



Alan Rosenthal

## Civility or Civil War in Legislatures: Is There an In-between?

By Alan Rosenthal, Rutgers University

*Legislators will become more civil with one another when they develop dedication not only to their agendas, their careers, and their constituencies, but also to their legislature. Incivility will then pose less of a problem and the institution will become healthier for the understanding and support it gets.*

State legislatures are no match for the U.S. House in either the amount or intensity of incivility of members toward one another. Yet, nearly everywhere state senates and houses are combat zones, far different places than they were a half century ago. Senates and houses were always a bit disdainful of one another, but formerly in a good-natured sort of way. The good nature is no longer present. Similarly, the two parties, at least in competitive states, opposed one another in biennial elections for the legislature, but not as vehemently as they do today. In earlier times members valued some of their colleagues on the other side of the capitol and some of their colleagues on the other side of the aisle. Collegiality is by no means dead today, but the trust and camaraderie of yesteryear are much diminished. Civility is not yet on life support, but neither does it have the heart beat it used to have. The decline of civility may be cause for regret but, given what has been happening within and outside of legislatures, it should come as no surprise.

### Why Less Civility?

Conflict has always been a central feature of the legislative process. That is as it should be. People in the nation and in each state are highly diverse. They have different values, different interests and different priorities. If you listen to legislators describe their districts, even within what might appear from a distance to be relative homogeneity, they see diversity. This diversity and these differences are represented in legislative bodies,

which attempt by means of study, deliberation, negotiation, compromise and majority votes to reach public policy settlements. For some issues the process is contentious.

Major differences that exist in the public may also be organized along partisan lines, with Democrats on one side of an issue and Republicans on the other. The CBS/*New York Times* survey has been asking Americans whether they think there are important differences between Democrats and Republicans. Most recently (July 4, 2004) three out of four people answered yes to the question, the highest such response in 24 years. The same survey showed that Americans were divided sharply along partisan lines on whether they thought the country was headed in the right direction, their assessment of the condition of the economy, and their concern about the possibility of losing their jobs. In an earlier survey (November 5, 2003), the Pew Research Center for the People and the Press found that the nation was equally divided in terms of partisan identification and that Republicans and Democrats had become more intense in their political beliefs and more polarized than they had been in the past.

The divided electorate is reflected in divided legislative bodies where the two parties fiercely compete for control. Competition for the U.S. Senate and U.S. House is about as close as it can be, and competition for control of state legislative chambers has increased significantly in the past decade. Generally, either party can win control in about half of the nation's 99 chambers. After the November 2004 elections, Democrats

held control in 47 chambers, Republicans held control in 49 chambers, and two chambers were tied (Iowa Senate and Montana House). The more competitive the political situation in a state, the more likely civility among members will suffer.

Civility suffers especially because election campaigns are conducted by the legislative parties and legislative leaders, who are now responsible for winning or retaining control of or increasing their numbers in senates and houses. Today the campaign is a continuing one, it never ends. It is fought in legislative chambers, as well as in legislative districts. The majority party, campaigning inside the legislature, makes sure its threatened members are on the right committees, carry popular bills, and get attention in the media. At the same time, the majority party targets minority members whose districts are in play, denying them whatever might make them look good and help them get reelected. Meanwhile, the minority party raises issues and sponsors amendments that will put targeted members of the majority on record and at risk for taking unpopular positions. Each side tries to embarrass and score off the other.

Legislators who are targeted and members of their caucus cannot be expected to have warm feelings toward colleagues who are trying to get them defeated. Given battlefield conditions, it is the exception rather than the rule to maintain civil relationships, let alone friendships, with people who are shooting at you.

Civility depends on the existence of legislative norms, or rules of the game that mem-

bers expect one another to follow. The norms in legislative bodies were never very strong, and they are even weaker today. Reciprocity is still important, but one's word means less and respect is in shorter supply. The idea of apprenticeship is practically laughable. Trust among members is diminished, just as interpersonal trust among Americans generally is less than it used to be.

