

Bicameralism: a concept in search of a theory¹

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1. Introduction

Rooted in the medieval social order (Marongiu 1968, 54), “bicameralism is a common model of parliamentary design” (Russell 2001a, 442) which generally implies the presence of two legislative houses, both playing a role in the national legislative process and although “not necessarily equal” (Uhr 2006, 474), their interactions nonetheless affect the legislative outcomes.

Following this premise, referring to bicameralism implies the analysis of both the lower and the upper chamber and their institutional relations. Although theoretically true, in practice we find an abundant literature on parliaments which focuses mostly on the role of the lower chamber and uses the term ‘legislature’ commonly referring to this latter alone. When we focus on the upper chamber, “It is like looking for a needle in a hay stack” (Haas, 2000): researches are much fewer and just few scholars have attempted to deepen our understanding on their role (Marriott 1910; Lees-Smith 1923; Mastias, and Grangé 1987; Lijphart 1999; Luther, Passaglia and Tarchi 2006; Patterson & Mughan 1999a; Patterson and Mughan 2001; Russell 2000, 2013a; Baldwin & Shell 2001; Swenden 2004; Norton 2007).

The main reason rests on the general misperception of their “secondary-ness” when compared to the lower chamber (Uhr 2006, 478). In fact, while this latter has always been considered as the emblem of the democratic representation principle and thus the core of national decision-making process, the mode of formation of upper chambers varies a lot according to the specific national constitutional settings.

Despite this misperception, we should be aware that there is no such institutional creature as “insignificant bicameralism” (Lijphart 1999, 211). Where bicameralism exists, it always matters and “even unelected or indirectly elected second chambers with limited legislative powers can exercise great policy power” (Uhr 2006, 478). This situation is termed “Cicero’s puzzle” (Money and Tsebelis 1992) and it refers to the “power able to be deployed by upper houses in the face of constitutional pre-eminence of lower houses” (Uhr 2006, 478). In this way, the different mode of formation is to be considered more as a positive feature of bicameralism than a

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negative one. Particularly, in federal and fragmented political systems, the representation of different interests in upper chambers from those represented in lower ones allows the first "to guard against the majority" (Russell 2001a, 443).

Having said this, through the analysis of the controversial literature on bicameralism, the aim of this paper is to deepen the understanding of upper chambers' role in bicameral systems through the analyses of the main theoretical justifications developed in the literature.

The successive paragraph focuses on the definitional issues. The third paragraph identifies the historical evolution of bicameralism. Finally, the fourth paragraph, using Norton's classification, presents the normative justifications for bicameralism.

2. Defining Issues

As recalled by the very name "legislature", parliaments are commonly accepted as the institutions which primarily have the power to make law. This *binomium*, theoretically relevant in most of the current definitions (Mezey² 1979, 6;), has been long challenged by prominent scholars in parliamentary studies. To be clear, scholars do not deny the essential legislative parliaments' power but they underline the other important functions other than the making of laws. According to Wheare, the use of the name 'legislature' "can mislead. For a large part of the time of these bodies is not devoted to law-making at all" (1968, 1). On the same point, but one century earlier, Bagehot underlined, in its famous volume on "The English Constitution", that the legislative function, although important, should nonetheless not be deemed "as important as the executive management of the whole State, or the political education given by Parliament to the whole nation" ([1867] 2001, 97).

Along this debate, Norton's definition offers a wide understanding of the legislatures' role and he identifies them as the "constitutionally designed institutions for giving assent to binding measures of public policy, that assent being given on behalf of a political community that extends beyond the government elite responsible for formulating those measures" (1990, 1). These institutions may be a single or a bicameral body and the term bicameralism refers thus to "an institutional design for a two-house representative assembly" (Patterson and Mughan 1999, 1; see also Ferrara 2001, p. 1157).

