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STATE LEGISLATIVE REORGANIZATION

JOHN W. LEDERLE

Interest in strengthening the legislative branch of the government has reached new heights in the last three or four years. No doubt this has been due in part to a rather widespread reaction against executive dominance of the governmental scheme during the New Deal era and to the extremes of executive power which, of necessity, were exercised by president and governors alike during the war. There has also been rather universal recognition of the fact that of the three branches of government the legislature has most markedly failed to streamline its organization and procedures for its Twentieth Century responsibilities.

On the national level there has been a great deal of constructive criticism. Three important studies of Congress—*Strengthening the Congress* by Robert Heller¹, *The Reorganization of Congress* by the Committee on Congress of the American Political Science Association², *Report of the Joint Committee on the Organization of Congress*³—have lighted the way for fundamental reform. One of the noteworthy actions of the Seventy-ninth Congress was the passage of the Legislative Reorganization Act of 1946.⁴ While much still could be done, this statute represents a major step forward and pretty well clears the decks on the national level.

But serious thinking and study concerning reform of legislative procedure has not been restricted to Congress. During the past four or five years numerous investigations have been made of our state legislative mills. If the steady trend toward centralization, toward the shifting of governmental functions from state capitals to Washington is to be halted, or even slowed down, it is imperative that the states do something about reforming their legislative procedures. This is exactly what a good many of them are now attempting.

New York, as befits our most populous state, has taken the lead in studying state legislative procedures. A special grand jury⁵ and a

¹ Washington, D. C.: National Planning Association (1945).

² Washington, D. C.: Public Affairs Press (1945).

³ Washington, D. C.: United States Government Printing Office (1946) (79th Congress, 2nd. session, Senate Report No. 1011). This report will be referred to hereafter as the *LaFollette-Monroney Report*.

⁴ Public Law 601, 79th Congress. For an able detailed analysis of this Act see Charles W. Shull, "The Legislative Reorganization Act of 1946," 20 *Temple Law Quarterly* 375-395 (1947). The public opinion climate existing immediately preceding enactment of the Legislative Reorganization Act is discussed in John W. Lederle, "Spotlight on Congress," 44 *Michigan Law Review* 615-630 (1946).

⁵ See three printed documents filed in the Supreme Court, State of New York, Albany County, In the Matter of the Legislative Investigation, as follows: (1)

joint legislative committee⁶ have made painstaking investigations and followed up with numerous recommendations for improvement. The report of the joint legislative committee is one of the finest legislative studies ever made and in its presentation of comparative data is actually of more value to the student of the legislative process than the report of the LaFollette-Monroney committee. The Massachusetts legislative system was studied by a special commission which produced an excellent report.⁷ In Connecticut the initiative for reorganization has come from the Legislative Council, which in both its 1944 and 1946 reports to the General Assembly recommended extensive improvements in legislative procedure.⁸ Its efforts have been aided by the support of the Connecticut Public Expenditures Council.⁹ In Alabama¹⁰ and in California¹¹ the bureaus of public administration of the state universities have carried on extensive investigation of the legislative process, thus indicating the possibilities for university research in this field. The Commonwealth Club of California has published a three hundred and fifty page study of the California legislature¹² with extensive comparative data from other jurisdictions, illustrating in practical terms what private citizen groups can do about the problem. The Council of State Governments set up a Committee on Legislative Processes and Procedures to make a comprehensive and comparative study and its report entitled "Our State Legislatures,"¹³ published in December of 1946,

"Interim Presentment by the Grand Jury of the Extraordinary Special and Trial Term," dated Albany, New York, December 7, 1944; (2) "Second Interim Presentment," dated Albany, New York, May 4, 1945; and (3) "Final Report and Presentment," dated Albany, New York, October 24, 1945. For a summary of the special grand jury investigation see John W. Lederle, "New York's Legislature Under the Microscope," 40 *American Political Science Review* 521-527 (1946).

⁶ See New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures: (1) *Interim Report*, Albany: Williams Press, Inc., 1945 (Legislative Document No. 35); (2) *Final Report*, Albany: Williams Press, Inc., 1946 (Legislative Document No. 31).

⁷ See *Report of the Special Commission on the Legislative System and Procedure*. Boston: Wight and Potter Printing Co., 1943 (Senate Report No. 50).

