ment from day to day, for the same purpose, although a certain specified number is required to be present therein, respectively, for the doing of any ordinary business.

245. In the States above mentioned, therefore, the vacancies in the senate may be filled by those members of the two branches who are duly returned, and attend on the day of assembling, though they do not amount to the number requisite to the transaction of business; but in other States, and in the federal government, whose legislative bodies are not authorized to proceed in this manner, their right to proceed to organize on their first assembling is supposed to depend, like their authority to proceed afterwards with the transaction of business, upon the presence or absence of a certain specified number of members, denominated a Quorum, which will be treated of immediately in connection with this subject.

SECTION III. QUORUM.

246. It being a general rule, that where authority is conferred upon several persons, to be exercised with others, all the persons authorized must be present, in order to exercise it, and that authority delegated to the discretion of an individual, cannot be delegated by him to another; it would be a consequence of these principles, if they were strictly applied to the proceedings of legislative assemblies, the members of which have but a merely delegated authority themselves, and constitute a representative body, that the members must all necessarily be present, and concur, in order to the doing of any valid official act. But this would be extremely inconvenient, in general, and, in the greater number of our legislative assemblies, which are bodies of considerable size, would render their proceeding wholly impracticable. Hence it has been found indispensable, in the constitution of legislative assemblies, to make them an exception, in both these respects, to the general principles above stated.

247. In all councils and other collective bodies of the same kind, it is necessary, therefore, that a certain specified number, called a *quorum*,[1] of the members, should meet and be present, in order to the transaction of business. This number may be precisely fixed in the first instance, or some proportional part established, leaving the particular number to be afterwards ascertained, with reference

[1] For the origin of this term, see Blackstone's Commentaries, I. 351.

to each assembly, and this may be done either by usage, or by positive regulation; and, if not so determined, it is supposed, that a majority of the members composing the body constitute a quorum. If the required number is not present, at the time appointed for the meeting of a legislative assembly, the members can ordinarily do nothing more than adjourn from day to day, and wait for the requisite number, unless they are specially authorized to take measures to compel the attendance of absent members. In this country, the number necessary to constitute a quorum is, in all the States, respectively, and in the congress of the United States, regulated by constitutional provisions.

248. In the British parliament, according to the ancient and invariable usage of the two houses, as evidenced by their rules, three is the number necessary to constitute a quorum of the lords,[1] and forty a quorum of the commons.[2] These numbers, respectively, although established by and dependent upon usage merely, and within the power of each house to abrogate or change at any time,[3] have nevertheless the force of standing orders,[4] that is, they are equally binding upon every succeeding parliament until abrogated,

[1] May, 191.

[2] This number, which appears to have been first recognized as the quorum of the commons, on the 5th of January, 1640, (Comm. Jour. II. 63,) depends only on usage, and may be altered at pleasure. From an entry on the 20th April, 1607, (Comm. Jour. I. 364,) it seems, that sixty was not then a sufficient number. An attempt was made in the commons, March 18, 1801, (Comm. Jour. LVI. 188,) to make the quorum sixty, but it failed.

[3] It is somewhat surprising, that in reference to so simple a matter as the number necessary to constitute a quorum of either house of parliament, there should be any diversity of statement among well-informed writers. But such is nevertheless the fact.

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

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

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

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

The origin of the number *three* as a quorum of the house of lords undoubtedly arose from a principle of the Roman law, that three persons suffice to make a college — *collegium*, equivalent to our word corporation, in most of its legal features.

[4] By the system of standing orders, which is in use in England, it is in the power of the house of commons, at any time, by simply declaring one of its orders a standing order, to make it binding on or in force in a succeeding house of commons, as much as if it was an order of that house itself. This system does not prevail in this country. It is not in the power of a legislative assembly here to make any rules to bind its successors. That can only be done by constitutional provision or

and do not require to be specially adopted in order to be in force.

