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IMPROVING STATE LEGISLATIVE PROCEDURE
AND PROCESSES

By Lester B. Orfield*

INTRODUCTION

In recent decades much attention has been given to reorganization of the state administrative boards and agencies. Growing interest has been manifested in improving the procedure, organization and personnel of the state courts. The most significant recent trend has been towards legislative reform. This has been true both as to the federal government and the States. On March 4, 1946 there was submitted the Report of the Joint Committee on the Organization of Congress. On January 1, 1943 the Report of the Massachusetts Special Commission on Legislative System and Procedure was published. The Connecticut Legislative Council submitted a report on legislative procedure on November 16, 1944. The Final Report of the New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures was submitted on February 15, 1946. Studies have been made in California, Illinois, and Kansas, to mention only some of the States. In Great Britain the First Report from the Select Committee on Procedure appeared on October 16, 1945.

The state legislatures have several functions. Important executive appointments are usually subject to confirmation by the upper house of the legislature. The lower house usually may impeach and the upper house try officials of the State. Amendments to the State Constitution are usually proposed by the legislature. These functions should not, however, be regarded as the principal functions of the legislature. It enacts legislation, airs important state problems, and reflects the will of the people. Tasks of the legislature should be determination of broad policies in a clear and decisive way, authorization of organization, personnel, powers and finances adequate to administer its policies, and review of the effectiveness of the policy and the administration of the policy. It is the essence of democratic government that the legislature properly fulfill its functions. Totalitarianism in Europe began with the decline of legislative bodies which were unable to meet the requirements of the times. A stronger and more representative legislature, in closer touch

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and better informed about the executive and administrative departments is the best antidote to bureaucracy. Changes must be made in the organization and operation of the legislatures to secure more speed, proper deliberation, better coordination, more efficient use of personnel, and a unified leadership.

I

POWERS OF THE LEGISLATURE

If the legislature is to function properly it must have the necessary powers to do so. Unfortunately during the nineteenth century numerous constitutional restrictions were imposed. It may be that when such restrictions were imposed, corruption, abuse of power, and incompetence justified them. But bad conditions of a hundred years ago have been eliminated or ameliorated, and hampering restrictions should be removed and at least not increased.

1. Power to Regulate Legislative Procedure.

*Recommendation.* The State Constitution should, in general, leave to the legislature the power to regulate legislative procedure. Ideas of sound legislative procedure change from time to time. The Constitution should deal only with fundamental matters and matters of a more or less permanent character. It is a mistake to imbed ideas of procedure in the Constitution.

2. Powers as to Substantive Law

*Recommendation.* The State Constitution should not impose numerous and broad restrictions over the powers of the legislature to enact substantive laws.

It should be assumed that the legislature will perform its proper functions. The restrictions in the Federal Constitution, a few basic ones in the State Constitution, and the veto power of the Governor should be sufficient guaranties against harmful legislation.

3. Confirmation of Executive Appointments.

*Recommendation.* The legislature should have the power to confirm important executive appointments.

The requirement of such confirmation tends to assure the appointment of persons of integrity and ability. The status of the appointee is strengthened since he has passed the scrutiny of both the legislature and the Governor.

Recommendation: Joint interim committees or interim committees of either house should have full investigatory powers both during and after sessions of the legislature.

Much if not most of the work of such committees is done after adjournment of the legislature. There should be no doubt of their power to act at such time.

5. Power of Governor to Reorganize.

Recommendation: The Constitution should confer on the Governor broad powers to reorganize the administrative departments subject to legislative revision.

Such a provision will afford the legislature more time for its more proper legislative functions and at the same time promote administrative efficiency. In the past much legislative time has been consumed in prescribing the details of administration. A possible objection to this proposal may be that an occasional Governor will abuse the privilege.

6. Claims Against the State.

Recommendation. Power to deal with claims against the State should be delegated to the courts or to administrative agencies.

This provision will afford the legislatures more time for its proper functions. The legislatures are not adequately equipped to serve as judicial tribunals for the settlement of private claims against the government.

7 Power to Prescribe Court Procedure.

Recommendation: Power to prescribe rules of civil and criminal procedure, subject to constitutional limitations and to legislative revision, should be conferred on the highest appellate court of the State.

This provision will likewise save the time of the legislature. There is increasing unanimity of opinion that the courts should prescribe their own procedure. The adoption of rules of civil and criminal procedure is a highly technical matter for which the legislature is not well fitted. Virtually all phases of federal procedure are now prescribed by the Supreme Court.


Recommendation: "Home rule" should be conferred on the localities of the State to every extent possible, and general laws should be enacted with respect to them.
Such provisions will save the time of the legislature and at the same time promote self-reliant local government. The legislature can then give more time to matters of state-wide concern. In eight States, localities are still granted charters through local acts. "Home rule" is provided in eighteen States.

9. Impeachment.

**Recommendation.** While the legislature should retain the power to impeach, the trial of such impeachment should be by the highest state appellate court.

Such a provision will also save the time of the legislature. The trial of an impeachment can better be carried on by judicial processes. The Missouri Constitution contains such a provision.


**Recommendation.** The Constitution should confer on the legislature the power by a vote of a majority of all the members at any regular session to provide for the submission of the question whether or not there shall be a convention to amend or revise the Constitution to the qualified voters of the state at any regular election.

