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CRAWFORD SCHOOL OF ECONOMICS AND GOVERNMENT

Rules of Procedure for National Assemblies

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About the Parliamentary Studies Centre

The Policy and Governance Program in the Crawford School of Economics and Government and the Political Science Program, Research School of Social Sciences (RSSS), have agreed to establish a Parliamentary Studies Centre, drawing on strengths in both programs, with Professor John Uhr as the foundation director. The two ANU programs have agreed to share the start-up costs, with a Management Board comprising Professors Andrew MacIntyre and Richard Mulgan from the Crawford School, and Professors Rod Rhodes and John Wanna from RSSS.The presence of the Centre for Democratic Institutions (CDI) in Crawford, under Dr Ben Reilly's directorship, adds considerably to the Centre's capacity to address regional interests in parliamentary processes.

The Centre operates more as a research broker or facilitator than as a stand-alone research entity.The Centre welcomes expressions of interest from those seeking advice or assistance with academic research on parliamentary studies.The Centre, however, is not set up to accommodate visiting fellows.The aim is to keep the organisational overheads to a minimum in order to convert available research funds into research outputs.The objective is to seek out funding that can be directed to researchers who are best placed to carry through with appropriate research.The Centre particularly welcomes expressions of interest from researchers seeking to participate in the project on 'institutional strengthening' described below.

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Rules of Procedure for National Assemblies

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The rules of procedure of a national assembly are as important to the assembly as the constitution is to the nation. The rules establish a framework for governance for the assembly just as the constitution does for the nation.

The phrase 'rules of procedure' actually is narrow and even misleading; some national assemblies refer instead to their 'standing rules' or their 'standing orders.' (All three phrases are used interchangeably here.) The rules of procedure do establish the basic elements of the assembly's procedures for acting on legislation and other matters, but the rules usually do much more than that. For example, standing rules typically govern the organization of the assembly's committees and may identify key staff positions; some standing orders even regulate the organization of party groups in the assembly. The rules may establish these organizational units and specify the responsibilities, authority, resources, and membership of each, as well as other aspects of their operations. In addition, assembly standing orders often contain provisions affecting the election of its members, the standards governing their conduct while in office, and aspects of the assembly's relations with other institutions of the national government, especially the executive, and even with the public.

Writing the rules of procedure for a national assembly is a delicate and demanding task. Any national assembly has much to learn from the successes and failures of other assemblies, especially those facing similar challenges and functioning as part of similar constitutional systems. It is essential to bear in mind, however, that an assembly's standing rules are words on pieces of paper. What ultimately is more important than these words is the spirit that has to underlie them in a durable democracy. That is the spirit of mutual respect, tolerance, moderation, and compromise. If assembly members do not share this spirit, their assembly is doomed to failure, no matter what their standing orders may say. Even in the most polarized national assemblies in stable modern democracies, the largest party group outside of the executive government always is the opposition, not the enemy. There is no distinction more important for the survival of democracy.

The first half of this paper focuses on the nature and sources of rules of procedure for democratic national assemblies, and how those rules relate to the larger framework of governance of which the assembly is a part. The second half of the paper discusses some of the key issues that rules of procedure often address, especially the procedures for engaging in deliberation and decision-making and for debating subjects of national importance. The paper concludes with some thoughts on criteria for evaluating rules of procedure.

The nature and sources of rules of procedure

Significance and effects of the rules

An assembly's rules of procedure are critically important for at least four reasons.

First, its rules lend order, stability, and predictability to the way in which the assembly does its work. Before any large group of people can make any decisions, they first must know how they will make those decisions. If a group meets only once and there is only one decision for them to make, they may not need any formal rules of procedure. Instead, the members of the group, if it is part of a democratic society, simply may assume that everyone should be allowed to speak and make proposals, and that eventually they will reach a decision by consensus or they will make their decision by majority vote. However, a large group that meets repeatedly to make many important decisions will find it essential to have a collection of rules of procedure that all its members understand and accept. Otherwise, the group is likely to spend too much time arguing about the procedures they should follow, and not enough time focusing on the substantive decisions they are expected to make. A Speaker of the British

House of Commons even argued more than 200 years ago that '[i]t is much more material that there should be a rule to go by than what that rule is….' In other words, it is better to follow an imperfect rule than not to have any rule at all to follow.

Second, the rules define how much protection the opposition and political minorities in the assembly have against a majority that might be tempted to abuse its powers. The rules help to ensure that the assembly is governed by its own 'rule of law,' not by the preferences and interests of a temporary majority of its members. The rules of national assemblies typically state that most decisions will be made by a majority vote of all its members (sometimes called an absolute majority) or a majority of those members who are present when the vote takes place (sometimes called a simple majority). This could mean that the majority would have the power to do whatever it wants unless its power is controlled by the assembly's rules. As Thomas Jefferson, the American political theorist and politician, wrote at the beginning of the 19th century, 'as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted.' Only a strict adherence to these rules can protect the minority or opposition in the assembly from a wanton exercise of power by the majority. Consequently, only the assembly's rules of procedure can ensure that the assembly may consider all subjects of national importance, not just those chosen by a numerical majority.

Third, the rules allocate responsibilities and powers among the members of the assembly and the organizational units they form within it, such as party groups and committees. What powers does the president or speaker of the assembly have? How will he or she be chosen? Do party groups enjoy special rights and powers that are not enjoyed by assembly members who are not affiliated with one of those groups? Does each party group have the same rights and powers, or are their rights and powers affected by the number of members in each group? Will the assembly create committees from among its members? If so, what are the authorities and duties of each committee? For example, will committees review bills—that is, proposed laws—before they are discussed in plenary meetings? May committees amend proposed laws, or may they propose amendments on which all the members will vote during plenary meetings? May committees propose changes in the national budget that the executive government proposes? These are only a few examples of the kinds of questions that standing rules usually answer.