249. In this country, the number necessary to form a quorum is different in each legislative assembly, according to its size, the quorum being for the most part fixed at some aliquot part, as for example, two thirds, or a majority of each; and, of course, being established only by constitutional provision, the number is in force at the commencement of each session, and is unalterable by the assemblies themselves.

250. In the constitutions of the United States and of the following named States, it is provided, in the same words, that "a majority of each house shall constitute a quorum to do business," namely: — Maine, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, Florida, Alabama, Mississippi, Michigan, Missouri, Iowa, Wisconsin, and California. In the constitutions of New Hampshire, (as to the house of representatives,) Maryland, and Vermont, the same proportional number is established in equivalent terms. In the constitution of Ohio it is declared, that "a majority of all the members elected to each house shall be a quorum to do business."

251. In the constitution of Illinois, it is provided, that "two thirds of each house shall constitute a quorum," and in those of Tennessee, Indiana, Arkansas, and Texas, that "two thirds of each house shall constitute a quorum to do business." [1]

252. In the constitution of New Hampshire, it is provided that, "not less than seven members of the senate shall make a quorum for doing business," and in that of Massachusetts, "that not less than sixteen members of the senate and sixty members of the house of representatives shall constitute a quorum for doing business." The constitutions of Louisiana and Kentucky declare, that "not less than a majority of the members of each house shall constitute a quorum to do business;" that of Georgia that "a majority of each house shall be authorized to proceed to business;" while that of North Carolina provides, that "neither house of the general assembly, shall proceed upon public business unless a majority of all the members of such house, are actually present." The assem-

by law. Each assembly, indeed, usually adopts the rules and orders of its predecessors, in express terms, and until this is done, they are not in force at all. There is an interval, therefore, of more or less duration, at the commencement of each assembly in this country, when the only rules in force in it are those of the common parliamentary law.

[1] In the several assemblies, therefore, mentioned in this and the preceding paragraph, the number necessary to a quorum is so fixed by the constitutions of the States, to which they respectively belong, that it cannot be varied therefrom by those assemblies themselves.

blies, therefore, in the States mentioned above, may establish the quorum of each at any number they please, provided it is not less than the constitutional number. Thus, in Massachusetts, where the senate is to consist of forty members, not less than sixteen of whom are to constitute a quorum, that body may itself determine upon and fix its own quorum at any number between sixteen and forty.

253. In some of the ways above mentioned, the quorum of each legislative assembly becomes established at a fixed number; the presence or absence of which can always be ascertained by counting. This is usually done, after the assembly is constituted, by its presiding officer, who announces or reports the result. In the senate of the United States this duty is performed by the sergeant-at-arms, upon whose report to the presiding officer, the latter announces the result. For the purpose of ascertaining whether a quorum is present, every person, who is entitled to vote, that is, every person, whose return as a member has been admitted, and who has been regularly sworn as such, and no other person, is to be counted. This rule excludes, first, all mere claimants to seats, whose claims, however well founded they may be, are not yet admitted; but it does not affect the right of persons duly returned, however ill founded their claim may be, and notwithstanding their elections may be controverted. In the second place, it excludes the presiding officer, when he is not a member of the body over which he presides, but presides in virtue of his election or appointment to some other office. Thus, the lord chancellor, who presides over the house of peers, in virtue of his office of chancellor, is not counted to make a quorum of that body, unless he is also a peer and as such a member of the house of lords. So, also, the vice-president of the United States, who, by virtue of his office, is the presiding officer of the senate, is not counted as a member, to make a quorum of that body, notwithstanding he is expressly entitled, by the constitution, to give the casting vote therein, when the senate is equally divided. In the third place, the rule above mentioned excludes the representatives of territories in the lower house of congress, denominated delegates, from being counted therein as members, to make a quorum, although by law they exercise all the functions of members except that of voting.

