Fordham Law Review

Volume 36 | Issue 2 Article 5

1967

A Unicameral Legislature in New York: A Review and Proposal

COMMENTS

A UNICAMERAL LEGISLATURE IN NEW YORK: A REVIEW AND A PROPOSAL

All the people of a state cannot assemble, debate and vote upon their laws as was done in ancient Athens. Instead, certain groups of the governed must choose one of their number to speak for the rest in an assembly of other similarly chosen men, called a legislature. The structure of this legislature, this gathering of citizens who make laws, is the subject of this comment. Structure varies widely from country to country. In some lands, lawmakers sit in two separate houses, while in others a single house is found sufficient. A recent United States Supreme Court decision, *Reynolds v. Sims*,[1] raised important questions as to the justifications of bicameralism; and so it might be profitable to consider whether New York's lawmakers should all convene in one house, or whether they should continue to deliberate separately, as Senate and Assembly.

Toward this end, there follows an attempt to analyze the development of both the bicameral and unicameral forms of legislature from historical, political, social and geographical standpoints in order that the traditional Anglo-Saxon leaning towards bicameralism may be tested against the realities of its origins. That analysis will then be integrated with a study of these two legislative forms as they exist in America today, pinpointing modern difficulties with the bicameral bias. Finally, the discussion will focus on New York State, whose legislative structure will be evaluated in light of a detailed proposal for unicameralism.

I. Origins of the Legislative System

A. *The Upper House*

In 1295 King Edward summoned the nobles and prelates of the realm to advise him on matters of state. They were requested to bring with them members of the lower clergy, certain Knights of the shire, citizens and burgesses all chosen by their fellows. The nobles had always deliberated separately in the Great Council, and the clergy did not care to sit beside the sometimes unrefined laymen. So what could have been five Estates became the two houses of Parliament that Great Britain knows today.[2]

The English House of Lords thus began as a kind of committee of nobles who gave advice to the King on topics they thought important.[3] Similarly, in the

1. 377 U.S. 533 (1964). In this case, the Court held that a plan of voter apportionment for the election of members of the Alabama legislature was unconstitutional. The Alabama House of Representatives was elected on what was supposed to be a population basis. Since the Senatorial districts were not apportioned according to population, the Court held that the voter's right of representation was infringed, and ordered both houses of the state legislature to be chosen on a population basis.

2. T. Cole, European Political Systems 57 (1959). By contrast, medieval Scotland had a unicameral legislature because by Scottish tradition the Estates always sat and voted together. R. Luce, Legislative Assemblies 4 (1924).

3. T. Cole, supra note 2, at 57.

United States today, one of the functions of the Senate is to give advice and consent to the President on his foreign policy.[4] This advisory function of the upper house is by no means unimportant.[5] The usual reason given for having a second house, however, is to make the lower chamber the "popular" one, the house more responsive to the will of the whole population, but to keep the upper house as a moderating force upon the legislative process.[6] Not all founders of governments have subscribed to this view. The Abbe Sieyes, a French statesman and political theoretician, made this comment on the function of an upper house: "If a Second Chamber dissents from the first, it is mischievous; if it agrees . . . it is superfluous."[7] On careful study, this observation appears more flippant than farsighted.

An illustration ascribed by some to George Washington indicates the view our founding fathers took of an upper house. The people's opinion, said General Washington, as he poured tea from his cup into his saucer, is this liquid; when it is fresh from the kettle, here in the cup, it is still boiling; but in the saucer it has sufficiently cooled so as to be potable.[8] John Stuart Mill thought that this function of enabling cooler deliberation of questions was of secondary importance, for he felt that any assembly worthy of representing the people would be able to prevent hasty action. Rather, he observed that the danger of concentrated power was the true justification for a bicameral legislature: "The consideration which tells most, in my judgment, in favour of two Chambers . . . is the evil effect produced upon the mind of any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult."[9]

The upper house often possesses extra or specialized functions. Sometimes it is so organized as to give different interests a hand in government, which these vital interests might not otherwise have. The Irish Parliament is organized in this fashion. The lower house is a popularly elected chamber, while the head of state may fill certain seats in the upper house from outstanding members of the trades, professions, and other economic and social groups.[10] It is intended that these men will insure that the vital community interests which specifically concern their group will not be overlooked.[11]

In France, unicameralism was always advocated by republican groups, and they have sometimes succeeded in taking away important powers from the upper chamber when the constitution has been redrawn. The Council of the Fourth Republic, for example, shared in electing the President of the Republic and

4. U.S. Const. art. II, § 2.

5. H. Schwarz—Liebermann von Wahlendorf, Struktur und Funktion der Sogenanten Zweiten Kammer (1958).

6. The Federalist No. 63 (Madison).

7. J. Marriott, Second Chambers 1 (1910). For a full treatment of the part Sieyes took in the French revolution, see A. Cobban, 1 A History of Modern France 165-67 (1962).

8. Lippmann, "The One Man, One Vote Rule," Newsweek, May 10, 1965, at 33.

9. J. Mill, Representative Government 249 (Henry Regnery Co. ed. 1962).

10. Ireland Const. arts. 18-19.

11. K. Wheare, Legislatures 214 (1963).

tested the constitutionality of laws,[12] but only after 1954 could it consider a bill before the lower house had completed its action on the bill.[13] In the Fifth Republic, the name "Senate" is restored and its power is increased, but the will of the lower house still prevails in case of deadlock between the two houses.[14] The Senate is thus less of a quasi-cabinet than the old Council.[15]

It might be mentioned that the upper house often functions as a court of last resort. Both the House of Lords in England[16] and the Senate of New York State[17] preserve some of their once extensive judicial power.

One might be tempted to guess that a bicameral legislature is the hallmark of an old, established and conservative government. But outward indicia are frequently misleading. The Soviet, or legislature of the U.S.S.R., has two houses: the Soviet of Nationalities and the Soviet of the Union.[18] On the other hand, New Zealand adopted a one chamber legislature in 1950 under a conservative government.[19] Similarly, a conservative administration abolished the upper house in Denmark in 1953.[20]

In countries with a federal plan, states which are the political sub-divisions have on occasion moved from two to one chamber legislatures in times of political or economic uncertainty. The unicameral legislature of Queensland, Australia, held its first session in 1922 in the uncertain times following World War I;[21] the first session of Nebraska's unicameral legislature occurred in the depression year of 1937.[22] In any event, it seems evident that the structure of a legislature is not a simple predictable result of current political feeling. But changes in the structure of a legislature may well indicate the essential forms of legislative activity.

