

THE
OXFORD
HANDBOOKS
OF
POLITICAL
SCIENCE

EDITED BY

R. A. W.
RHODES

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BINDER

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ROCKMAN

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POLITICAL
INSTITUTIONS

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CHAPTER 24

BICAMERALISM

JOHN UHR

The term “bicameralism” refers to legislative institutions with two chambers sharing legislative powers. In bicameral assemblies, both first and second (or lower and upper) chambers play a role in consenting to proposed laws, although not necessarily equally. First chambers in parliamentary systems tend to have primary legislative responsibility, particularly for taxation and government budgeting, but also in relation to votes of confidence in the political executive (Diermeier and Feddersen 1998). Of course, there are interesting exceptions; for every rule of bicameral relationships, there are important qualifications, and plenty of debates over the qualities of bicameral institutions. Bicameralism has a very long history, leading many commentators to treat it not simply as predemocratic but as anti-democratic—on the evidence that upper houses have traditionally represented “upper classes” of privileged minority interests. Interestingly, many modern upper houses have taken their name from the anti-democratic Roman Senate (Patterson and Mughan 1999). Yet many political institutions with origins in the distant past can be adapted to take on new tasks. Bicameralism provides interesting examples of such institutional makeovers.

There is no one model of bicameralism in political practice and so there is unlikely to be one political theory of bicameralism. As a topic in contemporary political science, bicameralism is surprisingly under-researched and is quite under-theorized. Bicameralism has rightly been called “a concept in search of a

* My thanks to the editors for helpful criticism of earlier drafts and also to Stanley Bach, Mike Pepperday, Kevin Tuffin, and John Wanna.

theory" (Smith 2003, 3). A useful preliminary step is to recognize the two families of bicameralism exemplified in the existing literature by the contrasting models of the British Westminster system and the US congressional system (Lijphart 1999, 200–15). Bicameralism is about more than the presence or absence of upper houses. Bicameralism is about power-sharing relationships within political assemblies and the various balances of political representation in parliamentary and presidential regimes.

In this chapter, I review current research on bicameralism, arguing that there is no one model of bicameralism and no one explanatory theory. Instead, contemporary bicameral systems blend "inheritance" and "innovation" to form distinctive legislative arrangements of political representation. Inheritance here refers to the continuity of past institutional arrangements, such as the traditional representation of hereditary peers in the British House of Lords. Innovation here refers to the design of new institutional arrangements, such as the 1999 reforms under the Blair government drastically to reduce the representation of hereditary peers by allowing peers themselves to elect ninety-two of their own representatives to be retained in the House of Lords. As this example suggests, the nature of upper house representation in a bicameral system can change in quite fundamental ways, preserving elements of inherited practices blended in with new elements that alter the overall mix with untested and in many cases unpredictable consequences. This example also suggests that even the most enduring of bicameral systems are subject to change, as for example the Belgian system in 1995 when moving towards federalism, just as new unicameral systems, such as Indonesia today, can begin transformation towards a bicameral system. Hence, one should be wary of sweeping generalizations about the current state of bicameralism given that the powers and practices of bicameral legislatures are often under review and renovation.

Although bicameralism is often overlooked in scholarly literature, it is of considerable policy importance with recent critics arguing that "bicameralism is an effective institution to strengthen liberal market forces" (Vatter 2005, 209; cf. Castles and Uhr 2005). My analysis begins with some defining issues, clarifying the two main types of bicameralism as they appear in parliamentary and presidential political systems. I then locate the common theoretical justification for both forms of bicameralism by reference to "redundancy theory." The bulk of the chapter then investigates the consequences for political systems of the presence of bicameralism, investigating three contrasting accounts of "balance" attributed to bicameralism. First, a brief mention of the historical account of "balance" derived from premodern theories of the mixed regime which capture some of the institutional dynamics of non-elective representation found in many older upper houses. Second, a review of liberal constitutional accounts of bicameralism illustrating two complementary tendencies or institutional norms. The first tendency has bicameralism play negative roles by restraining the vices of majoritarianism ("tyranny of the majority") and restraining political activists ("factions") threatening vulnerable

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interests. The second tendency has bicameralism promote more robust democratic public deliberation through political participation by interested groups in civil society. Most contemporary systems of bicameralism display both tendencies or norms, resulting in degrees of institutional uncertainty about the ongoing balance of negative and positive expectations. Third, examination of political science accounts of strong and weak bicameralism, using contemporary data to help identify the institutional characteristics of both of these ideal types of bicameralism. Once again, many contemporary systems of bicameralism exist comfortably within these notional extremes and are strong in some limited respects and weak in other limited respects. My aim is not to provide an organizational chart of contemporary bicameral assemblies but to help explain reasons for the remarkable diversity of achievements across the family of bicameral systems.

1 THE RISE AND FALL OF BICAMERALISM

As Philip Norton reports, there are more bicameral legislatures than we might believe (Norton 2004). Around a third of the world's legislatures are bicameral, and around two-thirds of the world's advanced democracies have bicameral legislatures. The larger the democratic state, the greater the chance of bicameralism; and the more federal the polity, the greater the likelihood of bicameralism. Eighteen of the world's twenty-two federal countries (all except the very smallest) have bicameral legislatures where the second house represents regions, provinces, or states, and the first house represents overall population. Non-federal or unitary countries are fairly evenly divided between bicameral and single chamber (or unicameral) legislatures (Lijphart 1999, 202–3). In addition to unicameral and bicameral legislatures, there are rare additional types with more than two chambers. Historically, three or four chambers are not unknown, each representing a distinct class or social "estate." There are also examples of parliaments, such as that of Norway, which are elected as one body (the Storting) but subsequently reconvene as two chambers (the smaller Lagting and the larger Odelsting) when conducting legislative business.

