Understanding the Second Chambers of the Parliaments

This reading item is based on the Comparative overview of consultative practices within the second chambers of EU national legislatures, European Union, October 2014, under a Creative Commons license (edited by Zsuzsa Szakály).

INTRODUCTION AND LEARNING OUTCOMES

As several states have bicameral system, it is important to see the characteristics and roles of the second chambers. The different types and roles of the second chamber in a political system of a state can determine the powers of the second chamber.

The four main functions of the second chambers: the representation of different interests, the independence from the executive, the acting as a veto-player and the performance of different parliamentary duties. These aspects are examined in detail to understand the characteristics of the second chambers.

Learning outcomes

- 1. Understanding the different types of bicameral systems
- 2. Understanding possible functions of a second chamber

Keywords: second chamber, selection, legitimacy, bicameralism, political weight, territority, veto-player, redundancy effect, regional balance, representation of different interests

Estimated time: app. 45 minutes

Recommended Reading

- 1. National Democratic Institute For International Affairs Legislative Research Series
 Paper #3 One Chamber or Two? Deciding Between a Unicameral And Bicameral
 Legislature
- 2. Parliament and democracy in the twenty-first century: A guide to good practice Inter-Parliamentary Union, 2006
- 3. Making reconciliation work: the role of parliaments, 2005, https://www.ipu.org/resources/publications/handbooks/2016-07/making-reconciliation-work-role-parliaments

3. Second chambers in the literature

An overview of the literature on second chambers¹ permits the identification of a certain number of common characteristics to all second chambers, which are particularly relevant for a study on consultative practices.

In general, 'second chambers are often characterised as embodying a particular measure of wisdom, balance and expertise.' They work under less public opinion and media pressure than the corresponding first chambers and have in general more time to examine the files and to investigate areas that are sometimes neglected by first chambers, which have to deal with more urgent matters.

Nevertheless, as mentioned in the previous section, second chambers are often criticised and misunderstood. This is not only true within political debates but also in literature, especially with regard to the need to reform certain second chambers.³

A core notion discussed in these debates is the **legitimacy of second chambers**. It rests upon various factors including inter alia their composition and the regional/territorial balance, the level of expertise of their members and the political balance. Legitimacy refers primarily to the justification of the action of the public authority. Yet, in contemporary analysis, this notion is closely related to that of democracy, which implies in the case of second chambers that legitimacy focuses on the composition of the second chamber and the representation

_

¹ See for instance G. Tsebelis and J. Money, 'Bicameral Negotiations: The Navette System in France', British Journal of Political Science, 1995, 25(1), pp. 101-129; G. Tsebelis and J. Money, Bicameralism. Political Economy of Institutions and Decisions, New York, Cambridge University Press, 1997, 250 pp.; S.C. Patterson and A. Mughan (eds.), Senates. Bicameralism in the contemporary world, Columbus, Ohio State University Press, 1999, 360 pp.; S.C. Patterson and A. Mughan, 'Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers', The Journal of Legislative Studies, 2001, pp. 39-60; M. Russell, 'What Are Second Chambers For?', Parliamentary Affairs, 2001, 54, pp. 442-458; R. Watts, 'Models of Federal Power Sharing', International Social Science Journal, 2001, pp. 23-32; T. König, 'Bicameralism and Party Politics in Germany: an Empirical Social Choice Analysis', Political Studies, 2002, 49(3), pp. 411-437; E. Roller, 'Reforming the Spanish Senate: Mission Impossible?', West European Politics, Vol. 25(4), 2002, pp. 69-92; W. Swenden, Federalism and Second Chambers: regional representation in parliamentary federations: the Australian Senate and German Bundesrat compared, Brussels, Lang, 2004, 423 pp.; A. Vatter, 'Bicameralism and policy performance: The effects of cameral structure in Comparative Perspective', The Journal of Legislative Studies, 2005, 11(2), pp. 194-215; T.O. Hueglin and A. Fenna, Comparative Federalism: A Systematic Inquiry, Toronto, Broadview Press, 2006, 390 pp.; J. Uhr, 'Bicameralism', in R.A.W. Rhodes, S. Binder and B.A. Rockman (eds.), Oxford Handbook of Political Institutions, New York, Oxford University Press, 2008, pp. 474-494; P. Norton, 'How Many Bicameral Legislatures Are There?', Journal of Legislative Studies, 2009, 10(4), pp. 1-9; A. Rasmussen and D. Toshkov, 'The effect of stakeholder involvement on legislative duration: Consultation of external actors and legislative duration in the European Union', The European Union Politics, 2013, 14(3), pp. 366-387; M. Russell, The Contemporary House of Lords: Westminster Bicameralism Revived, Oxford, Oxford University Press, 2013, 352 pp.

