

Bicameralism-history-theory-problems

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By way of introduction to this volume on bicameralism it may be appropriate to delineate the field under discussion. And although at first sight this seems to be a straightforward assignment, it may prove in the end that a simple and adequate definition of the problems at hand is not available. First of all, bicameralism is a concept with a highly divergent set of historical references. In particular, the 'second' of the two chambers in a bicameral parliamentary system eludes uniform characterisation. Moreover, the representative aspect of 'second chambers' is widely placed in doubt, and tends to be regarded as an anachronistic element in parliamentary life.¹ One or several of these descriptive and evaluative ambivalences are put forward to promote the case of abolition of 'second chambers' and thereby to obliterate bicameralism as parliamentary practice. Recent abolition in Denmark and Sweden should show the secular trend.

Nevertheless, bicameralism is very much alive, even to the point of being discussed as a possible contribution to the strengthening of parliamentarism in the European Community. The papers collected in this volume, taken together, underscore no doubt the great variation of histories, theories and problems. But also, the contributions suggest a changing and possibly worthwhile approach to parliamentary institutions as such. In a way, this side-effect can be regarded as a consequence of the somewhat uncommon perspective on representation, i.e. that of the less representative 'second chambers'. Commenting on border-line cases of representation may not be the typical ap-

¹ E.g. G. Leibholz, *Die Repräsentation in der Demokratie*. (Berlin/New York 1973) 155, opines that 'fast allgemein allmählich die Oberhäuser politisch sterile Institutionen und in den meisten jüngeren europäischen Verfassungen völlig verschwunden [sind].'; cf. J.A.R. Marriott, *Second chambers. An inductive study in political science*. (Freeport (NY) 1969² [Oxford 1910]) e.g. 237f; a more realistic view is expressed in J. Mastias and J. Grangé, *Les secondes chambres du parlement en Europe Occidentale*. Paris 1987.

proach to the subject-matter, but illustrative it nevertheless is.² By invoking other aspects of representation and by reviving obsolete ones, uncritical conceptions can be corrected and nonhistorical ones enriched.

In this introduction, I will deal with the following topics. First, an attempt will be presented to define bicameralism as we find it today. Then will follow a short overview of the historical origins in the different European realms. Lastly, some of the reasons for making bicameralism an interesting topic for historical and theoretical investigation will be adumbrated.

BICAMERALISM: THE ACTUAL INSTITUTION

Confining oneself to Europe, one finds ten countries that have a bicameral system in one way or the other. Two countries abolished it recently, bringing the total of unicameral systems in Europe to five. In this sense, bicameralism is still the main trend. However, the differences are not to be overseen. Three out of ten are federalist states, in which the 'second chamber' takes the form of a federal council (Germany, Austria, Switzerland). The other seven have one national parliament with two chambers. This distinction is one between federal and unitary bicameralism. It is an important one, and may suggest a relevant dimension for future developments of bicameralism. We will discuss the possible explanations for these two patterns later on. Let us first take a closer look at the variations that can be found. In doing so, it may be most appropriate to concentrate on the different positions of the 'second chambers'.³ It is there that we may locate the major distinctions. In our modern conception of parliamentary democracy, the general norm is proportional representation of the citizens in an assembly that performs the central role in the legislative process. Whatever the national variations on this general norm—whether the legislative function pertains exclusively to the 'first chamber' or is to be shared with other bodies, whether elections are by district or on a national scale, whatever the specific additional competence in the political process—in modern parliamentary democracies the citizens are represented by a 'first chamber' elected by universal suffrage. The rest so to say is embellishment, *ad libitum* expression of national identity, if one likes, or inconvenient remnants of the past, if one prefers. To distinguish bicameral systems from each other then seems to require only the classification of their 'second chambers'.

² This mechanism recurs in contemporary practice as well. The last years have witnessed a growing self-awareness among Dutch senators, some of whom rebut the charge of falling short in democratic legitimacy, by pointing out that their counterparts in the other chamber fall short in representative quality.

³ Weber, 'La crise du bicaméralisme', in: *Revue du Droit Public et de la Science Politique en France et à l'Étranger*, 88(1972) 573-606; 575: 'Le bicaméralisme est rarement considéré comme un système en soi, il exprime simplement l'existence d'une deuxième chambre'.

