Restraining Elective Dictatorship

The Upper House Solution?

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We live in an elective dictatorship, absolute in theory,
if hitherto thought tolerable in practice.

Lord Hailsham, 1976

FOREWORD

The Hon. Bill Hayden, AC*

There have been many conferences and quite a few books about the role and value of upper houses. At least in Queensland, none has so far ignited a passion for this sort of reform with political decision-makers, and perhaps even less so with the public.

This book draws together considerable intellectual capacity with the range of scholars who are participating, and the diversity of their expertise. This is fundamental for thoughtful, constructive discussion.

Personally, I hope that a momentum will develop from this book, which brings about the re-establishment of an upper house in Queensland. It will take time and effort.

It would be a powerful blow in asserting greater government accountability for the benefit of Queenslanders, but it will be an extremely difficult challenge to pull off.

I recall the conduct of constitutional referendums in this country, so few of which have succeeded. The inevitable tactic of opponents is to sow confusion with gross simplifications and distortions of propositions and the consequences of proposals, which would follow their adoption, so much so that the public is either in a minor panic about a prospective dreadful fate or wishes to be anaesthetised from the incessant punishment of political talk.

By then the public is in reject mode.

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So it has been, in the past, when this topic has arisen. The pat response is: an upper house is a plan for more politicians; we do not need them.

That is half right. But an upper house does not mean an inescapable total increase in the number of politicians. It may readily be done by reducing the number in the lower house to allow for the increase of the new parliamentarians in the upper house.

In Queensland there are eighty-nine members of the Legislative Assembly and twenty-eight members of the Federal House of Representatives. It takes more than three state parliamentarians to represent the same number of people as it takes for a member of the House of Representatives to do a similar job. That is rather rich.

Merely to adopt an upper house and not change the voting system would subvert the whole notion of change to bring about greater accountability of government. An essential change would therefore be to multi-member electorates, perhaps state-wide as with the Senate, and proportional representation, something I was instrumental in Labor adopting grudgingly —albeit in a limited fashion—at a special national conference in 1981.

By retaining a similar voting system to that applying to the Legislative Assembly the same disproportions for the large, old, established teams would be duplicated. At the 2004 Queensland state election Labor received 47 per cent of the first preference vote and 63 per cent of the electorates. The Liberal–National Party coalition received 35 per cent of that vote and 30 per cent of the seats.

There was a respectable 18 per cent of that vote which went to *others* but only four seats went to this group, to independents.

Some 14 per cent of the electorate was effectively disenfranchised, and the Greens in particular scored a healthy nearly 7 per cent of the vote, but not one parliamentary representative; their voters were dudded of their right to democratic representation.

There is nothing 'suspect' about these results. That is the inevitable result of the present, single-member electoral system.

We want, I should hope, a system that strives more fairly to make the Queensland Parliament more representative of the electorate's wishes and, in doing so, make it more accountable, as we have seen with the Senate on a range of major issues of concern, such as the dreadful demonising of people in the children-overboard fiasco and the dubious conduct of reporting, or some of it, of some of our intelligence assessment agencies in respect of Iraq.

But, perhaps, on a less lofty plane of public concern, ordinary people were approaching the Senate for a democratic hearing and investigation of their claims, like some of the harrowing incidents which have occurred under the military justice processes. The Senate was becoming a haven of hope for, and seen as more relevant to the needs of, ordinary people than was the House of Representatives.

The Senate had been evolving its style with skill and measured responsibility and, by the time of which I write, was behaving with sober restraint, passing most government legislation, but effectively making government accountable for its actions on certain issues.

The Hawke and Keating Labor governments had similar but less sensational experiences. Governments do not like it.

It is called obstruction and has led to some proposals for 'reform' which are simply a method of diminishing the watchdog-with-teeth role of the Senate.

The Senate role has not been without a few flaws.

Maybe I am becoming too focused on an upper house for Queensland which, of course, was the initial motivation for this volume of essays.

It is my judgment that if that is where the focus were to continue to rest then, in practical terms, little headway will be made in reaching that objective. The purpose is about a political process and inevitably that means wading into the heartland of politics.

Now politics is about many things: idealism, I hope; practicalities; a degree of pragmatism; and of getting things done for the benefit of the community, as the practitioners see it.

It also has other concerns. Ministers can get tired—very, very tired at times—and that sort of tiredness is not always good for making decisions. They can feel frustrated and unappreciated in the steam house of criticism, especially from the media, and can perhaps lunge in the wrong direction with decision-making. There are some who allow the action guy, the 'get things done' syndrome, determine their actions and take an impetuous but wrong turn.

And then there are the stunt guys: those who have a great idea for drumming up populist applause but waste public money and often violate project guidelines. That is when checks are needed to remind them when they are exceeding their authority.

Politics is also about power and power can be an extremely potent narcotic that can creep up in its effects on its prey, who, maybe, are unconscious

of the process which carries them away wrapped in a gentle rapture. 'Yes Minister, as you so wisely put it'—that is a nice hit for a jaded soul before morning coffee.

All that deference, especially from senior public servants; the rush of adrenalin that can come with decision-making, especially if the outcome which favours you follows a vigorous debate; seeing your ideas implemented as national programs; the status goods that go with senior office—VIP aircraft, shiny limousines and personal staff dancing attendance on you.

