TS: My guest today is so knowledgeable about state legislatures. He’s probably forgotten more than I will ever know about the first branch of government. Pev Squire is a professor at the Truman School of Government at the University of Missouri. He has had a distinguished career researching legislatures going all the way back to their colonial beginnings with the Virginia House of Burgesses in 1619. He has authored and co-authored multiple books on legislatures including the definitive history of American Legislatures titled “The Evolution of American Legislatures,” a must read for anybody who wants to consider themselves a serious scholar of legislatures.

With most legislative sessions starting in January and more than 1500 newly elected legislators joining the ranks, it’s a good time to dive into the complex history of our enduring institution, the state legislature.

Dr. Pev Squire, it is really an honor for me to have you on this podcast that we do at NCSL. The word awe comes to mind I have of your knowledge of legislatures and wish that I had just a fraction of what you know about legislature. I mean that very sincerely. You just have such an impressive appreciation and knowledge of legislatures and that’s what we are here to talk about. So, Pev welcome to the show.

PS: Well, I’m happy to be here and I hope I can live up to all of that.
TS: I have no doubt that you will. I’d like to get a little more detail of your history with legislatures and the question is why did you decide to start looking at legislatures as a political scientist? Talk about the work you’ve done in that field.

PS: Well, you know I’ve been doing this now for many, many decades. I go back to when I started graduate school. Legislatures were always of interest. I had enjoyed taking a course on Congress back when I was an undergraduate. And so, it wasn’t a surprise that I continued to sort of explore ideas with legislatures. I became intrigued with state legislatures while I was in graduate school and I followed at that point, I was at the University of California at Berkeley, so I was following California politics closely. It occurred to me that sort of the way the California Assembly it functioned had some things in similarity with Congress but also some differences. And so that’s when I ended up exploring in my dissertation and coming up with some ideas about how state legislatures were like in some instances, Congress, and different in other instances and why those differences were important.

And so, I pursued that for a long time. Mostly looking at contemporary legislatures. Probably about 15 or 20 years ago now I had sort of the thought myself of being sort of well versed in state legislatures from the 1960’s on and I was curious you know what had happened before that to lead up to the 1960’s and so I just kept pushing back farther and farther. Ultimately arrived back in 1619 and have been sort of mining a lot of that since. So, there are you know remarkable continuities from 1619 to the present. Lots of things that have changed, but ah probably more things that we have in common with those early institutions than differences.

TS: And wound-up publishing one of the number of the books you’ve done about legislatures which was “The Evolution of State Legislatures.” Is that the formal title?

PS: “The Evolution of American Legislatures.” Looking at both those colonial assemblies that were the predecessors and then not just state legislatures, but also the territorial bodies that preceded most state legislature.

TS: And let me just say I have read that book cover to cover and sort of reread it as well because I love it. I love the stories that are in there about legislatures and exactly what you talked about the discovery of like man there’s a lot more in common with these colonial outfits and beyond the territorial than one might expect. What other books have you done on legislatures? You’ve written multiple books on legislatures.

PS: Gary Moncrief, who many people in state legislatures will know, he and I have done a couple of books on state legislatures today which is in a third edition. And then a book called Why States Matter which should be obvious to everybody who listens to this, but it is not obvious to the rest of the world sometimes. So, I’ve done works comparing congress and state legislatures and 101 chambers. I looked at the colonial assemblies and the rise of the representative and then more recently a book on the rite of instruction which is something that was important in the 18th and 19th century and has been forgotten since, but which is still embedded in a number of state constitutions and operated to a greater degree in the 19th century than political scientists and
historians have sort of given credit so. That’s what I’ve done in the past and now I’m working on historical analysis of ballot measures on state legislatures.

TS: Let’s go into some of this history because I find it really fascinating. I think sometimes legislatures we have over 1500 new legislatures after this election. Not uncommon turnover especially following a redistricting cycle and they walk in the door, and they don’t really appreciate that this is an institution that has a history.

