Reform #13 – Reducing Polarization from the Inside: How Legislative Rules Promote Collaborative Policymaking in States

Andrew Douglas and Nathan Nicholson

Paper drafted for the National Democracy Slam 2015, Washington College of Law, April 22, 2015

Summary of Argument

The legislators elected to Congress and state chambers have become increasingly polarized, but obstacles to bipartisanship that originate within our legislative bodies exaggerate this polarization even further. Addressing these obstacles is the most direct way to reduce the impact of polarization on legislative outcomes. Our 2014 study of power-sharing arrangements in state legislatures revealed that two conditions are critical for the prospects of meaningful bipartisanship and collaboration in policymaking: the degree to which majority party leaders control the legislative agenda, and the level of civility and trust in personal relationships between legislators of different parties. Targeted reforms that seek to limit majority leaders’ control over the agenda, and foster strong relationships between legislators, have the potential to play an outsized role in reducing the impact of polarization on legislative outcomes.

Introduction

Rising partisan polarization has made it increasingly difficult for legislators of different parties to engage in the collaboration necessary for effective and responsive policymaking. The decline of collaboration has a range of causes, including a polarizing electorate, flawed electoral structures, and an increasingly corrosive media environment. While the complex social and political structures that have led to the election of increasingly polarized legislatures present a generational challenge, some smaller and more immediate obstacles to bipartisan policymaking originate within legislatures themselves. Removing these obstacles through targeted reforms to legislative rules and practices can directly reduce the impact of polarization on policy outcomes.

Several such reforms are studied in Best Practices for Collaborative Policymaking: Learning from Power-Sharing Arrangements in State Legislatures, a 2015 report from FairVote and the Bipartisan Policy Center, made possible by a grant from the Democracy Fund and assistance from the National Conference of State Legislatures and National Institute for Civil Discourse. Through research and discussions with dozens of legislators, the report examines five bipartisan agreements used to organize state legislative chambers after a post-election tie or the formation of a cross-party coalition, and uses these experiences to identify specific steps that can be taken in any chamber to improve prospects for legislating across party lines.

Under normal circumstances, the ability of legislators from opposing parties to collaborate is conducive to effective policymaking; but in situations where power must be shared between the parties, collaboration becomes a necessity. The dramatic and diverse effects of these power-sharing arrangements on legislative outcomes therefore highlights the potential impact of specific legislative rules and practices on prospects for bipartisan collaboration.
In some cases, power-sharing arrangements have led to a marked decline in partisan rancor and an increase in productivity and bipartisan cooperation. The 2007-2008 Oklahoma Senate session, for example, in which bipartisan co-leaders presided over a tied chamber, was acclaimed as remarkably productive, with Sen. Mike Johnson (R) describing the tie as his “favorite two years in the Senate,” and as a period characterized by “unbelievable camaraderie” and “mutual respect.” In other cases, similar arrangements instead resulted in hostility and gridlock.

The wide variation in outcomes between the arrangements examined in the report can be traced largely to differences in two areas of the legislative environment into which they were introduced, each of which has clear implications for reform: the distribution of power over the legislative agenda, and the strength and civility of personal relationships across party lines.

These two factors are critical precursors to meaningful bipartisan collaboration in any chamber, as made apparent by the heightened cooperation necessary for successful power-sharing. Together, reforms targeting both of these areas have the power to ameliorate the ideological polarization of our elected representatives by promoting legislative procedures and personal relationships that facilitate mutually agreeable solutions to policy problems, especially on issues that do not align neatly along the partisan divide.

**Democratizing the Agenda to Clear a Path for Bipartisan Legislation**

Majority party leaders’ control over the legislative agenda – the selection of bills and measures that will be brought before a committee or the full chamber for votes – is the most significant internal source of legislative polarization. In most American chambers, leaders of the majority party exercise control over the agenda both at the committee stage, when committee chairs select the bills that will be brought before the committee, and at the calendar stage, when bills reported from committee are scheduled to be brought to the floor. This control allows leaders in many chambers to block inclusive legislation in favor of partisan alternatives, significantly limiting the prospects for bipartisanship. As a result, the polarization of the legislature is exaggerated: the bills allowed to pass will be those that make as few concessions to the minority as possible, leaving them unrepresented in policy outcomes, and with little recourse beyond obstruction.