In several states it is almost impossible to secure the calling of a state constitutional convention. The Model State Constitution of the National Municipal League contains such a provision. In eight states a majority of the legislature may submit the question Arizona, New York, Oklahoma, Oregon, Tennessee, Virginia, West Virginia, and Wisconsin. In Kentucky there must be a majority in two successive sessions.

II

**APPORTIONMENT, SIZE, AND CHAMBERS**


**Recommendation.** At least the lower house should be elected on the basis of equal population districts.

In a considerable number of states neither house is elected on the basis of equal population districts. The result may be great under representation of the cities in both houses. This would seem to violate basic tenets of democratic representative government. It is highly questionable that the federal idea of representation in the Senate irrespective of population should be carried over to the States. The localities do not have the high constitutional status of the States.
2. Time and Manner of Reapportionment.

Recommendation: Reapportionment should be made at the beginning of each decade. Reapportionment should be by an executive commission, which should be subject to mandamus if it fails to act. The Constitution should specifically so provide.

Several states have provided for executive reapportionment: Arkansas, California, Maryland, Missouri, Ohio, and South Dakota. Occasionally reapportionment is brought about by use of the popular initiative. In states where reapportionment is left to the legislatures there has often been a failure to reapportion extending over several decades.


Recommendation: The size of the legislature should not be increased, and preferably should be reduced.

Too large a legislature makes deliberation and debate difficult and the status of individual legislators less significant. There is little danger of under-representation as may readily be seen when the population of Congressional districts is compared. In the event of population increases unevenly distributed over the State, reapportionment, rather than increase in size, is the solution. Nebraska has a unicameral legislature of 43 members, compared with its former bicameral consisting of 33 members in the Senate and 100 in the House. New Hampshire has reduced the size of its lower chamber. In Massachusetts the Special Commission on Legislative System and Procedure recommended that the size of each chamber be cut in half.

4. Unicameral Legislature.

Recommendation: Serious consideration should be given to the experience of Nebraska and the Canadian provinces with unicameral legislatures.

The Model Constitution of the National Municipal League so provides. The States should carefully examine what useful purposes are served by having second chambers. The burden of proof should be on those who advocate the creation or continuance of unnecessary governmental machinery. They should ascertain whether or not legislation is more carefully scrutinized where legislative procedure and processes are such that most of it is enacted at the end of the session. They should consider the additional delay and expense involved. They should consider the vast powers conferred on conference committees and the more success-
ful activities of lobbyists. They should consider the likelihood of legislative impasses where the two houses are controlled by different parties.

5. Joint Legislative Committees.

Recommendation. Where the adoption of a unicameral legislature is not feasible, joint legislative committees should be established. Both houses should have equivalent committees to the fullest extent possible.

A practical difficulty with the unicameral legislatures is that constitutional amendments are necessary. No change in the constitution or statutes is required for the creation of joint legislative committees. Joint committees have been successfully used in the New England States. Students of legislative procedure have almost unanimously favored the use of joint committees. Their use results in the saving of time for members of the legislature, committees, government officials, and witnesses.

III

RULES

1. Prescribing by Legislature.

Recommendation. Generally speaking, rules of legislative procedure should be prescribed by the legislature rather than by the Constitution.

Rules of legislative procedure should be means rather than ends. As in the case of judicial procedure ideas of fair and efficient procedure change from time to time.

2. Study of Rules by Legislature.

Recommendation. Each legislature through its legislative council or an interim committee should examine its rules of procedure with a view to bringing them up to date.

Up to now the legislatures and their agencies have devoted almost all their time to improving the substantive law. The time has come for them critically to examine their own procedures so that they may function with a maximum degree of efficiency. Interim committees were established in 1941 in Massachusetts and in 1944 in New York.

3. Retention of Secretaries and Clerks.

Recommendation. The legislatures should make it a practice to
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retain the same secretaries and clerks of their respective legislative chambers.

This practice would facilitate uniform interpretation and application of the rules.


Recommendation: A national association of legislative secretaries and clerks should be formed.

Such an association through conferences could do much to develop some degree of uniformity in rules of legislative procedure. Such an association has been formed in the British Empire, and it even publishes a journal.

5. Pre-Session Conferences.

Recommendation: Prior to the legislative session a conference of newly-elected legislators should be held, and a pamphlet issued covering legislative procedure.

Such conferences have been held in several states since 1932. They enable the legislators to get some understanding of the rules before they meet. They are recommended by the Connecticut Legislative Council.

IV

Sessions and Term of Office

1. Length of Legislative Session.

Recommendation. There should be no constitutional limitation on the length of legislative sessions.

The executive and the judiciary render full-time services. The legislature should also have ample time to perform its functions. Legislative "jams" at the close of sessions may thus be eliminated. It should be recognized that the amount of legislative business has constantly expanded. No indirect limitation should be imposed by limiting legislative salaries to a fixed number of days.

2. Call and Subject Matter of Special Session.

Recommendation: The Governor or a majority of the legislature should have the power to call special sessions of the legislature. The special session should not be limited to subjects mentioned in the call.

The increasing amount and importance of legislative business have made the calling of special sessions more necessary. Regular
annual sessions are held in Massachusetts, New Jersey, New York, Rhode Island and South Carolina. No good reason appears why the legislature itself should not have the power to determine the need for and the subject matter of special sessions.

3. Term of Office.

Recommendation. The term of office of all chambers of the legislature should be four years.

