

Review of the Third Edition of Donald A. Tortorice's *Modern Rules of Order*

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Introduction

In 2007, the American Bar Association (“ABA”) published what it called the third edition of *The Modern Rules of Order* (“MRO”) by lawyer Donald A. Tortorice (“Tortorice”). MRO states as its purpose: “The objective of *The Modern Rules of Order* is to provide a modern and simplified procedure that promotes efficiency, decorum and fairness within a format that can be easily mastered and later referred to with ease.” MRO p. xiv. Somewhat confusingly, the Pennsylvania Bar Institute Press (“PBI”) in 2006 published what it called the third edition of MRO. The two third editions, while based on the same text and in accordance on substantive points, are not identical and contain minor variations in wording and completely different pagination. The publication of these twin third editions of MRO prompted this review.

PBI published the first edition of MRO in 1992, which is understandable as author Tortorice’s legal career was based in Pennsylvania and he had long been active in continuing education programs with the PBI. The ABA published the second edition in 1999. In this review, all citations to MRO are to the more recent ABA third edition unless otherwise specified. Although there are slight differences in emphasis, there are no substantive changes between the editions. The small differences among the various editions are discussed in the *History* section below.

Despite the relentless promotion of MRO by ABA Publishing, the ABA House of Delegates and most ABA Sections and other divisions, continue to use RONR. See ABA House of Delegates Rules of Procedure § 42.6, available at <http://www.abanet.org/policy/cb0304.pdf>. The Tort Trial and Insurance Practice Section (“TIPS”) uses TSC, *The Standard Code of Parliamentary Procedure*. TIP’s Bylaws Art. VII, § 3, available at <https://www.abanet.org/tips/guidelinebook/2007/A.1.Bylaws.pdf>.

Tortorice’s principal background is in the business corporate world, as discussed in the “about the author” section of his book. MRO p. xi. His book is written from the perspective of meetings of business corporations. The sample agendas (pp. 33–34) and minutes (pp. 41–49) in the book are for board and shareholders meetings of business corporations, with members added only as a parenthetical afterthought in the sample agenda (p. 34). Many attorneys who do some nonprofit advising are comfortable with this approach because their principal area of practice is working for business corporations and it is easy for them to use familiar business corporate models for nonprofit corporations. In practice, however, particularly for deliberative meetings where input from diverse sources is expected, as in the nonprofit sector, the business corporations’ process, which maximizes efficiency at the cost of discussion, is a poor fit.

While nonprofits can often learn from business models, their goals—and therefore their governance structures—are different. For example, business corporations' relationship with shareholders, whose sole goal is typically profit maximization, is very different from membership nonprofits' relationship with members who desire to take an active role in an organization that gives meaning to their lives. Even in non-membership nonprofits with self-perpetuating boards, the emphasis is on the more amorphous goal of achieving the mission with limited resources. More sources of input, more diversity in board membership, and more deliberation are generally warranted in trying to arrive at optimum decisions.

MRO reads as though it were written by someone who gained his experience in meeting procedures by sitting through business corporations' board meetings, instead of attending nonprofit membership meetings and reading the established works in the field of meeting procedures. For example, in the introduction, Tortorice quotes former US House Parliamentarian Clarence Cannon as saying that Congressional procedure is not appropriate for voluntary organizations, MRO p. xiii, and leaps from that statement to the conclusion that *Robert's Rules* are not suited to corporate or nonprofit business meetings. MRO p. xiv. (Tortorice in this context appears to be unaware of alternatives to Robert, such as TSC and Keesey.) Cannon, however, actually relied primarily on Robert in describing the regularized and simplified legislative procedures used in voluntary assemblies. See Cannon pp. 721–23 (citing, as its sole reference on parliamentary procedure for ordinary assemblies, ROR). For example, Cannon says:

As a result [of the complexity and detail of legislative procedure] there has been simultaneously developed through years of experiment and practice a simpler system of procedure adapted to the needs of deliberative assemblies generally and which, though variously interpreted in minor details by different writers, is now in the main standardized and authoritatively established. Assemblies convene with the implied understanding that they will be conducted and governed in accordance with these fundamental principles.

Id. at 721 (headings omitted).

MRO reads as though the author felt he never needed to read RONR and just assumed it was the same as the congressional rules. For example, Tortorice invents new cumbersome phrases to replace the traditional descriptive categories for motions: “meeting conduct motions” and “disposition motions,” MRO pp. 5–6, 21, 52–53, instead of “privileged motions” and “subsidiary motions,” respectively. See RONR pp. 60–66; TSC p. 17. Similarly, MRO refers to “tellers” as “judges of election,” mirroring business corporation usage. Compare MRO p. 30; RMBCA § 7.29 (inspectors of election), *with* Keesey p. 108; RONR pp. 400–04; TSC pp. 157. While MRO is short, it also leaves out a lot of useful procedures contained in even the briefest of the more traditional authorities (authorities derived from the parliamentary tradition, including RONR,

