is referred to a standing committee in whose possession it remains until reported back or until the committee is discharged. Except in rare instances the presiding officer designates which committee shall receive the measure. The rules often permit discussion at this point by providing that the question "Shall the bill be rejected?" may be raised, but this never occurs in practice. Sometimes reference does not take place until after second reading, but in such cases second reading usually follows immediately upon first. Consequently nothing is gained by adherence to an ancient practice observed by Parliament, inasmuch as with us the merits of a bill are no longer debated on second reading and afterwards referred to a committee for review of the details.[24] In Arizona and Ohio the bill is printed and on the desks of members before reference.[25]

When bills are referred by the presiding officer immediately upon introduction they are apt to be distributed more or less at haphazard among the various committees. Thus in Vermont, within a period of three sessions, woman's suffrage bills were sent to committees on municipal corporations, internal affairs, temperance,

[22] H. J. 1915, pp. 132–133.

[23] S. J. 1915, p. 4.

[24] In Arizona, Louisiana, Missouri and Ohio the rules provide for reference after second reading, but as the constitutions require readings to be on separate days, reference is delayed one day after introduction.

[25] Arizona House and Senate Rules 9; Ohio, House Rule 73 and Hughes' "Parliamentary Guide."

judiciary, ways and means and grand list.[26] By requiring measures to be filed with the clerk previous to introduction or by allowing a day to intervene between introduction and reference such careless disposition of measures can be avoided.

In at least three states the speaker has been deprived of his power of reference. In Ohio and Virginia members of the House designate the committee, and Maine practice, in keeping with her system of joint committees, provides a joint standing committee whose function is to assign bills to the proper committees.[27] Permitting a member to specify what committee shall consider his bill robs the speaker of a great deal of control over its fate, for the latter is sure to have at least one committee dominated by his adherents. Even if committees are elected by the house his power is large, since his reference is rarely overruled by contest on the floor.

Where joint committees are used as extensively as in Massachusetts and Connecticut the process is a little more involved. Reference by the presiding officer in one house must be confirmed by the other and when such concurrence is refused, it is the usual, although not the invariable practice, for the first house to recede from its position and to pass a resolution agreeing with the new reference. As differences of this sort are quite frequent the reference of the presiding officer is constantly checked up by the other house and his own.[28]

Formal reference by the speaker before the assembled house consumes valuable time and serves no useful purpose. Members pay no attention to this order of business, practically denying themselves the right to review the action of the speaker. Notice of the reference in the daily journal or calendar is quite sufficient, if opportunity is given to move to revise the speaker's action. The rules of the Virginia House require the clerk to refer bills in accordance with the endorsement of the proponent and to enter the fact on the journal. He is then to prepare a daily list of all bills offered with their patrons and references.[29] A member thus learns readily what

[26] Memorandum of Vermont Legislative Reference Bureau, 1916.

[27] This procedure was adopted as an improvement over the old method of concurrent reference.

[28] *See* Journals of Massachusetts and Connecticut. Maine, as noted above, employs a joint committee on reference.

[29] House Rules 7, 37 (1915). Urged by the Massachusetts Joint Committee in its report on the reform of the rules, 1915, p. 33.

disposition has been made of his measures, for the general confusion on the floor and the sing-song manner in which reference of bills is carried on precludes even the most diligent from profiting by public announcement.

Committee Meetings

The efficiency of the committee system may be impaired by inconvenient hours of meeting. Too often the program of the house makes no allowance for the time necessary for the meetings of the committees. As a consequence they frequently are compelled to snatch a few minutes at recess or at the close of the day when all are tired and anxious to get home.[30] Although forbidden by the rules, meetings during a sitting of the house are common toward the end of the session. Morning seems to be the best time for committee meetings for then the members are fresh for the most important part of their legislative duties. The customary hour in Massachusetts is 10:30 a.m. Members accordingly plan to devote their mornings to committee work, which therefore becomes as regular a part of the routine as the session on the floor. Occasionally meetings are held at night but only in order to clear up a crowded calendar.

Committee Schedules

A *sine qua non* of effective committee work is the maintenance of a fixed schedule of meetings, which should be arranged by a responsible person and to which members should strictly adhere. The practice of drawing up a loose schedule at an informal conference of several chairmen provokes conflicts and ends in holding meetings whenever a quorum can be gotten together. Moreover, if choice of time is left to the convenience of the individual members, meetings are most numerous in mid-week, with the consequence that the house calendar is crowded on three days a week with bills reported out, but light on other days. Stated sessions of committees would go far towards keeping each day's business uniform.[31] Furthermore, adherence to a fixed schedule, permitting special meetings only after one day's notice, removes the old evils of "snap meetings."

[30] Discussed in the Bulletin of the Nebraska Bureau, Procedure in the Forty-eight States, p. 17. In Arizona sessions frequently convene to insure presence of members and recess immediately for committee work.

[31] Recommended by the Vermont Special Committee, 1917.

It has not been uncommon for a meeting to be held without the customary announcements, at midnight or other convenient hour, at which only the friends of the measure could appear. Afterwards the bill might be reported out at any time to an unsuspecting legislature and rushed through before the opposition regained consciousness.

Few states have attempted to introduce system into their committee schedules. To do so involves a surrender in part of each committee's freedom of action and is at variance with the feeling that somehow it is beneath the dignity of a committee to allow itself to have a schedule imposed upon it. A measure of progress has, however, been made. In the 1915 session the Nebraska Legislative Reference Bureau submitted a plan of committee meetings which was followed in the main, and in California a committee is ordinarily appointed for the same purpose. The presiding officers of the South Dakota houses, in consultation with others, work out a schedule for the session, and in New York the various chairmen meet with the clerk and arrange a schedule which is carried out quite successfully. In Minnesota a measure of responsibility for arrangement of committee meetings is placed by the rules upon the rules committee.[32] The attitude, however, of most legislators is illustrated by the refusal of the Vermont legislature in 1917 to adopt an elaborate schedule of meetings which aimed to cure much of the old evil.

If committee schedules are to be made a complete success it is best that they be arranged by someone outside the house, who can devote the necessary attention to the details. The smoothness with which the Massachusetts system works is due largely to the effort of the person in charge of the weekly bulletins, whose duty it is to confer with the different committee chairmen and clerks and to arrange a schedule of meetings accordingly.

The value of committee deliberations would be enhanced if they were to proceed according to calendars announced beforehand, but the nearest approach to this innovation occurs in announcement of committee hearings.[33] In Massachusetts this latter serves virtually

[32] Assembly Rule 19 permits variations from this schedule only on one day's notice or a call of the majority.

[33] Committee calendars were urged by the Progressives in the New York Assembly in 1913 but to no avail. (Journal, p. 19.) A resolution offered recently

as a calendar, since custom secures for each bill a public hearing. Frequently in this state committee action is taken in executive session at the time of the hearing although it may be postponed to a certain day, but inasmuch as regular executive sessions are held at stated intervals members know when certain measures are to come before the committee for final action.[34]

It is generally accepted that an opportunity for a hearing should be given on each measure and that notice of same should be published in a way that all interested may have an opportunity to attend. Massachusetts publishes twice a week a bulletin of hearings which is copied by the newspapers, and daily, at 2:00 p.m., a printed list is issued of all assignments for the morrow. Notices are also sent to petitioners. In New York, Illinois and Wisconsin notices of hearings are published in weekly bulletins. In whatever manner the notice may be published, it is the general rule, to which Massachusetts is an exception, that hearings are granted at the will of the party leaders and not as a matter of right. An old trick is to fix a date and, if the legislation involved is unwelcome to the bosses, to postpone the hearing when the advocates of the measure have assembled their forces. Thus the latter are worn out by successive postponements.

The importance of committee deliberation is recognized in eleven state constitutions by provisions requiring committee action on bills.[35] The constitutions of Alabama and Virginia require that the committee be in session to consider the bill. This is the simple principle that no business should be transacted except in regular session with a quorum present, although the rules of but few legislatures mention the matter of a committee quorum at all.[36] Regardless of the constitutional provision in Pennsylvania directing that there shall be a committee report on each bill, committees frequently report without a meeting. The chairman may secure the individual assent of a majority of his committee, or late in the session he may merely rise in the House and ask if any members of

in the Illinois House authorizing notice to committee members of bills scheduled for consideration died in committee. H. J. 1915, p. 342.

[34] Frothingham, *supra*, p. 106.

[35] Index-Digest, State Constitutions, p. 839.

[36] In Illinois, Iowa, Kentucky, Minnesota, New York, West Virginia, and Wisconsin a majority shall constitute a quorum under the rules. In California the decision is left to the committee although it shall never be less than one-third.

his committee are opposed to his measure, and if strong objection does not appear he reports the bill favorably. Against such procedure a point of order that a bill was not considered in committee will not be sustained as it is not competent for the chair to go back of the committee report.[37] Proxy votes are also an evil and where they are admitted it is difficult to maintain committee work on a high plane. New York has recently forbidden their use.

Committee Records

The general custom of "the short roll call," by which measures reported favorably pass the house without an actual division, gives to committees the power of life and death over the vast majority of legislative proposals. Yet final action is commonly taken in secret session. The rules of Ohio and Florida require that all committee meetings be public, but these are exceptions and the procedure in New York is typical. Committees have an open session and an executive session. Different members may appear at the open session and call up bills they have introduced,[38] but at the executive session all outsiders are excluded. Here the discussion is strictly secret and no information concerning it is to be divulged except through the official records.[39]

But to open committee deliberations to the public is not sufficient alone to fix responsibility definitely, and the most common device for turning the searchlight upon the dark recesses of committee action has been to require records of their proceedings to be kept. Committee records in one form or another have been adopted by the rules of one or both houses in fifteen states. The record in Wisconsin is most complete. It includes the time and place of hearings and meetings, the attendance of members, the names of persons appearing before the committee with the firms they represent, and the votes of members on all questions. The chairman is charged with the responsibility for its keeping and a copy follows the bill when reported to the house. It is to be accessible to the

[37] Pa. H. J., 1868, pp. 713–714; 1901, p. 303; and elsewhere.

[38] Some houses require by rule that the sponsor of a measure be notified when it is to come up in committee; others only if the report of the committee is to be adverse.

[39] 1916 Clerk's Manual, N. Y., pp. 530–531. Where such courtesy prevails the necessity for an official report of all proceedings is increased.

public and after the session is filed with the secretary of state.[40] For the sake of making it easily available in order that its purpose may not be defeated, it would be wise to make the record of votes an integral part of the committee's report. It would then appear in the journal and would be preserved for all time. The Progressives of the New York Assembly of 1913 secured the adoption of a rule that the report of the committee must contain the names of the members present when action was taken and their vote, these to be entered on the journal,[41] but as a matter of fact the journal gives only the names of those who favored the report. Ohio and Kentucky accomplish practically the same result by requiring that all in favor of the report sign it, their signatures being spread on the journal. The advantage in recording the votes of committees on the journals is in the wider publicity given them and the greater assurance that they will be preserved, the full minutes being filed in the secretary of state's office.

The experience of the Illinois House demonstrates that merely to pass a rule requiring that committee records be kept may be of no effect. A rule for keeping records similar to the Wisconsin rule was adopted at the 1913 session, but at the end no deliveries were made to the secretary of state as had been provided.[42] At the following session complaint was early made that bills were being reported unaccompanied by a report of the roll call,[43] and it is doubtful if Illinois has even yet succeeded in her purpose. Had the votes of committees been entered on the journals the members could not have avoided going on record, for it would have been in the power of the minority to have made trouble by protesting.

The publication of full committee records will go far towards introducing regularity in committee proceedings, and to this end they should contain more than a statement of the vote upon the report to the house; they should include the votes on every question put to the committee, as the Wisconsin rules provide. By turning light upon committee proceedings the members would be brought

[40] Wisconsin Joint Rule 6.

[41] *See* Assembly Journal, 1913, p. 19, and Rule 21.

[42] Bulletin, Legislative Voters' League of Illinois, Nov. 20, 1914.

[43] House Resolution No. 53, 1915 H. J., p. 237. This was a resolution to investigate the breaches of the rule but was never reported out of committee. Statement of Mr. Shurtleff of the Rules Committee bears out the above.

to give this phase of their work the attention it deserves. Committees would be unlikely to smother important legislation by failure or refusal to report inasmuch as responsibility could be easily located, but naturally, reform of this nature is steadily opposed by the leaders of the "old guard." For example, when the proposal under consideration was offered at the last session of the New Jersey House it was defeated by the argument of a leader that the power to discharge a committee was sufficient protection against possible iniquities therein.[44]

Committee work can be much facilitated by the employment of expert clerks to look after the drudgery of details. To this end it would be well to organize all clerical assistance to committees under a head clerk of committees with a permanent tenure of office. The success of the Massachusetts system is in part due to the effort expended by the clerks. Although the custom is to appoint the youngest member of the committee as clerk yet his position in the next legislature is dependent upon the ability with which he handles the affairs of his committee, and if he performs his duties with success the way is opened to coveted places later.

Joint Committees

The system of joint committees, highly developed in Massachusetts, Maine and Connecticut, has produced excellent results. In Massachusetts all except judiciary and ways and means are joint; judiciary usually sitting as a joint committee and ways and means sitting separately as a double check on money bills.[45] With the exception of the latter committee it will be observed from the lists of committees in the three states where the joint system prevails, that the separate house committees are concerned with the business

[44] The Philadelphia *Record*, Jan. 10, 1917.

Note:—The argument presented against a proposal, made during the general revision of the rules of Congress in 1880, that the report of a committee shall include the names of the members concurring, in reality sets forth two good reasons for the system of committee records advocated above. It was objected that a member would have to scrutinize every bill before his committee and come to a deliberate conclusion on it, and that the confidential element in committee action would be destroyed. (*Congress. Record*, 46 Cong., 2 Sess., p. 826.)

[45] All money bills must pass through the individual scrutiny of the ways and means committee of each house, although they may have been acted upon earlier by another committee.

and procedure of each house as a unit in itself, and that matters necessitating concurrent action are delegated to joint committees. The house membership on joint committees greatly exceeds the senate, in Massachusetts the ratio being eight to three. They act and vote, however, as a unit; there is no house rivalry. They are, therefore, joint committees in reality. The rule in Massachusetts is that bills are to be reported back to either branch, having reference to an equal distribution of business between the two, except that money bills must go first to the House. The practice also permits a bill to be referred to two joint committees in turn sitting jointly, as for example, a bill relating to the sale of milk and cream was turned over to the committees on agriculture and public health.

It is not too much to say that the success of Massachusetts, the state in which the committee system is most highly developed, is due in a considerable measure to her joint committees. As pointed out by Professor Reinsch, public attention tends to be attracted to joint committees more than to innumerable committees of both houses.[46] Committee sessions consequently become orderly and dignified. Advocates or opponents of legislation are not compelled to plead their cause twice, and duplication of clerical duties is escaped. Opportunity is given to reduce the number of bills which the houses must consider by combining bills on the same topic into one which embodies the good points of all,[47] and a broader view is possible than can be acquired by committees of a single house.

The objection to the joint committee is that it substitutes a single consideration of a measure for consideration by each house separately, which is the theory of the bicameral system, and on this ground Vermont at the last session abolished all joint committees.[48] But even granting that the spirit of the bicameral system is violated, a question certainly open to argument, it would seem that the rights of both houses would be sufficiently safeguarded if a bill passed by one house were received by the other as with a favorable report unless the committee representation of that house declared them-

[46] Reinsch, "Legislatures and Legislative Methods."

