

Bicameralism in the Americas: Around the Extremes of Symmetry and Incongruence

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Bicameral legislatures have recently attracted considerable attention in comparative literature. However, this increased interest has been uneven and insufficient to close the many gaps existing in this area of research. Latin America, a continent with a long tradition of bicameralism, has been all but ignored. This study develops a system of scores with which to measure the strength of the bicameral systems of the Americas. Twelve cases are examined: the nine current bicameral legislatures, two unicameral cases that became in the 1990s and, finally, the United States, which provides a pattern of comparison and is the model on which Latin American constitutions have been based.

Bicameral legislatures, that is, legislatures that involve two distinct chambers in their deliberations, have recently attracted considerable attention in the comparative literature. In both the United States and the United Kingdom, the works by Tsebelis and Money, Patterson and Mughan, and Russell, as well as the special issue of *The Journal of Legislative Studies*, stand out.¹ In France, the *Revue Internationale de Politique Comparée* devoted an issue to the topic 'Des Sénats', which followed other important works, such as those by Mastias and Grangé.² In Germany, bicameralism has been the topic of some recent books on legislative systems as well as of several articles in the *Zeitschrift für Parlamentsfragen*.³

However, this recently increased interest in bicameral legislatures has been uneven and indeed insufficient to close the many gaps existing in this area of research: only some remarkable second chambers, such as the US Senate and

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the British House of Lords, have been thoroughly investigated, and just one form of them – the upper houses in parliamentary systems – has dominated the comparative studies. There is certainly truth in the words of a German scholar: ‘although there are a great number of studies on parliaments, researches on second chambers are few. It is like looking for a needle in a haystack’.⁴ Moreover, a whole continent with a long tradition of bicameralism – Latin America – has been all but ignored in most recent studies.⁵ Indeed, not only comparative analyses including all or some of these cases, but also empirical works on the functioning of the upper houses of the region (the senates), are rare if non-existent.⁶ This negligence is notable for several reasons: first, bicameral legislatures have a long tradition in the constitutional law of the region; second, bicameralism is the legislative system prevailing today in half the countries of Latin America⁷; third, mirroring the American Constitution, Latin American cases combine presidentialism and strong bicameralism, an institutional mixture difficult to find in other geographical areas; fourth, in comparison with established democracies, the region exhibits a higher rate of second chamber abolition in the second half of the twentieth century as well as a larger number of revisions of the constitutional faculties of upper houses.⁸

Latin American cases are extremely important for the understanding of bicameralism and comparative studies cannot make further progress without taking them into consideration. In the following pages, light is shed on the features of these cases by analysing their constitutional arrangements on a comparative basis.⁹ Twelve cases will be examined: nine correspond to the current bicameral legislatures – Argentina, Bolivia, Brazil, Chile, Colombia, Mexico, Paraguay, the Dominican Republic and Uruguay; two are cases with a history of bicameralism, but with legislatures that turned into unicameralism in the constitutional reforms of the 1990s, Peru and Venezuela,¹⁰ and, finally, the United States, which not only provides a pattern of comparison from outside the area but is also the model on which Latin American constitutions have been based. Therefore, the bicameral cases include large countries (such as Brazil and Mexico) and small ones (such as the Dominican Republic and Uruguay). It also includes all federal cases (Argentina, Brazil, Mexico, Venezuela and the United States) and those unitary cases with bicameral institutions.

There are certainly many ways to undertake the proposed comparison but, for reasons that will later be explained, it has been decided in this study to develop a system of scores through which the strength of the bicameral systems of the Americas can be measured. We hope that this system for the evaluation of bicameralism becomes useful to researchers either interested in analysing other cases or in comparing our cases with others outside the region. The article is divided into four sections: the first section presents the

general features of Latin American bicameralism and assesses both the contributions and gaps shown by the specialised literature in the understanding of these cases; the second section further explains the concept of bicameralism and describes the institutional arrangements related to it; the third section compares the strength of each Latin American bicameralism on the basis of the variables and the system of scores specially developed for this purpose; in the last section some conclusions are drawn from the study.

THE LATIN AMERICAN BICAMERAL CASES: AN HOMOGENEOUS GROUP, BUT HOW HOMOGENEOUS?

In 2002, Mexico and the Dominican Republic had legislatures divided into upper and lower houses, together with most of the countries of South America (seven out of ten) - Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay and Uruguay. In contrast, unicameralism prevailed in Central America, as well as in Ecuador, Peru and Venezuela.¹¹ However, this congressional landscape is quite recent and has changed over the last few decades. Compared with advanced democracies, Latin America has shown a greater tendency towards unicameralism in the last 50 years: in the 1990s, Peru (1994) and Venezuela (1999) replaced their bicameral systems with unicameral legislatures as a result of the constitutional reforms which took place during the pseudo-democratic governments of Fujimori and Chávez, respectively; Ecuador abandoned the bicameral system in the constitutional reform of 1978; Nicaragua is the only case in Central America that had a bicameral legislature in the twentieth century (between 1911 and 1979), but this was replaced by a unicameral legislature after the Sandinist Revolution; Cuba also had a bicameral legislature before the Revolution of 1959.

The recent cases of senate abolition in Peru and Venezuela show that the prevailing constellation of political and partisan interests plays a crucial role as an explanatory factor for the suppression of second chambers. In effect, although there are practically no scholarly studies about their abolition, these cases have been regarded as part of the broader strategy of the concentration of power unfolded by the two incumbent presidents, the success of which was facilitated by the existence of strong party leaderships. In this sense, a unicameral legislature would pave the way for an unconstrained executive because favourable political majorities are easier to build. These were not, however, the reasons for unicameralism which were publicised in these countries. Other goals were publicly emphasised, such as the simplification of the law-making processes, the reduction of parliamentary costs, and the eradication of duplicated administrative and control organisms.¹² Furthermore, at least two structural and legitimacy deficiencies of these bicameral

systems should also be taken into account. First, the territorial representation that these senates advocated was not sufficiently articulated since Venezuela's federalism was in crisis and Peru's process of decentralisation was incomplete. Second, due to the strong control exercised by the political parties and their leaderships in these countries, the two chambers diverged little in composition and performance. Thus, it is quite probable that these factors intervened to undermine the legitimacy of the upper houses. However, the cases still need thorough investigation.

Although not considering abolition, recent constitutional reforms in other countries – such as Argentina, Colombia and Mexico – also sought to affect the bicameral system by altering some of its features, such as the system of election, the length of the legislative terms and the size of the senate. As can be seen, our Latin American cases move and change. Nevertheless, the main characteristics of their bicameralism are well established and have not been altered significantly. In fact, the Latin American countries form an homogeneous group mainly characterised by two features: the democratic legitimation of the upper houses through the direct election of their members (with the partial exception of Chile, with ten appointed senators out of 48¹³) and almost equivalent constitutional powers for both houses. According to these features, the Latin American cases are among the strongest bicameralisms in the world.

The meaning of a strong bicameralism has been clarified by Arendt Lijphart, from whom we learn that the strength or weakness of bicameralism is determined by three features: the formal constitutional powers of the two chambers (formally equal chambers make bicameralism stronger), the method of selection (second chambers that are not directly elected lack political legitimacy and, thus, real political influence), and the convergence or divergence in the political composition of the chambers (bicameralism is stronger when the composition differs).¹⁴ The first two criteria serve to classify bicameral legislatures as either symmetrical or asymmetrical: symmetrical chambers are those with equal or only moderately unequal constitutional powers and democratic legitimacy; asymmetrical chambers are highly unequal in this respect. The third criterion classifies legislatures as incongruent or congruent, depending on whether the composition of the two chambers differs or not. Lijphart obtains the following categories by combining these elements: strong bicameralism (characterised by both symmetry and incongruence); medium-strength bicameralism (characterised either by symmetry and congruence or by asymmetry and incongruence), and weak bicameralism in which the chambers are both asymmetrical and congruent.

