Bicameralism vs. Parliamentarism:
Lessons from Japan’s Twisted Diet

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Abstract: David Mayhew (1991) argued that divided government does not lead to gridlock; partisan rivals find ways to strike deals. In parliamentary systems, however, the stakes are higher, because government survival is partly a function of legislative effectiveness. If a parliamentary system is strongly bicameral, a government could face an opposition majority in the upper house with the means and motivation to block its legislative agenda and oblige it to resign. In this paper, we examine data from the Japanese Diet between 1989 and 2013, a period of frequent non-government upper house majorities. Have Japan’s “Twisted Diets” succumbed to gridlock? We show that while governments adapt smoothly to the mere absence of upper house control, they are severely hampered when the upper house is controlled by the Opposition. They propose fewer laws and suffer more changes to and failures of the legislative proposals they do submit.

1. Introduction

Divided government is a term usually reserved for presidential systems. After all, presidentialism is defined by the independent origin and survival of the legislative and executive branches (Shugart and Carey 1992), so the prospect of different branches controlled by different political forces (“ambition countering ambition”) is part and parcel of what presidentialist constitutional designers envision when they design such systems of checks and balances (Madison, Federalist 51). In countries such as France that feature hybrid executive structures, the notion of cohabitation has arisen to describe periods when an independently elected president from one political party faces a prime minister and cabinet supported by a different party or coalition. In “pure” parliamentary systems, however, the executive must maintain the support of the parliament just to survive in office, so a partisan divide between the executive and the legislature might seem impossible(1). Indeed, the hallowed Westministerian principle of responsible government presumes that a government is free, even obliged, to implement its policy program at will as long as it retains the confidence of the popularly elected parliament (Bach 2003).

However, if a parliament is bicameral, a government that enjoys the confidence of the lower house might face an opposition majority in the upper house. Formally, a hostile upper house might not be able to fire the government(2), but upper house intransigence might be sufficient to block a government’s legislative ambitions to the point that the government cannot accomplish anything and is obliged to resign. Further, where upper chambers are elected to fixed-length terms, a battle of wills between the chambers could disadvantage the nominally more powerful lower chamber (i.e., the one with the formal power of confidence), because only the lower house is subject
to early dissolution\textsuperscript{(3)}. The supposedly stronger chamber could find itself in the weaker bargaining position, enhancing the legislative power of the upper house beyond what constitutional designers intended.

Divided bicameralism, therefore, is an important and constitutionally precarious possibility in parliamentary systems, but it is rarely considered in the literature (but see Bach 2003; Ganghoff 2014; Fortunato, König, and Proksch 2013). This oversight is perhaps understandable; the doomsday scenario of a hostile upper house systematically killing government bills is rarely in evidence, for two reasons. First, divided parliamentary government is infrequent in the world’s parliaments; usually, if a parliament is bicameral, the government enjoys bicameral majorities\textsuperscript{(4)}. Second, upper chambers in parliamentary systems are typically very weak, so their partisan makeup does not matter very much. Even if the opposition control the upper house, there may be little they can do to stop the government’s agenda.

Truly strong parliamentary bicameralism, wherein the second chamber has both the will and the power to veto government proposals, would seem on its face to create a constitutional contradiction - a doomed attempt to enjoy both responsible government and checks and balances. The most well-known example of such a design is the Australian constitution, whose authors devoted most of their constitutional convention wrestling with this tradeoff\textsuperscript{(5)}. Most bicameral parliamentary constitutions deny the second chamber a veto over budgets because a government denied supply ceases to function and must resign. The Australian Senate has the power to reject any type of bill, and it is exceptional for a government to control bicameral majorities\textsuperscript{(6)}. The founders put their faith in the wisdom of politicians to avoid the worst possible outcome of gridlock-induced collapse. A 1975 crisis affirmed that the Australian Senate does in fact possess a veto over the budget, but with that single exception, a powerful Senate with infrequent government majorities has not meant stalemate (Binder 2003).

The Italian Senate is, on paper, even more powerful. Not only may it reject a budget; it may explicitly withdraw confidence and force (not merely induce) the government to resign. All postwar Italian governments until 2013 have held bicameral majorities, so the immense power of the Senate has proved largely irrelevant. Between 2006 and 2013, however, governments suffered razor-thin Senate majorities, and the emergence of a big new party in the 2013 election produced a government minority in the Senate. It is no coincidence that the recent experience of gridlock, serial government turnover, and recession has produced what looks to be a viable government proposal to revise the constitution to substantially weaken the Senate and make it unelected (Vassari 2014). If the amendment passes, the Italian Senate will return to near irrelevance, but this time out of constitutional powerlessness rather than political congruence.