That power is corrosive is no novel concept. The seventeenth-century English journalist and republican Marchamont Nedham, in *The Excellencie of a Free State*, says it neatly, interpreting the proverb *honores mutant mores* as reflecting the temptations of power:

> the reason is, because [as the proverb saith]…'honours change men's manners' accession and continuation of power and greatness, expose the mind to temptations: they are sails too big for any bulk [i.e. Hull…] of mortality to steer an even course by.[1]

And by the way, after thirty-five years in public office, most of it as a minister or office holder, I will not waste time trying to exempt myself from the implications of any of these criticisms I have made.

That is why we must seek to preserve the democratic system as a process whereby a series of checks and balances are continually at work, in which the separation of powers, as it is practised in the Westminster system, is maintained, where the fourth estate, the media, are encouraged because of their capacity to train the intensely discomforting sunlight of public exposure on public office peccadilloes.

James Madison in *Federalist 51* made a highly pertinent point in asserting that when the legislature is unified it wields dominant, unbalanced power over the other branches of government.

There are other checks and balances which need to be reviewed or introduced to increase accountability—and I am thinking of a wider canvas than just Queensland with this clutch of comments—the evasion tactics which are adopted to avoid freedom-of-information revelations, and often urged upon a minister by concerned public servants who are also thinking of their comfort. Has the public service been or is it becoming politicised? Some scholars say no; I think the process is well and truly advanced in the

Commonwealth and it is not a good omen. Do we need a bill of rights? I long thought not, but Labor governments in the Northern Territory and Western Australia making jailing mandatory for, I feel, not terribly great second offences, convince me otherwise, especially as most of the jailbirds will be young Aboriginal kids from deprived backgrounds.

That is enough from me. I conclude by recommending this volume and sincerely trust it proves productive of better and deeper reflection upon the importance of government accountability for the community.

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1   Marchamont Nedham, *The Excellencie of a Free State* [1656] (reprinted London, 1767), pp. 134–5, quoted in Wootton, David, '"Checks and Balances" and the Origins of Modern Constitutionalism' in Womersley, David (ed.), *Liberty and American Experience in the Eighteenth Century*, Liberty Fund, Indianapolis, 2006.

Upper Houses and
the Problem of Elective Dictatorship

Scott Prasser, J. R. Nethercote and Nicholas Aroney

In 1976 Lord Hailsham, a leading Conservative in British politics for half a century and twice Lord Chancellor (1970–74; 1979–87), told BBC viewers that 'we live in an elective dictatorship, absolute in theory, if hitherto thought tolerable in practice.'[1] He also said:

> *Until recently the powers of government within parliament were largely controlled either by the Opposition or by its own backbenchers. It is now largely in the hands of the government machine, so that the government controls the parliament, and not parliament the government. Until recently, debate and argument dominated the parliamentary scene. Now it is the whips and party caucus. More and more, debate is becoming a ritual dance, sometimes interspersed with catcalls.*[2]

Hailsham had not raised a new concern. Even by the time he spoke, the problem he perceived had been a prominent topic of debate and analysis for perhaps twenty years. In 1964 there had been a Penguin special entitled *What's Wrong with Parliament?*[3] Its critique was symptomatic of the scene generally in countries whose parliamentary traditions derived from Westminster. In *The Lucky Country*, published in the same year, Donald Horne declared that 'in Australia, parliaments are now mainly of ritualistic significance.'[4] Professor L. F. Crisp, in the 1971 edition of his classic text, *Australian National Government*, lamented that:

> *Among British parliaments around the world the Australian has perhaps suffered a more substantial eclipse than most…Today great and far reaching*

decisions for the welfare and security of every day citizens are taken and applied every day by the executive…The initiative and the power of decisions are with the government…most decisions of consequence are effectively made elsewhere—in the prime minister's suite, or in cabinet, in caucus rooms or in party executives and conferences; in the departments…the commissions and…boards; in the interest group executive meetings and…major banks, businesses and industrial concerns.[5]

Professor G. S. Reid, a distinguished historian of the Commonwealth Parliament, sustained a deep critique of executive government dominance. Observing that Australia's parliamentary institutions had adopted 'almost a complete panoply of Westminster-type ceremony, furnishings and parliamentary dress,'[6] he contended that these provided a 'cloak of legitimacy' for executive governments pursuing their own agendas.[7] He pointed to the limitations on non-executive members in shaping legislation and in parliamentary scrutiny of government in support of a general thesis that parliament had been 'undermined by the executive.'[8] There were occasionally accounts with a measure of optimism but the picture was generally bleak.[9] The debate lost some of its force with the revival of the Senate during the 1970s and the establishment of a viable committee system, followed in 1987 by a similar system in the House of Representatives. Gloom, in something of a hysterical form, returned when the Howard Coalition government added a very slim majority in the Senate to its substantial numerical superiority in the House of Representatives. While the rigid discipline which characterises Australian political parties means that even modest majorities are more than sufficient, the new National Party senator from Queensland, Barnaby Joyce, on various matters took an individual line which diminished the certainty of government domination in all matters.

The bleak state of affairs in Australia's national parliament is reflected in the state parliaments. One *fin de siècle* appraisal described them, in a mix of metaphors and similes, as 'unoccupied museums occasionally opened for the passing of bills, where members of the executive, with its extensive entourage, camp uncomfortably like modern day Bedouins for the duration of the sittings.'[10] The authors might also have underlined the brevity of these occasional sittings.

