Bicameralism:
(Legislatures with Two Chambers)

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About this series

These constitution-building primers are intended to assist in-country constitution-building or constitutional-reform processes by: (i) helping citizens, political parties, civil society organisations, public officials, and members of constituent assemblies, to make wise constitutional choices; and (ii) helping staff of intergovernmental organizations and other external actors to give good, well-informed, context-relevant support to local decision-makers. The primers are designed as an introduction for non-specialist readers, and as a convenient aide-memoire for those with prior knowledge or experience of constitution-building. Arranged thematically around the practical choices faced by constitution-builders, the primers aim to explain complex issues in a quick and easy way.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

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Overview

What?	• A 'Bicameral' Parliament or legislature is one in which two assemblies share legislative power.
Why?	• Typical purposes include: to represent sub-national governments, to act as a body of expert scrutiny and review, to provide a further democratic check on the power of the lower house or to provide representation for various socio-economic interests or ethno-cultural minorities.
Why not?	• A single chamber can be cheaper, simpler and more efficient; it avoids duplication and deadlock, while concentrating democratic responsibility in one elected assembly. • The checks and balances of bicameralism can also be provided by other institutions, without the need for a second legislative chamber.
Where?	• Around 80 countries worldwide have a bicameral legislature. • In general terms, bicameralism is more common in federal, large and presidential states, while unicameralism is more common in unitary, small, parliamentary ones.

What Is the Issue?

All modern forms of democracy give central place to a legislative and deliberative assembly, the members of which are chosen by universal suffrage through free, fair, regular and competitive elections. There are concerns, however, about the ability of one elected assembly to adequately represent a diverse a society. A second legislative body may enable a more nuanced and complete representation of society, with greater representation for territorial, communal or other minorities. There are also concerns about the effects of concentrating power in a single elected assembly. The absence of checks and balances in a single chamber may lead to hasty and poorly considered decisions, to technically deficient legislation or to excessively partisan legislation that makes no concession to strongly held minority views. For these reasons, many countries have a second legislative chamber—often with distinct composition, function and powers—in order to complement and balance the primary chamber. In many contexts, however, a second chamber may add additional complexities, delays and costs for little additional benefit; a properly designed single-chamber legislature, with extra-parliamentary checks and balances, may be more appropriate.

Should There Be a Second Chamber?[1]

Reasons for Having a Second Chamber

There are many reasons why states choose to establish a second chamber:

Enabling different principles of representation to be applied: Most legislatures are elected through a system that represents people according to their party preferences and (sometimes) by geographical constituency, usually on a one-person-one-vote basis. This reflects the equality of citizens in the state. Having a second chamber may allow other principles of representation to be applied that represent the diversity of the state. For example, a second chamber may structure representation through territorial units (states, provinces, regions); may represent specific communities defined by religion, ethnicity, language or culture; or may be designed to increase the representation of women, marginalized socio-economic classes, particular interest groups, youth or people with disabilities. If it is directly elected, it may use a different electoral system or be chosen for different terms of office.

Improving scrutiny and review of legislation: A second chamber may provide an additional forum in which proposed legislation can be scrutinized in a calm, dispassionate way. In many cases, this may be seen as part of a mixed constitution, in which democratic elections are balanced by meritocratic appointments from among those with the relevant qualifications, experience and expertise. The intention is usually not to challenge the principle of policy decisions but to allow a sober second thought, to improve the technical quality of laws and avoid hasty or ill-considered decisions.

Providing additional democratic checks and balances in the legislative process: If there is only one legislative chamber, the party that wins a majority in that chamber can have unlimited control of the legislative power. A second chamber—especially if it has a different composition to the first, is chosen on a different electoral cycle and has a similar democratic legitimacy—may increase the number of actors with the power to block legislative changes (veto players). This can provide an additional check that helps to prevent the so-called 'tyranny of the majority' and divisive, partisan changes.

[1] The terms 'upper house', 'upper chamber', 'second house' or 'second chamber' are widely used around the world. For our purposes, the terms are synonymous and interchangeable. (The only notable exception is the Netherlands, where, for historical reasons, the nomenclature of the houses is reversed.)

Historical legacy: Some countries have second chambers for mainly historical reasons: they were adopted at some point in the nation's history and have remained by force of tradition, or because existing institutions have the power of self-preservation. Second chambers might also have been copied from a neighbouring country or imposed by a retreating colonial power, without much thought as to whether a second chamber would be necessary or beneficial. This is not necessarily a good reason for retaining or resurrecting a second chamber at moments of constitutional change; countries such as Denmark and Sweden, for example, abolished their second chambers, and have sought to achieve more balanced representation and distribution of powers through other means.

Reasons for Not Having a Second Chamber

Conflict, delay and lack of responsibility: If there are two chambers with opposing majorities and broadly equal powers, the political conflict between them may result in the legislative process being blocked or deadlocked. Popular demands might be frustrated by an obstinate second chamber, or necessary reforms prevented. It might be difficult for the public to assign responsibility for policy failures, and there is a risk of a system breakdown as extra-constitutional shortcuts are sought.

