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# Unicameralism, Bicameralism, Multicameralism: Evolution and Trends in Europe

by

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## Abstract

An analysis of the structure of parliaments in European countries shows that a wide range of options developed across the centuries. However, many of these patterns (among which tetracameralism, tricameralism, and qualified unicameralism) did not survive, despite their sometimes-remarkable historical interest.

Currently, parliaments in Europe are either unicameral or bicameral: while unicameralism is the most common option, bicameralism is generally adopted in more populous countries and/or States with strong territorial autonomies. As a matter of fact, among varieties of bicameralism, the most common is characterized by a ‘territorial’ second chamber. Nevertheless, other types of bicameralism deserve attention too, not only to provide a comprehensive outline of the comparative scene, but also to find features that can define emerging trends.

For this purpose, a classification of bicameralism will be outlined, mainly examining the patterns displayed by second chambers and the relationships between the two chambers. Combining this classification with the outcomes of the choice between unicameralism and bicameralism, some trends can be detected, although national experiences are so diverse that reliable norms are difficult to identify.

## Key-words

parliament, unicameralism, bicameralism, representation, decision-making process



## 1. Introduction

A comparative analysis shows that there is a huge diversity in the patterns identifiable in parliaments across European systems, especially if one adopts an historical approach, as Europe is the region where most of the models experimented with throughout history were created. As a matter of fact, a complete examination of the patterns distinguishing parliaments in Europe would require a deep historical analysis, dating back at least to the Middle Ages (Marongiu 1968).

In those centuries, embryonic ideas of structures for the representation of society paved the way for systems made of councils and assemblies, each representing a sector of society in advising the monarch.

The structure of the system of councils and assemblies, that would later become the parliament, depended mostly on how society was divided, or rather on how the sectors of society that were considered as deserving representation were divided. As a result, the ancestors of modern parliaments were organised in a variable number of assemblies — or, as they would be called later, chambers or houses. The main patterns of the parliaments that characterised European countries were based on one, two, three or four assemblies. Over time, the number of assemblies was reduced, so that no more than two chambers can be found in modern parliaments. Nonetheless, a brief overview of the patterns existing in the past may be of some interest, especially as this can help us understand the reasons for the subsequent evolution that resulted in parliaments as we know them today (para. 2). After this overview, an analysis of contemporary patterns will be provided, with an attempt to classify the main categories of current parliaments in European countries (para. 3). The classification will allow to draw some concluding remarks (para. 4).

## 2. The Patterns of the Past

This overview of the patterns of the past should begin with an analysis of the evolution of the British Parliament, since its roots date back to the Anglo-Saxon period (Perceval 1953: 33-48), and its evolution can help to explain how the system developed as it is, and works today. The way in which Westminster became a bicameral parliament is a subject



that deserves special attention, both from an historical point of view, and in order to find links with its surviving peculiarities. The aim of this paper is much more general (or maybe generic), and therefore such an analysis does not fall within its scope: strictly speaking, after all, the British solution cannot be considered as a pattern of the past, but rather an ancient solution that exists to this day, thanks to adaptations and reforms; in fact, the structure of the British Parliament will be taken into account as a prototype of modern parliaments.

The real patterns of the past are those that disappeared because they were abolished more or less recently. Most of them can be jointly defined as ‘multicameralism’, because they featured a number of chambers greater than two. Two main types of multicameral parliaments can be identified: the three-chamber and the four-chamber systems, respectively called ‘tricameralism’ and ‘tetracameralism’.

Another pattern disappeared very recently, the so-called ‘qualified unicameralism’, that was characterised by a varying structure of the parliament.

## 2.1. Tricameralism

The most renowned example of tricameralism in history is certainly that which characterised the French *Ancien Régime*, where the States-General were divided into three assemblies, the first representing the clergy, the second the aristocracy and the third the commoners (Krynen 1987: 30-44).

After the French Revolution, the three-chamber structure of the legislature was reintroduced during the French Consulate (1799-1804) and at the beginning of the First Empire (1804-1807). Together with the *Corps législatif*, which was the successor of the Council of Elders (thus the equivalent of an upper chamber) and the *Tribunat*, successor of the Council of Five Hundred (the equivalent of a lower chamber), a *Sénat conservateur* was established and endowed with the power to protect the Constitution from legislative acts.

The system eventually became bicameral, when, in 1807, the *Tribunat* was abolished, in view of a further concentration of powers into the hands of the Emperor, which succeeded in subjecting the remaining chambers to his rule, so as to exercise his rule-making power without major counterweights.

As for the rest of Europe, perhaps the only recent case of tricameralism worthy of mention is that introduced in the Socialist Republic of Croatia, in which for almost two decades the legislature established was based on three councils, each of which represented



different approaches to decision-making. In this regard, the Constitution of 1974 established a Socio-Political Council, a Council of Municipalities and a Council of Associated Labor. When Croatia became an independent State, the Constitution of 1990 abolished tricameralism and introduced bicameralism.

Apart from France and, to some extent, Croatia, the most significant experiences of tricameralism are not to be found in Europe. Indeed, in the history of political thought, the idea of a three-chamber parliament is frequently associated with Simón Bolívar's theory, according to which a popularly elected chamber, (the Chamber of Tribunes) would be endowed with the power to regulate finance and foreign affairs, a hereditary chamber (the Senate) would enact law, and a third chamber (the Censors) would have the power to review the lawfulness of the acts of the other two and to protect fundamental rights.<sup>1</sup> This parliamentary pattern was never really established in the countries of the American continent when they gained independence; therefore the interest in Bolívar-style tricameralism relies essentially on its theoretical value.

In contrast, from a practical point of view tricameralism was a relevant feature of the Constitution of South Africa of 1983, which is sometimes called 'Tricameral Constitution', precisely to stress the importance of the changes made to the structure of the parliament with regard to the overall constitutional system (Welsh 1984: 147-162). The three-chamber structure of the parliament was a part of the country's *apartheid* policy, as each chamber represented a race: the House of Assembly was reserved for whites, the House of Representatives for blacks, and the House of Delegates for indians. The tripartition was combined with a limitation of powers of the Parliament as a whole, and a disparity between the chambers, such as to give the House of Assembly a preeminent role. The distance between the *apartheid* regime and modern democracies in Europe is so deep that an analysis of this experience of tricameralism in this paper would be rather odd: even this brief mention is probably enough to confirm the irrelevance of the subject, given that the division of chambers on the basis of race is, of course, wholly inconsistent with the principles regulating parliaments throughout Europe.

## 2.2. Tetracameralism

In some countries, the fragmentation of representation led to the creation of a four-chamber parliament. This was the case, in particular, with the Swedish *Riksdag* of the



Estates, in which four assemblies represented, respectively, the aristocracy, the clergy, the burghers and the peasants.

The traditional four-chamber Diet was abolished in 1866 and replaced with a bicameral legislature. This pattern survived in Finland, where the Swedish model was adopted in 1809, when the land was lost by the Realm of Sweden and became a Grand Duchy submitted to the rule of the Russian Empire. Although only sporadically convened, the Finnish legislature maintained its traditional structure for almost a century, until 1906, when tetracameralism was replaced by a unicameral parliament.