² Council of Europe, European Commission for Democracy Through Law (Venice Commission), Report on Second Chambers in Europe, 'Parliamentary complexity or democratic necessity?' by P. Gélard, available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2006)059-e (EN), at p. 11.

³ See inter alia P. Norton, 'Adding Value? The Role of Second Chambers', Asia Pacific Law Review, Vol. 15 No. 1, 2007, pp. 3-18; E. Roller, 'Reforming the Spanish Senate: Mission Impossible?', West European Politics, Vol. 25(4), 2002, pp. 69-92.

⁴ R. Barker Political Legitimacy and the State, Oxford, Clarendon Press, 1990, p. 23

entailed by this composition. Indeed, '[t]he actual political importance of second chambers depends not only on their formal constitutional powers but also on their method of selection' and '[s]econd chambers that are not directly elected lack the democratic legitimacy, and hence the real political influence, that popular election confers.' The following parts of this study will demonstrate that most second chambers represent subnational territorial entities and that these second chambers represent subnational territorial entities and that these second chambers generally enjoy a strong democratic legitimacy. Yet, not all of these chambers are directly elected by the population since some are composed of members designated through other means. For instance, the German Bundesrat is not directly elected but is nevertheless considered as legitimate and very powerful. As a consequence, it seems that more than the criterion of direct election, a representation of the population of the country is requisite in the assessment of the legitimacy of a second chamber.

The European Member States in which second chambers' legitimacy are most criticised are the United Kingdom and – to a lesser extent – Ireland. There is no territorial representation in these second chambers and the vast majority of citizens are excluded from their designation process. The essential ingredient of legitimacy is lacking and there is a gap between the second chamber and the citizen. Yet, these second chambers enjoy a certain degree of legitimacy granted through their composition – representation of vocational interests and universities in Ireland and appointment of members mainly on the basis of their relevant expertise and experience and perhaps personal distinction in the United Kingdom. Such composition can also generate legitimacy but second chambers mainly composed of experts do not in general enjoy a strong democratic legitimacy.

Hence, it seems difficult to assess second chambers' legitimacy. Given the lack of any hard measure permitting this evaluation, it seems that the 'perceived legitimacy' should be the prevailing concept to assess a second chamber's legitimacy. The yardstick would be that a second chamber should be perceived as sufficiently legitimate to exercise its powers.

-

⁵ A. Lijphart, Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries, New Haven, Yale University Press, 1999, p. 206.

⁶ B. Doherty, 'Seanad Éireann', Constitution Review Group Report 4: The National Parliament, Dublin, Government of Ireland, 1996, p. 26.

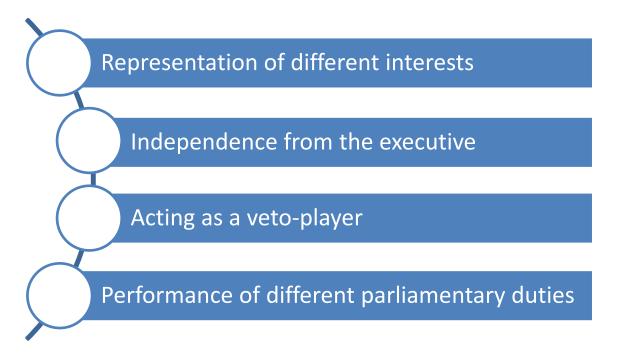
⁷ D. Shell, The House of Lords, 1st edn., Manchester University Press, Manchester, 2007, p. 164; J. Steffek, 'The Legitimation of International Governance: A Discourse Approach', European Journal of International Relations, 2003, pp. 249-275 at p. 257. For further discussion on these concepts, see C. Holst (ed.), Expertise and Democracy: Arena Report No 1/14. Oslo, available at http://www.sv.uio.no/arena/english/research/publications/arena-publications/reports/2014/report-01-14.pdf (EN).