B. *Scandinavian Parliaments*

Legislatures of the Scandinavian countries have certain features which illustrate what it is a legislature must do and how the lawmaking body is organized in order to do it. The Norwegian national legislature, called the Storting, consists

12. There is no principle of judicial review in French jurisprudence. T. Cole, supra note 2, at 225-26, 301.

13. Id. at 222-23.

14. France Const. arts. 45-46.

15. T. Cole, supra note 2, at 300.

16. Four Lords of Appeal, presided over by the Lord Chancellor, compose the supreme tribunal of the kingdom. All other members of the House may join them in making up the court; but only a few, and those with legal training only, ever do. 9 Halisbury's Laws of England 363 (3d. ed. 1954).

17. The Court for the Trial of Impeachments is composed of the President of the Senate, the Senators, and the Judges of the Court of Appeals. N.Y. Const. art. VI, § 24; N.Y. Code Crim. Proc. §§ 12-13.

18. U.S.S.R. Const. arts. 32-33; H. Schwarz—Liebermann von Wahlendorf, supra note 2, at 159, sees the upper chamber as a bulwark against totalitarianism, and explains the Soviet upper chamber as a necessary outlet for nationalism in a supposedly federal state.

19. N.Y. Times, July 26, 1950, § 1 at 12, col. 5.

20. N.Y. Times, May 29, 1953, § 1 at 6, col. 3.

21. Pierce, The State that Abolished its Senate, N.Y. Times, July 15, 1922, § 1 at 625 (Current History Magazine).

22. N.Y. Times, Jan. 6, 1937, § 1 at 4, col. 2.

of 150 members elected every four years. These members assemble and choose 38 of their number to constitute an upper house, the Lagting; the rest sit as the lower house, the Odelsting.[23] Although both houses consider the budget, only the Odelsting may initiate legislation.[24] The reason why two houses, whose members have the same qualifications, should have differing functions may not at first be apparent. The framers of the Norwegian Constitution evidently felt that one house should be concerned with proposing laws and starting the legislative process, but that the second, smaller chamber should be left free to give the legislation, as proposed, careful and mature consideration. The legislators themselves determine which of them shall principally introduce ideas, and which shall principally reconsider them.[25]

The Icelandic Althing is of similar structure to the Norwegian Storting, that is, the whole parliament is elected at once and then divides itself into two houses.[26] As in Norway, only the lower house may initiate legislation; but here financial matters are reserved for joint session.[27] Icelandic representative government, however, exhibits certain unique features. Voters must be of excellent character and show financial responsibility.[28] Article 48 of the Constitution provides, "Members of the Althing are bound solely by their convictions and not by any orders of their constituents." Not only are the qualifications for voting strict, but representatives of the people are directed by the constitution to place their better judgment over the expressed interests of the electorate. It might seem that this is less a representative government and more a system which permits the electorate to choose a man who will make decisions for them. And these decision makers have no choice but to separate into two houses because men who must speak for the common good more than they speak for specific interests must take extra precaution that their actions will not override vital but unrepresented interests. On the other hand, it might be said that Article 48 simply puts the basic responsibilities of any representative into the constitution in a very explicit way, rather than leave the area in doubt, as many countries do.

Sweden began with a legislature of four houses: the Clergy, the Nobility, the Provincial Council and the People. In 1866 the present bicameral structure was adopted.[29] The 150 members of the upper house are chosen for eight year terms by electoral colleges which assemble throughout Sweden every year to elect one eighth of the members of the upper house, which is a continuing body. Seats in this house are redistributed among nineteen electoral districts every ten years on the basis of population. The 230 members of the lower house sit for four years. They are chosen by direct election from twenty-eight districts, different in size from those used for the election of the upper house.[30] In general, both houses

23. Norway Const. art. 49.
24. Norway Const. arts. 75-76.
25. L. Orfield, Growth of Scandinavian Law 175-82 (1953).
26. Iceland Const. art. 32.
27. Iceland Const. art. 42.
28. Iceland Const. art. 33.
29. L. Orfield, supra note 25, at 260.
30. Id. at 261.

have equivalent powers. In case of disagreement between the two, however, a combined vote is taken, and so the numerically stronger lower house generally prevails.[31]

The system of choosing the members of the upper house indirectly is suitable for a constitutional monarchy like Sweden. Popular election of the lower house is offset by the opportunity for balancing interests through the electoral colleges. And although the lower house has the final say in a close question, the upper house provides the moderation characteristic of a constitutional monarchy.

Generally, then, Scandinavian legislatures offer examples of the typical use of a second chamber in the legislative branch of government. In two of these countries, the legislature is elected as a single body, but then divides itself into two houses, ostensibly so that the lawmakers can have a second look at what they have done, but probably also because a broader, less parochial concern for the common good obtains in a two house parliament. Finally, a second chamber is generally thought to stand for moderation and conservatism. Members of Sweden's upper house would seem to be chosen by a process which reflects a trust in the idea of an indirectly elected house to moderate legislation.

C. *Early American Unicameral Legislatures*

The history of the United States shows much tinkering with legislative structure. An easy explanation for the existence of bicameral legislatures in colonial times is their similarity to the British Parliament, but their true origin may have been in the early colonial corporations from which they evolved. Many of the colonies were chartered as what today might be called membership corporations. In the Massachusetts Bay Company, as in most of the other colonial corporations,[32] strife arose between the "magistrates" or board of directors and a committee of the members who were sent to discuss problems with them. The governor, in order to conciliate the members, then empowered this committee, or group of "deputies" as they were called, to act as a permanent advisory board. At first, the magistrates and deputies sat together; but when the representatives of the people began to seek independent powers, they also began to hold separate sessions. Then the magistrates tried to keep power by "packing" the upper chamber.[33] Moves like this were countered, in New Jersey for example, by refusal of the Burgesses to vote approval of the governor's actions for seven years—1668 to 1675—until the governor acceded to their demands.[34] By the time of the revolution, the lower houses had generally succeeded in surpassing the upper houses in importance.[35]

After the revolution, some states continued to function under their colonial charters. Others set up governments which relied much on the discretion of the legislature and severely limited the powers of the executive, for memories of

31. Id. at 262.

32. R. Luce, supra note 2, at 7-15.

33. In case of deadlock, a combined vote was taken. The normally more numerous deputies could be defeated if more magistrates than deputies were in office. Id. at 17-18.

34. Id. at 18.

35. Id. at 47-57.

heavy handed colonial governors were quite fresh. Executive power was often divided between the governor and the upper house, or else it was placed in an executive council, of which the governor was merely chairman.[36]

Forms of legislature were varied. New Hampshire's was elected as a whole, and then divided itself.[37] Maryland chose its lower house by direct election and picked senators by means of an electoral college.[38] Virginia's senators, on the other hand, were elected directly.[39] The arguments of *The Federalist* were extremely influential in persuading the framers of many state constitutions to choose the bicameral form of legislature.[40] Three states, Pennsylvania, Georgia and Vermont, originally had single chamber legislatures.[41] Only Vermont's endured for an appreciable length of time, for the federal example was too strong to be resisted in Pennsylvania and Georgia.[42] It seems that while both Georgia and Vermont based their constitutions upon Pennsylvania's, only Vermont made extra provision for a real executive and thus permitted the unicameral system to work efficiently.