### 2.3. Qualified Unicameralism

A very peculiar structure for parliament is that of so-called ‘qualified unicameralism’, in which the parliament divides into two internal chambers when considering the most important (legislative) matters. This system was typical of Norway (as well as of Iceland, before 1991); since the 2009 Norwegian elections, however, it disappeared in favour of a classical unicameralism (Passaglia 2015: 85-95). In Norway, qualified unicameralism was the result of a compromise reached in 1814 during the Constituent Convention. On the one hand, most parliaments established at the time had a bicameral structure, typical of the constitutional ideals of the Enlightenment, and bicameralism characterised parliaments established by the Constitutions that had most influenced the Norwegian Constituent — namely the American Federal Constitution of 1787 and the French Constitutions of 1791, 1793 and 1795. On the other hand, nothing in the Norwegian political and social context truly justified bicameralism: there was virtually no nobility (and what little did exist would be abolished a few years later) that could form an aristocratic second chamber; Norway was conceived as a unitary state, such that there was no need to establish a second chamber to represent territorial autonomous entities (Rommetvedt 1992: 79).

The influence of foreign models led to a compromise, in the sense that it was ultimately decided that all Members of Parliament would be elected in the same way and form a single assembly, which would be divided into two chambers when dealing with specific matters. After elections, the Parliament (*Storting*) would elect a quarter of its members to form the *Lagting*, a sort of ‘upper chamber’, with the remaining three-quarters forming the *Odelsting*, or ‘lower chamber’.



Progressively, throughout the 19<sup>th</sup> century, the division between the two chambers became merely apparent and remained thus for the entire 20<sup>th</sup> century. Serious disagreements between the two chambers were therefore hard to identify.

As a result, at the beginning of the 21<sup>st</sup> century, Norwegian qualified unicameralism had a relatively long history of rather limited usefulness. The second chamber, conceived as a reduced copy of the first, did not significantly improve legislation and decision-making; such that the result of this increased procedural complexity was generally a longer time elapsing from the proposition to the adoption of an act, without any specific benefit for its contents.

A proposal to amend the Constitution and abolish the system of *Odelsting* and *Lagting* was introduced in 2004 and was passed by the *Storting* on 20 February 2007 by an overwhelming majority. The reform took effect in 2009, with the newly elected *Storting* (Smith 2008: 393).

### 3. The Current Landscape

The more complex patterns of parliament experimented with in the past did not survive into modern times; or, rather, they were restricted to very limited areas before they were abolished. Consequently, only two forms can be found in contemporary European States: unicameralism and bicameralism.

According to the Inter-Parliamentary Union's database,<sup>II</sup> most countries have chosen the unicameral pattern: however, the bicameral one is far from rare. Overall, there are thirty-one unicameral parliaments in Europe at the national level, while bicameralism is adopted in seventeen countries. Unicameralism is therefore the structure of roughly two thirds of the parliaments (64.6%), although the minority choice in favour of bicameralism cannot be neglected (35.4%), at the very least statistically speaking.<sup>III</sup> The case of Germany requires some explanation: formally, its parliament should be deemed unicameral, because the *Bundesrat* is not a second chamber in the traditional sense (Kotzur 2006: 257-290); nonetheless, in functioning as a constitutional body representing the Member States the *Bundesrat* plays a role that is absolutely comparable to that of formal second chambers in other countries, so that, for the purposes of this paper, the German Parliament will be considered bicameral.



The choice between one or two chambers is difficult to explain with clear and undisputable criteria. In fact, there is no correspondence between a pattern and one or more other characteristics of the countries; at the most, some trends and leanings can be estimated.

First, population size seems to impact the choice. Among the twelve most populous countries in Europe, ten have a bicameral parliament:<sup>IV</sup> only Turkey (the third country by number of inhabitants) and Ukraine (the eighth) have adopted unicameralism. Four other countries in which the parliament consists of two chambers rank among the fourteenth and the twenty-first most populous.<sup>V</sup> Therefore, among the less populous countries in Europe, only three States have adopted bicameralism: Ireland (twenty-eighth in ranking, by population), Bosnia and Herzegovina (the thirtieth), and Slovenia (the thirty-seventh).

This outline of the European situation confirms a trend that can also be identified at the worldwide level: unicameral parliaments are in the majority, but bicameralism is the pattern that characterises most of the countries with more than thirty million inhabitants: thirty out of the forty most populous States have a two-chamber system, so that approximately four billion people live in countries where the parliament is bicameral, notwithstanding the fact that the unicameral pattern is adopted by the Popular Republic of China.

Second, the geographic extension of the countries also seems to have some influence. In this regard, nine out of the first thirteen countries ranked by area, in Europe, have a bicameral parliament.<sup>VI</sup> The exceptions are: Ukraine (the second), Sweden (the fifth), Norway (the sixth), and Finland (the eighth). From a more general perspective, geographic area can be considered as a criterion for the choice, since the Popular Republic of China is the only country, among the ten most extended ones, that has not chosen a bicameral parliament.

A third criterion to take into account is history, which appears to play a role in orienting towards either unicameralism or bicameralism. Indeed, in many systems, the present structure of the parliament was very much influenced by the solutions adopted in the past, such that a sort of 'path dependence' can be noted.<sup>VII</sup> The case of the Parliament of Westminster is too obvious to merit explanation. However, several other examples could also be mentioned. In this regard, one could observe that in Eastern Europe, bicameralism was adopted in very few countries: it is fair to state that a possible link with



the past tradition of Soviet Law can be seen. According to Marxist-Leninist political theory, popular sovereignty could not be divided; therefore, in Soviet states, there was no room for a two-chamber parliament. However, the Soviet Union itself coupled popular representation with the representation of territories within the framework of a Union among formally autonomous Soviet republics. In other words, from a theoretical point of view, bicameralism was conceived as creating a rift in unitary popular sovereignty; in more concrete terms, second chambers were seen as typically conservative institutions, and therefore not consistent with the Marxist theory of the State and with the implementation of a Communist society. Upon the fall of Socialist regimes, the transition towards liberal democracy affected a very significant part of the institutional framework; however, unicameralism was replaced with two chambers in only a few cases. Apart from the Russian Federation, which derived its bicameralism directly from the past, bicameral legislatures were adopted in Belarus, in the Czech Republic (since 1996, notwithstanding major opposition – Kysela 2006: 1012-1013), in Poland (where the choice of bicameralism in 1989 ‘was quite unexpected’ — Granat 2006: 965), and in Romania, as well as in three former members of the Yugoslavian Federation, namely Bosnia and Herzegovina, Slovenia, and Croatia, where a Chamber of Counties serving as a second chamber was established in 1990, but was subsequently abolished in 2001. All fourteen remaining post-Socialist countries opted for unicameralism.

There is a form of path dependence on the opposite side too, as it is relatively rare to bring about a transformation from bicameralism to unicameralism. Leaving aside those Socialist states in which the second chambers were abolished precisely as a result of the theoretical approach to the division of power,<sup>viii</sup> unicameralism was sometimes the result of the abolition of the second chamber (such as in Denmark, in 1953) or of the merger of the two chambers into a single one (such as in Sweden, in 1971). The abolition or merger took place when the original reasons leading to the establishment of bicameralism no longer held: unicameralism was the result of an effort to simplify the structure of parliament, as its complexity was considered unnecessary.

Finally, and perhaps most importantly, the structure of the State quite clearly influences the structure of parliament, given that in Federations or in Regional States, a two-chamber system is generally adopted. Although the subject will not be considered in this paper, it is



noteworthy that the choice of bicameralism at the federal level is not frequently repeated at the sub-national level.<sup>IX</sup>

Even extending the analysis to non-European countries, a comparative analysis shows that unicameralism in a federal state is rather exceptional: the unicameral parliaments of the United Arab Emirates, Venezuela, Comoros, Micronesia, St. Kitts and Nevis, and – until its recent division – Serbia-Montenegro, do not negate the strong trend in favour of bicameralism in federal countries (Watts 2010: 2).

