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Citation for published version:

Swenden, W 2010, Sub-national participation in national decisions: the role of second chambers. in E Henrik, S Waelti & M Zuern (eds), *Handbook of Multi-Level Governance* . Ashgate Publishing, pp. 103-123.

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Handbook of Multi-Level Governance

Publisher Rights Statement:

© Swenden, W. (2010). Sub-national participation in national decisions: the role of second chambers. In E. Henrik, S. Waelti, & M. Zuern (Eds.), *Handbook of Multi-Level Governance* . (pp. 103-123). Ashgate Publishing Ltd..

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Chapter 6

Subnational participation in national decisions: the role of second chambers by Wilfried Swenden

Second chambers have been among the most frequently described institutions of federal government. They are said to represent subnational interests (interests of the states, provinces, Länder, cantons, Autonomous Communities, Regions and Communities, Republics or oblasts) in decision-making at the national level. In the current context of multi-level governance, a growing number of policies cross-cut across levels (vertical entanglement) and policy sectors (horizontal entanglement). For instance, regulations to combat climate change, cross cut various ministerial departments (agriculture, environment, energy, transport, housing, finance) and levels of government (global, European, national, regional, local). In this contribution, we are only interested in the latter type, i.e. vertical coordination, with a special focus on patterns of state – sub-state (but supra-local) coordination. For instance, in climate change policy, the national level may play a key role in determining the appropriate national environmental targets and in representing its interests in supranational or global forums. However, it may not be able to reach these targets without the cooperation of subnational actors who are responsible for implementing them. Therefore, involving the latter in the process of setting climate change regulations is crucial if the state is to reach its objectives and fulfil its international commitments. Second chambers could be the structural or institutional intergovernmental device in which vertically joined-up policies such as climate change regulations are discussed and decided upon.

The key objectives of this chapter are (a) to provide an overview of the diversity of second chambers in terms of their composition and powers and (b) to consider the extent to which these features contribute to second chambers that are effectively

representing subnational interests in policies of mutual central-regional concern. The chapter is divided in four sections. In the first section, I briefly demonstrate the clear connection between federalism and second chambers. In the subsequent section, I provide an overview of second chambers based on two key criteria: composition and powers. In the third section, I demonstrate how both of these criteria affect the role of second chambers as channels of subnational representation in national decision-making. The final section considers other institutional arrangements that could complement or substitute second chambers in their role of subnational representation.

Federalism and second chambers

In 2000, 66 states possessed a bicameral national legislature (Russell 2000: 25). Not all of these states are democracies and only a minority of them are federal democracies. Yet, the relationship between federalism and bicameralism is a strong one. As Table 1 demonstrates there is not a single federal democracy without a second chamber, whereas unitary states (particularly when they are relatively small) frequently adopt a unicameral structure (Lijphart 1999: 200-215).

[About here: Table 1: The relationship between federalism and bicameralism]

The strong relationship between federalism and bicameralism corresponds with the role federal theory attributes to second chambers in a multi-layered state. For instance, motivating the then still indirectly elected nature of the US Senate by state legislators, James Madison argued that the Senate would be able to give ‘state governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two [federal and state] systems’ (Federalist No 62: 317). More recently, Watts and Smiley conceived of second chambers as one important mechanism of ‘intra-state federalism’. By this they mean a

set of ‘devices and processes through which subnational interests are channelled into the operations of central government’ (Smiley and Watts 1985: xv). In other words, second chambers (may) give subnational actors (or their representatives) the ability to participate in federal decision-making on matters of subnational concern (Russell, 2001).

Arguably federations that emerged from a ‘coming together’ of previously sovereign states expressed the strongest desire to have such mechanisms in place and phrased this as a precondition to pool or transfer sovereignty to a newly created federal state (Stepan 2001). Yet, it follows from Watts and Smiley’s definition that the need to establish mechanisms of intrastate federalism will be higher, the more the activities of the centre impinge on subnational interests. When the first federal second chambers emerged, federal centres tended to provide a limited set of tasks (national defence, national currency, foreign affairs, customs or excise). Today, most federal governments assume more important functions: often they raise the largest share of income, provide social security, set out a regulatory framework in policy areas which generate high levels of externalities (such as the environment or energy) or spend heavily on health or education. Sometimes these activities may directly encroach upon the domain of constitutionally allocated subnational competencies. Subnational governments which rely on federal income resources for half of their revenue or more, or which implement federal legislation as ‘agents’ of the federation will prefer to be involved in federal decisions that determine how much money will come their way or which federal policies they are expected to implement.

As the introduction to this volume made clear, in today’s complex environments all federal systems have grown away (albeit to varying degrees) from dual federalism. ‘Marble cake’, ‘co-operative’ or even ‘organic’ have been listed as adjectives to capture the higher levels of interdependence between the centre and the subnational levels of

government characterizing most contemporary federations (see Grodzins 1966; Sawyer 1976, Watts 1999, Hueglin and Fenna 2006: 145-178). Yet, a growing interdependence between levels could generate a process of centralization when the intrusion of the federal government in subnational policies is not offset by a strengthening of subnational influence in decision-making at the centre. However, do second chambers live up to their expected role of subnational representation at the centre?

The key argument of this chapter is that the extent to which second chambers effectively engage in subnational representation depends on whether its members have the ability (powers) and incentives to advance interests that are either linked to the subnational constituents whom they represent or to the collective, fiscal or administrative interests of a subnational (branch) of government with whom they can be associated. A first step therefore is to look at two classic variables on the basis of which bicameral legislatures are typically classified: composition and powers.