But bicameralism is far from universal. Whatever its theoretical virtues, many nations have turned their backs on it as a practical guide to everyday politics; and many policy analysts have argued that bicameralism is an obstacle to social democracy and "a significant brake on government intervention and on the expansion of the welfare state" (Vatter 2005, 209). Examples of nations which have rejected bicameral systems in favour of unicameral systems include: New Zealand in 1950, Denmark in 1953, Sweden in 1970, Iceland in 1991, Peru in

1993, and Scotland in 1999. Many of these are examples of "two into one" stories, where the discarded upper houses were typically less democratic than their lower houses: often with restricted franchises and narrower qualifications for membership, usually with considerable powers over legislation, and sometimes selected by appointment rather than election (Longley and Olson 1991). Much like the traditional House of Lords in the UK, many European upper houses survived, in J. S. Mill's words, simply to provide those with "conventional rank and individual riches" the opportunity to "overawe the democracy" arising below them (Mill 1984, 356). In the famous language of French revolutionary activist Abbe Sieyes, where upper houses agree they are superfluous and where they disagree they are mischievous—primarily because they paralyze the will of the people as represented in the more democratic lower house (quoted in Russell 2000, 79).

Also relevant is the slow but steady rejection of bicameralism at the sub-national level in such advanced liberal democracies as Canada, which saw its last provincial upper house abolished in 1968, and whose national senate is formally very powerful but of uncertain public legitimacy because members are appointed rather than elected (Marriott 1910, 131–52; Smith 2003, 3). Democratic constitutions, like the revised Belgium constitution of 1995, typically restrict the powers of upper houses over financial bills, and this widespread restriction reflects the primacy of lower houses as "the people's chamber" and the preferred site of government and home of the political executive (Wheare 1968, 140–1; Lijphart 1999, 205–6). There are very few examples over the last fifty years of nations with unicameral systems adopting bicameralism (Lijphart 1999, 201–3). Unicameralism deserves its own distinctive theory of the model legislature. Nebraska is the only US state to have rejected bicameralism and it did so because "experience has shown that the check exerted by a second chamber is often only nominal, seldom results in good, and is occasionally detrimental to the public welfare" (Johnson 1938, 93; cf. Binder 2003, 127).

Yet despite this history, bicameral legislatures remain a prominent feature of the international political scene. Although approximately one-third of the legislatures of the world are bicameral, around two-thirds of *democratic* national legislatures are bicameral. Federalism suggests one reason: the second chamber acting as a states house or representative of the regions. But even half of the *unitary* democratic states have bicameral legislatures, and further, many sub-national democratic legislatures are bicameral (Lijphart 1999, 201–3). Although it is notable that many small nations have unicameral legislatures, the adoption of bicameralism cannot be explained solely by reference to federalism: only around a third of bicameral assemblies are located in federal systems (Patterson and Mughan 1999, 10). No special representative function such as regional representation is necessarily required: instead, bicameralism "can be justified as a protection against electoral excesses," with the upper house serving a "protective role" much like "all genuine insurance facilities" (Brennan and Lomasky 1993, 214–15; Patterson and Mughan 1999, 3).

2 DEFINING ISSUES

Studies of bicameralism typically focus on the role of second or upper chambers and on institutional relationships between the two chambers. The convention in parliamentary studies is to regard the upper chamber as "secondary" compared to the first or lower chamber, on the basis that the first chamber is "lower" in the sense of closer to the people, with a scheme of representation credited with being more democratic because it reflects the population at large rather than geographical regions or social minorities. Within particular national settings, two houses might have similar legislative powers but, even in these rare situations of similar legal powers, the two houses will rarely have similar schemes of representation. Italy is one important exception, with both parliamentary houses arranged to represent similar interests and even sharing similar powers—this unusual duplication of interests and powers helps explain the comparative weakness of what on paper appears a very strong upper house (Lijphart 1999, 205–11; Russell 2000, 29, 50, 82). The practical power of an upper house depends less on the forms of legislative power available to it and more on the substance of public support for its role in the national legislative system, reflecting the wider political and public legitimacy attached to its distinctive scheme of representation. Even unelected or indirectly elected second chambers with limited legislative powers can exercise great policy power. This situation has been termed "Cicero's puzzle," referring to the power able to be deployed by upper houses in the face of constitutional pre-eminence of lower houses (Tsebelis and Money 1995, 126).

The convention about the "secondary-ness" of second houses does not hold for legislative studies across the board: many upper houses in non-parliamentary or presidential systems (e.g. the US Senate and upper houses in the US states) are rarely if ever regarded as secondary. This goes well beyond the sphere of US politics because the US provides "the model on which Latin American constitutions have been based" (Llanos and Nolte 2003, 55). Upper houses in presidential systems share many of the attributes of upper houses in parliamentary systems—typically smaller than lower houses (the House of Lords is a rare exception), with constitutional restrictions on powers over public finance, but with longer terms than lower house members, often arranged through a staggered election cycle. These differences in schemes of representation do not necessarily render non-parliamentary (or congressional) upper houses "secondary." Thus, not all forms of bicameralism are alike; indeed, not even all forms of parliamentary or congressional bicameralism are alike. Bicameralism is a term of convenience covering a great variety of types of legislatures comprising two chambers, with the powers of upper chambers and their relationships to lower chambers varying across and within parliamentary and presidential systems. Then there are the crossovers: the so-called "semi-presidential" systems (Lijphart 1999, 121–4).