The suggested link between the form of the State and the pattern of parliament could lead one to emphasise the potential impact of the need to represent territories on the existence of a second chamber: in this regard, a connection certainly exists; however, it should not be perceived as binding, as it is not an invariable rule that second chambers represent territories in federal or regional countries. This observation testifies to the appropriateness of engaging in further analysis of the role and functions of the second chambers: bicameralism can have, in fact, very different foundations and purposes. Thus, an overview of the main models of bicameralism in Europe is required to better describe the kaleidoscope of solutions adopted by different countries.

### 3.1. Patterns of Bicameralism

The choice of bicameralism can be for different reasons, for which scholars have proposed several rationales. For instance, the focus could be on the benefits of a second chamber in terms of representation of interests or in terms of the quality of the decision-making process (Money and Tsebelis 1992: 25-43); a further benefit was identified as consisting in a stronger protection of individuals' rights and freedoms (Llanos and Nolte 2003: 54-86). More generally, the functions of second chambers can be summarised with regard to the strengthening of 'representation' and 'reflection' (Norton 2007: 3-18; see also Romaniello 2016: 6-12).

Other possible purposes motivating the establishment of bicameralism could be classified on the basis of the definition of the second chamber. In this regard, five such definitions are proposed: 'aristocratic' (*a*), 'counter-majoritarian' (*b*), chamber of 'further reflection' (*c*), 'corporatist' (*d*), and 'territorial' (*e*).

(*a*) In some systems, the two chambers were conceived of to represent the different foundations of government: the lower chamber operated as the body that represents the



people, whereas the second chamber aimed to preserve the traditional aristocratic principle, being an unelected body of hereditary members or of members appointed irrespective of any electoral mandate.

This form of bicameralism was typical of the 19<sup>th</sup> century, when the democratic principle was taking root in European countries and still coexisted with traditional forms of legitimacy, such as the divine right of kings or the oligarchic form of exercising power. The upper chamber was then supposed to cushion the lower chamber's decisions, which would have been 'too much upon the democratical order', as Benjamin Rush, a signatory to the American Declaration of Independence, would have said (Hawke 1961: 193-194). A good example of this coexistence is the Kingdom of Italy immediately after Unity, when Victor Emanuel II was proclaimed, in 1861, King by 'the grace of God' and 'the will of the Nation'. Both of these principles were implemented in Parliament, since the members of the Chamber of Deputies were elected by popular vote while the members of the Royal Senate were formally appointed by the King, usually upon the 'more-than-persuasive' advice of the Government.

'Aristocratic' second chambers have rarely survived to present times. The most notable exception remains the House of Lords of the United Kingdom, irrespective of the evolution undergone by this institution in the 20<sup>th</sup> century and the attempted reforms that are still debated in Westminster today (Russell 2000; Russell 2013: 285-300).

Even though aristocratic chambers have disappeared in almost all democratic countries, some traces of the idea that led to their establishment may be recognised in some contemporary 'non-aristocratic' chambers, such as, for example, the Canadian Senate. In Canada, the British prototype was revisited: the hereditary members were abolished, but the formal appointment of senators by the Head of State (i.e. the Governor-in-Council) is still one of the institution's main features (Pinard 2006: 466-476).

A different kind of 'heir' of the aristocratic second chamber may be seen in those chambers which, by their composition, strive to ensure an additional dose of 'wisdom' within institutions. The Italian Senate is an example, since the minimum age to be elected as senators is 40 (whereas to be elected as members of the Chamber of Deputies, the minimum age is 25): consequently, being 'mature', senators are supposed to be wise enough to avoid any 'mistakes of youth'.



(b) Today, traces of the ancient aristocratic chambers may also be found in those second chambers that play a key role in avoiding the ‘tyranny of the majority’. Indeed, there are second chambers that are often counter-majoritarian institutions because of the way in which their members are appointed and, sometimes, because of the structure of the political system.

Even though the presence of a second chamber is itself a means to offer counterweights to the majority, since it increases the chances to express different points of view, there are some cases of second chambers that play a precise role in limiting the action of the political majority expressed in the first.

Some examples may be helpful. As mentioned above, in Canada, senators are appointed by the Governor-in-Council, and they serve until they reach the age of 75. Because of this system, a cabinet that remains in office for a long time can appoint a great number of senators, such that the majority of these senators share the political views of the Government (and of the majority of the House of Commons). As a result, when a new majority is elected, and a new Government is formed, the majority of senators remains, for some time, the expression of the old Government; in other words, the new Government needs time to appoint new senators to reverse the old majority, but these appointments cannot take place until the senators in power reach the age of 75. Thus, the Canadian Senate is a temporarily counter-majoritarian institution.

The French Senate of the Fifth Republic is another good example of a virtually counter-majoritarian institution. French senators are indirectly elected, as they are chosen by elected officials, and they represent territorial collectivities. This type of election, together with constituencies favouring rural areas, led to a stable right-wing majority; as a result, for a long time, the Senate was a chamber of opposition to any left-wing Government (Di Manno 2006: 251-252). The situation changed in the 2011 elections, which produced a centre-left majority for the first time; thus, for a few months the Senate was a chamber of opposition against the right-wing Government, before becoming part of the governmental majority with the presidential and legislative elections of 2012. Two years later, the new elections for the Senate resulted in a new centre-right majority, that restored the ‘ordinary’ opposition of the Senate to left-wing Governments.

(c) Another model of bicameralism is typical of the parliaments characterised by two chambers that share, as a general rule, the same degree of legitimacy, given that the



members of both chambers are selected in a very similar way, namely through direct election. In this case, the existence of two chambers is a means to ensure ‘further reflection’ in the decision-making process. The degree of ‘reflection’ changes, of course, depending on the powers and responsibilities of the second chamber; they may be equal to the first, but may also be limited to the function of a simple suspensive veto. The Italian Parliament, under the Constitution of 1947, is one of the standard examples of this type of bicameralism (the different ages required to become senators or Members of the Chamber of Deputies has not produced substantial dissimilarities in the composition of the chambers), apart from a period during which the second chamber worked as a limit upon the ‘tyranny of majority’, due to important differences that were introduced into the electoral system of the two Chambers.<sup>x</sup>

(d) A different model for an upper chamber was adopted in the 1937 Irish Constitution, inspired by the ‘corporative’ social theory of Roman Catholicism, enshrined in the 1931 encyclical *Quadragesimo Anno* by Pope Pius XI. The *Seanad* is not elected, but consists of members appointed on the basis of their belonging to vocational and cultural interest groups (Garvin 1969: 14-23). A few years after the adoption of the Constitution of Ireland, a similar system was proposed in the Italian Constituent Assembly (1946-1947), but was eventually rejected.

This pattern has been largely unsuccessful, since Ireland is the only experience to have adopted it in a lasting manner. Moreover, a deeper analysis shows that the ‘corporatist’ structure of the Irish Senate has progressively vanished, due to the increasing influence of political parties in senators’ appointments. The fact that the institution appears rather anachronistic is clearly demonstrated by the proposed abolition of the Irish second chamber with the Thirty-Second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013, that was approved by the Parliament in July 2013, but that was eventually rejected in the popular referendum held a few months later, on 4 October, with a majority of 51,7%.

(e) Today, the most common model appears to be that of a second chamber that represents peripheral entities. This kind of chamber is not unknown to states that can be defined as unitary; however, it is much more common, of course, in federal or regional states. As a matter of fact, the main objective behind the establishment of this type of chamber is to ensure a balance between the powers of the federation (or the regional state)



and the constitutional status of the Member States, Regions or Provinces, as applicable. Bicameralism is thus the result of both the need to ensure checks and balances in the relationships between different levels of government, and of the need to strengthen cooperation in decision-making (Palermo and Kössler 2017: 165-178).