254. In the constitutions of the United States, and of all the States, except Massachusetts, New Hampshire, New York, New Jersey, and North Carolina, it is expressly provided, that a less number than a quorum may adjourn from day to day. This pro-

vision, being general, is applicable as well before as after the organization. But as a legislative assembly, when duly convened, cannot be adjourned without day, or dissolved, but by lapse of time, or in the manner provided by law; and as an adjournment from day to day can have no other effect than to enable those who attend personally to ascertain, in the most convenient manner, when the requisite number is present; it can scarcely be thought necessary to the existence of such a power, that it should be expressly conferred; and therefore it may be considered to exist, as well in those States whose constitutions are silent on the subject, as in those where it is expressly conferred.

255. If, on the day appointed for the meeting, the requisite number of members is not present, those who attend can only adjourn until the next day, and so on from day to day, until the requisite number appears, or a prorogation or dissolution takes place; unless a smaller number than a quorum should be expressly authorized to compel the attendance of absent members; in which case, proceedings may take place for that purpose. In reference to this subject, various provisions are in force. Those only which are found in the several constitutions will be briefly noticed.

256. I. The constitution of the United States provides, that a smaller number than a quorum "may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide." The same provision is found in the constitutions of New Jersey and Alabama, and with a slight verbal alteration in those of Delaware and Virginia; in the constitutions of Maine and Arkansas, and with a slight verbal alteration, in those of Rhode Island, Maryland, and Missouri, the language is, that a less number than a quorum "may compel the attendance of absent members, in such manner and under such penalties, as each house shall provide." The constitutions of Georgia, Florida, Michigan, Texas, Missouri, Iowa, Wisconsin, and California, contain clauses, similar in substance to those last mentioned. Constitutional provisions, of this kind, do not confer any present authority of themselves to compel the attendance of absent members; nor do they authorize the conferring of any such power by law; they merely authorize each house, when duly constituted, to compel the attendance of its members.[1] Consequently they can have no operation until after the organization.

[1] Congressional Globe, XVI. 977. In the rules and orders of the house of representatives in congress, it is provided, that any fifteen members, including the speaker, if there is one, shall be authorized to compel the attendance of absent members.

257. II. The constitution of Pennsylvania provides, that a smaller number than a quorum "may be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be provided." That of Tennessee contains a similar clause. In the constitution of Louisiana, which contains a like provision, the word "shall" is inserted, instead of "may." The constitutions of Kentucky and Ohio have the same provision in substance as that of Pennsylvania. Clauses of this description authorize the legislatures of the States in which they prevail, to provide beforehand, by law, that each legislative assembly, though containing less than a quorum, may compel the attendance of its members; and this authority may as well be exercised, so as to relate to the first assembling, as after the constitution of the assembly. When this is the case, if the requisite number do not appear, those who do, may, of course, resort to the measures, provided by law, to compel the attendance of absent members.

258. III. In the constitution of Rhode Island, it is provided, that "a less number than a quorum of each house may compel the attendance of absent members, in such manner, and under such penalties, as may be prescribed by such house or by law;" in those of Indiana and Illinois, the terms are, that "a smaller number may meet, adjourn from day to day, and compel the attendance of absent members." In the first-mentioned State, certainly, and it is presumed, also, in the others, provision may be made either by law, or by each house acting for itself, to enforce the attendance of absent members.

259. IV. The constitutions of Massachusetts, New Hampshire, Vermont, New York, and North Carolina, are silent with reference to this subject. But it can scarcely be doubted, that in those States, and in those where the power is conferred upon the legislative bodies themselves, as well as in those whose constitutions authorize the regulation of this matter by law, the subject may be made one of ordinary legislation.

260. When the number necessary to constitute a quorum is fixed absolutely, as in Massachusetts, it is only necessary to count the members present, in order to ascertain whether the requisite number is in attendance; so where the quorum is some aliquot part of the whole number, as two thirds, or a majority, provided the whole number is fixed by law; but, where the number necessary to form a quorum is an aliquot part of the whole, and the number of which the whole assembly may consist is uncertain, depending upon the number of constituencies which elect mem-

bers, or the number of elections that take place, it is necessary, in the first instance, to ascertain how many the body consists of, before proceeding to determine whether a quorum is present; and, in order to do this, it is clear that those who are duly returned and those only must be reckoned as members. In all cases, therefore, it seems to be manifest, that a less number than a quorum must have power, at least, provisionally, from the very necessity of the case, to examine and decide upon the returns; for, otherwise, it might be impossible to ascertain how many members were present.

