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## **Playing House The Theory of Bicameral Parliaments**

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**This is the first of two briefing papers looking at the debate on the existence of a second chamber within the Namibian legislature. This paper offers an overview of the development of bicameralism, as well as the arguments for and against this type of legislature. The second briefing paper takes a more detailed look at the existence of bicameralism in the context of Namibia and draws conclusions based on information about its functioning. The second paper also presents insights gained from Namibian Members of Parliament as to the value of a second chamber in the legislature.**

### **1. Introduction**

A bicameral parliament means that the legislative process is divided between two different chambers. At the beginning of the 20<sup>th</sup> Century, Barnett wrote that bicameralism was regarded by almost all as a “demonstrated truth” (1915: 449). He felt that, after habit, the most popular consideration in favour of a bicameral system was that it was judged as the only mechanism through which fears about the abuse of executive power could be allayed. This meant that its functioning was deemed to form a vital part of a system of checks and balances (Barnett 1915: 455).

Almost a century has passed since Barnett wrote this – a century that has witnessed two world wars and many other developments which have certainly influenced the internal political organisation of states. The debate around whether a bicameral or unicameral legislature is best remains unresolved. Widely disparate opinions exist regarding the relative merits and disadvantages of bicameralism versus unicameralism (a single chamber parliament).

This paper aims firstly to define bicameralism and to examine how it came to occupy its present form and position. Next, the paper provides an overview of the main arguments for and against this form of parliamentary organisation, as well as analyses its prevalence globally and in Africa.

### **2. Bicameralism**

Bicameralism is a means to reconcile the conflicting interests of key societal groups by granting them either veto power or at least powers of review (Braüninger 2002: 5). A second chamber, which has the power to review, decline or accept any legislation proposed by the first chamber, is

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introduced into the composition of the legislative body. Poncelet mentions that passing legislation from one house to the other allows an issue to be argued to a fuller extent and a wider range of relevant opinions to be expressed (2000).

Second chambers are legislative bodies composed on a different set of principles to the first chamber (Robertson 1993: 431). Barnett argues that a second chamber would be unable to serve as a sufficient check against an abuse of power unless the two houses are composed upon different principles (1915: 459).

Tsebelis and Money (1997: 1) quote Trivelli who states that the features characterizing bicameral legislatures include, among others:

- separate sessions of the two legislative chambers;
- separate determination of voting outcomes;
- different composition of members; and
- no overlapping membership.

However, according to Tsebelis and Money (1997: 1), these aspects are merely useful in determining whether or not there are two separate assemblies in existence. The fact that legislation is deliberated in two distinct assemblies is the defining characteristic of bicameralism.

### **3. The Dimensions of Bicameralism**

Rakhimkulov (n.d.) proposes that bicameral systems usually evolve out of a) the need to balance political power and b) the perceived need for the efficiency of the legislative process. Tsebelis and Money (1997: 16) identify these as the two dimensions of bicameralism forming a common thread through its history.

The first dimension, which is political and redistributive in nature, focuses on the fact that there is a struggle for power between the two houses in terms of vetoing or reviewing unsatisfactory outcomes and imposing preferences (Tsebelis and Money 1997: 16).

The second dimension, efficiency, is related to the fact that both houses have common interests and that an outcome is produced which makes them both better off. This has implications for the quality of legislation in both a substantive and procedural sense – substantive, because it suggests a movement from the status quo closer to the preferred outcome for citizens; and procedural, because there are many different methods of achieving a desired outcome – the most efficient being the process that involves the least cost (Tsebelis and Money 1997: 16).

### **4. The Historical Development of Bicameralism**

Tsebelis and Money (1997: 15 – 42) have identified six distinct, though overlapping, stages which each represent a step forward in the evolution of bicameralism.

