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THE HISTORY AND PHILOSOPHY OF THE QUORUM  
AS A DEVICE OF PARLIAMENTARY PROCEDURE

by

WILLIAM PAUL WHITE

B.A. Montana State University, 1962

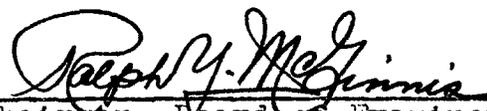
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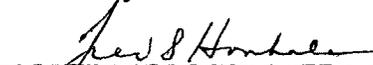
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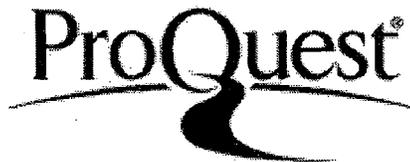


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## CHAPTER I

### THE PROBLEM FOR STUDY

#### I. INTRODUCTION

After centuries of struggle the world has reached a point where representative governments are firmly established as functioning governmental bodies. There has emerged in this era of the 20th century a host of nations whose highest levels of policy are formulated by democratic means, indicating that the people influenced by these governments are to large degree the influential and in the last resort sovereign. The people then, not the "prince" maintain the attributes of sovereignty. According to J. S. Mill,

The meaning of representative government is that the whole people, or some numerous portion of them, exercise, through deputies periodically elected by themselves, the ultimate controlling power, which in every constitution must reside somewhere. This ultimate power they must possess in all its completeness; they must be masters, whenever they please, of all the operations of the government.<sup>1</sup>

In order for the people to be "masters" of governmental operations there must have evolved along with the people's control a method or procedure for governing the popular assemblies. "The evolution of the modern democratic process

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<sup>1</sup>John Stewart Mill, Considerations on Representative Government, (London: George Routledge and Sons), P. 82.

is fused to the development of parliamentary procedure, as a systematic method for giving each man or his representative a voice in establishing the law."<sup>2</sup>

Thus governing bodies, deliberative assemblies, world law-making organizations, must themselves first be governed by laws. Democratic bodies from the United Nations to the League of Women Voters as a first act of organization usually construct a set of laws that they must abide by in everyday functioning in order that they insure their internal order. The laws that are self imposed upon any organization represent the basis upon which the laws of direct consequence to the people are enacted. But organizational laws go deeper yet; without them there could be no adequate way of insuring any form of deliberative order. As a realization of this we can trace back in time a succession of organizational procedure that has often been the key to the degree of effectiveness to which bodies have functioned. Indeed, parliamentary procedure and democracy invariably accompany each other. From the earliest origins of the British Parliament, the growth of representative government has been marked by an ever increasing system of formal procedure that has imposed order on the actions of parliament in direct ratio to the freedom to handle its own affairs were won

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<sup>2</sup>Dwight Allen, "Parliamentary Procedure", Social Education, Vol. XXI (November, 1957), p. 303.

from the King.

The general philosophy of democratic government and that of parliamentary procedure are the same. Sturgis has said, "the philosophy of each is based on freedom of the group and of the individual, on equality of opportunities and responsibilities for all, and on the right of the majority to decide."<sup>3</sup> Gray goes further when he writes,

...the parliamentary form of government is based essentially on freedom of discussion, freedom of speech, freedom to evaluate, to criticize, to protect, to act or to recind action. Further it is based on the recognition of the fact that no one member or group of members has the rights or privileges that may be denied any other member or group of members, and that minorities have privileges as great as the majorities.<sup>4</sup>

Sturgis states that,

Parliamentary law is concerned with the means by which beliefs and ideas are best translated into effective group action. It must provide orderly ways of the will of the majority. It must be clear, considerate, kind, fair, and it must effect the desired aims of the assembly. It must, in other words, be democratic.<sup>5</sup>

The rules of parliamentary procedure then, have evolved through history as a method of implementing and maintaining the ideals of democratic society. The rules themselves are simply mechanical and could be considered useless without

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<sup>3</sup>Alice F. Sturgis, Learning Parliamentary Procedure, (New York: McGraw-Hill Co., 1953), p. 21.

<sup>4</sup>Wilkenson Gray, "Philosophy of Parliamentary Law", Quarterly Journal of Speech, (October, 1941), p. 437.

<sup>5</sup>Alice F. Sturgis, Sturgis Standard Code of Parliamentary Procedure, (New York: McGraw-Hill Co., 1950), p. 8.

the required accompaniment of a democratic philosophy--a philosophy that must be active in practice and spirit as well as name or the rules of procedure may become not tools to implement but rather tools to pervert the aims and ideals of democracy.

Perhaps there is no better example of the fate of a body that espoused democratic ideals and yet was unable to function because of a lack of procedure than the French National assembly at the time of the French Revolution.

A hundred members might be seen trying to address the House at the same time. The authority of the president was wholly disregarded. Spectators applauded or hissed at pleasure. No rules were observed in the conduct of business. Sir Samuel Romilly, deeply sympathetic, had prepared a statement of the practice of the House of Commons, and Mirabeau had translated it into French. It was ignored. Much of the violence which prevailed in the Assembly would have been allayed, and many rash measures unquestionably prevented, if their proceedings had been conducted with order and regularity.<sup>6</sup>

Thomas Jefferson, realizing the need for a body of rules for the new nation of America and probably aware of the debacle in the French Assembly, utilized the usages of the British Parliament to form the basis of procedure for the newly formed American Congress. It was as he said, "a sketch, which those who after me will successively correct and fill up, till a code of rules shall be formed for

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<sup>6</sup>Robert Luce, Legislative Procedure, (Boston: Houghton Mifflin Co., 1922), p. 1.

the use of the Senate, the effects of which may be an accuracy of business, economy of time, order, uniformity and impartiality,"<sup>7</sup> Jefferson was right. His manual has grown into volumes that serve as the basis of deliberation for the democratic assemblies of the world.

But on what plane do we view procedure? Luce has asked if, "parliamentary law be spoken of in the same breath with the Magna Carta, The Bill of Rights, the Declaration of Independence?"<sup>8</sup> Perhaps we can turn to Justice Frankfurter for the answer when he concluded, "the history of liberty has largely been a history of observance of procedural safeguards."<sup>9</sup> Indeed, parliamentary procedure is the safeguard of the very essence of democracy where the will of the people is to be ascertained--and abided by.

## II. THE PROBLEM

The twofold purpose of this study was to discover (1) a history of the quorum, and (2) a philosophy of the quorum, as shown by an examination of significant events that have occurred in American political history.

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<sup>7</sup>Thomas Jefferson, A Manual of Parliamentary Practice, (New York: Clark & Maynard, Pub. 1873), p. 6.

<sup>8</sup>Luce, op. cit., p. 2.

<sup>9</sup>"The Revolution in Criminal Justice", Time, July 16, 1965, p. 22.

The limitation to American political history is intended to keep the bounds of this study within a recognizable political framework. However, this study does deal with those events of significance concerning the quorum that occurred in English history because it was in that nation that the general rules of parliamentary law were started and developed into an organized system. America, as a nation whose cultural roots are primarily derived from England, has, accordingly, taken its basic system of rules of procedure directly from the English through colonial charters, Jefferson's Manual of Legislative Procedure, the first body of rules for the U. S. Congress, etc.. Thus, it is reasonable that any study of American procedure should begin with a consideration of the "Mother of Parliaments" for inceptions of those parliamentary devices which have been accepted by the United States decision-making groups.

Importance of study: America has been accused of being over-organized. That is, persons living in communities across the land represent a nation of joiners. As a nation, we organize in flower clubs, Parent-Teacher Associations, state and national houses of government. Since there are in the United States at least 2,000,000<sup>10</sup> organizations of various types, it becomes apparent that we tend to act in groups for the attainment of our goals. One writer, Paul

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<sup>10</sup>Sturgis, op. cit., p. 4.

Hoffman, has stated that America's voluntary organizations are the "greatest phenomenon of American democracy."<sup>11</sup>

It is in light of this phenomenon that the importance of this study is to be found.

The American system of (private and governmental) group decision-making is based on the assumption that the individual is capable of self-government. To realize this assumption, minimum standards of representation must occur as part of the democratic process if the wish of the individual is to be truly effective in this decision-making process.

Since the quorum is an essential device of assuring adequate participation of the individual and thus assuring government of majority rule and minority protection, a knowledge of the history and philosophy of this central concept will contribute to our understanding of the democratic decision-making process. It is this very understanding of the democratic process that may well aid in the preservation of the individual's right to participate in decisions that ultimately effect him.

### III. HISTORICAL BACKGROUND

In 1832, the English House of Commons established a new set of procedural rules in an attempt to handle more

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<sup>11</sup>Ibid., p. 21.

efficiently the ever-growing amount of business they were required to transact. The enactment of the new rules signified more than a desire to streamline the working of the House; rather, the act reflected the need for efficiency to cope with the problems of increased trade, colonial management and perhaps, even more important, the enlargement and growing complexity of the functions of government. The ideas of democracy were by this time well imbedded in England, as a new, growing and enfranchised middle class endeavored to enlarge their interests. It was one more act that reflected the changing structure of power in England as the King's prerogatives became less and less dominant. The loss of dominance had taken much time: from the medieval parliament of the Estates in the thirteenth century to the nineteenth century.<sup>12</sup>

The Kings of the early medieval parliaments would on occasion, call together those persons whom they felt could offer them needful advice. In time, these persons became grouped as to their status, with the well-to-do on one side and the lesser merchants and landowners on the other.

Subsequently, a clerk was appointed to record the activities of the parliaments--as they were now called.

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<sup>12</sup>For a better understanding of the growth and development of parliament see any of the numerous general history series, i.e., Charles Knight, History of England (New York: John Wurtele Lovell, 1881)

At first, the records were very scanty but expanded to include records of proceedings and at times the speeches of the members. These records were entered into volumes that outlined the nature and forms which the parliaments followed. In the seventeenth and eighteenth centuries formal treatises on the nature of procedures during various eras were compiled by Elsynge,<sup>13</sup> Hakewel,<sup>14</sup> and others of the period.

These treatises represent not only a record of activities but are manifestations of the continually growing body of customary law. The growth of the parliamentary system showed signs of sophistication during this period. by the practice of electing members to the House, utilization of a committee system and an air of formality that became part of the proceedings. The English parliament by the 17th century had emerged as a vital source and voice in the determining of public policy at an increasing degree to the exclusion of the King. Ilbert points out that "parliamentary procedure (at the end of the 17th century) followed the lines which it continued to retain until

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<sup>13</sup>Henry Elsynge, The Manner of Holding Parliaments in England, (London; 1768)

<sup>14</sup>W. Hakewel, Modus Tenendi Parliamentum, (London, 1671)

after the Reform Act of 1832."<sup>15</sup>

From the Long Parliament to 1832, the most profound changes are often considered to be in the growth and development of the cabinet in parliament and the emergence of the party system. Ilbert, commenting on the changes has stated:

They were silent changes, not brought about by any act of the Legislature; gradual in their operation; developed, modified, deflected, retarded by strong personalities, like Walpole, Pitt, George III; imperfectly appreciated, misinterpreted, misunderstood."<sup>16</sup>

In its way, the entire focus of parliamentary procedure was altered in the nineteenth century. The House came to recognize that the great task of self government--that excluded the one great power of the King--may well be determined by the very rules that it employs to direct itself. The new procedure of the 19th century was constructed with the realization that perhaps the very continued existence of a parliament rests on the correct solution of the problems of procedure. The new dimension to procedure brought about by party government, extensions of suffrage, a mighty empire and in time the introduction of deliberate obstructionism were such that procedure came to be recognized

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<sup>15</sup>Josef Redlich, The Procedure of the House of Commons, (London: Archibald Constable Co., 1908), p. 11.

<sup>16</sup>Ibid., XI.

as a single problem upon which the survival of the system may well have depended.

If there is any one origin from which the greater part of parliamentary law has developed, it could only be termed usage. Indeed, there is a large body of practices that can be traced to its origins; however, there is equally as great a number of practices whose roots tend to evade us in the light of a long passage of time. Of the rules that have survived to the present day, Stubbs has said,

Many are in the same form as they appear in earliest parliamentary records. Others are less easily discovered in the medieval chronicles and rolls, and owe their reputation for antiquity to the fact that, where they appear in later records, they have already assumed the dignity of immemorial custom.<sup>17</sup>

Of the multitude of devices that constitute procedure, there exists in the background of each some moment when it became identified as part of accepted parliamentary procedure,

Many usages were crystallized, so to speak, by the ruling of a speaker or by some formal action of parliament, such as a resolution or simple vote. New situations were met in the same way. Thus, came what we call precedents. Out of these have been formulated much of what we call parliamentary law.<sup>18</sup>

Not all precedents have survived, even after formal adoption. Many have been dropped for extreme reasons.

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<sup>17</sup>William Stubbs, The Constitutional History of England, (Oxford England: Clarendon Press, 1873), p. 389, Vol. III.

<sup>18</sup>Luce, op. cit., p. 13.

For instance, Hatsell, in what is considered to be the first compilation of precedents (Published 1776), reflects as precedents all the proceedings in both houses of parliament from January 4, 1641, (when the king, Charles I., went in person to the house of commons, for the purpose of arresting certain members), to the restoration.<sup>19</sup>

Although there is an aura of vagueness that is well contained around the early development of many aspects of procedure, modern parliamentary law is more concrete and in the 20th century its sources are well established. Specifically, modern parliamentary law is drawn mainly from five sources:

1. Decisions of bodies on appeal.
2. Decisions of presiding officers on points of order.
3. Decisions of courts.
4. Writings of authorities on parliamentary law.
5. Customs and usages.<sup>20</sup>

If there is a key to the success of parliamentary law which has lasted hundreds of years, and shows no signs of growing old, it may well reside in the ability of the major legislative houses to adapt the technique of its practice and procedure to meet the demands and problems of each generation.

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<sup>19</sup>Luther Cushing, Elements of the Law and Practice of Legislative Assemblies, (Boston: Little, Brown and Co., 1866), p. 308.

<sup>20</sup>Paul Mason, Mason's Manual of Legislative Procedure, (New York: McGraw-Hill, Inc., 1953), p. 53.

Since parliamentary law is in a never ending state of flux it differs greatly from the practice of deliberative bodies of times past, both in America, and in England. Parliamentary law is not determined by the rules or practices in the House of Representatives of the United States, as it is often mistakenly thought. However, it should be noted that there is a difference in general structures of the procedure used in legislative bodies as contrasted with small private bodies.

Their special requirements (large legislative bodies) and the constantly increasing pressure of their business have produced highly complex and remarkably efficient systems peculiar to their respective bodies but which are as a whole unsuited to the needs of the ordinary assembly. As a result there has been simultaneously developed through years of experiment and practice a simpler system of procedure adapted to the wants of deliberative assemblies generally and which, though variously interpreted in minor details by different writers, is now in the main standardized and authoritatively established.<sup>21</sup>

#### IV. DEFINITION OF TERMS

Definitions of many terms which will be used repeatedly in this investigation are as follows.

Parliamentary Law: Consists of the recognized rules, precedents and usages of legislative, administrative, and service bodies by which their procedure is governed and determined. Parliamentary Law is an organized system of

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<sup>21</sup>"Rules of Order", Encyclopaedia Britannica, Vol. XIX.

rules built on precedents and guided in its development by the authority to make rules inherent in every deliberative or legislative body.<sup>22</sup>

Parliamentary Procedure or Practices. The question is often asked as to the difference between parliamentary law and parliamentary procedure or practice. The many authors surveyed thus far acknowledge no difference and many use the words interchangeably. If any distinction should be made in this study it is to this extent: Parliamentary law shall mean all the rules of procedure that have evolved through history and have been accepted as legitimate devices by having survived the tests of usage and the courts. Parliamentary procedure or practice should include these rules but should also include any and all rules that any given group--private or legislative--may utilize. Thus, rules that are particular to a given group, that may never have withstood a test by the courts and yet are utilized would simply be considered rule or rules of parliamentary procedure or practice--but not necessarily parliamentary law.