Fourth, the rules also affect the relations between the assembly and other national institutions of governance as well as with the people whom the assembly represents and serves. The basic framework of relations among the assembly, the executive government, and the judiciary is to be found in the national constitution. The standing rules of the assembly help to transform this framework from abstract principles into the practical arrangements that the daily process of governance requires. To offer just two examples, how do members of the executive government and members of the assembly communicate with each other? The assembly's rules may control if, how, and when officials of the executive government can participate in the proceedings of the assembly. How are citizens able to know what decisions the assembly has made and what positions its individual members have taken? The standing orders may determine whether a complete transcript of assembly debates is made and published. They also control how the assembly conducts its votes and whether the media and the people have access to information on the votes cast by each party group and each member of the assembly.

For all these reasons, and undoubtedly others, a national assembly's rules of procedure provide more than its skeletal framework. They also provide the connective tissue that enables its parts to move and work together. The content of these rules can have a profound effect on how well the assembly will work and in what direction it will move. An imperfect rule may be better than no rule at all, but what the rules say is of critical importance. Rules often are not politically neutral; frequently they work to the advantage of some individuals and groups in the assembly and to the disadvantage of others. To be effective, assembly members must understand the rules of procedure that govern them. It is equally important that they recognize the importance of these rules and appreciate the need to respect them and comply with them.

The constitution and the rules of procedure

Key elements of a national assembly's rules are likely to derive from the national constitution. In a democratic society, the constitution affects the rules in three basic ways. First, the constitution defines the larger framework of governance of which the assembly is a part. The standing orders of the assembly must be compatible with this framework. Second, the constitution is likely to include some specific provisions that govern aspects of how the assembly is organized and how it conducts its business. Third, the constitution should specify how additional rules are to be adopted.

Legislative and executive powers

Modern democratic political systems often are divided into three categories. First, parliamentary systems are characterized by a union of legislative and executive powers. The parliament, as the national assembly frequently is known, or one chamber of it selects the head of the executive government who may be designated the prime minister and who usually must be an elected member of the assembly. In some parliamentary systems, the other ministers *must* be assembly members; in others, they *may* be assembly members; in still others, they *may not* be assembly members. The executive government, consisting of all the ministers, must resign from office if it loses the 'confidence' of the assembly—in other words, if it no longer has the political support of a majority of the assembly's members. Typically, there is a cooperative relationship between the executive government and the parliament because that government is chosen by the majority party in parliament or by a coalition of parties that compose a majority. More often than not, the prime minister is the leader of the majority party, and his or her government sometimes has been called the 'executive committee' of the parliament.

Second, presidential systems are characterized by a separation of legislative and executive institutions and a sharing of powers between them. Both the president and the members of the congress (as some assemblies in presidential systems are called) are elected directly and independently by the people. The president is not chosen by the congress; in fact, the president may belong to a political party that does not hold a majority of seats in the congress. For this reason, policy disagreements between the legislative and executive branches are much more common in presidential systems than in parliamentary systems. The congress cannot remove the president or any of his or her ministers from office simply because it does not support the executive government's policies. Instead, constitutions in presidential systems often provide for the president or a minister to be impeached and removed from office only for a serious abuse of power or violation of the law. These constitutions also provide for certain powers to be shared between the president and the congress. For example, the president often is given the power to veto a new law that the congress has approved, but the congress may be empowered to enact the law even after the president has vetoed it. Because of constitutional provisions such as this, there often is a competition for power between the two branches of government.

Third, some modern constitutions combine elements of parliamentary and presidential systems in ways that are too complex and variable to summarize easily. The most obvious characteristic of such mixed systems is the existence of both a president and a prime minister. In some systems, the president is more powerful than the prime minister; in others, the reverse is true. In other words, the president may be the head of state and the prime minister may be the head of the government, or the president may be the head of state and the head of government, with the prime minister acting as his chief deputy. If the president is directly elected by the people, he or she is likely to be more powerful than if the national assembly elects the president. Does the president appoint the prime minister and the other ministers? Is the assembly required to approve the choice of the ministers who constitute the executive government? Who can remove a minister—the president, the assembly, or either of them? Can the assembly remove the president because of policy disagreements? Can the president dissolve the assembly at a time he or she chooses? The answers to questions such as these help to determine whether a mixed system more closely resembles a parliamentary or a presidential system. (For the sake of simplicity and brevity, the rest of this essay concentrates on rules of procedure in parliamentary and presidential systems.)

The underlying nature of the political system is reflected in the rules of procedure of the parliament or the congress. For example, parliamentary standing orders typically enable the executive government to control and dominate the parliament's legislative business. Most importantly, they give the leaders of the party (or coalition of parties) comprising the executive government the authority to set the assembly's schedule and its agenda for considering proposed new laws. Certain times may be set aside for opposition parties (parties not included in the executive government) to initiate parliamentary debates on issues that are important to them. However, the standing orders reflect an assumption that the opposition parties will not be able to have votes on bills that would enact their preferred policies into law. Congressional standing orders, by contrast, are much less likely to give such formal powers to the executive government. These standing orders are more likely to be written in terms of the 'majority' and the 'minority,' not in terms of the 'government' and the 'opposition.' These rules also are more likely to provide for the congressional agenda to be determined by majority vote or by negotiations among all the parties represented in the congress, not just those that are part of the executive government.

