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The Office of Speaker in Comparative Perspective

STANLEY BACH

Even a cursory study of national assemblies in democracies reveals that superficial similarities often mask profound differences in the distribution and exercise of authority, both within the assembly and *vis-à-vis* the executive power of government.¹ The first-order distinction, of course, is between legislatures and parliaments: between assemblies that are constitutionally and often electorally independent of the executive and that compete with it for pre-eminence in a system of separated institutions sharing power, and assemblies that designate members of the executive, often from among the assembly's own members, that governs on behalf of and only with the continuing confidence of the assembly.

To begin to understand the dynamics and activities of national assemblies, however, we must usually go beyond this distinction and differentiate within the class of legislatures on the one hand and parliaments on the other on the basis of differences among them in electoral systems and constitutional relations. To what extent, for instance, do the methods for nominating and electing assembly members make them susceptible to (or more immune from) influence by their party leaders? And to what degree, for instance, is the assembly exposed to the danger of being dissolved prematurely by the president? These and like factors influence the operation of assemblies by affecting such matters as the number and cohesion of party groups, the roles and activities of committees, especially in originating or revising proposed new laws, and the assembly's capacity to affect the national budget and monitor government performance.

Among these potentially important differences, it may seem far less consequential that almost every democratic assembly selects its own presiding officer, whether it be the speaker, chairman or president of the assembly. This officer (to be called 'speaker' here, solely for clarity and convenience) is usually, but not necessarily,

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chosen by the assembly from among its members, and is responsible for presiding over its plenary sessions and representing the assembly in its formal relations with other government institutions. It is often the speaker, for example, who signs bills and other documents to signal their final approval by the assembly, and who also receives communications on behalf of the assembly from the president, prime minister or other executive officials.²

Yet here again, these superficial though essential similarities mask equally important and far more interesting differences. There are various and distinct dimensions of activity – and, consequently, potential sources of influence – to which speakers may devote their time and energies. The national constitution or the assembly's standing orders and uncodified customs, or both, will determine which and how many of these roles each speaker is expected to fulfil. In turn, the relative strength or weakness of the speaker's office will affect other aspects of both the formal distribution of authority and the less formal distribution of influence within the assembly. Like the powers of the presidency, the powers of the speaker are, to some extent, what he (for convenience and with apologies to Betty Boothroyd) makes of them. But the degree to which these powers are or are not effectively circumscribed by law, rule or deeply embedded practice also affects the room for manoeuvre that each incumbent of the office enjoys.

Of particular interest is the essential incompatibility of several of the roles that speakers sometimes play. The speaker may be expected to serve as the assembly's equivalent of both the head of state and the head of government, sometimes embodying, serving or speaking for the assembly as a whole, and sometimes acting as a member, or even leader, of its dominant party fraction.³ A speaker with such dual and apparently conflicting responsibilities has to strike a delicate balance between these two dimensions of his office. A failure to find and maintain this balance can damage the assembly as a working organisation as well as its public reputation.

DIMENSIONS OF THE OFFICE

In addition to the speaker's ceremonial activities and symbolic functions, there are at least six other possible dimensions of activity in which he may be expected to engage and which can provide him with significant influence within the assembly.

First, the speaker is often ultimately responsible for the management of the assembly. Most of the day-to-day administrative responsibilities may be delegated to a secretary general or other chief

administrative officer. However, this officer frequently is accountable to (primarily appointed and removable by) the speaker. If so, the speaker can exercise significant influence over the assembly's facilities – buildings, staff, information resources and so on. In part as a consequence, the speaker may be intimately involved in setting and allocating the assembly's budget. These powers enable the speaker to affect the well-being of the assembly and its individual members who, in anticipation or as a result, can become beholden to him. In ways sometimes obvious and sometimes subtle, a clever speaker who is so inclined can translate administrative responsibility into political influence.

Second, and deriving from the first, the speaker may become responsible for allocating the assembly's resources among members and party groups. These resources always include the mundane but essential: office space, equipment – especially computer and communications systems – and staff. Often the line between resources and perquisites of office becomes indistinct – when, for example, the speaker can control, directly or indirectly, the allocation of official cars and drivers, apartments that the assembly owns or rents for its members, and opportunities to travel abroad as members of official parliamentary delegations. Even when the speaker shares such administrative and allocative powers with others (such as a committee of party leaders or the standing committees that each house of the US Congress has established for this purpose), he still may retain some ability to use them to reward or punish.

