UNICAMERALISM AND THE INDIANA CONSTITUTIONAL CONVENTION OF 1850

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Bicameralism as a principle of legislative structure was given "casual, unquestioning acceptance" in the state constitutions adopted in the nineteenth century, states Willard Hurst in his recent study of main trends in the institutional development of American law.[1] Occasioning only mild and sporadic interest in the states in the post-Revolutionary period,[2] problems of legislative

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1. HURST, THE GROWTH OF AMERICAN LAW, THE LAW MAKERS 88 (1950). "[O]ur two-chambered legislatures . . . were adopted mainly by default." *Id.* at 140. During this same period and by 1840 many city councils, unicameral in colonial days, became bicameral, the result of easy analogy to state governmental forms. The trend was reversed, and since 1900 most cities have come to use one chamber. MACDONALD, AMERICAN CITY GOVERNMENT AND ADMINISTRATION 49, 58, 169 (4th ed. 1946); MUNRO, MUNICIPAL GOVERNMENT AND ADMINISTRATION c. XVIII (1930).

2. "[T]he [American] political theory of a second chamber was first formulated in the constitutional convention held in Philadelphia in 1787 and more systematically developed later in the *Federalist.*" Carroll, *The Background of Unicameralism and Bicameralism,* in UNICAMERAL LEGISLATURES, THE ELEVENTH ANNUAL DEBATE HANDBOOK, 1937-38, 42 (Aly ed. 1938). The legislature of the confederation was unicameral. ARTICLES OF CONFEDERATION, V. Early American proponents of a bicameral legislature founded their arguments on theoretical grounds. Some, like John Adams, advocated a second state legislative house to represent property and wealth. Others, such as Jefferson, rejected this view of social checks and balances but advocated a two-chambered body on the classic ground that it produced delay and therefore deliberation. ADAMS, *A Defense of the Constitutions of Government of the United States of America,* "Preface" in IV THE WORKS OF JOHN ADAMS 271, 283 (Adams ed., 1851). JEFFERSON, *Proposed Constitution for Virginia* in III THE WRITINGS OF THOMAS JEFFERSON 322 (Ford ed. 1894); JEFFERSON, *Notes on Virginia, id.* at 223. See generally HOLCOMBE, STATE GOVERNMENT IN THE UNITED STATES 65-68 (1916); SENNING, THE ONE-HOUSE LEGISLATURE c. I (1937). The Jeffersonian position remained the predominant view throughout the nineteenth century. Benjamin Franklin was a strong advocate of the unicameral system for Pennsylvania. FRANKLIN, *Queries and Remarks Respecting Alterations in the Constitution of Pennsylvania* (1789) in XII THE WORKS OF BENJAMIN FRANKLIN 175 (Federal ed. 1904). The case for bicameralism today relies upon the possibility it gives of area- and interest- as well as population-representation, its prevention of haste and production of careful examination of bills, its greater resistance to influence seeking to corrupt the legislature, its tendency to discourage attempts to aggrandize legislative power. SENNING, *op. cit. supra* at 5-6. The modern unicameralist argument, essentially functional, is well stated in SENNING, *op. cit. supra,* c. V.

A brief resume of early unicameral experiments follows: Legislative bodies in the colonies at the time of the Revolution were, with the exception of those of Pennsylvania and Delaware, bicameral. Carroll, *The Unicameral Legislature of Vermont,* III PROC. VERMONT HIST. SOC., New Series 21 (1932). Dealey states that the two colonial exceptions were Georgia and Pennsylvania. DEALEY, GROWTH OF AMERICAN STATE CONSTITUTIONS 37 (1915). The discrepancy is doubtless due in part to the fact that Delaware was owned by Penn and was governed under Pennsylvania's charter. It had its own assembly after 1702, however. MORISON AND COMMAGER, I THE GROWTH OF THE AMERICAN REPUBLIC 77 (4th ed. 1950). Dealey seems in error regarding Georgia. Moran, *Rise and Development of the Bicameral System in America* in XIII JOHNS HOPKINS STUDIES 254 (1895). See generally Csontos, *Outline History of Unicameral Legislatures, 840-1935* in UNICAMERAL LEGISLATURES, ELEVENTH ANNUAL DEBATE HAND-

