

# I LOOKING AT WHAT LEGISLATURES DO

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Richard Finan, president of the Ohio senate, took time from his leadership responsibilities during the 2001 legislative session to meet with a group of about twenty fifth graders who were visiting the capitol building in Columbus. Finan enjoyed chatting with youngsters, asking them questions, answering any they might have, and trying to convey an upbeat message about government. “How long does it take to make a law?” one of the children asked. “Six to nine months,” Finan replied, although he might have said that it depends on the nature of the issue, and so much else. The senate president asked how many of the young visitors would want to become politicians when they grew up. Not a single child raised a hand. How many, he then asked, would want to make laws when they grew up. About half the children raised their hands.

How people respond to a question depends both on how it is framed and on the stereotypes people carry in their heads. Like these fifth graders, Americans know that legislatures make law, but they do not know how they do it. Nevertheless, as public opinion shows, they do not like the way they do it. Americans are too busy to watch legislatures, whether from near or far. However, they do not like what they see, even when they are not looking. Nowadays, the public is especially unhappy with politics, politicians, and political institutions. Legislatures and legislators are probably hit hardest of all by public cynicism and disdain for things political in American life.

## **What Legislatures Look Like**

Appearance means a lot today—probably because it is as close as we come to the object or behavior being examined. With respect to appearance, legislatures are at a distinct disadvantage. They can and do look bad to the American public because they are naturally inefficient, unpredictable, and messy—none of which are appealing characteristics to most people.

Even proximity and involvement do not make a legislature appear more attractive. Undergraduate and graduate students who intern in the legislature, with few exceptions, look askance at what goes on under capitol domes. True, they develop respect for legislators themselves, and they acknowledge the hard work they do; but the process is something else entirely. One of the legislative interns in the Vermont legislature, a man in his fifties, was attending law school at the time. He had already had a successful career as a surgeon on a university medical school facility. For him, being in the legislature was culture shock. He

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was accustomed to the precision of surgery, with the surgeon and a support team operating on one patient, and with no outside interference. The legislature, of course, was an entirely different experience. Everything seemed to be going on at once—not precisely, as in the operating room, but rather sloppily.

Legislatures also look bad in part because they are made to look bad. They are the whipping boys (and girls, perhaps) of the political system. The executive and judiciary have their critics, but they do not suffer nearly as much abuse as does the first branch of government. The legislature offers a very convenient target for criticism from all quarters.<sup>1</sup>

Take legislators themselves. When newly elected lawmakers arrive at the capitol, they encounter obstacles they had never imagined. It takes them years to overcome feelings of frustration and really appreciate the nature of the process. If they are in the minority party, they feel a sense of powerlessness because the majority pretty much controls the agenda. Even if they are in the majority party, they usually have trouble doing what they want to do—getting their bills enacted and funding projects for their constituencies—and find that there are not enough resources available to satisfy everyone. There are too many other legislators with too many other constituencies. Unless they are from Nebraska, with its unicameral legislature, legislators feel that the legislature has one house too many—the other house. If their bill has a fiscal impact, they feel that their own house has one committee too many—appropriations, ways and means, or finance—to which their bill has been given a second referral. It is a daunting business, but who or what is at fault? Where can blame be placed? On the *system*—the legislature, that is.

Just as legislators are left wanting, so too are advocacy groups that pursue special interests of one type or another. Perhaps a half-century ago, these groups did not expect as much and could be satisfied with the proverbial “half loaf.” That is no longer the case. However savvy a group’s leadership may be with regard to what it can reasonably expect to achieve, it is necessary nowadays to make sure the rank and file is mobilizable for grassroots campaigns. The troops have to be kept fired up. The message communicated to the rank and file is that the group did not get from the legislature what it deserved. Something is in the way; the system has to be overcome.

Political campaigns for legislative seats also tend to put the legislature in a bad light. The legislative minority party may run against the legislature, since the institution is under the opposition’s stewardship. It is common, moreover, for candidates who challenge incumbents to run against the legislative system. “Elect me, I’ll change things in [the name of the state capital],” is a popular campaign pledge. Even incumbents run against the institution in which they serve, because such a stance has appeal to the voters. Beyond this, negative and attack campaigns influence how people regard their politicians and political institutions. Over time the negatives have serious consequences.

Add to the mix the nature of media coverage of the legislature, which has tended over time also to feed the negative. Television today barely covers the leg-

islature, unless the print press has led the way. Legislative coverage is the job of the daily newspaper, which in many respects does good work, with both penetrating and insightful reporting and analysis. For example, the *New York Times* does a first-rate job in Albany and the *Sacramento Bee* does fine work in Sacramento. The *Baltimore Sun* provides a running account of the legislative session in Annapolis, while the *Columbus Dispatch* and both the *Star Tribune* and *St. Paul Pioneer Press* do good jobs covering Ohio and Minnesota, respectively. All of these newspapers and others in state capitals across the country are important sources of information about issues being contested in the nation's legislatures.