Third, the speaker may be involved in determining the assembly's work plan – for the session, but also for the next day and the coming week – especially the agenda of bills and resolutions to be considered and other questions to be debated during plenary sessions. The assembly's standing orders may assign this power to him exclusively, or he may share it with other members of his party or with a multi-party steering committee that often is composed of fraction leaders or their designees. In the last case, the actual influence exercised by opposition parties will depend on at least two factors: the ability that the constitution and the assembly's standing orders give the government and its assembly supporters to control committee and plenary agendas; and the distribution of seats among party groups in the assembly and on the steering committee itself.¹

Fourth, the speaker is to preside during plenary sessions, though he may share this responsibility with others, and to apply and enforce the assembly's standing orders. He has the authority to interpret the rules of procedure, to resolve procedural disputes and

uncertainties, and to ensure that members comply with the applicable rules. In practice and sometimes by rule, the speaker also is obliged to maintain order and decorum in the chamber and to stop members from engaging in 'unparliamentary' debate or other actions that violate official rules or perhaps even unofficial expectations of behaviour. The authority on British parliamentary practice observes that

In so large and active an assembly as the House of Commons, it is absolutely necessary that the Speaker should be invested with authority to repress disorder and to give effect, promptly and decisively, to the rules and orders of the House. The ultimate authority upon all points is the House itself; but the Speaker is the executive officer by whom its rules are enforced.⁵

Fifth, in presiding over plenary sessions, the speaker almost always enjoys some discretion in deciding what is to be proposed and debated, and when, and which members are to be recognised to speak or to present motions or other matters for the assembly to consider. No body of standing orders can be sufficiently elaborate and complete to provide for every procedural contingency that may arise. Further, even if it were possible to devise such standing orders, they would deny the assembly the flexibility necessary to conduct business equitably and conveniently. The key questions are how much discretion the speaker possesses and what conventions govern his exercise of that discretion. In some assemblies (the British House of Commons, for example) the speaker has some control over who is to speak and for how long, and which amendments may be debated and presented for votes. In others (the US Senate, for instance), these decisions are largely beyond the speaker's control, being governed by the standing orders, or shaped by well-established customs and practices that the speaker is loathe to violate, or made by others such as a steering committee or separate party groups.

Sixth, and finally, the speaker may be an active member or even the leader of a party group within the assembly. The assembly's standing orders and practices can recognise this fact and allow the speaker to function openly and formally as an active partisan. More often, however, the speaker's partisan role is not acknowledged while he is presiding over the assembly's plenary sessions, but it is obvious to all concerned and shapes both the speaker's actions and others' reactions to him. In this conception of the office, it is deemed both natural and proper for the majority party to choose its leader (or one of its leading members) to occupy the primary position of

authority in the body it controls. Alternatively, the assembly may expect its speaker to be detached from partisan concerns. As a condition of selection, the speaker may be required to relinquish formal party ties or at least to refrain from active involvement in partisan activities.

It should be obvious that there can be tensions among these various roles that speakers may play. Most important, any speaker is presented with opportunities and temptations to use his powers to the advantage of his party or a favoured coalition of assembly members. At the same time, he is expected to act as the agent, representative, symbol and protector of the assembly as an institution, and all of its members, individually and collectively. The resulting conflicts in role are virtually inevitable. What distinguishes the office of speaker in one assembly from another is when and how these potential conflicts arise, what the assembly does to avoid or minimise them, and how they are resolved when they do arise.

TWO CONTRASTING CONCEPTIONS

Consider two hypothetical and polar alternatives. In one national assembly, the speaker seeks to use the powers of his office to the maximum advantage of his party. To the partisan speaker, the logic of his position is obvious: he was elected speaker by his party's majority in the assembly, and so it is that party (or coalition of parties) to which he is responsible and to which he owes his allegiance. As the majority, his party was elected to control the assembly, and to speak and act for it, so the partisan speaker sees no incompatibility between serving the interests of his party and directing the assembly as an institution.

If the majority in the assembly is to meet its responsibilities and fulfil its commitments to the voters, it must be able to mobilise the assembly's resources in support of its programme. Because the majority party (or coalition) has the responsibility to exercise the assembly's constitutional powers on behalf of the nation, it is only fitting that the speaker allocate to it, and to his fellow partisans, a disproportionate share of the assembly's budget, staff, equipment and offices. Beyond this argument of necessity, to the victors go the rewards of office. Why should the speaker appoint members of the opposition to parliamentary delegations, rather than rewarding and encouraging loyal members of his own party? Elections produce winners and losers. Even if the majority party controls only 51 per cent of the seats, it has 100 per cent of the responsibility to govern. The minority has no claim to a proportionate share of policy-making power; why should it be able to claim a proportionate share of the benefits of office?