As in Pennsylvania, Georgia's executive and legislative branches were so closely linked as to be almost unwieldy.[43] The unicameral legislature in Georgia was called the House of Assembly. Its sixty members were elected by the counties on a population basis, with an interesting exception: the two port towns of Sunbury and Savannah were allowed two and four members respectively, to represent the trade. The House of Assembly then elected an executive Council from its members, and the seats left vacant by those chosen were filled by a special election. This Council of twelve members chose the governor, reviewed legislation, proposed amendments, and could delay final enactment of bills for five days. It had the responsibility of watching over the governor. Strong central power was greatly feared, and the structure of the legislature expressed this fear. A blanket clause in the constitution made "every officer of the State . . . liable to be called to account by the House of Assembly."[44] These limitations upon the executive branch were too stringent to be practical. In 1789 a constitution was adopted which was a very close approximation of the Federal Constitution. The unicameral form of legislature was lost by the addition of a senate. A year later Pennsylvania followed suit by adding an upper chamber to its legislature, over the objections of its prominent son, Benjamin Franklin, long an advocate of unicameral legislatures.[45]

Vermont has had the longest experience of any state with a single chamber.

36. Id. at 57.
37. Id. at 21.
38. Id. at 22.
39. Id. at 21.
40. Id. at 74.
41. C. Shull, American Experience with Unicameral Legislatures 9 (1937).
42. Id. Before the revolution, Pennsylvania had a unicameral legislature, but Georgia used a bicameral system during colonial times. R. Luce, supra note 2, at 20-21.
43. See A. Saye, A Constitutional History of Georgia (1948).
44. Id. at 103.
45. Id. at 142.

In her haste to establish a state government after independence, she gave little consideration to the question of the desirability of a unicameral legislature, and the first constitution was patterned upon that of Pennsylvania. Supreme legislative power was vested in a house composed of representatives of the townships, which were really population units. There was a Council, which was the executive branch of government, and this had considerable legislative authority. Not only was it a fairly strong executive arm, but it could also initiate and amend legislation. Finally, there was a board of Censors made up of thirteen members chosen by the people at large to serve for seven year terms. The Censors had the power of constitutional review of legislation and later had the power to initiate amendments to the constitution. It was these Censors who continually agitated for the establishment of a senate and who finally had their way in 1836.[46] This structure of state government did not call for a strict separation of powers. The executive power was not in an individual, but in a group. It was nevertheless strong and it had certain legislative functions which were used to keep the legislature in check. Thus a balance of power was achieved without the use of the federal-style separation of powers, but rather by what was more like the old style colonial structure. The whole system was unlike anything in the United States today.[47]

A study of this period in Vermont's history indicates that there was never any great popular support for bicameralism during these years.[48] A comparison of the ten years before and the ten years after 1836, when the first bicameral legislature sat, indicates that the unicameral legislature was superior to its successor in the wisdom of its financial policy, in the stability of the laws it enacted, and in its lower cost of government.[49] The addition of a senate was brought on not by any dissatisfaction with the single chamber legislature but by the erratic and troubled politics of those times.[50] For the single chamber, described by the censors as an institution both un-American and inherently vicious, was made the whipping boy for these difficulties.[51]

Some feel that the problems met during this experience in Vermont offer no real lessons for our times because problems in state government today are greatly different from those seen in Vermont before 1836.[52] It would seem, however, that the experience shows that considerable flexibility can be used to adapt state government to problems confronting a particular state. And one theory of government may not be the answer everywhere.

---

46. C. Shull, supra note 41, at 9-11.

47. Id. at 12.

48. Carroll, The Unicameral Legislature of Vermont, in 3 Proceedings of the Vermont Historical Society 1, 16 (1932).

49. Id. at 32-45.

50. Id. at 24.

51. Id. at 26.

52. "The experience was brief and . . . without any real lessons for our era." D'Alemberte and Fishburne, The Unicameral Legislature, 17 U. Fla. L. Rev. 355, 358 (1964). A quick arithmetical check will show that the unicameral legislature in Vermont lasted fifty-nine years, 1777 to 1836, while Nebraska's so far has endured for hardly thirty.

II. Modern American Legislatures

A. *The Unicameral System*

Today unicameralism flourishes in Nebraska and in numerous city governments throughout the United States. Nebraska's voters authorized a single chamber legislature in 1934,[53] and the first session was held in 1937.[54] Prior to the change, there had been much interest and lively debate on both sides of the question.[55] In the van of those in favor of the transition was Senator George Norris who had been an early champion of unicameralism. There had been much dissatisfaction with the legislature in Nebraska for some time before 1935. A joint legislative committee in 1915 recommended simplifying legislative procedure, and, in addition, the establishment by constitutional amendment of a single chamber legislature with more members than the Senate of the time but fewer than the House. A test vote showed the electorate almost evenly divided on the subject; but when the depression made itself felt, the advocates of the single chamber knew that the time for success had come. Senator Norris, noting that the qualifications and duties of Senators and Representatives were the same, argued that the saving to the taxpayers would be considerable if Nebraska had only one chamber. It would certainly employ less people, and it might make them more efficient.[56] The move was opposed by some who sincerely believed in the soundness of the bicameral system. Most orthodox party adherents opposed the amendment for many reasons, especially on the side issue of the election of legislators on a non-partisan basis. The amendment[57] was approved at the polls by an overwhelming majority of the votes cast.[58]

Members of the new single-house legislature were to be elected from one-member districts for four year terms, and half of the legislature was to be re-elected every two years.[59] Formerly the entire membership could change at one election, although in practice it never changed more than one-third.[60] Legislators were made aware of their own and their colleagues' votes by an electric roll call system.[61] They had the benefit of the Nebraska Legislative Council which studies social and governmental needs, drafts proposed legislation in proper form, provides legal research and furnishes adequate copies of all pending bills well in

53. N.Y. Times, Nov. 9, 1934, § 1 at 3, col. 1.

54. N.Y. Times, Jan. 6, 1937, § 1, at 4, col. 2.

55. The Model State Constitution of the National Municipal League (1921) made provision for a unicameral legislature. See also A. Johnson, The Unicameral Legislature 134-36 (1938).