In this paper, we turn to the parliamentary system with the next strongest version of bicameralism: Japan. The Japanese House of Councillors (HC) has the same powers as the Lower House (House of Representatives - HR) with the exceptions of budgets, treaties, and confidence, for which the HR’s decisions prevail\textsuperscript{(7)}. For all other legislation, however, the two chambers are co-equal. The one caveat is that an HC veto may be overridden by a two-thirds majority in the HR\textsuperscript{(8)}. From 1956 through 1989, the Liberal Democratic Party (LDP) held single-party majorities in both chambers, so HC majorities seldom disagreed with governments, and, like in Italy, a
potentially strong bicameral system operated as though it were effectively unicameral. Since 1989, however, no single party has controlled bicameral majorities in Japan, and governing coalitions have done so only 49% of the time. A new phrase has entered the lexicon to describe Japanese-style divided government: Nejire Kokkai, the “Twisted Diet,” invokes the metaphor of a system so distorted as to be wholly ineffective.

Is this image correct? Has the advent of divided government with a strong upper chamber paralyzed Japanese lawmaking? If so, what can or should be done about it? Is an Italian-style emasculation of the HC the only option? And if the Twisted Diet has not paralyzed policy making, why not?

2. How should divided bicameralism affect lawmaking?

The idea that divided bicameralism should constrain lawmaking is intuitive. If both houses of parliament have to agree for a bill to become a law, and if the two houses are controlled by different groups that want different policies, it ought to be difficult to find consensus on how to change policy (Tsebelis 1999).

However, this hypothesis assumes away the very interesting matter of coalition formation. In a pure two-party system, if the parties are internally united, then when the government party does not control the upper house, the opposition party must do so. But most parliaments feature more than two parties. As long as no single opposition party (or stable opposition coalition) controls an upper house majority, control over the upper house veto is up for grabs. A government might solve this problem by adding another party to its coalition, one whose votes are surplus in the lower house, but pivotal in the upper house. Alternatively, rather than take on an additional partner and have to share cabinet portfolios and compromise on policy decisions in all areas, such a government might behave as the bicameral version of a minority government. It might choose to find the extra upper house votes it needs on an issue-by-issue or even bill-by-bill basis.

Thus, the absence of bicameral majority control for a governing party or coalition need not imply unremitting policy gridlock. Nevertheless, piecing together a bicameral coalition, either by expanding the government or by building legislative majorities on the fly, can be costly, time consuming, and constraining. The veto player logic still applies – other things equal, the more parties needed to forge bicameral majorities to pass bills, the smaller the set of achievable policies is likely to be. Broader coalitions might also mean greater transactions costs, and lawmaking might take longer and be more contentious and prone to opportunism. So while stalemate is not inevitable, there should be some measurable effects of non-government upper house majorities.

3. A brief history of Japanese coalitions

We call a Diet “Unified” if the parties in government control a majority of seats in both houses. We refer to the simple absence of an HC majority for the government as “Majority-Minority” Diets. We call a Diet “Divided” when an opposition party or stable opposition coalition effectively controls upper house business. The distinction between a Majority-Minority (Maj-Min) Diet and a Divided Diet is important. In a Maj-Min Diet, the government is technically outnumbered in the HC, but it generally remains the largest coherent group, and should be able to manipulate the legislative agenda in such a way as to dominate any would-be opposition coalition in the competition for the small parties holding the casting vote. An anti-government majority coalition
might require a hodgepodge including anti-system parties, small niche parties, and independents. Importantly, the opposition lacks the agenda control or ability to make side payments that the government enjoys. In a Divided Diet, by contrast, the government faces a stable opposition majority in the HC. It is in this scenario that the effect on governance should be the most profound.

Table 1 lists all of the bicameral combinations since 1956. The LDP’s long period of bicameral dominance ended in 1989, when it came second in that year’s HC half-election. In 1993, the LDP suffered a split and found itself in opposition for the first time. The new government was an unwieldy seven-party coalition that controlled bicameral majorities, but collapsed within a year. The LDP was back in government, as the largest party in a different coalition in less than a year’s time. By 1998, the LDP’s coalition partners had departed, and with the repatriation of some of the 1993 defectors, the LDP had reassembled a single-party HR majority. However, as in the 1989-1993 period, the LDP lacked an HC majority, and found itself back in the business of building ad hoc partnerships. Finally, in October 1999, the LDP invited a longtime opposition party, Kōmeitō, into the government, explicitly to cement bicameral control. The LDP-Kōmeitō coalition governed, sometimes with a small third partner, from 1999 through 2009. But in 2007, the coalition lost the HC when the Democratic Party of Japan (DPJ) won a landslide large enough to hand it plurality position, and in combination with two small partners, an HC majority. This was the first time in over half a century that the two chambers of the Diet were led by different parties. In 2009, the DPJ routed the LDP in an HR election, and unified government was restored. Alas, the DPJ’s own dominance lasted only a year, as the LDP won the 2010 HC half-election, and the Diet returned to “majority-minority.” In 2011, a split began to develop in the DPJ, so weakening the DPJ prime minister’s faction in the HC that we identify a de facto transition back to a Divided Diet. Thus, the Japanese Diet has been Unified, with the governing coalition enjoying bicameral majorities, for only about half of the time between 1989 and 2013.

