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The territorial aspect of second chambers in Latin American federal countries

by

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Abstract

Second chambers are often designed to represent territorial interests, but they are prone to being taken over by political parties which undermines legislators' territorial focus. In traditional federal theory, a senate mediates the relationship between democracy and federalism because it enables subnational participation in national government. Recent literature challenges this assumption and provides evidence of inefficient territorial representation by the second chamber. The inability of a senate to represent territorial interests in national politics has been called Madison's paradox. The findings of this study of territorial representation in bicameral and federal Latin American countries support Madison's paradox and reveal that second chambers in federal Latin America have been ineffective in expressing the territorial dimension. Alternative formats of subnational participation in central government have emerged, such as executive-based bodies comprising the central and regional governments for political negotiations and the coordination and implementation of policies.

Key-words

Federalism, democracy, second chambers, comparative politics, Madison's paradox



1. Introduction

There are various theoretical explanations for the existence of a second chamber^{II} as part of the legislative power of a country. Although such legislative chambers also exist in unitary countries, in the field of federal studies, they are often related to the adoption of federalism in a country. Recent arguments, however, cast doubt on the efficiency of the senate for territorial representation and participation of subnational units in the political life of a federation. The territorial representation expected of the second chamber mostly relates to the formal composition of the house, based on the election of subnational, unit-based senators. Territorial participation of the upper chamber is reflected by the extent to which senators vocalize demands from their original state or province to influence the direction of national policy.

The essence of the arguments that question the ability of the senate for territorial representation and participation is its institutional design, prone to a high potential for party take-over. When the party system dictates the senators' preferences more than subnational demands, the senate resembles the lower house, duplicating the function of the political arenas. So, the take-over of the senate by parties dissociates it from the task of representing subnational units. The incongruence of expectations for the territorial character of the second chamber and the evidence of its inability for this task is called “the Madison paradox”^{III} and affects most federal countries^{IV}.

Madison's paradox has mostly been discussed in theoretical terms, and generally refers to European and American federal experiences. The present study is a contribution to this discussion, empirically examining the paradox and applying it to Latin American cases, employing a combination of legal, political and pragmatic viewpoints.

The assessment of the territorial character of the second chamber in Latin American federal countries will start from (1) the constitutional role played by the senate in selected cases and (2) its institutional features, passing through (3) the overrepresentation index (Samuels & Snyder, 2001; Snyder & Samuels, 2004) for each country, and also includes a brief analysis of (4) the party system in each house. The first two elements of analysis reflect the territorial aspect of the second chamber, revealing the original purpose of the institution, traditionally associated with the US federal set-up. The latter two indicate the potential of



political take-over of the upper chamber by political parties, depending on the general orientation of the system, whether more nationalised or regionalised.

Latin American federal senates are the focus of this study as they developed specific institutional characters over time, regardless of the patterns established by the U.S. model^V. Four countries in the region have formally adopted federalism: Argentina (1853), Brazil (1889), Mexico (1824), and Venezuela (1811). Venezuela dropped its second chamber in the constitutional reform of 1999 (Brewer-Carías, 2004). Therefore the comparative analysis of the senates will concentrate on the other three cases.

This paper proceeds as follows: I will introduce Madison's paradox and its key arguments; then I summarize the main elements of the institutional profiles and comparative observations on Madison's paradox in Latin American federal countries. Finally, I will discuss alternatives to territorial representation in federal countries and indicate complementary avenues of research.

2. Second chambers between democracy and federalism

Doria (2006) and Palermo (2018) raised a thought-provoking topic in the debate on federalism and its relationship with democracy: are second chambers truly a fundamental element of federal democracy, and, if yes, do they succeed in promoting territorial representation and participation of subnational units in national political life?

Second chambers have, traditionally, been regarded as a federal element ever since the advent of the US model, which had broad repercussions due to "The Federalist" papers (Hamilton et al., 2003). Although not essential to the federal character of a country (Watts, 2006), the second chamber would affect the operation of democracy, strengthening the principle of separation of powers (Benz & Sonnicksen, 2016). Second chambers also emphasise checks and balances and disperse authority to limit the tyranny of the majority (Watts, 2006), and, depending on how strong second chambers are, can act as veto players (Tsebelis, 2011).

In federal theorising, the second chamber would exert its legislative competences along with the tasks of territorial representation and participation of subnational units vis-à-vis the federal government. In this context, territorial representation means, "(...) making present of something absent' while 'not making it literally present'. Representation, then, meant



‘making present indirectly’, via an intermediary (...)’ (Burgess, 2006, p. 193). Since the advent of the Federalist Papers, the basic questions regarding representation at federal level are which territorial interests and should be represented, how to achieve equality of representation, and, finally, how ‘representative’ representation can be, i.e., representation as proportionality.

Territorial participation, in its turn, avoids isolation and allows influencing common policies that affect the constituent units. Theoretically, the participation of subnational units in national politics takes a representative form, with the upper house performing the tasks of law-making and control over the federal government. The second chamber “ideally represents the interests of the constituent units in the process of federal law-making” (Gamper, 2005, p. 1315). To guarantee the balance of power between the two chambers, it is fundamental for the second chamber to have veto power, in general, but especially for territory-related matters, which means those that could violate the constituent units’ interests (Gamper, 2005; Tsebelis, 2011).

In democratic theory, the role of the federal chamber depends on the understanding of the relationship between federalism and democracy. For some scholars, the second chamber represents a constraint to majoritarian democracy^{VI}. This derives from the argument of a total incompatibility between democracy and federalism (Gibson, 2004; Stepan, 1999a, 1999b). By proposing the continuum demos-constraining/enabling^{VII} for classifying federal experiences, Stepan highlights the limits to the formation of the national will required by the democratic status. Inspired by the US model, other federations, such as some Latin American federal countries, would also see political consequences that are demos-constraining. One of those consequences would be a minority of people deciding on the fate of the majority when the competencies of the senate are symmetric to those of the lower chamber, which works on the premise “one person, one vote”^{VIII}.

On the other extreme, however, scholars consider federalism and democracy as necessary conditions that complement each other (Levy, 2007; Lijphart, 2012; Oates, 2011; Soares, 1998). In this perspective, the greatest merit of a federal model is the equilibrium of power between constituent units, guaranteed by the second chamber. Benz and Sonnicksen (2017) point out that features usually attributed to federalism, such as individual liberties, the rule of law, and the possibility of accommodating diversity more appropriately, could



promote democracy. The senate would be one of the *loci* of the political system where diversity is better embodied.

More recent literature (Benz & Sonnicksen, 2016, 2017, 2021; Sonnicksen, 2018) concedes that the second chamber can play a mediating role between federalism and democracy, here taken as two different dimensions of a political system. Together with other mediating elements, second chambers promote the coupling between federalism and democracy in what the authors consider “a tense relationship” (Sonnicksen, 2018). This tense coupling between federalism and democracy can occur in an intergovernmental dimension, which covers the national or regional character of the party system in a polity. It can also happen in an intra-governmental dimension, captured by the executive-legislative separation or fusion of powers, in which the senate can also be a determinant element. The senate is therefore the institution that better captures the territorial aspect in a federal political system, even influencing executive survival under certain circumstances^{IX}.