But the contemporary media also have a negative bias, one that gets through to their readers. "If it bleeds, it leads," the journalistic saying goes, demonstrating the unfortunate reality of how today's news is defined: If it's positive, it's not news; if it's negative, it is. Alan Ehrenhalt, a journalist by training and trade (but a political scientist by nature), puts it more subtly: In comparing political scientists and journalists, he notes that while political scientists are interested in institutions and institutional stability, journalists only take a serious interest in governmental bodies when they start to break down. The former are essentially students of order, the latter are students of disorder.<sup>2</sup>

Conflict is newsworthy, so the media look for it. When they find conflict, they attribute it to partisan politics, campaign contributions, and political ambitions. Rarely do they portray it as simply legitimate disagreement over the merits of an issue; there is not much interest in such a story. The more negative, the more newsworthy. The positive is not news, and it is either not reported or is underreported. But the more sensational or scandalous the material, the more newsworthy it is. The media's incentives are understandable. In a competitive struggle for an audience, the media give people what they believe people want—the interesting, the negative.

The incentives for journalists—which can be referred to as the three Ps—run in the same direction. If they want their stories to have good *placement*, if they want to be *promoted* to the Washington, D.C., bureau, and if they want to win the *Pulitzer Prize*, members of the state house press corps are well advised to investigate aggressively and then take no prisoners. To add to these incentives, skepticism and distrust are probably part of journalists' genetic makeup. "What journalists can't see, they don't believe," is the way a student of journalism put it. Most of the legislative process, as we shall see (or not see) is going on in many places simultaneously—so it cannot be viewed by one pair of eyes, journalistic or otherwise.

Finally, there is the public experience of the legislature. Although the legislature is not really on the radar screen of the overwhelming majority of citizens, the public's overall perception of it is negative. Public disapproval is a consequence of the factors noted above, but especially the highlighting by the media of the public officeholders who do wrong and the public transactions that go wrong. People tend to generalize from these worst cases to everything about legislatures. (Curiously, they neglect to do the same regarding their own legislators, whom they regard positively and whom they regularly return to office.)

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Even in a benign environment, Americans would find it difficult to appreciate legislatures and the legislative process. John Mueller captures the essence of the public's attitude:

When politicians respond to what they think their constituents want they are routinely accused of "pandering to public opinion" and of "doing anything to be elected." When they go in a direction different from what public opinion seems to dictate, they are accused of "ignoring the will of the people" and "pandering to special interests." If they have sharp differences, they are accused of polarizing the situation, encouraging an "either/or" politics based on ideological preconceptions rather than a "both/and" politics based on ideas that broadly unite us. If they manage to agree, they are accused of selling out principle for a Tweedledum and Tweedledee me-tooism. It's a tough racket.<sup>3</sup>

More fundamentally, as awful as it may sound, people do not like legislatures because they do not care for democracy in action. They may appreciate it in principle, but they do not care for the nitty-gritty of democracy at work.

"Why," people wonder, "is there so much conflict?" They think—wrongly—that most Americans agree on policies and priorities.<sup>4</sup> People with whom other people associate face to face normally are in agreement. But within larger entities—the nation, state, and even legislative districts—disagreement is common. Americans see eye to eye only at the most general level—on the need for better education, a cleaner environment, improved health care, and the like. But they do not agree on how to achieve these goals; nor do they concur on abortion, carrying concealed weapons, capital punishment, or a number of other heated issues.

"Why," people ask, "do legislators pay so little attention to what regular citizens think and so much attention to what special interests want?" A recent survey conducted by the National Conference of State Legislatures (NCSL),<sup>5</sup> for example, indicated that one-third of Americans felt that elected public officials were indifferent to what people like themselves thought. Only slightly more felt that they did care about what their constituents thought. Despite the fact that legislators spend so much time and effort relating to their constituents, people felt that they were not accessible. And despite the fact that seven out of ten Americans are members of at least one political interest group, people decry the special interests (although not the particular special interests to which they belong). When asked in the NCSL survey whether they thought special interest groups represented people's opinions or special interest groups did more harm than good, only 24 percent responded the former while 40 percent responded the latter (and 36 percent had no opinion or did not know). Evidently, people feel that their own group espouses the public interest, while everyone else's espouses a "special interest."

