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The Office of Speaker in Comparative Perspective

STANLEY BACH

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

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

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

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

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

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

DIMENSIONS OF THE OFFICE

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

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

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

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

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

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

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

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

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

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

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

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

TWO CONTRASTING CONCEPTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WESTMINSTER AND WASHINGTON

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

this committee's decisions almost always reflect the procedural preferences and partisan interests of the speaker and his fellow majority party leaders. Through his political influence, therefore, the American speaker can approach exercising the same degree of control over the amending process that the British speaker exercises by authority granted in her House's standing orders.

Even though the Rules Committee's proposals are subject to approval or rejection by majority vote of the House of Representatives, the opposition party has complained for the better part of a century that collaboration between the Rules Committee, on the one hand, and the majority party and its leaders, especially the speaker, on the other, can create a condition of procedural tyranny.³⁰ Given this collaboration, there is no need for the House's rules to vest a power directly in the speaker that he can effectively exercise indirectly and more discreetly. This is just as well. Should anyone seriously propose giving him the discretionary authority to select amendments, the opposition party undoubtedly would proclaim that the death of deliberative democracy in Congress was at hand.

With regard to members' rights to debate and amend, it is precisely because of the American speaker's position as party leader that he is so bound by rules and entrenched conventions when he presides. But giving these powers to the British speaker entails no such risk, precisely because of the non-partisan tradition of her office and her recognition that her reputation requires her to preserve that tradition.

This takes us back to what is ultimately the most important and underlying difference between the speakers in Washington and Westminster. 'Once in the Chair [the British speaker] becomes in the truest sense a House of Commons man. He sheds all his party affiliations and dedicates himself exclusively to the impartial discharge of his functions. It is inconceivable today that any Speaker would ever be consciously partisan.'³¹ It is equally inconceivable today that any American speaker would not be consciously partisan. Whatever other duties and formal responsibilities are assigned to that office in Washington, '[f]rom its earliest days, the Speakership has been an irreducibly political office'.³²

One manifestation of this difference is in the voting practices of the two speakers. In both houses, the speaker rarely exercises the right to vote. The difference arises in those unusual cases in which he or she does vote. In Washington, the speaker is most likely to vote on matters of great importance to his party's programme and when it is particularly important for him to demonstrate his solidarity with his

fellow partisans or to lead them in casting a politically difficult vote. In other words, when the American speaker votes, it is always in accord with his fellow partisans and in support of a position that clearly differentiates his party from the opposition.

In Westminster, on the other hand, the speaker votes only when necessary to break a tie, and then she votes in a way intended to affect the outcome as little as possible: 'in order to avoid any possible stain on his impartiality, [the speaker] casts his vote according to well understood principles: in general he will try to avoid a change that depends on his sole vote, and if possible will so cast his vote as to enable the matter to be discussed again by the House.'³³ For example, the speaker will vote against an amendment in order to preserve the bill in the form the House has approved it to that point. In other words, he (now she) votes in whichever way tends to leave the question open so that it may be decided finally at a later time and by another vote in which the speaker need not decide the outcome.

Moreover, the difference in partisan roles has implications beyond the chamber where each assembly meets. When not presiding, the roles of the British and American speakers impose on them very different lifestyles. In London, the perceived requirements of the office severely limit the kinds of activities in which the speaker engages and the kinds of contacts she has with other members of the house.

The need to be impartial obliges the speaker radically to change his life style. He not only resigns from his party, which of course is a major turning point in a political career, but he also normally resigns from any clubs which may have political associations. He isolates himself from the camaraderie and social life of the House of Commons, and even personal friendships which he may have developed over the years with other members must be submerged in the wider circle that includes every Member.³⁴

In Washington, in sharp contrast, there are never enough hours in the day for the speaker to satisfy all the demands that his fellow partisans make on his time. As someone elected by the other members of his party, he must always be concerned to maintain good personal and political relations with them – witness the abortive palace coup against Speaker Gingrich in 1997. Modern speakers make every reasonable effort to speak and campaign for their party colleagues, not only in Washington but in their constituencies as well. Election as US speaker (or as another senior congressional party leader) probably results in almost as radical a change in life style as

that experienced by the British speaker – but in entirely opposite ways.

NOTES ON ELECTORAL AND POLITICAL CAREERS

In France and Israel, speakers later became prime ministers,³⁵ and among the candidates for president of Ukraine in 1994 were the former and future speakers of the national assembly, the Verkhovna Rada. By contrast, the speakership in Washington as well as in London usually marks the culmination of the incumbent's career in national politics, although for very different reasons.

The British speaker effectively renounces active partisan involvement when she becomes speaker. Though she, like every other MP, must run for re-election, today the major parties do not oppose her and she runs as Madam Speaker, not as a party candidate. It is only a matter of practice, and a relatively recent one, that the major British parties immunise the speaker of the House of Commons against serious electoral challenge.³⁶ Ireland has gone much further. The 1937 Irish constitution elevates the electoral immunity of the Dail's speaker (the Ceann Comhairle) to a constitutional principle. Article 16 states in part that: 'Provision shall be made by law to enable the member of Dail Eireann who is the Chairman immediately before a dissolution of Dail Eireann to be deemed without any actual election to be elected a member of Dail Eireann at the ensuing general election.'³⁷ On the other hand, the electoral immunity of the speaker, whether by practice or rule, does not necessarily prevail in other assemblies that derive largely from the Westminster model. For example, the speaker of the Australian House of Representatives, who remains a party member, cannot expect to run unopposed for re-election, nor can national or provincial speakers in Canada or the speaker of the Lok Sabha in India.³⁸

Writing in 1963, K.C. Wheare offered an interesting and plausible example of the interplay between a nation's electoral system and the role of its assembly speaker. He observed that a proposal to adopt the Irish rule had been rejected in Britain 'on the ground that it results in the disfranchisement of the electors in the speaker's constituency'.³⁹ In explanation, Wheare pointed to the significance of a major difference between the British and Irish election laws. Whereas British MPs are elected from single-member districts, members of the Irish Dail are chosen from multi-member constituencies. In Ireland, consequently, 'there is room for party contests in the Speaker's constituency in the filling of the remaining seats'.⁴⁰

By contrast to all of these parliamentary assemblies, the American speaker lives in the midst of political and electoral combat, not above it, and not only because he remains a partisan, but precisely because he is a highly visible party leader. If speakers of the US House rarely have been seriously challenged for re-election, it is not because of any self-restraint exercised by the major opposition party. Instead, it is because both parties have tended to choose their leaders from among members who enjoy a fair degree of electoral security. But recall the effort that the Republican Party invested in its successful 1994 campaign to defeat the incumbent speaker, Thomas Foley. Thereafter, the Democratic Party encouraged well-financed campaigns against Foley's Republican successor, Newt Gingrich. Whenever one US party is able to defeat an incumbent congressional leader of the opposition, it always is quick to tout its success as a major victory, and the only single political trophy more glorious than the political head of the speaker is that of the president himself.

For both British and American speakers, election as speaker can be expected to mark the final step in their political careers. It would be virtually unthinkable for a contemporary speaker of the House of Commons to leave that office in order to join the government as a minister or to take some other position that carries a partisan colouration.⁴¹ To become speaker in Great Britain is to retire from competitive politics:⁴²

[I]t seems well established that a Speaker once elected, will regard himself as no longer a candidate for any office in the government in future. When he retires as Speaker, he retires from the House of Commons and, although he is offered a seat in the House of Lords – and usually accepts it – he has retired from party politics. His impartiality in office is assisted, therefore, by the knowledge that he hopes and seeks for nothing at the hands of the government of the day, whether it be his party or not.

