Chapter 4 abstract

In modern democracies, the legislative power is vested in parliaments with diverse organizational structures. Bicameral legislatures, requiring concurrent deliberation by two bodies, are present in about one-third of the world's countries. Bicameralism typically serves the important purpose of accommodating the representation of heterogeneous interests from distinct social cleavages or geographic entities, but it is also associated with advantages such as greater stability of policies, increased accountability, and better quality of legislation. These benefits, however, only arise under specific circumstances, and the greater procedural complexity brought about by two chambers is not without costs. Disagreement between the two chambers often leads to costly legislative gridlock. Bicameralism can also open the door to pressure groups advancing their requests for favorable legislation when the chambers do not have time to carefully consider its consequences. The constitutional choice of bicameralism and its optimality ultimately rest on the subtle balance between its costs and benefits.

4

Bicameralism

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4.1   Introduction

In modern democracies, the legislative power is vested in parliaments, whose organizational structure displays marked differences. Bicameral legislatures are present in about one-third of the world's countries (Tsebelis and Money 1997), and almost half of the OECD countries (Testa 2010). Joint deliberation by two concurrent bodies is a defining feature of bicameral legislatures. Yet, the balance of power between the two assemblies varies greatly, from systems where the two chambers share the same legislative powers, to others where one body has a subordinate role because of restrictions on its powers and area of competence. For example, upper chambers have sometimes only veto or advisory power or cannot deliberate on financial legislation. Table 4.1 provides an overview of the parliamentary structure and powers in 35 democratic countries.[1]

Insert Table 4.1 here

Among the 25 bicameral legislatures, 15 operate under an open-rule arrangement whereby the second chamber can amend the legislation passed by the first, whereas in the remaining 10 legislatures, the second chamber has only veto power (closed rule). As for restrictions on policy domains, 5 bicameral countries do not grant power over financial legislation to their upper houses; among those that do, Australia and the Netherlands give only veto power to the upper chamber. A few decades ago, however, an overview of structure and powers of elected assemblies among OECD countries would have delivered a different picture. At the beginning of the twentieth century, "strong bicameralism" was more pervasive. For example, in the United Kingdom, restrictions on the House of Lord's power to deliberate on money bills only came into place after the reform brought about by the Parliamentary Act of 1911. Other countries—like Denmark, New Zealand, and Sweden—undertook even more radical reforms by abolishing their second chamber in the second half of the twentieth century.[2] Against the reduction in pervasiveness of bicameralism observed within OECD countries, a different pattern is recorded elsewhere as new democracies that have emerged in former communist countries—such as Croatia, Russia, Kyrzykistan, Kazakhstan, and Belarus—and have moved from unicameral to bicameral assemblies.[3] The variety of bicameral arrangements observed in modern democracies and their continued evolution raise the question of why certain countries opt for this type of legislative structure, and which considerations explain the variety of shapes that bicameralism takes.

4.2   Why Bicameralism?

From a historical perspective, the roots of bicameralism can be traced back to ancient Greece and Rome, where assemblies with a more "representative" structure co-existed with a smaller advisory council resembling an upper chamber without substantive legislative role (Muthoo and Shepsle 2008). However, the institutional development of

democracies in the modern era was shaped by the parliamentary bicameral model that by the eighteenth century had emerged in Britain, where a lower chamber (Commons), elected by individuals enfranchised on the basis of property requirements, shared legislative powers with an upper chamber (Lords) consisting of hereditary and life peers. The British bicameral model heavily influenced England's North American colonies, which although at the beginning espoused unicameralism, by the time of the American Revolution, had consolidated bicameral legislatures in place. The subsequent Philadelphia Constitutional Convention enshrined bicameralism in the Constitution of the United States. Departing from the class-based British model, the U.S. Senate became the body representing the States of the Federation. The British and U.S. models shaped the evolution of parliamentary structures in modern democracies that adopted bicameralism as tool for accommodating the representation of heterogeneous interests, stemming from distinct social cleavages (class, minorities) or geographic entities (states, regions). The representation of heterogeneous interests was not the only objective of bicameral legislatures, though. In the Federalist Papers #62 and #63, the founding fathers of the U.S. Constitution highlighted other important advantages of bicameralism, such as greater stability of policy outcomes, increased accountability to the electorate, and better quality of legislation. Formal models developed by the scholarly literature to study the rationale for bicameralism shed light on the validity and limitations of these arguments.