Generally, in bicameral systems, the lower chambers –popularly elected- detain the primary legislative power, "particularly for taxation and government budgeting, but also in relation to votes of confidence in the political executive" (Uhr 2006, 474), instead, the upper ones -usually appointed or elected indirectly- have fewer formal legislative powers with respect to the lower ones and do not hold the confidence relationship with the executive, exceptions exist such as the Italian and Romanian Senate.

Despite the above, we should be aware that there is no one model of bicameralism, neither is there any unique institutional arrangement, but each model is the outcome of national constitutional designers for maximizing the benefits (Llanos & Nolte 2003). Diversity, thus, has been the rule over time and among the countries: "bicameral institutions have been adopted by class societies and by federal states, by

² Mezey defined legislatures as a "predominantly elected body of people that acts collegially and that has at least the formal but necessarily the exclusive power to enact laws binding on all members of a specific geopolitical entity" (Mezey 1979, 6).

republican polities and by unitary political systems. They have been used to maintain the status quo, to amalgamate the preferences of different constituencies, and to improve legislation, and have been justified in all of these terms” (Tsebelis and Money 1997, 13). Facing this diversity, bicameralism ends up being “a term of convenience covering a great variety of types of legislatures” (Uhr 2006, 478), which varies in terms of size, length of terms, basis of composition, mode of election (Borthwich 2001) and obviously on the relative legislative power strength.

Today, this institutional and historical asymmetry echoes the different labels used for describing the second branch of the parliament: Senate, Upper Chamber, Second Chamber, all describe the same institution, however all hold different perceptions of it.

The majority of these institutions inherited their name from the famous council of elders of ancient Rome, the Senate, which reflected their internal membership of ‘council of old men’ and thus characterised by their distinctiveness and wisdom.

Differently, the label ‘upper chamber’ refers to the historical evolution of bicameralism. The legislature was class-based and it aimed to preserve the class advantages. Hence, the distinction between the upper and the lower house was rooted “in the class-conscious sense of “upper” and “lower” (Loewenberg and Patterson 1979, 121).

Finally, with the extension of the electoral suffrage and the affirmation of the democratic principles, the distinction between first and second chamber extensively emerged and, still today, it is rooted in the general misperception of their subordinate role with respect to the first chamber.

But this last distinction is not evident in all Countries, and in some cases, the label is actually reversed – the Netherlands are an example - and the popularly elected lower house is the second chamber and the indirectly elected upper house is the first chamber. In order to avoid misunderstanding, all along this paper, I adopt the terms ‘lower’ and ‘upper’ houses.

Already starting by the definitional issues, it is evident how much the role of upper houses remains a highly debated issue. Entering into the core of this debate, the following sections, first, analyse the historical evolution of bicameralism and, second, scrutinise the main theoretical justifications for an upper chamber.

3. History of Bicameralism

The history of bicameralism follows a double and intertwined track. On the one side, in institutional terms, the earliest appearance of a bicameral legislature in the contemporary sense is in England, in the medieval era. On the other side, the same idea of bicameralism is “much older than the institutions that may be classified as” such (Shell 2001, 5). In fact, the dual deliberation characterizing modern bicameralism and the same explanations provided to justify the presence of an upper chamber are “rather a growth from roots stretching back beyond the thirteenth century to a period long before the summons of burgesses or even of knights of the shire to Westminster” (Pollard 1920, 45).

Taking in mind this premise, the aim of this section is not to give an exhaustive and descriptive analysis of the history of bicameralism³, but an overview of the

³ For a more in-deep historical analysis see Temperley 1910; Lees-Smith 1923; Tsebelis and Money 1997; Preece 2001; Shell 2001.

important steps characterizing the bicameral discourse, from the philosophical debate to the current institutional settlement.

Bicameral-like institutions already developed in ancient Greece. In Sparta, perhaps the first bicameral example, the legislative power was exercised by the Monarchy, the Senate and the Ephorate (Tsebelis and Money 1997). In Athens, the council – composed by wise men – and the Assembly – composed by representative of “citizens”- reflected the modern dual deliberation of bicameral systems.

