American state legislatures, long neglected by the press and by the academic community, have been receiving greater attention of late. If not directly in the public eye, the states and their legislatures are now at least in the public line of vision because the states today bear heavier responsibilities and encounter more imposing difficulties than in the past. This is the result of a variety of factors including the reduction in federal funding, criticism of federal regulatory authority, dissatisfaction with categorical grant programs, and difficult economic conditions. Accordingly, the decade of the 1980's began as an extremely challenging one for the states; it is continuing that way. It is understandable, therefore, that many people are wondering whether the decentralization of federal governmental power, including President Reagan's "New Federalism" and its variations, can work. Whether decentralization will be successful depends, in large part, on the legislatures of the states.

State legislatures have changed from passive bodies to more involved and active ones. Almost twenty years ago, as part of a discussion of state legislatures sponsored by the American Assembly, Alexander Heard observed: "State legislatures may be our most extreme example of institutional lag. In their formal qualities they are largely nineteenth century organizations and they must, or should, address themselves to twentieth century problems." Even though many members who served were dedicated and worthy individuals, legislatures were generally as Heard characterized them. They were not in the habit of doing very much and, for the most part, piddled at the periphery of public policy. The major business of the State was left
to the "government," i.e. to the other branch—to the governor and to the departments and agencies of the executive.

This situation has changed dramatically since the Supreme Court's reapportionment decisions of *Baker v. Carr* in 1962, and *Reynolds v. Sims* in 1964. Perhaps more than any other single factor, it was the redistricting of the 1960's that has brought about what can appropriately be called a transformation of American state legislatures. Reapportionment helped produce a fairer system of representation. Additionally, and equally as important from an institutional perspective, reapportionment brought into office a new generation of legislators. The people who ran and the people who were elected changed, and the legislature changed because of them.

Although reapportionment was the key factor in the legislature's institutional transformation, other forces also came into play. Two of the nation's major foundations—The Ford Foundation and the Carnegie Corporation—began to take an interest in state legislatures and began to invest in their improvement. Legislative reform assumed a much higher place on the agenda of the states, and several organizations began to devote themselves to this task. The Citizens Conference on State Legislatures (later renamed Legis 50) worked on matters of reform from its establishment in 1967, until its demise a decade later. Among other things, it was responsible for an evaluation and ranking of legislatures in all of the states. The Eagleton Institute of Politics at Rutgers University established a center on state legislatures, produced legislative organizational studies under contract with nine states, held annual conferences over the course of a decade for specially selected legislators from the fifty states, and collaborated with many states on a variety of projects. Legislative organizations themselves—particularly the National Legislative Conference and the National Conference of State Legislative Leaders—began to take a major role in reforming the organization, structure, and process of legislatures in the states. All of this activ-


5. *Eagleton's Legislative Center—Fourteen Years of Service* (available at Center for State Legislative Research and Service, Eagleton Institute of Politics, Rutgers University, June 1980) [hereinafter cited as *Fourteen Years of Service*].
7. *Id.*
8. *Fourteen Years of Service*, supra note 5.

http://scholarlycommons.law.hofstra.edu/hlr/vol11/iss4/4
ity contributed to the significant progress made by state legislatures as political institutions.

In recent decades state legislatures probably have come further developmentally than any other American political institution—in part, perhaps, because they had further to come. The presidency has declined in power and status and the executive bureaucracy has lost much of its energy and elan. Congress has become overblown and overly complex. Gubernatorial office is much more limited than it once was. And the political parties—at national, state, county, and local levels—are in poor health. By contrast, state legislatures have done extraordinarily well, at least until very recently.

This article will discuss what has happened to state legislatures since the early 1960's and will analyze their current condition. It will present a general picture and comment on overall patterns, recognizing, however, that each state and each legislature differs to some extent from another. Generally, however, the legislatures of most states fit the analysis presented here.

The changing condition of state legislatures will be considered below in terms of:

First, capacity, which involves the resources available to a legislature that enable it to perform its functions as a political institution.

Second, composition, which pertains to the personnel or membership of the institution, the political talent available.

Third, performance, or how the legislature actually does its job and carries out its functions.

Fourth, maintenance, which concerns the care and feeding of the legislative institution itself, its health in other words.