Second chambers are thus key in the discussion of the relationship between federalism and democracy. However, new interpretations of the origins of the American federal model question the role of second chambers as an arena for territorial representation, and especially, for subnational participation in federal political life. This has repercussions for other countries that have adopted similar structures.

“Madison’s paradox” (Dehousse, 1989; Doria, 2006; Palermo, 2018) arises from the theoretical inadequacy of the institutional model of the senate for the expected function. It departs from the common assumption that a territorial chamber is essential for a federal system to provide an arena for regional interests. The second chamber fails that duty by becoming a nationalised, party-dominated, institution like the lower chamber. From a historical perspective, this contradiction comes from the misinterpretation of the principles of equal representation of territorial units and indirect election since the advent of the American Constitution.

Madison, in the Federalist Papers, separates the representation of the people in a national state from the representation of the states in a federal state. The people would be represented in the lower chamber, which derives its power from the constituency and is proportionally representative. The federal representation must be different: “The Senate, on the other hand, will derive its powers from the States as political and coequal societies; and these will be



represented on the principle of equality in the Senate, as they are now in the existing Congress. So far, the government is federal, not national” (Hamilton et al., 2003, p. 241).

There are two models of upper houses, senatorial and ambassadorial, each based on a different concept of regional representation. The senatorial type aims for political representation of federated communities. All but one upper house in the world has adopted that model. The German *Bundesrat* is the only ambassadorial one, understood as the juridical representation of federated governments, besides the EU Council (whose federal character is still evolving).

The institutional failure in representing regional interests is mostly related to the senatorial model, because it allows linking the senator and the subnational unit by party dynamics. The ambassadorial model would escape that tendency because of the nature of that link: this type of senate consists of emissaries from state governments instead of elected representatives (Thelen & Karcher, 2014). This reduces the risk of political parties taking over those representatives.

The senatorial model comes from the US, where it was created to perform a different function, “(...) providing a bulwark against the risks of politics being dominated by parties” (Doria, 2006, p. 36). The justification for the existence of the second chamber as a territorial one only came later in reaction to criticism from anti-federalists. The original reason for proposing the American Senate, according to Doria, was a different one: “(...) the true rationale which led the Framers to build the Senate – not just a Senate, but that Senate – had originally to do not with federalism but with the theory of mixed government, and, more specifically, with the Madisonian idea of the necessity of a protection against the risk of factionalism” (Doria, 2006, p. 20).

Palermo (2018) builds upon Doria’s assessment of the inefficiency of the upper chamber to serve as the voice of subnational units within the national decision-making process. His argument goes in the same direction: that the second chamber (in the senatorial model) is generally unsuitable for territorial representation and participation because the territorial aspect can be overruled by the political or democratic claim, duplicating the type of representation that usually goes on in the lower chamber.

The main reason for the inadequacy of senates to the territorial prerogative is that subnational units seek participation and not mere representation in the national political arena. The institutional senatorial form of second chambers is usually not suited to enable



effective participation: “(...) the Madison’s paradox tells that territorial second chambers, aimed at representing territories and more general factors other than the democratic element, in the end, turned out to do precisely what they were supposedly aimed at not doing. They became political-democratic chambers like the lower houses of parliament (...)” (Palermo, 2018, p. 52).

The solution to the identity crisis of the senate is different for both authors. For Doria (2006), it lies in using the federal chamber as a disruptive tool via the party system: “(...) senatorial chambers instead [of ambassadorial ones] can – under certain conditions – perform a strong decentralizing and destructuralizing function, by offering the regional political personnel a national outlet for its ambitions” (Doria, 2006, p. 7). Although the ambassadorial model performs the function of territorial representation, it is the senatorial model that could weaken the centralising force exerted by the party system in a federal context.

In a different perspective, Palermo (2018) suggests the adoption of executive-based structures dedicated to dealing with the lack of a proper arena to vocalize their interests left by the unfulfilled expectations over the senate. These structures operationalise coordinated actions and enable negotiation among subnational units and between them and the federal government. Another trend to deal with the ineptitude of the senate for territorial representation would be moving from bicameralism towards bilateralism, creating alternative *fora* for a discussion of singular and regional-based claims. Therefore the “unresolved dilemma of subnational representation” (Palermo, 2018, p. 50) would depend more on intergovernmental relations (mostly informal and dynamic) rather than on the institutional architecture of second chambers. The issue is still unresolved. Regardless of “their set ups and powers” (Palermo, 2018, p. 51), second chambers cannot voice the demands of subnational units appropriately. These are more efficiently addressed by executive bodies, despite the institutional discourse that the senate is the locus for territorial representation.

According to Palermo, “a fundamental challenge of bicameralism is necessary” (2018, p. 51) because subnational representation and participation are key issues for the operationalisation of federal systems. We must confront the “widespread trust in second chambers” (Palermo, 2018, p. 64), because the arrangement is unable to articulate subnational interests in national politics. For meeting and negotiating among states and with the federal government, a political system must establish other arenas. “No reform has



succeeded to turn second chambers into something they are not designed to be” (Palermo, 2018, p. 64).

In sum, Madison’s paradox is still on the reform agenda worldwide, questioning the aptitude of second chambers for territorial representation and participation in national political life. The next section contributes to this debate by exploring this issue for Latin American federal countries.

3. Assessing the territorial character of the second chambers in Latin American federal countries

Latin America covers twenty countries. By far the most are unitary states. Only four countries are formally federal: Argentina, Brazil, Mexico and Venezuela. Venezuela is an outlier here, as the 1999 Constitution abolished the senate, leaving no visible trace of formal territorial representation in the federal government. Since this is a study of second chambers, Venezuela was left out of the analysis.

Argentina, Brazil, and Mexico share another important feature: they are all presidential countries. Valenzuela (1991) claims that Latin American countries have been using the US as an unsuitable reference to establish political systems. Therefore Latin American presidentialism disregards important characteristics of its nations, people, culture and, more importantly, political elites. For the author, Belgium and Canada would be more suitable models than the US for granting democratic permanence to the countries of the region (Valenzuela, 1991).

On the other hand, Shugart and Carey (1992) suggest that institutional design affects how the political process in representative democracies operates and regimes with an elected president can offer some advantages. Presidentialism differs from parliamentarianism by having two agents of the electorate, the president and the assembly, while in parliamentary regimes the assembly is the only electorally accountable agent^x. In regimes with elected presidents, their executive powers can be affected not only by constitutional constraints but by other institutional choices. In addition, the separation of elections between legislative and executive can affect the democratic operation of the whole system (Shugart & Carey, 1992) and impacts on federal institutions (Watts, 2012).



Regarding the second chamber in particular, the system of government, whether parliamentary or presidential, can have an important impact on the perception of its territorial character. In presidential systems, the senates have broader powers than parliamentary regimes, making upper houses strong players (Neiva, 2008). However, the parliamentary flexibility can, in turn, enable territorial expression in the senate, if the attributions of the upper house differ from the powers of the chamber of representatives (Linz, 1985). This effect is even stronger if it is associated with a regionalized party system (Watts, 2006).