organization yielded precedence in the 1800s to the more immediate and compelling questions posed by slavery, territorial expansion, war, financial depression, and mushrooming industrialism. Awakened interest in unicameralism in the early twentieth century[3] arose not so much from reconsideration of abstract fundamental principles of government as from dissatisfaction on pragmatic grounds with the inefficient functioning of the traditional two chambers.

It is customary to treat the period between 1836, when Vermont abandoned the last surviving single-chambered house, and the first decade of the 1900s,[4] not simply as a time of total eclipse of interest in unicameralism, but almost as one in which the concept was unknown. One finds in the modern discussions of the subject scarcely any intimation that the constitution-makers of the last century were aware that they had alternative choices in organizing the legislative branch of government. The impression thus received is, of course, sufficient in outline, but it is inadequate in detail: There were no uni-

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BOOK, 1937-1938, 161 (Aly ed. 1937). In the first state constitutions Georgia and Pennsylvania adopted unicameral legislatures but changed to the two-chamber structure in 1789 and 1790 respectively. Neither "of these seems to have abandoned the one-chamber form as the result of any deliberate or adequate examination of the merits of its performance . . ." HURST, *op. cit. supra,* note 1, at 53. More interesting, they were "one house law-making bodies only in name. Functionally they were bicameral." A council or board of censors, in Georgia elected by the legislature from its own members and in Pennsylvania chosen by the electors, performed many of the functions of a second house. SENNING, *op. cit. supra,* 75-76. Vermont's 1777 constitution established a one-house legislature modeled after Pennsylvania's. This body lasted until 1836. It was satisfactory to the people and survived four proposals by the state's Council of Censors to establish a bicameral system. Carroll, *supra,* 15. The press gave little attention to the Censors' proposals, but all comment favored retention of the one house. Reasons other than statements merely of local pride were that one house operated satisfactorily and that change would increase government costs, lengthen legislative sessions, and remove the government from the people. *Id.* at 17-18. In Vermont, too, an Executive Council seems to have acted as a second chamber at least until 1786; after that period it "had a weak suspensory vote, but nothing more." *Id.,* c. II, *passim,* esp. 14-15, 24. Vermont abandoned its unicameral legislature as the result of a constitutional amendment drafted by a convention whose members' motives and credentials were open to question. The people acquiesed in the change because they were aroused at the complete failure of the 1835 Legislature and Executive Council to reach an accord in their duty of electing a governor, an evil unrelated to the unicameral system. Evidence indicates that the successful agitation for the change was inspired by banking institutions that foresaw coming regulation and sought to block it through control of a small second chamber. *Id.,* c. II, *passim,* and c. V, *passim,* esp. 69-70.

3. SENNING, *op. cit. supra* note 2, c. II; JOHNSON, THE UNICAMERAL LEGISLATURE c. V (1938).

4. The twentieth century unicameral movement is frequently dated from 1912. In that year Oregon voters rejected a constitutional amendment to abolish one of the legislature's two houses, and Ohio's constitutional convention considered a similar proposal. The movement's subsequent progress is traced in the authorities cited in note 3, *supra.*

cameral legislatures, but a few political thinkers were entertaining the idea of abolishing one of the two houses.[5]

The recent discovery of a letter received by Schuyler Colfax at the time when he was an influential member of the Indiana Constitutional Convention of 1850 illuminates the state of unicameral (and other) thought at that period and leads to inquiry into the consideration accorded the subject by the makers of Indiana's long-lived 1851 Constitution. The letter is reproduced in full:

Lafayette Oct 6./50

Schuyler Colfax Esq,

Dr Sir,

Your letter has remained thus long entirely unacknowledged, because I intended to prepare an article discussing the whole question you presented, with the objections to it &c, send it to you that you might publish it or otherwise if you thought proper. But I have not found leisure sufficient to accomplish this work, having been closely pressed for time ever since the recp't of your favor.