On the basis of this classification, Lijphart places two Latin American countries (which are part of his universe of 36 democracies) in the categories of strong bicameralism (Colombia after 1991) and medium-strength

bicameralism (Colombia before 1991 and Venezuela). Other authors have reached similar conclusions about these and other cases on the continent. Tsebelis and Money rely on two dimensions to explain institutional variations among 53 bicameral legislatures.¹⁵ On the one hand, they consider the membership of the two houses, based on the method of selection (hereditary, appointment, indirect elections and direct elections) and the type of representation (citizens, sub-national geographic units, professional occupation, minority ethnic representation). On the other, they refer to the relative power of the two houses as reflected in the mechanisms for resolving inter-cameral differences. These mechanisms differ greatly throughout the cases, but can generally be classified as the *navette* system, the conference committee, the joint session, the ultimate decision by one house, and new elections.¹⁶ Of all these, the joint session and the ultimate decision by one house can be regarded as asymmetric solutions (to use Lijphart's terminology) because they normally benefit the lower house. Concerning the Latin American legislatures, Tsebelis and Money found that, as in all other cases outside the continent, there were no instances in which the two chambers were completely identical. In other words, they found no cases of congruent bicameralism. Likewise, the methods for resolving disagreements show that the bicameral systems of Latin America are among the cases of greater symmetry: only in Bolivia, Brazil and Venezuela has the constitution established an asymmetrical method of conflict resolution.¹⁷

Two other works follow the direction of Lijphart's thinking. Based on Lijphart's typology, Schiavon classifies all the legislatures of the continent, including those in the Caribbean islands and also constitutions that are no longer in force.¹⁸ According to the author, all prevailing constitutions are disposed to strong bicameralism, or, at least, medium-strength bicameralism, as in the cases of Uruguay and Paraguay, which have symmetric but congruent bicameral legislatures.¹⁹ There is also the work by Patterson and Mughan that mainly concentrates on the dimension of the symmetry-asymmetry.²⁰ The authors compare the constitutional powers and functions of 36 upper houses, including some Latin American cases: Argentina, Brazil, Colombia, Mexico and Venezuela (under its previous constitution). They build a continuum based on the relative dispersion of power between the lower and upper houses. At one end of this continuum are senates that are constitutionally co-equal with the lower houses (Mexico); these cases are followed by senates that are co-equal with restrictions (Argentina) and senates with limited exclusive powers (Brazil, Chile, Colombia, Venezuela). There are no Latin American cases in the two further categories of largely advisory and fully subordinated senates. As in the other cited works, this one also maintains that Latin American senates are powerful or hardly less powerful than the lower houses.

The main contribution of these works has been to provide the tools needed to locate the bicameral systems of Latin America within the universe of bicameralism. Thanks to them, we know that we are dealing with a fairly homogeneous group of bicameral legislatures, which are situated at some point between the strong and medium-strength categories of bicameralism as identified by Lijphart. However, we have also seen that these works do not reach the same conclusions regarding the exact position given to the cases. If we consider, for instance, the ruling constitutions (current cases of bicameralism), according to Tsebelis and Money, Bolivia and Brazil are the cases of medium-strength bicameralism because their method of resolving disagreements favours the lower house. For Schiavon, on the other hand, the medium-strength bicameral cases are Paraguay and Uruguay because they are symmetric but congruent, whilst for Patterson and Mughan, Brazil, Chile, Colombia and Venezuela have senates with limited powers over financial legislation. Therefore, these studies give us a starting point from which to build a classification of Latin American bicameral institutions that has been missing up to now.

Part of the problem is that these works either base their classifications on two or three elements exclusively or merely make general characterisations ('it is an exercise of boundary drawing, not a detailed mapping of the role played in government by individual senates, or types of senates'²¹). In order to overcome this difficulty, we suggest raising the number of elements on which comparison is based. In this sense, Lijphart has already warned us, saying that, although bicameral legislatures tend to differ in several ways, not all differences affect the question of whether a country's bicameralism is a truly strong institution.²² However, it seems that if the goal is to compare bicameral cases of approximately similar strengths, it is necessary to deal with a greater number of variables. Only by doing this can we make the classification more precise. On the other hand, the danger of keeping the number of variables low is also known. Tsebelis and Money have noted, for instance, that it is often assumed that preferences of the houses are similar or even identical when party composition of one chamber mimics the composition of the other.²³ However, political congruence should not be equated with identity of positions because opinions may vary within the same party, there may be differences in constituency representation or differences in the decision rules in each chamber. We can add, at this point, that there are also constitutional differences besides the method of selection (the complete list of which is dealt with in the next section) that should be considered at the moment of assessing the level of bicameral incongruence. These differences (such as partial elections, different lengths of terms, different sizes of the chambers) suggest that political congruence, when existing, does not annul the differences between the two houses. The same thing happens with

the elements relating to the bicameral symmetry. If we want to know accurately the degree of symmetry of our cases or, in other words, the points at which every bicameralism is less symmetric, it is necessary to extend the definition of 'formal constitutional powers' to embrace more elements than just, for instance, the method of conflict resolution.

THE INSTITUTIONAL FEATURES OF BICAMERALISM

The division of the legislature into two different chambers has received at least four basic justifications in institutional theory.²⁴ First, one rationale for bicameralism has been the representation of different interests in the two houses. These interests were originally class-based as inspired by the British example of mixed government, where the House of Lords represented the aristocracy and the lower house 'the commons'. The underlying idea was, that the interests of each estate could only be protected by the mutual veto of the chambers. Nowadays, the idea of reserving one legislative chamber for the nobles has lost legitimacy, but what did survive was the idea of using two chambers to accommodate different political, economic or social interests and, in so doing, to promote the enactment of legislation based on a greater social and political consensus. Second, another rationale for bicameralism is its contribution to the preservation of liberties and individual rights by strengthening the system of checks and balances. With the division of the legislature into two chambers, controls on the executive power are duplicated as well as providing a counterweight to avoid a tyranny of the majority or a 'tyranny of the lower house'.²⁵ Third, the inclusion of a second chamber in the constitutional design is thought to improve the quality of the legislation because it creates a system for the correction of mistakes based on the redundant evaluation of legislation in two distinct legislative bodies.²⁶ Finally, by making the process of law approval more complex, bicameralism also grants stability to the legislative outcome. In effect, bicameralism has been thought of as a solution to the problem of legislative instability produced by changes in personnel, changes in preferences, and changes in outcome.²⁷

As has been explained above, these four goals have justified the division of the legislature into two distinct deliberative bodies.²⁸ However, the same goals have also inspired other related institutional arrangements because many constitutional designers understood that these goals were better achieved if divergences between the chambers were enlarged or the system of checks and balances was strengthened. In effect, it has often been maintained that a greater divergence of preferences between the two houses (or, in current parlance, a greater incongruence) would help to promote a larger consensus, improve the quality of legislation, and achieve greater legislative stability. Similarly, a more powerful role for the second chamber in the processes of

legislative and political control (a better symmetry) would improve the functioning of checks and balances. As a result, a number of institutional features, which, as Rogers has argued, were meant to improve or even preserve the efficacy of bicameralism, complemented the definitional characteristic of bicameralism (that is, the existence of two deliberative bodies).²⁹ The following paragraphs list these features and explain their connection with the goals of a bicameral system.

In order to enact legislation based on a greater social and political consensus, second chambers have previously been used to represent different social estates, and are today used for the representation of either the states in a federal system (as in the United States) or the interests of minority groups (like the linguistic groups in Belgium). There are also legislatures that do not seek to represent different categories of citizens and, instead, elect the two bodies on a population basis. In these cases, the same principle of giving divergent collective attitudes to each chamber has also been maintained by resorting to different institutional arrangements, such as the method of election (for instance, the representatives of one chamber are elected in single-member districts and the other in multi-member districts), the different size of the bodies, and different lengths of the legislators' terms in office. Similarly, many constitutional designers contended that an improvement in legislative quality could not be secured by resorting only to the redundant assessment of legislation. Thus, additional institutional provisions were incorporated in order to encourage the development of expertise and wisdom on the part of upper chambers as well as to reduce instability of personnel and preferences. All these mechanisms can be listed as follows: (a) a higher minimum age set for the upper chamber so that they are composed of mature legislators at an advanced stage in their political careers; (b) selection criteria that involve some evaluation of expertise; (c) indirect election of senators, in order to obtain a select appointment and, in federal systems, to secure a close relationship between the federal and state governments;³⁰ (d) longer terms in office for members of second chambers in order to develop legislative expertise and a greater degree of political independence. The second chamber would, then, *tempérer le pouvoir* with more time to consider legislation;³¹ (e) finally, the partial renewal of the second chamber would produce stability of personnel and guarantee greater expertise, independence of opinion, and stability of legislative outcomes.

Another group of institutional arrangements is connected to the role of bicameralism in the system of checks and balances. Both old and new institutionalism agree with the idea that bicameralism improves the system of controls. They do it, however, from different perspectives. Among new institutionalists a negative vision of bicameralism has prevailed because it makes the decision-making process more complicated and so more difficult

to change the status quo.³² Instead, a positive vision of bicameralism predominated when the goal was to base legislation on a larger social consensus. For old institutionalism, bicameral systems were valued as institutions that encouraged political negotiations and compromises.³³ However, there are differences in the intensity with which bicameralism participates in the system of checks and balances, due to the different ways in which second chambers evolved in previous centuries. When both upper and lower chambers have the same constitutional faculties to participate in the legislative process and to control the executive power, the bicameral legislature is regarded as symmetrical, in the terms used by Lijphart, and the senate as a 'veto player' or a 'veto point'.³⁴ When the upper house has only faculties to delay the passage of legislation and, especially in parliamentary systems, when the cabinet is responsible only to the lower house, the legislature is asymmetrical and the senate has no formal veto power.