For the presidential cases of Argentina, Brazil and Mexico, the analysis will cover the role and powers of each senate; the issue of legislative malapportionment and overrepresentation and its effects in the upper chamber; and finally, a debate about the interaction between the party systems and the second chamber. Table 1 gives an overview of the institutional aspects of federal senates in Latin America under the current constitutional order:

Countries	Year of the current Constitution	Number of senators for each constituent unit	Representativity
Argentina	1994	3	Provincias and Buenos Aires
Brazil	1988	3	States and Federal District
Mexico	1917	3*	States and Mexico City

*There are also 32 national senators-at-large, spread across the parties in proportion to their share of the national vote. As it does not involve territorial representation, they are only recognised here. Source: Federal Constitutions of the countries systematised by the author.

3.1 Role and powers of the second chamber in Latin American federal countries

The role and powers of the second chamber are an important predictor of its effective territorial vocation. Russell (2001) stresses that some senates represent the territorial interests of subnational units while also fulfilling traditional roles of scrutiny and law revising functions. This expectation was to be met by three categories of specific roles: representation of the territories and their interests at the national level; a forum for the different territorial units to debate policies and agree on common positions, and establishing the link between the national parliament and territorial assemblies or governments (Russell, 2001). Naturally, each senate fulfils those roles to varying degrees.



Those roles materialised into effective representation and participation through special powers of territorial legislation (rights of law proposition and veto, for example), voting arrangements and the composition of special arenas to debate territorial affairs, as well as channels of territorial accountability. According to Russell: “Where the territorial assemblies or governments are represented this creates an indirect form of accountability between the upper house and the people, through elections at sub-national level” (Russell, 2001, p. 108).

Russell (2001) warns about the difficulties of finding evidence of the territorial role of second chambers. The present analysis reaches a similar conclusion. Table 2 summarizes the results from the analysis of the current constitutional setting of second chambers in Argentina, Brazil, and Mexico:



Table 2 - Constitutional role and powers of the second chamber in Argentina, Brazil and Mexico				
Countries	Role of the second chamber	Composition of the second chamber	Powers of the second chamber	Second Chamber Power Score (Neiva, 2008)
Argentina	Legislative	72 senators, directly elected: three for each province and three for the city of Buenos Aires. Party criteria: two seats for the largest party, one seat for the second largest party. Partial replacement: one-third of the seats are replaced every two years. The term lasts six years. There is no limit for re-election.	Judgement of authorities (President, Vice-President, chief of staff of the ministers, ministers and members of the Supreme Court)	25
			Authorizing (of state of siege in case of external attack)	
			Law initiative (explicit cases: <i>Ley Convenio</i> , over federal tax coparticipation; national development/settlement)	
			Joint nomination with the President of positions to some authorities (Supreme Court, other federal courts, ambassadors, among others)	
			Joint appointments with the military of superior officers of the Armed Forces	
Brazil	Legislative	84 senators, directly elected: three for each state and three for the Federal District. Majoritarian principle. Partial replacement: alternately, one-third and two-thirds of the seats are replaced every four years. The term lasts eight years. There is no limit for re-election.	Control* (summon authorities to provide information on a predetermined subject, request information, to set up parliamentary commissions of investigation)	31
			Judgement of authorities (President, Vice-President, military commanders, ministers and members of the Supreme Court, among others)	
			Approval of the President's nominations for some positions (judges, ministers of the Federal Courts of Auditors, territory governors, among others)	
			Authorizing (external fiscal operations at all levels of government)	
			Approval to dismiss the Republic's Attorney-General	
			Establishment of fiscal limits (to fix public debt limits at all levels of government and other matters)	
			Suspension of unconstitutional law enforcement	
			Auto-organisation	
			Election of the Republican Council	
			Tributary evaluation	
			Extraordinary summons of the Congress	
			Constitutional amendments initiative*	
Mexico	Legislative	128 senators, directly elected: three for each state and three for Mexico City. Relative majority principle: two seats for the largest party, one seat for the next largest minority in a proportional system. This last seat must be alternately headed by women and men each elective period. The term lasts six years. Re-election is possible only for two consecutive periods.	Appointment, ratification and removal of authorities (members of councils and commissions, and committees, among others)	24
			Approval of the President's nominations for some positions (ambassadors, consuls, executive financial positions, among others) and their resignations	
			Approval of the regulation to the coalition government and recognition of the jurisdiction of the International Criminal Court	
			Control* (to create parliamentary commissions of investigation)	
			Law initiative	
			Law approval/revision	
			Foreign policy analysis and approval	
			Authorizing military placement (national forces to go abroad, foreign armies to pass through Mexican territory or to stop by its waters)	
			Analysis of the activities of the National Guard	
			Federative issues (provisional government and conflicts of responsibility)	
			Judgement of public servants	

*Responsibility shared with the lower chamber or other authorities.

Source: Federal Constitutions of the countries systematised by the author, and Neiva, 2008.





The main constitutional role of the second chambers of Argentina, Brazil, and Mexico is legislative. They also share the power of nomination and judgment over specific authorities. Moreover, all these senates can authorise the Executive to take specific actions: to allow the movement of national and foreign military forces through the national territory, to declare the *estado de sitio* (state of siege) in Argentina, and to make some fiscal operations in Brazil (especially those that affect public debt).

When it comes to the legislative function, the Argentinian senate has a restricted right of law proposition, which is broader in Mexico. Mexican senators can initiate all sorts of laws: the Mexican senate has not only the power of law initiative but also approval and revision. Brazilian senators have no constitutionally specified law initiative: they are restricted to constitutional amendments, a competence shared with the lower chamber, but the senate can suspend the execution of laws in case of unconstitutionality.

The power of the Mexican senate to deal with federal issues and solve conflicts between the constitutive units in specific cases stands out from the comparative set. This is the only explicit constitutional device among the three cases that declares a territorial role exclusively for the second chamber^{XI}.

Regarding the composition of the second chambers under analysis, it is clear by the distribution of seats and rules of re-election that the chambers are intended to bring, in some measure, territorial representation to the national Legislative. However, this role seems detached from the powers attributed to them (Mexico deviating slightly here). The Mexican Constitution also deals with gender representativeness in the seat distribution of the chamber (since 2019), which remains a democratic issue worldwide^{XII}.

Finally, the last column of Table 2 also presents the Second Chamber Power Score built by Neiva (2008). Federalism is an important variable to explain bicameralism, but it is not enough to explain the strength of the senate. To verify that, Neiva discusses the determinants of the existence and the power of the senates, departing from the analysis of its constitutional powers. The system of government explains why senates are stronger in presidential systems than in parliamentary ones.

Neiva suggests an index of the political strength of senates of presidential bicameral countries deemed “minimally democratic”^{XIII} (Neiva, 2008, p. 23) worldwide. He does so by analysing constitutional powers, divided into legislative, control, appointment, and other significant but only occasionally used powers, such as the approval of international treaties.