⁸ M. Russell, 'Legitimacy and Bicameral Strength: A Case Study of the House of Lords', available at http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCUQFjAA&url= http%3A%2F%2Fwww.ucl.ac.uk%2Fconstitution-unit%2Fresearch%2Fparliament%2Fhouse-oflords%2Ftabs%2Flegitimacy_bicameral_strength.pdf&ei=rA6oU5OVIonB7Aag5YHAAg&usg=AFQjCNFOqrjNo MQYD5n_n_bNiyHGJnwk1g&bvm=bv.69411363,d.ZGU (EN) p. 3.

As a conclusion, it seems that the issue of legitimacy may be the most debated in respect of second chambers mainly composed of members lacking any territorial connection with the population expressed either through election or through other means of representation, such as experts or selected individuals. Consequently, one may suggest introducing elements of direct popular election or other mechanisms favouring the territorial connection of members of second chambers in order to increase their legitimacy and to enhance their function of representation.

A number of key elements have been identified in literature to justify their existence and their added value to the parliamentary system. In a 2007 paper on 'Adding Value: The Role of Second Chambers', Lord Norton of Louth considers that the two functions justifying their existence are those of representation and reflection. In another 2001 paper on 'What are Second Chambers for?', Meg Russell identified four such elements, namely (1) the representation of different interests, (2) the independence from the executive, (3) the acting as a veto-player and (4) the performance of different parliamentary duties. This four-pillar justification will serve as structure for the following analysis of the key findings in literature on the second chambers' functions justifying their existence.

Role of Second Chambers



3.1 Representation of different interests

⁹ P. Norton, 'Adding Value? The Role of Second Chambers', Asia Pacific Law Review, Vol. 15 No. 1, 2007, pp. 3-18.

¹⁰ M. Russell, 'What Are Second Chambers For?', Parliamentary Affairs, 2001, 54, pp. 442-458, at p. 443.

'Firstly, in composition terms, the upper house may introduce representation of a different set of interests to those which exist in – and frequently dominate – the lower house.' 11

Interestingly, it is possible for a second chamber to represent particular groups or territorial entities without being directly elected.¹² The second chamber may for instance serve to represent minorities, whether territorial, ethnic, linguistic or political-party minorities, which would not be — or not sufficiently be — protected within the elected first chamber representing the majority of the population.

The fact that bicameralism is often associated to federalism entails that second chambers frequently represent the different parts of the **federal State**. However, second chambers in unitary States may also represent subnational entities, as in France. The territorial representation is the commonest form or representation in second chambers, with subnational entities – as provinces, regions, departments, municipalities, etc. – represented in the second chamber. As stated in a 2006 report of the Venice Commission, second chambers 'are necessary, and will become increasingly so, in federal states and ones that are constitutionally regionalised or heavily decentralised, where second chambers represent geographical areas whereas first chambers represent peoples.' ¹³

An interesting parallelism may be drawn with the EU, which combines features both of an international organisation and of a federal system. Although the theme of federalism in the EU remains a matter of controversy in literature a trend is emerging in favour of the federalisation of the European system. In 2010, a network of European 'Federalists' – the Spinelli Group – was established in order to promote a federal and post-national Europe, a 'Europe of the citizens'. In a 2013 speech, the former President of the European Commission, Mr. Barroso said that a 'functional federalism' was needed to counter emerging threats to European unity. He further stated that 'federalism is in itself a concept with two faces: searching for unity whilst recognizing, respecting and reconciling genuine autonomy. At its very core is the idea of unity in diversity. Now, what can be more European than that? [...] This is what functional federalism means in practice: we take one step at a time, yet we can only do that successfully if we have the larger context and a long-term vision in mind.' Despite ongoing debates in literature on the federal feature of the EU, there seem to be

-

¹¹ Ibid.

¹² P. Norton, 'Adding Value? The Role of Second Chambers', Asia Pacific Law Review, Vol. 15 No. 1, 2007, pp. 3-18, at p. 6. See the case of the Irish Senate, as described in section 4.

¹³ Council of Europe, European Commission for Democracy Through Law (Venice Commission), Report on Second Chambers in Europe, 'Parliamentary complexity or democratic necessity?' by P. Gélard, available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2006)059-e (EN), at p. 11.

¹⁴ F. Knüpling, 'Federalism and Multi-level Governance: Comparing the EU with other Federal States', available at http://cor.europa.eu/en/activities/governance/documents/9030a584-7703-47e9-9905-e11741d4a6bd.pdf (EN).