'Second chambers'

Until now, I have been speaking of 'second chambers', as most succinctly expressing this additional character of the 'second' of the two chambers. Historically speaking, this is in some cases an anachronism. In actual practice, it is also incorrect as a general term. In the Netherlands, the 'second chamber' is officially called the *Eerste Kamer der Staten-Generaal*, the First Chamber of the States-General. This expresses some sense of historical continuity on the part of the designers of the Dutch constitution of 1815: the Second Chamber was a *nouveauté*, since proportional representation was then introduced for the first time. On the other hand, in countries like France or Austria, where in their framing a modern constitution the discussion was about whether or not adopting bicameralism, reference was made to a 'second chamber'. Since one of the major arguments in favour of a 'second chamber' was in terms of the necessity to have a representation of the *valentior pars*, the classical (republican) term of *Senatus* was (and is) widely used. Also in Dutch practice, the members of the First Chamber are informally referred to as senators. Although as a matter of fact, in most countries some allusion to terminology from the *ancien régime*-period is made, only in the case of the British House of Lords real continuity is present. For all practical purposes, then, we will continue to use the neutral term 'second chamber', from now on skipping the inverted commas.

Recruitment

In most modern democracies, second chambers can be characterised by stating that the appointment of their members proceeds in ways that are less fully democratic than is the case for the corresponding first chamber. This limitation can take different forms. Members of a second chamber may obtain their seat even without being elected, like in the United Kingdom, or may be partly elected, partly appointed.

There may exist restrictions in eligibility like age restrictions, or social and economic restrictions may be imposed, professional qualifications may be required. Moreover, the 'electorate' may be limited: it may consist of a specific group of representatives, of a provincial or even of a national government. The principle of proportional representation may be curtailed, by giving more or less equal weight to the provinces of a country.

All these limitations of the democratic principle as applying to the counterpart first chamber, are exemplified in bicameral practice in about as great a variety as the amount of existing bicameral systems seems to permit. See Table 1.

In the Netherlands, and for the greater part of its members in Belgium and Italy, one finds representation of the second chamber approaching proportionality, although differently from that of the first chamber. On the ot-

Table 1
Criteria and sources of representation (adapted from Mastias and Grangé, *Secondes Chambres*, 23)

	Criterion of representation Source of Assignment	non-elective systems	socio-economic and cultural representation	Territorial representation		Demographic representation	
				(semi-) egalitarian representation of territorial entities	Territorial and demographic representation		(semi-) full proportionality to population
					weighed territorial representation	partial proportional representation	
direct election	Electorate equal to that of first chamber			Ständerat-sw, 2 each canton=46 Senato-ES, 4/5 (208)			Senaat-BE, 47 (106)
	Special conditions						Senato-IT, 98% (315)
	Grand electors/ special mandates						Lanthing-DK (till 1953), 34
indirect election	Election by members of local assemblies (+supplementary or parliamentary delegates in some cases)		Senate-ER, 7/10 (43)		Senato-ES, 1/5 (45) elected by autonomous regions	Sénat-FR, by local associations/delegates Bundesrat-AU, designated by local Diets	I Kamer-NL, election by provincial States Senaat-BE, 2/7 (50) by provincial councils Riksdag I-S, till 1969
	Cooptation by second chamber						Senaat-BE, 1/7 (25) Lanthing-DK, 34, till 1953
intermediate systems	Designated by local executive				Bundesrat-BRD, by Länder		
	Limited franchise		Senate-IT, 1/10 (6) elected by university graduates				
non-elective systems	Nomination by head of state or government	Lords-GB, 1/3 Senate-ER, 1/5 Senato-IT, 5					
	Hereditary membership or based on quality	Lords-GB, 2/3 Senato-IT, former presidents Senaat-BE, prince royal					

Legendum: AU=Austria, BE=Belgium, BRD=Federal Republic of Germany, DK=Denmark, FR=France, ES=Spain, GB=United Kingdom, IT=Italy, NL=Netherlands, S=Sweden, SW=Switzerland. Fractions indicate part of second chamber appointed in this way, if applicable followed by absolute numbers (in brackets). Danish and Swedish data refer to the situation before the abolishment.

her hand of the scale, the House of Lords defies any notion of representation of an electorate. In this case, the representatives represent themselves, but as we will argue below, the person they represent is a political role rather than just an individual.

Intermediate systems like that of the German Federal Republic have other ways to express the political character of their representatives, by having them appointed by the federal states.

These wide variations are complemented by comparable divergences in competencies of the second chambers.