In general, also, US speakers retire from competitive political life when they leave that office. Most recent speakers were very much 'men of the House'. No twentieth century speaker has run for the Senate, and most would have considered it a demotion, if not rank treachery, to have done so. Speaker Reed, quoted earlier on the subject of opposition rights in the House, is reputed to have referred to the Senate as a place where good representatives went when they died. By the same token, speakers have rarely seriously considered themselves as candidates for president. None has actively sought the

presidency since Blaine in the 1870s and Reed in the 1890s. In 1933, Speaker Garner was elected as Roosevelt's vice-president, but it certainly was (and remains) open to dispute whether that constituted a political promotion. In fact, the only speaker to be elected president was James K. Polk in 1844, which is ancient history by American standards.

Yet US speakers are pre-eminent party leaders. Why then has the speakership not been a stepping-stone to the White House? First, at least in relatively modern times, speakers have been elected to that office only after long service in the House. Many of them have been too old and too accustomed to legislative life to even try to redefine themselves as presidential candidates. Second, speakers usually are promoted from lesser leadership positions and are chosen for their demonstrated skills as House leaders, not as national electoral leaders. Most speakers probably have recognised the limits of their ability and appeal, even if, in the dead of night, they might have compared themselves favourably with the presidents under whom (or *with* whom, as Speaker Rayburn insisted) they served. Third, members would hesitate to elect a speaker whose presidential ambitions might distract him from his duties inside the House. Fourth, a speaker who did have presidential ambitions would find it exceedingly difficult to be an effective speaker and a competitive candidate at the same time. Fifth, a speaker's reputation is tied to the reputation of Congress with which he is so closely associated in the public mind, and, deservedly or not, Congress is never among Americans' most highly esteemed institutions. And, sixth, a speaker's success in the House usually is measured by his success in passing legislation which, in the American system, almost invariably requires compromises and concessions. The result is that the products of the legislative process often disappoint the political activists of the speaker's party, who tend to sport less centrist policy views and who exercise a disproportionate influence over the selection of their party's presidential candidate.

For all these reasons, and probably more, US speakers usually view this office as their final step up the ladder of elective politics. The jump is not impossible. From time to time Speaker Gingrich expressed some interest in making the attempt, as did Richard Gephardt, his Democrat replacement-in-waiting. However, running for president from the speakership may prove to be at least as much a disadvantage as an advantage, and state laws generally would prevent a speaker from running for president and seeking re-election to the House at the same time.

SPEAKERS ELSEWHERE

The focus here on the British and American speakers reflects their international visibility, the ready availability of information on their offices, and the striking pattern of similarities and differences between the two offices. However, some observations on speakers in other national assemblies will help to fill out the analysis.

Not surprisingly, speakers in other well-established and functioning democracies that trace their roots to Westminster tend to reflect the British conception of the office, at least in part. In Dublin, for example, the speaker (Ceann Comhairle) of the Dail Eireann also renounces partisan life.

The Chairman of Dail Eireann does not engage in any political activities whatever and is so independent as to express no views on any item of legislation or policy issue. If the Chairman on selection is a member of a political party or grouping, he or she resigns that position immediately and does not attend parliamentary party or group meetings during the course of his or her chairmanship.⁴³

Under the Dail's 1997 standing orders, the speaker supervises the administration of the Dail and its staff. Like the British speaker, the Ceann Comhairle may require a disorderly member to withdraw for the day, take the floor from a member who is speaking in an irrelevant or repetitious manner, and decline to entertain a motion to close the debate on a question if, among other possible reasons, he determines that 'the question has not been adequately discussed'.⁴⁴ But also like the British speaker, in Ireland the speaker's role in preparing the daily order paper is essentially ministerial. True control over the order of business rests with the government acting through the Taoiseach (prime minister).⁴⁵

The office of speaker of the Indian Lok Sabha closely resembles the British office.⁴⁶ But the same cannot be said of the office in every assembly that traces its roots back to Westminster. Although the similarities are always many and important, with time and distance can come differences that reflect other differences in constitutional structure, partisan organisation and national experience. For example, Canadian assemblies resemble the British in general and in many particulars. However, in Ottawa and in Canadian provincial assemblies, the speaker does not enjoy quite the same authority or the same exalted position of respect as the speaker at Westminster.

For example, according to Dale Lovick, once the speaker in the British Columbia provincial assembly, his office evidently is not

granted all the authorities of the British speaker, especially in selecting speakers and amendments. Therefore, Lovick contends, there is less reason for incumbents of his office to renounce all partisan ties precisely because their discretion as presiding officer is so constrained as to severely limit the possibility that they might use it for partisan advantage. Concerning Canada's national assembly, Franks explains that it is the party whips, not the speaker, who control office space and the membership of travelling parliamentary delegations, and who prepare lists from which the speaker recognises members during debates and question period. It is in part because of the speaker's lack of discretionary power, Franks argues, that Canadian MPs do not act independently of party more often.⁴⁷

A basic question pervading all procedure and most other aspects of an MP's work, is the locus of final authority. There are two possible loci: the parties or the speaker. In Britain it is the speaker; in Canada, the parties. For the private member to be truly independent in Canada, much of the power now wielded by whips and House leaders would have to be shifted to the speaker, including some measure of the decisions on accommodation; participation in question period, debates, and committees; and visits abroad. Decisions on the use of closure and the guillotine might also usefully involve more participation by the speaker.

So long as these powers remain in the hands of parliamentary party leaders, Franks implies, Canadian MPs will follow their leaders in hope of benefits or fear of penalties.

On the office of speaker in the parliaments of Canada, Australia and New Zealand, we also have the benefit of Laundry's imposing 1984 comparative study of the speakership throughout the Commonwealth. It is not possible here to do justice to the breadth of information that Laundry presents. However, it is pertinent for our purposes to focus briefly on what his study reveals about whether the speakers of these three assemblies resemble their British and Irish counterparts in withdrawing entirely from party politics upon election to the chair. In general, the experience in all three nations, all of which are so obviously indebted to British parliamentary practice in so many respects, is that partisanship is not necessarily incompatible with impartiality in practice, but that it can undermine the perception of impartiality.

In Canada, Laundry informs us, the speaker of the House of Commons remains a participating member of his party. The speaker

usually has sought re-election as a party candidate, 'although he does not conduct a highly charged political campaign',⁴⁸ and has faced opposition from other parties. In 1968, the speaker ran for re-election as an independent and without opposition from either of the two main parties. However, this innovation failed to establish a precedent to be followed in subsequent elections. It is also the government of the day that, until recently, selected the speaker and, on occasion, appointed him to other high office after he left the House. Still, in all, the Canadian experience apparently demonstrates that a speaker need not take the same vows of non-partisanship as his British counterpart in order to preside in a manner that is impartial and, equally important, that is generally but not invariably perceived as being so. Laundry refers to the commitment of recent speakers to maintaining a posture of neutrality while in the chair, though he also documents that Canadian speakers have more often been subject to criticisms and charges of partisan bias than have speakers in London.