A second example concerns rules of procedure governing the participation of government ministers in the meetings of the assembly. Parliamentary standing orders often contain detailed provisions concerning question periods and parliamentary questions, fixing opportunities in the weekly schedule for members of the parliament to ask questions of ministers who appear in the parliamentary chamber to answer them. Other questions can be submitted in writing, and the

standing rules may regulate the kinds of questions that are appropriate to submit and how quickly ministers must reply to them. Question periods are a natural reflection of the fact that most ministers in parliamentary governments are themselves members of the parliament; but even when ministers need not, or may not, be elected members, they still may be required by the parliament's rules to appear and respond to questions. In presidential systems, on the other hand, it would be unusual for a president or his ministers to participate in plenary meetings of the congress to answer questions or engage in debate. Congressional committees are the primary forum in which members of congress have the opportunity to question ministers, but committee members are very unlikely to be able to question the president as well.

National and sub-national governments

In addition to defining the relations among the branches of the national government, the constitution also defines the relations between the national government and sub-national levels of government. In particular, the constitution determines whether the political system is a unitary one, in which regional, provincial, or local levels of government are subject to control by the national government, or whether it is some sort of federal system in which state or provincial governments are assigned certain constitutional powers of their own, to be exercised by officials who are elected directly by the people instead of being appointed by officials in the national capital.

This essential characteristic of the political system also is likely to be reflected in the national assembly's rules of procedure. Federal systems tend to have bicameral national assemblies, with one house of the assembly being connected to the states or provinces more directly than the other house. In the United States, for example, the people of each state elect two members to the national Senate, regardless of the population differences among the states. In Germany, by contrast, the members of the federal Bundesrat are officials of the state governments. In addition to governing how the members of this house are to be elected, the constitution also will define the powers of the federal house of the national assembly. Does it have the same powers as the other house, which typically is directly elected in constituencies of more or less equal populations? Can the federal house initiate legislation? Under some constitutions, the federal house cannot initiate, and may not be empowered to amend, financial and budgetary legislation. Does the federal house have any powers that it does not share with the other house? For instance, the U.S.Senate, but not the House of Representatives, has authority to approve international treaties, judicial appointments, and many government appointments.

The rules of procedure of the federal house must address these special responsibilities, and the rules of each house must take into account the powers and actions of the other. There may be rules governing how the two houses communicate with each other, for example, and rules enabling committees of the two houses to work together. Of greatest importance is the need for standing orders to govern how the two houses are to reach agreement on legislation that both of them have considered (assuming that both houses have legislative powers). Among the most complicated provisions of some standing rules are those governing how one house can respond when it passes a bill that the other house then amends. In a more indirect and subtle way, the rules of a unicameral assembly may differ from the rules of each house in a bicameral assembly. The procedures for debating and amending legislation may be more complicated and may include more stages in a unicameral assembly than in either house of a bicameral assembly. In a bicameral assembly in which both houses have legislative powers, each proposed new law is reviewed at least twice, once in each house. A unicameral assembly, by contrast, may follow more elaborate procedures of its own to compensate for the lack of a second review by a second house.

The constitution as a source of rules

In these and other ways, the national constitution is a framework and guide for rules of procedure that later are adopted for the national assembly. However, constitutions can affect the work of national assemblies even more directly by including provisions that become fixed, entrenched rules that the national assembly must follow. For instance, a constitution may prescribe when annual sessions of the assembly shall begin and the date by which they must end. It may define what constitutes a quorum of the assembly for certain purposes—how many members of the assembly must be present for it to make certain kinds of decisions. The constitution also may specify whether certain decisions are to be made by simple majority vote (a majority of the members who participate in the vote), an absolute majority (a majority of all assembly members), or some greater majority such as two-thirds of the members. The national assembly is obligated to follow any such constitutional provisions that govern its internal organization and procedures. It may not amend or suspend a constitutional requirement unless the constitution authorizes it to do so.

Other issues of critical importance that constitutions frequently address are the rights and responsibilities of the assembly's members, and especially the immunity they enjoy. The assembly's standing orders then may contain rules that amplify and implement these constitutional provisions. The most common and perhaps most important constitutional protection that members should enjoy is the right to speak freely in

assembly meetings without fear of being penalized for what they say. Some constitutions also grant members immunity from arrest and prosecution, though they differ in when members are protected from arrest and the kinds of crimes for which they cannot be prosecuted. Some constitutions strictly limit the legal immunity of assembly members to prevent them from abusing their offices. Other constitutions grant members much broader immunity to protect them against arrests and prosecutions that may be politically motivated. In addition, constitutions that do grant assembly members some immunity against arrest and prosecution also may include procedures by which the assembly can vote to waive a particular member's immunity in a specific situation. All provisions of these kinds are designed to strike a difficult balance: between the need for assembly members to speak and act without fear, and the need to ensure that assembly members, like all other citizens, are subject to the rule of law.

Constitutions differ in the extent to which they dictate how the national assembly and its members do their work. There are several arguments in favor of a restrained approach. People who are well qualified to draft a constitution may not have the practical knowledge and experience to write rules of procedure for an assembly that may not yet even exist. Also, entrenching many rules of procedure in the constitution imposes a degree of inflexibility on the assembly that may prove unwise. Even if there is unanimous agreement in the national assembly that a constitutional provision governing its quorums, for instance, needs to be changed, it can be changed only by what often is the difficult and time-consuming process of amending the constitution. National assemblies need to be able to correct their weaknesses and respond to changing demands and circumstances. Rules of procedure that are entrenched in the constitution make it difficult for an assembly to adapt.

On the other hand, entrenching certain rules in the constitution helps to protect them against majorities in the assembly who find those rules to be inconvenient, preventing them from exercising power in the way they would like. If one of the key values of standing rules is the order, stability and predictability they give to an assembly and its conduct of business, those rules should not be changed without good cause and careful thought, and certainly not only to serve the momentary interests of what may be a transitory majority. Especially in new democracies, where doubts may remain about the commitment of some assembly members to democratic values, it is tempting to protect core procedures from attack by sheltering them within the protective walls of the constitution.