The strength of bicameralism in federal democracies

Although all federal democracies have a bicameral legislature, federal second chambers vary significantly in how they are composed and in the type of powers which they possess. Combining both variables, Lijphart has distinguished between strong and weak bicameralism. A bicameral system is strong when both chambers are composed on distinct principles yet share roughly equal powers (Lijphart 1999: 200-215).

There are several ways in which a second chamber can distinguish itself in compositional terms from the lower house. In general, lower houses are directly elected and tend to respect the principle of 'one person, one vote' (yet, Samuels and Snyder 2001: 661 for some exceptions). By comparison, the election or renewal of the second chamber may not coincide with that of the lower house, its members may serve different (usually longer) terms, different age requirements may apply, and membership renewal

of the second chamber may take on a 'staggered' character. Furthermore, elections to the second chamber may be held on the basis of a different electoral system. In addition, representation in the second chamber may not follow the principle of one person one vote, but favour the smaller subunits (in the extreme case by providing equal representation for each subunit irrespective of its demographic size in the federation; alternatively by over-representing the smaller units, yet not at the level of equal subnational representation (Samuels and Snyder 2001; Stepan and Swenden 1997, Stepan 2001: 344). Finally, several second chambers are indirectly elected, for instance by (and from within) the subnational legislatures or executives; a few of them are even appointed by the federal Prime Minister or government.

For bicameralism to be strong, the second chamber must have roughly the same powers as the lower house. Yet, in reality few second chambers are as powerful as the corresponding lower house. For instance, not all second chambers can introduce or amend legislation, veto legislation, convene a bicameral mediation committee, amend or veto budget or finance bills, determine their own agenda or decide on who will chair its committees. Similarly, not all second chambers are involved in amending the constitution, endorsing treaties or selecting high public officers such as ambassadors or members of the Constitutional Court.

When mapping bicameral strength for the countries that were listed in Table 1, we find that strong bicameralism is more likely to appear in federal democracies (as expected) but also that only half of the 12 federal democracies listed in that table have a strong bicameral legislature. Indeed, Table 2 summarizes the strength of bicameral legislatures based on their compositional distinctiveness and powers (in relation to the corresponding lower houses).¹ Bicameralism is strong in Australia, Argentina, Brazil, Germany, USA and Switzerland strong, but much weaker in Austria, Belgium, Canada, India, Russia and Spain (Swenden 2004: 39).

[About here: Table 2: Bicameral strength in the most important federal democracies]

Table 2 also lists the ‘regime type’ of the political system in which the bicameral legislature is embedded. It is clear that all weak bicameral legislatures are nested in parliamentary federations. Conversely, with the exception of the Australian and German (and Swiss) bicameral legislatures, strong bicameralism is confined to presidential systems of government. Even the powers of the Australian and German second chambers are weaker in relation to their corresponding lower houses than that of the other second chambers listed among the group of strong bicameralism.

[About here: Table 3: Bicameral strength and its relationship with parliamentarism / presidentialism (bicameral asymmetry in power is shaded)]

The association between parliamentarism and weak bicameralism follows from the mutual dependence between cabinet or ‘government’ and legislature that characterize a parliamentary regime (Bergman, Müller and Strøm, 2003: 13). A Prime Minister and cabinet are politically accountable to any majority of members of parliament, with a risk of being outvoted by the latter through an ordinary or constructive vote of no-confidence. By comparison, in a presidential system, the president and legislators are elected in separate elections and each of them serves fixed terms. The President cannot be removed from office, except by Impeachment; the legislature cannot normally be dissolved by the President (Lijphart 1992).

The choice between parliamentarism and presidentialism has important implications for the design and strength of bicameralism. In a presidential system, two

distinctively composed but equally powerful legislative chambers do not raise a problem of accountability because the president should not be held responsible to the legislature in the way in which a parliamentary executive requires the support of a legislative majority. As a result, both houses of a presidential legislature can be equally powerful since there is no clear ‘institutional’ rationale for why the second chamber should be made inferior to the lower house in terms of its legislative or budgetary powers. In practice, presidential second chambers can develop an important role as veto-players, but they also actively participate in policy setting (for instance by initiating a large number of bills).

In contrast, since a parliamentary executive requires the support of a legislative majority, parliamentary governments are usually held accountable to the lower house alone. The latter is always directly elected and its composition more closely approximates the principle of ‘one person, one vote’. Voting down budget bills is synonymous to withholding confidence in government; therefore most parliamentary systems deprive their second chamber from the right to veto, possibly even amend appropriation bills (see Howard and Saunders 1977: 251-302; Evans 1997: 93-102 on the right of the Australian Senate to block appropriation bills, the use of which provoked a constitutional crisis in 1975). Since the chain of accountability runs between the parliamentary executive and the lower house, an important dimension of bicameral asymmetry appears that is found missing from presidential regimes (see shaded areas in Table 3). Therefore, parliamentary second chambers often only have a suspensive veto-right; they may delay or amend government legislation, but they do not initiate a large bulk of federal legislation themselves. Where they have more legislative powers, they are often composed in such a way that their political majority is likely to be congruent with that of the lower house (for exceptions see section 3). In this sense, parliamentary

second chambers are generally more re-active than active, also in considering the extent to which federal policies touch upon subnational interests.