[47] This is successfully accomplished in Connecticut where the work of drafting the substitute is turned over to the clerk of committees, who is an experienced official. The advantages of joint action are admitted also in those states whose rules permit joint hearings. Wisconsin has especially availed herself of this privilege.

[48] *See* Report of the Committee to Revise the Rules, 1917, p. 9.

selves as opposed.[49] As long as opportunity remained for one body to refer a measure to a committee of their own number the matter of separate discussion would receive all the attention it deserves.

Conference Committees

In case of serious differences between the two houses the good offices of a conference committee are called in.[50] But as a rule, amendments proposed by one house are generally adopted by the other and consequently there are few difficulties serious enough to call for conferences.[51] An examination of the journals will disclose that they are seldom employed until late in the session when the rush of the closing hours is impending; that they are seldom unsuccessful; and that their reports are universally adopted. The situation is therefore charged with possibilities for evil in the opportunity afforded for making trades which are seldom investigated by the house as a whole. The general parliamentary law that the report of a conference committee cannot be amended in either house[52] increases the inclination to accept any compromise the committee may offer. The secrecy of proceedings in the conference is increased by the rule that the minority of the committee cannot report.[53]

[49] Suggested in memorandum of Vermont Legislative Reference Bureau prepared for the Legislature, 1916.

[50] The first constitution of New York provided a most cumbersome method of managing disagreements. The two houses were to meet in a conference managed by committees from both. (Constitution of 1777, Art. XV. Abrogated in the Constitution of 1821.) By this method the secret bargaining which now features the work of committees of conference was avoided.

[51] At the 1915 session of the Illinois Legislature conference committees were used but eleven times and in each case the report was adopted. The Oklahoma Legislature of the same year adopted the reports of the ten conference committees appointed, and in Massachusetts in 1916 nine of the ten conference committees agreed on reports which were accepted. There were only five conference committees in Indiana at the 1915 session. These cases are typical.

[52] Jefferson's Manual ¶ 535. In California enforced by Joint Rule 9, and in Maine by J. R. 13. By a recent decision in Pennsylvania a conference committee report was permitted to be amended by a concurrent resolution. (Legislative Journal, 1913, p. 5230.) Otherwise the formula must be to recommit by concurrent resolution with instructions to amend. The rules of some legislatures allow no other action than acceptance or rejection.

[53] 5 Hinds 6406; Pa. H. J. 1850, pp. 1216–1218.

[54] See Index-Digest, State Constitutions, pp. 838, 842–843.

In order to bring the conference report to the attention of the members, who, as we have seen, are quite willing to accept on faith the compromise presented to them, it is sometimes required that it be printed and on the desks of the members before final vote. This becomes a constitutional mandate whenever the constitution requires the printing of amendments or of the bill in final form.[54]

Discharge of Committees

A bill in committee is out of the hands of the house until reported back or the committee is discharged. In order to prevent the quiet chloroforming of bills without the committee going on record, possible when bills are retained indefinitely, the rules in twenty-five states provide that the committee must act within a specified time. The time allowed varies from four days in Colorado to twenty-five in Minnesota, although it is unusual to enforce this limit with any rigidity.[55] The rules of the California Senate prescribe that committees shall report "as soon as practicable," and in Kentucky a member may call up a bill "after a reasonable time."[56]

Although it is clear that it should be made easy to place a bill before the house after it has been in committee a reasonable time, to place a bill automatically on the calendar after the expiration of a certain number of days, as is done in North Dakota, robs the committee of legitimate selective power. No bill should adorn the calendar without the favorable action of a committee unless at least 25 per cent of the house are willing to assent to discharge the committee. Thus Delaware permits the discharge of a committee after ten days upon the request of eighteen (about one-half of the House)[57] and New Jersey at the request of fifteen (about one-fourth) upon one day's notice.[58] In Utah, however, the speaker alone is granted this power on four days' notice, and in North Carolina the author may recall the bill after five days in committee.[59]

[55] For experience of Iowa *see* Shambaugh, "Statute Law Making in Iowa," p. 224. For experience of California *see* Hickborn, "The California Legislature of 1909," p. 12.

[56] California Senate Rule 34; Kentucky House Rule 37.

[57] House Rule 27.

[58] House Rule 67.

[59] House Rule 3 (Utah); North Carolina House Rule 51. In the senates of Missouri, North Carolina and Ohio and in both houses in Indiana, one member may demand return after a specified time.

It is the right of a house to get measures before it easily. Occasionally, however, the discharge of a committee is made so difficult that it becomes virtual master of the legislation entrusted to its consideration. The rules of the Illinois House require a majority vote of all elected to discharge a committee; twenty-four hours' notice must be given and the motion can be entertained on but three days a week.[60] New York likewise requires a constitutional majority to discharge a committee, but the motion cannot be put until the committee has been ten days in possession of the measure.[61] Under such circumstances it is practically impossible for the house to regain possession of a bill in the hands of an unwilling committee. The situation was so serious in Michigan, where under the two-thirds rule a minority could prevent the discharge of a committee throughout the session, that the present constitution prohibits the legislature from passing any rule which would prevent a majority of the members from taking a bill out of the hands of a committee.[62]

After some painful experience with "pickling committees" the Pennsylvania House has since 1913 permitted sixty members (less than one-third of the body) to discharge a committee which had held a bill ten days. Here the difficulty had been further complicated by a ruling that a motion to discharge a committee must be made under the order of resolutions,[63] which was in order only on Monday night and Friday morning. The House never met on Friday and, as the session on Monday night was limited to one hour, opportunity to move discharge rarely came.[64] But in the reforms of 1913, "Resolutions" was made the fourth order of regular business for each sitting.

It is highly advisable that all committee calendars be cleared up and all business reported back before a stated time in the session, a practice that is perfectly feasible where the time for introduction of measures is limited. Thus one portion of the legislative activity

[60] House Rule 12.

[61] House Rule 10.

[62] Debates, Michigan Constitutional Convention, 1907–08, p. 1421.

[63] H. J., 1878, p. 742.

[64] House Rule 62 for 1911 and earlier. If the motion to discharge was unwelcome to the organization the Monday night hour was always consumed before the order of Resolutions was reached.

would be gotten over with, say half way in the session, leaving the remainder of the time for discussion on the floor. The rush and riot of the closing days is happily avoided in Massachusetts and much credit must be given to the custom by which the presiding officers keep account of the manner in which committee work is proceeding, comparing progress this year with the calendar of last year, and if a committee is found to be dilatory, they do not hesitate to apply pressure.[65]

There exists some difference of opinion as to the advisability of requiring committees to report on all matters referred to them. The Massachusetts special committee of 1915 voiced a violent protest against the practice of a committee report on every measure. Committees are compelled, they argue, to consider frivolous measures, and the calendars are crowded with adverse reports which are seldom overthrown but which consume the time of both houses. The recommendation was accordingly made that a committee unanimous against a bill need not report, thus opening the way for prompt consideration of the more important matters.[66] On the other hand, it is urged that committees be compelled to report every measure and that the house take formal action on all. But it is a useless waste of legislative energy to require committees to consider measures to which the committee is unanimously opposed or which a reasonable fraction of the house does not favor. Although mere silence should not stifle legislation and to escape committee tyranny discharge should be made easy, it is in keeping with the dignity and responsibility which a committee should feel to allow it discretion in selecting measures upon which to devote attention.

Where committees are not compelled to report upon each meas-

[65] Joint Rule 10 specifies at what time the final report of all committees must be in, which time may be once extended. Three days after the final limit committees must report with the recommendation that the bill be referred to the next General Court. This recommendation is of course perfunctory, and may be overthrown without opposition from the committee, although it requires a four-fifths vote to do so. This permits a bill to be killed by committee by mere delay unless an overwhelming majority is in its favor. The advantage, however, is found in that it gets all the business of the session before the house in time to dispose of it in an orderly manner.

[66] Committee upon Reform of Procedure, 1915, report pp. 43, 44. In 1914, 1431 matters were reported adversely by unanimous committee vote. These were read by both clerks and went on both calendars. Allowing two minutes for each measure, sixteen legislative days were thus consumed.

ure, there are few adverse reports, unfavored measures usually being allowed to die without formal action; and in view of the common difficulty in discharging a committee this is the surest way to kill a bill. Where no legislation is permitted to die in committee a negative report recommends that "the bill do not pass" or that "the bill be indefinitely postponed," and is commonly adopted by unanimous consent. The question is, "Shall the bill be rejected?" or "Shall the report be adopted?" Vermont found that if the question were put "Shall the bill be read a third time?" as is usual for favorable reports, the indication being towards overturning an adverse judgment of the committee, a committee report was, by the mere inertia of members, often reversed without adequate reason.[67] The Pennsylvania House used to allow a bill negatived in committee to go on the calendar at the request of sixty members (less than one-third), although the earlier practice had been that such bills came up for consideration as those reported favorably. In 1915 the sixty rule was changed to a majority on the ground that because it was easy to get sixty members to place a negatived bill on the calendar, it was crowded with bills which ultimately never passed. Sometimes the lower house has been known to surrender absolute veto power to the committees by making an unfavorable report final.[68] On the other hand, the Senate of South Carolina permits a negatived bill to go on the calendar at the request of one member.

In accordance with the principle to relegate all business which does not require deliberative action to hours when the house is not in session, and to publish disposition of same in the journals, it would be well to abolish the formal reading on the floor of reports of committees. There is no good reason why they should not be filed with the clerk, published in the journal and calendar, and opportunity

[67] The form of the question was changed at the 1917 session.

[68] The custom in Missouri is to pass such a resolution a few weeks before the close, *e.g.*, 1913 H. J., p. 745. A similar resolution was presented in the Indiana House in 1915 in order to seal the fate of the female suffrage and prohibition measures then in committee. At first it was thought to have passed but, in consequence of the storm stirred up by the absolute surrender to a committee, the speaker reversed his decision on the ground that the resolution had not received the constitutional majority required by the rules. (Indianapolis *News*, February 24, 25, 1915; Chicago *Tribune*, February 24, 1915.)

given to move rejection on the floor. If the report is favorable the bill could move automatically to second reading.[69]

Steering Committees

No discussion of the committee system would be complete without some attention to steering committees, which control the time of the legislature to a greater or less degree in approximately three-fourths of the states. Their function is to guide the house, especially during the last days of the session, through a calendar congested with bills too readily placed thereon. The theory is that, in the tumult of many measures competing for consideration, no important matter must be allowed to go by default.

The confusion attending the closing days of the average legislature is notorious yet natural in so far as it arises from the indolence of the members and the spirit of procrastination which dominates the early days of the session. Indeed, the very existence of a sifting committee, designed as an escape from a crowded calendar, contributes toward the confusion and operates in turn to congest the calendar, since members, who are only human, know that a way out is easy and convenient. Furthermore the hesitancy or lack of courage displayed by the standing committees in killing the less worthy measures contributes to the final congestion and resultant demand for a steering committee. Just as the power of standing committees developed when the number of bills introduced had become too large for consideration by the whole house, so the steering committee emerged when measures approved by the standing committees increased until a further selective agency became an irresistible temptation.

Complaint is common that too few bills are checked at the committee stage.[70] Statistics of legislatures chosen at random demonstrate that in view of the hundreds of bills considered, committees are too lax in exercising their selective function and that many more

[69] In Illinois, Kansas, Massachusetts and Texas reports of committees are not read on the floor, appearing merely in the journals. In Congress bills reported favorably go automatically to the proper calendars; an adverse report is laid on the table unless a request to place the bill on a calendar is made within three days. (Rule XIII.)

[70] Replies to the questionnaire of the Nebraska Legislative Reference Bureau (1913) of but five states could be understood as expressing that committees exercise courage in reporting adversely.

bills reach the debate stage than the house can dispose of conscientiously. Sometimes the sentiment prevails that practically all deserve a fair trial on their merits before the assembled house.[71] This shy attitude assumed by committees towards negative reports constitutes an evasion of an obligation. At the 1915 session the committees of the Ohio Senate killed but 26 per cent of bills introduced in that body, while only 49 per cent of House bills met their fate in the house committees. In Indiana and Kansas less than 50 per cent were stifled in committee and in Michigan less than 40 per cent.[72] The percentage of committee executions to total number of bills considered in New York averages about thirty-five in the Assembly and thirty in the Senate.[73] The lower house in Illinois is an exception, for at the 1915 session committees checked more than 75 per cent of the bills referred to them. The full significance of committee slackness is clear when it is remembered that it means that each house has on its calendars from four hundred to fifteen hundred bills which presumably must be debated and disposed of in addition to those which come from the other branch of the legislature. Under these circumstances, the *raison d'être* of the steering committee is obvious.[74]

Steering committees vary widely in the several commonwealths. In some they are a mere servant occasionally employed as a means by which the house can more readily express its will. In others they are in fact masters of the legislature's destiny, in which case they are often called sifting committees. Steering committees exist in the most innocuous form in those states in which the function rests, as it does in Congress, with the regularly appointed rules committee, which may report a special order to facilitate the progress of a measure. If they are sensitive to the will of the house they merely construct an expeditious plan by which legislative business may be advanced without undue obstruction. They therefore introduce elasticity into the daily program by proposing special

[71] In South Dakota all bills except those of the most trivial character are reported favorably from the committees. (Statement of Dr. Doane Robinson, State Historian.)

[72] Compiled from indices of the several journals of 1915.

[73] Colvin, "The Bicameral System," pp. 77 *et seq.*

[74] Committees deal more gently still with bills from the other house. In Ohio scarcely 20 per cent of Senate bills failed in house committees, and but 7 per cent of House bills in senate committees.

orders altering the regular routine of business, since the house is able with the help of the rules committee to suspend the regular order of business without the delay necessary if a member in his individual capacity should propose the same.[75] In Pennsylvania and Massachusetts reports by the rules committees are unusual, must be confined to a single measure, and must be adopted by a majority vote. The California House retains its control over "rules" by requiring a two-thirds affirmative vote to adopt any modifications brought in by this committee. On the other hand, the Illinois House has gone to the opposite extreme by providing that any special order proposed by the rules committee stands unless overthrown by a majority of all members elected,[76] and the same is true of New York. The rules committee thus becomes a very powerful group.

Several states have gone further than a mere steering committee, which controls discussion occasionally when time is precious, by creating what is known as a sifting committee to determine what measures shall be discussed on the floor. The latter is made the custodian of practically all bills, the house restricting itself to those measures which it submits. Usually towards the close of the session the practice is to adopt a resolution by which the make-up of the daily calendar is delegated to a committee. All bills accordingly owe their advancement to this committee, the house having virtually surrendered its selective power. The Washington House gives complete control of the calendar to a sifting committee which takes charge the first week of the session. In Montana after the fortieth day the steering committee reports the order of consideration of all bills as they come from committee.[77] Even broader are the powers of the calendar committee of the Kansas House, for not

[75] The rules committee of the New York Senate has in the last few years assumed this function when the minority has proved obstinate. The first time that it interfered in the order of business seems to have been at the session of 1897, when a special order limiting debate was brought in. The point of order that the proposed change would require one day's notice was not sustained. From this the power of the committee soon extended to reporting special programs for the progress of a measure.

For an account of the evolution of the Rules Committee in Congress *see* Alexander, "History and Procedure of House of Representatives," Chapter X, and 4 Hinds 3152, *et seq.*

[76] House Rule 12.