French bicameralism, for example, combines elements of both parliamentary and presidential systems, with the upper house representing the regions and potentially a third force under circumstances of "cohabitation" when the presidency and the lower house are under opposing political parties—and very powerful when, for instance in the late 1970s, supporting president Giscard against mutual opponents in the lower house (Tsebelis and Money 1995, 124–5; Russell 2000, 87–9).

Most of the early political science studies of bicameralism focused solely on the formal constitutional role served by upper houses (e.g. Marriott 1910; Bryce 1921). The most important theme of this early wave of research is the recognition that the public value claimed for bicameralism derives from differences between the two houses' schemes of political representation. At the foundation of modern studies of bicameralism is the claim that bicameralism implies that the two legislative bodies embody *diversity* rather than *duplication* of political representation. Germany provides one example, with the lower house elected by the people and the upper house appointed by state governments (Konig 2001). An older example is the difference in rules over representation for members of the two houses of the US legislature. Federalism explains some of these differences in the architecture of representation (e.g. equality of state representation regardless of population size), but many other differences reflect a deeper commitment to structural diversity in the logics of representation embodied by each house: for example, the US Constitution provides that the Senate will be considerably smaller than the House of Representatives, stipulates a higher minimum age for senators (followed in different ways by Canada, India, Mexico, France, Italy, among others), grants senators longer terms (three times that of House members), and puts them on a staggered election cycle, with a third being elected each House election. Structural differences in representation between two houses are a common feature of the institutional logic of bicameralism (Russell 2000, 25–33).

By contrast, recent studies of bicameralism tend to take a different perspective, turning away from the public law dimension of constitutional norms to examine public decision-making dimensions of constitutional practice. Although this new perspective is not confined to rational choice analysis, many of the most influential contributions have used techniques of formal modeling drawn from game-theoretic analysis and mathematical models of politics (see generally Tsebelis 1995; Tsebelis and Money 1997; Diermeier and Feddersen 1998; Tsebelis 2002). Skimming over many subtle variations in emphasis in this new generation of bicameral studies, I want to note one important common element—which is the inclusion of the institutional interests of the political executive in the current analysis of bicameralism. Analysts of bicameralism frequently chart the many ways that bicameralism can affect the strategy of policy choice open to political executives. This is a fresh contribution to an old story about the institutional design of the separation of powers in modern representative government. Where

many traditional studies confined themselves to examinations of two institutions managing legislative power, contemporary studies of bicameralism reach out to include the institutional management of legislative-executive relationships. The turn to formal modeling in bicameral studies is not necessarily an alternative to more traditional public law approaches. But instead of sorting through the many variations in bicameralism in order to identify desirable constitutional norms of intercameral comity, a game-theoretic analysis subjects bicameralism to a considerably more demanding examination of institutional logic framing the political executive's political management of those wielding legislative power. Formal modeling brings the promise of greater political realism by dealing-in the single political actor with the greatest public power: the chief political executive (Bottom, Eavey, Miller, and Victor 2000; Ansolabehere, Snyder, and Ting 2003).

What does bicameralism begin to look like when the analysis turns from a preoccupation with constitutional norms to a focus on executive management of legislative power? To anticipate: bicameralism emerges as a cluster of veto points allowing political representatives to restructure the legislative process and to reframe the options open to political executives. This systematic analysis of executive-legislative relations can reveal many of the very practical consequences posed by bicameralism, including many unintended consequences (Binder 2003, 12-33). Formal modeling of bicameralism drew initially on case studies from presidential (or congressional) systems of government (see e.g. Hammond and Miller 1987; Miller, Hammond, and Kile 1996; but see also Tsebelis and Rasch 1995; Konig 2001). Although many presidential systems have bicameral legislatures, one promising way to explain bicameral relationships *within* the legislature is to begin with the fact that executive power is separated from the legislature. Executive power is held by a president supported by a public mandate independent of the legislature. By comparison, many parliamentary systems with bicameral legislatures place executive power in the hands of the leader of the political party or grouping able to command the political support and formal confidence of parliament—or at least of its lower house, given that the “first chamber is always the most important one” (Lijphart 1999, 201). The division of legislatures according to two broad types of political regime (parliamentary and presidential) means that bicameralism divides into two broad types, illustrating two different families of relationships between bicameral legislatures and political executives. Parliamentary systems display tugs of war between the chamber housing the political executive (the lower house) and the upper house. Presidential systems display a different set of institutional dynamics. There is still a struggle between the two legislative houses but it tends to deal more openly with disputes over the use and abuse of *legislative* powers—rather than disputes over the use and abuse of *executive* powers as displayed in parliamentary systems. Both systems display bicameral policy bickering, but in presidential systems the legislative bickering is over each chamber's policy priorities, whereas in parliamentary systems the legislative bickering is over each chamber's

view of the appropriateness of the policy priorities of the political executive, which initiates the vast bulk of parliamentary legislation (Diermeier and Feddersen 1998).