PS: It is interesting. Legislators probably don’t fully appreciate that they are part of this continuing institution. That there were lots of decisions made in the past that gave them the institution in place today and the fact that they will make decisions while they are in the legislature that will have implications for people that follow them. So, there are lots of continuities and occasionally innovations and significant changes. But I think if you picked up some of the legislators from the 18th century and plopped them down in contemporary American legislatures that they probably would be able to operate a lot better than people might expect.

(TM): 06:18

TS: Why is that? What’s the commonality they would find familiar? The clothing, the technology has all changed, but what’s the common thread?

PS: You know the rules the basic behavioral rules governing how you comport yourself in the legislature have long histories. Can go back and look at the even the rules in the 1600’s which were relatively few in number, but they would be familiar in terms of how you behaved that you address the speaker. In most cases, you had to take your hat off. You know you don’t carry weapons onto the floor. You know a lot of those things were in place. And then even during the colonial area you started getting more complexity with rules that could be used to cut off the dates to invoke a formal cloture. How many readings those had to have has a long history. A lot of there is fairly constant over time. It gets tinkered with a little bit to try to make things more efficient. But for the most part even though we have these very elaborate rules now, they’ve just been sort of created over time. You can think of them as sort of geological strata that slowly builds up over time and you can find the early roots of these rules going back into the 18th and even the 17th century.

TS: What about other features like committee systems or leadership or anything else that you know is really has those deep, deep ties to the historic nature of legislatures?

PS: Yeah. We had committees, standing committees in colonial assemblies in Virginia in the 1600s. You’d find ad hoc committees even the very first day of the very first Virginia somewhere in 1619. But they had standing committees within a few decades. Not every colonial assembly did, but many of the others did. Pennsylvania had a very elaborate system. South Carolina used them as well. They became important. Bills got referred to them. They were gatekeepers in the same way that they became in modern legislatures. They even were allowed to hold hearings outside the institution and to gather information and collect papers. So, you know, all of that
would be familiar. But it’s important to point out state legislatures actually had committee
systems before congress did. Congress sort of lagged behind the states on that and in fact many
of the developments in congress as it was created under the constitution were actually built on
the original 13 state legislatures to a far greater degree than most people realize.

TS: I mean that’s another thing that is very clear in you revolution of American legislatures book is
that the U.S. Congress was really the child of the state assemblies.

PS: It was. And this is runs sort of counter to the way most historians have viewed it and most of the
historians would say James Madison and George Mason were skeptical of state legislatures,
which they were, and therefore didn’t look to them as models when they sort of developed the
U.S. Congress that we know. But in fact, they did. They were not the only formal state legislators
serving in the constitution of convention. And so, the entire sort of basic structure of the U.S.
Congress was modeled on the existing state legislatures. Almost all of them are bicameral and
the U.S. Congress is bicameral. They’ve used the most common names for the two chambers.
They allow the lower chamber to begin with revenue bills and that was based on the state
legislatures that they took the veto power basically word for word from Massachusetts. When
you look at leadership, we had speakers of the colonial assemblies. We had speakers in the
original state legislatures. You get a speaker in the U.S. House of Representatives and so there
are far more continuities than discontinuities when you look at how that congress was originally
created. And even when you look at the rules in the first U.S. House, you can see where they
were taken from the rules being used in a number of the states at that time.

TS: Man, I’m just geeking out on this stuff. Pev I really do love it. Of course, I’m a big fan and
champion of legislatures so no one should be surprised by that. Are there eras do you think of
you know we chunk legislative evolution into distinct eras. What I am going to get to is, like OK,
where does that get us today.

PS: Yeah, it’s an interesting question and something I’ve been playing around with and in just the
last couple of years. Certainly, when we talk about the sort of national period from
independence on, you have this founding period which you get the original 13 state legislatures.
They were most of just continuities with their colonial predecessors with some innovations
layered on. And you bring in the U.S. Congress as that’s part of that. And you can sort of see that
era really extending up until about just about 1860. You get new states brought in. The new
states are to model themselves on the existing state legislatures at that point. And then
following the Civil War and its aftermath, you get a change in American society. You get
urbanization. You get economic development, the telegraphs, the railroad. Everything is
dramatically different than the last part of the 19th century. And you see that in state
legislatures, they change. They get more elaborate rules. They add on lots and lots of
committees even more committees than most state legislatures have today. They are instituting
annual salaries rather than just per diems. People start serving for longer than they had before.