[77] Montana H. J., 1915, p. 353, and statement from State Library.

only does it arrange bills on the calendar but the "fixing of times for the consideration of bills" is entrusted to it.[78] In Missouri and Nebraska the sifting committees name only those bills which take precedence on the calendar,[79] and at the last session the Missouri committee was restricted to naming for advancement five general bills and sixteen private bills daily. Formerly the number had been unlimited.[80] The power of the sifting committee of the Iowa House has been similarly reduced at the last few sessions by exempting from their authority appropriation bills, special orders and bills already on the calendar when the committee takes charge. As pointed out in a recent study of the Iowa Legislature these restrictions make the committee an agency for preventing rather than promoting legislation in that it customarily holds bills until withdrawn by the House.[81] The House does its own selecting through the power to make any measure a special order.

A most extreme example of a sifting committee has been developed in the New York Assembly through the augmented power conferred upon the rules committee throughout the last days of the session. The system is so notorious that a brief review of its development may be of interest.

As early as 1832, a committee of nine was created with unusual selective functions. It could by unanimous vote refer a bill awaiting action by the committee of the whole to a select committee to report complete, *i.e.*, ready for final passage,[82] and in this manner a bill might escape debate until it came up for final vote. This, however, does not constitute an exact precedent for the present rules committee, for as yet standing committees had not been developed to remove unworthy measures from consideration by the house. The purpose was merely to relieve the calendar of the committee of the whole upon which were placed all bills introduced by private members, but nevertheless the arrangement did not escape criticism. In 1857 the select committee on rules deprecated the practice and condemned the transaction of business through "guiding com-

[78] Kansas H. J., 1915, p. 540, Resolution 37. It is common for the committee to limit debate to twenty minutes on one measure.

[79] Missouri H. Res. p. 884, Journal 1915. Statement of Nebraska Legislative Reference Bureau.

[80] Missouri H. J., 1913, pp. 1301–1308.

[81] Shambaugh, "Statute Law Making in Iowa," pp. 545 *et seq.*

[82] Assembly Journal, 1832, p. 363.

mittees" as fruitful of hasty, improvident and fraudulent legislation.[83]

But the pressure on the calendar increased and in 1872 a committee was created with power at any time to report bills of a general nature, which were then placed upon a preferred calendar having precedence over unfinished business.[84] This special privilege was denied at the next session, but in 1886 a new committee became the recipient of the old power.[85] The latter committee was abolished in 1890 to be followed by the all-powerful rules committee of 1892.

In the session of this year the rules were amended to provide that all motions to make a bill a special order, or to suspend the rules for the purpose of reading a bill out of its regular order, be referred to the committee on rules. This committee was empowered to report at any time and its decision was final unless overthrown by two-thirds of the members present.[86] The next year the exercise of this unusual power of determining what measures should be promoted was restricted to the last ten days of the session,[87] and this time limit remains today.[88] The number required to overturn a report of this all-powerful committee was reduced in 1900 from two-thirds to a simple majority vote, but nevertheless its judgment remains wellnigh final since the program which it presents is in practice never overthrown. When it is also remembered that it requires a majority of all the members elected to instruct the rules committee to report, its obstructive authority during the last days of the session, as well as its power to accelerate, is seen to be immense. Furthermore the time in which "Rules" is in the saddle is invariably extended beyond the prescribed ten days by the simple precaution of setting a day for adjournment ahead of the date on which the legislature's business can possibly be completed.[89]

It is the custom in New York further to strengthen the position of this committee by a resolution towards the close under which all matters pending before the various other committees are referred

[83] New York Assembly, Document No. 7, 1857.

[84] New York Assembly Journal, 1872, p. 603.

[85] New York Assembly, Document No. 5, 1887.

[86] Assembly Journal, 1892, p. 484.

[87] Assembly Journal, 1893, p. 2002.

[88] New York Assembly, Rule 24.

[89] In 1911 the rules committee was in charge from May 8th to October 6th. As a rule it governs for a month each session.

to it. Thenceforth "Rules" may be said to be the only committee functioning. As bills in its possession are reported out, they are made special orders on second and third reading.

It would be hard to imagine a method by which a house could more completely subject itself to the control of three members and the speaker, who is ex-officio chairman of "Rules," and still retain the form of a freely deliberating body. From the very beginning the committee seems to have abused its power, the spirit of the standing rules being wholly repudiated. Bills from the bottom of the calendar were moved to the top without attracting the attention which would have followed a motion put to the house. The fate of all measures fell immediately into the hands of these men, and although "Rules" quickly began to monopolize the time of the Assembly, it did not act with the discretion which would have served the end advocated, viz., the advancement of important business which otherwise might never have reached final action.[90] The completeness with which individual members surrendered themselves to the party bosses appears from the two-thirds vote necessary, until 1913, to instruct "Rules" to report. But even under the modified rule of a simple majority the committee is rarely compelled to act, and probably the first instance in which this was accomplished occurred on the closing day of the 1912 session after a majority of members had informally petitioned the committee to release the bill in question [91]

The rules committee of the New York Assembly does not relieve the congestion of the closing hours of the legislature. If it did there would be some justification for its existence. Its influence extends far beyond a mere selection of measures to be taken up by the Assembly, for by careful managing it can secure the passage of measures during the final rush which would meet with certain defeat in the earlier stages of the session, and refusal to report a measure assures its destruction. Enjoying as much parliamentary power as the English cabinet, the rules committee nevertheless escapes any measure of responsibility before the people. The nullification of its present broad functions by confining them to the preparation of

[90] The rules committee was criticized severely for its work in the first session in which it enjoyed its present power. *See* Annual Record, issued by City Reform Club, New York, 1893.

[91] Report of Citizens Union—New York City, 1912, p. 7.

proper rules for the government of the Assembly would be a signal reform. It would require the legislature to take stock all along the line and might prove the first step towards efficient legislative methods in the earlier days of the session.

The existence of a sifting committee is evidence of the breakdown of the other legislative facilities for eliminating worthless measures and bringing worthy measures to final passage. If standing committees would fulfill their duties and the house were to exercise diligence in clearing up its calendar daily, a steering committee might survive for emergencies, but the excuse for a sifting committee would have vanished. Reliance upon a sifting committee decreases the sense of responsibility of other committees in reporting adversely. To counteract this influence the legislature of South Dakota abolished sifting committees entirely and passed resolutions to clear the calendar each day.[92]

[92] Legislative Reference Bureau of South Dakota, in reply to Nebraska Questionnaire of 1913.

CHAPTER V

PASSAGE OF BILLS

Having followed the course of legislation from introduction through consideration by committee, we must now examine the manner and means by which the legislature expresses its collective will upon measures which survive the selective powers exercised by standing committees.

Quorum

It is a general principle of parliamentary law that a deliberative body cannot act without the presence of a quorum. The constitutions of forty-two states in accordance with common practice prescribe that a majority shall constitute a quorum. Indiana, Texas and Tennessee have placed the number at two-thirds. New York requires three-fifths present when passing appropriation bills, and when levying a tax Vermont places the quorum at two-thirds. These provisions, however, are nullified by the general presumption that a quorum is present if no member raises the question, which often permits the transaction of business by a small minority. Appropriation bills have frequently passed the New York Assembly with less than fifteen members present, although the journal showed that the constitutional majority voted in the affirmative.[1] Appropriations have passed the Pennsylvania Senate with but two members present. In fact the practice of acting without a quorum is common to all our legislative bodies. The journals of course do not disclose the absence of a quorum and the courts will not admit evidence to impugn them.[2] It is but fair to note, however, that such practice is possible only by unanimous consent, for

[1] Report of a Committee of the Citizens' Union, 1913. New York *Evening Post*, November 22, 1913, states that appropriations aggregating $2,000,000 passed the Assembly with six members in place.

[2] *See Auditor-General* v. *Board*, 89 Mich. 552. A resolution unseating one member and seating another was not invalid because of no quorum present since the journals did not disclose that enough members had been excused to kill the quorum. The presumption of a quorum was not rebutted by affidavits and protests spread on the journal at a later date.

it is always within the province of any member to raise the question of no quorum. The mere threat to raise the point of order of no quorum is sufficient to postpone further consideration of the specific question under discussion. The business of the house, however, is not seriously interrupted for it at once proceeds to other matters. If opposition to any measure has been registered beforehand no action is usually attempted in the absence of a quorum. For example, the Illinois House customarily devotes Mondays, when a full attendance is hard to get, to measures on the calendar to which no objection has been expressed. It must be clear, therefore, that in view of the ease with which a single member can obstruct the transaction of business in the absence of a quorum, proceedings under such conditions are nothing else than action by unanimous consent.

Printing of Bills

Before a measure comes up for consideration by the assembled house it is usually printed and placed on the desks of the members. A few southern states alone remain exceptions.[3] Printing before final passage is mandatory under the constitutions of sixteen states; but three of these, Idaho, New York and Virginia, dispense with it in urgent cases.[4] As a matter of fact, bills are printed on introduction in approximately two-thirds of the states, and in the remaining, with the exception of the southern states noted above, upon the favorable report of a committee.

The advantage gained by printing all bills on introduction is of doubtful value. Maine, Michigan and Minnesota are the more important states whose legislatures, unless by special order to the contrary, print only bills reported favorably from committee. The expense of printing is thus reduced, and above all, the files of members are not crowded with measures which will never come up for consideration. The bill in the hands of the members is corrected to include the amendments added by the committee, thus

[3] In Alabama, Georgia, Mississippi and North Carolina bills are rarely printed. Rule XX of the Pennsylvania General Assembly of 1776 permitted no debate on first reading, and ordered bills to lie on the table for the perusal of members, forbidding any member to take them from the house. In such times the reading of the text of a bill was a real service.

[4] Index-Digest, State Constitutions, pp. 842, 843. Four states forbid consideration before printing. This has been held only to require printing before the bill is debated. (*Massachusetts Insurance Co.* v. *Trust Co.*, 20 Colo. 1.)

bringing the printed copy more nearly into its final form. Of course bills of exceptional interest may be printed on introduction by special order of the house.[5] The Pennsylvania House has adopted a working compromise by which bills on introduction are printed on pink paper. This copy does not go on the desks of members to congest their files, but may be secured if desired at the office of the sergeant-at-arms. As bills are reported (very few are reported unfavorably, rather are they allowed to die in committee) they are printed on white paper and placed in members' files. In this connection it may be noted that Connecticut has taken a step towards differentiation between special and general laws by requiring that the former be printed at the expense of the petitioner who must in addition pay a fixed fee.[6] The New Jersey Assembly and the two Houses of Rhode Island also provide by their rules that the cost of printing special bills must be borne by the applicant.[7]

Readings

Parliamentary common law prescribes that each bill shall receive three readings before it shall be brought up for final passage. These stages in the progress of a measure antedate the use of the printing press, when copies were written out in long hand and read for the information of the members. But the necessity for reading at length no longer exists and readings are today of no significance other than to mark successive steps in the advancement of a measure, each one being a device to secure adequate delay. Provisions regarding the reading of bills occur in thirty-six state constitutions, thirty-four requiring three readings, twenty-five specifying that they be on three different days, and three that not more than two readings shall be on the same day. Thirteen states permit the requirement of readings on separate days to be relaxed somewhat by a vote larger than a simple majority, although in five the vote upon the question of urgency must be by ayes and noes, and in two it must be entered on the journals.[8] The mandate which compels

[5] In Maine one-third more are introduced than are printed; in Michigan and Minnesota about 50 per cent of those introduced are printed.

[6] General Laws of Conn. (1902), ¶¶ 32, 10.

[7] New Jersey Assembly Rule 49; Rhode Island Senate Rule 34, Assembly Rule 38.

[8] Index-Digest, State Constitutions, pp. 840–842. In Georgia bills must be read on three separate days unless in case of actual invasion or insurrection.

three readings on different days is salutary as contributing to discourage hasty passage, and, when absolute, tends to lighten the pressure during the last three days by preventing the introduction of measures at this time. Where the requirement is not absolute it may be of little effect through the habit of granting unanimous consent to its suspension.

Ordinarily first reading is merged with the announcement of introduction, but if the constitution prescribes absolutely that there must be three readings at length, first reading usually does not come until after favorable report by a committee. Thus in Pennsylvania and Illinois the reading by title on introduction does not count as a constitutional reading, and an additional step equivalent to an additional reading is made necessary. West Virginia escapes this extra stage through a provision which allows the suspension of the constitutional prescription of three readings in full by an aye and no vote entered upon the journal. Rather than read the bill in full on first reading the house regularly records an aye and no vote on a motion to suspend. This is a useless formality and would consume an inordinate amount of time were the roll actually called.

As pointed out in the chapter above, the custom of giving two readings before reference, still obtaining in some legislatures, is a mere survival and is indefensible now that no debate is held until after report back by a committee. Today it is generally considered bad form to begin an attack upon a bill before the debate stage following committee report. If two readings are had before reference, debate occurs normally at the report stage when the question is either on accepting the report of the committee, or, this being perfunctory, upon ordering the bill to a third reading. Thus is added virtually a fourth reading without increasing in the least the opportunity for deliberation. Massachusetts and Maine also add a fourth stage but one that serves a somewhat different purpose. At third reading the question is put on passing the bill to engrossment after which it is sent to the other house for concurrence. There having "passed to be engrossed" it is returned to the house of its origin where it is "passed to be enacted" and sent again to the other house likewise to be "passed to be enacted" or rejected. Final passage is thereby separated distinctly from the preceding stages, a procedure forbidden by the Constitution of New York,

which compels the final vote to be taken immediately following third reading. The virtue of the Massachusetts plan is that no temptation exists to slip in amendments at the last moment since both houses have approved the measure in its final form at the "passed to be engrossed" stage.[9] Obviously the Massachusetts practice eliminates the evil which caused New York to merge third reading and final passage, *viz.*, the postponement of final passage, after reading a bill a third time, to a preconcerted hour when it could be forced through by log rolling. The sense of the house is expressed when the bill is ordered to engrossment; and final passage is merely an opportunity for the expression of a more mature judgment after the other house has acted.[10] In other states the vote on passage usually follows immediately upon third reading although they are separate orders of business and although occasionally final action may be postponed, perhaps to secure the attendance of more friends of the measure.

The constitutions of five states provide for reading of measures at length after passage and before signing by the presiding officer.[11] The purpose is to guard against alteration at the last moment of the official copy of the act, either through fraud or error. Although experience has shown that constant vigilance alone assures a correctly enrolled act, the utter futility of any provision regarding reading in full is self-evident, since only a pretense is made at fulfilling the constitutional mandate. Even before the reading clerk is well started, impatient members interrupt by cries of "Aye, aye."

The framers of our state constitutions seem generally to have considered the reading of bills at length to the assembled house as an effective aid to good legislation. Today twenty-six constitu-

[9] Amendments are forbidden after engrossment, and the copy upon which the final vote is taken becomes the official copy of the act. Senate Rule 49, House Rule 53. An examination of the journals will show that a bill approved by both houses at the "passed to be engrossed" stage suffers little danger at the "passed to be enacted" stage.

[10] It is true that no calendar is kept in Massachusetts of bills on final passage but the speaker will give notice to any member of the time at which a certain one is to come up. Frothingham, "A Brief History of the Constitution and Government of Massachusetts," p. 117.