TSC, and Keeseey), such as the workings of committees, methods of voting, notice (MRO's brief mentions of notice assume that all issues related to notice are prescribed by statute or the bylaws, MRO pp. 14, 22), special meetings (MRO mentions only that special meetings are restricted to business stated in the call, MRO p. 14), a default nominations procedure, and removal from office. See Keeseey pp. 80 (removal from office), 89–100 (committees), 105–11 (methods of voting), 113–17 (nominations); RONR pp. 89–90 (special meetings), 116–18 (notice), 393–415 (methods of voting), 416–24 (nominations), 471–85 (committees), 642–43 (removal from office); TSC pp. 102–05 (notice), 107 (special meetings), 141–49 (methods of voting), 150–56 (nominations), 173–74 (removal from office), 175–84 (committees).

The daunting nature of RONR (at 643 pages of text) may be a significant reason that Tortorice's approach is favored by some other lawyers, because MRO is only 68 pages of big print that can read through in an hour or so before a meeting. Its brevity is the superficial charm of MRO. Lawyers well into their careers do not often have the luxury of time to immerse themselves in a 643-page tome in sufficient depth to give advice that presupposes a professional familiarity with an authoritative text. The major concern with MRO is not that it is a simplification of the *Robert's Rules* stream of general parliamentary law, but (as discussed below) that Tortorice's approach has fundamentally changed some traditional meeting rules in a way that detracts from the deliberative process, which is particularly important in the post-Enron, post-Sarbanes-Oxley era.

Meeting manuals derived directly from the parliamentary tradition also have the advantage over MRO that their basic rules should be very familiar to board members who have participated in other deliberative organizations, such as professional or neighborhood associations, fraternal or affinity groups, or student or local government bodies, where general parliamentary law applies (either alone or as a supplement to an adopted manual in the parliamentary tradition). Because parliamentary procedure is largely an evolved system, it has had the benefit of years of honing those rules, motions, and procedures that work best. Tortorice's procedural rules are likely to cause confusion for participants whose experience is primarily in organizations that hold deliberative meetings using the forms of general parliamentary law.

Tortorice's title, *Modern Rules of Order*, may also cause some confusion because *Modern Rules of Order* is also used as the title of the most recent (1964) edition of Luther Stearns Cushing's *Manual of Parliamentary Practice* (1st ed. 1845). Cushing's manual, once widely used, was largely superseded by Henry M. Robert's procedural works. RONR pp. xxxiv–xxxv. Cushing lost popularity because it did not take a prescriptive position when the general parliamentary law was unsettled on a procedural point, suggesting that groups adopt their own specific rules to address the situation. Robert, on the other hand, met a significant need by devising default rules to cover many frequently occurring procedural disputes. RONR pp. xxxiv–xxxv. Tortorice's model adoption language states ambiguously "Meetings of . . . this [corporation/association] shall

be conducted according to *The Modern Rules of Order*,” MRO p. xv (footnote omitted), which could refer to either Tortorice’s or Cushing’s very different works.

Tortorice’s approach appears to reject all the traditional sources and start over again based on his own experience, which results in a somewhat uneven treatment of frequently occurring issues. His approach also varies considerably from traditional parliamentary practice (general parliamentary law), and not in ways that necessarily simplify matters. As discussed below, MRO enshrines a lot of common meeting practices that are disapproved by the more traditional parliamentary authorities for good reasons. In many ways, Tortorice’s approach does not so much simplify traditional practice, as it significantly enhances the chair’s power at the expense of the deliberative process.

Some of the more modern, but traditionally based, parliamentary authorities simplify procedure in part by curtailing minority rights in favor of the majority. See Keesey pp. 61–62 (rescind requires a simple majority vote, never a two-thirds vote); TSC pp. 37, 44 (similar). MRO, on the other hand, curtails the rights of even the majority in favor of the Chair, as discussed in greater detail below. With a completely benign and omniscient chair, this simplification may enhance expedition. In reality, however, such “benevolent dictator” chairs are rarely encountered. More frequently, the chair is an ordinary human, often striving very hard for the optimal results, particularly in nonprofit organizations, but subject to human frailties nonetheless. Even MRO recognizes that some organizations may suffer from “lack of effective leadership,” MRO p. 12, but prescribes no antidote, other than waiting until it is time to elect new leadership.