It is in this unpromising situation, and in some measure because of it, that bicameralism has remained of interest in Australia and abroad. Because

the Australian Senate reinvented itself during the 1960s and 1970s (largely as a belated consequence of the change in the method of election when proportional representation was adopted in 1948), Crisp's 1971 judgment, quoted above, no longer has quite the same force as when it was first composed. Similarly, in some State parliaments, it has been revival of upper houses, usually following electoral reform, which has brought some life back into the parliamentary process. In both the United Kingdom and Canada, with their appointed upper houses, the essence of the reform project is to entrench effective bicameralism by finding a means of legitimisation comparable to that almost inadvertently attaching to the Australian Senate as a consequence of proportional representation.

The question is rightly posed: why is effective bicameralism so important, particularly when there are so many extra-parliamentary means available for keeping governments in check? In an immediate sense, there are two main answers. The first is that so many of the extra-parliamentary tools of accountability are too susceptible to executive control, whatever their nominal attributes of independence, authority and power.[11]

This is clearly illustrated by experience of reform in Queensland following the Fitzgerald inquiry of the late 1980s. Circumscription of the auditor-general, royal commission findings that the ministry had acted against the public interest in the hospitals crisis of 2006, and rushed amalgamations of local governments without adequate public debate all point to a regime where ministerial responsibility is much attenuated. The Legislative Assembly's sittings are so short (and manipulated) that there is little opportunity for bringing ministers to account. Media endeavours to fill the vacuum have been readily brushed aside by the mothering instincts of recently retired Premier Peter Beattie in relation to his ministers. It is deep irony that one of the most articulate critiques of the Commonwealth parliamentary situation following the 2004 national election came from the Queensland Department of the Premier and Cabinet, though without any acknowledgement that the deficiencies espied in Canberra were more glaringly present in Brisbane.[12]

But there is a second, complementary and compelling reason for supporting bicameralism as a means of checking executive government. It lies in the view that, as the problem derives from executive dominance within parliaments, so remedies must themselves be sought within parliaments. Useful as extra-parliamentary mechanisms of accountability may be, it is only by fostering a capacity to challenge executive government within the

parliamentary process that a durable regime of scrutiny, investigation and accountability can be resurrected and revived. General experience, and notably experience in the period since the Second World War, the era of government intervention in the economy and the welfare state, shows conclusively that bicameralism has provided the most likely conditions for restraining the executive. It is when scrutiny and accountability are legitimised by, and harnessed to, election and democratic representation that an authoritative constraint on executive government can come into play.

But recognising the significance of bicameralism for an effective scrutiny and accountability regime needs more than an acknowledgment that a parliament should be composed of two houses rather than one. Bicameralism, properly designed, materially enhances the qualities of a parliament in several ways. A thoughtfully constructed bicameral parliament is one where capacity for representation is amplified, opportunity for debate and deliberation is broadened, scope for examination of legislation increased, and avenues for scrutiny, investigation in all its forms and review augmented.

This book has been produced as a contribution to current Australian debates about bicameralism. It seeks to do so by appraising bicameralism in Australia, by revisiting its doctrinal and philosophical foundations, and by locating the Australian experience within bicameral practice and development elsewhere in the Anglo-Saxon world. (It has unfortunately not been possible to examine the New Zealand Parliament. It has been unicameral since 1950 but in the past decade has pursued some of the benefits of bicameralism by means of a House of Representatives composed by a multi-member proportional method of election.)

Bicameralism has an established but unsettled place in Australian parliamentary traditions. It has survived in all original jurisdictions but frequently in the face of opposition from the Labor Party. This has seen the abolition of the Legislative Council in Queensland in 1922 and several attempts to do likewise in New South Wales. Labor eventually came to terms with the Senate—whose abolition it advocated from 1920 to 1978 even as it used that chamber as opportunity arose to harass and hassle its opponents on the Treasury benches. Lingering Labor hostility to even reformed upper houses is now plainly evident in South Australia. In that state, the UK-born Labor premier, Michael Rann, after fostering constitutional and political reform during a period of minority government, is now actively exploring abolition of the Legislative Council.[13]

Between 2005 and 2008 the Senate weathered a term in which the Howard Coalition government had the benefit of a razor thin majority (which many consider, in retrospect, to have been a poisoned chalice). Much interest in the first term of the newly-elected Labor government will focus upon whether it initiates any measures to reinforce Senate procedures, especially those for scrutiny and accountability of government, following the interval of majority rule.

This volume is based mainly on papers prepared for a conference convened in Brisbane in April 2006 for the purpose of encouraging interest in bicameralism as a means to address endemic weaknesses in Queensland government. As already observed, Queensland government, even after reforms arising from the Fitzgerald inquiry, remains weak in terms of scrutiny and accountability. It is a stark example of how executive government can blunt the force of any instruments or avenues of accountability which rest, in the final analysis, upon the indulgence and goodwill of the government itself. All too often Queensland seems to be an embodiment of world's worst practice. Populism, even when expertly practised, as it so often has been in Queensland, is not a substitute for investigation, scrutiny and accountability.

The book offers a wide-ranging *tour d'horizon* of bicameralism in the English-speaking world. The opening essays by John Uhr, Nicholas Aroney and Geoffrey Brennan examine and articulate the doctrine of bicameralism as an electoral and parliamentary tradition, explaining the philosophies and logic underlying its adoption and practice. These are followed by several chapters on the Senate, exemplar of bicameralism in Australia. Authored by Harry Evans, George Brandis, John Hogg and John Nethercote, these contributions have the special value of recording opinion about the Senate during the brief period of unfamiliar majority rule in the years from 2005 until 2008.