And people question the legislative process itself: "Why all the bickering?" they ask. Indeed, one-third of the respondents in the NCSL survey believed that legislators spent too much time arguing, while half acknowledged that disagree-

ment and compromise were necessary parts of lawmaking. People do not realize that what they refer to as bickering is actually deliberation. "Why all the compromise?" they question, when compromise is not selling out as is popularly thought, but rather the way in which consensus is built and settlements reached. Whether or not Americans really like *representative* democracy is in doubt. Many of them presumably would prefer direct democracy, or at the very least the possibility of the initiative and referendum, which enables citizens to end-run or overrule their legislature. When the NCSL survey offered respondents the choice between "Making laws is a job best left to elected representatives" and "The public should decide issues directly by voting on them," 30 percent chose the former, while 47 percent preferred the latter (with 23 percent registering "Don't know" or "No opinion").

Add to all of this just what a legislature would look like if people actually took time to observe it. If the legislature were not in session, it would look all right. But when it is at work, the legislature is extremely difficult to comprehend. It is neither neat nor linear, and too much is happening at once.

### **What Legislatures Do and How Well They Do It**

Political scientists have shed much light on what legislators do and how they function. The past twenty-five years have witnessed an upsurge in the attention paid to state legislatures by the political science profession. Thanks in large part to the work of Malcolm E. Jewell and his students, the study of legislators and legislatures is in an especially healthy state nowadays. Anyone who delves into the research reported in the *Legislative Studies Quarterly* can attest to that. Among the subjects that have been gainfully explored are recruitment, determinants of voting behavior, legislative parties, standing committees, professionalization, development and reform, turnover, staffing, leadership, and the legislature's budgetary role. Currently, the effects of term limits are being studied by, among others, a consortium of scholars working with the NCSL, the Council of State Governments, and the State Legislative Leaders Foundation.

Thanks to the efforts of political scientists, we have a far better idea of what legislatures are all about. But one question eludes us, in part because political science has not addressed it: "What is a good legislature?" The exploration of this subject has been left to others—to journalists, advocates, and reformers. Much of the discussion has been quite uninformed. Indeed, it has been dominated by what is "bad" about legislatures: the members; their motives and ethics; the process and procedures; and the products, which are insufficient or misdirected.

The objective of this book is not to answer that question, but certainly to shed light on it by providing readers with a better grasp of what makes a legislature "good." The destination toward which we are heading is important, but even more so is the trip itself and what can be learned by looking closely at how legislatures work.

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### *Standards for Assessment*

At the outset, it is necessary to have some notion of what is meant by a “good” legislature. Whether a legislature qualifies depends on the standards used in assessing it. Different standards will yield different results. The standard that is used for judging a baseball team is pretty straightforward. It is not whether the players have the highest batting average or receive the highest salaries; nor is it the number of pitchers who have won twenty games. It is whether the team has won more games than others during the season and whether it wins the divisional playoffs and the World Series. The “goodness” of a corporation or business is not as easy to assess, but earnings and valuation would make the bottom line.

Assessment is even more difficult with regard to a legislature. The way to begin is to review the standards that are commonly, albeit implicitly, used in judging these institutions. Each has its adherents, but we shall dispense with them one by one before offering the standard that will be employed in the study at hand.

*Product* is an obvious standard. What is a legislature for if not to improve life for people in the state? The public cares more about what comes out of the legislature than what goes on inside it. The better the policies, the better the legislature. This makes intuitive sense. Political interest groups do not have much trouble assessing a legislature. A business organization, teachers’ association, or environmental group—any such entity judges a legislature in terms of what it does for or against it. Is a “good” legislature one that has given much and denied little to the particular group? But, of course, one group’s “good” legislature is another’s “bad” legislature. An interest group’s success rate cannot be an indicator of a legislature’s quality, but only of a legislature’s policy preferences. You may or may not agree with such preferences.

No one has succeeded in adequately measuring a legislature’s overall product, although from time to time political scientists have come perilously close to equating the quantity of output with the quality of output. One measure of legislative “goodness” might be the number of bills enacted into law (or possibly the percentage of bill introductions that become bill enactments). This assumes that the more law, the better the legislature. But is one enactment equal to another? Anyone familiar with the legislative process will agree that this is not the case. The variation in the substance and significance of laws enacted is tremendous.

What about isolating those measures that are significant, and putting the others aside? Take the budget, for example. Is a “good” legislature one that grows the state budget? Republicans—and many Democrats—might disagree. Is it one that increases funding for higher education or for elementary and secondary education? Senior citizens might not think so. Or is a “good” legislature one that makes laws that protect the environment? That protect animals? That deregulate economic enterprise? That take away the licenses of drunk drivers?