One of the most frequently leveled criticisms at legislatures, particularly the lower chambers, is the great turnover of personnel. Members of the lower chamber, usually elected for only two years, serve sixty or ninety days, and then fail to run again or are defeated at the next election. Numerous proposals have been made to elect members of the lower House of Congress for four or six year terms. Twenty-four Governors are elected for four-year terms. Members of the Canadian provincial legislatures and the Australian state legislatures are elected for three or five year terms. In the United States, members of the Senate are elected for four years in 31 states and three years in one state. Members of the lower chamber are elected for four years in three states Alabama, Louisiana, and Maryland.

V

SALARY

1. Increase of Salaries.

Recommendation. Salaries of legislators should be substantially increased, and should take into account both advances in the cost of living and increases in the number and length of sessions.

The Joint Committee on the Organizations of Congress has proposed a fifty per cent increase for Members of Congress. The New York State Joint Legislative Committee has proposed an increase for New York Legislators from $2,500 per year to at least $5,000 per year. The salaries of members of the House of Commons in England were increased from $2,400 to $4,000 per year, beginning April 1, 1946. The cost of maintaining the legislatures is so infinitesimal that it deserves little or no concern.

2. Fixing of Salaries by Legislature.

Recommendation. Legislative salaries should be fixed by the legislatures rather than by constitutional provisions.

The Model Constitution of the National Municipal League so
provides. Salaries adequate when first fixed in the Constitution almost invariably become inadequate to secure popular interest in and approval of constitutional amendments changing salaries upwards.

3. Abolition of per diem salaries.

Recommendation: Legislative salaries should not be on a per diem basis.

The executive and judicial departments are not paid on a per diem basis. Longer and more frequent sessions are gradually stripping the legislatures of their part-time character. The use of a per diem basis results in improper pressure on the legislature to adjourn early even though its business has not been completed.

4. Transportation Expenses.

Recommendation: Reasonable provision should be made for transportation expenses.

It is in the public interest that legislators keep in fairly close and frequent contact with their constituents.

VI

COMMITTEES

1. Continuity and Equalization of Work.

Recommendation. There should be continuity of committee personnel and chairmen.

The basis work of the legislature is done in committee. Ninety per cent of the work of Congress is done in committee. Without an effective committee system the legislature does not function effectively. Committee personnel should not shift too often or too radically. The chairmanship should not rotate too often.

2. Number of Committees.

Recommendation: The number of committees should be greatly reduced.

In most legislatures there are far too many committees. This results in so many committee assignments to each legislator that it is difficult for him to attend all committee meetings or to become an expert in one or two fields. It is difficult to schedule committee meetings.

3. Organization According to Subject-Matter.

Recommendation: Committees should be organized along the
lines of the major subjects of legislation. At the same time the principle of equalization of work should receive consideration. Both chambers should have equivalent committees insofar as practicable.

Organization according to major subject-matter should make liaison with the administrative departments more easy. Equalization of work is also not to be ignored. Some committees have far too much to do. Their burden should be lightened. The use of subcommittees may be a solution. The use of equivalent committees will improve coordination between the two houses, facilitate joint hearings, establish a basis for joint research, and simplify relations between the legislature and the executive.


*Recommendation.* There should be a permanent standing committee on legislative organization, processes, and procedures.

If legislative organization and procedure is to be kept up-to-date continuous attention must be given to the subject. Among the states which have set up permanent committees is California.

5. Size of Committees.

*Recommendation.* The size of committees should be reduced.

With fewer and smaller committees legislators would be assigned to fewer committees. It would then be easier to schedule committee meetings. Legislators might become experts as to their committee subjects. Smaller committees can operate more efficiently and informally.

6. Sub-Committees.

*Recommendation.* Where large committees are needed and retained, sub-committees should be created.

This will enable the committee simultaneously to deal with several matters. Sub-committee hearings should not, however, be secret, but should be open to members of the legislature, and press and the public. Proper liaison between a committee and its sub-committees should be maintained.

7. Joint Committees.

*Recommendation.* To every extent possible the legislature should function through joint committees. As a minimum joint hearings should be held.

The use of joint committees and joint hearings saves the time of legislators, committees, government officials, and witnesses. It is a step towards a unicameral legislature requiring no constitutional changes.
8. Schedules of Committee meetings.

Recommendation: Regular schedules of committee meetings should be established, and adequate notice of such meetings should be given to members and to the public. Committee meetings should be open to the public. Postponements for more than a week should not be permitted except for good cause.

Regular schedules of meetings prevent conflicts between committee meetings and sessions of the legislature and facilitate the early consideration of bills. Notice to the public can more easily be given.


Recommendation: All witnesses before committees should file statements of their testimony in advance, and limit their oral presentation to brief summaries of their main points. The committee staff should prepare digests of their statements in advance and brief the committeemen on the questions to be asked each witness.

At present hearings are frequently held with little advance preparation and may consist largely of the reading of prepared statements by the witnesses. This uses up much time of the committee and leaves little time for questions and answers.


Recommendation. Joint public hearings after adequate notice should be held with respect to all bills of importance.

This proposal is a reasonable compromise between two extremes: hearings on all bills and hearings on none. It is the practice in New York. Hearings on all bills are held in Connecticut, Massachusetts, Nebraska, and Wisconsin, and in the Illinois Senate. A requirement of hearings on all bills may result in legislative congestion, or perfunctory hearings on less important bills. Public hearings may result in the obtaining of much significant data and many points of view, and makes for deliberation and public confidence in legislative processes.