With some exceptions (e.g. Tsebelis and Rasch 1995; Tsebelis and Money 1995), studies of parliamentary bicameralism have been less forthright about the place of the political executive in defining the scope of bicameralism. This is not surprising given the prevailing if polite fiction that these political systems are examples of parliamentary rather than prime-ministerial government. Unlike presidential systems, parliamentary systems are traditionally ruled by a shared or collegial political executive under a system known as "cabinet government" (Lijphart 1999, 118). But in the wake of the steady rise of executive power concentrated in chief ministers, a debate has arisen about the "presidentialization" of the role of parliamentary heads of government. This debate is covered in Chapter 17 in this volume and its relevance here is limited to the changing terms in debates over parliamentary forms of bicameralism. Before the rise of debates over parliamentary presidencies, political debates over parliamentary bicameralism were about intercameral roles and responsibilities in sharing legislative power. But increasingly, with the growth of prime-ministerial control over executive powers, public debate over bicameralism has changed in important ways from one primarily about the roles of upper houses in managing *legislative* power to include debate about the role of upper houses in managing *executive* power. This change reflects increasing awareness of the political executive as the driving force in the parliamentary process. As chief political executives take greater control over the parliamentary process, public debates over the value of upper houses turn from traditional preoccupations about their legislative capacities to new preoccupations about their capacities to balance growing executive power with new forms of parliamentary and public accountability.

Finally, in this review of basic defining issues in the study of bicameralism, I note that concepts of *tricameralism* and even *multicameralism* have emerged as ways of explaining the influence of the political executive over legislatures (see, e.g., Levmore 1992; Tsebelis 2002, 141–5). An example of de facto tricameralism arises from the legislative power exercised by the US president authorized by the constitutional veto over bills passed by Congress: Legislation thus requires the consent of three potential "veto-players," if we include in this definition of tricameralism the House, the Senate, and the president. Analysts of tricameralism are advocates of realism: in the context of presidential studies, they are widening the focus to include all holders of legislative power, including presidents with constitutional power to veto legislation emerging from the institutional struggle between the two houses of the legislature. The realist call for a tricameral approach has also begun to arise in studies of parliamentary bicameralism, acknowledging the institutional struggle between those wielding executive and legislative power. But again we see interesting differences between parliamentary

and presidential studies. Analysts of presidential systems note the power of the executive to negate legislative outcomes, whereas analysts of parliamentary systems note the power of the executive to initiate and control parliamentary outcomes—and the power of upper houses to use their legislative power to try to negate or modify executive schemes. An example of the acknowledgment of tricameralism in a parliamentary context is Reid and Forrest's "trinitarian" framework (political executive, lower house, upper house) for investigating the institutional relationships embedded in the Australian constitutional setting (Reid and Forrest 1989). Reid's analysis makes good sense of Australia's famous 1975 constitutional crisis when the opposition-controlled Senate refused to pass the budget of the Whitlam Labor government, provoking the governor-general to dismiss the government (despite its majority in the lower house) and install the opposition as caretaker government, pending a general election for all members of both houses (a so-called "double dissolution" election), which the opposition comfortably won (Bach 2003, 83–119).

3 BICAMERALISM AS REDUNDANCY

Before we examine the consequences of bicameralism for democratic politics, we should pay some attention to the causes or drivers of bicameralism. The intellectual and institutional history of bicameralism has generated "one of the classic debates in the history of political theory" (Vatter 2005, 194; see also Shell 2001). My focus here is on the currents of political theory that have kept bicameralism alive, as a matter for constitutional reflection as well as a political institution, and not on the historical sources that brought it life in the first place. The favorite model for contemporary thinking about bicameralism is "redundancy theory" which helps identify the institutional design considerations appropriate to the various forms of bicameralism (Riker 1955; Landau 1969; Patterson and Mughan 1999). In theories of institutional design, as in many parts of engineering, redundancy is highly valued as a reinforcement mechanism, or safeguard, in the event that systems fail to operate as planned. For example, automobiles have front and rear brakes and hand as well as foot-operated brake levers. While not all are strictly necessary for ordinary motoring, the duplication and overlap can be positively beneficial when, as can happen, there is a system failure in one set of brakes or one set of brake operators.

The benefits of redundancy only come into play when the braking system is designed as two or more parallel subsystems, allowing the second or apparently

superfluous subsystem to perform independently of any malfunction in other subsystems. What might at first sight appear as over-engineering can then appear as a prudent design because of the security it provides against malfunction in one of two or more parallel systems. Federalism is a case in point where two or more levels of government either duplicate services or, more likely, duplicate demand for services and thereby strengthen the political accountability facing those responsible for providing public services. Of course, there are many limits to constructive redundancy. As federalism so often shows, accountability can go missing when each level of government blames the other for preventing successful delivery of public services. So too in bicameralism: the parties dominating each chamber can also play the blame game, trying to avoid public accountability for their decisions or even their non-decisions. Landau's challenge still stands: "the task remains to learn to distinguish between inefficient redundancies and those that are constructive and reinforcing" (Landau 1969, 356).

