The Unicameral Legislature in Florida

Allen Morris

THE UNICAMERAL LEGISLATURE IN FLORIDA

by ALLEN MORRIS AND AMELIA REA MAGUIRE *

THE GOVERNMENT organized by President James Monroe and the Congress in March 1822, for the management of the newly-acquired territory in Florida, included a one-house legislature known as the legislative council. [1] This unicameral legislature lasted seventeen years, from 1822 until 1838. Efforts to revive the one-house body did not commence until 1967.

A decade after the unicameral legislature for Florida was first established, agitation began for a two-house or bicameral legislature. In 1832, a resolution offered by Joseph Simeon Sanchez, representing St. Johns County on the council, directed Florida's congressional delegate, Joseph M. White, to advise Congress of the territory's increased population, the huge land area it governed, and the need for a more responsive legislative agency: "... the Legislative Council are well satisfied that their legislation would be more perfect and more conducive to the welfare of the people of Florida, if they had another legislative body." [2]

The Florida pattern of territorial government deviated, as had the system set up to meet the needs of the Orleans Territory in 1804, from the scheme devised by Washington for the territories commencing with the establishment of the Northwest Territory in 1787. [3] In the Orleans and the Florida territories a one-house legislature was created to enact laws for the territory. Elsewhere this process was the responsibility of a panel of judges. The territorial

* Mr. Morris is clerk of the Florida House of Representatives. Ms. Maguire is research assistant to the clerk.

1. An Act Establishing the Territory of Florida, March 30, 1822, III *U. S. Statutes at Large,* 654-59.
2. *Journal of the Proceedings of the Legislature Council for the Territory of Florida,* 10th sess., 110-11.
3. Clarence E. Carter, ed., *The Territorial Papers of the United States: Territory of Orleans,* IX (Washington, 1940), 202-13, 405-07; "Northwest Ordinance of July 13, 1787," *The Territorial Papers of the United States: Northwest Territory,* II (Washington, 1934), 39-50. See also Clarence E. Carter, "Apprenticeship for American Statehood" Department of State *Bulletin,* XII (June 17, 1945), 1109-14.

governors and the Congress retained veto power over all acts passed by the legislative councils.

The legislative council for Florida consisted of thirteen men described as "the most fit and discreet persons of the territory" among the "citizens of the United States residing there." They would be appointed by the President and confirmed by the Senate for a term of one year.[4] The requirement for membership on the council was modified in 1823, to limit eligibility to persons living in the territory for six months, although it did permit "inhabitants of the Territory, resident there at the cession," but not necessarily citizens of the United States, to serve. [5] This apparently was to enable persons of Spanish citizenship living in Pensacola and St. Augustine to be appointed. The establishment of a territory by Congress was the necessary preliminary step to being admitted to the Union. There "was the virtual promise of [becoming] a new State in the Union." [6] An informal formula had evolved so that Congress considered the granting of statehood when a territory achieved a certain population level. [7] It was the same measure that Congress used to determine the seats allocated to each state in the United States House of Representatives.

There was a steady increase in Florida's population. There were 13,554 persons tallied in the 1825 special census and 34,730 in the regular census of 1830. The St. Augustine paper, quoting the Tallahassee *Floridian* in 1838, reported the results of another census ordered by the legislative council: "The whole number returned amounts to 41,224, including white and black population. No returns have been received from Columbia, Duval, Mosquito, Nassau and Hamilton Counties. The Floridian estimates the whole population to be 48,831 souls which will give a population of 39,368 Federal numbers." [8]

4. III *U. S. Statutes at Large*, 654-59. For a history of the 1822 legislative council, see Allen Morris and Amelia Rea Maguire, "Beginnings of Popular Government in Florida," *Florida Historical Quarterly*, LVII (July 1978), 19-38.
5. III *U. S. Statutes at Large*, 750-54.
6. Carter, "Apprenticeship for American Statehood," 1110.
7. The formula in 1820-1830 was 40,000 inhabitants for one seat; in 1830-1840, 47,700; and after 1840 the number was set at 70,680. *Congressional Quarterly's Guide to Congress*, 2nd ed. (Washington, 1976), 542. These numbers were supposed to reflect all free persons. Slaves were counted as three-fifths, and Indians were not counted at all.
8. St. Augustine *Florida Herald*, July 28, 1838, quoting the Tallahassee *Floridian*. The 1838 Florida population was 47,232 (25,143 whites, 21,131

The legislative council, by several acts of Congress, kept pace in membership with the increase in territorial population and in the number of new counties created. The council grew from the original thirteen members and two counties in March 1822, to twenty-nine members and twenty counties in 1838.