⁸ See State of Connecticut. *Report of the Legislative Council*, November 16, 1944. Hartford: 1944. Also *Report of the Legislative Council*, November 20, 1946. Hartford: 1946 (Public Document No. 96).

⁹ The Expenditures Council issued two excellent brochures: (1) "Proposed Improvements in Legislative Procedure," Hartford: 1944; (2) "Further Improvements in Legislative Procedure, 1947," Hartford: 1947.

¹⁰ Cf. the following studies by Professor Hallie Farmer issued by the Bureau, the year of publication being indicated in parenthesis: "Legislative Apportionment" (1944), "Local and Private Legislation" (1944), "Standing Committees" (1945), "Recess and Interim Committees" (1946), "Legislative Costs" (1947).

¹¹ See, for example, Dorothy C. Culver, *Legislative Reorganization*. Berkeley, California: University of California Bureau of Public Administration, 1941.

¹² *The Legislature of California* (Prepared by order of the Commonwealth Club of California, under the supervision of C. C. Young, Director) San Francisco: Parker Printing Co., 1943.

¹³ Chicago: Council of State Governments, 1946. This report will hereafter be referred to as *Council Report*.

makes twelve broad recommendations for improving state legislative organization and procedures.

These studies, and there are numerous others which could be cited, reveal a widespread concern about state legislative practices. The recommendations in these reports have been received in most instances sympathetically; they have not been left in the realm of mere talk; something has been and is being done about them.

From these studies and the recommendations accompanying them certain general suggestions for improvement of our state legislatures are brought out. Only a few of the numerous proposals can be discussed here. These will be taken up under three headings: (1) proposals for attracting better and more experienced legislators, (2) proposals for improving legislative committee work, (3) proposals for improving technical aids and research facilities.

I

Many observers, and Professor C. S. Hyneman in particular, have made a study of the personnel of our American state legislatures. They have brought to light the private occupations, ages, legislative experience and other attributes of our state legislators.¹⁴ While the facts revealed are not as bad as the public's stereotyped conception of legislators, it must be admitted that much can be done to attract to this public service a better and more experienced personnel.

One approach would be to increase the pay of legislators and, in addition, to permit properly audited expense allowances for necessary travel and maintenance while on legislative duty.¹⁵ While in the foreseeable future state legislative activity will no doubt remain of the part-time variety, with the legislator securing the major share of his income from his private business or profession, still there is no justification for the present situation in which the legislator has to make a contribution from his private purse in order to meet the heavy expenses involved in long sessions away from home.¹⁶

¹⁴ See, for example, by C. S. Hyneman, "Tenure and Turnover of the Indiana General Assembly," 32 *American Political Science Review* 51-67 (1938); "Tenure and Turnover of Legislative Personnel," 195 *Annals of the American Academy of Political and Social Science* 21-32 (1938); "Who Makes Our Laws?" 55 *Political Science Quarterly* 556-581 (1940). See also, Harvey Walker, "Who Writes the Laws? Survey of Ohio Lower House," 12 *State Government* 199-200 (1939). For a study of Congressional personnel see Madge M. McKinney, "The Personnel of the 77th Congress," 36 *American Political Science Review* 67-75 (1942). A significant British study is J. F. S. Ross, *Parliamentary Representation*. New Haven: Yale University Press, 1944.

¹⁵ For a table dealing with the salaries and compensation of state legislators see Council of State Governments, *The Book of the States, 1945-1946*. (Chicago: The Council of State Governments, 1946) p. 107.

¹⁶ *Council Report*, p. 5. Representative Elton R. Eaton of the Michigan legislature discussed "how a legislator lives and entertains constituents on \$3 a day" in the *Detroit News*, Part One, November 10, 1946, p. 15. A modest hotel room at the capital cost him \$3.50 alone. He figured, living as modestly as he knew how, that he had a \$3 income and an \$8 outgo.

State constitutional provisions in 29 states fixing salaries for legislators are frowned upon in several of the studies referred to above. On this point one of these concludes: "It is the concensus of the Committee that detailed specification of salaries is not appropriate to the content of constitutions and in addition is an inflexible and therefore a poor method for determining the level of salaries."¹⁷ Present pay scales are woefully low in most states. This situation discourages men and women of limited means from running for the legislature; it encourages high turnover through voluntary retirement after a term or two, just when the legislator has learned the ropes.¹⁸ While it would be easy to exaggerate the factor of compensation in attracting and retaining better legislative personnel, a capitalist democracy must predicate its operations on the proverb that the laborer is worthy of his hire.

