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The Paradox of Federal Bicameralism

Giancarlo Doria



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Abstract

Although still regarded by many as an essential feature of a truly federal government, the institution of the federal chamber appears to be experiencing a deep crisis. In all but two cases, in fact, federal chambers have shown over the decades an uncontrollable tendency towards centralization, to the limit that they now seem indistinguishable from regular, national chambers. The article assesses this problem from three perspectives. 1. A theoretical analysis of the concept of *regional representation* reveals that the origins of such a crisis lie in an intrinsic flaw of the institutional model upon which the chambers are based. 2. An historical analysis of the birth of federal chambers, and particularly of their archetype, the US Senate, shows that such a flaw is due to the misinterpretation of two features of the latter - equal representation and indirect election - which have been regarded as serving to provide true regional representatives, when their original rationale was in fact the protection from the risk of factionalism. 3. Finally, an analysis of the impact of political parties on federalism and on federal chambers shows that a possible solution for their crisis lies in using them as instruments for the decentralization and destructurization of the party system.

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Table of contents

1. Introduction	5
2. One Chamber, Two Models.....	8
2.1. The Senatorial Model.....	11
2.2 The Ambassadorial Model	14
3. A Crisis of the Senatorial Model.....	17
4. Philadelphia or the Origins of Federal Bicameralism.....	19
4.1. The Framers Intentionally Rejected the Ambassadorial Solution	20
4.2. The Framers Did Not Want a Clearing House for States' Interests....	21
4.3 What the Framers Wanted	23
5. Federalism, Federal Chambers and the Party System	27
5.1. The <i>Bundesrat</i> and the German Party System	29
5.2. The Senate and the US Party System	32
6. To Make the Senatorial Chamber Work	33
7. Conclusion	36

The Paradox of Federal Bicameralism*

Giancarlo Doria

"It is said that there must be in a Federal Government some institution, some authority, some body possessing a veto in which the separate States composing the Confederation are all equal. I confess this doctrine has to me no self-evidence, and it is assumed, but not proved"
(Bagehot 1877, 162)

1. Introduction

One of the most common assumptions concerning federal government is that it requires the presence, within the national legislature, of two chambers: one representing the people, the other representing the sub-national units.¹ The aim of this second, *federal* chamber has been variously defined throughout history, but it has most commonly been regarded as that of providing a place where the regions'² interests can be expressed and composed with those of the center, so to increase the total efficacy of the governmental activity.

Considering the diffusion of this theory, it is surprising to discover that, almost everywhere, federal chambers are accused of failing in performing their duty, and of having evolved into nationalized, party-dominated institutions, barely distinguishable from their popular counterparts.³

* This paper is largely based on a research which will be published on "NOMOS. Le attualità nel diritto".

¹ See, e.g., Arendt Lijphart, "Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories", 15(2) *Publius* (1985), 3-15, at 3; Robert Dahl, *How Democratic is the American Constitution?* (Yale University Press, New Haven, London, 2001), 46; Schepers Stefan, *Le Droit Fédéral en Europe* (Bruylant, Bruxelles, 1991), 95; Costantino Mortati, *Istituzioni di Diritto Pubblico* (Cedam, Padova, 1991), 470; Guido de Vergottini, *Diritto Costituzionale Comparato* (Cedam, Padova, 2004), 315. On the contrary, Wheare explicitly defines federal bicameralism as an exception to the federal rule; see Kenneth Wheare, *Federal Government* (Oxford University Press, London, 1946), 30.

² In the rest of the text, the term *region* will be used to refer generically to sub-national units. When discussing a specific country, the proper denomination will instead be used.

³ Among those who have identified such a problem at a general level, see: Meg Russell, "The Territorial Role of the Upper House", 7(1) *The Journal Of Legislative Studies* (2001), 105-118; Wilfried Swenden, *Federalism and Second Chambers* (PIE, Brussels, 2004); Jean Mastias and Jean Grangé, *Les Secondes Chambres du Parlement en Europe Occidentale* (Economica, Paris, 1987), 56; Adele Anzon, *I Poteri delle Regioni* (Giappichelli, Torino, 2003), 17-18; de Vergottini, *Diritto costituzionale ...*, 315. More specifically, see for Australia, Swenden, *Federalism ...*, 349; for Austria, Marco Piredda, "Il Bundesrat austriaco", in *Un Senato delle Autonomie per l'Italia Federale. Atti del Convegno tenuto a Roma il 20 Febbraio 2003* (ESI, Napoli, 2003), 187; for Belgium, Mastias and Grangé, *Les Secondes Chambres ...*, 174-180; for Canada, C.E.S. Franks, "Not Dead Yet, But Should It Be Resurrected? The Canadian Senate", in Samuel Patterson and Antony Mughan (eds.), *Senates*,

This paradoxical⁴ divergence between the theory and the reality of federal bicameralism is the object of our analysis. Before turning to that analysis, though, two other points need to be stressed:

1) It is significant that, among the institutions showing the tendency towards centralization, we find the archetype of all federal chambers: the US Senate. If it is in fact commonly acknowledged that the Senate has managed to become one of the most powerful parliamentary assemblies of the world, it is also admitted that it did so essentially by betraying its alleged original function as the representative of the states' interests⁵ - a function which, ironically, is apparently better performed by the House of Representatives.⁶ In other terms, "the Senate, simply, did not develop as a federal house".⁷

2) Surprisingly, there are two federal chambers - the German *Bundesrat* and the Council of the European Union⁸ - which have instead effectively performed their function (to be precise, they have done so in such a way that they are even accused of exerting a too federalizing impact⁹). Thanks to their success, such chambers have been regarded by some¹⁰ as a model that can provide a remedy for the crisis of federal bicameralism. Yet, their structure is so radically different from that of the other chambers - it is even questioned whether they can truly be considered parliamentary assemblies¹¹ - that, rather than a solution to the problem, this seems to be a way to hide from it. Furthermore, unless a conclusive answer is given to the question of why such

Bicameralism in the Contemporary World (Ohio State University Press, Cleveland, 1999), 120-161; for India, Swenden, *Federalism ...*, 349-351; for Spain, Meg Russell, *Reforming the House of Lords. Lessons from Overseas* (Oxford University Press, Oxford, 2000), 211.

⁴ To the best of our knowledge, the first instance of the expression 'paradox' associated with the current situation of federal second chambers can be found in a very insightful analysis by Renaud Dehousse; to that analysis, this article expresses its debt of gratitude. See Renaud Dehousse, "Il paradosso di Madison: Riflessioni sul ruolo delle camere alte nei sistemi federali", 17 *Le Regioni* (1989), 1365-1400.

⁵ See Daniel Elazar, *Exploring Federalism* (University of Alabama Press, Tuscaloosa, 1987), 181; William Riker, *The Development of American Federalism* (Kluwer, Boston, 1987), 139; Samuel Patterson and Anthony Mughan, "Senates and the Theory of Bicameralism", in *id.* (eds.), *Senates, Bicameralism in the Contemporary World* (Ohio State University Press, Cleveland, 1999), 1-31.

⁶ See Richard Fenno, *The US Senate: A Bicameral Perspective* (American Enterprise Institute, Washington, 1982).

⁷ Patterson and Mughan, *Senates ...*, 11.

⁸ On the topic of whether the EU Council should be considered as a second, federal chamber, see George Tsebelis and Jeannette Money, *Bicameralism* (Cambridge University Press, Cambridge, 1997); Peter Norton, "How Many Bicameral Legislatures Are There?" in 10(4) *The Journal of Legislative Studies* (2004), 1-9.

⁹ See, among the others, Elazar, *Exploring ...*, 181; Werner Patzelt, "The Very Federal House: The German Bundesrat", in Patterson and Mughan (eds.), *Senates ...*, 59-92; Russell, *Reforming ...*, 216; Barbara Pezzini, *Il Bundesrat della Germania federale* (Giuffrè, Milano, 1990).

¹⁰ See, e.g., Swenden, *Federalism ...*, 349; Carlos Juberias, "A House in Search of a Role: The Senado of Spain" Patterson and Mughan (eds.), *Senates ...*, 293; Lorenza Violini, *Bundesrat e Camera delle regioni, due modelli alternativi a confronto* (Giuffrè, Milano, 1989), 10.

¹¹ The Constitutional Tribunal of Germany has answered in the negative in a crucial decision of 1975. Although the Tribunal's arguments were based on strictly textual considerations, they echoed the results of a majority of German scholars, particularly those of Friesenhahn. See Mastias and Grangé, *Les Secondes ...*, 116-117.

chambers have been so effective - and the others so ineffective - there is a serious risk that the mere exportation of their structure to other countries could not only leave the latter's problems unsolved, but even create new ones.

This article explores the paradox of federal bicameralism in its theoretical and historical implications, aiming to provide its explanation and to propose its possible solution. In order to arrive to that solution, the study will not be limited to the level of institutional dynamics, but will also consider the role of the actors which give life to those dynamics: political parties.

The analysis proceeds as follows. Paragraph 2 shows that there exist two models of federal bicameralism, each based on a different interpretation of the concept of *regional representation*. The *senatorial model* interprets it in the sense of a political representation of federated communities; originally invented in the Philadelphia Convention of 1787, this model is now spread all around the world. The *ambassadorial model*, instead, interprets the concept in the sense of a juridical representation of federated governments; developed on the basis of the institutional structure of ancient confederal diets, it is nowadays only applied in Germany and in the EU.

Paragraph 3 shows that the crisis of the federal chambers is in fact more precisely a crisis of the *senatorial* model. It also reveals that its causes do not lie in contingent factors, but in an intrinsic flaw of the model, i.e. the impossibility to ensure a representation of status simply through the means of elections.

Paragraph 4 examines the origins of the senatorial model in the US. It arrives to the conclusion that the Framers designed an institution intrinsically unfit to work as a clearing house for the states' interests because they did not originally interpret the Senate as aimed to perform that function. The model on which the Senate was based had in fact to do much more with the theory of mixed government than with federalism; it was only later, when the original rationale had become politically unsustainable, that the federal explanation was conceived.