The institutional practice reflected in part the theoretical foundation of Greek philosophers. According to Plato’s theory of “mixed government” (Plato 1966), further developed by Aristotle (1959), the balance of powers between the different interests representation and the limits upon groups would reduce the risks of degenerations of the political systems, highly felt in the ‘simple’ forms of government.⁴ In fact, the advantages of the ‘mixed governments’ reside on the representation of different interests and groups, checking upon each other.

Bicameral-like institutions developed in republican Rome as well. The Roman Senate, the first institution holding the name that would later be used by most of the contemporary upper chambers, was originally a council of elders appointed to advise the early kings (Tsebelis and Money 1997, 18). The Senate, composed of wise and virtuous men, acquired a dominant place in the Roman Republic, while sharing the power alongside assemblies more representative of the citizens: *the Comitia Centuriata* and the *Comitia Tribuna*.

The next example of bicameralism was in Britain in the 14th century and actually it represents the first experiment in the modern sense.⁵ The constitutional arrangements have been long interpreted through the classical theory of ‘mixed government’, with “the king represent[ing] monarchy, the House of Lords the aristocratic element, and the House of Commons the democratic element within society” (Shell 2001, 8). However, it would be nonetheless misleading to argue that the theory itself inspired the current practical institutional settlement. In fact, “the history of bicameralism in England suggests that the institutional evolution was driven by societal forces rather than a theoretical understanding of political institutions” (Tsebelis and Money 1997, 23). In this way, the evolution from the council of the Anglo-Saxon kings, to the Great Council of the Nation, to the current institutional arrangement, was more the result of the circumstances rather than a deliberate project. In fact, the constant increase of control over legislation and the need for additional taxes, which fostered the enlargement of the membership in the Great Council, transformed the original King’s advisory council to the early form of bicameralism as “an *elite model*” (Russell 2013a, 42). This latter, characterised by the two chambers representing different ‘estates’, “the Lords being the chamber of the aristocracy and the clergy, and the Commons of less privileged groups” (Russell 2013a, 42), gradually developed in the current institutional settlement where the power progressively “shifted from the king to the parliament and from the upper house to the lower house” (Tsebelis and Money 1997, 23).

⁴ The pure forms of government are the rule by the one – monarchy, the few- aristocracy, or the many- polity, which could respectively develop into the corrupt variant of tyranny, oligarchy and democracy

⁵ For a more in-deep historical analysis of the English experience see Temperley 1910; Lees-Smith 1923; Chisholm 1957; Edwards 1960; Tsebelis and Money 1997; Freeman 1886; Carmichael and Dickson 1999; Preece 2001; Castelli 2010; Bradley and Pinelli 2012

Differently to the English experience, across the continent, a different ratio emerged. In America, the institutional innovation in the evolution of bicameral legislatures was “the shift in representation of societal classes to representation of “the people” (Tsebelis and Money, 27) and, thus, the debate was mostly focused on the need that the two legislative houses should represent different “manifestation of the ‘people’s’ will” (Tsebelis and Money, 27).

The US Constitution’s Fathers formulated a double justification for an upper chamber, “one based on traditional arguments for checks and balances and senatorial wisdom, and the other based on the newly invented concept of federalism” (Shell 2001, 12). Following this ratio, the “great compromise” agreed in 1787 at the Constitutional Convention in Philadelphia established a strong bicameral federal legislature, with the lower chamber reflecting the popular dimension and the upper chamber the territorial one. The upper house was the upshot of the struggle among small and large States and it was organized in order to assure the equal participation of all the States in the decision-making of the Union.

Thus, the American revolution developed a new debate on constitutional making that largely influenced the institutional evolution in most countries and at “the same time the French revolution swept away the old order and elevated the ‘sovereignty of the people’ into the over-riding principle of government” (Shell 2001, 12; see also Martino 2009).

In this way, the two models of bicameralism followed different and opposite development paths. On the one side, with the exception of the English House of Lords, the original bicameral *elite model* progressively disappeared. On the other side, the *territorial* model of bicameralism (Russell 2001b) largely entered into the constitution-making debates.

