

LP05: LECTURE 16 MASONS MANUAL AND RULES OF THE LEGISLATURE

The principles of parliamentary law and the rules of the legislature – connected to power to adopt rules—Mason reinforces much of what was already covered

As earlier stated in People's Advocate, legislative rules and the power of a legislature relative to its procedure are rooted in the history of parliamentary common law.

Three most well know and used manuals of legislative procedure, are Jefferson's (written by Thomas Jefferson when he was President of the Senate, and still used by the US Senate) Cushing's Legislative Assemblies, and Manual of Legislative Procedure by Paul Mason (former Secretary of the California Senate) popularly known as "Mason's Manual" and used by the California Legislature (see SR 20, AR 10, and JR 31).

As an introduction to parliamentary law, browse certain provisions of Mason's Manual-- most relevant source of parliamentary law to the legislative process in California. It has become a general source of parliamentary law and is now published by the national conference of state legislatures (NCSL).

Not necessary to know the minutia of parliamentary procedure, but simply to understand the basic principles and be aware of its complexity. There are very few experts.

MASON'S MANUAL (In these notes, chapter 7 is mentioned first.)

CHAPTER 7. PARLIAMENTARY LAW (hierarchy of law- where do legislative rules fit?)

1. Generally, parliamentary law, which gets its name from the Parliament of Great Britain, consists of the recognized rules, precedents and usage (customs) of legislative bodies by which their procedure is regulated. **Legislative procedure is akin to civil procedure and criminal procedure.**

It is that system of rules developed by precedents made by legislative bodies in the same manner as common law is developed by judicial precedent.

There is no one system of "Parliamentary Law." Many systems have been developed by legislative and deliberative bodies in other countries since its origination in the British Parliament. However, these systems have many features and rules in common.

2. Parliamentary law, like the common law of which it is a branch, is an organized system of rules.

--It is built on precedents created by decisions on points of order or appeals, and by decisions of courts.

--It is guide by the authority to make rules inherent in every deliberative body.

--It is based on a system of principles and is not simply a group of haphazard rules.

--It is based upon reason and has been developed over time.

Parliamentary law does not rest upon "mere custom" but upon "reasonable and equitable custom." Remember: "What is not reason is not law."

Individual rules are interpreted in the light of basic principles.

When beginning to think about Parliamentary Law, it is best to first consider the parliamentary principles upon which it is based, before specific rules/application.

There are, according to Mason, Ten Fundamental Principles that Govern Procedure (set forth in Chapter 8, cleverly entitled-- "Principles of Parliamentary Law").

1. The group must be so constituted and endowed that it has the power and authority that it purports to exercise.
2. There must be a meeting of the group at which the decision is made.
3. There must be proper notice of the meeting so that all members of the group have an opportunity to attend and participate.
4. There must be a quorum present at the meeting.
5. There must be a clear question before the group for decision.
6. When the decision is being made, there must be an opportunity to debate the question.
7. The question must be decided by taking a vote.
8. There must be a vote in the affirmative of at least a majority to make a decision or carry a proposition.
9. There must be no fraud, trickery or deception causing injury.
10. Decisions must not be in violation of laws, rules, or decisions **of higher authority**.

In California, the **higher authority** is found in Article IV of the California Constitution.

THE MOST IMPORTANT PURPOSE OF PARLIAMENTARY LAW IS TO PROVIDE AN ORDERLY PROCEDURE OF CONDUCTING THE BUSINESS OF THE LEGISLATIVE BODY AND TO AVOID CONFUSION.

PURELY TECHNICAL RULES ARE TO BE APPLIED ONLY WHEN THEY WILL AID IN THE DELIBERATIONS OF THE BODY.

THE MOST DIRECT AND SIMPLEST MEANS OF ACCOMPLISHING A PURPOSE SHOULD BE FOLLOWED.

CHAPTER 1.

SEC.1. NECESSITY FOR RULES OF PROCEDURE- **EFFECTUATE THE WILL OF THE MAJORITY**

1. General principle- it is necessary that legislative bodies be governed by rules of procedure so that the will of the majority may be determined and revealed in an orderly manner.

2. Rules determine the priority and manner of consideration of questions and provide an orderly and methodical plan to conduct business and eliminate confusion and waste of time and effort.

3. Rules protect what can be considered the **THREE FUNDAMENTAL RIGHTS OF MEMBERS-**

(1) A notice of meetings.

(2) The opportunity to attend.

(3) The ability to participate in debate (Not endless debate-cloture).

Rules protect the minority from unfair treatment **relative to these 3 rights**

MOST IMPORTANTLY, rules protect the majority from obstructive tactics- not vica versa (use example of minority attempting to amend bill when there is not majority support and the manner in which the majority reacts).

