CENTRO STUDI SUL FEDERALISMO
PERSPECTIVES ON FEDERALISM

ISSN: 2036-5438

Shared Rule vs Self-Rule? Bicameralism, Power-Sharing and the 'Joint Decision Trap'

by

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Perspectives on Federalism, Vol. 10, issue 2, 2018

Abstract

In federal and regionalised states, bicameralism constitutes shared rule between levels of governments. At the same time, second chambers serve as a safeguard protecting self-rule of decentralised governments against the encroachments of central legislation into their areas of responsibility. Both functions seem to be best fulfilled in legislative systems requiring joint decisions of legislative chambers. Depending on particular conditions, joint decision-making involves the risk that legislation ends with ineffective compromises or even fails. Under favourable conditions, it provides a productive structure to apply shared rule and protect self-rule. Comparative studies can identify these conditions, and appropriate ways to adjust institutional designs of bicameralism accordingly, bearing in mind that significant institutional reforms of bicameral systems are difficult to achieve.

Key-words

bicameralism, federalism, joint decision-making

1. Protecting self-rule by shared rule – Functions of bicameral systems

Federalism has been defined as a polity combining self-rule of central and regional governments and shared rule among these governments (Elazar 1987: 5). This definition also applies to federalising states in which regions, or some regions, have achieved a significant extent of autonomy to govern their affairs. Self-rule rests on a separation of powers between levels of government defined by the constitution. Shared rule usually finds expression in intergovernmental relations, which exist in a variety of institutionalised or informal patterns.

Regarding these two dimensions of a vertical division of powers in federations of regionalised states, a bicameral system can fulfil two functions: First, second chambers representing regional interests should protect the autonomy of regional governments against encroachments by central legislation into their constitutionally guaranteed jurisdiction. Thus, they serve as a safeguard of self-rule (Bednar 2009). Second, bicameralism allows representatives from constituent units of a federation or from regions to participate in central legislation in order to ensure that particular interests of these units are considered. In this way, bicameral legislatives work as a core institution of shared rule. Whereas self-rule can be effectively protected by a second chamber's veto against legislation, shared rule requires the willingness of both chambers to find an agreement. Regardless of which function prevails, bicameralism essentially aims at limiting the power of the centre.

These two functions are only fulfilled in an effective way in federations where the legislative chambers actually represent both the demos and the demoï of constituent units or their governments and where they are linked by processes of joint decision-making. Whether the first condition applies depends on the selection of representatives, their affiliation to parties, communities of citizens or governments, and the extent to which these affiliations influence debates and decision-making in a chamber. As a rule,[I] the first chamber consists of directly elected representatives of the demos, which includes citizens on an equal basis. In federations, members of second chambers are normally selected on a territorial basis and are expected to represent sub-federal units, i.e. regions, communities, states, *Länder* or provinces (Borthwick 2001; Russell 2001; Palermo 2018).

The second condition depends on the decision rules in a bicameral legislature. Effective protection of self-rule and shared rule requires that both chambers participate in legislation on an equal footing so that they have to harmonise their decisions, which actually means that they make joint decisions. Joint decision-making, which in bicameral system is attributable to the veto power of a second chamber, strongly limits central power and constraints the power of a majority in parliament. As they share legislative powers, two chambers have to vote in favour of a bill in order to pass it as law, otherwise, legislation fails, and neither the federal nor the regional governments can make law, the former because of a legislative deadlock, the latter because it has no power to legislate. In order to come to concordant votes in both chambers, a bill has to be negotiated between leaders of majority parties or groups in both chambers, often including members or groups who are pivotal for achieving the required votes.

In legislatures with second chambers having no veto rights, these latter can nonetheless compel the first chamber to a joint decision because of an overlap of tasks fulfilled by central or regional governments. This interdependence of policies, despite a separation of powers and the self-rule of governments, regularly appears in the executive, in particular when governments provide public goods or services, which generate cross-border (external) effects. In legislative decisions, both levels of governments are actually affected in matters of institutional reform or if the allocation of powers is at stake. In these policies, most second chambers with consultative rights in normal legislation have veto rights as far as a constitutional amendment is necessary. Hence, bicameralism usually institutionalises 'intragovernmental' joint decision-making at the federal level, whereas intergovernmental relations in the executive mostly arise to manage interdependence in an institutional setting of self-rule with shared-rule resulting from informal coordination.