The President and Congress doled out sovereignty slowly to Florida with a succession of amendments to the basic Territorial Act of 1822. Alabama was granted statehood only two years after becoming a territory; of the original territories only Michigan had to wait longer than Florida to come into the Union as a state. One Florida historian suggested that the delay may have been because "many of the inhabitants were Spaniards having little knowledge of and no experience with American institutions, and the Americans living in Florida were by no means universally desirable. The United States already knew full well their capacity for lawlessness and doubtless wished to permit the growth of a more stable settlement before relinquishing control of affairs." [9]

By an act approved May 15, 1826, Congress revised the territory's enabling law to allow the citizens of Florida to vote for their council members. The governor was to "divide . . . the territory into thirteen convenient districts, so as to give to each district, as near as may be, an equal number of free white inhabitants for the purpose of electing members of the Legislative Council." One person would be elected from each district. [10] This was the first, and likely the least controversial, of all the legislative apportionments in Florida history.

According to Robert Luce, in his study, *Legislative Assemblies*, bicameral legislatures developed in the British colonies in America, but without conscious imitation of Parliament. In turn, Luce notes, Parliament as a two-house lawmaking body also was an accident. The first real Parliament, that of 1295 under King Edward, could have had six independent houses had the natural division among classes not shifted the separate groups into two unified bodies. Medieval France and Spain had three houses;

slaves, and 958 free blacks), Doc. No. 15, Census of the Territory of Florida; Dorothy Dodd, *Florida Becomes a State* (Tallahassee, 1945), 131-32, 461.

9. Kathryn Abbey Hanna, *Florida, Land of Change*, rev. ed. (Chapel Hill, 1948), 149.
10. IV *U. S. Statutes at Large*, 164-67, sec. 10.

Sweden, four; and Scotland, one. [11] By the time of the establishment of Florida as a territory, a pattern of bicameral legislatures had been established throughout the United States. [12]

Governor William P. DuVal, in his message to the legislative council in 1829, claimed that Congress had confused the governmental situation in Florida by providing that certain officers "shall be elected by joint ballot of both houses" of the local legislature. [13] This had resulted from amending Florida into a bill originally applying only to the territory of Arkansas which already had a two-house legislature.

Again, in 1833, the legislative council petitioned Congress to "re-organize the territorial government so as to authorize the people . . . to add a Senate to the Legislative body." [14] The Tallahassee *Floridian* strongly supported this proposal: "The proposition to add a senate to our legislature we believe will receive an undivided support-The want of a senate has been one of the principal causes of the hasty and ill-digested legislation, which has been a subject of so much complaint in this territory-A greater degree of circumspection, a greater attention to the practicability and policy, as well as phraseology & construction of laws, will be the consequence of the establishment of such a body." [15]

Yet, if comment in territorial newspapers may be taken as any indication, the efforts on the part of Florida's political leadership to bring about a bicameral legislature occasioned little interest among the general public. The voters of Florida were far more concerned with the war against the Seminoles which erupted in 1835, and the army's continuing efforts to resettle the Indians west of the Mississippi. On the political side, the question of statehood-if, as well as when-was being debated. Most East Floridians it seems were opposed to the proposition; those in West and Middle Florida favored statehood.