The ability of majority party leaders to block bills from advancing means that the support of a bipartisan majority of all legislators in no way guarantees that a bill can pass. Majority leaders are likely to block any bill that does not enjoy the support of a majority within their own caucus (a principle commonly referred to as the “Hastert Rule” in the U.S. House). In states, the majority party’s standards for what bills are allowed to advance can be even higher, with leadership sometimes reluctant to alienate even a small portion of their members by bringing a bill they strongly oppose to the floor.

The reluctance of majority party leaders to allow votes on bills that do not enjoy strong support within their party significantly limits the prospects for meaningful bipartisan collaboration. It means that for a given issue or policy problem, many solutions that could draw the support of a bipartisan majority in the chamber are ruled out from the start. The bill that is ultimately allowed to reach the floor is likely to represent the consensus position of the majority party to the greatest extent possible, allowing the majority to minimize the number of minority votes needed, along with their need to consider the minority’s views. Legislators therefore have little incentive to cross party lines to collaborate on
legislation in the first place, as meaningful bipartisan efforts are likely to be futile unless they fit closely with the views of the majority.

Northwestern University political scientist Laurel Harbridge argues that majority agenda-setting power has significantly impeded bipartisan collaboration in the U.S House in recent decades. She finds that, while the number of bills receiving bipartisan co-sponsorship has declined only slightly, the proportion of these bipartisan bills making it to a floor vote has declined significantly. This suggests that in the House, the decline in bipartisan legislative outcomes may have more to do with the increasingly restrictive use of agenda-setting powers than with declining interest in bipartisanship from individual legislators.

Fortunately, majority party leaders’ control over the agenda is not universal. Many state legislative chambers use rules that decentralize or remove agenda control, empowering collaboration and giving both parties access to the policymaking process. Recent research has shown that rules that decentralize control of the agenda increase the degree to which the minority party can contribute to policy outcomes. These rules fall into three categories:

- **Automatic advancement of bills.** In many chambers, party leaders determine what bills will be heard in committee and which will be brought to the floor, but in others, committees are required to hear or report all bills, and bills reported from committee are automatically placed on the floor calendar for a vote. Together, these rules eliminate formal control over the agenda at both stages of the legislative process. Twenty-two state chambers, in places like Ohio, Kentucky, and Utah, require that committees hear or report all bills. Thirty-five of the ninety-nine state chambers use automatic calendaring.

- **Majoritarian rules.** Rules in some state chambers allow majorities in committees and/or on the floor to place items on the legislative agenda, allowing bipartisan majorities to advance legislation regardless of the preferences of party leaders. Examples include discharge petitions, which allow a majority of legislators to recall a bill stuck in the committee and bring it to the floor; motions to advance an item on the floor calendar, which allow legislators to force a bill already reported from committee to be scheduled for a vote; and rules that allow a committee's members to place items on the committee agenda, over the objections of the committee chair. These rules reduce the ability of party leaders to put a chokehold on legislation that a bipartisan majority of the chamber supports. Importantly, however, they are most effective when legislators are given protection from retribution; for example, discharge petitions can be permanently or temporarily anonymous, as was the case in the U.S. House until a 1993 rule change.

  Examples of states with unique majoritarian rules include: Nevada, and Arizona, which allow committee members in one chamber to vote to put an item on the agenda; Hawaii, South Dakota, and Missouri, in which discharge petitions in one chamber require support from only one third of legislators.

- **Limits on majority party control of committee composition.** In most chambers, committees play an important role in determining what legislation can be brought to the floor. Limits on the ability of majority party leadership to control the composition of committees and the selection of chairs help ensure that the minority will have a voice in this stage of the process, improving the prospects for bipartisan legislation. Examples of states with such rules include: Nebraska, South Carolina, Hawaii, and Alaska.
Each of the procedures discussed above is already in use in some, and in some cases dozens, of the ninety-nine state chambers.