Bicameralism originated in Ancient Greece and other Mediterranean cultures, although it was not present in the modern sense of the word, i.e. with a clear separation between the executive, judicial and legislative powers. The Greek philosophers supported the merits of mixed government (i.e. bicameralism) over simple government (i.e. unicameralism). According to their reasoning, simple government represented only the interests of one of the classes in society – either the one

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(a monarch), the few (an aristocracy), or the many (a republic). On the other hand, they felt that mixed government provided for the representation of two or more of these societal interests. This line of argument implied that the various interests were in place to balance each other.

In medieval times, the representation of different social classes was thought to require separate chambers. This meant that the second chamber became an appointive or hereditary chamber, as with the United Kingdom's House of Lords (Robertson 1993: 431). By the 18<sup>th</sup> Century, many Western philosophers regarded the British political system as a model example of governance. Britain's practice of deliberating legislative matters in two distinct assemblies – the House of Lords and the House of Commons – was a retake on the Ancient Greek theory of mixed government.

With the formation of the United States of America, national pressure challenged political institutions to represent the people, regardless of whether previous representation was based on class (unitary political systems) or on territory (confederate political systems). Most of the states in North America started out with unicameral governments, but nearly all of them very quickly evolved into bicameral legislatures.

Developments after this were fuelled by the rise of Republicanism, which affected political institutions in two contexts, namely unitary or class-based political systems (e.g. British institutions) and federal or territorially based political systems (e.g. American institutions). Britain and America provided the two most distinct models of institutional development. The norm was that confederations adopted bicameral legislatures in which 'the people' were represented in the lower house, while the constituent states were represented in the upper house. Unitary states tended to reserve the upper house for elite classes, in order to implement a counter balance for the political power of 'the people' in the lower houses. In both cases, however, the two houses tended to have equal legislative power.

Bicameralism up until this stage had evolved in two different ways. The first focused on representing different societal classes and the second on the representation of different aspects of the nation, population and territory. Acceptance of each of these institutional structures was changing as Republicanism became firmly entrenched in the 20<sup>th</sup> Century. This gave rise to three separate variations of bicameralism:

- bicameralism with legitimate and politically powerful upper houses (as found in federal systems)
- bicameralism with weak and efficient upper houses (as found in unitary systems)
- congruent bicameralism (in which the political composition of the second house resembles that of the first house to such an extent that the debate hinges on the intrinsic value of second houses; countries with congruent bicameral parliaments usually dissolve them in favour of unicameralism)

The present-day debate focuses on the various justifications for bicameralism. It is commonly believed to prevent a tyranny of the majority by checking the excesses of the more popular chamber. Conversely, it can also prevent a tyranny of the minority by improving the representativeness of decisions under majority-rule systems. Lastly, it reduces the potential for the tyranny of an agenda setter. His or her choice must survive competition from all alternatives in the second house, and thus control over outcomes necessarily implies the complicity of another agenda setter in the other chamber.

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## 5. Arguments for Bicameralism

Rakhimkulov (n.d.) states the following as benefits of a bicameral system. Firstly, two-chamber legislatures are commonly adopted with the aim of enhancing the representation of sub-national governments. Most of them are territorially elected: this is frequently done in order to offset the centralizing tendencies of unicameral legislatures, which are generally elected on party slates. Secondly, it induces stability because undesirable policies can be avoided through the interplay between the different preferences of the members of the two houses (Rakhimkulov n.d.). Bottom, Eavey, Miller and Victor also feel that a bicameral legislature is more likely to have stable, un-dominated policy choices than a unicameral legislature (2000: 524). In the third place, Rakhimkulov (n.d.) mentions that a key principle of democracy, i.e. the separation of powers, is expressed through the fact that the two houses supervise each other.

