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## THE UNICAMERAL LEGISLATURE IN NEBRASKA

*Lester B. Orfield \**

IT IS PERHAPS not exaggerating to say that no more far-reaching innovation in state government has been adopted in recent years than Nebraska's unicameral legislature. It is an axiom of political science — somewhat modified, to be sure, by the growth of administrative tribunals — that there are three branches of government: legislative, executive and judicial. Nebraska has drastically changed the first of these three by adopting a single-house legislature. This question whether the legislature shall consist of one or two houses has become the chief problem of legislative structure during recent years. The model state constitution drafted by the National Municipal League made the unicameral chamber the most important feature of the legislative set-up.

The Nebraska change should be of as much interest to lawyers as it is to students of government. Jeremy Bentham, who criticized the whole legal system so severely, was no less critical of the bicameral legislature.<sup>1</sup> While in the early days of American history law was developed by the courts, today it is to the legislatures that we look. So fully has the field of lawmaking been preëmpted by the legislatures that they prescribe not only the rules of substantive law but those of procedural law. Courts have today abandoned their ancient prerogative of prescribing rules of criminal and civil procedure and do so only when directed by legislative acts. In Nebraska since 1920 the deplorable situation has been that by virtue of an express constitutional provision the courts cannot prescribe rules of procedure which would alter any existing statutory rules. But such unfortunate situations can be to some extent at least ameliorated by the influence lawyers have on legislation. A large proportion of the members of legislative bodies are lawyers. The judiciary committees are dominated by lawyers. Bar associations usually have committees on legislation. An increasing number of uniform acts are being presented to legislatures.

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<sup>1</sup> 4 BENTHAM, WORKS, Bowring ed., 419-450 (1843). See also Rockow, "Bentham on the Theory of Second Chambers," 22 AM. POL. SCI. REV. 576 (1928).

A considerable group of lawyer lobbyists attend legislative sessions. Law schools offer courses in legislation and law reviews give much space to it.

#### HISTORY OF THE UNICAMERAL REFORM IN NEBRASKA

The unicameral legislature in Nebraska was not proposed out of a clear sky. In 1913 a Nebraska joint legislative committee offered the following reasons favoring a unicameral legislature: that it would be more direct and responsible; that large cities are governed by single chamber councils; that there is no need to represent special groups; that the bicameral system results in loss of responsibility; and that the bicameral system does not insure deliberation and reflection.<sup>2</sup> A majority of the 1915 session favored the proposal, but there were not enough votes to submit it to the electorate.<sup>3</sup> The 1917 session rejected the system. In 1920 the unicameral plan was defeated by a tie vote at the constitutional convention.<sup>4</sup> Proposals were made but not seriously considered by the 1923, 1925 and 1933 legislatures.<sup>5</sup> In 1923 an initiative petition for a constitutional amendment did not get enough signatures. In 1934 Senator Norris took charge of the movement to bring about a unicameral legislature. He was assisted by local persons of prominence, but to him almost alone must go the credit for the adoption of the plan. Recognizing the improbability of change through proposal by the legislature, he resorted to the initiative. The initiative petitions were signed by 95,000 although only 57,600 signatures were required. Although plans were made as early as February 1934, the formal campaign began the second week in October 1934. Senator Norris visited the larger cities and made radio addresses. At the November 1934 election the amendment was adopted by a vote of 286,086 to 193,152, with 84 out of 93 counties and 1,956 out of 2,029 precincts favoring it. In May 1935 the legislature passed laws providing for the number of members and districts, fixing the member-

<sup>2</sup> Senning, "The One-House Legislature in Nebraska," 13 NEB. L. BULL. 341 at 342 (1935). See also REFORM OF LEGISLATIVE PROCEDURE AND BUDGET IN NEBRASKA, NEBRASKA LEGISLATIVE REFERENCE BUREAU, Bulletin No. 4, May 15, 1914.

<sup>3</sup> OGG and RAY, INTRODUCTION TO AMERICAN GOVERNMENT, 4th ed., 690 (1931).

<sup>4</sup> 2 PROCEEDINGS OF NEBRASKA CONSTITUTIONAL CONVENTION, 1919-1920, p. 2798. See also 1 *ibid.*, CIV, 382.

<sup>5</sup> Senning, "Nebraska Provides for a One-House Legislature," 29 AM. POL. SCI. REV. 69 (1935).

ship of the new body at forty-three.<sup>6</sup> The first unicameral legislature will meet in 1937.