The index reveals that the most common power of a senate is to moot on a constitutional amendment (present in 92.9% of the cases), followed by the power of proposing a law (84.3%) and opining on them (58.8%). There are also less conventional functions, such as controlling the Executive, appointing authorities, and minor and occasional powers with symbolic relevance. The power index reaches the top value of 32, the Bolivian senate being the most powerful, and gets as low as 4, corresponding to the weaker case - the Caribbean island of Santa Lucia.

On this score, Brazil comes out as having the second most powerful senate of the minimally democratic countries considered by Neiva (2008), coming right after Bolivia, reaching an index of 31. Argentina follows with 25 points and Mexico with 24. Although the Second Chamber Power Score does not consider specifically the dimension of territorial representation, we can infer that while the Mexican senate is the only one that explicitly grants the territorial power of the second chamber, it is not as strong as those senates in which the representation of subnational units is reflected merely in their seat composition, such as the case in Argentina and Brazil.

In conclusion, this analysis of the constitutional role and powers of the second chambers of Argentina, Brazil, and Mexico highlights that only Mexico has the explicit constitutional power to deal with issues derived from the federal agreement. For the other two, the territorial character is implicit, resulting from the criteria of the election of their members. The relevance of this finding rests on the idea that the implementation of competences, and therefore the fulfilment of the expectations of the territorial character by the senate, would be better enabled if it derived from an explicit constitutional provision. In that sense, Madison's paradox is indeed present in the reality of those countries, where the territorial character of the senate is disconnected from the constitutional power to effectively represent the subnational units before the Union and allow them to take part in national political life.

On the other hand, Mexico, the only Latin American federal and bicameral country which constitutionally foresees the explicit power to solve federal issues, is comparatively weak among the countries of this sample. This casts doubts on how well the territorial interests are represented in the national arena, bringing Madison's paradox as a potential explanation for the lack of territoriality of the senate of Argentina, Brazil and Mexico.



3.2 Territorial overrepresentation in the second chamber in Latin American federal countries

Over- and underrepresentation are concepts of how the constitutional order establishes proportionality in the composition of the legislative power in a political system. Usually, in a bicameral system, the lower house is proportionally composed of the population of the district where the representatives are elected. To avoid large variance in the number of representatives, the constitution can establish a range for the number of representatives that each subnational unit can elect. These limits mean that one subnational unit can lose seats, while the other can gain them. This distorts the proportionality of the “one person, one vote” principle^{XIV}. Over- and underrepresentation can therefore very often occur in a lower chamber. This inequality can be regionally measured, by comparing the percentage of the population and the respective seats that each subnational unit gets in the lower chamber (Backes, 1997).

In the upper chamber, the subnational units are usually equally represented: they have the same number of seats, regardless of the population of their district, because of what is represented in that chamber. If the lower chamber represents the individuals, the upper one aims to represent the subnational units. In this case, small states have the same weight as the most populated ones in national politics and in that sense overrepresent the population of the subnational unit.

The issue of overrepresentation of the second chamber has been widely discussed in the literature: Lijphart (1985) considers it a link between federalism and the model of consensual democracy; Samuels and Snyder (2001) demonstrate that federalism and country size have a significant impact on overrepresentation in the upper house, especially for developing Latin American and African democracies; Stepan (1999a) discusses it as a demos-constraining element of federalism; Gibson (2004) takes a procedural approach to it in policy-making, and Watts (2006) uses the overrepresentation aspect of federal bicameralism to critically examine his own concept of democracy and how it can benefit from federalism.

Rubiatti (2014) exposes very clearly the issue of overrepresentation in the second chambers in general, but specifically in Latin America. It is usually related to the democratic representation problem involved in the process of choosing political representatives^{XV}. The main premise connecting representation and democracy is that in a democracy, an elected government would be necessarily representative^{XVI}. The debate about this connection is



current and lively, but this study will focus on the idea that every democratic selection of representatives will necessarily follow a formal criterion.

The principle of equality is usually essential in democratic representation, and the assumption of “one person, one vote” is the most common guiding rule. In that sense, every bias on this assumption is taken by mainstream literature as a distortion. The term “malapportionment”, usually used as a synonym for overrepresentation, expresses this idea of something inadequate in the ideal quest for equal representation. If we apply the principle of equality to the senate model, there is a change of focus on what or who is represented. There is an equality of representation among units, which usually get the same number of seats in the senate, but the population represented by each unit will vary, leading to an overrepresentation of less populated territories.

In Latin America, the main consequence of malapportionment or, more specifically, of the overrepresentation of less populated areas compared to the most populated ones would be unfair elections (Snyder & Samuels, 2004), to the advantage of the less developed territories, traditionally dominated by conservative, clientelist politicians. In contrast, urban areas would be underrepresented, undermining more progressive groups. Overall, the overrepresentation character of an electoral system would favour continuity and make a change in the status quo less likely (Rubiatti, 2014; Tsebelis, 2011).

Latin America has a well-known history of legislative malapportionment: Snyder and Samuels already showed that the region, and especially Argentina, Bolivia, Brazil, Chile, Colombia and Ecuador, has higher levels of malapportionment in both houses than the global average (Samuels & Snyder, 2001; Snyder & Samuels, 2004).

In Samuels and Snyder’s proposed index of malapportionment, one of the variables is bicameralism. They start from the theoretical premise that senates tend to be more malapportioned than the lower chambers by striving for equal representation of minority groups in smaller territorial units. Lower chambers, on the other hand, are less likely to overrepresent territorial minorities. Samuels and Snyder cast doubt over this assumption of higher malapportionment in senates as compared to lower chambers. They point to great variance in malapportionment in both houses across bicameral systems. Both houses can present asymmetry of powers, which determines how malapportionment affects bicameral systems (Samuels & Snyder, 2001).



From a comparative perspective, in the lower chamber “The most-malapportioned countries in our sample are in less-developed regions with many recently-established democracies” (Samuels & Snyder, 2001, p. 659). This challenges the premise that malapportionment happens mostly in the upper house. Nonetheless, Samuels and Snyder’s data confirm that the phenomenon tends to be stronger in the senate, but not necessarily. The Netherlands, Uruguay and Paraguay show virtually no malapportionment in their senates (Samuels & Snyder, 2001), because they are not designed for territorial representation.

Federalism and country size are the correlates of malapportionment that matter most for this phenomenon: the upper houses in federal and big countries are more malapportioned. The size of the countries affects malapportionment only in the upper houses (Samuels & Snyder, 2001).

In this literature, malapportionment is considered “a formal pathology of Latin American political systems”, raising questions about the “performance and quality of democracy” (Snyder & Samuels, 2004, p. 134). According to Snyder and Samuels, malapportionment is, in both houses, a formalised, detailed and explicit problem that results in inequalities and unfair elections. Consequently, Latin America would not even be democratic in the first place. The authors called it an “‘(...) electoral stealth technology’ for engineering bias (...)” as it is “‘(...) less obvious and thus it is often not seen as a proximate cause of unfair elections” (Snyder & Samuels, 2004, p. 136), especially for the lower house. They go even further to suggest that “The compatibility between malapportionment and the other core elements of democratic politics makes malapportionment an especially pernicious problem because it can help sustain a powerful illusion of robust democracy that hides a reality in which some citizens are far more ‘equal’ than others in terms of the value of their votes” (Snyder & Samuels, 2004, p. 137).