There are a number of constitutional arrangements that can affect the level of symmetry of a legislature. The method adopted for the resolution of disagreements is one of the most important and, of these methods, the *navette* or shuttle system is found in almost every bicameralism. According to this system, a bill shuttles between the chambers until the writing of the bill is acceptable to both. However, the *navette* may not ultimately resolve the disagreement, so other constitutional rules may be developed to complement its role. These rules are various: a conference committee with delegates from the two houses can be invoked to attempt to find a compromise; both chambers can meet in a joint session to discuss and vote on the legislation; the lower house can be decisive; the initiating house can be decisive. Despite the many variations, the methods of resolving divergences can be divided into two groups: those that respect the bicameral decision process – or, in other words, those that do not alter the balance of power between the chambers by favouring one of them – and those that favour one house rather than the other. Among the first are normally those systems where the initiating house is decisive because, in such systems, the balance of power between the chambers depends solely on where the bill was introduced. To this group also belong systems using a conference committee, but only if the number of delegates to this committee is proportional to the size of the chambers or if each chamber has one vote. Among the asymmetrical methods, the ultimate decision in the hands of one house (normally the lower house) alters the balance of bicameralism. Similarly, the joint session favours the lower chamber because this house is generally larger than the upper house and the votes of its members predominate in the total number of votes cast.

There are also other institutional features connected to the efficacy of the system of controls. On the one hand, constitutions can either respect the equality of the two chambers to initiate bills or give priority to one of them as happens when constitutions dictate that financial legislation must be initiated in the lower chamber. In such cases, an asymmetry is created because one of the chambers is restricted to the performance of revision tasks only. On the other hand, some constitutions grant the lower chamber greater prerogatives to exert political control over the executive. In constitutions of parliamentary systems, the vote of censure is typically a prerogative of the lower house. In other constitutions, faculties of control (such as a vote of censure, question-time, the requirement of written information, investigation committees) are granted to both chambers on equal terms. In the US and all Latin American constitutions, the chambers are also treated equally in the impeachment process: in general, the lower house accuses and the upper house judges. However, equilibrium breaks down in favour of the senate regarding the tasks of approving appointments to the executive branch. This could be described, in some cases, as an asymmetry in favour of the senate.

To conclude, the following Table 1 summarises the institutional features connected to bicameralism as described above. These features can be grouped around the concepts of incongruence and symmetry as developed by Lijphart.

TABLE 1
BICAMERAL INSTITUTIONAL FEATURES

Bicameral Institutional Features Favouring Incongruence

- 1 Provincial or minority interest representation in the second chamber
- 2 Poblational representation in the two chambers, but with differentiated districts and electoral formulas
- 3 Non-elected representatives in the upper house (hereditary or appointed)
- 4 Indirect election of second house members
- 5 Different size of the bodies (smaller upper house)
- 6 Higher minimum age for upper chamber members
- 7 Selection criteria for upper chamber members involving expertise
- 8 Longer tenures for second chamber members
- 9 Partial renewal of the second chamber

Bicameral Institutional Features Favouring Symmetry

- 10 Both chambers have equal faculties to submit, modify or reject legislation
 - 11 Both chambers have equal initiating faculties
 - 12 The method for the resolution of disagreements is bicameral
 - 13 Both chambers have equal instruments of political control
 - 14 The Senate agrees upon executive appointments
 - 15 There is a division of labour in impeachment tasks
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BICAMERALISM IN THE LATIN AMERICAN CONSTITUTIONS

Section 1 has already explained that Latin American bicameralisms are noted for the high levels of incongruence and symmetry they show. In the following pages a detailed comparison of these cases is given based on an analysis of the constitutional texts. We would like to make clear from the very beginning that we have taken into consideration the latest constitutional texts (including reforms up to October 2002). This is important because, in some Latin American countries, constitutions are frequently revised so that some of the points of analysis that have been presented in the previous pages may well soon be altered. Further, information has been included based on legislation and congressional rules that complemented the constitutions.³⁵

The study proceeds as follows: we break down the dimensions of incongruence and symmetry in the many institutional features listed above and observe if and how they appear in the constitutions of Latin America. To do this, each of these features is transformed into a variable with three values. Higher and intermediate values in any of these variables add points in favour of bicameral symmetry or incongruence. Value zero indicates asymmetry or congruence. The more variables showing higher values, the stronger the bicameral system. Here we would like to make a digression to say something about the methodology. We are aware that this is not perfect and that there are other ways to study how strong bicameralisms are in constitutional terms. However, we draw from the work and experience of other authors and believe with them that this is the best way in which we can accomplish our task.³⁶ Indeed, it will always be the case that the values adopted in every variable will be a matter of discussion and the weight of some variables will be seen as arbitrary by some observers. However, three factors validate our instrument of research. First, it has been widely accepted by experts on Latin American political institutions.³⁷ Second, whilst the final results do not contradict common sense and expert opinions, they help us to accentuate and visualise the differences among the cases. Last but not least, the methodology opens the window to integrate our research on legislatures with other researches based on a similar approach – like those assessing the strength of presidentialism in Latin America.³⁸

Let us now begin with our comparison. Table 2 presents the values of the 11 variables connected to bicameral incongruence and symmetry. The first column shows that two of these variables have sub-variables. These are the electoral system (number 1), which is formed by four sub-variables, and the qualifications required to become a member of the upper house (number 3), which is composed of two sub-variables. The other parallel columns show the values that the variables take (extreme, middle, nil). In this table, maximal values score four points in every variable, middle values score two

points, and negative values score zero. Because of this, if a variable is formed by two sub-variables, the maximal values of each of them score two points. There is only one variable scoring more than the rest – number 1, the electoral system – with maximal values reaching a total of eight. Through this differentiated score, we acknowledge the importance that electoral systems have for bicameral incongruence without leaving aside the other variables of incongruence, commonly ignored in comparative studies of bicameralism. There is also one variable that deserves an additional explanation – number 10. We found that the senate's approval of executive appointments was difficult to classify because this faculty actually indicates *an asymmetry in favour of the senate*.³⁹ It could also be argued that a bicameralism without this prerogative would still be extremely symmetrical if both chambers had the other legislative and control faculties in common. Nevertheless, our decision was to keep this variable in the analysis of symmetry as an indicator of the senates' strength. In this way, a bicameral legislature with a maximal incongruence and a maximal symmetry would reach a total of 24 points in every dimension.

The Levels of Bicameral Incongruence

The aim of this section is to explain how Latin American cases score in the variables related to bicameral incongruence. The partial (individual variables) and final results (the sum of variables) are presented in Table 3.

Regarding the electoral system, all bicameralisms in our study receive the same score, with the exception of Chile and Colombia, which score higher in sub-variables 1.c. and 1.b., for having, respectively, a significant number of non-elected senators and some ethnic minority group representation. Apart from these salient examples, all cases present similar features. First, both upper and lower houses are composed of elected memberships (with the already mentioned partial exception of Chile with its ten non-elected senators), which places all Latin American senates at the same level of legitimacy as lower chambers.⁴⁰ Second, in all these bicameral systems, different methods of election for the upper and lower house aim at differentiating their composition. In four cases, constitutions determine the equal representation of provinces, states or geographical departments in the senates - three federal countries, Argentina, Brazil and the United States, and a unitary country, Bolivia. Two cases complement the equal representation per state with other forms of representation: in Mexico, three senators represent each state and a total of 32 senators are elected in a single national district; in the former constitution of Venezuela, there were two senators representing each state and a number of additional senators (maximum three per party). Four countries (Colombia, Paraguay, Peru and Uruguay) elect their senators in a single national district.⁴¹ The Dominican Republic uses the system of relative majority in single-member districts. Chile elects its elected senators from

TABLE 2
SCORES FOR BICAMERAL INCONGRUENCE AND SYMMETRY

Variables of Incongruence	Maximum Values: Extreme Incongruence	Intermediate Values: Middle Incongruence	Negative Value: Congruence
(1) Electoral system			
(1a) Electoral districts and formulae	2: different for the two houses	1: either the district or the formula differ between the houses	0: district and formula are the same for the election of the two houses
(1b) Representation of minority groups	2: minority upper house members are more than five per cent of the upper house	1: minority upper house members are less than five per cent of the upper house	0: there are no minority groups represented in the upper house
(1c) Non elected upper house members	2: appointed upper house members are more than five per cent of the house	1: appointed upper house members are less than five per cent of the house	0: the upper house has no appointed members
(1d) Indirect elections	2: the election of upper house members is indirect	–	0: the election of both upper and lower house members is direct
(2) Size of the chambers			
	4: the upper house is less than a third of the size of the lower house	2: the upper house is more than a third of the size of the lower house	0: the two houses have the same size
(3) Qualifications to be an upper house member			
(3a) Age	2: upper house members are at least nine years older than lower house members	1: upper house members are between one and nine years older than lower house members	0: members of the two houses have the same age limits
(3b) Other qualifications needed to be an upper house member	2: more demanding qualifications to become an upper house member than a member of the lower house	–	0: same qualifications to become upper and lower house member
(4) Length of the mandate			
	4: upper house mandates are double lower house mandates	2: upper house mandates are longer than lower house mandates, but are not double them	0: upper house and lower house mandates have the same length

