

The “Good” Legislature

By Alan Rosenthal

This article, based on the author’s book, Heavy Lifting: The Job of the American Legislature (CQ Press, 2004), explores the factors that indicate whether a legislature is “good” or not. Neither a legislature’s appearance, structure, nor its product ought to be considered indicative. A legislature’s performance of its principal functions is what counts. Legislatures do best at representing constituencies and constituents, next best at lawmaking, and least well at balancing the power of the executive. Critical to legislative performance of the latter two functions are leadership and standing committee systems.

Any student of state legislatures at some time or another has been asked whether the legislature in a particular state is a good one, not so good, or even bad. Just how good or how bad? This is a difficult question to answer intelligently, but that hardly means that an answer is not given by academics and others. Often the media furnishes its own answer, at least to whether the legislature in its state is good or bad. The media usually tilts negatively, as is exemplified by the *New York Times* which characterizes the New York Legislature as the most dysfunctional in the nation.

What Standards Should We Use?

How a legislature is rated depends greatly on the standards applied to the assessment. Three of the most frequently used standards are appearance, product and structure.

The public, in general, goes by the standard of *appearance*. In most states the people do not like what they would see, if they were looking (which they aren’t). The legislature is disheveled at best, ragged at worst. It is unpredictable and frustratingly elusive. Actually, it is a wonderful example of democratic politics. But while most Americans applaud democracy in principle, not many appreciate the nitty-gritty of democracy in practice. Add to the unappealing appearance of the legislature and the legislative process, the picture conveyed by a media that stresses the negative, conflictual and scandalous. The result is low marks for the legislature by the public in the states.

Product is an obvious standard. Most people care more about what comes out of the legislature than what goes on inside it. 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 its interests. Given this standard, one group’s “good” legislature is another group’s “bad” legislature. It is probably not possible to agree on product requisite for a

legislature’s goodness, except in the most general sense. In any case, product as a standard rests on the assumption that the legislature is a means to an end, the end being what it produces. However, the legislature is not only or primarily a means to an end; rather, it is an end in itself. That is because the institution and the process allow for a democratic means of reaching settlements among the different values, interests and priorities that people have.

Structure as a standard came into prominence during the legislative reform movement of the late 1960s, the 1970s, and the early 1980s. A major assessment of the 50 state legislatures was conducted by the Citizens Conference on State Legislatures as part of the campaign for legislative reform. State legislatures were ranked from 1 to 50, depending on many factors, nearly all of which had to do with structure or capacity. Legislatures were awarded points if they had, among other things, deadlines for filing bills, superior offices for leaders, fewer than eighty members in the house, and so forth. The ranking that resulted from the evaluation—with California, New York and Illinois at the top—made as much sense as assessing a professional football team by the condition of its uniforms, the size of its locker rooms, and the cost of its training facilities rather than its performance on the field or the number of games it won and lost.

What matters is neither appearance, product, nor structure, but how the legislature functions, how it does its job. In short, what matters most is legislative performance.

The legislature’s job is essentially threefold: representing, lawmaking, and balancing the power of the executive. The three components overlap, but they can be considered separately.

Representing constituencies and constituents entails legislators serving their districts’ interests and expressing their constituencies’ views. The former involves offering access to individuals and doing case

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work for them and bringing home the bacon, in the form of funding formulas and projects, to the district as a whole. The latter involves expressing the dominant policy positions of the constituency, that is first, if constituents care about an issue and second, if they generally agree as to what should be done about it.

Lawmaking involves the processes by which settlements are reached (or not reached) among contending values, interests, preferences and priorities which exist in the population and its organized groups and are represented and promoted in the legislature. In order to enact laws, including the most important one—the budget for the state, participants in the process engage in study, deliberation, strategizing, negotiation, compromise and attempts to build successive majorities.

