

VARIETIES OF UNICAMERALISM

ACT Legislative Assembly, Canberra, 31 July 2009

Summary of conference proceedings

Proceedings introduced and attendees welcomed by Mr Tom Duncan, Clerk of the Legislative Assembly, who called on the Deputy Speaker of the Assembly, Mary Porter, who formally opened the conference, and outlined the day's program. Ms Porter noted that the conference and its deliberations placed the ACT experience in an international context.

Opening address

Chair: Professor John Uhr

Professor Louis Massicotte, Laval University, Canada

Professor John Uhr, director of the Parliamentary Studies Centre, Crawford School of Economic and Government at the ANU, said that a primary aim of the conference was to address the fact that unicameralism attracted very little academic study, and it was important to note its sheer diversity of forms.

Professor Uhr introduced Professor Massicotte.

Professor Massicotte noted that the world was mostly bicameral in terms of populations governed, but in fact there were at most recent count 112 unicameral legislatures against 75 bicameral.

A number of possible causes existed to explain the prevalence of unicameralism legislatures.

- They were more democratic
- They were less democratic
- They were confined to countries small in size
- They were confined to countries small in population
- They were useful in poor countries in order to contain costs

There were also a number of other possible characteristics.

- The country was unitary rather than federal
- The country had no British legacy
- The country was a republic not a monarchy
- The legislature was subnational rather than national
- A leading politician disliked the upper chamber

However, on closer examination it was found that:

- Democracy does not seem to matter
- Size of the country matters
- Poverty was not a conclusive factor
- A federal structure was influential
- Colonial legacy was not strong or conclusive
- Unicameralism was less frequent in monarchies

In the case of federations there was a “double bind”.

- An acceptance of bicameralism at the national level
- But unicameralism at the subnational level

The United States and Australia were two key exceptions.

The composition of legislatures had shown certain discernible trends over time.

- From 1980-1999 more Senates were created than abolished
- Between 1909-1950 there was more bicameralism
- In 1980 126 countries – or 67 per cent – were unicameral.

A possible explanation of the rise of unicameralism was that most unicameral legislatures were “born” as such.

On the question of how dispensable are upper chambers, a key factor is the power dimension: just how powerful are they?

It is possible to chart a decline in strong bicameralism as the trend has been for upper chambers to become less powerful. But at the same time strong bicameralism remains a feature of presidential regimes.

Conclusions

- Democracy can thrive either way
- Long-term trend towards unicameralism

Professor Massicotte then took questions.

SESSION 1: The Australian Scene

Chair: Dr Sandra Lilburn, ACT Legislative Assembly

Professor John Wanna, ANU

Dr Will Sanders, ANU

Dr Janine O’Flynn, ANU

Professor Wanna

Frontier Unicameralism: The Paradox that was Queensland

Professor Wanna observed that self-government in Queensland when it separated from New South Wales was less a popular democracy than a business venture.

The Legislative Council, established at the start of self-government, was abolished in 1922, an event unique among the former colonies that became states in the Commonwealth. A “spoils of office” system of politics evolved there.

Queensland’s unicameralism was characterised by institutional weaknesses. For example:

- There was no real committee system, and
- There was no estimates process.

But despite this there were also some notable strengths.

- A professional public service
- Generally sound administration
- No public debt
- Independence of clerk and parliamentary staff

After 1988 a series of reforms were enacted, most notably to parliament and in the introduction of a range of accountability mechanisms hitherto lacking. Despite an occasional voice calling for a restoration of the upper chamber, bicameralism was largely dead in Queensland.

Dr Janine O’Flynn
The Curious Case of the ACT

Dr O’Flynn traced the path of self-government of the ACT, achieved in 1989 after a referendum in 1978 rejected the idea. It has developed into a system unique in Australia, a hybrid city-state combining functions and powers of both state and local government that is close to the people it serves. It has proved in its 20 years to be both progressive and innovative, implementing a pioneer Bill of Rights and controversially enacting civil union legislation for same-sex couples. Both the size and scope of this unique jurisdiction were crucial factors in the capacity to govern.

Dr Will Sanders
The Northern Territory

Dr Sanders pointed out how self-government, achieved in 1978, differed markedly from that of the ACT. A key component was the electoral geography which saw 7 out of the 25 electorates containing an Indigenous majority. It was more difficult for Labor than the CLP to manage the tensions inherent in balancing settler and outback interests. The Commonwealth constituted a *quasi* upper house for both the NT and the ACT, with its power to veto legislation, as it had done with euthanasia (NT) and civil unions (ACT), as well the power of intrusion as was demonstrated in the Commonwealth Indigenous intervention in the Territory in 2007.

Questions were then taken.

A representative from the South Australian parliament drew attention to the flagged referendum in that state on the upper house, relating to numbers and terms, but stopping short of an earlier plan to canvass its abolition.

SESSION 2: Canada and the United States

Chair: Mr Tom Duncan

Professor Louis Massicotte, Laval University, Canada
Professor Donald DeBats, Flinders University

Professor Massicotte *Unicameralism in Canadian Provinces*

Bicameralism has a long history in early Canada from the establishment of the assembly in Nova Scotia in 1758, bicameral until 1928; Prince Edward Island, bicameral 1773-1893; New Brunswick 1792-1891; Quebec 1792-1838 and Ontario 1792-1840. Canada, at the national level, has been bicameral since 1857. A number of legislatures were “born” unicameral: British Columbia (1871), Alberta (1905) and Saskatchewan (1905).

A distinguishing feature of the Canadian experience has been the predominance of appointed bodies as upper houses, but with two attempts at reform. One was in the old United Canadas (1856-1867) when the Legislative Council was made elective; the other was in Prince Edward Island when the upper house was made elective in 1862, albeit with a property franchise, but the two chambers merged in 1893.