The role of the opposition is to oppose. It would violate the public will, as expressed at the polls, for the opposition to dictate any part of the plenary agenda and to consume the assembly's valuable and limited time with debates on propositions that are doomed to fail. Instead, it is the speaker's responsibility to assist the majority party to enact the programme (manifesto) on which it was elected. It may be courteous to keep the opposition informed; however, the most that can be asked of the majority is that it act after consultation with, but never with the required concurrence of, the opposition. Of course, the speaker is obliged to enforce the assembly's standing orders, including whatever protections they include for opposition parties and their members. However, the speaker should not be expected to exercise whatever discretion he has to extend these protections further than assembly rules require.

If the constitution or standing orders create a steering committee of sorts, its purpose presumably is to promote or require consensual (or at least compromise) decisions concerning the agenda, and such actually may be the result in some assemblies. It does not require excessive cynicism, however, to envision a multi-party steering committee being reduced to a facade behind which the majority party or coalition exercises effective *de facto* control. In the US Congress, the closest approximation to such a steering committee is the House of Representatives' Committee on Rules, which proposes the sequence in which, and the procedures by which, the House debates and votes on major bills. During the late nineteenth century and the first years of the twentieth century, the speaker chaired this committee and appointed its other members. One speaker during the 1890s, the formidable Thomas B. Reed, is reputed to have informed the opposition party members of the committee that he and his majority party colleagues had 'decided to perpetrate the following outrage, of which we all desire you to have due notice'.⁶ Due notice is all that any opposition has the right to expect.

In plenary sessions, the opposition may have a right to be heard, but never to prevail. If the majority is defeated or stymied in enacting elements of its programme, it fails in its constitutional obligation to the electorate that chose it to govern. It is only proper, therefore, for the speaker as presiding officer to use all the discretionary powers that he can find within the standing orders to assist, not impede, the majority, and to do so not simply because he shares its philosophy and policies, but because he has an affirmative responsibility to help it transform them into law. As speaker, whether party leader or not, it is his democratic duty to interpret the assembly's standing orders in ways that assist the democratically elected majority to work its will.

The assembly, after all, is not a mere debating society. It has serious business to do and it will stand accountable at the next election for its successes and failures. Deliberation is a good thing, to be sure, but the speaker cannot in good conscience allow time to be wasted by pointless speeches and fruitless amendments. How else is he expected to exercise his discretion if not to the advantage of the majority party and its legislative agenda that the voters endorsed? Plenary sessions are not supposed to be fair fights in which neither side has the advantage. The majority should win, otherwise the link between elections and governance is broken. And if the outcomes of plenary sessions are not in doubt, extended debates only contribute to public cynicism and confusion by portraying an assembly that cannot act decisively and that speaks with a babble of conflicting voices.

To the speaker as maximiser of partisan advantage, therefore, it is both his right and his responsibility to use all his powers – procedural, administrative and others – to benefit his party, even if at some cost to opposition parties and the equal treatment of all members. To the speaker as neutral manager, the institutional speaker, on the other hand, such an approach fundamentally violates his conception of the office, his responsibility to the assembly, not just to some part of it, and ultimately his obligation to the constitutional system of which the assembly is a part. The speaker is to reign, not to rule.

To the neutral speaker, he is the choice and the servant of the assembly as a whole. Even if he is elected by the votes of only the majority party or coalition, that does not excuse him from serving all members, any more than a directly elected president or assembly member has a right to ignore the will and best interests of constituents who voted against him. It is the speaker's responsibility to ensure that the assembly functions as envisioned by the constitution and the standing orders. In the end, the majority does not need the speaker to act as its agent; the weight of numbers ultimately will be sufficient for the majority to prevail.

Members seek election to the assembly so that they can use its powers and procedures to enhance their individual reputations and careers, and to implement their own policy views and the national policy programmes of their party. For better or worse, few of them are particularly concerned with the well-being of the assembly; for most members, the assembly is a means to an end, not an end in itself. But someone must be responsible for the integrity and viability of the assembly as an institution. And who else if not the speaker? There never is a lack of members who are willing and able to look out

for themselves and for the interests of their party. Let the speaker look out for the assembly.

The assembly is a representative body, and elections to it are not plebiscites. If the only reason the assembly exists is to allow the majority to enact its programme into law, without doubt, delay or deliberation, then it serves no necessary function. It would be quicker and cheaper for the public to vote directly on which party's programme should automatically become law by virtue of the election outcome. Advocates of representative democracy believe (or assume), however, that the electorate ultimately is better served by electing assembly members to make those policy choices, after devoting the time to study and deliberate on them that the average citizen cannot afford to invest, and after assembly members balance their own judgements against their perceptions of how their median constituents would vote in their place.