Current interest in bicameralism is not by any means confined to Australia. Reform of the House of Lords has had an assured place in British political debate in the past decade which has seen removal of most of the hereditary peers, with, as Meg Russell shows, some unexpected consequences. Paul Thomas takes up the story of the Canadian Senate whose constitution has long been a subject of debate. As an appointed chamber its legitimacy is continually being questioned, particularly in western Canada, notwithstanding that it nevertheless evinces many characteristics of an effective second chamber.[14]

At provincial/state level in Canada and in the United States, the story of bicameralism is one of contrast. David Docherty tells the Canadian story where, since 1968, not one provincial legislature has had an upper house (the last, in Quebec, was abolished in 1968; some of the Canadian legislatures have never had a second chamber). In the United States, by contrast, as Graeme Starr shows, bicameralism has been a long-standing feature of state legislatures; as in Australia, there is one exception, Nebraska.

The book then returns to the situation in Australia, this time to examine the position in the various state parliaments. A general survey by Bruce Stone is followed by essays about Victoria, by Brian Costar, where there has recently been substantial reform of the Legislative Council, and South Australia, by Clem Macintyre and John Williams, where, as reported earlier, the fate of the extensively reformed Legislative Council is once again uncertain as the Labor government considers the prospects of a referendum for abolition.

The final set of essays, by Bruce McPherson, Janet Ransley, Gerard Carney, and Colin Hughes, address the situation in Queensland. This reflects the origins of the collection in a project aimed to encourage thinking about improved government in Queensland by means of effective scrutiny and accountability of the kind which an upper house, with its own electoral and democratic roots and authority, can bring.

For many decades, Queensland has provided one of the most obvious and pure examples of elective dictatorship. The post-Fitzgerald era has shown—it is tempting to say, conclusively—that extra-parliamentary institutions and instruments are simply not adequate for the task. It is not that they do not have value. Their abolition is not part of the agenda of this book. Rather, the argument is that an upper house—a house where the government does not have a majority—would bring added strength to extra-parliamentary machinery. But in a modern polity, an institution with its own democratic credentials constitutes a far more substantial accountability hurdle than any creation of ordinary statute law.

Bicameralism, in summary, is about addressing the issue raised in Lord Acton's much-quoted aphorism—'Power tends to corrupt and absolute power corrupts absolutely.'[15] It is about ensuring that the legislative power itself is dispersed rather than concentrated in a single house of a legislature which is liable to capture by a single party or small group. The words of John Stuart Mill remain as valid today as when he composed them in the middle years of the nineteenth century:

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. It is important that no set of persons should, in great affairs, be able, even temporarily, to make their sic volo prevail without asking anyone else for his consent. A majority in a single assembly, when it has assumed a permanent character—when composed of the same persons habitually acting together, and always assured of victory in their own House—easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority. The same reason which induced the Romans to have two consuls makes it desirable there should be two Chambers: that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year. One of the most indispensable requisites in the practical conduct of politics, especially in the management of free institutions, is 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; and of this salutary habit, the mutual give and take (as it has been called) between two houses is a perpetual school; useful as such even now, and its utility would probably be even more felt in a more democratic constitution of the legislature.[16]

Given the increasing amount of legislation passing through federal and state parliaments, growing concerns about civil liberties in these times of increased terrorism threats, the limitations of other accountability mechanisms, and the continuing roles and expectations in most democracies for parliament with their elected officials to supervise executive government actions, and to modify these actions if need be,[17] the time is ripe for a thorough assessment of the effectiveness of modern legislatures and, in particular, the capacity of upper houses to contribute to enhanced government accountability and democratic representation. In times of increasing executive arrogance, of increasing party discipline, and in Australia of such complete one-party dominance of all levels of government, such an undertaking is especially urgent and overdue.

1   Lord Hailsham, 'Elective Dictatorship', *The Listener*, 21 October 1976, p. 496.

2   *Ibid.*, p. 496.

3   Hill, A. and Whichelow, A., *What's Wrong with Parliament?*, Penguin Books, Harmondsworth, 1964.

4   Horne, D., *The Lucky Country*, Penguin, Melbourne, 1964, p. 178.

5   Crisp, L. F., *Australian National Government*, Longman, Melbourne, 1971, p. 267.

6   Reid, G. S., 'Australia's Commonwealth Parliament and the Westminster Model', *Journal of Commonwealth Political Studies*, vol. 2(2), 1964, p. 92.

7   Reid, G. S., 'Parliamentary–Executive Relations: The Suppression of Politics', in Mayer, H. (ed.), *Australian Politics: A Third Reader*, Cheshire, Melbourne, 1971, p. 506.

8   Reid, G. S., 'The Changing Political Framework', in Van Dugteren, T. (ed.), *The Political Process: Can It Cope?*, Hodder and Stoughton, Sydney, 1978, p. 78.

9   See 'Introduction', Nethercote, J. R. (ed.), *Parliament and Bureaucracy*, Hale and Iremonger, Sydney, 1982.

10   Uhr, J. and Wanna, J., 'The Future Roles of Parliament', in Keating, M., Wanna, J. and Weller, P. (eds), *Institutions on the Edge: Capacity for Governance*, Allen and Unwin, St Leonards, 2000, p. 10.

11   Grundy, B., 'The Missing Constitutional Ingredient', *Upholding the Australian Constitution*, vol. 17, Samuel Griffith Society, 2005.

12   Young, L., 'Parliamentary Committees: The Return of the Sausage Machine?', *Democratic Audit of Australia*, Discussion Paper 28/06 (2006).