Unnecessary duplication: If the two chambers have similar majorities, one might unnecessarily duplicate the other, adding institutional complexity for little gain in terms of policy outcomes.

Cost: Having another legislative chamber usually means having more politicians, more administrative and support staff, and more travel and accommodation expenses, as well as the costs associated with maintaining another physical space in which its sessions can be held. In a developing country, this may place considerable demands on the public treasury that could be better spent elsewhere.

Alternatives to a Second Chamber

The functions performed by a second chamber may also be performed by other institutions. Simply identifying a need for these functions does not necessarily mean that a second chamber is needed.

Minority-veto referendums/abrogative referendums: The democratic-check function of a second chamber can be performed by means of referendums triggered by a parliamentary minority (e.g. Denmark), by a certain number of eligible voters (e.g. Italy, Latvia), or by a directly elected head of state (e.g. Iceland). In essence, these arrangements use the people as a whole as a sort of second chamber, a potentially powerful popular check that can prevent the incumbent legislative majority or other ruling elites from deviating too far from the public's wishes on major issues of substance. In Iceland, for example, the president used his power to call referendums in order to refer two loan repayment bills to the people; the bills had been passed by parliament, but were strongly opposed by the people. The disadvantage, however, is that the referendum process is likely to be too cumbersome, too costly and perhaps too divisive to be invoked except on major issues. As a result, these mechanisms are therefore unsuitable for addressing issues of technical legislative quality.[2]

Quasi-second chambers: The purposes of a second chamber may be fulfilled by other institutions (quasi-second chambers) that lack the formality and status of a house of parliament but that are constitutionally recognized and granted a consultative or advisory role in the legislative and policymaking process:

- Functional or communal representation may be provided by bodies such as socio-economic councils that bring together labour, business, the professions etc. Such councils can be found in France, Italy and Luxembourg, among others.

- In some countries, traditional or tribal leaders may be represented in a special advisory assembly, such as the House of Chiefs in Botswana or the National Council of Chiefs in Vanuatu.

[2] See the primer on Direct Democracy for more information on minority-veto referendums and abrogative referendums.

- Territorial representation may be achieved through more or less formalized meetings of the heads of sub-national governments. In Canada, for example (which is bicameral, but has a relatively weak second chamber), such representation takes place through institutions such as the Council of the Federation (an association of the premiers of Canada's provinces and territories) and the First Ministers' Conference (a meeting of the provincial and territorial premiers with the federal prime minister). These institutions have no formal constitutional status but play an important political role in Canada's system of negotiated federalism.

- The technical review function may be performed by a council of state (e.g. the Netherlands) or law council (e.g. Sweden) consisting of legal and administrative experts, or by a stronger system of parliamentary committees.

Concurrent majority rules: The protection of ethic, communal or linguistic minorities and other traditionally excluded groups may be provided by means of qualified majority rules, giving these groups veto power within a unicameral system (e.g. article 81 of the 2008 Constitution of Kosovo).

Electoral quotas in a unicameral system: The participation of traditionally excluded groups in political decision-making can be encouraged and supported by special electoral arrangements in a unicameral system. For example, New Zealand reserves seven seats for Maori (indigenous) voters in its unicameral system by providing them with the option of voting on a separate electoral roll. Lebanon provides for the equal representation of Christian and Muslim communities in a single chamber. Such provisions, discussed in a separate primer, might be considered as an alternative to bicameralism.

Deciding Whether to Have a Second Chamber

It is impossible to say, in the abstract, whether or not a second chamber would be advantageous. Every country's context is different, and much will depend on the political situation, as well as on the design, powers and functions of the second chamber. It is important to analyse the specific needs and circumstances of the country in question. Some questions to consider might include:

- How diverse is the country? Are there any under-represented national minorities?

- What is its territorial structure? Is it centralized or decentralized? Federal or unitary? Does this need to be reflected in equal participation in national lawmaking processes?

- What were the shortcomings of the former constitution, and what improvements are needed in order to consolidate and strengthen a democratic constitutional order?

- Is there a need to provide additional checks and balances against incumbent governments?

- Is there a need to improve the technical quality of legislation?

- Is there a need to broaden the political participation of particular groups in society? How can these groups be identified and included?

- Is the greatest priority to ensure stable, effective, responsible government? If so, how might this conflict with other aims?

Think Point: Why is a second chamber being discussed? What needs is it intended to meet? Is a second chamber an appropriate way—or the best way—of meeting these needs?

What Type of Second Chamber?

Harmony between Purposes, Composition and Powers

If there is to be a second chamber, its composition and powers must be appropriate to its intended purposes. Answers to questions such as 'How should the chamber be chosen?' and 'What powers should it have?' will naturally follow from a proper understanding of the needs that the second chamber is supposed to address.