The notion that the Twisted Diet has paralyzed policy making has gained currency. Journalists and their readers described the situation as “severe,” “confused,” or “confrontational.” More than once, a governing party has suggested that the best way to cope with the Twisted Diet would be via a grand coalition. In 2007, LDP Prime Minister Yasuo Fukuda made this offer to the DPJ’s leader, Ichirō Ozawa. Ozawa replied that the only solution would be to hold new elections...We do not agree on the fundamentals and thus we cannot discuss policy
issues. To get to the end of debate, would be a death match (desu-matchi) (Asahi Shim-bun, Nov 10, 2007).

With the shoe on other foot, the DPJ’s Kan floated the same idea to the LDP in 2011, but the LDP suggested that Kan should resign and call an election instead. Each time, then, the opposition, entrenched for at least three years due to the HC’s fixed election schedule, has demanded that the government quit and let the voters decide whether to un-twist the Diet (which could only happen in the opposition’s favor, inasmuch as the house it controls cannot be dissolved). This scenario seems to flip the pecking order of the two houses upside down (indeed, another popular term for divided government in Japan is “gyakuten,” or “reversal”). Is it true that Japanese governments have been hamstrung by Twisted Diets, especially in the 2007-2009 and 2011-2012 Divided Diets?

4. Data analysis

Thies and Yanai (2013) studied the passage and amendment rates of ordinary cabinet bills in the 1989-2011 period, as well as the size of the legislative agenda. In this paper, we extend and update that analysis by focusing, through 2013, on budgets and treaties, which do not require upper house approval, on the subset of cabinet bills that we call “budget-enabling bills” because their bicameral passage is necessary to fully implement the budget, and on the frequency with which governments turn to the main opposition party to pass laws in Twisted Diets.

4.1 Budget and Treaties

The Japanese House of Councillors cannot veto budgets or treaties, so one might be tempted to ignore those and focus only on “normal” legislation to look for the differences between Unified and Twisted Diets. But one thing that a glance at budgets and treaties can tell us is whether a government’s lack of upper house control does actually produce an upper house “preference” that diverges. If the government need not secure HC approval to pass budgets and ratify treaties, then it need not make concessions or engage in any coalition building there, so the numerical superiority of the opposition should be decisive in determining how the HC votes.

First, consider budgets and Table 2. Between 1989 and 2013, the governing party or coalition controlled an upper house majority in 12 of 22 ordinary budget cycles. Eleven times, the biggest opposition party voted against the government’s budget, but that was not enough to stop HC approval. In the ten years that the government lacked an HC majority, by contrast, the HC rejected the government’s budget, which of course became law anyway. It did not matter whether the Diet was Maj-Min or Divided – the absence of a government majority was sufficient for a negative (albeit fruitless) HC vote.

In addition to the general budget, Japanese governments typically submit one or two supplementary budgets each year. These are usually targeted to urgent needs not anticipated by the general budget, and so the political calculations surrounding them are somewhat different. Opposing a supplementary budget is not a general statement of

<table>
<thead>
<tr>
<th>Table 2</th>
<th>Bicameral Disposition of Budgets, 1989-2013*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget Type</td>
<td>Diet Type</td>
</tr>
<tr>
<td>General Budgets</td>
<td>Unified</td>
</tr>
<tr>
<td></td>
<td>Maj-Min</td>
</tr>
<tr>
<td></td>
<td>Divided</td>
</tr>
<tr>
<td>Supplementary Budgets</td>
<td>Unified</td>
</tr>
<tr>
<td></td>
<td>Maj-Min</td>
</tr>
<tr>
<td></td>
<td>Divided</td>
</tr>
</tbody>
</table>

* Excludes minority governments.
government disapproval, but more a disagreement with a specific proposal. In the 1989-2013 period, 35 supplementary budgets were submitted. Eighteen were submitted to Unified Diets, and all were approved by the HC. For the eleven that were submitted to Maj-Min Diets, the biggest opposition party opposed each one, but the government secured HC approval for six of those by bringing onside enough small parties to constitute a majority(17).

Finally, six supplementary budgets were submitted to Divided Diets. Three passed the HC and three were rejected. While it might seem surprising that opposition-controlled HCs would support 3 of 6 supplementary budgets, a strong argument can be made that all three approvals were exceptional. The first was an emergency stimulus package passed one month after the collapse of Lehman Brothers to deal with the global financial crisis. That same HC had rejected a different supplementary budget earlier in the year, but the sudden, widespread fears about global economic catastrophe caused the opposition to change its stance and express its support for rapid stimulus. The two other cases occurred in 2011, in direct response to the March 11 “triple disaster” earthquake, tsunami, and nuclear plant meltdown in the Tohoku region(18).

We turn now to treaties, and Table 3. In the 1993-2013 period, 338 treaties were submitted to the Diet, and 326 (97%) were ratified. In Unified Diets, all 194 passed both houses. In Maj-Min Diets, the HC approved 83 of 98 treaties, and ignored twelve(19). When the opposition controlled the HC, however, they behaved differently. The HC in Divided Diets approved only 28 of 46 treaties (61%), ignored nine (6%), and formally rejected two. Seven others failed to reach a vote in either house.