A norm of restrained partisanship has characterised the office of speaker in New Zealand as well. The speaker seeks re-election as a party candidate, but he limits his partisan activities and 'does not indulge in highly partisan politics'.⁴⁹ He is selected by the government of the day, but '[o]nce elected to the Chair the Speaker conducts himself in a completely impartial manner and is usually well-accepted by the opposition'.⁵⁰ By contrast, the Australian speaker apparently remains a somewhat more active party politician than his counterparts in Ottawa and Wellington, and at some expense, Laundry argues, to the stature of the office and the likelihood of a speaker continuing in office after an election in which party control of the assembly changes hands:⁵¹

The complete political detachment which is such an important feature of the speakership at Westminster is not a characteristic of the office in Australia. At a general election he contests his seat on a party basis like any other Member, and as the appointment of the Speaker is regarded as the privilege of the party in power, there is little likelihood of his being re-elected in the event of a change of government. Experience has shown that it is not impossible for a political partisan to discharge the duties of Speaker with fairness and impartiality; but it has also been shown that in these circumstances it is not always feasible to elevate the Speaker's office to the same high plane of dignity which it occupies at Westminster. When the Speaker is known to

favor the governing party and is permitted to campaign on its behalf it is not so easy for him to win and retain the confidence of the opposition which, in turn, may be less inclined to accord him that unqualified respect which should be due to the Chair on all occasions.

Correspondingly, the Australian House of Representatives does not give its speaker the range of discretionary authorities that the British speaker enjoys. In Canberra, the speaker does not control the length of speeches or debates, nor may he refuse a motion for closure. In practice, the party whips determine the order in which members speak, and the speaker has no authority to select amendments for consideration. In these respects, his powers more closely resemble those of the partisan US speaker than the non-partisan British speaker, even though the Australian system generally, and the speakership specifically, are patterned after the Westminster model in so many other respects. The reason, according to Laundry, lies in a presumption of partisan bias. The Australian speaker 'is assumed to be partisan no matter how he may conduct himself in the Chair'.⁵²

To oversimplify the matter, we may place the office of speaker in Australia, Canada, Great Britain and New Zealand along a spectrum of low to high partisanship in Westminster-style assemblies, with the British and Australian speakers at either end and the other two occupying intermediate positions. If we place the same four offices on a second spectrum of high to low discretionary authority vested in the office of speaker, they array themselves as we would expect, with the most partisan (or presumptively partisan) speaker enjoying the least discretion, the most non-partisan speaker exercising the greatest array of discretionary powers, and the Canadian and New Zealand speakers again somewhere between them. Within parliamentary assemblies of British origins, it would seem, the more actively partisan the speaker is, the more likely his impartiality in the chair is to be doubted, and, therefore, the more his powers are limited, in much the same way that the US House of Representatives limits the discretionary authority of its avowedly and even enthusiastically partisan speaker.

Although we lack the information needed for a systematic comparison of the speakership in all democratic national assemblies, we can gain some useful insights from Bergougous' analysis of questionnaires that officials of 117 national assemblies (democratic or not) completed for the Inter-Parliamentary Union (IPU).⁵³ Although Bergougous does not provide us with any frequency distributions

or other quantitative analysis of the responses to these questionnaires, he does offer a number of generalisations that are relevant to this analysis and that appear to place most other speakers somewhere between Washington and Westminster.

He reports, not surprisingly, that: 'the Speaker plays a decisive, but rarely exclusive, role in appointing the Secretary General and the same is true for the organization of services and staff recruitment.'⁵⁴ In addition, speakers typically have some ultimate authority, but not daily responsibility, for management of the assembly as an organisation: 'only rarely is the Speaker in no way involved in administrative and financial matters, but ... it is equally infrequent for him to be totally responsible for them and even less frequent for him to be entrusted with these tasks.'⁵⁵

Concerning legislative matters, speakers usually have a limited role, if any, in making independent decisions that set the agenda for plenary sessions. When the speaker is involved in making these decisions, it is often in conjunction with a multi-party steering or co-ordinating committee. The 'vast majority' of speakers have authority to maintain order and enforce the assembly's rules of procedure.⁵⁶ However, Bergougous reports considerable variety among assemblies, especially those that do not take Westminster as their underlying model, in the powers of speakers to fix the length of debates. In some assemblies, the speaker's role is 'restricted by provisions in the rules of procedure that establish the practical details of the debate or how to calculate speaking time'. In others, '[o]rganization of debates and the fixing of speaking time may not be the responsibility of the Speaker but of a collegiate body'.

As noted earlier, in some assemblies, unlike those in Washington and Westminster, '[a] list of speakers may be drawn up in advance, as in Australia, France, and Germany, and in the case of organised debates in Canada, India, Italy, Japan, the Council of the Russian Federation and South Africa'. In some assemblies, this list governs the order in which members are recognised to speak. In others, the list is only a useful guide. 'In Canada and India, although a list of possible speakers is given to the Speaker, the latter decides who will be authorised to take the floor. Although the Speaker makes his choice freely and independently, it is not an arbitrary choice.'⁵⁷ That choice is governed by various rules and customs, especially to promote debates that are balanced and that reflect the proportionate strength of the several parties in the assembly.

Further, some speakers have discretion over how long individual members are allowed to speak. In the French National Assembly, the

speaker evidently may permit an MP to continue speaking beyond his allotted time, or curtail his speech 'if the President considers that the Assembly has received sufficient information'.⁵⁸ With regard to the speaker himself or herself, Bergougous finds that national assemblies are almost equally divided as to whether the speaker may (as in Washington) or may not (as in London) participate personally in debate. However, even actively partisan speakers rarely do intervene and, more often than not, only after leaving the chair.⁵⁹

With regard to the speaker as a partisan, Bergougous' analysis of the IPU questionnaires supports the supposition that the American and British speakerships define two extreme ends of the spectrum. The British speaker's power to select amendments is very much the exception. That power 'presupposes great impartiality on the part of the Chair as well as a profound knowledge of the subject of the matter of the debate and an unusually acute political sense'.⁶⁰ Furthermore, it presumes a degree of non-partisanship that also is exceptional. Whether in Latin America, western Europe, or elsewhere, most speakers retain their partisan ties and are often influential *national* party leaders.⁶¹ They can expect to be opposed for re-election, and they cannot expect to survive as speaker after a change in party control of the assembly. However, it is equally unusual for the office of speaker to combine the position of neutral assembly manager and referee with that of party leader *within the assembly*.

Writing of continental European speakers, Wheare had come to much the same conclusion in the 1960s:⁶²

Though they are certainly not party leaders, they are often party men; they may have given up party politics for the time being, but they may not have given them up for ever. They may have held office in the past and they may hope to hold it again in the future. They may have achieved the Speakership as a consolation prize but they may not be content with it. They may desire to be impartial and to keep out of party conflict, but the assembly may not allow them to do so. Much depends on the traditions and code of behaviour of the members.

Baerwald illustrates the power of Wheare's last observation. In a 1963 interview, Baerwald reports, the Speaker of the Japanese Diet said that he sought to emulate his British counterpart. However, Baerwald observes:

Circumstances simply did not permit him to play the role of quasi-judicial arbiter between the principal antagonists of the

day, the Liberal-Democrats and the Socialists. It would have been superhuman to do so in the face of the Socialist efforts, which were partially successful, to lock him in his office and to use sit-down tactics in the halls of the Diet building to prevent him from opening a plenary session.⁶³

Finally, Baerwald's discussion of the speaker in Japan also illustrates that whatever powers a constitution, law, or set of standing orders vests in a speaker, the way in which he exercises those powers, or even his ability to do so, depends very much on whatever traditions have grown up around his office and, even more generally, on the prevailing rules of the political game.