Though majority parties are unlikely to be interested in giving up control over the agenda where they have it, the current tolerance of these rules by majorities in many chambers suggests that wider adoption is possible, particularly in chambers in which majority leadership has less control over the process of rule adoption. In many states, changes to legislative rules and procedures can also be advanced directly by voters through ballot initiatives – as in 1988, when Colorado voters passed the “Give A Vote to Every Legislator” (G.A.V.E.L.) amendment, designed to eliminate majority party leaders’ control of the agenda by requiring that all bills be heard, and the automatic advancement of bills to the floor calendar.9

**Fostering Civility and Strong Cross-Party Relationships**

While legislative rules matter, the personalities and associated approaches of legislative leaders and members are central to effective collaborative legislating. Good chamber rules can be implemented poorly or ineffectively by intransigent leadership and, conversely, a collaborative mindset among chamber leadership can foster strong collaborative practices even in the absence of such rules. Political science research and reports from legislators indicate that legislative relationships characterized by civility – including a presumption of mutual good faith, an openness to compromise and collaboration, and a willingness to separate ideological disagreement from personal antagonism – may be an important contributor to the ability of legislators to craft policy across party lines.10 11 12 13

Legislators and civic groups have developed a variety of measures designed to foster civil relationships among legislators. These civility-enhancing measures should be considered as potentially valuable supplements to rule-based strategies for promoting collaborative policymaking:

- **Bipartisan Social Events.** Congressional observers such as the Bipartisan Policy Center’s Commission on Political Reform have posited that the decrease in time that Members of Congress spend in Washington, D.C., especially over weekends, has contributed to a rise in uncivil behavior and the loss of opportunities for bipartisan policymaking. The BPC commission recommends reconfiguring the Congressional calendar to include synchronized five-day work weeks in Washington and establishing periodic informal gatherings to foster relationship-building among members.14 Such bipartisan social events are a feature of many legislatures and have been cited both as popular among members and as aids to legislative civility.15

- **Educational Initiatives.** Several civic organizations have developed educational initiatives focused on developing civility-promoting tactics. The Beyond Civility project (www.beyondcivility.org) works to bring civic stakeholders together in dialogue about the importance of effective communication across the barrier of ideological disagreement.16 The Institute for Civility (www.instituteforcivility.org) offers several similar civility training resources, including online civility training, workshops, and seminars.

- **The Next Generation Initiative: Legislative Seminars to Build Trust through Civil Discourse.** The Next Generation Initiative, a project of the National Institute for Civil Discourse, was developed by Ohio State Representative Ted Celeste (D) in 2012. Next Generation works with state legislators to cultivate a culture where discourse and collaboration typify public policy development through
workshops built around the theme of “Building Trust through Civil Discourse.” These half-day workshops engage state legislators from both parties in guided discussions to deepen their appreciation for each other’s commitment to public service, strengthen relationships across the aisle, and create working groups in participating state legislatures. In several of the states in which workshops were hosted, legislators reported concrete cross-aisle legislative efforts that resulted from the strategies discussed in the workshops, including joint bi-partisan co-sponsorship of legislation and joint discussion of agenda items between committee chairs and ranking members.

**Recommendations**

The variations in existing rules and customs across legislatures offer room for a variety of reform approaches. As a uniform starting point, we propose implementing the following practices in Congress and state legislative chambers to mitigate the effects of polarization and promote productive collaborative policymaking:

1. *Create a neutral agenda-setting regime* that takes agenda control out of the hands of the majority leadership by requiring that all bills to be given a committee hearing, and that all bills reported from committee be brought to the floor.
2. *Foster stronger cross-party relationships* by creating synchronized five-day work weeks and establishing periodic bipartisan social gatherings.

**Conclusion**

While legislative rules and relationships are not primary causes of polarization, addressing them is a direct means to reduce the harmful effects of polarization on legislative outcomes. Academic research and the recent examination of power-sharing arrangements in state legislatures from FairVote and the Bipartisan Policy Center both suggest that the allocation of control over the agenda-setting process and the level of trust and civility between legislators of opposing parties each have significant impact on the prospects for bipartisan collaboration in policymaking.

Neither rules changes nor efforts to enhance civility will solve the polarization crisis on their own, but effective pursuit of both ends can help lay a path for bipartisanship through the legislative process and equip legislators to follow it.

---

1 Andrew Douglas has been a researcher at FairVote since 2013, and Nathan Nicholson is a 2014-2015 FairVote Democracy Fellow. They thank John Fortier and Mathew Weil at the Bipartisan Policy Center and FairVote executive director Rob Richie for their assistance with this analysis.
2 Johnson, Mike. Personal interview. 3 July 2014
7 National Conference of State Legislatures. N.d. “Inside the Legislative Process.” National Conference of State
9 Ibid.

to+Latest+Articles+%29