However, beyond the unquestionable strong relation between bicameralism and federalism (Levmore 1992, 159), some bicameral legislatures emerged for different reasons other than the territorial dimension. Then, since “their justification has generally been felt obvious in regard to federal systems, but difficult to make elsewhere” (Shell 1998, 17), the aim of the next section is to understand this evolution and to scrutinise the main theories developed in the literature for justifying the existence of upper chambers.

4. Rationales for Bicameralism

Despite its ancient roots and its resilience in the contemporary world, bicameralism remains a questioned institutional arrangement (see Dippel 2003). Since its origins, it has been highly debated: “[o]f all topics relating to the theory of representative government, none has been the subject of more discussion, especially on the Continent, than what is known as the question of the Two Chambers” (Mill 1862, 249). Yet, there is no one model of bicameralism and so there is no one single universally accepted criterion for justifying it and bicameralism remains “a concept in search of a theory” (Smith 2003, 3).

Money and Tsebelis identify three historical reasons for bicameralism: “the representation of distinct interests; stability; and quality assurance” (1992, 27). According to Llanos and Nolte (2003), the institutional theory has provided four basic justifications for bicameralism: (1) representation of different interests; (2) preservation of liberties and individual rights; (3) improvement of the quality of legislation; (4) stability of the legislative outcomes. Again, Aroney lists four reasons

for an upper house, “corresponding to the four fundamental functions which modern representative assemblies are generally expected to perform” (2008, 210): (1) democratic representation; (2) public deliberation; (3) legislative outputs and (4) scrutiny of executive government.

With a more simplified approach, Patterson and Mughan (1999a) focus on two primary functions: “representation and redundancy”, with the latter including most of the above mentioned justifications. This theory has been further developed by other scholars. Uhr emphasises the sole concept of ‘redundancy’ and then investigates the consequences of bicameralism through “three contrasting accounts of ‘balance’” (2006, 475; see also Uhr 2008). Differently, on the account of Patterson’s and Mughan’s theory, Russell (2001a) adds four additional elements: (1) representation of different interests; (2) independence from the executive; (3) ability to act as a ‘veto player’; (4) mitigation of the burden of parliamentary work.

A more comprehensive understanding is given by the theoretical approach provided by Norton.

Norton, considering the use of the term ‘redundancy’ misleading, refines the Patterson’s and Mughan’s theory (1999b) and marks the distinction between *function* and *capacity*, “the former comprises the reasons for [the creation of upper chambers]; the latter the resources by which they are able to do what is expected to them” (2007, 6). Moreover, for analytical purposes, he identifies two principal functions: *representation* and *reflection*, which are not mutually exclusive and “each may be [further] separated into different elements, resulting in some complex combinations” (Norton 2007, 6). Thus, bicameralism can be designed in order to accomplish different purposes and consequently different institutional *rationales* can inspire its institutional design (Paladin 1984, 219).

In order to better understand the complexity of bicameralism, the next section will use Norton’s theory for presenting the several justifications developed in the literature for an upper chamber.

4.1 Principle of representation

The universally accepted justification for an upper chamber belongs to the query for representation. Hence, differently to the classical popularly elected lower chambers, the composition and the mode of election of upper ones vary a lot, according to the specific national constitutional settings.

Alongside the British and American experiences, two models of bicameralism emerged: the first involved the representation of different societal classes; the second involved the principle of territorial representation. Both differed in practice and in their evolution path – with the *elite* model progressively disappearing⁶, but both developed from the same theoretical foundation.