Competence

Without going into much detail, a glance at Table 2 will suffice to give ground to the observation that the formal power and competence of second chambers escapes general definition.

In several cases, e.g. the second chamber is provided with a conciliation procedure to arbitrate existing disputes with the first chamber in matters of legislature. But this is no regular practice. Veto powers can have a suspending effect only, in some cases existing in theory only but not in practice. Moreover, second chambers have widely differing competence as far as legislation is concerned. The reader is referred to Table 2 for more details.

In the same vein, differences can be enumerated concerning the possibilities of controlling the executive, the duration of mandate, the intervals between renewal of members. The above enumeration may suffice, however, to indicate the great variety of ways in which second chambers deviate from the contemporary norm of democratic representation and the various consequences this deviation has led to in constitutional arrangements. But how did all this come about?

HISTORICAL DIMENSIONS

The historical investigation of the emergence and development of political institutions is highly apt to lead to results that shed light on what bicameralism is all about. In opposition to a technical-juridical approach, in particular, historical research is prone to elucidate the more comprehensive context that produced and sustained this systematically inconvenient aspect of modern parliamentarism. In the contributions to this volume, one will find very insightful analyses of bicameral aspects of parliamentarism in its original feudal stage, as well as of its prospering and suffering under the influence of the exigencies of the emergence of the modern state. Reflecting the balance of power in its political, economic, social and cultural dimensions, as it evolved between nobility, crown, church and cities, bet-

Table 2

Powers and competence of second chambers (adapted from Mastias and Grangé, Les secondes chambres, 26)

Powers Competencies	Power to delay only temporary veto or delay suffing from consideration	Right of veto in principle not exercised in practice	Limited or conditional right of veto (majority requirements)	Powers equal to those of the first chamber
Full competence in all mains	<p><i>Senato -ES</i> * delay for investigation=1 month * suspending veto for 2 months * priority of investigation Congreso de los Diputados * conciliation procedures</p>	<p>Nationale for laws of finance * conciliation</p>	<p><i>Sénat -FR</i> * <i>Definitive</i> decision by Assemblée Nationale on demand of gynt. after 2 to 4 lectu- lectures in each chamber. in case of no concilia- tion * priority of Assemblée budget matters</p>	<p><i>Senato -IT</i> <i>Ständerat -SW</i> * conciliation <i>Senaat -BE</i> * usual priority of Kamer van Voksvertegen- woordigers in</p>
Competence limited in some matters	<p><i>Lords -GB</i> * veto appr. 1 year * on 'Money Bills', veto reduced to 1 month, amendments on taxes and credits excluded * usual prior investigation by Commons in important matters <i>Senate -ER</i> * delay of inves- tigation of 3 months, rejec- tion by Senate superseded by Dáil if adopted by 2/3 majority *No right of initiative on constitutional matters * On financial laws limited delay, and no right of amendment</p>			
Generally limited competence	<p><i>Bundesrat -AU</i> * delay of investigation 2 months * right of initiative exercised by majority only * no competences in fi- nancial matters * priority of investiga- tion by Nationalrat</p>	<p><i>Eerste Kamer</i> <i>NL</i> * Right of veto for bills in their totali- ty, rarely exer- cised * no right of amendment *no right of initiative * priority of investigation by Tweede Kamer</p>	<p><i>Bundesrat -BRD</i> * Com- plete veto of bills concern- ing the Länder or the constitution * other bills only by qua- lified majority * no right of amendment * priority of investigation by Bundestag * conciliation</p>	

ween centre and periphery, between one form of representation and another, the history of parliamentarism shows a number of peculiarities relevant to the history of bicameralism proper. See Table 3.

The early appearance of a bicameral system in Great Britain, and its virtual absence in other major countries in Europe, has elicited many a comment from historians of parliamentarism. Rudolfine von Oer and Wim Blockmans, *infra*, present the arguments of Otto Hintze in this respect, together with their appraisal in the light of recent research. Hintze's argument centered on the feudalism of the Carolingian heartland as the fountain of the *Dreikuriensystem*, the absence of which in the *Randländer* permitted the development of bicameral forms of representation there. Hintze's insistence on the feudal origins of modern representation links in with some of the characteristic elements of Gierke's *Genossenschaftsrecht*. Both were very much concerned to understand the political world of their own day, which also saw appear the principled but almost despairing analysis of Carl Schmitt.⁴ In a way, their concern was not so much to give an explanation of bicameralism as such, but to develop a notion of representation independent from the dominant, modern liberal-democratic one.⁵ It is a biased game of typology construction out of which the *typus* bicameralism is suggested to arise.