56. See generally Senning, The One-House Legislature in Nebraska, 13 Neb. L. Rev. 341 (1935).

57. Neb. Const. art. III, § 1.

58. Senning, supra note 56, at 345.

59. Neb. Const. art. III, § 7.

60. Srb, The Unicameral Legislature—A Successful Innovation, 40 Neb. L. Rev. 626, 628 (1961).

61. Day v. Walker, 124 Neb. 500, 247 N.W. 350 (1933) provides judicial sanction for this electric system; an interesting, if somewhat narrow-minded discussion of the device appears in the dissent of Judge Rose.

advance of legislative action.[62] No vote may be taken until a bill has been on public file for five legislative days, and no final enactment may be made until it has been out of this file and on the desks of the members for one day.[63] There are 43 members, each representing roughly 34,000 electors,[64] and they are elected without their political affiliation marked upon the ballot.[65]

Nebraska is not the only example of unicameralism in the United States. Despite the obvious disparity between a state legislature and a city council, a brief examination of urban government on this subject should prove illuminative. Originally, the city corporation was controlled by a council made up of a mayor, aldermen and councillors all sitting together. The council often exercised judicial as well as executive and legislative powers.[66]

The federal example made bicameral city councils popular. Philadelphia adopted a double chamber council in 1796,[67] and this became the pattern for cities throughout the United States. The Federal Constitution was not slavishly imitated in Philadelphia because every branch of city government was made weak and closely responsible to the people.[68] New York City clung to the bicameral form the longest until 1936, when a plan was adopted which at least approaches a unicameral system. The City Council was established as the legislative body, while the Board of Estimate was retained for important financial functions, but could no longer initiate measures or amend them.[69]

The Model City Charter of the National Municipal League first advocated unicameral city councils in 1900 and still suggests unicameralism as the ideal form of municipal legislature.[70] Most city councils today are composed of one representative from each ward or district, with the mayor occasionally selected by the council. The exact duties and qualifications of the executive vary widely, but in general the council's function is both advisory and legislative.[71] Unicameralism has, in this form, proved an effective, workable system of urban government.

B. *Bicameral Systems*

Thus it appears that the single chamber city council is the rule in municipal government. On the state scene, however, two chambered legislatures are favored. The functions and advantages of the upper house have been mentioned —to advise the executive, to moderate legislation, to guarantee a representation of the best interests of the state and, occasionally, to act as the court of last

62. Neb. Rev. Stat. § 50-402 (1965).

63. Neb. Const. art. III, § 14; Rules of the Nebraska Legislature Nos. 10-12.

64. These statistics are taken from the Book of the States and are based upon the most recent census figures available (1966).

65. Neb. Const. art. III, § 7.

66. C. Shull, supra note 41, at 13.

67. T. Reed, Municipal Government in the United States 60 (1926).

68. Id. at 61.

69. 7 New York State Constitutional Convention Committee 1938, Problems Relating to Legislative Organization and Powers 126 (1938) (hereinafter cited as 1938 Convention).

70. National Municipal League, Model City Charter (6th ed. 1964).

71. National Municipal League, Forms of Municipal Government 12 (1939).

resort. But it is undoubtedly the strong example of the federal system which makes bicameral state legislatures so numerous. The best authorities[72] indicate, however, that the federal system is based primarily on the Connecticut Compromise[73] and the problems which that plan settled, and secondarily on the theoretical advantages of the bicameral system.[74]

Although there are many historical reasons for having a legislature of two chambers, there are pragmatic ones as well. The analogy to the federal plan, making a bicameral state legislature readily understood by the ordinary citizen, is an obvious example. Of chief importance, however, is the concept of checks and balances. It would seem that the very nature of a legislature calls for a balancing of interests. Where one house might be excessive, the other, it is hoped, would be moderate and tend to balance the final legislative product. There is, then, opportunity for careful and mature deliberation where one house can rule upon the other's work product. In other words, a second chamber allows a second, independent look at proposed legislation, and thus bicameral legislatures are thought to be more conservative and less apt to enact hurried laws. The result is fewer but wiser laws, enacted without fanfare.[75] A bicameral system can also provide better representation. Formerly, this meant representation of special classes or economic interests,[76] or representation of political subdivisions. A second house also can be used to cross-section the electorate and thus insure fair representation.

If these facets of a bicameral legislature are assumed to secure their desired result, the moneys saved by any unicameral system would be a concededly false economy. The small saving in taxes would be at the cost of poor representation and clumsy laws.

Before a practical criticism of two house legislatures is made,[77] a recent mathematical study which discovered a serious defect in the bicameral system should be noted.[78] This study indicates that the two house system of representa-

72. Reynolds v. Sims, 377 U.S. 533, 574-75 (1964).

73. This was the plan whereby the smaller states were guaranteed an effective voice in the federal government. Every state could send two Senators to the Federal Senate, while membership of the House of Representatives was based on population. Thus the smaller states had equal voice with the larger states in the Senate, while the larger states had their interests protected in the House. It will be recalled that the Congress under the Articles of Confederation was unicameral. See text accompanying note 153 infra.

74. C. Shull, supra note 41, at 25 seems to think that the arguments for bicameralism in The Federalist were an afterthought to buttress the bicameral federal plan made necessary under the Connecticut Compromise.

75. It was once felt that a two chambered house was more difficult to corrupt, and thus secure against lobbies. But it has long been recognized that a small upper house, once corrupted, can block good legislation and effect the same result as if the entire legislature were corrupt. See D. Colvin, The Bicameral Principle in the New York Legislature 184-85 (1913).

76. Sir Henry Manning, in discussing the problem for New South Wales, says in The Upper House, The People's Safeguard 1856-1953 (1953) that the upper house should be indirectly elected on a nonpartisan basis, while the lower house should be chosen directly by partisan ballot.

77. See part III infra.

78. J. Buchanan & G. Tullock, The Calculus of Consent (1962).

tion introduces an element of uncertainty as to vote responsibility which is not present in the one house system. It is demonstrated by probability models that the bicameral system involves considerably higher decision making risks than a unicameral system, if we assume both houses are chosen on the same basis, for example, population. This means that a final count of the votes on a measure in a bicameral legislature does not necessarily show how the electorate feels about the measure; indeed, the high probability that the bicameral legislature will vote contrary to the electorate leads to a general disapproval of the two house system.[79]

III. The Effectiveness of a Bicameral Legislature: A View of New York

A. *New York Legislature*

The New York legislature may indicate whether the bicameral system is effective because of the reasons advocates of that system advance. The complex task of apportioning New York's 150 Assembly and 58 Senate seats[80] was accomplished in a manner which at least attempted to perpetuate the state's Republican majority.[81] New York's present apportionment by population, both for Senate and Assembly, uses a citizen, rather than resident or voter base.[82]

New York has one of the most vigorous two party systems in the nation.[83] Thus, party discipline in both houses of the legislature is tight.[84] It is said that dissenting votes are cast only at the direction of the floor leaders,[85] and most of the deliberation occurs off the floor of the legislative chamber during the various steps of committee action on a bill.[86] This particular process has itself been the object of reform,[87] and satisfaction with the improvements is said to rival that which followed the changes in Nebraska thirty years ago. The governor takes considerable part in the legislative process,[88] and this, combined with the well organized party lines in the legislature, means that the process of enacting laws often becomes a series of bargains between the two house leaders and the governor.[89]

---

79. Id. at 234.

80. N.Y. Const. art. III, § 2; N.Y. State Law § 121 (Supp. 1967).

81. F. Munger & R. Straetz, New York Politics 61 (1960). The fear in 1896 was that a heavily Democratic New York City would control any legislature apportioned strictly on population, and so an equalizing weight in the Senate was given to the upstate rural land areas, which generally voted Republican.