Balancing the power of the executive. In a system of separated powers, such as ours, the legislature is obliged to check and balance the executive. Earlier in the nation's history, the legislature was the more powerful branch, but today the advantage is with the executive. Because the executive is one and the legislators are many (individuals who are also divided into contending parties and chambers), governors have the upper hand, should they choose to raise their arm. Unlike legislatures, chief executives can decide without having to build consensus. They can prioritize and focus their resources far more easily than can legislatures. And they have the bully pulpit—that is, access to the media—which allows them to build support among the public and indirectly within the legislature. To balance a strong executive, a legislature must be able to review seriously the governor's budgetary and programmatic priorities, ensuring that they are consonant with the legislature's. It must be able to initiate major items on its own, without depending upon the governor always to set the agenda.

How Well Do Legislatures Perform?

If representation were their only job, legislatures would deserve high ratings—on average an A or an A-. The “good” legislature would be practically ubiquitous. Different legislatures do it differently, as would have to be expected. Representing a district of nearly 850,000 people, as is the job of a California senator, is not at all the same as representing a district of 16,459 people, as is the job of a Wyoming senator. Either way, legislators offer constituents a connection to the political and governmental world—that is, if constituents want to take advantage of such a connection.

There is no question that most lawmakers take constituent service seriously and spend much of their time (and/or staff time) doing it. Serving the inter-

ests of constituents and constituency is a relatively simple matter and legislators, no matter what the nature of their constituencies, can be expected to try to help people out.

Expressing the views of constituents and constituency is more problematic, in particular because on most issues with which the legislature deals no views exist. On a few issues, however, a substantial proportion of the constituency does care (at least somewhat), as does the representative. Most often the views of the dominant constituency groups and those of the representative coincide. Only infrequently do they clash. At these times, depending on the issue, representatives will either take a Burkean position, voting according to their conscience or judgment, or a politically prudential position, going along with the dominant views of the constituency.

It may be argued, of course, that not everyone in the state is represented equally by legislatures. Shouldn't there be more women, minorities, blue-collar laborers, and younger people in legislatures? What about Republicans who live in Democratic dominated districts and vice versa? Are these political minorities fairly represented? Despite the fact that the legislature does not mirror the population of the state in demographic characteristics and despite the predominance of single-member districts in which minority party voters are shut out, the representational system works well. This is partly because the views of constituents are represented not only by the legislators they elect to office, but also by political parties and interest groups to which constituents belong or with whom they agree.

Lawmaking is even more variable than representation. What should we expect by way of legislating in bodies that work to resolve conflict and achieve settlements, and that have to deal with difficult problems facing the state and its people? What, in short, makes for good lawmaking? Two important elements are study and deliberation. The fact is that both study and deliberation play substantial roles—indeed, the largest roles—in lawmaking processes, even though attention usually focuses more on political gamesmanship. Other important elements are strategy and negotiations. Whatever a bill's substantive merits may be, it is necessary to put together and keep together the support required to get it enacted into law. Most members of what constitutes a majority have made a decision on the substantive and political merits of the case. Relatively few have to be won over through negotiations and bargaining. Still, disagreements—among members, between chambers, and with the governor—often have to be worked out.

So, what constitutes better legislative performance at lawmaking? Each legislature engages in lawmaking in somewhat different fashion depending on the situation, circumstances, and personalities involved. The lawmaking process varies among legislatures, nor is it the same from issue to issue or day to day in the same legislature. Just as there are various ways to skin a cat, so there are various ways to make law. Good lawmaking requires a nice combination of ingredients, with substantial amounts of study and deliberation included. In this process, the role of standing committees is extremely important. It is here that measures are reviewed, shaped, and agreed on and where study and deliberation are mainly brought to bear. Standing committees are said to be the workhorses of the legislature. Indeed, they have to be the workhorses, if the legislature is to be “good.” This is not to minimize the importance of political considerations—that is, how a policy proposal plays in the state and what the public thinks of it.

Overall, legislatures do reasonably well at lawmaking, but not as well as they do representing. Here, they would receive a grade of B+ or B. In any particular state it is easy to second-guess the legislature and the process. Who can say if there is a better way to pass a bill, or defeat one? A legislature probably always can do better in the study and deliberation department, but perhaps at the risk of slighting political aspects. But the process is not really manageable, depending as it does on contingencies of all kinds. As long as there is disagreement among members, interest groups to deal with, another house to worry about limited time, or a governor who wants a piece of the action, the process can take just about any course. As long as study and deliberation play a substantial part, different positions are expressed, and majorities have their way, legislatures essentially are making law the way it ought to be made.