I looked back for the paper you mentioned, it contained nothing except a mere statement of the proposition I had discussed.

You have been thinking of the constitution of the legislative branch of our state government, & the reasoning in favor of a single body has certainly presented itself to your mind in stronger form than I can place it on paper. In bringing others to admit the force of your reasoning the great difficulty will be to overcome the deeply fixed impression of the absolute necessity of checks and balances in the legislature. The reasoning and experience in favor of these checks &c as brought out in the history of the British parliament and

5. In 1805, in a memorial, *Constitutional Reform, To the Citizens of Pennsylvania on the Proposal for Calling a Convention,* Thomas Paine stated that the constitution then in force was a retrogression from Pennsylvania's earliest state organic law. Among other reasons for this was its provision for a senate, which was a slavish copy of England's House of Lords. Paine recognized the danger of "the precipitancy to which the legislature might be subject in enacting laws," and suggested as a remedy that the legislators be equally divided by lots, sit and debate and vote in two groups, and then have all votes of the two groups totaled. II THE COMPLETE WRITINGS OF THOMAS PAINE 992 at 1001 (Foner ed. 1945). Less equivocal was Jeremy Bentham, whose *Anti-Senatica,* a compilation of manuscripts, was sent to Andrew Jackson in 1830. It was not simply an attack on the United States Senate but on the second chamber generally. "In no state of things actual or imaginable is it well adapted to its supposed purpose: neither in a new-established nor an old-established government." XI SMITH COLLEGE STUDIES IN HISTORY 209, 252 (July 1926). Amos considered the choice so clear that as between the unicameral and bicameral legislatures, "it seems almost absurd that there should be any doubt as to the side on which the advantage lies." AMOS, THE SCIENCE OF POLITICS 238-246, esp. 245 (2d ed. 1883). Other instances could probably be found. It must be remembered too that some cities were rejecting the two-chambered council in the mid-nineteenth century. St. Louis adopted it in 1838, abandoned it in 1850. San Francisco adopted in 1850, abandoned in 1856. Bradshaw, *Unicameralism in American City Government* in UNICAMERAL LEGISLATURES, ELEVENTH ANNUAL DEBATE HANDBOOK, 1937-1938, 79 at 81 (Aly ed. 1937).

our federal Congress have made a deep impression on my mind, & unless the attention can be strongly fixed upon the differences between a state government like ours & either of these, mere reasoning can have no effect on the mind. Men will say & think your theory is right, but it is mere theory, it is at war with experience, & we are not prepared to set up our reason against the wisdom & experience of the past. Men are slow to understand that highly as the present may think of the past, its reasoning & teachings, yet the present is & of necessity must be superior. I speak not of course of any comparison between the prominent individuals of this or any other age, but of the intelligence, wisdom & attainments of the whole at present as compared with the past. If the destiny of the race is progressive that destiny can only be filled by each age making some progress, not by remaining content with the attainments of the past. Indeed is it possible for an age which is in possession of all the experience & wisdom of the preceding ages, not to possess a higher wisdom than any of its predecessors. I cannot pursue this farther, but its justness cannot but strike one who will think closely of any past age as compared with its successor. Again the reasoning &c on which the constitution of the British parliament & our Congress is based, is wholly inapplicable to our state legislature. The British parliament is formed so as to represent in one house the interests of the aristocracy, in the other the interests of the monied power of the kingdom, the interests of the masses as *men* are not recognized at all. These interests are conflicting & it would not be possible to bring them together into a single body without one or the other soon being vanquished by the other [last 3 words crossed out]. The monied power would swallow up the other, hence the necessity that each interest should have a negative upon the action of the opposite interest.

So in our federal government, the separate states, each being sovereign, the equal of any other, though the difference in population may be immense, the interests of the several states occasionally conflicting, the form of separate bodies, one representing the whole people, the other the interests of the separate states, is required. Otherwise the interests of the more populous states would be consulted at the expense of the interests of a much larger number of states, less densely populated.