The Diet's speakers 'are given incredibly broad powers: they can call a plenary meeting on their own authority, they can fix the agenda, they can limit debate, and they can maintain order'.⁶⁴ If members disagree with a time limit the speaker sets, the Diet majority can impose it by simple majority vote. Consequently, Baerwald concludes, in Tokyo 'a presiding officer has the authority to be a dictator in his own chamber'. In practice, however, '[h]is exercise of this power entails risks'.⁶⁵

Members of Opposition parties may attempt to barricade him in his office, or boycott the session altogether, or allow the session to begin and participate in a variety of delaying tactics that make it impossible to make any progress in the deliberation of the legislative matter which has brought about the impasse in the first place. These impediments, which are political rather than legal, constitute a powerful set of constraints on the excessive use of this grant of power to a presiding officer.

Whether or not this situation continues to prevail today, it remains true that, in every country, the office of speaker rests at an intersection of theory and practice. Any analysis that rests exclusively on official statements of formal powers can only hope to capture half the truth.

IN THE CHAIR

This analysis has both normative and prescriptive implications. There are profound differences between the powers, duties and traditions of the office of speaker in Great Britain compared with the same office in the United States. We have also seen that speakers in other established democracies tend to have job descriptions that fall

somewhere between these two polar cases. The long histories of both offices, and the respect accorded to their incumbents, undoubtedly have inspired other democratic assemblies to try to emulate one or the other, or even both. Even so, the role of the speaker, both in theory and in practice, is still very much a reflection of the constitutional powers of the assembly, its constitutional relationship with the executive, the electoral law and its consequences for the assembly's organisation and partisan divisions, as well as the more elusive effects of culture, history and tradition.

The most important difference among democratic speakers certainly must be the degree to which they are actively engaged in promoting party power and policies while serving as speaker. To re-emphasise the distinction that has been made repeatedly, in London the speaker is removed from such activity at all times. In Washington, on the other hand, the speaker usually has been very much the political and policy leader of his party in the House of Representatives. And in many, if not most, other democratic assemblies, the partisan posture of the speaker falls somewhere between these two extremes, the speaker being neither a party leader within the assembly nor a partisan neutral.

Notwithstanding this range of differences, however, there is an equally important commonality between the British and American speakerships and, more generally, in the expectations that surround the office of speaker in most if not all long-established democratic assemblies. Whether the speaker is a partisan or non-partisan figure, whether he is or is not actively involved in scheduling the assembly's legislative business, whether he enjoys or lacks significant discretion in applying the assembly's standing orders and assigning rights to participate in plenary sessions, the speaker is always expected to leave his partisan and personal policy preferences behind when he ascends the rostrum. In none of the assemblies that have been discussed here is it expected that the speaker will use his position as presiding officer during plenary sessions to the advantage of his party in ways inconsistent with the expectations created by the assembly's standing orders.

This last caveat is important because each set of standing orders sets its own implicit balance between majority powers and minority (opposition) rights. In the British House of Commons, the standing orders quite deliberately give the government control over how most of the House's time is allocated, and the government's majority is empowered to fix time limits for acting on specific propositions. In the US House of Representatives, the standing orders impose fairly

strict and pervasive time limits on debate and also enable the House to bring a bill to a vote on passage when the majority decides to do so. In the US Senate, by contrast, it takes a three-fifths vote to end debate on a bill, and senators generally may offer amendments that are entirely unrelated to the bill under debate. In other words, the Senate's standing orders deny the majority party the control over the plenary session agenda that majorities enjoy in other assemblies.

The speaker operates within the framework of the standing orders, whatever they may provide. If they work to the advantage of the majority, as they usually do, so be it. If they work to the advantage of the minority or opposition, as in the case of the US Senate, the speaker still accepts them as controlling. From the perspective of the speaker, the key is not *what* the rules provide, but that he enforce them accurately and even-handedly, *whatever* they may provide. In the more established democracies, this is how speakers typically think and act, *and this is as it should be*. Even if the speaker plays the partisan maximiser at some times and for some purposes, while in the chair he serves best when he serves as the neutral referee.

If the assembly majority remains reasonably unified and determined, it will prevail. Virtually all assemblies can pass bills by majority vote (though it may be an absolute majority as opposed to a majority of the quorum of members who are present and voting). And if the standing orders place serious obstacles in the majority's way, the appropriate response is to amend those rules, which the same majority can usually do promptly enough. The inappropriate response is for the speaker, in presiding over plenary sessions, to misapply the standing orders to the advantage of his party. That brings discredit on him, undermines respect for his office and exacerbates the level of conflict within the assembly because neither side can be confident that it knows the rules of political combat that will be followed.

Plenary sessions should be combat of sorts – a clash and competition of ideas. Assemblies must be deliberative as well as decision-making bodies. The majority can control the decisions that are made, but it must be willing to subject itself and its policies to a process of deliberation in which proposals are debated, tested, criticised, amended and contrasted with alternatives, especially those proposed by the opposition. Granted, this process can make national assemblies appear disorganised and inefficient, with unhappy effects on their public reputations. The solution to this problem, however, is not to transform the assembly into an assembly line (so to speak) or a steamroller, or to hide it from public view, but to improve public understanding of what

a legislative assembly is, how it works and what standards should be applied in evaluating its performance and productivity.

From this perspective, the optimal role for the speaker in plenary sessions is to enforce the rules fairly, to refrain from interjecting his own opinions from the chair, and to exercise his discretion as even-handedly as possible. It also serves the speaker's interests for the standing orders to be relatively elaborate, for prior interpretations of those rules to be recorded and easily retrievable, and for the speaker always to have the immediate assistance of an expert staff member to remind him what the rules and precedents are and how they are to be applied to particular situations as they arise. Notwithstanding Great Britain's admirable experience, it actually benefits the speaker when the effect of the rules and precedents, together with a commitment to observe established though unofficial practices, all combine to leave him with relatively little discretion. The more discretion the speaker must exercise, the more likely he is to be perceived as taking sides, however unwillingly or unwittingly, in partisan disputes by virtue of however he exercises that discretion, and the more likely his neutrality and fairness are to be questioned, however unjustifiably.

IMPLICATIONS FOR YOUNG ASSEMBLIES

Unfortunately, there are indications, though only anecdotal, that this is not the conception of the office of speaker that is (or was) developing in some of the newly constituted or reconstituted national assemblies of eastern Europe and the former Soviet Union, and elsewhere among nations without a history of political independence and parliamentary democracy during the years before the Second World War. At least so it appeared from observations and reports during the early to mid-1990s; perhaps the concerns expressed here are not as justified now as they were even a few years ago.

The 1991 Constitution of the Republic of Macedonia prohibits the speaker of the national assembly from being a member of a political party; Article 67, paragraph 3, states: "The office of the President of the Assembly is incompatible with the performance of other public offices, professions, or *appointment in a political party*." The impressive reputation and tradition of the office of speaker in Great Britain may well be the source of such mandated non-partisanship. But as Bergougous points out, the total depoliticisation of the speakership is exceptional among established national democratic assemblies. And as Laundry has documented, not even direct descendants of British parliamentary democracy, such as Canada and Australia, have

developed the same expectation. The attempt to transplant British convention to new assemblies such as that of Macedonia, and even to codify it as a requirement, may be equally admirable in intention. However, it is all too likely to prove unreasonable and unrealistic in practice.