[11] Kentucky, New Mexico, Alabama, Oklahoma and Louisiana. In Alabama and Oklahoma two-thirds may dispense with it, and it is not required in Louisiana unless five request it. Index-Digest, State Constitutions, p. 842.

tions specifically require that bills be read in full at least once before final passage, although two, Ohio and Virginia, permit the mandate to be suspended in cases of urgency. Fifteen of the above require three readings at length. Of the latter, eleven constitutions permit one or two full readings to be dispensed with, but in four the provision is inflexible. Such prescriptions betray in the minds of their authors a wholly unscientific knowledge of human psychology. It is difficult to believe that even a most sympathetic imagination could have visualized a legislature sitting through a single afternoon, earnestly attentive while bill after bill was read in their hearing. The time which would thus be consumed alone renders compliance with the constitution impossible. Many bills are long and technical and their reading aloud could serve no useful purpose. A recent chartering bill in West Virginia covered 247 pages, and an honest reading would have been a sheer waste of precious time. Usually the clerk reads the title and perhaps a few words of the text, consuming but a fraction of a moment although the journal will show a reading in full.[12]

The house, however, will usually recognize a demand that the bill be read in full as the constitution requires, a concession which lends itself easily to obstructive tactics, since it is easy for a minority wishing to delay action to demand their constitutional right. Although no constitutional mandate to read bills in full exists in New York, the Senate of that state was accustomed to grant such demand until the session of 1915 developed an extraordinarily obstinate minority. As a consequence the point of order was sustained that the right to call for reading at length could be exercised only in the committee of the whole upon the second reading of the bill.[13] The way henceforth is opened to defeat such dilatory methods at the beginning, although the minority loudly protested that their constitutional guarantee was being violated.[14]

[12] *See* article "Improvement of Legislative Methods and Procedure" by Chester Lloyd Jones in *Proceedings of the American Political Science Association*, 1913–1914, p. 191, for the experience of several states with the constitutional provision under consideration. More complete returns collected by the Nebraska Legislative Reference Bureau bear out the conclusion that the requirement is not only futile but harmful.

[13] Senate Journal, 1915, p. 936; and New York *Times* April 2, 1915.

[14] Mr. S. B. Scott in his forthcoming book on Pennsylvania state government gives a highly entertaining instance in which the power to demand reading in

Debate

It is common knowledge that our state legislatures are no longer deliberative bodies and that there is little real debate on the floor. Debate, such as it is, generally occurs when the bill comes up the first time after favorable report by committee. This is on second reading, unless it is the custom to give two readings before reference, in which case opportunity for debate upon the merits of the measure arises on the question of adopting the report or ordering the bill to third reading. The practice of some legislatures provides for no real debate until third reading, and consequently all discussion must immediately precede final action.[15] The custom of a majority of the legislatures, however, is to pursue a less summary course by separating debate and final action. The debate stage being the normal time for introducing amendments, members have an opportunity to express a more mature judgment when the revised measure comes up later for final passage. Second reading therefore is usually the crucial period in a bill's history and unless it is of special political significance, third reading, which gives an excellent opportunity to debate the merits of the amended measure, is as much a matter of routine as the first. In keeping with Massachusetts' unique procedure, only a few bills are discussed at second reading, debate being held at third reading upon the question of engrossment. As noted above, final passage is postponed until the other house has concurred in the order to engross.

Most legislatures permit bills to be taken up by sections at the debate stage. As each section is considered amendments may be proposed, and it is well that here the house should move deliberately. If reading by sections is postponed until third reading,

full was invoked as a dilatory measure. Third reading of a bill covering fifty-two closely printed pages of three columns each in the record was demanded. The clerks became exhausted and members were summoned to take their places while kindly persons insisted that the reading be louder and more distinct, in order that they might follow it on their files. Finally a reading squad was organized to read several portions of the bill simultaneously and the majority felt that they had fulfilled the letter of the law. In all about four hours were consumed.

[15]Alabama, Connecticut, Illinois, Iowa, Louisiana, Kansas, Ohio and the Dakotas report that debate is commonly delayed until third reading. In Kansas, however, many measures are discussed in committee of the whole, which is the second reading stage. Measures which escape the committee of the whole are not debated until third reading.

errors which would otherwise have been disclosed at an earlier time are not discerned until it is difficult to rectify them. Yet strangely enough, the ten states, which by constitutional mandate prescribe but one reading in full, specify that it shall be the last.[16]

The Committee of the Whole

At one time the committee of the whole, which furnished such excellent facilities for discussion, was a part of the normal procedure, but the general spirit of speeding up today pervading legislative halls has worked for its downfall. It is not recognized by the rules of the New York Assembly, while in the West Virginia Senate there have been but two committees of the whole in the last twenty years, and in Massachusetts but one in the last twenty-five years.[17] The rule of the Pennsylvania House requiring the committee of the whole on all measures is invariably suspended by unanimous consent. With monotonous regularity the journal records, "the rule requiring bills to be considered in the committee of the whole being in this case dispensed with." Elsewhere, however, the rules generally provide merely that the committee of the whole may be ordered upon a majority vote, a privilege, it may be repeated, availed of but little. Where its use still survives the procedure is for all bills favorably reported by committees to go on the calendar of general orders and for the house to go into the committee of the whole automatically when this order is reached in the daily program. Kansas, Michigan, Montana, Nebraska and Oklahoma may be mentioned as making general use of this form of organization.

The advantages of the committee of the whole are such as to have started a movement for a general return to its employment. In it the restrictions of formal debate are thrown aside, and although the personnel of the members does not differ from that of the house, they come to it in a different frame of mind. Its purpose is frank discussion and deliberation. The committee of the whole may hold a public hearing; as for example, at the hearings in 1915 by the Illinois Senate upon the bill to abolish capital punishment

[16] Index-Digest, State Constitutions, p. 842.

[17] Statements in reply to the Nebraska Questionnaire. A motion to go into committee of the whole in order to hear testimony concerning a proposed railroad measure was defeated by an overwhelming vote. Massachusetts House Journal 1915, p. 1212.

the Governor and others appeared, addressed the Senate, and were in turn questioned by members.[18] In this connection it may be noted that Wisconsin, whose rules permit the committee of the whole upon a demand of one-sixth, is taking greater and greater advantage of this more or less informal organization by summoning administrative officials before it. Such procedure is also valuable in the consideration of money bills, which should be taken up item by item. The Illinois House in 1915 adopted a practice frequently followed in Kansas and Oklahoma, by which bills at introduction may be referred by the speaker directly to the committee of the whole; the idea being that upon some bills it would be well if members were uninfluenced by the action of a committee. The rule in Illinois has been of no effect because the privilege of reserving bills for consideration by the whole house has been rarely exercised.

The possibility of abuse of the committee of the whole, which has done much to bring it into disfavor, lies in the absence of any record of proceedings therein and in the disposition of the house to sanction, without a roll call, the adoption of amendments reported therefrom. The general parliamentary principle that the ayes and noes cannot be demanded in this committee is reënforced by specific rule in many states. In a few cases, however, some record is preserved. In Maine, Illinois and Pennsylvania a report of debates appears in the stenographic record of all proceedings, although there is no way of getting the members' votes on record, and in none of these is a committee of the whole more than a very occasional occurrence. A small fraction of the committee of the whole may demand a roll call in Kansas, Kentucky and Nebraska but common practice neglects the call for the ayes and noes.[19] Louisiana seems to have been the first to require a complete record of action of this committee to be entered on the journal as are other proceedings of the house,[20] and the Arizona Senate alone has followed her example.[21] Where the constitution requires three read-

[18] Illinois Senate Debates, 1915, pp. 442 *et seq.*

[19] In Kansas and Kentucky twenty-five may demand a roll call, and in Nebraska ten.

[20] House Rule 67. An examination of the journals of Louisiana reveals that this is usually observed.

[21] Statement of the late Senator Cunniff of Arizona.

ings of bills, consideration in committee of the whole is counted as the second reading, although this was not true formerly.[22]

Control over Debate—Obstruction

Control over debate is always possible for the lower house through the simple expedient of the previous question. The usual practice of the upper houses likewise permits debate to be closed by this means, although certain restrictions may be enforced, such as the condition that more than one member must second the motion.[23] In Connecticut, Massachusetts, New York and Vermont the previous question in the Senate is not in order. This does not mean, however, that cloture may not prevail. On the contrary, in the Massachusetts Senate debate may be closed under the rules one hour after the adoption of a motion to that effect, and on this motion not more than ten minutes can be consumed in debate.[24] In the New York Senate the president must recognize a member who wishes to move to close debate after the measure has been before the house for six hours.[25] This rule was adopted after experience had persuaded the members to surrender their senatorial privilege of unlimited debate, but immediately was rendered ineffective through a ruling by an unsympathetic president that the time for debate might be extended by offering a substitute measure, which constituted a new and independent proposition.[26] To escape this impasse the rules committee began to report special limitations upon debate, and cloture in the Senate became an accepted fact.[27] In 1915, following a series of obstructive tactics by the minority, a resolution was passed to extend throughout the session which, although not authorizing the previous question, accomplishes the same result. A motion to close debate could be moved at any

[22] Sustained in *In re Reading of Bill*, 1 Colo. 641.

[23] In the senates of Virginia and Wyoming three are necessary to demand the previous question. In Pennsylvania, four, and in Delaware, five.

[24] Senate Rule 47. Adopted in 1882.

[25] Adopted in 1894. S. J. pp. 125, 196.

[26] S. J. 1894, pp. 191, 196 *et seq.* The chair was able to defeat the will of the majority by refusing to consider an appeal from the decision on the ground that no question of order was involved.

[27] S. J. 1897, p. 1326. This is believed to be the first instance. Debate was limited to two hours.

time, and when carried, shut off debate immediately; members were allowed but two minutes on roll call to explain their votes.[28]

The Georgia Senate while permitting the previous question has placed unusual restrictions in its way by requiring a majority to sustain the call for putting the motion, a motion to adjourn or to lay on the table being in order before the question on closing debate is taken, and by further prescribing that no senator before yielding the floor shall submit any motion the effect of which shall be to prevent further debate.[29] Thus the custom, widely practiced in the Illinois Senate, of making a motion and in the same breath moving the previous question upon it is impossible. In the Illinois Senate it is not unusual for one to move that a bill be taken up on third reading and final passage out of its order and immediately to move the previous question. This objectionable procedure prevents any debate whatever upon the measure since the earlier stages were passed perfunctorily, all discussion having been postponed until third reading. It will be seen from the foregoing that the dignity of the upper houses of our legislatures no longer demands freedom of unlimited discussion and that the means of checking long-winded tactics are universally at hand.[30]

[28] S. J. 1915, pp. 933, 934. Not even questions of personal privilege were in order after the motion to close was carried. P. 1160.

[29] Senate Rules 59, 122.

[30] The development of the previous question as a means of suppressing debate and bringing the house to an immediate vote upon the matter at hand was thoroughly reviewed in a discussion in the Fourteenth Congress (January 19, 1816) upon a motion to expunge the rule which permitted it to be invoked. William Gaston pointed out that it was originally used in Parliament to postpone the putting of the question when a decision at the time would be embarassing or injurious, owing to the delicate nature of the subject. If the previous question was carried, discussion of the main question was suspended and debate turned to the propriety of taking a vote on the main proposition. "Its purpose was not to suppress unpleasant discussion but unpleasant decision." The question then put was, "Shall the main question be now put?" (5 Hinds 5443, and for Parliament May, p. 269.) Today it is stated negatively in Parliament, *viz.*, "That the question be not now put," because of the similarity of the old form to the cloture motion now in use. (May, p. 269.) Unlike the experience of American legislatures, development of cloture in Parliament did not proceed from an abortive use of the previous question, where such motion still retains its early purpose.

The previous question was first invoked to shut off debate in Congress on December 15, 1807, on which occasion, however, the speaker's decision, that the question decided in the affirmative precluded further discussion, was overruled

Obstruction in the state legislatures is further made difficult by the general adoption of time limits upon speeches, which are either incorporated in the rules, as in the Illinois Senate and House and the New York Assembly, or are more commonly enforced by a resolution passed about the middle of the session. In this manner Massachusetts has placed the limit at ten minutes, Kansas at fifteen, and the New York Senate at five.[31] Obstruction has but rarely presented a troublesome problem in the state legislatures since both majority and minority are anxious rather to speed up legislation than to impede it. Vigorous use of the previous question plus the operation at times of a steering committee with power to restrict incidental motions has been generally effective against efforts of the minority to impose its will upon the majority. Following congressional practice, speakers refuse to consider dilatory motions, even going so far as to deprive a member of the floor if he is not using his time in good faith.[32]

by a vote of 103 to 14, which judgment was affirmed later on December 1, 1809, by a vote of 101 to 18. But on February 27, 1811, the House reversed itself during the debate on the Non-Intercourse act by ruling that the previous question did shut off debate. This action was taken during the last days of the session when time was precious. It is clear that the previous question was not called in through misunderstanding as to its accepted use, the speaker's decision in accordance with the precedents established on the two earlier occasions being overruled, but because it seemed to furnish a convenient instrument of cloture when one was sadly needed. In England, however, the question of cloture was fought out on its own basis, a distinct procedure being constructed for the purpose. (*See* Redlich, vol. 1, pp. 137 *et seq.* and vol. II, pp. 227 *et seq.* For a complete history of the previous question in Congress *see* 5 Hinds, ch. CXX.)

Cloture was not admitted in Congress without a severe struggle, and although no precedent could be found in Parliament, one at least existed in the rule of Pennsylvania Colonial Assembly (Rule XVII in 1776), "'If at any time a debate prove tedious and four members demand that the matter be put to vote, speaker shall not refuse it." McConachie, "Congressional Committees," pp. 23, 24, states that this rule first occurs in 1703 and that a rule authorizing the speaker to stop superfluous and tedious debates appeared as early as 1682.

[31] In Illinois Senate and New York Assembly under the rules a member may speak fifteen minutes; in the Illinois House thirty minutes, and in the Washington House only ten minutes. For resolutions limiting debate *see* Massachusetts House Journal, 1916, p. 198; Kansas House Journal, 1915, p. 28; New York Senate Journal, 1915, p. 1589.

[32] Michigan House Journal, 1901, p. 1234. The old procedure of demanding roll calls on amendments to the journal, sometimes employed before Speaker Reed's ruling on dilatory motions, would be quickly suppressed today.

A unique method of obstruction was employed at the 1915 session of the Illinois Senate, when a strong minority was seeking to prevent the naming of a rules committee until the results of certain contested elections could be known. The scheme, which failed as a matter of course, was to offer amendments to the resolution naming the committee. Notice would then be given that the next day reconsideration would be moved of the vote by which the amendment was lost, which, the minority believed, delayed action upon the main proposition until the amendment was disposed of. The opposing view of the majority was that all ancillary motions are carried by the main motion and that a substitute cannot be used as a method of defeating the main question. Accordingly, the majority finally went ahead and passed the resolution, later overruling the objection of the chair that the original motion was never passed while amendments were pending. The presiding officer was of the minority party and, as every minute was valuable in the race to control the make-up of the rules committee, the majority at the time had no hesitancy in overruling his decision. It was, however, a doubtful parliamentary proceeding as the effect of a motion to reconsider is to suspend the original proposition.[33] Alabama alone has guarded by rule against such a situation by providing that a motion to reconsider a subsidiary question cannot remove the main question from consideration but shall be disposed of at the time made.[34] It may be pointed out that such a situation could not arise in those states which like Pennsylvania do not admit a notice of reconsideration. It is unreasonable, however, that the will of the majority should be defeated by such paltry means and the speaker would have been justified in ruling such conduct as dilatory. It is sufficient that an opportunity be given later to reconsider the final vote at which time amendments would be open for reconsideration also.