This is the only reason in favor of the separate bodies in Congress, except a strong feeling of distrust of the capacity of men for self government, which characterizes all the debates in the convention that framed the federal constitution.

If you can bring men to feel that there is nothing in the experience of the past that gives the lie to your reasoning, that there is no sacrilege in thinking for themselves even though they should arrive at a different result from their fathers, that there is no peculiar mistery [*sic*] about government, that it is not a subject to be learned from men inspired, & adopted as a matter of

faith, but to be reasoned about, & acted upon as any of the ordinary matters of business, then you can have little difficulty in bringing them to the conclusion that a single representative body is preferable to the present organization.

The reasoning in favor of a single body to my mind is clear, convincing, after these difficulties to its reception and consideration are removed.

It is shortly this. Men are *capable of self government.* Every man who is recognized as a citizen is politically equal to his fellow, & is entitled to an equal voice in the government.

In our state there is but a single class. Neither distinct classes with differing interests,[6] nor equal sovereignties. There is but one interest to be consulted, the interest of the whole people.

That interest if it were possible would best be consulted by the determination of the whole people as to any measure, this is impossible & being impossible that system is the best which will most nearly accomplish it. Delegates are chosen from small districts, each to exercise the functions of his constituency in determining & fixing the rules by which they are willing their rights & duties shall be regulated. Select these delegates from single districts, let them be elected for but a single year, securing their direct & immediate responsibility & you have a body that must & will reflect the will of the people. If they embody in their acts the wishes of the people, you have a government in which the people govern themselves, this is the object sought. What more will you have. Checks & guards. For what purpose, if your representatives think & act according to the wishes of the people. Do you intend the will of the people shall be thwarted. That there is be [*sic*] a power in the government that shall be allowed to say to the people you are mistaken as to what your interests require & it is necessary a check be placed upon your will, that a vice be placed in the hands of another body of men who may at any time stop the motion of those who are desiring to act in obedience to your will.

It is idle to talk of two bodies each with a negative on the others action representing truly at all times the will of the same constituency. When they agree they do, & in such case the one is as good as the two. When they disagree one does, the other does not act in accordance to the will of the people, in such case you are better without the one that does not.

If you cannot constitute a single body in such way as truly to represent popular will, it is not possible you can form two bodies so that each shall do what neither singly can be made do. Each acts by itself & if no single body will truly represent the public will, do you approach nearer the desired

6. Compare the debates on the number of members to be allotted each house, I REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 1850 (cited hereafter as DEBATES) 980 *et seq.* The delegates clearly believed that there were several lines of cleavage among different interest groups, e.g., large and small counties, rural and urban communities, agricultural and commercial and financial interests.

standard, by requiring the agreement of two bodies neither of which truly represents that will. In a word, if you cannot find an agent who will obey your instructions, act as you wish do you add to your safety by requiring him to act in concert with another whom you know will disobey you.

But it is urged you will thus embody in your laws the popular prejudices and passions.

This so far from being a reason against is a strong one in favor of a single body. If it will be a body acting as it is acted upon, embodying in the laws the popular will, you have the perfection of government if men can govern themselves. ' Whose passions or prejudices should be the law of the state except the passions & prejudices of those who are to be governed by such laws.[7]

But the people will act foolishly, unwisely, & your laws will be changing. True, but what body of men will act foolishly & unwisely so seldom as the whole people, who will know better when laws require changing, or change them more judiciously than those who are ruled by them. But it is said, aged men are more trustworthy &c than younger men & would you abolish our Senate. There can be no objection to calling your single body a senate, & requiring the members to be thirty years of age if you choose.

Again the friends of the present system will talk of France her experience &c. They seem unable to understand that so far as experience teaches (except only our own experience) it conclusively teaches not that two legislative bodies are better than one but that man cannot govern himself, that he must be governed.

