



Folkways of a One-House Legislature

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Article Summary: The Nebraska Unicameral has two sets of rules that govern how its members behave, one written and the other unwritten. The informal norms of behavior are at least as important as the formal rules. They are the folkways to which every senator must conform if he or she is to be an effective legislator.

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Photographs / Images: Lavon Heidemann on the floor of the Legislature, March 13, 2012; opening day of Nebraska's first unicameral legislative session, January 5, 1937; state senators discussing legislation; senators on the floor of the Unicameral



Nebraska Sen. Lavon Heidemann stands during first-round debate on the floor of the Legislature on March 13, 2012. (ERIC GREGORY / Lincoln Journal Star file)

The Nebraska Unicameral, like most other organized groups and institutions, has two sets of rules that govern how its members behave. On the one hand are the official rules that govern the formal legislative process. These are the written rules of the game. The second set of rules are informal, unwritten norms of behavior that are just as important, if not more so, than the first. These rules perhaps are best described as “folkways,” or those standards of behavior that are usually known as customs and practices to which all senators are expected to conform.

Political Scientist Donald Matthews first identified the presence of folkways in the U.S. Senate more than fifty years ago. He argued that failure to abide by them can be detrimental to one’s effectiveness as a legislator.¹ Other researchers have examined this topic in different settings and reached similar conclusions.²

This article discusses the folkways of Nebraska’s one-house legislature and evaluates the role they play in shaping the influence of senators in the lawmaking process.

Apprenticeship

Probably the most widely recognized folkway, both within and outside the Nebraska Legislature, is the expectation that new senators will benefit from a period of time spent “learning the ropes,” before taking on highly visible activity in the chamber. Taking to the microphone, for example, to make major speeches early in one’s first year is frowned upon by more senior members. It may be only a slight exaggeration to say that senior senators generally agree it is wise for new members, at least for a time, to be “seen, but not heard.” New members are expected to listen and learn, speaking infrequently and then only after observing an appropriate period of apprenticeship.

This folkway, however, is not applied equally among all members. New members with prior experience in the Unicameral are exempted. They already have served their apprenticeship and may occasionally even succeed in being selected to a leadership position in their first year back.³

Some evidence suggests that this folkway may be waning in importance. This is especially so in light of recent voter-imposed limitations on how many terms senators may serve. With only two

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BY STATE SENATOR BILL AVERY (LD-28)

terms in which to achieve one's legislative objectives, senators may be less willing to wait before stepping forward to pursue their goals. Nonetheless, more senior members still can be observed grumbling from time to time when new members speak too often on too many topics.

Work Horses and Show Horses

Professional observers of legislative processes long have distinguished between two distinct types of legislators: work horses and show horses.⁴ Legislators who covet public attention are more likely to become show horses. Those who want to gain the respect of their colleagues and get things done become work horses. This holds true in Nebraska as well. After an extended and contentious debate in a recent session of the Unicameral, a new member on the losing side, but who had played a prominent role in the debate, reportedly commented: "I may have lost, but I'll make the evening news."

Senators who seem more interested in scoring political points, getting quoted in the newspapers and appearing on television, than they are in making sound public policy are viewed as show horses and are less likely to be effective.

Much of the daily routine of legislative work is highly detailed, dull, and boring. Despite that, one of the most entrenched ground rules of the

Nebraska Unicameral is that members will attend to these unrewarding tasks on a daily basis. Not everything necessary to making good policy is exciting, but it needs to be done and senators are expected to do it.

One particularly tiring task involves long hours spent listening to often repetitive testimony at public hearings on proposed legislation. The Unicameral is one of a limited number of legislative bodies in America to require that every bill introduced receive a public hearing. This is one of the many practices of the Nebraska Unicameral that make it arguably the most open and transparent legislature in the country.

Members take pride in the distinctiveness of its procedures and most work hard to preserve and protect them. Senators who take a casual approach toward doing their share of routine work—for instance, habitually departing hearings early, leaving others to do the work in their absence—face disapproval and risk losing the respect of their colleagues.

Some of the Unicameral's most effective members may be senators many Nebraskans have heard little about. They diligently go about their work, day after day, receiving little public attention in the process. They make the legislative process work more smoothly and they get things done.