History

The format of all editions of MRO follows a familiar pattern in legal publications. After summary and detailed tables of contents (MRO pp. v–ix), a brief background of the author (MRO p. xi; before the table of contents only in MRO3PBI pp. ix–x), introduction (MRO pp. xiii–xiv), and model rules adoption language (MRO p. xv), the book contains in Chapter One a series of brief numbered “black-letter” rules (MRO pp. 1–9). Chapter Two, entitled *Discussion of the Rules*, restates each rule and underneath the black letter amplifies each provision and provides additional detail about its application. MRO pp. 11–31. Chapter Three contains some short sample agendas. MRO pp. 33–34. Chapter Four is entitled *Discussion of Minutes and General Guidelines for the Conduct of Meetings*. MRO pp. 35–39. It contains a detailed discussion of minutes and reiterates meeting conduct guidelines contained in Rules 9 and 10, emphasizing a preference for informal discussion and resolution of action items. Chapter Five contains lengthy sample minutes for a meeting of stockholders and a meeting of a business board of directors. MRO pp. 41–49. The text concludes with a two-page motion chart (MRO pp. 52–53) and an index (MRO pp. 55–59). The only substantial difference in the organization of the various editions is that the first edition did not have an index and contained a four-page introductory highlights section, called *Modern Rules of Order in a Nutshell*, with quotations from the rest

of the book. MRO1 pp. 7–10. The highlights section is not included in subsequent editions and the index is included in the second and subsequent editions. MRO2 pp. 75–80, MRO3PBI pp. 75–84, MRO pp. 55–59.

The most significant difference among the editions is that both ABA editions contain a significant typographical error in the black-letter of Rule 12, *Motion Practice and Precedence*. The PBI editions state: “(b) [W]here a required vote is stated, reference is made to those present and voting or, (c) in situations such as stockholders meetings where participants have more than one vote, reference is to the number of votes cast.” MRO1 pp. 15, 31; MRO3PBI pp. 13, 32 (lettered subsection indicators only in MRO3PBI). The black-letter only versions of the rules (Chapter 1) in the ABA editions, on the other hand, state: “(b) [W]here a required vote is stated, reference is made to those present; and (c) voting or, in situations such as stockholders meetings where participants have more than one vote, reference is to the number of votes cast.” MRO2 p. 13; MRO p. 5. The ABA wording is, at best, confusing. At worst, it leads to a reading that motions need a majority or two-thirds vote of those present to pass (counting abstentions as “no” votes), as opposed to a majority or two-thirds vote of those present and voting (abstentions not counting at all). See RONR pp. 389–90. This is particularly confusing in that the distinction, on cursory review, appears purposeful, in that a vote of a majority of those present is required for board action under RMBCA § 8.24 and RMNPCA § 8.24. That the phraseology of the ABA editions is not purposeful can be gleaned not only from the re-use of the clearer original punctuation in MRO3PBI, but also the correct statement of the rule where it is repeated in the fuller discussion of Chapter 2. MRO2 p. 31; MRO pp. 20–21. It is a mystery why this obvious error was continued in the ABA third edition after being addressed in the PBI third edition.

Other changes in the various editions are more in the nature of clarification. For example, under MRO’s disappearing quorum provision, a quorum is necessary only to commence a meeting, but the meeting can continue after that no matter how many members of the body depart. MRO p. 14. The second and subsequent editions add language at this point making it clear that the MRO disappearing quorum rule applies unless prohibited by the bylaws or applicable law. Compare MRO1 p. 24 with MRO2 p. 24; MRO3PBI p. 23; MRO p. 14. Similarly, in its discussion of the motion to appeal, the second and subsequent editions add a sentence reinforcing that, “[w]henver a member questions the appropriateness or essential fairness of the Chair’s ruling, that member can appeal the ruling to a vote of the meeting.” Compare MRO1 p. 34 with MRO2 p. 34, MRO2PBI p. 34, MRO p. 22.

In another clarification, the third editions insert a headnote before the rules indicating that only Rule 1 (role of the chair) and Rule 2 (rules and governing law) are mandatory and the remaining “rules” are simply guides for the chair. Compare MRO1 pp. 11, 21; MRO2 pp. 9, 21 with MRO3PBI pp. 7, 19; MRO pp. 1, 11. The purport of this headnote, however, was already included in the descriptive text of Rule 1 (chair should “us[e] these rules as a guide . . . and not

as an unyielding mandate . . . ,” MRO p. 12) and Rule 11 (rules on motions merely a guide, MRO pp. 4, 20). Similarly, in the third editions, the black-letter text of Rule 9, *General Consensus and Sense of the Meeting*, clarifies that, “[t]he Chair may also announce that, without objection, a matter may be recorded as the unanimous decision of the meeting.” *Compare* MRO 1 pp. 14, 29; MRO2 pp. 12, 29 *with* MRO3PBI pp. 11, 30; MRO pp. 4, 19. This concept was already apparent from the discussion of Rule 9 in the more detailed Chapter 2. MRO p. 19.

Other changes in subsequent editions reduce the sometimes harsh tone of original. *Compare* MRO1 p. 1 (condemning traditional procedure as “complex and involuted”) *with* MRO2 p. 1, MRO3PBI p. 1, MRO p. 1 (traditional procedure merely “complex”). *Compare* MRO1 p. 29 (condemning “personal invective” and “churlish conduct” at meetings) *with* MRO2 p. 29, MRO3PBI p. 29, MRO p. 18 (condemning “[p]ersonally insulting, inappropriate language or conduct”).