For example, if the primary need is to improve the quality of legislation and to provide a forum in which technical issues can be debated in a calm, informed manner, without challenging the primacy of the lower chamber in legislation and policymaking, consideration could be given to an appointed, co-opted, *ex officio* or indirectly elected chamber. The members of such a chamber would mainly be recruited from within political, legal and administrative elites, and their powers might be limited to proposing amendments and delaying legislation. On the other hand, if the primary need is to include territorial units or minority communities in law-making, consideration should be given to creating an elected chamber that over-represents small units or minority communities, and that gives them an effective veto power in matters affecting their immediate interests. If the need is to provide a democratic check on incumbents, direct election, using a different electoral system and/or electoral cycle to that used by the primary chamber, might be required, together with extensive veto powers.

Harmony with the Political System as a Whole

In deciding whether a second chamber is appropriate, and, if so, deciding what form a second chamber should take, it is important to consider how the second chamber would fit into the wider political and institutional context. In particular, thought should be given to:

The total number of veto players in the political system: too few, and there is a risk of narrow majoritarianism, or excessive concentration of power; too many, and there is a risk that the state will be deadlocked and unable to respond to public demands. Either of these extremes could damage the performance and legitimacy of the political system as a whole.

The structure of the state: Federal and regionalized states typically have a second chamber in which the sub-units are represented, and which gives them a voice in national legislation.

Electoral system: The electoral system for the second chamber may be designed to complement that used for the first chamber, such that the different merits of each system are preserved. In the Czech Republic and in Poland, for example, the first chamber is elected by proportional representation, to ensure inclusiveness and a fair distribution of power between parties according to the share of votes they each receive, while the second chamber is elected on a plurality basis in geographical districts. In Australia, conversely, the first chamber is elected according to a preferential majority (instant run-off) system that tends to over-represent the two largest parties, while the second chamber uses a version of proportional representation that enables small parties to have some national influence.

Strong and Weak Bicameralism

The strength of a second chamber is principally determined by three factors: (i) *symmetry*—the balance of constitutional powers between the houses; (ii) *congruence*—the extent to which the second chamber is likely to reflect, or differ from, the partisan composition of the lower house; and (iii) *legitimacy*—whether the second chamber possesses the democratic legitimacy to use its powers.[3]

[3] This categorization, including the concepts of symmetry and congruence, are adapted from Meg Russell's (2003) reflections on Arend Lijphart (1999).

Symmetry: Symmetry refers to the extent of equality in legal powers between the chambers. In symmetrical bicameralism, the two chambers have equal or nearly equal powers: the consent of both houses is usually needed for the enactment of laws, and the lower house cannot unilaterally override vetoes or amendments adopted by the upper house, or can do so only with difficulty (e.g. by a supermajority). Bicameralism is asymmetrical when the upper house is constitutionally restricted (e.g. being limited to a delaying power, having the right to propose but not insist on amendments). Territorial second chambers often have weak powers over some areas of legislation and stronger powers over others, reflecting their particular concern for protecting and promoting sub-national governments (e.g. German Bundesrat, Kenyan Senate, South African National Council of Provinces).

Congruence: Congruence is the term used to describe the similarity of the chambers in terms of their partisan composition. Chambers are congruent when the same party or coalition of parties enjoys a majority in both chambers, and incongruent when the partisan composition differs between the chambers. Congruence is likely to occur when both chambers are directly elected, at the same time, using a similar electoral system or when the leaders of the majority in the lower house appoint a majority of the members of the upper house. Incongruence is likely when the chambers are based on different representative principles — being chosen by different electors, at different times, or using a different electoral system. For example, the Senates of Romania and Italy are highly congruent with the lower house, since, in these countries, both chambers are concurrently and directly elected by proportional representation. The Australian Senate is incongruent, since it is elected by a different electoral system from that used for the Australian lower house. As a result, the Australian Senate is a more significant political actor because it often places the Greens or other minor parties in an influential bargaining position.

Legitimacy: The stronger the legitimacy of a second chamber, the more likely it will be to make full use of its powers. Democratic legitimacy is typically conferred by popular election, but other forms of legitimacy such as traditional or religious legitimacy or legitimacy conferred by representing sub-national governments may apply in some contexts. Many second chambers around the world, especially those that are appointed rather than elected, are perceived as lacking legitimacy, and as a result have less practical authority than their formal legal powers would suggest. For example, the upper houses of Canada (appointed) and the Netherlands (indirectly elected) both have, according to the texts of their respective constitutions, absolute veto powers over all legislation. In practice, however, these powers are used sparingly because of their perceived lack of democratic legitimacy. The directly elected Senate of Australia, in contrast, is much more robust and assertive in the use of its powers, as is the German *Bundesrat*, which derives legitimacy from sub-national governments.

Design Options: Composition and Structure

The role and effectiveness of a second chamber will be greatly influenced by how its members are chosen, by whom, and for how long. These considerations are discussed in this section.