A Forum of the World's Senates, held in March 2000, identified the following advantages of bicameralism. Firstly, bicameralism is appropriate in the context of nations adopting decentralization policies which justify independent representation at a central level. Secondly, it is a guarantor of stability in the transition to democracy. Brown (n.d.) writes that bicameralism is the easiest way to accommodate the dualist structure of the state, because it is a method of representing popular national interests and state and regional interests at the same time. This ties in with one of the other reasons the Forum stated for the popularity of bicameralism. The members of the Forum felt that the diversification of representation brought about by the establishment of bicameralism enables a process whereby the parliamentary system can be corrected to incorporate national circumstances. Lastly, bicameralism is viewed as a modern means of ensuring the separation of powers without which, according to the Forum, a society has no constitutional basis.

Several political theorists state that the bicameralism slows down the legislative process. However, this can be viewed as a benefit or a drawback. If the goal is efficiency, then second chambers do make for inefficient legislative processing. On the other hand, if the goal is to improve the quality of legislation and achieve increased representation, then the inclusion of a second chamber is an appropriate means to achieve these ends. Braüninger also writes that bicameralism is more likely to produce outcomes which will actually be implemented (2002: 4).

Other advantages of bicameralism include its ability to reduce corruption. Tsebelis and Money (1997: 40 – 41) quote Levmore who argues that bicameralism requires the complicity of more individuals than would have been required in a unicameral system. Brown (n.d.) also mentions that some countries cite expertise (because more members of the upper house generally serve for longer periods of time than those in the lower house) as a means of improving legislation. According to Tsebelis and Money (1997: 40), quality control rests on two ideas. The first is preventive, which means that the knowledge that someone else will examine the product makes the producer more careful in the first place. Secondly, a system is in place which can discover mistakes after they have been decided on, but not yet implemented.

Tsebelis and Money (1997: 40) also mention that since the time of the Ancient Greek philosophers, the notion has existed of a council of elders who could bring their expertise and wisdom to a government. They quote Mastias and Grange who argue that the institutional provisions which promote an efficient second chamber can include higher age minimums and selection criteria involving some evaluation of expertise. This is especially important in territorial

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terms, as one would expect the representative of a specific region to have more specialized knowledge of the area (i.e. the value of territorial representation).

## **6. Arguments against Bicameralism**

Thomas Bentham was one of the strongest opponents of bicameralism. In an analysis of his arguments, Rockow (1928: 578) mentions that he (Bentham) saw no special superiority in a bicameral legislature and felt that it would only give rise to endless complications. Barnett (1915: 456) agrees. He wrote that the division of legislative authority would frustrate any unity or purpose likely to be achieved in legislation.

Rockow summarises Bentham's main argument against bicameralism as follows. According to Bentham, the aim of government is the "greatest happiness of the greatest number" (1928: 577). Therefore, he proposes that a legislative assembly should be based on universal suffrage, for it is only then that the aim of legislation will be the advancement of general interest. Thus, in Bentham's eyes, there is no justification for a second assembly in addition to the popular house. His qualification is that if a second chamber represents popular interests, it is useless; and conversely, if it represents only a particular interest, it is "mischievous" (1928: 578). Based on this, Bentham concluded that the existence of two chambers was not due to a rational analysis of their utility, but rather due to prejudice – "authority-begotten and blind custom-begotten prejudice" (1928: 578).

With regard to one of the reasons Rakhimkulov (n.d.) gives for the emergence of bicameral legislatures (i.e. the need to balance political power), Bentham felt that there would be a constant clash of authority in some cases and that this would make it impossible to keep the two houses in equilibrium, in terms of power. He argued that one house would always emerge superior regardless of whatever legal provisions might be in place, and that the 'inferior' house would not allow itself to be eclipsed. Subsequently, this would lead to the latter attempting to enhance its power through "petty annoyance" (Rockow 1928: 586). Furthermore, related to the search for a balance of power, Bottom, Eavey, Miller and Victor (2000: 528) feel that strategic position taken within bilateral negotiations – as take place between the two houses in a bicameral system – can obscure the existence of mutually beneficial bargains. The potential for failure within these types of negotiations could also be greater and might prevent the achievement of core outcomes<sup>1</sup>.