Respect for Committees

The committee system is a vital part of the legislative process. Committees are where the vast majority of legislative work takes place. Woodrow Wilson once famously referred to the committees of the U.S. Congress as “little legislatures,” the place where the real work of Congress occurs. He wrote: “Congress in session is Congress on public exhibition . . . Congress in its committee rooms is Congress at work.”⁵

In Nebraska, standing committees review bills under their subject matter jurisdiction, schedule and convene hearings, refine and amend bills, and decide whether to recommend bills for consideration by the full body of the Legislature. They also help identify areas of opportunity where compromises on bills may be possible, thereby facilitating the movement of bills through the process.

In a very real sense, Nebraska’s committee system serves as a giant filtering system that enables the Legislature to “screen out” undesirable legislation and to divide its labor in a rational way. Committees are specialized repositories of knowledge about specific areas of public policy. Members are expected to understand the importance of this system and show respect for it.

The folkways of the Unicameral strongly discourage members from using the formal rules to override the actions of a committee. The rules do provide a mechanism for pulling a bill from a committee that has not reported the bill to the floor for general debate.⁶ However, the use of this rule, while available to any member, is generally frowned upon and rarely is successful when attempted. It is viewed as lacking in proper respect for the work the committees have done.

This same folkway also discourages members from attempting to amend bills undergoing debate on the floor by tacking on the contents of bills that have not been reported out of committee or have not been considered in public hearing. Attempts to do this are seen as violations of this norm and they often fail.

Specialization

The Nebraska Unicameral considers hundreds of bills every year on many issues. It is simply not possible for any one senator to be expert on everything that comes to the floor. The most influential senators are those who are active on issues they know something about and those of particular interest to their district. Senators who feel the

Opening day of Nebraska’s first unicameral legislative session, January 5, 1937. U.S. Senator George Norris, a staunch advocate of unicameralism, is standing at the back of the platform. RG2183-1937-105-2



need to speak on virtually every bill that makes it to the floor soon find themselves speaking to a nearly empty chamber.

Senators are more effective when they specialize in specific issue areas, especially those involving the committees on which they serve. More experienced members understand the importance of learning the subject matter of their own committees and then using that knowledge to enable them to serve as a reliable resource for their colleagues.

Members of the Education Committee, for example, who regularly deal with Nebraska's very complex and complicated school financing formula, are in a unique position to help others understand it.

The expectation for new members is that they will seek assignment to committees of most interest to them, focus their energy, time, and attention on the relatively few issues those committees manage and not try to be expert on every issue that may appear on the agenda. In doing so, other senators may come to see them as persons to whom they can turn for information and voting cues, because they trust their knowledge and opinions on these particular issues. The highly effective senators speak mostly on matters within the realm of their expertise.

Collegiality

In the universe of state legislatures, the Nebraska Unicameral is small, numbering only forty-nine members. It is not difficult to get acquainted with each senator, eventually coming to know their views and preferences on most issues, likes and dislikes, their style of debate, and their strengths and vulnerabilities. Many deep and permanent friendships are made, often cutting across ideological and party lines. Of course, as one would expect, not all forty-nine members are going to become close friends; strained relationships may develop, even enmities. Collegiality becomes especially important in this setting.

In fact, if the Unicameral has any cardinal rules, one of them surely is that political disagreements must not become personal and lead to inappropriate behavior on or off the floor. During floor debate, members are expected to address each other as "Senator," and not by first or last names. Of course, profanity is prohibited, as are racist comments and ethnic slurs. Questioning the motives of a colleague or launching personal attacks also are considered highly inappropriate and typically are met with bipartisan disapproval.

It is not uncommon for senators to address each other in elaborate and exaggerated terms, such as

"my esteemed colleague." Exaggerated courtesy, flattery, and elaborate displays of collegiality permit competitors to disagree without permanently poisoning relationships, so that eventually they may cooperate. There is a generally shared understanding that your opponent today may be a needed ally tomorrow.

It is understood, of course, that politicians are highly competitive people with strong opinions and deep commitments on many issues. It is difficult to hold in check one's emotions during contentious debate where things may not be going well on an issue one cares deeply about. However, anger and lack of collegiality are the enemy of compromise, without which little can be accomplished. Collegiality promotes civil debate in a frequently tense environment that produces winners and losers every day. Members who understand and respect this norm are more often the winners.

Reciprocity

Although many senators are reluctant to admit it, vote trading is one of the core folkways of the Unicameral. Senators help each other achieve their legislative goals whenever possible and, in turn, they can expect to be repaid. The acceptance of this norm, contributes significantly to the smooth operation of the Legislature and the successful movement of bills through the legislative process. It is a subtle process, more often involving implicit understandings than overt deals.