Mode of Composition

Second chambers may be composed in one or more of the following ways:

Direct election: Second chambers may be directly elected by the people. This method of composition has the potential to increase the democratic legitimacy of the second chamber. If the electoral system, timing of elections, and apportionment of seats are similar between the two chambers, then it is likely that the second chamber will be congruent, having a similar partisan composition to the first chamber, and thus having less effective veto power. Alternatively, if the rules determining the timing, process, form and criteria of election differ, the second chamber is likely to be incongruent, having a different partisan composition from the lower house, and thus—all other things being equal—greater political influence.

Territorial representation: Members of territorial second chambers are frequently chosen by or from sub-national institutions. Members of the upper houses of India and Austria are elected indirectly by the sub-national legislatures. Germany's upper house is best considered as a congress of delegates from the 16 provinces, each of which sends a delegation from its executive branch (usually consisting of the provincial ministers responsible for the areas of legislation under discussion). South Africa's National Council of Provinces has a mixed composition: each provincial delegation consists of six permanent members designated by the parties in the provincial legislature, the premier of the province, and three members deputed by the premier according to the subject being discussed. Indirect election by territorial units may also be adopted in unitary states (e.g. the French Senate is indirectly elected by colleges mainly composed of municipal and departmental councillors).

Functional representation: The term 'functional representation' refers to the representation of social, economic, professional or vocational groups. This is intended to ensure that the legislature reflects society as a whole, in terms of its economic interests, social function, expertise and life experiences. The National Council of Slovenia, for example, consists of members chosen by members of various social and economic groups (see insert). The Irish Senate, in principle, has a similar basis, with most of its members being elected from five panels representing (i) language and culture, literature, art and education; (ii) agriculture and fisheries; (iii) labour; (iv) industry and commerce; and (v) public administration and social services, including voluntary social activities. In practice, the Irish Senate is strongly dominated by party politics, since, although these panels may nominate candidates, the election is determined by incumbent politicians.

Functional Representation: The National Council of Slovenia		
Functional group represented	**Number of members elected by each group**	
Employers	Chambers of commerce; industry and employers' associations	4
Employees	Trade unions	4
Farmers, crafts and trades, professions	Farmers' organizations	2
	Crafts and trades groups	1
	Professional organizations	1
Non-commercial sectors	Universities and colleges	1
	Teachers	1
	Research organizations	1
	Culture and sports	1
	Medical professionals	1
	Social care	1
Local communities	Local councillors	22
Total:		**40**

Communal representation is similar to territorial and functional representation but applies to linguistic, ethnic, cultural or religious groups rather than territorial or socio-economic ones. There are relatively few second chambers chosen on this basis, although the Belgian Senate, which partly consists of quotas of members elected from linguistic communities, is one example. The House of Peoples of Bosnia and Herzegovina, which consists of an equal number of Bosniaks, Croats and Serbs, is another. This form of composition is usually associated with consociational arrangements, intended to distribute power between communal groups. This may be necessary as part of a peace agreement following inter-ethnic violence or to prevent a state with deep cultural or linguistic divisions from falling apart. The disadvantage of such arrangements, however, is that by structuring politics through such divisions, they may entrench and prolong the divisions that they are intended to heal.

Executive appointment: Appointment by the executive is typically used only for weak review chambers, where the members represent their own experience and wisdom rather than an external constituency. In practice, however, appointments may be made—by constitutional law or

custom—on a quasi-representational basis, to ensure the inclusion of particular groups. In these cases, an appointed chamber may come to resemble a chamber based on functional or communal representation. In Belize, for example, one-quarter of the senators are appointed on the advice of constitutionally recognized social and economic interest groups, while in Canada, a certain quota of senators must be appointed from each region of the country. Alternatively, appointments may be made so as to ensure that the second chamber reflects the balance of power between the political parties in the lower house. In these cases, the second chamber may practically resemble a congruent elected chamber. In Jamaica, the government is constitutionally guaranteed almost a two-thirds majority in the Senate. In all cases, executive appointment can be vulnerable to patronage and corruption, with members chosen for partisanship rather than merit. This can reduce the legitimacy and effectiveness of the second chamber. To prevent this, an independent nominations commission may be established, with the authority to nominate candidates or scrutinize proposed nominees.

Mixed membership: It is not uncommon for second chambers to be based on a mixture of two or more modes of composition. For example, wholly appointed upper houses are rare in global terms, but it is quite common to permit a small number of appointed members to sit alongside elected members, to enable non-partisan people of merit and experience to be included in the legislature. In Italy, the vast majority of senators are directly elected on a regional basis, but a small number of senators for life may be appointed by the president of the republic from among those who have 'brought honour to the nation through their exceptional accomplishments in the social, scientific, artistic, and literary fields' (Constitution of Italy, article 59). In India, likewise, the president may appoint a small number of members according to their 'special knowledge or practical experience in respect of such matters as…literature, science, art and social service' (Constitution of India, article 80), who sit alongside the members elected by the sub-national legislatures.

