BICAMERALISM OR UNICAMERALISM?

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How should one structure a state legislature? Nebraskans aside, most of us have
grown up with a bicameral legislature, we see it at the national level as well, and so we
tend to assume that this is the best system. However, if one looks more closely into
American history, as well as into the practice of other federal systems, one finds that this
assumption is not universally shared. In my remarks today, I will sketch the experience
with unicameralism within the United States and in other federal systems, then briefly
survey the arguments for and against a bicameral legislature as they have developed and
shifted over time, and finally consider what conclusions can be drawn from this historical
and comparative experience.

Let’s start with the United States. During the colonial period, all the American
colonies except Pennsylvania and Delaware had bicameral legislatures, with an upper
house that typically was appointed rather than elected and represented elite elements of
colonial society. This arrangement to a considerable extent coincided with the system in
England, where the House of Commons represented the populace and the House of Lords
the aristocracy. Thus the initial justification for bicameralism in England and in the
British colonies was tied to the representation of distinct social classes rather than to the
representation of territorial constituencies.

Most states continued the bicameral model in their initial constitutions, although
they prescribed that the upper house be popularly elected. In some states the social-class
distinction between the two legislative houses remained in an attenuated fashion, with
more restrictive property qualifications for serving in the upper house or for voting for its
members. Massachusetts, for example, had different voting qualifications for electing the
Senate than for electing the Assembly, and different property qualifications for serving in
the two chambers. Pennsylvanian Benjamin Rush explained the rationale behind such
arrangements: the legislature should reflect the “natural distinctions of rank,” with one
chamber based on “superior degrees of industry and capacity” and the other to represent
“the men of middling fortunes.”

However, three states—Pennsylvania, Georgia, and Vermont—established
unicameral legislatures in their initial constitutions. These states favored a simpler form
of government in which there were fewer impediments to the enactment of the popular
will. Benjamin Franklin, who favored a unicameral legislature, likened a bicameral
legislature to “putting one horse before a cart and another behind it, both pulling in
opposite directions.” These unicameral states also were concerned about removing
barriers to good legislation. To quote Franklin again: “If one part of the legislature may

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control the operations of the other, may not the impulses of passion, the combinations of interest, the intrigues of faction, the haste of folly, or the spirit of encroachment in one of those bodies obstruct the good proposed by the other, and frustrate its advantages to the public?” Finally, the unicameral states rejected institutionalizing the divisions in society in separate chambers of the legislature—the legislature should represent the people, not social classes.

Whatever the merits of these views, the early unicameral legislatures did not long survive. Georgia abandoned unicameralism in 1789, Pennsylvania did so when it adopted a new constitution in 1790, and Vermont did so in 1836. No other state adopted a unicameral legislature until Nebraska did so in 1937, and no state has since followed Nebraska’s lead.

If bicameral legislatures are the norm in the United States, the same is not true beyond its borders. U.S. territories, such as the Virgin Islands, operate with unicameral legislatures. Almost all other federal systems do have bicameral federal legislatures, and even the European Union divides legislative authority between a European Parliament, representing citizens, and a Council of Ministers, representing the constituent governments of the EU. But the constituent units of other federations—whether they be called states or provinces or cantons or länder—seldom have bicameral legislatures. Thus, the provincial legislatures in Canada and South Africa are all unicameral; so too are legislatures in the cantons of Switzerland, in the states of Brazil, Mexico, and Nigeria, and in the länder of Austria and Germany. Australia is the only federal system that has followed the American model of bicameral state legislatures.

Why have these other federal systems not instituted bicameral legislatures in their states and provinces? Largely because they viewed bicameralism as unnecessary for effective representation. There is no need to represent cities or other jurisdictions—states, provinces, and länder are not miniature federal systems, so these units do not need representation. Nor is it necessary or desirable to represent social classes. If the people are adequately represented in a single-housed state legislature, then representation in a second house, chosen by the same voters, is duplicative and unnecessary.

