
The Good Legislature

Beyond the intuition that says "I know one when I see one," how do you go about measuring the effectiveness of any given legislature?

By Alan Rosenthal

What do we want our state legislatures of the 21st century to be? Of course we want them to be effective, to be good. But we also know that state legislatures will be heavily influenced by forces over which they have little control—technology in particular. The challenge is to remain true to the fundamental purposes of representative democracy and the legislative system.

So what is an effective, a good legislature in a time of dramatic change?

It's a question, for the most part, that has gone unanswered, and even unattended. And the answer as to what a good legislature is must come from legislators, legislative staff and concerned citizens.

For legislatures to be good, they must carry out the functions we expect of them in our system of representative democracy. The principal ones are balancing power, representing constituencies and making laws. In considering whether legislatures are doing their job (and hence are good), we have to examine how well they are performing these three functions.

BALANCING POWER

Constitutionally, legislatures are separate, co-equal branches (indeed, the legislature is the first branch of government and the executive the second) that share governmental power. So it follows that legislatures must balance the power of governors and the executive branch. A good legislature, accordingly, has to be relatively independent of the governor. It must insist on participating in the initiation of policy and refuse to rubber-stamp executive proposals.

Independence was a watchword of the legislative reform movement of the 1960s and '70s. At that time it appeared that legislatures, except in about a dozen states, were dominated by governors. The development of legislative capacity and the legislative institution nourished a growing sense of legislative independence.

Legislative power may be requisite, but that does not mean that the greater the power imbalance in favor of the legislature, the better that legislature is. More power for the legislature is not necessarily better once an appropriate balance is achieved. In other words, an imbalance in favor of the legislature is no better than an imbalance in favor of the governor. The legislature must truly be a co-equal branch of government.

Although we can measure the constitutional powers of governors and legislatures, their real power hinges as much on political factors and traditions as on constitutional and statutory ones. If we examine who initiates and enacts legislation and budgets, we should see in a general way how well the legislature is fulfilling its power balancing function.

REPRESENTING CONSTITUENCIES

One of the major roles of a legislature is representation-representing various constituencies, mainly people in each lawmaker's electoral district, but also organized groups and individuals elsewhere in the state. The question is, how well does the legislature perform its representational tasks?

First, the constitutional system and the legislature ought to provide for substantial political equality, that is, "one person, one vote." This standard, enforced by state and federal courts, is generally met, although the political gerrymandering that accompanies redistricting is often used to benefit one party and incumbents in their re-election efforts.

Second, a variety of groups who previously lacked membership should be present in the ranks of legislators today. Women, African Americans and Hispanics most notably need opportunities to serve as well as to be represented. The problem with such descriptive representation, as it is called, is that it can be applied to all types of groups (and not just those specified above). It is not easy to know just where to draw the line; nor is it easy to know just how close the percentages of minorities in the legislature should come to the percentages of minorities in the state.

Third, as part of its representational function, the legislature must provide service to constituencies and constituents. Constituent service is normally the job of individual members who appreciate the importance of doing a good job in this area if they hope to be re-elected. Service includes responding to constituents' requests for information, help and case work, as well as taking care of the district's interests with respect to state-aid formulas, local projects and public expenditures.

Fourth, the legislature has to ensure that citizens, as well as groups, have access-access to members, to committees, and to the general process. The legislature must be open and provide information on agendas and proceedings. Legislatures' outreach efforts, including C-Span, help.

Fifth, the legislature also has responsibility for civic education, especially on representative democracy, the legislative institution and the legislative process. In order to provide civic education, legislatures have to tell the public it is their job to represent diverse constituencies, various interests and differing values, and it is their role to engage in conflict, build consensus and achieve settlements. Citizens must have a sense of what representative democracy entails if they are to participate and advocate responsibly. It is up to the legislature to provide them with that sense.

Sixth, the legislature has to be responsive, at least to some degree, to what citizens want, as well as to what the legislature determines they need. Assuming that responsiveness is

part of the representational function, we have to figure out how legislative enactments—at least on major issues—square with public demands and with public needs.

MAKING LAW

Although representing others deals with the relations between the legislature and the public, lawmaking is internally focused. It relates to the processes by which laws (and policies) are fashioned.