The effects of malapportionment, and especially overrepresentation, on the quality of democracy mentioned by Snyder and Samuels (2004) are important in the lower chamber. When overrepresentation also affects the upper chamber, it influences the democratic status differently. The significant weight that small and rural-based subnational units gain by having the same number of seats as bigger and urbanised territories makes them powerful players in the national politics game. It can contribute to the maintenance, or even proliferation, of subnational authoritarian enclaves. Malapportionment can compel national and democratic



elites to tolerate such enclaves if they can secure national legislative majorities for law approval. The same effect can “hold the center hostage” (Snyder & Samuels, 2004, p. 154) as small and less populated constituent units can have veto power in the senate.

The overrepresentation index proposed by Snyder and Samuels ranges from 0.00 to 0.49, the highest being the most overrepresented house. Table 3 displays the index of malapportionment from Samuels and Snyder (Samuels & Snyder, 2001; Snyder & Samuels, 2004) for the second chambers of the case studies under analysis:

Position	Country	Index
1	Argentina	0.49
2	Brazil	0.40
5	USA*	0.36
13	Mexico	0.23
	Average Latin America*	0.25

*Cases included for comparative reference

Source: Samuels & Snyder, 2001; Snyder & Samuels, 2004.

Argentina is the most unequal in terms of proportional representation in the second chamber. It means that in Argentina less populated provinces have the same weight in national politics as the more populated ones. Although they represent fewer voters, malapportionment makes the smaller provinces powerful players in national politics. Brazil follows as a significantly malapportioned senate, even more than the US, presented here as a reference and the main inspirational model for the adoption of federalism in Latin American countries. Mexico shows a significantly lower level of overrepresentation in the second chamber than Brazil and Argentina, and even lower than the average index for Latin America.

The differences in the results of overrepresentation, especially between the subset Argentina and Brazil, on one side, and Mexico, on the other, lie in how the seats of the second chamber are selected. For the first subset, there is a strict egalitarian representation from the subnational units – Argentina and Brazil allocate three seats for each province or state in the senate, regardless of population. One might expect that this would guarantee a strong territorial role for the Argentinian and the Brazilian senates. Due to their prominent



level of overrepresentation, the connection between the subnational unit and its senator's seat would be significantly strong. But, as stated earlier, the allocation of seats alone does not guarantee a strong territorial role from the second chamber, especially if they do not have this specific role and the necessary powers recognised by the constitutional order.

Mexico has a combination of systems: each state elects three senators, but 25% of the remaining seats are chosen on a national basis. It represents a “proportional correction” of the overrepresentation phenomenon, attenuating but not solving the inequality problem in the Mexican second chamber.

The overrepresentation of subnational units in the national legislative can produce a distortion of federal spending that would benefit overrepresented territories. In this case, the federalism is reallocative. If the overrepresentation does not affect the distribution of resources and it is done proportionally to the population, then it is a case of proportional federalism (Gibson et al., 2004).

The US and Mexico have more proportional distribution of seats among subnational units in the national legislative than Brazil and Argentina because in this latter set “a dual structure of territorial overrepresentation exists, with the lower chamber's regional allocation of seats compounding the overrepresentation inherent in the senate's role as an arena for territorial representation” (Gibson et al., 2004, p. 175). Brazil and Argentina overrepresent smaller, less populated units in the lower house more significantly than the US and Mexico, where the distribution of seats in the lower house is more proportional to the population of subnational units. In consequence, the distortion in the distribution of federal resources is higher in the first subset than in the second.

The conclusion is that, although the senate is the legislative house for territorial representation, the overrepresentation feature present in the lower chamber is what drives distortion in the distribution of federal resources. This limits the influence that the senate can have in the overall federal system, whether overrepresented or proportional. Overrepresentation in the lower chamber is, therefore, a stronger predictor of federal spending distortions, more than the senate overrepresentation in cases of reallocative federalism, such as Brazil and especially Argentina.

However, as demonstrated by Rubiatti (2014), distortion is the rule and not the exception when it comes to most structures of legislative power worldwide, with overrepresentation being a common feature among contemporary democratic regimes. Sometimes, instead of a



well-played political strategy, it can be a result of simple mathematical or functional impossibility: representation of voters can be impossible to break down in an exactly proportional number of seats.

Nonetheless, the significance of overrepresentation in the cases under analysis, especially Argentina and Brazil, could suggest a stronger connection between the senator and the demands of the subnational unit that elected her or him. In this sense, the strength of smaller states within national politics would be significant. However, overrepresentation in those countries happens especially in the lower chamber and not in the senate. Therefore the equal weight given to subnational units in the upper chamber as a federative tool is not a predictor of their ability to gain more federal resources for their territories.

Given the importance of explicit devices for the upper chambers under analysis to claim territorial matters in the national legislative, the fact that they are composed equally does not say much about their ability to steer federal resources to benefit their subnational units. So, what does? The answer may be the structure of incentives brought by the party system, the focus of the next section.

3.3. The impact of political parties on the territorial representation and participation of the second chamber

The party system is, together with the second chamber, a traditional mediating element of the relationship between federalism and democracy (Benz & Sonnicksen, 2016; Gibson, 2004; Sonnicksen, 2018). From a democratic point of view, Stepan (1999b) states in his approach to “demos-constraining/enabling” federalism, the operationalisation of federalism and democracy influences party regionalisation: while national parties help to keep the federation together, a regionalised party system can help to protect democracy by presenting an obstacle to the formation of populist majorities. Arretche (2001) goes in the same direction and points not only to the nationalisation of the party system (covering the entire country) but also to centralisation (i.e., the degree to which national leaders monopolise party decisions) as defining features of the degree of centralisation of the federation itself.

A different perspective claims that party discipline and factionalism are key elements to nationalising subnational conflicts and making representatives collaborate for the democratisation of authoritarian subnational enclaves in federal systems (Gibson, 2005; Mickey, 2015; van Mierlo, 2021). Willis et al (1999) were also concerned about the democratic



side, especially in Latin America. However, they reached a similar conclusion: when the party system is nationalised, central interests tend to prevail when confronted with subnational issues, constraining revenue reassignment and spending responsibilities.

For Gibson, democratisation affects party dynamics^{XVII} in federal systems by empowering subnational actors, which “(...) structured the incentives (...) reshapes relations between center and periphery, altering policy-making patterns, and redistributing power (...)” (Gibson, 2004, p. 10). Party systems are, together with courts^{XVIII}, intergovernmental councils and other actors, important keepers of federal boundaries. Authority boundaries in federal systems are significant and vulnerable at the same time and need the safeguards of the party system to balance and reinforce them in a redundant way (Bednar, 2019).