Bodies, Groups or Assemblies. These refer to (1) those groups of people elected or appointed as the official representatives of the people to function in a leg-

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<sup>22</sup>"Parliamentary Law", Bouvier's Law Dictionary, Rawle's Revision Vol. IV.

islative manner, and (2) those groups of people formed voluntarily for common interests, to reach a common goal or explore a common subject.

Quorum. Modern writers on the subject of parliamentary law, seemingly without exception, take cognizance of the quorum as an extremely important aspect of procedure; as such, it is usually stated as a general rule, for adequate and legal transactions of business. Since each organization must determine its own quorum, it is rarely outlined in specifics in the manuals. The reason is quite obvious. Unlike many other features of procedure a quorum requirement cannot be stated in such a manner that would be binding on all organizations. Since no blanket quorum regulation is capable of filling the needs of all assemblies, it is regarded the duty of the persons constructing the organization's constitution to set the requirement in such a way that it will be realistic in light of the specific nature of the organization. Generally speaking, organizations having a fluctuating number of members will select a percentage as a quorum; those organizations with a fixed number usually specify a definite number as a quorum.

The important feature to note here is that few organizations would elect to disregard the quorum. To the contrary, rare is the group that would choose to ignore such an important safeguard. The idea that some set number of

the whole body must be present before legal business can be transacted seems to be well imbedded in our procedure. However, there is much variation as to just what can or should constitute a quorum.

Much of the controversy that has been historically associated with the quorum can be traced to the problem of simply determining just what is meant by a quorum. "From the very earliest times it has been recognized as a general rule that a majority of a group is necessary to act for the entire group."<sup>23</sup> In the case of a public body, the power or authority which establishes the body may also determine what constitutes a quorum.<sup>24</sup> Sturgis states that common parliamentary law fixes the quorum as a "majority of the members".<sup>25</sup> The constitution of the United States sets the quorum requirement in the House of Representatives at a majority of the membership. But to state that a quorum is a majority of the membership opens the way to potential conflict; which, is precisely what has happened on numerous occasions. Many writers on the subject of procedure will go beyond this general definition and attempt a less restricted one--ignoring the majority limitation. The following are selected definitions from some of the better known texts on

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<sup>23</sup>Mason, op. cit., p. 61.

<sup>24</sup>Ibid.

<sup>25</sup>Sturgis, op. cit., p. 73.

procedure:

1. A quorum is the number of members required to be present to legally transact business.<sup>26</sup>
2. A quorum is the number of members required to be present at a meeting in order that the assembly may transact business.<sup>27</sup>
3. A quorum is the minimum number of the members of an organization which must be present at a meeting in order to transact business legally.<sup>28</sup>
4. A quorum in an assembly is the minimum number that may be present to carry on business.<sup>29</sup>

In the above listed group of definitions there is no key given as how to determine what is a minimum number nor just what constitutes a majority. Is a majority the, (1) total membership list, including (2) associate members and, (3) including or excluding delinquent members? Is the majority computed on the basis of those (4) present and voting, or, (5) those present, voting and not voting, etc.?

These are the types of questions that have added to the confusion of the quorum concept as it has been utilized through history. As we have emerged into the modern era, it

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<sup>26</sup>Joseph O'Brien, Parliamentary Law for the Laymen, (New York; Harper and Brothers, Publishers, 1952), p. 28.

<sup>27</sup>Henry M. Robert, Parliamentary Law, (New York: Appreton-Century-Crofts, Inc., 1951), p. 356.

<sup>28</sup>Sturgis, loc. cit.

<sup>29</sup>F.M. Gregg, Handbook of Parliamentary Law, (Boston; Ginn and Company, 1910), p. 68.

is not surprising that by now the method, which has been legally agreed upon by the courts, to determine minimum and majority, is well established.

Quorum. For the purpose of this study, a quorum shall mean the rule of parliamentary law that requires some predetermined parts of the entire body to be present before business can be legally transacted.

Obstructionism. The act, on the part of any individual or group, of refusing to answer the quorum roll call, excepting those individuals who are physically unable to do so.

## CHAPTER II

### REVIEW OF THE LITERATURE

A considerable amount of material on the subject of parliamentary law has been written during the past several hundred years. Most of it can be classified as (1) those materials that codify precedents in manuals to be utilized in meetings of various bodies to facilitate their business and, (2) those publications that attempt to deal with procedure as it has grown and developed in various bodies. Those of the second type may be commentaries on procedure, official or unofficial records of proceedings in various bodies such as the House of Commons or the United States Senate or House, or general history books that include procedure as a facet of history that mirrors the growth of government.

Of those books in the first instance, almost without exception, the treatment of the quorum is standard in that rules governing its use are outlined for meetings or forming constitutions. The differences in the consideration of its uses are only subject to change in light of the various dates of publication. Thus, a book on procedure which is

150 years old, i.e. Jefferson's Manual,<sup>1</sup> is less specific as to the number of conditions regarding the use of the quorum than the Sturgis Code of Procedure, (1951).<sup>2</sup> The comparison of the two indicates the vast change that has occurred in the development of the quorum during the intervening years.

The list of manuals on procedure is far too vast to allow a detailed examination of each. However, there are authors who require special mention since to some degree they look beyond a simple statement of what the quorum is and how it is utilized. Most writers have pointed out standard features of the quorum and go no further.

Since one of the purposes of this paper is to discover the historical growth of the quorum, reference will be made to those authors who deal with the historic aspect of the quorum. They are here presented in their historical occurrence, starting with the most recent.

1. Mason's Manual of Legislative Procedure.<sup>3</sup> Mason has divided the quorum into seven headings; each is an outgrowth of precedents as determined by the better known manuals. For further support of the precedents, he lists the legal decisions that

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<sup>1</sup>Jefferson, op. cit., p. 26.

<sup>2</sup>Sturgis, op. cit., p. 14.

<sup>3</sup>Mason, op. cit.

have occurred when any aspect of the quorum has been challenged to a court decision and interpretation. His findings appear quite thorough so far as he has gone. The weakness in relationship to this study is that no interpretation of the quorum is given outside of the strict reporting of the American legal cases--and these only by index number. This is not surprising considering the book is a manual for legislative bodies and makes no pretense at an historical analysis.

2. Sturgis Standard Code of Parliamentary Procedure.<sup>4</sup>  
Sturgis uses the same pattern as Mason. Her approach is to outline the present day rules regarding the quorum and to refer each to one or several legal cases that have in some way determined the status of the quorum. Once again there is no concern or treatment of historical analysis.
3. Robert Luce, in his book, Legislative Procedure,<sup>5</sup>  
devotes time to a discussion of the historical aspects of the quorum. He views the quorum in some detail as it progressed in this country in

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<sup>4</sup>Sturgis, op. cit.

<sup>5</sup>Luce, op. cit.

the New England, colonial and state legislatures. He even goes so far as to discuss briefly the quorum breaking rule of speaker Reed in the House of Representatives in 1890. Too much of what Luce offers is simply a narrative of several incidents in American history, which although interesting, lacks necessary depth, philosophy or completion. In its totality, Luce's writing does not come near the comprehensive study of the quorum that is needed--or does it claim to; Nevertheless, Luce has taken time to discuss the quorum outside the usual reiteration found in the manuals. His work was an aid in the reporting on the quorum in this paper; especially of value is his reporting on early American Legislatures.

4. Luther Cushing in his work, Law and Practice of Legislative Assemblies,<sup>6</sup> offers a discussion of the quorum in addition to stating quorum requirements of the period. His discussion is limited to a short survey of various constitutional requirements for the quorum in many eastern states, and also the status of the quorum in the national houses. His discussion of the English Houses is only to mention the numbers required to constitute

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<sup>6</sup>Cushing, op. cit.

a quorum of each. The work is a hundred years old and is thus dated so far as recent developments of the quorum--and parliamentary practice in general are concerned.

In reviewing the literature of the second group, there was found a wealth of material on the general development of both the English and American parliamentary governments. The Congressional Record and Globe are available for the American government and Journals of the Lords and Commons for the English government. In the case of those events that occurred in these Houses before the start of their Journal publications, the collections of debates and proceedings are used.

Finally, there are several writers who have dealt with the quorum problem as it occurred in the House of Representatives in 1890. This is not unique since what occurred culminated a problem that was centuries in building. Further, any event that causes the House of Representatives to lose all sense of order and decorum would probably be widely commented upon.

## CHAPTER III

### METHOD OF PROCEDURE.

The method of procedure used in the study of the quorum was the historical method.<sup>1</sup>

To accomplish the purpose of the study the following procedure was used:

I. Materials relevant to the topic were gathered and summarized according to the following categories: (1) origin and chronology of the quorum, (2) obstructionism and the quorum, (3) modern American usages of the quorum.

II. These materials were utilized to establish a philosophy of the quorum.

III. Chapter IV presents the findings from this study according to the following classification:

- A. Origin and chronological development of the quorum
- B. Obstructionism in the development of the quorum
- C. Modern American usages of the quorum
- D. Philosophy of the quorum, including basic premises of parliamentary law in relationship to the quorum

IV. Chapter V presents the following:

- A. Summary of the findings of the study
- B. Recommendations for future usages of the quorum
- C. Recommendations for further study

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<sup>1</sup>Ernest B. Bormann, Theory and Research in the Communicative Arts. (New York: Holt, Rinehart and Winston, Inc., 1965).

### C. Recommendations for further study

Statements about the materials are made in this study. These statements include judgments concerning human motives, conclusions deduced from historical data, and implications resulting from the various usages of the quorum at different times by different bodies.

## CHAPTER IV

### FINDINGS

#### I HISTORY OF THE QUORUM

Origin and Chronological Development: Often a phenomenon might in fact exist, but human failure to identify and acknowledge that existence does not diminish nor obviate it. Such has been the case with the parliamentary concept of the quorum. Long before attention was called to it, a form of the quorum existed in the early meetings of the king and his councilors in medieval England. In a sense, the quorum as an element of parliamentary procedure, is almost as old as the parliament of England itself. Although not acknowledged as such by modern standards, either by name or purpose, a form of the quorum is evident as far back in English history as the reign of Henry II (1154-89). The "curia regis" or court of law of that period maintained that no one was indispensable to a court, "except its lord and such of his officials as are required to transact its business,"<sup>1</sup> This fragmentary form of the quorum lasted but a short time as a result of the new power structure of the nobility, brought about by the

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<sup>1</sup>A. F. Pollard, The Evolution of Parliament, (London: Longmans, Green and Co., Ltd, 1926), p. 27.

Magna Carta. This document of 1215 stated that the king when he held his court, "is not therefore bound to summon any particular persons to assist him."<sup>2</sup>

As the king's advisors took on a more independent role in the operations of government during the next two centuries, the status of the quorum concept becomes vague. The *Modus Tenendi Parliamentum*,<sup>3</sup> one of the principle documents of early procedure, seemingly contradicts itself on the quorum concept. In the discussion on the degrees of the peers, the *Modus* points out that the parliament is composed of six degrees and that if any of the degrees, "below the King be absent, if they have been summoned by reasonable summonses of Parliament, the Parliament shall nevertheless be considered complete."<sup>4</sup> The obvious implication is to the effect that business may proceed provided adequate notice be given no matter who attends. In later discussion, however, the *Modus*

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<sup>2</sup>Ibid.

<sup>3</sup>The main problem here is simply the lack of accurate, extant records of the period. The *Modus* is one of the most complete documents concerning procedure of the period but its validity is in question. The author is anonymous and it appears at various times in somewhat unusual circumstances. (Ibid., p. 433).

<sup>4</sup>Thomas D. Hardy (ed.), Modus Tenendi Parliamentum an Ancient Treatise on the Mode of Holding the Parliament in England (London: Eyre & Spottiswode), p. 24.

spells out precisely what constitutes a quorum:

By this it is evident that the King can hold a Parliament with the commons of his kingdom without bishops, earls, and barons, provided they have been summoned to parliament, although no bishop, earl, nor baron obey the summons, because formerly there was neither bishop, nor earl, nor baron, yet the Kings held their Parliaments.<sup>5</sup>

The distinction here is clear; the newer social classes of the earls, barons and bishops need not be present for the legal transaction of business, provided the king and his commons were present and the others simply notified.

The Modus goes on to explain why the commons must be present and why the presence of the newer classes is not needed for the proper transaction of business:

But still on the other hand, although the commons--the clergy and laity--are summoned to Parliament, as of right they ought to be, and for any cause will not come, as if they pretend that the Lord the King does not govern them as he ought, and assign special cases in which he has not governed them, then there is no Parliament at all, even though the archbishops, and bishops, earls, and barons, and all their peers, be present with the King; and therefore it is needful that all things which ought to be affirmed or abrogated, granted or refused, or done by the Parliament ought to be done by the commons of the Parliament which is composed of three degrees or orders of Parliament, to wit, of the procurators of the clergy, the knights of shires, commons of England, and not the nobles, because every one of them is in the Parliament for his own person and for none other.<sup>6</sup>

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<sup>5</sup>Ibid., p. 42.

<sup>6</sup>Ibid.

The commons then, composed by the clergy and laity, are of such importance to the king that they must be present for the proper transaction of business and thus constitute, what in latter terms would be called a quorum.

The development of the quorum as a stated rule of procedure and given the name "quorum", is linked to the development of the office of the justice of the peace. In the year 1327, Isabel, the wife of Edward II, contrived to depose her husband and set his son Edward III upon the throne of England.<sup>7</sup> In an effort to avoid the possibility of a popular uprising and to maintain the peace, the new king ordered that "good men...should be assigned to keep the peace."<sup>8</sup> After the crises had passed, the office was retained and within twenty years, the additional power of trying felonies was given the "conservators, wardens, or keepers of the peace." An order, which appears as an effort to control the justices themselves, was enacted in the year 1344 and according to Cross, who stated, "any two or more were intrusted with limited judicial functions."<sup>9</sup> The requirement of "any two or more" seems an outgrowth of liberties and abuses of power

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<sup>7</sup>David Hume, The History of England, (Boston: Adline publishing Co., Vol. II), p. 164.

<sup>8</sup>Sir William Blackstone, Commentaries on the Laws of England, ed. W. G. Hammond (San Francisco: Bancroft-Whitney Co., 1890), Book I. p. 351

<sup>9</sup>Arthur L. Cross, A Shorter History of England and Greater Britain, (New York: MacMillan Co., 1929), p. 142

taken by some of the conservators and that in an effort to discourage such activities, more than one justice was required for the proper transaction of business.

Under the circumstances, this requirement was apparently devised in an effort to have the justices keep check on one another. This restriction seems to have failed to bring about the end of power abuses as indicated by a statute enacted by Richard II which states, "that none shall be made justice of the peace for any gift, brocage, fauover, or affection...."<sup>10</sup>

To further keep men of dubious scruples from becoming justices it was enacted in statute Richard 12.c.10., that the justices, "be of the best reputation and most worthy men in the country."<sup>11</sup>

The parliamentary device of requiring more than one justice to be present for the legal transaction of business, was not called the "quorum". This term was devised during the same period but in conjunction with another aspect to the office of justice of peace. The word "quorum" was first used to name a select number of justices, known for their outstanding ability to be of the "quorum". The Eirenarcha by Lambard states:

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<sup>10</sup>William Lambard, Eirenarcha or The Office of the Justice of the Peace, in Two Books: Gathered in 1579 and published 1581, p. 33.

<sup>11</sup>Blackstone, Loc. cit.