As mentioned in the previous section, bicameral legislatures are generally slower than unicameral legislatures, which can be a disadvantage. Rockow (1928: 583) writes that Bentham argues that the existence of two chambers, each sharing in legislation, will involve pointless delays in the process of legislation. This is due to the duplication of paperwork, as well as deadlocks resulting from "mutual jealousies and conflict of authority" (Bentham 1928: 583).

Susan Benda (n.d.) of the National Democratic Institute for International Affairs feels that bicameralism could decrease accountability to some extent. The members of the various houses could try to blame unsatisfactory legislation on each other, plus there are more elected officials for the public to monitor. Furthermore, a bicameral legislature is more expensive than unicameral for both government and taxpayers, since more officials need to be employed.

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<sup>1</sup> The core is defined as the set of outcomes in which every decisive coalition achieves its value. If any coalition fails to realise its potential, non-core outcomes may occur (Bottom, Eavey, Miller and Victor 2000: 528).

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Rockow (1928: 578) mentions that Bentham, apart from simply opposing bicameralism, even went as far as offering arguments to counter the proponents of this type of parliament. Firstly, he felt the argument that the second chamber has particular appropriateness is false. He stated that if this particular appropriateness is to legislation, then the second chamber should become the first and no other is necessary. Secondly, he refused to accept that a bicameral legislature could be justified on the grounds that it checks the haste of the first. According to him, if greater consideration is desirable, it should take place in the first chamber not in the second because the first chamber is the more important sphere of activity.

The arguments of the opponents to bicameralism can be summarised as their belief that there are other alternatives which will produce the benefits of bicameralism, i.e. a) to ensure that governors remain the servants of the majority and b) to reduce capricious legislation and improve its quality. To these ends, Rockow (1928: 588) writes that Bentham proposed a wide extension of suffrage, secret ballots, equal electoral districts, annual parliaments, legislation prohibiting corruption, the accurate publication of government proceedings and single chambers. Brown (n.d.) quotes Riker who proposes the requirement of legislative supermajorities (i.e. at least 75% of the members are required for the passing of legislation<sup>2</sup>), multi-party proportional representation and judicial vetoes on legislation.

## **7. The Global Picture<sup>3</sup>**

### **Prevalence and Characteristics**

During the early 1970s there were only 45 countries with bicameral parliaments (Forum of the World's Senates 2000). In 2001, the Inter-parliamentary Union recognised 64 countries as bicameral (BBC News 2001)<sup>4</sup>.

The bicameral parliaments dispersed throughout the world differ in various ways. The first is their different methods of nominating members. Fully elected upper houses are in the majority (39). Out of these, 21 are elected by means of direct suffrage; two are elected by a mixture of direct and indirect suffrage; and 16 are elected entirely by indirect suffrage. This is usually done by local authorities and through the intervention of locally elected individuals. In South Africa and Ethiopia, provincial legislative assemblies implement indirect election, while in Gabon and Mauritius, election takes place by local authority representatives. There are also a number of states in which the upper house is partially elected and partially appointed – Algeria is one of these. Mostly the numbers of elected representatives outweigh the number of appointees. Lastly, there are 14 countries with bicameral parliaments where the representatives are all appointed.

Another area where bicameral parliaments differ is the number of members and their terms of office. There are 27 countries whose upper houses have 19 members or less; 22 countries whose members number between 50 and 109; and 13 countries (including Egypt and Morocco) with more

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<sup>2</sup> Although this may sound like a good solution in theory, in practice it is likely to have serious consequences for the legislative process – for example, slowing the parliamentary process, hung parliaments etc.

<sup>3</sup> The source of this information is a document prepared after the Forum of the World's Senates held in March 2000. It can be found at [www.senat.fr/senatsdumonde/english/english-synthese.html](http://www.senat.fr/senatsdumonde/english/english-synthese.html). Thirteen African countries were also represented. These were: Algeria, Egypt, South Africa, Senegal, Swaziland, Liberia, Lesotho, Ethiopia, Mauritania, Namibia, Burundi, Nigeria and Burkina Faso (Nabakwe 2000).