From the Greek theory of mixed government to the elaborations made by Montesquieu, Mill and the American Founding Fathers, to the current theoretical models in favour of bicameralism (Tullock 1959; Hammond and Miller 1987; Lijphart 1984; Riker 1992; Brennan and Hamlin 1992; Tsebelis and Money 1997; Brandbury and Crain 2002, 2004, 2006), the first justification for bicameral legislatures argues that the “upper chamber is a check on popular passion and thus on the possibility of majority tyranny” (Muthoo and Shepsle 2006, 254). In other words,

⁶ The House of Lords is an exception

the different interest representations in the two chambers impede and limit the tyranny of a single chamber and limits majority abuse of minorities.

Today, the concept of minorities has changed a lot and so it has bicameralism, through time and across countries. "Originated in the essentially pre-democratic view" (Loewenberg and Patterson 1979, 121) of representation, bicameralism reflected the different social classes. In this respect, although Montesquieu was the first in giving a comprehensive and still influential argument in favour of an upper chamber, already in 1659 James Harrington was proposing bicameralism as a remedy against parliamentary despotism, he argued "the reason for a senate is that a popular assembly, rightly constituted, is not capable of any prudent debate" and "the reason of a popularly assembly is that a senate, rightly constituted for debate, must consist of so few and eminent persons that, if they have the result too, they will not resolve unto the interest of the people, but according to the interest of themselves. A popular assembly without a senate cannot be wise", but "a senate without a popularly assembly will not be honest" (Harrington [1659] 1977, 771).

Later, Montesquieu further developed this argument and based his justification for bicameralism on the need to establish a mutual check on the legislature:

"In a state there are always some people who are distinguished by birth, wealth, or honors; but if they were mixed among the people and if they only had one voice like the others, the common liberty would be their enslavement and they would have no interest in defending it, because most of the representations would be against them. Therefore, the advantages they have in the state, which will happen if they form a body that has the right to check the enterprise of the people, as the people have the right to check theirs.

Thus, legislative power will be entrusted both to the body of the nobles and to the body that will be chosen to represent the people, each of which will have assemblies and deliberations apart and have separate views and interests." (Montesquieu 1989 [1748], 160)

Sharing the French philosopher's arguments and mostly the fact that "when the legislative and executive powers are united [...] there can be no liberty" (Montesquieu [1748] 1989, 157), the American Founding Fathers, acknowledged the risks of majority dominance. On the same point, although based on different representational logic, in the Federalist papers, Madison argued in favour of an upper chamber in order to check over "the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolution" (Madison [1787-88] 2008, 306).

From a similar perspective, the English political philosopher John Stuart Mill was extremely aware of the risks which a single legislative chamber elected on the basis of single member constituencies posed for representation:

"The consideration which tells most... in favor of two Chambers ... is the evil effect produced upon the mind of any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult. It is important that no set of persons should, in great affairs be able, even temporarily, to make their *sic volo* prevail without asking anyone else for his consent. A majority in a single assembly... when composed of the same persons habitually acting together and always assured of victory in their own House –easily becomes despotic and overweening, if released from the necessity of considering whether its act will be concurred in by another constituted authority [...]" (Mill 1862, 250-251).

Against the risk of despotic degenerations and in line with the views of Montesquieu and *The Federalist*, Mill recognised the advantage of two legislative chambers as a check on each other:

“One of the most indispensable requisites in the practical conduct of politics, especially in the management of free institutions, is conciliation, [...]the mutual give and take (as it has been called) between two Houses is a perpetual school; useful as such even now, and its utility would probably be even more felt in a more democratic constitution of the Legislature.” (Mill 1862, 250-251).

To sum up, from one continent to the other, all of these arguments aimed to impede the potential for populism and the role of upper chamber was conceived as the perfect place for representing interests “who [were] absent from, or disadvantaged by, arrangements in the first chamber” (Russell 2013a, 44). In this way, citing Bagehot’s argument, in order to limit the danger of “sinister interest” in the lower chamber, it is “therefore of great use to have a second chamber of an opposite sort, differently composed, in which that interest in all likelihood will not rule” (Bagehot [1867] 2001, 80).

