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Book Review

THE SOMETIME GOVERNMENTS. By Citizens Conference on State Legislatures, written by John Burns. Bantam Books: 1971. pp. 357. $1.95 paper.

In recent years the Citizens Conference on State Legislatures, Kansas City, Missouri, has been searching for ways and means to improve state legislatures. *The Sometime Governments* is an outgrowth of its Legislative Evaluation Study, funded in 1969 by the Ford Foundation. In the foreword and the preface, respectively, John W. Gardner, Chairman of Common Cause, and Larry Margolis, Executive Director of the Citizens Conference, recognize the important pivotal position of the states in the federal system. In the same concert they paint a discouraging picture of state legislatures. Margolis states that "our principal instruments of decision-making — our 50 state legislatures — are in disarray."[1] With only a few glints of optimism the book follows this gloomy path to public enlightenment.

Logically organized and clearly written by John Burns, its blueprint for reform is designed to attract legislators and citizens to the general plight of state legislatures, to pinpoint specifically the strong and weak points of each state legislature, to develop standards by which to measure progress, and to assist in planning future efforts. Unfortunately, however, the Citizens Conference has limited its analysis to the narrow fundamentals of the legislative process: length and frequency of sessions, compensation of members, staffing, facilities and equipment, procedures, committee systems, size of legislative houses, leadership and ethics. In brief, the book confines itself to legislative structure and internal legislative operations.

After a review of the essential role of the states in the federal system, the rise and fall of state legislative power in relation to state executive power, and the rebirth of hope for state legislatures because of Supreme Court decisions on reapportionment, the study launches into an explanation of its evaluation standards and their application. Its tests of legislative capability are functionality, accountability, informedness, independence and representativeness. After applying its rating system to the fifty states, the study devotes a full chapter to explaining how staffing, compensation, time, committee structure, facilities, leadership, rules, size and ethics are reflected in these standards of legislative capability.

The Functional Legislature. In expounding the concept of the functional legislature, the analysis advocates unlimited sessions, certain

1. CITIZEN'S CONFERENCE ON STATE LEGISLATURES, THE SOMETIME GOVERNMENTS xi (J. Burns 1971).

theoretical procedures to control the flow of work to prevent logjams, a centralized research staff as well as a full time professional assistant for each legislator, and adequate physical facilities. For the latter it lists legislative chambers, offices for members and staff, electronic roll call systems, conference rooms, committee rooms and accommodations for the public and the press.

In general, this chapter argues that a legislature should be of reasonable size. The large legislature develops an extremely centralized operation and spawns too many committees. The necessity for strict discipline defeats the purpose of the large representation.

In the procedural realm a series of proposals urges certain types of bill sponsorship, use of joint committees, floor action on every bill, bill deadlines, bill carry-overs, and a reasonable limit on debate. Finally, the presiding officers should have relatively secure positions with a strong role in appointing committees, managing the flow of legislation, and coordinating the two houses. Maryland ranks sixteenth in this category.

The Accountable Legislature. After a preliminary explanation of the bewilderment of the citizen with the legislative process, the book lists the elements of accountability. Of first rank is visibility, and this can be achieved best in the single-member district. Houses of reasonable size, simple committee structure, rules and procedure designed to make a public record, open sessions for the citizens and the press, and ethical requirements for lobbyists and legislators serve this purpose. Lobbyists should publicly record their representation and legislators should disclose their sources of income, assets and campaign contributions. Rules and procedures should provide firm leadership, but ensure all legislators, including members of minority parties, the chance to exercise their representative capabilities. Probably the size of Maryland's House of Delegates and its multimember district system accounts for Maryland ranking thirty-first under this criterion.

The Informed Legislature. Time in the form of unlimited sessions is deemed important by the Conference. The minutiae of legislation can only be properly explored by a well balanced committee system, inviting public participation. The atmosphere of appropriate facilities and the intellectual assistance of qualified staff are basic necessities. Research is categorized as general, legal and fiscal. Each type should be available to leaders, members, committees and party caucuses. When not in session, the committees and research services should be organized to develop in depth broad policies and programs. Under this test, Maryland ranks tenth.

