

議事先（慣）例在立法程序上之運用

The Application of precedent to legislative procedure

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【摘要】

近年來，立法事項隨著政府行政事務之增加，而有快速增長之趨勢，致使現有議事法規規範，產生不敷使用之現象，於是不得不借助於若干議事先（慣）例，來填補議事法規不備之需，先（慣）例之存在，並非議事法適用上所獨創，其於個別法領域之適用亦到處可見，惟先例或習慣法，一般在立法程序之運用上，並未加以嚴格區分。有無區分之必要，需視二者在法效力的優先性及拘束力而定。此外，更由於國會議員〈立法委員〉之議事行為，常隨著政治環境或個人情境及認知之不同，而有異於尋常之作為，兼以立法事項層出不窮，常導致議員（立法委員）間議事之相互杯葛，或形成與行政部門間之角力，為求得議事之圓滿進行，亟須對立法程序作調整與因應。因此，援引議事先（慣）例，作為議事規範遂有必要。

關鍵詞：先例、立法程序、議事

【Abstract】

In recent years, the legislative business has been expanding rapidly along with proliferation of government's administrative business. This trend has significantly contributed to inadequacy of session rules. As a result, it's a must to resort to various precedents filling the gap. Application of precedents is not unique to session rules, which has been applied frequently by individual laws. However, the general application of precedent or common law to legislative procedure is not strictly differentiated. The necessity to differentiate would depend on priority and binding force of the legal effects on both. Sometimes the session rules are unavailable, especially while lawmakers performing their duties, they often behave in pursuant to political environment and their own cognizance, plus due to the multiplicity of legislative business, for the sake of the session may proceed harmoniously, the legislative procedure must be adjusted and accommodated. Therefore, it's a must to cite precedents as the session rules.

Key words : precedent、 legislative procedure、 session