**Capacity**

Probably the greatest change to have taken place in state legislatures has been the enhancement of legislative capacity, consisting mainly of time, organization, assistance, and information. Legislatures have considerably more time to perform their legislative functions today than earlier, and they have started to make more effective use of it. There is, first of all, the tremendous increase in time spent in session. In 1960 the legislatures of only eighteen states met

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port on the Merger of Three National Legislative Groups 5 (available at Center for State Legislative Research and Service, Eagleton Institute of Politics, October 1973).

10. For example, California and Vermont have certain basic features in common, but essentially they are not alike. Legislatures in Indiana and Maryland, Montana and Louisiana, Iowa and Florida belong to the same species but still are quite different.
annually, while those in thirty-two states met every two years rather than every year. Today, by contrast, forty-three legislatures—by formal or informal arrangement—meet every year and only seven are still on biennial schedules. Moreover, there is the time spent in special sessions. In the 1981-82 biennium, for instance, thirty-four legislatures met in special session, primarily because of the need to adopt decennial reapportionment plans and to cut state budgets or raise state taxes. Constitutions in more than half the states limit the length of regular sessions to a specified number of calendar or legislative days. In the rest, however, there are no constitutional limits, and the number of days spent in session has increased steadily during recent years. It would seem that a variant of Parkinson’s Law has operated in legislatures—sessions have expanded to fill the time available for them.

Increasing work loads and time pressures have spurred various efforts to use time more efficiently. Legislatures have begun to utilize deadlines for bill-drafting requests by members; for the introduction of bills; for committee action on bills; for final floor action; and for conference committee reports. Some standing committees are being scheduled to meet more frequently and for longer periods during the earlier days of the sessions; and less frequently when action takes place on the floor.

Moreover, one of the most significant advances by legislatures has been in the use of the interim period—the period between one legislative session and the next. It is during this period that legislatures, through their regular standing committees or special committees, engage in intensive study of public policy and conduct oversight of department and agency activities. The scheduling of interim ac-

13. See, e.g., FLA. CONST. art. III, § 3(d) (not to exceed sixty consecutive days unless voted on by two-thirds of each house); Md. CONST. art. III, § 15 (limiting regular sessions to ninety days each year, but may extend to maximum of thirty additional days by three-fifths majority vote of each house); S. D. CONST. art. III, § 6 (regular session in odd years not to exceed forty legislative days; regular session in even years not to exceed thirty-five legislative days).
14. See, e.g., CONN. CONST. art. III, § 2 (regular session at such times as general assembly shall judge necessary); N.Y. CONST. (not specifying any number of days); Mich. CONST. art. IV, § 13 (regular session shall adjourn on day determined by concurrent resolution).
16. Id. at 142-44.
17. Id. at 144.
tivity varies. In Florida, for example, when the legislature is not actively in session, members spend three or four days one week each month meeting with their standing committees and engaging in interim work. Some other states also have regular schedules, with committees meeting at specified times; but most permit their interim committees to meet at times specified by the chairman and the members—usually once or twice a month.¹⁸

Between regular and special sessions and active interims, legislatures today spend considerably more time on the job. California, Illinois, Massachusetts, Michigan, New York, Ohio, and Pennsylvania have nearly full-time legislatures. In other states, such as Alaska, Arizona, Colorado, Iowa, Oklahoma, South Carolina, and Wisconsin, legislatures are not full-time, but are in the neighborhood of two-thirds time.

Today, also, legislatures are organized more effectively than before. The most important aspect of a legislature's organization is the standing committee system. Twenty years ago, although standing committees could be found in every legislative chamber, with the exceptions of a few committees and a few chambers, they were paper committees only. Little time was spent screening or working over bills, and committees met only on occasion. Their primary purpose, it might appear, was to provide a number of legislators with chairmanships to comfort them and the rest with committee memberships to list on their letterhead. Committees were far from being the focal point of the legislative process that they are today.¹⁹

Since the 1960's, committee systems virtually everywhere have been overhauled. In some places overhaul has been accompanied by a reduction in the number of committees.²⁰ In some places it has meant a reduction in the number of assignments for legislators, so that in at least a few chambers individuals serve on only one committee.²¹ Along with restructuring has been the staffing of committees by professionals, who sometimes are hired by the leadership and/or committee chairman but who normally are assigned to the