4. Many rules of procedure are based upon fundamental rights such as the decision by the majority but some rules are necessary only to avoid confusion by designating one course of procedure when more than one course might otherwise be followed.

Quoting Jefferson, it may be as important that there be a rule as what the rule is.

5. **The great purpose of all rules is to serve the will of the assembly rather than to restrain it; to facilitate and not to obstruct.**

SEC. 2. RIGHT TO REGULATE PROCEDURE

3. **The constitutional right of a state legislature to control its own procedure cannot be withdrawn or restricted by statute, but statutes may control procedure insofar as they do not conflict with the rules of the houses or with the rules contained in the constitution (Note: Mason's Manual was first published in 1935, draw attention to People's Advocate, a case not appealed).**

5. In general, state legislatures are governed in accordance with the recognized principles of parliamentary law subject to any special provisions of the state constitution, and any rules adopted by the body. Rules-primary source, Mason's secondary source.

7. An act of the legislature is legal when the constitution contains no prohibitions against it.

SEC. 3. DETERMINE RULES OF THE HOUSE'S PROCEEDINGS

1. Each house shall determine the rules of its proceedings
2. Each house may pass an internal operating rule for its own procedure that is in conflict with a statute formerly adopted

[Q--Why does this make sense? How are rules different from statutes?

A--Statutes need approval of executive branch or supermajority for a veto override--inconsistent.]

3. The California Constitution is a limitation, rather than a grant of legislative power.

7. The fact that a house of the legislature acted in violation of its own rules or in violation of parliamentary law in a matter clearly within its power does not make its action subject to intervention by the courts [Enrolled Bill Rule].

SEC. 4. SOURCES OF RULES OF PROCEDURE

1. Rules of procedure are derived from several sources, taking precedence in the following order:
 - a. Constitutional rules
 - b. Fundamental legal principles (power to determine rules in continuous, subject to fundamental rights, a legislative house cannot tie its own hands by establishing unchangeable rules).
 - c. Statutory rules
 - d. Adopted rules
 - e. Adopted parliamentary authority
 - f. Parliamentary law
 - g. Custom and usage
 - h. Judicial decisions (except that judicial decisions, to the extent they are interpretations of rules from one of the other sources, take the same precedence as the source interpreted, e.g., the judicial interpretation of a constitutional provision takes precedence over a statute)]

SEC. 6. LEGISLATIVE PROCEDURE IS CONTROLLED BY THE CONSTITUTION

5. A constitutional provision regulating procedure controls over all other rules of procedure (see Article IV).

7. Generally, if Congress or a state legislature violates a constitutional requirement, the courts will declare its enactment void.

[However, note: US v. Munoz-Flores 495 US 385 (1990) Issue: Art. I, Sec. 7, Cl. 1 (origination clause) --all Bills for raising Revenue shall originate in the House of

Representatives-- majority found that bill was not a "bill for raising revenue," despite special assessment imposed for violation of US statute. Two Justices (Stevens and O'Conner), in a concurring opinion, stated that a revenue bill would become law whenever it is passed by both Houses of Congress and duly signed by the President, whether or not it was properly originated because there is no language in the Constitution that speaks to the consequence of improper origination and the second clause of Section 7 states that every bill which shall have passed the House of Representation and the Senate shall, before it becomes a law, be presented to the President." Also, note *Yolo v. Colgan*, cited in *Planned Parenthood*, a bill that received an insufficient number of votes (as provided for in the California Constitution), becomes law pursuant to the enrollment rule.]

CHAPTER 3. STATUTORY RULES GOVERNING PROCEDURE

SEC. 20. JOINT RULES

1. State Legislatures adopt joint rule to govern the relationship between houses (e.g. conference committees, germaneness JR9, SR 38.5, AR 92). This practice is not incompatible with the constitutional provision that each house shall determine the rules of its procedure.

SEC. 21. RULES MUST CONFORM TO CONSTITUTIONAL, STATUTORY AND CHARTER PROVISIONS

--re: statutes and charter provisions, generally apply to inferior political subdivisions

7. Rules adopted by a state legislature expire at the end of the session at which they were adopted.

However, prior to the time that the new rules are adopted, the house is governed by customs and usage, the best evidence of which are the rules most recently adopted (cite Sec. 39, Mason's Manual). See cover of Appendix to Assembly Journal, current joint rules in use, adopted during the 1997-98 session (also the joint rules for adopted for the 87-88 Session, were used until the legislature adopt rules for 93- 94 session).