In the choice of the wardens and justices of the Peace, the Statute lawes have respecte to the manners and abilitie (or Livelihoode) of them all, and to the skill and learning of suche as are speciallie selected, and therefore named of the Quorum.<sup>12</sup>

Despite the efforts of Richard II to keep the justices honest, it was apparently felt an attempt to upgrade the justice courts and to further check the unscrupulous justices, it was enacted during the reign of Henry VII (1457-1509) by statute II, c.2 s.5, "of the Justices of the peas whereof one shall be of the quorum."<sup>13</sup> Thus the quorum during this period referred to the membership of the select few justices who were appointed to that standing, and were mentioned in terms that denoted their status: "again, Justices of the Peace (especialllye those of the Quorum) form hencefoorthe...."<sup>14</sup> The Lawmakers during the reign of King Henry VII must have felt the chances of honest proceeding in the justice courts would be improved if at least one justice was of the quorum. The parliamentary device of requiring more than one justice to be present for the legal transaction of business, was not called the "quorum"--there was no name for this rule.

The quorum then, simply referred to that certain number of justices of the peace, of eminent learning, or ability, whose presence in addition to the other justices, was

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<sup>12</sup>Lambard, loc. cit.

<sup>13</sup>James Murry (ed.), A New English Dictionary on Historical Principles, (Oxford: Clarendon Press, Vol. VIII).

<sup>14</sup>Ibid.

necessary to constitute a bench. The justices were appointed by a special commission of the king under the great seal, the form of which was settled by all of the judges in 1590. This appoints them all,

...jointly and severally, to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors: in which number some particular justices, or one of them are directed to be always included, and no business to be done without their presence.<sup>15</sup>

The actual working is recorded in the Eirenarcha by Lambard, and is as follows: "quorum aliquem vestrum, A.B.C.D. etc. unum esse volumus," (of whom we will that A.B.C.D. etc. be one).<sup>16</sup> The word "quorum" is derived from the Latin "who" and means "of whom". Formerly it was sometimes stated as "corum"; in each instance the word is the plural genitive of "who".

The order requiring more than one justice be present for the legal transaction of business and thus requiring one to be of the quorum, became neglected as in time all justices became of the quorum.<sup>17</sup> In 1753 the custom of advancing all justices to the quorum became codified into law by George II.

...be it enacted by the King's most excellent

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<sup>15</sup>Blackstone, loc. cit.

<sup>16</sup>Lambard, loc. cit.

<sup>17</sup>Blackstone, loc. cit.

Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in the present parliament assembled, and by authority of the same, That...no act, order, adjudication, warrent, indenture of apprenticeship, or hereafter to be made, done or executed, but two or more justices of the peace, which doth not express that one or more of the justices is or are of the Quorum, shall be impeached, let aside or vacated, for that defect only, any law, statute or usage to the contrary notwithstanding.<sup>18</sup>

Since more than one justice was necessary for the proper transaction of business, and that all justices be of the quorum, these two requirements became synonymous, and the word "quorum" took on its present day meaning.

The emergence of the quorum in the House of Commons as an adopted rule of procedure occurred on January 5, 1640. On that day the House resolved, "that Mr. Speaker is not to go to his chair till there be at least forty in the House."<sup>19</sup> From that time the rule has been intact and no attempts have been made to change the quorum concept. There have, however, been attempts to change the number required, despite statements to the contrary by many authors in the field. An attempt was made in the commons to change the quorum requirement from forty to sixty on March 18, 1801. The motion failed.<sup>20</sup> In fact in

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<sup>18</sup>Danby Pickering, Statutes at Large, from the 26-30 Year of King George II., (London: Joseph Bentham, 1766), stat. 26 Geo. II C. 27.

<sup>19</sup>C. H. Parry, The Parliaments and Councils of England, (London: John Murray, 1839), p. 345.

<sup>20</sup>Luther Cushing, Elements of the Law and Practice of Legislative Assemblies, (Boston: Little, Brown and Co., 1866), p. 95.

reference to the number necessary to constitute a quorum in both the commons and lords, there has been a diversity of statements among well-informed writers. Cushing lists the discrepancies in his book on legislative procedure:

Judge Story, (Com. on Const. II. 295) says that the number of forty-five constitutes a quorum to do business in the house of commons. And he adds, in a note, 'I have not been able to find, in any books within my reach, whether any particular quorum is required in the house of lords.'

Chancellor Kent, (Com. I, 235, note b,) says: 'In the English house of commons, forty members used to form a quorum for business, but in 1833, the requisite number was reduced to twenty.'

The authors of a French work--Confection of des Lois, (1839), p. 163,--having spoken of forty members as a quorum of the house of commons, adds, in a note, that the number is now fixed at twenty.

The notion, that the quorum of the commons had been reduced from forty to twenty, arose from the fact, that in the years 1833 and 1834, the house met for the transaction of private business at three o'clock, and at five, proceeded to the public business as before; the quorum for the two hours devoted to private business was fixed at twenty members; leaving the quorum for the general business of the house at forty, as it had been established by usage time out of mind. This arrangement for private business was not renewed after 1834.<sup>21</sup>

Why the number forty was adopted has given rise to speculation by some authors. Laundry states, "It has been suggested that this number was chosen because it coincided with the number of counties into which England was divided

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<sup>21</sup> Ibid.

at that time."<sup>22</sup> Townsend goes farther when he quotes the same reason as that given by Laundry from Dwarris on the Statutes but then adds, "The number was most probably chosen by accident, as the fitting medium between rigour and laxity, just sufficient to insure a fair hearing, without taxing too severely the attention of honourable members."<sup>23</sup> "The origin of the number three as a quorum of the House of Lords, " states Cushing, "undoubtedly arose from a principle of the Roman Law, that three persons suffice to make a college-- collegium, equivalent to our word corporation, in most of its legal features."<sup>24</sup>

Before the quorum was adopted as a constant rule of procedure in the parliament, there was an occasion when the house dismissed for what ostensibly was a quorum failure. The date was April 20, 1607, thirty-three years before the formal adoption of the quorum, that, "no Bill was read this day, and the house arose at ten o'clock, 'being not above threescore.' It seems that sixty was not then a sufficient number."<sup>25</sup>

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<sup>22</sup>Philip Laundry, The office of Speaker, (London: Spottiswoode, Ballantyne & Co., 1964), p. 206.

<sup>23</sup>W. C. Townsend, History of the House of Commons from 1688 to 1832, (London: 1843, Vol. II), p. 365.

<sup>24</sup>Cushing, loc. cit.

<sup>25</sup>John Hatsell, Precedents of Proceedings in the House of Commons with Observations, (2nd ed.; London: H. Hughs, 1784, Vol. II), p. 127.

To this day the exact reasoning and oral discussion--if any, that occurred in respect to quorum rule of 1640, are not known. The general motivation of the house on that day, however, has given rise to different interpretations. Josef Redlich, maintains the motive was "the desire of the Puritan majority to protect themselves against surprise vote during the hours of slack attendance in the early part of the setting."<sup>26</sup> Townsend, in his *Memoirs of the House of Commons*, states that the quorum rule was, "certainly intended to prevent questions being carried by surprise and in a thin house."<sup>27</sup> Hatsell maintains the same reasoning and further states, "that it is essential to the fairness of proceeding."<sup>28</sup>

Indeed, 1640 was a tumultuous year in England. Not only was there strife between the commons and the throne on political grounds, there also existed strife in the area of theology. This religious strife was not restricted to the heirarchy of government; the nation as a whole had been divided for years over religious differences. The opposing forces of Catholic tradition and Puritan earnestness were contending within the area of Church

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<sup>26</sup>Josef Redlich, The Procedure of the House of Commons, (London: Archibald Constable Co., 1908, Vol.II), p. 75.

<sup>27</sup>Townsend, loc. cit.

<sup>28</sup>Hatsell, op. cit., p. 124.

life; within the area of political life the two opposing forces of absolutism and desire for popular government, were struggling.<sup>29</sup> The king represented the established church of England, and absolutism, the parliament was strongly Puritan and represented the desired popular government. As intense as the religious problem was in the land, there is little reason to suggest that within the House of Commons there were religious factions quarreling. It seems all effort was directed toward the throne. So strong was this feeling of hostility of the Puritan parliament toward the king and established church, the house between December 18, and December 24, 1640, accused Laud, "Archbishop of Canterbury, of High Treason." In addition to Laud, ten of the most prominent bishops and judges were accused of crimes ranging from treason of idolatry and superstitions.<sup>30</sup> Such action left no doubt as to the feeling of the commons toward the church and king. It should be pointed out that not all the members of the commons agreed to the hostility as some remained firm in their support of the king:

When the dominant party in the commons determined to destroy Episcopacy, Falkland and Seldon

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<sup>29</sup>H.D. Traill and J.S. Mann (ed.), Social England (New York: G.P. Putnam's Sons, 1909, Vol IV, Section I.), p. 57.

<sup>30</sup>Parry, op. cit., p. 345.

stood aside from Hampden and Pym. Hyde, to whom the Church appeared as a safeguard of order and decent devotion, and Falkland, whose foresight showed him that the Church, not Puritanism, was the defender of intellectual liberty, drew sword for 'Church and king.'<sup>31</sup>

Actually, the hostility of Charles I toward the parliament was a strong force in drawing the commons together in a tight unified group. Considering there were 504 members of commons, the "Angelican Reaction" of Falkland and Seldon was very limited.

The assertion made by the previously mentioned authors concerning a surprise vote in the early days of the Long Parliament, seems doubtful. This period in the house was marked by extremely strong Puritan strength and the possibility of any minority--if there really was a significant one at this time--to attain a surprise vote, seems remote.

A far more reasonable explanation and one that seems a natural out-growth of previous developments, is that the house was in need of a device to encourage attendance and aid in maintaining order. It was November 3, 1640 when the Long Parliament convened. With the exception of the brief Short Parliament there had been no meeting of parliament since 1629. The new parliament was anxious to

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<sup>31</sup>Traill and Mann, op. cit., p. 50.

declare and discuss the misrule<sup>32</sup> of the king and get about its business. However, soon after the Long Parliament settled to work the old problem of gathering and holding a house began to plague the organization. As far back as December 18, 1621 when "Mr. Secretary moveth, that at a certain hour we proceed to business, whether the house be full or not,"<sup>33</sup> the ability of gathering and holding a house had been a problem. This problem had not been restricted to the commons; on July 8, 1625 the new monarch, Charles I noticed, "the thinness of the House of Lords and signifies his pleasure that those present shall not depart."<sup>34</sup> In the commons on July 11, 1625 it was ordered, "...the censure of the house shall pass upon all such as be absent."<sup>35</sup> By June 2, 1628, the problem of gathering and holding a house was severe enough for the commons to order that:

The House be called, and no excuses made till the House is fully called, and then to be heard. The forfeitures to be disposed as the House shall think fit; and if any failing, and his excuse not allowed, a Serjeant-at-Arms to be sent for him to come to the House to answer: and after the House called over, the defaulters to be presently called.<sup>36</sup>

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<sup>32</sup>Godfrey Davies, The Early Stuarts 1603-1660, (London: Oxford University Press, 1952), p. 97.

<sup>33</sup>Parry, op. cit., p. 291.

<sup>34</sup>Ibid., p. 302.

<sup>35</sup>Ibid.

<sup>36</sup>Ibid., p. 311.

Even this measure seemed unable to force an adequate attendance, thus only three days later the commons ordered:

Whoever is absent without leave on call of the House, shall pay L 10, at least. Upon question, all such members as, by information to the House, without a call, shall appear to absent the service of the House, by going out of town, shall incur the like penalty.<sup>37</sup>

The parliament of 1629 was the last parliament called by the king until 1640 when the Short Parliament met for a period of about one month. The parliament of 1629 was dissolved March 10, yet as late as January 30, "it is ordered, in the Commons, that no man go out of the House during the sitting of the grand Committee, without licence, upon censure,"<sup>38</sup> and on February 11, less than two weeks later, "ordered in the Commons, every member to attend, and none to go out of town."<sup>39</sup> A few days later the parliament was dismissed and did not meet again until 1640. The procedural problem attendant with gathering and holding the house was left unsolved, as no device had been put into effect to eliminate it.

During the Short Parliament the topic was not considered but only three days after the opening of the Long Parliament on November 5, 1640, the house became involved in a

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<sup>37</sup>Ibid.

<sup>38</sup>Ibid., p. 328.

<sup>39</sup>Ibid., p. 330.

lengthy debate and an order was made, "that the door be shut and none suffered to go out, (a very rare practice)."<sup>40</sup> Still no relief was gained by the working members to hold a house, so on December 4, 1640, it was ordered, "That whoever does not take his place, or moves out of it to the disturbance of the house, shall pay 12d, to be divided between the Serjeant and the poor."<sup>41</sup> At last, what appears as a final stroke to keep a minimal, acceptable house, it was ordered on January 5, 1640, "that Mr. Speaker is not to go to his chair, till there be at least forty members in the House."<sup>42</sup>

There can be no doubt that basic parliamentary procedure was being evolved during this period and the order of January 5, 1640 came as a natural out-growth of the previous efforts of the house to keep its members--or some set number of them in attendance. The rule was ordered during the tenure of Speaker Lenthall who introduced various rules for the preservation of order without which, "many a sitting of the Long Parliament would have collapsed in chaos and uproar."<sup>43</sup> Lenthall's reaction to the erratic attendance

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<sup>40</sup>Ibid., p. 341.

<sup>41</sup>Ibid., p. 344.

<sup>42</sup>Ibid., p. 345.

<sup>43</sup>Laundy, loc. cit.

habits of the parliament, was such that two months after the parliament had been in session--about the time of the quorum resolution--he found reason to complain of, "the conduct of members so unworthy to sit in parliament that could run forth for their dinners, or to the playhouses and bowling alleys, leaving business of great weight."<sup>44</sup> Townsend, in addition to this, remarks about a "thin house" stating further that quorum rule was a safeguard "required to correct the general laxity of discipline and attendance which succeeded the Restoration."<sup>45</sup> It is interesting to note that the majority in the most numerous house during the reign of Charles I consisted of two only, 176 to 174. Even this full house of 350 left still a third wanting.<sup>46</sup>

With the few exceptions noted earlier the house of January 1640 was not factionalized, at least during the early months of that year; thus, the quorum order of that day was probably geared to force attendance. The majority was essentially undivided and the threat of a surprise vote at that time seems doubtful. It may well have been the case that some members saw eliminated in this motion the ability of any extremely small house to carry a

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<sup>44</sup>Ibid.

<sup>45</sup>Townsend, loc. cit.

<sup>46</sup>Townsend, op. cit., p. 366

surprise vote but if such sentiment existed there is little reason to believe that it was discussed. It is quite possible, however, that many of the members of the house might have considered the order of January 5, 1640 as a method of protecting majorities and minorities.

Quorum Usage in the American Colonies: The utilization of the quorum in the proceedings of the first colonies was ordered by the government of England before that government imposed such a regulation upon itself. There are many reasons that can be conjectured as to why this procedural device was used--or imposed--on the colonies. Perhaps the most reasonable is simply that the colonies were no more than branch offices of a trading company far removed from the eye of the main office in London; as such, the company as well as the throne and commons, desired influence by any means possible, including dictating the form of internal proceedings their councils were to use. A device such as a quorum could be indispensable in stemming the power of any one man or group.

For instance, the charter of the Massachusetts Bay of 1629, states,

...and that the said Governor, Deputie Governor, and assistants of the saide Company, for the tyme being, shall or maie once every Month, or oftener at their Pleasures, Assemble and Houlde and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their Affaires, and that any seaven or more persons of the assistants, together with the

Governor, or Deputie Governor soe assembled, shalbe saide, taken, held and reputed to be, and shalbe a full and sufficient Courte or Assemblie of the said Company, for the handling ordering, and despatching of all such Buysiness and Occurrents as shall from tyme to tyme happen.<sup>47</sup>

The charter continued, calling for "greater and general Courts" scheduled through the year, and specified that,

...The Governor or Deputie Governor and six of the Assistants and Freeman of the saide Company as shalbe present, or the greater number of them so assembled, whereof the Governor or Deputie Governor and six of the Assistants of the least to be seaven, shall have full power, and authoritie to choose, nominate, and appointe, etc.<sup>48</sup>

In the commission of Sir Ednumd Andros appointing him "Captain General and Governor in Chief in and over all that part of our territory and dominion of New England in America,"<sup>49</sup> a charter, signed by James II, makes specific reference to the quorum. The power given Andros was restricted for the most part to the "advise and consent of our said Council...any five whereof we do hereby appoint to be a Quorum."<sup>50</sup> Just why the quorum number was changed from seven to five for the Colonial Council, raises questions that require too much speculation to be considered here.