It follows, therefore, that deliberation is as important a function of democratic assemblies as is their ability to decide. '[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market.'⁷ In political life, the assembly is such a market. And for this competition to be effective in revealing the political equivalent of truth, it must be free and fair competition. In turn, this requires the speaker to allocate the assembly's resources so that all members and groups of members can prepare and present effectively their understanding of the truth. The assembly must be managed and its resources allocated not merely for the benefit of the majority, but for the benefit of the process of deliberation.

What prevents the assembly from degenerating into collective despotism is the prospect of the next election. The majority suddenly may find itself in opposition, and should conduct itself with that possibility always in mind. (It was for this reason that some supporters of the US Democrats and the British Conservatives acknowledged privately, if not publicly, that the recent electoral defeats of their parties ultimately were healthy developments for their assemblies and even for the parties themselves.) But for elections to serve this function, the programmes and priorities of the opposition must be exposed to public scrutiny and the clash of advocates in assembly debates, not merely in the simplifying and distorting atmosphere of election campaigns.

To the extent, therefore, that the speaker can affect plenary session agendas, he does a disservice to representative democracy if he denies the opposition the chance to advocate its policies in open session and to have to defend them against the majority's criticisms.

The speaker should use his powers to ensure that the opposition's programmes and alternatives are debated, rather than depend on the unlikely high-mindedness of the majority to do so. Similarly, with respect to the assignment of rights to debate and propose amendments, the speaker's objective ought to be balance and fairness. If the majority's positions are more persuasive, or if the majority simply is sufficiently unified in support of those positions, it will prevail anyway at the end of the day.

In plenary sessions, the role of the speaker is that of a neutral referee, insisting that the rules be enforced, applying them even-handedly, and preserving order and decorum, so that debates on policy are not disrupted or distracted by needless quarrels over procedure. The speaker must be fair; more to the point, he must be perceived to be fair. If members and party groups are to use their privileges and powers under the standing orders to promote their legislative strategies and programmes, they must be able to depend on a stable system of rules that are applied consistently and predictably. Whenever the speaker exercises discretion – in deciding who may speak and for how long, for instance – there is a danger that some members will perceive political or personal bias, even if none is intended. The neutral speaker, therefore, welcomes being confined within a system of rules, precedents, and traditions that minimise the discretion he is called upon to exercise. He recognises that his own reputation for fairness and integrity, as well as all members' willingness to accept defeat gracefully, are enhanced when he conducts the assembly's plenary sessions according to well-known, well-accepted, and well-documented procedures and practices.

Finally, the neutral speaker is not an active partisan nor a policy advocate. Whatever his own policy preferences, he must set them aside when he assumes the chair and must not let them affect his decisions as the assembly's presiding officer. Even if he expresses his own views privately, he certainly must not do so from the chair. It is not appropriate for him to comment on speeches or critique proposals when he is presiding. He is to speak only on questions of procedure and the proper conduct of business. It is often said about the playing field that a referee or umpire is doing a good job when he is barely noticed, because his decisions do not provoke criticism by the members of either team. So too for the speaker.

These are two extreme conceptions of the office of speaker. To call them ideal types hardly seems appropriate, since neither would serve an assembly ideally well. Most, if not all, assemblies actually expect their speakers to occupy a position somewhere between these

two extremes.⁸ Some comparisons between the offices of speaker in the US House of Representatives and the British House of Commons with respect to the six dimensions of office defined above will illustrate some of the similarities and differences that characterise the office in theory and in practice.

WESTMINSTER AND WASHINGTON

In many respects, the British speaker epitomises the speaker as neutral manager and referee. She (now with thanks to Betty Boothroyd) relinquishes her party affiliation upon election and serves the assembly as an institution with such effective neutrality that contemporary speakers can expect to retain that office even when parliamentary elections produce a change of party control within the assembly. Presumably because of the House's confidence in her impartiality, its standing orders give her significant discretionary powers over the conduct of legislative business, powers that have important effects on the ability of its members to participate in the assembly's proceedings.