261. When the number, of which an assembly may consist, at any given time, is fixed by constitution, and an aliquot proportion of such assembly is required in order to constitute a quorum, the number of which such assembly may consist and not the number of which it does in fact consist, at the time in question, is the number of the assembly, and the number necessary to constitute a quorum is to be reckoned accordingly.[1] Thus, in the senate of the United States, to which by the constitution each State in the Union may elect two members, and which may consequently consist of two members from each State, the quorum is a majority of that number, whether the States have all exercised their constitutional right or not.[2] So, in the second branch of congress, in which, by the constitution, the whole number of representatives of which the house may consist is fixed by the last apportionment, increased by the number of members to which newly admitted States may be entitled, the quorum is a majority of the whole number, including the number to which such new States may be entitled, whether they have elected members or not, and making no deductions on account of vacant districts.[3]

262. Where a number less than a quorum is under the necessity of acting, as, to adjourn from day to day, to examine and decide upon returns, or to compel the attendance of absent members, the same person usually assumes, or is required by law, to preside, by whom the preliminary proceedings are afterwards conducted, until the organization takes place; but if no person is authorized by law or by custom to conduct or record their proceedings, the most convenient and proper mode to be adopted will be for them to appoint suitable temporary officers to prepare and manage their business, but for every order and record to be authenticated by the signature of each and every member present.

[1] J. of H. VI. 274, 395; J. of H. VII. 214.
[2] J. of S. 32d Cong. 2d Sess. 351; Cong. Globe, X. 1.
[3] J. of H. 30th Cong. 1st Sess. 877; Cong. Globe, XVIII. 821.

263. The right of the members of every legislative assembly to have the presence and attendance of other members, in order to a due organization of the assembly, has already been partly treated of in the preceding section, in connection with the number necessary to constitute a quorum. Very nearly akin to this right, is that of the assembly itself, after it is constituted, to have the attendance of all its members, for the transaction of business. Where the former right is conferred and measures are provided by law for its enforcement, those measures will, of course, depend upon the particular law by which they are created, and will be made adequate to the end in view, according to the circumstances and condition of each assembly, but will probably bear more or less analogy to the means resorted to by the assembly itself, after its constitution, to enforce the attendance of its members.

SECTION IV. — COMPELLING ATTENDANCE OF ABSENT MEMBERS.

264. Every legislative assembly, when duly constituted, has power to compel the attendance of its members; but, until so constituted, it has no such power, as it has itself no legal existence; and the right of the members who are present for the purpose of organization to compel the attendance of other members depends wholly, as has been seen, upon the constitution or law to which each assembly is subject. The right of a legislative assembly, after it is regularly constituted, to have the attendance of all its members except those who are absent on leave, or in the service of the assembly, and to enforce it, if necessary, is one of its most undoubted and important privileges. It is usually enforced by means of what is denominated a "call" [1] of the assembly, which is effected in the following manner in the house of commons.

265. When a call of the house is determined upon, the first step to be taken is to pass an order that the house be called over on a future day, and, for this purpose, it is usual to appoint a day which will enable the members to attend from all parts of the country. This order is always accompanied by a resolution "that such members as shall not then attend be sent for in custody of the sergeant-at-arms." On the day appointed for the call, the order of the day for that purpose is read in the usual manner, and proceeded with, postponed, or discharged, at the pleasure of the house. If proceeded with, the names of the members are called over in the

[1] May, 188.