As a nonpartisan legislature, the Unicameral lacks the majority and minority whip system relied upon in other states for lining up votes and providing members with reliable vote counts based on policy preferences of political parties. As a result, Nebraska senators must put together a new (and often different) coalition of at least twenty-five senators on virtually every issue. Reciprocity is enormously important to this process.

Some senators explicitly reject the notion that deal making may be necessary to successful passage of their bills. But those who refuse to engage in reciprocity with their colleagues likely will constrain their ability to advance their own legislative agendas.

Institutional Loyalty

It is frequently noted that the Nebraska Unicameral is a unique institution among legislatures in America. Not only is it the only one-house legislature in all the states, it also is the only officially nonpartisan one. Candidates who seek to serve in the Unicameral are not identified on the ballot by party affiliation. Political parties do not determine

who will be elected as committee chairs. Voting along party lines, while it does sometimes occur, is not always the norm. The body lacks the “instructed voting” system so common in partisan bodies. It has no party caucuses, no organized issue or ideological groupings that always work together and vote as a bloc. Its only caucuses represent the congressional districts, meeting biennially, for the purpose of selecting memberships of standing committees. As a one-house legislature, there is no need for secretive conference committees that determine the final content of most legislation in bicameral systems.

Most members respect these unique qualities of the Unicameral and steadfastly defend it from external and internal attacks. Senators can find themselves serving as champions of the Unicameral to the outside world, speaking up for its openness, nonpartisan structure, collegiality and accountability.

Members also may come to the defense of any member who is perceived to be the victim of false or unfair outside attack. One dramatic example of this occurred early in the first session of the 100th Legislature (2007). One of the newly elected senators was the target of an outside attack, falsely accusing him of supporting illegal immigration. When the Unicameral convened the next day, member after member took the floor in a “firestorm” of bipartisan denunciation of the attack. Many of those who spoke against the action were members who did not necessarily share the ideology or policy preferences of the senator in question. They were people who were defending the institution, clearly demonstrating the primacy of institutional loyalty over partisan advantage.

It is not yet fully clear how or whether term limits may affect this norm. However, loyalty and attachment to the institution tend to deepen over time, creating a form of “institutional patriotism.” As time served in the Unicameral becomes more limited, it would not be surprising to see loyalty toward the institution itself soften as a result.

The Unicameral would not be well served should term limits diminish this norm. The institution needs members who behave in ways that build up the institution and show respect for its traditions. So far, term limits appear not to have done great harm to this folkway. Even though only two members now have served more than eight years in office, the majority still seem to hold the institution in high regard. More importantly, those who fail to do so still face disapproval from their colleagues and markedly reduced effectiveness.

Seniority and Party

Seniority and party loyalty play a prominent role in the practices and customs of virtually all legislatures, even though seniority usually is not explicitly stated in the written rules. More senior members and party loyalists are given leadership positions over more junior colleagues; they typically receive the most coveted committee assignments, are assigned more desirable office space, and generally are at the head of the line to get their piece of all things valued in the institution.

The Unicameral is considerably different from other legislatures in how seniority and party affiliation interact and are valued. Neither is entirely absent, but owing to the original intent of the Unicameral founders—especially their unyielding commitment to nonpartisanship and a non-hierarchical, egalitarian legislative culture—the practice of rewarding seniority and party loyalty has been considerably restricted.

From the beginning, the founders sought to create a system in which legislative leadership was based on ability, not seniority or party loyalty. In fact, an attempt in 1985 to give “the most senior members of the legislature first pick of committee assignments, failed” with only nine senators voting in favor.⁷ So, seventy-five years after creation of the Unicameral, committee assignments continue to be determined by a nonpartisan Committee on Committees comprised of equal numbers of representatives from the various congressional districts.

In virtually every legislature but Nebraska’s, seniority and party are most often the primary considerations in selection of committee chairs. In other states, leaders of the majority party (usually the speaker) appoint chairs or sometimes the majority party caucus selects chairs from among their most senior members serving on those committees. In Nebraska, chairs are selected by at-large secret ballots in which seniority and party may only play a limited role. Prior service on the committee one seeks to lead, friendships, experience and knowledge in the subject matter, or a reputation for fairness and competent work often matter more.⁸

A survey conducted in 2001 of current and former senators confirmed that “seniority is not an important factor in the selection of legislative leaders.” Still, however, the same survey revealed that more senior members had more influence, largely because of their better understanding of and ability “to use the legislature’s processes.”⁹

Before term limits, seniority may have played a larger role in leadership selection than it has since

voters limited senators to two consecutive terms of four years each. Virtually all committee chairs and speakers were senators with some prior experience in the institution. While these leadership positions were not awarded solely by seniority, members with longer service had improved chances of achieving these positions compared to their more junior colleagues.