¹⁵ For further information, see E. Cloots, G. De Baere and S. Sottiaux (eds.), Federalism in the European Union, Oxford, Hart Publishing, 2012.

¹⁶ See http://www.spinelligroup.eu/ (EN).

¹⁷ Former President of the European Commission J.M. Barroso, 'Speech: more integration would boost European cooperation', 22 April 2013, excerpts are available at http://ec.europa.eu/debate-future-europe/ongoingdebate/articles/barroso_federalism_20130422_en.htm (EN).

sufficient elements to establish a parallelism between the EU and a federal system, which may serve as an interesting starting point to examine the issue of bicameralism at the European level.

Territorial minorities may be further protected by systems in which each territorial entity is represented by an equal number of members, irrespective of its population. Such mechanism, as exists in the United States Senate for US States, provides for an efficient protection of small and less populous areas. In addition, members of second chambers may be required to vote in territorial blocks, rather than by political parties. This is the case in the German *Bundesrat*, where members have to vote *en bloc* and per *Land*, as will be further described in the next section.

Such vote in territorial blocks aims also to avoid the influence of party discipline. Ronald L. Watts notes that the impact of party discipline upon the representation of regional interests within the federal legislative chambers should not be underestimated. 'Whether due to the pressures for party discipline within parliamentary federations, or the emphasis upon party representation in proportional representation electoral systems, or the combined effect of both, party considerations have tended often to override regional differences (although not totally) within federal second chambers. This has especially been the case where party representation has differed between the two houses. A particularly notable example of clashing party representation between the two federal legislative chambers in recent years has been the operation of the German Bundesrat. Indeed, [...] this tendency led there to pressures for reform. Even in federations where the separation of powers exists between executive and legislature resulting in less pressure for strict party discipline, there has been an increasing tendency recently for polarization along ideological rather than regional lines, as has become apparent within the US Senate. Generally, the net effect of the impact of the operation of political parties has been to moderate, although not eradicate, the role of federal second chambers as a strong voice for regional interests in federal policy-making. Nevertheless, the existence of federal second chambers in federations has generally induced political parties to take greater account of regional interests than might otherwise have been the case.'18

3.2 The independence from the executive

'Secondly, and less often formally acknowledged, second chambers will tend to provide a more independent view in what are frequently party-dominated parliaments, reflecting certain aspects of their powers and composition.' 19

In general, second chambers have reduced powers over political executives, as will be demonstrated in section 4. Except for the Italian Senate and the Romanian Senate, second

¹⁸ R.L. Watts, 'Federal Second Chambers Compared', Presentation at Conference on "Federalizing Process in Italy. Comparative Perspectives". An international conference organised by the Department for Institutional Reforms, Italy, and the Forum of Federations, Rome, February 17-19, 2010, p. 14. Emphasis added.

¹⁹ M. Russell, 'What Are Second Chambers For?', Parliamentary Affairs, 2001, 54, pp. 442-458, at p. 443.

chambers have no confidence vote on the governments' actions, as opposed to first chambers. The confidence vote makes party discipline in the first chamber essential to the stability of the government. Hence, the discipline may in turn threaten the efficient exercise of this scrutiny role. As stated by D.M. Olson, '[p]aradoxically, the very system intended to ensure parliament's control over the executive has led to exactly the opposite flow of control.'²⁰ Given that party discipline tends to be less strict in second chambers, they are able to counterbalance the 'executive-dominated' first chamber. Consequently, although second chambers have no confidence vote over governments, they may be more inclined to discuss and reject aspects of government bills than the first chambers. Hence, the parliament's overall control over government may be furthered through this bicameral oversight.

This independence is further guaranteed by the terms of office, that are in general longer for second chambers than for first chambers. The fact that members of second chambers do not have to face re-election as frequently as members of first chambers increases their independence from political parties and their ability to express their own views.

In general, 'second chambers are often characterised as embodying a particular measure of wisdom, balance and expertise.'²¹ The high profile of the members of Senates has indeed a direct influence upon the quality of the debates and consultations within second chambers, which increases the political weight of such second chambers. The example of the House of Lords in the United Kingdom has been intensely discussed in literature with regard to the issues of independence, expertise and relations with the executive. The absence of any elections and the expertise of members of the House of Lords has permitted the reduction of the impact of party considerations.²² The members of the House of Lords do not have to fight against opposing parties nor to face re-election; they sit for lifetime and cannot be expelled, which increases their independence. This composition has been judged as 'intrinsically beneficial to this activity. Those with an expertise or some experience in the field covered by a bill will tend to contribute to debate. Operating in a less partisan environment than the Commons and one largely neglected by the mass media (interested more in the partisan clashes in the Commons), it is possible for members to engage in a constructive dialogue with government ministers.'²³

_

²⁰ D.M. Olson, Democratic Legislative Institutions: A Comparative View, M.E. Sharpe, 1994.