In brief, bicameralism protects self-rule through shared rule; thus, it conforms to a basic principle of a constitutional government. It prevents a concentration of power and protects interests of minorities against what Alexis de Tocqueville has called a 'tyranny of the majority' (Tocqueville 1835: 410). Power limitation is most effective if both chambers have to come to joint decisions. Under these conditions, a second chamber can effectively protect the autonomy of regional governments by using its veto power against legislation threatening regional self-rule. Preventing a bill from becoming law can also help minorities to defend their particular interests against general regulation. Failure to pass a law on a

matter, which is on the legislative agenda, may be also be an outcome preferred by opposition parties in parliament. However, non-decisions undermine the effectiveness of a government and can destabilise a political system. If limitation of governmental power goes too far, legitimacy can suffer. A way out of this dilemma is negotiated legislation, which is regularly preferred to a deadlock, even if a compromise often is considered as a suboptimal outcome. For this reason, a bicameral system needs to optimise the limitation of power, it also must work in a way that prevents shared rule from ending in the joint decision trap.

In order to shed light on this challenge and to make recommendations for coping with them in practical politics, we need to understand how joint decision-making in bicameral legislatures works, how policies are made in the chambers and how both come to a joint decision. The theory of joint decision-making (Scharpf 1976; Scharpf 1988) has often been reduced to an explanation of the trap. However, on closer inspection, we find that it points out different modes of negotiation and various conditions affecting which negotiation mode applies, and the particular consequences on policy-making. In the following sections, I will outline the basic analytical categories and causal mechanisms, which might be useful to explain the operation of bicameral systems in federal and regionalised states. Moreover, I will explain why bicameral systems operating according to the joint decision mode are difficult to change, and why they tend to be locked in the joint decision-trap of constitutional policy.

2. Institutions and decision rules: Bicameral legislation as joint decision-making

Bicameral legislatures vary in many respects, including not only scope of legislative and supervisory powers, but also their very institutional composition (Coakley 2014; Heller and Branduse 2014; Leunig 2009; Patterson and Mughan 2001; Palermo and Kössler 2017: 165-176; Russell, 2013, 46-63; Riescher et al. 2010; Uhr 2006). In respect of the division of powers, not all bicameral legislatures establish joint-decision systems; some second chambers for instance only play a consultative role. In other cases, the vote of a second chamber can be overruled by the first chamber but nonetheless has a constraining effect, like in the British Parliament where the veto of the House of Lord can cause significant delay to the passage of legislation. We also find bicameral legislatures, with both chambers

formally having equal decision rights, but with a second chamber rarely applying its veto power in practice, as is the case in Canada where the Senate hardly ever votes against a decision the House of Commons and takes on a more advisory role (Smith 2003).

In western democracies, the power of second chambers tends to be constrained (first and foremost in fiscal policy) if they lack democratic legitimacy compared to the popularly elected chamber of parliament. In bicameral systems with a directly elected second chamber (e.g. the Senates in Australia, Brazil, Italy, Switzerland and the U.S.), both houses of the legislature usually have equal powers. To make law, both have to pass an identical bill. Accordingly, each chamber can veto a bill. In this case, decision rules require joint decision-making. In asymmetrical bicameral systems, powers of the second chamber vary depending on issues at stake. In Germany, for instance, the assent of the *Bundesrat* is only necessary whenever a law affects the jurisdiction of the *Länder*. Otherwise, the Federal Parliament has the final say in legislation (see Niedobitek 2018). In Austria, Belgium and Spain, only laws amending the constitution require the assent of the second chamber.

When both chambers are required to reach an agreement in legislation, procedures for conciliation vary among bicameral systems. Irrespective of other rules, these procedures usually provide for a particular sequence of deliberations and resolutions of the individual chambers. That sequence of the legislative process can be the same in all instances or may differ even within one bicameral system depending on specific conditions (e.g. by policy area, type of legislative act, etc.). In any case, the configuration of decision-making procedures has an impact on power relations in a bicameral system, although the consequences are ambiguous. On the one hand, the chamber where a bill is tabled, and where a first decision is made before the bill is forwarded to the other chamber, has a 'first mover advantage'. It can constrain the discretion of the chamber that is second in turn and can at best amend the version of a bill passed by the first chamber. On the other hand, the chamber with the final decision might be able to block legislation if the proposal passed in the other chamber is considered unacceptable. This other chamber has to take into account the risk that its decision might be void if it cannot respond anymore with a revision of a bill.