The national assembly as a source of its own rules

It is not practical or desirable for a nation's constitution to include a complete set of standing rules for its national assembly. In fact, constitutions include, at most, only a small fraction of the rules that an assembly needs to govern its operations. Therefore, we can expect a constitution to authorize the assembly to devise for itself the more numerous rules that are necessary to supplement the relatively few that are entrenched in the same document. Furthermore, this authority is not one that the assembly can exercise only once. The authority given to the assembly to make its own rules carries with it the authority to repeal, amend, or add to any of those rules at any time it chooses. These decisions by the assembly constitute the second source of its rules of procedure.

There is one restriction on an assembly's authority to make rules governing its own organization and procedures: these rules cannot conflict with rules contained in the constitution itself. It may be possible to appeal to a national court if it is thought that an assembly rule is unconstitutional. Perhaps a greater danger is that the majority party or group in an assembly can adopt rules that suit its own purposes and that minimize the rights and powers of members who do not belong to the majority. This danger to the vitality of representative government cannot be prevented entirely. The best way to prevent a majority from adopting rules of procedure that are unfair to the minority or the opposition is to remind members of the majority that they may become members of the minority after the next election. In a new assembly that has not yet experienced the alternation of power between parties that reflect different ideologies, it is especially important for those writing the assembly's rules to remind members of this possibility.

In parliamentary systems, the parliament is very unlikely to adopt rules that the executive government opposes. The leaders of the executive government and most members of the assembly are members of the same political party or parties, so their incentive is to cooperate and to reach agreement. In presidential systems, on the other hand, in which the president and the congress engage in a recurring competition for power, exactly how the assembly can adopt rules for itself can be important. Under some constitutions, the assembly (or either house, in the cases of bicameral assemblies) is empowered to act unilaterally to adopt rules for itself. These rules do not have to be included in laws that also may need the approval of the other house (again, in the case of bicameral assemblies) and, perhaps more important, the president as well. Under other constitutions, new assembly rules are established by enacting new laws, laws that the president usually has the power to veto. This situation gives the leader of the executive branch the ability to affect the internal operations of the legislative branch, when the president vetoes proposed new rules or when he threatens to veto

them unless they are revised in ways that satisfy him. A constitution can help protect the national assembly from presidential interference in its affairs by enabling the assembly (or each house of it) to adopt rules for itself without the need for presidential approval. The constitution also can make clear that the legal standing of assembly rules is not diminished by the fact that they are not enacted into law.

Even an elaborate code of standing orders cannot address every question and issue that may arise in the future. Also, it is not always obvious how even the most carefully written rules should be applied in specific situations that may develop years later. The third key source of rules of procedure, therefore, is the interpretations and rulings that are certain to be required as the rules actually are used. More often than not, either the constitution or the standing rules authorize the speaker or president of the assembly (or whichever member is presiding over a plenary meeting) to apply the assembly's rules and to resolve any uncertainties or disagreements about the application of those rules. The speaker exercises this authority by making rulings about what procedures are proper under certain circumstances.

Sometimes the speaker acts at his or her own initiative; sometimes the speaker responds to the initiative of another member who asserts, usually by stating a question of order or a point of order, that some rule of the assembly just has been violated or is about to be violated. For example, after a member of the assembly has proposed an amendment to a bill that the assembly is considering, the speaker may be called upon to decide whether that specific amendment is relevant to the subject of the bill. On the other hand, the British House of Commons is one assembly that empowers its speaker to decide in advance which amendments to a proposed new law the assembly should consider. Under some standing rules, a ruling by the speaker is final. Under others, the speaker's ruling on most kinds of questions can be challenged by any assembly member. In that case, the assembly normally decides, by a majority vote, whether the ruling of the speaker was correct and should be enforced.

Rulings that apply general rules of procedure to specific cases also fill in some of the details and interpret what the often abstract language of a certain rule actually means in practice. If these rulings are inconsistent—if the speaker makes one decision today and a contrary decision on the same question tomorrow, or if one speaker makes a certain ruling and the next speaker makes a contradictory ruling on the same question—then the rules of procedure cannot produce the order, stability, and predictability that they should provide. This has two implications. First, rulings need to be correct and consistent. Second, every assembly member should be able to know about them.

For procedural rulings to be correct and consistent, the speaker should have an expert knowledge of the assembly's rules of procedure. However, the speaker may have too many other responsibilities to study the rules intensively. Also, the speaker may be a person who is closely associated with a party group in the assembly; in that case, assembly members who belong to other party groups may suspect, fairly or not, that the speaker's rulings are influenced by what is in the short-term interests of his or her political party. For both reasons, national assemblies frequently have a staff official (who, in turn, may have several deputies) who truly is an expert on the standing rules. This official is present during the assembly's plenary meetings to advise the speaker on procedural questions; he or she also is available whenever possible to answer members' questions about the rules. This procedural advisor must be a public servant who is, and is perceived to be, politically neutral, so that all members can have confidence in the advice that he or she gives to them and to the speaker. In turn, it is expected that the speaker will accept this official's advice, so that members of all party groups can be confident that the speaker's rulings are correct.

To ensure that these rulings are consistent as well, and that members are able to study them, the assembly's procedural advisor also may be assigned the task of recording each ruling when it is made, and to arrange for these rulings to be compiled and published for the information of all assembly members and for the general public. Before the procedural advisor gives advice to the speaker or another member, the advisor is able to consult this historical record to ensure that his or her advice is consistent with earlier rulings on the same subject. Individual assembly members also can study this record to decide for themselves whether they think a specific ruling is correct and consistent with previous rulings, and then to challenge a ruling they think is mistaken, if the standing orders give them the power to do so.