Obviously, those arguments have not prevailed in the United States. What is interesting, however, is that the arguments in favor of bicameralism in the states have changed over time, reflecting shifts in circumstance and in political perspectives.

Initially, those who favored bicameralism insisted that it would improve deliberation and thus contribute to better legislation. Thus John Adams explained that a single legislative body would be “subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice—and consequently productive of hasty results and absurd judgments.” For thoughtful deliberation to occur, not only would there have to be two houses but the character of those houses would have to be different. As Thomas Jefferson wrote, “The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles.” This might be accomplished by differentiating the two houses in terms of size, in terms of length of tenure, in terms of qualifications for office (e.g., requiring senators to meet more stringent property and age requirements), and in terms of mode of apportionment. For example, Massachusetts and New Hampshire apportioned their assembly seats based on population but their senate seats based on the proportion of taxes paid by the residents of each district.
Throughout American history, states have been quite willing to revise or amend their constitutions, and this has provided them an opportunity to reconsider whether they should retain their upper houses and, if so, why. Some delegates to nineteenth-century constitutional conventions repeated the eighteenth-century justifications for bicameralism, particularly the idea that the upper house should protect property interests and reflect aristocratic virtues. But in the wake of the Jacksonian movement in the 1830s and thereafter, these arguments attracted little support: most delegates no longer equated the accumulation of property with wisdom and prudence. They therefore eliminated differential requirements for voting for or serving in the two houses of state legislatures. Some delegates also sought to reduce other distinctions between the two bodies—for example, in the Pennsylvania Convention of 1837-38, delegate John Dickey proposed eliminating higher age qualifications and longer terms of office for the senate as a means of breaking down what he called “the aristocracy of the Senate.” After all, he concluded, “here we are now all democratic.”

Yet if there was no need to give special protection for property and if former distinctions between the two houses were reduced, was there really any need for a second chamber? A few delegates concluded that there was not and proposed that their states establish a unicameral legislature, but they remained a small minority. The majority of delegates found a new rationale for bicameralism in its contribution to a system of checks and balances. As a delegate to the Ohio Convention of 1873 argued, “we have maintained the double-chamber system because we have found it secures us, to some extent, against the mischief of hasty legislation, over-legislation, or too much legislation.” Even if the two houses did not represent different interests in society, they could be given different perspectives by varying their size and giving members terms of different length, as well as by providing for greater continuity in the upper chamber by stipulating that only a portion of senators would stand for reelection every two years. The two chambers might also be given somewhat different powers—for example, the lower house might have exclusive power to originate revenue bills, whereas the upper house might confirm gubernatorial nominees—and this too could lead to different perspectives. The president of the Kansas convention of 1859 summarized this viewpoint, suggesting that the House would play the main role in originating legislation, while the Senate “would act as a board of censors, criticizing and amending the acts of the lower House.”

During the twentieth century, the debate about whether to have a second chamber shifted once again. Whereas delegates during the nineteenth century emphasized the need to promote deliberation and block ill-considered legislation, many convention delegates during the twentieth century were more concerned about a second chamber being used by special interests to prevent the passage of popular statutes. As a delegate to the Ohio Convention of 1912 observed: “If the two bodies agree, one is sufficient, and if they disagree, then both might as well be abolished. They tell us that one serves as a check on the other; but oftener than otherwise, the check is placed just where the people do not want it and where they would not have it if they had a single legislature.” In particular, critics focused on problems with the state senate, which they accused of being “the graveyard of popular legislation.” What had been seen as advantages were now described as disadvantages. The small size of the Senate made it more susceptible to corruption than deliberation, and the large size of Senate districts impeded oversight by
constituents. Further, long senatorial terms made it difficult to punish senators who failed to represent their constituents’ wishes.

