not inconsistent with the standing rules and orders of the House." (10)

Precedents as Law

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

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

Thomas Jefferson believed that the Members' awareness of the rules was as important as the rationale of the rules themselves. He wrote: "And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members." (13)

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

---

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

11. 1 Hinds' Precedents at p. iii.

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

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

special rules.(14) Thus, the precedents may be viewed as the "common law," so to speak, of the House, with much the same force and binding effect. Of course, the Speaker is not required to follow precedents blindly or mindlessly. In fact, the Speaker or Chairman may refuse to follow a precedent even though it is relevant to a pending question, where it is the only precedent on the point, and was not carefully reasoned.(15) In the main, however, parliamentary probity in the House is now looked upon as a matter of inherent right rather than a privilege subject to political exigencies, and as a science rather than an improvisation varied at the discretion of the Chair.(16)

Historically, the House has resisted efforts by a Speaker to act arbitrarily and in disregard of its precedents and procedures. In the last years of the 19th century, the powers of the Speaker grew to a point where they approached absolutism. Entrenched behind the power to appoint committees, and with authority to extend or refuse control of the floor, the office of Speaker came to be regarded by some as more powerful even than that of the President of the United States. The reaction of the membership of the House against this ascendancy of the powers of the Speaker came quickly. "Almost overnight" wrote Clarence Cannon, "the slowly accumulated prerogatives of the great office crumbled. Within three short years (1909–1911) a bipartisan revolution swept away every vestige of extrajudicial authority." The Speaker's power of recognition was circumscribed; the motion to recommit was restored to the minority, the election of committees was lodged in the House, the reference of bills to committees was standardized, and the determination of legislative policies and programs was delegated to party caucuses. This wave of reform culminated in the wresting of control from the Speaker, with ultimate authority passing from the Chair to the membership.(17) This relationship between the Members and the Speaker has been more than maintained since the turn of the century. Today, the office of the Speaker is judicial in character. The decisions of the Speaker are judicial and mediatory rather than polemic and partisan.

Comparative Rights

On analysis, the rules of parliamentary procedure will be seen as an attempt to strike a careful balance between the var-

---

14. Parliamentary *law* has been defined as "the rules and usages of Parliament or of deliberative bodies by which their procedure is regulated." A *rule* of parliamentary law is defined as "a rule created and adopted by the legislative or deliberative body it is intended to govern." *Landes* v *State ex rel. Matson,* 160 Ind. 479, 67 N.E. 189.

15. 6 Cannon's Precedents § 48.

16. 6 Cannon's Precedents at p. vi.

17. 6 Cannon's Precedents at pp. vi, vii.