Paragraph 5 turns to the relation between federalism, federal bicameralism and the party system. It shows that: 1. ambassadorial chambers tend to entangle the regional and central party structures, with the effect of curtailing either the central or the regional autonomy; in either case, they exert an undeniably negative impact on the functionality of federalism; 2. senatorial chambers instead can - under certain conditions - perform a strong decentralizing and destructuralizing function, by offering the regional political personnel a national outlet for its ambitions.

Paragraph 6 examines the conditions under which it is possible for the senatorial chamber to work as an effective instrument for the decentralization and destructuralization of the party system. Such conditions are identified with a truly regional election and a true autonomy from political parties for the chamber's members.

The concluding paragraph proposes two possible solutions to the crisis and shows how each of them represents the application of a different interpretation of federalism.

2. One Chamber, Two Models

What is a federal chamber? The comparative analysis of the several institutions which go by this name does not help us find an answer: the level of differentiation between them is such that it could even be questioned whether they truly constitute a unitary category. In particular, of the eighteen existing federal chambers¹²:

- seven are directly elected by the people (among the others: the US after 1913, Australia, South American countries and *de facto* Switzerland), five are chosen by regional legislatures (the US before 1913, Austria, India, Malaysia, South Africa), two are variously linked to the regional executives (Germany, the EU) and two are based on a combination of these methods (Belgium, Spain);
- in eleven cases regions are equally represented, regardless of their population (among the others: the U.S., South American countries, Nigeria, South Africa, Malaysia and *de facto* Switzerland and Australia), in three representation follows proportionally population (Austria, India, Belgium) and in four a median criterion is used (Canada, Germany, the EU and *de facto* Spain);
- finally, in most countries the term of office is fixed, although sometimes staggered; in four cases, instead, it depends on that of the regional executive or legislature (Germany, Austria, the EU, South Africa).¹³

If the comparative analysis proves unhelpful, the theoretical examination seems to be even more problematic. To some extent, it is quite obvious that, on a theoretical level, a federal chamber is simply a chamber which provides

¹² The analysis is based on Samuel Patterson and Anthony Mughan, "Fundamentals of Institutional Design, the Functions and Powers of Parliamentary Second Chambers", in 7(1) *The Journal Of Legislative Studies* (2001), 39-59; Coakley John and Laver Michael, "Options for the Future of the Seanad Éireann", *The All-Party Oireachtas Committee on the Constitution. Second Progress Report* (Government of Ireland, Dublin, 1997); Russell, *Reforming ...*, 23.

¹³ On the institutional differences between the several federal chambers, see Robert Borthwick, "Methods of Composition of Second Chambers", 7(1) *The Journal Of Legislative Studies* (2001), 19-26; Russell, "The Territorial Role ..."; Patterson and Mughan, *Fundamentals ...*; Ronald Watts, "Federal Second Chambers Compared", *Federalismi.it* (2006), at <http://www.federalismi.it>.

a *representation of federated states*. But what does this mean? If we analyze the terms which compose the expression (*representation* and *federated states*), we discover that both present at least two different meanings.

1) Representation, as it is commonly known, assumes a different meaning depending on whether it is used in its *juridical* or in its *political* sense.¹⁴ Juridical representation is the relation (founded either on the will of the represented or on the law) which entitles somebody to exercise some of the rights of somebody else. Such a relation presupposes that the will of the represented - although absent - is still existent, at the very least in concept; as a consequence, this will can be used as a meter to evaluate the conduct of the representative. It is in this sense that we say that an attorney represents a firm or that an ambassador represents a country.

But this is not what we mean when we say that the members of a legislative body *represent the people*, since, at the very least, there is no *will of the people* per se (i.e. outside the representational relation). This absence implies that there is no objective meter upon which the conduct of the representative can be evaluated, and therefore requires the use of some device to ensure the existence of at least some degree of correspondence between representatives and represented: this device is the electoral process. Of course, the correspondence which is created through the electoral process differs in nature from that which is presupposed by juridical representation: it is in fact not a correspondence of wills, but one of interests. In other terms, elections make it useful for the representatives to conform to the interests of the represented, because of the sanction of non-reelection. In this sense, it is said that if juridical representation comes down to mandate, political representation comes down to accountability.

2) Federated state, on its part, can either mean a community - or a *people*, although we will see that such an expression is not appropriate for a sub-national unit - or its government, i.e. the apparatus which the community sets up to provide for the general interest. To our ends, it is important to consider that the two differ deeply with regards to the problem of having a *will*; in fact, as we have just said, a community (or a people) per se does not have a will, quite obviously instead a government can shape, have and express a will.

¹⁴ The analysis draws on Giovanni Sartori, *Elementi di teoria politica* (Il Mulino, Bologna, 1987), 285. A different approach, which nonetheless confirms our theses, can be found in Hanna Pitkin, *The Concept of Representation* (University of California Press, Berkeley, 1967). Pitkin's distinction between delegates and representatives tout court more or less overlaps with Sartori's distinction between representatives in the juridical and in the political sense.

In light of this, what do we mean when we say that the federal chambers' members are the *representatives of the federated states*? Are they ambassadors or normal legislators? Do they represent the federated communities or the federated governments? To begin with, we can rule out two possible answers, for they are contradictory:

a) such representatives cannot be ambassadors of the federated communities. In fact, as we said, juridical representation requires the existence of two wills, but the federated community per se does not have a will;

b) they cannot be political representatives of the federated governments. This can sound a little less obvious, but can be put this way: to be a political representative of a government simply means being accountable to it; at the same time, though, governments - at least, democratic governments - are accountable to their communities; as a consequence, since the relation of accountability is clearly transitive (if *a* is accountable to *b* and *b* to *c*, then *a* is accountable to *c*), the representative automatically becomes a representative of the community.

If this is so, we are left with only two possible meanings of the idea of *representing the federated states*:

a) the chamber's members can be political representatives of the several federated communities. In this case, the chamber is similar to a regular parliamentary assembly, whose members represent the people in the sense that they are accountable to the electorate. Of course, rather than the whole nation, the members of a federal chamber represent the specific community of the region from which they come. We will call this a *senatorial chamber*;

b) the chamber's members can be juridical representatives of the several federated governments. As a consequence, such members are completely different from regular legislators, for they are not required to autonomously shape their wills, and to be later judged by the electorate; the wills they express, instead, count because (and insofar as) they can be referred to those of the governments they represent. Since the nature of such members clearly resembles that of ambassadors, we will call this an *ambassadorial chamber*.

To which of the above theoretical models can actual federal chambers be referred? A comparative analysis reveals that there is no single answer: the great majority of them can more or less easily be described as senatorial chambers, yet two adopt quite explicitly the ambassadorial model.

In other terms, so, as we had provisionally stated before, federal chambers apparently do not constitute a unitary category; on the contrary, two, radically different institutions go by this name. It is therefore absolutely

essential that, prior to our analysis of the functionality of second chambers, we analyze each institutions separately, discussing their nature, history and most essential features.

2.1. *The Senatorial Model*

The members of senatorial chambers are required to shape their wills autonomously from the federated communities they represent or their governments. Therefore, they cannot be either instructed or interfered with in any legally relevant way. In this respect, the relation that such members enjoy with their communities is similar - although not identical - to the one between members of political chambers and the people at large.

In light of this definition, we must include within this category all the chambers which satisfy both of the following conditions:

a) their members are required (under the terms of the national constitution, or *de facto*) to represent only and specifically the regional communities which elect them. This rules out institutions - such as the French *Sénat* or the Italian *Senato* - whose elections are linked to regional communities, but whose members are not required to represent such communities (in the case of the Italian *Senato*, they are actually required not to represent them). Since this condition is of course necessary also for a chamber to be considered ambassadorial, we can simply say that such institutions are not federal chambers.

b) their members are either:

i) directly elected by the regional communities - for in this case there is no doubt that the relation is one of political nature;

ii) elected by one of the bodies of the regional governments (usually the legislatures), if and only if these body does not possess any instrument to impose their wills over those of the representatives. In the absence of such instruments, in fact, this merely constitutes a form of indirect election (i.e. the chosen representatives are not called to represent the body which chose them, but the regional community at large).

Having laid out the basic concepts concerning the senatorial chamber, let us now turn to the history of the model.

Most institutions emerge gradually throughout history, by a process of progressive accretion or imperceptible adaptation; usually, therefore, it is extremely hard to trace down their origins. This is not the case with the senatorial chamber: the idea according to which the members of the federal chamber must be *political representatives of the federated communities* did

not simply progressively emerge from the mists of history; it was consciously invented in a precise historical moment.

That moment was the Philadelphia Convention of 1787. During the works of the Convention, in fact, the Framers of the US Constitution, having apparently decided to set up a chamber within the national legislature through which the several states could be represented, consciously rejected the principle - common to the existing confederal diets - that its members were to be ambassadors of the states (and consequently subjected to instruction and recall). Instead, they intentionally resorted to a different principle, that of political representation of federated communities, and created therefore a completely new institution.

But the US Senate is not only the first instance of a senatorial chamber; its role is instead much greater, for it is quite commonly accepted¹⁵ that it is precisely thanks to the fame and fortune of this venerable institution that so many other countries decided to adopt a federal chamber, and a senatorial chamber in particular. In other terms, the US Senate was not only the archetype, but also the prototype¹⁶ of the senatorial chambers.

That the example set by the US Senate played a fundamental role in the adoption and worldwide diffusion of senatorial chambers is a crucial passage in our analysis. It is therefore important to immediately counter a possible objection: i.e. that, as important as the example set by the US Senate was, it is not because of it that so many countries adopted a federal, senatorial chamber.

After all - so would the argument go - during the 19th century, when the diffusion of the institution began, many theorists of federalism maintained that the presence of a chamber of regional representation was an essential feature of a truly federal government; it is therefore likely that the countries adopting a senatorial chamber did so primarily because of those theories rather than because they were imitating the US example.

This objection cannot be accepted. To understand why, we must focus on the precise basis upon which those theorists claimed that a federal chamber was essential for a federal government. Such a basis was the idea, extremely common during the 19th century, that federalism was some kind of median form of government between a unitary state and a confederation. This idea, on its part, had been developed essentially out of the attempt of the

¹⁵ On the importance of the U.S. model, see Tsebelis and Money, *Bicameralism ...*, 31; more specifically, see John Uhr, "Generating Divided Government: the Australian Senate", in Patterson and Mughan, *Senates ...*, 31, for Switzerland; and Franks, "Not Dead Yet ...", 120, for Canada.