Enforcing, reviewing, and changing the rules

Rules of procedure have no value if they are not enforced. In fact, even the most wisely designed and carefully drafted rules can be a source of cynicism among members of the assembly and the general public if they are ignored or violated freely.

Most national assemblies place the initial responsibility for enforcing their standing orders on their speaker or president. That is why he or she needs the assistance of a staff official who is an expert on what those rules say, what they mean, and how they have been interpreted and applied in the past. If the speaker or president receives sound advice from this official and rules in accordance with that advice, the rules will be enforced in a manner that is both fair

and unbiased in favor of any political party or group. Nonetheless, as noted above, constitutions or standing orders may allow the assembly members to exercise the ultimate control over their own rules by allowing them to challenge and reverse decisions that their speaker or president makes.

Although strict compliance with, and enforcement of, the assembly's rules is important, it also is important that these standing orders do not become inflexible. Flexibility needs to be preserved in two respects. First, the rules of procedure may permit a simple majority (or perhaps some larger majority) of the assembly's members to waive or suspend a particular provision of those rules at a certain time and for a specific, limited purpose. If, for example, the rules provide that something is to be done at a certain time, it might be in order for the assembly to agree, by a majority vote, to do it later or not at all. Or, for instance, if the rules prohibit a member of the assembly from presenting a certain kind of proposal, there may be a procedure by which the assembly can waive that prohibition to allow the member to present his or her proposal. This kind of flexibility in the rules of procedure can be very useful. However, there must not be so much flexibility that a small majority of members can vote to do whatever they want, in whatever way they want, while destroying the rights of all other members, especially the opposition, in the process.

Flexibility in rules of procedure is important in a second respect. Like laws, assembly rules need to be reviewed periodically and amended to address their deficiencies. Even the best sets of standing orders need to be revised from time to time if the assembly is to respond effectively to the changing challenges and demands it faces. For this purpose, many democratic assemblies have created a standing committee that is responsible for examining the assembly's standing orders and evaluating proposals to change them. This committee may be authorized to make its own proposals for amendments to the rules, as well as to review proposals suggested by assembly members and others. In some assemblies, the speaker or president may refer questions about the rules to this committee as those questions arise during the course of plenary meetings. Although the chairman may have to make an initial ruling to prevent undue delay in the proceedings, the committee can report later on whether the rules should be clarified or amended in response to the question that was raised.

Should the assembly's rules of procedure and the way they are applied in specific cases be subject to review by a national court—for example, by the supreme court or the constitutional court? On the one hand, judicial review can be valuable for at least two reasons. First, it can ensure that a majority in the assembly does not find ways to deny other members, and especially the opposition, the protection of their rights that the rules should provide. Second, judicial review of both the terms and the application of the assembly's rules also can ensure that the assembly complies with whatever constitutional provisions are to govern it. If the constitution states, for example, that a majority of the assembly's members must participate in the vote to pass a bill, the assembly conceivably could adopt a rule that is inconsistent with this requirement, or the assembly could ignore this requirement if that is necessary to pass a bill that otherwise might be defeated. Judicial review may be the only, or at least the most effective, way to prevent such things from happening and to ensure compliance with the constitution.

On the other hand, judicial review of assembly procedures can undermine the separation of the legislative and judicial branches of government. Just as it can be dangerous for democratic governance if the legislature tries to tell the courts how to do their business, it also can be undesirable for the judiciary to become involved in the internal proceedings of the assembly. Even if it is proper for a court to review the constitutionality of assembly rules, there is much less reason to allow the court also to review the wisdom of rules that the assembly has the right to adopt for itself or to review whether its procedures were followed or a rule was applied correctly in a specific case.

The content of rules of procedure

Decisions, deliberations, and debates

National Assemblies are decision-making organizations. They also are organizations whose decisions should reflect sufficient deliberation, and in which any subject of national importance should be a potential subject for debate. There is a natural tension among these characteristics of national assemblies. Policy debates provide the necessary background for legislative decisions, but not all debates should lead to decisions about enacting new laws. Decisions that are made without due deliberation may prove to be unwise, but extended deliberation can impede an assembly's ability to make decisions in a timely and responsive manner. Whether intentionally or not, every set of rules of procedure strikes a balance between the value of debate and deliberation and the need to decide, just as they strike a balance between the rights and powers of the majority (or government) and those of the minority (or opposition).

The importance of decision-making, deliberation, and debate in national assemblies also point to many of the core questions that a national assembly's standing rules typically address.

Decisions

For example, what decisions should the assembly

make? Standing orders can answer this question in a narrow sense by specifying what motions and other proposals its members can make, and under what circumstances. Members cannot be allowed to demand that the assembly vote on any proposal at any time. In a broader sense, therefore, the standing orders also affect the decisions that the assembly can make by determining how the agenda of the assembly is controlled. If members of an assembly are free to propose their own draft laws, it is likely that the assembly will not have time to consider all of them fully, and it may not have time to consider some of them at all. In any active, modern democratic assembly, therefore, there must be one or more ways to decide the order in which proposed new laws or other matters should be considered.

In parliamentary systems, the executive government typically controls the assembly's legislative agenda. Just about the only proposed new laws that the assembly considers are those that are initiated and drafted by the executive government. Even if members of other parties have the right to present bills that reflect their own policies and programs, there is little or no realistic chance that the assembly will vote on many, or even any, of their bills. The list of bills on which the assembly debates and votes, and the order in which it does so, is determined by the executive government. The standing rules may produce this result directly—for example, by giving responsibility for the legislative agenda to the leaders of the executive government in the assembly. Alternatively, the effect of the standing rules may be more indirect—for example, by allowing the agenda to be determined by simple majority votes that the executive government's party or parties are able to win.