It is probably not possible to agree on a product that is indispensable for a “good” legislature. It may not even be worth the search. Product as a standard

rests on the assumption that the legislature is a means to an end, the end being what it produces. But suppose the legislature is not primarily a means to another end, but rather an end in itself. The legislature does furnish the mechanism by which public policy ends are reached. But the legislature is also the end in that the institution and the process allow for settlements among the different values, interests, and priorities that people have. If such differences did not exist, there would be no need for settlements, and legislatures would not be necessary. Administration and implementation could be left to the executive. Given the existence of diverse and conflicting public views, however, a legislature of representatives elected by citizens provides a way of working things out—deciding on priorities, allocating resources, and inflicting burdens. Democracy is largely about process, and the legislature—not the executive or the judiciary—is the engine that drives democratic processes. The legislature is the place where the people’s representatives assemble, where individual citizens and organized groups have ready access, and where differences come into conflict. If the institution and the process are what matter most, then any assessment has to focus on the legislature itself.

Such a focus ordinarily has led to an assessment tied to the legislature’s *structure*. By structure, we mean the way these institutions are set up to do their job. Structural features range widely, and they include elements that might also be categorized as capacity. One house or two houses, the number and size of standing committees, the salaries of members, the facilities available, the amount and organization of staff, and the laws and rules pertaining to the integrity of members and the process—all are structural elements that are thought by some to be the defining elements of a good legislature.

Structure as a principal standard came into prominence during the legislative reform movement of the late 1960s, the 1970s, and the early 1980s. Led by legislative leaders, rank-and-file members, national legislative organizations, the Eagleton Institute of Politics at Rutgers University, and the Citizens Conference on State Legislatures (CCSL), the reform movement represented a sustained national effort to modernize state legislatures, which political scientist Alexander Heard in 1966 referred to as “our most extreme examples of institutional lag.”<sup>6</sup> In their efforts to modernize their structure and increase their capacity, state legislatures used as models the U.S. Congress and the California legislature, both of which were highly developed institutions.<sup>7</sup> Over the years the reform movement achieved notable success; almost everywhere structural change and capacity enhancement was achieved.

A major assessment of the fifty state legislatures was a key part of the reform movement. In 1969 the CCSL, with a large grant from the Ford Foundation, conducted an evaluation of legislatures in the fifty states. A political objective underlay the evaluation enterprise. In ranking the states from 1 to 50, the CCSL wanted to persuade the lower-ranked states to adopt reforms that the higher-ranked states had already implemented and to persuade the higher-ranked states to go even further.

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The evaluation was published in both popular and scholarly versions.<sup>8</sup> The overall scores given to each of the states were based on five sub-rankings, with states scored on each. The FAIR rankings, as they were called for short, were functionality, accountability, informedness, independence, and representativeness. Scores for each of these sub-rankings were based on hundreds of factors. For example, legislatures scored higher if they had, among other things, limitations on their sessions; deadlines for filing bills, introducing bills, etc.; adequate circulation patterns in the chambers; superior offices for leaders; joint rules for house and senate; fewer than eighty members in the house; exactly seventeen committees in the house and twelve in the senate; and private offices for each member. What was the justification for each of these standards in assessing a legislature? The only one that comes to mind is that this was how the California legislature did it.

The specific criteria and scoring are arbitrary, at best. Essentially, the states that ranked at the top—California, New York, and Illinois—were those that devoted the most resources to the legislature. In these places, salaries, staff, and facilities were relatively plentiful. The assumption of the CCSL evaluation, moreover, was fairly linear: the more capacity a legislature has, the better it is. While the criteria and the scoring could not be justified, the approach was dictated by two very different considerations. First, social science methodology had little use for anything but quantitative indicators that were susceptible to statistical manipulation. Second, political objectives required that each state receive a numerical ranking, its own number and not a place in a quartile, quintile, or even decile. In practical terms, the methodology worked; hundreds of items were totaled and numerous scores were calculated. The political objective was accomplished; legislatures took their numerical ranking seriously, and they started to make changes to improve where they stood relative to others—mainly in terms of their capacity.

But a number of legislative leaders (some of whom served in states with lower rankings) pointed out publicly that the CCSL rankings made little sense. Evaluating a legislature in this manner, they charged, is like evaluating a football team by the condition of its uniforms, locker rooms, and training facilities rather than by its performance on the field. Legislative structure, they said, is not indicative of how a legislature functions. At best, structure furnishes a legislature with the wherewithal to do its job; but there is no guarantee that the legislature will exploit that structure to do its job. At worst, wherewithal has little or nothing to do with how well the legislature goes about its business. Higher salaries, more staff, fewer committees, member offices, and so forth may be nice for legislators, but they may not be necessary for the performance of the legislature.