Koenigsberger has emphasised the inherently dynamic character of systems of representation. According to this view, the development of parliamentarism has nothing to do with *weltgeschichtliche* processes, but should be analysed according to a power-political scheme. He notices that the conclusive establishment of parliamentarism in Great Britain during the seventeenth century contains many a 'lucky' moment in both national and international circumstances.⁶

No doubt, the quite strong position of the Commons, partly flowing from its containing both gentry and citizens, representing the boroughs in the processes of decision-making in a fairly integrated political system, in combination with the way nobility and church shaped the House of Lords, are important elements to explain this early and remarkable example of bica-

⁴ Hintze, *Feudalismus - Kapitalismus*. Ed. G. Oestreich. Göttingen 1970; O. von Gierke, *Das deutsche Genossenschaftsrecht*. 4 vols. Graz 1954 (reprs. of 1868-1913-ed.); C. Schmitt, *The crisis of parliamentary democracy*. Tr. of *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (Berlin 1923) by E. Kennedy. Cambridge (Mass) 1985.

⁵ Hintze 'möchte ...den Staatstypus, dem das Dreikuriensystem entspricht, als einen fortgeschrittenen, intensiveren Staatsbetrieb bezeichnen im Vergleich zu der mehr extensiven rückständigen Betriebsweise des älteren Typus, dem das alte Zweikammersystem entspricht.' 64-5. Hintze relies on notions like 'Herrscher als Repräsentant einer Gesamtheit', 'lokaler Selbstregierung' and 'Immunität', and stresses the role of Roman law and the modernising influence of the continuing power struggle between the states of the European mainland. p 74.

⁶ H.G. Koenigsberger, *Politicians and virtuosi. Essays in early modern history*. (London/Roncheverte 1986) 21.

Table 3. Historical development of second chambers (adapted from Mastias and Grangé, *Les secondes chambres, 46-47*); final form of second chambers indicated by italics

Type Time	Continuation of a chamber representing original legitimacy after the rise of democratic legitimacy		Creation of a chamber to contain, temperate or supplement the power of the democratic majority (compromis between popular sovereignty and the protection of minority interests)		
	Aristocratic chamber, challenged and eventually overpowered by popular chamber	Original sovereignty of territorial entities maintained after the acceptance of popular sovereignty	Second chamber created to restrain rising democratic power	Chamber created in a democratic system	
				Compromise between antagonistic socio-political powers	Compromise between central power and territorial entities
	<i>Lords-GB</i> XI-XII c.: counselling King XIII c.: ++representing Commons XIV c.: Commons separate XVIII c.: Commons obtain first place				
1789 French Revolution			Sénat conservateur-FR 1799-1814	Conseil des Anciens-FR 1794-1799	
1814-15 Restoration			Chambre des Pairs-FR 1814-1848 I ^e Kamer-NL 1815-1848	Senaat-BF 1831	
1848 European revolutions		<i>Ständerat-SW 1848</i> succeeding confederate Diet from XV c. Representing original sovereignty of the cantons next to new Nationalrat representing popular sovereignty	I ^e Kammer Reichsrath-AU 1848-1918 Senato del Regno-IT 1848-1943 Sénat impérial-FR 1852-1870	I ^e Kammer-NL 1848 Landsting-DK 1849-1866	<i>Ständerat-SW 1848, cf. this row, second column</i>
1860-70 industrialisation & nation-building			<i>Landsting-DK</i> 1866-1915 Riksdag I-S 1866-1909 Bundesrat II Reich-G 1871-1918 Senato Canovisto-ES 1876-1923	<i>Conseil d'Etat-L.</i> 1856-1868 Sénat III ^e République-FR 1875/1884-1946 Riksdag I-S 1909/1873-1969 <i>Landsting-DK</i> 1915-1953	
1914/18 WWI			Senate-ER (GB) 1920/22-1936	<i>Senate-ER</i> 1937	Reichsrat Weimar-G 1919-1934 Bundesrat I Rep.-AU 1920-1929
1939/45 WWII				Conseil de la Rép. (IV ^e Rép)-FR 1946-1958 <i>Senato della Repubblica-IT</i> 1947 Sénat V ^e Rép-FR 1958 <i>Senato-ES</i> 1977/78	<i>Bundesrat II Rep.-AU</i> 1945 <i>Bundesrat-BRD</i> 1949

meralism. In particular, a comparison of the British case to the evolution of parliamentarism in the Castilian Kingdom suggests that the 'constitutionalisation of aristocracy' is a decisive factor in the emergence of bicameralism, maybe even of a strong parliamentary system itself (cf. the contribution of Croft and Thompson, *infra*).