Suspension of the Rules

But as has been already indicated the dangers in legislative procedure lie rather in the direction of too little discussion than in the direction of too prolonged debate. No rule is invoked so often as the one which permits dispensing with the rules so that bills may

[33] 5 Hinds 5704.

[34] House Rule 18.

be hurried through in several minutes. Only indeed where the constitutional requirement of readings on several days is absolute can undue haste be avoided; a two-thirds or three-fourths vote to suspend the provision being as easy to secure as a simple majority. Rarely is a division necessary to secure the requisite number, which is usually obtained by unanimous consent.[35] Naturally the most frequent suspensions of the rules to expedite legislation involve local and obscure measures, for if any political importance attaches to the bill the minority will see that it takes the normal course. A member announces: "Gentlemen, this is merely a local measure, personal to me and my constituents and I ask to have it put on immediate passage." The house is not interested and is quite willing to act blindly upon the recommendation of the local member.

The usual method of facilitating passage is simply to omit certain of the steps which a bill would normally take. It is not uncommon to advance bills, as they are reported from committee, to third reading subject to amendment and debate. In this manner they escape the customary debate stage, which occurs either at second reading or on the motion to accept the committee's report, and pass finally without discussion. Another method of facilitating passage is to adopt a motion to consider the second reading as the third and pass the bill at once,[36] or to order that a measure, reported from committee, be engrossed at the clerk's desk and put on final passage.[37]

Unfortunately for the public, the confusion of the closing hours is greatly intensified by indiscriminate suspension of the rules. Indeed where constitutional checks do not prevent, bills may be advanced from introduction to final passage in a few seconds. Obviously such proceedings nullify all checks and safeguards.[38] In Delaware the Senate will admit a bill on introduction, go into committee of the whole, receive and adopt the report therefrom, read it a third time, and pass it as rapidly as the successive motions can

[35] For the constitutional provisions which permit suspension of readings on several days *see*, Index-Digest of State Constitutions, pp. 840–842.

[36] The practice in Washington.

[37] Ohio practice. Minnesota also frequently moves a bill from committee report to final passage in one motion.

[38] Kansas, North Dakota and West Virginia are the worst offenders. In West Virginia the ayes and noes on the motions to suspend the rules appear on the journals.

be put. Naturally separation of the several stages by several days does not guarantee deliberation or thought, but it does afford an opportunity for them and a chance for anyone who may be interested to be heard, as well as for verification of the official, enrolled copy.

Investigation of the journals reveals that in most legislatures the majority of business of the closing days is done under suspension of the rules. Only bills so favored can secure attention. In the absence of a steering committee suspension of the rules to consider a bill out of its regular order is the house's way of sifting legislation. Bills move from second to third reading and final passage without regard to the regular order and the calendar is thereby rendered futile.[39] Michigan and New York have sought to meet the evils of undue haste by the constitutional prescription that all bills be printed and in the possession of members, in Michigan five days before final action,[40] and in New York three days in final form, thus rendering snap amendments impossible.[41] The rules of the New York Assembly further guard against surprise by the provision that a bill shall be on third reading calendar two days before being taken up unless it has been made a special order, in which case third reading is permitted to follow immediately upon second. Notice of the special order, however, must appear on the calendar two days before consideration.[42] Suspension of this procedure is guarded against by the general requirement of one day's notice to suspend any rule.[43] Yet it is quite common for a member to secure unanimous consent to put a bill on final passage immediately after the report of a committee. It must be admitted, however, that the situation the last few days is relieved by the fact that the daily program is completely in the hands of the rules committee.

Between a sifting committee easily amenable to the will of the house and the transaction of business under a general suspension of the regular order there is a real choice. The advantage of a prearranged calendar which gives certainty as to what business

[39] Minnesota begins this early in the session.

[40] Art. 5, Sec. 22.

[41] Art. 3, Sec. 15. Of course if the requirement of three readings on separate days is made absolute by the constitution, bills cannot be advanced in whirlwind fashion from introduction.

[42] Assembly Rule 12.

[43] Assembly Rule 55.

shall come up is wholly with the former. The Senate of New York, which uses a steering committee but little, preserves a semblance of regular order at the end by a rule that all bills must be referred to the committee of the whole before third reading.[44] As the session draws to a close, "General Orders," the calendar of bills before the committee of the whole, is never reached in the day's business. Consequently a measure must depend for advancement upon securing unanimous consent to dispense with the committee of the whole and to order it directly to third reading. The task of objecting to such advancement for any measure is delegated to the majority leader by his party colleagues. The minority group for practical reasons find it to their advantage usually to remain in line and consequently a single man, the majority leader, determines the fate of the bulk of the measures which come up during the last days of the legislature. The grip of the organization is further strengthened by the ruling that motions to discharge the committee of the whole must be made under the order of "Motions and Resolutions," an order seldom reached on the last days. It is therefore impossible for legislation unfavored by the organization to get a hearing. The minority must behave, since it has legislation on which it will ask unanimous consent, and it cannot risk discipline by the majority.

A commendable reform would be to allow motions to discharge the committee of the whole under "Reports of Standing Committees," which is reached early in the day's session. "General Orders" would then no longer serve as a graveyard for bills but rather as a depository for them until withdrawn by the senate using its selective power through its ability to discharge the committee of the whole from those matters which it wished to consider at the late date. A great many measures reported from standing committees on the last few days escape consignment to "General Orders" by gaining unanimous consent to immediate advancement to third reading, there to await their turn on the calendar. If the sponsors are unwilling to have their measure lie on this calendar until it can be taken up in its regular order, they move to suspend the obstructive rules in order that it may be rushed through to final passage. Upon this motion, however, one day's notice is required, and when the motion comes up at a later day members have an opportunity to defeat the rapid progress of the measure.

[44] Senate Rule 18.

The point to be noticed is that by the practice of the New York Senate, few bills are rushed from committee through final passage without due notice to members, and to this extent it is an improvement over the haphazard methods practiced elsewhere. Occasional measures are rushed through by unanimous consent under a general suspension of all rules, but such cases are the exception rather than the rule. Although very autocratic, a more orderly system of selection prevails than in those legislatures which have developed no other sifting agency than business by unanimous consent.

Amendments

Notwithstanding how accurately and skilfully a bill may be drafted, ambiguities and inconsistencies may creep in due to the insertion of improper amendments. Accordingly, examination of all amended measures by an expert before they are put up for final vote is much to be desired, yet only a few states provide by rules for such revising process. Colorado, Maine and Massachusetts have committees which revise bills before third reading and are authorized to correct inaccuracies, repetitions and inconsistencies. The actual work of course is done by clerks and everything depends upon the skill and experience of the clerical force. Wisconsin employs a revision clerk in the Senate and a revision committee in the House to examine amendments while the bill is yet in the hands of the standing committee, and an additional committee on bills on third reading is maintained in both houses. The New Jersey House leaves it to the speaker to decide whether amendments shall be submitted to a committee on bill revision to see that they agree with the context. No bill can be reported from a committee in Connecticut until after it has received the approval as to form of the clerk of bills, who is always an official of several years' experience in legislative matters, having reached the position through systematic promotion. The committees on revision in New York and Massachusetts, authorized to examine the grammatical language, correct typographical errors and make the bill accomplish the purpose intended, employ experts for the work. The work of the New York committee is somewhat weakened through their inability to report amendments; they report only recommendations which do not force consideration as amendments would. With the exception of Massachusetts none of the above committees can

effect changes in the legal sense. The revision committee in Wisconsin, however, may call attention to any change deemed advisable as long as the proposed alterations do not affect the scope of the bill. The committee in Massachusetts may report as amendments changes in the legal effect. It will be seen that at best the legislatures have taken only half-way measures to assure that bills, perhaps admirably drawn for introduction, shall not be rendered ambiguous, inconsistent and impossible through amendments which may be adopted.

Yet regardless of how thoroughly measures are examined and corrected before third reading, if the way is clear to introduce amendments on final passage gross evils may result. It works out about as follows: "The clerk announces the reading of a bill; he begins its reading, when a member offers an amendment which no one understands but himself and the amendment is adopted. The reading goes on and the bill is passed as amended. In the hurry and probable confusion of the moment, no one but the mover of the amendment may know exactly what it is or how it affects the nature and subject matter of the bill."[45] It can be appreciated that members are loath to hold up amendments presented on third reading simply because they do not understand them. The course of least resistence is to remain quiet and acquiesce. Accordingly a prohibition upon all amendments on third reading was inserted in the New York constitution of 1894,[46] which unfortunately has been construed to admit amendments until the final section of the bill has been read. Yet if amendments are adopted at this stage final passage is delayed by the constitutional mandate that all bills must lie printed in final form for three days on the desks of members.

More than thirty legislatures forbid by the rules amendments on third reading. To amend a bill which has reached this stage it is necessary to recall it to second reading, adopt the amendments and advance it again to third reading. The spirit of the provision is violated by the practice of numerous legislatures which permits a motion that the bill be called back to second reading and recommitted with instructions to report certain amendments forthwith.

[45] From the speech of a member before the Constitutional Convention of New York, 1894. Record, vol. I, p. 479.

[46] Art. III, Sec. 15.

Without leaving his place the chairman of the committee designated immediately reports the bill as amended and it is restored to its place on third reading. Other states either permit under the rules amendments freely on third reading or systematically violate the rules as do Kansas and the Indiana Senate.

The value of ordering a bill back from third to second reading in order to amend is therefore dependent upon the time which elapses before the amended measure comes up for final passage. If Ohio practice is followed, amendments on third reading (the usual time for amendments in Ohio) are referred to a select committee of one, the person proposing the amendment being named, who announces immediately that he has amended the bill as directed by the House, which acts on it forthwith. The measure then goes at once to final passage. Nothing is gained by this useless formula, since all the evils of hasty amendment and passage survive. But if the bill called back to second reading to amend comes up on third reading in the order that any bill does, if it is called back in fact so that it goes to the foot of the third reading calendar, members have time to come to an intelligent conclusion.

A more effective means of attaining the desired end occurs in the constitutional requirement that all amendments be printed before being acted upon.[47] The experience of those states whose constitutions contain such provisions has been that, the temptation to passage the moment after amendment being removed, the rule which sends the bill back to third reading and compels it to come up in regular order on third reading has been observed in spirit instead of being suspended by unanimous consent. Of course cases have occurred in which the amendment was hastened to the printer and received back in half an hour to be passed hastily, but as this involves considerable difficulty they are comparatively rare. Whether the mandate that all amendments shall be printed extends to those which merely strike out matter and propose nothing new

[47] California IV, 15; Colorado V, 22; Idaho III, 15; Illinois IV, 13; Missouri IV, 29, 30; Nebraska III, 11; Pennsylvania III, 4. Unfortunately this has been held in Colorado not to apply to amendments recommended by conference committees. (*Board* v. *Strait*, 36 Colo. 137.) It may be repeated that New York very wisely requires the printing of a bill in final form three days before passage. Missouri requires that all amendments be incorporated in the engrossed bill and the engrossed bill be printed.

has given rise to some doubt, but better opinion seems that printing anew is necessitated. Pennsylvania came to this view in 1913,[48] although earlier custom had been to put the bill on final passage at once.

Amendments whether printed or not should be attached by responsible clerks to the copies of the bills on the files of members. A busy legislator should be able to refer easily to the whole measure, but has no time to clip amendments from the journal and paste them on a copy of the bill. Vermont makes this possible in a less satisfactory manner by printing on the calendar the citation to the page of the journal on which the amendment may be found, while Massachusetts inserts it therein in full.

Amendments are usually disposed of without roll call unless the ayes and noes are demanded. Alabama is an exception to the general rule in that her constitution requires the names of all those voting to be entered in the journal.[49]

It is possible that a bill, passed by one house, might be completely modified by amendments introduced in the other. These amendments might then be adopted by the first house without a roll call. The measure in its final form would thus escape a recorded vote in the house of its origin, although the constitution might require an aye and no vote on the passage of all measures. In order to render this practice impossible, the constitutions of seven states require that votes of one house on concurring in an amendment of the other be entered on the journal.[50] Today, however, the constitutional prescription that final passage shall be by ayes and noes entered in the journal has been generally interpreted to imply that, although a bill has once passed the house on a recorded vote, concurrence in amendments adopted afterwards by the other requires a similar vote.[51] Thus it becomes impossible for either house to escape going on record on the measure in its final form. Indiana is an exception in that measures returned with amendments to be concurred in do not come up a second time for final passage but are accepted by a *viva voce* vote.

[48] Legislative Journal, 1913, p. 3632.

[49] Alabama IV, 64. Of course it does not follow that there is always a real roll call.

[50] Colorado V, 23; Louisiana 40; Mississippi IV, 62; Missouri IV, 32; Pennsylvania III, 5; Virginia IV, 5; West Virginia VI, 31.

[51] The constitutions of three-fourths of the states contain this provision.

The prevailing practice in considering amendments made by one house to measures which have already passed the other lends itself to grave abuse through the power of the presiding officer to call them up at will as messages from the other house. He is thus enabled to select the most favorable time to rush concurring action. Such control over the fate of amendments would be destroyed if a special order of business were devoted to consideration of messages from the other house, and if amendments in which concurrence is desired were placed on the calendar. Precautions of this nature are taken in Vermont. Not only are members informed of amendments from the other house by their appearance in full on the calendar, but a definite time is set aside for their consideration under the order of business of Senate (or House) proposals of amendment. A rule of the New York Assembly is likewise designed to assure deliberation on such proposals. Amendments made in the Senate to measures passed by the House are to be referred to the committee which originally reported the measure,[52] but unfortunately this is never observed.

There remains one possible reform concerning the treatment of amendments which can be stated very briefly. Under general parliamentary law amendments once adopted by the house on second reading cannot be struck out on third reading unless a motion to reconsider has been carried. Motions to reconsider involve retracing the steps by which the bill passed second reading and are subject to the restriction that they must be made within a certain time, usually twenty-four hours after the vote proposed to be reconsidered has been taken. Great inconvenience is apt to arise from the difficulty of modifying an amendment once adopted, should a minority prove obstructive. On the other hand, amendments proposed by a committee, although adopted by the house when it agrees to the report of the committee, are not treated as an integral part of the bill and can be altered or stricken out at will. The suggestion here is simply to provide a similar method of striking out amendments offered from the floor and adopted at second reading, should they be found undesirable at third reading.

[52] Assembly Rule 11.

Roll Calls on Final Passage

Roll call on the passage of each measure is required by the constitutions of thirty-six states.[53] The New England States are exceptions. Among them, however, the ayes and noes may be demanded by a fraction of the members. The constitutional requirement of the roll call on the final passage of bills, or in concurring in amendments, is of doubtful value. The journal of the Ohio House, selected at random from those of several states, records fifty-one roll calls on the last day of the 1915 session, and twenty roll calls were not unusual upon an ordinary day, although there were 121 names on the roll. On the last day of the 1914 session of the New York Assembly there were 208 roll calls, the roll containing 150 names. Similar cases could be multiplied in every state which requires roll calls on final passage. Now it is impossible to call a roll of 150 names honestly in less than fifteen minutes. On this basis thirteen hours would have been so consumed in the House on the last day of the Ohio Legislature and fifty-two hours in the New York Assembly. An ordinary day's session would have to devote five hours to roll calls, for the states have been slow to devise mechanical contrivances for recording votes. Wisconsin led the way at the present session by adopting an electric voting machine.