### *The Job of the Legislature*

Neither products nor structural features a “good” legislature make. What matters is how the legislature functions, how it performs. What, then, is the job of the legislature? Legislatures have many tasks and do a variety of things. For example, they advise and consent to a governor’s appointments, they serve as

training grounds for politicians who go on to higher office, and they conduct oversight with regard to executive departments and agencies. But mainly the legislature's job consists of three principal functions: *representing*, *lawmaking*, and *balancing the power of the executive*. These components, as we shall see, are not independent of one another. Like just about everything else involving legislatures, they overlap. Indeed, lawmaking and balancing executive power are not distinguishable in practice, though they can be assessed from distinct perspectives. And representation is part and parcel of the other two.

Whether legislatures can be considered "good" or not depends on how they handle these three functions. Yet there is very little in the literature of political science that takes on all three as elements of legislative performance. If, for example, one examines the *Encyclopedia of the American Legislative System*,<sup>9</sup> only a half-dozen of its ninety-one chapters relate to two of the specified functions, representing and balancing the power of the executive. Not one of these chapters is on the processes by which laws are made. This omission has not gone unnoticed in the profession. Charles O. Jones, a former president of the American Political Science Association, observed that scholars rarely study lawmaking itself; instead, they research institutional arrangements and legislative behavior.<sup>10</sup> This is the place, then, where the performance by legislatures of these jobs will be scrutinized.

Representing constituencies and constituents is obviously one of the principal jobs of the legislature in a representative democracy such as ours. James Madison, in *Federalist* No. 10, extolled the virtues of a system of representation whereby the views of the public were refined and enlarged "by passing them through the medium of a chosen body of citizens." Representation, as practiced by those elected to represent, has come to mean more than the moderating of public views that Madison had in mind. It now encompasses hands-on activities as well. As it is examined here, the job of representing deals primarily with the work done district by district by individual legislators and then aggregated into the whole. The examination undertaken here does not attempt to correlate the legislature's public policy outputs with the views of a statewide public. That is not the best measure of representation, in our judgment. Instead, it is preferable to focus on the relationships of individual legislators to their constituencies.

Chapters 2 and 3 do just that—first, from the standpoint of how legislators *serve* their districts' interests, and second, from the standpoint of how legislators *express* their constituencies' views. The former chapter pays attention to just how representatives and districts are linked, as well as to communications and the securing of benefits for individuals and groups. The latter chapter wrestles with the issue of whether, to what extent, and how representatives reflect what constituents want by way of public policy. It examines, as virtually every discussion of representation does, the classic tension between constituency on the one hand and conviction on the other—the "delegate"/"trustee" distinction. The chapter concludes with an attempt to deal with representation at an institutional level, as well as at the aggregated individual level.

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For most legislators, making law is the job they chiefly associate with being members of the legislature. Their representational duties are important, but when the legislature is in session the transformation of bills into laws is their main occupation. A former Wisconsin lawmaker put it succinctly: “The *raison d’être* of a legislative body is to pass laws.”<sup>11</sup> Not only are individual legislators motivated to make law, but the legislature itself is an arena in which individuals, parties, and interest groups battle with one another to get their values, interests, and priorities reflected in statute. Law is the means by which it is decided who gets what, and who does not.

Lawmaking is, indisputably, one of the principal jobs of the legislature. It has been studied in a variety of ways, but perhaps the most popular model is that tracking the stages by which a bill becomes a law—from introduction to committee referral to action on the floor in one house and on through similar stages in the other. The approach taken here is entirely different. Lawmaking for us is complex and convoluted and by no means as simple and direct as the “bill-becomes-a-law” model would suggest. Lawmaking is the subject of chapters 4, 5, 6, and 7, in which the focus is no longer mainly on the individual but rather on elements of the process and looked at from an institutional perspective.

The aim here is not to pursue a sponsor with a bill that he or she wants passed. Rather, it is to take various cuts of the process—different photographs, as it were—in order to try to capture what appears to be most important about lawmaking in the states.

Chapter 4 looks at legislatures’ large workload and the limited time available to handle it. Chapter 5 highlights the obstacles lawmakers have to overcome—disagreement by participants, jurisdictional disputes, intercameral rivalry, and the scarcity of resources. Then, with the ground laid, the question in chapter 6 is: “How does it all get put together?” Of interest here are the deliberative aspects of the process, as arguments are heard, problems are studied, and contestants debate the merits of their positions. Support for a measure is being fashioned, or thwarted. Successive majorities have to be won over in both houses, not just one. How that is accomplished and how settlements are achieved is the topic of chapter 7. Inside and outside strategies come into play here, and disputes are finally worked out; legislation is enacted.