(5) Renewal of the upper house

4: partial renewal of the upper house

0: total renewal of the upper house

Total

24

8

0

Variables of Symmetry

Maximum Values: Extreme Symmetry

Intermediate Values: Middle Symmetry

Negative Value: Asymmetry

(6) Legislative prerogatives of upper houses

4: upper chamber can modify or reject any legislation, as well as initiate bills concerning any topic

2: legislative powers of the upper chamber (initiation, amendment and rejection of bills) are restricted to certain topics

0: upper chamber can only delay the passage of legislation. Its decisions can be revoked in the lower chamber

(7) Origin of legislative processes

4: either the legislative discussion of bills can be initiated in any of the chambers, or there is a division of tasks for the initiation of legislation

2: lower house has the exclusive right to initiate most legislative processes

0: all legislative processes are initiated in the lower house

(8) Method for the resolution of disagreements

4: method for the resolution of disagreements maintains the symmetry between the houses

–

0: method for the resolution of disagreements favours the lower house

(9) Instruments for the executive's control

4: both chambers enjoy the same instruments of executive control

2: lower chamber has more instruments of executive control than the senate

0: lower chamber enjoys all the instruments of executive control

TABLE 2 (CONTINUED)
SCORES FOR BICAMERAL INCONGRUENCE AND SYMMETRY

Variables of Symmetry	Maximum Values: Extreme Symmetry	Intermediate Values: Middle Symmetry	Negative Value: Asymmetry
(10) Participation of the senate in executive and other appointments	4: senate agrees upon more than four types of appointments	2: senate agrees upon less than four types of appointments	0: senate does not intervene in executive appointments
(11) Bicameral division of work for tasks of impeachment	4: both the senate and the lower house participate in impeachment processes	–	0: only the lower house has prerogatives to participate in impeachment processes
Total	24	8	0

TABLE 3
BICAMERAL INCONGRUENCE IN LATIN AMERICA

Variable	Argentina	Bolivia	Brazil	Chile	Colombia	Dominican Republic	Mexico	Paraguay	Peru	United States	Uruguay	Venezuela
1.a.	2	2	2	2	2	2	2	2	2	2	2	2
1.b.	0	0	0	0	1	0	0	0	0	0	0	0
1.c.	0	0	0	2	0	0	0	0	0	0	0	0
1.d.	0	0	0	0	0	0	0	0	0	0	0	0
2.	4	4	4	2	2	4	4	2	4	4	4	4
3.a.	1	2	2	2	1	0	1	2	2	1	1	2
3.b.	2	0	0	0	2	0	0	0	0	2	2	0
4.	2	0	4	4	0	0	4	0	0	4	0	0
5.	4	0	4	4	0	0	0	0	0	4	0	0
Total	15	8	16	16	8	6	11	6	8	17	9	8

19 double-member districts. None of these methods of election coincides with the method prevailing in the respective lower chamber.⁴²

However, different methods of election are not the only point of divergence between the two houses. With varied intensities, all our bicameral cases exhibit additional incongruencies. In effect, results obtained in variable 2 indicate that the two chambers differ in size since the senate is, in all cases, smaller than the lower chamber and, in most cases, notably smaller.⁴³ Additionally, variable 3, regarding the qualifications necessary to become a legislator, show that a minimum higher age is required to be a senator in all the cases with the exception of the Dominican Republic (variable 3.a). The age difference indicated in the constitution exceeds nine years in most bicameral systems, extreme cases being those of Brazil and Chile, where it reaches 14 and 19, respectively. Chilean senators are the oldest, with a minimum age of 40 years, and Dominican and Mexican senators the youngest, with a minimum of 25 years. A smaller number of constitutions add other requirements to that of minimum age (variable 3.b). Argentina, Uruguay and the United States require more years of citizenship for foreign residents to become a senator than those required to be a deputy. In Colombia, the constitution dictates that senators must be citizens by birth.⁴⁴ Further, in Colombia, the two senators representing the indigenous communities must be certified to have held a position of authority in their communities. The most remarkable case is, though, that of Argentina because Article 55 of the constitution not only requires, as already mentioned, a minimum of 30 years of age and six years of citizenship for members of the upper house, but also an annual income of two thousand pesos fuertes or equivalent amount. This pecuniary clause, written in the old constitution of 1853, was not altered in the recent reform of 1994.

Two additional variables of incongruence must also be considered. On the one hand, the length of terms of office (variable 4) shows that, although senatorial tenures are expected to be longer than those of deputies, only five of our cases fulfil this condition. In fact, in Brazil, Chile, Mexico and the United States, senatorial tenures are double or triple those of deputies, while in Argentina they are two years longer. On the other hand, regarding the renewal of upper houses (variable 5), we have seen that the theory expects it to be a partial renewal, in other words, that not all senators leave office at the same time. This was thought to avoid the complete and automatic translation of electoral outcomes in second chamber seats and, so, to gain stability and continuity in the legislative outcome. However, the partial renewal of the senate is only observed in four cases: in Argentina and the United States a third of the senate is elected every two years; in Brazil, one- or two-thirds of the senate are alternately elected every four years; in Chile, half of the elected senators are elected every four years, non-elected senators have

eight-year tenures, and ex-presidents have a tenure for life.⁴⁵ Ex-presidents are also second-chamber members in Paraguay, Venezuela and Peru, but the constitution dictates that there be no voting rights for presidents in Paraguay as well as no right to intervene in the formation of a quorum in Peru.

To conclude, with the background of incongruent bicameralisms in all of Latin America, Argentina, Brazil and Chile are the cases whose constitutions resorted to a greater number of mechanisms to enhance divergences between the two legislative bodies. These cases replicate the model of the US constitution, which, according to our system of scores, has only a slightly higher number. In other words, if electoral results gave a similar political composition to both chambers, in these bicameralisms divergences would still prevail, at least in a more obvious way than in the remaining cases. Furthermore, whilst in most of our cases bicameral constitutional arrangements were incorporated to encourage different preferences in the two houses, Chile stands out by showing the strongest tendency towards the maintenance of the status quo (due especially to its non-elected senators).

The Levels of Bicameral Symmetry

The previous section specified the levels of incongruence of Latin American bicameralisms. In all cases it was found that, with important differences of degree, the two chambers differed in their composition. This section deals with the constitutional powers of the chambers to legislate and control the executive. Since the composition of the two chambers differs, disagreements over legislation are to be expected, and the mechanisms for the reconciliation of the chambers acquire paramount importance.⁴⁶ This is one of the variables defining the concept of symmetry, as shown in Table 2. In this table, we included three variables relating to the power of second chambers to exercise legislative control (the legislative prerogatives of upper houses, the origin of legislative processes, the method for the resolution of disagreements), two variables connected to the prerogatives of political control (the instruments for the executive's control, the participation of the senate in executive appointments) and one concerning the question of impeachment.

In the first and last variables (numbers 6 and 11), all Latin American bicameralisms receive the highest possible score. In effect, variable 6 concerning the power of senates to intervene in the processes of law-making, shows that senates have not only the power to initiate their own bills but also to amend or reject any other bill. Besides, variable 11 confirms that all our senates participate as juries in the processes of impeachment. We have found no cases where the lower chamber had the prerogative to participate in impeachment processes and the senate did not, but we have found a case where the senate had some prerogative of this nature and the lower chamber did not (Venezuela).⁴⁷ Instead, the remaining variables show divergences among the cases. In variable

7, most cases have the highest score because of two reasons: either all bills can be initiated equally in both chambers (the Dominican Republic, Peru and Uruguay) or both chambers share the exclusive right to initiate the treatment of determinate bills (Colombia, Paraguay, United States, Venezuela). Five cases receive the intermediate score: Brazil, because here most legislative processes are initiated in the lower chamber (remarkably, all executive bills must first be treated in the Chamber of Deputies) and Argentina, Bolivia, Chile and Mexico because in these countries a greater number of important bills must be initiated in the lower chamber. In Mexico, in particular, the senate is individually responsible for the approval of international treaties, but the Chamber of Deputies is not only the initiating house for many other bills but also individually responsible for the approval of the budget.