13   Bastoni, J., 'Does the South Australian Legislative Council Have a Future?', *Democratic Audit of Australia*, Discussion Paper 29/06 (2006). See also King, L., 'An Experiment in Constitutional Reform—South Australia's Constitutional Convention 2003' and Griffin, T., 'The South Australian Constitutional Framework—Good, Bad or What?', *Upholding the Australian Constitution*, vol. 15, Samuel Griffith Society, 2003.

14   See also Joyal, S. (ed.), *Protecting Canadian Democracy*, McGill-Queen's University Press, Montreal, 2003.

15   Lord Acton, Letter to Bishop Mandell Creighton, 1887 (see De Jánosi, F. Engel, 'The Correspondence between Lord Acton and Bishop Creighton', *Cambridge Historical Journal*, vol. 6(3), 1940, p. 307).

16   Mill, J. S., *Considerations on Representative Government* [1861], ch. 13, Everyman edn, London, 1972, pp. 325–6.

17   See Russell, M., 'Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards', *Legislative Studies*, vol. 7(1) , 2001, p. 61.

Bicameralism: Philosophy and Doctrine

Bicameralism and Democratic Deliberation

John Uhr*

The term 'bicameralism' refers to parliaments, legislatures or political assemblies composed of two chambers or two houses. In bicameral assemblies, both chambers play a role in consenting to proposed laws: both chambers share legislative power, although not necessarily equally. There is no one model of power-sharing among bicameral systems. Each bicameral institution differs in important local ways. The standard alternative type is a unicameral assembly, with only one chamber or legislative house. There are rare additional types with more than two chambers or houses: three or four chambers are not unknown, each representing a distinct class or social 'estate.'[1]

There are many accounts of bicameralism that examine its contribution to political and policy stability.[2] Some of these standard accounts note the way that so-called 'veto players' such as second chambers can set terms and conditions on other institutional players, such as political executives that seek the consent of an upper house to a government's legislative initiatives or policy proposals. In this chapter, I want to turn attention away from this reactive dimension of upper house dealings with governments towards a more proactive dimension inherent in bicameralism itself. My focus is on proactive qualities of bicameralism that, under certain circumstances at least, allow two chambers to promote more effective democratic deliberation than normally encountered in unicameral political assemblies.

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My conclusion is not a recommendation for any one particular model of bicameralism. In principle, bicameralism has the potential to offer a variety of political benefits. In practice, it all depends on the institutional arrangement of powers in the particular parliamentary setting. My focus is limited to matters of principle, leaving others to work through priorities in institutional practice.

Preview of the argument

My argument is that bicameralism is best understood in terms of theories of redundancy, where the provision of two chambers secures a range of political benefits—notably, more robust political deliberation—better than can be generated by one unicameral assembly.[3] This is an argument about principles of institutional design and should not be confused with advocacy of the relative merits of second over first chambers. Strictly speaking, bicameralism refers to *systemic* qualities of political institutions with two chambers. In contrast to views of certain advocates of second chambers, bicameralism thus understood does not refer to an institutional preference for upper chambers, as it were, 'over and above' lower chambers. Indeed, the systemic view that I outline in this chapter holds that it is the creative tension (or institutional friction) between the two chambers, and not simply the internal qualities of upper house institutions, that drives the benefit of bicameralism. In J. S. Mill's words, the 'mutual give and take' between two houses 'is a perpetual school,' stimulating public discussion and eliciting progressive new solutions to policy problems.[4] This view is consistent with admiration for distinctive qualities of second chambers but it should not be confused with a view, held by some advocates of bicameralism, that tolerates the neglect or even withering away of lower houses.

I begin with an extended explanation of bicameralism in terms of redundancy theory. I then clarify bicameralism through two sets of contrasting accounts of 'balance' in political assemblies. First, a contrast designed to identify the core meaning of balance in bicameralism through a contrast between modern liberal approaches to bicameral balance and classical pre-liberal approaches to theories of the mixed regime. Although bicameralism resembles earlier mixed regime practices, the differences are more striking than the similarities. This initial contrast highlights some of the distinctive institutional properties of modern liberal bicameralism—especially its place

in liberal regimes of representative government where it modifies many of the underlying liberal-democratic principles.

My second contrast is within modern liberal accounts of bicameralism illustrating two complementary tendencies evident in liberal regimes of representative government. The first tendency has bicameralism perform important negative roles: this is the tendency to use bicameralism to act against the vices of majoritarianism and government use of representative powers to impair minority interests. The second tendency has bicameralism play more positive roles: this is the tendency to use bicameralism to promote the virtues of an effective deliberative assembly through strengthened legislative processes. Most practical systems of bicameralism incorporate elements from both tendencies, thereby establishing degrees of institutional uncertainty about the ongoing balance of negative and positive tendencies.