Terms of Office

It is common for second chambers to have a longer term of office than that applied to first chambers (e.g. six years, as opposed to four or five years for the first chamber). Terms may be staggered so that the second chamber provides continuity between changes of government. If the second chamber is directly elected, staggered elections may induce incongruence between the two chambers, since elections to the second chamber may be used as a protest vote against the incumbent majority.

A second chamber that can be dissolved at will by the executive will (all other things being equal) be in a weaker position than one that sits for a fixed term or that can be dissolved only in limited circumstances. Some second chambers have a permanent or rotating membership and are never dissolved. This can strengthen their position vis-à-vis the executive or lower house.

Number of Members

Second chambers are usually small, in terms of number of members, when compared to the first chamber. This is intended to encourage a more intimate and informal style of debate, particularly in review chambers. However, it is important to consider whether there are sufficient members to staff all committees, and, in the case of elected second chambers, to think about constituency sizes—too few members might mean that each one has too heavy a workload.

Additional Considerations (Especially for Territorial Chambers)

Representation by population or by territory: Should each unit be represented in accordance with its population, or should less populous units be over-represented so that smaller units are given greater parity with larger ones? Argentina, Australia, South Africa and the United States all give an equal voice to each unit despite variations in population. Others, such as Germany and India, while still over-representing smaller units, do so on a sliding scale: the most populous German region, Bavaria, with 12.5 million people, has six votes, while Bremen, with 600,000 people, has three (i.e. half the votes but approximately one-twentieth the population). Such over-representation emphasizes the role of such a chamber as a representative body *of the units as such* rather than of the individual

citizens within them. In practice, over-representation can enable a minority of the population to veto changes approved by the majority. It is estimated, for example, that the US Senate enables members representing just over 11 per cent of the population to block legislation. This can have undemocratic effects, protecting the status quo from progressive and popular reforms.

Bloc voting or personal voting: Should all members of a delegation representing a territorial unit be required to vote as a bloc (representing the decision of that unit *as such*, rather than disparate individual or party decisions)? Members of the German *Bundesrat* vote en bloc, with each delegation casting all its votes the same way. If a delegation is divided, it is taken to have abstained. Members of the Indian upper house, the *Rajya Sabha*, do not vote en bloc. These different methods of voting reflect two different conceptions of the role of the second chamber and two correspondingly different views of the status of its members: the *Bundesrat* delegates are primarily spokespersons of their provincial governments, while the members of the *Rajya Sabha*, although elected by sub-national legislatures, are first and foremost party representatives. Following from the above, the seating arrangement in the chamber may be arranged by territorial units or by political party. The former is associated with the bloc vote, since the ambassadorial dimension of the role is emphasized; the latter is associated with personal voting, since it emphasizes the party-political role of members.

Representation of minorities: Are all the political groupings in a sub-national assembly to be represented proportionally in the national upper house or only the dominant majority? In India, although direct elections to legislatures take place according to a plurality electoral system, the indirect election of members of the upper house takes place according to a single transferable vote, enabling minority parties to be represented. Similarly, delegations to the South African National Council of Provinces must be appointed in a way that proportionately represents the parties present in the provincial legislation. As the German *Bundesrat* is a meeting of executive delegates, only the parties participating in the executive at provincial level are represented, to the exclusion of others.

Partisanship

In practice, in countries with well-developed party systems, it is usual for party politics to outweigh most local or regional concerns. The congruence of the second chamber, in terms of its partisan balance, will be a key determinant of its strength and activeness. Even in Germany, members of the Bundesrat, despite their character as delegations, often vote on party lines, and a difference in the partisan composition of the chambers (resulting, for example, from differences in national and sub-national election results) can significantly frustrate the ruling party.

Design Options: Powers

Resolving and Avoiding Conflicts between the Chambers

Second chambers can come into conflict with the lower house. Some constitutions, prioritizing the need for checks and balances, grant each house an absolute veto over legislation. This can result in deadlocks when the two houses do not agree. Such a deadlock situation is most likely to occur if the two houses have different, but equally strong, democratic mandates (e.g. the US Senate and the US House of Representatives are both popularly elected, but the staggered terms of office and different electoral district sizes mean that it is not uncommon for the popular majority in the two chambers to differ). Many bicameral states, however, establish mechanisms for resolving disputes between the houses. Such mechanisms are typically intended to ensure government stability, to prevent deadlocks, to protect the primacy of the lower house and the principal representative body of the people and to restrict the role of the second chamber to that of a revising and reviewing chamber rather than one with absolute veto power over legislation.

Shuttle procedures: In countries where the two chambers have equal or nearly equal powers, a shuttle (Fr. navette) procedure is used: proposed amendments bounce back and forth between the chambers until disagreements on the bill are resolved and a text is approved in identical form by both. Shuttle procedures do not *avoid or overcome* deadlock; they simply provide a way of dealing with disagreements. Unless combined with some other mechanism, reliance on shuttle can lead to long delays in legislation, especially if the two chambers do not have a similar partisan composition.