Whether the Japanese upper house approves, disapproves, or ignores budgets or treaties, the outcome is the same – the version passed by the lower house becomes law. Therefore, it is interesting that oppositions treated budgets and treaties differently from one another when they controlled the HC. General budgets were formally rejected all but once, and rejected through inaction that once. Supplementary budgets were always considered, and sometimes approved. Treaties, however, were considered only three-fifths of the time, and ignored otherwise. For treaties, the modal form of protest, it would seem, was simply to allow them to be ratified without any action at all. One possible explanation is that opposition parties feared appearing unpatriotic if they were to (fruitlessly) reject treaties, whereas fruitlessly rejecting non-emergency budgets is intrinsic to what it means to be in Opposition.

### 4.2 Budget-enabling bills

HC votes on budgets and treaties are interesting to investigate as position-taking exercises, but they cannot directly frustrate government policy.

Ordinary bills, by contrast, require the approval of both houses to become law. So it is here that a
government’s lack of upper house control should really matter. Probably the most important category of “ordinary bills” are what we call budget-enabling bills. While the HC cannot block the actual budgets, it can kill budget-enabling bills. In principle, the HC could reject all budget-enabling bills and effectively stymie the government’s entire budget, despite the Constitution’s explicit denial of such a power. As a result, governments should be anxious about the fate of budget-enabling bills.

Between 1989 and 2013, 664 budget-enabling bills were submitted to the Diet by the cabinets, 365 in Unified Diets, 222 in Maj-Min Diets, and 77 in Divided Diets. As Table 4 shows, most budget-enabling bills eventually passed; eight bills that initially failed were replaced by substitute bills that passed later in the session or in a later session.

In Unified Diets, most (95%) bills passed without any substantive amendments, as expected. In Maj-Min Diets that figure dropped only to 90%. By contrast, in Divided Diets, the proportion of bills substantively amended is relatively large (18%). Eighteen bills (23%) were rejected or ignored by the HC. Three of these were ultimately killed by the HC, 11 were passed through the HR’s two-thirds override, and four were vetoed, but resurrected with replacement bills.

### 4.3 Ordinary Government Bills

In Table 5 we replicate the findings of Thies and Yanai (2013) on passage and amendment rates, extended through 2013. The passage rate of government bills hardly differs between Unified and Maj-Min Diets, a drop from 96% only to 94%. Cabinet bills are amended before passage only slightly more often in Maj-Min Diets as well (8.8% vs. 6.6%). But the change in Divided Diets is again dramatic. Only 76.5% of cabinet bills pass through both houses. In fact, the much higher final failure rate of 17.4% is flattered by the 6.2% of bills that passed only because the government of the day was able to override the HC veto issued. When we consider that a very large percentage of laws passed each session in any parliament (in Japan or anywhere) are utterly uncontroversial technical laws (thus inflating the appearance of cross-party comity) the rise in HC rejection rates from roughly one in 20 to one in four is that much more impressive. Clearly, Japanese governments facing Divided Diets have had much more trouble legislating than those facing Unified, or even Majority-Minority Diets.

Table 5 speaks to the success rate of cabinet bills that were actually proposed. Thies and Yanai (2013) also demonstrated that Diet Type affects the size of the government agenda – governments lacking HC control propose fewer bills to begin with, self-censoring to avoid even more defeats and to allocate limited time to those bills most likely to succeed. Table 6 replicates and updates their Table 19.3, normalizing the number of cabinet bills proposed by the number of days in a legislative session (which varies quite a bit). The reduction in the government agenda is plain to see, and

<table>
<thead>
<tr>
<th>Diet Type</th>
<th>Pass</th>
<th>Pass with amendment**</th>
<th>Pass via 2/3 override</th>
<th>Fail</th>
<th>Replaced</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unified</td>
<td>345</td>
<td>16</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>365</td>
</tr>
<tr>
<td></td>
<td>(94.5%)</td>
<td>(4.4%)</td>
<td>(0.5%)</td>
<td>(0.5%)</td>
<td>(100.0%)</td>
<td></td>
</tr>
<tr>
<td>Maj-Min</td>
<td>200</td>
<td>19</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>222</td>
</tr>
<tr>
<td></td>
<td>(90.1%)</td>
<td>(8.6%)</td>
<td>(0.5%)</td>
<td>(0.9%)</td>
<td>(100.0%)</td>
<td></td>
</tr>
<tr>
<td>Divided</td>
<td>45</td>
<td>14</td>
<td>11</td>
<td>3</td>
<td>4</td>
<td>77</td>
</tr>
<tr>
<td></td>
<td>(58.4%)</td>
<td>(18.2%)</td>
<td>(14.3%)</td>
<td>(3.9%)</td>
<td>(5.2%)</td>
<td>(100.0%)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>590</td>
<td>49</td>
<td>11</td>
<td>6</td>
<td>8</td>
<td>664</td>
</tr>
<tr>
<td></td>
<td>(88.9%)</td>
<td>(7.4%)</td>
<td>(1.7%)</td>
<td>(0.9%)</td>
<td>(1.2%)</td>
<td>(100.0%)</td>
</tr>
</tbody>
</table>

* Excludes minority governments.