The party system is an essential mediating element between federalism and democracy, but it could also become an element for democratic backsliding. The recent position of Grumbach (2022) about the role of parties in the relationship between federalism and democratic quality is quite interesting. While most of the literature is interested in national measures of democracy, he focuses on its subnational measure within the US federal system. To do that, he proposes a State Democratic Index. He assesses theories of democratic expansion and backsliding based on party competition, among other elements. His conclusion about the influence of subnational Republicans’ governments on democratic backsliding is important because it shows how just one party could be responsible for a decline in the quality of democracy at subnational level.

In a comparative perspective, Watts (2006) includes political parties as an important piece in the puzzle of comparing federal second chambers: in general, the federations present some level of asymmetry in the party alignment between the federal and the subnational level. This asymmetry could be more pronounced and lean towards a more nationalised or regionalised party system, hanging mostly on party discipline. This is one of the aspects affecting the operation of political parties within a federation. Especially in parliamentary systems, where guarantying party discipline at each level of government can sustain the executive in office, party organisation is more autonomous in both subnational units and the central government.

Depending on how those incentives are organised, they affect the formation and operation of federal second chambers, especially in terms of territorial representation and participation. In Watts' words: “The pressure or absence of strong party discipline in



different federations has also had an impact upon the visible expression of regional and minority interests within the federal legislatures and particularly their second chambers.” (Watts, 2006, p. 11).

The impact of political parties on the performance of the second chamber is a general phenomenon in federations, but the degree of this impact varies. However, according to Watts, in both parliamentary and presidential federal countries, “(...) there has been an increasing tendency for polarization along ideological rather than regional lines (...)” (Watts, 2006, p. 12). The main consequence of this tendency would be the weakening territorial role of second chambers, with the reinforcement of the democratic premise, as later argued by Palermo (2018).

In his detailed analysis of the reality of the second chamber of Argentina, Brazil, and Mexico, Rubiatti (2014) starts from the assumption that the three senates already have a strong territorial aspect (based on the measure of overrepresentation). However, with political parties being the main structuring element of the political spectrum in contemporary political systems, they play a role in how the territorial forces are organised within the senate. This is true even for the physical distribution of senators’ seats in the plenum: only in Brazil do the senators of the same state sit together. For Argentina and Mexico, the seating order is by party or coalition^{XIX}.

The party composition of the senate, and especially its difference from that in the lower house, would be a factor of effective incongruence in bicameral systems. When the two houses are composed differently in party terms, it is expected that they act more autonomously and the costs of legislation approval may increase since it commonly must be approved in both houses. This is what Lijphart (1977) calls “concurrent majorities”, one of the four features of consociational democracy. It means that with different party configurations, both houses can veto each other’s actions as additional protection of vital minority interests^{XX}. Although including the analysis of the lower house composition would be interesting for a more complex understanding of the Congress as a whole, this study will concentrate on the composition of the second chambers of the countries under analysis.

The argument discussed in this paper goes as follows: in a federation, a more centralised party system leads to focusing on national elections, driving the federal system to a more centralised model. On the other hand, a more region-based party system may value more local and regional elections instead of the national one, creating a centrifugal force for the



federal system and strengthening subnational governments^{XXI}. The effects of both movements on the composition and operation of the second chamber could be a concentration of the electoral focus on national disputes in a centralised party system, making the senate a less territorial legislative chamber, and consequently, more ideologically driven. Still, a region-based party system would privilege subnational elections, turning senators' attention to subnational demands in their mandates.

To discuss this argument in the context of the territorial character of the second chambers of federal and bicameral countries in Latin America, this paper will build upon the findings of Harbers (2010). She defines party nationalisation as the balanced territorial distribution level of votes for a party and its national support. In that sense, the opposite of party nationalisation is regionalisation (i.e., when a party enjoys a varied proportion of votes in different parts of a country). Party regionalisation is therefore different from party fragmentation (which refers to numerous parties in a polity). Those two concepts are related but refer to distinct dimensions of the party system.

Her main argument is that “(...) political decentralization and fiscal decentralization inhibit the development of nationalized party systems” (Harbers, 2010, p. 606). Centralisation of government activities is intricately linked to party nationalisation, especially for well-established democracies. For new democracies, decentralisation is a trend that relates to the party system, “Particularly in Latin America, with its long and well-documented history of centralism (...), decentralization constitutes a departure from previous patterns of governance” (Harbers, 2010, p. 607) and strengthens local elites and subnational identities. This affects the political and electoral strategies of parties, with consequences for political representation and competition.

In Latin America, party systems are usually less programmatic (which means that the policy set supported by each party is not decisive for the voter), so decentralisation, especially the political type, creates incentives for parties to focus on regional elections instead of national ones. This is a swing movement: supporters will vote nationally when they are interested in national policies and regionally when focused on locally provided goods. This means that party nationalisation is intimately related to how responsibilities are divided and shared in the federal system.

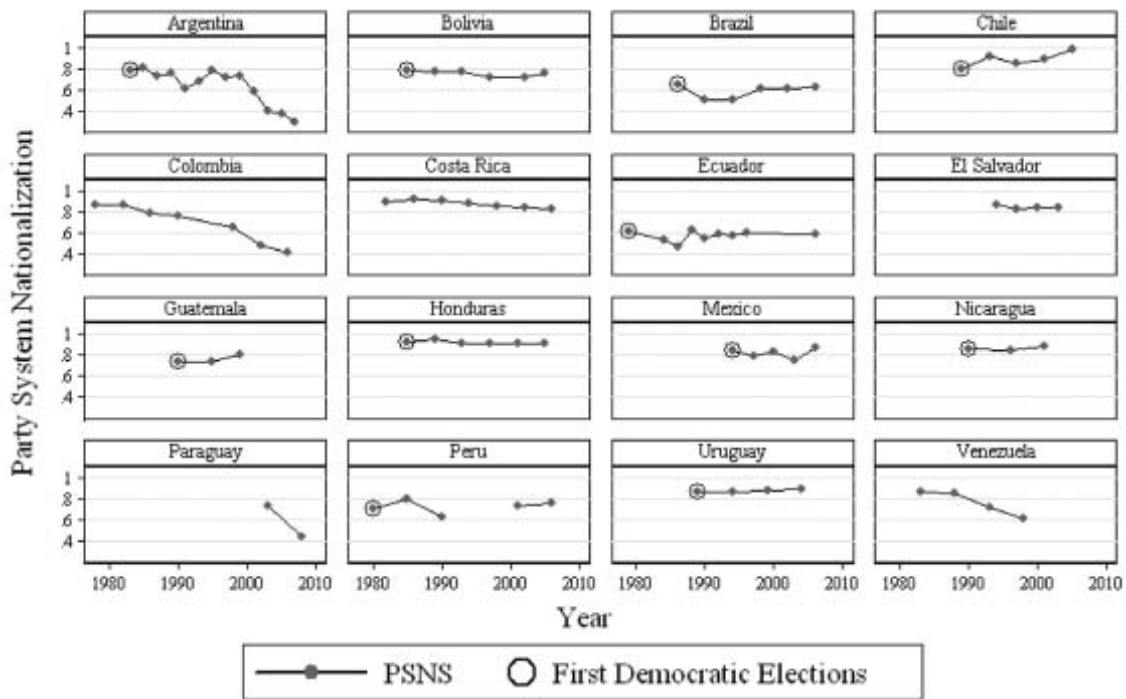
Decentralisation disperses resources and responsibilities across levels of government. Both political and fiscal decentralisation can influence regional voting patterns. Political



decentralisation creates a sublayer of political competition, implying a new level of political organisation within the parties or the creation of subnational parties. Fiscal decentralisation provides access to resources and grants autonomy from the centre. Resources are especially important for new democracies, where the link between parties and voters is more fluid and less programmatic. In both senses, decentralisation in Latin America has strengthened local elites.