To add to all of this, the pressures on legislators from organized interest groups are more varied, more intense and more extreme, thus reinforcing or supplementing partisan division. Formerly, lobbyists pursued an "inside game," based on relationships with legislators and the case they made in their advocacy efforts. Today, an "outside game" is also in play, whereby grassroots constituencies are mobilized and appeals are directed by interest groups at broader public opinion. Many more people are involved than before and passions are more intense.

In the old days, partisan and other differences among members could be eased—if not overcome—by the socializing that contributed a big part of legislative life. For a number of reasons, socializing nowadays plays a much smaller role in building bonds among diverse bodies of legislators. Members themselves have different tastes and behaviors. They work harder at the job and try to spend more time with their families. They drink less, engage in solitary pursuits (jogging instead of poker), and are not nearly as convivial as the old timers.

Moreover, the environment in which they live is a fragmented one. In virtually every state capital, legislators used to reside in the same hotels or motels during the legislative session. Today, they are spread all around—in condominiums they own, apartments they rent, and various hotels they frequent. Only in a few small states (such as Wyoming where most legislators still have rooms at the Hitching Post) do they live in close proximity to one another. Thus, they are less likely to get together and share stories and experiences or bond, as they say.

Legislators socialize to a lesser extent in part because lobbyists no longer entertain as much as they once did. Ethics regulations prohibit or limit the gifts that legislators can accept or require disclosure of what they do accept. Legislators, therefore, keep a greater distance and lobbyists can get home earlier.

Consequently, fewer opportunities exist for legislators from the two parties and the two houses to get together. The trips, dinners and parties that lobbyists used to host have been replaced by fund raisers, which provide no real chance for relationship-building among legislators. Ethics laws and the "gotcha" mentality of the media work to keep people apart.

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#### Does It Make Any Difference?

Unless it made a real difference to the legislature or the process, the loss of civility would not occasion concern. It does, however, make some difference to the legislators, to the legislative process, and to the legislature as an institution.

The legislature, according to legislators, is not as pleasant a place to work as it once

was. Indeed, 30, 40 or 50 years ago it may have been too pleasant. It was close and clubby, and legislators spent almost as much time socializing as they did working. The few veteran members left from the good old days remind their colleagues that "It's no fun anymore." But the many newer members don't really expect fun. Nor do they expect the uncivil behavior they encounter in their bodies. However much they may deplore incivility, it does not drive them out of legislative service. Other than in the smaller states, where low salaries are the major cause of retirement, those who voluntarily leave the legislature are few and far between.

Legislators are inclined to believe that, because of the contentious atmosphere, it has become difficult to build consensus and gridlock is likely to result. This may be true, but the impact of incivility here would seem to be only marginal. Consensus—that is, 50 percent plus one or better—does get built on most issues, today as in the past. Sometimes the consensus is bipartisan, other times it is built within the majority party. Either way, things get done. When they don't, it is usually attributable—not to the mood of the legislature—but to the fact that legislators, significant interest groups, and members of the public disagree strongly as to what should be done.

The most important effect of incivility is probably on the legislature itself, that is the legislature as an institution. The legislature is already under siege from without. Depending on the state, the media can be relentless in its legislative bashing. The public, since the time of Watergate, has become increasingly cynical about political people, including legislators, and political institutions, including legislatures. Americans do not feel that people are adequately represented or that the system is responsive. They think most elected public officials are pursuing their own interests, rather than serving the public interest. And they are highly critical of what they perceive to be the unnecessary bickering, conflict and deadlock in the legislature. The public has lost confidence in the way the institution and the process work.

As an institution, the legislature needs at least some support or appreciation from outside. It sorely needs support and appreciation from within. Yet, nowadays it gets precious little of either. In a period of highly

contentious politics, legislators not only attack one another. They attack the institution in which they serve. Such attacks are grist for the media mill, and feed rather than counter what the public already believes about the legislative system.

If they serve long enough and have leadership positions and responsibilities, legislators may develop an institutional—rather than individualistic or partisan—perspective. But there is no guarantee, given the fact that immediate pressures push them in other than institutional directions. In the 16 term-limited states, an institutional perspective has to come even harder. Members cycle through the house or the senate, with no opportunity to either serve or lead for very long, and no time to develop an institutional commitment.