Over recent years, rational choice analysts have taken up the cause of bicameralism (see, e.g., Hammond and Miller 1987; Brennan and Hamlin 2000, 234-54). One valuable contribution that this school provides to redundancy theory is a richer explanation of how bicameral *diversity* of political representation differs from situations with *duplicated* representation. Bicameral diversity can overcome the policy instability associated with the cycling of alternative preferences often found in systems of majority rule, with no stable core of majority preferences. Bicameralism provides considerable evidence of the relevance of "the core" as "a basic concept in social science theory and cooperative game theory" (Tsebelis and Rasch 1995, 379). Thus, one of the primary consequences of bicameralism is said to be relatively greater stability in legislative decision-making, with final decisions hard to arrive at, but also very hard to overturn. The effects are held to be important to democratic government: In the language of Buchanan and Tulloch, bicameralism is an important "stopping mechanism" able to diminish "external costs" imposed by well-organized factions (Levmore 1992, 145-7). In this view, minorities are less capable of hijacking government decisions when governments are forced to muster majorities across two sites of legislative decision-making, provided that the two sites are differently constituted and that each site of law-making power can exercise a veto power over proposals initiated by those controlling the other house or the initiating government. By examining the nature of "the bargaining game" between two houses, analysts can reveal the public benefits of dispersed political power with, in effect, requirements for supramajority voting in order to mobilize political support across the two houses or sites.

The most detailed case studies of legislative redundancy tend to come from presidential rather than parliamentary systems, and they identify many of the ways that redundancy differs from duplication. Redundancy in political

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representation can involve two complementary systems of representation, with each legislative house drawing on a particular range of representative interests. "In general, the different chambers represent different 'principals' or 'legitimacies,' that is, different parts of the electorate or ways to represent the electorate" (Tsebelis 1995, 310). An example comes from Binder's study of "stalemate" in the US Congress, often wrongly attributed to episodes of "divided government"—referring to the division of policy priorities that occurs when the political executive is of one party and the legislature is dominated by another party (Binder 2003, 34–56). Institutional stalemate within Congress occurs even when the legislative and executive branches are in the hands of the same political party. The root cause is in the institutional design of the bicameral legislature as it has developed historically, revealing its potential for persistent discord arising from structural division in forms, even styles, of political representation between the House and the Senate. The public policy preferences of each house reflect or at least grow out of the differently-structured routines of representation, as exemplified by the House's short election cycle dominating the careers of all members in the one large chamber, and the Senate's longer and staggered election cycle reinforcing a less frenzied culture of electoral responsiveness in the smaller chamber.

The fundamental point arising from Binder's analysis of US "stalemate" is that the formal constitutional provisions for bicameralism have given rise to contrasting sets of rules of the game of institutional politics. Whatever the original intentions, the effect is that bicameralism has encouraged two sets of procedural rules promoting two contrasting types of legislative processes, resulting more often than not in deep-seated policy disagreements between the two houses. Even political executives with party majorities in both legislative houses have to reconcile themselves to this burden of bicameralism (Binder 2003, 97–105). We can see that one likely consequence of bicameralism is policy stability: Although the policy process includes a complicated legislative procedure, once policy has been translated into law opponents of that policy face formidable obstacles when they attempt to bring in alternative policies (Bottom, Eavey, Miller, and Victor 2000; Konig 2001; Tsebelis 2002, 143–9). In the language of formal political analysis, bicameralism has "stability-inducing properties" which protect "the core" of majority rule (i.e. "the set of un-dominated alternatives") from the many instabilities found in unqualified forms of majority rule (Hammond and Miller 1987; Miller, Hammond, and Kile 1996). But another possible consequence is higher government debts, because governments have to include benefits for a wider range of political interests when negotiating under bicameral circumstances and, consistent with the previous point about stability, benefits once given can rarely be retracted, even by incoming governments from opposed parties (Heller 1997).

4 BICAMERALISM AS BALANCE

Historically, the standard model for the stability attributed to bicameralism was *balanced* government, implying that two chambers could bring desirable balance to legislative decision-making. But what does "balance" mean in this context? This question gets us into the heart of many of the most hotly contested disputes in the theory and practice of bicameralism. Bicameral studies include many debates over the claims of particular systems to meet tests of "balance," but remarkably few accounts of the benchmarks appropriate to sound judgments of balance in legislative institutions. A traditional model of this approach to bicameral balance emerged in classical theories of the mixed regime, with its idea of mixing or blending different classes and interests through distinct political institutions, each with a role in policy-making and legislation. Bicameralism originally emerged from this traditional interest in the balance of competing claims to rule exercised by antagonistic groups. Aristotle's "polity" provides students of bicameralism with an influential model of a mixed regime with an institutional design blending democracy and oligarchy in an arrangement of "dual deliberation" (Tsebelis and Money 1997, 17–21). This classical model of bicameralism lacks liberalism's constitutional norms of popular sovereignty and limited government. The ancient model resembles modern bicameralism in bringing together diverse political interests, but it differs by not testing the legitimacy of each legislative house by reference to the one source of sovereignty in "the people." Referring to ideal types, classical bicameralism mixed competing sources of political authority; modern bicameralism blends different but complementary expressions of popular sovereignty: for example, the people as "one people" and the people as state residents.