Another suggestion to improve the experience factor among legislators is to lengthen the term of office. There is less satisfaction today than at one time with short terms and frequent elections. While responsiveness to public opinion is important, surely experience and consistency in long-range legislative policy are also entitled to weight. A four year term with a portion of the legislature elected every two years would seem a reasonable compromise—keeping the legislature aware of changes in public opinion through the biennial introduction of an element with a current mandate, but preserving a portion of the experience and know-how of the group whose jobs were not voted upon.

Another recent development merits widened utilization. In a number of states pre-session legislative conferences¹⁹ have been held with a view to familiarizing new and inexperienced members with the physical layout of the respective chambers in the state capitol, with the service agencies, such as the legislative reference and bill drafting, with legislative procedure from the time a bill is introduced to the time it goes to the governor. Like a college "Freshman Week", the pre-session legislative conference gives the new member a chance to get oriented in his new environment, to form some beginning friendships, before the feverish rush of active work begins. Enthusiastic reports came from the jurisdictions which have used these conferences.

¹⁷ *Council Report*, p. 5.

¹⁸ See *Final Report of the New York State Joint Legislative Committee* (supra note 6) 168, where it is stated, "The plain fact is that at the present rate of compensation of \$2,500 a year . . . it has become virtually impossible for most salaried employees and certainly for most individuals in the lower income brackets to run for the Legislature. Those who do assume legislative office find it difficult to devote the necessary time and attention to their duties. Not only does the present salary fail to compensate members reasonably for their services, but it actually is responsible for substantial personal loss." By way of comment on this quotation it might be said that New York's legislators are paid handsomely in comparison with the compensation for such service in most other states.

¹⁹ Arkansas, Colorado, Connecticut, Georgia, Massachusetts, and North Carolina.

Some thirty-five²⁰ states have provided information booklets for legislators. They present in simple form the rules of procedure, and set forth information on legislative service agencies, thus enabling the new legislator to get into the swing of things more quickly. Pre-session legislative conferences and information booklets are a partial answer to the problem of inexperienced legislators. Certainly they represent a great improvement over the old school of hit-or-miss experience.

II

Many who would improve legislative procedures pick the standing committees as the place to begin. Certainly the LaFollette-Monroney group considered this the keystone to national legislative reform.²¹ Committees are the legislative "workshops" on the state level as well. What can be done to make them more efficient?

All investigations agree that the number of state legislative committees should be reduced.²² If Congress by the recent reorganization act would successfully reduce the number of House committees from 48 to 19 and Senate committees from 33 to 15 the states would do well to imitate by cutting down the present average of 32.4 committees in the upper house and 39.9 in the lower house.²³ From such a reduction would flow many advantages. The individual legislator with fewer committee assignments would acquire greater familiarity with the subjects within his committees' jurisdictions, would not have so difficult a time with conflicting committee meetings. If critics are rightly concerned about the splinter-thinking and lack of leadership in state legislatures at present, it is possible that a policy committee made up of chairmen of the reduced number of committees might be utilized for a coordinating and leadership role.

There is not a state legislature which could not profit by a redefinition of committee jurisdictions.²⁴ At any particular moment there is likely to be an overloading of some committees at the same time that others are left with little to do. Because of the changing nature of the problems facing the legislature, a year or two later often sees some of the overloaded committees with little to do while some of the somno-

²⁰ *Council Report*, p. 7.

²¹ "Your committee believes that no adequate improvement in the organization of Congress can be undertaken or effected unless Congress first reorganizes its present obsolete and overlapping committee structure. This is the first and most important test of whether Congress is willing to strengthen itself and its organization to carry the tremendous work load that present-day governmental problems place upon it." *LaFollette-Monroney Report*, p. 2.

²² A powerful factor leading to prolific committee growth is the desire to satisfy all members of the legislature with a committee chairmanship and the prestige associated with such office.

²³ *Council Report*, p. 9.