These arguments had some effect—a constitutional convention in Arkansas in 1918 initially decided to eliminate one house but later backtracked, and unicameralism failed in convention in Nebraska in 1919 by a single vote. However, to some extent those who felt that state legislatures were not sufficiently responsive chose a different tack. Between 1898 and 1918, twenty-two states adopted some version of the initiative. If the state legislature was insufficiently responsive to popular demands, it was felt, the solution was not to reform the legislature but to bypass it, by enabling the populace to enact law directly.

Intrastate population shifts also contributed to a rethinking of bicameralism. During the nineteenth century, many states took account of counties or towns in drawing legislative districts, particularly for the state senate. Given the predominantly rural, dispersed population, this system of apportionment did not diverge dramatically from apportionment based on population and thus did not excessively differentiate the composition of the two houses. However, in the twentieth century, with increased urbanization, the differences in apportionment schemes between the two houses worked to the detriment of urban and suburban voters. Those who favored bicameralism responded that the differences in apportionment between the two bodies contributed to the checks and balances essential to republican government. They also justified representing political subdivisions by analogizing the state legislature to the Congress. As a delegate to the New Hampshire convention of 1902 suggested, “the principles of representation should be applied to the towns of this state as are applied by the government of the United States in dealing with the various states.” Finally, those who favored apportioning only one house on the basis of population emphasized that basing both houses on population might lead to domination of state politics by a single part of the state or by a single interest. As a delegate to the Montana convention of 1889 noted, if you “place the entire matter of both houses of this legislature upon a basis of popular representation, the mining interests and the mining localities and sections of this state will forever dictate to the rest of the state.”

These arguments were strongly disputed. Proponents of representation according to population in both houses noted that “we have heard of state sovereignty, but I never heard of county sovereignty.” Giving equal representation to political subdivisions, while perhaps protecting less populous areas, did so only by disregarding the interests of urbanites and suburbanites. Moreover, it denied political equality to all persons within the state. The U.S. Supreme Court agreed. In *Baker v. Carr* (1962), it held that legislative apportionment was a justiciable, rather than a political, question. And in *Reynolds v. Sims* (1964), it held that states were required to “make an honest and good faith effort to construct districts, in both houses of the legislature, as nearly of equal population as possible.”

The Court’s “one person, one vote” rulings raised anew whether bicameralism served any purpose. During the late 1960s and early 1970s, the issue was the subject of lengthy debates in conventions in Michigan, Rhode Island, Connecticut, Tennessee, Hawaii, Maryland, and Illinois. As a delegate to the 1970 Illinois constitutional convention argued, “it used to be that there was a reason for two houses. One represented geography, the other population. But under the concept of one person, one vote, the
reason now is to represent one man, and he doesn’t need to be represented in two
different houses.” Critics of bicameralism further contended that bicameralism interfered
with transparency and accountability in the legislative process. In particular, they noted
that it enhanced the power of secretive and undemocratic conference committees, which
were often called upon to settle disputes between the two houses. A Hawaii delegate
termed such committees “the villain of bicameralism,” while a Montana delegate argued
that “under no circumstances in government is so much power invested in so few
individuals as in the notorious conference committee.” Critics of bicameralism also noted
a two-chamber legislature was more expensive. Finally, proponents of unicameralism
pointed to the successful experience of Nebraska with a unicameral legislature as proof
positive of the advantages of eliminating bicameralism.

The contemporary case for bicameralism, in the wake of *Reynolds v. Sims*, is
weaker than it has been in the past. Defenders of bicameralism can claim that the benefits
of a deliberative check, a sober second thought, are timeless. They can also argue that
state senators and state representatives continue to differ in their terms of office and in
the size of the constituencies they serve, and that this promotes a valuable difference in
perspective.

Whatever the arguments—and it is striking how the arguments for bicameralism
have changed over time—no state has followed Nebraska’s example. When given the
option in Montana and North Dakota, where convention delegates submitted the question
to a popular vote, unicameralism was defeated. Nevertheless, a serious question remains:
are there any good reasons, other than tradition and familiarity for bicameralism in the
American states?