By comparison, the speaker in the US House of Representatives is a political and policy activist whose discretionary powers are more circumscribed, in some respects, than those of his British counterpart. When actually presiding, the more non-political speaker has far greater discretion that could be used for partisan advantage. The more partisan speaker is more hedged around by rules, precedents and practices that limit his opportunities to exercise discretion for political purposes. The more neutral speaker requires political sensitivity in using her procedural discretion, especially in selecting members to speak and amendments to be offered. The more partisan speaker is expected to leave his partisanship at the door to the plenary chamber.⁹

In both assemblies, the speakers have significant formal administrative responsibilities and certain allocative powers that accompany them. In practice, however, most of their authority is delegated, limited by rules, or circumscribed by expectations that they are unlikely to violate. In London, the speaker chairs the House of Commons Commission, which has authority over the management and services of the House. In Washington, the speaker has some control over space within the Capitol building. More important, he exercises supervisory authority over the administrative officers of the House; although the House elects these officers, the speaker is empowered to remove them.

The British speaker probably devotes more of her attention to managerial matters than does her counterpart in Washington, much

of whose time is consumed by his party leadership activities. However, both speakers naturally delegate their administrative responsibilities to the extent practicable. The House of Commons Commission assigns daily managerial authority, including most personnel decisions, to senior staff. So too in Washington. Political considerations are far more likely to affect the selection and retention of these staff in Washington, but decisions by administrative staff usually do not serve partisan interests. In addition, a standing Committee on House Administration has authority over most administrative matters affecting the US House. In Washington, as in London, congressional management decisions usually are governed by institutional, not political, considerations. In Washington, however, ultimate administrative control remains in partisan hands.¹⁰

In London, the speaker makes few discretionary decisions affecting the allocation of parliamentary resources – staff, office space, equipment, travel opportunities and the like. These matters are governed by law, by custom, and by arrangements made between and within the parliamentary parties. Party leaders typically decide the membership of parliamentary delegations travelling abroad, for example, and party whips even may prohibit (or at least strongly discourage) their members from travelling on non-parliamentary funds, especially in cases of ‘three-line Whips’. In Washington, the speaker may approve or disapprove funds for travel; in practice, however, most such decisions are made by other party and committee leaders, subject to the speaker’s veto, which he is much more likely to exercise through quiet influence than by exercise of formal authority. Other distributive decisions governing staff and funds for office operations are governed strictly by standing rules and internal regulations. Coveted office space is allocated through an elaborate bidding system, rather than allowing the speaker and his fellow majority party leaders to use these allocations as rewards and sanctions.

In both capitols, then, the speakers exercise more formal than daily control over administrative and allocative matters. The British speaker would never consider trying to distribute perquisites of office for partisan advantage. The American speaker might be so tempted. However, he has little or no control over most allocative decisions, which are usually governed by rules and regulations. Whatever discretion remains to him is often constrained by powerful expectations of partisan equity and fair treatment for all members. The advantage to be gained by any attempt to use the speaker’s

administrative and allocative authority for partisan purposes is rarely worth the furore that it would provoke.

By contrast, there is a striking difference between the two speakers in their influence over the agenda of legislative business in plenary sessions. The British speaker exercises no control over '[t]he daily and weekly agenda of the House [which] is determined by "the usual channels", that is to say the Leader of the House and the Chief Whips of the government and opposition'.¹¹ Griffith and Ryle elaborate: 'In practice [the speaker] is not the manager of the House's business.'¹²

In particular he has no power (except in certain limited circumstances) to decide on what days the House shall meet, the hours of meeting, the business to be taken at any sitting (except when selecting amendments to motions or bills), the duration of that business, the duration of debate or the duration of speeches in a debate. These matters can only be decided by the House itself, either ad hoc or by standing order, and that means essentially by the Government of the day who, through its majority, has secured control over the arrangement of business.

In Washington, on the other hand, the speaker can exercise a powerful influence over the legislation that the House considers in plenary session, as well as over how that legislation is debated and amended. In some respects, the speaker exercises this authority by invoking formal House rules that assign discretionary powers to him in his capacity as presiding officer. In particular, the speaker can decide unilaterally whether the House will consider bills under certain procedures that expedite plenary decisions by limiting debate and severely restricting opportunities for proposing amendments.¹³ In other circumstances, House rules empower the speaker to defer temporarily the consideration of certain motions and resolutions that the House's rules enable opposition party members to present for plenary debate and vote. In practice, the speaker almost always exercises these powers in concert with fellow party leaders and in coordination with committee leaders of his party, but the rules vest the authority in him alone as the speaker.