The distinctive character of "balance" arising out of liberal or modern bicameralism can be seen in the constitutional doctrine justified in the *Federalist Papers*. I will highlight two contrasting tendencies within the liberal doctrine of bicameralism: one designed to restrain government and another designed to energize government. Even the most systematic of game-theoretic approaches examine the institutional design of liberal constitutionalists like the authors of the *Federalist Papers* (see, e.g., Riker 1955, 452–5; Hammond and Miller 1987, 1157–8, 1169–70; Miller, Hammond, and Kile 1996, 98; Tsebelis 2002, 140–1). This broad doctrine defends bicameralism in two often contrasting ways: negatively, in terms of weakening the tendency to abuse of power by political executives; and positively, in terms of energizing and strengthening the deliberative process within the political assembly. At their broadest, liberal doctrines of bicameralism deal with both tendencies as a pair of supplementary measures for effective representative government.

Of course, the practice of most bicameral assemblies tends to show the greater influence of one or other of these two approaches. It is not uncommon for

bicameral systems to remain in the negative mode of clamping down on executive abuse of power, usually by using the second chamber as an accountability mechanism to curb executive excesses, including excessive executive control over the independence of the lower chamber. But there are examples of bicameral systems moving over, at least from time to time, to the positive mode to promote strengthened deliberative processes in the legislative assembly. Just as most practical bicameral systems combine elements from both negative and positive modes, so too liberal theories of bicameralism also combine both justifications. The balance of justification varies across theorists, but for present purposes I can round out the negative mode as exemplified in the influential eighteenth-century constitutional doctrine of the *Federalist Papers*, and the positive mode in the equally influential nineteenth-century liberal theory of John Stuart Mill. Both articulations converge in favor of bicameralism and my present contrast is not completely faithful to the rich detail both versions contain. Suitably warned then about the provisional nature of this contrast, we can begin with the negative mode so characteristic of eighteenth-century liberal constitutionalism (Mahoney 1986).

It is notable that the phrase "legislative balances and checks" appears early in the *Federalist Papers* as an example of the modern science of politics unknown to "the ancients" who, as we have seen, pursued a different concept of institutional balance (*Fed* 9; Tsebelis and Money 1997, 27-9). For Madison, the legislature is the deliberative assembly and the Senate, as the controversial second chamber in the proposed US legislature, is justified in terms of the balance it brings to political deliberation. Madison explains the merits of this second chamber by reference to the limited deliberative capacity of the first chamber. In *Federalist* 51, Madison argues that in modern political regimes, legislative authority will tend to overpower the authority of the other two branches of government (the political executive and the judiciary). This overpowering tendency meant that the legislature itself should be divided further into two sub-branches based on "different modes of election and different principles of action," with each sub-branch "as little connected with each other" as possible in one branch of government. Madison's liberal convictions are apparent in *Federalist* 62 where he notes that this bicameral structure is a useful precaution against "the facility and excess of law-making" which are "the diseases to which our governments are most liable." For Madison, the problem was that too much concentrated power in one political assembly would generate too much law making and too much government. This liberal model of representative government is one of limited government: government limited in scope to liberal causes of civil liberty and limited in process to the rule of law. The attraction of bicameral solutions is that they allow constitutional designers to graft complementary models of political representation on to the core stock of popular representation. In the US case, this meant that Madison and his fellow framers could accept the legitimacy of a system of relatively popular representation with larger numbers of locally elected

members in the lower house, in the knowledge that this popular model would in practice be modified by the presence of another model of representation in the upper house.

Using contemporary language, we can say that this early version of bicameralism was designed to modify the potential for populism through two contrasting versions of democratic legitimacy in the two chambers of Congress. This is not the only approach to modern bicameralism, but it is a very influential one reflecting a commitment to federalism, where the polity arises through a federation of states with equal representation in the second house. There are many variations of federally-organized legislative chambers, and it is useful at the outset to note that the US framers did not expect their federal chamber to restrict itself to act solely as a "states house," protecting only state interests. Federalism helps explain the composition of a second chamber but it alone does not explain the construction or purpose of the second chamber. One only has to see the near-universal existence of bicameralism at state-level legislatures in the USA to begin to appreciate the wider policy purposes associated with US bicameralism. The distinctive competence of the second house of the national legislature goes far beyond its federalist composition, illustrating the broader institutional logic of bicameralism. Describing the Senate as "a second branch of the legislative assembly distinct from and dividing the power of the first," Madison defends this as a "salutary check on government." Factious rulers will require "the concurrence of two distinct bodies in schemes of usurpation or perfidy:" the concurrence of "separate and dissimilar bodies" (*Fed.* 63). Of importance here is Madison's emphasis in *Federalist* 62 on "the dissimilarity in the genius of the two bodies," with the Senate having considerably fewer members, each with a considerably longer tenure than members in the House of Representatives, arranged to promote "stability" through a rotation re-election system where a third of its members face re-election every two years. The intended policy goal is a greater sense of *public responsibility* in the Senate when compared to the necessary but insufficient *public responsiveness* expected of the more openly democratic House of Representatives.

A step from Madison to British philosopher J. S. Mill and his account of second chambers in his *Considerations of Representative Government* brings us closer to the second strain of liberal bicameralism (Mill 1984, 352-9). Mill accepted the value of the negative mode of bicameralism with its anti-corruption potential, but his version reaches beyond that to promote the positive values of public deliberation. Acknowledging "the corrupting influence of undivided power," Mill clearly defends the negative dimension of bicameralism. But his deeper justification is in terms of the positive mode of wider public deliberation. Democracy requires important political virtues, of which none is more necessary than what he calls "conciliation: a readiness to compromise; a willingness to concede something to opponents, and to shape good measures so as to be as little offensive as possible

to persons of opposite views" (Mill 1984, 353). The context for Mill's analysis of conciliatory conduct is bicameralism which, in his view, lent itself to structured public discussion of antagonistic political viewpoints.