** “amendment” means substantive amendment. Bills passed with procedural amendments are included in the “Pass” column.
here the mere absence of a government majority is important. A comparison of submission rates shows that the government proposes 0.2 fewer bills per day in Maj-Min Diets than in Unified Diets, or one less bill every five days. Table 5 shows that the success rates of these bills remain very high, so evidently, the need for governments to find extra votes in the HC slows them down and causes them to hold back bills for which they presumably see no viable partners. The number of cabinet bills submitted per day is smallest in Divided Diets—roughly one less bill every four days Unified Diets. Even so, Table 5 shows us that success rates of submitted cabinet bills plummet.

### 4.4 Opposition Support Rates

When facing Unified Diets, governments do not need the support of any non-governmental parties to pass laws. That does not mean that outside parties will never vote with the government; but it does imply that the government has little incentive to compromise in order to increase the size of its majority.

Maj-Min Diets force governments to find some outside support, but they may have many options to build the necessary upper house majority coalition. Finally in Divided Diets, the main opposition party (or coalition) controls the upper house, so, except when the government is willing and able to override HC vetoes, it must persuade the main opposition either to cooperate or to abstain. Presumably, it is the government’s inability or unwillingness to pay the costs of cooperation demanded by its main rival that increases legislative failure rates, triggers the override procedure (when feasible), and shortens the legislative agenda.

A further question, however, asks how often governments choose to bargain with their main rivals for HC passage and how often they build majorities that exclude the biggest opposition force. For Unified Diets, we have no strong expectation—opposition parties are free to support or oppose either sincerely or strategically, but their choices will not affect outcomes—government bills will almost always succeed. For Divided Diets, by definition, all laws will have received either a “yea” vote from the main opposition party, an abstention by that party that essentially hands the government a majority, or a “nay” vote that was overridden. Maj-Min Diets are the most interesting. In the aftermath of the LDP’s 2012 HR election triumph, Thies and Yanai (2013) took

<table>
<thead>
<tr>
<th>Diet Type</th>
<th>Passed w/o amendment (%)</th>
<th>Passed w/ substantive amendments (%)</th>
<th>Passed via 2/3 HR override of HC veto (%)</th>
<th>Failed (%)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unified</td>
<td>1,282</td>
<td>94</td>
<td>0</td>
<td>57</td>
<td>1,433</td>
</tr>
<tr>
<td></td>
<td>(89.5%)</td>
<td>(6.6%)</td>
<td></td>
<td>(4.0%)</td>
<td>(100.0%)</td>
</tr>
<tr>
<td>Maj-Min</td>
<td>571</td>
<td>59</td>
<td>1</td>
<td>41</td>
<td>672</td>
</tr>
<tr>
<td></td>
<td>(85.0%)</td>
<td>(8.8%)</td>
<td>(0.2%)</td>
<td>(6.1%)</td>
<td>(100.0%)</td>
</tr>
<tr>
<td>Divided</td>
<td>158</td>
<td>53</td>
<td>17</td>
<td>48</td>
<td>276</td>
</tr>
<tr>
<td></td>
<td>(57.3%)</td>
<td>(19.2%)</td>
<td>(6.2%)</td>
<td>(17.4%)</td>
<td>(100.0%)</td>
</tr>
<tr>
<td>Total</td>
<td>2,011</td>
<td>206</td>
<td>18</td>
<td>146</td>
<td>2,381</td>
</tr>
<tr>
<td></td>
<td>(84.5%)</td>
<td>(8.7%)</td>
<td>(0.8%)</td>
<td>(6.1%)</td>
<td>(100.0%)</td>
</tr>
</tbody>
</table>

* Extension of Table 19.2 from Thies and Yanai (2013).
** Excludes minority governments.
a snapshot of party strengths in the HC and determined that (assuming party-line voting and no support from the Japan Communist Party), there were 29 different minimal winning coalitions of parties that the LDP-Kömeitō government could use to pass bills through the HC. If the LDP were to find itself at odd with the Kömeitō, there were a further seven ways to build an HC majority.

Only two of these 36 potential HC majorities would have involved the DPJ – the main opposition party at the time. Of course, the number of winning combinations will have varied over time as a function of the number of parties in the HC and their seat shares. But the point is that governments facing Maj-Min Diets have options.

Table 7 shows the share of all laws (bills that were successful) that were proposed by the government and supported by the main opposition party. Because they are so important, we separate the budget-enabling laws from all other cabinet proposals. First, we notice that the main Opposition party supported two in three cabinet bills even in the Unified Diets, where the government did not need any cooperation to legislate. This is undoubtedly because most bills, even among budget-enabling bills, are not partisan in nature.