Roll calls on numerous measures are possible simply because the roll is not called. Go through the journals of any of the thirty-six states mentioned above and you will find measure after measure upon which no dissenting voice was cast. Indeed a real division will occur with conspicuous infrequency. The results of the 208 roll calls in New York to which reference has been made, show that only fifteen record as many as five votes in the negative, and of these only eleven could be called real divisions. Since many measures meet with no opposition, an experienced clerk can tell as soon as he has called half a dozen names whether further call will reveal any negative votes. If none are apparent the rest of the roll is called very rapidly and a member must watch carefully to catch his name, if indeed it be called at all. A skilled clerk of the Pennsylvania House has been known actually to call 207 names in 59 seconds. Under the short roll call of New York, names of but a few members are called by the clerk and the bill is declared passed

[53] Index-Digest of State Constitutions, pp. 844–845.

by an arbitrary number of votes. Several printed slips of about one hundred names are employed for the purpose of making up the journal; they are pasted in the journal and the names thereon are recorded as voting in the affirmative. A member who wishes to go on record in the negative must rise and announce the fact to the clerk, unless he has given notice beforehand, and his name will be crossed off the list and written down on the negative. In order that the records will be consistent members who have been excused for the day are crossed off. Bills are thus passed at the rate of one a minute sometimes with not more than a corporal's guard present.[54] Undoubtedly the spirit of the constitution is violated. What was intended was an honest roll call with opportunity to return aye or no.

Yet perhaps the situation is not so serious as some have declared, for a practice so general must have some survival value. It must be remembered that the quick roll call is simply a method of acting by unanimous consent in cases in which the constitution requires a recorded vote. Usually a member can have a slow roll call if he asks for it, and by the custom of many legislatures may demand its verification.[55] True, insistence upon a slow roll call is apt to be unpopular, for a man's colleagues are impatient to have their measures reached; but here again enters the element of unanimous consent. The use of an electric voting machine would probably increase the number of real divisions, but business by unani-

[54] Mr. Baker, addressing the New York Constitutional Convention of 1867 (Record, p. 1301) said: "I know for a fact that during the last two days of the session the clerk passed more legislation than the body of the House, and it was no uncommon thing to adjourn and leave the city, a majority of the members not knowing upon what bills they had voted." So it appears that the short roll call is no strictly modern invention.

The Committee on Legislation of the New York Citizens' Union (Report for 1908, p. 22) describes the technique. At that session the clerk had four printed lists of names for the sake of variety; the selection of the form to be used seemed arbitrary.

[55] New York is perhaps an exception since the presiding officers sometimes take the ground that there must be a substantial demand for a roll call, else those opposed should be content with being recorded in the negative. (Citizens' Union, Committee on Legislation, Report 1913, p. 5.) Of course there have been instances elsewhere in which the gavel rule of the speaker was very marked and demands of a few members have been disregarded, but such are occasional and grow out of conditions more serious than problems of procedure.

mous consent would continue in the absence of a quorum, since the record of the machine could be modified upon the journal to meet constitutional mandates.[56] If the constitutional requirement of a roll call on any and all measures were abolished, a record of real divisions would still be preserved through the power of a small minority to demand the ayes and noes. During the 1916 session of the Massachusetts House there were but eighty-nine roll calls on all subjects, yet each represented a real division of opinion. The true explanation of the short roll call is found in the anxiety of members to speed up legislation upon which they have not had time to form opinions, and to seek for fundamental reform through new methods of voting is to mistake symptoms for causes.

Counting a Quorum

The simple expedient of counting towards a quorum those physically present although the fact is not revealed by a roll call, following Speaker Reed's famous ruling of 1890, is now generally accepted by the states, even finding a place in the rules of a few.[57] Speaker Reed and those who supported him were able to find numerous precedents among the state legislatures.[58] In 1874 the Speaker of the Massachusetts House ruled that the constitutional requirement of a quorum was satisfied by physical presence, and in 1883 the president of the Pennsylvania Senate counted a quorum. Following the punishment in 1882 of a member for contempt in refusing to vote, the more expeditious method was likewise adopted in 1883 by the New York Senate. At the session of 1892 the same body fell back upon the older practice of punishing for contempt members refusing to vote, although it seems evident that the purpose was to find authority for measuring vengeance to three senators.[59] How-

[56] The introduction of an electric voting machine in Wisconsin has been wholly beneficial, inasmuch as the number of roll calls has been increased and life injected into the session generally. Wisconsin requires no roll calls on final passage unless on demand of one-sixth and therefore each is a real division. The time consumed being negligible, the temptation to short roll calls where the machine is used would be materially reduced.

[57] Found in the rules of the Florida, New York and Ohio Senates. By the rules of both houses of Virginia members present but not voting shall on the demand of one be counted in the negative. (House, 69; Senate, 51.)

[58] *See* Congressional Record, 51 Cong., 1 Sess., pp. 915–916; 1161–1162; 1234. Indiana, Massachusetts, New York, Ohio and Pennsylvania were cited.

[59] *See* Brooklyn *Eagle*, Jan. 27, 1892.

ever, in 1902 counting a quorum was legalized by specific rule.[60] The legislatures of practically all the states require by rule that a member vote and that failure to do so constitutes contempt, but if threat of contempt should fail the body would doubtless resort to counting a quorum.[61] It is questionable, as Speaker Reed said in a letter to a member of the New York Convention in 1894, whether an assembly has the right to make a man vote. A person with no opinion should not be made to express one; it is enough that he be compelled to acquiesce in the result and the fact of a quorum is not disturbed by his silence.[62]

Engrossment and Enrollment

It is worth while to devote some attention to the preparation of the official copy of bills and to the safeguards employed against dishonest or careless engrossments and enrollments. Except in New England the engrossed copy is the one specially prepared for passage as the authorized bill. Having received the approval of both houses the enrolled bill, now in the form of an act, is made from the engrossed bill. After being signed by the presiding officers of both houses the enrolled measure goes to the governor for his approval. Upon receiving his signature it becomes the official statute. When reading the rules of the New England states, however, it is well to remember that the "engrossed" bill refers to the copy which goes to the governor.

Due to better systems of engrossing and enrolling and the use of the printing press involving checking by expert proof readers, scandals growing out of fraudulent copies are not so common as formerly. In the prosperous days following the Civil War when industry broke into unprecedented activity, the possibilities of special legislation were discovered and special interests often profited through incorrect enrollments. "Such was the pressure upon

[60] It may be noted that as early as 1858 a proposal to incorporate "counting a quorum" in the rules had been made in the Pennsylvania Senate. It was disagreed to because it was not thought that a man could be put down on a quorum until he voted and the method of punishing for contempt was adopted instead.

[61] For example, Michigan House Journal 1899, pp. 993, 1207; and House Journal 1893, p. 1700.

[62] The letter appears in the Revised Record, New York Convention, 1894, vol. I, p. 450.

the legislature that it became the habit to prepare laws for the signature of the governor which had never passed the legislature."[63]

In order to insure purity of text, the rules now generally provide that before final passage bills shall be engrossed under the supervision of a committee. This committee renders very inadequate supervision, the work being delegated to clerks. In New York, where the constitution requires printing in final form before passage, bills are rarely passed without being engrossed by printing. The proof is read by experts who have an office in the capitol. In other states, however, the rule requiring engrossment is often evaded by a motion that the bill be considered engrossed and ordered to a third reading, and thus it is possible for third reading to follow immediately upon second.[64] Where the custom of combining third reading with second prevails, as in Minnesota, Washington and West Virginia, it is impossible for bills to be engrossed; and Washington recognizes this by specifying that all amendments are to be pasted securely on the original bill. Frequently bills are engrossed only in case that they have been altered after introduction; otherwise the copy introduced continues to be official until enrollment.[65] If no engrossed copy is made, the original bill, or a printed copy thereof, in possession of the clerk, with amendments fastened upon it, is official.[66] The plan of Michigan and New Jersey of making one of the printed copies the official bill throughout its legislative career is a good one. It then corresponds line for line to the copies in the hands of the members and the clerk thereby avoids the difficulty of identifying the places for proposed amendments upon a copy different from that in their possession.

The preparation of the enrolled measures, done sometimes by printing, sometimes by typewriter, sometimes in long hand,[67] is

[63] Samuel Dickson in the Presidential Address before the Pennsylvania Bar Association, 1896. *See* also Debates of New York Constitutional Convention, 1867, p. 1303.

[64] No bills have been engrossed in Iowa since 1907 although the rules prescribe that they shall be. (Shambaugh, "Statute Law Making in Iowa," p. 230.)

[65] The recognized practice in Arkansas, North Carolina, Idaho, North Dakota and Wisconsin.

[66] Connecticut, Nevada, New Hampshire, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia and Washington follow this method.

[67] *See* Bulletin No. 4 of the Nebraska Legislative Reference Bureau for a table showing methods of engrossment and enrollment in the several states.

likewise supervised by committees which report that they are correctly enrolled. But again the oversight is of the most casual sort. In the Pennsylvania House the committee charged with this function numbers twenty-five, divided into groups of three to expedite the work; but bills are rarely examined by members, the real work being left to clerks, although the official clerk of the enrolling committee is supposed to sign enrolled measures as a sort of voucher. The method of enrollment in Vermont makes it virtually impossible to correct errors which may appear at this stage. The original bill with amendments written or pasted thereon goes to the governor for approval. Later, perhaps after the adjournment of the legislature, the engrossing clerk copies the act into a book, and the presiding officers of the two houses and the governor meet in the secretary of state's office and sign it.

The great defect of most systems occurs in the fact that the real work is not done by responsible men, so that blame for errors can be clearly located. To this end it would be well to make a regularly established state official responsible for correct enrollment. In 1911 the Senate of Wisconsin abolished committees on enrolled and engrossed bills and placed the duty of reporting measures as correctly enrolled upon the chief clerk. It may be suggested that legislative reference libraries could to advantage be entrusted with this responsibility. In South Dakota the chief of the engrossing staff must initial each page as a verification of its correctness,[68] and by the laws of Connecticut the engrossing clerk must certify with his signature that each bill is correctly prepared.[69] By a curious provision of the South Carolina Code, county solicitors are required to attend upon sessions of the legislature to assist in drawing up bills and to supervise engrossment and enrollment of the same. Each bill must be certified by one of these officers as correctly enrolled.[70] Maine, Massachusetts and New Hampshire provide that the work be done in the secretary of state's office. California, Kentucky, New York, North Dakota and Utah have by statute made fraudulent alteration of the enrolled measure a felony and New Mexico by constitutional provision.

The constitutions of thirty-three states require that the en-

[68] Laws of 1909, Chap. 123.
[69] General Statutes (1902), Par. 36.
[70] South Carolina Code (1912), Par. 23.

rolled bill be signed by the presiding officers of both houses, twenty-two prescribing that it be done in the presence of the assembled body.[71] An attempt was thus made to provide an additional guarantee against the signing of bills irregularly passed. A situation which arose recently in Indiana raised the question as to the responsibility of these officers. Two bills which had never passed the legislature were signed by the presiding officers and later by the governor. The grand jury sitting to investigate the responsibility for the affair reported that the speaker of the House and the president of the Senate, who had wrongfully signed the measures, were in no way liable.[72]

Upon the question whether the enrolled bill controls the engrossed bill in case of discrepancy between them, the courts have not been in agreement; although the attitude consistent with the widely accepted principle that the enrolled bill is final, would favor making it the conclusive copy.[73]

[71] Index-Digest, State Constitutions, p. 846. A similar provision failed in the Constitutional Convention of New York in 1894 because it was feared that the presiding officers would be invested with the veto power. (Record, vol. I, pp. 906 *et seq.*) The prevailing opinion of the courts has been, however, that failure to sign in no way invalidates the act, as the only function of the signatures is to furnish evidence in the absence of which recourse may be had to the journals. *Commissioners* v. *Higginbotham*, 17 Kan. 62; *Taylor* v. *Wilson*, 17 Neb. 88; But *see Burritt* v. *Com'rs*, 120 Ill. 322; and *Douglas* v. *Bank*, 1 Mo. 24; also *State* v. *Kiesewetter*, 45 Ohio St. 254, where the provision was held mandatory.

[72] From the text of the report of the grand jury to the Governor. Indianapolis *News*, Dec. 5, 1914.

[73] So held in *Division of Howard County*, 15 Kan. 194. But *see contra Berry* v. *Railroad*, 41 Md. 446; *Brady* v. *West*, 50 Miss. 68. Also *Moog* v. *Randolph*, 77 Ala. 597. Where material divergence exists between the engrossed measure and the enrolled act the bill approved by the governor is not the one which passed the houses and therefore never became law. In *State* v. *Swan*, 7 Wyo. 166, one section of the act was void as being enrolled by mistake.

CHAPTER VI

LEGISLATIVE LEADERSHIP

We must finally examine the preparation of a daily legislative program, to discover how far the houses follow a fixed arrangement of business. The question of the control of the time of the house and the extent to which individual members have surrendered themselves to the guidance of leaders is involved. The matter of controlling the limits of debate necessitates no complex system of rules since a minority anxious to discuss measures is absent. With the exception of the rush days at the close the houses do not surrender control of their time to any special group. The legislatures of Georgia and Washington are perhaps exceptions in that from the first of the session the calendar of the latter is under the jurisdiction of the rules committee, while in the former all motions to interrupt the regular order must be referred to the same committee.[1] In the Georgia Senate no request for unanimous consent to suspend this rule will be heard.[2]

The Calendar

The daily program takes the form of a calendar upon which measures appear in the order in which they are to be taken up. Appropriation bills sometimes have preference by being placed at the head of the list.[3] Usually the calendar is printed daily, although sometimes it is merely posted as a bulletin, as in Nebraska, Nevada and South Dakota. In some of the more backward states as Arkansas, Indiana, Montana and North Carolina, the clerk merely keeps a list of measures in their regular order.

The evils of such a lax method are twofold. Great power over the calendar is put in the hands of the speaker inasmuch as with him rests the selection of bills to be handed down for the consideration of the house. He is consequently enabled to reserve measures until an opportune time, either favorable or unfavorable to their

[1] Washington House Rule 2; Georgia House Rule 42, Senate Rule 137.

[2] Senate Rule 40.

[3] Georgia, even over special orders; Kansas, Mississippi under the constitution, and Pennsylvania.

passage, without the members being much the wiser. In the second place the members are ignorant of the time at which bills are to come up. The absolute right of members to be informed in advance as to what business is to come up really constitutes the essential reason for the daily printed calendar. As a select committee of the Commons declared in 1861, certainty from day to day of the business to be transacted is the great aim of procedural reform. Each member, furthermore, should be able to rely upon the carrying out of the program laid down.[4] Nevertheless, slight investigation will reveal that our state legislatures have attained this ideal very imperfectly. Although as a rule, matters not upon the calendar are denied consideration, a few states, however, reporting to the contrary that business not upon the calendar is often taken up,[5] the value of the calendar as a program of the day's activities is materially lowered by the general custom of admitting measures to consideration out of their regular order. The practice of granting leave to take up measures ahead of their turn obtains generally in states in which the calendar is allowed to become overcrowded. If steering committees are not employed, calendar rules are practically disregarded the last few days of the session. For example, in one day, selected at random about two weeks from the end, the Illinois House by unanimous consent suspended the regular order thirty-two times, permission to suspend being withheld but twice.