Term limits that first took effect in the 2006 election, however, forced out these senior members and replaced them with new senators, all but two of whom had never previously served in the Unicameral. Now many of these senators have moved into leadership roles, with only two years of previous experience. For as long as term limits are in effect, experience is unlikely to again be very prominent in leadership selection. It is unknown, at this time, what possible long-term impact this may have on the institution.

Party affiliation, as might be expected, is most likely to appear in the redistricting process and selection of the speaker. Since redistricting has such powerful implications for the political parties, it is not surprising that it is the most partisan activity undertaken by the legislature. Speaker selection also tends to be partisan, although not always. The first speaker of the Unicameral was a Republican

who was elected by a legislature with a Democratic majority. As recently as 1994, a Democrat from the Omaha area was elected speaker, despite being in the minority party.

Interestingly, the most recent speaker was a Republican in a heavily Republican legislature who was elected after only two years of service at the young age of thirty-one years, beating out a veteran Democrat lawmaker of some eighteen years.¹⁰ Seniority did not carry the day.

The Unicameral appears to remain committed to its emphasis on non-hierarchical, egalitarian distribution of power in its organization and practices. Despite numerous attempts over the past seventy-five years to modify this arrangement, this founding principle has survived. The effects of seniority and party on power distribution within the body continue to be muted, a development that would not have been possible unless a majority of senators “played by the rules” by respecting these informal folkways.

Relationship with Lobbyists

Dating back to the ballot campaign to win voter approval for creating a unicameral legislature, the manner in which lobbyists would operate, the amount of influence they would

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State senators discuss legislation in *Biography of a Bill*, a 1963 documentary film produced by University of Nebraska Television.

have, and their relationship with senators were topics of great interest. The founders, in particular U.S. Senator George Norris and University of Nebraska political scientist John Senning, were convinced that lobbying within the open structure of a unicameral would be more visible and less susceptible to secrecy and backroom deal making. In fact, reining in lobbying by exposing the activity of lobbyists frequently was presented as a reason to vote for the unicameral ballot initiative.¹¹

Over the years, laws have been passed to regulate lobbying activity through limits on gift-giving, registration requirements for lobbyists, and extensive rules requiring the reporting of lobbying expenses and campaign contributions. The Unicameral seems to have struggled, almost from the beginning, with its relationship to the lobby.

Originally, lobbyists were allowed inside the chamber, occupying empty seats at the rear. Sometimes senators and lobbyists even sat together on the legislative floor. They openly conferred about legislation currently under consideration in full view of the public. Some members worried that this practice did not present a very good image of the legislature and argued for a more “arms length” relationship with lobbyists. Others, however, felt that allowing lobbyists inside the chamber kept lobbying activity very public and in the open for all to see. Eventually, members adopted rules that incrementally moved lobbyists outside the glass partition and into the rotunda where they remain today.

On the floor of the Unicameral, from *Nebraska for the People, Part 1: Legislature*, a 1974 documentary film produced by University of Nebraska Television.



Members always have recognized, however, that lobbyists are an important and vital part of the legislative process. To be sure, lobbyists are advocates for special interests, but more importantly they are sources of information. In order to perform their duties in a rational and informed manner, senators rely on lobbyists to provide them with reliable and factual information on the vast number of issues they confront in every session.

Despite the need for lobbyists, senators are expected to respect the arm's length relationship that has evolved over the decades. No one today could imagine allowing lobbyists to sit inside the chamber and confer with senators on legislation. But just keeping lobbyists out of the chamber is not enough. Senators are expected to avoid becoming so cozy with lobbyists that their independence is compromised. Members do not enhance their standing among their colleagues if they are perceived to be a consistent voice for a particular segment of the lobby in making policy. Maintaining a respectable arm's length relationship with lobbyists will serve a senator well.

Truth or Consequences

A final informal rule is the expectation that members are truthful in their dealings with each other, that they use factually correct information, and they can be depended upon to keep their word.