Harbers’ analysis (2010) of the elections in Argentina, Brazil, and Mexico from the 1980s to the 2000s traces significant party nationalisation in those countries:

Figure 1 – Party system nationalisation from a comparative perspective (Harbers, 2010)



Source: Harbers, 2010, p. 617

Although there are changes over time, they are only significant in the Argentinian case, which moved from an intensively nationalised party system towards a more regionalised model. Brazil starts from a slightly less nationalised model than Argentina and with time showed a discreet movement towards regionalisation in the 1990s, reassuming the national pattern thereafter and retaining it. Finally, Mexico started the period of analysis as nationalised as Argentina, without further alterations until the 2000s, when it moved slightly



towards regionalisation and then back to nationalisation. Altogether, all party systems are significantly nationalised when compared to the general tendency of Latin America, even with the discreet movement towards regionalisation, which was only noticeable in Argentina.

In terms of the discussing the territorial character of the second chamber, the nationalisation of the parties in those three cases allows the assumption that political elites tend to focus more on national issues than on regional ones, weakening, again, any expectation of a significant territorial role from the second chamber. Combining this argument with the considerations about the role and powers of the senate, and the insignificance of overrepresentation in the upper house for policy effects in those cases, we can conclude that the senate cannot perform tasks of territorial representation adequately. Even though the federal theory sees the senates as arenas for territorial representation and participation in a federal system, they are not up to the task. But the regional interests of the subnational units must be voiced somewhere. The next section will try to map recent instances where those demands have been presented and negotiated for Argentina, Brazil and Mexico.

4. The prospects: territorial representation and participation in national politics

As established so far, Madison's paradox seems to be real in Latin America: in the federal countries of the region that have a second chamber as part of their federal arrangement, the house does not properly enable subnational participation in national political life beyond the territorial composition of the chamber. This is due to the lack of this explicit constitutional role and the powers to fulfil it, the effect of significant overrepresentation levels, and the nationalising effect of the party systems.

Nevertheless, some institutional devices have been emerging to balance expectations of an adequate arena for not just a formal representation of subnational units before the federal government but also their active participation. They consist of tools within parliaments, together with executive-based institutions.

4.1 Alternative forms of territorial representation: within legislative committees



Palermo (2018) mentions that even some unicameral systems adopt arrangements for territorial representation, reserving seats on the legislative chamber assigned to specific territories and minorities, irrespective of their populations. Those arrangements end up functioning as a bicameral system in practice and mostly suffer from the same problem, the take-over of its territorial vocation by a party-based one.

Another form of territorial representation in national legislative bodies are committees and commissions dedicated to one specific legislative matter. The Argentinian senate, for example, has permanent commissions for Administrative and Municipal Affairs, and Federal Tax Co-participation^{xxii}. The Mexican senate has an ordinary commission on Federalism and Municipal Development^{xxiii}. For Brazil, there is no evidence of the existence of specific groups for discussion of the federal arrangement in the senate. Such institutional arenas enhance the deliberation of bills to alter the federal pact, enabling subnational participation in the upper house.

4.2 Executive-based institutions for territorial representation and participation

Palermo (2018) also points towards the executive branch of government as a natural alternative to second chambers for an arena of territorial representation. According to him, “Irrespective of the very existence and the composition and powers of territorial second chambers, nearly everywhere, more or less institutionalized bodies have been established to link subnational entities and the centre at the governmental level” (Palermo, 2018, p. 55). Those institutions are usually composed of delegates from subnational units and the national government, emphasising participation and coordination beyond mere institutional representation.

Argentina is fairly centralised and repeatedly debates provincial autonomy. The constitutional reform of 1994 eased the situation by proposing a federal fiscal organism to oversee and control the implementation of the share of revenues, established by Art. 75, 2 of the Constitution. Nonetheless, most of the executive-based arrangements happen in informal meetings of top executives of federal and provincial officials (President and Governors); or only among provincial governors or in the federal councils, which are sectoral forums of policy ministers, often dominated by the national agenda (Carnota, 2015).

Of those arrangements, the meetings and forums for sectoral policy ministers stand out as an arena for provinces to voice their concerns and priorities, working as a top-down



deliberative body for policy-making. The federal councils aim for policy consensus for concurrent responsibilities, although they are not constitutionally embodied and are sponsored and funded by the federal agency, which gives indirect control of the agenda to the president (Carnota, 2015). Therefore, even in the field of intergovernmental relations, territorial participation in Argentina is still prone to domination by the central government. In Brazil, the structure is slightly different. Considered a “political system with high power dispersion” (Da Cunha et al., 2020, p. 130), it coexists with fiscal centralism, very visible in some public policies like social security. The Union still has a central role in the federal pact, reinforced by the liberal reforms of the 1990s (Lopreato, 2020). Informality is also the rule when it comes to meetings of the president and governors, as well as of the governors and sectoral forums of policy ministers (not necessarily dominated by the federal government^{xxiv}). In the Brazilian case, there are also formal participatory instances for each of the main public policies, which mostly include representatives of subnational units (states and municipalities, each one with one seat for all the subnational units of each level). However, the nomination for these instances depends on the President, and recently there have been cases in which the legal criterion for composition was disregarded^{xxv}, a sign that the institutionalisation of those spaces is still under dispute.

Finally, in Mexico, federalism is still considerably centralised. Regardless of the federative arrangement established by the 1857 Constitution, which respected the existence of two sovereign layers of government, the political and administrative practice in Mexico becomes more centralist by the day. The main goal of this process was to consolidate territorial integrity and national identity (Villanueva, 1996). The existence of executive instances to promote subnational representation and participation in the national political life started in the 1970s and 1980s, with the *Comités Promotores del Desarrollo de los Estados* (Committees for Promoting the Development of the States - Coprodes) sponsoring the coordination of the states in federal policies and the *Convenio Único de Coordinación* (Single Coordination Agreement - CIJC), a legal device to formalise intergovernmental relations. For fiscal affairs, a *Sistema Nacional de Coordinación Fiscal* (National System for Fiscal Coordination - SNCF), was created to promote equity in the fiscal distribution of federal resources.

Those instances enable the participation of state governments in the design of their specific developing plans, but they are subordinate to the discretion of the federal government (Villanueva, 1996). The national executive is another strong player before the other branches



of government, Legislative and Judiciary, given its relationship with the governing party. As the president can still control lower levels of government, the tendency of executive-based arenas for territorial representation and participation tends to be top-down and coordinating rather than participatory (Stein & Turkewitsch).