²⁴ For a recent investigation of this problem with typical recommendations for reform see *Report of the Nebraska Legislative Council, Sub-Committee on Realignment of Legislative Committees*, Legislative Council Sub-Committee Report No. 14 (Lincoln, Nebraska: 1946).

lent committees have become overburdened. Standing committee structure should not be viewed as sacred and unchangeable. While jealousies over vested interests may interfere with proper flexibility in shifting functions from one committee to another, the ideal of flexibility should be striven for continuously, rather than intermittently as at present.

Coordination between the two houses may be aided by establishing "equivalent" committees in each. Such committees may find it more possible to hold joint hearings, to conduct joint research. Of course some might object that the checking function involved in bicameralism is lost if committees of the two houses have too close an affinity.²⁵ It would be undesirable if they were to assume the personalities of identical twins. Another suggestion would be the widespread adoption of the joint legislative standing committee hitherto restricted to New England. Experience there has been entirely favorable.

There seems to be rather sharp disagreement as to whether committees should report all bills, even when the report is an adverse one.²⁶ There is much to be said for permitting the committee to "pigeon-hole" a bill rather than to clutter up the calendar with bills reported adversely. However, the committee vote not to report the bill ought to be a matter of official public record, and in some states the discharge rule should be simplified in the interests of majority democratic control.

While it would be unwise to require committee hearings on all bills, most studies stress their value in connection with bills of major public importance. The lobbyist is more likely to stay in line if he has adequate opportunity to present his case in an open hearing. The public will have a safety-valve for self-expression and will gain confidence in the legislative process. Adequate notice should be given of committee hearings and full records should be kept of evidence and testimony together with committee action thereon in executive session.

III

Whether we like it or not the quantity of legislative output has been constantly increasing, and the complexity of the problems calling for statutory adjustment has required increasingly specialized knowledge. Since the average legislator is an amateur with respect to most questions coming before him, it is imperative that he have access to sound factual information as a guide to their solution. At present he looks to two primary sources: to the lobbyist representative of private interest groups and to members of the executive establishment. Both sources have much of value to contribute, but it must be admitted that

²⁵ "Equivalent committees, joint committees, and joint hearings streamline and simplify the legislative procedure without weakening the checks and balances of the bicameral system." *Council Report*, p. 9.

²⁶ See *Final Report of the New York State Joint Legislative Committee* (supra note 6), p. 110 ff.

both are subject to a natural bias, which, if not supplemented by information from impartial sources, may well lead to unwise legislative decisions.

At the turn of the century much attention was focused on the need for staffing the legislature with technical aids.²⁷ Legislative reference bureaus, legislative drafting services, statutory revision commissions were subsequently set up in many states. If one examines the statutes in the various jurisdictions it will be found that provisions for these technical aids have remained largely without amendment through the years. The momentum of the progressive movement instead of receiving reinforcement from time to time has often been allowed to run down. Visits to a number of state capitals reveal wide disparity between what is being done and what ideally could be done. Here and there in state service one may run into an old timer who recalls the origin of the movement from which so much was expected, who has a warm glow when you mention the name of the great leader in that movement, McCarthy of Wisconsin,²⁸ or refer to the writings of the others who early sought to bring trained intelligence to the assistance of the amateur legislator. But penurious legislative support and callous legislative inattention have too often led to frustration of the hopes of the reformers.

The time has now arrived when most state legislatures can with profit reexamine their technical staff facilities. Most recent studies advocate more adequate funds for such services. The New York joint committee found that the inadequacy here is a prime contributor to the "problem of legislative primacy in framing policy."²⁹ While interim investigating committees will always be necessary to investigate major problems of a sore thumb nature, they do not meet the need for comprehensive, expert, over-all policy formulation. Nor do the individual legislators come with a suitable program of their own. Into this vacuum the private lobbyists and executive departments have moved.

Surely the most promising suggestion for meeting this situation is widespread adoption of the legislative council idea, originally promoted in 1921 by the National Municipal League in its Model State Constitution.³⁰ Although considerable time elapsed before the first state, Kansas (1933),³¹ took up the proposal, the legislative council

²⁷ See Edwin E. Witte, "Technical Services for State Legislators," 195 *Annals of the American Academy of Political and Social Science*, 137-143 (1938).

²⁸ For a thoughtful study of the movement, seen through the biography of one of its outstanding leaders, see Edward W. Fitzpatrick, *McCarthy of Wisconsin* (New York: Columbia University Press, 1944).