4.2.1 Representation

Spatial models of policymaking provide a useful tool to understand how bicameralism differs from unicameralism in the representation of heterogeneous interests. In a canonical spatial model, where individuals can be ranked based on their preferences over a unidimensional policy chosen by simple majority voting, the policy preferred by the median voter emerges as the winner.[4] Hence, when a single legislative assembly deliberates by majority voting, the median legislator's ideal policy will be implemented. On the other hand, in a bicameral system, where the policy is determined by two concurrent majorities, the final outcome will be a compromise between the ideal points of the median legislators in the two chambers. Thus, if one chamber is devised in such a way that its median legislator represents the interests of a minority in the overall population, whereas the other chamber represents the majority, then the policy implemented will be a compromise between the preferences of the majority and those of the minority prevailing in one of the two legislative branches. The extent of the compromise depends on the bargaining strength of the two bodies, which is shaped by the specific rules governing the decision-making process. Proposal power is particularly important. As shown by models of noncooperative legislative bargaining, in a divide-the-dollar game, the outcome is more favorable to the proposer (Baron and Ferejohn 1989). In fact, in a bicameral setting, a disproportionate allocation of seats to minorities does not per se lead to disproportionate power over budgetary allocations, unless the malapportioned chamber holds proposal power (Ansolabehere et al. 2003).

In a multidimensional policy space, the effect of alternative institutional arrangements on representation is more complex. In particular, different intensities of preferences over alternative issues may result in logrolling between majority and minority groups, whereby

minorities who care more intensively about some dimension may obtain the passage of legislation on their favorite issue even if a majority opposes it. In this case, two chambers with sufficiently divergent constituencies, by requiring a larger winning coalition to pass legislation, can reduce the risk of tyranny of a minority (Buchanan and Tullock 1962; Grofman et al. 2012).

It is important to note that, in a multidimensional set-up with different intensities of preferences—as in the simpler unidimensional case—the benefits of a second chamber only arise if its base of representation is different from the first. Hence, in a spatial model, "congruent bicameralism," where the two chambers represent the same voters, is at best irrelevant if it does not entail costs.

4.2.2 Stability

Spatial models of policymaking also provide important insights into another potential advantage of bicameralism—for example, its effect on the stability of legislation. In the canonical spatial model—as already discussed—when preferences are single-picked on a single dimension, the policy preferred by the median voter emerges as the Condorcet winner.[5] However, absent stark restrictions on policies and preferences, voting may lead to different policies emerging as winners in different pair-wise comparisons, thus compromising stability. Majority cycles can be prevented by imposing restrictions on the voting process, such as, eliminating defeated alternatives. However, in this case, as the order in which alternatives are put against each other dictates the outcome of the voting process, stability can only be achieved at the cost of giving a strong position to a subset of decision-makers with agenda-setting powers. By dividing legislators in two chambers so as to break the cycling, bicameralism can provide an alternative way of achieving stability (Hammond and Miller 1987; Levmore 1992; Riker 1992). At the same time, the greater stability achieved via bicameralism is not without its costs. In fact, as shown by Muthoo and Shepsle (2008), it may well be the case that under bicameralism the status quo policy is the only feasible and acceptable one, although this is not the case under unicameralism. Thus, while reducing the likelihood of arbitrary policy cycles, bicameralism may also preserve the status quo against potentially more advantageous alternatives.

4.2.3   Accountability

In the canonical spatial model, legislators can be ordered according to their preferences in the policy space and, as long as the preferences of the median legislator coincide with those of the median voter, the policy preferred by the majority is implemented. Hence, different institutional rules only affect policy if they alter the identity of the median legislator. However, the relationship between voters and their elected representatives is typically more complex. Even if politicians "as citizens" might have the same preferences for the policy as the voters do, once they are in power as decision-makers, their overall payoff might differ from that of their constituents. In particular, they might find it costly to implement the policy preferred by voters because the implementation requires competence and effort, or because some alternative policy may provide better opportunities for rent-seeking (Besley 2007). When lobby groups actively seek to sway policy to their advantage, the organizational form of legislative bodies can affect in an

important way a legislator's incentives to concede to lobby interests. For example, in a vote-buying context where two lobbies compete to pass new legislation or to keep the status quo by offering payments to legislators who care only about monetary transfers, Diermier and Myerson (1999) show that bicameralism raises the cost of passing new legislation. Intuitively, when chambers decide sequentially on new legislation, a lobby must pay enough to each chamber to ensure that the proposal is not blocked.

If legislators care not only about monetary payments but also about policies, the relationship between bicameralism and the cost of lobbying becomes more complex. In particular, if the median legislators in the two chambers have aligned preferences on a standard unidimensional policy space (ideological dimension), bicameralism increases the cost of lobbying, as in the standard vote-buying model without policy preferences. However, this is no longer true if the two chambers are divided and polarized on ideological grounds, because in this case bicameralism (unlike unicameralism) generates countervailing electoral incentives that make lobby capture easier (Testa 2010). The procedural complexities of bicameralism may also have another undesired effect. As the time necessary to pass legislation increases with the number of veto players, and time is the ultimate scarce resource for legislators, bicameralism—by increasing the risk that legislation might not gain timely passage—can reduce the bargaining power of legislators, making them more vulnerable to lobby pressures (Facchini and Testa 2016).