Regarding the methods for the resolution of disagreements between the chambers (variable 8), our cases offer a varied picture. However, they can in principle be arranged in three groups (with the proviso that important procedural differences can also be found within every group): a first group of cases is characterised by the purest *navette* system; a second group complements the *navette* system with the use of the conference committee; and in the third group the joint session is the complementary method. In the first two groups disagreements are reconciled by maintaining a perfect symmetry between the chambers. In the third group the symmetry is altered in all cases (except one), because the joint session favours the lower house.

The first group includes Argentina, Mexico, Paraguay, Peru and the Dominican Republic. In all these countries a bill is shuttled several times between the chambers. In Argentina, Paraguay and Peru, the size of the majority voting for the bill in every chamber (a simple majority or a two-thirds majority) plays a crucial role in favouring the view of either the initiating or the reviewing house. In Mexico and Paraguay the approval mechanisms slightly diverge depending on the position assumed by the reviewing house (whether of rejection or amendment), but the bicameral symmetry is in any case maintained. A particularity of the Mexican case is that, if disagreements persist around some items of the bill, a simple majority in both chambers can decide to approve the rest of the bill on which agreement has already been attained.

The second group – formed by Chile, Colombia and the United States – is characterised by the intervention of both the shuttle system and the conference committee in the process of bicameral reconciliation. Composed of members from each chamber, typically from the committees that originally reported the legislation, conference committees are *ad hoc* units whose fundamental task is twofold: first, to negotiate an agreement that a majority of the conferees from each chamber can support and, second, to report an agreement acceptable to a majority of both the house and senate.⁴⁸ In the three cases, the conference committee remains a symmetric solution. In the United States, the senate and house

TABLE 4
BICAMERAL SYMMETRY IN LATIN AMERICA

Variable	Argentina	Bolivia	Brazil	Chile	Colombia	Dominican Republic	Mexico	Paraguay	Peru	United States	Uruguay	Venezuela
6.	4	4	4	4	4	4	4	4	4	4	4	4
7.	2	2	2	2	4	4	2	4	4	4	4	4
8.	4	0	4	4	4	4	4	4	4	4	0	0
9.	4	4	4	0	4	4	4	4	2	4	2	2
10.	4	4	4	4	2	2	4	4	4	4	4	2
11.	4	4	4	4	4	4	4	4	4	4	4	4
Total	22	18	22	18	22	22	22	24	22	24	18	16

delegations need not be the same size because each house has one vote in conference as determined by a majority of its conferees. In Colombia, bicameral committees are only concerned with working out a common text, acceptable to the delegation of both chambers, which will then be voted on in each chamber separately. In Chile, the final version of the bill is voted on separately as well, but the system is more complicated because several institutions – the *navette* system, conference committees, the executive power and special majorities – intervene to solve the divergences. If the conference committee fails to seal an agreement, the executive intervenes to give the initiating lower chamber the opportunity to insist on its version of the bill, but this time it has to be passed by a special majority of two-thirds. If this majority is not achieved, the reviewing house then has the opportunity to insist on its own version.

The remaining group consists of the cases of Bolivia, Brazil, Uruguay and Venezuela. In three of these cases – Bolivia, Uruguay and Venezuela – the joint session (or ‘national congress’) is the constitutional mechanism for the resolution of bicameral disagreements (although this has other parallel constitutional functions as well). Therefore, these countries have opted for a unicameral solution that may eventually favour the lower chamber. This is so – even in the case of Uruguay where the constitution establishes that decisions in joint sessions must be taken with a majority of two-thirds of the votes – because these senates are significantly smaller than the respective lower houses and, therefore, turn out to be underrepresented in the joint session. For this reason, these three cases receive the lowest score in this variable.

In Brazil, on the other hand, the joint session does not alter the bicameral symmetry. In fact, in this country, bills can follow either of two processes of revision. The first is the *navette* system according to which one chamber decides after the other. The constitution also dictates a stopping rule: a maximum of three readings with the last word belonging to the initiating house. This fact has led many analysts to assume that Brazilian bicameralism favours the lower house because, as we have already commented, most important bills are initiated in this chamber (see Appendix 2). We have already acknowledged this superiority of the Chamber of Deputies in variable 2 (origin of the bills), where Brazil receives a lower score. The second process is the approval of bills in a joint session. Normally, these sessions take place to deal with presidential vetoes, budget bills and *medidas provisórias*.⁴⁹ But they do not alter bicameral symmetry since the two chambers deliberate together but the votes of their members are counted separately.⁵⁰ Consequently, as regards the resolution of conflicts, we have opted to give the case of Brazil the maximum score.

Then, we still need to consider the two remaining variables dealing with the senates’ prerogatives of political control. Variable 9 shows that most of the cases receive the highest score because both chambers enjoy the same

instruments to exercise control over the executive. An exception is Chile, the weakest case, because its constitution assigns all control functions to the Chamber of Deputies and explicitly forbids the senate (or any of its organisms) to perform them. There are also three intermediate cases, Peru, Venezuela and Uruguay. In the first two cases most control mechanisms belong to the lower house whilst in the latter the approval of a motion of censure is taken in a joint session where, as we have already explained, the senate's participation is minor. Finally, variable 10 concerns the faculty – typical of our senates – to consent to appointments in the executive and judicial powers and to military promotions, among others. This is a faculty present in every constitution, but some senates are granted a greater role since a larger number of appointments are submitted for their consideration. As a matter of fact, this applies to most of the cases, with the exception of Colombia, Dominican Republic and Venezuela, which receive the intermediate score.⁵¹

In conclusion, after considering all the variables connected to bicameral symmetry, the most symmetrical cases were Paraguay and the United States, with the highest score attainable (24 points). These cases are immediately followed by Argentina, Brazil, Colombia, the Dominican Republic, Mexico and Peru with a total of 22 points. At the other extreme, we have identified Venezuela as the weakest case (16 points), followed by Bolivia, Chile and Uruguay (18 points). Chile is a particular case because the senate is quite strong in its powers of legislative control, but weaker in terms of political control over the executive. On the other hand, in the other three weaker cases, the senate's veto power over legislation is affected.

CONCLUSION

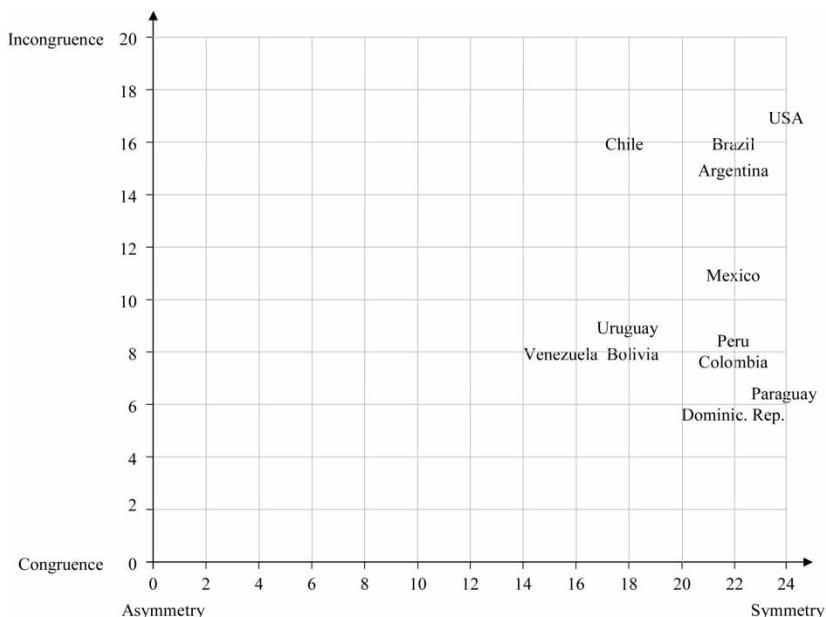
After the study of bicameralism carried out in the previous sections, we would like to conclude by saying, first, that Latin America is, basically, the region of bicameral symmetry since most of the cases in the region received extremely high scores ranging from 22 to 24. This fact contributes to our understanding of the relationship between the institution of bicameralism and those of federalism and presidentialism. On the one hand, it has normally been sustained that symmetrical bicameralism co-exists with federalism whilst there are no unitary systems with such strong upper houses.⁵² However, this study has shown that both unitary and federal systems receive high scores since four of our strongest cases actually do not have federal constitutions (Colombia, Paraguay, Peru and the Dominican Republic). On the other hand, the fact that there is a greater affinity between symmetrical bicameralism and presidentialism than between that and parliamentarism is confirmed by this study. Thus, it is possible to affirm that strong bicameralism is correlated to presidential systems of government. The constitutions of our Latin American

cases have transformed its upper houses into very powerful institutions, the strength of which is comparable to that of the US Senate. The latter has often been regarded either as the 'most powerful legislative body in the world'⁵³ or 'unusual among upper houses' for sharing equal legislative power with the House of Representatives.⁵⁴ We now know that powerful upper houses are not so rare and that Latin American constitution-makers seem to have imitated the American model very well.