If the prohibition against party membership means that the speaker may not be a party member at the time of his election, an assembly would have to choose only from among its independent members who belong to no party group, or from those who do not enjoy the legitimacy of democratic election (if the speaker is not required to be an assembly member). The former option would limit the assembly's choice unreasonably, because usually there are not many independents, and assembly standing orders often create incentives for members, including those elected as independents, to affiliate with a party group. And the latter option would be even less sensible, because the person chosen would have to be either a defeated or retired assembly member or someone without the experience in the assembly that an effective and credible speaker needs.

Alternatively, and more likely, the requirement may mean that the speaker must relinquish all party ties at the time he is elected. But to what end? Just because someone is required to renounce his formal party membership, does that make him any less a party loyalist? Undoubtedly, it is only the exceptional British MP who can set aside her political history in this way, and members of the House of Commons have years to judge which of their colleagues are truly capable of undergoing this transformation. In the entirely different historical and political context of eastern Europe and the former Soviet Union, alleging that someone can be transformed instantaneously from partisan to non-partisan is likely to produce nothing other than heightened cynicism about the sincerity of public officials at a time when their credibility is particularly important for the health of the new regime. Furthermore, however well-intentioned the attempt to mimic British convention may be, it is predicated on a false understanding of the relationship between partisanship and partiality.

The question is whether impartiality when in the chair requires a speaker to forego all partisan ties at other times, much less forevermore. The argument in support of such forbearance is that it is necessary to sustain the perception of impartiality, and that any manifestations of partisanship will raise doubts and suspicions in the minds of the members of other parties about the speaker's neutrality

in his role as presiding officer, representative of the house and manager of its affairs.

Yet ultimately there is something implausible about this argument. So long as the assembly elects its speaker from among its more experienced members – or from among its more experienced or visible politicians in the case of a newly democratic regime – he is almost certain to have been an active, committed partisan, even if not a party leader in the assembly. It is unrealistic, therefore, to expect the speaker suddenly to change his mind and to find no more merit in his party and its policies than in any of the others. No, what he should be expected to do is to succeed in setting his preferences aside as he fulfils certain responsibilities of his office.

Requiring or expecting the speaker to renounce his party allegiance is to emphasise form over substance. Rules or conventions can take the man out of the party; they cannot take the party out of the man. The proof of impartiality lies in performance, not in any pretence of political disinterest. As Laundry has put it: 'The fact that he [the speaker] himself may have political attachments is not in itself important, provided he is able to distinguish between a party allegiance and his duty to Parliament.'⁶⁶ This is not to disparage the depoliticisation of the office in Great Britain or to doubt the sincerity of its incumbents. It is to recognise that, in this respect, British parliamentary democracy may be inimitable – as the Commonwealth experience tends to demonstrate – and that attempts to imitate British practice may well prove to be fruitless and self-defeating. The danger is that, in new democracies, whatever their constitutions or assembly standing orders may say, it will be only the pretence of non-partisanship that prevails, not the actual practice of impartiality.

The office of speaker is one of the most important and prestigious positions in any democratic regime. It is also a position of unquestioned democratic legitimacy, which makes it even more important at a time when everyone, whatever their political pasts, claims to be an enthusiastic democrat. It is not surprising, therefore, if the assembly's majority party fraction selects one of its most pre-eminent leaders to hold the office. And it is too much to expect such a party leader to forego the position which may place him behind only the president and prime minister in the pecking order of national power and protocol.⁶⁷ Some speakers have been defeated or prospective presidential candidates, so election as speaker is not necessarily the pinnacle of their political careers (making their non-party status even more implausible, of course). This makes the office

valuable, in addition to its constitutional value, as either a consolation prize or a launching pad toward the presidency.⁶⁸

This merely describes an understandable tendency to elect partisan leaders as speakers. It is demonstrably possible for such a speaker to function as a neutral authority and referee in his capacity as presiding officer during plenary sessions. In some new or aspiring democracies, however, speakers have been too inclined to carry their politics with them into the chamber.

This inclination can manifest itself in a variety of practices. The speaker may show favouritism by giving the floor in debate more often to members of his own party or coalition, and by allowing them to speak at greater length than other members. He may shut off speakers with whom he disagrees, perhaps on the alleged grounds that their speeches are irrelevant or that time is too short. He may participate in debate from the rostrum, and interrupt other members to interject critical comments during their speeches. He may decline to entertain motions and amendments because, in his personal judgement, they are unworthy of consideration. He may ignore the standing orders when complying with them would be politically inconvenient, and he may claim the authority to pronounce new modes of proceeding when it suits his purposes. And as the ultimate administrator of the assembly, he may by his inaction sanction ghost voting, in which one member uses voting machine cards to vote for one or more of his absent colleagues, in full view of the assembly and sometimes in view of television cameras as well. In summary, the speaker may fail to enforce the assembly's standing rules fully and fairly, especially by allowing his partisan affections to intrude on his procedural responsibilities. Any reader of this essay is encouraged to decide how well this admittedly extreme composite portrait depicts the speakers and the assemblies with which he or she is most familiar.

It would be unfair not to recognise that speakers in some new democracies have found themselves in positions that have almost forced them to exercise broad discretionary authority with very little guidance on which to rely. The standing orders that they are to apply are newly adopted and untested, and it should not be surprising if they also prove to be incomplete, unworkable in important respects and a recurring source of unanticipated consequences. Any student of reform efforts in more established assemblies is familiar with the observation that today's reform becomes the cause of tomorrow's problem. In addition, speakers of new assemblies are hampered by their own limited experience as well as by a lack of recorded precedents and a dearth of experienced parliamentary staff advisors.

Finally, it is too soon for these assemblies to have developed the traditions and customary practices that circumscribe a speaker's powers and the accepted exercise of his discretionary authority.

In part, the source of the problem may lie in the standing orders themselves. When these rules assign the speaker broad discretion in deciding which members may speak and for how long, when they give him great influence, if not control, over the legislative agenda, and when they assign him effective control over the assembly's infrastructure and the allocation of its resources, it is hardly surprising when speakers are, and are perceived to be, arbitrary, partisan and unfair. The temptations are difficult to resist, as are the tendencies of opposition party members to perceive bias in the speaker's discretionary decisions, even when none is intended.

That this situation may be understandable does not make it any less disadvantageous and even dangerous to parliamentary life and work. When the speaker exercises his powers as presiding officer in an arbitrary, partisan or inappropriately intrusive manner, the rights of the opposition are the certain victim. And even when the speaker is not prompted by partisan motives, the extent to which he exercises discretionary powers, by choice or necessity, is almost certain to engender suspicions about his intentions and purposes, and to create perceptions and expectations of unfairness among those who are not in his personal or political favour. Finally, and institutionally, the result also is an unfortunate degree of uncertainty and unpredictability about how the assembly is going to conduct its business.