¹⁶ See Tania Groppi, *Il Federalismo* (Laterza, Roma, 2004), 123.

European legal doctrine to approach the new phenomenon of federalism through the lens of its traditional theoretical categories, particularly of sovereignty. So, if within a confederation the sovereignty belonged to the peripheral entities, and within a unitary state it belonged to the center, a federal government was somewhere in the middle, with the sovereignty divided in one way or another between the periphery and the center.¹⁷

This being so, it seemed all but normal that the federal state's legislature (i.e. the locus par excellence of manifestation of the sovereignty) had to be composed of the sum of the two organs which were typical respectively of a unitary state (a national chamber) and of a confederation (a council of ambassadors). Significantly, the first formulation of this thesis can be found in the Federalist no. 39 (Madison):

The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion and on the same principle as they are in the legislature of a particular State. So far, the government is national, not federal. The Senate, on the other hand, will derive its powers from the States as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they are now in the existing Congress. So far, the government is federal, not national".¹⁸

Now: if the reason why so many countries adopted federal bicameralism truly was that they deemed it necessary to replicate within their national legislature the two supreme organs of a unitary state and of a confederation, the problem is: why did virtually all of them (all of them but Germany) build a senatorial rather than an ambassadorial chamber? In fact, all confederacies had adopted as their supreme bodies chambers composed of the states' ambassadors (instructable and recallable).

In other terms, if the *double-nature* theory had been the true reason for the diffusion of bicameralism, we would live in a world with many ambassadorial chambers and very few, if any, senatorial chambers. Since the opposite is true, some other force was there which made it possible for the senatorial model to have the diffusion it had. This force, quite clearly, was the example set by the US Senate.

In conclusion, it is primarily thanks to the success of the US Senate that the senatorial model was adopted in the other federal countries: Mexico,

¹⁷ On the topic, see Guido Lucatello, *Lo Stato federale* (Cedam, Padova, 1939).

¹⁸ Alexander Hamilton, James Madison and John Jay, *The Federalist Papers* (edited by Clinton Rossiter, Penguin, New York, 2003), 241.

Switzerland, Argentina, Brazil and Australia, during the 19th century¹⁹; Austria, India, Pakistan, Belgium, Malaysia, Spain and South Africa during the 20th century. Interestingly, it should be noted that even Germany - which, as we will see, is the homeland of the ambassadorial model - was not completely immune from the allure of the US solution. In particular, the US Senate exerted a great influence on the Paulskirche Convention of 1848: the Staatenhaus of the never applied Constitution of Frankfurt was in fact composed of members which - contrary to the German tradition - were completely free from any form of instruction.²⁰

2.2 The Ambassadorial Model

Within ambassadorial chambers, the members' wills do not count *per se* - as autonomously shaped and freely expressed - but because they correspond (and only insofar as they correspond) to those of the regional governments they represent. In this sense, such members resemble ambassadors.

This definition raises a problem: how could such a correspondence be achieved? Three instruments have been used to this end:

a) *the mandate*. The mandate is an order which the regional executive - or, less likely, legislative - gives to the chamber's member for each single deliberation. The representative has simply to report the region's will; consequently, in the case of a discordance, his vote is null. The German *Bundesrath* of years 1867 to 1918 openly adopted this solution, clearly indicating (Article 7 of the Constitution of 1871) that a vote contrary to the instruction would not count;

b) *the instruction*. The instruction is an indication through which the region expresses its will on a specific matter. Although the representative is not legally bound to follow it (and consequently his vote is not null in the case of a discordance), the regional government can enforce it over the recalcitrant representative by recalling him. This method - as we will later see - was used by some southern states of the US at the middle of 19th Century, as an application of the so-called *doctrine of instructions*;

c) *the personal union of seats*. This method resolves the correspondence problem by unifying the wills: the seat in the federal chamber is granted to an organ of the region which has the right to express the regional will (such as the head of the government). This is the model which best describes the

¹⁹ Canada should be added to this list. In fact, although the Senate is partially based on the British model (its members are chosen by the Governor General on the proposal of the Prime Minister), it was considered ever since its creation as a way of giving representation to the federal interests. See Tania Groppi, *Canada* (Il Mulino, Bologna, 2005), 84.

²⁰ Peter Merkl, *The Origins of West German Republic* (Oxford University Press, New York, 1963), 80.

institutional structure of the Council of the European Union; the current German *Bundesrat* is instead based on a not completely defined mixture of methods *a* and *c*.

If the presence of one of such instruments is at the same time a sufficient and a necessary condition for describing a chamber as ambassadorial, two other features usually accompany them:

a) *the block vote*. We define block vote the requirement that each regional delegation expresses a common ballot in every deliberation. The presence of this feature is a necessary condition for defining a chamber as ambassadorial: in fact, if the representatives' wills only count insofar as they can be referred to those of the regions, and since a region cannot have two wills, it comes as a consequence that two representatives of the same region cannot express different wills. At the same time, this is by no means a sufficient condition for defining a chamber as ambassadorial: for example, it was used during the Philadelphia Convention, whose members were definitively not ambassadors;

b) *the changeable composition*. We have a changeable composition when the Constitution prescribes that the assembly can be composed in different ways depending on the different topics of the discussion. This institution brings to its extreme consequences the tendency, which is proper to every ambassadorial chamber, to destroy the figure itself of the "chamber's member"; this phenomenon is particularly visible for the German *Bundesrat*, in which the will of the region is usually expressed by the so-called *Stimmführer*, a single delegate who carries all the votes of the *Land*.²¹ Contrary to the block vote, the changeable composition is clearly a sufficient, but not a necessary condition for defining a chamber as ambassadorial.

Ambassadorial chambers are far from common: the only institutions which satisfy the above conditions are the German *Bundesrat*, the EU Council and - according to some²² - the South African National Council and the Russian Council of the Federation.²³

²¹ Mastias and Grangé, *Les secondes chambres ...*, 109 defines the *Bundesrat* as a "chamber without members".

²² See Russell, "The Territorial Role ...", 117.

²³ In the rest of the text we will focus just on the first two, not only because of their importance, but also because the classification of the others as ambassadorial chambers is disputable. As for the Russian Council of Federation, a comparison with the other institutions is improper because of the peculiar political situation of the country (furthermore, after the institutional change of 2000, it is disputable that it can still be considered as an ambassadorial chamber).

As for the South African National Council, instead, the idea of its similarity with the *Bundesrat* seems altogether dismissible. Created in 1997, the National Council is composed of ten delegates from each provinces: the Prime Ministers, plus 6 members elected by the legislature for a whole term and 3 who sit in rotation; every delegation cast a single ballot, and all the members can be recalled. These features do not seem sufficient to ascribe the institution to the ambassadorial model. In fact: 1) the right of recall does not serve to impose the will of the provincial legislatures

The first example of a bicameral legislature with an ambassadorial chamber can be found in Germany, with the creation in 1867 of the *Bundesrath* of the *Norddeutscher Bund*. The *Bundesrath's* members were bound to follow the instructions of their governments (otherwise their vote was null); they were protected by diplomatic immunity, and enjoyed the title of His Excellence, which was typical of ambassadors. These features passed almost untouched to the Weimar Republic's Reichsrat and to the current *Bundesrat*.²⁴

It hardly follows, though, that the ambassadorial model was *invented* by the German legislators of 1867, at least in the same way that the senatorial model was invented by the American Philadelphia Convention of 1787. German legislators, in fact, inherited the idea of making the federal chamber's members juridical representatives of the federated government from an institution, the diet of ambassadors, which was extremely common within ancient and modern Confederations. From the Swiss confederation (1291-1798; 1815- 1848) to the Dutch United Provinces (1579-1795), to the United States between 1778 and 1787, all confederation had in fact been ruled by diets composed by the ambassadors of the confederated states or directly by their rulers.²⁵ It was thus primarily by looking at this tradition - and particularly at the Diet of Regensburg, operating within the German Holy Roman Empire between 1663 and 1806; and at the Diet of Frankfurt, operating from 1815 to 1848, and then again from 1848 to 1866 - that the *Norddeutscher Bund* developed its *Bundesrath*.

To prove this point, it is significant that, when in 1867 Germany gave its final shape to the model, the ambassadorial principle had already found an *ante litteram* application in the US Senate at the middle of the 19th century. At that time, in fact, the US southern states began to uphold the so-called "*doctrine of instructions*", according to which state legislatures, which elected senators, also retained the right to instruct them and - if needed - to recall them.²⁶ The argument went as follows: since the Senator was to represent the state, i.e. the state's will, and since the state's legislature was the true depository of that will, it came as a consequence that, should any

over their representatives; it is instead an instrument in the hands of political parties, which, under the explicit terms of the Constitution, are the true holders of the Council seats; 2) the Constitution prescribes that members of the provincial legislatures who are chosen as permanent members of the Council must resign; a provision that clearly contrast the idea of creating a link between the two levels; 3) as it has already been stated, the sole prescription of the block vote does not constitute a sufficient reason for considering a chamber as ambassadorial. In the end, the National Council seems much closer to the South African tradition of corporative second chambers than to the ambassadorial model.

²⁴ For an insightful analysis on the topic, see Francesco Palermo, *Germania ed Austria, Modelli federali e bicamerali a confronto* (Università degli Studi di Trento, Trento, 1997); Barbara Pezzini, *Il Bundesrat della Germania federale* (Giuffrè, Milano, 1990); Fulco Lanchester, *Le costituzioni tedesche da Francoforte a Bonn* (Giuffrè, Milano, 2002), 35-38.

²⁵ See Tsebelis and Money, *Bicameralism ...*, 31-32; Pezzini, *Il Bundesrat ...*; Violini, *Bundesrat ...*, 23.

²⁶ Riker, *The Development ...*, 149; Ross Baker, *House and Senate* (Norton, New York, 1989), 41-42.

differences between the two occur, the latter had the right to remove the former as no longer performing his duty.