Another change in the second and subsequent editions is that the distinction between types of committee reports is eliminated in the model agenda for shareholders’ meetings in later editions. This may be because Tortorice’s pro-chair orientation persuaded him to give the chair discretion in the ordering of committee reports at shareholders’ meetings, rather than requiring standing committees to report before special committees. As there is no other discussion in MRO about the order of business, the import of the change is unclear. *Compare* MRO1 pp. 46–47 (listing standing committee reports before special committee reports for shareholders’ and directors’ meetings) *with* MRO2 pp. 47–48; MRO3PBI pp. 48–49; MRO pp. 33–34 (listing generic committees only for shareholders’ meetings, but standing committees before special committees for directors’ meetings). *Contrast* Keesey pp. 78, 96 (standing committee reports before special committee reports in standard order of business); RONR pp. 344–45 (same); TSC pp. 114, 186 (same).

Review of the different editions of MRO therefore demonstrates tremendous consistency and no substantive changes between the various versions. A group that adopts MRO as its parliamentary authority does not need to be concerned if participants are using different editions of the book.

Distinctions

Review of MRO for distinctions between its rules and more traditional parliamentary rules indicate that most of the rule changes fall into two categories: (1) those that confusing rather than clarifying, and (2) those that allow the chair significantly more control over the meeting and the substantive results.

(1) Undue complexity or confusion in MRO:

- RONR doesn’t require any seconds in small board meetings, deleting an entire layer of complexity. RONR p. 470. MRO, although largely written for business

corporate boards, requires seconds for almost all motions, including nominations and demands to count the vote (division of the assembly). MRO pp. 5–8, 21–26. The latter two do not require seconds even in larger meetings under traditional authorities. Keesey pp. 21–22 (no seconds required for any motions); RONR pp. 271, 273–74, 418 (standing uncounted verification of vote available on demand without a second, standing counted verification requires seconded motion and majority vote); TSC pp. 100–01 (standing counted vote available on single member demand). Calls for a division of the assembly can, however, interrupt under traditional authorities, but not MRO. *Compare* MRO pp. 8, 26, 52–53, *with* RONR p. 271; TSC p. 101. This is another way that under MRO a challenge to the chair (in this case his or her determination of the result of a vote) is made more difficult, by adding the requirement of a second and preventing some calls for vote verification by lack of interruptability.

- Similarly, MRO seems to be unaware of the RONR small board rules and appears to believe that allowing informal discussion before a motion is made is an innovation, MRO pp. 38–39, as opposed to a long-standing rule for small board meetings. See RONR pp. 470–71. Similarly, Keesey and TSC permit informal discussion even in larger groups. Keesey p. 67; TSC p. 128. See RONR p. 383 (brief informal discussion permissible to help frame question in ordinary meetings).

- An example of an area where MRO strikes out on its own in a way that may be confusing involves disagreements with the chair's procedural rulings. Under traditional parliamentary authorities, a member can appeal the chair's ruling and then the assembly votes on whether or not to affirm the ruling of the chair. Keesey pp. 50–51; RONR pp. 247–52; TSC pp. 82–84. The assembly's decision is final. Under MRO, on the other hand, when the assembly votes against the chair's ruling on appeal, it "corrects" the chair, who must then amend his or her original ruling. MRO pp. 1, 11. This adds several unnecessary and potentially confusing steps, simply in order to make it appear (inaccurately) that it is the chair who has the final say over procedural matters. This deference to the chair, discussed in greater detail below, is also evident in MRO's rule that an appeal (a challenge the chair) cannot interrupt another speaker, MRO pp. 6, 23, whereas *appeal* is sufficiently important that traditional authorities allow it to interrupt if necessary to prevent an incorrect ruling from taking effect. Keesey p. 50; RONR p. 249; TSC pp. 84.

- MRO is also somewhat more expansive than traditional authorities in regard to impermissible appeals. *Compare* MRO pp. 6, 22 (any ruling by the chair regarding a matter of law unappealable) *with* Keesey p. 52 (accepted truths, known facts, existing laws, and established rules unappealable; "[a]ny rule involving the presiding officer's personal judgment or opinion" appealable); RONR p. 248 (only chair's rulings on "question[s] about which there cannot possibly be two reasonable opinions" unappealable); TSC p. 82–83 (any ruling of chair involving judgment appealable, matters of fact not appealable). *But see* Atwood p. 39 (chair's rulings on organization's constitution and bylaws

unappealable).