¹⁸. Id. at 145.
²⁰. For example, Maryland now has only five senate committees and six house committees.
²¹. In the 1969 Texas Senate, by contrast, the median number of assignments for the thirty-one senators was ten. A. Rosenthal, The Interim Work of the Texas Senate 7 (available at Center for State Legislative Research and Service, Eagleton Institute of Politics, Rutgers University, June 1971).
committee from a bipartisan central staff agency. 22 Currently, all standing committees are staffed by professionals in about thirty-five states. In the remainder only the major committees and/or the fiscal committees are staffed separately; the rest are served by a pool of professionals. 23

Regardless of number, respective member assignments, and staffing patterns, there can be little doubt that committees today are truly the "workhorses" of the legislature and that "[t]he quality and quantity of work done in committees is vital to the legislature in appropriating funds, enacting or changing laws, and overseeing state agencies." 24 Standing committees provide a division of labor, opportunities for members, a degree of specialization, a more intensive scrutiny of substantive matters, and a broader distribution of influence within the legislature. The significance of committees is shown in a recent survey of over 2,000 legislators, who were asked to identify in rank order, from the eight alternatives offered to them, the three most important decisionmaking arenas in the legislature. Almost two-thirds of the respondents ranked regular committee meetings first, second, or third, just below the office of the presiding officers or majority leaders. 25 Standing committees counted most in the senates of Mississippi, South Carolina, Virginia, Maryland, Tennessee, Montana, and New Mexico and in the houses of Nevada, South Carolina, Oregon, Virginia, Louisiana, Mississippi, and Arkansas, as well as in the Nebraska Unicameral. 26 They tended to be more central in legislatures dominated by one party and less central where the parties were evenly balanced and where party caucuses played a larger role.

More than any other single factor, the expansion of professional staffing has contributed to the enhancement of state legislative capacity. Although the professional staffing of legislatures began half a century ago, with legislative reference bureaus and legislative councils, it was not until the 1970's that substantial growth occurred in most places. It is estimated that there are now more than 16,000

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26. Id. at 456-57.
full-time, year-round staff members—professional, administrative, clerical—working for legislatures. As many as 25,000 are on the payroll during the course of legislative sessions.27 The large majority of legislatures currently have anywhere from 50 to 300 professional employees.28 A few—such as Delaware, North Dakota, Vermont, and Wyoming—still have meager staff resources. Several states are extremely well off, by any standards save congressional ones. At last count, California and New York had over 700 full-time professionals, Florida and Michigan over 500, and Pennsylvania and Texas over 400.29

Staff members are of differing types and perform different tasks, including bill drafting, policy research, fiscal analysis, post audit or program evaluation, and sometimes even research on science and technology. They serve a variety of clients, including legislative leaders, party caucuses, rank-and-file members, and, as previously mentioned, standing committees. Because of the assistance rendered by many and multi-talented professionals, the legislative process works better than before; greater attention is devoted to both major and minor issues.30 Greater continuity of concern is possible.31 All in all, with professional staff the legislature can tackle problems it could not otherwise address.

Information is the final factor involved in the enhancement of legislative capacity. Due to professional staffing, the increased generation of data and the development of new technologies, legislatures have more information available to them than before. Although legislators want information (and they complain about not having enough), they frequently are overwhelmed with it. The issue, therefore, is whether they have the most useful information available to them.32 The information challenge is a difficult one; each committee and, indeed, each legislator prefers a particular piece of information, delivered at a particular moment in time, and communicated by a

27. Staffing Patterns, supra note 22, at 3.
28. Id. at 43.
29. Id.
Despite difficulties in utilization, much valuable information is at hand. Political information continues to be of greatest import, but analytical information is also being used in making decisions in the legislative process. There is little doubt that members of the contemporary legislature can become extremely well informed if they wish to be and make the necessary effort.

**Composition**

At least as crucial as the capacity of the legislature is its membership. Examination must be made concerning the kinds of people elected and how they have changed over the years. The issue is whether these changes have created an improved legislature.

Better or worse, the number of legislators has dropped in the last two decades—7,438 currently as opposed to 7,781 in 1961. The reduction in the total has come about because the size of several houses has been decreased. Houses in Connecticut, Ohio, Vermont, and Massachusetts were all cut significantly. Recently, the number of members in the Illinois House was reduced from 177 to 118. As of today, therefore, senates range in size from Minnesota with 67 members to Alaska and Nevada with 20 and houses range from New Hampshire with 400 members to Alaska and Nevada with 40.