Federalism, Second chambers and subnational representation

The previous section provided a brief overview of bicameral strength, based on compositional distinctiveness and powers. Yet, how strong should a bicameral legislature be in order to make a substantial contribution to subnational representation? Furthermore, do all strong bicameral legislatures necessarily play a significant role from the viewpoint of subnational representation?

Reflections on the powers of the second chamber

First, irrespective of how a second chamber is composed, it will only have the ability to pursue such a role if it is sufficiently powerful. A second chamber without the ability to veto or delay federal decisions will only play a secondary role in subnational representation and other political institutions are likely to assume that role instead (see further). Having said this, not all the powers of second chambers are equally relevant from the viewpoint of subnational representation. For instance, should a second chamber have the right to veto appropriation bills which finance administrative departments and programs that are exclusively federal? Should it have the right to declare war or intervene in the appointment of ambassadors? Should it have the right to set up committees of inquiry to probe into federal expenditure programs? Arguably, second chambers that have these rights (such as the US Senate) are testimony to the more ‘multi-faceted’ role that the framers of the constitution may have had in mind with bicameralism. Indeed, second chambers could provide a more ‘detached’ view on policy matters, helped by the higher age requirements of their members or especially the longer terms which they serve. Hence, the ambition to make the second chamber play a

significant role as a 'house of review' could have overshadowed, in some cases even dominated their assumed relevance from the viewpoint of subnational representation (e.g. Quick and Garran 1901, or Swift 1996 for an overview of the constitutional debates preceding the making of the Australian or US Senates respectively).

On the other hand, one would expect the second chamber to have a right to introduce, amend or veto constitutional changes that alter the balance of powers between the federal and regional levels of government; to co-decide on the regional distribution of federal grants or to influence the rate of federal taxes if part of their revenue accrues to the regions. On the basis of the summary overview in Table 2, only the powers of the Austrian and perhaps also the Spanish second chambers fall short from this perspective. De facto, the Canadian Senate can be added to this group; its nominated character had deprived it of much legitimacy and therefore its considerable powers have remained largely unused (Franks 1999 for a few recent exceptions). In general, the more a federation adopts the features of a co-operative or joint-decision federation, the stronger the required powers of the second chamber. The evolution of the powers of the German Bundesrat reflects the development of post-war German federalism from a co-operative to a 'joint decision-making federation.' When the members of the German parliamentary council debated the German 'Basic Law' in 1948, they assumed that the consent of the second chamber would be required for about a third of all federal bills. Yet, more than 50 years later, the Bundesrat's consent was needed for about 55-60 percent of all federal bills. This relative increase in powers reflects the growing involvement of the federal government in concurrent and framework legislation. It also illustrates the growing relevance of shared taxes, joint-decision making tasks, or the increasing financial support of the federal government in assisting the Länder whenever they are charged with implementing federal legislation (Sturm 2001). Hence, in part, the strengthening of the centre has been offset by

increasing the involvement of the Bundesrat in federal matters. This makes the process of German ‘centralization’ qualitatively different from, say, a similar process in Austria (where a transfer of competencies from the Länder to the federation was not offset by a collective decision-right on those matters at the federal level). Conversely, the most recent reforms of German federalism have reduced the level of ‘entanglement’ between the federal and subnational levels by returning some legislative powers to the Länder, a development that is said to bring the veto-powers of Bundesrat closer to (if still above) its originally intended levels (Hrbek 2006).

Reflections on the composition of the second chamber

Yet even if second chambers have the capacity to decide on matters that are relevant from the viewpoint of subnational representation, its members may not necessarily keep such concerns in mind. Therefore, and second, the incentives that drive the members of the second chamber derive at least in part from the way in which the second chamber is composed.

Also, in this respect, not each of the compositional features that were mentioned in Table 2 is of equal significance from the perspective of subnational representation. For instance, US senatorial terms are thrice as long as terms of representatives. Consequently, representatives are almost continuously embroiled in a re-election campaign, whereas (small state) senators are less dependent on party influence and constituency concerns, at least during the first couple of years after their election. Or, to list another example, the US congressional literature suggests that the success of a candidate will be associated more with and measured against ‘the state of the nation’, the larger is the constituency in which (s)he vies for election (Krasno 1994). With the exception of some of the smallest states that have twice or as many senators as representatives, lower house constituencies are sub-sets of senatorial constituencies. The

latter typically coincide with the boundaries of a state. Therefore, senators are more likely to address ‘national’ concerns than representatives. Indeed, next to state governors or vice-presidents, senators are the most important position from which to launch a bid for the US presidency. This said, the ever more costly campaigns for the (re-)election of senators representing large states have also gradually pushed forward the start of their election campaigns. Furthermore, while senators may think and act ‘nationally’, the procedural rules of the US Senate leave more room for advancing specific state-concerns (for instance, filibustering or the occasional need for unanimous consent agreements to structure floor debate; Sinclair 1989). Chairs of powerful committees (the choice of membership which may reflect specific state interests) could also wield their influence to extract state specific interests (Peterson 1995).