And then you get into the 20th century which is sort of the professionalizing period. I had used to
think that it would be sort of instituted with just around the California Assembly in the 1960’s. It
actually proceeds that. You can find a pressure on state legislatures to a horrific degree at the beginning of the 20th century. They had to change to respond to that. Really from the 1980’s on we got into this post professionalizing period where you have some legislatures that continue to sort of advance in terms of salaries. Others that don’t and so there is a gap between a lot of state legislatures in congress in terms of resources available to them now. In a way when tried to close in ’60s and ’70s and they haven’t really made much difference so in recent decades. And so, we may be on the cusp now of a series of new changes because again so much has been put down onto the states in terms of decision making. That state legislatures are again having to respond and then the question becomes whether they will be given the resources they need to make the decisions that are asked of them or if they will have to struggle on that score.

(TM): 13:32

TS: You know I was sort of under the impression there was this period of sort of corporate dominance in legislatures you know that industrial you know whether it was the timber industry in one part of the world and the mining industry in a different set of states that was sort of the early part of the 20th century. And then you get the redistricting opinions which sort of some of the U.S. Supreme Court mandating one person one vote Baker v. Carr and Reynolds v. Sims so those decisions came out in the early ’60s and then that is kind of the marking point. I mean is that still accurate? And then you get this burst of modernization new constitutions in like the 70’s and like you say pay staff resources go from next to nothing to very substantial in many states. How does that? Kind of fill in the gaps and let me know if that’s a fair description of the 20th and the 21st centuries of legislature?

PS: It works in part. There are a few things that probably there were more pressures early on in the 20th century coming out of the 19th century when a lot of state legislatures were thought to be highly corrupt and under the thumb of particular industries or corporations depending on the state so. You know Anaconda in Montana and Southern Pacific in California. The oil interest in Pennsylvania. That’s an important sort of development that people were unhappy with the status of their state legislatures with the capacity of their state legislatures even by the beginning of the 20th century. And it took legislatures some time to respond to that. But you begin to see really around the 1940s more states moving to annual sessions from biannual sessions. That picks up in the 1960s. You begin to see some increases in salaries. Some increase in staffing. All of that gets accelerated in the 1960s with the professionalization movement. Just out of California and the idea was to give legislatures more time and more resources and better prepared legislators to meet the demands that were being made of them and that was a significant development and in terms of meaning themselves from reliance on corporations the idea if you had your own staff, you had institutional staff, committee staff, personal staff you had the information that you needed to make decisions without having to rely on the executive branch or interest groups to provide you that information. And so, you get lots of wonderful comments from legislators in the 1970s saying you know for the first time you know my staff tells me something different, so I don’t have to simply take the word of the governor’s person or lobbyists on a particular piece of legislation.
TS: That seems to beg the question are we in the new era? Are we still just somewhere along that continuum and maybe it just really has plateaued. I mean NCSL tracks the size of legislative staff. We actually just completed our census of legislative staff. We do it roughly every four or five years. And it’s at 30,000. It’s just held roughly and it’s across all 50 states. It sounds like a big number, but you know when you break it down it’s been very stable at 25,000. It gets a little complicated because we break it up by full time year-round professional staff versus the session only staff. So, I’m just thinking staff resources is one element of that. Physical resources. Capital space is another element to that. And these are things that have been very you know not changing in certainly recent years. Term limits comes along in the 90’s. Maybe that marks a change, but where are we today?