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<sup>47</sup>U. S., Congress, House, American Charters Constitutions and Organic Laws, 59th Cong., 2nd Sess., 1906, House Doc.5190 Vol. 3, p. 1853.

<sup>48</sup>Ibid.

<sup>49</sup>Ibid.

<sup>50</sup>Ibid., p. 1963.

It should be noted, however, that the charter of 1629 had been cancelled by a judgment of the high court of Chancery of England, June of 1684. The Andros commission was a charter specifying the nature of power and government in the colonies during the interim years until 1691 when the government was reorganized under the charter of that year. The charter specified that the "Governour of our Province..assemble and call together the Councillors or Assistants..Seaven of them at the least shall and may from time to time hold and keep a Council for the ordering and directing the Affaires of our said Province."<sup>51</sup> This particular quorum requirement was one quarter of the total body since the charter calls for a total of "eight and Twenty Assistants or Councillors." This particular group became the upper body of the government and as a result of a statute of October 1692, which formed a branch with a quorum requirement that stated, "Forty representatives at any time so assembled shall be accounted a number sufficient to constitute a House,...and do any business proper to be done in that house."<sup>52</sup> It can be assumed that the number was selected to conform to the requirement of 1640 in the English House of Commons. The Massachusetts Constitution of 1780, written after the revolution, calls for "not less than sixty members of the

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<sup>51</sup>Ibid., p. 1878.

<sup>52</sup>Luce, op. cit., p. 24.

house of representatives shall constitute a quorum for doing business," and, "Not less than sixteen members of the senate shall constitute a quorum for doing business."<sup>53</sup>

On the other hand the charter of Maryland in 1632 which was granted to Lord Baltimore, contained no quorum regulation. The charter remained in force until the revolution of 1776 when a new constitution of that year stated, "that not less than a majority of Delegates...constitute a House."<sup>54</sup> The constitution of 1867 reaffirms the majority as a quorum.

In the Province of New Hampshire the royal commission simply stated that, in order to make laws, statutes and ordinances, "the consent of the governor and the major part of both houses was necessary."<sup>55</sup> Precisely what constituted a quorum was apparently never mentioned as indicated by an entry made in the Provincial Papers in July 1696, when it was asked "whether three of the assembly was a house and could adjourn and whether it was legal," to which the house replied that, "there was no prefixed number appointed and that it was legal."<sup>56</sup> No mention of a quorum was made until 1745 when from that time on the number was regularly

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<sup>53</sup>House Document, op. cit., p. 1898.

<sup>54</sup>Ibid., p. 1692.

<sup>55</sup>William H. Fry, New Hampshire as a Royal Province, (New York: Columbia University Press, 1908), p. 146.

<sup>56</sup>Ibid.

specified in the rules adopted by every succeeding assembly at its first assembly. Still the number fluctuated in relationship to the growth of the number of representatives. Thus, in 1745, when the house consisted of twenty members, the speaker and at least eleven members had to be present before business could be transacted. In 1762, when there were thirty-one present, it was voted that the speaker and fifteen members should constitute a quorum. In 1771, when the house consisted of thirty-four members, the quorum consisted of the speaker and sixteen members, while in 1775, it was still further increased, embracing the speaker and eighteen members.<sup>57</sup>

Rhode Island, settled in 1636, by Roger Williams, received its first charter from the king in 1643. The charter does not discuss any quorum requirement: however conflict over the matter must have occurred because in 1672 the representatives demanded a degree of autonomy given the English House of Commons. A resulting reform bill included that,

In all weighty matters, wherein the King's honor is most jeopard'd...the Assembly shall be the major part of the Deputies belonging to the whole collony, as there must be the major part of the Assistants (by the charter). Butt otherwise, such said act (if made without the greater part of the Deputies present) such said act shall be voyd and of none effect.<sup>58</sup>

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<sup>57</sup>Ibid.

<sup>58</sup>Luce, op. cit., p. 25.

There was, however, a quorum requirement in the lesser town government of Providence, Rhode Island, as early as October 2, 1655, as indicated by an excerpt of the town record,

First all actionab [sic] Cases shall be tried by 6 Townesman as in ye Nature of a Jury; Yet with ye libertie of not being Put on Swearing, and these 6 men to be Princd downe by ye Towne quarterly, and warned 3 days before the Court by ye Seargeant to be ready at ye day and hower appointed Vender ye Penaltie of 3<sup>s</sup> for ye Neglect.<sup>59</sup>

The idea of a majority constituting a quorum in Rhode Island has remained constant and is specifically stated as a requirement in the constitution of 1842.

The Carolinas are good examples of where the crown's officials attempted to maintain control of the colonies by refusing them the power to regulate their own rules and procedure. Under proprietary regulations the quorum was held at one third, significantly higher than forty required in the house of commons. In South Carolina in 1716, a statute set the quorum at sixteen, slightly more than half of the total membership of thirty-one. In 1719, the number of representatives was raised to thirty-six and the quorum to nineteen.<sup>60</sup> When the house grew to forty-eight, nineteen was nearly forty percent of the

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<sup>59</sup>The Early records of the Town of Providence, (Providence: Snow Farnham Printers) Vol. II, p. 85.

<sup>60</sup>Jack P. Greene, The Quest for Power, (Williamsburg, Virginia: University of North Carolina Press, 1963)p. 217.

house, which caused occasional complaints:

Governor James Glen wrote in 1748 that the size of the quorum often created 'many obstructions and delays. A Party of pleasure made by a few of the Members,' he lamented, 'renders it often impossible for the rest to enter upon Business, and sometimes I have seen a Party made to go out of Town purposely to break the House as they call it (well knowing that nothing could be transacted in their absence) and in this manner to prevent the Success of what they could not otherwise oppose.' In 1756 the Board of Trade also contended that the size of the established quorum, 'put it into the power of any one or two factious Member(s) who have an Influence in His Majesty's service and the Publeck good of the Province by prevailing upon others to absent themselves.' The Board suggested that Governor Lyttilton alter the situation, but neither he nor his successors made any effort to do so.<sup>61</sup>

In North Carolina, the Fundamental Constitution of 1669 provided that a quorum should consist of not less than half of the total members.<sup>62</sup> The royal governor complained that a majority was too high for a quorum as it was much more difficult for the governor to control from twenty-five to thirty-five members than fifteen.<sup>63</sup> Attempts were made by a succession of governors starting with Johnston in 1746 when he attempted to reduce the number to fifteen.<sup>64</sup> The issue was not resolved and in November 1760, the house adopted a resolution

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<sup>61</sup>Ibid.

<sup>62</sup>House Document, op. cit., p. 2782.

<sup>63</sup>C. E. Raper, North Carolina, (New York: MacMillan Co., 1904), p. 218.

<sup>64</sup>Greene, op. cit., p. 218.

reaffirming the majority rule. Governor Dobbs was powerless to enforce his quorum requirement of fifteen members because the lower house simply declined to act unless a majority were present.<sup>65</sup> The house used the quorum issue to exert its independency and seldom allowed the number as designated by the crown to be the actual one.<sup>66</sup> Thus in effect, the house denied the royal authority power to regulate its internal proceedings in regard to a quorum and succeeded in enforcing a provision of their own.

In the original charter for the Province of Pennsylvania, in 1681, given to William Penn, no mention of a quorum is made. However, one year later in Penn's Charter of Liberties granted by the king, a provincial council of 72 persons was to meet yearly. The council composed of persons "moste noted for their Wisdom, Virtue and Ability"--was subject to the following: "not lesse than Two Thirds of the whole Provincial Council shall make a Quorum and that the Consent and approbation of Two Thirds of said Quorum shall be had in all such Cases or matters of Moment." However for routine business it was ordered that, "...in all cases and matters of lesser mement Twenty-four members of the said Provincial Council shall make a quorum, The Majority of which four

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<sup>65</sup>Ibid.

<sup>66</sup>Raper, op. cit., p. 222.

and Twenty shall and may always determine on such Cases, and Causes of Lesser Moment."<sup>67</sup> The clause for minor business was excluded in the Charter of Privileges of 1701 and replaced by a requirement of "Two Thirds of the Whole Number that ought to meet."<sup>68</sup> As the colonial charter gave way to a constitution in 1776, the unique requirement of two-thirds was continued--but unlike the charter of 1701, the constitution neglects to define which two-thirds: of those present or of the total enrollment of the body. The omission, as well as the large number, must have caused concern for all subsequent constitutions (of which there were three) require a reduced quorum of a majority with a provision for a non-quorum to adjourn to locate absent members.<sup>69</sup>

The lands of present day New York, previous to 1777, were in charters of other colonies, including Massachusetts, Pennsylvania and grants to the Duke of York. New York, until 1771, appears to have been exempt from quorum difficulties. However, in that year the crown's instructions to Governor William Tryon stated:

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<sup>67</sup>House Document, op. cit., p. 3048.

<sup>68</sup>Ibid., p. 3078.

<sup>69</sup>Ibid., p. 3094.

And although by our commission aforesaid, we have thought fit to direct that any three of the members of our said council make a quorum, it is nevertheless our will and pleasure that you do not act with a quorum of less than five members, unless upon extraordinary emergencies when a great number cannot conveniently be had.<sup>70</sup>

The council had eleven members; after the revolution erupted, New York framed a constitution calling for a majority quorum; this same requirement remained in all subsequent constitutions.<sup>71</sup>

One of the earliest charters was that which established the colony of Virginia. The early charters were quite specific on the quorum matter. For instance the charter of 1611-12 stated:

The Treasurer, Company of Adventureres and Planters... Keep a court and Assembly...the Treasurer or his Deputy, to be always one, and the Number of fifteen others... shall be sufficient Court...for dispatching casual and particular Occurrences, and accidental Matters of less Consequence...<sup>72</sup>

The above provision is for the handling and ordering of matters of less consequence; however, the subsequent paragraph of the charter sets up a more formidable quorum requirement for "affairs of greater Weight and Importance...the said Treasurer and Company or the greater Number of them, so assembled, shall and may have full Power and Authority..."<sup>73</sup>

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<sup>70</sup>Luce, op. cit., p. 27.

<sup>71</sup>House Document, op. cit., p. 2623.

<sup>72</sup>Ibid., V. II, p. 3805.

<sup>73</sup>Ibid.

This charter was issued to the colony of Virginia thirty years before the English House requirement of 1640. The latter requirement can only be termed a majority requirement which was repeated in future houses. The Virginia Constitution of 1776 creates a two house legislature with a majority of the twenty-four members of the senate a quorum but the document fails to provide a quorum for the house.<sup>74</sup> This apparent oversight was remedied in the constitution of 1830 and the quorum has remained a majority for both houses since.

In addition to the colonies mentioned, there is little that differs in the early charters and constitutions of the few remaining colonies in respect to the quorum. There is a very definite limit to the extent to which the procedure of one body can serve as a model for another. Yet by the close of the colonial years of American history, all of the colonies had some form of quorum requirement. Not all the legislatures had adopted the rule of a majority quorum but it was adopted by most of them. Pennsylvania and Vermont both reduced their quorum requirements from two-thirds to a simple majority by 1790. South Carolina, Georgia and Massachusetts were the only States permitting less than a majority to do business and all three have abandoned the practice.<sup>75</sup> It should be noted that the House of Commons

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<sup>74</sup>Ibid., p. 3816.

<sup>75</sup>Luce, op. cit., p. 28.

and the Crown, as the creating bodies for colonial charters, one time only, imposed the same quorum requirement on a colony as the one imposed on themselves; further, the quorum impositions were, for the most part, imposed on the colonies before the English house adopted its own.

The Quorum Rule and the Federal Constitution: By the latter half of the 18th Century, the quorum had permeated the councils and legislatures of America as an established function of procedure. As such, it is not surprising that it became an item of concern in the drafting of a Federal Constitution.

It was into August of 1787 before the delegates to the Federal Constitutional Convention came to the problem of the quorum. It was handled with dispatch and the deliberations lasted but a short time. Article VI, Section 3, of the proposed constitution stated, "In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day."<sup>76</sup> The following account of the deliberations, taken wholly from James Madison's notes (the only authoritative, extant source), recounts Nathaniel Ghorum, delegate from Massachusetts, opposing the motion because, "less than a Majority in each House should be a Quorum, otherwise great delay might happen in business and great inconveniences from the future increase

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<sup>76</sup>James Madison, Debates in the Federal Convention of 1787, (ed.) Hunt & Scott, (New York: Oxford University Press, 1920), p. 339.

of members.<sup>77</sup> Mercer of Maryland concurred, and added that "so great a number will put in the power of a few by seceding at a critical moment to introduce convulsions, and endanger the government."<sup>78</sup> Mercer favored leaving it to the legislature to fix their own quorum the same as in the English house and thus keep it at a small number. Mason from Virginia countered with the argument that less than a majority quorum would be, "dangerous to the distant parts to allow a small number of members of the two Houses to make laws," and that the "Central States could always take care to be on the Spot and by meeting earlier than the distant ones, or wearing their patience, and outstaying them could carry such measures as they pleased." King from Massachusetts retorted that such might be the case but he was of the opinion, "that public inconvenience..was more to be dreaded." Governor Morris from Pennsylvania moved to fix the quorum at thirty-three members in the House and fourteen in the Senate which was a majority of the time. King amended this to have fourteen and thirty-three the lowest numbers but, "leaving the Legislatures at liberty to increase them or not." Elsworth of Connecticut, Wilson of Pennsylvania and Gerry of Massachusetts, noted that seventeen would be a majority out of a quorum of thirty-three and eight of fourteen, hence

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<sup>77</sup>Ibid., p. 376.

<sup>78</sup>Ibid.

questions might possibly be carried by as few as two large states and in the senate with the aid of two small states.<sup>79</sup>

The motion as amended was defeated nine to two and the original carried with the additional wording, requested by Randolph and Madison, of, "and may be authorized to compel attendance of absent members in such manner and under such penalties as each house may provide."<sup>80</sup> One further amendment was made to the quorum. It was moved by Madison that the right of expulsion was too important to be exercised by a, "bare majority" and that two-thirds should be required. The motion passed but not without opposition from Governor Morris who felt that the power could safely be trusted to a majority and that to require more would invite abuses from the minority. Despite Morris's objection the motion carried.<sup>81</sup>

The nature of the debate over the quorum reflected the attitudes, fears and interests of the period as much as a concern for proper procedure. From the debate it appears the compelling reason why a smaller number than a majority of the members of each house should not be permitted to make laws, was to be found in the extent of the country and

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<sup>79</sup>Ibid., p. 377.

<sup>80</sup>Ibid., p. 378.

<sup>81</sup>Ibid.

the diversity of its interests. Thus the concern was the possibility of the central states being "on the spot" and the distant states precluded from legislative deliberations. A further consideration is that sectional cleavages, were not manifest in the quorum as much as the fear of the small states being domineered by the large ones--thus, the rejection of Morris's motion.

Unfortunately and despite good intentions, the quorum provision that was placed in the constitution had several built-in problems that were to plague the Senate and House of Representatives off and on for the next one hundred years. The actual concept of a required number present for the legal transaction of business was well permeated into American procedural practice by the termination of the revolutionary period. It is not surprising then, that the states would, with slight exception include a quorum requirement in their own constitutions. Thomas Jefferson in his manual of procedure which he designed for the new states of America, advocated a quorum and referred to Hatsell for his precedent.