In other respects, the speaker influences the agenda less formally and directly through his influence as party leader over the recommendations of the Committee on Rules, which proposes agenda-setting resolutions for the House to debate and adopt by majority vote. Just as important, these resolutions control which amendments, if any, members will be allowed to propose to each major bill. In the contemporary House, this committee is an

acknowledged agent and ally of the majority party leadership for which the speaker normally speaks. The rules adopted by each of the two congressional parties in the House ensure this relationship by empowering its candidate for speaker to decide which of his party's members shall serve on the Rules Committee.

In a sense, what was said above about control of the legislative agenda in the House of Commons – that 'the occasions, duration and content of business are largely controlled by the government of the day exercising its majority, and by the opposition parties and backbenchers using the opportunities available to them' – also can be said of the House of Representatives, but with one difference that means everything for our purposes here. In London, control of the agenda rests with the government acting through its parliamentary majority, as opposed to the speaker who plays no part in making agenda decisions. In Washington, on the other hand, the speaker acts either for or through the governing majority. The agenda powers of the US speaker and those of the majority are not alternatives; they are one and the same, only exercised in different ways.

With respect to the fourth dimension of office, the speaker as presiding officer, the powers and responsibilities of the office in both assemblies are quite similar. Both the American and the British speakers are to preside over plenary sessions, to maintain proper order, and to interpret and enforce the assembly's rules.¹⁴ Both speakers preserve decorum in plenary proceedings. Each can call members to order for violating the rules and conventions of debate.¹⁵ Both speakers are obliged to apply the standing orders and, when necessary in deciding questions of order, to make rulings that resolve procedural questions on which those rules are silent.¹⁶ In principle, decisions by either speaker can be challenged and rejected by a vote of the house, which remains the ultimate arbiter of its rules. In practice, however, such challenges are rare in either house, and, in modern practice, never successful.

Several additional points need to be made about the two speakers as procedural arbiters. First, in making procedural rulings, both speakers are so surrounded by documentation and human expertise that it has become almost impossible for either to rule in a manner that is arbitrary or inconsistent with precedent. In both houses, speakers' rulings have been carefully noted for centuries. Equally important, key rulings are available to all members in published form. Both houses also publish manuals of procedure that explain what the rules and precedents permit and prohibit in enough detail to address all but the most remote procedural possibilities. In

addition, both houses employ a staff of professional experts on assembly procedures who are equally available to all members, regardless of party or position, who seek explanations of those procedures. Furthermore, these experts are always present during plenary sessions to give advice to the speaker, advice that the speaker virtually always follows whenever there is precedent on point.

In short, whenever possible, each speaker decides procedural questions in accordance with previous decisions and is clearly seen to do so, and every member has ready access to published and human resources that enable him or her to conduct an independent inquiry into what is the procedurally correct ruling, either before or after the speaker announces a decision.

Second, there seems to be an even greater emphasis in Washington than in London on minimising the discretion of the speaker as arbiter of the standing orders. Perhaps it is coincidental, but perhaps not, that the House of Commons relies for procedural guidance primarily on the single published volume of *Erskine May*, whereas the House of Representatives has published its precedents, and commentaries on them, in 28 volumes, with more in preparation. The more exhaustive the published precedents, the more difficult it is for a speaker-as-party-leader to rule in a manner inconsistent with them in order to achieve some partisan advantage.

Commentators on the British speakership are more likely to stress that it is important for the speaker as presiding officer to retain a degree of discretion and flexibility. Laundry, for example, concludes that '[t]he speaker's rulings are not impositions of his own will but judgements rendered within the framework of parliamentary law, *tempered on occasion by his sense of the mood of the House and the circumstances of the moment*'. The speaker 'must know when to be indulgent and when to be severe, when to give a flexible interpretation to the rules and when to impose the letter of the law. He must judge the varying moods of the House and take whatever action seems prudent in the circumstances'.¹⁷ By contrast, American commentators are more likely to assert that 'parliamentary law' in the US House of Representatives is a complete and closed system that has the virtue of leaving little to the discretion of the speaker. According to Lewis Deschler, long-time procedural advisor in the House (the 'parliamentarian' in congressional parlance), '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'.¹⁸

British parliamentarism appears to welcome a degree of discretionary judgement by the speaker as she interprets and applies standing orders and complementary rulings by her predecessors, while the apparent goal of the US House, though never stated this baldly, is to eliminate as much of the speaker's procedural discretion as is reasonably possible with respect to the same kinds of questions. It is irresistible to conclude that the reason for this difference lies in the difference between a non-partisan and a partisan speaker: British MPs trust that their speaker will exercise discretion in a fair and even-handed way, while American representatives fear (or hope, depending on their party affiliation) that their speaker will exercise whatever discretion he has to the benefit of his party.