According to traditional and very common classifications, this type of second chamber, that can be defined as ‘territorial’, is based on two different models. The first one is implemented in the ‘Senate model’ (e.g. in the United States, at least after the Seventeenth Amendment was ratified, in 1913), where the upper chamber is elected by the people, but the Member State is represented as a result of the constituency’s structure, the boundaries of which correspond to the State. The other, the ‘Council Model’ characterises Germany, where the members of the Federal Council (*Bundesrat*) are part of the executive branch of each *Land*. A third model should probably be taken into account, as there are second chambers the members of which are appointed pursuant to indirect elections, held by territorial legislatures: in the first decades of the history of the U.S. (prior to the adoption of the Seventeenth Amendment), the Senate was based on this electoral system, which is rather similar to that currently applied to elect the Austrian *Bundesrat*.<sup>XI</sup>

To be more accurate, it could be questioned whether the method of selecting members is a viable criterion against which to classify territorial chambers, as other features can also play a crucial role: in particular, the weighting accorded to each territory is key in identifying how to situate the chamber in the institutional context. For this reason, a deeper analysis is required, and will be carried out below (para. 3.3).

In any case, it must be underlined that, as a matter of principle, all models are capable of effectively protecting peripheral entities *vis-à-vis* the central government. In practice, however, the ‘Council model’ appears to be far more successful, if simply because of the strict connection it establishes between local government and the central/federal decision-making process. The ‘Senate model’ may be more responsive to social inputs, but the electoral mandates can make senators much keener to defend their potential popular votes, rather than to preserve the balance of powers between the levels of government. The outcomes of the third model identified are more difficult to define, as there appears to be more variety in the ways in which local interests are protected.

As mentioned above, the ‘territorial second chamber’, conceived of as either a Council or a Senate (or belonging to the third category), can exist in a unitary State, but what



appears to be more significant is that this type of chamber is not a permanent feature of federal (or regional) states. Several federal states lack a federal upper chamber. In this regard, two systems may be mentioned. First, the Canadian Senate, that is not representative of Provinces, since its members are appointed on the basis of their region of provenance: for Ontario and Québec, the region corresponds to the Province, whereas the other provinces are considered in groups of three or four, as belonging to a region. Second, the case of the Italian Senate is interesting, because the Constitution states that the Senate shall be elected on a 'regional basis'; however, the correspondence between constituencies and regions has not actually endowed senators with a specific mandate to represent their territory of provenance.

Obviously, the absence of a federal second chamber does not imply an absence of the need for the levels of government to cooperate. Indeed, as in many other countries, in both Canada and Italy, cooperation is effected by means of a 'conference system', in which members or representatives of the executive branch at the national and the regional or provincial levels are members of joint committees that take part in the national decision-making process, delivering agreements and understandings: as a matter of fact, in many countries a form of 'executive federalism' has developed, in which 'the processes of intergovernmental negotiation . . . are dominated by the executives of the different governments' (Watts 1989: 3).

### 3.2. The Structure of Parliament and the Decision-Making Process

The choice between unicameralism and bicameralism naturally affects the efficiency of the decision-making process. It is no coincidence that, in his reference book on *Patterns of Democracy*, Arend Lijphart explains that '[t]he pure majoritarian model calls for the concentration of legislative power in a single chamber', whereas 'the pure consensus model is characterised by a bicameral legislature in which power is divided equally between two differently constituted chambers' (Lijphart 1999: 200). In other words, efficiency and rapidity in the decision-making process is clearly favoured by the existence of a single chamber; on the contrary, a less efficient process is the price that bicameralism must pay to ensure the pursuit of other interests. Whether bicameralism is worth this price depends upon the interests pursued by a system, and upon their value.



Therefore, ‘good bicameralism’ can be defined as a bicameral system that is capable of balancing efficiency and the pursuit of other interests: on one hand, it must ensure an appropriate consideration of the interests that should be taken into account in parliament and, on the other, it cannot allow this consideration to excessively delay or hinder the decision-making process.

The issue does not only concern *which* interests are or should be taken into account, but also *how* they are taken into account. This observation refers to the differences between the two chambers, especially as far as their respective powers are concerned.

The different forms of second chambers, as described above, may have greatly different effects upon their broader systems, on the basis of the powers enjoyed by each chamber.

Generally, second chambers do not have the same powers as the first chambers, either because certain accessory powers are lacking (e.g. they cannot hold Government accountable to them) or because the first chamber enjoys primacy with regard to the final decision in disputed issues. In these cases, the balance between efficiency and the pursuit of other interests results in a more complex decision-making process, which however can always be terminated by the final vote of the first chamber: thus, the interests that second chambers are supposed to represent can delay, but cannot block a decision from being taken.

In some cases, the allocation of powers between the chambers results in a separation. The chambers do not exercise the same powers, because a part of these is attributed to the first chamber and another part to the second. Therefore, the parliament sometimes operates as a unicameral body. Often, the first chamber is endowed with powers which the second does not possess (e.g. the power to express a vote of confidence in the Government), but the second chamber may sometimes enjoy reserved powers, such as the US Senate’s power to advise and give consent with respect to Presidential appointments. In these circumstances, the concrete operation of the decision-making process is not endangered, because the two chambers do not have to reach any agreement.

In contrast, efficiency does become an issue in parliaments characterised by so-called ‘perfect bicameralism’, a notion that describes parliaments in which the two chambers have the same powers and responsibilities, and neither the first nor the second is capable of overriding the opposition of the other. In this case, because of their composition (since, at



present, the democratic legitimacy of the members is roughly identical for both chambers), second chambers tend to be ‘copies’ of the first. This duplication is supposed to guarantee deeper reflection when adopting acts or motions, simply because the two assemblies must fully agree on the texts to be approved. Of course, the deeper reflection ensured by the second chamber can easily become an obstacle to the adoption of any decision at all: processes require much more time for completion, and the risk of being unable to jointly decide remains.

### 3.3. Current Bicameral Parliaments in Europe: an Overview

In Europe, among the seventeen bicameral parliaments, a large majority is characterised by a second chamber that represents territories (sub-para. *i*). The second category, in terms of the number of subscribing systems, is that based on a second chamber of ‘further reflection’ (sub-para. *ii*), while the other categories consist only of the systems seen above when describing the main patterns of bicameralism.

Thus, an ‘aristocratic’ second chamber continues to operate only in the United Kingdom, having been replaced everywhere else with other forms of representation. After all, the House of Lords is so peculiar to the British experience that it would be difficult to find chambers to compare with it.

With regard to the ‘counter-majoritarian’ second chambers, the case of the French Senate seems to be the only example of a chamber designed to be either a ‘counter-majoritarian’ chamber or one of ‘further reflection’, depending on the political orientation of the majority in the National Assembly.

Finally, when it comes to ‘corporatist’ second chambers, the Irish Senate is, to date, the only real example in Europe,<sup>xii</sup> although the Slovenian second chamber recalls at least in part the idea of a chamber that is supposed to represent social categories.

Notwithstanding major differences in their composition, the British, French and Irish second chambers all share the commonality of occupying an ancillary position in the institutional context, compared to the first chambers. None of these second chambers are empowered to contest the Executive’s responsibility, and generally their role in the legislative process is limited to the power to oppose via a suspensive veto, which while more or less difficult to overcome, can never hamper the first chamber’s ability to have the final say. The inequality that characterises these embodiments of bicameralism can easily be



explained by the different roots of the chambers' legitimacy: aristocratic, corporatist and indirectly elected second chambers cannot compete, in terms of strength of legitimacy, with assemblies that are directly elected by the people.

If these second chambers are basically affected by a weakness deriving from their legitimacy, for the second chambers of the two other categories the situation is remarkably different.