Somewhat surprisingly, budget-enabling bills in Maj-Min Diets garner main-Opposition support 95% of the time (and other laws nearly 93%)! Why do governments turn so often to their main rivals when they need extra partners? It could be that they find bargaining with single outside party more efficient than piecing together a coalition with several small parties. Or maybe governments feel that co-opting their main rivals is better than isolating them and suffering bad press from extra-parliamentary obstructionism. Perhaps it is simply the case that the two parties with the most similar views in many policy areas are the two largest parties, and that striking deals with a menagerie of small parties would lead to too many off-dimensional or extreme side payments. We are not confident that any of these speculations entirely rings true, but in any case it is interesting that “grand coalitions” seem to be the norm for law-making in Maj-Min Diets.

We now turn to the Divided Diets. It is initially surprising that the rate of main-opposition-party support for successful bills is not 100%. The reason for this is the historical coincidence that Japan’s first experiences with Divided Diets corresponded with their first experiences with lower house super-majorities. That is, those governments were fortunate that just at the time that they faced an opposition-controlled HC, they had the necessary two-thirds majority in the HR to override the HC’s veto. Sure enough, all eleven of the budget-enabling bills that passed without main-opposition support did so via the override. For the eleven other cabinet bills that passed without main-opposition support, six passed via the override and the final five passed the HC because the main opposition abstained and so the government’s minority HC contingent constituted a voting majority. When the override is available, the main opposition cannot effectively
oppose a determined government, and so opposition becomes merely symbolic, just as is the case of budgets or treaties. For the last five bills, the opposition chose not even to signal its opposition, most likely calculating that doing so would merely provoke five more overrides, and for these laws, the symbolic payoff would not have been worth the trouble.

5. Assessment

The Liberal Democratic Party dominated Japanese politics for 33 years, due to its ability to maintain single-party majorities in both houses of the Diet. Ever since the LDP lost its HC majority in 1989, however, no single party has enjoyed bicameral majorities, and governing coalitions have done so only half of the time. In most bicameral parliamentary (or semi-presidential) systems, the absence of a government majority in the upper house is not terribly important, because most upper chambers are constitutionally very weak – able only to delay, or easy to override, or even barred from whole areas of policy making. Still others have the potential to interfere with the government agenda, but are reluctant to flex their muscles and must pick their spots carefully, lest their non-elected status make their activism seem illegitimate. The long-dormant powers of the Japanese HC became important as soon as the LDP found it needed allies to pass laws.

Our review of the legislative record since 1989 leads us to two conclusions. First, the mere absence of a government HC majority matters, but it does not risk gridlock. Governments can try to expand their membership to turn a Maj-Min Diet into a Unified one, or else they can round up outside party support on an ad hoc basis for each bill. The latter slows things down – fewer bills are proposed, and more are amended, but the basic principle of responsible party government is not fatally undermined by the need to build slightly larger coalitions. This observation jibes with the Australian experience, where Maj-Min Parliaments are the norm. Despite ritual complaints from Australian governments of either main party about the Senate’s fecklessness, governments are able to govern.

Our second finding is that while a non-government majority in the HC is not particularly troubling, an Opposition HC majority, that is a Divided Diet, is of much greater moment. When the main opposition party or coalition controls the HC, the government has no choice but to bargain with its greatest rival. An opposition that will not strike deals with the government, whether because of sincere disagreement or strategic obstructionism, can fatally undermine the government’s ability to govern, up to including the rejection of budget-enabling bills. Legislative failure rates are three to four times as high as in Unified Diets, and that despite the pre-emptive reduction in the number of bills proposed, as well as the greater willingness to amend bills in process. Moreover, it is likely that the full potential of gridlock in Japan was actually avoided in the first Divided Diets between 2007 and 2009 because the 2005 election provided the Abe, Fukuda, and Aso governments with veto-proof supermajorities. Seventeen times, those governments used the veto override, and one wonders how much more often they were able to pass bills only by credibly threatening to do so.

One shortcoming of the Japanese Constitution is the fact that the only practical way to escape gridlock is for a government to resign, and leave it to the voters to “un-twist” the Diet by electing the HC-controlling Opposition to take control of government as well, in effect rewarding it for its intransigence. Here, we believe that the Australian founders came up with a better solution. In
Australia, the government may (ask the Governor General to) dissolve both chambers for new elections if the Senate has a rejected a government bills three times\(^{(30)}\). This means that the party wielding the Senate veto must always consider that over-zealous obstruction might put themselves in electoral jeopardy. Moreover, the Constitution provides for a joint sitting of the two chambers if the Senate does not pass the government bill in question after such a double dissolution, and because the government controlled House has twice as many members as the Senate, the government is almost sure to prevail in such a circumstance. In Japan, the HC cannot be dissolved early, so the party or coalition that controls it is secure at least until the next triennial half-election, and many of its incumbents may be just starting on a fixed six-year term. In such a circumstance, the HC has the de facto power of no-confidence because it also has the de facto ability to thwart the budget, the primary tool of governance. Both of those powers are expressly denied the HC by the Constitution, and so we are left to rely on the better angels of politicians to avoid constitutional crisis, a risk that led Madison to recommend “auxiliary precautions” (Madison).