It is however, one thing to enumerate the circumstances that led to bicameralism in Great Britain, quite another to explain the institution itself.

An attempt at periodisation

We have noted a tendency in the literature to regard second chambers as exponent of the remnants of a pre-democratic order, cloaked in the sallow garb of traditional legitimacy. One should, however, take care lest one takes this as a characteristic of second chambers throughout history. In the first place, as we will indicate below, in the premodern period the second chamber represented the 'nation' as a whole, whereas the representatives of the people represented 'interests', instead of the general interest. In the second place, speaking in terms of what private interests are represented in the second chamber, veils the really important characteristics of bicameralism: the interdependence of its chambers. Bicameralism has not been invented recently, but is about as old as parliamentarism itself. Moreover, the case of the United States of America is presented —by Thomas Fröschl, *infra*— to indicate that a second chamber can be made an instrument in a modern political system as well.

In this volume abundant evidence is given to the effect that representation has tended to segregate itself into different chambers. More often than not, we find bi —or tricameral representation, suggesting that a differentiation of titles to be represented is central to the concept of representation itself. Aiming at a periodisation of bicameralism, we may therefore be advised to look to the wider context of representation itself. On the other hand, one may question the suggestion implicit in such an approach that bicameralism is just one of the ways in which representation becomes institutionalised. The literature on *ständisch Verfassung*, more often than not, seems to imply that bicameralism is not 'the real thing'. But overcoming the estates-paradigm may be not as easy as one would like to.

What we need is a theoretical argument to order all these different dimensions, aspects and partial histories. It is evident that there is not one explanatory argument about the history of bicameralism, on at least the same grounds as there is not one type of bicameralism, in some cases not even within one country. Bicameralism is an institution subject to change, responding to changing circumstances, possibly even embodying the vitality of the parliamentary system in Western states. Historians no longer swa-

llow Hintze's sweeping generalisations head and tail, nor do they accept the historicist implications of Gierke's contrast between organicist *Genossenschaft* and mechanistic *Kontrakt*. Our modern notion of e.g. French parliamentarism has become much more sophisticated following more detailed knowledge of the variegated histories of the provincial parliaments and the central role of French bureaucracy.⁷

Two dominant lines of argument may be contrasted. On the one hand we have those who argue that the system of parliamentary representation is a reflection of the actual political forces and power relations in a nation. In the 'age of democratic revolutions', the bourgeoisie fought their way to parliament, destroying outlived privileges of the old ruling classes. The continuing existence of second chambers in parliament reflects the fact that the bourgeois uprising was only partially successful. Second chambers represent the untouched fortresses the anti-democratic forces in society managed to rescue. The practical implications of this point of view evidently are that bicameralism is a reflection of the past, and an impediment for a genuine democratic future.

On the other end of the scale, we see the notion of parliamentary institutions expressing the ideological formations in a nation, and what is more, as a possible avenue to defining these ideological formations. The continuing existence of bicameralism is taken as proof for the hypothesis that bicameralism is what accords with the more precise conception of parliamentary representation. According to this somewhat essentialistic conception, institutions embody (part of) the political self-conception of a nation.⁸

These two approaches to bicameralism are both reflected in the studies in this volume. Most often they are combined in describing important episodes in the historical development of bicameral systems. Especially in the period of constitutional codification around 1800, both power struggle and debate on the national identity and the institutions appropriate to it get their due.⁹ In developing some arguments for a periodisation of the history of bicameralism it will be fitting to incorporate both aspects. This would imply combining a functionalistic and a deterministic explanatory scheme. According to the first, bicameral institutions perform functions in realizing the political goals of a nation, like enforcing a homogeneity of heterogeneous elements, such as estates, classes, groups of different levels of professionals. Moreover, to these goals may belong the realisation of certain qualities of the representative and legislative process. In this respect one

⁷ See i.a. J.R. Major, *Representative government in early modern France*. New Haven/London 1980.

⁸ The most outstanding representative of this approach is Otto Gierke, in his *Das deutsche Genossenschaftsrecht*, especially in the part of volume III translated and edited by F.W. Maitland as *Political theories of the Middle Age*. Cambridge 1900.