Absolute numbers are not, however, as important as the types of members who hold legislative office. In many respects, legislatures are more representative now than earlier. Minorities are slightly more visible, with the percentage of Blacks having risen—albeit very gradually—to four percent and at least some Hispanics have taken legislative seats in states with a sizable Hispanic population. The greatest gains, however, have been made by women. At the start of the 1970's only 300 women, constituting four percent of the nation's legislator total, held office. In 1983-84 there are almost 1,000

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35. *Id.*
38. M. Johnson & S. Carroll, *Profile of Women Holding Office II 6A* (available at Center for the American Woman and Politics, Eagleton Institute of Politics, Rutgers University, 1978). *See also Women in State Legislatures 1981 and Women in State Legislative Leadership 1981* (available at Center for the American Woman and Politics, Eagleton Insti-
women, approximately thirteen percent of the total number of legislators. More women are running for office, more are being elected, more are being appointed to chair key standing committees, and more are being chosen by their colleagues for positions of top leadership. \(^9\) The impact of Blacks and women in state legislatures is being felt, primarily in terms of the agenda of issues that receive attention. Issues of interest to these groups that once were overlooked or shoved aside cannot be ignored as easily anymore. Even if they are not resolved, they are likely to be addressed.

Legislators have been getting somewhat younger. In the 1960's the average age was in the early forties. Today the average is in the late thirties, down three or four years. \(^{40}\) Legislators now are better educated, with more than four out of five possessing at least a bachelors degree as compared to three out of five in 1960. \(^{41}\) Also, more young men and women, just out of professional and graduate schools and colleges, choose to run for the legislature rather than embark full time on another occupational path.

In part because of the rise in membership of individuals who are just out of school or still in school and the increase in women who have been homemakers, the distribution of occupations in state legislatures has been shifting. No longer are lawyers as predominant in legislative assemblies as they once were. \(^{42}\) Increased demands on legislator's time and conflict-of-interest and disclosure statutes have taken their toll. Although still the largest occupational grouping, the percentage of lawyers is down from thirty in 1960 to twenty in 1979. \(^{43}\) The demands of time have also taken their toll on farmers, who once accounted for twenty-two percent of the nation's legislators, but account for only ten percent today. \(^{44}\) Another notable occupational shift involves educators—at the elementary, secondary, and higher educational levels—who have increased their representation in legislative assemblies from three percent of the total in 1966 to ten percent in 1979. \(^{45}\)

Changes in the demography of membership suggest that, while fewer people with essentially full-time occupations now seek posi-

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39. See sources cited supra note 38.
40. Gerrity, supra note 36, at 7.
41. Id.
42. Id. at 5.
43. Id.
44. Id.
45. Id.
tions in the legislature, more people who want to make politics their full-time, or nearly full-time, vocations now seek legislative office. However negative public opinion, and however frustrating the job, being a legislator still has great appeal. Attracted by the lure of public office, a number of younger people want to devote themselves fully to politics, and the state legislature is a first or second step up the ladder to higher elective office. In the language of recruitment theory, their ambitions may be “progressive”; in the language of contemporary business, they are on a fast track; in the language of politics, they are biding their time until they can run statewide or for a congressional seat.

As a consequence, more legislatures today have more members who are full-time—if not full-time legislators per se, then full-time politicians. Twenty years ago, if one asked legislators what their occupations were, the response inevitably would be “attorney,” “businessman,” “farmer,” or whatever. A number in California and a couple elsewhere might have answered “legislator,” but they were few and far between among the national total. Today, a majority of members in a number of states—California, Illinois, Massachusetts, Michigan, New York, Pennsylvania, and Wisconsin—think of themselves as “legislators” and work at politics and the legislature on almost a full-time basis. Even in smaller states like Minnesota and Oklahoma full-timers probably account for one-third of the membership. And it is not only leaders and the chairmen of major committees, whose responsibilities demand considerable time, but rank-and-file members also are becoming full-time today.