This doctrine, however, did not prevail; it found some applications during the second quarter of the 19th century, but was abandoned altogether after the Civil War. Yet, if it had prevailed, it would have clearly made the US Senate the first concrete example of an ambassadorial chamber. Anyway, the emergence of such a theory at least twenty years before the creation of the German *Bundesrath* proves the point we made above: the ambassadorial model was not created in 1867; it simply found its first application then. As we will see, this conclusion is of the greatest importance for the rest of our analysis.

3. A Crisis of the Senatorial Model

Paragraph 2 shows that the federal chamber is not a unitary category, but one which includes two different modulations: the ambassadorial model, adopted by Germany and the EU; and the senatorial model, adopted by all of the other federal countries.

If we confront these results with the data provided in paragraph 1 concerning the diffusion of the federal chambers' crisis, an interesting point clearly emerges: the line between ambassadorial and senatorial chambers perfectly overlaps with the one between the chambers that have and have not experienced such a crisis. Consequently, it is only natural to ask: is it possible that this crisis does not depend on a generic problem of the federal chambers, but on a specific flaw of the senatorial model?

This paragraph addresses this question and answers it in the positive, by showing the existence of a link between the assumptions upon which the senatorial chambers rest and their degeneration into fully nationalized, party-dominated institutions.

As we have seen in paragraph 2, the senatorial model interprets the concept of regional representation as a form of *political representation of federated communities*. At that level we could be satisfied with this definition, for we simply wanted to stress the difference between that interpretation and the one offered by the ambassadorial model; but what exactly does it mean? What is it exactly that the member of the senatorial chamber represents?

The most obvious answer, that he represents the *regional people*, is unacceptable. The concept of people cannot be applied to a region, unless one wants to reject the consolidated idea of the unitary nature of the federal

state.²⁷ Yet, since political representation necessarily requires some form of unity between those who are represented, we need to find something else, other than the concept of people, which can provide such a unity.

The best solution seems to be offered by the idea of a *representation of status*. A status can be defined as the way under which the law regards an individual as a holder of specific interests in his quality of member of a specific group or category. In contemporary states, the status is the base upon which groups such as denominations or nationalities find their relevance in front of the law; in fact, because of the individualistic assumptions of modern philosophy, fundamental rights cannot be granted to groups per se, and are therefore given to individuals regarded under their status of members of those groups.

Regional affiliation (being a Californian, a Bavarian, etc.) clearly qualifies as one of such statuses. Specifically, it is a status to which certain governments - the federal ones - attach a particular importance, but which is in principle undistinguishable from the others; so that, for instance, a corporative government can instead attach more importance to the status of somebody's job position.²⁸

It is on this concept that the idea of a regional representation can best and most solidly be based. In this sense, representing a *regional community* would mean representing a specific number of citizens, but considering them only with respect to the specific status of their regional belonging (not with respect to the complex of their interests). In other terms, it is as if the representative were wearing a pair of colored glasses, filtering all but one of the people's characteristics.

If this is so, though, a problem emerges. When we discussed political representation in general we said that the means to ensure the needed correspondence between the representatives and the people is the general election; but the matter is much worse with a representation of status. In this case, in fact, the representative is not only required to 1) conform to the interests of the represented, but also - and at least as fundamentally - to 2) only represent them under the specific status of their regional belonging.

²⁷ If there truly were a regional people, i.e. a regional entity with a general interest, such an entity would necessarily have the right to evaluate whether each decision taken at the central level conforms or not to that interest. In the latter case, the region could lawfully decide not to enforce that decision, a result which clearly conflicts with the unitary nature of a federal government.

²⁸ A certain similarity between federalism and corporativism has been acknowledged by Arendt Lijphart, *Patterns of Democracy* (Yale University Press, New Haven, London, 1999). A striking proof of this relation, which specific reference to the topic of second chambers, can be offered by the South-African transition from a corporative (ethnic) bicameralism to a federal bicameralism during the 90s.

Unfortunately, if the first goal can be achieved through the simple means of the elections, the second cannot. The only instrument which can guarantee that the representative does not put down his colored glasses is the nature of the activity which he is called to perform: if this activity only involves the people's regional statuses, he will act as if he were only considering the regional belonging of the represented; if instead such an activity involves the people's general interest, he will surely not, for the simple, obvious reason that he will have no interest to do it.

Unfortunately, this is precisely what happens within senatorial chambers (contrary, for instance, to the regional assemblies ruling a particular territory): their members are required to perform a representation of status, but at the same time to operate within a field where the whole set of the people's interests are involved.

The consequence, quite unsurprisingly, is that the representative inevitably stops considering the members of its regional community under the specific status of their regional belonging, and starts to look at them with respect to the all of their interests. Consequently, the chamber loses its regionalized shape. Regional groups start to crumble, and new groups emerge, based on lines which depend on the specific profiles that electors consider to be the most relevant (religion, economic interests, international collocation). On average, so, unless such profiles are specifically those related to the regional affiliation (but in this case, the whole national politics will be structured around the regional *cleavage*), the groups will most likely be structured according to political ideologies, i.e. the profiles which - because of their all-inclusiveness - best reflect the subdivisions of the electorate.

In conclusion, so, the evolution of the senatorial chambers into nationalized, party-dominated institutions is by no means accidental; it depends instead on a theoretical flaw of the senatorial model. If this is so, one may ask: how is it possible that such an intrinsically flawed model found such an incredible diffusion? To this question we must now turn.

4. Philadelphia or the Origins of Federal Bicameralism

Paragraph 3 closes with a question: since we have shown that the senatorial chamber is intrinsically (not accidentally) unable to work as a clearing house for state interests, how can we explain that so many countries adopted that model precisely in order to have it perform that function?

To this question, to some extent, we have already answered: we have in fact shown that the reason of the diffusion of the senatorial model essentially lies in the strength of the example set by the US Senate. Yet, this answer is not fully satisfactory, for it almost automatically raises another question:

then, why did the US Framers themselves adopt such a flawed model? This paragraph aims to provide an answer, by showing that:

a) the Framers did not develop the senatorial model by either accident or mistake; instead, they purposely chose to use the existing institutional material, which would have led them towards the ambassadorial solution;

b) they did so because they did not primarily intend the Senate as the manifestation of the confederal root of the Union, as they later claimed. In fact, although this idea appears in the Federalist Papers, it does not reflect either the real intention of the Federalists (particularly of James Madison) or the true will of the Framers; it was elaborated only after the conclusion of the Philadelphia Convention, essentially as a polemical reply to the Antifederalists' attacks against the upper chamber;

c) the true rationale which led the Framers to build the Senate - not just a Senate, but *that* Senate - had originally to do not with federalism but with the theory of *mixed government*, and, more specifically, with the madisonian idea of the necessity of a protection against the risk of factionalism.

We will in sum show that the US Senate became a full-fledged parliamentary assembly not because the Framers' device did not work, but because it worked, and worked extremely well.

4.1. The Framers Intentionally Rejected the Ambassadorial Solution

Why did the Framers choose the ineffective senatorial model over the effective ambassadorial one? One answer could be that they simply lacked the institutional material necessary to adopt the latter solution and were consequently bound to resort to the former. This answer is simply wrong: not only did the Framers have all that was necessary to build an ambassadorial chamber; even more, this choice should have been for them the most natural one.

As we have already noted in Paragraph 2, the theory, first advanced by James Madison, according to which the Senate was to be the embodiment of the confederal root of the Union, leads to a paradox within the paradox. This explanation, in fact, depicts the Senate as nothing less than an heir of the Congress, the organ which had ruled the former colonies under the Articles of Confederation between 1781 and 1787. Nonetheless, if we confront the features of the Senate with those of its alleged ancestor, we discover a striking number of dissimilarities, which invest basically every feature of the institution: congressmen were elected every year, senators every six; congressmen were paid by the states, senators by the Union; congressmen

voted per state, senators per capita; congressmen could be instructed, senators could not; congressmen could be recalled, senators could not.

The idea of a Senate heir of a Congress, in other terms, simply does not work. If the Framers had truly wanted the Senate to represent the confederal root of the Union, they had but one option: to make it an ambassadorial chamber. To do so, they should have adopted even only some of the features of the Confederal Congress, such as the right of instruction and recall; but when the Anti-federalists advanced those proposals, the majority of the Convention simply turned them down.

Of course, one could object that, at the very least, the Convention still maintained the principles of equal regional representation (E.R.R. in the acronym coined by Wilfred Swenden²⁹) and of the election by the state legislatures. Yet, both were only seeming concessions to the confederal principle.³⁰ Equal representation would in fact do nothing more than favor the small states.³¹ The election by the state legislature, on its part, could not create any sufficient link between senators and the states, both because of the lack of the right of instruction and recall, and because the Senators' long term (6 years) shielded them from any interference from their electors (whose terms were usually of 2 years; furthermore, since the senatorial elections usually followed those of the legislatures, the senators almost never faced the same institution which would later judge them).

4.2. The Framers Did Not Want a Clearing House for States' Interests

Sub-paragraph 4.1. describes the terms of a paradox within the paradox. Apparently, the Framers: 1) wanted an institution which represented the confederal branch of the new government; 2) had at their disposal all that was necessary to create an ambassadorial chamber, which would have been perfectly in line with that function; 3) rejected instead that path and decided instead to create a senatorial chamber, patently unable to work to that end.

Quite obviously, one of these assumptions must be false; and, since the ones under 2) and 3) are factual elements, the false one cannot be but the first one. In other terms, although they said so, the Framers did not want an institution which represented the confederal branch of the new government. They did not want any such thing as an heir of the old Congress.

²⁹ Swenden, *Federalism ...* .

³⁰ Riker, *The Development ...*, 30-31.

³¹ To be sure, the four-sided states, according to the accurate reconstruction of Frances Lee and Bruce Oppenheimer, *Sizing Up the Senate: The Unequal Consequences of Equal Representation* (University of Chicago Press, Chicago, 1999), 34.