In considering the third principal part of the legislative job, the institutional perspective has to be the dominant one. Legislators individually can represent their constituencies, but it takes the legislature to balance the power of the executive. In creating a new governmental system, the framers of the Constitution wanted the three branches of government to share power, with neither the executive, legislative, nor judicial branch having substantial power over the others. Consequently, they demanded a system of separated powers—one in which checks and balances operate but there is still sharing. Initially, legislatures were the dominant institutions, but that is no longer the case. Putting the courts to one side, it is the executive that has dominated for the past fifty years or so. The executive dominates today, and legislatures have to work hard to maintain parity.

Chapters 8 and 9 examine how and how effectively legislatures balance the power of executives. Chapter 8 discusses the advantages governors generally possess vis-à-vis their legislatures. The main one, possessed by every governor, is that of unity. The governor is one, the legislature is two houses (except in Nebraska), two parties (except in Nebraska), and usually one hundred or more individuals (although there are fewer than one hundred members in Nebraska and seven other states). Other things being equal, governors have the upper hand; but other things are seldom equal. Whether a balance is achieved between the executive and legislature depends on how the governor confronts the legislature and how the legislature responds to gubernatorial leadership or lack thereof. That is the focus of chapter 9.

What becomes very clear in chapters 4 through 9 is that legislative leaders are central figures in the process. How and how well legislatures do their lawmaking and balancing, and even to some degree how they do their representational work, depends substantially on legislative leadership—the top leaders of the majority party. Therefore, chapter 10 undertakes an examination of the role of leadership in the functioning of the legislature. It is difficult to see how a legislature can perform well without effective leadership. At this point, the case is implicitly made that a “good” legislature requires such leadership.

Chapter 11, by way of conclusion, addresses the question that largely motivated the present study. What is a “good” legislature, given the performance standards adopted here? What requirements have to be met for a legislature to pass a “goodness” test?

### Figuring Out How They Do What They Do

This study of the legislature’s job draws on a variety of source materials, each of which serves to illuminate the subject, at least to some extent. Together, these varied materials should cast substantial light on how legislatures go about their business of representing, lawmaking, and balancing.

First, this study draws on work already published by political scientists on legislatures, some of which have proved vital to the present endeavor. Joseph M. Bessette’s wonderful theoretical treatment of deliberation in Congress was invaluable. Of an entirely different nature, John A. Straayer’s insightful analysis of the Colorado General Assembly helped make sense of one state legislature. Laura A. Van Assendelft’s splendid portraits of southern governors made a significant contribution to the chapters on the legislature and the executive. The present study also relied on my own research and writing.<sup>12</sup>

Second, memoirs, biographies, and first-hand accounts are drawn upon to flesh out the people and the process. Tom Loftus, the former speaker of the Wisconsin assembly, offers legislative wisdom that nicely buttresses some of the arguments made herein. Ralph Wright, the former speaker of the Vermont house, offers candor and humor, which is happily incorporated into the narrative of this study. John E. McDonough’s war stories from his days in the Massachusetts

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legislature illustrate important points and, besides, are much too good to ignore. Harriet Keyserling's memoirs of her experience in the South Carolina house also are valuable, as is James Richardson's fascinating biography of Willie Brown, the former speaker of the California assembly.<sup>13</sup> It would be foolish for anyone writing about the job of the legislature to overlook such rich materials.

During the 2000 session of the Minnesota legislature, Sen. Ember Reichgott Junge took advantage of her insider's knowledge to write an account of Gov. Jesse Ventura and the legislature. Her work has not been published, but with her permission parts of it are used here. All references to her work are cited in the endnotes as "Ember Reichgott Junge, unpublished manuscript, 2000." Along similar lines, I made use of a diary kept by Del. Sandy Rosenberg of the Maryland house, also cited when reference is made to it.

Third, the coverage of the legislature by the capital press corps in a number of the states is extremely useful to the current study. The comments of participants in lawmaking, which are quoted in daily newspapers, are gratefully borrowed and noted in this study. Also useful for present purposes are a number of case examples reported in the press. Coverage by the following dailies has been of special help: *Baltimore Sun*, *Columbus Dispatch*, *Minneapolis Star Tribune*, *New York Times*, and *St. Paul Pioneer Press*.