In 1834, the council, by resolution, urged Joseph White to "use his exertions" to bring about a reorganization which would

11. Robert Luce, *Legislative Assemblies: Their Framework, Make-Up, Character, Characteristics, Habits, and Manners* (Boston and New York, 1924). 3-4.
12. Thomas Francis Moran, "The Rise and Development of the Bicameral System in America," *John Hopkins University Studies in Historical and Political Science,* 13 Series, No. V (May 1895), 7-53.
13. Tallahassee *Floridian and Advocate,* October 30, 1829.
14. *Journal of the Legislative Council for the Territory of Florida,* 11th sess.; Tallahassee *Floridian,* January 19, 1833.
15. Tallahassee *Floridian,* January 19, 1833.

include a Senate. [16] The following year, the council dispatched still another resolution to White. John D. Edwards, a member of the council from Leon County, sponsored this action which urged Congress to inquire into the consideration of "constituting a senatorial branch in our Territorial Legislature." [17] The Edwards resolution suggested that "the impolicy of confiding to a single house of representatives the power of framing laws for large communities of varied interests, is no longer a matter of theory or speculation. Its evils are so fully demonstrated by the unerring test of experience as to be universally admitted.-Rashness and imprudence of legislation, endless change of statutory enactments, general confusion and chaos of the law, and perpetual fluctuation of the public policy form part only of the acknowledge *[sic]* and deplorable consequences growing out of the action of a single legislative assembly, annually elected and subject only to the check of the executive veto.-The experiment now being made in Florida adds another confirmation to the axiom in political science, established by past ages and actual examples. The total failure of the scheme to secure a happy social organization, and a wise, and wholesome code of laws is obvious to every man in the Territory, and that our fellow citizens should be generally dissatisfied with the existing system is neither wonder nor dispute. The people assiduously desire a reform which will assimilate their government in a most important feature to those under which most of them were born and educated, and which would promise them a like security for the engagements of a system of steady and beneficial legislation." The Florida council asked for the creation of "a senatorial branch in our Territorial Legislature, to consist of at least three Senators from the Eastern, three Senators from the Middle, three Senators from the Western and one Senator from the Southern Judicial District of Florida." [18]

There was some opposition to the Edwards resolution, and according to the Tallahassee *Floridian,* the council, meeting in committee of the whole, "after some time spent therein" reported the resolution "as amended." [19] In the roll call vote on adoption

16. Ibid., March 8, 1834.
17. *Journal of the Legislative Council for the Territory of Florida,* 13th sess., 58-59.
18. Ibid., 59.
19. Tallahassee *Floridian,* February 7, 1835.

of the resolution seventeen members supported it, and five, including Edwards, voted against the measure. [20]

When Charles Downing was elected delegate, succeeding White for a term commencing March 4, 1837, he shouldered the responsibility for persuading Congress to give Florida a two-house legislature. On March 5, 1838, Downing pushed a resolution through the House. It called on the committee on territories "to inquire into the expediency of reorganizing the Legislative Council of Florida Territory, so as to give another branch to said Council, to be called a Senate." [21] The St. Augustine *Florida Herald* cheered: "Success attend it. We may feel the services of the good old Legislative Council, for years to come.-Go ahead Mr. Delegate!" [22]

On June 5, Congressman Isaac H. Bronson of New York, and later a resident of Florida, reported Bill 828 out of committee to reorganize the Florida legislative council. [23] The House approved the measure and sent it on to the Senate the following day. It passed there also and was signed into law by President Martin Van Buren on July 7, 1838. Legislative power would be vested in the governor and the legislative council. The latter would consist of two houses, the senate and house of representatives. [24]

House members were to be elected from the same districts as members of the old legislative council. There would be twenty-nine members in the first house, to be increased thereafter as the population grew. The eleven-member senate could be reapportioned from time to time until it reached a maximum member-

20. *Journal of the Legislative Council for the Territory of Florida*, 13th sess., 58.
21. *Journal of the United States House of Representatives*, 25th Cong., 2nd sess., 520.
22. St. Augustine *Florida Herald*, March 22, 1838.
23. *Journal of the United States House of Representatives*, 25th Cong., 2nd sess., 1036. Bronson had already shown his interest in Florida by reporting out House Bill 780 from the committee on the territories on May 11, 1838. It would have allowed the people of Florida to write a constitution and form a state government. The bill failed, although the territory did write and submit a proposed state constitution. *Journal of the United States House of Representatives*, 25th Cong., 2nd sess., 870. Bronson later moved to Florida where he was appointed judge for the Eastern District. He lived first in St. Augustine and then in Palatka. Upon the admission of Florida into the Union in 1845, he became judge for the Eastern Circuit Court, and was then appointed judge for the District of Florida on August 8, 1846. *Biographical Directory of the American Congress, 1774-1971* (Washington, 1971),642.
24. *Journal of the United States House of Representatives*, 25th Cong., 2nd sess., July 7, 1838, 1295-96; V. *U. S. Statutes at Large*, 263-64.

ship of fifteen. Senators had terms of two years; representatives, one year; and sessions would be annual.