This is precisely the conclusion to which Gordon S. Wood arrives in his analysis of the cultural and institutional factors beneath the creation of the American republic.³² According to Wood, the original rationale of the Senate was not that of representing the confederal branch of the Union; this explanation was conceived by Madison and the Federalists only after the closure of the Philadelphia Convention, to shield their creature from the harsh criticisms coming from the Antifederalists' field. Since this episode is the turning point of the history of federal bicameralism, it is useful to analyze it in greater detail.

During the ratification of the Constitution, the Senate had begun to be the center of the attacks of the Antifederalists - the supporters of a weakly centralized government - who claimed that this institution was one of the most prominent examples of the alleged centralistic and aristocratic inspiration beneath the Federalists' design. According to the Antifederalists, in fact, through the Senate - the true pivot of the new system - a small group of men would control the future of the whole continent. Particularly under attack were features such as the indirect election, the small number of members, the long tenure of office, and the special competences.

Since such accusations were finding a fertile ground in the Whig ideology pervading most of American public opinion, the Federalists needed to find a new basis for the justification of the Senate. The idea of its being the heir of the Confederal Congress was a perfect candidate for such a justification, since it combined the two accusations of the Antifederalists and turned them against them. To do so, the Federalists (particularly James Madison and James Wilson) began to slightly change in their political writings the meaning of some of the most fundamental features of the institution. In particular:

a) the election by the state legislatures, originally developed as a means to keep the chamber autonomous from the House and still grant it a democratic foundation,³³ began to mean that senators would be the defenders of the states within the new government;

b) the equal representation clause, originally nothing more than a political compromise, with no theoretical significance,³⁴ came to be the symbol of the retention of some portion of sovereignty in the hands of the States;³⁵

³² Gordon Wood, *The Creation of the American Republic* (University of North Carolina Press, Charlotte, 1969).

³³ See Lee and Oppenheimer, *Sizing Up ...*, 24.

³⁴ See Madison, quoted in Max Farrand, *The Framing of the Constitution of the United States* (Yale University Press, New Haven, London, 1913), 111.

³⁵ See Lee and Oppenheimer, *Sizing Up ...*, 34.

c) finally, the special competences became the sign that the *confederal* root of the new government had the prevalence over the unitary one, represented by the House (whose only prominence over the Senate regarded the very specific field of money bills, “a trifle light as air”, as it was defined by James Wilson³⁶).

In the words of Wood: “The Federalists found a justification for the upper house that they had not anticipated. ‘The people will be represented in one house, the state legislatures in the other’, the Federalists said time and again in explanation of the establishment of bicameralism in the new Congress. The Senate now became a means of restraining ‘the large states from having improper advantage over the small ones’. Indeed - many Federalists could now argue - precisely because ‘the senators represent the sovereignty of the states’, the consolidation predicted by the Antifederalists could never result.”³⁷

Ironically, the one who granted this disguising reinterpretation such a fame that it displaced once and for all the original ratio of the Senate, was that same James Madison who had been the strongest opponent of both election by state legislatures and equal representation. Which is a final proof of how far was the idea of the Senate as the representative of the confederal principle from the mind of those who actually designed the Senate, *when* they actually designed it.

4.3 What the Framers Wanted

If Wood is right, then what originally was the Senate for the Federalists? The answer can be best given through the words of Elaine Swift³⁸: it was to be an *American House of Lords*. This did not mean, though, that the Antifederalists were right in saying that what the Federalists wanted was an institution to protect the American burgeoning aristocracy: it is not in this sense that they referred to the British example. Let us enlarge on this topic.

At the end of the 18th century, the protection of the aristocracy had long stopped being the most common justification for the House of Lords; in fact, not less than a century before, such a justification had begun to be replaced by the *theory of the mixed government*. According to such a theory - which, originally developed by Polybius, had been resumed in the 17th century by British Whig thinkers - the upper chamber served to bring into the legislative process that compound of principles (monarchic, aristocratic and democratic)

³⁶ Wood, *The Creation ...*, 556.

³⁷ *Ibid.*, 558.

³⁸ Elaine Swift, *The Making of an American Senate: Reconstitutive Change in Congress, 1787-1841* (University of Michigan Press, Chicago, 1996).

over which every good Constitution had to be based.³⁹ In this light, the representation of the aristocracy was no longer an end per se (meaning that the aristocracy had to be represented so that the aristocracy's privileges could be more secure), but rather a means whose aim was to contribute to the general interest of the people (which would benefit from the mixed government).

Americans had imported this theory from Europe during the 18th century, mostly through the work of Montesquieu, and had adapted it to their peculiar political situation. In particular, although they accepted the principle of compound government, they also strongly rejected the idea that it required some concessions to the much hated aristocratic principle.

What Americans Whig theorists wanted, in other terms, was an upper chamber which could work as a bulwark against the excesses of democracy, and particularly of popular transient impressions - as part of that system of check and balances which they were beginning to consider the true essence of the new, republican government. Yet, they wanted an institution which did not entail the admission of privileges on the basis of birth, as it was the case with the British House of Lords. But if the upper chamber was to represent the people, just as the lower chamber, how could it effectively restrain the people's impulses?

How to combine these two needs? How, in other terms, to build a *truly American* House of Lords? When the Convention of Philadelphia met in 1787, such questions had long been answered. It is in fact not enough stressed that, at the time of the Convention, eleven of the thirteen former colonies had already adopted a bicameral legislature⁴⁰. The eleven Constitutions provided the Framers with all the material which was necessary to solve the problem.

The basic idea had been offered by the progressive discovery of the non-neutral nature of representation. If both chambers had to represent the

³⁹ See Donald Shell, "The History of Bicameralism", 7(1) *The Journal Of Legislative Studies* (2001), 7; Tsebelis and Money, *Bicameralism ...*, 19-20.

⁴⁰ The exceptions were Georgia and Pennsylvania, which adopted bicameralism respectively in 1789 and in 1790; on this, see Thomas Moran, *The Rise and Development of the Bicameral System in America* (John Hopkins Press, Baltimore, 1895). The prevalence of bicameralism at the sub-national level (which still resists, with Nebraska being the only unicameral State) differentiate the U.S. from almost all of the other federations, which is a further proof that the rationale for bicameralism in that country was never predominantly federalism. The only other federal countries with sub-national bicameral legislatures are Australia (all of the six states were bicameral before Queensland turned to unicameralism in 1997), Argentina (8 provinces out of 24) and India (5 states out of 25). Germany's *Land* of Bavaria was considered as having a bicameral legislature until it abolished its upper chamber in 1998; nonetheless, the organ's parliamentary nature was disputed, for it more strongly resembled a powerful economic-social council (an institution which is common in the tradition of European and especially German-based democracies). On the topic, see: André Malamud and Martin Costanzo, *Subnational Bicameralism, The Argentine Case in Comparative Perspective* (Proceedings of the 19th World Congress of the International Political Science Association, 29 June - 4 July, Durban, 2003).

people, in fact, this did not imply that they had to do so the precise same way: second chambers could therefore carry a representation which would differ not in nature, but in quality from that of popular chambers. Therefore, they could still help to exercise a restraint on the popular will.

In particular, the solutions were: a) a long tenure of office and the indirect election (or elections with higher wealth requirements, or larger constituencies), which served to protect Senators from popular transient impressions; b) the staggered term, which prevented constant waves of new, inexperienced components; c) the small number of members, which was crucial to make every Senator more responsible and to avoid the creation of factions; d) a series of special competences, which - by bringing the second chamber closer to the executive - served to make it perceive itself as the true depository of the State's supreme interests.

In this respect, a particularly interesting example is that of the Senate of Maryland. Its 15 members were chosen by a body of great electors, which on their part were elected by the people at large in number of two per county, regardless of the population. This scheme, writes Wood, "soon came to represent for many the best method of isolating the social elite".⁴¹ The similarity with the US Senate is striking.

The influence which such provisions exerted over the choices of Philadelphia is enormous. The name *Senate* itself - which incidentally is the definitive sign of the classical, rather than federal, ascendancy of the institution - was taken directly from the states' upper houses (in particular, probably, from that of New York), and accepted by the Convention apparently without a discussion.⁴²

The member of the Convention who most vocally advocated the mixed-government justification of bicameralism was James Madison, ironically the same one who would later link his name to the Senate's disguising re-interpretation as the confederal branch of the government. In particular, Madison adjusted the mixed-government theory to one of the most important postulates of his philosophy, i.e. the need for a protection against "factionalism."

Federalist n. 10 famously defines factions as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of

⁴¹ Wood, *The Creation ...*, 214.

⁴² The name *Senate* first appears in the Convention's Records of 31 May, as emerges from Farrand, *The Records ...*, 51.

the community.”⁴³ At least as famously, Madison claimed that the main protection against factionalism came from a truly *republican* - as opposed to democratic - government, i.e. one in which the power was held by a representative body rather than by the people at large.

Of course, not every possible representative body would work to Madison’s scope, since even a representative body could yield to factionalism. In particular, “a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.”⁴⁴

Autonomy from the people (to be obtained through long tenure of office and possibly indirect elections), and possession of great wisdom (to be obtained through small number of members and the self-perception as the true depository of the state’s highest interest): these were the two most fundamental features Madison was looking for. At the same time, he was of course aware that both the dependency of the legislature on the people and its large composition were essential instruments which it would be neither possible nor safe to eliminate. How to reconcile such opposing needs?

It is as an answer to that question that Madison and the Federalist, on the example set by the state Constitutions, designed the US Senate. It is therefore not surprising that they did not set up any of the instruments which would have allowed senators to be true representatives of the states interests: the only function that the states and the state elections had to perform was to give legitimacy to the institution. But apart from that, no other link was necessary.

In conclusion, so, the Framers delineated a Senate patently unsuitable to work as a clearing house for state interests essentially because they did not want it to perform that function. They “intended and expected senators to be national legislators, not primarily representatives of state interests.”⁴⁵ It was only because of political, contingent reasons that they were forced to forge the theory of the Senate as the representative of the confederal branch within the Union.

Unfortunately, though, thanks in part to the success of the theory of federalism as a median form of government between the unitary state and the confederacy, and in part to the incredible fame that the Senate gained, this

⁴³ Hamilton, Madison and Jay, *The Federalist ...*, 72.

⁴⁴ *Ibid.*, 377.