In congressional systems, with their emphasis on separating the legislative and executive branches, the rules of procedure are much more likely to allow the assembly to control its own legislative agenda. Instead of giving the executive government any authority over the legislature's agenda, the standing orders typically allow the assembly to decide for itself what bills it will consider and the order in which it will consider them. If the standing orders permit these decisions to be made by simple or absolute majority votes, the executive government still can control the agenda if it has the support of a majority of the assembly's members. If most members do not belong to the president's political party, however, the assembly may not necessarily act on all of the president's proposals when he or she wants the assembly to do so. Furthermore, the standing rules sometimes require a special majority, such as a two-thirds vote, to place certain matters on the agenda at certain times. Unless one party or coalition has an overwhelming majority of seats in the assembly, these procedures can be used only with the support of a significant number of other, opposing party members.

The rules of procedure can be expected to include provisions affecting not only what decisions the assembly makes, but also how it makes those decisions. How are votes conducted? Are there different voting procedures, such as votes in which members call out 'Yes' or 'No' in unison, or votes in which members stand to be recorded either for or against a proposal, or votes in which each member votes by responding individually when his or her name is called, or votes in which an electronic voting system is used? If so, which voting procedure is used under which circumstances? After a vote begins, is there any time allowed for members to come to the meeting hall to vote? How is the accuracy of votes assured? How are the records of votes preserved and made available to the public? Is the speaker or president of the assembly allowed to vote in every case or only under certain circumstances? How many members of the assembly, or what percentage of members, must cast their votes if the outcome is to be accepted as final? Answers to these and other related questions are to be found in the standing orders, whether they are rules that the assembly adopts for itself or rules that are entrenched in the national constitution.

In a broader sense, the rules of procedure also affect how the assembly makes its decisions by defining the stages of the legislative process. How many times does the assembly deliberate on a bill in plenary meetings before it votes on whether or not to approve it? In assemblies that trace their roots to historic British parliamentary practices, it is common for bills to be read three times—that is, to be brought before plenary meetings at three different stages. After the first reading of a bill, when only the title of the bill actually may be read, the standing rules may permit a debate on the general principles and policies embodied in the bill. After the assembly has agreed to these general principles and policies, it may discuss each section or paragraph into which the bill is divided. At this stage, in connection with the second reading of the bill, the assembly also may act on amendments to each section or paragraph as it is discussed, and then even may vote on whether to approve that part of the bill. Finally, the standing orders may provide that, on some later day, the bill should be read for a third time, at least by title, before the assembly votes on whether to approve it in its final, amended form. Other assemblies may establish different stages of the process, and even assemblies that use this system of three readings also may have rules that allow it to bypass some stages when the assembly decides that an expedited process is more appropriate.

In assemblies that are composed of two chambers with significant legislative powers, the rules of

procedure also must take into account the possibility of legislative disagreements between the two houses. The standing rules may provide for additional possible stages of the legislative process that can be needed to resolve those disagreements after each chamber has completed its initial action on a bill or other matter. On the other hand, each house in a bicameral assembly may be satisfied with somewhat less elaborate legislative procedures of its own because it knows that each bill it approves also will be the subject of study, deliberation, and votes in the other house. Conversely, the standing rules of a unicameral assembly may include more elaborate and time-consuming stages of the legislative process in order to be sure that each proposed new law is considered carefully.

A key stage of the legislative process often involves the assembly's committees. The assembly's standing orders usually set out the duties, powers, and responsibilities of its committees. Some of those committees may be permanent, meaning that they continue to exist throughout a session of the assembly, or until the assembly convenes after the next election, or until the assembly decides to change or abolish them. Other committees are more temporary bodies that the assembly creates for limited and short-term purposes. In some cases, the assembly's rules of procedure only discuss committees in general; in other cases, the rules identify each permanent committee by name and also may describe the policies and actions for which each is responsible.

The standing orders also are almost certain to define the part that committees play in the legislative process. Can a committee write its own bills at its own initiative? Do the rules require that all bills be sent to a committee, and that the same committee is to receive all bills on the same subject? Are committees required to make recommendations to the assembly on every bill they receive? Must a committee make its recommendations in a written report? Does each committee control its own agenda and schedule, or can it be given binding directions by the assembly as a whole, or by its speaker or president, or by a multi-party steering committee? What procedures does each committee follow when it meets, and what discretion does each committee have to decide on its own procedures? Do committees review and report on a proposed new law before the assembly debates its merits or only after the assembly already has approved the bill in principle? Can a committee make changes in a proposed new law, or may it recommend such amendments for the full membership of the assembly to evaluate in a later plenary meeting? Do members of a committee that has examined a bill lead the discussion of it in plenary meetings, or do they participate in the plenary deliberations in the same way as all other members? These are only some of the questions about its committees that the rules of an assembly often answer.

Deliberations

Closely related to rules of procedure that govern what decisions are made and how they are made are companion rules that govern the process of deliberation. How much time is allowed for members to discuss the merits of each bill the assembly considers, as well as each amendment, motion, and other question that arises during the process of considering a bill? Do the standing rules set the length of time for considering different kinds of bills and motions, or do the rules create procedures by which the assembly can fix time limits that are well-suited to the importance of each proposal and the controversy it engenders? If the standing rules do not limit how long any one member may speak or how much time the assembly may devote to considering a bill, they may create procedures by which the assembly can vote to end the discussion. For instance, the rules may allow a member, under some circumstances, to propose a motion that the assembly proceed to an immediate vote on whatever it has been discussing.

Of equal importance is the question of how this time is divided. For instance, the time may be allocated equally among the party groups that are represented in the assembly; instead, the time may be allocated among the parties in proportion to the number of members in each group. Alternatively, the rules may provide for the time to be distributed among the assembly's members as individuals. In that case, how much discretion does the speaker or president have in deciding who will participate in the deliberations and in what order? In some assemblies, he or she is guided by a written list, prepared in advance, of members wishing to participate. In others, the speaker or president is empowered to decide which members will be able to participate, as well as the order of their participation, although he or she may be guided by well-established norms and practices that tend to ensure fairness and balance.