The Independent Legislature. Basic to achievement of the goal of independence is unshackling legislatures from constitutional limitations, executive dependence, special interests and conflicts of interest. In this chapter the study reviews both its concept of the role of the state legislature as a coequal branch of government and the steps to be taken to assure that it depends only upon the people who elect its members. Skill in independent planning, enactment, oversight and

their means of achievement are the objectives of this chapter. Here Maryland ranks fifteenth.

The Representative Legislature. The book's perceptive analysis of the "citizen legislator" vs. the "professional legislator" is worth repeating:

> By almost any measure — income, education, social class, race — American legislatures are extremely unrepresentative of their constituencies. There are many reasons for this. Legislative salaries are small and the demands of legislative work are great. Running for office itself requires increasingly large expenditures of time and money and effort. And elective office is, by its very nature, insecure . . . .
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> Under these conditions, not many people are likely to be attracted to legislative service, and even fewer can afford it. Most of our legislators, in fact, come from occupations that allow them to devote a fair amount of time to legislative affairs without hurting their own business. . . . Most of the restrictions we have placed upon legislative service — especially those of time and money — have stemmed in no small part from our desire to ensure the "citizen" or "amateur" character of our legislatures, and forestall the emergence of full time, "professional" bodies. . . .
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> It is increasingly apparent that in today's society a legislature must be both "citizen" and "professional" — both close to the people and capable of coming to grips with complex public problems. The same qualities that make a legislature more "professional" — adequate salaries, skilled staff, enough time — make it possible for a greater variety of the citizenry to serve in the legislature, and thus make it more "representative."[2]

The remainder of the chapter contains a restatement of the importance of the single-member district, diversity of membership and the opportunity for individual effectiveness of members. Maryland's ranking forty-fifth in this category pulls our legislature down to twentieth in the overall ranking of the fifty state legislatures. Although Maryland has no district with twenty-two representatives, as stated on page eighty-two, its multimember district system would obviously fare badly in any analysis which places heavy emphasis upon the single-member district as the ideal tie between voter and legislator.

The final portion of the study is divided into general and specific recommendations. Under such divisions as "size," "time," "committees" and the like, the first part lists seventy-three recommendations for the states. The most challenging is the last one, which suggests that, as a means of cultivating generalized support for the legislature as an institution, a citizens committee be created by joint resolution to study legislative operations, facilities, and needs, and to recommend improvements.

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2. *Id.* at 134–35.

Fully half the book is devoted to specific recommendations for the improvement of each state legislature. For Maryland there are twenty-eight suggestions, at least half of which have already been adopted.[3] Such items as the consent calendar, improvement of facilities and the regulation of conflicts of interest are under study; and positive action in these areas is evident. The adoption of the unlimited session is improbable. As the preface admits, the book is similar to a stop-action photograph. It does not reflect continuing improvement in the General Assembly of Maryland. Moreover, it gives too much credit to citizen groups and to the 1967 Constitutional Convention for organizational progress. For at least ten years the Legislative Council Rules and Procedure Committee's annual studies have methodically analyzed, adopted and rejected proposals for improvement.

The book is written for the constructive purpose of seeking improvement in state legislatures. However, it might make cynics of all but the most informed readers. To avoid the complete loss of faith in state legislatures, and this means loss of faith in democracy itself, the limitations of this work must be pointed out.

Admitted in the first chapter is that the study concerns itself with *structure* apart from the *legislation actually produced.* Even without an analysis of the quality of a state legislature's achievements in relation to its problems, the rating game is somewhat meaningless. Although California ranks near the top in all the categories comprising the study's evaluative standards, its legislature must raise a two-thirds majority to pass the budget or any appropriations bill. The ability of a minority to control such important matters should weigh far more heavily than many of the factors considered by the Conference. Even with a substantive approach, by what standards is a good legislature judged? In the final analysis it is the voter who decides.