Indeed then, the quorum by the eighteenth century was a fundamental aspect of parliamentary procedure, well imbedded in the state constitutions. The potential problems inherent in a simple majority quorum were not to erupt to any great extent until the latter half of the eighteenth century. This is not to say however, that some forms of

quorum obstruction had not already taken place. Since each house of the American Congress defines its own set of procedures, and each is accorded high respect by the citizens of America, it was perhaps a degree of good fortune that the major problems concerning the quorum were resolved for the American people in such august bodies. Further definitions of the quorum were made by the courts of this country with strong ramifications for private organizational procedure. The new modifications that were necessary in utilization of the quorum were for the most part brought about by the need to eliminate obstructionism that had slowly been developing in this country.

Obstructionism and the Quorum: Obstructionism in parliamentary procedure is a relatively modern problem. Hundreds of years passed during the evolutionary period of parliament and procedural growth without any concerted attempts to completely nullify the efforts of parliamentary bodies for the desired ends of a minority. Modern parliamentary obstructionism is usually credited to Parnell and the Irish delegation in the commons. The type practiced by Parnell in the name of Irish nationalism was a menace to the principle of majority government. During the formative years of the House of Commons, certain incidents occurred that could be called obstructionism, although the form was mild in most instances. The quorum in the House of Commons as a device of obstruct-

ionism has never been great enough to endanger the system as was the case during Parnell's reign. Conversely, in the United States House of Representatives, the quorum became a severe enough problem to threaten the very foundations of the house.

Long before the first instances of deliberate, quorum obstructionism occurred in the commons, a very prophetic clerk saw a potential evil in its use. John Hatsell was the clerk and as such compiled one of the first complete sets of precedents of the House of Commons. During Hatsell's time a great deal of business was conducted by the House of Lords--which is no longer the case since much of their former power has passed on to the House of Commons. In any event, Hatsell was concerned with the Speaker who returned from the Lords to inform the commons of their activities and not finding a quorum. Hatsell concluded,

I should think he ought, at least, to report what has passed in the House of Lords; for it might otherwise happen that, for want of forty Members, the Speaker might be prevented from taking the Chair that day, and from communicating to the House a speech or message from the King, of which, 'as a message to adjourn, and several other matters,' they ought to be immediately informed; especially as it is always in the power of any Member to prevent the proceeding in any other business than the report of the message, by calling upon the Speaker to count the House.<sup>82</sup>

If such an occurrence took place, Hatsell fails to state,

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<sup>82</sup>John Hatsell, Precedents of Proceedings in the House of Commons with Observations, (2nd ed.; London: H. Hughs, 1784, Vol. II), p. 75.

but there can be no doubt that his mind perceived the potential for obstructionism of sorts.

It wasn't until 1729, eighty-nine years after the establishing of the original quorum rule that a speaker announced the house was adjourned for want of forty members. After the initial eighty-nine years had passed, failures of the house to make were not so far apart, happening almost yearly through the 18th century. In the house, the actual method of counting is as follows. After the House has been made, if notice be taken that forty members are not present, the Speaker directs strangers to withdraw; and members are summoned. After the expiration of two minutes, the Speaker proceeds to count the house, the outer door being kept open during the proceeding to enable members approaching from the lobby to be included in the count. If it be after four o'clock (on Friday, one o'clock) that the absence of a quorum is proved, the Speaker at once adjourns the house until the next setting day.<sup>83</sup> There are further rules that have been developed in regards to the quorum but in essence the above is the general procedure.

The Speaker does not count the house but rather assumes a quorum to be present unless his attention is drawn to the

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<sup>83</sup> Sir Thomas Erskine May, Treatise on the Law, Privileges, Proceedings and Usages of Parliament, (16th ed.; London: Butterworth & Co., 1957), p. 331.

absence of a quorum. Any member is entitled to draw attention to the absence of a quorum at any time during a sitting simply by so directing the Speaker to count. Failure to make a quorum is termed in the English Commons as "count out."

Franqueville, A French critic of the British House states, "some members sometimes take malicious pleasure in demanding a count out in order to end discussion which embarrasses them or to delay the vote on a measure they oppose."<sup>84</sup> Franquerville, noted the lighter and sometimes petulant side of the house when he reports,

They have lots of fun sometimes, particularly at the dinner hour when the benches are empty and the orators speak in a desert or rather for the journalists and the voters. Sometimes they ask for several successive counts and succeed in obtaining the desired result to the great discontent of some deputies. When this occurs the whips are blamed, one of whose principle functions consists in making and maintaining a chamber.<sup>85</sup>

On June 8, 1871, Sir John Packington was the victim of a count out. He complained that at the moment he was about to take the floor a member asked for the count out and caused the end of the session. He saw one of the ministers pass to one of his colleagues a note on which was written, "We have come to count Packing on out; he is the first to speak."<sup>86</sup>

So entirely does the Speaker depend upon the house for power to exercise his authority, that even if the number of

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<sup>84</sup> Franqueville, Gouvernement et Le Parlement Britanniques, Ed., J. Rothschild, (Paris: 1887), Vol. III, p. 67.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

members present drops below the required quorum, he cannot take notice of the facts. However, if only two members were before the Speaker he could not take notice of the fact, nor could he stop the business of the house. Thus, if one member proposed a resolution and another seconded it, the Speaker would have to put the question to a house composed of those two members. Further, such an action would appear in the House Journal as if it had been agreed to by the whole body of almost 700!

Since the speaker has no power to notice that the number in the house has fallen below the quorum, it must be brought to his attention by a member. Once some mention has been made then all business stops at the Speaker's cry of "Order, Order," and two minutes are allowed for the formation of the quorum and if not made debate stops and the house is closed for the evening.<sup>87</sup> It takes only the slightest hint of no quorum to set the speaker in motion as indicated by the following example:

About a score of our representatives were giving serious attention to a very serious address, on a very important subject, by a very serious brother member...Vexed by the scanty attendance that listened to his all-important subject, he joked about the crowded benches, the packed House, that he pretended to see around. The jest was fatal; he had referred to the number present; this done, the Speaker must determine what that number is. "Order! Order!" from the chair, silenced the debater. Amazed he sat down,

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<sup>87</sup>Reginald Palgrave, The House of Commons, (London: MacMillan and Co., 1869), p. 78.

quite ignorant of the effect of his wit,--then the Speaker rose in all solemnity; in due custom he began the regular "one, two, three," as his extended arm pointed in stately circuit to each member. Soon all was over; the two minutes elapsed; but twenty heads were counted, and the House broke up, much in laughter at the luckless orator, who had counted himself out.<sup>88</sup>

Another unusual quorum incident that could be considered obstructionism occurred at the conclusion of Arthur Onslow's career as Speaker of the House; an incident that asserts the power of procedure over the throne,

It was January 1761, and the King was in the House of Lords, waiting to give his assent to the Money Bill. The King waited and the Lords waited; they could do nothing else until the Speaker appeared at the Bar. And still they waited; and still there was no Speaker. There were questions, agitations, whisperings, titters, growlings; what had become of old Arthur? But old Arthur was behaving, as usual, with exemplary correctness. He could not leave the House of Commons; indeed he could not regard the House and the Speaker as being officially in existence at all. Fewer than forty members were present, and Arthur could not, would not, budge until he had the necessary quorum.<sup>89</sup>

In what must have been a crude attempt at obstruction, a complaint was made on June 10, 1874 that members had been obstructed on their return to the House during a count. The speaker said it was the duty of the sergeant to keep free access to the House, and he believed that duty had been properly discharged.<sup>90</sup>

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<sup>88</sup>Ibid., p. 79.

<sup>89</sup>C. E. Vulliamy, The Onslow Family, (London: Chapman & Hall, 1953), p. 128.

<sup>90</sup>May, op. cit., p. 332.

Free access to the parliament seems to have been a problem in earliest times. Even the Tenendi directs a door keeper to be present and make sure "entrance be denied to none who ought to be present at the parliament."<sup>91</sup> Even more significant is the rule in the Modus that without his commons, the King could do nothing and the Modus directs the commons after they are summoned not to come if, "the Lord the King does not govern them as he ought."<sup>92</sup> Just how, or if the commons ever utilized this quorum rule to force action from the king is not known.

Although the number present might fall below the quorum, the validity of the votes or resolutions passed before the quorum count is demanded, cannot be challenged. Cushing reports that it has been said to be the practice, in the House of Commons, for the government or administration, to take measures to prevent the formation of a house on particular occasions, with the purpose in mind of putting off or suppressing discussion, which they wish to get rid of, without putting it down to a direct vote. The business assigned beforehand for the day, on which the sitting is thus prevented or terminated, falls to the ground, and must be renewed on some other day; since each day is usually appropriated in advance, for a considerable period, it is

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<sup>91</sup>Thomas D. Hardy (ed.), Modus Tenendi Parliamentum, (London: Eyre and Spottiswoode), P. 24.

<sup>92</sup>Ibid., p. 42.

difficult, if not impossible.<sup>93</sup> Cushing neglects to cite specific examples of the above manipulation but such activities seem quite probable in a house whose ministers have been known at times to be less than scrupulous.

In the national government and particularly the United States House of Representatives, the full impact of a quorum struggle has been realized. As far back in history as 1788, the author of the 58th Federalist paper while advocating a new Federal structure for the new nation of America, was also quick to note procedural problems that might interfere in a strong government. It is not known if it was Hamilton or Madison who warned that, although there are some advantages to a majority or more than a majority quorum, they are outweighed by the inconveniences in the opposite scale. In the author's words,

...it would facilitate and foster the baneful practice of secessions; a practice which has shown itself even in States where a majority only is required; a practice subversive of all the principles of order and regular government; a practice which leads more directly to public convulsions and the ruin of popular governments than any other which has yet been displayed among us.<sup>94</sup>

As sincere and ominous as those words are, there have been no instances of secessions in the early Congresses of the national government--if by secessions it was meant

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<sup>93</sup>Luther Cushing, Elements of the Law and Practice of Legislative Assemblies, (Boston: Little, Brown and Co., 1866), p. 151.

<sup>94</sup>Hamilton, op. cit., p. 301.

that certain states or delegation to the Congress would depart the sessions so as to have attendance fall below the quorum requirement and thus obstruct business. This is not to say however, that the quorum requirement as adopted has not been used to stifle business: it is simply that a different method of quorum obstructionism was developed, a method not foreseen by the framers of the constitution.

The first hint of quorum trouble in the Federal Congress did not occur until Jackson's administration, when members of the House seem to have caused a quorum to fail by declining to vote.<sup>95</sup> This event was on May 9, 1834, and although the record is somewhat vague on the matter, it may have set the precedent, for on May 30, 1836 the refusal of Members to vote moved John Bell of Tennessee to say, "the time might and probably would come, when the order of the House would be broken up by a factious minority."<sup>96</sup> He then made it clear that he favored prompt punishment of members who refused to vote.

Aside from these incidents, nothing occurred to suggest a quorum problem in the national government until 1840. In that year no less a person than John Quincy Adams stifled house business and in so doing set the precedent for a new

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<sup>95</sup>U. S. Congress, House, Roster of Debates, 23rd Cong., First Session, 1834, p. 4023.

<sup>96</sup>Ibid., 24th Cong. First Session, 1836, p. 4086-4099.

form of quorum obstructionism.

The event started out innocuously enough. The state of New Jersey had a contested election case and the elected members to the house were considered by Adams to be false claimants. On March 6, they were to be sworn in without waiting for additional evidence that Adams maintained would have a bearing on the matter. The following comes from the Diary of John Adams and gives an interesting account of the matter.

I had resolved, if thus called, not to answer to my name. Many other members had determined to do the same; and if all the minority would do so, the majority could not form a quorum of the House, and therefore could not perpetrate this outrage upon all justice and all law...I resolved, however, at all events to practice it myself, and await the consequences.<sup>97</sup>

Adams found the device to be one that produced results and although there was "some flinching on the Administration side," he continued to use it. On March 24, Adams recounts,

The count was again taken by tellers, and was 10 ayes, 85 noes--all the opposition members forebearing to vote, and thus leaving the majority without a quorum. The committee were thus compelled to rise and report this fact to the House; and this first disclosed to both parties of the House; the secret of the defensive strength of the minority--a strength the more impregnable as it consists in silence and precludes all disorder. The rage of the majority at this discovery was unbounded; but it was impotent.<sup>98</sup>

The opposition attempted to stifle the ability of the

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<sup>97</sup>John Quincy Adams, The Diary of 1794-1845, Allan Nevins, ed., (New York: Longmans, Green & Co., 1928), p. 505.

<sup>98</sup>Ibid., p. 506

minority to remain silent and on March 25, it was moved by Representative Taylor, "moved that I should be compelled to vote. Not in order. Beatty moved a resolution to censure upon me for not voting. Not in order. Motions to suspend the call, and to adjourn, were multiplied, and failed, etc."<sup>99</sup>

Adams had struck upon the easiest method of obstructionism; the silent--or disappearing--quorum. It was a practice by which the minority part could prevent any legislation or business they disliked by refusing a quorum. A quorum was presumed to be present unless questioned, but the rules permitted a roll call upon demand of a fifth of the membership. Minority members would demand the roll and then remain silent when their names were called. Since the rules prescribed that a member's presence was established only by a viva-voce reply to the roll, and since it required a majority of the whole to constitute a quorum, the silent filibuster could effectively stop the House from doing business. For nonpartisan matters the quorum would reappear, only to vanish again as soon as a vote was asked on any pending bill opposed by the minority. The process could be repeated interminably until the majority dropped the bill.<sup>100</sup>

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<sup>99</sup>Ibid.

<sup>100</sup>Barbara Tuchman, "Czar of the House", American Heritage, XIV, (December, 1962), p. 33.

The device worked well for Adams but perhaps even he realized its potential disruption in the house for he refrained from further quorum obstruction during his term. The device lay dormant for several years before it was again utilized to any great extent. This may or may not be due to a respect of legislative procedure but simply because the conditions were not right for its use. Optimum effectiveness of the silent quorum requires a close division of the house. If this is not the case, the majority party can form its own group to comply with the quorum requirement and in so doing, void the minority obstruction.

Even before Adam's disruption of the house, there had been instances of quorum problems in the state governments. In their haste to ratify the constitution, the federalists in Pennsylvania had called for the question on adoption. The antifederalist pointed out the motion was out of order since Congress had not yet sent them the new constitution and therefore it had not been given the required three readings. The nineteen antifederalists held an indignation meeting and decided they would foil the proceedings by staying away.

It took 47 to make a quorum, and without these malcontents the assembly numbered but 45. When the house was called to order after dinner, it was found there were but 45 members present. The sergeant-at-arms was sent to summon the delinquents, but they defied him, and so it became necessary to adjourn till next morning. It was now the turn of the Federalists to uncork the vials of wrath. The affair was discussed in the taverns till

after midnight, the 19 were abused without stint, and soon after breakfast, next morning, two of them were visited by a crowd of men, who broke into their lodgings and dragged them off to the state house, where they were forcibly held down in their seats, growling and muttering curses. This made a quorum...<sup>101</sup>

Many states have had some unique experiences with quorum obstructionism, but perhaps none have suffered as much as Tennessee. As late as 1911, thirty-four members of the house, enough to break a quorum, fled to Alabama, because of contemplated changes in temperance and election laws. Apparently a fine time was had by all as they ventured on to Georgia. The minority stayed on, met from day to day and worked out a compromise suitable to the absentees, who finally returned after two months absence.<sup>102</sup>

However, there can be no doubt that so far as volume and severity of obstruction, the national House of Representatives was hardest hit, yet most reluctant to correct the problem. While the house was suffering from the problem of the silent quorum, many state houses had eliminated it. In fact when Speaker Reed broke the quorum in 1891, he utilized the rationale set forth by Lieutenant Governor and presiding officer David G. Hill of New York, who eliminated the silent quorum there. Hill, in 1883, maintained that the constitutional provision as to a quorum was entirely

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<sup>101</sup> John Fiske, The Critical Period of American History, (Boston: Houghton Mifflin & Co., 1888), p. 373.