Yet, the legislature is a remarkable and deserving institution. It is more important than the policies it crafts; it is an end in itself. That is because it functions as the engine of representative democracy. As I explore in my book, *Heavy Lifting: The Job of the American Legislature*, it is the principal agency of representation in the states, it provides a lawmaking mechanism by which settlements can be reached by majorities, and it offers a check on and balance to a powerful executive branch. We cannot afford to permit such an institution to erode because of a lack of support.

### What Can Be Done About It?

One of my colleagues, searching for a solution to the incivility problem, suggests that Republicans and Democrats unilaterally declare a cease-fire. That is not at all likely to happen, nor should it happen. Conflict is endemic in legislative bodies and contests for control of office and policy are a good thing, not a bad one. Nowadays, however, combat goes a bit too far.

The problem that legislatures face is that so many things separate legislators, while few unite them. Members have different backgrounds, constituencies, and agendas and few chances to bond. The challenge is to increase the occasions for members to get together and to have a reason for doing so.

Probably no legislative body has been as internally divided as the U.S. House during the past 10 years. In an effort to increase comity in the House, David Skaggs, a former congressman who had served earlier in the Colorado Legislature, raised funds for and

conducted four biennial retreats for members. These retreats were held over a week-end early in the session, before combat between Republicans and Democrats had become too hard edged. Initially, members brought their families, but over the period from 1997 to 2003 the number who did so dwindled. The assumption of the retreats was that Republicans and Democrats, who socialized together, were likely to see opponents in more humanized terms than otherwise, and this would engender greater civility in the House. There is no persuasive evidence, however, that the strategy worked.

State legislative retreats, at least those in which most members participate, are few and far between. Georgia is distinctive in this respect. Here, all members get together for several days after each biennial election. Some of the orientations for new members run a few days and are held at a place away from the capitol. But most are one- or possibly two-day sessions in the capitol or at a facility nearby. Retreats for all members are certainly a good idea and ought to be held periodically. Given the right programming, such an activity can help build trust. And greater trust among members is requisite for comity in the legislature.

Other ways have been used to bring members together. Cas Taylor, the former speaker of the Maryland House, instituted a bus trip around the state for newly elected legislators. Accompanied by members of the leadership team, these lawmakers visited parts of the state they might not otherwise have gone to see. They became familiar with various institutions and facilities. They also got to know one another by traveling together for five days. Taylor's successor as speaker shortened the trip because of the state budgetary situation at the time.

It is useful, indeed, to facilitate social interaction among members, but it is not enough. As the Maryland bus trip suggests, such interaction ought to have a more explicit legislative purpose, such as learning about the state. One important purpose is that of developing and communicating support for the legislature as an institution. Promoting such a purpose should be the responsibility of legislative leadership, including leaders from both parties and both houses. It is not enough for leaders simply to pay lip service to their institution, they must work seriously to maintain its health and make it stronger.

That requires that leaders promote and play a role in teaching newer, and even older, members about the legislature and its significance and educating them as to their responsibilities for the legislature's well-being. At a minimum, members should not run against the legislature, badmouth the legislature, or scapegoat the legislature. The job of the legislators is to leave a stronger institution behind when they depart than they found when they arrived.

One way of building support among members is to enlist them in the job of providing the public with civic education on representative democracy and the legislature's central role in the system. As part of its representational function, the legislature has the responsibility of explaining itself to its constituent publics, rather than leaving the task solely to the media or even to the schools. Legislatures are beginning to take on this responsibility, but the involvement of members as well as legislative staff is vital. Members themselves have to explain representation, lawmaking, deliberation, negotiations, compromise, majority rule, lobbying, and separation of power in terms that people can understand. They have to make the case for the legislature in the face of public cynicism toward political people and political processes. It is not an easy job, but it has to be done.

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### Bio

Alan Rosenthal is a professor of public policy at the Eagleton Institute of Politics, Rutgers University. He has worked with legislatures throughout the nation and participated in programs of the National Conference of State Legislatures and The Council of State Governments. His latest book is *Heavy Lifting: The Job of the American Legislature* (CQ Press, 2004). 191 Ryders Lane, New Brunswick, NJ 08901. (732) 932-9384. alanr@rci.rutgers.edu.