Our second conclusion stresses the differences between the cases. Figure 1 illustrates the study unfolded in the previous pages by combining the two dimensions of incongruence and symmetry.

Four groups can be identified at a glance. Firstly, we have the cases exhibiting the lowest scores in the symmetry variable as well as very low scores in the incongruence variable: Bolivia, Uruguay and Venezuela (before 1999). These cases are the weakest bicameral systems on the continent. However, if one considered other bicameral cases outside the region, the conclusion would be that these senates are strong and are granted important powers by their constitutions. The fact is, though, that compared with the other bicameral cases on the American continent, these are the senates least equipped to act on

FIGURE 1
THE DIMENSIONS OF INCONGRUENCE AND SYMMETRY IN AMERICA



equal terms with the lower house if conflict occurs in the legislative process. Furthermore, in the particular cases of Uruguay and Venezuela, senates are also weak in their powers of political control. Consequently, if we return to the rationale of bicameralism mentioned at the beginning of this article, only one of the four identified goals seems to be satisfactorily achieved by these bicameralisms: the double consecutive assessment of legislation.

Something similar could be expected from the group of cases placed at the bottom of Figure 1, that of the Dominican Republic, Colombia, Paraguay and Peru (before 1994). These constitutions constructed very symmetrical bicameral systems but simultaneously limited the points of divergence between the houses. Because of this it could be expected that, with similar political majorities, both chambers tended to duplicate their behaviour. In this case, bicameralism would be better contributing to the improvement of the quality of legislative production than to producing a system of checks and balances. Nonetheless, since senates are constitutionally given a strong position vis-à-vis the Chamber of Deputies, it is difficult to predict which chamber will be successful in the eventual occurrence of conflict.

Thirdly, at the opposite extreme, we find three cases – Argentina, Brazil and the United States – with the highest score in the two dimensions of incongruence and symmetry. In these countries, the senate is constitutionally empowered to act as a real veto player. Disagreements with the Chamber of Deputies can be common as well as paralysis and delay in the legislative production. The senate also shares equal powers with the lower house to control the executive. These are the cases best prepared to fulfil the goals that political theorists have always associated with bicameralism: representing interests different from those in the lower house, contributing to the system of checks and balances, improving the quality of legislative production, and producing more stable legislative results.

Fourthly, Chile stands out by being very incongruent but not as symmetrical as the others. In fact, Chile is a particular case because its senate is strong in terms of legislative powers but weaker in terms of powers of political control. This fact lowers its symmetry score and differentiates it from the cases in the other two groups.

To conclude, it is worth remembering that this classification of Latin American bicameralisms is only the starting point for a study of these systems in Latin America. An assessment of bicameralism in the region should include other variables affecting the functioning of these systems in practice. The power of the president, the party system, the decisions rules, the internal organisation and personnel endowment of each chamber should be added to those variables taken from the constitutional design. Only then shall we be able to assess the extent and the way in which these systems exercise the important prerogatives granted to both chambers by the constitution.

APPENDIX I
INSTITUTIONAL FEATURES OF LEGISLATIVE INCONGRUENCE

Country	Age Difference	Other Qualifications to be a Senator	Form of Election	Term Length	Renewal of the Upper House	Size of the Body
Argentina 1994	senator 30 years deputy 25 years	Yes (more years citizenship, a minimal income)	Direct	senator 6 years deputy 4 years	Partial (one-third every two years)	72 senators 257 deputies
Brazil	senator 35 years deputy 21 years	No	Direct	senator 8 years deputy 4 years	Partial (one- or two-thirds every four years)	81 senators 513 deputies
Bolivia 1994	senator 35 years deputy 25 years	No	Direct	senator 5 years deputy 5 years	Total	27 senators 130 deputies
Chile 2001	senator 40 years deputy 21 years	No	Direct (with a number of appointed members)	senator 8 years deputy 4 years	Partial every four years (of elected senators)	48 senators 120 deputies
Colombia 1997	senator 30 years deputy 25 years	Yes (to be a Colombian by birth, a certificate for indigenous representatives)	Direct	senator 4 years deputy 4 years	Total	102 senators 163 deputies
Dominican Republic	senator 25 years deputy 25 years	No	Direct	senator 4 years deputy 4 years	Total	30 senators 120 deputies
Mexico	senator 25 years deputy 21 years	No	Direct	senator 6 years deputy 3 years	Total	128 senators 500 deputies
Paraguay 1992	senator 35 years deputy 25 years	No	Direct (also includes ex-presidents)	senator 5 years deputy 5 years	Total	46 senators 80 deputies

Peru	senator 35 years deputy 25 years	No	Direct (also includes ex-presidents)	senator 5 years deputy 5 years	Total	60 senators 180 deputies
United States	senator 30 years deputy 25 years	Yes (more years citizenship)	Direct	senator 6 years deputy 2 years	Partial (one-third every two years)	100 senators 435 deputies
Uruguay 1997	senator 30 years deputy 25 years	Yes (more years citizenship)	Direct	senator 5 years deputy 5 years	Total	30 senators 99 deputies
Venezuela 1983	senator 30 years deputy 21 years	No	Direct (also includes ex-presidents)	senator 5 years deputy 5 years	Total	50 senators* 203 deputies

Notes:

*Both the total of upper and lower house members correspond to the election of 1993. Numbers can vary slightly as a result of the principle of *additional representatives*.

APPENDIX II
SOME INSTITUTIONAL FEATURES OF BICAMERAL SYMMETRY

	Initiating Chamber for Particular Legislation		Instruments for the Executive's Control		Executive and Judicial Appointments
	Lower Chamber	Senate	Lower Chamber	Senate	
Argentina 1994	Budget, taxes, military recruitment, bills from popular initiative	<i>Coparticipación</i> ¹ , provincial and regional development	<i>Interpelación</i> , motion of censure against the chief ministers' cabinet	<i>Interpelación</i> , motion of censure against the chief ministers' cabinet	Supreme Court, lower courts, diplomats, military promotions, Central Bank
Bolivia	Taxes, budget, development plans, loans, military force	Single approval of municipal taxes	Written reports, <i>interpelación</i> , vote of censure	Written reports, <i>interpelación</i> , vote of censure	Military, chief of the national police, diplomats, General Comptroller, Superintendent of Banks (1)
Brazil	Bills submitted by the president, the Supreme Court, higher courts, people	–	<i>Interpelación</i> , written reports investigation committees	<i>Interpelación</i> , written reports investigation committees	Judges, Court of Auditors, Central Bank, Attorney General, diplomats, regulatory agencies
Chile	Taxes, budget, military recruitment	Amnesties and pardons	Request of information, writing of observations	–	Ministries and prosecutors of the Supreme Court, Attorney General, one member of the Constitutional Court, General Comptroller of the Republic (2), Central Bank
Colombia 1991	Taxes	International relations	Written reports, <i>interpelación</i> , request for vote of censure	Written reports, <i>interpelación</i> , request for vote of censure	Constitutional Court, military, Attorney General (3)
Dominican Republic	–	–	<i>Interpelación</i>	<i>Interpelación</i>	Members of the Central Electoral Council, members of the Accounts Chamber, diplomats (5)

Mexico	Loans, taxes, military recruitment, income law, budget, single approval of outgoings budget	Single approval of international treaties	<i>Interpelación</i> , investigation committees	<i>Interpelación</i> , investigation committees	Attorney General, ministries, diplomats, Ministry of Finance high officials, military, Supreme Court, Electoral Court, Council of the Federal Judiciary, National Committee of Human Rights, Central Bank, governors and chief of the Federal District (in case of urgency)
Paraguay	Departmental and municipal laws, budget	International treaties	Written reports, <i>interpelación</i> , investigation committees, Request for vote of censure	Written reports, <i>interpelación</i> , investigation committees Request of vote of censure	Military, national police, diplomats, judges, Central Bank directors, directors of bi-national entities, Attorney General (4)
Peru (1979)	–	–	Investigation committees <i>interpelación</i> vote of censure, vote of confidence	Investigation committees	Diplomats, Supreme Court, Supreme Court prosecutors, General Comptroller, Central Bank, Superintendent of Banks and Insurance, military promotions, police promotions
United States	Taxes	Single approval of international treaties	Oversight hearings, written reports, investigation committees	Oversight hearings, written reports, investigation committees	Diplomats, Supreme Court, members of the cabinet, lower courts, military, independent agencies

APPENDIX II (CONTINUED)