<sup>102</sup> Luce, op. cit., p. 35.

satisfied by the presence of the members, even if they did not vote, and accordingly he directed the recording officer of the senate to put down the names of the members of the senate who were present and refused to vote.

In his ruling on the matter, Hill stated:

...Today there are present over three-fifths of all the senators elected. They sit in their seats before me. Rule 14 of the senate requires each senator to vote when his name is called, but a number--more than enough to constitute the requisite three-fifths--refuse to vote at all, either for or against the bill, and remain silent. It is claimed that, therefore, they are to be deemed absent and cannot be counted as constituting a quorum. They are not absentees within the meaning of the rules, because they are in fact present. There can be no 'call of the house' or other proceedings instituted to compel their attendance, because they are not absent. Their action is in defiance of the rules of this body, factious, and revolutionary.

If, because they refuse to respond to their names when called, they are thereby to be deemed absent, of what use are the rules of this body and the law which gives this body authority to send its sergeant-at-arms for its absent members and forcibly bring them into this chamber, if, when brought in, they can still refuse to vote and still be deemed absent? It would show that all such provisions in the rules and in the statutes were entirely nugatory and of no force or effect. There is no principle of parliamentary law which permits a senator to be present in his seat and refuse to respond to his name, and then be allowed to insist that he is not present. If he does not want to be regarded as present he must remain away from the chamber. This is common sense, and it is not antagonistic to parliamentary law.<sup>103</sup>

A similar decision was made in Tennessee in 1885.

In the legislature, the house had ninety-nine members, of which two-thirds was sixty-six. A registration bill was pending

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<sup>103</sup>U. S. Congress, House, Hinds Precedents, 59th Cong., 2nd Session., 1906, Vol. 4, p. 69.

which was objected to by the Republican members of the House. Upon the third reading the Republicans refused to vote, whereupon the speaker directed the clerk to count as present those present but not voting, and a quorum being present, declared the bill passed upon this reading.<sup>104</sup>

The reluctance of members to answer their quorum calls has not been restricted to the United States. In the French chamber of Deputies, where a majority is a quorum, it was decided in 1878, by the President of the Country, that the presence only, and not the participation in the voting of a majority of the members, is necessary for the validity of a vote.<sup>105</sup>

Never-the-less, the House of Representatives failed to follow the quorum breaking of the states until 1891. The scattered attempts to do so before the fifty-first Congress were over-ruled and real pressure for change did not start building until 1875. In that year a bill was called up and there arose dilatory proceedings including the quorum call and then refusal to vote. Mr. Benjamin F. Butler, of Massachusetts, made the point that there was a quorum present, and if the Chair would take note of the presence of Mr. Samuel J. Randall, of Pennsylvania, who was participating in the proceedings, but had not voted, and of the Chair himself,

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<sup>104</sup>Ibid., p. 67.

<sup>105</sup>Paul Mason, Mason's Manual of Legislative Procedure, (New York: McGraw-Hill Book Co., 1953), p. 341.

there would be a quorum present. John Coburn, representative of Indiana, added that if a man is present but not voting, one of his colleagues could vote for him. The strong reply was made by James G. Blaine, the Speaker:

The Chair never heard of that being done. He begs to remind the House, whereas that might and doubtless would be true, that there is a quorum in the Hall, the very principle enunciated by the gentleman from Indiana has been the foundation probably for the greatest legislative frauds ever committed. Where a quorum, in the judgment of the Chair, has been declared to be present in the House against the result of a roll call, these proceedings in the different legislatures have brought scandal on their names. There can be no record like the call of the yeas and nays; and from that there is no appeal. The moment you clothe your Speaker with power to go behind your roll call and assume that there is a quorum in the Hall, why gentlemen, you stand on the very brink of a volcano.<sup>106</sup>

Subsequent speakers were also reluctant to get near the brink of the volcano, for attempts during the next few years to end the silent quorum were futile. Perhaps the most ambitious attempt was made by John Randolph Tucker of Virginia in 1880. Tucker simply requested that the following amendment to the rules be adopted:

Whenever a quorum fails to vote on any question, and objection is made for that cause, there shall be a call of the House, and the yeas and nays on the pending question shall at the same time be ordered. The Clerk shall call the roll, and each member as he answers to his name, or is brought before the House under the proceedings of the call of the House, shall vote on the pending question. Of those voting on the question and decline to vote shall together make a majority of the

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<sup>106</sup>U. S. Congressional Record, 43rd Cong., 2nd Sess., Vol. 3, p. 1734.

House, the Speaker shall declare that a quorum is constituted; and the pending question shall be decided as the majority of those voting shall appear.<sup>107</sup>

Tucker was quick to offer explanation for this change in the rules but the opposition was just as quick to condemn.

Tucker made the comparison between the House and the English Commons where in the latter a quorum can be ascertained by "ocular demonstration" but that such not the case in the American House. He continued by pointing out that the, "Constitution does not say that a majority voting shall constitute a quorum, but that a majority of the House shall constitute a quorum to do business." He concluded by saying,

...it seems to me not to be in accordance with the progress of the age we live in that we should sit there in a condition of nonaction under the self-delusion we are not present when we are present, and that there shall be a power on the part of gentlemen here upon any question of remaining silent and saying, 'you cannot prove I am here unless I choose to open my mouth.'<sup>108</sup>

Several members of the house spoke against the adoption of the rule. Mr. Garfield was against giving one person the power of declaring the presence of other members and charged it would enable the speaker to,

...bring from his sick-bed a dying man and put him in this Hall, so that the Speaker shall count him, and make his presence against his will, and perhaps in his delirium, count in order to make a quorum, so that some partisan measure may be carried out over the

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<sup>107</sup>U. S. Congressional Record, 46th Cong., 2nd Sess., Vol. X, p. 573.

<sup>108</sup>Ibid.

body of that dying man.<sup>109</sup>

Mr. Blackburn, while not quite so emotional, simply asked who would control the Speaker's seeing, and "how do we know but that he may see forty members more for his purposes than there are here in the House?"<sup>110</sup> A touch of irony was to come out of this verbal skirmish as Thomas B. Reed, in his logical way, added his condemnation to Tucker's rule. Several days later, Tucker withdrew his amendment after Mr. Blackburn, head of the rules committee, let it be known that his committee would bury the rule.

During the next three Congresses, there occurred only isolated instances of quorum obstruction and it proved to be more of a nuisance than a tool to pervert majority rule to impotency. The 50th Congress, however, was victimized by its own rules and its legislative output was meager and passage of the usual routine measures was secured only with the greatest difficulty. The quorum filibusters tended to make the body appear both odious and ridiculous in the eyes of the country. By the second session, the Speaker's situation was pitiable and Congress had demonstrated that the defects of the existing procedure were too deep-seated for any group of leaders to exercise adequate guidance and control

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<sup>109</sup>Ibid., p. 576.

<sup>110</sup>Ibid.

over the course of business. For instance, James B. Weaver of Iowa, and a handful of sympathizers, held the House at bay for eight days by using the quorum or any other roll-call device that would waste the day.<sup>111</sup> For all practical purposes the house had ceased to function as a legislative body. Only those bits of business that commanded an almost unanimous consent were ever passed.

During the summer and autumn preceeding the Fifty-first Congress, comments, articles and interviews with House members pointed the way for an up-coming battle in the House. Thomas B. Reed, the Speaker elect, served notice that he was going to attempt to change the rules, or as he stated:

I ought not to have written the words 'to change the rules,' for that conveys an entirely incorrect idea. No rules have to be changed, for the new House will have no rules. What should have been written is that there will be an effort to establish rules which will facilitate the public business--rules unlike those of the present House, which only delay and frustrate action.<sup>112</sup>

Roger Q. Mills, on the Democratic side, charged the Republicans were bent on mischief and that,

they have some desperate enterprise on foot that their prophetic souls tell them is beyond the boundary of rightful jurisdiction, and that in carrying it out they will meet with stubborn opposition.<sup>113</sup>

The Democrats held the trump card in the silent quorum.

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<sup>111</sup>Ibid.

<sup>112</sup>Thomas B. Reed, "Obstruction in the National House", The North American Review, CXLII (Oct., 1889), p. 427-428.

<sup>113</sup>William A. Robinson, Thomas B. Reed, Parliamentarian, (New York: Dodd, Mead and Co., 1930), p. 15.

The Republicans were a majority by eight, only three more than a quorum, which was set at 165. To make a quorum, the Republicans would be allowed only three absences, which would be impossible with sicknesses and unavoidable absence of members.

The session formally opened on December 2, 1889, and the rules of the preceding Congress were referred to the Committee on rules for consideration and report. Speaker Reed utilized general parliamentary law while awaiting their report and the House moved slowly with routine matters. Finally in the latter part of January, the House started deliberations on four contested Republican seats. On January 29, the West Virginia election case of Smith vs. Jackson was called up. The roll call gave yeas 162, nays 3, not voting 163, and on recapitulation, two Democrats withdrew their votes, making the result yeas 161, nays 2, not voting 165. The Congressional Record tells the story of what happened next:

Mr. Crisp. No Quorum

The Speaker, The Chair directs the Clerk to record the names of members present and refusing to vote:  
(Applause on the Republican side)

Mr. Crisp. I appeal--(applause on the Democratic side)  
--I appeal from the decision of the Chair.

The Speaker. Mr. Blanchard. Mr. Bland. Mr. Blout.  
Mr. Breckinridge, of Arkansas Mr. Breckinridge of Kentucky.

Mr. Breckinridge of Kentucky. I deny the power of the speaker and denounce it as revolutionary. (Applause on the Democratic side of the House, which was renewed several times.)

Mr. Bland. Mr. Speaker--(Applause on the Democratic side.)

The Speaker. The House will be in order.

Mr. Bland. Mr. Speaker, I am responsible to my constituents for the way in which I vote and not to the Speaker of this House (Applause.)

Mr. Speaker. Mr. Brookshire, Mr. Bullock, Mr. Bynum, Mr. Carlisle, Mr. Chipman, Mr. Clements, Mr. Clunie, Mr. Compton.

Mr. Compton. I protest against the conduct of the Chair in calling my name.

The Speaker (Proceeding). Mr. Covert, Mr. Crisp, Mr. Culverson of Texas (hisses on the Democratic side), Mr. Cummings, Mr. Edmunds, Mr. Enloe, Mr. Fithian, Mr. Goodnight, Mr. Hare, Mr. Hatch, Mr. Hayes.

Mr. Hayes. I appeal from any decision so far as I am concerned.

The Speaker (continuing). Mr. Holman, Mr. Lawler, Mr. Lee, Mr. McAdoo, Mr. McCreary.

Mr. McCreary. I deny your right, Mr. Speaker, to count me as present, and I desire to read from the parliamentary law on that subject.

The Speaker. The Chair is making a statement of the fact that the gentlemen from Kentucky is present. Does he deny it? (Laughter and applause on the Republican side.)

The tumult continued with such remarks as:

Mr. Morgan. I beg leave to protest against this as unconstitutional and revolutionary.....

Mr. Outhwaite ('Cries of Regular Order.') I wish to state to the Chair that I was not present in the House when my name was called, and the Chair is therefore stating that is not true. (Applause and cries of 'Order!') It is not for the Chair to say whether I shall vote or not or whether I should answer to my name when it is called. (Laughter and applause.)

.....  
Mr. Crisp. I appeal from the decision--

Mr. Breckinridge, of Kentucky. It is disorderly; the House has ordered a vote and the Speaker has no more right to state that fact from the Speaker's chair than he would have from the floor of the House. It is a disorderly proceeding on the part of the Speaker. (Applause on the Democratic side.)<sup>114</sup>

Speaker Reed continued his count, paying little attention to the general pandemonium created by the members of the House. As he concluded the count and the confusion subsided, Reed offered his ruling and the reasons for it. He started by recalling John Randolph Tucker's efforts to eliminate the silent quorum, ten years earlier, mentioning also the problems with the quorum in Tennessee and reviewing the reasoning of David B. Hill in New York. His arguments were common-sense and not as elaborate as his subsequent published arguments. In essence, he maintained that the House had the constitutional power to compel attendance of members by the sergeant-at-arms and that such power was of no value if members were present and yet refused to be counted as a quorum. Reed said, "Inasmuch as the Constitution provides for their attendance only, that attendance is enough. If more was needed the Constitution would have provided for more."<sup>115</sup>

Tumult even worse than before followed. Brekinridge of Kentucky demanded a point of order and was overruled. He then appealed the decision of the Chair, but an alert Republican moved to take the appeal. Such a motion would, if carried, shut off debate; thus, the Democrats "foamed with rage" and the House saw behavior that has yet to be matched--including one Democrat who, unable to reach the front because of the crowded aisles, came down from the

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<sup>115</sup>Hinds Precedents, op. cit., p. 67.

rear, leaping from desk to desk. Another member from Texas sat significantly whetting the bowie knife on his boot. Tension broke briefly when Representative Spinola of New York, pointing to a picture of the siege of Yorktown on the wall, accused the Speaker of counting the Hessians in the background to make up his quorum.<sup>116</sup> At each call of the roll, Reed counted heads and repeated his formula, "A Constitutional quorum is present to do business," while all the time keeping control of himself, or as the New York Times said, "cool and determined as a highwayman."

Before the issue was settled, the House witnessed some great debate. Carlisle, Turner, Crisp for the Democrats and McKinley, Cannon, Butterworth and Reed for the Republicans. One of the ablest speeches of the debate was made by Butterworth. He argued that a representative was chosen to serve not merely his own constituency but the whole country, and that he had no warrent to attempt to paralyze the action of the House, but that the country had a right to require that he should be in his place and perform his duties. The constitution had specifically given the House the power to compel attendance of its members. What was the object of this power?

Was this authority conferred by the Constitution only to enable us to go through the farce of bringing in the absentees and learning after each member has been seated in his place that, while under the Constitution he is actually personally present to make

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<sup>116</sup>Tuchman, op. cit., p. 95.

a quorum to do business, yet when an attempt is made to do the thing which required his presence, he at once by merely closing his mouth becomes constructively absent? Or he may, in fact, while present, arise in his place and assert that he is absent, and we must take his word for it. What an absurdity on the face of it, no matter how sanctified by age! It is the weapon of the revolutionist. It is the weapon of anarchy.<sup>117</sup>

The Democrats attempted to absent themselves from the House altogether but Reed was able to gather a quorum from the ranks of the Republicans although it meant two members brought in on their sickbeds. This occurred on the fifth day and after the quorum was made the Democrats filed back to their seats and the silent quorum was defeated. A few weeks later the Rules Committee reported out a new set of rules, composed by the Chairman--who was also Speaker of the House. Known thereafter as "Reeds Rules" and adopted on February 14, they provided among other things that (1) all members must vote; (2) one hundred shall constitute a quorum for a committee of the whole; (3) all present shall be counted; and (4) no dilatory motion shall be entertained and the definition of what is dilatory is to be left to the judgment of the Speaker.<sup>118</sup>

The death of the silent quorum reflected a profound alteration in the parliamentary procedure of the House. However, it was not long before the Democrats attempted to

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<sup>117</sup>Samuel W. McCall, *American Statesmen*, Vol. 35: Thomas B. Reed, (Boston: Houghton Mifflin Co., 1914), p. 170.