Very rarely, in fact, have contemporary American speakers sought to advance party interests by violating the House's rules or failing to follow its established precedents. Furthermore, speakers (and their surrogates) are almost equally committed to complying with many customs that are not enforceable as rule or precedent, such as conventions governing the order in which members should be recognised to propose or debate amendments, even though ignoring these conventions from time to time would serve their party well. It is precisely when the House's codified procedures are ambiguous or silent or when, intentionally or not, they leave the speaker as presiding officer with some discretion that he may interpret these procedures to his advantage as party leader, thereby provoking partisan controversy. In many such instances, however, the speaker's discretion in practice is much more limited than it might appear from a reading of the standing orders alone.

It is the exceptions that prove the rule, and perhaps the best known exception of recent years concerns the time that representatives are given to come to the chamber in order to cast their votes when a question is being decided by use of the House's electronic voting system. The House's standing orders usually give members not less than 15 minutes to vote. This is a minimum amount of time; the rules do not specify when the time for voting must end. The speaker has the discretion to allow more time for members to record their votes or to be convinced to change their votes, and he may close the vote at any time after the 15 minutes have elapsed (for example, when the side he favours enjoys a momentary one-vote advantage). In at least two contemporary instances, when the passage of contentious bills was at stake, Speakers Wright (a Democrat) and Gingrich (a Republican) left votes open far beyond the time necessary to accommodate members who were *en route* to

the chamber, but just long enough to turn narrow defeats into equally narrow victories. They were acting within the discretion allowed them, albeit for party purposes and at the cost of provoking a partisan tempest.

In presiding during plenary sessions, speakers may or may not be granted significant discretionary authority affecting, for example, which members are to speak and for how long, and which amendments, if any, the assembly shall consider to the bills it debates. In this respect, it is striking how much more discretion the British speaker exercises than the speaker of the US House of Representatives. In London, the speaker regularly makes decisions that in Washington are governed by rule, by virtually binding conventions, or by majority vote.

Among the most significant discretionary powers of the British Speaker are to decide (1) which members to recognise to speak in debate, and in which order; (2) whether to entertain a closure motion to conclude a debate; (3) which amendments to permit during plenary consideration of a bill at report stage; (4) whether to permit supplementary oral questions and, if so, how many; and (5) whether to allow private notice questions from opposition front and backbenchers alike, as opportunities to raise issues before the House – especially on ‘matters on which the Government appears vulnerable’.¹⁹ Bradshaw and Pring elaborate:²⁰

To help make its debates more effective the House has given the Speaker certain discretionary powers. The most important are the power to select amendments to a bill or a motion before the House, that is, in the interests of more efficient debate, to decide that one (or more) and not another (or others) is to be discussed and voted upon; the power to refuse a delaying or dilatory motion if he thinks it an abuse of the rules or to accept a motion to bring a debate to a close after it has, in his view, been debated enough; and the power to decide whether or not to allow a proposal to move the adjournment of the House to discuss “a specific and important matter that should have urgent consideration”.

In all, there are ‘some 40 matters on which the Speaker has discretion’, according to Griffith and Ryle.²¹

Of course, any speaker must decide many questions. In some cases – in determining, for example, whether an oral question is in proper form or whether a significant breach of parliamentary privilege has occurred – the British speaker is usually able to make

decisions that are 'correct' in that they are based on and consistent with unambiguous precedent. In other cases, however, such as the five kinds of determinations listed above, the speaker is expected to (and has no alternative but to) use her best judgement about what best serves the interests of the House. There may be generally understood conventions to guide her;²² nevertheless, she ultimately acts at her own discretion.

The time allowed for a plenary debate is critical to the ability of the governing majority to pass its legislation as well as to the ability of the opposition to probe, question and criticise. The British speaker does not have the unilateral power to terminate a debate. That right belongs to the House, but the speaker is empowered to decide whether it is appropriate for the House to exercise its right. 'Under the closure rule the Chair has an absolute discretion in deciding whether or not a motion for the immediate termination of the debate shall be put.' The standing orders provide that, if that motion is made, the House votes on it immediately 'unless it shall appear to the Chair that such motion is an abuse of the rules of the House, or an infringement of the rights of the minority'.²³