Compared with the length of terms, two other compositional features are much more important as determinants of subnational representation. The first considers the extent to which the members of the second chamber possess strong incentives to lobby for subnational interests. This hinges in part on the geographic reach of the party which they represent, or in the case of nationwide parties, on their authority to act against the interests of the nationwide party. The second feature has been studied more extensively by legislative scholars, but loses much of its relevance if the incentives to ‘think and act’ subnationally are missing. It concerns the degree to which members of the smallest or over-represented units in the second chamber will use their disproportional influence in the chamber to advance specific territorial interests. I will discuss both elements in turn.

A territorial incentive structure: members of the second chamber, party seniority and constituency ties

Most members of a second chamber run on a party ticket. Even Canadian senators owe their appointment first and foremost to having served the party which controls the Canadian government at the moment of their selection (Franks 1999). Therefore we must look ‘inside’ the parties to assess the extent to which members of a second chamber can advance subnational interests. Two aspects are relevant here: (1) the dependence of members from regional parties or subnational party machines for their (re)selection or promotion within the party while in office; (2) the capacity of members of the second chamber to stand up against majority opinions of the federal party (in the lower house or second chamber). This hinges on their seniority within the party as a whole.

With respect to the first of these two elements, the method for electing second chambers is a crucial variable. Directly elected second chambers do not necessarily generate the strongest subnational ties. True, where such elections are by plurality vote and take place in constituencies that are congruent with the units of the federation (as in the US for instance), we find an incentive to cultivate a ‘personal’ and constituency specific vote. However, the direct election of the US Senate since 1913 (17th amendment) has reduced the dependence of senators from specific party concerns associated with their state. During the first half of the nineteenth century, US senators were not only elected by state legislatures but they were also subject to recall. Hence they could be forced to abide to specific state legislative instructions (Swift 1996: 32). The ‘recall’ requirement disappeared first, and gradually primaries came to replace selection by state legislatures. This method of selection freed senators from state party discipline, and, especially when their election coincides with that of the president allowed them to anticipate ‘presidential coattail effects.’

In comparison, despite their direct election, Brazilian senators have remained more dependent from their state party machines. The presidential coattail effect is much

weaker in Brazil than in the US. Brazilian senators are not pre-selected in open state primaries, but by a small group of state party leaders, depriving national party leaders of significant input (Samuels, 2000: 5). Rather than surfing on ‘presidential coattails’, Brazilian senators line up behind gubernatorial candidates who have ‘the name recognition and organizational backing [clientelistic networks] that congressional candidates seek’ (Samuels, 2000: 6). Furthermore, unlike the US, Brazil lacks a two party system since congressional elections by (open-list) PR generate a multi-party system instead. Therefore, congressional elections are typically won on multi-party candidate lists and congressional candidates must vie for the attention of subnational party leaders to obtain eligible positions on these lists. Career patterns of senators and governors in the US more or less run on parallel tracks, but in Brazil, senators may have served as governors previously or aspire to a governorship after their senatorial terms. In sum, Brazilian senators are nested more strongly in state politics than their counterparts in the US and their prime loyalty remains towards the state even after their election to the Senate (Samuels, 2000: 16-17; Samuels and Mainwaring 2004: 98-99).

The US and Brazil are both presidential systems of government. Parties tend to be more disciplined and better organized in most parliamentary systems. In general, MPs in a parliamentary legislature have less scope to cultivate a personal vote, even where they are elected by first-past-the-post in single member electoral districts (Cain, Ferejohn, and Fiorina 1987). True, some parliamentary parties may have a territorially concentrated support base (for instance, ethno-regionalist parties such as the Scottish National Party or the Bloc Québécois). Alternatively, national parties may have strong subnational party branches that play a key role in selecting candidates for second chamber elections as a result of which the latter can be expected to pay allegiance to subnational party interests. Arguably, that allegiance is strongest for second chambers that are indirectly elected by or/and from within regional parliaments or executives. For

instance, this is the case for the German and Indian second chambers. The composition of these second chambers depends on the outcome of regional elections, and subnational party branches are more likely to select candidates or draft party manifestos for said elections. The allegiance to subnational policy levels will be lower among the group of directly elected parliamentary Senates. Normally, their election coincides with elections for the politically more significant lower chamber. Therefore, parties seeking to gain votes in both elections are under strong pressure to make Senate campaigns congruent with the themes that dominate the election of the lower house.

In general, members of parliamentary second chambers will be under stronger pressure than their counterparts in presidential systems to display cohesive voting behaviour. This is so because the battle between government and opposition in the federal lower house is likely to spill over into second chamber politics. As Sawyer once put it, to the extent that the same parties are represented in both chambers of a parliamentary bicameral legislature, 'the politics of federalism [in the second chamber] may have been abandoned for the politics of keeping a particular party [or parties] in office [government]' (Sawyer, 1969: 42). Conversely, members of a parliamentary second chamber who represent federal opposition parties may abandon the politics of federalism for the politics of 'frustrating' or 'holding to account' a particular party or party coalition in federal government. In this fight, the federal government holds two important advantages.

First, it possesses a legitimacy bonus, since it can invoke the legislative support of a directly elected legislative majority in the (more proportionally composed and directly elected) lower house. The federal government's 'electoral mandate' forces parliamentary second chambers to act cautiously, even *if* they were to invoke their role as vehicles of subnational representation. Second, the federal parliamentary executive is likely to have critical resource advantages: strong administrative support from

ministerial cabinets or ministries that members of the legislature without a post in government lack. Therefore, the role of the second chamber will be confined primarily to formulate policy preferences in response to proposed government policy, irrespective of whether these proposals relate to a recalibration of federal-regional relations in the state. In this sense, parliamentary second chambers are more reactive compared with their presidential counterparts.