A number of other reforms were also prominent, most notably:

- Reduction of upper house powers, and
- Compulsory retirement of members.

There has been no serious attempt to resurrect upper houses in Canada. The Charter of Rights (1982) may have provided the safeguard that Westminster-style politics otherwise lacks.

Professor DeBats *The Case of Nebraska*

Alone of the 50 states of the USA, Nebraska is the only unicameral legislature, having changed in 1934. There is no apparent influence of the Canadian or Queensland experiences, and a key factor was the opposition to bicameralism by Senator George Norris, who saw in it potential for corruption. A key argument was that deliberative capacity of government would be improved. Nebraska is also small and far less diverse than most other US states.

Georgia, Pennsylvania and Vermont each started out unicameral but became bicameral.

Two pillars of bicameralism in the US are discernible:

- Legislative check; and
- Different organisation of upper house from lower house.

The first of these pillars has been a constant; the second highly variable. The second pillar has shifted from *interests* to *counties*. This has become the core rationale for bicameralism in the United States.

In the 1960s, the US Supreme Court under Chief Justice Warren took a critical view of upper houses, concerned that entrenched rural interests with a minority of the vote could block legislation. This placed pressure on the second pillar, arguing for equal representation of one man, one vote.

American bicameralism remains robust. Upper houses have become democratised. The Supreme Court strengthened bicameralism rather than weakened it.

The US, unlike Australia and Canada, remains committed to legislative government rather than executive government.

Questions were taken.

SESSION 3: New Zealand, Scotland and Wales

Chair: Professor Uhr

Professor Elizabeth McLeay, Victoria University
Dr Phil Larkin, University of Canberra

Professor McLeay

New Zealand: Experiments in Bicameralism and Unicameralism,

Bicameralism in New Zealand went through two phases: (1) 1852-1890 and (2) 1890-1951.

In the 1890s New Zealand got rid of the provinces which sealed the fate of upper houses. The rise of parties saw the increased domination of the legislature by the executive.

Very few have mourned the passing of the upper house, although the idea was briefly revisited in the 1990s.

Unicameralism has also had two distinct phases. The first phase was marked by a parliament subservient to the government, and government by manifesto. It was an adversarial parliament.

A turning point was a Royal Commission on the electoral system which reported in 1986 and has led to the current multi-party system, and the MMP voting system. The legislative has been changed and slowed down, and is characterised by an increase in both women and Maori members. However it is far from perfect.

- There is still Cabinet dominance
- Urgency still prevails
- The house at 122 is still too small
- Shallow pool for ministers
- And little public understanding

The changes have demonstrated several points.

- Unicameralism can make for good parliaments
- Elected representatives can be reflective
- And politics is about conflict.

Most importantly, changing the electoral system does not in itself change the culture.

Dr Phil Larkin
Scotland and Wales

Ten years since devolution. Scotland has been characterised by consensual ‘new politics’ whereas Wales is Labour-dominated.

Explaining the consensual style in Scotland:

- Model of small consensual parliaments in Europe
- Strong dislike of politicians

It has been called a “parliament of committees”. Committees have the right to introduce legislation; five Bills have so far been introduced in this way

In Wales:

- A restricted legislative remit
- And committees also strong

The regional assemblies are now beyond the experimental stage and an accepted part of the political scene.

Questions were taken. Discussion on what constitutes a parliament and what is an assembly.

SESSION 4: Asia and the Pacific

Chair: Mr Quinton Clements, Centre for Democratic Institutions

Dr Laode Ida, Deputy Speaker, DPD, Indonesia
Mr Ian Harris, Clerk, House of Representatives
Mr David Hegarty, ANU

Dr Laode Ida

The Change of Legislative Systems of Indonesia from Monocameral to Bicameral

Dr Ida outlined historical background, explaining how under Suharto, law-making was dominated by the President.

Implications of centralism:

- All government policies are top-down
- Limited scope for political organisation

The result was an accumulation of discontent by the time Suharto stepped down. Among the demands for reform was a move away from centralisation, hence the change to a bicameral system. The amended constitution makes provision for a separation of powers, but there is still lack of constitutional clarity for the bicameral system.

Mr Ian Harris

Varieties of Unicameralism

Going back to the writings of Tacitus there is a long history of revisiting decisions and revising them.

Australian parliamentary experience has derived from Westminster, been called "Washminster" but is in fact "Ausminster", with its own evolutionary process, the main innovation of which is the Main Committee, now being studied elsewhere in the world.

Unicameralism is a cost-effective and efficient way of governance, and accountability is available through a strong and independent committee system, with New Zealand having the best in the world. In the ACT, the committee system is a safeguard against executive dominance.

Unicameralism is the most appropriate for the Asia-Pacific region.

Quinton Clements noted that many parliaments in the region had not been successful; their processes had been marginalised and political power lay very much with the executive.

Mr David Hegarty

Pacific Islands Parliaments: Effectiveness and Legitimacy

In the case of Papua New Guinea, outside the cities the parliament has very little significance.

By way of contrast, in Samoa the national parliament is closely followed and its proceedings widely listened to on the radio. An innovation here is that departmental secretaries are required to attend and answer questions.

Such differences may be explained by the underlying structures of society.

The ways in which these parliaments handle conflicts within their own societies is a major test of their legitimacy.

Questions were taken. Mr Harris elaborated on the Main Committee, and noted a major decline in the use of the guillotine since its inception in 1994.

Professor Uhr closed proceedings, thanking the organisers and participants and the ACT Legislative Assembly for its hosting.