²¹ Council of Europe, European Commission for Democracy Through Law (Venice Commission), Report on Second Chambers in Europe, 'Parliamentary complexity or democratic necessity?' by P. Gélard, available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2006)059-e (EN), at p. 11.

²² See Lord Norton of Louth, House of Lords: Official Report (Hansard), 13 March 2007, Vol. 690, col 707.

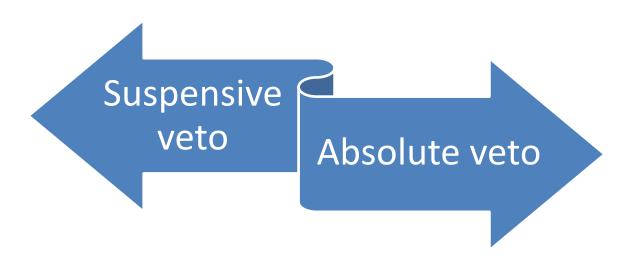
²³ P. Norton, 'Adding Value? The Role of Second Chambers', Asia Pacific Law Review, Vol. 15 No. 1, 2007, pp. 3-18.

Finally, the small size of second chambers may influence its efficiency. Indeed, 'smaller chambers are more intimate, members know each other better, and decision-making – both in the chamber and its smaller committees – will tend to be more efficient.'24

3.3 The acting as a veto-player

'Third, the second chamber acts as a 'veto-player' within the policy-making process, particularly if it has strong formal powers. The merit of this role is hotly disputed.'25

Certain second chambers may block legislation, which turns them into 'vetoplayers' in the policy-making process.²⁶ Through this tool, second chambers may favour a broader consensus on policy rather than through a mere political party majority in the first chamber. As declared by a former Canadian Prime Minister, Sir John Macdonald, second chambers may be the place for 'sober second thought' so that bills are undergoing proper and careful consideration before finally becoming law. Yet, the consideration of a bill by a second chamber in turn entails an extension of the procedure and delay.



The veto power of the second chamber may be either suspensive²⁷ – it may be overruled by the first chamber and merely delays the adoption of the legislation – or absolute – it blocks the adoption of legislation. The absolute veto power is often associated to constitutional matters in which the consent of both second chambers is required. Yet, in Germany, the

²⁵ Ibid., at p. 443.

²⁴ M. Russell, 'What Are Second Chambers For?', Parliamentary Affairs, 2001, 54, pp. 442-458, at p. 449.

²⁶ G. Tsebelsis, 'Decision-Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism', British Journal of Political Science, 1995.

²⁷ This is for instance the case of the Austrian Bundesrat, which may merely postpone the publication of legislation proposed by the Nationalrat for a few weeks and the Nationalrat can overrule the decision of the Bundesrat by reiterating its previous bill. A similar competence exists also for the German Bundesrat on all federal legislation not involving competences of the Länder.

*Bundesra*t also has an absolute veto power over all federal legislation involving competences of the *Länder*. In these areas, the *Bundestag* has no possibility to override the absolute veto, even by unanimity. This specific case will be further examined in points 4.5 and 5.1 of this study.

3.4 The performance of different parliamentary duties

'Finally, and less commonly noted, is the way in which second chambers can spread the burden of parliamentary work, often allowing functions to be carried out complementary to those pursued in the first chamber.'²⁸

Members of second chambers work under less public opinion and media pressure, which leaves them more time to carry out legislative scrutiny work in detail. They may undertake committee investigations on controversial issues, as euthanasia for example, which has been subject to intense investigations notably in the Belgian Senate, the Spanish Senate and the House of Lords in the United Kingdom. Other sensitive topics, as the life imprisonment for murder and the legalisation of cannabis for medical use have similarly been scrutinised by second chambers.

In a similar vein, numerous authors refer to the 'reflection' function of the second chambers. This concept is called, somewhat misleadingly, ²⁹ the 'redundancy effect' by Samuel C. Patterson and Anthony Mughan in their 1999 book on *Senates: Bicameralism in the Contemporary World*. ³⁰ This reflection may lead the second chamber to seek to persuade or to force the first chamber to take a decision, notably through the veto-power of certain second chambers.