(TM): 17:24

PS: Well, you know the change really happened right around 1980 and it’s the same time that Ronald Reagan gets swept into the White House. And it wasn’t Reagan who made the change, but sort of the motivation for electing smaller government was sort of the big idea there so. We have seen a plateau across the 50 states since the 1980’s. Staff is probably the clearest example of that although you can I look at salaries that have been lagging in lots of state legislatures going back into for decades, 2 decades, 3 decades all the way back to 1889 for New Hampshire. You know they just haven’t kept salaries up with the inflation. We are at a period where we have seen particularly at the most advanced legislatures in terms of staff resources they’ve leveled off or even declined a little bit in California and New York. You’ve seen a little bit of growth at the bottom end which is probably good because those are the legislators who have the fewest resources available to them and so more resources will help them. But the concern you might have is of course where you don’t have your independent staff resources. You rely on external sources of information and those external sources of information will always have their own agendas that they want to push which may or may not be the same set of priorities that the lawmakers themselves might have. So, it’s a concern that we have leveled off for such a long period of time. It also comes as you know we noted that more is being asked of them. Lots of decisions are being made at the state level. Lots of very complicated policies that have to be worked out. And so, sort of the lack of information is one of the things that can cause problems for the legislature in terms of just making policy mistakes or not being able to make policies as quickly or as correctly as they might like.

TS: My favorite example of that is some of the digital asset stuff cryptocurrency. Very complex issue. Still evolving to figure out like you know should states accept cryptocurrency for tax payments and for other kinds of payments to the state and it put me in the mind of those Virginians you were talking about earlier who often were legislators. You know Jefferson, Madison, Monroe, and Washington and even Daniel Boone was in the Virginia legislature.

PS: I think legislatures today are being asked to answer a lot of very difficult questions. And you know cryptocurrency is one thing and the Internet privacy bills are you know. How do you deal with social media and just sort of the routine questions today. Education today continues to be difficult. Tax systems is always difficult. So, you know we can’t say that legislators in the past
had it easier. They actually had tough things they had to decide and limited time and information. And today though we are just being swamped more and more and in fact because of the difficulties that congress has had in making decisions, lots of decisions have been left to the legislatures to fill in some of those gaps where congress can’t seem to come up with policies. So, there are lot of demand on legislatures today and you know government is complex. The legislative process itself is complex. So, for new members who are just coming into the institution, it’s pretty daunting. They have to learn a lot about policies and lots of policies. And they have to understand the sort of distinct complexity of parliamentary procedures as well as how do you operate in an institution where you alone don’t get to make decisions, but you have to try to persuade some number and again figuring out what that number is isn’t always easy of your colleagues to agree with you. So, it takes a lot of time and skill and effort to succeed in a legislature. From outside the legislature sometimes, that’s not always appreciated.

TS: That reminds me of this something I witnessed one time I was doing a menses of consulting thing in an African legislature in this case and there was a recession. Much like the recessions you would have here where there were interest groups, and all of the members were mingling, and I was sort of standing on a balcony and I looked down and of course they were speaking in this case Arabic. And they were wearing sort of the garb of the nations. Looked very unfamiliar and sounded very unfamiliar. By the same token, seemed extremely familiar. I was looking at this scene thinking like this is exactly like every reception that I’ve seen at every state capital I’ve been in before. And I was thinking about Jefferson Long and he was a short-term legislator and I like to bring him up. And Madison and these folks because that part hasn’t changed right. This persuasion with that fuel inside of it has that evolved a whole lot you think.

PS: Not a lot, no. They still have to grapple with the same basic questions about what they think their responsibility is in the job. Do they simply do whatever they think their constituents want them to do or do they bring in their own expertise and their own sense of right and wrong and go from that. And you can find you know that was always sort of attributed to Burke and the English Parliament but actually you can find the exact quandary in the diaries of colonial assembly members in places like Virginia. So, you know every legislator has to decide exactly what’s the basis of his or her decision making going to be. And then they also have to learn that it’s not just their own view, but a complex world of lots of other colleagues and parties and constituents and interests that all sort of play to them and so you are constantly juggling things. And it’s a demanding job. Again, I from outside the institution, I think most people don’t appreciate the difficulty of having to make some of these decisions sometimes. You know the media will report on sort of the superficial aspects of the legislative process and always I mean this is one of the things you can find over time – always complaining that nothing gets done early in the session and everything is left until the end. You know that’s universal. That has been constant over time. It’s not a new thing and it’s because it’s hard to reach decisions particularly on complicated and controversial issues. So, you put them off till the end because there are lots of things that have to fall in place before you can arrive at a consensus on these things. So, the legislative process is pretty constant across the legislatures and over time the rhythm of it is pretty much the same. New legislators coming in or people just moving into leadership need to sort of reflect on what were the lessons that they learned or what were relayed to them by their
senior colleagues when the first arrived. Ah because there is lots of valuable information contained in those experiences.