⁹ For a highly polemic use of these two approaches, see C. Schmitt, *The crisis*, as well as Leibholz, *Die Repräsentation*.

may point to the opinion that a second chamber functions as a protective belt around the monarch against a possibly too massive popular influence on legislation, or to its description as a 'chambre de réflexion', as an embodiment of considered opinion. This functionalistic perspective tends to develop into arguments about the desirability of bicameral institutions, not necessarily implying their necessity or inevitability. Societies may decide not to have functions performed that are salutary, or to have these performed in a different manner. Ivan Roots, *infra*, elaborates this theme in his discussion of the monocameral phase in English history during the Cromwellian period. The functional perspective is also dominant in much of the Scandinavian abolitionist history, as is evident from the contributions of Michael Metcalf and Nils Stjernquist. It lingers on the background of most of the contributions on the actual role of the second chamber in the working of the English parliament. The functionalist approach, in short, concentrates on the effects of bicameralism and on their evaluation in the light of the professed goals of the political order. It may point to alternative solutions, to built-in inconsistencies, or to insufficient official definitions of the situation.

Quite different is the deterministic power-political approach. Systems of representation are outcomes not of the coordinated pursuit of societal goals, but of the balance of power between different claimants for the ultimate rule of the system. As long as absolute power is an impossibility, systems of balancing are inevitable. Bicameral systems, hence, are sign of a lack of supremacy on the part of any of the contestant groups. Bicameralism is compromise, not principle. In 'eschatological' histories of parliamentarism, in particular, this line of approach gets its full force. Progressive and reactionary forces contest the legislative power. The democratic forces, opposing any remnants of traditional privileges, move towards the realisation of democratic representation based on universal suffrage. Indeed, this is a way in which the secular trend in modern history may be presented, although it is a matter of historical research to determine in how far, and whether at all, it is accurate to describe the development of political systems from the exclusive perspective of one of the participant groups.

Nevertheless, in a less uncompromising vein, power politics must be regarded as an ineluctable element in the explanation of bicameralism. Democratic reforms have, more often than not, been based on power-based demands from hitherto unrepresented groups, although, again more often than not, particularistic forces were joined by those who tried to reformulate the overall ends of the society in view of newly arisen circumstances. In a classical idiom, articulations of 'volontés particulières' were accompanied by or reintegrated into the articulation of a 'volonté générale'. The history of bicameralism reflects this dual structure.

Congar reminds us of the double meaning of representation: in an individualist sense he speaks of *représentation-délégation*, where the repre-

sentatives are delegates of the represented, in contrast to the organic representation as symbolisation: *représentation-figuration*.¹⁰ Neither of these two forms is suitable for all cases of representation. The barons of the realm seem doomed to the figurative form. They have received no delegation, nor do they choose in their midst ones to be delegated. Whatever they do else, they figurate representation *qualitate qua*. Whereas a king may be elected, they are not. But just like kings can become tyrants, noblemen can forfeit their symbolic quality, not as a consequence of trespassing some delegation, but by relinquishing their identification with the common interest of the community they figurate. Symbolisation no doubt means rhetoric and metaphoric play of words. Koenigsberger, therefore, suggests to concentrate on power.¹¹ But, does delegation fare so much better? Presumably not. Delegation may be a different institutional arrangement of representation (and in its dealings with other political forces a very effective one), it cannot function without at least some elements of rhetoric and symbolisation.

Bicameralism is that political arrangement in which these two patterns of representation are segregated and embodied in separate chambers. The permanency of bicameral arrangements depends on an interlaced distribution of power and symbolism. If, e.g., the 'chamber of delegates' does not develop a sense of representing 'the' country vis-a-vis countervailing powers, it will scarcely overcome the inherent tendency to particularism and will soon lose any political weight it may have possessed when instituted. But, as success breeds success, delegates would never start to represent the national interest if they did not manage first to countervail the dominant powers in their neglect of the 'bonum commune'. Institutionalisation is always a matter of words and deeds. It is, according to Eberhard Schmitt, 'immer als soziopolitisches Phänomen, als «soziale Beziehung» zu sehen'.¹² Admittedly, this is the kind of functionalist analysis that Koenigsberger frowns at.¹³ But so is the theory of Norbert Elias he employs himself. In particular, the second mechanism Koenigsberger presents following Elias, that of 'the depersonalization and institutionalization of the exercise of power', can only be understood in terms of social position, social role, and role behaviour as is argued by Schmitt. And although Koenigsberger and Schmitt agree in respect of the necessity to see parliamentary institutions in a dynamic perspective, Schmitt's approach to representation as a pattern of so-

¹⁰ Y. M.-J. Congar, 'Quod omnes tangit, ab omnibus tractari et approbari debet', *Revue historique de droit français et étranger* 36 (1958) 210-259, esp. 248-250.