Sometimes a member may misspeak or cite inaccurate information in testimony or during floor debate. When this happens, and the member becomes aware of it, they are expected promptly to correct the error. It is generally understood that, since all hearings and floor debate are transcribed into a permanent record, it must be made as factually correct as possible.

Perhaps nothing undermines a senator's effectiveness more quickly than failure to keep a commitment. However, in the real world of legislative work, most senators understand that sometimes circumstances change that make existing commitments difficult, if not impossible, to honor. When such situations develop and a member must abandon a prior commitment, he or she is expected to disclose fully to all parties involved what the changes that affect their commitment are. If the commitment cannot be met, all parties then are aware of the circumstances and why the commitment is being abandoned.

The failure to observe this basic legislative norm is to violate a core principle of the Nebraska Legislature in a way that can make the damage difficult to repair.

Discussion

Conformity to these legislative folkways contributes to the legislative process in a number of ways. By observing a period of apprenticeship, members demonstrate willingness to listen and learn and thus avoid possible missteps early in their tenure. Hunkering down and doing the nitty-gritty routine, everyday work of the Unicameral earns members the respect of their colleagues and helps ensure that the necessary work gets done. Respecting the work of committees enhances the standing of the committee system and facilitates the division of labor in the body, while encouraging members to develop areas of policy expertise.

By discouraging personal conflict, collegiality promotes civil discourse in an often tense, high-stakes environment and thereby makes cooperation more likely. Reciprocity helps create winning coalitions that move legislation through the legislative process. Honesty in dealing with colleagues creates trust and also promotes compromise that is so important to success in policy making. Respect for the institution creates camaraderie among members and inspires a sense of pride in holding membership in the Unicameral. Members may be more likely to work together to get things done in order to protect the institution from outside criticism or ridicule.

Understanding the role of partisanship in an officially non-partisan institution helps members accept the reality that partisan loyalty at times comes into play, but need not permanently damage the institution. Suppressing the sovereignty of seniority in the Unicameral contributes significantly to retaining the original intent of building a non-hierarchical organization in which power is dispersed widely among its members. Recognizing the appropriate role of lobbyists in the legislative process, while maintaining a respectable arm's length relationship with them, fosters independence.

Following the norms discussed here is essential to becoming an effective senator. These are the unwritten rules that guide individual senators in Nebraska's one-house legislature, by providing important guideposts that help them chart a path toward greater effectiveness in the legislative process. These are the folkways of the Unicameral. They are the normative rules, meaning they define how a senator ought to behave. Failure to recognize and follow these ways can lead to disapproval, while those who conform and respect them are rewarded. Their bills get passed into law. They can

influence the passage or failure of other bills. They are held in high regard by their colleagues, partly because they attend carefully to these folkways. ❁

NOTES

¹ Donald R. Matthews, *U.S. Senators and Their World* (Chapel Hill: University of North Carolina Press, 1960), 92-117.

² John Wahlke et al., *The Legislative System: Explorations in Legislative Behavior* (New York: Wiley, 1962), 141-169; Allan Kornberg, "The Rules of the Game in the Canadian House of Commons," *Journal of Politics* 26 (May 1964): 358-80.

³ This occurred in 2007 when Sen. Brad Ashford (LD-20), returning after a twelve-year absence, was elected chair of the Judiciary Committee.

⁴ *Washington Post and Times Herald*, Feb. 19, 1956, cited by Matthews, *U.S. Senators*, 94.

⁵ Woodrow Wilson, *Congressional Government* (Boston and New York: Houghton Mifflin Company, 1885), cited by Joint Committee on the Organization of Congress (JCOC) Final Report (2003): 46-47.

⁶ Rule 3, Sec. 20.

⁷ Charlyne Berens, *One House: The Unicameral's Progressive Vision for Nebraska* (Lincoln: University of Nebraska Press, 2005), 99.

⁸ Attempts have been made over the years to structure committee leadership along party lines, some even originating from within the body, but most from the outside by the political parties. All attempts failed because of stiff resistance by majorities of senators in both parties.

⁹ Berens, *One House*, 111.

¹⁰ It may be worth noting that had the more senior senator won the speakership, she would have been the first woman speaker in the history of the Nebraska Unicameral. The extent to which gender influenced the election outcome is difficult to know, although it cannot be dismissed.

¹¹ Berens, *One House*, 147-69.