Lawmaking includes several related legislative activities. The legislative role in formulating, reviewing and adopting a state budget has special significance. The budget is probably the most important bill that a legislature passes. A legislature that performs poorly on the budget is likely to be an ineffective legislature overall.

The legislature's oversight role is also worth considering; that is, how and to what extent does the legislature monitor the application and effect of the laws it has enacted. Finally, we should pay some attention to legislative foresight; that is, how and to what extent the legislature looks ahead in order to develop policies to meet the future needs of the state.

What should we expect of the lawmaking process?

First, it is important that individuals and groups have an opportunity to participate in the lawmaking enterprise as it takes place within the legislature. Diverse perspectives and positions on issues from both organized groups and unorganized individuals should be welcome. Lobbyists, accordingly, are an integral part of the process. (The importance of participation, however, is not meant to suggest that direct democracy, by means of the initiative and referendum, is a desirable feature of the lawmaking process.)

Second, the participation that counts most is that by legislators themselves. If a legislature is to perform its lawmaking function well, members must be able to play a role. Not every member, however, will choose to be active on every issue; some are better equipped and better positioned than others. Internal democracy requires that within the senate and house power be relatively dispersed.

Still, standing committees are key agencies and some legislators play larger legislative roles by virtue of their committee assignments (or because of their interests or abilities). Not only do chairmen exercise leadership, but the rank and file of both the majority and minority parties also may have influence at the committee stage of the process. In a number of states the party caucus is another locus of member influence. There issues are hashed out and party positions on legislation are developed. Internal democracy also requires that members have basic parliamentary rights.

Third, although legislatures are essentially democratic bodies, with members substantially equal to one another, some members are "more equal than others." These are normally the elected and appointed leaders. Strong leadership, particularly at the level of the presiding officer, is essential if the legislative process is to work well. This requires individuals with strategic, problem-solving and consensus-building abilities—people who

exercise primary responsibility for the functioning of the legislative process and the maintenance of the institution.

Fourth, the processes of legislative decision making may be more or less partisan in nature. If the legislative parties are cohesive, the majority probably will play the decisive role on important issues, such as the budget. The majority party caucus will be a principal forum for deciding key issues. But the minority must also be accorded parliamentary rights. If the majority lacks cohesion, or has tended to dominate, as it does in essentially one-party states, decisions on key issues probably will be made on a more bipartisan basis. Either system can work, depending on the political culture of the state.

A major danger is that if partisanship is too heavily weighted in the process, minority members may find themselves almost completely shut out, the only role remaining to them that of mischief maker. Unrestrained partisanship can damage civility and undermine the legislature as a working institution, further eroding the trust and confidence the public has in it. The conduct of the legislative parties, therefore, merits close scrutiny.

Fifth, deliberation is an important feature of the legislative process. It necessitates a give-and-take and an exchange of information and ideas. Deliberation provides the possibility that a number of legislators will be influenced by the discussion. The deliberative process is not restricted to the debate (or lack thereof) that goes on at the second reading stage on the senate and house floor.

It is also a vital element of committee activity and continues in the frequent and unstructured exchanges in members' offices, leadership conferences, at lunch, and in the corridors of the state house or legislative office building. Deliberation as a standard is central to the very idea of a legislature.

Sixth, while deliberation involves the exchange of ideas, building consensus involves a more material exchange. It depends on the willingness of opposing sides to sit down at a table together and negotiate their differences. Generally, that means dealing, trading and compromise, so that as many participants as possible buy into a settlement. The overwhelming majority of laws enacted by a legislature are settled by some process of consensus building.

On relatively few issues are lines so firmly drawn that negotiating is fruitless and battling it out is the only way to arrive at a decision. There is little doubt that one of the most important tasks of the legislature is to build consensus; a legislature that is effective in this regard is likely to be an effective legislature.

Seventh, these processes not only work to make laws, they are also intended to address problems facing the state. If legislative processes are not related to state needs, they cannot entirely fulfill the expected lawmaking function. Ideally, we expect legislatures to solve problems and improve conditions in the state. At the very least, legislatures have to address problems.

FACILITATING FACTORS

Two sets of factors contribute substantially to the ability of a legislature to perform well. One can be called capacity, the other institutionalism.