Performing the job of balancing the power of the executive overlaps that of lawmaking to a considerable extent. Balancing, however, requires more—that the legislature share with the governor the capacity to participate as equals in setting the priorities and policies for the state. Here is where legislatures are at the greatest disadvantage and where they perform least well. On average, they would receive no higher than a B or B- for this part of their job.

When it comes to balancing variation from legislature to legislature is easier to specify. In a few states legislatures appear to hold a predominant position, because they are accorded power to draft the state budget or because they have traditionally shaped the budget and the executive has acquiesced. In most

states, however, legislatures have to assert themselves if they want to balance their governor, let alone their budget. Some of these legislatures have managed a spirit of independence, even with an executive controlled by the same party as that which commanded a majority in each house of the legislature. They have proven to be coequal branches of government. Other legislatures have chosen not to challenge their governor, either because party was too strong a bond or because they lacked the will to assert themselves.

The balance of executive-legislative power depends partly on constitutional provisions, although constitutions can be changed. It depends also on what have become customary ways of doing things in a state. Finally, it depends on the personalities and politics at the time. At the very least, what is necessary for the legislature to do its balancing job is recognition that it ought to do it and that it have the will to try to do it.

What Conditions Have to Exist for a Legislature to be “Good”?

What appears vital to the legislature’s performance are the following:

1. A connection by legislators to their constituencies and a responsiveness to constituency views where they exist.
2. A balance between the deliberative aspects of lawmaking on the one hand and the political aspects on the other, ensuring that the process takes into account arguments as to the merits of a measure. This ordinarily means that a legislative chamber delegates a major role to its standing committees, which have policy expertise, some continuity of membership, and the respect of the larger body.
3. Effective legislative leadership. Although leadership matters relatively little with regard to representation, it is hard to imagine the lawmaking process working without committee, party and chamber leadership. Among the many responsibilities of leadership are finding common ground, facilitating compromise, forging consensus, and enabling a legislative majority to find and work its will. It is even harder to imagine that the power of the executive could be balanced without effective leadership. Legislative leaders have to represent the senate and the house to the governor and then negotiate the best deal possible from their chamber’s point of view.

What Will Make Legislatures Better?

It is easier to identify what will make legislatures worse than what will make them better. Term limits,

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for example, clearly will make them worse. The effects of their adoption in the 1990s are beginning to be felt. These effects vary from state to state, but overall term limits are impeding the legislature's job performance. This is demonstrated in a large-scale study conducted by the National Conference of State Legislatures, The Council of State Governments, the State Legislative Leaders Foundation, and a number of political scientists. Leaders generally are weakened, committees are more frequently bypassed, and governors are advantaged vis-a-vis the legislature. Although the results of investigation in a number of term-limited states are inconclusive on the point, a survey of the nation's legislators indicates that representation also suffers. Legislators in term-limited states reported spending less time than legislators in non-term-limited states keeping in touch with constituents, engaging in constituent service, securing state funds and projects for their districts, and being responsive to the demands and views of their constituents.

The first rule for physicians is "do no harm." That rule might well be applicable to the efforts of those who are critical of and want to bring substantial change to state legislatures. State legislatures are far from perfect, but they seem to be doing what they

were intended to do. Ways in which their job performance can be improved and in which legislatures can become better probably do exist, but they are difficult to identify and even more difficult to implement effectively. Mechanistic reforms are not the answer, if institutional improvement is the objective. Rather, leaders and members have to want to build and/or refashion their institutions, have to be around long enough for changes they institute to take hold, and have to be succeeded by colleagues who are also committed to maintaining their legislatures as effective institutions. No single agenda for legislative improvement makes sense everywhere; no formulas exist that will work no matter what or where the problem. Making the legislature "good" is work that must be continually in progress and work that must be specific to each of the nation's states.

About the Author

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