<sup>4</sup> This information can be found at the following website: [news.bbc.co.uk/1/hi/english/static/in-depth/uk\\_politics/2001/open\\_politics/lords/abolition.stm](http://news.bbc.co.uk/1/hi/english/static/in-depth/uk_politics/2001/open_politics/lords/abolition.stm).



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than 109 members. As far as terms in office are concerned, in 13 countries members serve for four years; in 22 countries they serve for five years; and in 17 countries they serve for six years. There are three countries (including Morocco and Liberia) which have nine-year terms and three (Burkina Faso is one of them) where members serve less than three years.

### **Other Examples**

The Scottish Parliament Constitution Office compiled a report in 1998<sup>5</sup> on a survey of several unicameral parliaments to examine their functioning. The report arose out of an apprehension that a parliament with one just chamber cannot function properly. It presents findings on the measures implemented (or not) by various unicameral parliaments in order to ensure a continued system of checks and balances on the executive chamber after the dissolution of the second chamber.

In Sweden, which has a unicameral parliament, the Riksdag<sup>6</sup> implemented various reforms as substitutes for the positive features of bicameralism. These included:

- procedural rights being given to a minority of the Riksdag
- members not being required to live in the areas that they represent – this is seen as likely to provide a better range and quality of political candidates
- the electoral system being reformed so that parties meeting the threshold of 4% nationally, and 12% in a constituency, receive the same proportion of Riksdag seats as they do votes
- the comparatively large size of the Riksdag as a unicameral legislature, meaning that it is well populated to provide a sufficient number of parliamentarians to sit on its range of committees

Denmark followed a similar pattern to Sweden. A constitutional reform, in addition to abolishing the Landstinget<sup>7</sup>, introduced other reforms which strengthened the checks on executive power. These included the principle of cabinet responsibility to the parliament being formalised, and a new provision being made for a third of the Folketinget<sup>8</sup> to have any law passed put to referendum for confirmation (with the exception of financial laws). Furthermore, an Ombudsman was introduced and various constitutional guarantees of rights were introduced or strengthened.

In New Zealand, no significant work was done on the probable effects of the abolition of the second chamber and no reforms in the vein of those in Sweden and Denmark were introduced initially. The only additional constitutional reforms relating to checks on the government were introduced in the late 1970s and early 1980s. Queensland<sup>9</sup> also followed New Zealand's example. The abolition of the upper house was not accompanied by a corresponding reform to the lower house or any other constitutional reforms. The period of one-party dominance was ended in the 1980s when a series of corruption scandals led to a wide range of reforms to introduce checks on the executive.

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<sup>5</sup> This report can be found at [www.scotland.gov.uk/government/devolution/csbc1-00.asp](http://www.scotland.gov.uk/government/devolution/csbc1-00.asp).

<sup>6</sup> This is the lower house, which corresponds to the National Assembly in Namibia.

<sup>7</sup> This is the upper house, or second chamber. In Namibia, this is the National Council.

<sup>8</sup> This is the lower house, which corresponds to the National Assembly in Namibia.

<sup>9</sup> This is a region in Australia.

## 8. Bicameralism in Africa

### Prevalence

Out of 56 countries and islands in and off the African continent that were examined, 14 have bicameral parliaments<sup>10</sup>. These are:

- Algeria
- Botswana
- Burundi
- The Republic of Congo
- Egypt
- Ethiopia
- Gabon
- Lesotho
- Liberia
- Mauritania
- Morocco
- Namibia
- Nigeria
- South Africa
- Swaziland

Table 1 shows in which areas of Africa these countries are located.