<sup>118</sup>Barbara W. Tuchman, The Proud Tower, (New York: MacMillan Co., 1966), p. 129.

nullify the quorum ruling and restore the weapon of the silent quorum. In 1892, the Democrats won control of the House by a large enough majority to gather a quorum without being dependent on the Republicans, whereupon they threw out Reed's reform. In the following Congress the Democrats were split on several basic issues and with reduced ranks, were unable always to procure a quorum. Reed was retired from the Speakership but was still in a position of strength as the leader of the Republicans on the floor. From this position Reed organized a filibuster and continually requested roll calls that held up the transaction of business on one occasion for two weeks. Finally the Democrats adopted a rule providing that a member who was present might be counted for the purpose of making a quorum, whether he voted or not. Reed must have enjoyed a sweet revenge but refrained from crowing and instead simply said, "This scene here today is a more effective address than any I could make, I congratulate the Fifty-Third Congress".<sup>119</sup>

The quorum rules that Reed initiated and adopted by the Democrats were sustained in a decision of the Supreme Court of the United States. The case of *U.S. v Ballin* arose out of the act providing for the classification of worsteds, passed by the House on May 9, 1890. On the vote there appeared yeas 138, nays 0, not voting 189. The Speaker

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<sup>119</sup>Ibid., p. 130.

then announced the names of 78 Members present and not voting, along with those who were, showed a total of 212 Members present, constituting a quorum present to do business. The validity of this act was questioned and was carried as far as the Supreme Court. The following paragraph gives the substance of the court's decision:

As appears from the Journal at the time this bill passed the House, there was present a majority, a quorum, and the House was authorized to transact any and all business. It was in a condition to act on the bill if it desired. The other branch of the question is whether, a quorum being present, the bill received a sufficient number of votes; and here the general rule of all parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body.<sup>120</sup>

The effect of Reed's modification of the quorum and the Supreme Court concurrence has rendered the quorum a limited tool of obstruction. It can however, be used to accomplish other ends that amount to obstruction. For instance during the 1964 civil rights bill debate, the Southern members of the Senate were staging a filibuster. Each day, Senators Humphrey, and Kuchel, the bill's floor managers, wrote letters to Northern Senators exhorting them to be on hand to answer quorum calls. The Southern strategy was to keep demanding roll calls in order to prolong the filibuster. If a quorum failed to answer the roll, the Southerners could adjourn for the day and rest up for the next day's filibuster. When the Northerners failed to raise a quorum on April 4,

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<sup>120</sup>United States v. Ballin, 144 U.S. 1.

Senate Majority Leader Mike Mansfield, called this, "a travesty on the legislative process."<sup>121</sup>

Modern American usage of the quorum. Aside from quorum obstructionism, another facet of the quorum that has been troublesome to organizational bodies has been the question of just what constitutes a quorum. Chapter one cites several definitions of the quorum that are offered in selected parliamentary procedure textbooks. All are very general and are open to the types of questions that follow the definitions, "Supra, p. 16, 17".

Once again, the House of Representatives furnishes an excellent opportunity for the development of procedure to be traced in respect to this aspect of procedure. The constitution states that a majority of each House shall constitute a quorum. In the absence of a set number, court decisions have established the majority to be the legal quorum number.<sup>122</sup> In the House the question emerged under the Speakership of Galusha A. Grow, as to just what precisely constitutes a quorum. In 1861, Vallandigham of Ohio, made a point of order that no House existed since the Chair had counted a quorum on the basis of a majority of

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<sup>121</sup>The Humboldt Times, June 23, 1966, p. 4.

<sup>122</sup>Masson in his book on Legislative procedure has indexed the cases in detail that substantiate the majority as the quorum. See particularly *Brown v Dist. of Columbia* (1888), 127, U.S. 579, 32L. Ed. 262. Masson, op. cit., p. 336.

members chosen, not on the basis of those sworn in. The reasons for such a request probably stem from the fact that at the beginning of the Civil War a large number of constituencies refused to elect, thus it was practically impossible to secure the attendance of a majority of all possible members. The speaker responded by quoting the constitution, "The House of Representatives shall be composed of Members chosen every second year by the people of the several States." Vallandigham did not elect to argue the point and the house acquiesced in the decision.<sup>123</sup>

There was no further discussion over the question of what constituted a quorum of the house until 1879, when Speaker Randall from Maine, concluded that although there was a majority of the House present a true quorum could be fewer, to account for the fact that there were two vacancies. Whether Randall was correct to conclude two fewer for a quorum because of the vacancies was not challenged, hence no decision.

The question was brought up again on May 10, 1886 when Speaker Carlisle stated that it was an open question "as to whether or not it requires a majority of all members who might be elected under the law to the House to constitute a quorum or merely a majority of those who are Members of the House."<sup>124</sup> The matter was left at this point until

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<sup>123</sup>Hinds, op. cit., p. 60.

<sup>124</sup>Ibid.

September, 1890. Thomas B. Reed was Speaker. Charles Crisp of Georgia made the point that no quorum was present since the quorum count had excluded four vacancies. Reed had to decide whether 164 members were a quorum or, counting the four vacancies, 166 was the legal quorum. In his decision, which reviewed the previous decisions on the matter, Reed concluded that the words, "those chosen" meant members chosen then alive, thus 164 would be the proper number.

But Reed's decision still did not go far enough and in 1906 it was necessary to re-define what constituted a proper quorum. In the decision of that year, Speaker Cannon of Illinois turned to a Senate Committee report which stated a quorum was a majority duly chosen and sworn. For the purposes of the House, he added that a quorum consists of a "majority of those members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House." Speaker Cannon's ruling of April 16, 1906,<sup>125</sup> is still regarded as the correct interpretation of the phrase in the constitution that states, "a majority of each (House) shall constitute a quorum to do business," and continues to be regarded as the definitive ruling on this point.

Since Speaker Cannon's ruling, the question has rarely

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<sup>125</sup>U. S., Congressional Record, 59th Cong. 1st Sess., 1906, p. 5354.

been the subject of floor discussion and frequent reaffirmations of the ruling by the Chair have not been required. However, on May 9, 1913, Speaker Clark, in response to a point of order that 216 members did not constitute a quorum, stated, "Two hundred and sixteen Members constitute a quorum. Four hundred and thirty-four Members constitute the whole membership of the House, but one is dead and three have never been sworn in."<sup>126</sup> The matter has been left at this and no new efforts at defining the quorum requirement of the constitution have been attempted.

Many decisions and acts that have been passed by Legislative bodies, corporations, boards and private groups etc., have been challenged and tested in light of their procedural legality. As a result, rules from the House of Representatives as well as other organizations, have had their legality tested in the courts of law for over the past one hundred years and there now exists a series of legal cases that define and limit the quorum concept. The following, from Words and Phrases,<sup>127</sup> cover the general usage of the quorum as evolved by the courts:

A majority always constitutes a 'quorum' of a deliberative body, in absence of some legal requirement fixing different number, and can take any action within power of body to transact. *Herring v. City of Mexia, Tex.*,

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<sup>126</sup>U. S., Congressional Record, 63rd Cong., 1st Sess., p. 1457.

<sup>127</sup>"Quorum," Words and Phrases, Vol. 35A.

The general rule applicable to boards, commissions and similar bodies or entities of a definite membership applies to a building commission appointed to build county buildings unless the statute otherwise specifically provides, to-wit, that a 'quorum' consists of a majority of its members, and that such 'quorum' due notice having been given to the time and place of meeting of all members, can exercise the powers of the commission: and further, that action of a majority of such 'quorum' is the action of the body or commission. State ex rel. Green v. Edmondson, 23 Ohio Dec. 86, 96, 12 Ohio N.P., N.S., 577, 588.

Under generally accepted Rules of Parliamentary Procedure, in absence of contrary provision, a majority of authorized membership of a body, consisting of a definite number of members, constitutes a 'quorum' for the purpose of transaction business. McCormick v. Board of Ed. of Hobbs Municipal School Dist. No. 16, 274 P2d 299, 308, 58 N.M. 648.

In actions to have office of county manager of Florence county declared vacant, to restrain hold-over officer from continuing to exercise duties thereof, and to compel him to turn over office to alleged new appointee, where there was a consistent tie on every ballot of governing board of Florence county seeking to elect county manager and three members withdrew from meeting after 5 o'clock and remaining three members unanimously voted for county manager, evidence sustained finding that at the time of attempted election there was no 'quorum', essential to valid election. Gaskins v. Jones, 18 S.E. 2d 454, 456, 457, 198, S.C. 508.

Where by-laws of corporation required that four be a quorum at directors meeting, but, at meetings where bonuses were voted to majority stockholder who was dominating director, only four directors including the dominating director were present, there was no 'quorum', meetings were illegal, and bonuses were mere 'gratuities', especially where notice of such meetings was not given. In re Fergus Falls Woolen Mills Co., D. C. Minn., 41 F. Supp. 355, 362.

'Quorum' within corporate bylaw providing that majority of directors shall constitute quorum meant majority of remaining directors, not majority of total authorized number of directors, and two of remaining three directors could elect individual to fill vacancy where third remaining director and refused to attend

election meeting and other bylaws provided for vote of majority of 'whole board' and three-fourths of 'whole board' where serious action was involved. Gearing v. Kelly, 222 N. Y. S. 2d 474, 476, 15 A.D. 2d 219.

Under const. art 6, SS 5, 8, Rev. St. 1908, SS1412, a majority of the members of the Supreme Court constitute the court en banc, and a majority of the court as thus constituted may decide a case, three judges at least concurring; a 'quorum,' as used in the statute, meaning a majority of the entire body. Mountain States Telephone & Telegraph Co. v. People 190 P. 513, 517, 68, Colo. 487.

As used in Const. art. 6SS2, par. 1, providing that the Court of Errors and Appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a major part of them, the words 'a major part of them' do not refer merely to the six judges, but refer back to all of the antecedents and mean that a majority of the entire court, including the chancellor, the justices, and the six judges, shall constitute a 'quorum' being sufficient to render a decision. In re Hudson County, 144 A. 169, 171, 106 N.J. Law, 62.

A 'quorum' of grand jury means that at least 12 grand jurors were present. People v. Dale, 179 P. 2d 870, 872, 79 CA2d 370.

It is now well settled that in all cases the majority of a legislative body is a quorum entitled to act for the whole body, unless the power that creates it has otherwise directed. Zeller v. Central R. Co. 35 A. 932, 934, 84 MD. 304, 34 LRA 469.

Lastly, the method of computing a quorum should be noted. The following example by Sturgis is a method that meets legal requirements and is in general use by private organizations and in many cases, official and legislative bodies. In computing a quorum, only members in good standing are counted. The quorum of an organization with a membership list of 262 members and a required quorum of

one-sixth of its members would be computed as follows:

Total membership list .....	262
Delinquent members.....	12
Members in good standing.....	250
Number required for quorum.....	42

Since a quorum always refers to the number of members present and not to the number voting, in the example just cited, if only 25 voted on a question, the vote would still be legal provided there was present a quorum of 42 or more members in good standing. A member who is disqualified because of personal benefit or interest in a particular question cannot be counted for the purpose of computing a quorum for a vote on that question or of counting a majority of the quorum.<sup>128</sup> The presiding officer, if he is a member of the organization, is counted in computing a quorum.<sup>129, 130</sup>

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<sup>128</sup>Enright v. Heckscher (1917) 240 Fed. 861, 153 C.C.A. 549.

<sup>129</sup>Shugars v. Hamilton (1906) 122 Dy. 606, 92 S.W. 564

<sup>130</sup>Alice F. Sturgis, Standard Code of Parliamentary Procedure, (New York: McGraw-Hill Co., 1950), p. 15.

## II. PHILOSOPHY OF THE QUORUM

Parliamentary procedure is a state of mind as much as a system of maintaining order. Take away the attitude and desire for order and progress in conducting the business of an organizational body and chaos will ensue. Like all of man's law, parliamentary procedure requires an affirmative attitude for orderly group action to transpire. Strip away the affirmative attitude and only the mechanical rules remain; these rules are inadequate by themselves.

Wilkenson Gray has constructed a set of principles under which true and effective parliamentary procedure must work. The first principle and perhaps most important is that the group, as a whole, has the right to determine its own course of action.<sup>1</sup> The device which is used to determine which course of action a group may follow is often discussed, namely the use of voting or balloting, but these devices rely on more basic, seldom considered principles. This basic and fundamental aspect of democratic voting and decision making is the concept of a majority and minority; or, the concept that the greater part of a voting body determines the will of the whole. In fact, the concept of

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<sup>1</sup>Wilkenson Gray, "Philosophy of Parliamentary Law", Quarterly Journal of Speech, (October, 1941), p. 437.

a minority with rights that will acquiesce to the will of the majority as if it had been their own, "is an invention no less definite than that of the lever or wheel, and is found for the first time as an every day method of decision in Greek political life."<sup>2</sup>

The exact moment or place of the first instance of majority rule will probably never be known but one obvious answer is simply that the side with the greater strength or number of swords would have its will prevail. In any event, majority rules emerged in ancient Greece as a standard method of policy making. Since then, in many and various societies the majority rule concept has been maintained as a method of decision making and in modern democracies is a fundamental rule.

There are, of course, those political systems that in both theory and practice repudiate the idea of majority rule as well as minority existence. For instance, in theory Thomas Hobbes<sup>3</sup> held that government, when instituted, was necessarily to have absolute power, and not necessary to consider the rights of minority or even of a majority of subjects, as opposed to the will of the man, or assembly of men, to whom was given the sovereign authority.<sup>4</sup>

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<sup>2</sup>Bernard Bosanquet, The Philosophical Theory of the State, (London: MacMillan and Co., 1925), p. 4.

<sup>3</sup>Thomas Hobbes, Leviathan, (London: Andrew Crooke, 1651), p. 115.

In practice we need but look to modern day communism, i.e., Red China to find an example where no discernible effort is made to allow the majority to rule, or minority protection to exist outside the power elite.<sup>4a</sup> Most western governments that are democratic in design are in part considered democratic because rule is by majority and those in power attempt to protect the minority--often referred to as the "loyal opposition".

Thus, in the development of parliamentary procedure the concept of majority rule and minority acquiescence and protection are basic. A government or ruling body that does not allow majority rule and minority protection cannot be considered truly democratic in the usual sense of the word. Further, a government may be ruled by majority but unless the minority is protected, a realistic form of free government cannot exist. It is minority protection, or rights beyond the reach of the majority which constitute liberty, not the power of the majority.<sup>5</sup>

Under a democratic government that professes rule by

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<sup>4</sup>Hobbes neglects to explain just how differences of opinion between members of the assembly or sovereign and assembly were to be resolved

<sup>4a</sup>Peter S. H. Tanz, Communist China Today, (New York: Praeger, Inc., Pub., 1957), p. 178.

<sup>5</sup>Francis Lieber, Civil Liberty and Self-Government, (Philadelphia: J.B. Lippincott & Co., 1883), p. 31.

the majority, two conditions concerning the minority-majority concept may develop which contain evils of such magnitude as to possibly corrupt the system. First, on initial impression what appears to be rule by majority may in fact be quite the opposite; in reality an organized minority may impose its will on a disorganized majority. The will of the people practically means the will of the most numerous or the most active part of the people, the majority, or those who succeed in making themselves accepted as the majority.<sup>6</sup> This same trend can easily occur outside the framework of national governments as any public or private organization can be ruled by a genuine majority or suffer from a minority that dictates to the majority in the name of majority rule. In practical life, there exist classes or blocs which do the ruling. The management of public affairs and private, organization business, or policy direction is generally in the hands of a minority of influential persons, to which the majority will defer.

Concern for this very problem led the authors of the Federalist Papers to warn the new nation of America to be aware of a powerful minority since,

It is, that in all legislative assemblies the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings. In the first place, the more numerous an assembly may be, of whatever characters composed, the greater is known to

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<sup>6</sup>Bosanquet, op. cit., p. 70.

be the ascendancy of passion over reason. In the next place, the larger the number, the greater will be the proportion of members of limited information and of weak capacities.<sup>7</sup>

Secondly, and of less immediate consequence to parliamentary procedure, is the condition known as the majority tyranny.