Indeed any argument against the single organization if traced to its source, originates in a distrust of the people, a disbelief in their capacity for self government. I think you will find this the fact in any instance.

That men by the mere force of reason will never arrive at the absurd conclusion that two bodies are for any purpose connected with legislation better than one, is proven by the fact that universally among those who are free, who recognize the capacity of men to govern themselves, the highest legislative functions (the framing constitutions) have been committed to a single body of men. Do you believe there is a man in Indiana who supposes the constitution about to be framed would be better, be more in accordance with the will of the people if you were to separate the convention into two bodies each with a negative on the action of the other. If for ordinary legislation two is better than one, for such extraordinary work as constitution making there certainly should be three, four, or perhaps twenty different

7. That there were those who did not share this touching faith in the safety of minority groups at the hands of the majority, compare JEFFERSON, *Notes on Virginia* (*Query XIII*) in III THE WRITINGS OF THOMAS JEFFERSON at 223-224 (Ford ed. 1894), concerning the dangers of "an elective despotism." See also CALHOUN, *A Disquisition on Government* in I WORKS OF JOHN C. CALHOUN (1863).

bodies. The reasoning that proves two better than one proves fifty separate bodies each with a negative on the action of the others better than any smaller number.

I have written much more than I designed when commencing, but hope I have not wearied you. Indeed I am so strongly impressed with the policy of this change that I should have written more without regard to your patience had I the time. If I have succeeded in strengthening your convictions or suggesting a new view of this subject to you I shall feel that I have done something towards producing a change I think must be beneficial.

My idea of the highest perfection of a constitution for a free people is one that shall provide a machinery by which the will of the people shall at all times be the supreme law, leaving all details to ordinary legislation

Your Obt Servt

R. Jones Jr

This letter, which must have been received by Colfax at Indianapolis a day or so after his arrival there,[8] was found in the papers of John Barron Niles, an influential lawyer and a delegate to the convention from a district adjacent to Colfax's South Bend.[9] The youthful Colfax was an admirer of the older Niles, and the inference is that he passed the letter to Niles for advice or support.[10] He received no support,[11] and he may have been dissuaded by Niles from advocating the single-chambered legislature that he seems to have been inclined to favor.

No more can be said of the alternatively perspicuous and naive, the Jacksonian and Emersonian, Jones than that he was almost surely a Lafayette lawyer of no special distinction.[12] Among the widely held Colfax

8. The Convention assembled in the Hall of the House of Representatives at 10 a.m., Oct. 7, 1850. Colfax, one of seven not present, arrived for the afternoon session. I DEBATES 3, 7.

9. Niles was delegate from the Representative District of Laporte County, Colfax from the Representative District of St. Joseph County. The papers of Niles, who practiced in Laporte, Indiana, from 1833 to 1879, are deposited in the Special Collections Room of the Indiana University Library.

10. Colfax was 27, Niles 42. Colfax expressed his admiration for Niles several times in letters reporting on the convention to his paper, the St. Joseph Valley Register. The letters were captioned "Editorial Correspondence." St. Joseph Valley Register, Oct. 24, 1850; *Id.*, Oct. 31, 1850.

11. Niles, on December 6, 1850, elaborated his views on the function of the Senate, in itself a rejection of any proposal that there be *no* Senate. "I look upon a Senate as performing the same uses precisely as a House of Representatives . . . the Senate and the House being so arranged that each must view the actions of the other, and aid in wholesome legislation, by its wisdom and councils." He then spoke in favor of a large Senate. I DEBATES 994.