11. Records of Committee Meetings.

Recommendation: Regular records should be kept of all committee meetings and hearings. Such records should cover time, place, members present, how they voted, who appeared before the committee and whom they represented. Such records should be available to the public, and filed with the Secretary of State at the end of the session.
At the present time, with few exceptions, committees do not keep official records of hearings or of executive sessions which are accessible to the public. Attendance records and votes are not available. The press often denounces the secrecy of international meetings. Secrecy about domestic business in legislative committees, in executive sessions, and in conference seems to be hallowed by usage.

12. Digest of Bills in Reports.
Recommenda­tion. A complete and understandable digest of a bill, together with legislative changes made by the bill, written in nontechnical language, should accompany the committee report on each bill. This digest should include a supporting statement of reasons for its passage, of the state interest involved, its cost, and the distribution of any benefits.

Much of the legislation considered by the legislatures is so complex as to render difficult a full understanding of its subject matter. The press, the radio, and the public are entitled to clear and brief explanations of legislation being considered by the legislatures.

Recommenda­tion. Committees should report bills within a month after reference. With respect to the chamber in which a bill originates no bill should be reported out until ten days after reference. Committee chairmen should be required to report promptly all bills approved by the committee.

Early reporting of bills, especially when preceded by early introduction, should reduce legislative “jams.” The ten day requirement should assure deliberation. The chairman should of course be bound by decisions of the committee. The New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures found that most bills are reported by committees within a month after reference.

Recommenda­tion. A fourth of the members of the legislature should have the power to discharge a committee from consideration of a bill after proper notice to the committee.

It should not require a majority of the legislature simply to bring a bill before it. Democratic principles forbid making the committee as powerful as the legislature itself. Under the new Missouri Constitution a third of the members of the legislature have the power to discharge a committee from consideration of a bill.
15. Selection of Minority Members.

Recommendation. Minority committee members should be selected by the minority leader. This is the usual practice. It is recommended by the Connecticut Legislative Council. Government through parties calls for such selection.


Recommendation. Conference committees should be limited to adjustment of differences between the two chambers, and matters on which both houses are in agreement should not be subject to change. They should hold public sessions and file written reports.

In several states conference committees have taken liberties with bills and made deals which defeated the intent of both houses. When Senator Norris campaigned for a unicameral legislature in Nebraska, he stressed the evils of the conference committee.

17 Time of Joint Legislative Reports.

Recommendation. Joint legislative committees and commissions should be required to report to the legislature not later than four weeks after the opening of the session if such reports are to be considered at the session. The committees should be organized shortly after the legislative session closes.

Early submission of such reports helps avoid legislative "jams" at the close of the session. Early organization of the committees makes early reports feasible.

18. Preservation of Data before Joint Committees.

Recommendation: Upon completion of their assignments, joint legislative committees and commissions should be required to deliver their unpublished data and transcripts of hearings to the legislative reference bureau for indexing and preservation.

This provision should reduce or avoid costly repetition of research and unnecessary waste of time.

19 Appropriations Committee.

Recommendation: All appropriations bills should be fully and carefully considered by the full appropriations committees of both houses. Hearings should be open. Committee hearings and reports should be laid before the lower and upper houses a minimum of three legislative days before their floor consideration. Appropriation committees should be the best staffed of any committees. Standard appropriation schedules should be devised which will
clearly define in concise and uniform accounts the sub-totals asked by agencies for their operation. Modern mechanical accounting and tabulating machines should be provided for the staff.

By strengthening the appropriations committees, much money now wastefully spent can be saved without seriously diminishing essential governmental functions.


Recommendation. Both the lower and upper houses of the legislature should establish formal committees for the determination and expression of majority policy and minority policy. The majority policy committees of the two houses should serve as a formal council to meet regularly with the Governor, to facilitate the formulation and carrying out of state policy, and to improve relationships between the executive and legislative branches of the government.

There is need for the formal expression within the legislature of the main policies of the majority and minority parties. Machinery should be set up to secure more party accountability. The majority policy committees of the two chambers should meet at frequent intervals, as should those of the minority, to formulate the over-all legislative policy of the two parties. Party members should not be required, however, to follow such policies.

The legislature and the Governor should be partners, not antagonists. To narrow the widening gap between the executive and the legislative branches, the Senate and House majority policy committees should also serve on a formal council to meet at regular intervals with the Governor, to consult and collaborate in the formulation and carrying out of state policy and to improve relationships between the two branches of the state government. By giving legislative leaders a part in the formulation of policy, instead of calling upon them to enact programs prepared without their participation, better cooperation should be secured. The Joint Committee on the Organization of Congress made a similar proposal in 1946. Many of the advantages of the parliamentary form of government will be derived.

VII

BILLS

1. Filing before Session.

Recommendation. Legislators should have and exercise the right to have bills drafted, printed, and filed before sessions. They should be notified of such right immediately after election. Bill
drafting facilities in the Capitol should be made available within ten days after election.

Perhaps the leading cause of legislative congestion at the end of the session is late introduction of bills. Massachusetts already permits such pre-session filing, and the New York Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures proposed it in its 1946 report.