	Initiating Chamber for Particular Legislation		Instruments for the Executive's Control		Executive and Judicial Appointments
	Lower Chamber	Senate	Lower Chamber	Senate	
Uruguay	–	–	Written reports <i>Interpelación</i> Investigation committees Request for vote of censure	Written reports <i>Interpelación</i> Investigation committees Request for vote of censure	Military, diplomats, state prosecutors, Appellate Courts, members of Directories and General Directories, participation in officials removal (6)
Venezuela	Budget, taxes	International treaties, single approval of treaties between the states	<i>Interpelación</i> , vote of censure	<i>Interpelación</i>	Military promotions, Attorney General, diplomats (7)

Notes:

- (1) The ministers of the Supreme Court of Justice, the magistrates of the Constitutional Court, the *Consejeros de la Judicatura*, the Attorney General of the Republic and the People's Defender (ombudsman) are appointed in a joint session of the chambers. Besides, the Chamber of Deputies intervenes in the appointment of the presidents of social and economic entities where the state takes part.
- (2) The senate does not intervene in military appointments which are the exclusive prerogative of the president.
- (3) The senate does not intervene in diplomatic appointments which are the exclusive prerogative of the president.
- (4) Both the senate and the chamber of deputies participate in the appointment of the People's Defender and the Comptroller and Subcomptroller of the Republic.
- (5) Both the senate and the chamber of deputies participate in the appointment of the Supreme Court.
- (6) The members of the Supreme Court, the Electoral Court, the Administrative Court, and the Court of Auditors are appointed by the two chambers in a joint session.
- (7) The members of the Supreme Court as well as the Attorney General are appointed by the two chambers in a joint session.

¹It was difficult to find a good translation for the words *coparticipación* and *interpelación*. The first describes a system of local/federal taxes collected by the federal government and distributed according to a formula established by law between both the federal states and the provinces. The second is a congressional hearing that normally takes place at the plenary session and involves one or more of the government ministers (heads of departments).

NOTES

1. G. Tsebelis and J. Money, *Bicameralism* (Cambridge: Cambridge University Press, 1997); S. Patterson and A. Mughan (eds.), *Senates. Bicameralism in the Contemporary World* (Columbus, OH: Ohio State University Press, 1999); M. Russell, *Reforming the House of Lords. Lessons from Overseas* (Oxford/New York: Oxford University Press, 2000); N. Baldwin and D. Shell (eds.), 'Second Chambers. Special Issue', *Journal of Legislative Studies*, 7/1 (2001).
2. P. Delfosse and J. Duprat (eds.), 'Des Sénats. Special Issue', *Revue Internationale de Politique Comparée*, 6/1 (1999); J. Mastias and J. Grangè *Les Seconde Chambres du Parlement en Europe Occidentale* (Paris: Économica, 1987).
3. G. Riescher, S. Ruß and C. Haas (eds.), *Zweite Kammern* (München/Wien: Oldenbourg, 2000); S. Schüttemeyer and R. Sturm, 'Wozu Zweite Kammern? Zur Repräsentation und Funktionalität Zweiter Kammern in westlichen Demokratien', *Zeitschrift für Parlamentsfragen*, 23/3 (1992), pp.517–36; R. Sturm 'Vorbilder für eine Bundesratsreform? Lehren aus den Erfahrungen der Verfassungspraxis Zweiter Kammern', *Zeitschrift für Parlamentsfragen*, 33/1 (2002), pp.166–79.
4. C. Haas, 'Sein oder nicht sein: Bikameralismus und die Funktion Zweiter Kammern', in G. Riescher, S. Ruß and C. Haas (eds.), *Zweite Kammern* (München/Wien: Oldenbourg, 2000).
5. In Patterson and Mughan's *Senates*, the senates of Australia, Canada, France, Great Britain, Italy, Poland, Spain and the United States are analysed; in *Reforming the House of Lords. Lessons from Overseas*, Russell includes seven second chambers – Australia, Canada, France, Germany, Great Britain, Italy, Ireland; in the work *Zweite Kammern* by Riescher, Ruß and Haas the upper houses of the following countries are dealt with: the United States, Switzerland, Australia, Germany, Austria, South Africa, India, Spain, Belgium, Canada, Italy, Japan, France, Holland, Great Britain, Ireland, Russia, the Czech Republic, Denmark, Sweden, New Zealand. Additionally, the special number published by the *Revue Internationale de Politique Comparée* did not consider the Latin American cases, while that of the *Journal of Legislative Studies* only touched on them briefly.
6. Among the first, there are notable exceptions. First, Arendt Lijphart's comparative study of 36 consolidated democracies, whose chapter 'Parliaments and Congresses' provides an outstanding classification of bicameralisms and includes Colombia and Venezuela among the cases. See A. Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven, CT/London: Yale University Press, 1999). Second, Tsebelis and Money's *Bicameralism*, where all the Latin American cases with the exception of Uruguay are taken into consideration.
7. According to the Parliamentary Union, the proportion of bicameral systems is around one-third of all legislative systems throughout the world (63 of 178 legislatures have two chambers). See M. Russell, 'What Are Second Chambers For?', *Parliamentary Affairs*, 54 (2001), p.22.
8. Four have been the abolition cases among advanced democracies in the twentieth century (Denmark, Ireland, New Zealand and Sweden), whilst five took place in Latin America (Cuba, Nicaragua, Ecuador, Peru and Venezuela).
9. Our analysis is based on the most recent constitutional texts, that is, the constitutions with their latest reforms up to October 2002. With the purpose of comparison, the contents of the constitutional texts which were relevant for the analysis of bicameralism were previously systematised. See R. Fuchs and M. Hägele, 'El bicameralismo en las constituciones de América Latina', *Working Paper*, No.7 (Hamburg: Institut für Iberoamerika-Kunde, 2002).
10. Why should we consider legislatures that are no longer bicameral? For two reasons: first, we hope that our analysis of the features of these legislatures help to understand their weaknesses and strengths and shed some light on the reasons that motivated their abolition; second, the durability of the unicameral structures that emerged in the 1990s in these countries remains uncertain. As a matter of fact, the re-installation of a bicameral legislature was approved by the Peruvian Congress after ten years of unicameralism and is expected to be implemented in 2006. See the newspapers *El Comercio* and *La República*, 4 April 2003.

11. Bicameralism has also prevailed in Haiti, except between 1957 and 1987. Caribbean countries colonised by Great Britain mostly have bicameral systems with appointed senates.
12. Look, for instance, at the web page of Venezuela's National Assembly (www.asambleanacional.gov.ve), the *Reseña del Proceso de Transición desde el Congreso de 1998 a la Asamblea Nacional*. See also E. Bernalde, *La Constitución de 1993. Análisis comparado* (Lima: Ciedla, 1996) for the Peruvian case.
13. According to Article 45 of the constitution, the non-elected Chilean senators are ex-presidents who have been in power for at least six consecutive years and nine 'institutional representatives': two ex-ministers of the Supreme Court (appointed by it); one ex-Comptroller of the Republic appointed by the Supreme Court; one ex-Commander-in-Chief of the Army, one of the Navy, one of the Air Force and one ex-General Director of *Carabineros*, appointed by the National Security Council; one ex-director of a public university, appointed by the President of the Republic; one ex-Minister of State also appointed by the President of the Republic.
14. Lijphart, *Patterns of Democracy*, pp.205–13. See also G. Sartori, *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes* (Basingstoke: Macmillan Press, 1994), pp.183–9.
15. Tsebelis and Money, *Bicameralism*, pp.46–70.
16. We shall return to this topic in the next section, where the features of these systems are presented in detail.
17. According to Tsebelis and Money, *Bicameralism*, pp.54–69, the method for the resolution of conflicts used in Latin America is the *navette* (a consultative process through which the bill shuttles back and forth until agreement is reached). This method is complemented by the conference committee in Chile and Colombia and the joint session in Bolivia, Brazil and Venezuela (under the former constitution). There are no cases in which the lower house has the ultimate decision, but cases where the ultimate decision relies on the chamber where the bill was introduced (Argentina, Brazil, Chile, Dominican Republic and Mexico). It should be said at this point that we agree with Tsebelis and Money's classification in general terms, but, as we shall explain later, we think that their interpretation of the Brazilian joint session as an asymmetrical method is mistaken.
18. J. Schiavon, 'Bicameralism in Latin America: Does it Make a Difference?' Paper delivered at the meeting of the American Political Science Association, Boston, MA, 29 Aug.–1 Sept. 2002.
19. The author identifies other recent cases of medium-strength bicameralism: Colombia (1974–91), Peru (1980–92), which were symmetric but congruent legislatures, and Venezuela (1958–99), which was incongruent but asymmetric. As shall be explained later, we do not agree with the author's classification of Uruguay and Paraguay as congruent legislatures.
20. S. Patterson and A. Mughan, 'Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers', *Journal of Legislative Studies*, 7/1 (2001), pp.39–54.
21. Patterson and Mughan, 'Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers', p.51.
22. Lijphart, *Patterns of Democracy*, p.205.
23. Tsebelis and Money, *Bicameralism*, pp.53–4, maintain that, although there are no cases where the methods of selecting legislators in upper and lower houses are identical, where proportional or semi-proportional representation is employed, the two houses may resemble each other politically.
24. Consult, for instance, M. Cotta, 'A Structural-Functional Framework for the Analysis of Unicameral and Bicameral Parliaments', *European Journal of Political Research*, 2 (1974), pp.201–24; Longley and Olson, *Two into One*; Patterson and Mughan, *Senates*; Mastias and Grangé, *Les Seconde Chambres du Parlement en Europe Occidentale*; W. Riker, 'The Justification of Bicameralism', *International Political Science Review*, 13/1 (1992), pp.101–16; J. Rogers, 'An Informational Rationale for Congruent Bicameralism', *Journal of Theoretical Politics*, 13/2 (2001), pp.123–51; Russell, 'What Are Second Chambers For?'; Schüttemeyer and Sturm, 'Wozu Zweite Kammern?'; D. Shell, 'The Second Chamber Question', *Journal of Legislative Studies*, 4/2 (1998), pp.17–32; Tsebelis and Money, *Bicameralism*.