A critical friend of democracy, Mill feared the tyranny of the majority over liberal minorities. His ideal preference was for unicameralism, with a fully representative single chamber using proportional representation to promote the parliamentary representation of neglected "minorities." But in the absence of that idealized single chamber, Mill saw merit in a second chamber representing interests not adequately represented in the first chamber able to "oppose itself to the class interests of the majority" and protest "their errors and weaknesses." Such a "wisely conservative body" might even be modeled on the Roman Senate, comprising persons of "special training and skill" brought together "to moderate and regulate democratic ascendancy." This mode of positive support for more representative public deliberation carries through to later British defences of bicameralism. James Bryce is perhaps the most influential of this school. Bryce pioneered the comparative science of modern democracy. His *Modern Democracies* is the first classic investigation of democratic institutions in empirical political science (Bryce 1921, II, 437-57). The chapter on upper houses is a core part of Bryce's anatomy of bicameralism, which reflected his personal political activism in the cause of House of Lords reform and his political influence on many subsequent Westminster institutional developments in modernizing upper houses. Bryce thus provides the most influential twentieth-century account of the positive mode of bicameralism as a device for sounder public deliberation (Patterson and Mughan 1999, 11, 13, 204).

5 CONTRASTING STRONG AND WEAK BICAMERALISM

If bicameralism is about balance, what happens when one of the two houses outbalances the other? If the weight is overwhelmingly in favor of the lower house, the result is unicameralism in substance, if not in form. But what if the weight is in favor of the upper house: is this too a form of unicameralism? This issue is not simply academic. It is politically alive in the Westminster democracies: for example the United Kingdom, Canada, and also Australia—a country that has had "more experience with bicameralism than any other parliamentary

democracy" (Smith 2003, 6, 22–30). Some Australian state upper houses still reflect traditional class interests or at least attract reform movements proclaiming the need to "democratize" them (Stone 2002, 2005). This call for reform demands that traditional restrictions on upper house franchise, membership qualifications, and electorate weightings be repealed. But is the model of a democratic upper house one with identical qualifications for franchise and membership with the lower house, and with the same tolerance for minimal variation in electorate enrollments? Tempted as we might be to reply "yes," we might be even more demanding of democratic standards and explore other options that allow upper houses to get ahead of their lower house institutions, and achieve even fairer forms of democratic representation. To stay with an Australian example: The Australian Senate was overhauled in 1948 when proportional representation was first adopted, with each state acting as one large multimember electorate. Nothing was done to the formal legislative powers of the Senate but this one electoral change brought about a significant lift in the public legitimacy of the Senate, which many analysts began to describe as "more democratic" than the lower house with its conventional single-member system biased against the return of minor party candidates (Uhr 1998, 113–15; Russell 2000, 55–6, 82–4).

This example of change to the rules of representation for upper houses shows how existing bicameral systems can be strengthened with minimal alteration of the formal constitutional powers of either house. More generally, we can see that the institutional strength of a bicameral system is closely related to its scheme of representation: Those systems with institutions capable of widening the scope of parties represented are more likely to develop capacities for what analysts term "cleavage management." In this context, "cleavage" means political division based on entrenched social identities, such as class, religion, ethnicity, or even regional geography. Effective political management occurs where groups separated by such entrenched divisions are brought together, or their preferred party representatives are brought together, in institutional circumstances conducive to intergroup agreement on "a way ahead." Thus, for these purposes, strong bicameralism describes an institutional environment for multiparty political deliberation capable of generating negotiated policy outcomes acceptable to the representatives involved.

This is only one version of the strong bicameralism literature. A simpler version equates "strong" with two houses sharing equal institutional power, whether or not this results in effective cleavage management. This simpler version really measures the strength of the upper house's resistance to initiatives derived from the lower house—measured in terms of everyday institutional conventions rather than the often misleading legal provisions when divorced from prevailing political conventions, such as those associated with the norms of Westminster responsible parliamentary government. Thus, evaluating the strength of any particular bicameral

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system is no easy matter, given that we must approach each national political assembly as comprising "at least outwardly, unique aggregations, each with its own history, its special traditions and customs, its time-honoured norms and practices, its constitutional status, and its impact on the laws of the land" (Patterson and Mughan 1999, 9). While it is difficult to rate or measure the operational dynamics of each and every bicameral system, there is agreement that we can identify some of the institutional qualities found in the two extreme ends of the range of strong-weak possibilities. With suitable cautions, I draw on Lijphart's influential framework of contrasts between ideals of a strong and weak bicameral system (Lijphart 1999, 201-11; cf. Bryce 1921, 441; Druckman and Thies 2002, 767-9; Llanos and Nolte 2003, 57-60).