The upper house would include three senators from the western judicial district (area west of the Apalachicola River), four from the middle judicial district (between the Apalachicola and Suwannee rivers), three from the eastern judicial district (east and south of the Suwannee River), and one senator from the southern judicial district (the peninsula area from the Indian River on the Atlantic coast to Charlotte Harbor on the Gulf).

The first election for the bicameral legislative council, was scheduled for October 8, 1838. The voters would fill twenty-nine seats in the house of representatives, eleven in the new senate, and fifty-six delegates for the constitutional convention. The St. Augustine paper remarked: "This election excites uncommon interest. It will be decided upon principles. Hitherto the elections in the Territory have been generally influenced more by the personal popularity and supposed merits of the candidates, than by any questions of general interest; but that time has passed, and a new era, we have abundant reason to hope, has commenced." [25]

Writing specifically of the senate, the *Herald* opined: "We ought not from our sad experience, elect for the Senate a single one of those gentlemen, who has heretofore been a member of the Council. The lawyers particularly who have hitherto formed nearly one half of that body, and have shown, however amiable and worthy men they may be in private life, that God Almighty never intended them for Legislators." [26]

"Perpendus," writing in the *Herald,* supported as his candidate for the senate one General Peter Sken Smith who was described as "a gentleman of high respectability and wealth, who came with his family, several years ago, from New York, to settle in Florida, and who resides in this city." The general, however, declined to run: "Were there no other objection-I am from my recent residence, almost an entire stranger to most of my fellow citizens of East Florida, and I confess I am not inclined to make the tour of the country for the sole purpose of *electioneering* for *-myself.*" [27] Smith did raise a number of questions which he be-

25. St. Augustine *Florida Herald,* October 6, 1838.
26. Ibid., August 11, 1838.
27. "Perpendus" apparently was much concerned with current political situations. His discussions centered upon the St. Joseph's constitutional

lieved should be put to those who would be candidates: separating the legislative from the judicial branch, a system of internal improvements, and a "sound, honorable, liberal and judicious system of BANKING." [28]

When the election was over and the tally was in, it revealed that the voters had reelected members of the old legislative council to occupy nine of the eleven senate seats. These included: James A. Berthelot, Leon County; Charles H. DuPont, Gadsden County; Isaiah D. Hart and John Warren, Duval County; George Sydney Hawkins, Jackson County; William Marvin, Monroe County; William J. Mills, Alachua County; and George Walker and Benjamin Drake Wright, Escambia County. The two new senators were former Governor William Pope DuVal, from Calhoun County, and William Bailey of Jefferson County.

Of the twenty-nine members of the house of representatives, twelve had already served on the council. [29] Former council members elected were: James W. Bannerman, Leon County; Thomas M. Blount and Edward L. Drake, Escambia County; John Brett, Jackson County; S. L. Burritt and Gabriel Priest, Duval County; A. J. Dozier, Jefferson County; Richard Fitzpatrick, Monroe County; Archibald D. McNeill, Madison County; William S. Mooring, Jackson County; Washington M. Tabor, Washington County; and Ebenezer J. Wood, Franklin County. The others elected included: Elias E. Blackburn, Jefferson County; Joseph B. Browne, Monroe County; William Cooley, Hillsborough County; A. F. Duval, Daniel McRaeny and William Tradewell, Leon County; William B. McCalland and Isaac Ferguson, Jr., Gadsden County; E. B. Gould and Edwin T. Jenckes, St. Johns County; Daniel McLeod, Walton County; Hiram T. Manly, Franklin County; James Niblack, Columbia County; William M. Reed, Hamilton County; Elisha Summerlin, Madison County; J. L. Thigpen, Nassau County; and William H. Williams, Mosquito County.