2. Time Limit on Introduction.

Recommendation: No bill should be introduced later than six weeks after the legislature assembles except by the Rules Committee of either house or by unanimous consent of the members. Bills originating in administrative agencies and measures resulting from the findings of joint legislative committees and commissions and the legislative council should be introduced not later than four weeks after the legislature assembles.

This is recommended by the New York Joint Legislative Committee. The Massachusetts Special Commission has gone further than any group in recommending early introduction before sessions. Such a time limit is another effective means of avoiding legislative jams. It should not be difficult for administrative agencies, interim committees, and legislative councils to have their programs ready within four weeks after the session commences.

3. Referral To Committee.

Recommendation: Bills should not be referred to committees until a day after they have been introduced.

This will permit adequate time for proper determination as to which committees should handle bills. There has been much complaint of referral to the wrong committee.


Recommendation: All bills should be printed at the time of introduction. The legislative bill drafters and revision clerks should whenever possible examine all bills prior to introduction before they are delivered to the printer. Checks should be made as to form, accuracy in the text and references, and consistency with the language of existing statutes as in New Jersey and Wisconsin.

Such a requirement advocated by the Connecticut Legislative Council is convenient not only for the committee members, but also for legislators and the general public. It makes for fuller knowledge of the legislative process from its very beginning. Printing bills
after favorable report by committee is not sufficient protection of the rights of either legislators or people.

5. Printing of Amendments.

Recommendation. All amendments to bills should be printed before being voted on.

In the absence of such a requirement amendments are not likely to receive the scrutiny to which they are entitled. The delay involved would ordinarily be only one day.

6. Deliberation as to Bills.

Recommendation. No bill should be enacted into law which has not been in the possession of each chamber for at least three days except in the case of emergency legislation.

The Model Constitution of the National Municipal League contains a somewhat similar provision. This requirement should result in more careful and deliberate consideration of bills. The Nebraska unicameral legislature is required by the Nebraska Constitution to give due deliberation, since no bill may be enacted until at least five days after its introduction nor until one day has elapsed after it has been placed on file for general reading. New York has a somewhat similar provision.

7 Explanatory Statement with Bill.

Recommendation. When a bill is introduced it should be accompanied by a brief explanatory statement of its purpose.

This is required in New Jersey and has been proposed for Connecticut by its legislative council. It makes it easier for the legislators to focus on bills.

8. Bills Amending Existing Statutes.

Recommendation. All bills amending existing statutes should set forth in full the section of the act amended with omitted matters indicated in brackets and new matter in italics.

This requirement, recommended by the Connecticut Legislative Council, makes it easier for legislators and the public to grasp the purpose and intention of a bill. A possible alternative is marks through the omitted matters and the use of capital letters for new matter.

9 Engrossment and Enrollment.

Recommendation. Engrossment and enrollment of bills should be the responsibility of some established state official or of the legislative reference bureau.
Committees have neither the time nor the facilities for doing this properly.

10. Suspension of the Rules.

 Recommendation. One day's written notice of motion to suspend the rules should be required save on a specified day in each week or during the last five days of the session. Suspension at any other time should be possible only by unanimous vote.

Too easy suspension may result in want of proper deliberation on bills. Requiring notice protects legislators who might be absent. It is recommended by the Connecticut Legislative Council.


 Recommendation: All bills left in committee at the end of the session should be filed with the Secretary of State and referred to the legislative council.

Desirable legislation may have failed of adoption because of legislative congestion. Duplication, involving expense and waste of time, may be avoided.

12. Advisory Opinions as to Constitutionality.

 Recommendation: Legislatures should not, even where permitted to do so, request advisory opinions from the appellate courts as to the constitutionality of proposed legislation.

Advisory opinions as to the constitutionality of proposed legislation are a procedure open to question. Considerable delay may be involved. Advisory opinions are at present authorized in seven states—Alabama, Colorado, Maine, Massachusetts, New Hampshire, Rhode Island, and South Dakota. Attempts to permit or require the United States Supreme Court to render them have consistently failed. Although they are usually regarded as merely the views of the individual justices and not of the court they may turn out to be shackles on succeeding generations. The opinions are usually written without the benefit of briefs and arguments. The questions are put to the court abstractly rather than on the basis of actual facts. The whole viewpoint of the court is different, because the court is dealing with legislative proposals and doubts rather than with convictions.


 Recommendation. The state legislatures should establish electric voting systems.

13 State legislatures and several foreign countries employ the electric voting system. Alabama, California, Florida, Iowa, Louisi-
ana, Michigan, Minnesota, Nebraska, Pennsylvania, Texas, Virginia, West Virginia and Wisconsin. It saves a tremendous amount of time. A substantial portion of the legislative session is consumed in voting. In Massachusetts the Special Commission on Legislative System and Procedure recommended it for the lower house. It was favored by the Kansas Legislative Council in its 1935 report. Connecticut, Indiana, and Missouri have passed legislation contemplating the installation of the electrical roll call system.

VIII

CALENDARS, JOURNALS AND MANUALS

1. Daily calendars.
   Recommendation. Daily calendars should be printed during legislative sessions, and should be placed in the hands of members one day before matters thereon are to be considered.
   This makes it easier for legislators and the public to follow the activities of the legislatures.

2. Clearing the Calendar.
   Recommendation. Legislatures should make it a practice to clear the calendars each day.
   This helps avoid legislative jams and makes less necessary reliance on sifting committees.