12. The Lafayette City Directory of 1858 lists Robert Jones, Attorney-at-law. He appears too in the 1861 and 1873-74, but not in the 1867, directories. In the Lafayette Daily Journal, April 27, 1855, p. 8, col. 6, the firm of Gregory, Jones, and Spencer is listed in a classified directory. A Robert Jones appears in 1888 in BIOGRAPHICAL RECORD AND PORTRAIT ALBUM OF TIPPECANOE COUNTY, INDIANA 241, as a member of "the present bar."

papers, no other correspondence between Colfax and this Jones has been discovered.[13]

The views of Colfax, the affable and engaging editor of the Saint Joseph Valley Register who became Grant's vice-president, are readily to be gathered from his columns. A staunch advocate of the adoption of a new state constitution, his editorials seem to have had great local and some statewide influence in stimulating discussion and producing a popular vote favorable to calling the convention.[14] Beginning with a two-part statement in early 1849 of a few measures to which the Register lent its support,[15] his program grew perceptibly and on June 15, 1850, he received the Whig nomination as delegate from his county, despite his protestations that he did not seek it.[16] On July 4, 1850, he ran a three and one-half column statement of his platform,[17] and in the August election he defeated his opponent by a substantial majority.[18] The interesting point is that he never in his paper mentioned unicameralism.

Whence and when came the unicameralist views that Jones' letter so

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Robert Jones was "judge" in 1899. I DEHART, PAST AND PRESENT OF TIPPECANOE COUNTY, INDIANA 279 (1909). Robert Jones, Sr. was senior warden of the Protestant Episcopal Church, April 10, 1837. *Id.* at 254.

13. According to SMITH, THE POLITICAL CAREER OF SCHUYLER COLFAX TO HIS ELECTION AS VICE-PRESIDENT IN 1868 390 (unpublished doctoral thesis in the Indiana University Library, 1939), the Colfax papers have been widely disseminated. The four largest owners are the New York Public Library, the Library of Congress, the Indiana State Library, and the Northern Indiana Historical Museum at South Bend. None of these collections contain any other Colfax-Jones correspondence, according to replies to recent inquiries.

14. The St. Joseph Valley Register, Jan. 25, 1849, reports the recent act passed by the Senate on Jan. 2, the House Jan. 13, and approved Jan. 15, 1849 (Ind. Laws, 33rd Sess. 1849, c.34). ". . . [W]e are decidedly in favor of such a convention. . . ." Editorials in the February 15 and March 1, 1849 numbers suggest needed reforms. The issue of June 28, 1849 states that the editorials of the Register were being widely reprinted and applauded. The question was put to the voters at the annual August election, and the Register of August 23 reports that St. Joseph County voted 10 to 1 in favor of calling a convention. This, said the Register, was the highest ratio in the state.

15. Colfax's initial platform was for an elected judiciary, popular election of all state officers, single districts for representatives (all advocated in the St. Joseph Valley Register of Feb. 15, 1849), and biennial legislative sessions, abolition of associate judges or an increase in their powers, change of the date of elections to October, no important state debt without a vote of the people, curtailment of local legislation, homestead exemptions (*Id.*, March 1, 1849). On May 2, 1850, the Register reprinted an editorial on reform of judicial procedure and organization.

16. St. Joseph Valley Register, June 20, 1850.

17. In addition to the provisions advocated earlier, note 15 *supra*, Colfax asserted his intention to act in a non-partisan fashion, to support reform but to proceed with caution and moderation, to frame a document embodying general principles and not laws ("a Constitution, not a *code*"), to support measures imposing stricter rules of legislative enacting procedure, to follow the directions of the people on banking issues (with a personal predisposition against both the "no bank" and the state bank view and in favor of free banking with a safety fund). He was against Negro suffrage, but also against expulsion of Negroes from the state, slavery, imprisonment for debt, legislative divorces, and prohibition of alcoholic beverages.

18. Colfax, 972 votes; Deavitt 734. St. Joseph Valley Register, August 15, 1850.

clearly implies Colfax held? It is impossible to say with certainty, of course, but there is some evidence that the idea reached Colfax from the pen of his correspondent Horace Greeley. On August 10, 1850 (about two months before the tardy answer of Jones to Colfax's "favor"), Greeley wrote from New York to "Friend Colfax" a four page letter on the subject of constitutional reform.[19] His main purpose was to urge single districts for the election of both legislators and of judges. In the course of this discussion he writes: "I suppose you are not yet advanced enough to get rid of the Senate humbug and come to one House for legislation; that will do next time." The inference is reasonable that Colfax then asked Jones to brief him on the case for unicameralism, and either that he was never fully convinced of its merits or that he decided that its advocacy would be inexpedient for an ambitious young man.