Recent generations of legislators are more professional and are thus different from their predecessors who were more amateur. Political life is tougher for them, because all their eggs lay in one basket. Amateurs need not be concerned as much about being reelected to office or achieving higher office. They can return to their regular careers. Thus, they are not as concerned about constantly catering to constituents and interest groups. Professional politicians, on the other hand, cannot afford to run risks. They generally have no other careers awaiting their return. Not only their equanimity, but their livelihood as well rides on reelection. For them, the rewards of victory are too great, and the deprivations of defeat too severe. They must be extremely responsive if they are to remain in office and

eventually move ahead.

Gone, or going, from many legislative chambers are the old-timers. In the words of David Obey, a former state legislator who for the past fourteen years has been a member of Congress, the "people with dirt under their fingernails" have given way to "the briefcase boys." Obey recollects:

In the legislature, I served with a lot of guys who simply understood, without even thinking about it, what their responsibilities were to party, to their own consciences, and to their districts.

. . . .

What I miss from Wisconsin, more than anything else, are the people I used to serve with—the farmers, the union members, and the retired county board types, who had a sense of duty above anything else.

. . . .

I believe that today's generation of politicians, . . . [is] much more poll-oriented, much less willing to do what's tough but necessary.47

The new breed of legislator is professional, skilled, and bright. Nearly all are independent, some compulsively so. Few are willing to sit on the sidelines for very long, to serve an apprenticeship, or to play follow the leader. They are assertive and aggressive and, due in part to their influence, the legislature has become more assertive and aggressive.

PERFORMANCE

The performance of the legislature—or the manner in which the legislature does the job expected of it—depends largely on its capacity and its composition. The enhancement of legislative capacity and the change in legislative composition has resulted in improved legislative performance in making policy, in appropriating funds, in exercising oversight, and in sharing power with the executive branch of government.

The making of public policy, through the enactment of laws, is the principal function of legislatures. Members themselves perceive lawmaking to be their most important business and it is the one on which they spend most of their time. Thus, legislatures collectively expend a large amount of energy here.

In terms of the amount of legislation introduced and enacted,

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47. Rosenthal & Mann, Can the House be a Home?, 6 St. Legis. 26-27 (January 1980).
Legislatures have been proposing many bills and enacting many laws in the past twenty years. From 1963 through 1974, for example, the average number of bills introduced in a state legislature during a biennium was 3,053.48 This average encompassed New York's 22,328 on one end of the spectrum and Utah's 585 on the other. In the same period the average number of bills enacted in a state legislature during a biennium was 856. This average encompassed California's 2,850 and Utah's 232.49

Recent data, for regular and special sessions during the 1979-80 biennium, show a national total of 202,087 bills introduced and 42,687 bills enacted.50 The average number of introductions is up to 4,042 per state, about a one-third increase over the earlier period. At the high end are New York with 21,682 introductions and Massachusetts with 18,054; at the low end is Wyoming with 849.51 The average number of enactments is 854, almost exactly the same as in the earlier period, with enacted bills ranging from 2,588 in California to 205 in Vermont.52 One indication of improvement here is the overall decrease in the proportion of bills that pass. Earlier, about one out of every three bills that was introduced passed the legislature. Now, about one out of five passes.53 This means that the legislature, mainly through its standing committees, is doing a better job screening introductions and eliminating the chaff.

As far as statewide issues or major policies are concerned, much of what is introduced and enacted is unimportant. Nevertheless, among the many bills, some are critical. On these bills, and with regard to major issues, legislatures have come to play a more decisive role. The legislative arena is where most of the policy-related action takes place and where fundamental decisions are made. In addition, legislatures have assumed a leadership role. In major policy domains—such as energy, transportation, and even taxation—initiatives come from within the legislature, from the leaders or the standing committees. Thus, the earlier generalization that "the governor proposes and the legislature disposes" no longer describes the situation.

49. Id.
51. Id.
52. Id.
53. Id.
For instance, consider the area of education policy. At one time legislatures concerned themselves very little with elementary and secondary schools and probably less with higher education. They left this area to state departments of education, teacher associations, local school boards, colleges and universities, professional schoolmen, and to the governor if he had any interest. Yet, by the end of the 1970's, legislatures were in the thick of policymaking in education, having wrested the initiative from state departments and interest groups. Most had come to grips with the difficult issues and had started to exercise control over the design, funding, implementation, and assessment of education in their states. Other actors continued their involvement, but they were not making the critical decisions and they were not the dominant force.