The force of the calendar is also weakened by "passing" a measure when it comes up in its regular order. If such practice prevails, there can be no certainty that a measure will be acted upon when reached. In many legislatures a member to secure consideration for a bill must call it up at the debate stage, but if he thinks the time inopportune he neglects to do so and another than the sponsor will not usually request its consideration. By the rules of Pennsylvania a bill may be passed for two weeks before being dropped from the calendar.[6] Pennsylvania also keeps a postponed calendar of bills on third reading on which a measure goes at the

[4] Report of Select Committee of the Commons on Business of the House, 1861, pp. iii–xii. Cited by Redlich, "Procedure of House of Commons," vol. I, p. 98.

[5] Alabama, Arizona, Minnesota, Nebraska and New Jersey. Oklahoma enforces the calendar strictly but reserves some time just after convening and before adjourning for consideration of matters not on the calendar.

[6] House Rule 35.

request of the sponsor, who is thus given a chance to marshal his forces and to seize a more promising moment later to put his measure to vote.[7] Members avail themselves of this privilege frequently. Missouri possesses the same device in an "informal" calendar. In those states in which custom permits a measure on the calendar to come up automatically in its turn without the necessity of a member calling it up for consideration, it is usual to "pass" a measure if there is a request to do so, although in some cases it may lose its favorable position on the calendar. Ohio practice, however, permits a bill "passed" on the calendar by a majority vote to be placed at the head of the list for the day following.[8] A blanket motion may extend this favor to over one hundred measures at a time and thus disturb the order most effectually. A bill "passed" on the calendar once in Connecticut or twice in California is sent to the foot unless saved by a two-thirds vote.[9]

In accordance with the principle that a member should know with a great degree of certainty what measures are to come up in the day's business, a simple majority should not be able to violate the regular order without due notice. It has sometimes been urged by those who had in mind meritorious legislation which failed because the majority could not act immediately as they desired, that the majority should at all times be master of the time of the house by being able to change the order of business at any time.[10] But the minority also deserves protection from the snap tactics of the majority, and to this end notice of all motions to suspend the calendar should be imperative. Due notice having been served in advance, a simple majority would be sufficient to carry the motion. This is the practice in New York.[11] The rule prevailing in some states, making necessary a two-thirds or three-fourths vote to suspend the order, gives undue power to the minority, who are entitled to no such consideration if they have been properly notified.

[7] House Rule 68. Since the session of 1913 measures not called up from this calendar within five days are dropped.

[8] Joint Rule 21 and House Journal 1915, p. 1117.

[9] Connecticut House Rule 9, Senate 22; California Assembly Rule 14, Senate Rule 40.

[10] Urged by Illinois Voters' League (*Bulletin*, Nov. 20, 1914) and adopted in Illinois in 1915. The majority in the lower house must be absolute. Haines, "Minnesota Legislature of 1909," recommends the same.

[11] Senate Rule 44, Assembly Rule 45.

Much could be done towards introducing order and certainty into the proceedings of the houses by improved methods of compiling the calendar. Broadly speaking, all contemplated actions which could possibly give rise to discussion should appear on the daily printed program. This means that all bills on second reading, third reading or final passage should be shown. If second reading occurs before reference, the report of the committee should go on the calendar before it is acted upon inasmuch as debate is likely to occur at this stage. Yet the calendars of some states, as Alabama and Iowa, show bills only on third reading. When measures are referred to the committee of the whole, general orders should be included in the calendar as is done in Arizona, Kansas, Michigan, Minnesota, Oklahoma and the New York Senate. A material defect of the Massachusetts calendar is its failure to show measures up for final passage, a step, which, it will be recalled, does not occur until the bill has been returned from the other house with engrossment concurred in. Although final passage is thus rendered largely perfunctory it is the crowning stage of the bill's career and setting the time at which it is to occur should not be left so completely in the hands of the speaker. As noted above, however, the speaker will inform any interested member of the time at which a certain measure is to come up.

Measures should be set forth by title, as is done generally, and not by number merely, as in Illinois, Maryland and New Jersey. If bill dockets or bill indexes are published regularly a complete history of the bill is superfluous, but brief summaries, as included in the calendars of California and Iowa, would act as a ready reference. If a bill has been amended at any time the fact should be noted and, if copies of all amendments are not placed in proper order in members' files by clerks, citations to the pages in the journals where they may be found should be included. Vermont calendars include such citations, but Massachusetts goes farther and prints all amendments in full in the calendar, thus guaranteeing that they shall be available to members at the time action is to be taken thereon. It goes without saying that all special orders should appear on the calendar and that all that has been said about bills applies with equal force to resolutions.

There remain three other orders of business of which members should be advised beforehand since they will be called upon to assert

an opinion upon them. First, reports of committees recommending amendments should appear in full on the calendar before adoption. As pointed out above, this is absolutely essential if the report stage is likewise the debate stage. But even if debate should be postponed and the committee's report adopted indifferently, members should be warned of proposed changes which may alter the very nature of a bill.

In the second place, following the example of Wisconsin, motions to reconsider should be required to hang over one day and should find a place on the calendar. Other motions which must lie over one day, such as a motion to discharge a committee, likewise appear on the Wisconsin calendar under the head of "Motions for Consideration," while Arizona, after the manner of Congress, maintains a calendar of motions to discharge committees. It will be recalled that the practice of Parliament requires that a notice of motion must be given for practically all orders of business.

And finally, amendments made by the second house to bills which have already passed the first should appear on the calendar. Concurrence by the house in which the measure originated in amendments of the other may be a crucial point in the career of the bill, and it should not be treated in the loose manner which generally prevails. The Vermont practice by which such amendments appear in full on the calendar is to be commended. Reports of conference committees should receive similar consideration. It is submitted that, were the calendar compiled along the lines set forth here, a considerable influence would be set at work to compel adherence to a previously arranged program.

With two or three exceptions no effort has been made to distinguish between different kinds of legislation on the calendar. As noted above a very few give a preferential place to appropriation bills. Separation of private and general bills would be a distinct gain as tending to call attention to their different natures. In 1895 the Governor's Commission of the New York Legislature recommended that three calendars be adopted, *viz.*, a private and local calendar, a cities calendar, and a general calendar; and that certain days be set apart for certain calendars. Mondays and Saturdays were to be devoted to private and local measures, thus keeping interested ones at the capitol over the week-end and reserving more

general legislation for mid-week when a full house would be present.[12] The calendar of the Maryland Senate recognizes the principle to the extent of grouping local and general bills separately on the calendar. In those states which still retain the committee of the whole no general principles regarding the nature of the measures to be placed on "General Orders" are applied. Late in the session this calendar often becomes a graveyard for most bills which have been unable to escape it, and growing large because not disposed of, serves as a place where a few measures of doubtful virtue may be held for the purpose of passing in a hurry at the close.[13]

The value of the calendar would be much enhanced if it were placed in the hands of members one day before matters thereon are to be considered. Urged repeatedly in New York, this has been adopted in Wisconsin.[14] According to the rules of Connecticut also, matters must appear on the calendar one day before being taken up. When ready for action they are marked with a cross. Thus a measure which has been on the calendar for one day will thereafter be "starred for action." The value of the rule in Massachusetts requiring matters to lie over one day before action has been much enhanced in the Senate by the practice of publishing on the calendar all matters which are to appear on the orders of the day on the morrow.

Zeal and perseverance in clearing up the calendar at each sitting would go far towards relieving the congestion so generally attending the closing days. Nevertheless it is the almost universal report that no effort is made to clear the calendar each day. Work consequently is allowed to accumulate until the calendar no longer sets forth a daily program but serves merely as a docket from which the house may select matters for consideration. The third reading calendar of the Alabama House for the twenty-sixth day of a recent session held almost 250 measures, and the calendar of the Kansas Senate for the same day of the session showed more than 400 matters upon which that body was supposed to pass judgment. Other

[12] New York Assembly Document, 1896, No. 20. This feature was introduced as an amendment to the rules by the Progressives at the 1913 session but was defeated. (Ass. J. p. 15.)

[13] *See* Michigan Constitutional Convention Debates (1907–1908), p. 147. In the New York Senate reference to the committee of the whole towards the close of the session is a polite way to kill a measure.

[14] Senate Rule 19, House Rule 21.

examples likewise chosen at random could be multiplied in many states. Serious attention towards keeping abreast of the daily program would do much to obviate the need for sifting committees and for the general suspension of the calendar rules as the session grows old. Pressure would in turn be placed on the committees to assure that they were making consistent progress in their work. Legislatures which for the sake of orderliness enforce the rule that committees must make final report on all matters midway in the session of course find it impossible to clear the calendar for weeks after the expiration of the time, but where the introduction of new measures and reports of committees continue until late it is imperative that the work assigned each day on the calendar be completed. It is deplorable that measures should ever be allowed to die on the calendar. If they are trivial they should never get out of committee, but once out they deserve a decision by the house.

Massachusetts avails herself of a simple plan to aid her in disposing of routine business on the calendar. It has been the experience of many states that matters on the calendar giving rise to prolonged discussion may precede much routine business and that consideration of the latter is delayed as a consequence sometimes for days. Massachusetts treats as unopposed business those measures on which members do not indicate a wish to debate or amend. As the calendar is called, such matters are disposed of in the routine manner. After the calendar has once been gone through, the speaker returns to measures which members have indicated a desire to discuss. Transaction of routine business accordingly proceeds rapidly and is not allowed to accumulate on the calendar.

Closing Days of the Session

The evils of the glut of legislation so general during the closing days are too well known to merit discussion here. Remembering that the journals are records of things done, it is interesting to examine the report they give to see how the burden of work is distributed throughout the session. The Journal of the New York Assembly of 1914 devotes all of the second volume to a record of the last six days. As noted above, there were 208 roll calls on the last day. On an average day near the end, the Assembly passed fifty-nine bills and advanced forty-four. The final day of the 1915 session of the Ohio House saw forty-three measures passed and the

adoption of the conference report on the general appropriation bill containing 347 amendments. At the same session of the Illinois House the work accomplished the first four months fills 740 pages of the journal; that of the last month requires 642 pages to report. Nor were the earlier months spent in discussion on the floor, for the verbatim reports of debates during the first four months fill 625 pages while those of the last month fill 655 pages. Furthermore the time was not consumed in committee deliberations, for 40 per cent of the committee reports were rendered during the last month. The House simply did not settle down to work until four months of the session had passed. It is generally recognized that the first few weeks of many sessions are wasted. In 1915 the New York Legislature after sitting six weeks had passed eighteen measures, although 1565 had been introduced. In 1916, fourteen measures were passed during the same period, 1314 having been introduced.[15]

The congestion at the end is not confined to the large states. The Idaho House passed or rejected fifty-three measures in one day at the close of a recent session.[16] Montana reports an equally serious situation, and it has been estimated that in past years from 80 to 90 per cent of the business of the North Carolina Legislature has been ratified the last ten days.

The remarkable thing is that no means have been developed to remedy a condition which is partly due to lack of effective organization throughout the session and is partly psychological. Concerning the latter aspect of the situation it may be said that members are anxious to get home, their financial remuneration seldom compensating them for their absence from business. The spirit of procrastination, so strong during the early days, must now be atoned for by frenzied action in midnight sessions. Unanimous consent is granted promiscuously if business will be advanced thereby. The only visible hope lies in greater speed. Even if a time limit upon the introduction of new measures has been enforced the calendar becomes congested unless the committees and the house have moved expeditiously throughout the session.[17] Amid

[15] From a table prepared by the New York *Times*, Feb. 21, 1916.

[16] The Governor's Message to the Twelfth Legislature.

[17] A real advantage flows from the enforcement of such a rule to the extent to which it prevents the introduction of entirely new measures at the close preparatory to hasty passage. Bills have often been known to have been brought

such conditions a steering committee is preferable to a general suspension of the calendar because some measure of responsibility can be exacted. The constitutional provision requiring readings on three separate days, if absolute, prevents bills passing from one house to the other within three days of adjournment; but the Indiana clause which prohibits transmission to the governor on the last two days of the session merely advances the congestion forty-eight hours. A rule proposed by the Progressives of the New York Assembly in 1913 would have marked a real advance. Private and local bills were to be in order on the calendar only during January and February, leaving at least two months for action on general measures solely.

Massachusetts avoids the tumult of the last days more successfully than do other states, and it is worth while noting the means by which she accomplishes it. In the first place, there is no limit upon the length of the session, and the legislature seldom adjourns before July. Well-informed persons state that if the session were shortened, as it is by the constitutions of some states, congestion at the end would be unavoidable.[18] In the second place the exceptionally strict time limit upon the introduction of bills, none being received as a rule after the second week, makes possible the enforcement of the provision that committees must report out all measures early.[19] The legislature knows by the middle of April at the latest how much business remains to be accomplished. Furthermore the healthy rivalry of committees in efforts to keep their slates clean is an incident of the high development of the committee system in Massachusetts. Close record is made each week of the progress of work in committees, which is compared with similar periods of previous years, so that the presiding officers are enabled to apply pressure where necessary. Summing up, we may say that the legislature of Massachusetts makes sure that all the

in the last forty-eight hours, which their proponents would not have dared to present unless they knew business had so accumulated that no one would have time to examine them.

[18] The Wisconsin Legislature, which maintains order to the end, continues in session from January through July or later.

[19] Massachusetts Joint Rule 12. There is commendable hostility towards the suspension of this rule. Concurrent action by four-fifths majority of each house is necessary to suspend it.

business which is to engage the session is introduced at the very first. Committees at once get busy and continue so in order that they may return their reports promptly. And finally, the houses continue in deliberation a sufficient length of time to insure that their work will be completed without confusion or disorder.

Legislative Leadership

The constitutional fathers were so intent upon removing the legislature from executive control that the problem of legislative leadership seems never to have arisen in their minds, yet it has been the absence of responsible and definite direction within the body which has necessitated the development of leaders outside who, hidden from public view, have turned the opportunity into a source of private gain. Our state legislators are but human beings of little or no legislative experience, who are usually as amenable to good leadership as bad; but led they must be and the boss has filled a real need. The legislatures, moreover, have done nothing to develop from among themselves leaders who shall be responsible as such to the people, and the public is suffering from the resulting aimlessness of legislative activities. Members are as the blind leading the blind. Willing to follow, they can find no one to guide them.

A study of any of the journals discloses the fact that the bodies lack a consistent purpose. Members are not able to follow a constant policy, since they vote on many matters on which they have no opinion. This truth is illustrated in the number of actions which are reconsidered and, what is more noteworthy, in the number of definite decisions which are reversed. What leadership the houses enjoy is provided by the speaker and a few prominent committee chairmen, who stand forth partly because of their experience or force of personality, partly because of the position gained by them under the rules, and partly because of their position in the party hierarchy. Their control is often arbitrary and rarely systematically constructive. This latter quality has not been necessary because they have never been responsible to public opinion as recognized leaders.

The Speaker

Remembering that discussion here must be confined to that phase of legislative leadership which is related to questions of procedure, we may note that the member standing out predominant

as the party chief is generally the speaker. The power which he derives from committee appointments and the reference of bills has been tampered with but little, as has been shown above. His powers through recognition of members wishing the floor are extensive since so large a volume of business is conducted by unanimous consent. Usually in refusing recognition therefor, aside from extreme cases of arbitrary and irregular conduct, he merely exercises the parliamentary right of any member to object to the suspension of the regular procedure by unanimous consent. But because of his position, the speaker can use this right to enforce discipline, when an obscure member would only incur the hostility of his colleagues.