In his *Manual of Parliamentary Practice*, Thomas Jefferson reflected on eighteenth-century British parliamentary rules and procedures, and concluded that 'whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the speaker or the captiousness of the members'.⁶⁹ By extension, not only is it important that 'there should be a rule to go by', it is equally important that all members believe, and with good cause, that the assembly actually will go by its rules because they can depend on their speaker to apply and enforce those rules correctly and even-handedly.

WHAT IS TO BE DONE?

For the reasons offered, it is probably unrealistic in the near term to expect party fractions in new or newly democratised national

assemblies always to resist the temptation to select a loyal and active member, or even one of their current or prospective party leaders, as speaker, and it is equally unrealistic to expect these members to decline the honour. So we may expect that at least some of these assemblies will continue to be headed by speakers who are leading figures within their parties, who may well have ambitions to use their position as a stepping stone to higher office, and who have strong political and policy interests and equally strong incentives to use the powers of the speakership to promote those interests.

In the near term, this situation has at least one significant advantage. Especially in nations without democratic traditions, political power tends to gravitate toward the executive, and a confusing and cacophonous national assembly is a disconcerting thing to a public uneducated in the confusing ways of democratic governance. Once the first blush of enthusiasm for the democratic transformation has passed, the assembly must demonstrate that it deserves continued public support, and it must secure the resources it needs to function effectively when the executive largely controls government funds and has little incentive to fund a competitor adequately for governmental power. Under these circumstances, the assembly benefits if powerful individuals associate their own status, influence and political prospects with the vitality of the assembly. When an ambitious politician becomes speaker, his reputation can become tied to that of the body he chairs, so he has good reason to defend and strengthen the assembly in his own self-interest.

In the longer term, however, a speaker whose behaviour approximates that of the partisan maximiser will ultimately do serious damage to the assembly by creating mistrust and expectations of unfair treatment among its members, and by provoking opposition members and their public supporters to attribute their policy defeats to the deficiencies of the assembly as an institution. When too much power is concentrated in the hands of the speaker, and especially when he uses his procedural powers in presiding over plenary sessions in a manner that undermines respect for the rules of the game among all its participants, government as well as opposition, majority and minority, the unintended consequence will almost certainly be to jeopardise the still fragile legitimacy and respect that the assembly enjoys within the political elite and among the public at large. When the opposition concludes that it cannot get a fair hearing inside the assembly, it will be tempted to consider non- or anti-constitutional alternatives.

Then what is to be done? The most promising approach is to circumscribe the unilateral powers of the speaker in all respects and particularly in his capacity as presiding officer, thereby reducing incentives to designate a chief party leader as speaker by reducing the powers and discretion that he can exercise to the benefit of his party and his own career.

The speaker's administrative and resource allocation powers, for example, can be assigned, in whole or in part, to a multi-party committee. The result would be to reduce the speaker's ability to use these powers as rewards and punishments, with the additional benefit that the assembly's secretariat would come to be seen not as an extension of the speaker's power or a source of leverage for his party, but as an institutional resource that is available and accountable to all members and party groups. In similar fashion, the speaker's ability to shape the agendas of plenary sessions can be reduced by assigning the agenda-proposing power to a committee created for that purpose, either a steering committee of the majority party or a council on which all party groups are represented. If such a committee already exists, at least on paper, as it does in many cases, the speaker can be removed from its membership. In time, the assembly's members may perceive that the speaker as presiding officer is not promoting his own agenda, but instead is managing action on an agenda that, in some fashion, represents the collective will of the assembly, or at least its majority.

It would also benefit a democratic assembly to establish a committee whose primary or sole responsibility is to monitor the assembly's organisation and procedures and to evaluate and propose amendments to its standing orders. Thereafter, any disputes that arise over the efficacy or interpretation of the assembly's rules, or because of lacunae in the rules, can be referred to this committee for study and recommendation, rather than being left to the sole decision of the speaker for lack of any alternative. For the same reasons, an assembly is well served by developing a small cadre of staff who are experts on the assembly's rules, who are available to explain those rules to all members, and who are always present during plenary sessions to give procedural advice to the speaker. Although in the short run these officials may be (or at least may be seen as being) the speaker's agents, this danger can be reduced by also building a corpus of recorded precedents and rulings that are accessible to all members and to which the speaker's future decisions are expected to conform. It is far more difficult for the chairman of any body to act arbitrarily when it can be demonstrated that he is attempting to do so.

To reduce temptations for the speaker to dominate plenary sessions, the assembly's standing orders can provide that the speaker may not participate in debate from the rostrum, and that if he wishes to express his own views he must leave the chair and speak from the same place and under the same debate limits as any other member. Similarly, the rules can state that the speaker may not speak from chair except to announce the order of business, state the pending question, respond to inquiries about appropriate procedure, rule on questions of order and maintain proper decorum.

It is also advisable for assembly standing orders to govern such matters as debate limits, recognition priorities and amendment rights. For some purposes, the standing orders may establish rights and restrictions that apply in all cases. For other purposes, the same body of rules may create procedures that allow the assembly to vote on what rights and restrictions are most appropriate in individual cases as they arise. It is perfectly understandable why the authors of new rules for a new assembly would choose to give the speaker considerable latitude regarding such procedural decisions, rather than attempting to write rules that may prove to be unworkable or ill-advised. With time and experience, however, assembly members become better able to elaborate what may initially be a rather skeletal collection of rules into a code that circumscribes the speaker's discretionary powers in the interests of better enabling him to preside impartially.

If such reforms were to be adopted, in the short run they might well fit uncomfortably over the shoulders of the current speaker because these reforms would take away some of his powers and constrain the exercise of other powers that he retains. In the longer run, however, these reforms might gradually transform the nature of the office and members' expectations about the appropriate role of the speaker. If so, the office would become somewhat less attractive to members who thirst for higher office and for those who are unwilling to restrain their partisan impulses, but more attractive to members who are committed to developing and preserving an effective assembly and who are able to maintain a separation between their institutional responsibilities and whatever partisan roles they retain.

Even if these prescriptions are persuasive, one problem remains: how to get from here to there. Why should an incumbent speaker support reforms that reduce his personal power? And why should the incumbent majority party accept reforms that strike at the speaker's ability to serve its political and policy interests? In the short

term, these questions admittedly are difficult to answer. In the longer run, however, the solution may flow from the gradual maturation of the political system and more effective party competition in assembly elections. If and when the time comes that the party in power reasonably fears that it may lose those elections and that there will be an alternation in office, then members of the governing party may see such reforms as not so much a loss in their own power, but as protection against how they may be treated when they find themselves in opposition. Ultimately, the best protection against the majority's tendency to abuse its power is the realistic and sobering prospect of finding itself in the minority.

