

## Design matters: second chambers, cabinet formation, and constitutional reform

(With Sebastian Eppner)

Semi-parliamentary democracies establish a separation of powers between the executive and one part of a directly elected assembly. As Chapter 6 has shown, this powers separation makes it possible to balance different visions of democratic majority formation in ways that are not available under pure parliamentarism. In particular, voters can rely on the first chamber to choose between competing cabinet alternatives and on the second chamber to be fairly represented in issue-specific deliberation and voting. In contrast to the presidential separation of powers, voters can achieve this normative balancing without having to vest executive power in a single human being (Chapter 9). This combination of features makes semi-parliamentary government an attractive constitutional format.

This assessment may seem to be challenged by two prominent conjectures in political science and constitutional theory. The first argues that strong bicameralism—of which Australian semi-parliamentarism is one example—is only viable in presidential systems (Ackerman 2000; Calabresi 2001). The second suggests that a strong second chamber can only be combined with the logic of a parliamentary system in the first chamber if parties form “oversized,” and thus often ideologically heterogeneous, cabinets (Lijphart 1984). If these two conjectures were true, the patterns described in Chapter 6 could not be viable in the long run.

We argue in this chapter that both conjectures pay insufficient attention to the design of second chambers. If this design reduces their constraint on cabinet formation, second chambers are compatible with parliamentarism in the first chamber and with cabinets that lack a majority in the second chamber. We corroborate these claims with empirical analyses of cabinet formation and constitutional reforms in 28 advanced democracies in the period 1975–2018.

The chapter thus also contributes to the literatures on cabinet formation under different forms of government (Cheibub et al. 2004) and on the stability and reform of second chambers (Russell and Sandford 2002; Vercesi 2019).

The next section elaborates on the two conjectures about strong bicameralism. We then consider the more detailed design of symmetrical second chambers and build two indices of how restrictive these chambers are with respect to cabinet formation. Next, we show, in a conditional logit analysis, that the control of a second-chamber majority only affects cabinet formation when the chamber in question is restrictive. Finally, brief case discussions reveal how the restrictiveness of second chambers also helps to explain patterns of second-chamber reform. Most importantly, reducing the restrictiveness of a second chamber—rather than its legitimacy or veto power—can be sufficient to stabilize a bicameral system.

### **Two conjectures about strong bicameralism**

We begin by elaborating on the two conjectures that form our starting point. The first is that truly strong bicameralism requires a presidential system. As Bruce Ackerman (2000: 675) puts it, if constitutional designers “insist on a really powerful and independent senate, they must also be willing to accept something else: a really powerful and independent presidency” (see also Calabresi 2001: 87; Lijphart 1984: 101). The underlying argument is that when a second chamber becomes too symmetrical or strong, it leads to a “legitimacy tie” between rival parties in the two chambers (Ackerman 2000: 672; Lijphart 1984: 101). Presidential systems are assumed to be better at handling this problem because the government is legitimized directly by the voters and does not depend on parliamentary confidence at all.

A different way to state this conjecture is to postulate a fundamental incompatibility between the parliamentary accountability of governments and strong bicameralism (Lijphart 1984: 101). A recent example of this incompatibility thesis can be found in the final report of the State Commission on the State of the Parliamentary System in the Netherlands (2019). It advises against the direct election of the Dutch Senate because the resulting increase of its strength is considered a problem:

greater legitimacy poses a threat to the bicameral system as we know it. In this system, the political primacy of the First chamber is expressed to a significant degree in its direct election, as opposed to the indirect election of the Upper House. This relationship between the Houses is necessary to prevent

a stalemate arising between the Houses on the basis of two deviating election results. Such a stalemate is not easy to resolve in a parliamentary system.

(State Commission 2019: 225)

The second conjecture is related to the first. It suggests that a legitimacy tie can be avoided in one specific way: the “obvious solution” is “to form an oversized cabinet” (Lijphart 1984: 104). The idea is that if parties form coalition cabinets that control majorities in both chambers, strong bicameralism can be rendered compatible with the logic of parliamentary government. This hypothesis has also gained quite a bit of empirical attention in political science.

If the two conjectures were true, they would question the potential of semi-parliamentarism. The first conjecture suggests that strong bicameralism cannot be viably combined with a government that emerges from and is responsible to parliament, the second that this combination can only be achieved at high costs. If an oversized coalition of veto players were needed to make the combination work, many potential advantages of semi-parliamentarism discussed in Chapter 6 would be undermined.