During the process of deliberation, there usually is some opportunity for members of the assembly to propose amendments to the bill or whatever other matter the assembly is considering. The standing rules often specify when amendments can be proposed and prohibit certain kinds of amendments to all bills or to certain kinds of bills. It is common, for example, for the standing rules to bar any amendments that are not relevant to the subject of the bill being considered. To ensure that the assembly can reach a final decision, the rules also may prohibit amendments that would change a part of the bill that the assembly already has approved or that it already has amended. Especially in parliamentary systems, there may be rules deriving from the national constitution that prevent the

assembly from amending the annual budget bill at all, or from amending it in ways that increase spending or provide funds that the executive government has not recommended.

Debates

The French word for 'parliament' is 'parlement,' which is derived from 'parler,' meaning 'to speak.' It is not surprising, therefore, that many of a national assembly's rules of procedure often are devoted to governing the process and purpose of speaking. For instance, who may speak, in what order and for how long may members speak, and on what subjects may they speak? Much of the speaking that takes place involves deliberations on the merits of bills and other proposals on which the assembly will vote after the speaking ends. However, national assemblies also engage in debates on the executive government's record, its policies, and its intentions—debates that are not directly linked to legislative decisions. The rules of procedure normally govern when these debates take place, who can initiate them and select the subjects to be debated, and how long the debates last.

Standing orders (or less formal practices) often identify specific times of the day or week at which individual members can speak on subjects of their choice, sometimes very briefly and sometimes at greater length. In the U.S.House of Representatives, for instance, members sometimes can speak for one minute each at the beginning of a daily session, and sometimes for as much as one hour each at the end of a daily session. In some parliaments, such as the House of Commons in Great Britain and the House of Representatives in Australia, there often are debates in connection with motions to adjourn at the end of daily sessions. Even if the national assembly cannot change the executive government's proposed national budget, its annual consideration of the budget still may be valuable as the occasion for a wide-ranging debate on the government's accomplishments and failures, as well as its plans for the next financial year.

In addition, the standing orders may set aside certain times in the weekly schedule or certain days in the annual calendar for the largest party that is not part of the executive government to select the subjects for debate. These provisions prevent the executive government's majority from avoiding the need to explain and defend its actions and inactions, so they are a useful way to hold the government accountable to the assembly and, through it, to the people. Another procedure that promotes accountability is the question period for which the standing rules of parliaments typically provide. These periods, which may take place every day the assembly meets, give members regular opportunities to question government ministers, sometimes on matters of only local interest but sometimes on issues of grave national importance. The assembly's rules are likely to govern when the question period takes place, how long it lasts, which ministers are to be present, who is entitled to ask questions, and what kinds of questions may be asked. There also may be procedures that the assembly can use when it decides that a minister's response to a question was unsatisfactory.

Finally, an assembly's standing orders usually include rules and procedures to ensure that its proceedings are orderly and that its deliberations and debates are constructive. The speaker of the assembly typically is given the authority and responsibility to preserve order during assembly meetings. This includes the right to have visitors removed if they violate the assembly's rules or disrupt its proceedings. When tempers flare among assembly members, the speaker also has the duty to restore order in the chamber. In addition, the speaker usually is charged with ensuring that members abide by the assembly's standards of decorum in what they wear, where they speak, and how they speak to each other. In many assemblies, for example, members are not allowed to address each other directly; everything they say is supposed to be addressed to the speaker. Members also are required to refer to each other in respectful ways, and not to challenge the honesty, integrity, or sincerity of their colleagues. A member who violates these standards may be expelled temporarily from the assembly chamber, either by the speaker or by a majority vote of the assembly's members.

Other subjects of standing rules

A national assembly's standing orders usually address a variety of subjects in addition to the legislative process and the assembly's procedures for engaging in debate, deliberation, and decision-making.

Some of these subjects have been mentioned above. The rules of procedure, either those in the constitution or those adopted by the assembly, often create many of the leadership positions within the assembly and govern how those leaders are to be chosen. In similar fashion, the rules may govern the assembly's staff and support services. Who are the key officials of the assembly? How are they selected, to whom are they responsible, and what are their respective responsibilities and powers? In small assemblies or those with very limited resources, there may be relatively few staff, making elaborate rules unnecessary. In assemblies with larger and more complex staff structures, the assembly may adopt rules governing, among other things, how staff members are hired and fired and what authority they may exercise on behalf of the assembly collectively or any of its members individually.

The importance of committees already has been stressed. The rules of procedure may distinguish among different kinds of committees—for example, permanent and temporary committees, and perhaps

joint committees with members drawn from both houses of a bicameral assembly—and list the specific committees that are to exist until the rules are changed. The rules also may specify how each committee's members and leaders are to be selected. Committee seats usually are allocated among the party groups in parliament in rough proportion to the size of each. There is less consistency among national assemblies in how their committee chairmen and other leaders are selected. The standing orders may provide for the assembly as a whole to elect each chairman or it may allow each committee to choose one of its members as chairman. In some assemblies, such as those in the United States, all the committee chairmen are members of the majority party or coalition. In some European parliaments, on the other hand, committee chairmanships are distributed among the party groups after negotiations among party leaders. In still others, certain committees, and especially the committee to review the legality and propriety of government spending, have chairmen drawn from non-government parties. This practice, which may be only a matter of tradition that is not required by any written rule, is intended to ensure that these committees take their work seriously and are not unduly concerned with protecting the executive government.