To the individual member, the length of a debate usually is less important than whether or not that member is able to participate in it. In some national assemblies, the parties decide which of their members shall speak, in what order and for how long. In others, the speaker calls on members to speak in the order in which they requested to do so (even if the effect of that practice is to reduce what should be a debate to a disjointed series of speeches). In the British House of Commons, by contrast, the speaker is expected, in a sense, to orchestrate the debate – giving due deference to the need for ministers and opposition spokesmen to be heard at length, but also attempting to ensure that the various parties, less formal groups and points of view represented in the House receive a fair (though not necessarily equal) hearing. 'MPs often notify the Speaker in advance of their wish to speak, but he does not issue any speaking list as happens in other Parliaments. The result is that many MPs bob up and down as other MPs finish their speeches. They are "trying to catch the Speaker's eye"'.²⁴

In principle, the American speaker has at least as much discretion in allowing members to speak. The power of recognition is the heart of his authority as presiding officer of the House, and his decisions in this regard are not subject to challenge. Rarely do the House's standing orders give certain members the *right* to speak, even committee chairmen during debates on bills their committees have

reported.²⁵ They may speak if and when the speaker (or his surrogate in Committee of the Whole) recognises them for that purpose. In practice, however, the speaker actually has much less discretion in recognising members to speak. His formal powers are complemented by an elaborate system of precedent and practice that frequently governs his selection of members.

In general, these conventions serve the House in two ways: they enable the institution to benefit from the expertise of its members, and they protect the rights of the minority party. More specifically, the speaker is expected to give preference to members (and the more experienced members) of a committee during debate on a bill that committee had evaluated, and to alternate in recognition between members of the two parties that comprise the House's membership. Rarely does the speaker violate these conventions in an unambiguous way. Were he to do so clearly and repeatedly, he would provoke a firestorm of protest. Consequently, these conventions also serve a third useful purpose: they minimise the likelihood of arguments over the procedures of debate so that members are not distracted from their arguments over the substantive policy they are debating.

Furthermore, the US speaker has virtually no formal authority over the length of debates in plenary session. The time consumed in debating a motion, amendment or bill is either controlled by the House's standing orders or by a majority vote. The speaker has a powerful influence over the outcome of such votes, but that influence derives exclusively from his position as party leader, not from his authority as the House's presiding officer. Further, the US speaker does not even have the same discretion as the British speaker to decide whether or not to entertain a motion to conclude a debate. The House's precedents may control, in some circumstances, who may make such motions and at what stage of the proceedings, but they do not provide any basis for the speaker to decide that any such motion shall not be considered because it is, as the British standing orders put it, 'an abuse of the rules of the House, or an infringement of the rights of the minority'.

From the American congressional perspective, what is even more striking is the authority of the British speaker to select the amendments to be considered in plenary session at report stage. Inescapably, the speaker finds herself having to make judgements that can be as delicate as they are important.

This power, first given to the chair in 1909, has far-reaching effects. It moderates the multiplication of amendments as a means of slowing down the progress of business, and it places

on the chair the unenviable duty of deciding which points are most worthy of discussion. In so doing, he in effect decides the extent to which the minority shall be muzzled in the overall interests of the House.²⁶

In selecting amendments, the speaker is expected to take into account various considerations, 'such as the degree of support which they command, the importance of the principle they raise, the importance with which they are regarded by various sections of opinion, the extent to which they have been discussed in committee, the extent to which they introduce new points, and their relevance to the general content of the bill'.²⁷ Still, the final decision rests with the speaker. By her choice, not only can she extend or expedite the debate, she can (and necessarily does) control the ability of the opposition parties to force debates and votes on their alternatives to government proposals and, consequently, the need for government supporters to confront those alternatives. 'Of all the procedural reforms of the twentieth century', Laundy concludes, 'none perhaps expresses more forcefully the overriding confidence the House reposes in its Speaker and Chairmen.'²⁸

The American speaker has no such authority under the rules or precedents of the House. It is true that a member must 'catch the speaker's eye' before he or she may offer an amendment. In recognising members to propose amendments, however, both the speaker and his surrogates are constrained by the same powerful conventions that govern their recognition of members to participate in debate.²⁹ Neither the speaker nor any other member presiding in his stead can refuse to recognise members simply because he prefers not to hear them or to entertain their amendments. In most circumstances, his discretion as presiding officer is limited to deciding when, not whether, a member will be recognised. The ability of a member to offer an amendment depends not on the will of the speaker or his surrogate, but on (1) whether the amendment's content is consistent with the House's rules and (2) whether the bill in question is being considered under procedures that preclude consideration of some or all amendments that otherwise could be offered.

It is in this last respect that the speaker as party leader does influence, often profoundly, which amendments will be considered. The House's Committee on Rules may propose that members be allowed to offer only certain specific amendments during plenary consideration of a particular bill. For the reasons discussed above,