Power is one consequence of sequential procedures; the effectiveness of joint decision-making is another. Those actors who initiate a bill or who are the first to decide on it are motivated to anticipate potential vetoes in the other chamber in order to reduce the risk of

a bill getting voted down. They tend toward 'auto-limitation' (Manow and Burkhardt 2007), i.e. to voluntarily refrain from asserting their preferences or to pre-emptively moderate them. This strategic behaviour is possible, provided that the interests and preferences of the members or coalitions forming a majority in a legislative chamber are known, or can be predicted with high probability. The type of members and the cleavage structures in a chamber constitute relevant factors that allow veto anticipation. Yet this is not always possible. Party affiliation provides a rather good indicator of voting behaviour of members, but it may only constitute one factor influencing their preferences. Moreover, since the number of parties represented in a chamber is currently increasing in many western democracies and, as in a second chamber a majority is usually not determined by coalition agreements but varies from issue to issue, the capacity to reliably anticipate vetoes is limited from the outset.

Another way to find a bicameral agreement, also requiring a sequential procedure, is mutual adjustment. If the two chambers have sufficient opportunities to respond to the decision taken by the other chamber, as provided for by the 'navette' procedures, they might be able to come to identical decisions through mutual adjustment. Yet this process can be time consuming, which is why the number of decisions taken in each chamber is usually limited. Another rule to avoid an endless iteration of debates and decisions applies in France, where the prime minister can request a final vote of the parliament (Money and Tsebelis 1997: 1994).

Irrespective of these decision procedures, legislative chambers usually coordinate their votes in negotiations. As a rule, agreements are negotiated informally among leaders of the majority groups, the head of government or the responsible minister and members of a second chamber, with these negotiations often concentrating on actors holding a pivotal position to form a majority. If informal negotiations fail, they might continue in joint committees set up to find a compromise between divergent bills proposed by the chambers.

More often than not, the federal executive initiates and leads informal negotiations, since the executive drafts most bills in order to achieve the governmental program or agenda. These negotiations are most intensive if the second chamber assembles representatives from regional governments, like in the German Bundesrat. Here, legislation requiring the assent of the second chamber starts with pre-legislative intergovernmental

negotiations, first among *Länder* governments who search for a common position (Hegele 2017) and second in different arenas (parties, conferences of ministers) where federal and *Länder* governments meet and take the opportunity to avoid a veto (Schmedes 2017). In other federations, members of committees or party leaders negotiate a compromise. A unique constellation can be observed in Belgium. Here the Senate lost its power of veto in 2012, except in constitutional amendments, but interests of the Regions and Communities are represented by a plurality of regional parties in the first chamber. In consequence, joint decision-making occurs in the form of inter-party negotiations, and most important laws result from accords settled by party leaders (Popelier and Lemmens 2015: 120-125). In the U.S., the President tries to convince individual members of both houses of the Congress in bilateral negotiations, while party leaders or members of committees engage in interparty and bicameral negotiations (Owens and Loomis 2006).

These informal negotiations are often criticised as non-transparent; they prevent voters from ascribing responsibility for decisions and as they allow politicians to shift the blame or to claim success, they can undermine democratic accountability. However, as long as the final decisions are made in public, informality should not be overrated since it constitutes a decisive condition of effective negotiation democracy. Agreements can hardly be achieved in public debates, not least since parties compete for electoral support. They require that actors build trust and negotiate without 'tied hands', i.e. without being committed to positions of a party or a government. Compromises are more likely if negotiations proceed behind closed doors among independent actors. Indeed, for this very reason, joint decision-making creates a dilemma between democratic accountability and effectiveness of policy-making, but procedures in bicameral systems can establish an appropriate balance between both exigencies.

In several bicameral legislatures, formal procedures of mediation between the two chambers exist (Tsebelis and Money 1997: 176-208). Conference committees in the U.S. Congress are a case in point, as is the mediation committee of Germany's Bundestag and Bundesrat. These committees consist of members elected in both chambers. While the German '*Vermittlungsausschuss*' is a standing institution with 16 members from each chamber, the US conference committees are established ad-hoc, with members determined by the House of Representatives and the Senate, usually selected from the responsible standing committees (Haas 2010: 46). These committees meet to negotiate a final version

of a bill, which subsequently can only be accepted or rejected, but not amended in the legislative chambers. Although existing as formal institutions, they also work in private in order to shield the members from external pressure.