If a legislative body declined to adopt rules, it could continue operation indefinitely, for successive session, under the usage's and customs as evidence by the last-adopted rules in a previous session [note current joint rules in the Assembly appendix].

SEC. 22. RIGHT TO CHANGE RULES

1. Legislative bodies have power to abolish, modify or waive their own rules of procedure.
2. A majority does not have the power to make a rule, which cannot be modified or repealed by a majority. Rules adopted by a majority vote can be repealed or annulled by the same vote, even when a rule provides that no rule can be repealed or amended without a vote greater than a majority (see AR 8).

4. **A legislative body cannot tie its own hands by establishing unchangeable rules.**
5. **Rules of procedure passed by one legislature are not binding on a subsequent legislature.**
6. **No meeting of a legislative body can bind a subsequent one by rules of procedure.**
The power to enact is the power to repeal.
8. Rules of procedure are always within control of the majority of a deliberative body and may be changed at any time by a majority vote.

SEC. 23. RULES CAN BE SUSPENDED

1. Rules of the individual houses of the legislature are under their own control and may be suspended whenever, in the judgment of that body, suspension is required, except when the rule of procedure is imposed by the constitution.

SEC. 24. FAILURE TO COMPLY WITH RULES DOES NOT INVALIDATE ACTS

SEC. 26. FRAUD WILL INVALIDATE ACTS (no reported California cases)

RULES OF THE LEGISLATURE

[In addition to rules referenced in Chapter IX of *California's Legislature*.]

Joint Rules:

JR 4 -definition of "bill"

JR 5 -concurrent and joint resolutions

JR 9 -germaneness (return to this rule). Also can't add only coauthors

JR 10.5 -reference to fiscal committee (see text of rule)

JR 26 -concurrence

JR 28 -refusal to concur

JR 28.1, 29, 29.5, 30, 30.5, 30.7 -procedure on conference committees

JR 29.5 prohibits the conference Committee from adopting:

(1) A substantial policy change not "heard" in the policy or fiscal committee in each house.

(2) A substantial financial provision which has not been heard by the fiscal committee of each house.

JR 31 -reference to Mason's Manual

JR 33 -Dispensing with the Joint Rules--generally requires a 2/3 vote of each house

JR 34 -Legislative Counsel opinions

JR 36 -investigating committees

JR 44, 45- Conflicts of Interest (defer to regulation of participants section)

JR 51 -Legislative calendar

JR 54 -introduction of bills

(a) deadlines

(c) **can't author bill that would have "substantially the same effect" of a bill that the same member has authored, unless the bill has been "chaptered out" or has been vetoed.**

JR 57 -Appropriation bills that may not be sent to Governor ahead of the Budget may be held after enrollment, until the budget is passed (also in Constitution, see below).

(IV, 12 (c) The budget shall be accompanied by a budget bill itemizing recommended expenditures. The bill shall be introduced immediately in each house by the persons chairing the committees that consider appropriations. The Legislature shall pass the budget bill by midnight on June 15 of each year. Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.]

JR 58 -urgency clause amendments need the approval of the rules committee of the house the amendment is offered.

JR 58.5 -Legislature may consider Governor's veto for 60 days after veto, not counting days when the Legislature is in **joint** recess.

JR 61 -DEADLINES

JR 62 -Committee procedure

Notice of hearings

--4 day file notice in each house for committee of the first reference, otherwise 2 Day file notice.

--3 "sets" and exceptions

--reconsideration

--Waivers of the above

--roll call vote

--quorum present

COMPARE AND CONTRAST SENATE AND ASSEMBLY RULES

Role of Speaker v. Role of Pro Tem (Senate Rules Committee)

--see SR 7,11, 12.7 vs. AR 12,26

Jurisdiction and membership of Committees

--see SR 12 vs. AR 11, 11.5(b)

Mason's

--see JR 31, SR 20, AR 10

Bill limit

--SR 22.5 and AR 49

GERMANENESS

JR 9 amendment must relate to the same subject as the original bill

SR 38.5 amendment must relate to the same subject as the original bill

AR 92 amendment may not relate to a different subject than, or intend to accomplish a different purpose than, or require a title essentially different than, the original bill

*Distinguish germaneness from single subject (germaneness is more narrow rule).

SEC. 402, Mason's- definition of whether an amendment is germane.

is the amendment relevant, appropriate, and "in the natural and logical sequence to the subject matter of the original proposal."

--amendment is only required to relate to the same subject.

--amendment may entirely change the effect of the measure and still be germane.

--an entirely new proposal may be a proper amendment so long as it is germane to the original subject.

--whether the amendment is germane is a question to be decided by the body and not by the presiding officer.