The latter point is important, because it explains the ‘extra-ordinary’ position of the German Bundesrat among the group of parliamentary second chambers. The requirement of regional block voting, and especially its composition of regional executive members strengthens the capacity of the second chamber in subnational representation. Regional executive leaders are senior figures within their respective party organizations and they have some authority to speak up against the preferences of the major party protagonists in the federal executive and lower house. In fact, members of the Bundesrat frequently assume important positions in the federal party organizations (especially the Parteivorstand or party executive). Furthermore, as regional executive leaders, the members of the Bundesrat have the administrative support that most of their colleagues in the other parliamentary second chambers can only dream of. This enables them to influence federal policy-making earlier and more profoundly than their counterparts in other parliamentary second chambers. Finally, the composition of the German Bundesrat confirms the dominant pattern of intergovernmental relations in parliamentary federations: intergovernmental relations as inter-executive driven relations (Smiley and Watts 1985).

Of course, most members of the Bundesrat also pay loyalty to the national interests of the party family to which they belong, especially when they have set their eyes on a role in federal government or combine their function as subnational (Land) executive leaders with that of federal opposition leaders. Furthermore, the members of

the Bundesrat frequently convene in de facto party meetings, sometimes in the presence of the Chancellor or the opposition leaders in the lower house (Leonardy, 2002). In light thereof, the Bundesrat is frequently criticized for ‘playing federal party politics’, especially when the party political composition of the second chamber is incongruent to that of the federal executive and the second chamber is seen as a major brake on planned federal government policy (Fromme 1981, Lehmbruch 1998; Jeffery 1999; Scharpf 2005). Although an in-depth analysis to prove the validity of these accusations falls beyond the scope of this chapter, one should distinguish between two types of ‘obstructionism’ (for a summary of both arguments, see Swenden 2006: 213-219).

A first type is clearly linked to national party political strategies. It arises when a federal government faces a party politically hostile second chamber and accuses the Bundesrat of preventing it from implementing the policy proposals (‘the policy mandate’) on which it was elected. Alternatively, the federal government can play the ‘blame game’ and use party political incongruence to cover up intra-party disagreements or a fall out with its federal coalition partner (Scharpf 1988).

A second type of ‘obstructionism’ arises when the Bundesrat pursues its role as an articulator of subnational interests. This is the type of behaviour that federal theory expects from a second chamber.² Bicameral disagreement that is linked to different territorial interests within as well as between parties in federal government or opposition has increased in the past twenty years, especially on fiscal issues (Gunlicks 2002). Partly, this reflects the growing territorial socio-economic heterogeneity of Germany following unification. The dividing lines in the Bundesrat can pit Land governments that are controlled by the same political party/parties against each other.

It is interesting to contrast the role of the German Bundesrat in subnational representation with that of other parliamentary second chambers (even the indirectly elected ones). For instance, with some exceptions, Australian senators generally defer to

the wishes of their party colleagues in the lower house because the more senior party figures (Prime Minister, Deputy Prime Minister, Leader of the Opposition, the Deputy leader of the shadow cabinet) reside there (Jaensch 1986; 1994). These party leaders can promote obedient senators to the frontbench, and enforce party discipline through internal party rules (especially in the case of the Australian Labor Party).

Second Chambers and the Over-representation of the smallest units

Arguably, one of the most studied aspects of federal second chambers is the extent to which they overrepresent the smallest subunits in the state (Stepan 2001; Samuels and Snyder 2001).³ Such overrepresentation could turn the second chamber into a body which disproportionately advances the interests of small states. For instance, on the basis of how many members of the second chamber are needed to make valid decisions (quorum of attendance) for ordinary legislation or constitutional amendments, one could calculate the number of senators that is needed to approve legislation or block constitutional change. In Australia, Senate legislation can be approved by a small group of 14 Australian senators comprising just each of the twelve Tasmanian senators and both senators representing the Northern Territory. Jointly, they represent a mere 3.57 percent of the Australian population. Similarly, in the German Bundesrat, the delegations of the ten smallest Länder, representing just 28.7 percent of the population are sufficiently strong to halt federal bills that require the consent of the Bundesrat (Swenden, 2004: 132-134).

Yet, the consequences of 'equal or weighted' as opposed to 'proportional' subnational representation should be interpreted in light of the fact that voting is often by party and not by region. As mentioned above, in parliamentary systems this is more often norm than exception. Hence, not all senators from the same subunits represent similar parties; for instance, the votes of the twelve Tasmanian senators are split

between Labor, the Liberals and possibly some independents. Furthermore, the ten smallest German regions (comprising for instance affluent Hamburg and relatively poor Mecklenburg-Vorpommern) do not necessarily share the same interests and thus may not cast identical votes in the Bundesrat. Although these observations put ‘the problem’ of overrepresentation into perspective, when assessing its implications for subnational representation we should take the following four observations into account.