82. N.Y. Const. art. III, §§ 4-5.

83. F. Munger & R. Straetz, supra note 81.

84. See, e.g., D. Colvin, The Bicameral Principle in the New York Legislature (1913); F. Munger & R. Straetz, supra note 81; W. Moscow, Politics in the Empire State (1948).

85. F. Munger & R. Straetz, supra note 81, at 61.

86. Report of N.Y. Joint Legislative Committee on Legislative Practices and Procedures, March 24, 1959, Leg. Doc. No. 21, at 17.

87. Id. at 24.

88. N.Y. Const. art. IV, §§ 3, 7.

89. See generally Bureau of Municipal Research, The Constitution and Government of the State of New York—an Appraisal (1915). See also F. Munger & R. Straetz, supra note 81.

In 1913, David Colvin's study of the possibility of a unicameral legislature in New York State raised many interesting questions on legislative functioning.[90] Some of the answers have as much validity today as they had then, even when tested by more recent studies.[91] The entire examination was based on the hypothesis that the clash between the two houses assures superior legislation for the common good. Colvin found that in practice there was anything but a clash between houses and that checks and balances worked independently of the bicameral structure.[92] It has always been expected that the second chamber will review and criticize a bill received from the other house independently. More often than not the measure has already been the subject of diligent committee research, including, perhaps, painstaking studies by scholars in the particular field of the bill, or even hearings with considerable publicity and controversy. Hence, the reading of a bill in one house, after passage in the other, seldom takes anyone by surprise. More important, the legislator in the second house will already have been exposed to the merits of the bill and will often rely on the recommendation of the committee concerned, especially if it is a joint committee. "The fact that some of the most difficult work of legislation is undertaken by joint committees acting in co-operation is a significant commentary on the theory that legislation can best be accomplished through conflict between the two houses."[93]

In New York, the conflict theory often fails to work either way. The second house is sometimes used as an excuse for the failure of a popular, but in the eyes of the legislators, bad measure. The story is told[94] of the time the Speaker of the Assembly phoned the Senate majority leader about the flood of bad bills the Senate was approving that year, confident that the Assembly would knock them down. He told the majority leader that if the Senate passed and continued to send over that kind of legislation—he used a shorter and more descriptive term —he would have the Assembly pass it too, and how would the Senate like that? The flood of bad bills slowed down. Obviously, this is not the sort of use which proponents of the bicameral system intend to be made of the second chamber when they speak of independent review. In its worst form, it permits the shirking of legislative responsibility by providing a sort of ritual to keep constituents or interests satisfied.

The individual legislator's responsibility can be cloaked by sending the measure to a committee for consideration, or to a joint committee of both houses. The joint committee has been widely attacked as the greatest evil of the bicameral system.[95] For example, a bill requiring land registration in New York

90. D. Colvin, supra note 84.

91. It is unfortunate that recent accurate studies of the New York political scene are rare. W. Moscow, supra note 84, and F. Munger & R. Straetz, supra note 81, are the most recent and reliable works.

92. D. Colvin, supra note 84, at 190-91.

93. Id. at 71.

94. W. Moscow, supra note 84, at 172-73.

95. Merchant's Association of New York, A Unicameral Legislature Elected by Proportional Representation (1938).

City under the Torrens system was prevented from being enacted by means of this device, although it had considerable support.[96] It is the secrecy of the method that is most often attacked, and not its end result.[97]

New York's active political parties and vibrant two party system produce a division of the legislature into voting blocks such as are found in very few other states. Some studies[98] have found that the traditional belief in bitter conflict between metropolitan and non-metropolitan areas in certain state legislatures does not exist. This "traditional belief" apparently arose from earlier studies of the New York Legislature. Colvin, in his 1913 study of the legislature, found the break between urban and rural legislators an established thing,[99] and the study of unicameralism for the 1938 constitutional convention found this break an argument for continuing the bicameral form.[100] The most recent study finds a third group established, splitting New York State into urban, suburban and rural voting blocks, where formerly it was a struggle between the New York City and the "up-state" factions.[101] New York City, heavily Democratic, is the object of much fear and hostility in the legislature,[102] especially from suburban areas, which are often the strongest Republican areas in the nation,[103] whereas smaller cities often ally with rural areas.[104] Thus, since legislative voting, arguably, follows area and since area vote largely depends on party strength, it follows that party lines, subject to area interest, are the most effective check in the legislature.[105]

John Stuart Mill's argument of power accumulation[106] has been questioned in New York on the basis of party organization. Colvin, author of the previously mentioned 1913 study of the legislature,[107] found that if there was any threat of accumulation of too much power, it would be from the political party and not from the Senate or Assembly.[108] He felt that the two party system in New York is such as to render the danger of a single chamber usurping power to be unlikely if not impossible.[109] Later studies indicate that this is still true, although they reach differing conclusions. The 1938 study said that a one house legislature would increase the power of the party machine that would come to dominate it, but at the same time argued that the possibility of such domination might become more difficult in a New York unicameral legislature.[110] The latest work

96. 1938 Convention at 136.

97. N.Y. Times, Jan. 28, 1923, § 8, at 12, cols. 1-4.

98. See, e.g., Derge, Metropolitan and Outstate Alignments in Illinois and Missouri Legislative Delegations, 52 Am. Pol. Sci. Rev. 1051 (1958).

99. D. Colvin, supra note 84, at 108.

100. 1938 Convention at 140.

101. F. Munger & R. Straetz, supra note 81, at 61.

102. Id. at 55.

103. Id. at 55-56.

104. Id. at 55-65.

105. Id. at 61.

106. See text accompanying note 9 supra.

107. Note 84 supra.

108. D. Colvin, supra note 84, at 182-83.

109. Id.

110. 1938 Convention at 140.

similarly finds that legislative structure does not prevent usurpation of power, but the party contest does.[111]

The actual operation of the principle of checks and balances within the New York legislature might, therefore, depend more on the vitality of party politics than on bicameral structure. Colvin found that the political party is the real factor in checking legislation, not the upper house.[112] The 1938 study, while concluding that control of two houses by different parties lent color to the argument for bicameralism,[113] failed to note that in this event party strength, and not an inherent struggle between the houses, would be the decisive element. Later studies confirm the view that the party is the real reason why there are checks and balances within the legislature.[114] In New York, then, active political parties, social relationships, similar constituencies and common interests of Senators and Assemblymen together with a genuine interest in superior legislation, all work to reduce conflict between houses of the legislature to the point where checks and balances are effective for reasons totally unconnected with the theoretical views on bicameralism.