This specific function is reinforced by the fact that second chambers are generally considered as embodying expertise and wisdom, as further developed in points 6.1.2 and 7.2.2 of this study. This feature rests notably on the modes of selection of its members and on its relatively small size, which permits a more intimate and informal character of its discussions.

Next to these justifications for second chambers, there are also a number of potential problems entailed by bicameralism that are pointed in literature.³¹ One of these issues is the danger of legislative gridlock, through the veto-power of the second chamber. However, one may assume that if a second chamber decides to oppose its veto on draft legislation, it has legitimate reasons to justify its decision and in the end, this results in an improvement of the legislation.

²⁸ M. Russell, 'What Are Second Chambers For?', Parliamentary Affairs, 2001, 54, pp. 442-458, at p. 443.

²⁹ P. Norton, 'Adding Value? The Role of Second Chambers', Asia Pacific Law Review, Vol. 15 No. 1, 2007, pp. 3-18, at p. 7.

³⁰ S.C. Patterson and A. Mughan (eds.), Senates. Bicameralism in the contemporary world, Columbus, Ohio State University Press, 1999, 360 pp.

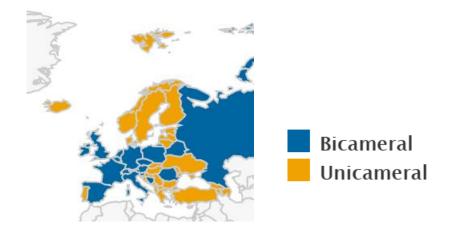
³¹ Ibid., at p. 454.

Another danger is the duplication of work causing unnecessary delay. This is especially true for second chambers having equal powers than the first chambers, as the Italian Senate, the Romanian Senate and to a lesser extent, the Spanish Senate.³² Yet, as will be further detailed below in the study, the Italian Senate is subject to intense discussions as to a probable reform and the Romanian Senate has been subject to a 2009 referendum which resulted in the decision to abolish the Senate. This abolition has not been put into practice though.

A final danger is that the second chambers' position is not taken into consideration by the first chamber and the executive, so that much of the benefit of bicameralism is lost. Governments have constantly searched to denigrate second chambers. This may be facilitated if the second chamber's composition is less obviously democratic, as in the United Kingdom. On the other hand, the fact that members of second chambers do not have to face re-election as frequently as members of first chambers – or not at all as in the case of the United Kingdom - increases their independence from political parties and their ability to express their own views. As discussed in point 7.5 of this study, the powers of second chambers as supervisors of the government's actions may be enhanced if the second chamber's members are independent from political parties, enjoy longer terms of office and operate under less media pressure. As to the relation with the first chamber, the position of the second chamber varies from one Member State to another. In certain cases – generally in constitutional affairs or, in the case of Germany, for any federal law involving regional competences – second chambers have veto power. In other cases, their role consists mainly in being a reflection chamber with consultative powers. In such situations, the weight of their opinions largely depends on the degree of legitimacy that they enjoy. The institutional mechanisms permitting to strengthen their legitimacy - including the representation of another set of interests than those represented in the first chamber, the expertise of their members, etc. – are discussed throughout this study and summarized in the final conclusions presented in section 10.

Bicameral and Unicameral Parliaments in Europe
 (https://data.ipu.org/compare?field=country%3A%3Afield_structure_of_parliament ®ion=europe#map)

³² E. Roller, 'Reforming the Spanish Senate: Mission Impossible?', West European Politics, Vol. 25(4), 2002, pp. 69-92; L. Moreno, 'El Futuro de la Federalización en España,' Paper presented at the II Simposio de Historia Actual, Instituto de Estudios Riojanos, Logroño, 26-28 December 1998.



Questions for Self-Check

What could be the benefit of a second chamber?

What could be a legitimacy problem related to second chambers?

What are the specialities of the Europen Union in this question?

How can the Senate be more independent?

What can be the connection with the executive power?

How can the Senate be a veto-player?

Home Assignment

Examine the parliaments of the European Union. Which model is more popular, the monocameral or the bicameral?

What is the better option? Why?



This teaching material has been made at the University of Szeged, and supported by the European Union. Project identity number: EFOP-3.4.3-16-2016-00014