Several things combined to make 1934 a favorable year in Nebraska. It was the year of the first election since the New Deal experimentation was in the air. The 1932 election swept in many members without legislative experience, and the long drawn out session and contentious spirit of its members led to popular disfavor. The two other amendments on the ballot, one repealing the prohibition of alcoholic liquors and the other permitting parimutuel betting, were also adopted. The fact that the unicameral measure had the backing of Senator Norris was reason enough for adoption in the eyes of many voters. When all this is said, however, much credit must be given to the able presentation of its proponents.

#### THE PRESENT STATUS OF UNICAMERAL LEGISLATIVE BODIES

Nebraska is the only state in the United States in which the unicameral plan prevails at the present time. Georgia, Pennsylvania and Vermont have had unicameral legislatures for short periods.<sup>7</sup> However, if the rarity of its existence be considered a criterion of its value, possibly a rehearsal of the places where it does exist, and a consideration of the historical basis of the bicameral legislature, will convince the doubter. The unicameral legislature exists today in eight out of nine Canadian provinces, Quebec, where the traditional element is strong, being the one exception. It is provided for in the new constitution for the Philippine Islands. The post-war European constitutions provide for no second chambers or for very weak ones. Norway, where the second chamber is selected by the first from its own members, has it in net effect, as do the Swiss cantons. Although England has its House of Lords, the real legislative body is the House of Commons. The House of Lords may not modify financial bills passed by the lower house; it may merely postpone the final passage of other legislation for a certain period of time. Virtually all American cities have single chamber councils. New York and Chicago, the largest of them, are governed by such bodies. From 1912 to 1917 ten states con-

<sup>6</sup> Much assistance was furnished by Professor John P. Senning, Chairman of the Department of Political Science of the University of Nebraska.

<sup>7</sup> In Georgia, 1773-1779; in Pennsylvania, 1776-1790; in Vermont, 1776-1836. For an excellent study of the Vermont legislature, see Carroll, "The Unicameral Legislature in Vermont," Vermont Historical Society (1932). Delaware had a unicameral legislature until 1776.

sidered the adoption of the unicameral legislature. In 1914, the vote in Oklahoma favoring it was 94,686 and 71,742 against, but a majority of the total vote cast at the election being necessary, the proposal failed. In January 1935, unicameral bills were offered in at least fourteen states: Delaware, Iowa, Kansas, Maine, Missouri, Montana, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming.<sup>8</sup>

#### THE ORIGIN OF THE BICAMERAL LEGISLATURE

With the exception of the ancient Greek and Roman republics, the legislative branch of the government as it exists today is a modern development, having been divorced from the executive only in comparatively recent times. When the powers of the absolute monarchs began to wane, certain assemblies of the people met together to pass laws. But these assemblies were not representative of the people as a whole. One assembly might represent the nobility, one the clergy, and one the common people. Spain and France had three-house assemblies. Sweden once had a four-house legislature. In England the three groups were ultimately combined to make two houses. Scotland was one of the few countries having a single-chamber legislature. It was not unnatural that the colonies, with no other example, followed the English system. In the case of Congress, there was not only the English example, but the need of sharply separating the state governments from the national and of protecting the smaller states. During the period before 1776, one house could represent the mother country.

Today, however, we live in a republic. We have no nobility. We have no State church. We are an independent country. The right to vote is given without reference to aristocratic qualifications. Education is universal and paid for by the state. What need is there for separate houses to represent separate groups? Is there anything but tradition and inertia to support the bicameral legislature?

In this period of disillusionment, some may claim that democratic government is a failure and may prefer a legislature with one house frankly representing the aristocratic elements of the state. But our two-house legislatures as now constituted no longer bring about such representation. Members of the upper houses of our legislatures are usually elected by the same class of voters for the same term of office with the same salary attached, and with the same qualifications and

<sup>8</sup> GALLAGHER, SINGLE HOUSE LEGISLATURES, Bulletin of American Legislator's Association, January 31, 1935.

the same duties, the only difference being that members of the upper house represent larger numbers of persons and may have longer terms. If we really wish an upper house which is not a mere duplicate of the lower house, we should demand certain property and intellectual qualifications for voters which are not required of those voting for the lower house, we should lengthen the term of office, increase the salaries and restrict the office to persons of greater age, wealth and intelligence than those who may be elected to the lower house.<sup>9</sup> If, as in bygone centuries, it is thought that the aristocratic elements of the state are entitled to special representation in a second house, that end is not attained under our present system.