- MRO confuses two different concepts: “sense of the meeting” and “consensus” and treats them as identical. MRO pp. 3, 4, 16–17, 19, 38–39. Both terms have useful and different functions. “Consensus” is a formal decision arrived at without a vote because no one dissents, also called “general consent” or “unanimous consent.” Keesey p. 105 (describing general consent, states that an officer who can accurately gauge the “sense of the meeting” may choose to use general consent frequently); RONR pp. 51–53; TSC pp. 142, 241–42. “Sense of the meeting,” on the other hand, is a non-binding resolution expressing the meeting’s opinion on an issue without requiring any action. Demeter pp. 51 n.*, 60; Keesey p. 29 (main motion may express position on a subject); RONR pp. 101–02; TSC p. 34 (main motion may express sentiment or opinion). MRO also coins the unnecessary and redundant phrase “general consensus.” Unmodified, “consensus” means *unanimous* or *general consent*. RONR pp. xxxviii, 51. Like MRO’s requirement for seconds of motions that do not require seconds under traditional authorities, and its apparent unfamiliarity with RONR’s small board procedures, RONR pp. 470–71, the use of the term “general consensus” betrays that Tortorice’s tutelage in meetings procedure derives from observation at meetings of businesses that use a highly streamlined and half-remembered version of meeting procedure. Adding to the confusion, Tortorice basically reiterates the same views about consensus or “sense of the meeting” in both Rule 7 and Rule 9. In his discussion of minutes, Tortorice then defines “sense of the meeting” or consensus as an acknowledgment by the members that a conclusion is “the clear sentiment of the majority.” MRO p. 39. This is contrary to the traditional definition of general consent as a decision reached without opposition. RONR p. 51. “‘Unanimous consent’ does not necessarily imply that every member is in favor of the proposed action; it may only mean that the opposition, feeling that it is useless to oppose or discuss the matter, simply acquiesces.” RONR p. 52. MRO’s formulation, on the other hand, raises the question that Tortorice may feel that a formal motion and debate are unnecessary when a motion appears to have majority support.

- MRO’s standard treatment of officer and committee reports is to approve them. MRO pp. 2–3, 16, 38. Traditional sources counsel against approval of officer and committee reports (as opposed to receipt for filing) because approval indicates that the assembly endorses the entire report. Keesey pp. 96–97; RONR pp. 101–02; TSC p. 188. Traditional procedure is simply to file the report and take action only as to recommendations made in the report. Keesey pp. 96–97; RONR pp. 101–02; TSC pp. 187–88.

- MRO provides that dissenters can request that their dissents be recorded. MRO p. 39. This may be appropriate on business corporation boards, so that directors can defend against liability for shareholders’ derivative suits when they strongly oppose corporate action. While some statutes permit nonprofit directors to record their dissents, RMBCA § 8.24 (right to record dissent in board meetings), it is usually unnecessarily divisive in most nonprofit boards, where directors’ personal

liability is less likely to be implicated because, with no money involved, there is less likelihood of a derivative action. Having this right to dissent as a default, contrary to standard parliamentary procedure—Keesey p. 84; RONR pp. 251–54; TSC p. 201—demonstrates Tortorice’s business orientation.

- Similarly reflective of its business focus, MRO allows, as a default, for minutes of members’ or shareholders’ meetings to be approved by the board. MRO p. 36. Standard procedure, on the other hand, holds that the members approve the minutes of their previous meeting unless a minutes approval committee is specifically delegated that right. RONR pp. 256–58; TSC pp. 117–18, 200. Another potentially confusing position of MRO in regard to minutes is that it gives no clearcut guidance about what should be contained in minutes: “Minutes vary significantly from organization to organization in style and content. There is no single correct form. . . . They need not be an exhaustive record of deliberation.” MRO p. 37. This open-ended advice, implying that at least some record of deliberation is expected, is in contrast to the barebones minutes recommended by traditional parliamentary authorities, which consist only of that which is done, not that which is said. RONR p. 451; TSC pp. 200–01. *But see* Keesey p. 84 (desirable to include major arguments for and against a motion in minutes).

- MRO’s rankings of motions are unique to its own system. MRO pp. 5–8, 20–26, 52–53 (order of ranking motions, from lowest to highest in precedence, are: (1) Main Motion, Election or Reconsideration, (2) to count the vote (division of the assembly); (3) to limit, extend, or close debate, (4) amend, (5) refer, (6) postpone, (7) withdraw, (8) recess, (9) appeal, (10) point of procedure (point of order), (11) point of privilege (question of privilege)). For example, MRO ranks the motion to limit debate below all debatable procedural motions, MRO pp. 7–8, 25, 52–53, and ranks the demand for a counted vote below all procedural motions, MRO pp. 8, 25–26, 52–53. This seems to imply that debate can be limited and votes counted only for main motions. Similarly confusing, MRO ranks point of procedure (point of order) over appeal, even though an appeal may override a point of order. MRO pp. 5–6, 22–23. Tortorice also seems to feel a need to rank all motions (except *adjourn*), even though traditional authorities do not feel the need to rank the large category of incidental motions because they are in order whenever they are applicable. Keesey p. 20; RONR p. 67; TSC p. 22. MRO’s self-contained ranking system could be confusing to participants familiar with traditional parliamentary authorities whose ranking systems are very similar to those of each other. See Keesey p. 19; RONR pp. 58–66; TSC p. 21.