Today, with the decline of the *elite model*, “[the] protection of minorities through upper house is [mainly] territorial, ethnic or linguistic” (Russell 2001a, 443). Among them, the commonest form is the territorial one, which offers the opportunity “to represent three distinct interests within each geographical unit: its assembly, its government, or its people” (Russell 2001b, 109). For instance, in Austria the Bundesrat is composed of representatives elected by members of state legislatures, in Germany the members of the Bundesrat are delegates of the *Länder* governments and in Australia and US they are elected directly by the citizens of the constituent units.

The growth of the territorial model has led some scholars to identify bicameralism as a characteristic feature of federal systems (see Amellier 1966⁷; Davis 1978). This argument, although partially correct, can be nonetheless misleading. In fact, it is correct neither to argue that only federations have bicameralism and nor that all federations have bicameral legislatures. Firstly, there are many non-federal countries with bicameral structures and secondly, of the 26 current federal systems, seven have a unicameral parliament.⁸

Despite the above, it is nonetheless exact to argue that – using Wheare’s argument - although “representation of the regions in the upper house is not essential logically for a government if it is to be federal, [...] it is [nonetheless] often essential if federal government is to work well” (1947, 93). It follows that upper chambers in federal systems fill two basic roles: on the one side, they check “the power of majoritarian elements that might otherwise dominate the government process” and on the other side, they ensure adequate representation of regional and minority interests and viewpoints” (Watts 2003, 69).

However, different representation in the upper chamber does not always correspond with the protection of minority interests. Opponents to the territorial model of bicameralism have proposed what has been called the ‘vocational’ or ‘functional’ upper chamber (see Horgan 1938), where “lower houses [...] represent

⁷Amellier stated that “in federal states, [there is] no choice [between unicameral and bicameral systems] is open because [federations] are by definition two-tier structures” (Amellier 1966, 3)

⁸ Comoros, Federal States of Micronesia, Iraq, Nepal, Saint Kitts and Nevis, United Arab Emirates and Venezuela

people in terms of where they live; upper houses should represent them in terms of how they get a living and what they live for" (Wheare 1968, 143). Current examples are Ireland and Morocco, where upper chambers are composed by representatives of professional groups.

4.2 Proactive Reflection

The query for representation, while obvious in federal systems, is not enough to explain the presence of upper chambers in unitary states. In those cases, without ignoring the political role (Money and Tsebelis 1992), bicameralism is better understood in terms of efficiency and advantages that upper chambers can bring both to the legislative process *stricto sensu* and to the functioning of the system as a whole.

In the literature, all of those justifications for bicameralism fall under the label of 'redundancy'. The term (Landau 1969; Patterson and Mughan 1999b; Riker 1955) refers to the duplication of functions in the two houses of the parliament and according to Patterson and Mughan, there are two main arguments for it. First, an upper chamber "provides for a second opinion" (Wheare 1967, 140) and thus, it assumes a revising role in the legislative process. Second, the presence of an upper chamber delays the legislative procedure and allows "the expression of public sentiments on policy issues" (Patterson and Mughan 1999b, 13).

Although widely used in the literature (Russell 2001a, 2013a; Uhr 2006; Watts 2003), the term 'redundancy' can be nonetheless misleading. In the common language, "redundancy is said to exist whatever there is an excess or superfluity of anything" (Landau 1969, 346) and for bicameral arrangements "the task remains to learn to distinguish between inefficient redundancies and those that are constructive and reinforcing" (Landau 1969, 356).

Norton uses a different approach for justifying bicameralism and he prefers to employ the term 'reflection' for making reference to the functions of the upper chamber, "deliberating, usually but not exclusively on what the first has done" (Norton 2007, 7). In this way, Norton, escaping from the ambiguities that the use of the term 'redundancy' implies, marks the role of an upper chamber not only in relation to the lower one, but also for its own powers and functions. In other words, he refines the 'redundancy theory' and he widens its scope. Precisely, the "reflection may be reactive or proactive" (Norton 2007, 7), the first refers to all the functions performed by the upper chamber in relation to the lower one and also with regard to the executive. The second role "exists where the second chamber may not simply react to what the first chamber has proposed but propose measure of its own" (Norton 2007, 8).