3. Following the Calendar.
   Recommendation. Legislatures should follow the order prescribed in the calendar, and should not consider matters not listed in the calendar. The only exception should be when a majority of members give due notice.
   This makes it easier for legislators and the public to follow the activities of the legislature. Absent legislators are protected. Orderly procedure is advanced.

4. Calendar References to Bills.
   Recommendation. The calendar should set out bills by title as well as by number.
   This seems necessary to fully inform the legislators and the public as to the character of the bills.

5. Reference to Amendments in Calendar.
   Recommendation. Calendars should note the fact of amendment, and amendments should be printed in full on the calendars.
This is necessary if amendments are to receive the same careful attention as other legislation.


Recommendations: Calendars should provide for taking up routine matters first, and then those matters subject to debate.

This assures the disposition of at least the routine matters.

7. Recording of Legislative Debate in Journals.

Recommendation: The house journals should record debates during sessions of the chambers. At the minimum a stenographer transcript should be made and preserved.

At present a full record is made only in Pennsylvania and a resume in Maine. Such a record should assist in construing the legislative intent, and should also be an incentive to better debate. The Connecticut Legislative Council advocates a stenotype record.


Recommendation: Journals should be reduced in size through the use of double columns, more printed lines per page, smaller type, abbreviations, the elimination of old forms and bill titles, and the omission of those voting in the affirmative on roll-calls.

In general, journals are too bulky and contain too much non-essential material. The Connecticut Legislative Council advocates a proposal along these lines. Kansas and Oregon have greatly reduced the size of their journals.

9. Uniformity as to Legislative Manuals.

Recommendation: Greater uniformity in format and content should be sought as to legislative manuals and blue-books. This should be done through the National Association of Secretaries of State and the state legislative reference services.

State legislative manuals vary greatly in format and content and usefulness with respect to the legislature.

10. Legislative Printing.

Recommendation: Where legislative printing costs are excessive, consideration should be given to the establishment of state printing plants.

Often there is no genuine bidding for legislative printing. The federal government, five states, and one city have their own printing plants.

The difficulties with respect to legislative printing are pointed out in the Interim Report of the New York State Joint Legislative
Committee on Legislative Methods, Practices, Procedures and Expenditures.

IX

LEGISLATIVE PERSONNEL

1. Definition of Legislative Positions.

Recommendation. Legislative positions should be clearly defined under adequate titles. The legislature should set up an internal personnel system which would provide minimum qualifications for all legislative positions, and which would apply the principle of equal pay for equal work.

In several states, the form of the legislative budget and the lack of a scientific classification of legislative positions by standard job titles has resulted in the erroneous application of titles to some employees. The legislative budget has often inflexibly lined out salaries for certain positions, that is to say, stated a job title and salary for the job, or it has made available large unitemized lump sums. Legislative officials have often utilized the line items before drawing upon lump sum appropriations for particular jobs. As a result line item salaries have been paid for jobs with duties wholly different from what the line item called for. On the entire problem of legislative personnel careful study should be given to the report of the New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures, and Expenditures.

2. Abolition of Patronage as to Essential Employees.

Recommendation. The Legislature should exempt from the patronage the services of skilled and essential employees and retain them in office in spite of shifts in party control.

In Congress and in many state legislatures there has been recognition of the fact that certain key administrative employees should, in the interest of efficiency, be exempted from the patronage system. Granting civil service status would not, however, be the solution. Most legislative employment is temporary and seasonal in nature and therefore accompanied by a large annual turnover. Only Wisconsin has civil service status as to legislative employees.

3. Adequate Salaries.

Recommendation. Adequate salaries, which take into account the temporary character of the work, expenses in changes of residence, and the increased cost of living, should be paid to legislative employees.
In the past one or more of these factors has been neglected.

4. Promotions.

Recommendation: Promotions should be based on a job classification plan.

In the past promotions have often been effectuated by the creation of erroneous titles or by the payment of additional compensation from lump sums. Under a job classification plan salary increments are provided for specific positions.

5. Payment by Checks.

Recommendation: All payments to legislative employees should be made by check. No check should be paid until proper certification has been received by the appropriate clerk.

Regardless of the inconvenience employees may have in cashing checks, the method of payment should be on a businesslike basis.


Recommendation: Clerical assistance should be assigned to legislators upon the bases of legislative work, size of constituency, and the nature of a member's legislative program.

In the past no particularly objective formula has governed the assignment of employees to members. Members of the upper chamber serve larger constituencies. Legislators with extensive legislative programs, particularly those with seniority, may need more assistance than other legislators.

7. Clerical Assistance to Committees.

Recommendation: The amount of clerical aid assigned to committees should be determined by the volume, complexity, and importance of the bills considered by the committees.

By the nature of things certain committees handle a tremendous number of bills and others relatively few bills. Furthermore, the bills vary greatly in complexity and importance.

LEGISLATIVE COUNCIL

1. Creation of Legislative Council.

Recommendation: State legislatures should consider the establishment of legislative councils.

Such a body makes the legislative process continuous and makes legislative planning and leadership more effective. Sixteen states,
Beginning in 1933, have established such councils Alabama, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Missouri, Nebraska, North Dakota, Pennsylvania, and Virginia. The Massachusetts Special Commission on Legislative System and Procedure in 1943 and the New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures in 1946 recommended the creation of councils. Legislative councils may do much to produce leadership in terms of a unified legislative program.