²⁹ See *Final Report of the New York State Joint Legislative Committee*, (supra note 6), p. 136 ff.

³⁰ See *A Model State Constitution*, (New York: National Municipal League, 1921), Secs. 29-32.

³¹ Some would give Wisconsin, which set up an executive council in 1931, credit for first experiment with the device. But the inclusion of non-legislators in its

movement has since spread rapidly until today almost one third of the states have councils or agencies corresponding closely thereto.³²

The general pattern which has evolved³³ is a body composed *exclusively* of legislators, averaging 16 in number. In composition an attempt is usually made to represent both political parties, to secure geographical representation, and to include certain key legislative leaders *ex officio*. The council meets at regular intervals, whether the legislature is in session or not, and directs the activities of its research staff. The council should determine the "priority to be given requests for research and the time to be spent on particular projects," and "protect the staff against the occasional member who requests a survey of complex problems that could tie it up for months."³⁴ Needless to say, substantial appropriations are necessary to cover the salaries of a research director and several staff experts and special stipends for occasional special consultants. Salaries of \$5,000 to \$10,000 should be paid the full-time personnel, and party lines should be ignored in securing a staff of real ability. Most legislative councils are authorized to utilize services of other state and legislative agencies and to work through subcommittees. A majority may hold hearings, and in about half the cases, the power of subpoena has been granted.

The primary function is to prepare research reports for the legislature. A decided conflict of view has arisen as to the wisdom of going further and recommending specific legislation. All councils are authorized to recommend legislation, but several in practice have refrained from doing so. This timidity has been due in part to "fears . . . voiced that legislative powers would be centralized in members of the council, that the council would develop into a 'little legislature,' that only members of the council with access to the research staff would be in a position to introduce major legislation."³⁵ Since council recommendations must stand or fall on their own merits, must pass the hurdle of the standing committees of the two chambers, the fears are no doubt highly exaggerated.

membership, the general inactivity after the first biennium of its existence and its abolishment in 1939, perhaps justify ignoring it as a hybrid and abortive attempt to carry out the legislative council idea. See John M. Gaus, "The Wisconsin Executive Council," 26 *American Political Science Review* 914-920 (1932).

³² These states are Alabama, California, Colorado, Connecticut, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Missouri, Nebraska, North Dakota, Pennsylvania, Virginia. See *Council Report*, p. 11. On the other hand in Michigan, Rhode Island, and Wisconsin experiments with some form of council have been abandoned.

³³ For an excellent summary of experience with legislative councils see J. A. Rhodes, "The Legislative Council: A Program for Planning and Research" 27 *Southwestern Social Science Quarterly* 54-61 (1946).

³⁴ *Final Report of the New York State Joint Legislative Committee*, (supra note 6), p. 141.

³⁵ *Ibid.*, p. 144.

Whether the council should run the risk of jealous criticism and possible liquidation for recommending controversial legislation probably depends on the adequacy of existing facilities for programming the legislative session. Where, as in New York, Pennsylvania and California, there are numerous, well-financed joint committees and commissions, and also informal pre-session conferences of legislative leaders, the planning function is already met. Research is all that need be asked of the council. But in the 44 states where there are biennial sessions and in the 24 states where sessions are limited to a certain number of days, it is essential to give continuity to the legislative process between sessions. Many of these states do not utilize interim joint committees or commissions. Too often in such states legislatures convene without a program and adjourn in confusion. Under such circumstances a legislative council would be derelict in its duties if it were not to recommend legislation.

IV

From the foregoing description of current proposals for improving state legislative procedures it can be seen that much vital thinking is being devoted to the matter. A real attack is being made on the problem of attracting high class personnel. The committees, the "legislative work-shops", are being reorganized both structurally and procedurally. Finally, the amateur legislators are calling for improved professional staff assistance in getting at the facts which are the grist for the legislative mill. Wishing to stop the trend toward federal centralization, desirous of redressing their position in the executive-legislative-judicial balance, state legislators at the moment are unusually receptive to reform suggestions. The recent progress in Washington under the Legislative Reorganization Act of 1946 is being matched on the state level. The state legislative scene today is one of change, and though the efforts are belated, a real attempt is being made to streamline legislative procedures to accord with Twentieth Century needs.