order in which they stand on the roll of the house, and those who are present answer to their names. The names of those who do not answer are taken down by the clerk, and are afterwards called over again. If they appear in their place at this time, or in the course of the same sitting, it is usual to excuse them for their previous default;[1] but if they do not appear, and no sufficient excuse is offered for them, by their friends, they are ordered to attend on a future day.[2] It is also customary to excuse them if they attend on that day, or if a reasonable excuse is then offered, as illness,[3] the illness and death of near relations,[4] public service,[5] or being abroad.[6] If a member should not attend at this time, and no excuse should be offered, he will be liable to be taken into the custody of the sergeant-at-arms, and brought to the house in that manner. In this case, he will be liable to pay the fees incident to such commitment and detention. But instead of committing the defaulters, the house sometimes appoints another day for their attendance,[7] or discharges the order for their commitment altogether.[8] In earlier times, it was customary for the house to inflict fines upon defaulters, as well as other punishment.[9]

266. This is substantially the method pursued in our legislative assemblies, with such alterations as each may think proper, the elements of a call being the calling of the members at a given time; the sending for defaulters in custody; and the payment of fines and other expenses by them, in order to effect their discharge. In the senate of the United States, a compulsory attendance of the members has not been found necessary; and nothing analogous to a call of the house has ever been resorted to. In the house of representatives, on the contrary, a call of the house is of almost daily occurrence; it is incidental to all other business, and takes place, without the passing of any previous order for the purpose, or the giving of any notice thereof beforehand. The manner in which it is there practised, is made the subject of a special rule.[10]

267. The obligation of a member to attend the service of the house, at all times, when the house sits, is, of course, suspended for a time, while a member has leave of absence; which may

[1] Comm. Jour. LXXX. 147.
[2] Comm. Jour. LXXXIV. 106.
[3] Comm. Jour. LXXX. 130.
[4] Comm. Jour. LXXX. 130.
[5] Comm. Jour. LXXX. 130.
[6] Comm Jour. XCI. 278.
[7] Comm. Jour. XCI. 278.
[8] Comm. Jour. XC. 132.
[9] Comm. Jour. I. 300, 862; Same, II. 204; Same, IX. 75.
[10] Rules 62, 63, 64.

be obtained, on the application of the member himself, or of any one in his behalf, and, sometimes, on the report of a committee appointed for the purpose. The same effect results from absence or employment in the service of the house.

268. When the attendance of absent members is compellable by virtue of a rule of the assembly, it is usual to provide that the proceedings, for this purpose, may take place, when a number of the members less than the number necessary for an ordinary quorum is present; and that number, though they can do nothing else, may, of course, do whatever is necessary to compel the attendance of absent members. Thus, in the house of representatives of congress, fifteen members, including the speaker, if there is one, constitute a quorum for this purpose.

269. If the motion, for a call of the house, passes in the negative, a second motion, for the same purpose, is not in order, until after the intervention of some parliamentary proceeding.[1] If it passes in the affirmative, the order may be rescinded or discharged, or the subject may be reconsidered.

270. A motion, for a call of the house, cannot be suppressed by a motion to lie on the table, but must be decided specifically.[2] All proceedings under a call are, from its very nature, suppressed,[3] and all members under arrest, as defaulters, are discharged,[4] by an adjournment of the assembly, whatever may be its effect upon other proceedings. In the mean time, the latter are excluded from voting, or otherwise participating in the functions of members.[5]

SECTION V. — ORGANIZATION.

271. The modes of organization, though substantially the same in all, are yet so different in their details, in the several States, that it will be impossible to do any thing more than allude, in general terms, to some of their distinctive features. In most of the States, there are certain differences in the constitution of the two branches, composing the legislature, which lead to corresponding differences in the mode of organization; in some, the presiding officer of the senate, or first branch, is not a member of the body, but is elected to some other office, in virtue of which he presides, as that of lieu-

[1] J. of H. 27th Cong. 3d Sess. 532; J. of H. 28th Cong. 2d Sess. 1151; Cong. Globe, XX. 177, 178.
[2] Cong. Globe, XIII. 335.
[3] Cong. Globe, XVIII. 60.
[4] Cong. Globe, XV. 516.
[5] Cong. Globe, XVIII. 928.