Recommendation. Such council should consist of members of the legislature only, and should contain members from both chambers. Members should be selected by the presiding chamber officers or by the chamber itself. Councils should be large enough to represent both chambers, yet small enough to operate efficiently.

Councils consisting exclusively of legislators have been more successful, and have more easily won the support of the legislature. The Kentucky legislature recently eliminated the non-legislative members. They vary in size from eight in Indiana to 27 in Kansas.


Recommendation. The legislative council should prepare legislative programs, collect data on state government and legislative proposals, prepare research reports for the legislature, investigate administrative agencies to effect economies, cooperate with interim committees, revise obsolete and conflicting statutes, and make recommendations public thirty days prior to the legislative session.

The sixteen state legislative councils have some or all of these duties. The legislature needs an independent source of information to which it can turn for authoritative, factual and complete analyses of its problems. Legislative primacy in framing policy is being challenged by the increasing number of bills originating in well staffed administrative agencies and private groups.


Recommendation. The council should have the power to appoint research staffs, utilize other state and legislative agencies, subpoena witnesses and records, hold hearings, and establish sub-committees to investigate problems.

These powers are usually conferred on the councils. The councils should determine the research programs of their staffs, the pri-
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5. Frequency of Council Meetings.

_Recommendation:_ The councils should meet on call or quarterly.

Such meetings help maintain legislative continuity. Seven councils meet on call, six meet quarterly, and one meets twice a year.


_Recommendation._ In order for legislative councils to be effective the legislature should make appropriations large enough so that the council may maintain an adequate permanent staff.

In 1945 biennial appropriations ranged from $7,500 in Colorado to $100,000 in Missouri. In view of the large amounts appropriated for administrative agencies, a very small price is paid for the maintenance of legislative primacy.

XI

LEGISLATIVE REFERENCE BUREAU

1. Maintenance of Legislative Reference Bureau.

_Recommendation._ Each state should maintain an adequate legislative reference bureau for the use of the legislature. Such bureau should be an independent agency responsible only to the legislature.

There are legislative reference bureaus in 44 states. It is essential that legislatures have adequate research agencies. The bureau should be responsible only to the legislature in order that its true purposes be not lost sight of or deflected.

2. Director of Legislative Reference Bureau.

_Recommendation:_ The Legislative Reference Bureau should be in charge of a director appointed by the legislative council, or in the absence of a legislative council, by a committee consisting of president pro tempore of the senate, the speaker of the house, the governor, the chief justice of the Supreme Court and the president of the state university. The director should be well-versed in the methods of research and bill drafting.

The success of the bureau depends largely on its director. Since the director is to serve the legislature, the legislature or its agent should have the power to select him.
3. Staff.

Recommendation. Staff facilities should be provided which are comparable in quality and adequacy to those which the legislature provides for the other departments of the state government.

Competent and adequate staff is a prime requisite to the functioning of the bureau. The regular full-time staff should include the director with not less than two research assistants, two stenographers, and a clerk. During the legislative sessions the director should have authority to employ at least two temporary bill drafters and two temporary stenographers.

4. Accessibility to the Legislature.

Recommendation. The offices of the bureau should be located so that it will be conveniently accessible to the members of the legislature. When the legislature is in session the bureau should be kept open at such hours, day and night, as are most convenient for the legislators. The facilities of the state library and of each state department should be available to the bureau.

No effort should be spared to make the bureau helpful in every conceivable way and at all times.

5. Reference Service.

Recommendation. The Bureau should perform the following reference services

A. Provide a comprehensive research and reference service on legislative problems, and collect systematically data and information concerning the government and general welfare of the State,

B. Prepare reports setting forth the social and economic effects of statutes or constitutional provisions enacted in the State or elsewhere,

C. Make such investigations into legislative and governmental institutions as will aid the legislature,

D. Maintain a legislative reference room and a small working library,

E. Keep and files copies of all bills, resolutions, amendments, reports of committees, journals, and other documents printed by order of either house, and catalog and index the same after they have been printed,

F. Receive, classify, file and preserve for future use the published and unpublished research materials of joint legislative committees and commissions and of the legislative council,
G. Assist and cooperate with the legislative council and with interim committees or commissions, and with standing and special committees;

H. Advise the presiding officers or members of either house of the legislature upon any question of parliamentary law or legislative procedure submitted by any of them,

I. Assign staff to the press and radio galleries of the two houses to assist in reporting the proceedings of the legislatures by making available relevant records, debates, and background data, and by summarizing and digesting public hearings before committees,

J. Abstract and analyze for legislators the reports of state departments and other administrative agencies,

K. Upon request, assist the clerk of each chamber or any other legislative officer in the preparation of manuals, reports, directories and other legislative publications,

L. At the request of the heads of the two chambers, cooperate with administrative agencies in gathering and evaluating data as a basis for legislation.


Recommendation: The Bureau should perform the following bill drafting services

A. Upon request, draft or aid in drafting bills, resolutions, memorials and amendments thereto, and render any other services in connection therewith, for any member of the legislature or for the governor;

B. Upon request, advise members of the legislature and the governor as to the constitutionality, or as to the probable economic or social effect of any proposed legislation.