Fourth, the bulk of this study relies on newly conducted research—interviews, a survey, and observation—I conducted in Maryland, Minnesota, Ohio, Vermont, and Washington. Are these five states representative of all fifty? The answer to that question is a resounding "no." It is not possible to choose states or legislatures that are representative of other states or legislatures. Every state and every legislature differs from every other, at least in some important respects. Indeed, the same legislature differs from session to session, and sometimes even more frequently than that—depending on partisan control, member composition, political circumstances, and environmental factors. It may, therefore, be assumed that different legislatures employ a somewhat different mix of means in pursuing their work of representing, lawmaking, and balancing; and that mix is never constant.

Why these states? Although not representative *per se*, the five states under special scrutiny here are in different regions of the nation: Minnesota and Ohio are in the Midwest, Washington is in the West, Vermont is in the Northeast, and Maryland (at least according to the regional groupings of the Council of State Governments) is in the South. More important than whether the five represent other states is the fact that they represent different patterns of control of state government, which is critical to the examination of lawmaking and to executive-legislative balance.

At the time of my observations in 2001–2002 the patterns of control were as follows: In Maryland Democrats were firmly in control of both houses of the legislature, as well as the office of governor. In Ohio the reverse was the case; Republicans were firmly in control of both houses of the legislature, as well as the office of governor. In Washington Democrats controlled, but the margins

were extremely narrow, one seat in the senate and two in the house; the governor was also a Democrat. Vermont was divided, with a Democratic governor and senate and a Republican house. Minnesota was even more divided; the legislature was tripartisan, with the senate in the hands of the Democratic-Farmer-Labor (DFL) Party, the equivalent of Democrats everywhere else, the house in the hands of Republicans, and the governor, Jesse Ventura, a member of the newly formed Independence Party.

These five legislatures varied in several institutional respects. The size of legislative districts ranged widely, as did the capacity of the legislatures, in terms of staff, facilities, and the like. Ohio's legislature was the most "professional," while Vermont's was the least (and thus the most "citizen legislature") of the five. The legislatures in Maryland, Minnesota, and Washington were in between, but much nearer to Ohio than Vermont. These factors will be revisited in the chapters on representation and lawmaking.

An important criterion in selecting these five legislatures was my likely access to leadership and, through leadership, to the inner workings of the lawmaking processes. In three of the states access was excellent and in another it was very good. In the fifth, Washington, less time was spent on first-hand observations, partly because the end-of-the-session visit did not allow for direct observation.

In each of these states I conducted a number of interviews and, more casually, engaged in conversations about the process. Among those interviewed were legislators, lobbyists, journalists, executive officials, and a governor. But the principal method of investigation was my observation of the process. I spent two weeks in the Maryland, Minnesota, Ohio, and Vermont legislatures during their 2001 sessions. These visits were conducted midway through the Maryland and Vermont sessions, just before the deadline for the budget in Ohio and toward the end of the session in Minnesota. The journey to Washington occurred the following year but was limited to four days.

Only a small slice of the lawmaking process could be observed. I had to choose where to be—in the house or senate, in one committee or another, at a floor session, or somewhere else. And I had to choose when I would be in each of the states. A lot is going on at any one time. To the extent possible, I observed the process looking over the shoulder of a legislative leader—especially the house speaker in Maryland, the senate president in Ohio, and the senate majority leader in Minnesota. But work in committee, especially in Vermont, and in caucus and on the floor also was closely observed. In each chamber the focus was on the majority party, which is responsible for the legislature's agenda and enjoys the initiative in making law.

Another way to observe lawmaking would have been to track a particular issue or to follow the efforts of a legislator trying to get a bill enacted. The former would not have been possible because of the limited amount of time I could spend in each legislature. One never knows much in advance what will be happening when, except for the budget. So, selecting an issue and tracking it would

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be out of the question. For much the same reason, monitoring a member's efforts would not pay off in an exploration of the job of the legislature.

It was decided, therefore, to look at those issues that came up during the time span during which I as observer was scheduled to be in the state. Most of the issues observed in some depth were on the agendas of the majority leadership, especially the budget, school finance, guns, and gay rights. Obviously, this approach leaves something to be desired; only a small part of the proceedings could be viewed first hand. But these proceedings were critical parts of the process, and not ordinarily open to outsiders. At a senate DFL caucus meeting in Minnesota, one senator welcomed me to the discussion of strategy that was about to begin: "You're in the huddle," he said. And that was the way it felt, although there was no risk that I would be asked to carry the ball.