Many thinkers have considered the problem but it was Tocqueville, the early observer of America, who made sobering comments on the emmanent tendencies toward majority despotism in America.

He prophesied that:

If ever the free institutions of America are destroyed, that event may be attributed to the unlimited authority of the majority, which may at some future time urge the minorities to desperation, and oblige them to have recourse to physical force. Anarchy will then be the result, but it will have been brought about by despotism.<sup>8</sup>

The America of 1830's was the subject of Tocqueville's concern and now almost 150 years later, the tyranny of the majority is still a potential threat.

Hamilton and Madison were aware of the latent dangers of a large legislature and in the Federalist Papers warned

...the more multitudinous a representative assembly may be rendered, the more it will partake of the infirmities incident to collective meetings of the people. Ignorance will be the dupe of cunning, and passion the slave of sophistry and declamation. The people can never err more than in supposing that by multiplying their representative beyond a certain

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<sup>7</sup>Alex. Hamilton, John Jay, and James Madison, The Federalist or the New Constitution, (London: J.M. Dent, 1911), p. 300.

<sup>8</sup>Alexis de Tocqueville, Democracy in America, Trans, Henry Reeve, (New York: Appleton-Century-Crofts, Inc., 1904), Vol. I., p. 287.

limit, they strengthen the barrier against the government of a few.<sup>9</sup>

Parliamentary procedure is constructed on the concept of rule by the majority--however, imperfect this may be or whatever be the built-in problems or propensity for abuse. Within the framework of procedure the concept of the quorum requirement has been devised. There are several immediate and easily discernible reasons for a quorum.

First it can be utilized to force a degree of attendance. It is somewhat of a paradox that the history of freedom of government and the establishment of democracy has been the fight to insure the right of all persons to have a voice in their government; yet, frequently legislative organizations are hard put to devise methods of forcing their members to attend and do the work required to maintain representative government. To represent one's community or organization is considered a privilege but such has not always been the case. For instance in medieval England, where the concept of representation was beginning to develop, Pollard noted that,

The difficulty was to enforce the attendance of representatives, medieval "liberties" were nearly fatal to representation and to the county courts, for the most cherished liberty was that which excused the lords and his tenants...<sup>10</sup>

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<sup>9</sup>Hamilton, loc. cit.

<sup>10</sup>Pollard, op. cit., p. 109.

It has been noted elsewhere in this paper the attendance problem that preceded the adoption of a quorum requirement in the house of commons in 1640. The quorum requirement may have eased the problem of a thin house, but far from solved it. Forty is a small number when the total of the house for over three hundred years has been over five hundred members. Yet not always was this simple quorum number easy to come by. In the House it was enacted in 1678, thirty-eight years after the quorum requirement, that, "...absentees should be fined 40L, and if they refused to pay the fine, then to be committed to the tower."<sup>11</sup> In 1693 the speaker was directed to write letters to the sheriffs of respective counties, requesting they send back errant members of the house. The non-attendance of members in the House is cause for concern but sometimes the reason is comic, as when no House could be formed to discuss the rival claims of the old and new East India Company--the members had dispersed to see a tiger baited by dogs.<sup>12</sup> For the House of Commons, the quorum number is small and is inadequate to offer but a minimum assist in developing a House of at least fifty percent of the members. Yet, attempts to change the quorum were few and readily defeated.

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<sup>11</sup>W. C. Townsend, History of the House of Commons from 1688 to 1832, (London: 1843, Vol. II), p. 366.

<sup>12</sup>Ibid.

There are certain pragmatic considerations that should be noted in regards to small attendance. In the House of Commons, the American Congress or any private or government group, optimum efficiency of procedure does not necessarily occur with full attendance. In fact, most organizations do operate better with a small number in attendance. But here the problem of a minority control again becomes a concern; hence, here must be in attendance enough of the membership to insure diversity of views and discussion. Moreover, the larger a legislative body is made, the more difficult it becomes for the members to combine successfully for purposes recognized as improper. Or as Sidgwick stated,

...the enlargement of the assembly beyond a certain point tends to give undue advantage in debate to the less valuable qualifications for oratory, and makes its meetings more liable to lapse into confusion, impulsiveness, and intemperance of a mob; and it involves the further drawback that the members have greater difficulty in obtaining useful personal knowledge of each other.<sup>13</sup>

An even stronger argument can be found in the Federalist Papers:

...In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority.<sup>14</sup>

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<sup>13</sup>Henry Sidgwick, The Elements of Politics, (London: MacMillan and Co., 1897), p. 406.

<sup>14</sup>Hamilton, loc. cit.

Secondly, the quorum can protect the majority or a large number of a body from an unusually small number of members who might attempt to proceed with business favorable only to those present. In theory, as Cushing points out, the condition of fewer than the total membership doing business is not really possible under the strictest adherence to parliamentary practice,

...where authority is conferred upon several persons, to be exercised with others all the persons authorized must be present in order to exercise it, and that authority delegated to the discretion of an individual, cannot be delegated by him to another.<sup>15</sup>

The strict adherence to this rule would be cumbersome if not impossible; hence, exception is made and only a specified number or quorum need be present. The question quickly arises, as to just what is a proper quorum number. Some organizations use a set number, some use a percentage. Most organizations, particularly governmental legislatures, have a set number that is specified by the organization's constitution. How this number is computed or determined is considered in another chapter.

The selection of a quorum number can be quite a capricious thing with each organization attempting to meet its particular needs. It has been noted that the English

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<sup>15</sup>Cushing, op. cit., p. 94.

House of Commons requires forty to form a quorum; the United States House of Representatives requires a majority of those present and voting as do most state governments. Over twenty use the same words that the United States Constitution does: "a majority of each house shall constitute a quorum to do business." Some state houses require two-thirds including Illinois, Tennessee, Indiana, etc. In New Hampshire seven members of the senate make a quorum; in Massachusetts not less than sixteen for the senate and not less than sixty for the house. In all, most states simply call for a majority and private organizations that meet regularly in one geographic area do the same. For national organizations with large memberships a small percentage is generally required.

But what is the logic that can allow twenty members of a group, as in the English house, the power to speak in the name of 670 members, or if a majority as in the United States House, 119 members binding 435 as if all had assented to the enactment? Parliamentary procedure allows most motions to pass with a majority of affirmative votes but with a quorum of a majority, the majority of the majority may legally proceed with business in the name of the entire body. Thus, with the quorum at a majority, 25 percent is needed for the transaction of business.<sup>16</sup> With the quorum

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<sup>16</sup>Cushing points out how even the small number of forty has been stretched on occasion in the commons. The

number smaller, a corresponding smaller portion of the membership constitutes a quorum. Serious doubts can be raised about a system that allows such a small number to speak for the entire body, particularly in the name of majority protection. Another problem of quorum usage that may harm the majority is a result of a quorum requirement that is too high or when adequate attendance is a problem. What might occur is the power might shift from the majority to the minority, since without minority attendance there can be no business accomplished. Hypothetically, it is possible for one single member to veto any bill if the quorum is formed by only one more than the required quorum number, for without his vote or attendance no quorum is present. This amounts to a potential club over the head of an organization and can be used by the minority to dictate its will on the entire group. Hardly does such a situation maintain accord with fairness and majority will. In his commentaries on the constitution, Joseph Story considered the problem of the majority quorum and stated,

If such a course were generally allowed, it might be extremely prejudicial to the public interests in cases, with required new laws to be passed, or old ones modified, to preserve the general, in contradistinction to the local or special interests. If it were even

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instance was a house divided, "twenty-seven ayes and eight nays, the aggregate of which, with the two tellers on each side and the speaker, just made up a quorum, the question was thereby held decided." Ibid., p. 122.

confined to particular cases, the privilege might enable an interested minority to screen themselves from equitable sacrifices to the general weal; or in particular cases, to extort undue indulgences.<sup>17</sup>

Whether the minority elects to make "equitable sacrifices" or "extort undue indulgences" is a moot point as this situation is wholly in violation of the principles of procedure that maintains the majority will, shall prevail.

If the use of the quorum for purposes of forcing attendance and protection of the majority are legitimate uses of the quorum, there are other and less noble uses to which the device may be put. Champ Clark, after 25 years in the House of Representatives, part of those as Speaker, observed many of the diverse possibilities of the quorum:

...to defeat a bill which some member deems obnoxious,  
 ...because some one is angered by the proponents of a bill, ...because some member who is not opposed to the pending bill wants to kill time so that some other bill to which he is opposed cannot be considered,  
 ...because of a desire for revenge for the recent defeat of his own pet measure, ...because he desires to annoy somebody else or to show his power, ...because he is weary or hungry or has an engagement or thinks the House has sat long enough, and hopes by raising the point of no quorum to force an adjournment.<sup>18</sup>

At best such uses of the quorum could only be considered dilatory, but never-the-less under the right circumstances such ends could be realized with the use of the quorum.

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<sup>17</sup>Joseph Story, Commentaries on the Constitution of the United States, (5th ed.; New York: Little Brown & Co., 1891), Sec. 35.

<sup>18</sup>Champ Clark, My Quarter Century of American Politics, (New York: Harper & Brothers Publishers, 1920), Vol. I, p. 199.

Champ Clark may have had tongue in cheek when he listed the above, but there can be no doubt as to the truth involved. All of which points to the question as to how far can the quorum--or any parliamentary device--be perverted to gain ends that are unrelated to initial purposes? In the case of the quorum, the opportunities have been numerous.

## CHAPTER V

### SUMMARY AND RECOMMENDATIONS

#### I SUMMARY

The purpose of this study was twofold: to discover a history of the quorum and to discover a philosophy of the quorum as it is used as a function or device of parliamentary procedure. The study was primarily aimed at events in American political history but traced the origins and usages of the quorum from its fragmentary beginnings in medieval English parliaments to its development as a standard practice of parliamentary law.

The study revealed that a form or concept of the quorum was utilized as early as the 12th century during the germination period of the English parliament. The concept is stated by the label "quorum" in 1327 and linked with the development of the office of the justice of the peace. The quorum was adopted as a constant rule of procedure in 1640 by the English House of Commons. Its function at that time appears as an effort to force attendance.

A quorum requirement was consistently imposed by the English monarch in the charters granted to the various American colonies--often in an attempt to maintain a form of political control. The use of the quorum device was wide-

spread in state legislatures and by the time of the constitutional convention of 1887 it was an item of concern for the framers of the new constitution. Despite certain objections the quorum in both houses was set at a majority, paving the way for the utilization of the quorum as a device of parliamentary obstruction.

On occasion the quorum had been used as a device of obstruction in the House of Commons but the optimum condition for stifling parliamentary business was not realized until John Q. Adams refused to answer the quorum call in 1834 in the American House of Representatives. Although this practice had been used in legislative bodies before, Adams brought it into respectability. The practice became known as the silent or disappearing quorum. Once established the silent quorum was used in many state legislatures. Its continued use to obstruct reached intolerable limits in the 50th United States Congress. Thomas B. Reed, the Speaker of the 51st Congress, faced the issue and was successful in breaking the silent quorum. His parliamentary revision of quorum usage was upheld by the Supreme Court.

Finally, the study discussed assumptions which must be present to provide a realistic use of the quorum. Such assumptions included a system of democratic voting and decision making based on the concepts of majority rule and minority acquiescence and protection. The study of the philosophy of the quorum revealed the intensity and extent to which

men will struggle to attain a realistic form of group management for deliberative bodies--of which the foremost goal of the quorum has been to secure a more fair system of democratic representation and action to insure the rights of all persons.

## II RECOMMENDATIONS FOR FUTURE QUORUM USAGES

One of the more pressing problems related to parliamentary procedure today is the inability of organizations to update or reform their own methods of doing business. As organizations, and particularly legislative branches of government, travel their evolutionary path, discarding old duties and responsibilities while adding new ones, they tend to continue to utilize the same procedure. When viewed in terms of decades and centuries, certain practices become quite antiquated and should be discarded. It is important that organizations be aware of the need to review the mechanics of their procedure and fit it to the organization's real needs. Such is particularly the case with legislative branches of government where rules committees continue to add but rarely subtract or synthesize their practices. In this age of advanced technology, when the magic of the computer is becoming commonplace, organizations would do well to consider how they might gain from the utilization of mechanical devices to speed their procedure.

In specific respect to the quorum as a function of

parliamentary procedure, the results of this investigation indicate that many organizations should review their quorum requirement in light of the following recommendations for future quorum usages.

First, organizations without a specific need should eliminate the quorum requirement--subject to the implementation of certain safeguards. In this era of rapid communications there should be no quorum requirement for the opening or continuance of business. The ease by which information can be transmitted, received and recorded with electronic devices allows sufficient communication between members of organizations without each others physical presence. However the following, in whole or part, should be used when a specific quorum is not required:

1. Calendars set up for work periods, sessions, etc. and distributed to all members or units;

2. Printed agendas submitted to all members at a set time before each scheduled meeting;

3. A majority decision to be considered valid regardless of the proportion of the whole voting, provided that if the decision is challenged it will be considered at a fixed time at the next regular meeting period of the organization and shall then be decided without debate by a majority of those voting.

Second, when an organization elects to require a quorum number for the transaction of business, the following are recommended:

1. The quorum requirement should emanate from a constitution in order to prevent easy access to a potential device of obstructionism. Further, this makes it difficult for the executive to gain undue control over the legislative by preventing executive attempts to reduce the quorum and thus gaining undue persuasion and advantage:

2. Recognition by the chair that when a quorum does not exist it is his duty to so notice and take appropriate action within the framework of the organization's constitution. When a quorum is assumed when one is not present, the situation is contrary to fact and at best an ostrich-like approach:

3. The quorum requirement should not be used as a device to force attendance, as in early English Parliaments, since such a practice creates the potential for new, additional problems. A new system should be utilized to force attendance--if it need be forced at all:

4. A high quorum number should be selected by an organization whose structure includes a strong executive, i.e., broad powers given to a president, mayor, etc. Such a number will reduce the possibility of executive attempts to manipulate a select few members to form a quorum to do the executive's--or anyone else's special projects:

5. Each organization should enact rules that call for the reading of bills, taking of votes, etc., only on given days or meetings in a regular sequence.

6. Members should be required to answer quorum calls if physically present, or suffer official reprimand and deemed in contempt, or possibly fined:

7. For legislative bodies without strong executives, as opposed to private, single purpose groups, the quorum number should be low--at least less than a majority, to allow for the multiplicity of legislative business. There are many aspects of business which a fairly small portion of the whole can handle with dispatch while being fully accountable to total membership. Redress of any alleged wrongs could be considered by opening debate:

8. Any large organization and particularly legislatures of civil governments should use electronic devices to speed quorum counts.

The above are listed in hopes that the quorum, or lack of one, will in the future be a device to speed parliamentary procedure, and assist in ending the problems historically associated with it.

### III RECOMMENDATIONS FOR FUTURE STUDY

This study has been limited to one rule (or device) of parliamentary procedure and makes no attempt to investigate the numerous other devices which form the corpus of rules known as parliamentary procedure. In fact, there is little evidence to suggest that parliamentary procedure has been the target of a great deal of historical study at any time. This absence forms the justification of additional studies

into the developments and philosophies of parliamentary procedures.

The past two thousand years have seen continual growth of regulations imposed bit by bit or in bulk, as in the case of legislative bodies that underwent major reform acts resulting in fundamental changes and additions to procedure. There is a need then, not only to probe deeper into aspects of the quorum but to trace historically the many faceted devices of procedure from their earliest appearances, through their adoption and modification, to the final stage of common usage.

Specifically then, there is a need for additional studies into the growth of rules and philosophies of parliamentary devices in order to one day form a basis of a comprehensive history of parliamentary procedure. Further, a need exists for investigations into the status of present day parliamentary procedure to determine comparative relationships between major private and public legislative bodies of the world.

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