NOTES

1. The views expressed here are those of the author and do not represent a position of the Congressional Research Service or the US Library of Congress. This study was originally prepared for and presented at the International Conference on 'Opportunities and Dilemmas of Parliamentary Leadership,' sponsored by the Research Committee of Legislative Specialists of the International Political Science Association, Ljubljana, Slovenia, July 1998.
2. This study is particularly indebted to the monographs by Bergougnous and Laundry cited hereafter, and to the research paper on *Presiding Officers: Speakers and Presidents of Legislatures*, Legislative Research Series, Paper #1, prepared by S. Benda of the National Democratic Institute, Washington, DC, 1996.
3. At one time in British history it was of great importance for the speaker to represent and speak for the assembly in its relations with the crown, and also with the second chamber, with the cabinet of ministers, and, more generally, with the world outside the precincts of the assembly. It is from this function that the title of the office derives: the one who speaks for the assembly. Today, however, in Great Britain and elsewhere, this function is largely ceremonial and ministerial.
4. On such 'collegiate' bodies, see G. Bergougnous, *Presiding Officers of National Parliamentary Assemblies* (Geneva: Inter-Parliamentary Union, 1997), pp.91-6. For an example, see H.H. Baerwald, *Japan's Parliament: An Introduction* (New York: Cambridge University Press, 1974), pp.83-7. On France and Portugal, see Benda, *Presiding Officers: Speakers and Presidents of Legislatures*, pp.10-14.
5. E. May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, (London: Butterworths, 19th edn. 1976), p.436.
6. W. Robinson, *Thomas B. Reed, Parliamentarian* (New York: Dodd, Mead, 1930), p.238.
7. Dissenting opinion of US Supreme Court Justice Oliver Wendell Holmes in the 1919 case of *Abrams v. United States*, 250 U.S. 616.
8. However Laundry quotes the speaker in Malawi, then a one-party state, as explaining: 'It is the responsibility of the Speaker to liaise with the Leader of the House and the Chief Whip to make sure that Government business is transacted on time and quickly. It is, therefore, the responsibility of the Speaker to make sure that the minimum of time is wasted in the conduct of transactions in the chamber.' P. Laundry, *The Office of Speaker in the Parliaments of the Commonwealth* (London: Quiller Press, 1984), p.204.
9. In the sweep of British history, the impartiality of the speaker is a relatively recent development, dating first from the mid-eighteenth century but not becoming

- established until the second half of the nineteenth century. Ironically, therefore, it may well have been familiarity with the British speakership that helped shape its American counterpart. 'So far as the British speakership was an influence on the House of Representatives in 1789, it was to confirm the concept of an active politician with an avowed political allegiance in the chair.' K. Bradshaw and D. Pring, *President & Congress* (Austin, TX: University of Texas Press, 1972), p.55. They comment that '[t]he impartiality and authority of Onslow (1728–61) [whom Jefferson quotes so admiringly] was followed by ... the open and violent partisanship of Norton (1770–80)' – a particularly formative decade in American political and constitutional history. Bradshaw and Pring, *President & Congress*, pp.54–5. On Onslow and his contributions to the speakership, see Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, pp.41–4.
10. To ensure effective partisan control, the new Republican majority in the House of Representatives insisted that it hold a two-to-one majority of seats on the Committee on House Administration, not merely a share of seats that is proportional to its majority in the House. The majority party has such a disproportionate majority on only one other committee: the Committee on Rules, which plays a pivotal part in setting the legislative agenda for plenary sessions.
 11. P. Laundy, 'The Speaker and His Office in the Twentieth Century', in S.A. Walkland (ed.), *The House of Commons in the Twentieth Century* (Oxford: Clarendon Press, 1979), p.154.
 12. J.A.G. Griffith and M. Ryle, *Parliament: Functions, Practice, and Procedure* (London: Sweet & Maxwell, 1989), p.146.
 13. However passing bills under these procedures requires more than simple majority votes. Almost always, therefore, a unified and determined opposition party can prevent their passage.
 14. Of course neither speaker presides over all plenary sessions from beginning to end. In Washington, the speaker may designate speakers *pro tempore* and he appoints chairmen when the House resolves into a Committee of the Whole. In London, the speaker shares responsibility for presiding over plenary sessions with the 'Chairman of Ways and Means' and the deputy chairman. 'By tradition they take no public part in the activities of their party during their tenure of office and do not speak or vote in the House. If a government of a different political colour takes power, however, it is not the practice to reappoint them. They may then return to party political activity. This power of re-entry differentiates them from the Speaker and may explain why their conduct in the Chair has not always been as free from criticism as his.' Bradshaw and Pring, *President & Congress*, p.54.
 15. The British speaker is more likely to take the initiative in calling members to order for misconduct in debate; the American speaker is more likely to act in response to a point of order that a member makes from the floor. Furthermore, the British speaker has a power that her American counterpart does not. She may 'name' an offending member, thereby initiating a process by which the house can vote to suspend that member from the house for a period of days or longer. Both speakers also are to call members to order when their speeches are irrelevant to the question at issue, but both tend to be quite lenient in exercising this responsibility.
 16. 'Much modern practice is based on rulings by the Speaker or other occupants of the Chair, and such rulings are also particularly important in achieving consistent interpretation and application of the standing orders. ... In some areas almost all the procedures are based on decisions of the Chair, and very little is laid down by standing order.' Griffith and Ryle, *Parliament: Functions, Practice, and Procedure*, p.179. Although the authors are referring here to the House of Commons, they could be speaking equally well of the House of Representatives.
 17. Laundy, 'The Speaker and His Office in the Twentieth Century', pp.130–31 (emphasis added) and p.203.
 18. US House of Representatives, *Deschler's Precedents of the United States House of Representatives*. Vol.1, 94th Congress, 2nd Session. House Document 94-661

- (Washington, DC: Government Printing Office, 1974), p.vii.
19. Griffith and Ryle, *Parliament: Functions, Practice, and Procedure*, p.358.
 20. Bradshaw and Pring, *President & Congress*, p.52, quoting Standing Order No.9.
 21. Bradshaw and Pring, *President & Congress*, p.145.
 22. For example, '[t]he Speaker is the judge of the propriety or admissibility of a question, and disallows a question when in his opinion it is an abuse of the right of questioning'. However, the speaker is not guided only by her own opinions. There are at least 14 standards that guide the speaker. House of Commons, *Manual of Procedure in the Public Business* (London: Her Majesty's Stationery Office, 14th edn. 1987), pp.38–41.
 23. Laundy, 'The Speaker and His Office in the Twentieth Century', p.162. The need for the speaker to make such judgements is minimised to the extent that the parties are able to reach an agreement on debate by negotiations through 'the usual channels'.
 24. P. Silk, *How Parliament Works* (London: Longman, 2nd edn. 1989), p.92.
 25. More often, House rules divide the time fixed for debating a question between those supporting and opposing it or between the majority and minority parties. An important exception is the right granted to a member presenting a bill or offering an amendment to begin the debate on it. Special rules that the House adopts for considering individual bills in Committee of the Whole almost always give control over the time for the opening debate on the bill to the committee chairman and the most senior committee member of the opposition party.
 26. Bradshaw and Pring, *President & Congress*, p.156.
 27. Laundy, 'The Speaker and His Office in the Twentieth Century', p.169; see also Griffith and Ryle, *Parliament: Functions, Practice, and Procedure*, pp.236–7 for criteria affecting which amendments the Speaker is most likely to select.
 28. Laundy, 'The Speaker and His Office in the Twentieth Century', p.166.
 29. Members usually do not propose amendments during plenary sittings of the House as such; instead, they offer them during proceedings in what is formally a committee of the House, a Committee of the Whole House on the State of the Union, on which every member serves, which meets in the same hall as the House, but over which the speaker himself never presides. He chooses another member of the majority party to preside as chairman during consideration of a particular bill.
 30. Until 1910–11, the speaker's influence was more direct because he also served as chairman of the Rules Committee.
 31. Laundy, 'The Speaker and His Office in the Twentieth Century', p.125.
 32. R.M. Peters, Jr., 'Speaker of the House', in D.C. Bacon, R.H. Davidson and M.Keller (eds.), *The Encyclopedia of the United States Congress*, Vol.4 (New York: Simon & Schuster, 1995), p.1859.
 33. Bradshaw and Pring, *President & Congress*, p.52. 'When the Speaker or chairman gives his vote he usually does so, if possible, in such a manner as to leave the House another opportunity of deciding the same question.' House of Commons, *Manual of Procedure*, p.90.
 34. Laundy, 'The Speaker and His Office in the Twentieth Century', p.127. James Jerome, a speaker of the Canadian House of Commons during the late 1970s, even claimed not to have attended informal events attended by members of some, but not all, parties in the House. J. Jerome, *Mr. Speaker* (Toronto: McClelland and Stewart, 1985), p.144.
 35. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, p.99.
 36. On this question during the twentieth century, see Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, pp.68–72.
 37. This provision was implemented by the Electoral (Chairman of Dail Eireann) Act, 1937, and later amended by the Electoral Act, 1963 and the Electoral Act, 1992. (According to Wheare, Irish law had protected incumbent speakers against electoral challenges since 1927. K.C. Wheare, *Legislatures* (New York: Oxford University Press, 1963), p.25) Charles Flanagan, TD, was kind enough to provide this information, observing in a letter that the rationale for protecting the speaker in this way 'is that,