Informal negotiations and negotiations in formal joint committees reduce the probability that joint decision-making ends in a deadlock. Veto anticipation and mutual adjustment also contribute to avoiding this negative outcome of legislation, although they imply higher risks of failure. In asymmetrical bicameral systems, these processes occur in the shadow of a majority decision, usually by the directly elected parliament or, as the case may be, the popular chamber. This shadow might also result from the possibility of a call for a referendum. In France, for instance, the President can submit a bill to a popular vote, whereas in Switzerland, it is left to the people to initiate a facultative referendum. While decisions of parliamentary majorities are usually known, the outcome of a referendum is uncertain. For this reason, the latter generates more incentive for members of the legislature to come to a broad-based agreement, while in cases where the first chamber has the final say, this incentive is moderate and depends on the power of the majority in parliament.

Yet even without a formal requirement of joint decision-making, bicameralism fosters negotiated legislation and consensus democracy. Second chambers without formal veto power often acquire influence in legislation as a 'chambre de reflexion'. They constitute an arena where bills are scrutinised by experienced politicians who are legitimised by their authority rather than by their affiliation to a party, government or community. Such a deliberative chamber generally improves the quality of legislation (Smith 2003; Sturm 2015: 185-186), both by introducing what John A Macdonald, the first Canadian Prime Minister called 'second sober thoughts' and by counterbalancing the confrontation among parties in the parliament.

However, a consultative chamber cannot change the legislative process into a kind of deliberative democracy. Regardless of the institutional setting, whether it constitutes symmetric or asymmetric power relations between the chambers, bicameral legislation is to a considerable extent the result of inter-cameral and intra-cameral negotiations. The quality of these negotiations varies. To understand the operation of bicameral systems in general and joint decision-making in these systems in particular, it is essential to consider these variations and their causes and consequences. The following analytical categories drawn

from theories of political negotiations can guide case studies and comparative research on bicameral legislation.

3. Confrontation, bargaining or arguing: Conditions of negotiating agreements between chambers

Negotiations aim to find a common ground among actors who pursue divergent interests, but are willing or compelled to harmonise their decisions through dialogue. In general, actors taking part in negotiations wish to come to an agreement, if they voluntarily engage in these. In joint-decision systems, they are compelled to do so. Nonetheless, they are not forced to negotiate, but urged to find an agreement, since they are otherwise unable to act at all. This also applies to joint decision-making in bicameral systems, although the actors involved in legislation advocate different policies, whether for policy or vote seeking reasons. Nonetheless, members of governments and parliaments who are accountable to citizens presumably try to avoid deadlocks in legislation, and members of second chambers usually prefer a compromise to rejecting a bill passed by the directly elected parliament (or its popular chamber), even if they have the right to exercise veto power. Therefore, actors' behaviour in bicameral legislatures is guided by mixed motives. As responsible representatives of citizens, most of them prefer an agreement between both chambers over voting down a bill. Nevertheless, all of them are associated to parties or groups, which pursue different policies and want to see most of their own ideas of good regulation becoming law.

The fact that negotiations constitute a mixed-motive game among the actors involved makes agreements possible. Still, there is a chance of deadlock, depending on the intensity of conflict, the behaviour of negotiating actors, the autonomy of negotiators from external influence, their dependence on external support, or the consequences of a non-decision. But irrespective of how these conditions materialise, negotiators will aim at compromises or package deals. While strategies of brinkmanship are not uncommon, in most cases, these outcomes appear better than a deadlock, not the least from the point of view of parties holding a majority in parliament. Yet the seemingly second-best solution, compared to a deadlock, may produce a problematic outcome. Compromises exclude all matters of intractable dispute, with the consequence that a law finally passed in the legislative

chambers hardly improves the status quo. Package deals can come with high costs of an agreement, and the concessions made to achieve the required votes can imply heavy burdens for a government. This explains why empirical studies have found that joint decision-making in bicameral systems can cause ineffective legislation (Vatter 2005; Scharpf 1988; Tsebelis 2002).