**Table 1: Regional distribution of bicameral parliaments**

	West	Central	Eastern	Southern	Horn	Northern	Islands	Total
Unicameral	11	8	5	3	5	3	7	41
Bicameral	2	3	1	5	1	2	-	14
<b>Total</b>	<b>13</b>	<b>11</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>5</b>	<b>7</b>	<b>56</b>

Sources: CIA World Factbook, the Inter-parliamentary Union and the Country Indicators for Foreign Policy Conflict Risk Assessment Report

The highest number of bicameral parliaments is found in southern Africa (five out of eight countries analysed), followed by northern Africa and central Africa (three each). Janda and Gillies (n.d.) write that 'diffusion' is the causal mechanism for political similarities among nations, which transforms into the simple borrowing of traits or institutions. Such borrowing is likely to be especially common among nations in the same region, which could explain the concentration of bicameral parliaments in certain areas.

The attendees of a forum<sup>11</sup> (2001) held on bicameralism in Africa and the Arab world, agreed that bicameralism is fragile, meaning that preference for it, and consequently its survival, is not guaranteed. However, the sentiment was that this is mostly due to hostile political conditions in certain countries, rather than real doubt about the value of bicameralism. Countries who are in

<sup>10</sup> This information was taken from the CIA World Factbook, which is compiled using information available as from 1 January 2002.

<sup>11</sup> The forum, entitled *Premier Forum des Sénats et Secondes Chambres d'Afrique et du monde arabe*, was held in Nouakchott, Mauritania.



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transition to democracy might see bicameralism as an instrument providing stability in the short term and the strengthening of democracy in the long run. There are several African states that have made provision for bicameralism in their constitutions, but who have not yet implemented it effectively. These include Cameroon, Madagascar, Mali and Chad.

The country representatives attending the forum felt that the originality of African second chambers possibly resulted from the way that they take account of diverse social interests and the need to reintroduce equality through the specific measures and adapted practices in countries that fall victim to social, racial and cultural imbalances.

### **Other Examples**

Two of Namibia's closest neighbours, Botswana and South Africa, both implement a form of bicameralism. In Botswana, the lower house is called the National Assembly and it has 44 members. The second chamber is called the House of Chiefs. It has 15 members consisting of the chiefs of the eight tribes recognised at the country's independence. This body has no legislative or veto power. However, all bills concerning a) tribal organisation or tribal property, b) the organisation, powers or administration of customary courts, and c) customary law, have to go through the House of Chiefs before being discussed.

South Africa also has a National Assembly. The country's constitution states that it has to have between 350 and 400 members. The number of seats awarded to each party is proportional to the number of votes it received in the election. Half of the members of the National Assembly are chosen from national party lists and the other 200 from regional lists.

The National Council of Provinces is South Africa's second chamber. It consists of nine delegations nominated by the various provincial legislatures, as well as a delegation from the South African Local Government Association (SALGA). Each delegation has 10 members – four are special delegates drawn from the provincial legislature and six are permanent delegates. The National Council of Provinces considers, passes, proposes amendments to, amends, or rejects legislation. All bills must be referred to the National Council of Provinces for debate and a vote on whether to accept or reject it.

## **9. Conclusion**

When the history of bicameralism is taken into consideration, it becomes clear that it was an evolutionary process spurred on and influenced by a variety of external and internal factors. Much deliberation and experimentation went into its establishment – from the Ancient Greek era up to the present day. This means that it is not merely an idealised governance system theoretically devised and forced into practice. It has taken quite a long time to grow into its current position and the reason for its prevalence is likely to be the simple fact that it augments the democratic operation of the legislature (Poncelet 2000).

As far as its benefits and disadvantages are concerned, such a variety of opinions exist in this regard that it merely depends on which stance you are taking – the theoretical cases for and against bicameralism are both very strong. The deciding factor should thus be the unique circumstances leading to its development and its advantages and drawbacks within the specific environment it is intended to occupy. This, combined with insight into practical experiences, will offer the best indication of whether or not bicameralism is the better alternative.

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