First, qualifying the point that was raised above, even if parties are cohesive and nation-wide, the effect of over-representing the smallest units in the second chamber cannot be ignored completely. This is best documented for some of the presidential second chambers. For instance, the provision of equal state representation in the US Senate, combined with the importance of seniority in the membership or chair of relevant senatorial committees has given small state senators - especially when occupying important committee positions – the leverage to ‘bring home’ distributive programs that disproportionately benefit the interests of their state constituents (Baker 1995; Peterson 1995: 140, 145-146; Lee and Oppenheimer 1998). The effect of equal subnational Senate representation has also been noted in the policy outputs of the Brazilian, Argentinean and Swiss second chambers (Diaz Cayeros 2006: 225; Gordin, 2010, Vatter 2004). Gordin has demonstrated that senators from over-represented Argentinean provinces have been allowed to incur higher deficits or more easily encountered the president’s goodwill to bail out such deficits, especially when sharing the presidential party label (Gordin, 2010). In Switzerland, the small cantons tend to be more rural and conservative; therefore their over-representation in the Council of States has provided a buffer against the progressive welfare policies that are propagated by the urban (and Social-Democratic) cantons (Obinger, Armingeon, Bonoli and Bertozzi, 2005: 263-306).

Second, federations develop over time. Therefore, mechanisms that once seemed to protect territorial minority interests may lose that quality with the demise or arrival of new cleavages. For instance, in Switzerland, the Catholics were the most salient minority when the Swiss ‘confederation’ was born. By today, the Catholic-Protestant divide has lost most of its salience. Arguably, the over-representation of the Catholic-conservative cantons in the second chamber was warranted, especially since several cantons sought secession from the Swiss confederation during the Sonderbund War (Vatter, 2004: 7). However, the second chamber cannot be said to protect linguistic interests very well, even if language has overtaken religion as the most important cleavage. The over-representation of the smallest cantons does not benefit the French- or Italian-speaking Swiss minority populations who live concentrated in more densely populated, and therefore under-represented cantons.

Third, the overrepresentation of the smallest units may work to the benefit of minorities but only when these are territorially concentrated and make up a (political) majority in the territories in which they are found. For instance, the ‘Southern Democrats’ who controlled the over-represented Southern US states used their seniority in the Senate to halt affirmative action programs that would stand to benefit black citizens from these states. This was so despite the higher representation of blacks in these states (discrimination was meant to protect cheap black labour as a source of economic competitiveness; Pierson 1995). Similarly, the dominance of rural and bourgeois parties in the Swiss second chamber is said to have exacerbated the under-representation of women there (Vatter, 2005: 208). In Australia, the provision of equal state representation has not served Aboriginals well since the opposition to pro-Aboriginal policies has generally been stronger in Western Australia and Queensland, two states that were over-represented in the Senate, at least until the mid 20th century.

Finally, the consequences of over-representing the smallest units in the second chamber are more frequently overlooked for parliamentary federations since representation is more by party than by region. A notable exception is the German Bundesrat due to the constitutional obligation to cast a uniform regional block vote there. Yet, even if representation is more by party, over-representing the smallest units can still generate significant consequences in two important ways. First, it can affect the party political balance between both chambers. For instance, Australian governments have been a few seats short of a majority in the Senate for most of the time post 1949. Although Senate elections by Proportional Representation (compared with lower house elections by the alternative vote, a majoritarian electoral system) are the main cause for this lack of Senate majority, equal state representation has played a role as well. For instance, between July 1996 and July 1999, the Australian government (Liberal-National) was two votes short of a Senate majority. In this period the government frequently relied on the support of two independent senators, one of whom represented the smallest (island) state of Tasmania. Had the Senate been composed on the basis of proportional subnational representation, Tasmania would not have been entitled to 12 but only two senators. In that case, the independent Tasmanian senator would not have been elected and the Liberal and Labor parties would have been able to benefit from their more concentrated following in some of the large and currently under-represented states. Second, where parliamentary second chambers are directly elected (as in Australia), federal governments can draw from the contingent of party senators representing the smallest units in order to build a cabinet that incorporates MPs from all the units of the federation. In Australia, there is at least an expectation that the government comprises MPs from the smallest states.

Alternative channels of subnational representation

While all examples of strong bicameralism are situated in federal states, not all federal states have strong bicameral legislatures. Furthermore, the above analysis illustrated that several federal second chambers fall short in their role of subnational representation. If second chambers fail to represent subnational interests in federal decision-making, what are the alternatives? Kenneth Wheare once argued that while the method of safeguarding regional interests via a federal second chamber is advisable, ‘federal government does not necessarily work badly without it’ (Wheare 1963: 90).

Second chambers are only one method of joining up politics and policies across different levels. In parliamentary federations, where second chambers tend to be weakest, intergovernmental relations often take the form of inter-executive relations, confirming their characterization as ‘executive’ federations (Watts 1999). At the apex, executive summits bring together the federal Prime Minister or ministers from the federal or subnational governments or the regional Premiers alone. Examples of such meetings are the Premiers Conferences in Canada, the Council of Australian Governments in Australia, or the Conference of Education and Culture ministers in Germany (Kultusministerkonferenz). Hence, such inter-executive meetings even developed in Germany, notwithstanding the key role of the Bundesrat.

Executive summitry meetings are of course prepared and paralleled by gatherings that bring together civil servants from various (levels of) government(s). Examples are the Landesreferenten in Austria, the close to thousand discussion and working groups of administrative experts from the federal and Land levels in Germany, or the expert committees drawing Swiss cantonal representatives into the preparatory stage of federal lawmaking (Kramer 2005: 132; Wälti 1996: 204). However, not all parliamentary states with a relatively weak second chamber can take recourse to institutionalized and formalized ‘intergovernmental’ alternatives of the type found in Canada, Austria or Australia (Bolleyer 2006a; 2006b).