¹¹ Koenigsberger, *Politicians and virtuosi*, 4: Basically, therefore, the history of the relations between monarchies and parliaments is the story of a struggle for power".

¹² E. Schmitt, *Repräsentation und Revolution. Eine Untersuchung zur Genesis der kontinentalen Theorie und Praxis parlamentarischer Repräsentation aus der Herrschaftspraxis des Ancien régime in Frankreich (1760-1789)*. (Munich 1969) 43 f.

¹³ Koenigsberger, *Politicians and virtuosi*, xi.¹⁴

cial relationships has some advantages over the power conflict inclinations of the Elias-model.

In the first place, Schmitt's model can more easily accommodate the distinction of Congar between 'représentation-délégation' and 'représentation-figuration'. In the second place, it permits the understanding of the history of parliamentarism as a confrontation of different concepts of representation. If my thesis about bicameralism as the institutionalisation of a bifurcated conception of representation is correct, it may even be a very plausible approach.

Corpus mysticum, liberty, democracy

In an attempt at a periodisation of the history of bicameralism, I suggest to look on the one hand to dominant political values, on the other to the changing balance of power. As a starting point, the implicit debate between Montesquieu and Rousseau may be illuminative. In *Du contrat social*, Rousseau produced the following metaphor:

'Les charlatans du Japon dépècent, dit-on, un enfant aux yeux des spectateurs: puis, jetant en l'air tous ses membres l'un après l'autre, ils font retomber l'enfant vivant et tout rassemblé. Tels sont à peu près les tours de gobelets de nos politiques: après avoir démembré le corps social par un prestige digne de la foire, ils rassemblent les pièces on ne sait comment'.¹⁴

Rousseau's scorn of political pretenders and illusionists who seek to unite the body politic by separation of powers leaves no doubt about his target. Against Montesquieu he is certain that there is no other way to realise the democratic ideal but by majority. The liberal ideal of the rule of law that was so central to his opponent was to Rousseau but a conceited form of slavery. The conception of liberty as the prime good of society was, however, no less a modern notion than that of democracy. In important respects it even has older origins, comparable to those of bicameralism. As far as bicameralism is concerned, liberty and democracy tend to conflict. The liberal anti-autocratic, antidespotic, and anti-arbitrary principle is to replace personalized sovereignty by systemic sovereignty. The legislative process may be formally concluded by the monarch, its principle should be balanced decision-making starting from the popular articulation of demands. In Montesquieu's conception both chambers perform their specific functions in formulating the general will. Following a long tradition of republican thought, and foreshadowing critics of Robespierre's arbitrary rule like Benjamin Constant, Montesquieu rested convinced that the democratic

¹⁴ Book II, chap. ii.

principle alone is no guarantee for the rule of law. In representation itself an antidote should be found against its possible perversion. But rule of law without democracy is a formalism, because it fails an answer to the question: 'Whose law is it anyway?'

Pre-modern notions of representation are of a more holistic nature. As the king represents his people, and the nobility represent theirs, developed the notion of privileged groups representing themselves. It created a certain tension between honour and liberties, between a moral qualification to speak for others and a qualification founded in law. Bicameralism may be regarded as an institutional solution of this tension. We pointed out that in Montesquieu liberty takes advantage of honour. Bicameralism is identified with this value. But it did not hold long against the new ultimate value of democracy, second chambers becoming second to the first chamber. An interesting fact about the nineteenth century, however, is that nor the argument from honour nor that from liberty did yield easily and completely. The arguments put forward in France, Italy, the Netherlands or elsewhere all exhibit this somewhat elusive mixture of honour as a moral qualification to represent and the liberal rule of law to be guaranteed by balanced representation. The mixture was elusive since neither of these two rivals to democracy were any longer exclusively political. Honour had become a lifestyle, and the rule of law was taken care of by a professional bureaucracy and judiciary. Nevertheless in many countries as we have seen, bicameralism continued to exist, partly as a consequence of the inertia of institutional arrangement, partly because 'honour' and 'liberty' were adapted to the changing predicament of democracy.