(i) The number of second chambers designed to represent territories amounts to ten. Most of the countries where this kind of representation exists have a federal structure. This is the case of Austria, Belgium, Bosnia and Herzegovina, Germany, the Russian Federation and Switzerland. Spain cannot be considered a federal state. However, its regional structure can be assimilated to that of a federation, at least for the purposes of this paper. Three other chambers represent territories that are part of a unitary state: Belarus, the Netherlands and Slovenia.

In federal states, aside from the case of the German *Bundesrat* – with its peculiar way of linking State executives and State delegations in the Federal Council<sup>XIII</sup> – the members of second chambers are mostly elected by territorial assemblies in a second-degree election. The choice of indirect elections characterises the Austrian *Bundesrat*,<sup>XIV</sup> the House of Peoples in Bosnia and Herzegovina,<sup>XV</sup> the Russian Council of the Federation,<sup>XVI</sup> as well as most of the members of the Belgian Senate, after the 2014 constitutional reform that abolished direct elections.<sup>XVII</sup>

Direct election of the members of the second chamber is the system chosen by all Swiss Cantons for the appointment of the Council of States,<sup>XVIII</sup> even though the Constitution also allows for indirect elections (Biaggini and Sarott 2006: 729). The same system applies to approximately 80% of the members of the Spanish Senate, while the remaining members are appointed by territorial legislatures<sup>XIX</sup>.

As noted above, some unitary States also grant territories with representation in the second chamber. This is the case with the Dutch Senate, the members of which are elected on the basis of lists drawn by the members of the twelve States-Provincial<sup>XX</sup>. In a very different institutional framework, a second chamber representing territories can be found in Belarus, where almost all members of the Council of the Republic are elected by Local Councils<sup>XXI</sup>.



As noted above, a peculiar second chamber is the National Council of Slovenia, that represents both local entities and social categories: twenty-two members are elected by local assemblies, while the other eighteen are chosen from among social categories<sup>XXII</sup>, such that the chamber can be identified as a hybrid between a ‘territorial’ and a ‘corporatist’ chamber.

Because all of these second chambers – with the partial exception of the Slovenian case – are intended to represent territories, one of the key issues is the weight effectively recognised to such territories. In particular, the main alternative is between giving equal weight to all subnational entities, thus adopting the typical rule of international law (and of confederations), on one hand, and providing representation by population, on the other, such that the composition of the second chamber is similar to that of the lower chamber. The second rule is applied only in the Netherlands<sup>XXIII</sup>, but four of the territorial second chambers adopt the first: Belarus<sup>XXIV</sup>, Bosnia and Herzegovina<sup>XXV</sup>, Russia<sup>XXVI</sup>, and Switzerland<sup>XXVII</sup>, as well as the Slovenian National Council, for its members elected by local assemblies<sup>XXVIII</sup>.

An intermediate rule is also used: the representation may be weighted taking population into account.

The intermediate rule is a compromise between the ‘federative’ requirement that all the federal states must be treated equally and the democratic ideal of voting rights precisely reflecting the population numbers in each federal state. Of course, much depends on how the population is taken into account. For instance, in the German *Bundesrat*, the number of seats/votes is based on the population of each *Land*, with a form of strong *degressive proportionality*, so that smaller *Länder* have more votes than a distribution proportional to the population would grant. The protection of smaller *Länder* against the ‘tyranny’ of the larger ones is guaranteed by the rule according to which *each Land* is allocated at least three votes, and a maximum of six<sup>XXIX</sup>.

The intermediate rule is also applied to the Austrian *Bundesrat*, but the impact of degressive proportionality is much less significant since, according to Article 34, § 2, of the Constitution of 1920, the number of representatives delegated by each *Land* ranges between three and twelve, depending on its population as ascertained by a regular census: [t]his means that the relationship between the numbers of *Länder* citizens is an important basis for the composition of both houses of the Federal Parliament, which is perhaps more



democratic, but at the same time diminishes the difference between the composition of both houses' (Gamper 2006: 789).

Representation weighted on the basis of population also characterises the Belgian<sup>xxx</sup> and the Spanish Senates.<sup>xxxi</sup>

When it comes to the role that the second chamber is called upon to play in the decision-making process, the general rule is that the first chamber has a wider set of powers than the second. In fact, the Executive, when required to be responsible to the parliament, is always responsible to the first, and not the second, chamber, with very few exceptions: among the ten 'territorial' second chambers, only the Dutch Senate and the House of Peoples of Bosnia and Herzegovina have the power to vote on confidence. The Swiss Council of States is also equal to the first chamber, but both have the power only to appoint the Government, and not to hold it accountable thereafter.

Similarly, the legislative process is generally characterised by the primacy of the first chamber. Only for constitutional reforms and matters directly concerning local autonomies do the two chambers share the same powers; for ordinary legislation that is unrelated to the territories' status or competences, the second chamber has, at the most, a suspensive veto. The idea underlying this inequality is probably linked to the aim of limiting the possible inefficiencies in the law-making process, that derive from the need to attain consensus between the two assemblies, to the subjects regarding which a peripheric point of view matters most.

Such modulation is clearly demonstrated, for instance, by Germany's regulation of the law-making process, especially after the constitutional reform of 2006, which reduced the powers of the *Bundesrat*, although with controversial outcomes in terms of efficacy (Scharpf 2007). As a matter of fact, for constitutional amendments, equality between the *Bundestag* and *Bundesrat* was established, as a two-thirds majority is required in both assemblies (Article 79, § 2, of the Basic Law). With regard to ordinary legislation, for some matters, the consent of the *Bundesrat* is required. An absolute veto is thus introduced for the following: protection by the Federal Criminal Police Office against the danger of international terrorism, when a threat transcends the boundary of one *Land*, when the jurisdiction of a *Land's* police authorities is unclear, or when the highest authority of an individual *Land* requests the federal authorities to assume responsibility for the matter at hand; state liability; the statutory rights and duties of civil servants of the *Länder*, the



municipalities and other corporations of public law, as well as of the judges in the *Länder*, except for their career regulations, remuneration and pensions (Articles 73, § 2, and 74, § 2, of the Basic Law). For all other matters, the *Bundesrat* may merely oppose legislation via the suspensive veto, the strength of which changes according to the votes in the *Bundesrat*: an objection by the majority of votes in the *Bundesrat* may be overridden by a decision of the majority of the Members of the *Bundestag*, while an objection by a majority of at least two thirds of the votes of the *Bundesrat* may only be overridden by a decision of a two-thirds majority, including at least a majority of the members of the *Bundestag*. In other words, when the *Bundesrat* displays strong opposition to a legislative measure, its veto is *de facto* nearly absolute (Article 77, § 4, of the Basic Law).

The variable effects of the veto in the legislative process is one of the most characteristic features of the German system, that, on the one hand, seems to be a model for newly shaped bicameral entities and, on the other, contributes to distinguish it from other territorial second chambers, the vetoes of which are considerably weaker.

Among the systems inspired by German bicameralism, one may recall Belgium, where, after the abolition of perfect bicameralism in 1995, the Senate now has fewer powers than the Chamber of Representatives, but maintains equality for constitutional amendments and the so-called ‘community laws’, i.e. those laws requiring a qualified majority, regulating the basic structure of the Belgian State, approving agreements of cooperation between the Federal State, the Communities and the Regions, approving international treaties, and providing for the organisation of the judiciary, the Council of State, and the Constitutional Court of Belgium. For all other legislation, which may be either unicameral or ‘virtual[ly] bicameral’ (Delpérée 2006: 706), the Senate may intervene as a chamber of consideration and reflection, within specific time limits.