B. *New York After Reynolds*

The much discussed case of *Reynolds v. Sims*[115] touched on the question of whether a bicameral system for a state legislature continues to have validity since both houses must be chosen on the basis of population.[116] An examination of this portion of the decision may suggest some present difficulties with continued adherence to bicameralism.

Under the *Reynolds* decision, state election systems should give approximately equal weight to each vote cast.[117] "Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature."[118] This requirement refers to the legislature as a whole, not just one house, in that, "as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."[119]

The Court examined the meaning of "population basis" in great detail, and, since the possibility of using different population bases to distinguish the two houses of a state legislature was raised later by the Court, it is necessary to examine this point further. It is well, however, to bear in mind the words of Mr. Justice Harlan, dissenting: "people are not ciphers . . . legislators can represent their electors only by speaking for their interests—economic, social, political—many of which do reflect the place where the electors live."[120]

111. F. Munger & R. Straetz, supra note 81, at 61.
112. D. Colvin, supra note 84, at 132.
113. 1938 Convention at 139.
114. W. Moscow, supra note 84, at 173; F. Munger & R. Straetz, supra note 81, at 61.
115. 377 U.S. 533 (1964).
116. Id. at 576.
117. Id. at 562.
118. Id. at 565.
119. Id. at 568.
120. Id. at 623-24.

The Court held that the Equal Protection Clause requires states to make honest and good faith efforts to make election districts for both houses as nearly equal in population as practicable.[121] While the determination of an exact population-representation coefficient would of course meet this standard,[122] the Court held that mathematical precision in making electoral districts of equal population would not be required.[123] Rather, high variations have been allowed,[124] and an apportionment which was "not the fairest" plan possible has been nevertheless held valid.[125] It is apparent, then, that some deviations from the equal population principle are constitutionally permissible provided they are based on legitimate considerations which are part of a rational state policy.[126] However, a clear and rational policy may still subvert the population base and hence be impermissible.[127]

The population base can be residents, citizens or voters,[128] and flexibility in choosing one over the other has been upheld.[129] For example, Virginia's practice of permitting resident military personnel to vote was approved.[130] The population distribution in other states has reduced the basis distinction to insignificance. After the constitutionality of New York's apportionment formulas had been tested and found wanting,[131] a later connected case[132] had this to say about the usefulness of different bases for apportioning the Senate and Assembly: "It should also be noted that a change from citizen base to a resident base for legislative apportionment would have but little impact on the densely populated areas of New York State."[133] Thus it would seem that the possibility of using two houses in New York for cross representation must employ a method other than different population bases.

Another traditional justification for bicameralism which comes under serious scrutiny in *Reynolds* is its similarity to the federal system. The bicameral structure of the state legislature is often popularly explained by analogy to the Congress of the United States. Astute observers have long realized, however, that there is no real parallel between state and federal systems.[134] The Congress under the Articles of Confederation was unicameral, and the Connecticut Compromise attempted to grant smaller states an equivalent voice in national policy

121. Id. at 577.
122. Paulson v. Meier, 246 F. Supp. 36 (D.N.D. 1965).
123. 377 U.S. at 569, 577.
124. Moore v. Moore, 246 F. Supp. 578, 582 (S.D. Ala. 1965). See also Toombs v. Fortson, 241 F. Supp. 65, 67, 70 (N.D. Ga), aff'd, 384 U.S. 210 (1965).
125. Dungan v. Sawyer, 253 F. Supp. 352, 358 (D. Nev. 1966).
126. 377 U.S. at 579.
127. Id. at 581.
128. Id. at 577.
129. Holt v. Richardson, 240 F. Supp. 724, 726 (D. Hawaii 1965), vacated and remanded on other grounds sub nom. Burns v. Richardson, 384 U.S. 73 (1966).
130. Davis v. Mann, 377 U.S. 678 (1964).
131. WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964).
132. WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), aff'd, 382 U.S. 4 (1965).
133. Id. at 925.
134. D. Colvin, supra note 84, at 182.

out of respect for their sovereign status.[135] Political subdivisions of a state, however, are not sovereign portions of the state as the states themselves are sovereign entities in the federal union; and for this reason the *Reynolds* Court found "the federal analogy inapposite and irrelevant to state legislative districting schemes."[136]

Since state senates are not to be justified by the example of the Federal Senate, what reason is there for having two houses in a state legislature? The Court felt that there were ample reasons. Chief of these is "to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures."[137] Whether this is so as a practical matter is questionable.

Despite its requirement of basing both houses' allotment of seats upon population, the Court suggested the use of different constituencies in the two bodies to produce a different composition or complexion.[138] This idea was developed in later cases. In a case arising out of Connecticut, a district court held that seats in the smaller house could be distributed so as to speak for a wider constituency and, consequently, a broader spectrum of voters.[139] Members of this house could, therefore, be expected to be less parochial in their examination of a bill than members of the more numerous house.[140] To make this broader view possible in the one house, the *Reynolds* decision would permit the numerical size of the second house to differ greatly from the first; the geographical size of the election districts for each house to be greatly different; and the length of terms of members to vary.[141] However, it is well to note that a provision in the Nebraska Constitution[142] permitting no less than 20 per cent nor more than 30 per cent weight to be given to land area in the creation of legislative districts was held not to comply with the requirements of the Equal Protection Clause by another federal district court.[143]

Important in *Reynolds v. Sims* is the approval of apportioning seats in the two houses so that representation in the legislature as a whole will be balanced and fair. "[A]pportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house."[144] The court in *Holt v. Richardson*,[145] after quoting this passage with approval, discussed the practicality, and the necessity, of assuring the "one man, one vote"

---

135. 377 U.S. at 574-75.

136. Id. at 573.

137. Id. at 576.

138. Id. at 576-77.

139. Butterworth v. Dempsey, 229 F. Supp. 754, 762 (D. Conn. 1964), aff'd sub nom. Pinney v. Butterworth, 378 U.S. 564 (1965) (mem.).

140. Id.

141. 377 U.S. at 577.

142. Neb. Const. art. III, § 5.

143. League of Nebraska Municipalities v. Marsh, 232 F. Supp. 411, 412 (D. Neb. 1964).

144. 377 U.S. at 577.