⁴⁵ Lee and Oppenheimer, *Sizing Up ...*, 24.

reinterpretation definitively displaced, especially in the eyes of foreigners, the Senate's original ratio.

The problems arose when more and more countries began to build their federal chambers on the US model, on the wrong assumption - shared by many theorists of federalism - that this would provide them with an effective instrument for the representation of the regional interests, thanks in part to E.R.R. and in part to the indirect election. Unfortunately, though, none of these features could oppose the intrinsic tendency of the senatorial chamber to evolve into a fully nationalized institution, since such a tendency was ultimately due to a simple factor: that the institution had been designed precisely to that end.

5. Federalism, Federal Chambers and the Party System

According to the results of paragraph 4, the crisis of senatorial chambers is not only intrinsic to their institutional model, but also, in a sense, intentional. In other terms, the phenomenon by which the federal chambers' members tend to become national legislators, rather than representatives of the states, is determined by the fact that such chambers were modeled on an institution which was purposely designed to encourage that trend.

At this point, one could probably conclude that - as many propose - the only solution to the senatorial chambers' crisis is their substitution with many *Bundesrat*-like institutions. That conclusion is profoundly mistaken: on a closer analysis, in fact, it is clearly founded upon an illegitimate link between the thesis that the senatorial chamber *cannot work as a clearing house for regional interests* (which has been proven true) and the completely different thesis that the senatorial chamber *simply cannot work*. Which instead not only has not been proven, but - as we will show - cannot be proven at all.

After all, the point on which we have concentrated so far, i.e. that senatorial chambers cannot perform that function simply and only because they were not originally intended to do so, should do nothing but convince us that these institutions might instead work well to some other end - and that consequently, maybe they should not simply be abolished, after all.

The question, therefore, is: can the senatorial chamber perform some function other than that of a clearing house? Our hypothesis is that it can; to see why, we must move our focus from the analysis of the relation between federalism and bicameralism to that of the relation between each of them and another crucial factor: political parties.

Let us now turn to the second side of our triangle: the relation between federalism and political parties.

That political parties strongly influence the functioning of the system of government, is a common assumption of political science⁴⁶ (which, in a sense, dates back to James Madison, as we incidentally saw in paragraph 4). That in particular the advent of mass - based, institutionalized parties - or, in the words of Giovanni Sartori⁴⁷, the structuration of the party system - has posed a serious threat to the machinery of constitutionalism developed in the 18th and 19th centuries, is at least as recognized.

As a part of that machinery⁴⁸, federalism has of course not been immune from such a threat⁴⁹. In particular, what has been especially crucial in re-shaping federalism is the introduction of a para-hierarchic relation between the national and regional political personnel, which has usually accompanied the advent of mass-based parties.

In fact, if federalism was essentially developed in an age when the holders of national and peripheral offices were supposed to have nothing more than institutional contacts, such a bucolic picture seems plainly risible to a contemporary observer. Although of course no worldwide (or even western-worldwide) generalization is possible, because of the difference between the several countries' party systems, it is a fact that the advent of mass-based political parties has created a central body of party functionaries (up to the party's secretary) whose control over the periphery, although exerted through incentives and stimuli which constitutional law for the most ignores, is probably more extended than that of any officeholder under the 18th century scheme of government.

The source of such a control lies essentially in the crucial aspect of the *cursus honorum* of the political personnel. It is in fact a quite common experience that the ambitions of party members go from bottom to top, meaning that those who operate at a local or regional level aim sooner or later to enter the national political competition. As a consequence, since it is usually the central party structure that holds the key to most relevant national seats, it is almost impossible for regional officeholders not to submit to the indications they receive from the center.

⁴⁶ This is also true of legal doctrine. See in particular Levinson Daryl and Richard Pildes, "Separation of Parties, not Powers", 119 *Harvard Law Review* (2006), 2312-2386.

⁴⁷ "A party system becomes structured when the elector does not follow a notable anymore, but is oriented towards an abstract party image, or towards the ideologies which animate the parties. Concretely, a party system is *structured* in presence of mass parties." Giovanni Sartori, *Elementi ...*, 343.

⁴⁸ The link between federalism and constitutionalism is extremely limpidly analyzed by Guido de Vergottini, "Stato federale", in *Enciclopedia del Diritto. Vol. 43* (1990), 832.

⁴⁹ On the importance of political parties in shaping the functioning of federalism, see Friedrich Carl, *Trends of Federalism in Theory and Practice* (Frederick A. Praeger, New York, 1968).

This trend is of course neither irresistible nor common to every country. In particular, a crucial factor against it is the common experience of the personalization of the regional politics around the figure of the regional President. Although this phenomenon has sometimes been regarded as a pathology of federalism, and as an instance of the contemporary tendency towards charismatic politics, it still presents some undeniably positive effects: in fact, by granting to the top regional office such a strong visibility, it creates a figure which can appropriately complete the *cursus honorum* of the regional personnel, diminishing its tendency to look at the center to find an outlet for its ambitions.

But the strongest factor against such a trend still lies in the nature of a Country's party system. If parties are strongly centralized and strongly structured, no instrument such as the personalization of regional politics will avoid the accretion of the national control over the periphery. If instead the party system is sufficiently decentralized (i.e. defined over local cleavages, to the limit of the presence of region-based parties) and non-structured (i.e. not articulated on a hierarchic model) federalism will still have hope to keep working; or at least, if one finds a value judgment to be out of place, to keep working according to its 18th and 19th century original scheme.⁵⁰

If this is so, the examination of the other side of the triangle - the relation between *federal chambers* and the *party system* - acquires an unexpected importance. In what way do federal chambers affect the nature of party systems? Do they help to keep it decentralized and destructured? Or do they contribute to its centralization and structuration? Or are they simply neutral?

These questions will occupy us through the rest of the paragraph. First, we will analyze the impact on party systems of the German *Bundesrat* and generally of the ambassadorial model; second, we will focus on the case of the US Senate (for now, we will instead leave aside the senatorial chambers of the other countries, which - having grown into mere copies of the national chambers - basically had no influence at all on their party systems).

5.1. *The Bundesrat and the German Party System*

If it is true that - contrary to the other federal chambers - the *Bundesrat* has essentially maintained its role as a true representative of *Länders'* interests, and that it has gained an importance which the Framers in 1787 had probably not even anticipated, it is also true that all of this came with a price.

⁵⁰ See Elazar, *Exploring ...*, 178; Austin Ranney and Willmoore Kendall, *Democracy and the American Party System* (Harcourt Brace World, New York, 1956).

It is in fact commonly acknowledged that the increased importance of the *Bundesrat*⁵¹ has had the side-effect of significantly nationalizing the *Länder's* elections, by giving them an immediate national impact: in fact, the German electors know even too well that when they elect the *Länder's* governments they are also slightly, but often significantly, changing the equilibrium within the national government, and they act consequently.

This has resulted in the regional elections having been loaded with an incredible national visibility, with party leaders' appearances during the campaigns of even the smallest *Länder*. As a consequence, such elections have seen the electorate essentially divided over national issues rather than over local matters.

The effect has been of the greatest importance: in fact, by preventing local cleavages to emerge, the link between the *Länder's* and the *Bundesrat's* elections has strongly contributed to the centralization of the German party system, which on its part is a key feature to explain the German tendency towards an entanglement of the several levels of government. This has been particularly true of the years after the German reunification, when the dissolution of the two-and-a-half party system has made the support of the *Bundesrat* even more fundamental for the government, giving its election an even increased importance. In this sense, the reform of 2006, which aims among the other things to reduce the *Bundesrat's* influence by redefining the criterion identifying the areas of legislation over which it has an absolute veto power, can be interpreted as a way to reply to that tendency.

This being said, to the scope of our analysis it is crucial to understand whether the party-centralizing role played by the German *Bundesrat* ultimately depends on a specific feature of that particular institution or can instead be considered as a standard by-product of every ambassadorial chamber. If the latter were the case, we would be justified in claiming that: although the ambassadorial model is a very federalism-enhancing tool, when regarded as a means to provide a clearing house for regional interests; when instead it is regarded from the point of view of its effect on the party system, paradoxically it proves to be a strongly anti-federal institution.

To some extent, one could say that the party-centralizing effect of the German *Bundesrat* depend on some of its peculiar feature. It is undeniable that the obviously excessive powers granted to (or acquired by) the *Bundesrat* have strongly contributed to make that mechanism start in the first place

⁵¹ Today the *Bundesrat* exercises an absolute veto power over slightly less than 60% of the total number of bills. The constitutional reform approved in July, 2006 should probably reduce that percentage to around 20-30%. On the topic, see Jens Woelk, "La riforma del sistema federale tedesco: riuscito il primo atto", *federalismi.it* (2006), at <http://www.federalismi.it>.

(excessive importance of the *Bundesrat* → nationalization of *Länders'* elections → centralization of the party system).

Yet, on a more fundamental level, it seems that the original sin is in the model rather than in its application. After all, in fact, its precise theoretical basis is that federalism works better if the two levels of government are entangled: it is therefore certainly not surprising that the parties' levels get entangled too. The problem arises - one could say - by the combination of the two effects: in fact, the entangling effect on the institutional level and the entangling effect on the party system, combined together, seem to pose a fatal threat to federalism.

At the same time, it is important to stress that entanglement does not necessarily mean centralization. In other terms, the fact that the blurred distinction between the two parties' levels ended up strengthening the central rather than the peripheral one, was probably due essentially to the specific nature of the German party system. Most likely, in presence of a previously highly decentralized party system, the introduction of a very strong ambassadorial chamber would have ended up having the very opposite effect: rather than submitting the periphery to the center, it would have submitted the center to the periphery. In fact, it would have prevented the usual phenomenon by which, after the formation of a federal country, the party leaderships become more and more centralized because of the necessities of the unitary government.

This specification accounts for the effect that a strong ambassadorial chamber has played in that peculiar proto-federal country which is the EU. In fact, the retention of virtually all the centralized powers in the hands of the Council (and of the European Council) has made it possible for the national political personnel to keep all of their strength, avoiding precisely the above phenomenon to take place. As a consequence, no truly pan-European parties and pan-European public opinion have developed - an absence which still marks the real difference between the EU and a true federal system.