Other subjects that the standing orders may address include members' rights and access to information, the standards governing their conduct and the procedures for investigating charges made against members for violating those standards, disciplinary actions that the assembly can take against its members and employees, inter-parliamentary relations and travel by assembly members and staff, as well as public and media access to the assembly's plenary and committee meetings. In short, almost any issue that affects the work of any organization may be an appropriate subject for a national assembly's rules of procedure, in addition to the rules that concern its legislative procedures specifically.

There also may be subjects, however, that the assembly's rules of procedure may not address. A sound general principle is that the rules an assembly adopts by its own authority only can govern the activities of the members and employees of the assembly itself. An assembly's rules, for example, may give its committees the power and responsibility to engage in oversight over how the executive government has implemented existing laws. For this purpose, the rules may authorize committees to hold public hearings at which its members can question government officials about their conduct and decisions. However, the rules may not be able to compel all prospective witnesses to testify at those committee hearings. A government minister may be obligated to appear before a committee because the minister also is a member of the assembly who, like every other member, must obey its rules. A public servant or a private citizen, on the other hand, is not a member or employee of the assembly, so he or she may not be bound by the assembly's own rules. If an assembly believes that it needs rules that apply to persons other than its own members and employees, it is best for those rules to be embedded in the constitution or enacted into law.

Criteria for evaluation

There is no ideal set of rules of procedure for democratic national assemblies. Each assembly must adopt rules that are well-suited to its needs, conditions, and responsibilities. Furthermore, an assembly needs to review and, when necessary, amend its standing rules periodically to ensure that they remain as suitable as when they first were adopted.

The same rules are not appropriate for all national assemblies because the constitutional systems of which the assemblies are a part are not the same. There are important similarities between the standing rules of assemblies in what are primarily parliamentary systems and the rules of assemblies in what are essentially presidential systems. However, there also are—and should be—important differences between them that reflect, among other things, the essential difference in the relationship between the executive and legislative powers. Also, some assemblies choose to adopt sets of rules that are more detailed and elaborate than others. In new democracies, for example, there may be an inclination to prefer sets of rules that give more written protection to the powers of the majority (or government) and the rights of the minority (or opposition). Older, more established democracies, on the other hand, may be content to rely more on norms, traditions, and practices that are not codified in the rules of procedure because these assemblies have greater confidence that members will comply voluntarily with those norms, traditions, and practices.

Another reason there is no ideal body of standing rules is that there is no ideal balance between majority powers and minority rights, or between the prerogatives of the executive government's party or parties in the assembly and the ability of other parties to hold that government to account. Similarly, there is no ideal balance between the need to deliberate and the need to decide, or between the need for the assembly to act and the need for its individual members to be heard. The best that can be said is that writing an assembly's rules of procedure is not simply a technical exercise that can be delegated to so-called experts. The members themselves should be involved enough in the process to ensure that all the technical details of the rules combine to strike appropriate balances between conflicting institutional imperatives.

In evaluating proposed or existing rules of procedure, there is a natural temptation to ask whether they enable the assembly to function efficiently. Officials of the executive branch as well as other observers of national assemblies often complain that they are obstacles to implementation of the executive government's legislative program, that they take too long to pass bills, and that they spend too much time in pointless debates. Particularly in new democracies, there is a risk of growing disenchantment among citizens to whom their assembly seems inefficient, especially when there is so much for it to do. Sometimes these criticisms are warranted. However, it is a mistake to evaluate an assembly, and its rules of procedure, solely on the basis of its efficiency or, a closely related value, its productivity.

The number of new laws that an assembly approves is not necessarily a good measure of its contribution to the nation's governance. How quickly the assembly passes bills is not necessarily a good indication of how well-designed its procedures are. A national assembly is not an assembly line. It is, after all, a deliberative body as well as a decision-making body. Sometimes an assembly serves the nation best by refusing to act, or at least by delaying action until public officials and citizens alike have time to reconsider what they thought the assembly should do.

A national assembly also is more than a law-making body. It is a representative body that must be accountable to the nation's voters. Standing orders also must be judged, therefore, on the basis of how well they promote the accountability of the people's representatives. A key question to ask, for instance, is how well do the rules enable the public to know what each of its elected representatives has done in the assembly—what he or she has said, how he or she has voted, and how diligently he or she has fulfilled the duties of an elected representative. For the same reason, it also is important for the standing orders to facilitate public and media access to the assembly's meetings and to the documents that record its activities and decisions.

An assembly has to do more than make new laws. It has an equally important responsibility to review and monitor the implementation of existing laws. In particular, this requires that the assembly have procedures that enable it, often acting through its committees, to assess whether the laws the assembly already approved are being implemented as the assembly intended and whether those laws are having the effects the assembly hoped and anticipated they would have. In a mature democracy, in fact, the distinction between making laws and overseeing their implementation is an artificial one. Both activities are part of a continuing process. The assembly enacts a new law and then monitors its implementation. On the basis of what the assembly learns from its monitoring activities, it can make informed decisions about whether it needs to enact amendments to the existing law or whether it should enact a new law that takes a different approach to addressing the same problem.

A democratic national assembly also has an especially important responsibility to review the government's annual budget in order to ensure that sufficient funds are available to implement the laws and that the budget reflects appropriate national priorities. To this end, rules of procedure often include special provisions by which the assembly acts on financial legislation. However, the power of national assemblies to change financial legislation, including the annual national budget, varies considerably and depends to a significant extent on whether the assembly is part of a primarily parliamentary system of government or a system that is primarily presidential in nature. National assemblies in presidential systems generally have more constitutional power to revise proposed financial legislation than do assemblies in parliamentary systems. As in other respects, an assembly's rules of procedure relating to the budget must be compatible with the underlying nature of the constitutional system; they must be consistent with whatever restrictions on the assembly's powers are imposed by the national constitution; and the rules must be evaluated within this context.

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