Conference committees: A conference committee (also known as a mediation committee in some jurisdictions) typically consists of a number of members of each chamber, who may, in case of a disagreement between the chambers, be convened to agree on a jointly approved text. The bill emerging from the conference committee is then voted on by both chambers. The chambers in plenary session have the final say on approval of the bill, but to facilitate negotiation and agreement it is usual for conference committees to be closed to the public, and for the chambers to vote for or against the agreed text without amendment. This process may enable a small number of members to have disproportionate influence over the substance of the bill without effective scrutiny. In the United States, for example, conference committees have been a scene of intense lobbying by special interests, enabling policy decisions to be taken by small groups with little democratic scrutiny (since, although each house may reject the agreement, to do so will usually involve high political cost).

Asymmetrical powers: In countries where second chambers perform mainly review functions, they are likely to have only weak powers, such as the power to delay (but not veto) legislation, or to propose (but not insist upon) amendments. In such cases, disputes between the chambers may be resolved simply by the application of the use of the override powers of the lower house. In Ireland, for example, bills passed by the lower house and rejected by the Senate or passed by the lower house but not passed by the Senate within 90 days may be adopted by a simple majority of the lower house after a period of 180 days has elapsed. Such rules prevent deadlocks but can also remove part of the rationale for bicameralism, since a chamber without effective power could be seen as an unnecessary expense.

Joint sessions: Deadlock between the chambers can be resolved by means of joint sessions. A joint session includes the members of both chambers sitting together in one body. As upper houses are usually smaller than lower houses, this arrangement typically gives a preponderant influence to the majority in the lower house. In India, if a bill has been passed by one house and rejected by the other house or not passed by the other house within six months, the president, acting on the binding advice of the government, may call a joint session of both houses to decide on the bill by a simple majority. To reconcile differences between the houses, the joint session has a limited power of amendment (Constitution of India, article 108).

Appealing to the people: Deadlocks between the chambers can be resolved by an appeal to the people. In Australia, for example, the government can order a double dissolution of both houses in order to overturn a veto imposed by the second chamber. The State Constitution of the Australian state of New South Wales makes provision for disagreements between the two chambers to be resolved by holding a referendum.

Veto powers only for certain types of decisions: A second chamber that has only weak powers in relation to certain types of legislation may nevertheless have extensive powers over certain types of decisions. For example, a second chamber may have an absolute veto over constitutional amendments in order to protect the fundamentals of the constitutional system from incumbent majorities in the lower house, or it may have veto power over legislation governing language rights, the status of national minorities or matters of particular concern to sub-national territorial units. In Belgium, Germany and South Africa, for example, the second chamber has only weak powers over ordinary legislation (the decision of the lower house will prevail), but a stronger role in matters such as constitutional amendments and laws concerning the competences of sub-national units, reflecting the role of these second chambers as representatives of territorial units.

Special provision for money bills: If the executive cannot raise money, government cannot carry on. In a presidential system, failure to pass a budget can cause a shutdown of the government and might expose the state to a self-coup by the executive or other forms of extra-constitutional intervention. In a parliamentary system, the rejection of the budget will usually be regarded (depending on the precise rules in force) as a withdrawal of confidence, which may lead to the resignation of the government and/or a new general election. In many jurisdictions, a special category of 'money bills' is recognized, these being bills related to taxation, loans and appropriations (spending). Given the importance of financial legislation for the day-to-day functioning of the state, money bills may be subject to a special legislative procedure, intended to prevent conflicts between the chambers over matters of finance. In Ireland, for example, the Senate may only delay money bills for up to 21 days (as opposed to 90 days for other legislation). In South Africa, the National Council of Provinces may make amendments to money bills, but these amendments are not binding, as they may be accepted or rejected at the sole decision of the National Assembly (lower house) (article 75).

Government Removal and Confidence

To avoid situations in which a hostile majority in the upper house is able to force the resignation of the government, many parliamentary constitutions deny the upper house the authority to pass a vote of no confidence, reserving this power to make or break governments exclusively for the lower house, in recognition of its primacy as the representative body of the whole people.

For example, the German Basic Law says that the chancellor (prime minister) is elected by, and responsible to, the *Bundestag* (lower house) and not to the *Bundesrat*. In Ireland, the upper house can only delay government bills for up to 90 days, after which the majority in the lower house can insist on its own way.

Treaties

International treaties are an important source of law, and in many jurisdictions treaties (or, at least, certain classes of treaties, such as those that affect the domestic laws of the state, public finances or the delegation of powers to an international organization) require legislative approval before coming into effect. Such approval may take the form of legislative ratification or enabling legislation. In a bicameral system, should treaties be approved by both chambers? If so, what should the process for resolving disputes between the chambers be? In Japan, for example, treaties are dealt with in the same way as financial legislation, meaning that the decision of the lower house prevails after a delay of 30 days.