One precaution would be to take the path now being traveled in Italy, to amend the constitution to remove the contradiction, either by limiting the HC’s powers or by abolishing the HC altogether\(^{(31)}\). Unlike Australia, Canada, or Belgium, for whom federalism provides an affirmative argument for meaningful bicameralism, there is no principled justification for bicameralism in Japan. Japan is neither federal nor ethnically divided. However, constitutional reform is very unlikely in the foreseeable future\(^{(32)}\), so, short of weakening the HC, the best approach would seem to be to reduce the probability of Divided Diets. As we have shown, the differences between Unified and Maj-Min Diets are less dramatic.

The most important determinant of a Divided Diet is the similarity (or dissimilarity) of the bases of representation for the two chambers. This, in turn, is a function of electoral rules, districting, and timing. In terms of electoral outcomes, the Japanese Diet looked congruent from 1956 through 1989, and the LDP’s loss in 1989 seems even in retrospect to have been anomalous. But the electoral rules and districting for the two chambers have never been identical. The main commonality across both systems during the LDP’s hegemony was a profound malapportionment in favor of rural areas. By law, no electoral constituency may cross a prefectural border, and the massive postwar urbanization of the Japanese population has left many prefectures permanently over-represented. Not surprisingly, it was the LDP that dominated rural Japan (Scheiner 2006; George Mulgan 2000), and this built-in and bicameral advantage is a big reason that the party managed to make an otherwise incongruent bicameral system produce congruent results.

In 1993, however, the coalition that threw the LDP temporarily into opposition changed the HR electoral system. At first glance, the new system looks even more like the HC system – it is a mixed-member-majoritarian rule that combines single-seat constituencies with a PR tier. But the single-seat districts are 300 in number, one result of which has been a dramatic reduction of pro-rural malapportionment\(^{(33)}\). In the nominal tier of the HC electoral system, the 47 prefectural districts elect 76 representatives every three years. Because every prefecture elects at least one member in every triennial half-election, the minimum representation of the most rural parts of Japan is two seats out of 146, as compared with 1 of 300 in the HR. Thus, while the HC remains badly malapportioned, the HR has become much more
urban in its orientation.

But the real problem, and the risk of a Divided Diet, comes not merely from the difference in the two houses’ bases of representation, but the fact that they both rely so heavily on single-member districts with plurality rule elections, which can lead to inflated translations of vote swings into much larger seat swings (Reed, Scheiner, Smith, and Thies 2013). Because HR elections and HC elections are not held concurrently, there is a real possibility of alternating landslides, and occasional swings to Divided Diets. As Table 1 showed, this is exactly what has been happening over the last several years.

Here again, the Australian example is instructive. The main reason that nearly all post-1948 Parliaments have been of the Maj-Min type is that the electoral system for the House of Representatives – the Alternative Vote – tends to produce single-party majorities while the Senate’s much more proportional Single Transferable Vote system tends to prevent them. This makes both Unified and Divided parliaments unlikely. The risk of majority tyranny by a new government riding a temporary wave of popularity is attenuated by a second chamber in which it must find allies, but the risk of gridlock induced by a recalcitrant opposition with the means and motive to obstruct is also very low.

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(1) Even minority governments count on a legislative majority for survival.
(2) For now, Italy is exceptional – the Senate can vote no-confidence in the government.
(3) Druckman and Thies (2002) have shown that governments that lack an upper house majority suffer shorter tenures in office, other things equal.
(4) Druckman, Martin, and Thies (2005) show that, other things equal, prospective coalitions that would lack upper house control are less likely to form.
(5) The Australian founders understood the risk of such a combination. Alfred Deakin warned “We are creating in these two chambers...an irresistible force on the one side, and what may prove to be an immovable object on the other side” (cited in Bach 2003:126).
(6) Taking each post-election Parliament as the unit of observation, this has occurred only six times since 1948. After 23 elections, governments fell at least one seat short of a Senate majority. The main Opposition party held a Senate majority one other time. Finally, the 2010 election produced minorities in both houses.
(7) The supremacy of the House of Representatives is stipulated by Article 60 of the Constitution of Japan for budgets, Article 61 for treaties, and Article 67 for the selection of the prime minister. The House of Councillors may delay a budget or a treaty for 30 days, and a prime ministerial selection for 10 days, but after those deadlines, inaction is deemed rejection, and HR’s decision prevails.
(8) Article 59 of the Constitution of Japan. For ordinary bills, the HC may postpone a decision for 60 days.
(9) Between the start of the 116th Diet (Sep 1989) and the end of 186th Diet (June 2014),
governments controlled bicameral majorities for 2,991 Diet session days, only an HR majority for 2,572 session days, and a majority in neither house for 506 days. If sessions with no lawmaking are excluded, those figures are 2,902, 2,539, and 500.