Drawing on the above cases, then, we can make the following final generalization concerning the potential effects of the adoption of an ambassadorial chamber on a country's party system: the ambassadorial chamber prevents the two levels of government to initiate potentially different party dynamics; it would make either the periphery dependent on a centralized party system or the center dependent on a peripheralized party system. In both cases, its negative impact on the functionality of federalism - from this perspective - is undeniable.

5.2. *The Senate and the US Party System*

The situation appears almost reverse when we move to the archetype of the ambassadorial model to that of the senatorial one. Perfectly in line with Madison's hopes, in fact, the US Senate seems to have played a significant role in de-centralizing and de-structuring the American party system. So, even though it has not prove to be an effective instrument for the representation and compensation of the state interests, apparently the Senate ultimately had a positive impact on preservation of the functionality of US federalism.⁵²

That the US party system is highly decentralized and non-structured, is a well-known fact. Even more, it has been suggested that it is precisely this peculiarity that has made it possible for the institutional design of Philadelphia to keep working for over two centuries. The long series of failed attempts to export that model have in fact made it clear that neither presidentialism nor a true federalism can work in presence of a structured and/or centralized party system.⁵³

Of course, the decentralized and non-structured nature of the US party system is not entirely imputable to the Framers' design: the way party systems evolve obviously depends for the most on factors which fall short of anybody's control. Yet, this does not mean that there are no instruments for influencing at least the general trend of this evolution.

Among such instruments, the most famous are of course the electoral laws - but they are by no means the only one. In particular, among the factors contributing to maintain the US party system non-structured and non-centralized, we can mention⁵⁴: 1) the monocratic nature of the executive, which has prevented the emergence of that web of affiliations based on the distribution of governing seats which is crucial for the birth of structured political parties; 2) the federal government, which has made it possible for regional *cleavages* to keep their strength; 3) the primary system, which - along with the first-past-the-post election - has coerced ideologically distant groups into getting united.

But it seems possible to say that the Senate itself has played an important role. To understand in what sense, we must go back to the reason why the structuration and centralization of a party system ends up having a negative impact on federalism. As we noted before, the key factor beneath this negative impact is the insurgence of a para-hierarchic relation between the regional political personnel and the central party structures; as we have also

⁵² Riker, *The Development ...*, 218.

⁵³ Giovanni Sartori, *Ingegneria costituzionale comparata* (Il Mulino, Bologna, 1995), 191.

⁵⁴ Fred W. Riggs, "The Survival of Presidentialism in America", 9 *International Political Science Review* (1988), 254.

said, this, on its part, depend on the fact that if the former wants to progress in its *cursum honorum*, it necessarily has to obtain the consent of the latter - which means that it has to abdicate some of its independence.

In this context, the importance of the Senate lies in the fact that it introduces a national seat which is at the same time of crucial importance and obtainable only through the political action at the state level. Even more, the fact that such a seat has gradually become the most revered and sought-after among all national posts (except of course for the Presidency, for which - though - the senatorial bench has proven to be a good springboard) has strongly helped the state party levels to keep their key role in American politics.

To some extent, and taking into consideration that the Senate is just one of the factors beneath such a process, one could say that the relation of political dependence between the periphery and the center of political parties that we described earlier, in the US operates backwards. It is in fact the central political personnel that is bound to maintain a strong link with the party's state level and with the state public opinion, if it wants to arrive to the most important step of its political career.

In this sense, so, we can say that, even though indirectly, the US Senate has played a major *federal* role. It did so particularly thanks to two of its characteristics:

1) the senatorial seat is a crucial national post, which can constitute the acme for the career of the political personnel. This characteristic, on its part, depends on three features of the Senate: is small number of members, the long and staggered term and the special competences. If it had not been for those features - unsurprisingly, the same ones that, as we noted earlier, Madison strongly advocated -the Senate would have probably ended up playing no role at all in this game;

2) the senatorial election has stayed primarily a matter of state politics. This key element depended essentially on the monocratic election of senators and on the state-large constituencies: in fact, on the one hand, they have prevented central parties from becoming overly important in the choice of the candidates; on the other hand, they have given the competition a regional relevance which has strongly contributed to its being played essentially over regional topics or over regional approaches to national topics.

6. To Make the Senatorial Chamber Work

Paragraph 5, which has turn our analysis to the topic of party systems and their relations with federalism and federal bicameralism, has arrived to two important conclusions:

1) although the ambassadorial chamber is extremely effective as an instrument of intergovernmental confrontation, and therefore can strongly enhance the efficacy of federalism on the institutional level, it exerts an undeniably negative impact on the level of the party system. In fact, it contributes to entangle the central and regional party structures, with the result of either making the latter depending on the former or vice versa;

2) the archetype of senatorial chambers - the US Senate - is not as neutral with regards to federalism as we had concluded during our earlier analysis of institutional mechanics. In fact, by offering the regional political personnel the possibility to achieve a national crucial seat without having to submit to the central party structures, it strongly contributes to maintain the functionality of American federalism.

Let us focus on this latter point. We began paragraph 5 by asking whether it is possible that, although unable to work as a clearing house for regional interests, a senatorial chamber could still perform some other federal function. To this we must now answer in the positive: at least one of the senatorial chambers - their archetype, to be sure - has in fact performed some *other federal function*, i.e. it has contributed to the decentralization and deconstruction of the US party system.

This raises a further question: is it possible for the other senatorial chambers, which instead appears to have been simply useless, to perform that function? The answer seems to be positive. As we stated earlier, in fact, the ability to perform that function depends essentially on a very small number of features which characterize the US Senate but were not adopted by the other countries, probably because they were misled by the idea of the Senate as the representative of the confederal root of the Union. That mistake, though, is not irreversible.

What conditions must therefore a senatorial chamber satisfy in order for it to work as a party-decentralizing and party-destructuring institution? It must simply be an *effective* and *appropriate* outlet for the ambitions of the regional political personnel. More precisely:

1) it must be an *effective* outlet, meaning that the elections of its members must stay primarily a matter of regional relevance (even though, as we have long established, they will ultimately operate entirely as national legislators, not as representatives of regional interests). How to achieve this goal? Different solutions can be developed, apart from the US option for a monocratic election in state large districts. For instance, the elections for each regional senatorial delegation can be held separately, together with those of each regional government; this would probably increase the

importance local cleavages and decrease the influence of central party organizations.

2) it must be an *appropriate* outlet, meaning that the senatorial seat must be regarded as sufficiently important, so that it can constitute the crowning achievement for the regional political personnel. In order for this to be achieved, senators must be granted the strongest possible autonomy from parties, from the first chamber and from the executive.

How can this second result be obtained? There can be several ways, and it is neither useful nor possible to enumerate them. There is only one point that needs to be stressed: autonomy does not necessarily mean power. On the contrary, if the chamber's powers are so vast that it becomes concretely impossible to govern without it or against it, the chamber's elections will inevitably assume a strong national connotation that will erase whatever regionalization one may try to achieve. Of course, it is also true that autonomy requires authority: if the powers granted to the federal chambers are so feeble that it becomes nothing more than an advisory council, it will be impossible for it to play any significant role on the party system.

The problem, thus, is to find the right balance between autonomy and authority: the chamber and its members must be sufficiently strong to be relevant, but not so strong that they are bound to cooperate with the system.⁵⁵ In this sense, the only possible suggestion for the quest of such a balance is that it might be found in the formula of *few powers, but deep powers*: the senatorial chamber could in fact be usefully stripped of its powers over ordinary legislation, so that it would be possible to govern against it; but, at the same time, it could be granted the last word within some specific fields which do not fall within the area of the normal executive's activity, such as extraordinary legislation, constitutional laws or appointments for guarantee institutions.

⁵⁵ According to Bruce Ackerman, "The New Separation of Powers", 113 *Harvard Law Review* (2000), 633-727, at 671, the search for that balance is made easier in the U.S. by presidentialism, since the risk of divided government is interiorized by such a system, thanks to the areas of relative reciprocal independence of the executive and the legislative. At the opposite, regimes such as parliamentary democracies, which - at least in theory - do not admit the possibility of divided government, should be on full alert against granting excessive powers to the federal chamber. They should content themselves with "one and a half houses." Although the analysis is undoubtedly convincing, it might be useful to stress that - even more than the alternative presidentialism/parliamentarism - what seems to truly count here is, once again, the alternative between countries with/without a structured party system. It is in fact highly doubtful that even the U.S. system of government could work with a different majority in each house, in presence of a strongly structured party system.

7. Conclusion

The results of our analysis can be summed up as follows:

1) beneath the name of federal chamber we have discovered the existence of two, different institutions: the senatorial chamber (whose members are not linked by any mandate or instruction to the regional governments) and the ambassadorial chamber (whose members are instead essentially ambassadors of those governments);

2) although both institutions are nowadays required to perform the same function, i.e. that of providing a place where the diverging interests of the regions can be expressed and composed, only the ambassadorial chamber was originally intended as aimed to that end. On the contrary, the senatorial chamber was initially created in the US to a very different scope: that of providing a bulwark against the risks of politics being dominated by parties. It is in this divergence between ends and means that lies the root of the crisis of the senatorial chambers: they are required to perform a certain function, but are based on an institutional model which was instead intended to perform a different one;

3) since the trend towards parties' structuration and centralization poses a crucial threat to federalism, and since the senatorial chamber appears to weaken that trend (by offering a national outlet to the ambitions of the regional political personnel), in the end it is possible to say that such an institution does in fact perform a federal function. On the contrary, the ambassadorial chamber, by favoring an entanglement of the regional and central levels of political parties, can in the end seriously curtail the autonomy of either one of the two levels, and so, from this point of view, can be negative for federalism.