#### ADVANTAGES OF THE UNICAMERAL SYSTEM

1. *Simplicity.* One of the most obvious advantages of adopting a single house legislature is that it simplifies statute making. There is only a single body involved, just as there is a single executive and a single judicial organization. The public can focus its attention on a single and smaller group. The difficult situation of having a Republican Senate and a Democratic House, or vice versa, is avoided. Conference committees are no longer necessary. Fewer regular committees are required. One does not have to consult two journals in studying the history of a bill. There are fewer points at which lobbyists may kill desirable laws. Jealousy, friction and rivalry between two houses is eliminated. Benjamin Franklin is said to have compared the bicameral legislature to a "cart with a horse hitched to each end, both pulling in opposite directions." No business corporation has two sets of directors. Constitutional conventions are unicameral. Efficiency likewise demands that the policies of the state be prescribed by a single legislative group.

2. *Responsibility.* In all probability the strongest reason for adopting the unicameral system is that it makes the legislature a responsible body. The public has but one body to observe instead of two. The legislature is brought closer to the people. Moreover, since the unicameral legislature, as generally urged by its proponents today, is about the size of the smaller of the two existing houses, a greater importance attaches to each member.

Legislation by conference committee is done away with. It has

<sup>9</sup> See the views of John Adams, John Jay, Francis Lieber, Justice Story, and Thomas Jefferson, as set out by Mulford Winsor, *State Law Librarian*, Phoenix, Arizona, in an unpublished study of legislative assemblies made in 1932.

been estimated that about fifteen per cent of all bills and seventy-five per cent of all important bills go through conference committees. A conference committee in reality amounts to a third house. Yet the people do not select the committee, nor do the two houses, appointment being by the presiding officers, who are not selected by the people either. The work of such committees is secret and no records are kept. Their proposals cannot be amended.

When there is but a single chamber, this chamber cannot cast the blame on some other group for improper action or nonaction.<sup>10</sup> Under the present system, members of one house may have a good paper record, although they have relied on the other house or on a conference committee to bring about an opposite result. The Nebraska amendment provides for a record vote on any question on the request of a single member.

3. *Less Corruption.* Closely connected with the element of greater responsibility is that of the greater integrity of a single house. It has been thought that the efforts of most undesirable lobbyists have been directed at killing bills rather than securing their passage.<sup>11</sup> Under the bicameral system, such lobbyists need concentrate on only one house, and on men under far less scrutiny than would be the few unicameral legislators. Even worse, in case bills go to conference they can concentrate on the committee or on two members of the conference committee from either house, or on the presiding officer who appoints them. On the other hand, to control a unicameral legislature it would be necessary to corrupt a majority of its members.

4. *More Capable Legislators.* When the legislative power is vested

<sup>10</sup> In the words of Senator George W. Norris of Nebraska:

"The State of Nebraska and its officials may be likened to a great corporation. The governor is the president of the corporation, the legislature is the board of directors, and the people are the stockholders. The stockholders have a right to know what their board of directors does and how it is done. They have a right to be able, by the record of the votes, to know whether the members of the board of directors have properly represented the stockholders. With the complexity which comes from a two-house legislature, it is impossible for them to know this.

"In order to fully understand the action of the board of directors, the stockholders would have to become parliamentary experts. They would have to spend a large amount of their time in following the intricacies of parliamentary procedure that winds up finally in the conference committee. A one-house legislature would obviate all this difficulty. The stockholders would then be able to tell just how every member of the board of directors voted on every question coming up for consideration." Norris, "The Model Legislature," 78 CONG. REC., No. 3, 3276 at 3278 (Feb. 27, 1934).

<sup>11</sup> Norris, "Nebraska's One House Legislative System," 79 CONG. REC., 1743 at 1744 (Feb. 7, 1935).

in a single body, obviously the greater responsibility and the reduction in the number of office holders will mean that a better type of person will be elected to the legislature. It will be a greater honor to be one of forty-three legislators than one of one hundred thirty-three, as formerly in Nebraska. Better salaries can be paid to this reduced number. Under the Nebraska provisions, \$37,500 will be paid annually to these forty-three legislators, considerably increasing the former salaries, but at less cost to the taxpayers.

5. *Dispatch.* The requirement of having to go through two houses results in much slowing up of legislation. A law may pass one house near the end of a session and fail of passage in the other house because of the press of business in the latter house. If the second house does consider the bill, it may desire amendments. A conference committee thus becomes necessary, and its view may not be acceptable to either house. The tendency of state governments to become administrative units of the nation makes even more imperative greater dispatch and efficiency in lawmaking. In an era of ever increasing scope of government activity, delays may be fatal.