The power of the purse is supposed to be the legislature's strongest suit. If so, either some of the honor cards have been missing, or else legislatures have not been playing their hands very cleverly. Until recently, legislative performance in appropriating funds was weak. Few legislatures had substantial impact on the budget, partly because of the constitutional and practical limits on legislative control, but partly also because they simply were not doing their jobs. The limits are still there, but legislatures now are doing their jobs; they are reviewing and fashioning state budgets far better than before.

In an earlier period legislatures basically accepted the budgets that the executive formulated and these budgets had been shaped largely by the needs of departments and agencies. Members of appropriations committees would add various projects, taking care to provide for their own districts, but otherwise legislators would have little impact. In many states, the legislature did not have a fiscal staff of its own; it was dependent on the governor's budget experts for counsel. This is no longer the case. Today, legislatures are almost as richly endowed with fiscal assistance as is the governor, and in some cases they are even better served. Their dependence on the executive is over and they are far more inclined today to question budgets for programs, for agencies, and for line items. And most recently, three-quarters of the nation's legislatures have sought to increase their control over the expenditure of federal funds, and half
have gotten involved in the allocation of monies coming from Washington in the form of block grants. 57

In Arkansas, Colorado, Mississippi, New Mexico, and Texas the legislature traditionally has been dominant in shaping the state budget. In such places the legislature continues its ascendancy. Nearly everywhere else legislative participation in the budget process is more intensive and the legislative impact is more noteworthy than ever before.

When it comes to their third function, exercising oversight, although legislatures have made substantial progress, much more remains to be accomplished. There are various forms of legislative oversight, but the principal form relates to the review of ongoing policies and programs, seeing how well they are being implemented and with what effects and assessing the performance of administrative agencies. 58 In a few states, such as California and Florida, this form of legislative oversight is mainly the responsibility of standing committees. Generally, however, special legislative audit or evaluation agencies, which exist in two-thirds of the states, 59 do such work under the supervision of bicameral legislative committees or commissions.

Audit-evaluation work has enhanced significantly the legislature and the legislative process; for instance, it allows redirection and restructuring of programs and agencies, changes in budget allocations and savings in taxpayer dollars, termination of a few programs and contraction of others, improved management practices in the executive, and greater learning on the parts of legislators and their staffs. Because oversight has few payoffs and relatively little appeal to most legislators, 60 there is a question as to how much a part of the legislative process it will become. It may not be well integrated yet, but the enterprise is certainly underway.

Beyond audits and evaluations, legislatures have started reviewing—and, indeed, controlling—the administrative rules and regulations of state agencies. Within the past six years forty-one legislatures have adopted some type of review, with twenty-nine now

59. Id. at 20.
having authority to either suspend, veto, or otherwise prevent administrative rules from going into effect. This power has been challenged in the courts of several states, and challenged successfully, and many suggest that in exercising such power legislatures may be interfering with the proper conduct of the executive. Nevertheless, legislatures stand firm in laying claim to this newly acquired power.

Whether in the areas of the review of administrative rules and regulations, audit-evaluation, budget and appropriations, or policy making, there is accumulating evidence that legislatures are taking on governors and the executive branch. Years ago the balance between executive and legislative power was considerably different. Even though there were states where legislatures were comparatively strong—Mississippi, South Carolina, Florida, Colorado, Arizona, and Idaho are certainly among them—in most places the governor dominated, or was thought to dominate. Such imbalance between legislative and executive power, however, no longer exists. This does not mean that the legislative branch is the dominant one everywhere; it does mean that legislatures practically everywhere are more powerful vis-a-vis their governors than they once were. As far as performance is concerned, the contemporary legislature is the first branch of state government in many places and at least a coequal branch in others.

MAINTENANCE

A state legislature is not only an instrument, the intent of which is to perform policy making, funding, oversight, and representational functions. It is also an institution which exists as an end in itself. In order to survive and function, it must maintain itself as an institution. Maintenance may appear to be an automatic process, but it is not; it requires continuous legislative attention.

It might seem that there is little cause for concern. As democratic and representative assemblies, state legislatures have been serving for over 200 years. Institutions with such staying power pre-

63. For a detailed account see A. ROSENTHAL, supra note 15, at 235-339.
sumably are entrenched. The legislature has its problems, however, and more than its fair share of critics. But as William J. Keefe pointed out some years ago, "[t]he American state legislature is an institution waning in everything except resilience." Since then legislatures have improved significantly; and yet, they currently are under stress.