This latter role strongly varies among countries and depends from the formal provisions established in each institutional arrangement, which implies that not all upper chambers can have it. Conversely, the proactive role is fundamental and "it may be seen as the predominant reason for having" (Norton 2007, 7) an upper chamber. Thus, beside the already analysed query for participation, the proactive role identifies the other justifications for bicameralism.

The first important justification for an upper chamber is to provide "second thoughts" (Campion 1953, 20) to the legislative process, which could "prevent the implementation of ill thought through policies" (Russell and Sandford 2002, 81). This

is the so called “principle of appeal “from Philippe drunk to Philippe sober”⁹ (McKechnie 1909, 8) which has the advantage to potentially impede the enactment of impetuous decisions¹⁰.

This justification is based on the twofold assumption of different interest representation and double check in the legislative process.

According to the first, the upper chamber is composed of different interests represented from that of the lower one and, in this regard, a part from the territorial principle, scholars usually legitimise its membership on the basis of accepted knowledge and wisdom. Accordingly, in his book *Modern Democracies*, Lord Bryce, identifying in the lack of knowledge and wisdom one of the two main defect of legislature, argued in favour of an upper chamber since “such a Chamber might be made a kind of reservoir of special knowledge and ripened wisdom to be added to whatever knowledge and wisdom have already been gathered into the more popular House” (1921). According to the second assumption, the presence of an upper chamber assures that legislation is looked at twice. In this way, the chamber functions “as a quality control mechanism” (Money and Tsebelis 1992, 28), which potentially can improve the quality of legislation (Trivelli 1975, 31-32) and reduce the likelihood of legislative errors.

In other words, legislation should be approved by a second representative body with a different viewpoint from that of the other chamber, which, although increases the time for the enactment of legislation, assures that decisions are taken in a more deliberative a conscious way.

In this way, the process of delay is considered more as an advantage rather than a peril of political gridlock and the main reason is that it prevents not only undue decisions but it secures “a period during which the opinion of the people regarding a law may be duly formed and expressed” (Bryce 1921). The Bryce report of 1918 widely emphasised the virtues of delay and it argued that the main function of an upper chamber should be the ‘interposition of so much delay (and no more) in the passing of the a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it’ (Bryce 1918, 6). In this way, the role of the upper chamber is to allow issues to be discussed more widely and thus, to assure the expression of public sentiments, which reinforce “the suggestion that an upper house can improve the democratic credentials of the system as a whole” (Aroney 2008, 227).

The second justification for an upper chamber is related to the need to assure stability in policy and government. According to the Federalist papers “No

⁹ It is also known as the ‘cooling effect’. The label comes from the famous dialogue between Thomas Jefferson and George Washington. Absent from the Constitutional Convention, Thomas Jefferson asked Washington “why the founders had created a second house of Congress, the Senate. Thereupon Washington asked, ‘Why did you pour your coffee into your saucer?’ Jefferson replied, ‘To cool it’. ‘Even so’ Washington responded, ‘we pour legislation into the senatorial saucer to cool it’ (reported in Patterson and Mughan 1999, 15)

¹⁰ Bagehot justifies the presence of the House of Lords by the deficiencies of the House of Commons “Whit a perfect Lower House it is certain that an upper House would be scarcely of any value. If we had an ideal House of Commons perfectly representing the nation, always moderate, never passionate, abounding in men of leisure, never omitting the slow and steady forms necessary for good consideration, it is certain that we should not need a higher chamber. The work would be done so well that we should not want anyone to look or revise it [...] but, beside the actual House a revising and leisured legislature is extremely useful, if not quite necessary” (Bagehot [1867] 2001, 84)