(TM): 24:51

TS: The first thing they would notice of course would be the tremendous diversity difference between actually colonial legislatures, legislatures of the 19th century and even the 20th century were very non-diverse. You know there were almost all white males who had kind of the same beard and the same scowl in a way. I think of those old class photos you see in the capitals in the Midwest. They had the same suit on. And, of course, now they would come, and they would see you know women now at 32% in all legislatures to about anywhere close to proportionate and in the number of people of color increasing. But the reason I put that on the table is that this whole notion of listening to other viewpoints, that diversity of viewpoints is now heavily informed by a much more representative body of people than certainly any point in history.

PS: Yeah no. We do have greater diversity on almost every dimension you can think of in the current legislatures and the new ones coming in. Ahm and that diversity is important not simply because of you know a notion of diversity is good, but the fact is legislatures run on information. You get information from a wider range of people when you have a more diverse legislative membership. And so those people will bring in different sets of experiences. Different viewpoints on how things can get solved and what’s a problem, what’s not a problem. And that information is valuable to anybody who is trying to make decisions because none of us has you know the complete right answer on any policy. And so, I think again one of the lessons we’ve learned in recent American history is the media will focus on the high conflict measures, but there are a lot of things that get through legislatures that are done on a more bipartisan basis. More profile issues sometimes important ones. Sometimes less important. But where you do find common ground in places that you might not expect it and so. Here in Missouri where it’s you know overwhelmingly republicans in both chambers, they still managed to move some criminal justice measures through in the last session working with republicans and democrats. It didn’t get a lot of attention, but it was a real success. That was the product and part of people coming from very different backgrounds and very different sets of experiences. Actually, sitting down occasionally and talking with one another and figuring out where they might actually be able to meet. And that’s the genius of the legislative process on the occasions when it works.

TS: We sort of have done some research around how many bills pass and final passage with a bipartisan vote which is just one vote from the other party, and we are pegging it somewhere around 85% which is much higher than most people would assume who are on the outside of the process. They are only looking at Washington. Let me ask you this. What do you think of the big challenges that stresses on the institution right now. Where does it need to go?

PS: Its’ an interesting question because we are obviously in a period of great stress in American politics and you know we toss around the word polarization, but it’s real. There are vast gaps between many republicans and democrats and many legislatures and legislatures that are overwhelmingly dominated by one party and usually with the so-called tri factor with the
government so that they are in a position to really push policies in a way that congress certainly
isn’t capable of doing it. And my big concern probably is where you have vast majorities that
they may rush to make decisions without sort of laying the proper legislative process and
following it. Not doing enough work to really develop those ideas so that their goals are actually
attained rather than just making political statements. Actually, making successful policies is
much more difficult. And I think probably you’ve heard me say this before but I for me the
critical thing that has to happen in American legislatures is that you have to allow the minority
party to have some voice. Obviously, the majority will almost always be able to work its will, but
you lose valuable information when you don’t allow the minority to at least express their
interests or offer their information. And it also stifles politics in a way that is probably
unhealthy, so you know we complain a lot about how congress works, but if you look at the House of
Representatives treats its minority party members, it’s generally much more charitable to them
than many state legislative chambers are to their minority parties. And it goes back to this
notion that just to take it all the way back to 1619 again they didn’t originally talk about folks.
They talked about voice. And so, you were given your voice to express your preferences. And so,
I think legislative bodies that try to limit the voice of all of its members particularly those in the
minority party probably are doing a disservice to themselves and even the majority is probably
hampered because it doesn’t get all the information it has or needs. It doesn’t have all the
legitimacy that it might need in making decisions.

TS: That’s a really receptive thing to say and I would agree with you completely. I spent a lot of time
with legislative leaders, and you know without saying who is good and who is bad, I’ve always
had this sense that the best ones are the ones who kind of understood this principle that you
can let the minority have its say. Talk on the floor. Be respectful. You take the vote you know
you outvote them at the end of the day, but there is this reason for doing that. You’ve kind of
used a different one which is to have that expression in. It may not necessarily change the vote
that moment, but it might change some votes at another point on a different bill. It just is a
matter of civility and respect.