With regard to the systems with a more standardised legislative veto, for example, the opposition of the Austrian *Bundesrat* can always be overridden a simple majority,<sup>xxxii</sup> while that of the Spanish Senate can be overridden by the Congress of Deputies by an absolute majority or by a simple majority after a 2-month period (Article 90 of the Constitution). The Russian Federation Council has a high impact on the legislative process; its vetoes are absolute for constitutional amendments and, for ordinary legislation, require a defeating resolution adopted by a two-thirds majority of the members of the *Duma*.<sup>xxxiii</sup>



As for the relationships between parliament and government, also in the context of the law-making process, the exceptions to the rule of primacy accorded to the first chambers are, again, the Bosnian, Dutch, and Swiss systems, where the two chambers are on an equal footing given that all bills must be adopted by both chambers in identical terms.<sup>xxxiv</sup>

The case of the Netherlands should probably be considered in light of the continuity with a tradition dating back to the early 19<sup>th</sup> century, according to which the Senate was actually the ‘first chamber’,<sup>xxxv</sup> even though in recent years its importance has begun to decrease, at least in practice (Boogaard 2018: 239-242). With regard to Bosnia and Herzegovina and to Switzerland, perfect bicameralism seems, on the contrary, to be a clear demonstration of the high degree of decentralisation that is typical of these two federations.

(ii) To complete this overview of European bicameralism, the remaining second chambers, the Czech, Italian, Polish and Romanian Senates, can be included in the category of ‘further reflection’.

These four assemblies are all characterised by the direct election of their members. At least in principle, this grants second chambers the same degree of democratic legitimacy as the first. Nevertheless, in this regard, an important feature to take into account is the electoral system: their equality in terms of legitimacy is enforced by the adoption of similar electoral systems, as occurs in Italy and in Romania.<sup>xxxvi</sup> Different systems for the election of the members of the two chambers can actually lead to a different perception of political legitimacy. As a matter of fact, in both Poland and the Czech Republic, a majoritarian system was introduced for the Senate, while the Polish Diet and the Czech Chamber of Deputies are elected with a proportional system that is generally considered as a better means to represent the different political orientations existing in society. As a result, from a strictly political point of view, in Poland and in the Czech Republic, the Senate does not seem to be on an equal footing with the first chamber.

The impact of electoral systems on political legitimacy is far from unrelated to the legal framework of bicameralism. The two Senates that are elected with the same formula of their corresponding first chambers share, with the latter, the power to hold their respective Governments accountable; on the contrary, the Czech and Polish Senates do not have the power to pass a motion of no confidence.



Even when it comes to the legislative process, the differences appear significant. The Czech and Polish Senates are, in fact, clearly in a subordinate position. In Poland, only constitutional amendments require adoption by both chambers. On the contrary, ordinary laws are passed by the Diet; the Senate is granted thirty days to examine the text adopted by the first chamber. The Diet has, however, the final word in case of opposition by the Senate: the senatorial veto is therefore a simply suspensive one, that can be overridden by an absolute majority vote of the Diet. In the Czech Republic, the legislative process takes a very similar shape, apart from the fact that the Senate, unlike its Polish homologue, is empowered to amend draft legislation adopted by the Chamber of Deputies. The need for adoption by both chambers is not limited to constitutional amendments, as it applies also to other important acts, such as the ratification of international treaties, electoral law, or laws on referenda. The ordinary legislative process, however, gives the Senate a purely suspensive veto.

The situation is rather different in systems where the two chambers share, more or less, the same electoral system, as the law-making process is entirely based on the equality of the chambers. Italy is probably the last European country in which perfect bicameralism exists. Romania abolished it with the constitutional reform of 2003, but without abolishing equality between the chambers: in the new institutional framework, the idea that both chambers have the same powers (and therefore that any law requires the favourable vote of both, if it is to be adopted) was replaced by a specialisation of the chambers, that are now endowed with different legislative competences, such that, depending on the matter at hand, either the Chamber of Deputies or the Senate has the final word. This different way to conceive equality was clearly inspired by the need to simplify the legislative process and reduce the time required to pass a law.

#### **4. Some Concluding Remarks (Looking for Trends)**

The comparative overview briefly sketched in this paper does not seem to offer clear outcomes related to evolving norms that can characterise the structure of parliaments across the entire European region.

Because of this lack of clarity, in order to propose some concluding remarks, the bar must be set slightly lower: rather than identifying norms that are probably impossible to



define, one may attempt to pinpoint some trends that, although somewhat questionable, can help to foster debate on the role of representation that is proper to parliaments.

In an effort to outline the main trends, six can be identified.

The first deals with the simplification of parliamentary structure. Multicameralism, as well as qualified unicameralism, did not survive, probably because of their complexity: currently, the structure of parliaments must be as simple as possible, so that the two-chamber pattern represents the maximum degree of complexity that the systems can bear.

A second trend concerns the choice between unicameralism and bicameralism. Generally, the main option seems to be for unicameralism, apart from cases in which there are compelling or at least serious reasons in support of the establishment or, more frequently, the maintenance of a second chamber. These reasons may come from a very wide range of sources: from history to geography, from the institutional framework of the State to the structure of society.

Third, bicameralism tends to be linked with the need to make different roots of legitimacy coexist within the parliament. Because of this trend, the number of second chambers that share the same legitimacy as the first is relatively small, and in at least one of the four countries in which it exists, namely in Italy, it is subject to much question, as there have been several attempts to modify the Senate to transform it into an assembly representing regions.<sup>XXXVII</sup>

The subsequent trend concerns precisely the pre-eminence of territorial representation as foundation of bicameralism. All patterns of bicameralism, other than the territorial, are clearly on the decline, not only because the number of systems that follow those patterns is modest, but also because no new second chamber has adopted any of them, apart from the partial exception of the Slovenian National Council. On the contrary, territorial second chambers are gaining momentum, even in states that are neither federal nor regional: the principle according to which peripheral interests deserve close consideration, irrespective of the form of the State, is thus an important element in the choice between unicameralism and bicameralism.

The need to stress an important interest in order to justify bicameralism is related to a fifth trend, which is probably the most important one. A two-chamber structure of parliament obviously affects the decision-making process in the sense that the latter is (inevitably) more complex than in unicameral legislatures. In this regard, the costs of



bicameralism must be compensated by advantages. In the past, advantages were found in limiting democracy or, later, in ensuring further reflection on the subjects at stake. Currently, the first advantage is obsolete, but the second too does not seem to deserve special consideration, given that one of the main concerns is to drive parliaments to decide as fast as they can: modern societies need quick decisions. It is no coincidence that rule-making power has been progressively decentralised from parliaments to executives, precisely to answer societal needs for rapid decisions. Against this backdrop, bicameralism can survive either because it brings patent advantages in terms of representation, or because its shape is not incompatible with a satisfactorily fast decision-making process.

These remarks introduce the sixth and final trend: in general, innovations in the decision-making process tend towards simplification. The reduction of the number of chambers to achieve unicameralism, such as in Denmark (1953) or in Sweden (1971), as well as, more recently, in Croatia (2001), is the most significant example, but in the same vein one could also consider the abolition of perfect bicameralism that took place in Belgium (1995) and in Romania (2003), and that is still a widely supported proposal in Italy. In addition, where (unofficial) bicameralism is a hallmark of the entire institutional framework, as in Germany, the constitutional reform of 2006 reduced the powers of the *Bundesrat* to facilitate the *Bundestag* having the final word. In other words, the idea of balancing representation and rapidity in decision-making has strongly influenced the most recent changes in constitutional framework, in the sense of enhancing efficiency as much as possible. The real issue for the near future is therefore to achieve this purpose without neglecting the need for an adequate degree of representation.

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<sup>I</sup> Bolívar expressed his preference for a three-Chamber Parliament in his *Message to the Congress of Bolivia*, delivered on 25 May 1826 (Fitzgerald 1971: 95-105).

