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JACK E. HOLMES

On the Proper Criticism of Legislators

An editorialist commended New Mexico's recent Legislature for its hard work and smooth organization, but he lamented that "such speed and precision failed to give the people in the main the legislation they demanded and the legislation they thought they were voting for. . . ." Another struck the same note with the claim that "The 23rd Legislature did not accomplish much for the general public." Another editor apologized to an earlier Legislature for having called it the worst in the state's history. Said he: "Prospects for better things in 1959? Not much. The membership of the Senate will be the same. The only chance is that the obstinate senators with two years to mull it over will see the error of their ways and begin to think in terms of the public good and do something about Big Trucks, fixed prices, free interest money to banks, and legislation generally that favors the consumers over the pressure and special interest groups. . . ."

Other editors lamented the fact that some 832 bills were introduced. One suggested that the Legislature should have "repealed that many laws and been of service to us." Still another hoped that "in the next session only a few bills will be presented and more time can be spent in giving complete thought and consideration to them."

But it may be that when we speak of the Legislature many of us are like the peasant who beats his donkey because it cannot be a race horse. Beating the legislative donkey may be a good outlet for a few frustrations but it seems an unlikely method of speeding up or changing the nature of the beast. And what is the nature of the Legislature?

It must be stressed, first, that the legislature is not an arena for the politics of doctrine. Legislators are Republicans or Democrats, yes;

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but that is merely to say that as individuals they can be placed only a step right or left of the center. As a rule they have little patience with questions of philosophy or, rather, the philosophic handling or discussion of problems. Although some legislators may be recognized as favoring a particular economic or social group or interest, their view of the concrete problems that come to them tends to be highly pragmatic. These men do not, like the members of Britain's Parliament, serve as units or votes to be ordered or directed by the cabinet or party organizations; nor do they act as spokesmen for rather rigid party doctrines, as do legislators in France.

In spite of all its sound and fury, American politics is geared to produce agreement or consensus rather than conflict. We see evidence of this in the agony New Mexico's politicians go through to develop party programs which will unite rather than divide voters. This phenomenon is reflected in the Legislature where there is vastly more evidence of concurrence than of conflict. In short, there is little specific Republican or Democratic doctrine expressed or acted upon. Party alignments or divisions on roll calls are rare unless the issue under the vote concerns a matter clearly relating to party advantage or organization, or unless it is one of those relatively rare cases when a governor and other party leaders have taken a position advertised and accepted by mutual agreement as a party stand.

In consequence, and to a very high degree, the New Mexico legislator is his own agent. He may, to be sure, serve more or less consciously in some matters as the agent or spokesman for a particular community or economic or social interest, but to the extent that he does he tends to be removed from party control or direction.

The "public interest" is somehow served, however, even if as a by-product. Unfortunately, the "public interest" as a concept is too vague and too personal a thing to be useful as a guide to policy, and use of the term tends to obscure the fact that public policy is the overall changing end-product at any moment of a broad, pervasive, and almost non-partisan politics. As a term for use in political struggle, as a tool of political polemic, "public interest" is enormously useful. Thus, the phrase is very clear in meaning to the spokesman for a particular group or interest: it is identical with that for which he speaks. It is equally clear to the doctrinaire individual who has a single-shot panacea to all of the state's problems, and perhaps it seems clear to those who admonish the Legislature "to make laws in the public interest." But the experience of many men and many years teaches those who will ob-

serve that the "public interest" is the aggregate of many particulars, and it assumes a different aspect in the eye of each beholder.

Competition during any legislative session we have in plenty. The birdwatchers want to bell the cats, and the cat lovers want to muzzle the dogs; the rugged individualist wants laws to free him from competition; the school teachers want more money; and each taxpayer wants to be entirely relieved of his particular burden. Some of the 800-odd bills are perhaps ridiculous, and some, perhaps, after years of struggle for their passage, may rank with the laws on child labor, the eight-hour day, free public schooling, and the guarantees of personal liberty. But we still hear the suggestion that the Legislature should meet for two days every sixty years rather than for sixty days each two years.

Consider the suggestion for a moment that sessions should be shorter and fewer. Unless we are idiots or anarchists we recognize that some governmental functions are essential to the existence of the society. As the process operates, we say, in effect, each two years: "This is the formula for now. It is far from perfect but we hope it will work in the main. If you don't like any of the elements of the formula it is up to you to see in a year or two to the changes you want."

As the biennial crop of bills bears witness, the public responds generously to the invitation. Let it be clear, however, that most legislators do not introduce all of the bills they are requested to. Of those they do introduce, many will be labelled "by request" or otherwise damned by faint praise. Legislators may simply let some wither on the vine by failure to go through all the trading, talking, explaining, and cajoling needed to get them passed or out of committee. Even such bills have been given their hour if not their day in court, and upon their demise there is nearly always a legislator or two and a few citizens who lament the action. Of course, many other bills are useful enough to someone and so little harmful to anyone that when they are presented favorably by committee they pass with nearly unanimous votes.

There are bills with substantial effect. For example, the last session again saw the failure to remove fair trading restrictions. Each side produced cogent arguments well-couched in social and economic theory. The protagonist of either side saw only the merits of his own arguments, and it became an issue which could be resolved for the moment only by counting the votes on either side.

Still another bill, however, found the temporary union of two old sets of antagonists when the electricity and telephone utilities found common cause with the Rural Electrification Authority. Such strange al-

liances are quite customary, for experienced legislative politicians merely attempt to defeat and never to annihilate their enemies. They know that the enemy of today may be the desperately needed ally of tomorrow. The vastly expanded federal aid highway program had raised the problem of who should pay for the relocation of lines and other facilities located on public rights-of-way. A bill to cause the Highway Department to pay such costs was hotly debated, with the opponents claiming that it was unprecedented and unfair to require the taxpayer who bought gasoline and other automotive excise tax items to pay for such relocations while the stockholders and customers of the utilities would go relatively unhurt. The proponents won, however, on the ground that since the cost of the highway program in New Mexico would be borne primarily by the Federal Government much of the real cost would be shifted to all the non-voting taxpayers out of the state.

Whether or not the "right" side won in each of the two issues, as well as in the others which produced considerable legislative fireworks, is beside the point. And the point is that on those half-dozen bills which were in real controversy the separate aggregations of angels or devils (which was which would depend of course on one's point of view) were composed in great part, in each occasion, of different individuals. Thus, to criticize the legislators in general is to allow to escape the miscreant who actually voted against your pet bills. The pressure group spokesmen learned this long ago, and they know precisely which to reward or punish with their votes and influence.

In its more mundane operations, the last Legislature succeeded in enacting 254 laws. In their endless task of adjusting the governmental machinery and the scales of private rights and duties, they passed 64 new statutes, amended 123 others, and repealed 10; while on 25 occasions they added certain new matter while amending old; substituted new for amended material in 24 laws; and in 8 others they enacted new sections, amended others, and repealed still others. Viewed in another manner, 153 of the new laws related to the structure and mechanics of government, and 101 related primarily to the relation of citizens to each other. Of this latter number about half were limited to small special groups, such as the professions. Of the governmental laws, 93 related to finance, and over a third of these were the product of the interim committee on public finance.

Even Solon, it will be recalled, found upon returning from his ten-year trip abroad after Athens had accepted his code that many of his laws had been amended or repealed during his absence.