- Somewhat confusing is that MRO’s ranking motion list does not include the motion to adjourn, which is one of the most highly ranked motions in traditional parliamentary authorities. Keesey p. 19; RONR pp. 227–28; TSC p. 21. MRO instead addresses motions to adjourn under a separate rule, Rule 14. MRO pp. 9, 30–31. MRO does not assign the motion to adjourn a rank, but, as it can only be made at the discretion of the chair and after the completion of all scheduled agenda items, it is of limited utility. *Adjourn* would be in order only at the end of the meeting when no other motion (except possibly unnoticed new business) is

under consideration. MRO pp. 30–31. See MRO p. 23 (motion to recess can be used to continue meeting from one day to another; time of recess at discretion of chair if not stated in motion; recess debatable as in TSC p. 77). See also TMT at pp. 128–33 (motion to adjourn to a continued meeting treated as different from motion to dissolve/adjourn sine die; dissolve only in order after all previously noticed items have been addressed). Somewhat confusingly, MRO makes *adjourn* debatable (and, implicitly, amendable) on the issue of when to reconvene. MRO p. 30. (By contrast, TSC p. 81 allows a motion to adjourn made when another motion is pending to be amended to set the time for a continued meeting, but not debated.) There would, however, be little reason to select a date to reconvene after the entire agenda had been completed. It is not clear from the text, but perhaps MRO would allow *adjourn* to interrupt during the heading of new business when new items that were not included in the agenda are under consideration, or allow *adjourn* to be used to set the next regular meeting date if one has not yet been scheduled by resolution or the bylaws. See RONR p. 87.

- In keeping with its orientation towards expedition over deliberation, MRO allows the maker of a motion to withdraw the motion at any time, without a second or a vote. MRO p. 23. Under traditional procedure, once a motion has been stated by the chair and debate has started, the motion cannot be withdrawn unless the maker obtains unanimous consent or a majority vote on a main motion. Keesey pp. 53, 55 (second not required); RONR pp. 281, 283–85 (second also required); TSC p. 95 (second not required). Traditional authorities indicate that other members, besides the formal mover of the motion, may think that the motion is meritorious and should go forward, even though the mover may have changed his or her mind, for actual or pragmatic reasons. RONR pp. 283–86. Perhaps the original mover does not like the way that the motion has been amended and now wants to thwart the will of the majority by withdrawing the motion. Traditional authorities indicate that the mover alone should not have such control over the business of a meeting. Keesey pp. 53, 55; RONR pp. 283–86; TSC p. 95. Requiring someone else to reintroduce a similar motion later, as MRO would require, MRO p. 23, unduly complicates the process and potentially allows technicalities to prevent the motion from being reached later in the meeting.

- MRO compounds the motions to lay on the table, to postpone indefinitely, and to postpone to a specific time into a single motion, with postpone indefinitely as the “default.” MRO pp. 7, 24, 27–28. Members unfamiliar with MRO may assume that a postponed motion can (or should) be on the agenda for the next meeting and it will not be unless the postponing motion specifically so states. MRO indicates that a postponed motion can be renewed later at an appropriate time, MRO pp. 24, 27–28, but does not explain what that means—whether at the next meeting, in the next quarter, or after the next board elections.

- MRO simply mentions reconsider and rescind as varieties of the main motion, without any discussion or guidance for how to handle them. MRO pp. 8, 26, 52–53. MRO implies that reconsider applies only to main motions, as with TSC pp. 39, 42.

- MRO only recognizes points of personal privilege (questions of personal privilege), not questions of privilege affecting the assembly, or at least describes the term “point of personal privilege” as simply an elegant variation of a “point of privilege,” as opposed to one of the two types of points of privilege. MRO p. 21. *Contrast* RONR p. 219 (distinguishing questions of personal privilege from questions of privilege affecting the assembly); TSC p. 74 (similar).
- In keeping with its preference for simplification over fuller expression of the participants’ opinions, MRO mandates a rule for elections that, should a candidate for office not obtain a majority in the first round of voting, only the highest vote-getters should be considered in the second round. MRO p. 29. Unfortunately, the text is not clear about what to do then there are 4 or more candidates—whether only the lowest vote-getter should be dropped in the second and subsequent rounds, if necessary, or only the top two vote-getters may go on to a decisive second round. MRO p. 29 (“[A] second vote should be taken among those candidates who received the highest number of votes.”). *Contrast* Keesey p. 120 (repeated balloting necessary unless bylaws provide otherwise); RONR p. 426 (ballot elections continue until one candidate obtains a majority); TSC p.159 (continued balloting until one candidate obtains a majority unless the assembly adopts a procedural motion such as dropping the lowest vote-getter in a subsequent round). MRO permits elections by voice or hand vote and apparently would conduct a voice vote in a similar manner to a ballot vote, with all candidates to be voted for at the same time. MRO p. 30. *Contrast* Keesey pp. 117, 130 (ballot should be used whenever disclosure of position might affect member); RONR pp. 427–29 (voice vote for elections to proceed on an up-or-down vote candidate by candidate until one receives a majority); TSC p. 159 (most elections by ballot vote). Consistent with its emphasis on expedition, MRO’s default position is that directors and others (such as committee members) who are vying for multiple available seats at the same time should be elected by plurality instead of majority. MRO pp. 9, 29. *Contrast* Keesey p. 103; RONR pp. 391–92, 427; TSC pp. 138–39.
- MRO specifically prohibits the use of certain traditional motions. MRO’s conflation of lay on the table, postpone to a certain time, and postpone indefinitely is discussed above. In addition, MRO prohibits general and special orders, MRO p. 28, even though general orders are typically simply another term for postponed motions. RONR p. 354. MRO does prohibit some traditional motions that are rarely encountered and eliminated in other more modern, but traditionally based parliamentary authorities. See MRO pp. 27–28 (eliminating motion to go into committee of the whole and special orders). See *also* Keesey pp. 67, 71–72 (similar); TSC pp. 60, 232–33 (special orders allowed, no committee of the whole). Some motions that MRO “eliminates,” it simply re-names or combines with other existing motions, not necessarily making motion practice any clearer. MRO pp. 27–28 (calling the question/previous question to be referred to as “close debate”; parliamentary inquiry incorporated into “point of procedure” (point of order); object to consideration, somewhat confusingly, treated as a point of procedure (point of order), implying that, subject to appeal, a