Gavel rule, under which the speaker refuses to hear objections to unanimous consent or to recognize demands for roll calls, has probably been a subject of complaint at one time or another in all our states. In this the speaker is aided by the confusion generally prevailing on the floor at critical times. An example of extreme control is furnished by the fact that a statement reported to have been made by the speaker, that there would be no more roll calls on dry measures permitted in the House, was accepted as final by the Senate.[20] A method of gavel rule requiring more finesse is to utilize a ruling on a point of order to bring about the desired result. The inexperience of the majority of members in parliamentary practice plus the element of party solidarity leads to general agreement

[20] Illinois Senate Debates, 1915, p. 507. A typical case of gavel rule occurred in the Pennsylvania House of 1911 and is fully set forth in the Legislative Journal, p. 3028. A joint resolution was up to amend the Constitution to provide for the initiative and referendum. It failed on third reading by a close division without record of votes, the speaker not heeding the call for the ayes and noes, after which the following colloquy took place.

MR. KELLY (on a question of personal privilege): "Mr. Speaker, I called for the yeas and nays on House Bill No. 758 before House Bill No. 771 was taken up."

SPEAKER: "The gentleman was not then recognized. The gentleman's objection will be entered on the journal."

MR. BALDWIN: "Mr. Speaker, I rise to a question of personal privilege."

SPEAKER: "The gentleman will state his question of personal privilege."

MR. BALDWIN: "I desire to have it noted that when the gentleman from Allegheny (Mr. Kelly) called for the ayes and noes on agreeing to House Bill No. 758 on third reading, I seconded the call."

SPEAKER: "It will be so noted on the journal."

with the speaker's ruling. Thus a clever speaker can frequently avoid a direct vote upon a measure, which the organization wishes to kill, by skilful rulings on incidental motions or on points of order. Furthermore, by choosing the time at which to "hand down" for consideration matters which do not appear on the calendar, the speaker may secure the success of measures which would doubtless fail were the house warned beforehand. A prominent instance of the use of this means to defeat a measure occurred in the New York Assembly of 1912 when the speaker refused to hand down a resolution from the Senate requesting the return of a bill in order that a beneficial amendment might be incorporated. Through the action of the speaker the bill became law without the house having opportunity to act upon the amendment desired by the Senate and fathered by the Civil Service Commission.[21] The power to appoint steering committees materially increases the centralization of control in the hands of the speaker. He may be ex officio chairman of this committee, as in New York where he reports the daily program.

The situation sometimes arising when the president of the senate is not a member of the majority party emphasizes the partisan nature of the presiding officer's position. The article in the Constitution of New York which empowers the president pro tem to act when the lieutenant-governor "shall refuse to act as president" was inserted because of an experience in which the lieutenant-governor refused to put the question on seating a member. Only after much disorder did the president pro tem succeed in putting the question and was sustained by the majority.[22] At the 1915 session of the Illinois Senate the lieutenant-governor aided and abetted a filibuster by refusing to recognize members other than those of the obstructing party and by refusal to hear demands of the majority for roll calls.[23]

The Floor Leader

The degree to which whatever guidance may exist is entrusted to the speaker is witnessed by the small place generally held by the recognized floor leader. Indeed, many legislatures do not recognize a floor leader other than informally. The chairman of a prom-

[21] Report of Committee of Citizens' Union, 1912.

[22] For full account *see* Senate Journal, February 5, 1894.

[23] *See* Illinois Senate Debates for March 11, 1915.

inent committee, such as judiciary or appropriations, may be the tacit leader, but his position depends largely upon the man, and he may see his leadership settle upon someone else with a stronger grasp of affairs. Occasionally the caucus will appoint a leader, although it may simply recognize the caucus chairman as such.[24] But motions to establish a floor leader are infrequent. In Massachusetts the chairmen of the three most prominent committees are recognized by having special seats assigned to them by the rules, and one of the number, the chairman of the rules committee, is supposed to be the speaker's spokesman.

In any case the rank and file of members follow instinctively a few prominent men who hold chairmanships of important committees. They are the men who are most frequently granted unanimous consent to advance their measures out of order. The obscure member rarely asks for it, perhaps because it is difficult for him to secure it. At least the most numerous instances of refusal follow requests by the rank and file. The point to be emphasized is that the men who direct the course of the deliberations receive but occasional and slight recognition from the rules and entirely escape public responsibility for the failures of the legislature.

New York is one state in which the floor leader is coming into a recognized position of power. Since 1915 the leaders of both parties have received the endorsement of law by acts appropriating money for their clerical and stenographic expenses.[25] At that session the Senate caucus of the majority party, although the Senate is a small body of fifty-one members, early in March named a committee of seven to shape party policy without the action of the caucus. Four days later the chairman of this committee received authorization from the caucus to appoint sub-committees to prepare all important measures for final passage.[26] He was likewise the president pro tem of the Senate, chairman of the rules committee which reported special orders at any time, ex officio member of the three leading committees, and possessed of the power to refer to the finance committee, of which he was a member, any money bill reported from another committee. It will be seen that, as far as the Senate was concerned, the majority leader was made dictator

[24] For example, Kansas, Oklahoma and New Jersey.

[25] For example, Chap. 726, Laws of 1915, granted the leaders each $2500 expense money.

[26] New York *Times*, March 14, 17, 1915.

and the standing committees were virtually superseded by the small caucus sub-committees of his choosing.[27]

The majority leader of the lower house of New York also holds a well defined position sufficiently strong for him to take issue on occasion with the speaker. In the 1915 session he frankly accepted responsibility for the party's record, and in asking the caucus for a committee to advise and assist him in examining legislation which the party would sponsor, set forth his policy thus:

> As majority leader in the Assembly it will be my best effort as far as possible to carry out the general principles of coöperation; to represent the sentiment of the majority of the Republicans in this legislature as expressed in conference, and to obtain such advice as may be gained from the speaker and from the other Republican members, whose suggestions I shall not only gladly receive, but gratefully solicit.

This is as near as any legislature has come to developing responsible leadership. The newspapers followed the actions of the leaders closely and their movements were given wide publicity. To this extent only were they as leaders placed under any liability to the people at large.

Executive Leadership

The legislatures have been even slower to grant the executive the function of leadership than to raise up responsible leaders among themselves, yet in many respects the governor is well fitted to lead. More than any member he represents the state as a whole; his outlook is state wide, and the popular mind is fast placing upon him accountability for the fulfilment of party pledges. Of late several governors have undertaken to maintain themselves as the recognized party leaders, but with varying degrees of success, and a reaction seems to be setting in against "executive usurpation."[28]

[27] The Senate of 1915 went further than usual in consolidating control in a leader, due probably to the presence of an obstructive minority. The majority party had just come into power and by a series of ripper bills were trying to restore their control over government officers. For this reason the majority were willing to go far in sacrificing individuality to organization.

[28] For example Governor Cox of Ohio was defeated by a platform which deprecated the governor's assumption of leadership in legislation. At the 1915 session Governor Willis carried out his promises of hands off and the legislature drifted. In this connection *see* article by J. W. Garner "Executive Participation in Legislation as a Means of Increasing Legislative Efficiency," *Proceedings American Political Science Association* 1913–14. References to numerous other articles on the subject are there given.

Formal attempts of the executive to establish himself as leader of the legislature have usually failed, and he has had to trust himself to the power of his personality and the share in legislation granted him by the constitution. Some have not hesitated to use the patronage freely for this purpose, but regardless of how praiseworthy it may have been in special cases, the considerations which should control executive appointments are subverted.[29]

A rule adopted in the Illinois House of 1913 has been widely discussed in this connection. The rule gave precedence to administration measures over everything except appropriation bills, and Tuesdays were set apart for their special consideration in the committee of the whole. The purpose as expressed by the author was to impose upon the governor an obligation for a legislative program and to make for party responsibility and party government.[30] Yet the rule never worked and was not continued at the next session of the legislature. In the opinion of the author it was not given a fair trial and failed because of the members' jealousy of executive power, because of the influence of precedent on account of which the House could not adjust itself to the new arrangement, and because of a general disregard for all rules specially marked in a session under the direction of an inexperienced speaker. At the subsequent session the majority in the House were of a political faith opposed to the governor, and personal antagonism as well as political considerations caused the rule to be dropped. The point to be made here is that such a rule is not apt to be given a fair trial under present conditions. For one thing, members feel that it is not in conformity with the spirit of the constitution. Anxious to secure passage of measures in which they were interested and jealous of their prerogative, the Illinois House felt that the governor wished to monopolize the time of the body. The essential bond of sympathy was lacking and the relation seemed to involve unwelcome subordination on the part of the House.

Indeed any effort on the part of the executive to direct legislation calls out opposition from the legislative bodies in which the governor is apt to be worsted. At a recent session of the Pennsyl-

[29] For the governor's legal powers in legislation *see* J. M. Mathews, "Principles of American State Administration," Chap. III.

[30] *See* article by Morton D. Hull, *American Political Science Review*, May, 1913.

vania Legislature a joint committee was appointed to confer with the governor upon certain important reform measures for the passage of which the governor had assumed personal responsibility in his campaign. On its face the action of the legislature indicated a recognition of the governor's leadership and a desire to coöperate with him. In reality its purpose was to take charge of the governor in order that certain legislation might be drafted in accordance with the wishes of the organization. The Senate created a committee on executive appointments to deal exclusively with the governor's nominations, and it is significant that all the Senate members of the joint committee to confer with the governor had places upon this committee. Thereafter he was kept in line by threats to refuse concurrence in his appointments. At the session of the same year, the New York Senate similarly prepared itself against possible executive encroachments by a new rule that all executive appointments should be referred to the finance committee, already the all powerful Senate committee. Attempts to control appointments in this manner are as contrary to the purpose of the constitution as are the efforts of the governor to coerce by patronage and veto. Through the transference of the substance of the appointing power to members of the legislative branch the principle that executive appointees should owe their places to the governor is perverted. The necessity of confirmation by the Senate has always been viewed as rightfully no more than a check upon flagrant abuse of executive power and in no wise to control it.

In at least two states opposition to the use of the patronage has found expression in the statute law. A member who promises the governor to give his vote or influence for or against a bill in consideration that the governor approve or veto any measure or make a certain appointment is made guilty of a felony.[31]

Some degree of coördination is maintained by reports of administrative heads submitted to the legislature, and by appearance of administrative officials before legislative committees. Here the use of the committee of the whole might be extended with profit, as is being done in Wisconsin, to bring executive officers before the entire body. Indeed, it should be the right of the head of each department to be heard. Yet the value even of legislative docu-

[31] North Dakota, Compiled Laws (1913), par. 9331, 9332. Utah, Laws of Utah (1907), par. 4099, 4100.

ments containing reports of departments or commissions is often destroyed through delay in publication. Too often they are not available until late in the session. If such reports are to be made the basis of legislation they should be in the hands of members a month before the session convenes, nevertheless their publication is sometimes delayed until after adjournment. In this connection it would be well to make sure that sufficient time can elapse before the close of the official year and the convening of the legislature to prepare reports that can be of service to the legislators early in the session. In Kansas and South Dakota the official year closes June 30, and reports of departments are always available at the opening of the legislature. Where the year does not close until November or December, as in Missouri, Ohio and Pennsylvania, official documents may be long delayed. Yet Massachusetts contrives to get important reports into the hands of the legislature early in January although her year does not end until November 30.

Legislative Records

There remains a word to be said concerning the means by which the work of the legislature is made public, for it is important that the people be readily informed of what is going on in time to urge or oppose pending measures. The publication of legislative bulletins or bill indexes giving the status of all matters can do much towards clearing up committee evils as well as enabling the public to follow the course of measures easily. At the sessions of 1915, bulletins giving the history of bills with their status at the time were issued at more or less regular intervals in thirteen states.[32] These were cumulative and with rare exceptions were issued weekly.[33] They were available to the public either gratuitously or upon payment of a small fee. California went so far as to put out a daily supplement. A few states have so organized committee procedure as to be able to announce bulletins of committee hearings.[34] Local newspapers in that case announce the more important hearings and in Massachusetts certain newspapers publish a daily program of

[32] California, Connecticut, Illinois, Iowa, Louisiana, Minnesota, Missouri, Nebraska, New York, Pennsylvania, Texas, Washington and Wisconsin. In Indiana, Michigan, New Jersey and South Dakota the legislative libraries kept a card index open to the public.

[33] Connecticut, Nebraska and Texas did not issue weekly indexes.

[34] Weekly in New York and Wisconsin; semi-weekly in Massachusetts.

all. Additional light is thrown upon the legislature's activities by the circulation of copies of all bills, resolutions, et cetera. In at least four states copies of all measures will be mailed to applicants either gratuitously or under a nominal fee.[35] Information as to what is taking place in the legislature need no longer be the monopoly of a favored few, and the old claim that a paid lobby was necessary if persons interested were to know the progress of business no longer stands.

Unfortunately for the public good the legislatures keep but incomplete records of their proceedings. As a consequence of Parliament's struggle with the king, the journals, which had come to include notes on speeches, became merely a record of things done and not of things said. The Commons resented the king's calling for reports of their debates and checked the note-taking propensities of the clerk.[36] With three exceptions the meager record of the journal is all we have in our state legislatures today. Maine and Pennsylvania have for some years published a stenographic record of all proceedings including votes, and in 1915 Illinois began the publication of verbatim reports of debates. These examples could well be followed by all states. From such records the people can be more fully informed why the legislature passed some bills and why it refused to pass others. The dignity of the session, moreover, would be enhanced if members realized that everything which took place on the floor would be permanently recorded.[37]

The journal, being the only record of which the courts will take cognizance, if indeed they go back that far, should be inspected with care in order that all errors may be eliminated. The importance of the printed journal is increased when it is remembered that

[35] In New Mexico they are free to those placed on the mailing list by members. In New Jersey and Virginia upon payment of ten dollars; in Wisconsin twelve dollars. They are generally free to the press.

[36] Sir Courtenay Ilbert in the Introduction to Redlich, "The Procedure of the House of Commons," pp. ix, x.

[37] New York published a record for two years, 1888 and 1889, but the expense was felt to be too great to continue it. The constitution submitted in 1915 contained a provision that full reports be published, which had been strongly advocated before the convention by Mr. Root. (*See* Record of the Convention, p. 3750.) A similar proposal failed the same year in the Michigan Legislature (H. J. p. 418 it had passed the Senate). Members do not seem anxious to perpetuate the memory of their legislative activities.

the reading of the manuscript journal is universally dispensed with, and the printed copies are the only check available to members. With the exception of a few states, chiefly in the South, copies of the journal appear on the desks of the members the next morning. Sometimes as in New York and Pennsylvania, the printed copies do not reach the members regularly and the journal is approved officially without examination by anyone.[38] Near the end of the session, when adjournment comes late at night, it may be impossible to have copies on the desks promptly the next morning but official approval should be withheld until members have been given a chance to examine them. About a dozen states employ a standing committee to report upon the correctness of the journal. But like committees on engrossment and enrollment this committee is not apt to expend much effort in inspecting the journal, although even most conscientious examination by three men may overlook errors which they can hardly be supposed to recognize. The legislature of Wisconsin substitutes for the old order, "Reading and Approval of the Journal" the new order, "Correction of the Journal," and the Minnesota Senate has gone one better by making the correction of the journal in order at any time throughout the next day's session. In this way every member has full opportunity to know that actions in which he is interested have been correctly spread upon the record.

[38] In New York as a matter of fact the clerical force never has the matter ready for the printer on time and only a small part of the journal ever gets on the desks of members, yet the reading of the manuscript is always dispensed with. (Reply to Nebraska Questionnaire, 1913.)

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