145. 240 F. Supp. 724 (D. Hawaii 1965), vacated and remanded sub nom. Burns v. Richardson, 384 U.S. 73 (1966).

principle in Hawaii and required exactly this sort of cross representation in both legislative houses. The court said,

> [i]n reapportioning and redistricting the senate, both houses overlooked the fact that, to be valid, the makeup of the senate must positively complement the makeup of the house, to provide the vital equality of voter representation. Both houses of the legislature seemingly forgot that the schemes of districting *each* house, when conjoined, must offer compensating advantages to the voters—not only to those voters within each representative district, be it senate or house, but to all voters throughout the State.[146]

To assist the achievement of this balanced representation and to compensate areas with relatively large numbers of inhabitants,[147] one house might include at least some multimembered districts.[148]

The language in the *Reynolds* case indicating that there might be reasons which would justify some variance of the strict population base requirement has already been noted.[149] In outlining one of these reasons the Court said, "[a] consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions."[150] The Court noted that there were several reasons why a state should be able to do this in at least one house of the legislature,[151] but the Court cautioned that giving at least one representative to each subdivision creates a "total subversion of the equal-population principle" in that particular house of the legislature.[152] The Court, then, offered no solution to the practical problem of giving fair, if not equal voice to political subdivisions while guaranteeing equal protection to citizens.

The Court did, however, mention three reasons for giving political subdivisions this representation. Local government, when it has responsibilities incident to the smooth operation of state government, should have some real voice in the legislature.[153] Some local legislation, applicable only to local government, should have a more formal consideration by this local government.[154] Use of political subdivisions would, in the eyes of the Court, also help prevent the appearance of that fearsome political reptile, the gerrymander.[155]

A Missouri constitutional provision on this last point was approved in a district court decision,[156] but in that case the subdivisions had been drawn as nearly equal in population as was possible. Different combinations of population bases and political subdivisions plus adherence to the constitutional requirements

146. Id. at 729.
147. 377 U.S. at 579.
148. Id. at 577.
149. Note 126 supra and accompanying text.
150. 377 U.S. at 580.
151. Id.
152. Id. at 581.
153. Id. at 580.
154. Id. at 580-81.
155. Id. at 581.
156. Jonas v. Hearnes, 236 F. Supp. 699, 707 (W.D. Mo. 1964).

may some day prove practical. A recent Vermont case[157] presented such a situation. There, statutes providing for the redistricting of the state Senate along county lines on the basis of total residents with multi-member districts and for the redistricting of the state House of Representatives along town lines on the basis of registered voters, also with multi-member districts, were held valid under the constitutional requirements outlined in the *Reynolds* case.[158]

These somewhat flexible combinations emerge from the stringent *Reynolds* decision as the most feasible method of making use of bicameral legislative structure in New York. Although the different population bases may not be suitable,[159] the preservation of the county as the basis for Senate seats seems worthwhile as counties emerge once again as politically important, especially in suburban areas like Nassau County.[160] Channeling of New York's party strength would then be on a firmer base than at present, and assure a meaningful bicameral legislature.

IV. Conclusion: A Proposal for a Unicameral Legislature in New York State

After *Reynolds v. Sims*,[161] it was the opinion of some that during the political activity attending an attempt to apportion both houses of a state legislature on the basis of population, it would be wise to examine the feasibility of a unicameral system.[162] It was argued that the population basis requirement diminished the importance and usefulness of the upper chamber.[163] The prospect of a simpler, more responsible and less costly legislative structure was appealing, and also deserved consideration in view of the frequently exhibited characteristics of reapportionment problems: they constantly recur, and their complexity invites procrastination.[164] An examination of the Nebraska system will illuminate the attractiveness of the features incorporated in the subsequent proposal for unicameralism in New York.

The single chamber legislature has a simple structure and is easy to understand. One man is chosen to represent his fellows, and he sits with other men, chosen in a similar fashion to enact the laws which govern the community. This is their responsibility, and if they fail, the breach of trust is readily detected. Persons or groups having interest in legislation can present their opinions and facts openly and legitimately, so that the stigma of lobbying is removed. Costs of government are reduced, because fewer men are on the payroll and waste of

157. Buckley v. Hoff, 243 F. Supp. 873 (D. Vt. 1965).

158. Id. at 875.

159. WMCA, Inc. v. Lomenzo, 238 F. Supp. 916, 925 (S.D.N.Y.), aff'd, 382 U.S. 4 (1965).

160. Nassau County is the fifth strongest Republican district in the nation. Westchester is second. F. Munger & R. Straetz, supra note 81. Proper recognition of this might go a long way toward satisfying fears of New York City dominating the legislature.

161. 377 U.S. 533 (1964).

162. D'Alemberte & Fishburne, The Unicameral Legislature, 17 U. Fla. L. Rev. 355, 367 (1965).

163. Lippmann, "The One Man, One Vote Rule," Newsweek, May 10, 1965, at 33; N.Y. Times, Jan. 14, 1965, at 34, col. 5.

164. D'Alemberte & Fishbourne, supra note 162, at 367.

effort and revenue is avoided, and the importance of the individual member increases when jockeying between two houses and the burying of responsibility in joint committee become impossible.[165]

For example, indications are that the Nebraska Legislature has fulfilled all the expectations of those who worked to bring it to its present form.[166] A good deal of the satisfaction with the Nebraska Legislature is attributable to reforms other than the abolition of the Senate,[167] such as procedural reforms. It is felt, however, that most of these would be less effective in a bicameral system. Much importance is given to mandatory public hearings on bills.[168] Also, representatives of the press are favored with invitations to committee meetings.[169] The progress of work is more orderly than under two chambers, partly because of a bill filing procedure which might not work well in a bicameral legislature.[170] A bill is kept on general file at least three days after introduction and consideration. Then, after appropriate hearings, it goes on select file, or second reading, for consideration by the Committee on Enrollment and Review. The third reading comes after two days on the desks of the members. This system is found to have the effect of not only insuring mature deliberation and careful consideration of bills, but also of enabling private citizens and interested groups to learn of details of bills and to present their views to the appropriate committee. In this way, the necessary and desirable features of lobby and pressure groups are retained, with some of the abuses removed through easy public scrutiny.[171]

That the unicameral legislature would enable proper responsibility for legislative action to attach was one of the prime expectations of proponents of unicameralism in Nebraska. It can be said that this is one of the most significant accomplishments of the new form of legislature, and that the attempt to fix responsibility was entirely successful.[172]

Another result of this system is that the progress of legislative work is orderly. Bills do not pile up at the end of a session, so that unhurried consideration of all matters presented is allowed.[173] Hearings of the Legislative Advisory Council held in different parts of the state prior to a legislative session contribute toward a more effective legislature and greater citizen participation in government.[174]

165. See Alaska Public Administration Service, Constitutional Studies (1955); Hawaii, Manual on State Constitutional Provisions (1950).