25. See A. Hamilton, J. Madison and J. Jay, *The Federalist Papers* (New York: Penguin Putnam, 1999), No.62, pp.344–50; and W. Bagehot, *The English Constitution* (Cambridge: Cambridge Texts in the History of Political Thought, 2001), p.80.
26. See Tsebelis and Money, *Bicameralism*, p.40. Other authors have pointed out that the division of the legislature into two chambers also means a division of work. See, for instance, Russell ‘What Are Second Chambers For?’, pp.443.
27. Consult Tsebelis and Money, *Bicameralism*, pp.37–9 and S. Levmore, ‘Bicameralism: When Are Two Decisions Better than One?’, *International Review of Law and Economics*, 12 (1992), pp.145–62.
28. Critics of bicameralism have instead emphasised its problems. The other side of the coin indicates that, first, a second chamber can provoke paralysis and frustrate the will of the ‘true’ majority present in the first chamber; second, the ideal model of representation based on popular sovereignty cannot be achieved except through one channel so that the second chamber is a deviation from this model; third, a second chamber produces harmful delay in decision-making processes. See advantages and disadvantages of bicameralism in Cotta, ‘A Structural-Functional Framework for the Analysis of Unicameral and Bicameral Parliaments’.
29. Rogers, ‘An Informational Rationale for Congruent Bicameralism’ defends the argument that the essential institutional attribute of bicameralism – the acoustic separation of two groups of legislators – is, in itself, sufficient to justify the maintenance of bicameralism.
30. Hamilton *et al.*, *The Federalist Papers*, No.62.
31. ‘Le temps de la réflexion, c’est le Sénat’ are words attributed to the French politician Georges Clemenceau. Cited in Mastias and Grangè, *Les Seconde Chambres du Parlement en Europe Occidentale*, pp.87, 93.
32. See G. Riescher and S. Russ, ‘Zur Funktion der Zweiten Kammern in modernen Demokratien’, in Riescher *et al.*, *Zweite Kammern*, p.392; and Sturm, ‘Vorbilder für eine Bundesratsreform? Lehren aus den Erfahrungen der Verfassungspraxis Zweiter Kammern’, pp.166–7.
33. See, for instance, John Stuart Mill’s essay *Consideration on Representative Government* in J. Mill, *Utilitarianism, Liberty, Representative Government* (London: Everyman, 1972), pp.325–6.
34. Consult G. Tsebelis, *Veto Players. How Political Institutions Work* (Princeton, NJ: Russell Sage Foundation, 2002), p.2, and A. Kaiser, ‘Vetopunkte der Demokratie. Eine Kritik neuerer Ansätze der Demokratietypologie und ein Alternativvorschlag’, *Zeitschrift für Parlamentsfragen*, 29/3 (1998), pp.525–41.
35. In the cases of Argentina and Chile we found that the senate had also prerogatives to consent to the appointment of directors of the Central Bank, but these prerogatives were not established by the constitution but by law.
36. In order to assess how powerful a president is in constitutional terms, M. Shugart and J. Carey, *Presidents and Assemblies. Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992) devised a simple interval scoring method on each of several aspects in which systems with elected presidencies vary and justify it by stating that ‘This is not a perfect method . . . but it is preferable to a purely non-quantitative, impressionistic ranking or to no assessment . . . at all’ (p.149). Examples of other uses of this methodology are: J. Carey and M. Shugart, *Executive Decree Authority* (Cambridge: Cambridge University Press, 1998), pp.274–98; H. Krumwiede and D. Nolte, *Die Rolle der Parlamente in den Präsidialdemokratien Lateinamerikas* (Hamburg: Institut für Iberoamerika-kunde, 2000), pp.72–89; M. Payne, D. Zovatto, F. Carrillo Flórez and A. Allamand Zavala, *Democracies in Development. Politics and Reform in Latin America* (Washington DC: Inter-American Development Bank, 2002), p.197; M. Shugart and S. Haggard, ‘Institutions and Public Policy in Presidential Systems’, in S. Haggard and M. McCubbins (eds.), *Presidents, Parliaments, and Policy* (Cambridge: Cambridge University Press, 2001), pp.64–102.
37. Previous versions of this article were presented at the Third European Congress of *Latino-americanistas* (Ceisal) in Amsterdam, 3–6 July 2002, and also in conferences in Argentina (Universidad Argentina de la Empresa) and Chile (Universidad Diego Portales).

38. See note 37.
39. In some cases, the senate not only participates in the appointment of executive officers, but also in the approval of authorisations. For instance, the Brazilian senate has the important prerogative of approving the level of both foreign and domestic public debts, among others. On the other hand, some Latin American constitutions establish that a number of executive appointments need the confirmation of the two houses and, in the case of Bolivia, that of the Chamber of Deputies alone (see Appendix 2).
40. However, in the particular case of Argentina, this status was only recently achieved when the constitutional reform of 1994 replaced the indirect election of senators (elected by the provincial legislatures).
41. Peru's constitution dictated that senators were elected to represent the regions. However, the constitution also provided a temporary clause until the regional division of the country could be approved by law. According to this clause, senators were to be elected in a single national district. The regional division of the country was never accomplished before the senate's abolition in 1993. See E. Bernalde Ballesteros, *Parlamento y Democracia* (Lima: Constitución y Sociedad, 1990), p.30.
42. Consult D. Nohlen, S. Picado and D. Zovatto, *Tratado de derecho electoral comparado de América Latina* (México DF: Fondo de Cultura Económica, 1998), pp.162–75, for information on Latin American electoral systems. In the particular case of Chile, both senators and deputies are elected in double-member districts. But districts are differently designed in the two cases, being larger than those for the senate.
43. There is information on the constitutional features of bicameralism in every country in Appendices 1 and 2.
44. The question of citizenship has normally been related to the special prerogatives that US and most Latin American senates possess in foreign policy decision-making.
45. Argentina is the only case in which partial renewal affects both the upper and lower chambers, but in different proportions: the partial renewal of the Chamber of Deputies involves half of the seats, the partial renewal of the senate, a third.
46. See G. Tsebelis and B. Rasch, 'Patterns of Bicameralism', in H. Döring (ed.), *Parliaments and Majority Rule in Western Europe* (Frankfurt am Main: Campus Verlag/St. Martin's Press, 1995), p.367.
47. Actually, according to the previous constitution of Venezuela, the Supreme Court was the institution in charge of impeachment. The senate could only authorise it to proceed with the impeachment of the president.
48. L. Longley and W. Oleszek, *Bicameral Politics. Conference Committees in Congress* (New Haven, CT/London: Yale University Press, 1989), p.24.
49. *Medidas provisórias* are decrees (with the force of laws) enacted by the executive in the case of urgency. They must be submitted immediately to the National Congress for consideration (Article 62 of the Constitution). Originally, they were treated and voted on in a joint session but after a recent constitutional reform (*Emenda Constitucional 32/2001* – 12 Sept. 2001), they must be approved in separate sessions of the two chambers.
50. Article 43 of the Common Rules for the National Congress states that a 'no' vote from either of the houses means the rejection of the proposal.
51. Consult also Appendix 2 for further information on the type of appointments involving senate intervention.
52. Patterson and Mughan, 'Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers', only found one case, the strong bicameralism of Italy, among unitary systems.
53. D. Smith, 'A House for the Future: Debating Second Chamber Reform in the United Kingdom', *Government and Opposition*, 35/3 (2000), pp.328–9.
54. B. Sinclair, 'Coequal Partner: the U.S. Senate', in Patterson and Mughan (eds.), *Senates*, p.32.