Capacity in the broadest sense is the resources, the wherewithal for the legislature to do its job. In the parlance of legislative reform, the amount of time in session and in the interim period, the size of the professional staff, the adequacy of facilities and technology add up to legislative capacity. How much staff is needed? How should it be organized? Is a full-time legislature better than a part-time one?

Questions like these deserve attention, although I doubt that the answers are the same in every place. Whether the legislature is more professional or more amateur may not be critical either. Just what combination of resources or how much of each type is optimum or sufficient probably varies from state to state.

A vital part of a legislature's capacity is the quality of the legislators themselves. In considering quality, we have to deal with the issue of professional versus citizen legislators—that is, those who are relatively full-time careerists on the one hand and those who are essentially part- and short-timers on the other. In just about every legislature, some of each type exist.

But in some legislatures (for example, California, Illinois, Massachusetts, Michigan and Pennsylvania) professionals predominate, while in others (for example, Montana, New Hampshire, Vermont and Wyoming) citizens predominate. It is not possible to say that one type of member is more desirable than another for a legislature, or just what mix works best.

Quality also applies to the personal characteristics of legislators, and especially of legislative leaders. The reputations of legislatures in California (during the late 1960s and early 1970s) and Florida and Minnesota (during the 1970s and 1980s) were based in large part on the substantial number of able, intelligent, energetic, dedicated and politically skillful individuals who served at the time. These members made a marked difference in the performance of the legislature. Legislators with such characteristics clearly contribute to legislative performance everywhere.

The integrity, or the ethics, of the legislature is an integral part of capacity. Although we do not define legislative goodness strictly in terms of the ethical behavior of members, the ethics of the capitol community and the type and enforcement of ethics laws are among the factors that affect how legislators function. Legislatures characterized by integrity are likely to do better than those where the ethical conduct of members is over the line or too near the line. Legislative integrity in deed and in spirit matters not only to the public, but also to the overall ability of the legislature to fulfill its representational responsibilities.

Institutionalism is related to a combination of factors that pertain to a legislator's identification with the senate or the house and with the legislature as a political institution. Three of the most important ones are concern, community and continuity.

Concern has to do with a sense of, identification with, or dedication to the legislature, all of which are likely to promote the performance of balancing power and making law. For a legislature to be good, it needs members who care about its well-being and who engage in institution-building activities (or at least do not engage in activities that are institutionally harmful or destructive). Members who are institutionally inclined will defend the legislature against criticism they believe unjust and will discourage colleagues from running against the institution in order to win office.

Community encompasses the culture and norms of the legislature. It requires some level of agreement on the need for civility and some manifestation of collegiality. Informal socializing among legislators helps to build community. In most places such interaction has been in decline in recent years; nonetheless, it remains an element of institutionalism, and one that seems to facilitate the performance of legislative functions.

Continuity is probably as important to institutionalism as anything else. Some continuity of membership and staff not only provides for greater knowledge and skill on the parts of lawmakers, but it promotes institutional values. It takes a while for most new members to identify with and develop concern for the legislature as an institution that merits their support.

Continuity does not require extremely low turnover of membership, but only that some members serve for a decent period of time. By requiring that everyone turn over with relatively brief regularity and by discouraging legislators from identifying with an institution they are passing through, term limits run counter to institutional continuity. The 18 states that currently limit terms are at a disadvantage when it comes to having a good legislature.

ASSESSING LEGISLATURES

This model of the good legislature is based on three principal legislative functions—balancing power, representing constituencies and lawmaking. The factors that facilitate performance of these functions are capacity and institutionalism.

Some might suggest a different model, but on the basis of what I have read and observed of legislatures, I think this is as good as any place to start thinking about what makes a legislature good. It will not be easy to bring to life the categories discussed here; it is virtually impossible to measure the several dimensions of the good legislature and to rank the legislatures of the 50 states on goodness. (What is most measurable is probably least significant and what is probably most significant is least measurable.) Uprooting a legislature from the political culture of its state cannot be done. What serves well in Vermont might not serve well in California, and vice versa; and what serves well in Iowa might not serve well in Florida, and vice versa. Comparing legislatures across states is tricky business; giving legislatures numerical scores is impossible business.

But even if measurement is beyond our ability, it is about time that we figure out roughly what a good legislature is and roughly how well our own legislature is measuring up.

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