6. *Economy.* Obviously it is far cheaper to operate one house than two. The unicameral legislature is likely to correspond in size to the smaller of the two former houses. Thus if the same salary scale is maintained, the cost of maintaining the more numerous of the two houses is eliminated. Even though a considerable salary be paid members of the unicameral legislature, it is likely to be less than the total paid the bicameral legislature. Furthermore, only one set of employees, such as secretary, reading clerk, sergeant-at-arms, and post-office keeper, need be maintained. Only one journal, instead of two, will have to be printed. Mileage fees and stamps will necessarily be less.<sup>12</sup>

7. *Possibility of Planning.* When bills require passage through two houses, it is extremely difficult to map out a comprehensive program of legislation. Each house is likely to have its own notions of what laws are necessary or desirable. On the other hand, when only a single body is involved, especially when that body is small, and can meet in

<sup>12</sup> The cost of the 1933 session of the legislature in Nebraska was \$201,668.13. The salaries and mileage of the 133 members amounted to \$110,504.72. The salaries of fifteen officers and seventy employees was \$37,275.25. A mileage of ten cents was allowed. \$4,360.20 was spent for postage, \$8,480.27 for supplies and incidentals, and \$12,403.54 for printing House and Senate journals. Under the unicameral amendment only \$75,000 can be spent for salaries in any two-year period. Only actual expenses in traveling by the most usual route once to and returning from each regular or special session is to be allowed.



more or less continuous session, planning is facilitated. Co-operation between the governor and the legislature becomes far easier.

#### ALLEGED DEFECTS OF THE UNICAMERAL LEGISLATURE

1. *Lack of Deliberation.* Perhaps the most frequently voiced objection to the adoption of a one-house legislature is that it would not be sufficiently deliberative.<sup>13</sup> It is asserted that measures would be rushed through without adequate consideration. But the present system results in too much check and balance. For every poor measure that may be defeated under the bicameral system, it is likely that two or more good measures fail. In times of depression, this may result in lack of action at critical moments with something approaching anarchy ensuing. Is it not possible that we have paid too high a price for deliberation?

But it is not to be admitted that the bicameral system insures deliberation. Much the same type of men are elected to both houses, so that one is not competent to check the other. The legislative product of our bicameral legislatures is all too often the butt of biting editorials. One house is likely to rely on the other house for detecting errors in bills, so that neither is careful. Is there anything deliberate about the final days of a session when important measures are turned over to conference committees and hurriedly adopted by legislators anxious to get home? A colleague of the writer has made a study of the Nebraska statutes held invalid by the Supreme Court of Nebraska, for improper methods of enactment and amendment.<sup>14</sup> One cannot read this study and still feel that a bicameral legislature insures careful consideration of laws passed.

One must concede that undue haste in legislation is to be avoided if it can be done at a cost not too great. A unicameral legislature does not necessarily entail the loss of proper caution in the passing of laws. The custom may be developed of referring important bills to the proper administrative authority for recommendation before passage. There can be no last hour conference committee reports. There are fewer members to introduce bills. The governor may still veto bills. The supreme court may throw out unconstitutional laws. A popular referendum, in states where the referendum exists, may serve as a

<sup>13</sup> See paper by Winsor, *supra*, note 9.

<sup>14</sup> Merrill, "Legislation: Subject, Title and Amendment," 13 NEB. L. BULL. 95 (1934).

final check. The legislators may be defeated at the next election. The greater responsibility placed on the single house will make it more cautious. The state constitution may lay down rules of legislative procedure which will check hasty action. In Nebraska the unicameral amendment provides that no vote upon the final passage of any bill shall be taken until five legislative days after its introduction, nor until it has been on file for final reading and passage for at least one legislative day. Moreover, expert assistance may be furnished in the drafting of bills. Conceivably an advisory council of revision might be created to examine bills provisionally passed by the legislature, and suggest changes which will result in their improvement.<sup>15</sup>

2. *Inadequate Representation.* It was asserted in the Nebraska campaign by the opponents of the unicameral legislature that it would result in inadequate representation of certain groups, particularly the farmers;<sup>16</sup> furthermore, that campaign expenses would be prohibitive because of the larger constituencies.<sup>17</sup> One obvious answer would be to make the unicameral legislature as numerous as the lower house. Earlier Nebraska proposals so provided. It is to be remembered that the senates of most states have but few members, yet have an equal voice in legislation, so that what the more numerous group may desire may be thwarted. As a matter of fact, the Nebraska unicameral legislature of forty-three members is more numerous than the former state senate, which contained but thirty-three members. It is also to be remembered that if the farmers and rural sections are given fewer representatives, the number of urban representatives is proportionately reduced. Representation would still be on the basis of population. If in some states the rural areas were over-represented in proportion to population, that error can be corrected. If the rural areas insist on the continuance of the discrepancy, that would be feasible even in a unicameral legislature.