chair can determine a main motion to be out of order when it is simply undesirable; motion to divide the question incorporated into motion to amend). See Keesey pp. 68, 69–71 (similar, except no discussion of division of the question); TSC pp. 90–93, 96–99, 233–35 (similar; parliamentary inquiry permitted, but also covers requests for factual information; division of the question permitted).

(2) Over-empowerment of the chair:

- Under MRO, the chair sets the agenda, but there is no way mentioned to amend or add to the agenda, implying that the chair's proposal establishes the order of business for the meeting without any role for the assembly. MRO pp. 2, 13. Under traditional parliamentary procedure, the chair is heavily involved in drafting a proposed agenda, but only the assembly has power to adopt or amend the agenda. Keesey p. 78; RONR pp. 360–61; TSC pp. 116.
- Under MRO, so long as the meeting starts with a quorum, the meeting can continue after departures leave less than a quorum in the room. MRO p. 14. The 2002 RMBCA § 7.25, allows this for shareholders' meetings, but not board meetings RMBCA § 8.24. On the other hand, the 1988 RMNPCA, and traditional parliamentary authorities require a quorum to be present (or at least the quorum's absence not to be noticed) in order for the body to take action. See RMNPCA §§ 7.22–7.23 (members' meetings), 8.24 (board meetings); Keesey p. 23; RONR pp. 336–38; TSC pp. 112–13. When the MRO disappearing quorum provision is coupled with the prohibition on adjourning the meeting before completion of the entire agenda (set by the chair), the chair and a small core group of supporters can do almost anything by waiting out an opposition majority.
- MRO does not provide for vice chairs to take over in the absence of the chair, only a temporary replacement designated by and responsible to the chair. MRO pp. 2, 15. In traditional parliamentary procedure, the assembly chooses a temporary chair if neither the chair nor a vice chair is present. See Keesey pp. 75–76, 82 & n.2; RONR pp. 436–37; TSC pp. 165–66. Similarly, under MRO the chair, instead of the assembly, appoints the temporary secretary in the absence of the elected secretary. *Compare* MRO pp. 2, 15, *with* RONR p. 443. Without a vice chair in place, regularly observing the chair's performance, it is harder to groom a successor to the chair and to allow for a regular succession in the chairs, as is typical in volunteer-led organizations. Similarly, without an elected vice chair, the assembly does not participate actively in and demonstrate ownership over the process of grooming a successor to the chair.
- Under MRO, the Chair alone controls discussion. MRO pp. 3, 17–18. MRO does not counsel alternating speakers of different viewpoints. *Compare* MRO pp. 3, 17–18, *with* Keesey p. 78; RONR pp. 367; TSC pp. 123–24. The Chair can end debate without a vote. MRO pp. 3, 17, 25. If the Chair closes debate and a member believes that additional debate time is needed, the member must move to extend debate, a motion that requires a two-thirds vote. MRO p. 25. (With

traditional authorities a two-thirds vote is similarly required to extend debate, but this motion is used only to override a limitation imposed by the assembly on itself. Keesey pp. 37–39; RONR pp. 183–87; TSC pp. 62–64.) As with TSC, under MRO limit or extend debate is debatable, TSC p. 64, but so is previous question/close debate, which MRO conflates with limit or extend debate. MRO pp. 7–8, 25, 27. Unlike under MRO, however, close debate/previous question is not debatable under any traditional authority because it wastes time debating over whether it is necessary to stop debating. Keesey p. 39; RONR pp. 191; TSC p. 68. Assuming that a meeting can adjourn after the completion of business included on the agenda, but before unnoticed new business (see discussion above), the chair can similarly control introduction of new items of business, as only the chair has discretion to permit a motion to adjourn at that time, MRO pp. 9, 30–31, which could cut off potentially adverse new business items.