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3. The specific recommendations for improvement of the Maryland General Assembly are listed below. The following recommendations have been substantially adopted, with the qualifications noted: interim committees; presession organizational meeting; strengthen staff support (leaders) (*e.g.,* Department of Fiscal Services and Department of Legislative Reference); committee staffing; increase legislative compensation; interim expense allowances; individual offices (Senators presently have individual offices; funds have been appropriated for the construction of a House Building which will provide offices for individual delegates); open committees; notice of meetings; management committees; strengthen the regulation of legislator conflicts of interest; dual committee consideration of appropriation bills; district offices; facilities for committees (funds have been appropriated which will provide for these facilities).

The following recommendations have not been substantially adopted: remove constitutional restrictions on session and interim time; strengthen staff of rank-and-file members (the technical services of, for instance, the Department of Fiscal Services and Legislative Reference are, however, available to all members); provide single-member districts; strengthen minority party role (this is in large part due to the fact that relatively few members belong to minority parties; it should also be pointed out that the various technical services available to members are dispensed equally to all members, regardless of party affiliation); reduce the size of the legislature; act on all bills (a member can, however, have a floor vote on any bill if demanded); committee jurisdiction; uniform committee rules; joint rules; publish committee roll calls; Washington, D.C., office for the legislature (Maryland is, however, increasingly utilizing the Washington office of the Council of State Governments, of which it is a member); bill deadlines; consent calendar (a constitutional amendment to facilitate this is under consideration, however); improve press facilities (the 1973 budget, however, includes funds for the construction of a Legislative Services Building, the plans for which include appropriate facilities for the press, radio and television).

Many of the recommendations can be directly challenged. For example, the first recommendation is that Maryland abolish the limited session. In our state we divide the year into two parts, to wit: (1) an allowable one hundred twenty days for passing legislation with the possibility of special sessions for emergencies, and (2) an interim period for thoughtful study of public questions and the preparation of a program for the next session. To abandon this system would jeopardize the state's outstanding record for fiscal responsibility and eliminate the period when new laws are being absorbed by the public. A glance at states with unlimited sessions would hardly encourage change. Not even the progressive Constitutional Convention of 1967 adopted the unlimited session. Another questionable proposal is the adoption of a series of bill deadlines to prevent "logjams" in the latter stages of a session. In all probability such deadlines would create only a series of "logjams" leading to the waiver of deadlines by common consent. From personal experience the writer also doubts that the sole responsibility for apportionment should be in the hands of the legislature. Even the relatively simple proposal that there be no closed committee sessions is not without question. In fact, an experienced political journalist argues forcefully that open bill-drafting sessions in Congress produce disastrous results.[4]

Overlooked is the tremendous role citizens themselves play in the substantive legislative process. Both the Governor and the General Assembly draw from the great reservoir of special talents of Maryland citizens to assist in governmental studies. Current examples are the Commission on Criminal Law and the Commission to Revise the Annotated Code. The testamentary and motor vehicle articles of the Maryland Code are recent contributions of the lawyer-citizen to the law of Maryland. From the writer's twenty-five years of experience in the legislative arena flows the conclusion that unsung citizen dedication to public service is a state legislature's hidden implement for research.

No legislature will ever be popular. It is the arena of controversy into which public problems are thrust for solution. As the umpire for society it is designed to substitute reason for force. It must establish a reasonable relationship with the executive and the judiciary. As Albert J. Abrams, Secretary of the New York Senate, has said, it must be sensitive, communicative, investive, judicial and respectful. In the final analysis, it is the character of the legislator whom the voter selects that determines a legislature's total performance. The interplay between the citizen and his representative is paramount. Although intended to help state legislatures, *The Sometime Governments* has drawn so bad an image it might serve only the purposes of apathy and doubt.

*William S. James**

4. Miller, *Here's a Reform We Don't Need,* Wall Street Journal, Oct. 20, 1971, at 20, col. 6.

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