4.2.4 Quality of Legislation

The crafting of legislative proposals requires information on the state of the world and technical expertise. While not all members of the legislature contribute to the most technical aspects of law making, still they must have sufficient knowledge to evaluate bills when deciding whether to pass them. Bicameralism may contribute to improving the quality of legislation in various ways. First, by imposing minimum age requirements and longer terms in office in the upper house, it helps build more expertise in the policy arena. Second, by requiring a sequential approval of bills, on the one hand it provides incentives to the first chamber to craft good-quality legislation to maximize the chances of passage in the second chamber; on the other hand, it allows the second chamber to further scrutinize legislation passed by the first so as to correct eventual shortcomings (Tsebelis 1997).

More sophisticated models of information transmission also highlight specific mechanisms through which the two chambers can improve the quality of legislation. As the effectiveness of policy crucially depends on the state of the world prevailing when the legislation is passed, acquisition of information is crucial for achieving the desired outcome. As shown by Rogers (2001), by allowing two bodies to derive independent assessments on the state of the world and to exchange information via reconciliation mechanisms, bicameralism leads to the passage of better policy than unicameralism. When there is uncertainty regarding the true state of the world, and information is dispersed among legislators, models of strategic-information transmission provide further insights into the role of sequential decision-making by different bodies. In particular, Iaryczower et al. (2013) show that if legislators prefer a high- to a low-quality proposal,

but only have imperfect private signals regarding quality, then only a fraction of members in the first chamber (House) might vote informatively, and members in the second (Senate) might only approve House bills that receive the support of an endogenous supermajority of House representatives. In other words, the strength of the support for a bill in the first chamber acts as a signal of its quality. Thus, a sequential decision-making process allows legislators in the second chamber to use the voting outcome in the first chamber to screen the policy and minimize the risk that a low-quality proposal will be passed.

4.3   Does Bicameralism Work?

The theoretical literature confirms some of the virtues of bicameralism identified by the founding fathers of the U.S. Constitution in terms of representation, stability, accountability, and quality of legislation. At the same time, it shows that the benefits of bicameralism only arise under specific circumstances, and that the greater procedural complexity brought about by two chambers is not without its costs. Empirical studies provide further insights into the actual costs and benefits of bicameralism.

Starting with the issue of representation, a straightforward test of whether bicameralism prevents tyranny of the majority is the extent to which it affords equal protection for federal entities of different sizes on important policies, such as the allocation of items in a federal budget. The power of members of a federation within a legislature crucially depends on the number of seats allocated to them. Bicameralism usually gives more voice to larger entities in the lower house by allocating seats proportionally to the population, whereas in the upper house, smaller populations are overrepresented, as they get more seats per capita compared to larger ones. In the most extreme scenario, members of the federation are allocated the same number of seats in one chamber, as in the U.S. Senate, where all states are represented by two senators. The extent to which malapportionment of seats guarantees equal protection to federal members is, however, controversial. The empirical evidence suggests that, at least in the allocation of budgetary resources, smaller entities receive disproportionately more resources in per capita terms (Atlas et al. 1995; Lee, 2004; Knight 2008; Hauk and Wacziag 2007; Dragu and Rodden 2011), although these correlations must be interpreted with caution since a substantial part of the "small state advantage" can be explained by economies of scale rather than just by malapportionment (Larcinese et al. 2013).

Moving to the stability of legislation, while numerous studies confirm the positive association between number of veto players and status quo persistence in various policy domains (Tsebelis and Chang 2004), the evidence on the effect of bicameralism is only indirect, as the definition of veto players deployed by existing studies encompasses any institutional actor that has the power to block proposed legislation. Nevertheless, this indirect evidence indicates that a large number of veto players are associated with legislative gridlock, leading to inertia in different policy domains such as taxation (Hallerberg and Von Hagen 1999), budget deficit (Franzese 2007), labor legislation (Tsebelis 1999), inflation (Treisman 2000), and budget composition (Tsebelis and Chang 2004).