This effect does not necessarily result from institutions constraining legislation, more often than not it appears for the very reason that actors want to escape impending deadlock. This is the conclusion which Fritz W. Scharpf drew from his original studies on joint decision-making in Germany and the EU (Scharpf 1988). Since then, theory has become differentiated, inspired by comparative research (Scharpf 1997, Falkner 2011; Benz 2016b). One important conclusion is that the probability of a deadlock and of ineffective decisions depends on specific conditions shaping the process of negotiations, i.e. conditions which affect how actors behave and which mode of interaction prevails in negotiations. In bicameral legislatures, two types of conditions seem to be particularly significant: One is the impact of party politics in the second chamber, the other relates to the cleavage structures which determine politics and voting in a bicameral legislature. Certainly, particular events or crises can modify the negotiation behaviour of relevant actors, but the impact of party politics and cleavage structures remains.

To explain the effect of these conditions, we can construct categories of typical modes of negotiation as confrontation, bargaining and arguing (Benz 2016a: 33). Confrontation occurs, if actors stick to their positions. In consequence, the probability of an agreement decreases to the extent that these positions diverge. Bargaining evolves, if actors pursue their interests but are willing to make concessions in order to achieve a compromise or settle conflicts by a package deal. Arguing requires actors to give reasons for their policy and to search for the solution of a problem or a conflict. If a solution can be justified on generalisable grounds, it is likely to find approval among all involved participants and the negotiations will end with a consensus.

In politics, arguing seems to be an ideal, whereas in reality bargaining and confrontation seem to prevail. By and large, this is correct, although it is worth noting that arguing should not be ruled out (Bächtiger et al. 2018; Elster 1998). Negotiations often oscillate between bargaining and arguing (Holzinger 2001; Landwehr 2009), and occasional shifts to arguing make it possible to overcome stalemate in negotiation processes.

Moreover, particular institutional conditions foster arguing behaviour. As mentioned above second chambers, mainly consulting on bills, and including senior, experienced politicians, tend to negotiate in this mode. Arguing behaviour is also likely to emerge in committees where specialists, who are motivated to solve problems, meet. The same applies to private meetings in which negotiators can discuss free from external pressure and control. Mediating committees constitute venues where representatives tend to negotiate in the arguing mode, and this explains why they often help to find a compromise between politically divided legislative chambers, as mentioned above.

However, other attributes of bicameral systems can cause a confrontation of both houses, the principal reason being party politics. Parties compete for votes and offices. The logic of party competition requires that their policies diverge, that each party provides an alternative to the policies of other parties, and that policies of other parties are depreciated and debunked. Accordingly, parties interact in an antagonistic manner, and public debates among representatives of different parties in plenary sessions of parliaments reflect this contestation. Expression of clearly contrasting positions is an essential mode of democratic politics, which allows voters to assign responsibilities and hold representatives to account. However, when compelled to negotiate, actors affiliated to different parties tend towards confrontation rather than bargaining, not to speak of arguing which seems to be unfeasible under such conditions.

It is due to this incompatibility with negotiations (Lehmbruch 2000) that party politics can turn joint decision-making into a futile effort. This applies in bicameral legislatures, if members of both chambers behave mainly as party representatives and if majorities in each chamber are controlled by opposing parties. Both conditions have shaped politics in the U.S. Congress since the 1990s. In situations of a 'divided government' when the President's party has no majority in either the Senate or the House of Representatives or both, legislation becomes difficult. Meanwhile the polarisation between the Democratic and Republican Party obstructs negotiations among members of responsible committees. Confrontation risks undermining bargaining. In the German federal legislature, like in the U.S., opposing parties often have a majority in the houses, since in *Land* elections voters tend to prefer opposition parties in the federal parliament which then have a good chance of achieving a majority of votes in the Bundesrat. Both in Germany and the U.S., voters seem to use mid-term or *Land* elections to limit the predominance of majority parties at the

federal level. The likelihood of such a constellation of a party-political divide in the legislature can apparently be reduced if both chambers in total are elected simultaneously, as it is the case in Switzerland (except one representative of Appenzell Innerrhoden) and Italy, whereas different voting systems used to elect legislative chambers can cause incongruent majorities.