In Spain for instance, inter-executive coordination mechanisms or sectoral conferences that bring together civil servants or ministers from the various autonomous communities are not always attended by executive representatives from all the regions and such conferences may lack the power to issue binding decisions (Grau í Creus, 2000). Furthermore the historic communities have frequently preferred a strategy of bilateralism, seeking recognition as special regions (or rather nations) within the state. In this sense, strengthening the Spanish Senate may not be an attractive alternative, for it would mean that these sub-state nations may have to give up some of these bilateral ties with the centre in exchange for a Senate that would act as the collective defender of subnational interests (Juberías, 1999; Roller 2002). Senate reform has also featured on the agenda of Canadian and Belgian constitutional reformers (Vanhee 2003, Smith 2007, Verhofstadt 2008), but as in Spain these reforms have stalled. A federal second chamber that would be more effective in regional representation could challenge the role of its current members (who may have to seek refuge elsewhere) or undermine the authority of the federal government. In a plurinational federation like Canada, Quebec may ask for a right to veto Senate decisions, much like what the historic communities aspire to in the Spanish context. Furthermore, Senate reform is often part of a wider constitutional agenda. Therefore, its success frequently depends on concrete achievements in other domains (such as electoral reform, or a constitutional reordering of competencies).

As federal states continue to (re)distribute authority vertically and horizontally, the role of second chambers in subnational representation will remain at the heart of the debate on institutional engineering in federal states. In light of the growing importance of subnational authority across the world (Hooghe, Marks and Schakel 2008), subnational authorities elsewhere may try to ‘break’ their way into or increase their voice at the national policy level. They may also use the second chamber as a vehicle to

increase their leverage in EU or international affairs by seeking to affect the position of the national executive. The role of second chambers in subnational representation is not only an issue of relevance for federal states, but also for the unitary or decentralized states that have strengthened the role of subnational authorities (regional or local government) in recent decades. For instance, in France the Senate has been interpreted as a chamber that represents local and agrarian interests, due to its link with local government and the overrepresentation of senators from small, agrarian communities (Loughlin 2007). A closer study of multi-level governance in Scandinavia can show insight into how intergovernmental coordination takes place without the presence of a second chamber.

This chapter has demonstrated that second chambers in federal states are hugely diverse in terms of composition, power and the way in which their members relate to the overall party system. Jointly, these factors determine the capacity of second chambers for representing subnational interests in federal decision-making. That capacity varies significantly from federation to federation, but where it is weak, alternative structures and channels of multi-level coordination may have developed. As a result, second chambers should neither be seen as a necessary nor as a sufficient condition for the proper functioning of multi-level governance. They can play an important role in this regard, but it depends.

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Table 1: The relationship between federalism and bicameralism

	Federal Democracies		Non-Federal Democracies	
Unicameral Legislatures			Costa Rica Denmark Finland Greece Hungary Iceland Israel Latvia Lithuania	Luxembourg Malta Mauritius New Zealand Norway Papua New Guinea Portugal Slovakia Sweden
Bicameral Legislatures	Argentina Australia Austria Belgium Brazil Canada Germany	India Russia Spain Switzerland USA	Bahamas Barbados Botswana Colombia Czech Republic France Ireland	Italy Jamaica Japan The Netherlands Poland Trinidad UK

Source: Swenden (2004): 26

Table 2: Bicameral strength in the most important federal democracies

Second Chamber/ Regime Type	Composition	Powers	Bicameral Strength	Significance from the viewpoint of subnational representation
US Senate <i>Presidential</i>	Directly elected Equal state representation <i>Distinctiveness: Moderate</i>	Co-equal (but money bills introduced in lower house) Superior role in approval Treaties + executive or judicial nominations <i>Bicameral Symmetry</i>	High	Moderate
Brazilian Senate <i>Presidential</i>	Directly elected (by simple plurality) Equal state representation <i>Distinctiveness: High</i>	Co-equal + executive or judicial nominations <i>Bicameral Symmetry</i>	High	High
Argentinean Senate <i>Presidential</i>	Directly elected (in part by PR) Equal state representation <i>Distinctiveness: High</i>	Money-bills introduced in lower house; Co-equal, originating house of legislation takes final decision but requires (2/3 or absolute) majority to overturn opinion non-originating chamber + executive or judicial nominations <i>Bicameral Symmetry</i>	High	High
Swiss <i>Ständerat</i> <i>Hybrid</i>	Directly elected (by plurality vote) Equal state representation (except for half-cantons) <i>Distinctiveness: High</i>	Money bills introduced in lower house; bicameral disagreements require conference committee meeting and subsequent vote by each chamber <i>Bicameral Symmetry</i>	High	Moderate
Australian Senate <i>Parliamentary</i>	Directly elected (by PR) Equal state representation (lower representation for territories)	Money bills introduced in lower house, but appropriation bills can be vetoed by Senate Navette + possibility of joint dissolution to sort	High	Low-Moderate