(10) Sometimes, a government lacks a majority in both houses (Minority-Minority). For the analysis that follows we ignore these few cases because the ever-present threat of a no-confidence vote complicates things theoretically. Moreover, Japan’s two spells of minority government in the 1990s were very different from one another. The Hata government in 1994 was the 5-party caretaker rump of coalition that split when its largest constituent party, the JSP, walked out. That government hung on for only two months. The Hashimoto/Obuchi LDP minority cabinets of 1996-1999 had the explicit “outside support” of the JSP and Shinó Saki-gake.

(11) This is an empirical generalization, not a definition. In all Japanese Maj-Min Diets since 1989, the government was the largest force in the HC, albeit short of a majority.

(12) This is extremely uncommon. In a study of 202 postwar governments in ten European democracies, Druckman and Thies (2002) found only two other instances of coalitions that included a party that was surplus in the lower house but needed for an upper house majority. Bicameral minority governments are much more common.

(13) Twisted Diets were normal before the LDP’s 1955 establishment. Most of those years (through 1952) were during the U.S.-led Occupation, however, so we exclude those Diets.

(14) Interestingly, after its stomping victory in 2009, the DPJ had a very large single-party majority in the HR. But just like the LDP in 1999, it invited two small partners into coalition to ensure bicameral control.

(15) Again, we omit the minority governments.

(16) The exception occurred in 1989, because an election was called before the HC could vote on the budget.

(17) One budget failed because the HR was dissolved for an election before it could be passed.

(18) All three supplementary budgets were eventually supported by the largest opposition party, the LDP, but the LDP-led upper house did delay the post-tsunami emergency budgets until Prime Minister Kan promised to resign.

(19) Two were submitted to the HC first, and passed, but the HR failed to vote on them before being dissolved due to a successful (and unrelated) no-confidence motion in 1993. Three treaties failed to reach a vote in either house.

(20) Again, we exclude the 129th and 138th – 144th Diet sessions, which featured minority governments.

(21) This table also re-codes Diets 175 through 178 as Maj-Min Diets rather than Divided, as they were coded by Thies and Yanai (2013). The reasoning for the re-coding is as follows. The DPJ was short of an HC majority in the 175th Diet, but had more seats (106) than the LDP-Kōmeitō coalition (102), and was able to strike deals with small parties to forge a majority. When 52 MPs led by Ichirō Ozawa, 12 of whom were HC members, left the DPJ, the situation changed to Divided: the DPJ could not practically form a majority without LDP-Kōmeitō coalition or the defectors who were not willing to cooperate, while an LDP-led majority was possible without the post-Ozawa DPJ.

(22) One bill passed via the override procedure in a Maj-Min Diet. It was a 2013 bill to reduce malapportionment in the Lower House electoral system. After it was approved by the HR, the relevant HC committee, chaired by an opposition politician, ignored the bill. After 60 days, the bill was deemed to be rejected, the government chose to use its override majority in the HR, rather than wait to try again in a more amenable post-election HC.

(23) E.g., Ireland, UK, Austria, Czech Republic, France, Poland, Slovenia.

(24) E.g., Spain.

(25) E.g., Germany, Belgium.

(26) E.g., Canada.

(27) Sporadic discussions about weakening or eliminating the Senate never get far. The defense of the Senate has little to do with federalism, and instead boils down to the benefit of having a check against untrammeled government power. The government should be able to
exercise its electoral mandate to govern, but the Senate’s job is to “keep the bastards honest” (Warhurst 1997).

(28) The 2009 election gave the DPJ-led coalition a 2/3 majority, but they never actually used it to override an HC veto. When Kan replaced Hatoyama as prime minister in June 2010, the JSP had dropped out of the coalition, leaving Kan (and later, Noda) short of the votes needed for an override. Moreover, the July 2012 party split led by Ichirō Ozawa cut the DPJ’s numbers in both houses, and Ozawa’s troublemaking inside the party probably undermined the credibility of any override threat as far back as June 2010.

(29) A comparison of the veto-proof LDP governments that faced Divided Diets with the veto-susceptible DPJ governments that did so is intriguing. The LDP governments’ success rates, excluding the bills it passed by override, was 78.0% to the DPJ’s 73.8%. How much of that difference was due to the credible override threat?


(31) New Zealand, Denmark, and Sweden all abolished their upper chambers.

(32) The Japanese constitution has never been amended in nearly 70 years, not least because the mere mention of tinkering with the constitution turns immediately to a discussion of the sanctity of the Article 9 “Peace Clause,” which raises hackles not just in Japan but among Japan’s neighbors as well.

(33) Some prefectures are still overrepresented despite electing only a single MP (down from a minimum of 3 under SNTV). Unless the rule prohibiting the traverse of prefectural lines is eliminated, this will persist.

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