However, while party politics determines policy-making in directly elected parliaments, this is not always a decisive factor in second chambers. Apparently, party politics predominates in directly elected second chambers, as is exemplified by the U.S., Australian, and Italian Senates (Breton 2014; Owens and Loomis 2006; Pasquino 2002). In Switzerland, direct democracy moderates the role of parties in the Council of the States (*Ständerat*). The British House of Lords, like the Canadian Senate, represent non-elected, consultative chambers in which party competition has limited impact, although even in the British upper chamber, party affiliation is increasingly reflected in voting behaviour of the Lords (Russell 2013: 94-124). In the French Senate, members form party coalitions, but party politics does not predominate either (Ruß 2010). In federations, second chambers generally should represent the interests of constituent units, regional communities or territories (Russell 2001). This does not mean that territorial interests prevail, yet they may affect behaviour of representatives although they are committed to political parties. The German Bundesrat, often considered a party-political body, provides an interesting example for the interplay of party and territorial cleavages. Delegates of *Land* governments are accountable to majority parties in *Land* parliaments but they also pursue interests of their *Land*, which they represent in the Bundesrat (Leunig and Träger 2012). In a similar vein, French Senators tend to deviate from the policy of their party if it is necessary to defend interests of local governments in legislation affecting the territorial structure of the state (Le Lidec 2012). Hence, beyond party politics, territorial conflicts or conflicts between distinct societies of regions shape politics in bicameral systems (Sturm 2015).

These different cleavages can reinforce each other, for instance, if the party system reflects the divide of a multinational federation or if economic disparities or fiscal policy conflicts ignite regional nationalism. If they persist for some time, such congruent cleavages find expression in a disintegration of the party system, as can be observed in Canada and in Belgium. Congruent cleavages tend to ignite confrontation, but not necessarily between legislative chambers. In Belgium, territorial conflicts shape politics in

the federal parliament, while in Canada they are expressed and managed in intergovernmental relations. The Spanish legislature on the other hand seems to represent a bicameral system burdened by mutually reinforcing territorial and party-political cleavages.

However, different patterns of conflict can also combine to crosscutting cleavages. They exist in particular in federations with integrated party systems such as Austria and Germany, where representatives of different territories may be aligned to the same party and where members from opposing parties may pursue the same territorial interests. The overlap of converging and diverging interests following from crosscutting cleavages prevents actors from maintaining their positions in negotiations and motivates them to find agreements. Under these conditions, bargaining behaviour is most likely to prevail in processes aiming at a coordination of decisions in bicameral legislatures, but arguing behaviour can also occur. Bargaining makes a deadlock unlikely, but it often ends with ineffective compromises or inefficient package deals. Crosscutting cleavages caused by two- or multidimensional patterns of conflict make package deals more complicated since the number of issues to be considered increases. Therefore, negotiations mostly result in compromises unless institutional conditions favour arguing processes.

To conclude: Bicameral systems established to constrain the power of central government and to protect self-rule of constituent units in principle fulfil their functions if they require joint decision-making in federal legislation. Given favourable conditions, joint decisions can be achieved in formal or informal negotiations: if the shadow of a majority decision drives the key actors in the chambers to find an agreement; if committees for mediating conflicts between chambers exist; or if conflicts predominating politics in each chamber combine to crosscutting cleavages. If party politics reinforces cleavages dividing a bicameral legislature, the need to come to joint decisions complicates legislation, reduces effectiveness of governance and can undermine the legitimacy of a polity. Under these adverse conditions, balancing self-rule and shared rule will most likely fail. They increase the probability of a deadlock in federal legislation; this does not imply that power migrates to lower level governments but that the governance of the federation is at risk. In this case, the joint decision trap in policy-making calls for a reform of the bicameral system. Yet, considering this special institution, a policy of constitutional reform faces even higher barriers (Russell and Sandford 2002).

4. The joint decision trap: Can bicameral systems be reformed?

Ineffective governance, legitimacy deficit and an imbalance of power in a federation give reasons for institutional reform. Changes in the composition of second chambers or of decision rules in bicameral systems require amendments of the constitution. As a rule, laws amending the constitution have to be passed in both chambers (Kemmerzell and Petersohn 2012). In other words, reforms determined to change the institutional conditions of joint decision-making or to eliminate the need for joint decisions in legislation are by themselves matters of joint decision-making. In consequence, members of second chambers can veto a reform which reduces their power or affects their other interests. For this reason, significant changes of structures or decision rules of a bicameral system are unlikely, although they are not impossible. Anyway, bicameralism can lead a government to be caught in the joint decision-trap, i.e. significantly constrained by veto players and at the same time unable to alter institutions causing these constraints (Scharpf 1988: 267-271).