	<i>Distinctiveness: High</i>	out bicameral disagreements <i>Moderate bicameral asymmetry</i>		
German Bundesrat <i>Parliamentary</i>	Indirectly elected (regional executives) Weighted state representation <i>Distinctiveness: High</i>	No vote of confidence + suspensive veto against federal appropriation bills Absolute veto in approximately 55 percent of legislation Concertation Committee to sort out bicameral disagreements + subsequent vote by each chamber <i>Moderate bicameral asymmetry</i>	High	Moderate-High
Indian Rajya Sabha <i>Parliamentary</i>	Indirectly elected (regional legislatures) Weighted state representation <i>Distinctiveness High</i>	No votes of confidence in government No right to amend or introduce money bills (only pass on comments) Right to amend other bills, but disagreements are decided by majority vote in joint sitting (in which more populous lower house dominates) <i>Bicameral Asymmetry</i>	Moderately Strong	Moderate
Canadian Senate <i>Parliamentary</i>	Appointed by Governor General (in practice Canadian Prime Minister) Representation by 'Region' <i>Distinctiveness High</i>	Money bills introduced in lower house, Senate can amend but not increase money bills sent up from lower house Veto right in other matters <i>Moderate Bicameral Asymmetry; however, powers largely unused due to legitimacy deficit</i>	'High' (de facto Low, due to constrained or almost unused powers)	Low
Russian Federation Council <i>Semi/ 'Super' Presidential</i>	Equal state representation, one delegated by regional executive, the other by subnational legislature <i>Distinctiveness: High [de facto, lower due to presidential grip on nominations]*</i>	No votes of confidence in government Veto-right constrained to matters affecting state-regional relations + suspensive veto in other matters <i>Moderate Bicameral Asymmetry</i>	Moderately Strong	Moderate
Belgian Senate <i>Parliamentary</i>	40/71 directly elected simultaneous with lower house; 21/71 indirectly elected from within regional (Community) parliaments 10 co-opted by directly and indirectly elected senators (+ senators by right: sons/daughters of the ruling monarch) Mostly Proportional Subnational representation <i>Distinctiveness: Low</i>	No votes of confidence in government No votes on budget Veto right in constitutional matters, constitutional laws (requiring special majorities) and generally one third of federal legislation Suspensive veto right in other matters <i>Moderate Bicameral Asymmetry</i>	Weak	Low
Spanish Senate	208, directly elected	No votes of confidence	Weak	Low

<i>Parliamentary</i>	simultaneous with lower house 49 appointed by and from within regional parliaments <i>Distinctiveness: Low</i>	in government and statewide budget; Veto right in constitutional matters, state of emergency or approving coercive measures against subnational government acting against Spanish national interest Suspensive veto right in other matters <i>High Bicameral Asymmetry</i>		
Austrian Bundesrat <i>Parliamentary</i>	Indirectly elected by regional legislatures Weighted subnational representation <i>Distinctiveness: Moderate</i>	No votes of confidence in government or budget Veto right on constitutional matters altering the distribution of competencies between the centre and the regions Suspensive veto right in other matters (can be overturned by lower house with simple majority) <i>High Bicameral Asymmetry</i>	Weak	Low

(1) Note, unless electoral system is mentioned, lower house and second chamber are elected on the basis of similar electoral systems.

(*) Regional governors and chairs of regional assemblies lost their right to sit in the second chamber and were replaced by delegates (of the governor and regional legislatures). A decision by Putin in 2004 to appoint governors (as his representatives) further weakened the Federation Council by strengthening the grip of the President on that chamber's composition (Gill 2007: 7-8)

Table 3: Bicameral strength and its relationship with parliamentarism / presidentialism (bicameral asymmetry in power is shaded)

	Parliamentarism		Presidentialism	
	Lower House	Upper House	Lower House	Upper House
Political Accountability (Censure vote leading to government resignation)	YES	NO	NO	NO
Absolute Veto Power in Executive Maintenance (federal budget bills)	YES	NO	YES	YES
Powers in general Lawmaking	YES	YES	YES	YES

ENDNOTES

¹ Since the powers and composition of these upper houses has already been discussed extensively in the comparative literature I summarize their main features here without going into further detail (For general comparative overviews see for instance Tsebelis

and Money 1997; Lijphart, 1999; Patterson and Mughan 1999; Russell 2000, Riescher, Ruß and Haas 2000; Baldwin and Shell 2001; Llanos and Nolte 2003; Swenden 2004; Luther, Passaglia and Tarchi 2006; Uhr 2006, Watts 2007).

² For instance, when the German Christian-Democrats (CDU-CSU) possessed comfortable majorities in the lower house and Bundesrat (from 1982 until 1987), the then Chancellor Helmut Kohl (CDU) successfully kept as many issues of bicameral disagreement as possible out of the ‘bicameral concertation committee’. Instead, he preferred to resolve them in internal party meetings with his CDU-CSU controlled regional governments (Klatt 1999; Lehbruch 1998: 160-161). Occasionally compromise meant backtracking on proposed reforms in the health care, postal or communications sectors. Sometimes compromise could only be achieved by ‘buying’ the support of one or several CDU regions, for instance by offering them disproportionate receipts of equalization payments (some of these practices were later declared unconstitutional by the Constitutional Court; Renzsch 1989: 333-345).

³ In recent years, the empirical political science literature has increasingly ‘problematized’ the over-representation (‘malapportionment’) of small units in a federal second chamber (Stepan 2001; Samuels and Snyder 2001; Gordin, 2010). Such a viewpoint contrasts with the rationale of more traditional accounts of federalism which have argued that over-representation protects small units against majority rule and strengthens their loyalty vis-à-vis the federation (Elazar 1987; Burgess, 2006).