Inexpedient it would have been, for surely no state's constitution makers were less disposed to favor measures whose tendency would be to unfetter the legislature.[20] Called together for exactly the opposite purpose,[21] the conven-

19. The letter is in the collection of the New York Public Library. No other remarks on the subject by Greeley have been found.

20. The remarks of delegates clearly reveal that the two-house system was regarded as a check on the legislature. The limitations already imposed "are more important, practically, in restraining bad legislation, than even the division of the legislative body into two Houses." II DEBATES 1251. Similar remarks were not uncommon. It need hardly be repeated that the constitution-making process in the American states has been one of continuously reducing the power of the legislature. "The development of the last one hundred and forty years is a long record of a series of steady encroachments on the powers of the legislature, . . . so that, in those states where these tendencies are most fully developed, the question is seriously debated whether state legislatures have any useful function in government that could not be performed more efficiently by a simpler organization of an administrative type, or by a small unicameral law making body. . . . [T]he really fundamental trend of change has been from a dominant legislature to a dominant electorate, working through the convention." DEALEY, *op. cit. supra* note 2, at 255-256. See also I BRYCE, THE AMERICAN COMMONWEALTH c. XXXIX, XLV (5th ed. 1914).

21. Governor Whitcomb, in his message of December 6, 1849, recommended the calling of a convention to provide for the elimination of certain evils, exclusively legislative. Chief among these was the elimination of local and private legislation. "The number of pages of general laws passed at those [the last five] sessions respectively, commencing with that of 1843-44 are consecutively 122, 92, 135, 164, and 125, while the pages of a local or private character are 180, 301, 365, 431, and 636 respectively." The more than six hundred private and local bills of the last session averaged 13 per working day. The remedy "can only be insured by an amendment . . . expressly prohibiting the action of the General Assembly on specified subjects of a local and private character. . . ." Governor Whitcomb called also for biennial sessions, debt prohibition, and a two-thirds majority for the passage of appropriations bills. JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF INDIANA, THIRTY-THIRD SESSION, 23-26 (1849), reprinted in I KETTLEBOROUGH, CONSTITUTION MAKING IN INDIANA 185-189 (1916). On "no one subject [was] the opinion of the people . . . more decided and unanimous, than that all practicable constitutional checks ought to be placed upon inconsiderate and hasty legislation." I DEBATES 104. The story of the legislature's internal improvements program that bankrupted the state is detailed in I ESAREY, HISTORY OF INDIANA, c. XVI (1922).

tion proceeded to write into the document it framed such familiar legislative curbs as biennial sessions,[22] debt limitations, and complex enacting procedures. The atmosphere was charged with distrust of the legislature, reiterated again and again in denunciations of prior chicanery, ineptitude, and folly.[23] "Looking over the past history of the legislation of Indiana," said Christian C. Nave, "we can come to no other conclusion than this: that the vast amount of legislation . . . has proved a curse rather than a blessing. If the people of Indiana could now go back to the session of 1831 and dispense with all legislation that has taken place since, it would be better for them—they would be better off without it than they are in the present condition of their public affairs, resulting from the legislation since that time."[24]

Paradoxically, it was Nave who made the only argument of the convention in favor of a unicameral legislature, in a curious speech combining with Jacksonian liberalism the usual fear of legislative action.[25] Moving to strike the word "Senate" from the section providing for a Senate and House of Representatives, he urged that sufficient safeguards could be thrown up against the House of Representatives to protect the state. The Senate, an "irresponsible" "aristocratic" body, "a badge of tyranny borrowed from our

22. Forty-three members of the convention voted in favor of an amendment to make sessions triennial. Eighty-three opposed. I DEBATES 93.