While gridlock is an important downside of bicameralism, the passage of legislation by two concurrent chambers may bring about other benefits. For example, two divergent chambers may provide checks and balances because the parties that control them will be less inclined to cooperate on policy, such as increasing spending and cutting taxes, which might benefit the other chamber in future elections. Consistently with this argument, Heller (2001) provides evidence of a negative relationship between bicameral divergence and budget deficit. However, divergent bicameralism can have detrimental consequences if elected representatives respond not only to voters but also to lobbies with opposing interests with respect to the electorate on some monetary dimension of policy. Although by increasing the cost of bribing bicameralism makes it less likely that elected representatives concede to lobby pressures, when the two chambers are divided on ideological grounds they are more likely to accommodate interests groups on the monetary dimension of policy. Cross-country evidence on the relationship between corruption and bicameralism confirms that inter-chamber polarization decreases the positive effect of bicameralism on accountability (Testa 2010).

Chambers do not exclusively exercise their veto when they disagree on ideological grounds. In fact, while it is true that a large proportion of bills originating in one chamber are never taken up for consideration in the other,6 disagreement between the two chambers is not exclusively driven by a divergence of preferences. The quality of legislation matters, too. Since the content of legislation is often technical, and information about its quality is dispersed among the members, legislators may rely on the sheer size of the majority supporting a bill as an indicator of its quality. Hence, in a bicameral system, the second chamber can optimally discard proposals that are not passed by a sufficiently large majority in the first chamber. In this way, the sequential approval by two legislative bodies allows the second chamber to scrutinize the quality of the proposals elaborated by the first and minimize the risk that poor-quality legislation is adopted (Iaryczower et al. 2013).

4.4 Conclusions

The institution of bicameralism has ancient roots. Although with time it has evolved, it still retains some of its original features. From a council of "wise men" in ancient Greece and Rome, to a class-based body in eighteenth-century Britain, modern bicameralism—while fundamentally transformed—still preserves the advisory role and representative purpose of the second chamber. In modern democracies, upper chambers accomplish their representative function by voicing the preferences of different territorial units (federal states or regions) or minorities (ethnic or linguistic). Their advisory role is reflected in the limitations on their power to initiate or amend legislation, as well as on minimum age requirements and longer terms of office devised to bring more expertise to the legislative arena while reducing electoral pressures. Despite the importance of these fundamental functions, the procedural complexities of bicameral decision-making are not without their costs. Disagreement between the two chambers often leads to costly legislative gridlock. Bicameralism can also open the door for politically connected organizations to advance their requests for favorable legislation when the two chambers do not have time to carefully consider its consequences. The constitutional choice of

bicameralism and its optimality ultimately rest on the subtle balance between the costs and benefits it entails.

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Table 4.1 Parliamentary structure

Country	Bicameral	Both chambers have power on financial legislation	Open rule	Parliament members	House members	Senators
Argentina	YES	YES	YES	329	257	72
Australia	YES	YES	NO	226	150	76
Bolivia	YES	YES	YES	157	130	27
Brazil	YES	YES	YES	594	513	81
Chile	YES	YES	YES	158	120	38
Colombia	YES	YES	YES	268	166	102
France	YES	YES	YES	908	577	331
Germany	YES	YES	YES	683	614	69
Italy	YES	YES	YES	952	630	322
Japan	YES	YES	YES	722	480	242
Malaysia	YES	YES	NO	289	219	70
Mexico	YES	YES	NO	628	500	128
Netherlands	YES	YES	NO	225	150	75
Philippines	YES	YES	YES	261	237	24
Poland	YES	YES	YES	560	460	100
South Africa	YES	YES	NO	490	400	90
Spain	YES	YES	YES	609	350	259
Switzerland	YES	YES	YES	246	200	46

Thailand	YES	YES	YES	442	242	200
USA	YES	YES	YES	535	435	100
Austria	YES	NO	NO	245	183	62
Belgium	YES	NO	NO	221	150	71
Canada	YES	NO	NO	413	308	105
Ireland	YES	NO	NO	226	166	60
UK	YES	NO	NO	1397	646	751
Denmark	NO	–	–	179	179	–
Finland	NO	–	–	200	200	–
Greece	NO	–	–	300	300	–
Hungary	NO	–	–	386	386	–
Israel	NO	–	–	120	120	–
New Zealand	NO	–	–	120	120	–
Norway	NO	–	–	169	169	–
Portugal	NO	–	–	230	230	–
South Korea	NO	–	–	299	299	–
Sweden	NO	–	–	349	349	–

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1 Source: Testa (2010).

2 New Zealand abolished the second chamber in 1951, Denmark in 1953, and Sweden in 1970 (Massicotte 2001).

3 See Massicotte (2001). For an overview of the literature on optimal constitution design see Voigt (2011).

4 The median voter is the individual that splits the population in two groups of equal size.

5 A Condorcet winner is the alternative that beats any other in any pair-wise comparison.

6 For example, in the U.S., 45% of all bills passed by the House are never taken up for consideration on final passage by the Senate (Iaryczower et al. 2013).