- Under MRO, the rules are simply a guide to the chair. MRO pp. 1, 11–12. Under traditional systems, the rules are meant in significant part to protect the rights of a minority to be heard, so that issues can be thoroughly vetted and all votes well considered. Keesey pp. 6–7; RONR p. xlvii; TSC pp. 8–9. A persuasive minority, in that way, can attain a majority.

- Traditional authorities allow a 2/3 vote to suspend the rules to allow for more flexibility when appropriate. Keesey pp. 55–58; RONR pp. 252–58; TSC pp. 84–87. This high vote quantum protects significant minority viewpoints. MRO, on the other hand, does away with the motion to suspend the rules. MRO pp. 26–27. MRO allows the chair on his or her own (or by a simple majority vote, if any question the chair’s proposal by an appeal) to override any procedural rule. MRO pp. 1, 11–12, 26–27. Implicit in MRO is that the members have no right to attempt to suspend the rules on their own initiative. MRO pp. 26–27.

- The treatment of MRO’s point of procedure (point of order), which subsumes the parliamentary inquiry or “point of inquiry,” MRO pp. 5–6, 22, 27–28, implies that there is no parallel manner of questioning or requesting factual information from the chair or other officers. In traditional parliamentary procedure, the point of information serves this significant purpose. RONR pp. 282–83. *But see* Keesey p. 69 (questions generally subsumed under point of order); TSC pp. 90–93 (point of information subsumed under parliamentary inquiry).

- Under MRO, it appears that the chair alone decides how to handle points of privilege (questions of privilege) without a motion or debate, even over objection. MRO pp. 5, 21–22. MRO ranks points of privilege above points of procedure (points of order) and appeals. MRO pp. 5–6, 21–23. This ranking appears purposeful in order to ensure that the assembly cannot disagree with the chair’s rulings on privileged matters. (It appears that the assembly can disagree with the chair’s position on lower ranking procedural motions by way of appeal. MRO pp. 1, 6, 11, 22–23.) Under traditional parliamentary authorities, a question of privilege, if not adequately addressed by the chair, can result in a main motion by the maker requesting relief from the assembly. Keesey p. 69 (question of

privilege treated as appealable point of order); RONR p. 220; TSC pp. 73–74.

- Under MRO, only the chair (or the chair's designee) may convene the meeting. MRO pp. 4–5, 14–15. By implication, under MRO the assembly has no right to convene the meeting and elect temporary officers in the absence of the chair or his or her designee. *Id. Contrast* RONR pp. 436–37; TSC pp. 165–66. If the chair surveys the room on arrival at the time called for the meeting and determines that there is a majority opposed to his or her position on a significant issue, the chair can just refuse to convene the meeting. Because the meeting has not yet been convened and the inaction is not a ruling of the chair, it is not appealable under MRO pp. 1, 6, 11, 22–23.

- Under MRO, if there is no quorum at the time set for a meeting, the chair alone sets the time for an adjourned meeting. MRO p. 14. Again, because the meeting has not been convened at this time, it would appear that the time set by the chair for the adjourned meeting is not appealable. An embattled chair could set the adjourned meeting for a time and date convenient only to his or her supporters. Under traditional parliamentary authorities, in the absence of a quorum, the participants in attendance set the place and time of an adjourned meeting. Keesey p. 23; RONR pp. 336–37. See TSC pp. 111, 242 (no business, even setting a continued meeting, allowed in absence of a quorum).

Conclusion

MRO may work well in small boards, particularly those of business corporations and nonprofit institutions whose board members largely come from the business world and are used to the curtailed process embodied in MRO. MRO appears to be based on Tortorice's experience with boards of business corporations and is most suited for that context, with its heavy emphasis on leadership from the top. Although MRO targets as its audience all business and nonprofit meetings, MRO p. xiv, the ABA publications office recognizes that in the specialized area of nondeliberative shareholders' meetings a specialized guide is necessary, so it published *Shareholders' Meetings*. See Wetzell, 22 Bus. Law. at p. 306 (unique nature of shareholders' meetings as nondeliberative meetings). At a time when even business boards are re-thinking their governance models to encourage greater board transparency, input, and deliberation after the Enron disaster and the ensuing corporate governance reforms, nonprofit boards and membership organizations should seriously question whether moving to MRO's possibly outdated business-oriented model is appropriate.

Even in the board setting, RONR or another more traditionally derived, but simplified parliamentary authority (e.g., TSC, Keesey), modified by the RONR small board rules (RONR pp. 470–71), is more likely to suit: (i) larger boards where a diversity of opinion is a specific intent of the board size (and where the RONR small board rules may apply by special rule of order); and (ii) smaller boards where a fair number of the participants gained most of their prior meeting experience in deliberative membership organizations, at other nonprofit boards, or by viewing national or local government proceedings on television. In

membership meetings in particular, the novel and truncated procedures of MRO are likely to cause more confusion than traditional parliamentary authorities. Therefore, while MRO may have limited utility in the corporate boardroom, its use should be limited outside of that context.

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