There are certainly cases of reform in federations or regionalised states which passed bicameral legislation (Benz 2016a). In some states, constitutional amendments abolished second chambers altogether, in New Zealand in 1950, in Denmark in 1956, and in Sweden in 1971. In the UK, the Labour government, when returned to power in 1997, made first strides to renovate the House of Lords, although the envisaged reform remained an unfinished project. A recent reform of the Italian Senate was rejected in a referendum, after it had been approved in both chambers of parliament. In Ireland, both houses of the parliament had decided to abolish the second chamber, but as in Italy, the constitutional amendment failed in the referendum. And more examples of significant changes in bicameralism could be added. However, there are also cases demonstrating the difficulties of such a reform. In Canada, various attempts to turn the unpopular Senate into an elected chamber or to limit the Senators' term of office have failed. In Germany, a constitutional amendment reduced the Bundesrat's veto powers in quantitative terms, but in legislation affecting the jurisdiction of the *Länder*, they still exist; however, farther reaching reform proposals never made it on to the agenda of federalism reform. In Romania, a consultative referendum recommended abolishing the second chamber, but the political elite was not willing to implement the reform.

These examples suggest the hypothesis that significant reforms of bicameral systems, including their replacement by a unicameral legislature, are more likely in unitary states, in particular if second chambers appear as historical relics. In contrast, second chambers appear to be enduring institutions in federal systems. Here, they are justified on normative grounds; apart from protecting the self-rule of lower level governments, they should represent territorial interests in shared rule at the federal level. It is evident that, in reality, they do not always appropriately fulfil these functions (Russell 2001, 113-114), and this article provides theoretical reasons why this might be the case. Nonetheless, proponents of bicameralism have stronger arguments to defend them than those who make the case for unicameralism. This does not rule out initiatives to amend a federal bicameral system. Yet, whenever change occurs, it turns out to be moderate and hardly deviating from a path-dependent institutional evolution.

Path-dependency points to an explanation provided by historical institutionalism. This theory does not rule out the occurrence of change, but it is said to take place under exceptional conditions opening a critical juncture. Yet, considering bicameralism, Kathleen Thelen and Sebastian Karcher (2013) have revealed, in an instructive case study on the evolution of the German Bundesrat, that critical junctures have led to continuity while the institution changed during periods of historical evolution. The findings of their case study are in line with the theory of joint decision-making outlined in this article. Actors in federal bicameral systems can incrementally adjust their practice and may also agree on moderate changes of decision rules, but they would hardly approve a far-reaching change of structures. However, for the same reasons that explain why joint decision-making in secondary legislation constrains governance but does not prevent decisions, institutions can evolve in an incremental way, although they are caught in the joint decision trap of constitutional policy. And, in the same way that the outcome of secondary legislation in bicameral systems varies according to conditions, the success or failure of constitutional reforms depends on specific conditions, some of which are given whereas others can be shaped by governments or parliaments (Benz 2016a).

5. Conclusions

Bicameral systems, even those in federations, vary. In general, they establish institutions operating according to the logic of joint decision-making. Under unfavourable conditions, legislation can fail, ending either in a deadlock or with ineffective compromises or inefficient package deals. However, powers of both chambers may be equal or different (symmetric or asymmetric bicameralism) and the selection of members of second chambers may lead to congruent or incongruent majorities in both chambers. Therefore, the variety of bicameral systems should make scholars cautious about generalising conclusions regarding their operation or their effects on policy-making. Not all of them require joint decision-making in all legislative matters, and even in symmetric bicameral legislatures where joint decisions are the rule, their impact on legislation and on the federal balance of power depends on particular conditions. Joint decision-making is a relevant concept to understand legislation in federal systems. Here, this pattern of negotiated legislation appears as an effective safeguard to protect self-rule and to include regional government in shared rule. However, bicameral systems may cause a federation or a legislature to fall in the joint decision-trap, and they regularly prevent constitutional amendments that seek to significantly change power relations between chambers.

This conclusion eschews providing reasons for speaking for or against bicameralism. It implies that the varieties of institutions, actor constellations, processes and conditions need to be taken into account. In general, bicameralism constitutes a dilemma between constraining power and enabling policy-making by applying power. Yet in democratic government under the rule of law, politics is always about coping with such dilemmas.

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[1] Although directly elected parliaments should represent citizens on an equal basis, regional communities might find a better representation in the first than in the second chamber. This holds true in parliaments with significant regional parties, whereas the second chamber does not represent constituent units. Examples are Belgium, Canada and the UK.

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