Federal bicameralism

One may wonder, whether federal forms of bicameralism conform to this scheme. At first sight, federal bicameralism seems to reflect quite other tensions, viz. that between centralisation and regional independence. But if we survey the workings of these tensions in the early period of parliamentarism, honour and liberties are again central to federal-like forms of bicameralism. The preservation of regional liberties, the defence of regional minorities against an abstract majority, moreover, is not restricted to federal bicameralism. It has been noted as a topic of interest in e.g. the House of Lords as well. On the other hand, modern federal bicameralism is markedly distinct from unitary bicameralism. As J. Pole explains, *infra*, the federal solution is provided with additional arguments. Indeed, bicameralism seems to be inherent to federalism. As a recent survey claims that almost all federal states in the world have bicameral legislatures (16 out of 17), whereas the majority of unitary states lives by mono-cameral systems.¹⁵ But the form bicameralism

¹⁵ L. D. Longley and W.J. Oleszek, *Bicameral politics. Conference committees in Congress* (New Haven/London 1989) 15.

takes in federal states, again, is variegated. In federal states of the presidential type, like the United States, the legislative impact of second chambers is far more important than in parliamentary systems like the European ones. Especially in the context of the European Community these two different models make us aware of very complicated way in which representation and form of government interact. The 'democratic deficit' of Europe on the one hand, and the need for efficient unification on the other, force us to reconsider the various arguments for both approaches to federalism anew. The reader is referred to the minutes of the symposium, *infra*, for more details.

Efficiency

Our modern demand on politics is more and more in terms of efficiency. Not seldom is the question posed, whether second chambers 'deliver the goods', whether they produce the outcomes they are supposed to bring forward in an efficient way (or produce these at all). Vernon Bogdanor, *infra*, succinctly summarizes the possible benefits second chambers might be said to have, and summarises the possible functional equivalents to bicameralism. His argument seems to point out that second chambers are less than efficient. In a very remarkable analysis of bicameralism, Brennan and Hamlin, have pointed out that there very well may be an efficient role for second chambers.¹⁶ Using the apparatus of public choice theory, they demonstrate that bicameralism may enhance the stability of the decision-making process in modern democracy. They show that, within the limits of certain restrictions, bicameralism is an institutional device to make parliamentary decision-making more responsive to the underlying preferences of the citizenry. In other words, on their view, second houses are not an anomaly in the context of modern democratic theory, but on the contrary a contribution to its efficiency.

TOPICS FOR RESEARCH

Over the last two years, Dutch political life has witnessed a growing interest in the foundations and functioning of the second chamber in parliamentary decision-making. The old epitheton of 'chambre de réflexion' becomes more and more just an expression for the expectation that a second chamber can enhance the quality of decision-making. More and more, this is scrutinized for its possibly destabilizing effects, for its efficiency, without

¹⁶ G. Brennan and A. Hamlin, *Bicameralism and stability*. [University of Southampton Discussion Papers in Economics and Econometrics 9002 University of Southampton 1990.

however leading to an upsurge of abolitionist tendencies. Next to that, it is becoming increasingly linked with the problem of parliamentary life in Europe. If we may regard these debates as a significant indication, bicameralism is all but dead, and seems to invite sustained scholarly attention.

Topics for research to be summarised here, can be divided into two categories. First, we have those topics researched in this volume, and second, there are those that suggest themselves after studying the papers presented here. Notwithstanding the many comparative and theoretically oriented studies to be found in the present volume, it seems correct to remark that their main thrust is to enrich our historical picture of the practical functioning of bicameralism, often on a low level of generality. Given the scarcity of studies of this kind, especially encompassing medieval and early-modern as well as modern examples of bicameralism, this volume is a welcome contribution to the kind of research called for in the first place. Our knowledge of bicameralism would, so it seems, be greatly enhanced, if more effort were devoted to updating the theoretical structures applied to the phenomenon. Since the days of Hintze, Koenigsberger is one of the few to have undertaken the adventure of a crispy and insightful picture in terms of his *dominium politicum et regale*. The possibilities, however, are far from exhausted, and what is more, the problems that face parliamentarism today, in particular in relation to growing international integration, are more pressing than ever. It is to be hoped that this volume triggers this integrative kind of research, with as much success as the organisation of the 1990-Conference did trigger this book.