Moreover, it is to be remembered that a small legislature has many advantages. The Nebraska amendment provided for from thirty to fifty members. Recent legislative proposals in other states have tended to adopt the same minimum and maximum limit. Committees are less essential in small legislatures. More debate is possible. It is less ex-

<sup>15</sup> WILLOUGHBY, PRINCIPLES OF LEGISLATIVE ORGANIZATION AND ADMINISTRATION 236 (1934).

<sup>16</sup> Burdette, "Nebraska, A Business Corporation," 34 AMERICAN MERCURY 360 March 1935).

<sup>17</sup> Lancaster, "Nebraska Prunes Her Legislature," 41 CURRENT HISTORY 434-436 (January 1935).

pensive to have fewer members. In 1935, the governors of Massachusetts and Michigan proposed to reduce by one-half the number of members in the bicameral legislatures of their respective states.

3. *Inability to Perform Special Functions.* It is argued that the bicameral system performs special functions which justify its continuance. Appropriation bills are introduced in the lower house, while the senate acts on nominations of the governor for various offices. The lower house impeaches and the upper tries holders of offices. But today when both houses are chosen by popular vote in an identical manner, there is no longer any reason for a separate house to introduce appropriation bills. The function of acting on the governor's nomination is often purely perfunctory and can as well be performed by a unicameral legislature. Impeachment proceedings are unwieldy, wasteful and infrequent and can be disposed of by other methods.

4. *Imperiling of Property and Minority Interests.* The basic objection in the minds of many opponents of the unicameral plan is that it would result in the taking away of certain constitutional liberties. The property of the few would not be adequately protected against the onsets of the unpropertied many. Such eminent jurists as Mr. Justice Story and Chancellor Kent were defenders of the bicameral system on this ground. But they assumed that the bicameral legislatures would have chambers sharply differentiated from one another. Today this is no longer the case. The same voters who vote for the upper house vote for the lower. The terms of office are often the same. The qualifications for membership are the same. One house is thus simply a duplicate of the other.

But it is by no means clear that unicameral legislatures will deal unfairly with minorities. The governor may still veto. The supreme court may still declare acts unconstitutional. Laws may be subjected to popular referendum. The procedure of legislation by the unicameral legislature may be so slowed as to assure consideration of the interests of all.

#### CONCLUSIONS

The adoption of a unicameral legislative system recommends itself for many reasons. It is more democratic, the bicameral system being based on a division of persons into classes. It is not wholly untried, having been once used in three states, and now existing in eight out of nine Canadian provinces, in the Swiss cantons, in Norway, in several of the countries created since the World War, in our city governments, and in our constitutional conventions; the unicameral principle is applied

to the executive and judicial branches of our government, and to the management of business corporations. The function of legislating is made simpler by the unicameral system. The legislature is made a more responsible organ. The possibility of corruption is reduced. More capable legislators are secured. The rapid passage of legislation is secured, though a sufficient degree of deliberation is retained. Expenses of legislative operation are reduced. The planning of comprehensive legislative programs is facilitated.

The history of other governmental innovations induces the belief that the unicameral legislature is not to be viewed as a universal panacea. Much good can be expected, however, when the unicameral idea is coupled up with other reforms, such as a small number of legislators, adequate salaries, long terms of office, the advice of experts, sound methods of legislative procedure, possibly (as in Nebraska) a non-partisan basis of election, and a parliamentary cabinet executive. As one authority has said:<sup>18</sup>

“Certainly it must be borne in mind that a legislative system, to be successful, must possess something more than the unicameral feature. That of itself, though the cornerstone of the arch of a simple, plain, classic law-making structure, is not sufficient. There must be a legislative body small enough to be thoroughly wieldy, large enough to be representative; means of formulating an intelligent legislative program; co-operation between the legislative and executive organs; procedure conducive to thorough deliberation; guarantees of complete publicity; adequate technical facilities; sources of impartial information; continuous study of legislative problems. In short, there must be a modern, scientific, efficient legislative plant, for which the simple, one-house plan would supply the motive power. Thus organized, thus equipped, the legislature would undoubtedly attract the state’s best material. Citizens capable of performing the fundamental governmental functions of determining the policies of the state, for the benefit of the state, would seek the service. In recognition of the importance of that function, the legislature should be endowed with adequate authority, unhampered by needless constitutional restrictions.”

<sup>18</sup> Mulford Winsor, *supra*, note 9.