Other Non-legislative Powers

Second chambers may have various other powers in the political system. For example, the consent of the second chamber might be necessary for the appointment of key officials such as ombudsmen and judges. Together with the lower house, it may co-elect the head of state. A second chamber might also act as a court to try officials who have been impeached, or have the right to initiate public enquiries into instances of alleged maladministration. These provisions are dealt with more fully in other primers.

Examples

COUNTRY	COMPOSITION	POWERS	EFFECTS
Germany: Democracy since 1949 (unified: 1990) Parliamentary republic Federal Multiparty system Pop. 80.2 million	**Bundesrat** (Federal Council) Approx. 60 members Delegations of provincial governments; vote en bloc Some over-representation of smaller provinces. Staggered terms (based upon duration of provincial governments); no dissolution.	German bicameralism enables the provincial governments to participate in federal legislation and gives them a special veto over legislation that concerns their areas of concurrent legislative or executive power. Bills concerning concurrent legislative powers and bills requiring implementation by the provinces need the approval of both houses. For other legislation: a veto imposed by an absolute majority of the **Bundesrat** may be overturned by an absolute majority of lower house; a veto imposed by a two-thirds majority of **Bundesrat** can only be overturned by a two-thirds majority of lower house. In practice, about 60 per cent of legislation requires the approval of the upper house.	Relations between the chambers depend greatly upon their party composition. Since the reunification of Germany in the 1990s, the party or coalition with a majority in the lower house has frequently been in a minority in the **Bundesrat** (due to disproportionality of representation and staggered election cycles). This has made the upper house a strong actor in the political system, occasionally enabling opposition parties to exercise, through the **Bundesrat**, a veto over much of the government's legislative programme.
Australia: Democracy since 1901 Parliamentary monarchy Federal Pop. 23.2 million	76 members: 12 from each state and two from each territory; all directly elected by a version of Single Transferable Vote. Six-year terms, with one-half elected every third year, subject to a double dissolution procedure.	Agreement of the Senate required for all legislation, but the Senate may not amend or introduce money bills. If the Senate rejects a bill that has been passed by the lower house a second time, after an interval of three months, or passes a bill twice with amendments that the lower house does not agree to, the governor-general (acting on the advice of the prime minister), may order a double dissolution. Both chambers are dissolved and new elections held. The new chamber reconsiders the bill in dispute. If the Senate still objects, the bill may be referred to a joint session (in which the lower house, by its greater numbers, predominates).	Owing to the different electoral system and distorted apportionment of seats on a geographical basis, the popular majority in the Senate can differ from that in the lower house, with third-party and minority-party members often holding the balance of power in the Senate. A double dissolution is costly (the prime minister's party might lose office), and it has been resorted to only six times—most recently in 1987. This means that the Australian Senate is a relatively powerful body.
Netherlands: Democracy since 1917 Parliamentary monarchy Unitary Pop. 16.8 million	75 members, elected by the members of the country's 12 provincial councils by proportional representation. Four-year terms, concurrent with terms of provincial councils (not necessarily concurrent with lower house).	All bills initiate in the lower house, and the Senate may not amend legislation—it may only vote for or against a bill as a whole. Other than that, there are no formal constitutional restrictions on the legislative power of the Senate to veto legislation, and no formal constitutional way for the lower house to overturn such vetoes. Absolute veto over constitutional amendments— these require two-thirds majority in both houses.	Theoretically expansive veto powers are in practice limited by a convention of deference to the lower house, based on a lack of popular legitimacy stemming from the process of indirect election. Other informal constraints— such as the part-time membership—also limit its power.
Romania: Democracy since 1991 Semi-presidential republic Unitary Pop. 20.1 million	137 members, directly elected for four-year terms. Members chosen by modified mixed member proportional system. This is similar, except in number of members and some incidental details, to the lower house.	The approval of each of the two chambers is required for all legislation—by a simple majority in the case of ordinary laws and an absolute majority in the case of organic laws. Provided that if a chamber has not made a final decision on a bill within 45 days (or 60 days in the case of codes and complex laws), the bill is considered to be passed. Bills for organic laws and for the implementation of the Constitution must be initiated in the lower house; other bills are initiated in Senate. Two chambers meet in a joint session for certain non-legislative decisions.	Romania is an example of a country in which the two houses have equal or nearly equal power, but where the chambers share a similar mode and timing of election, which usually results in the chambers having a similar political composition. The Senate therefore duplicates the work of the lower house.