<sup>II</sup> See *PARLINE database on national parliaments*, <http://archive.ipu.org/parline/parlinesearch.asp> (last accessed on 20 April 2018).

<sup>III</sup> This paper does not consider the legislature of the European Union. The reason for this choice does not rest upon on the controversial nature of the Union, but rather on the difficulty of establishing parallels between the structure of national parliaments on one hand, and that of the European Union legislature on the other. Regarding the latter, a literal argument could lead to its definition as a unicameral body, but on other (non-negligible) readings, it could be considered as a bicameral or even multicameral structure (Passaglia 2006: 1085-1213).

<sup>IV</sup> The countries are (listed by number of inhabitants, from highest to least): the Russian Federation, Germany, France, the United Kingdom, Italy, Spain, Poland, Romania, the Netherlands, and Belgium.

<sup>V</sup> Reference is made to Czechia, Belarus (nineteenth), Austria (twentieth), and Switzerland.

<sup>VI</sup> The countries are (listed by geographical extension, from greatest to least): the Russian Federation, France,



Spain, Germany, Poland, Italy, the United Kingdom, Romania, and Belarus.

<sup>VII</sup> 'In broad terms, 'path dependence' means that an outcome or decision is shaped in specific and systematic ways by the historical path leading to it. It entails, in other words, a causal relationship between stages in a temporal sequence, with each stage strongly influencing the direction of the following stage' (Hathaway 2001: 103-104).

<sup>VIII</sup> For instance, Hungary abolished bicameralism in 1960, while in the Democratic Republic of Germany, the *Länderkammer*, the second chamber that represented the *Länder*, was abolished in 1958.

<sup>IX</sup> Apart from the United States of America (with the exception of Nebraska), in Australia (except for Queensland), as well as in a few states of Argentina and India, sub-national legislatures are generally unicameral. The fact that there are no bicameral sub-national legislatures in Europe, and that a uniform pattern can thus be identified, appears to be a valid justification for focusing solely on the national level.

<sup>X</sup> Actually, the current and pre-2006 situations of the Italian Parliament are very close to the concept of perfect bicameralism, both in terms of legal provisions and of concrete practice. On the contrary, since the entry into force of the electoral law of 2005 (Act No. 270 of 2005), and until the recent electoral law of 2017 (Act No. 165 of 2017) reestablished a similar composition for the two Chambers, the Senate could be at least partially conceived of as a 'moderation chamber', not to say a truly counter-majoritarian one. Indeed, in the Senate, the majority bonus to the most voted coalition was awarded at the Regional level: this meant that different coalitions are rewarded depending upon the outcome of the elections in any given Region. As a result, the leading coalition was weaker in the Senate than in the Chamber of Deputies, where the majority bonus was awarded at the national level. Therefore, the Senate might serve as an effective bulwark against a 'tyranny of the majority', at least when no coalition achieved a clear-cut electoral victory.

<sup>XI</sup> It is noteworthy that the French Senate cannot be considered a 'territorial' chamber even though senators are elected by indirect universal suffrage, by a panel of 'great electors' that comprises members of regional and departmental assemblies and representatives of members of municipal assemblies. In fact, the pronounced representation of local communities does not imply a representation of territories, as the large number of electors (more than 160,000) emphasises the political divide, rather than any focus on territorial interests.

<sup>XII</sup> Article 18 of the 1937 Irish Constitution provides for eleven senators appointed by the Taoiseach, six senators elected by the universities, and forty-three senators elected by five vocational panels.

<sup>XIII</sup> See Article 51, § 1, of the Basic Law of 1949: 'The *Bundesrat* shall consist of members of the Land governments, which appoint and recall them'.

<sup>XIV</sup> According to Article 35, § 1, of the Constitution of 1920, '[t]he members of the Federal Council and their substitutes are elected by the Diets for the duration of their respective legislative periods in accordance with the principle of proportional representation but at least one seat must fall to the party having the second largest number of seats in a Diet'.

<sup>XV</sup> Article IV, § 1, of the Constitution of 1995: 'The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).

'a. The designated Croat and Bosniac Delegates from the Federation shall be selected, respectively, by the Croat and Bosniac Delegates to the House of Peoples of the Federation. Delegates from the Republika Srpska shall be selected by the National Assembly of the Republika Srpska [...]'

<sup>XVI</sup> According to the Electoral Law of 1993, the legislature and executive of each of the territorial entities (22 republics, 46 *oblasts*, 9 *krails*, 3 federal cities, 4 autonomous *okrug*s, and 1 autonomous *oblast*) appoints two members of the Council.

<sup>XVII</sup> Article 67 of the Constitution, as modified in 2005, provides that fifty out of sixty senators are appointed by and from the community and regional parliaments (twenty-nine by the Flemish Parliament from the Flemish Parliament or from the Dutch language group of the Parliament of the Brussels-Capital Region; ten by and from the Parliament of the French Community (which is composed of all members of the Walloon Parliament and several members of the French language group of the Parliament of the Brussels-Capital Region); eight by and from the Walloon Parliament; two by and from the French-language group of the Parliament of the Brussels-Capital Region; one by and from the Parliament of the German-speaking Community). The remaining ten senators are co-opted by their peers (six by the Dutch-language group and four by the French-language group).

<sup>XVIII</sup> Article 150, § 3, of the Constitution of 1999 recognises the power of each canton to choose the system of selection of their representatives to the Council of States.



<sup>XIX</sup> On the basis of Article 69 of the Constitution of 1978, 208 senators are directly elected by the people (4 senators for each peninsular province; 3 senators for each 'large' island; 1 senator for each 'small' island; 2 senators each for Ceuta and Melilla). The other members are appointed by the legislative assembly of each Autonomous Community: the number is variable, since legislatures appoint one per million citizens, rounded up (currently, 58 senators are indirectly elected).

<sup>XX</sup> See Article 55 of the Constitution of the Kingdom of the Netherlands of 2008.

<sup>XXI</sup> See Article 91, § 2, of the Constitution of 1996: 'The Council of the Republic is a chamber of territorial representation. The Council of the Republic consists of eight Deputies from every region [*oblast*] and the city of Minsk, elected at the meetings of Deputies of local Councils of Deputies of the basic level of every region and the city of Minsk from their ranks. Eight members of the Council of the Republic are appointed by the President of the Republic of Belarus'.

<sup>XXII</sup> According to Article 96 of the Constitution of 1991, '[t]he National Council is the representative body for social, economic, professional, and local interests. The National Council has forty members.

It is composed of: - four representatives of employers; - four representatives of employees; - four representatives of farmers, crafts and trades, and independent professions; - six representatives of non-commercial fields; - twenty-two representatives of local interests'.

<sup>XXIII</sup> In order to appoint Senators by the territorial assemblies, the value of a vote is determined by the population of the province in which the voter is a member of the States-Provincial; the seats are then allocated in one nationwide constituency.

<sup>XXIV</sup> See above, note 21.

<sup>XXV</sup> See above, note 15.

<sup>XXVI</sup> See above, note 16.

<sup>XXVII</sup> According to Article 150, §§ 1 and 2, of the Constitution of 1999, the twenty cantons are represented by two members of the Council of States, while the six 'Half-Cantons' are represented by one Councillor.

<sup>XXVIII</sup> Each local assembly in Slovenia appoints one Councillor.

<sup>XXIX</sup> Article 51, § 2, of the German Basic Law of 1949 establishes that *Länder* with less than 2 million inhabitants have 3 votes, *Länder* with more than 2 and less than 6 million inhabitants, 4, *Länder* with more than 6 million and less than 7 million inhabitants, 5, and *Länder* with more than 7 million inhabitants, 6.