5. Final remarks

This paper examined the aptitude of the second chamber for the task of territorial representation and participation in light of Latin America's federal experiences. Recent literature on the topic casts doubts on the capability of the senates to represent the interests of subnational units and to promote their participation in national politics because of issues with the institutional design. This paper analysed this assumption for the three Latin American federal and bicameral countries: Argentina, Brazil, and Mexico. The paper discussed constitutional elements about the role and powers of those chambers, observations on subnational overrepresentation, and the potential influence of the party system over the senate.

The analysis indicates that the territorial character of the second chambers in the selected cases tends to be weak. From the constitutional perspective, the territorial role of the second chamber is not explicit, leaving space for partisan take-over of subnational representatives. Even though this aspect is more explicit in the Constitution of Mexico, the comparative weakness of the chamber makes its territorial role less relevant, contributing to the centralisation of the whole political system. More evidence on the legislative outcome of those chambers could help to better understand the broadness of the legislative territorial approach in the second chamber. This is a research path still to pursue.

The higher levels of overrepresentation of subnational units, especially in the Argentinian and Brazilian cases, are not reflected in a stronger territorial character of those second chambers. They do not affect federal dynamics towards a more regionally-driven situation, but could even serve as a centralising element because of the difficulty of coordinating the subnational representatives.



Finally, the nationalising patterns of the party system of the countries under analysis is significant and steers the focus of the political parties towards national issues, weakening the connection of the senators to subnational demands.

For the cases of Argentina, Brazil and Mexico, the three dimensions of the constitutional role and powers, the overrepresentation and the partisan aspect of second chambers, lead to the conclusion that Madison's paradox is indeed a real thing. Although the political and federal theory attributes the role of territorial representation and participation in the national political life to the senate, that body does not have the power, the necessary representative connection, or even the political conditions to really meet that expectation. This conclusion is likely to also apply for countries that follow the senatorial model, but large-N research must be conducted to check that.

As an alternative to the inability of the second chamber to represent subnational interests, the literature points to the flourishing of executive-based arenas where the constituent units can present and negotiate their demands in the analysed cases. Those arenas are mostly informal and dominated by the national political agenda. They can barely function as an organised call to face the frequently strong bargaining power of the central government. Another fragility of this alternative is the potential to favour unequal territorial participation, based on party alliances between the central government and strong and economic or politically powerful subnational units. These aspects diminish hopes for territorial representation and participation before the federal government by the subnational ones even in the executive arena.

This investigation focused on institutional features of federal systems and leaves room for deeper digging, starting from a more dynamic approach to understand better the relationship between subnational and central governments in different contexts. One interesting research agenda on the topic of the territorial role of the second chamber is related to informal executive federalism referred to in Section 4.2. How effective those structures are and how they operate in distinct types of democratic arrangements. These and other related questions will fuel future research endeavours.

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^{II} For this paper, the expressions “second chamber,” “upper chamber,” “federal chamber,” “revisional chamber” and “senate” will be used interchangeably.

^{III} The term was first identified by Dehousse (1989) and further explored in Doria (2006) and Palermo (2018). Other political scientists have also discussed the problem of the inability of the senate to represent territorial interests in general: Franks (1999), Russell, (2000; 2001) and Sweden (2004).

^{IV} Germany is usually an exception to Madison’s paradox because of ambassadorial character of its *Bundesrat*. For an in-depth discussion, see Thelen and Karcher (2014). For a contrasting position on the matter, see Broschek (2010).

^V Gibson (2004) highlights the inspiration Latin American countries took from the U.S. federal experience, starting from the Iberic colonial past of the region: “The origins of federalism in Latin America (just as in the United States) had little to do with multinationalism or linguistic cleavages drawn along territorial lines. The Iberian colonization experience had a culturally and religiously homogenizing effect on the dominant strata of the region, so that territorial divisions and ethnicity did not coincide in any significant way. (...) Thus, in Latin America, as in the United States, it was not cultural or ethnic diversity between regions but size, economic differentiation, strong traditions of local elite rule, and military stalemate that were the driving forces behind the adoption of federal forms of government.” (Gibson, 2004, pp. 14–15).

^{VI} For a discussion of non-majoritarian types of democracy, see Lijphart, 1985.

^{VII} The continuum *demos* constraining-enabling for classifying federalism, proposed by Stepan (1999b), develops Riker’s classic proposition further that compares different federal systems in the world to the American, including new variables and complexities. The main assumption of this taxonomy is that federalism, *per se*, is *demos*-constraining in that its institutions are obstacles for realising the majority principle at federal level.

^{VIII} The symmetry between the role of both chambers leads to an especially strong effect in Latin America that will be further explored in the section on overrepresentation.

^{IX} For example, in parliamentary systems with strong bicameralism (Benz & Sonnicksen, 2016).

^X Unfortunately, Shugart and Carey (1992) do not differentiate between the effects of the regime on the lower or the upper house because they do not consider bicameralism as two agents on the legislative side, both serving representational ends.

^{XI} Art. 46 and 76 of the Mexican Constitution.

^{XII} For a broader discussion of what it means, see Neiva, 2008b.

^{XIII} Neiva defines minimally democratic countries as those with a Freedom House index of a minimum grade of 5 for political rights for the year of 2000 (Neiva, 2008, p. 36).

^{XIV} The “one-person-one-vote” premise refers to what Dahl (1978) describes as the equal weight of citizens preferences, a necessary condition for democracy.

^{XV} On representation theories and implications, see Urbinati, 2006.

^{XVI} For a discussion of this premise, see Manin et al., 2006

^{XVII} To go beyond the institutional approach to political parties, see Bednar, 2009; Benz & Sonnicksen, 2016; Erk, 2006.

^{XVIII} On the relationship between party system and court behaviour in federal environments, see Popelier, 2017.

^{XIX} https://www.senado.gob.mx/64/pdfs/documentos_apoyo/64-65/Plano.pdf
<https://www.senado.leg.br/senado/assentos.asp>

^{XX} Lijphart warns of the risk of minority tyranny derived from the minority veto power, but he states that this does not happen too often because of some collateral damage (Lijphart, 1977).

^{XXI} This relates to the literature on second order elections (Norris, 1997; Reif & Schmitt, 1980). Unfortunately, to my knowledge, there are no studies applying this concept to the cases under study, which would be a valuable addition to the literature.

^{XXII} <https://www.senado.gob.ar/parlamentario/comisiones/?active=agenda>

^{XXIII} <http://comisiones.senado.gob.mx/federalismo/>

^{XXIV} The case of the National Forum of State Ministers and Directors of Culture has been emblematic for going strongly and publicly against recent changes in the National Secretary for Culture in Brazil. A good example here: <https://www.otempo.com.br/diversao/secretarios-de-cultura-cobram-governo-bolsonaro-sobre-conducao-da-lei-rouanet-1.2472741>



xxv The recent composition of the National Education Council left out both institutions who represented State and Municipal Education authorities. For more:

<https://congressoemfoco.uol.com.br/educacao/secretarios-criticam-composicao-do-novo-conselho-nacional-de-educacao/>

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