7. Statutory Revision Service.

Recommendation: The Bureau should perform the following statutory revision services

A. Conduct a systematic study of the statutes in the state in order to ascertain feasible methods for reducing their number and bulk, and to render them more consistent and intelligible,

B. Upon request, assist any commission appointed to revise the statutes of the State, or any portion thereof, and, at the direction of such commission, draft appropriate bills to consolidate, revise, and clarify the statutes of the State,

C. Prepare and index for printing as promptly as possible after the adjournment of each session, the session laws therefore.
8. Duty of Staff to be Neutral.

Recommendation. Neither the director nor any employee of the bureau should urge or oppose any legislation, nor give to any member advice concerning the legal, economic or social effect of any bill or proposed bill except on the request of such member. Such a provision should safeguard the bureau from charges of encroachment on the positions of the legislature. It is not the purpose of the staff to determine policy, but rather to sift the wheat from the chaff.

9 Appropriations.

Recommendation. Adequate appropriations should be made for the support of the bureau.

The Joint Committee in the Organization of Congress has recommended that annual appropriations for the Legislative Reference Service be increased from the present $198,000, to $500,000 for the fiscal year 1947, to $650,000 for the fiscal year 1948, and thereafter to $750,000 per year. The committee found that the lack of skilled staffs for the committee work-shops of Congress was more complained of than any other matter before it.

XII

LOBBYING

1. Requirement of Registration.

Recommendation. All representatives of groups interested in legislation except counsel or agents of localities or public agencies should be required to register with the Secretary of State regardless of whether or not they are compensated for legislative appearances. Groups retaining legislative representatives should also register.

In order to enable the legislature better to evaluate data or communications from organized groups seeking to influence legislative action, legislation should be adopted requiring the registration of all groups engaged and individuals employed in such activity. The Joint Committee in the Organization of Congress has so recommended as have interim committees on legislative procedure in Massachusetts and New York.

2. Scope of Registration.

Recommendation. Such registration should include full information as to representatives, their employers, the period of such
employment, their special subject of legislative interests, and their compensation.

Such information will help the legislature to evaluate their representations without impairing the rights of any group or individual freely to express its opinions to the legislature.

3. Notice to Clerks.

Recommendation: The Secretary of State should send copies of notices of appearance as soon as they are made to the clerk of each chamber. The clerks in turn should post conspicuously a list of legislative agents and their sponsors and should transmit to the chairman of appropriate committees copies of the appearance statements.

It is not necessarily adequate that statements of legislative appearances filed with the Secretary of State are public records. Theoretically, they are available to the legislators, yet it seems more practical that such information be transmitted to legislators as a routine step in the legislative process.


Recommendation. In addition to an itemized account of expenditures of legislative representatives required within a month after adjournment, organizations employing such representatives should render monthly statements during the session disclosing all expenditures incurred by their representatives, the purpose of the expenditures, and a list of the bills and resolutions promoted or opposed.

The availability of full knowledge of expenditures for influencing legislation and the source of contributions will aid the legislatures in evaluating the representations made.

5. Contingent Compensation.

Recommendation. Legislative representatives should be prohibited from receiving contingent compensation.

This provision should reduce the temptation to excessive pressure on the legislature. New York and several other states have such a provision.


Recommendation: Legislation should be enacted providing penalties for violation of the lobbying laws, including at least temporary disbarment from acting as a lobbyist. Such legislation should designate the enforcement officials.

One of the chief difficulties in the past has been the ineffective enforcement of the lobbying laws.
1. Publication of Rules.

Recommendation. All rules and regulations of administrative agencies should be filed with the Secretary of State before becoming effective, and should be compiled and published at regular intervals. They should be reported to the next regular session of the legislature.

The public is entitled to full information as to rules and regulations of administrative agencies. Students of administrative law have strongly urged such a reform, particularly during the last decade. It is recommended by the Connecticut Legislative Council.

2. Reports of Administrative Agencies.

Recommendation. Reports by administrative departments, agencies and boards should be filed prior to the legislative session, and be of such format and content as to be of assistance to the legislature. They should be abstracted and analyzed by the legislative reference bureau.

Unless reports are filed early they are of no real use to the legislature. Since the agencies operate full time, the requirement of early filing is not burdensome. Often reports have been dull and too long and detailed, as pointed out by the Connecticut Legislative Council.

3. Appointment of State Auditor.

Recommendation. The state auditor, who shall engage only in post-auditing should be appointed by the legislature and responsible to it.

Making the auditor subject to and appointable by the legislature is a very effective way to secure legislative control over financial and other administration.

4. Joint Legislative Committee on Appropriations.

Recommendation. A joint legislative committee on appropriations should have investigatorial powers to study the manner in which the executive departments spends the funds appropriated by the legislature.

One of the most difficult problems of legislative procedure is that of improving the relationships between the legislature and the executive administrative agencies of government. Although the
executive and legislative branches are constitutionally separate, nevertheless government cannot operate efficiently without close cooperation. Without legislative oversight of the activities of the executive branch, the democratic concept is impaired. Up to now review of administration has been ineffectual and disorganized. Hence, a joint appropriations committee should conduct a continuous review of the agencies administering laws. The Committee on Congress of the American Political Science Association has made a somewhat similar proposal. The Joint Committee on the Organization of Congress have gone even further and have suggested that the standing committees of both chambers be directed and empowered to carry on continuing review and oversight of agencies within their jurisdiction; and that the practice of creating special investigating committees be abandoned. If the committees were made parallel with the main departments of government, legislative review of administration would be simplified.