<sup>XXX</sup> See above, note 17.

<sup>XXXI</sup> Quite interestingly, in the Spanish case, the representation weighted by population is the result of the mixed system of appointment of Senators: see above, note 19.

<sup>XXXII</sup> Article 42, § 4, of the Constitution. The rule does not apply to constitutional laws or constitutional provisions contained in simple laws restricting the competence of the *Länder* in legislation, because in these cases an absolute veto is provided (Article 44, § 2, of the Constitution).

<sup>XXXIII</sup> The Russian Federation Council is undoubtedly a very strong second chamber (Avakian 2006: 939-959), to the point that a comparison with the U.S. Senate can be drawn, especially taking into account some of the powers reserved to it by the Constitution: in fact, the most notable are the requirement to obtain its consent on some presidential appointments and the power to impeach the President of the Russian Federation.

<sup>XXXIV</sup> To adopt the legislation, means to attempt a conciliation may be provided. For instance, in Switzerland, in case of divergence after three readings, a committee of conciliation (thirteen members from each chamber) drafts a proposition, and the bill becomes law if this proposition is adopted by the National Council and by the Council of States.

<sup>XXXV</sup> This is the definition provided by the Constitution of 1814, which is still in force, although it has been much modified in time.

<sup>XXXVI</sup> Both countries eventually adopted a mixed system (Romania in 2008; Italy in 2017), which replaced a proportional system.

<sup>XXXVII</sup> The most recent attempt failed in 2016, when the Parliament adopted a constitutional reform that was eventually rejected by the population. Among the most important contents of the proposed reform, far-reaching changes to the Senate's role were proposed (Romeo 2017: 31-48).



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## References

- Avakian Suren, 2006, 'The Federation Council of the Federal Assembly of the Russian Federation', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 911-960.
- Biaggini Giovanni and Sarott Chasper, 2006, 'The Swiss Council of States (Ständerat / Conseil des États)', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 721-780.
- Boogaard Geerten, 2018, 'Mixed Democracy in The Netherlands', in Ferrari Giuseppe Franco, Passchier Reier and Voermans Wim (eds), *The Dutch Constitution Beyond 200 Years. Tradition and Innovation in a Multilevel Legal Order*, Eleven, The Hague, 229-242.
- Delpérée Francis, 2006, 'The Belgian Senate', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 697-719.
- Di Manno Thierry, 2006, 'The Sénat of the French Republic', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 153-256.
- Fitzgerald Gerald E., 1971, 'Message to the Congress of Bolivia', in Fitzgerald Gerald E. (ed), *The Political Thought of Bolivar*, Springer, Dordrecht, 95-105.
- Gamper Anna, 2006, 'The Austrian Bundesrat', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 781-828.
- Garvin Tom, 1969, *The Irish Senate*, Institute of Public Administration, Dublin.
- Granat Mirosław, 2006, 'The Senate in Poland', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 961-1001.
- Hathaway Oona A., 2001, 'Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System', *Iowa Law Review*, LXXXVI(1): 101-165.
- Hawke David, 1961, *In the Midst of Revolution*, University of Pennsylvania Press, Philadelphia.
- Kotzur Markus, 2006, 'Federalism and Bicameralism – The German «Bundesrat» (Federal Council) as an Atypical Model', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 257-290.
- Krynen Jacques, 1987, 'La représentation politique dans l'ancienne France: l'expérience des États généraux', *Droits*, 6: 30-44.
- Kysela Jan, 2006, 'Bicameralism in the Czech Republic: Reasons, Functions, Perspectives', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 1003-1034.
- Lijphart Arend, 1999, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, Yale University Press, New Haven (CT).
- Llanos Mariana and Nolte Detlef, 2003, 'Bicameralism in the Americas: Around the Extremes of Symmetry and Incongruence', *The Journal of Legislative Studies*, IX(3): 54-86.
- Marongiu Antonio, 1968, *Medieval Parliaments: A Comparative Study*, Eyre and Spottiswoode, London.
- Money Jeannette and Tselis George, 1992, 'Cicero's Puzzle: Upper House Power in Comparative Perspective', *International Political Science Review*, XIII(1): 25-43.
- Norton Philip, 2007, 'Adding Value? The Role of Second Chambers', *Asia Pacific Law Review*, XV(1): 3-18.
- Palermo Francesco and Kössler Karl, 2017, *Comparative Federalism. Constitutional Arrangements and Case Law*, Bloomsbury, London.
- Passaglia Paolo, 2006, 'Suggestions to Find a «Parliament» Within the Institutional Organization of the EU', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 1085-1213.
- Passaglia Paolo, 2015, 'From Qualified Unicameralism to Genuine Unicameralism: the Norwegian Experience', in Ferrari Giuseppe Franco (ed), *Two Centuries of Norwegian Constitution: Between Tradition and Innovation*, Eleven, The Hague, 85-95.
- Perceval R.W., 1953, 'The Origin and Development of the House of Lords', *Parliamentary Affairs*, VII(1): 33-48.



- 
- Pinard Danielle, 2006, 'The Canadian Senate: An Upper House Criticized Yet Condemned to Survive Unchanged?', in Luther Jörg, Passaglia Paolo and Tarchi Rolando (eds), *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism*, Giuffrè, Milan, 459-520.
  - Romaniello Maria, 2016, 'Bicameralism: a concept in search of a theory', *Amministrazione in cammino*, 20 September: 1-16, <http://www.amministrazioneincammino.luiss.it/app/uploads/2016/09/Romaniello.pdf>.
  - Romeo G., 2017, 'The Italian Constitutional Reform of 2016: An 'Exercise' of Change at the Crossroad between Constitutional Maintenance and Innovation', in Passaglia Paolo (ed), *The 2016 Italian Constitutional Referendum: Origins, Stakes, Outcome*, *The Italian Law Journal*, Special Issue: 31-48.
  - Rommetvedt Hilmar, 1992, 'The Norwegian Storting: The Central Assembly of the Periphery', *Scandinavian Political Studies*, XV(2): 79-97.
  - Russell Meg, 2000, *Reforming the House of Lords. Lessons from Overseas*, Oxford University Press, Oxford.
  - Russell Meg, 2013, *The Contemporary House of Lords. Westminster Bicameralism Revived*, Oxford University Press, Oxford.
  - Scharpf Fritz W., 2007, *German Federalism: A reform that misses its mark*, *MaxPlanckResearch* 2/2007, <https://www.mpg.de/207429/federalism>.
  - Smith Eivind, 2008, 'Norway – The end of bicameralism', *Public law*: 393-395.
  - Watts Ronald L., 1989, *Executive Federalism: A Comparative Analysis*, Institute of Intergovernmental Relations – Queen's University, Kingston (Ont.).
  - Watts Ronald L., 2010, *Federal Second Chambers Compared*, Presentation at Conference on 'Federalizing Process in Italy. Comparative Perspectives' (Rome, February 17-19, 2010): 1-21 ([http://pti.regione.sicilia.it/portal/page/portal/PIR\\_PORTALE/PIR\\_LaStrutturaRegionale/PIR\\_AssessoratoEconomia/PIR\\_Federalismofiscale/PIR\\_SeminarioIlprocessofederaleinItalia/watts%20intervento.pdf](http://pti.regione.sicilia.it/portal/page/portal/PIR_PORTALE/PIR_LaStrutturaRegionale/PIR_AssessoratoEconomia/PIR_Federalismofiscale/PIR_SeminarioIlprocessofederaleinItalia/watts%20intervento.pdf)).
  - Welsh David, 1984, 'Constitutional Changes in South Africa', *African Affairs*, 331: 147-162.