Strong bicameral systems comprise what Lijphart terms an arrangement of symmetrical but incongruent chambers: With both chambers *converging* through a symmetry of fairly evenly balanced legal powers but *diverging* through their incongruent cultures of representation. As noted earlier, the impact of bicameralism depends greatly on the presence of "two differently constituted chambers." If bicameralism is to act as a "truly strong and meaningful institution," then it needs to combine two chambers equal or nearly equal in formal powers but different in the political and policy viewpoints represented. One other quality is required: public legitimacy, which tends to attach to elected rather than appointed legislative houses (Lijphart 1999, 200, 205). When push comes to shove, none of the alignments of symmetry or congruence will make much difference to the real institutional strength of a bicameral system if the system lacks public legitimacy. That is, strength is a measure of public confidence in the value of the constitutional system. Of course, it is doubtful that strong public confidence in a bicameral system would arise in the absence of Lijphart's other two qualities: a convergence of power and a divergence of representation (Russell 2000, 250-4).

Which national systems display strong bicameralism? Lijphart locates Britain down the rankings, somewhere between medium and weak; other analysts put Britain into the weak category, some even calling the UK and Italy effectively unicameral (Lijphart 1999, 212; see also Tsebelis 1995, 316). This nicely indicates the degree of difficulty of rating and ranking bicameral systems, and the great value of Lijphart's two tests of bicameral strength. Some of Lijphart's "medium-strength" systems meet the symmetry test but fail the congruence test: for example Italy, Colombia, the Netherlands, Belgium, and Japan. Other "medium-strength" systems meet the congruence test but fail the symmetry test: for example, Canada, France, and Spain. Many systems meet the tests of "weak bicameralism," with asymmetry of powers and congruence of representation: for example Austria and Ireland. Only a few bicameral systems meet both tests of "strong bicameralism:" for example the USA, Germany, Switzerland, and Australia (Lijphart 1999, 205-13; see also Konig 2001; Llanos and Nolte 2003, 64-75).

6 CONCLUSION

Caution is advisable when speaking of the weaker forms of bicameralism. As Lijphart records, there is no such institutional creature as “insignificant bicameralism.” Where bicameralism exists, it always matters—even if only as an institution to be domesticated by political executives whenever they can render it weak (Lijphart 1999, 211). The existing literature on bicameralism has done much to deepen our understanding of the political significance of bicameralism. The main focus of this literature has been on the resolution of conflict arising from different forms of political representation in two legislative houses. My argument in this chapter has been that the range of functions performed by contemporary bicameralism are best explained in terms of changing blends of inheritance and innovation in political representation. Even stable democratic constitutions permit remarkable institutional change in the workings of legislative institutions. How can theoretical research keep up with such fascinating practical changes in the workings of bicameralism? I suggest a focus on three priority research areas. A first priority is a richer analytical history of bicameralism. The intellectual history of bicameralism has received some recent attention (see, e.g., Shell 2001) but there are very few institutional histories of the many different examples of bicameralism explaining distinctive national blends of inheritance and innovation. Even within national settings, bicameralism evolves, often in unintended but significant ways (Binder 2003). We know relatively little about the institutional histories of the leading models of bicameralism. Further, we know very little about the process of policy transfer across the families of bicameralism, just as we know very little about the history of cross-adaptation between parliamentary and presidential forms of bicameralism. These histories of inheritance and innovation await their analysts.

A second priority is more detailed mapping of the constitutional settings for the many varieties of contemporary bicameralism. Parliamentary and presidential regimes each come in many varieties, with important differences in the institutional design of legislative powers. We need to know more about how those legislative powers have been affected by the architecture and deployment of executive and judicial powers, and about how bicameralism evolves in different constitutional settings—as a product but also as an agent of change. Bicameralism can contain threatened change or it can preserve past changes; and over time, any one bicameral system can perform both functions under different political circumstances (Vatter 2005; Castles and Uhr 2005). The possibilities for institutional variation among democracies are increasing as democracy spreads across cultures. Frameworks of strong and weak systems highlight the main poles of performance, but there remains much to do to revise and update conventional accounts of the many constitutional forms that bicameralism has begun to take, and to explain how some blends of inheritance and innovation work better than others.

A third priority deals with the elusive concept of "balance" in bicameral relationships. We now know quite a lot about the institutional battles over balances of power internal to bicameral legislatures; but we know much less about the external balances between bicameral legislatures and the wider political community. We know something about how political parties manage bicameral legislatures but we know less about how bicameral processes contribute, if at all, to public debate and participation in the democratic public sphere. Public opinion data would help, but there are many larger issues about relationships and balances between democratic legislatures and democratic public deliberation that are shaping up as research priorities. We also need better explanations of the balance of deliberative capacities within bicameral legislatures. Traditional studies of bicameralism often restricted themselves to the investigation of "the second chamber problem," documenting the procedural profiles of different houses of review. The priority now is to explain the distinctive institutional behaviors noted, and sometimes grudgingly admired, by many analysts of second chambers in both parliamentary and presidential systems. Contrary to the skeptics, empirical researchers like Russell note the "independence of mind, stability of character, and a capacity for high quality and detailed legislative work" she finds characteristic of second chambers at their best, as well as their "reputation for more detailed scrutiny," their "higher degree of consensus," and their "less adversarial atmosphere" (Russell 2000, 102, 131-2; cf. Vatter 2005). Lijphart also notes the "more informal and relaxed manner" typical of the procedural life of second chambers (Lijphart 1999, 205). Of course, the study of bicameralism is about systemic relationships between two legislative houses, and not simply the virtues or vices of either house. Each of these three research priorities highlights systemic issues of bicameralism which, when properly investigated, can help to explain better many other institutional dynamics of democratic governance.

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