- while Chairman, convention demands of him to be totally impartial in the discharge of his duties. Contemplated in this is a restriction on normal political activity upon which an ordinary member might depend for his re-election.'
38. D. Lovick, 'Re-examining the Mythology of the Speakership', *Canadian Parliamentary Review* (Winter 1996/97). Lovick was speaker of the British Columbia Legislative Assembly in Canada. *The Speaker*, House of Representatives Factsheet No.3, Parliament of Australia, House of Representatives; revised March 1997; www.aph.gov.au/house/info/factsht. What is not clear is whether these speakers must fight for re-election as party members because they remain politically active while serving in office, or whether their need to stand as party candidates makes it implausible for them to renounce partisanship between campaigns. On the Lok Sabha, see S.C. Kashyap, *Parliament of India: Myths and Realities* (New Delhi: National Publishing House, 1988), pp.174-8.
 39. Wheare, *Legislatures*, p.25.
 40. Wheare, *Legislatures*, p.25
 41. The convention that British MPs relinquish further political ambitions upon becoming speaker is 'only' about 200 years old. Two former speakers became prime minister during the opening years of the nineteenth century. On the development of the British speakership, see P. Marsden, *The Officers of the Commons, 1363-1978* (London: Her Majesty's Stationery Office, 1979), pp.93-113.
 42. Wheare, *Legislatures*, p.26. According to Selwyn Lloyd, Speaker of the British House of Commons during 1971-1976, '[I]t is the convention that a Speaker must not only be impartial and separated from any Party political arguments during his Speakership, but he must also remain detached when his period of office is over.' S. Lloyd, *Mr. Speaker, Sir* (London: Cape, 1976), p.18.
 43. Letter to the author from Charles Flanagan, TD.
 44. Articles 57, 59, 64, and 97 of the 1997 Standing Orders Relative to Public Business of the Dail Eireann.
 45. 'The Taoiseach shall have the right to determine the order in which Government business shall appear on the order paper and, by announcement at the commencement of public business, the order in which it shall be taken each day.' Article 26 of the 1997 Standing Orders.
 46. S.C. Kashyap, *Our Parliament* (New Delhi: National Book Trust, 1989), pp.70-84.
 47. C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), p.141. To explain why, in his judgement, 'the Canadian House is not noted for either its respect for the chair or its knowledge of rules and parliamentary procedures', Franks cites the limited parliamentary experience that some speakers had before their elevation to the chair as well as the government's authority to select the chief parliamentary officials and, until 1985, to nominate the speaker. On changes in procedures for choosing the Canadian speaker, see Franks, *The Parliament of Canada*, pp.121-3.
 48. Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, p.107. We might characterise Canadian speakers as engaging in restrained partisanship; Laundy observes that they 'do not attend party meetings or actively campaign for their parties'. 'The main obstacle to agreement between the parties [on insulating the incumbent Speaker from electoral opposition] has always been a general reluctance to forego the possibility of winning an additional seat, plus the demoralizing effect on a constituency party organization of not having a campaign to prepare for and fight.' Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, p.109. See Wheare's argument, summarised earlier, concerning the British and Irish speakers.
 49. Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, p.166.
 50. Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, p.166.
 51. Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, p.143.
 52. Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, p.155.
 53. See note 4.
 54. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, p.51.

55. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, pp.53–4.
56. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, pp.70–71.
57. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, p.73.
58. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, p.74.
59. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, p.82. Bergougous draws attention to 'the didactic role played by certain Speakers in Parliaments of sub-Saharan Africa; in Mali and Niger, for example, the President summarises the discussion by recalling the views expressed on all sides in order to help the Assembly to take a decision. The President is playing his role of arbitrator and his intervention – even though it may undoubtedly have political significance – is an integral part of his functions'.
60. Bergougous quoting Michel Ameller, *Parliaments* (London: Cassell, 1966), p.196.
61. Bergougous also concludes that the office of speaker in western Europe typically differs from the office in London and Washington in another respect: the speaker is assisted by – or may share some of his powers with – a multi-member committee that usually includes MPs belonging to the various party groups represented in the assembly. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, p.108.
62. Wheare, *Legislatures*, pp.26–7. He also offers the intriguing speculation that speakers may have more difficulty remaining impartial in small chambers where the possibility of tie votes may be greater, and with it the need or opportunity for the speaker to cast deciding votes.
63. Baerwald, *Japan's Parliament: An Introduction*, p.79. It is questionable whether any Japanese speaker could convince opposition parties that he could be trusted to be a 'quasi-judicial arbiter'. Whether or not the speaker always was a leader of the Liberal Democratic Party (LDP) during its long years of political dominance, his election was very much a political decision: 'the LDP leadership makes the selection for Speaker and Vice-Speaker in the House of Representatives in conjunction with the formation of a new Cabinet. Hence, it is within the context of Cabinet-making, which ... requires the proper balancing of factional alignments inside the LDP, that the real nominations are made.' Baerwald, *Japan's Parliament: An Introduction*, p.78.
64. Baerwald, *Japan's Parliament: An Introduction*, p.15. Baerwald attributes the decision to give the speaker such powers in the Diet Law to the desire of Japan's Allied 'advisors' to avoid the possibility of American-style filibusters.
65. Baerwald, *Japan's Parliament: An Introduction*, p.87.
66. Laundry, *The Office of Speaker in the Parliaments of the Commonwealth*, p.10.
67. Bergougous also observes that 'Presidents of parliamentary assemblies in Eastern Europe are more often seen to be committed politicians rather than simply arbitrators of parliamentary life'. Bergougous, *Presiding Officers of National Parliamentary Assemblies*, p.109. The question is the degree to which they actually have acted as neutral arbitrators, simply or otherwise.
68. By contrast: 'To ensure or assist the impartiality of the Speaker in Britain ... it is usual, for example, to select the Speaker from the back benches, from those who do not hold or have not held office in the government.' Wheare, *Legislatures*, p.24.
69. T. Jefferson, *A Manual of Parliamentary Practice* (Washington, DC: Government Printing Office, 1993 reprint of first edition of 1801), p.2.