23. "[B]ills of the most important character were often passed in one day, and frequently in the course of five minutes, without having been once read through, or perhaps ten members knowing their purport, and perhaps without a vote in the affirmative of more than one-fourth of the members elected." I DEBATES 94. "[A]t one time they had established an insurance company which directly became a bank; . . . at another time peculiar privileges were given to one railway company, which on the very next day would be denied to another." *Id.* "Why he had seen bill after bill passing in the Legislature by the votes of ten or twelve men . . . when many of the members had gone home." *Id.* at 102. "[B]ills had passed the House of Representatives no record of which appeared upon the Journal." *Id.* at 107. "What had been the custom in that body in regard to many important measures? Some member would rise and present a proposition, which, upon its first appearance, would meet with little favor. If he was an artful and intriguing Legislator, he would move that it be laid upon the table. He would then go to log rolling. . . . On the last day of the session, when it was known that a good portion of the members had left for home because of not being immediately interested in the proceedings, the bill would be brought forward and passed. . . ." *Id.* at 108. "When the Mammoth Improvement Bill passed the Senate, the minority presented a proposition to amend the Bill by adding a million and a half to the appropriation and involving an ultimate cost of ten millions, and proposed if the Bill were so amended, to allow it to pass by a unanimous vote." *Id.* at 110. Such remarks are only a sampling of the comments during one debate. They are duplicated whenever the legislature came up for discussion.

24. I DEBATES 264.

25. Occasional allusions touched upon the subject. "You might dispense with the Senate altogether if you thought proper. Greater men than I am have proposed but a single legislative branch. Benjamin Franklin was opposed to having any such body as a Senate in the legislative department of the Federal Government." Thomas Smith of Ripley County, I DEBATES 270. "Sir, I have heard it intimated that a proposition will be made to abolish the Senate entirely, or, if retained at all, it should be made the same as the House of Representatives by being elected by the same voters, and for the same period of service. . . . I cannot concur." James W. Borden of Allen, Adams, and Wells Counties, II *Id.* at 1015.

mother country," had never checked hasty and improvident legislation and had aided the House in its iniquity. Contradicting himself, Nave pointed to the fact that Senators represented no interests different from those represented by the House. On the positive side, a single house would be more efficient, would offer fewer positions to those office-hunters who live "at the expense of an unsuspecting people," and would, above all, lessen the expenses of administration.[26]

Nave's speech was met with an amendment "that the south end of the Capitol be sold, and the proceeds applied to the payment of the public debt," to which the reporter records "laughter, 'consent,' and applause."[27] Nave's motion was tabled without discussion, and the convention underlined its rejection by moving immediately into an interminable debate on the number of members to be elected to the two chambers. Colfax, reporting by letter to the readers of his paper the events of each day's debates, did not consider this sole attempt to make Indiana a unicameral state worthy even of mention.[28] The subject never came up again, and that very day saw Colfax himself moving that the House be composed of one hundred and the Senate of thirty members.[29]

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26. I DEBATES 980-981. The source of Nave's unicameralist views is unknown, but internal criticism reveals relatively little resemblance between them and the arguments advanced in Jones' letter to Colfax. There is no record of any intercourse between Nave and Colfax. Nave was a Danville, Indiana, lawyer whose practice extended over the period 1831-1884 and was devoted to an unusual degree to criminal work. He was a state representative for two terms, 1834 and 1835, and a senator for three terms, 1839, 1840, 1842. He was elected on the Democratic ticket as delegate to the Convention from the Representative District of Hendricks County. In 1880, however, he was said to be a Republican. HISTORY OF HENDRICKS COUNTY, INDIANA 416-418 (1885); I BIOGRAPHICAL HISTORY OF EMINENT AND SELF-MADE MEN OF THE STATE OF INDIANA 5TH DIST. 31, 32 (1880); II KETTLEBOROUGH, *op. cit. supra* note 21, at 640.

27. *Id.* at 981.

28. St. Joseph Valley Register, "Editorial Correspondence," Dec. 12, 1850.

29. I DEBATES 988, Dec. 5, 1850.