Bicameralism as redundancy

There are many political analysts who regard bicameralism as pre-democratic and therefore outdated. Critics can point to examples of nations which have rejected bicameral systems in favour of unicameral systems: for instance, New Zealand in 1950, Denmark in 1953, Sweden in 1970, Iceland in 1991 and Peru in 1993. In this 'two into one' story, the discarded upper houses were typically less democratic than their lower house counterparts: often with restricted franchises and narrower qualifications for membership, usually with considerable powers over legislation and sometimes selected by appointment rather than election.[5] 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.[6] In the famous language of French revolutionary activist Abbé Sieyès, where upper houses agree they are superfluous and where they disagree they are mischievous—primarily because they paralyse the will of the people as represented in the more democratic lower house.[7]

Critics can also point to the slow but steady rejection of bicameralism at the sub-national level in such advanced liberal democracies as Canada, where the last provincial upper house (in Quebec) was abolished in 1968, and whose national Senate is formally very powerful but of uncertain public legitimacy because members are appointed rather than elected.[8] Democratic constitutions like the revised Danish 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.[9] There are few if any examples during the last fifty years of nations with unicameral systems adopting bicameralism.[10] Finally, critics can point to the persistent threat of 'gridlock' between the two chambers in bicameral systems and the parliamentary record of upper-house frustration or obstruction of lower house policy and legislative initiatives.[11] 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.'[12]

Despite this history, bicameral legislatures remain a prominent feature of the political scene internationally. 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.[13] Although it is notable that many small nations have unicameral legislatures, adoption of bicameralism cannot be explained solely by reference to federalism: only around a third of bicameral assemblies are located in federal systems.[14] No special representative function such as regional representation is necessarily required: bicameralism 'can be justified as a protection against electoral excesses,' with the upper house serving a 'protective role' much like 'all genuine insurance facilities.'[15]

Critics of bicameralism claim it is redundant. Bicameralism might have many defects but redundancy, ironically, is perhaps its distinctive quality. I am not so much defending the merits of bicameralism as trying to explain the internal logic of bicameralism, which emerges most clearly when we see bicameralism itself as an application of theories of redundancy.[16] 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. Perhaps a better example is driver-education vehicles which have two steering wheels, both performing identical functions, but with the benefit that the instructor can intervene in the event that the student is unable to steer the vehicle properly. The benefits of redundancy only come into play when the braking or steering 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.[17]

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. The fact that bicameral institutions reflect a belief in the virtues of redundancy does not necessarily prove that this or that specific instance of institutional redundancy meets a public benefit test. It is not surprising that political activists in favour of second chambers appeal to redundancy theory; nor is it surprising that their partisan opponents favouring unicameralism dismiss the application of redundancy theory as mistaken and self-serving. In Landau's terms: 'the task remains to learn to distinguish between inefficient redundancies and those that are constructive and reinforcing.'[18]

In recent years, rational or public choice analysts have taken up the cause of bicameralism.[19] For analysts fearful of the mistakes of misguided government, bicameralism has much to offer as a model of dispersed political power. Government decisions cannot proceed until those initiating the action can muster majorities in both houses or both sites of legislative decision-making. Either house or site of law-making power can exercise a veto power over proposals initiated by those controlling the other house or site. By examining 'the nature of the bargaining game' under conditions of bicameralism, analysts can reveal the public benefits of dispersed political

power with, in effect, requirements for supra-majority voting in order to mobilise political support across the two houses or sites. Thus rational choice analysis of 'divided government' can come to rest on views about the benefits of 'institutionally imposed compromise and bargaining' found in bicameralism.[20]

Bicameralism as balance

The term 'bicameral' simply means two-chambered, from the Latin word 'camera' for chamber. There are many practical and potential variations in institutional relationships between two chambers, with no one preferred model of inter-cameral powers and relationships. There would be little value in any arrangement where the two chambers simply duplicated one another: for example, by representing exactly the same political interests in the same manner. Hence the real interest in bicameralism is the variety of institutional forms adopted to allow two chambers to represent different interests. These differences can be carefully balanced complementary interests, but just as often they can be tenuous arrangements of competing interests—often representing different class interests.

One useful way to think of bicameralism is to draw on this Latin derivation and to imagine a bicameral political assembly, whether it be the UK Parliament or the US Congress, operating along the lines of a camera with two lenses. Each chamber or house captures a distinctive view of political representation. The implication is that decisions by a bicameral political assembly require a convergence or merging of perspective to provide final policy and legal focus. Bicameralism is about constructing a balanced view from two distinct perspectives. This is no easy matter, as anyone using binoculars for the first time will confirm. By contrast, unicameral assemblies work more like telescopes in providing a simplified and unified vision. Bicameralism promises to generate better political perspective than unicameralism. It all depends, of course, on the precise details of the relationship between the two lenses or chambers. We can therefore anticipate that much of the analytical interest in bicameralism deals with the relative powers of the two chambers or houses, and the extent to which they represent opposed or merely different political interests. A preference for bicameral assemblies in itself tells us little about the appropriate constitution and composition of the two chambers or of the constitutional principles governing relationships between the two chambers.

Given this range of uncertainty about so many details, what is the use of referring abstractly to bicameralism? When so much of the operating relationships between the two chambers can remain unspecified, what purpose is served by the summary term 'bicameralism'? The main answer is suggested by the 'ism' at the end of bicameralism. The core attraction to advocates of bicameralism is the promise of 'balance': a balance of political interests that would be difficult or impossible to arrange within one single representative chamber. This core idea of balance is compatible with the use of a second chamber to protect vulnerable minority interests otherwise likely to be dominated by the prevailing interests represented in the first chamber. These minority interests might be those of an economic, religious, ethnic, educational or some other minority group. They could be of the political left as much as of the political right. Such a group might but need not be a minority of the poor or poorly educated; it might be a minority of rich or well-educated people using the second chamber as a bulwark against the potential tyranny of the ruling majority group. Theories of bicameralism tend to have more to say about the added value of the second chamber than about the limited value of the first chamber, which is either taken as a given or simply assumed as undesirable. Analysts—as distinct from advocates—of bicameralism cannot have it so easily: analysts have to examine not only the claimed merits of a second chamber but also the possible demerits of the first chamber. To put this bluntly, many unicameral assemblies also rest on concepts of political balance. What appears as 'balance' to advocates of bicameralism might in fact upset prior constitutional balances dependent on the primacy of the first chamber.