government, any more than an individual, will long be respected without being truly respectable; not be truly respectable, without possessing a certain portion of order and stability” (Madison [1787-88] 2008, 308). In this way, the longer electoral terms of the Senators and their acknowledged wisdom provide an anchor for legislation subject to the changing impulses of the lower chamber (see Miller, Hammond and Kile 1996). The same rationale was at the origins of the Italian Senate (Barbera 1996; Cheli 1987; Manzella 2003). Based on the argument that it would have “not [been] suitable to centralize in one sole chamber such a power as the legislative one, which for its nature is inclined to be omnipotent” (Santi Romano 1945, 307), the Italian senate was designed as a *chambre de réflexion* and was vested of the role of guarantor of the legislative process (Barbera and Fortunato 1989). As a guarantor of “institutional ‘equilibrium’ between political conservation and innovation and a ‘sustainability’ of constitutional development” (Lüther 2006, 23), upper chambers also have a particular responsibility for guarding the constitution (Campion 1953) and for the preservation of liberties and individual rights (see Russell 2001c). In other words, the role of the Senate is, thus, rooted on the idea of separation as a method for limiting and when appropriate blocking (Carlassare 2001) potential impetuous decisions.

Finally, the third important justification for an upper chamber is its distinctive capacity to independently scrutinise the executive. Generally, parliamentary systems are based on the special relation between legislative and executive branches: ‘holding a gun to each other’s head’ (Gallager, Laver and Mair 1995, 43). The chamber can remove the executive with a vote of no confidence, while the executive may have the power to dissolve the legislature. This relationship –although some exceptions exist– is prerogative of the first chamber alone, while generally there is no principle of confidence vote in the upper chamber. The lack of the confidence vote implies important consequences in terms of chamber and executive relationship. In this case, upper chambers are more likely to act independently from the executive and they “may therefore provide an important forum for parliamentary scrutiny, strengthening parliament’s overall control over government” (Russell 2001a, 448; see also Druckman, Martin and Thies 2005; Russell and Sanford 2002). In the Federalist Papers, Madison argues “a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government.” (Madison [1787-88] 2008, 306) On the same point, Bagehot recognizing in the “executive government” the “most dangerous of all sinister interests”, affirms that the presence of a “retarding chamber [impedes] minor instances of parliamentary tyranny” (Bagehot [1867] 2001, 80-81).

Upper chamber can thus act more independently from the executive and can bring a different view into the legislative process.

All the above justifications provide reasons in favor of bicameralism. However, although complex combinations of those justifications can be found in the different political systems, it should be further stressed that for any institutional arrangement, the practical influence and impact of an upper house depend less on its formal legislative powers and “more on the substance of public support for its role in the national legislative system, reflecting the wider political and public legitimacy attached to its distinctive scheme of representation” (Uhr 2006, 478). Thus, legitimacy is of noticeable importance when discussing upper chambers and a “convincing theory of bicameralism must [...] take explicit account of second chambers’ perceived legitimacy” (Russell 2013b, 371).

Conclusion

Despite its ancient roots and its resilience in the contemporary world, bicameralism remains a questioned institutional arrangement. Since its origins, it has been highly debated, and yet there is no one model of bicameralism and so there is no one single universally accepted criterion for justifying it. Bicameralism can be designed in order to accomplish different purposes and consequently different institutional ratio can inspire its institutional design. In other words, each model ends up to be the outcome of national constitutional designers for maximizing the benefits. (Llanos and Nolte 2003).

Following this premise the chapter investigated the rationales of bicameralism, through the classification provided by Norton. The Author marks the distinction between *function* and *capacity*, with the former including all the reasons for the establishment of an upper chamber and the latter making reference to the resources by which upper chambers are "able to do what is expected to them" (Norton 2007). Through this approach, the chapter examined the different justifications of bicameralism developed in the literature though time and in different constitutional settlements. The chapter pointed out how heterogeneity represents the common feature of bicameral systems and how difficult is to provide a comprehensive theoretical justification for each institutional arrangement. The paper underlines how diversity has been the rule over time and among the countries and how national institutional arrangements continue to be strongly biased by their own historical, cultural and political factors.

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