During the constitutional convention which met at St. Joseph

convention and the new bicameral legislature. St. Augustine *Florida Herald*, August 4, 11, 18, 1838.

28. Ibid., August 18, 1838.
29. *Journal of the Proceedings of the Senate of the Territory of Florida*, 1st sess., 1839; *Journal of the House of Representatives of the Territory of Florida*, 17th sess., 1839; Allen Morris, comp., *The People of Lawmaking in Florida 1822/1979* (Tallahassee, 1979), No. 10.

from December 3, 1838, to January 11, 1839, no amendments were offered to return to a unicameral legislature. The bicameral system remained unchallenged through the constitutional conventions of 1861, 1865, 1868, and 1885, and there is nothing in the records over the years to indicate that there was any noticable desire to replace the bicameral legislature with any other system.

It was not until 1967 that the first efforts were made to reestablish a unicameral legislature in Florida. Representative Talbot D'Alemberte of Miami and Senator William D. Gunter of Orlando unsuccessfully introduced joint resolutions at the biennial sessions of 1967 and 1969, and at the annual sessions of 1971 and 1972. [30] Senator Sherman S. Winn of Miami tried again in 1974, [31] Representative Joseph M. Gersten of Miami sponsored joint resolutions in 1976 and 1977, and Representative William E. Sadowski of Miami sponsored a house resolution in 1977. [32]

D'Alemberte in an interview, explained that he had sponsored the unicameral resolutions because he felt the legislative reapportionment decisions requiring division of seats in the senate and house by population "had struck down the bases for two houses." "Also," he explained, "I spent some time in England at graduate school [University of London], and I learned something that I should have known before I went there and that is that England no long had a bicameral system. There is a saying that Americans took as a model for their lawmaking bodies the British plan about the time the British were moving toward abandoning that two-house plan. It is not generally realized in this country that the House of Lords no longer can veto, or even slow down,

30. D'Alemberte participated in drafting the state constitution that was recommended to the 1968 legislature by the constitutional revision commission. He also prepared the commentary for the 1968 constitution for the *Florida Statutes Annotated,* XXVA. Gunter served in the Florida senate (1966-1972), United States House of Representatives (1972-1974), and in 1976 he was elected Florida state treasurer. House Joint Resolution 2392, Florida House *Journal,* 1967, 826; Senate Joint Resolution 1493, Florida Senate *Journal,* 1967, 633; House Joint Resolution 672, Florida House *Journal,* 1969, 72; Senate Joint Resolution 259, Florida Senate *Journal,* 1969, 22, 90; House Joint Resolutions 502 and 708, Florida House *Journal,* 1971, 39, 67; Senate Joint Resolution 822, Florida Senate *Journal,* 1971, 128; House Joint Resolution 502, Florida House *Journal,* 1972, 18; Senate Joint Resolution 233, Florida Senate *Journal,* 1972, 19.

31. Senate Joint Resolution 44, Florida Senate *Journal,* 1974, 15.

32. House Joint Resolution 2487, Florida House *Journal,* 1976, 126; House Joint Resolution 1240, Florida House *Journal,* 1977, 170; House Resolution 976, Florida House *Journal,* 1977, 112.

legislation enacted by the House of Commons. The House of Lords still serves in various capacities but not as an equal of the House of Commons. In the beginning, the lower house was regarded as representing the popular will while the upper house served to check that will." [33] "In Florida under the old apportionment, the Senate represented counties and other interests." D'Alemberte believed that with apportionment of each house in Florida on population the justification for a second house was eliminated. "Too, I thought a case could be made against our system when it was realized that the important legislative work was done in conference committees and that the other decisions made by the Legislature probably were done only to keep the freshmen and lesser informed legislators busy." [34]

Perhaps the most significant development in this effort to create a unicameral legislature occurred in 1969. The 1968 revision of the 1885 constitution opened the door to bypassing the legislature through petition, allowing the placing of a proposed amendment "to any section" of the constitution directly before the electorate. Senator Gunter circulated petitions to procure the required 175,000 signatures endorsing a unicameral legislature. Under the Florida constitution this number would have constituted the necessary eight per cent of the votes cast in the previous presidential election in one-half the congressional districts and in the state as a whole.