(TM): 31:04

PS: You run that risk. You know legislatures are fragile institutions. One of the things that we
probably need to a greater degree than we’ve had over the last decade or two is some sense of
institutional loyalty and some appreciation for doing what you need to do. Make sure the
institution works and continues to work in the future. So, adherence to the rules. You adopt the
rules at the beginning of the session. Try to stick to them. When you start changing rules to
produce the outcome that you want that leaves a bad taste in everybody’s mouth and makes
them more suspicious of the motivations of legislators. And again, the majority in almost every
institution is probably going to be able to do what it wants most of the time. And on those
occasions where it can’t do what it wants, they make need to reflect on the fact that maybe
they are being prevented from doing something they probably shouldn’t do.

TS: Legislatures are fragile institutions. We often like to say they are strong institutions right and
actually this is one of these paradoxes that they both of these can exist, I think. Because I take
your meaning with that, and we better not take them for granted. I think the Icelandic people are you familiar with this claim to have the first legislature the hills of Iceland and Thingvellir like 970 or 871. I don’t know if that is entirely accurate or not, but they claim it and so we’ve joked before that these are 9th century institutions racing into the 10th century because they. But they have been around a long time, and they do change very slowly.

PS: Legislatures are composed of people who are ambitious and have agendas. Can be very forceful people. They bring great passion to their policy preferences and those passions can boil over. We have experiences in American history. Not just the fist of cuffs on the floor but even a pistol being brought out and somebody shot and killed. The notion of civility is really quite important, and you want to be able to maintain a decorum so that everybody feels like they are free to participate and free to express their preferences and a constituent’s preferences and to raise the points they want to make and that has to be done in such a way that everybody can be comfortable with it and that’s not always an easy thing to do. But that’s all on leadership to make sure that the rules that are undoubtedly in place in each of the legislatures are in fact followed on. And there are reasons why you have those rules because if you don’t have them, you can have some very unfortunate outcomes.

TS: We are sitting here as legislators are about to go into legislative sessions following the mid-term elections. We are talking about some of the major issues that they are going to be dealing with. Workforce issues is underlies everything. It’s a budget issue. It’s an education issue. It’s a public safety issue. And you know the American economy is in a truly unprecedented place. We are incredibly low on employment. Inflation and money supply. All of this. And then you’ve got affordable housing issues. A behavioral health crisis that seems to be somewhat unprecedented. So, my question is are legislators up to the tasks when they convene in January of dealing and bringing about good policies? Do they have the mechanisms, the systems, the institutional norms to solve some of these vexing problems?

PS: It will be difficult. It will be a challenge for even the best endowed legislatures to be able to do these things. These are complex issues. They have lots of dimensions to them. There are no simple or easy answers out there and it will take a lot of work on the part of committees and each of these chambers to try to develop ideas. There may be some innovative ideas that emerge from different places across the country. And of course, the value of something like NCSL where you can sort of gain access to some ideas that are being generated elsewhere. You know some keep tabs of the kinds of bills being introduced on some of these complex pieces of legislation. It’s tough to do. They probably need more support from my perspective. I’m a big proponent of legislative staff resources at the institutional level, committee level. I think personal staff is important as well. And they may find in some cases that they probably need more time to work through these things. Some legislatures operate under very restrictive calendars. Again, those are things that have changed in the past and those are the kinds of things that may need to change again in the future.

TS: I really genuinely, authentically, sincerely loved this conversation. I’m so grateful for your time and we are absolutely going to do a second part of this because like I said, I’ve got a whole
bundle of other questions about the size of legislative districts and the days spent in session so. Thank you so much for being on “The Inside Storey of Legislatures.”

PS: Well, I look forward to the second part.

TS: I’ve been talking with Pev Squire, professor at the Truman School of Government at the University of Missouri and distinguished for his research into the workings of state legislatures throughout American history.

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(TM): 36:56 music