One problem that causes institutional stress is the discontinuity of the legislature's membership. The high turnover of members, more so in state houses than in state senates, has been unsettling for some time now. It continues to be so today. Many members leave each year and are replaced by freshmen. Some leave voluntarily because they have become frustrated or because they have had enough or because they are ready to run for higher office. In some cases turnover is essentially involuntary: members leave because of age or health, because of unfavorably redrawn districts, or because of primary or general election defeats.

The problem, however, is not nearly as severe as it once was. The fifty-state turnover average has decreased steadily since the 1930's. Whereas it used to range from about forty to fifty percent each biennium, it fell to a low point in 1981 of twenty percent in the fifty senates and twenty-three percent in the fifty houses. The data have not been compiled as of this writing, but with the recent redistricting plans, and the 1982 elections, it would appear that turnover has taken a slight rise. It probably will average about thirty percent in state houses and perhaps twenty to twenty-five percent in state senates, with high rates in one or both chambers of Alaska, Arizona, Florida, Hawaii, Iowa, Maryland, Michigan, Nevada, Oklahoma, and Wyoming. The process of absorption will be rough in light of the strong feelings of independence that many new members bring with them and the pressure-cooker quality of the legislative session.

Even more threatening to the institutional fabric is the declining

68. Preliminary figures have been gathered by the National Conference of State Legislatures.
tenure of members. The proportion of freshmen may be lower than formerly, but so is the number of veterans who have served for some time. Fewer legislators choose to remain in legislative office for longer than ten years, or beyond the time when their pensions vest. It is rare in houses to find more than one member out of four or five with a decade’s service. The distribution of tenure in the Florida House illustrates this trend. At the beginning of the 1983-84 session, out of 120 members, only thirteen had ten years or more of service, only one-third had six years or more and about half the members were in their first or second terms. Similarly, about half of the representatives in the Oklahoma House at the start of the 1983-84 biennium were in either their first or second terms. For the legislative process to function well some members must have experience and a memory of what has happened in the legislature over the years. Despite this need, few legislators today are willing to have a lengthy career in the state legislature, and thus veterans are becoming something of a vanishing species. The legislative process suffers from discontinuity as a consequence.

There is discontinuity of legislative effort as well. This is due partly to turnover in membership, but it is due primarily to the electoral cycle. Although senators in thirty-eight states are elected for four years (often their terms are staggered), representatives in forty-five states have only two-year terms. This means that in most places there is an election for the legislature every two years and, except in Kentucky, Louisiana, Mississippi, New Jersey, and Virginia, the election is in an even-numbered year. What this means is that legislatures go into session in an odd-numbered year, i.e. 1983. They meet for two or three months or longer and then spend time in the interim period. They go into the second session of the biennium in the even-numbered year, i.e. 1984. But by this time preoccupation with the spring or fall primaries and the November general election is already developing. The tendency in many places is to sidestep the most difficult and controversial issues during the session held in an election year. After the legislature adjourns, not much attention can be devoted to interim work because the entire membership of the house (and some of the senate) is heavily involved in the business of reelection.

Not only does the legislative process undergo the disruption of

70. Information provided by Allen Morris, Clerk of the House of Representatives, Florida.
biennial elections, but it suffers from the restricted limits of a two-
year perspective. Everything is viewed in terms of what can be done
in a single biennium, for life beyond the next election is far removed
from the immediate realities. Public policy, however, is hardly a two-
year affair. A policy enacted in one session runs into the succeeding
sessions. It is in need of monitoring, of adjustment, and possibly of
change. Yet the election cycle freezes the legislature into a biennial
perspective.

It is interesting to take note of an exceptional case. In Maryland
the terms of members of both chambers are four years. Everyone is
up for election at the same time—along with the governor, the attor-
ney general, and the controller. When turnover is calculated on a
biennial basis, as it normally is, then turnover in Maryland is com-
paratively low—if only because it can occur only half as often as in
most places. Even more important, the legislature's perspective is a
four-year one. In December 1982, the Maryland General Assembly
elected its leadership, which practically speaking will serve for the
entire period. The General Assembly went into session in January
1983, with the prospect of working through three sessions and three
interim periods under stable leadership, and with the same commit-
tees, before having to face the weighty political concerns of an elec-
tion year. The leadership, the committees, and the individual mem-
bers could look ahead, establish agendas, and move deliberately; not
everything needs to be accomplished in the first year.