Proximity is important, but so is coverage. Snapshots capture only a small part of what is going on, which is impossible to see at any one time, anyway. But one can make better sense of the job of the legislature by watching the institution at work, extracting illustrations, and trying to get at what seems most generalizable. That can best be done when such observations are supplemented by other materials. The manner of inquiry pursued here is far from science, but it can be extremely informative. Observation is not the only approach, but it is one that probably should be used more often than it is in the study of legislatures.<sup>14</sup>

The representational job of the legislature is best approached differently. Although lawmaking in the state house illuminates aspects of representation, major reliance here is on a survey I mailed to all the members of the Maryland, Minnesota, Ohio, Vermont, and Washington legislatures. The surveys were sent to legislators in four states in May 2001 and then to legislators in Washington in April 2002. Of the 848 legislators sent surveys, 364 completed and returned them, a response rate of about 43 percent. Among states the response rate varied as follows: Maryland, 51 percent; Minnesota, 45 percent; Ohio, 33 percent; Vermont, 48 percent; and Washington, 32 percent. Subgroups—such as senate or house, Democrat or Republican, majority or minority party, male or female, and years of experience in the legislature—were appropriately represented in the total sample. The responses of legislators to the questions asked are cited in the text as the "five-state survey" and referred to mainly in chapters 2 and 3.

This book is about legislatures generally and how they go about doing their jobs. Yet most of its observations are based on only five of the fifty state legislatures. Admittedly, even these observations are highly selective. They were made during only one session, and only a short part of it, and only of a few of the many transactions going on then. They are offered here, with these caveats. But even with such limitations, it ought to be possible to get nearer than we have been to how legislatures perform. And nearer, also, to understanding what "good" legislatures are.

## NOTES

1. See Alan Rosenthal, "Democracy Works," *State Legislatures*, February 2003, 22–25.
2. Alan Ehrenhalt, "Political Science and Journalism: Bridging the Gap," *Perspectives* 1 (March 2003): 128.
3. John Mueller, *Capitalism, Democracy, and Ralph's Pretty Good Grocery* (Princeton, N.J.: Princeton University Press, 1999), 177.
4. John Hibbing and Elizabeth Theiss-Morse, *Stealth Democracy* (New York: Cambridge University Press, 2002).
5. Karl T. Kurtz, Alan Rosenthal, and Cliff Zukin, "Citizenship: A Challenge for All Generations" (Denver: National Conference of State Legislatures, September 2003), 9.
6. Alexander Heard, ed., *State Legislatures in American Politics* (Englewood Cliffs, N.J.: Prentice Hall, 1966), 3.
7. See Nelson W. Polsby, "The Institutionalization of the U.S. House of Representatives," *American Political Science Review* 62 (March 1968): 144–168; Peverill Squire, "The Theory of Legislative Institutionalization and the California Assembly," *Journal of Politics* 54 (November 1992): 1026–1054; and Alan Rosenthal, "State Legislative Development: Observations from Three Perspectives," *Legislative Studies Quarterly* 21 (May 1996): 169–197.
8. Citizens Conference on State Legislatures, *The Sometime Governments* (New York: Bantam Books, 1971), and *State Legislatures: An Evaluation of Their Effectiveness* (New York: Praeger, 1971).
9. Joel H. Silbey, ed., *Encyclopedia of the American Legislative System* (New York: Scribner's Sons, 1994).
10. Charles O. Jones, "A Way of Life and Law," *American Political Science Review* 89 (March 1995): 1–9.
11. Mordecai Lee, "Looking at the Politics Administration Dichotomy from the Other Direction: Participant Observation by a State Senator," *International Journal of Public Administration*, vol. 24, no. 4 (2001): 377.
12. Joseph M. Bessette, *The Mild Voice of Reason* (Chicago: University of Chicago Press, 1994); John A. Straayer, *The Colorado General Assembly* (Niwat: University Press of Colorado, 1990); Laura A. Van Assendelft, *Governors, Agenda Setting, and Divided Government* (Lanham, Md.: University Press of America, 1997); and Alan Rosenthal, *The Decline of Representative Democracy* (Washington, D.C.: CQ Press, 1998).
13. Tom Loftus, *The Art of Legislative Politics* (Washington, D.C.: CQ Press, 1994); Ralph Wright, *All Politics Is Personal* (Manchester Center, Vt.: Marshall Jones Co., 1996); Harriet Keyserling, *Against the Tide* (Columbia: University of South Carolina Press, 1998); John E. McDonough, *Experiencing Politics* (Berkeley: University of California Press, 2000); and James Richardson, *Willie Brown* (Berkeley: University of California Press, 1996).
14. Richard F. Fenno Jr. has, of course, relied heavily on observation in his studies of the U.S. Congress and its members. See, especially, his explanation of observation as a methodology in the appendix of his *Home Style: House Members in Their Districts* (Boston: Little, Brown, 1978).