When Secretary of State Tom Adams raised questions about the wording of the petitions, Gunter filed suit to test the constitutionality of the amendment. Circuit Judge Richard H. Cooper of Orlando ruled in favor of the language, and Secretary Adams then appealed to the Florida Supreme Court. The court held, by a four to two opinion on July 30, 1970, that the legislative petition was defective because it would amend, modify, or change at least thirty-four provisions of the Florida constitution. [36]

For the majority, Justice E. Harris Drew, in part, wrote: "The proposal here to amend Section 1 of Article III of the 1968 Constitution to provide for a Unicameral Legislature affects not only many other provision of the Constitution but provides for a

33. Interviews with Talbot D'Alemberte, August 28, 30, 1979.
34. Ibid.
35. *Adams* v. *Gunter,* July 30, 1970, 238 *Southern Reporter,* 2nd series, 824-36.

change in the form of the legislative branch of government, which has been in existence in the United States Congress and in all of the states of the nation, except one, since the earliest days. It would be difficult to visualize a more revolutionary change. The concept of a House and a Senate is basic in the American form of government. It would not only radically change the whole pattern of government in this state and tear apart the whole fabric of the Constitution, but would even affect the physical facilities necessary to carry on government. [36]

Gunter said he undertook the task of circulating the unicameral petitions because, ironically, "we already had it, and in its worst form: I'm speaking of the conference committee, where virtually every important issue considered by the Legislature is ultimately decided." But there were other reasons also, Gunter noted; "The one-house legislature would help pin-point responsibility to a far greater degree. It would eliminate a great deal of the buckpassing that goes on. The people could follow the process." [37]

Gunter claimed some 55,000 signatures had been obtained when the supreme court voided the petition. "I must acknowledge that the unicameral campaign got tied into the increase in legislative salaries, which was unfair. We had substantial interest in many counties and rudimentary leadership in every section. A number of newspapers took up the cause and printed petitions. I feel we could have carried through as the momentum was developing. I think it was a reachable goal. Now, without the impetus of the legislative pay raise, it likely would require $100,000 and the aggressive sponsorship of a popular public official, say, a governor, or some public interest lobby, say Common Cause or the League of Women Voters." [38]

Based on his own legislative experience D'Alemberte believed that the unicameral legislature only could be achieved through the petition process. "It would take some financing but I think the people would find it attractive." [39] The problem of the "any sec-

36. Ibid.
37. Interview with Bill Gunter, state treasurer-insurance commissioner, September 10, 1979.
38. The 1969 legislature had increased the pay of senators and representatives from $1,200 a year to $12,000, effective retroactively, on April 1, 1969. The senate president and house speaker were raised from $1,200 a year to $15,000.
39. D'Alemberte interview.

tion" wording was cured in 1972 through legislative passage of HJR 2835, introduced by D'Alemberte, and its ratification by the voters. [40] The corrective amendment, substituting "any portion or portions" for "any section," now is section 3 of article XI of the constitution. As chairman of the constitutional revision commission of 1977-1978, D'Alemberte, joined by former Governor LeRoy Collins, filed Proposal No. 76 to revise article III by vesting the lawmaking responsibility of the state in a legislature "consisting of a single chamber composed of one member elected from each legislative district." The commission's legislative committee rejected the proposal by a six to two vote in October 1977. [41]

Bill Mansfield, writing in the Tallahassee *Democrat* as editor of the editorial page, urged the merging of the house and senate. Mansfield wrote from irritation over what he called "the real Legislature, that is, the one that makes all the major decisions." He was referring to the house-senate conference committees, which possess unlimited power to rewrite bills in dispute between the two houses, and most particularly the general appropriations bill. In a unicameral legislature, Mansfield argued, "the run-of-the-mill lawmaker would at least have a chance to be heard on important state business. And perhaps the voters could tell who was doing what to them." [42]

40. House Joint Resolution 2835, Florida House *Journal,* 1972, 57, 103, 418, 716, 830.
41. *Constitution Revision Proposal No. 76,* on file with the secretary of the Florida senate, Tallahassee; *Journal of the Proceedings of the Constitution Revision Commission* (Tallahassee, 1978).
42. *Tallahassee Democrat,* June 3, 1979.