Another problem that causes institutional stress is the fragmen-
tation of the legislature. Lately, power and loyalties in politics and in
the legislature have become more and more dispersed. The legisla-
ture is not exceptional in this regard; many of the forces that beset
the legislature also beset other political institutions in the United
States. Thus, because it reflects more general societal conditions, leg-
islative fragmentation is not likely to be altered in any substantial
way very soon.

Fragmenting forces in legislative bodies are numerous. The de-
mocratization of the process has worked in this direction. The provi-
sion of personal staffs and district offices has given individual mem-
ers greater resources and helped foster their independent pursuits.
The development of computerized information, especially that which
indicates how state aid formulas affect legislature districts, strength-
ens the constituency orientation rather than the institutional one.
Similar effects may derive from single-member districts, which are
on the rise. The increasing competition for legislative office in many
places, the higher costs of campaigning nearly everywhere, the expanding role of political action committees, and the growing virulence of single-issue groups—all exercise centrifugal pulls on the legislature. Fragmentation is heightened further, because centripetal pulls have become weaker of late. For example, former communities of legislators in the state capitals have been disintegrating; parties and card games, or essentially social pursuits, are being replaced by working and jogging, or essentially individualistic pursuits. Legislators today do their own thing and have relatively little energy left to concern themselves with the maintenance of their institution.

The institution is primarily the business of legislative leadership. Leaders, more than anyone else, bear responsibility for the well-being of the institution. But the fragmentation of the legislature has helped undermine leadership. Centralized power has eroded. Legislative leadership is still imposing in some states like Florida, Georgia, New York, Tennessee, and Texas. In most places, however, it is less imposing than it was a decade or two ago.71

One indicator of leadership weakness is its instability. The tenure of leaders has become shorter and the turnover has become higher. In some chambers leaders are limited by tradition to one term, or perhaps two, as in Arkansas, New Jersey, and North Carolina.72 Without the ability to succeed themselves, their power also tends to be limited. Others leave their positions of leadership voluntarily, some depart to go on to better things and others leave out of a sense of frustration. A number, of course, lose their positions as top leaders—speaker of the house and president or president pro tem of the senate—when party control of the chamber changes hands, as happened in thirteen out of ninety-nine cases after the 1982 elections. Increasingly, leaders are being challenged within their own caucuses and may be forced out of office or defeated by an opponent. Increasingly, too, leaders are being challenged and defeated by bipartisan coalitions. This recently occurred in Alaska, California, Hawaii, Minnesota, New Mexico, and Ohio.

It is by no means easy today for leaders to lead. A principal reason is that few members are willing to follow. Most of them are too concerned with themselves—their bills, their reelections, their careers. Thus, effective leadership is in jeopardy.

In a lecture delivered in 1940, T.V. Smith, a professor of philos-

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ophy and member of the Illinois Senate, lauded the legislature. "Like other good institutions," he declared, "the legislature rises as a triumph over selfishness." That is less the case now. If the individual was subordinate when T.V. Smith was around, the individual is dominant today. In fact, the major contemporary challenge is the balance between the legislator as an individual and the legislature as an institution.

Some years ago, when legislatures were just beginning their development, William Keefe pointed out that the needs of the legislative system are not identical to the needs of the legislator. Subsequently, Charles O. Jones, another perceptive observer, expressed concern as to how a collection of individual representatives could function as an institution. This tension between the legislator as an individual and the legislature as an institution is a healthy one, but it depends on a balance being maintained. Today that balance is in question.

**CONCLUDING NOTE**

Legislatures have come a long way in a relatively short period of time. They are major political institutions, critical to the lives of their states. Yet, ironically, they face a crisis of confidence and of community, and cannot take institutional maintenance for granted. They are better than they used to be, but they face difficult times ahead. "The more things improve, the tougher they get"—that is the way Murphy's Law might sum up the situation in which contemporary state legislatures find themselves.

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73. T.V. Smith, *The Legislative Way of Life* 16 (1940).
75. Keefe, *supra* note 64, at 69.