From mixed regimes to bicameralism

Consider two contrasting approaches to institutional balance, one from the classical political authority of Aristotle before the rise of modern bicameralism and one from US founding figure James Madison, writing in 1787 in *The Federalist Papers* and defending a liberal model of bicameralism.[21] Aristotle's pre-liberal realism is a useful antidote to some of the bland simplicities of liberal theories of balanced government.[22] Aristotle's classical realism can help in specifying some of the working assumptions not spelt out by modern advocates of bicameralism.

The classical version of balance is associated with concepts of the mixed regime with its idea of mixing or blending different interests through

distinct political institutions, each with a role in policy-making and legislation. Theories of balance have traditionally been challenged by critics of mixed regime models who have feared the potentialities of institutional deadlock among competing political institutions, each under the influence of a distinct social order. Aristotle's account in books 4 and 5 of *The Politics* of the strengths and weaknesses of mixed regimes provides a useful, indeed balanced, summary of the theory and practice of institutional balance.[23] Aristotle's own version of mixed regime known simply as 'polity' reflects his preference for blending democracy with oligarchy through any number of potential institutional arrangements. The challenge of this classical approach to balance was to select specific institutions to represent quite particular democratic or oligarchic qualities. The idea was not to award democracy or oligarchy its voice in one and only one political institution, or to confine this combination of democracy and oligarchy to any particular bicameral arrangement, but to spread a complementary range of democratic and oligarchic interests across different political institutions. Democracies, for instance, vary according to which sorts of 'the people' (e.g. farmers, artisans, merchants, traders) hold power over which types of political institutions; just as oligarchies vary according to the types of 'so-called notables' (e.g. the military or big business) controlling different types of institutions.[24]

Bicameralism comes out of this traditional interest in the balance of political interests. Aristotle's classical analysis leant towards one particular model of balance: the mixed regime, or 'polity,' blending democracy and oligarchy in systems of 'dual deliberation.'[25] By contrast, modern bicameralism emerges alongside the liberal constitutional hope for a much more limited form of government using the means of the rule of law to promote the end of civil liberty and the security of individual rights. The classical balance was about blending the two rather antagonistic regime values of democracy and oligarchy; the modern liberal balance reflects a prevailing regime preference for the values of modern liberalism, which is compatible with only some elements of democracy and oligarchy as originally understood. This sharpened focus on one preferred set of regime values transforms the business of balance away from classical mixed regime experiments towards a constitutional design for a regime of political institutions representing the values of liberal democracy: or democracy liberally understood in the manner celebrated in the social doctrines of liberal theorists like Locke, Montesquieu and the authors of *The Federalist Papers*.[26]

Where does bicameralism enter the liberal picture of constitutional government? The answer is as a means towards the end of limited government. Theorists of the separation of powers could take some comfort from classical concepts of the mixed regime because they provided proof of the dividends of divided power. Classical concepts of how best to mix or blend the three primary political functions of executive, legislative and judicial power provided no appropriate model for liberal theorists of limited government. Although both were engaged in constitutional balance, the nature of the norms in balance differed quite fundamentally. Aristotle and classical authorities did not share the defining separation of modern liberal theorists between state and society or the allied belief in limited government. Modern liberals began with this quite fundamental separation of state from society, and thereafter tried to construct an institutional design for government that limited the form and substance of its impact on civil society. Bicameralism appealed to liberal constitutionalists as a component of the separation of powers strategy: an institutional device capable of contributing to this fundamental separation between state and society by dividing legislative power into two equally important legislative bodies, each representing valuable social interests and each exercising checks of accountability over government.

Two tendencies within bicameralism

The next set of contrasts is within the liberal doctrine of bicameralism itself. This broad doctrine defends bicameralism in two ways: negatively, in terms of weakening the tendency to abuse of power by political executives; and positively, in terms of 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. The practice of most bicameral assemblies tends to show the greater influence of one or other of these two approaches. But 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 parliamentary or legislative body.

Just as most practical bicameral systems combine elements from both negative and positive modes, so, too, liberal theories of bicameralism also combine both justifications.[27] The balance of justification varies among theorists, but for present purposes the negative mode can be taken 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 favour of bicameralism. The present contrast is not completely faithful to the rich detail both versions contain. Suitably warned, then, about the provisional nature of this contrast, further analysis can begin with the negative mode so characteristic of eighteenth-century liberal constitutionalism.

Although the French political philosopher Montesquieu is credited with initiating the modern liberal understanding of bicameralism,[28] we can use *The Federalist Papers* as an example of the practical application of bicameralism in liberal constitutional theory. 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.[29] 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. This advocacy of bicameralism risks offending those who can see a prior balance of deliberative qualities established by the first chamber. Not surprisingly, critics of bicameralism are often tempted to try to strengthen institutional relationships either to the political executive or to the judiciary as constitutionally important ways of redressing imbalance within a bicameral legislature. Thus, critics of bicameralism deal with deadlocks between the two chambers in one of two ways: either by granting power to the political executive to act as circuit-breaker through a power to dissolve the assembly; or by conceding a power of constitutional oversight to the judiciary to declare unconstitutional any inappropriate 'balances' effected by the assembly or one of its chambers.