Spain: Democracy since 1978 Parliamentary monarchy Quasi-federal (autonomous communities) Pop. 46.5 million	Senate 208 members directly elected on territorial basis (mostly four per province) by limited vote. 51 members chosen indirectly by legislatures of autonomous communities, with some over-representation of smaller units. Four-year terms, subject to early dissolution by head of state on the advice of the prime minister.	The Senate can, by an absolute majority, amend or veto legislation passed by the lower house. The Senate has a period of two months in which to exercise this power; for bills that are stated to be urgent by the lower house or by the government, this period is reduced to 20 days. If the Senate does not veto or amend during this period, the bill is passed in the form approved by the lower house. Legislative amendments adopted by the Senate may be accepted or rejected by the lower house by a simple majority vote. If the Senate vetoes a bill, the lower house may override the veto, without delay, by an absolute majority; after two months have elapsed, the lower house may override the veto by a simple majority. Thus, the Senate can, at most, delay bills by up to four months, but only if there is an absolute majority opposed to the bill in the Senate and no absolute majority in favour of the bill in the lower house.	The mode of composition of the Senate means that less populous provinces and autonomous communities (which tend to be more rural and conservative) are over-represented, thereby giving the conservative parties a small but disproportional veto power over parties of the left. This makes little difference to ordinary laws, since the Senate has such limited powers, but it can affect the Senate's non-legislative functions, e.g. appointment of members of the Constitutional Tribunal.
South Africa: Democracy since 1993 Parliamentary republic Decentralized (9 provinces) Pop. 53 million	National Council of Provinces (NCOP) 90 voting members; one delegation of 10 members from each province—mix of delegates elected by provincial legislatures and delegates appointed by provincial executives 10 non-voting members representing local government at sub-provincial levels	The NCOP has concurrent power with the National Assembly (lower house) with regard to bills concerning the provinces (schedule 4, and other areas specified in section 76(3)). The NCOP's veto may only be overridden by a two-thirds majority of the National Assembly (section 76 bills). It also has a veto over proposed constitutional amendments (section 74 bills). Decisions on these matters are taken by a bloc vote, and the votes of five of the nine provincial delegations are required for approval (six for a constitutional amendment). Other legislation, including all money bills, are ultimately decided by the National Assembly, and the NCOP's proposed amendments or objections can, in these matters, be overturned by an ordinary majority in the National Assembly. The NCOP votes on these matters through personal voting, with each member getting one vote.	As each province has one vote in most important matters, the NCOP gives each province an equal say in legislation. The domination of provincial legislatures by the dominant party in eight out of nine provinces means, however, that the NCOP is generally congruent with the National Assembly, potentially diminishing its effective power as a means of restraining the government or protecting provincial interests.

Decision-making Questions

(1) Is the second chamber intended to *strengthen* the power of the people to control their government, or is it intended to *moderate* the power of the people's elected leaders?

(2) What precise purpose is the second chamber intended to serve? How effectively can the same institution fulfil different purposes? How should these different purposes be prioritized and reflected in the second chamber's constitution and powers?

(3) How strong does the upper house need to be in order to serve these purposes?

(4) How do the proposed rules concerning the composition of the second chamber help to support this purpose?

(5) How do the proposed rules regarding the powers of the second chamber and the resolution of legislative disputes between the chambers support this purpose?

(6) Is it appropriate to make the upper house stronger (i.e. for its decisions to be more difficult to overturn by the lower house) in some spheres of legislation and weaker in others?

(7) How does the second chamber relate to the executive? If it is intended that the executive should be responsible only to the lower house, is this clear in the constitutional text?

(8) If the second chamber is intended to over-represent minorities or previously excluded groups, have other forms of inclusion or protection (e.g. electoral quotas, concurrent majority voting) been considered?

(9) Does the proposed second chamber have power without responsibility? Does it hinder stable and effective governance, and reduce the accountability of the government to the people?

(10) How broad have consultations been? Is this second chamber supported by all relevant actors?

References, Resources and Further Reading

Bulmer, W. Elliot, 'Minority-Veto Referendums: An Alternative to Bicameralism?', *Politics*, 31/3 (October 2011), pp 107–20

Lijphart, Arend, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Democracies* (New Haven, CT: Yale University Press, 1999)

Mill, John Stuart, 'On Second Chambers', in John Stuart Mill, *Considerations on Representative Government* (1861), available at <http://www.constitution.org/jsm/rep_gov.htm>

National Democratic Institute, *A Comparative Study of Second Chambers in Selected Countries* October 1996, available at <http://www.ndi.org/files/032_ww_comparative.pdf>

Patterson, Samuel C. and Mughan, Anthony (eds.), *Senates: Bicameralism in the Contemporary World* (Columbus, OH: Ohio State University Press, 1999), available at <https://ohiostatepress.org/index.htm?/books/book%20pages/patterson%20senates.htm>

Russell, M., 'Second Chambers Overseas: Lessons from Italy and Australia', available at <http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/39.pdf>

Russell, M., 'A Directly Elected Upper House?', available at <http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/40.pdf>

Reidy, Aisling and Russell, Meg, 'Second Chambers as Constitutional Guardians and Protectors of Human Rights', June 1999, available at <www.ucl.ac.uk/spp/publications/unit-publications/44.pdf>

Waldron, Jeremy, 'Bicameralism', Public Law and Legal Theory Research Paper Series, Working Paper No. 12-19, New York University School of Law, 15 March 2012, available at <http://ssrn.com/abstract=2045646>