At this point, one may ask: in conclusion, what way should we choose to solve the crisis of senatorial chambers? Should we simply turn them into many *Bundesrat*-like institutions? Or should we instead accept that they cannot seriously work as representatives of the regional interests, and change them on the model of the US Senate, so to have them perform at least the party-decentralizing and party-destructuring function? There is no single answer. What is important is to clearly state the ends we are pursuing, and be consequent:

1) if we care the most about the efficacy of the governmental activity, we should simply turn to the *Bundesrat*. In fact, an ambassadorial chamber, by working as an effective clearing house for regional interests, can reduce the conflicts and costs arising by the lack of inter-governmental coordination. At the same time, we must be aware that this choice, by making the regional and central party levels basically one and the same, can seriously reduce the

possibility for regional politics to develop any autonomous dynamics, and therefore, in perspective, can seriously curtail the level of diversity within the country. At the very least, since this phenomenon increases in line with the extension of the veto powers granted to the federal chamber, this consideration should make us skeptical about too strongly expand those powers, on the false but common premise that this would help federalism to work better.

2) if instead we care the most about the level of autonomy and diversity that federalism enhances, we should definitively reject the *Bundesrat* model. In this case, though, rather than simply keeping an ineffective senatorial chamber, it would probably be useful to change it in the direction described in paragraph 6 (to make it be an *effective* and *appropriate* outlet for the ambitions of the regional political personnel), so to have it work as a party-decentralizing and party-destructuring instrument. This, of course, also comes with a price: in particular, such a price consists of the raise in the costs of federalism, which would arise out of the increased political autonomy of the sub-national units, and out of the lack of a place where the differences can be expressed and reduced to unity.

The choice seems in other terms to depend ultimately on which value is given the strongest importance: efficacy of the governmental activity or autonomy and differentiation. In the end, thus, we have been apparently led to one of the most fundamental distinctions within the federal thought: that between “federalism as a means” and “federalism as an end”, in the accurate definition of Daniel Elazar⁵⁶. On the one side, there stand those who support federalism because it increases the total welfare of the society, by bringing the public response closer to the interests which have activated it. This interpretation - which is today particularly widespread, as it is shown by the diffusion of the idea that federalism can be reduced to the subsidiarity principle - quite obviously leads to a preference for the ambassadorial model, which enhances the functionality of the governmental activity at the cost of a diminution in the level of peripheral autonomy and internal differentiation.

On the other side, there stand those who support federalism on the assumption that differentiation is good per se, either because of a religious or metaphysical belief, or on the premise that, on the long term, it is more useful to the society than uniformity. It is to this theoretical approach that we can ultimately ascribe the senatorial model, with its stress on the preservation of the regional autonomy, even at the cost of a decrease in the total efficacy of the governmental activity.

⁵⁶ Elazar, *Exploring ...*, 81.

Bibliography

Ackerman Bruce, "The New Separation of Powers", 113 *Harvard Law Review* (2000), 633-727.

Anzon Adele, *I Poteri delle Regioni* (Giappichelli, Torino, 2003).

Bagehot Walter, *The English Constitution* (Little Brown and Co., Boston, 1877).

Baker Ross, *House and Senate* (Norton, New York, 1989).

Borthwick Robert, "Methods of Composition of Second Chambers", 7(1) *The Journal Of Legislative Studies* (2001), 19-26.

Coakley John and Laver Michael, "Options for the Future of the Seanad Éireann", *The All-Party Oireachtas Committee on the Constitution. Second Progress Report* (Government of Ireland, Dublin, 1997).

Dahl Robert, *How Democratic is the American Constitution?* (Yale University Press, New Haven, 2001).

de Vergottini Guido, *Diritto Costituzionale Comparato* (Cedam, Padova, 2004).

de Vergottini Guido, "Stato federale", in *Enciclopedia del Diritto. Vol. 43* (1990).

Dehousse Renaud, "Il paradosso di Madison: Riflessioni sul ruolo delle camere alte nei sistemi federali", 17 *Le Regioni* (1989), 1365-1400.

Elazar Daniel, *Exploring Federalism* (University of Alabama Press, Tuscaloosa, 1987).

Farrand Max, *The Framing of the Constitution of the United States* (Yale University Press, New Haven, London, 1913).

Fenno Richard, *The US Senate: A Bicameral Perspective* (American Enterprise Institute, Washington, 1982).

Franks C.E.S., "Not Dead Yet, But Should It Be Resurrected? The Canadian Senate", in Samuel Patterson and Antony Mughan (eds.), *Senates, Bicameralism in the Contemporary World* (Ohio State University Press, Cleveland, 1999), 120-161.

Friedrich Carl, *Trends of Federalism in Theory and Practice* (Frederick A. Praeger, New York, 1968).

Groppi Tania, *Canada* (Il Mulino, Bologna, 2005).

Groppi Tania, *Il Federalismo* (Laterza, Roma, 2004).

Hamilton Alexander, James Madison and John Jay, *The Federalist Papers* (edited by Clinton Rossiter, Penguin, New York, 2003).

Juberias Carlos, "A House in Search of a Role, The Senado of Spain", in Samuel Patterson and Antony Mughan (eds.), *Senates, Bicameralism in the Contemporary World* (Ohio State University Press, Cleveland, 1999), 260-300.

Lanchester Fulco, *Le costituzioni tedesche da Francoforte a Bonn* (Giuffrè, Milano, 2002).

Lee Frances and Bruce Oppenheimer, *Sizing Up the Senate, the Unequal Consequences of Equal Representation* (University of Chicago Press, Chicago, 1999).

Levinson Daryl and Richard Pildes, "Separation of parties, not powers", 119 *Harvard Law Review* (2006), 2312-2386.

Lijphart Arendt, "Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories", 15 (2) *Publius* (1985), 3-15.

Lijphart Arendt, *Patterns of Democracy* (Yale University Press, New Haven, London, 1999).

Lucatello Guido, *Lo Stato federale* (Cedam, Padova, 1939).

Malamund, André and Costanzo Martín, *Subnational Bicameralism, The Argentine Case in Comparative Perspective* (Proceedings of the 19th World Congress of the International Political Science Association, 29 June - 4 July, Durban, 2003).

Mastias Jean and Grangé Jean, *Les Secondes Chambres du Parlement en Europe Occidentale* (Economica, Paris, 1987).

Merkel Peter, *The Origins of West German Republic* (Oxford University Press, New York, 1963).

Moran Thomas, *The Rise and Development of the Bicameral System in America* (John Hopkins Press, Baltimore, 1895).

Mortati Costantino, *Istituzioni di Diritto Pubblico* (Cedam, Padova, 1991).

Norton Peter, "How many bicameral legislatures are there?", in 10(4) *The Journal of Legislative Studies* (2004), 1-9.

Palermo Francesco, *Germania ed Austria, Modelli federali e bicamerali a confronto* (Università degli Studi di Trento, Trento, 1997).

Patterson Samuel and Mughan Anthony, "Fundamentals of Institutional Design, the Functions and Powers of Parliamentary Second Chambers", in 7(1) *The Journal Of Legislative Studies* (2001), 39-59.

Patterson Samuel and Mughan Anthony, "Senates and the Theory of Bicameralism", in Samuel Patterson and Antony Mughan (eds.), *Senates, Bicameralism in the Contemporary World* (Ohio State University Press, Cleveland, 1999), 1-31.

Patzelt Werner, "The Very Federal House, The German Bundesrat", in Samuel Patterson and Antony Mughan (eds.), *Senates, Bicameralism in the Contemporary World* (Ohio State University Press, Cleveland, 1999), 59-92.

Pezzini Barbara, *Il Bundesrat della Germania federale* (Giuffrè, Milano, 1990).

Piredda Marco, "Il Bundesrat austriaco", in *Un Senato delle Autonomie per l'Italia Federale, Atti del Convegno tenuto a Roma il 20 Febbraio 2003* (ESI, Napoli, 2003), 183-198.

Pitkin Hanna, *The Concept of Representation* (University of California Press, Berkeley, 1967).

Ranney Austin and Willmoore Kendall, *Democracy and the American Party system* (Harcourt Brace World, New York, 1956).

Riggs Fred W., "The Survival of Presidentialism in America", 9 *International Political Science Review* (1988), 247-278.

Riker William, *The Development of American Federalism* (Kluwer, Boston, 1987).

Russell Meg, "The Territorial Role of the Upper House", 7(1) *The Journal Of Legislative Studies* (2001), 105-118.

Russell Meg, *Reforming the House of Lords. Lessons from Overseas* (Oxford University Press, Oxford, 2000).

Sartori Giovanni, *Elementi di teoria politica* (Il Mulino, Bologna, 1987).

Sartori Giovanni, *Ingegneria costituzionale comparata* (Il Mulino, Bologna, 1995).

Schepers Stefan, *Le Droit Fédéral en Europe* (Bruylant, Bruxelles, 1991).

Shell Donald, "The History of Bicameralism", 7(1) *The Journal Of Legislative Studies* (2001), 5-18.

Swenden Wilfried, *Federalism and Second Chambers* (PIE, Brussels, 2004).

Swift Elaine, *The Making of an American Senate: Reconstitutive Change in Congress, 1787-1841* (University of Michigan Press, Chicago, 1996).

Tsebelis George and Money Jeannette, *Bicameralism* (Cambridge University Press, Cambridge, 1997).

Uhr John, "Generating Divided Government, the Australian Senate", in Samuel Patterson and Antony Mughan (eds.), *Senates, Bicameralism in the Contemporary World* (Ohio State University Press, Cleveland, 1999), 93-119.

Violini Lorenza, *Bundesrat e Camera delle regioni, due modelli alternativi a confronto* (Giuffrè, Milano, 1989).

Watts Ronald, "Federal Second Chambers Compared", *federalismi.it* (2006), at <http://www.federalismi.it>.

Wheare Kenneth, *Federal Government* (Oxford University Press, London, 1946).

Woelk Jens, "La riforma del sistema federale tedesco: riuscito il primo atto", *federalismi.it* (2006), at <http://www.federalismi.it>.

Wood Gordon, *The Creation of the American Republic* (University of North Carolina Press, Charlotte, 1969).

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Bia Maria Teresa, “Towards an EU Immigration Policy: Between Emerging Supranational Principles and National Concerns”, 2 *European Diversity and Autonomy Papers - EDAP* (2004), at www.eurac.edu/edap.

1/2004

Toggenburg Gabriel N., “The Debate on European Values and the case of cultural diversity”, 1 *European Diversity and Autonomy Papers - EDAP* (2004), at www.eurac.edu/edap.