In *Federalist 51*, Madison argues that in liberal 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. The liberal model of representative government is one of limited representation: government limited in scope to liberal causes 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—even to the point of having the second legislative chamber constructed around federalist principles of representation, with each state equally represented regardless of geographic or population size. There are many variations of federally organised legislative chambers, and it is useful at the outset to note that Madison and his fellow framers did not expect their federal chamber to restrict itself as a 'states house,' only protecting states interests (not withstanding that US senators were, until 1913, chosen by state legislatures). Federalism helps to 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 in state-level legislatures to begin to appreciate the wider policy purposes intended for the US Senate, acting as a check and balance on the lower chamber.

The distinctive competence of the second legislative institution 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 defended this as a 'salutary check on government.' Government—or, more properly, misgovernment—will now require 'the concurrence of two distinct bodies in schemes of usurpation or perfidy': the concurrence of 'separate and dissimilar bodies.'[30] 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 the 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.[31]

Mill's case for more effective democratic deliberation

The contrasting positive mode of bicameralism accessible is most fully articulated in Mill's *Considerations on Representative Government*.[32] Mill accepted the value of the negative mode with its anti-corruption potential, but his version reaches beyond that to more positive values of public deliberation. Acknowledging 'the corrupting influence of undivided power,' Mill defends the negative dimension of bicameralism. But his real justification is in terms of the positive mode of wider and deeper public deliberation. Democracy requires important political virtues, of which none is more necessary than '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.'[33]

Mill is thinking primarily of the UK situation with an unelected House of Lords which to his mind has only limited capacity to moderate or check democratic excesses—a cause of some importance to Mill, given his fears of the power and, indeed, tyranny of the majority over liberal minorities. His preference was for a fully representative single chamber using proportional representation to promote the parliamentary representation of 'minorities.' But if he had to have a second chamber, his view was for one which represented interests not adequately represented in the first chamber: a

second chamber which 'would incline it to oppose itself to the class interests of the majority' and protest 'their errors and weaknesses.' Such a 'wisely conservative body' might be modelled 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. As an early and first non-American president of the American Political Science Association, Bryce pioneered the comparative science of modern democracy. His *Modern Democracies* is the first classic investigation of democratic institutions in empirical political science.[34] 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 modernising upper houses.[35] Bryce thus provides the most influential twentieth-century account of the positive mode of bicameralism as a device for deliberation.[36]

Contrasting strong and weak bicameralism

Bicameralism is about balance, but what happens when one of the two houses outbalances the other? If the weight is overwhelmingly in favour of the lower house, the result is unicameralism in substance, if not in form. But what if the weight is in favour of the upper house: is this, too, a form of unicameralism? This issue is not simply academic. It is politically alive in Australia, for instance, a country which 'has had more experience with bicameralism than any other parliamentary democracy.'[37] Some state upper houses still reflect traditional class interests or at least attract reform movements proclaiming the need to 'democratise' them.[38] This reform call 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 enrolments? Tempting as it is 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 counterparts, 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 multi-member 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.[39]

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 legislative powers of either house. More generally, we can see that the institutional strength of a bicameral system is closely related to its regime 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.'[40] 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 inter-group agreement on 'a way ahead.' Thus, for these purposes, strong bicameralism describes an institutional environment for multiparty political deliberation that can nurture effective political negotiation and generate feasible policy compromises.

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 upper house resistance to initiatives derived from the lower house—measured in terms of everyday institutional conventions rather than misleading legal provisions in constitutions when divorced from prevailing political conventions such as those associated with the norms of responsible cabinet government honoured in Westminster-derived systems of parliamentary government. Thus, evaluating the strength of any particular bicameral system is not an easy matter, given that each national political assembly must be approached 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.'[41]

Conclusion

Of the many contrasts in this chapter, perhaps none is more striking than that between the high theory of bicameralism and the low practice of so many bicameral systems. This gap between promise and performance is not simply the fault of self-serving advocates of ineffective upper houses. Some of the blame can also go to political analysts who have undertaken little constructive research on the various 'balances' associated with the promise of bicameralism. As a topic in contemporary political science, bicameralism is certainly under-researched but it is also quite under-theorised. Bicameralism has rightly been called 'a concept in search of a theory.'[42] The outstanding challenge is to widen the analytical and theoretical focus from upper houses to the broader *systemic* relationships at work in bicameral institutions. 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 associated with different institutional relationships.

Earlier generations of democratic theory had understandable reasons for treating upper houses as democratically suspect. But contemporary democratic theories are recovering, however slowly, an interest in the virtues of institutional redundancy with fresh research potential for studies of the multiplicity of institutional configurations compatible with effective deliberative assemblies. Bicameralism seems to many 'inherently duplicative and inefficient.'[43] But a narrow focus on efficiency fails to do justice to the institutional effectiveness promised, and not infrequently delivered, by bicameralism. Democratic standards of effective legislative deliberation are more demanding than narrower standards of efficient decision-making by public managers. This is not to write a *carte blanche* for upper houses of any composition operating in any manner they deem appropriate. But it is a warning that democratic institutional design draws on standards of efficiency that are open to the wider public benefits of some, but not necessarily all, of the costs of institutional friction within bicameral systems.[44]

In the end, it is all a matter of balance.

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22   Aristotle, *The Politics*, pp. 118–81.

23   *Ibid.*, pp. 122–6.

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29   *Federalist No. 9*, in *The Federalist Papers*, p. 72; Tsebelis and Money, *Bicameralism*, pp. 27–9.

30   *Federalist No. 63*.

31   Finer, *Theory and Practice*, pp. 401–2.

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