166. Nebraska Legislature, Brief Comparison of Bicameral and Unicameral Legislative Systems and Rules and Law Governing Their Operation in Nebraska (1959).

167. Note that not all mention of "Senate" and "House of Representatives" is removed from the Nebraska Constitution. See, e.g., Art. III, § 17. See State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

168. A. Breckenridge, One House For Two, Nebraska's Unicameral Legislature 51 (1957).

169. Rules of the Nebraska Legislature No. 6.

170. Breckenridge, supra note 168, at 51.

171. Senning, Unicameralism Passes the Test, 33 Nat'l Munic. Rev. 60 (1944).

172. Srb, The Unicameral Legislature—A Successful Innovation, 40 Neb. L. Rev. 626, 632 (1961).

173. Senning, supra note 171, at 62. The bill filing system permits the volume of bills to be evenly distributed throughout the legislative session.

174. Id. at 65.

In determining whether the abstract advantages claimed for a unicameral system have any practical merit, other proponents of unicameralism point to the success of the single chamber city council.[175] City government would seem, however, to be too close to the electorate to make the federal style system of checks and balances useful, or even meaningful.[176] Furthermore, most municipalities experience administrative or managerial needs to a far greater extent than what might be called legislative needs.[177] Therefore, a simple and well representing council is perfectly adequate for the requirements of a municipality, especially since its precise functions can be planned to fit the particular community.[178] Whether success on the municipal level indicates similar prospects for state government is not obvious. However, in summarizing the authorities it might safely be ventured that a simple and efficient unicameral legislature can be fitted with a wide variety of devices to insure that liberties, long guaranteed by bicameral state legislatures, will be preserved by the unicameral system.

To demonstrate both the form of such a unicameral state legislature and some of the protective devices which might be incorporated therein is the purpose of the following proposal for a unicameral legislature in New York State. It is designed to simplify the organization of the State's lawmaking body and improve its functioning without sacrificing what has been found useful in the American practice of employing checks and balances in government.[179]

The Senate will be abolished. There will be but one house of the New York legislature, called the Assembly.[180] The State of New York will be apportioned according to law and divided into uniform electoral districts. These districts would be larger than our present Assembly Districts; hence, the number of them would be somewhat smaller. In each of these electoral districts the voters will choose two of their number to represent them in the legislature. One of these, called the short Assemblyman, will be chosen for a term of two years and will stand for election in even numbered years only. The long Assemblyman will retain his seat for six years. All Assemblymen, short and long, will sit together when the Assembly is in session; and all Assemblymen have the same rights,

175. A. Johnson, The Unicameral Legislature 88 (1938).

176. Hagan, The Bicameral Principle in State Legislatures, 11 J. Pub. L. 310, 311 (1962).

177. See National Municipal League, Forms of Municipal Government 14 (1939).

178. C. Shull, American Experience with Unicameral Legislatures 13 (1937).

179. Proposals for a unicameral legislature in New York are not new. Both the 1914 Convention (A. Int. 1320, A. Pr. 1465, A.J. 866) and the 1938 Convention (Revised Record, Int. 265, Am. 306, and Int. 613, Am. 641) gave formal consideration to the idea. One of the proposals to the Temporary State Commission on the Constitutional Convention (1957) was to study the feasibility of a unicameral legislature in New York. See the Second Interim Report of this Commission, September 19, 1957, Leg. Doc. No. 57, at 23 (1937). The Temporary State Commission on the Constitutional Convention (1967) has a cursory discussion of the question in Pamphlet No. 14 at 11. On June 6, 1967 Mr. Delegate Weissberg of New York City proposed the adoption of a unicameral legislature by the Convention (Proposition No. 799), but the measure was not passed.

180. Art. II, § 1(a) of the proposed (1967) New York State Constitution provides for a Senate and an Assembly. The constitution was rejected by the voters at the polls in November.

preferences and duties. Their votes carry the same weight. Committees must have at least as many short men as long. The two "classes" will not adjourn to separate sessions, and in making its house rules, the Assembly may not prefer one "class" over the other. At election time, all the short Assemblymen will stand for election at the same time in the appropriate year and, every six years, the long Assemblyman's seat will be the subject of a contest. In this way, the Assembly will be a continuing body and, it is hoped, responsive to the changes in the electorate, and yet not drastically influenced by any such changes.

Besides making allowance for changes in the electorate itself, this plan would insure both a short term view and a cooler, more farsighted approach to proposed legislation. Thus, the virtues traditionally associated with the bicameral legislature will not be lost. It is expected that the long Assemblymen will exercise the moderating influence of an upper house, without the cumbersome secrecy with which the double chamber system functions presently in New York. Likewise, the short Assemblyman, ever conscious that his stay in the halls of power is but one third as long as that of his distinguished colleague, will insure that legislation will never be too far out of step with the temper of the electorate.

Bicameralism has lost one of the principal justifications for its continuing on the public scene. And although this may seem to make the institution outmoded, nevertheless the bicameral principle continues to have great validity and use in state legislatures.[181] From the ordinary citizen's standpoint it has great value as a reminder that no one body in his government can ever take absolute power. Even if the popular idea is not perfectly accurate in every detail, it might seem unwise to replace an effective form of legislature with what would most likely be a completely experimental one. Nebraska adopted a single chamber after years of dissatisfaction with a clumsy and possibly suspect bicameral legislature. There is much less dissatisfaction with the New York Legislature today, and the quality of legislation is generally felt to be superior.[182] Still we can echo Colvin's remark of 1913, that "the trial of a safeguarded unicameral legislature would not be a very dangerous experiment."[183]

181. Experience in New York has shown that because strict party discipline keeps Senators and Assemblymen in touch with each other's actions, the Senate and the Assembly generally work together in accomplishing legislation. Of course, this may mean that a measure which has significant popularity may be passed by one house as a "sop" to its popularity but then defeated by the other house, or detained in joint committee because the true temper of the legislature is against the measure. See text accompanying note 94 supra. Whether this sort of compromise is desirable as a check and balance or whether it is considered a "monkeying" with the bicameral institution, it is clearly an indication that Senate and Assembly achieve the common good in New York by working together. And it also shows that the similarities of both houses (for example, that members of both houses are to be chosen according to population) must be put to work constructively, and also that their dissimilarities, whatever they be, must be valid and serve a useful purpose in government.

182. See, e.g., the Report of the Special Committee on the Constitutional Convention of the Association of the Bar of the City of New York entitled "Legislative Apportionment," April, 1967, at 8.

183. D. Colvin, the Bicameral Principle in the New York Legislature 191 (1913).