Fortunately, the two conjectures can be refuted, and this refutation is instructive. They both fail to adequately consider the more detailed design of second chambers. Most importantly, they do not clearly distinguish between the *legislative veto power* of a second chamber on the one hand and its constitutional *power over the cabinet* on the other. As we have already seen in Chapter 3, Lijphart’s (1984) notions of symmetrical and strong bicameralism deliberately neglect second chambers’ constitutional relationship to the government.<sup>1</sup> Yet, when the second chamber lacks constitutional power over the cabinet, the problems of legitimacy ties or legislative stalemate are no greater than in a presidential system. After all, Juan Linz’s (1990a, 1994) famous critique of presidentialism focuses on these very problems. Indeed, I will argue in Chapters 8 and 9 that, to the extent that these problems do exist at all, they may be *more* severe under presidentialism—precisely because this form of government connects the separation of powers to executive personalism (Chapter 2).

<sup>1</sup> Ackerman (2000) is more attentive to second chambers’ specific powers over the cabinet. Yet, he still mixes them with legislative veto powers at crucial parts of his argument. Parliamentarism and bicameralism are considered compatible if the members of the second chamber “may delay or defeat some measures, but they do not have the power to unseat the prime minister or the cabinet or *unduly sabotage the government’s program*” (674, emphasis added). While Ackerman is right to focus on second chambers’ power to unseat the prime minister and cabinet, this power should be strictly distinguished from their legislative veto power.

When second chambers are strong in terms of their legitimacy and legislative veto power but weak in their power over the cabinet, they are a viable alternative to presidentialism and do not necessitate the formation of oversized cabinets. Showing this empirically is the main task of this chapter.

### **The restrictiveness of second chambers**

We start by looking at the more detailed design of symmetrical second chambers. In doing so, we exclude Switzerland from our general sample of 29 democracies, as the Swiss government does not require the confidence of any chamber of parliament to stay in office (Chapter 2). To increase the number of observations, we here consider the period from January 1975 to March 2018. Table 7.1 shows the twelve second chambers in the sample that were symmetrical in this period according to the criteria of Lijphart (2012): They had substantial legislative veto power and sufficient democratic legitimacy to use it.<sup>2</sup> Two cases had symmetrical second chambers only during some of the period of investigation: New South Wales from 1984 and Belgium until 1993. Due to constitutional reforms during the period under consideration, the second chambers of Victoria and Western Australia enter our analysis as three and two observations, respectively. We also include Finland, which used a unicameral veto of a one-third minority as an alternative to bicameralism until 1987 (Eppner and Ganghof 2017). Including this veto is preferable to excluding Finland or treating it as a case without any institutional veto point (Volden and Carrubba 2004).

The design of symmetrical second chambers can be more or less restrictive with respect to cabinet formation. To investigate the empirical consequences of the relevant design differences for cabinet formation and institutional stability, we construct two simple additive indices of restrictiveness. The first focuses only on the constitutional design of executive–legislative relations; the second adds institutional features that affect actor and bargaining constellations. We discuss both in turn.

<sup>2</sup> To make our point about second design, we follow the literature here as closely as possible. However, treating the symmetry of second chambers as a dichotomous variable is a strong simplification. Some second chambers have weaker symmetry; for example, because they are not directly elected (e.g. in the Netherlands), because their veto can be overridden (e.g. in Japan), or because their absolute veto only applies to certain types of legislation (e.g. in Germany).

Table 7.1 The restrictiveness of symmetrical second chambers

	Confidence (budget veto)	Investiture	Dissolution	Restrictiveness I	Party discipline	Decision-making flexibility	Compositional instability	Restrictiveness II
Italy	1(1)	1	-1	1	0	0	0	1
Belgium pre-1993	1(1)	1	-1	1	0	0	0	1
Victoria pre-1984	0(1)	0	0	0	0	0	0	0
WA pre-1987	0(1)	0	0	0	0	0	0	0
Netherlands	0(1)	0	0	0	0	0	0	0
Japan	0(0)	0	0	0	0	0	0	0
Finland pre- 1987	0(0)	0	-1	-1	0	1	0	0
WA post- 1987	0(1)	0	0	0	0	-1	0	-1
Tasmania	0(1)	0	0	0	0	0	-1	-1
Victoria 1984-2003	0(1)	0	-1	-1	0	0	0	-1
Germany	0(0)	0	0	0	-1	0	-1	-2
South Australia	0(1)	0	-1	-1	0	-1	0	-2
Australia	0(1)	0	-1	-1	0	-1	0	-2
Victoria post-2003	0(0)	0	-1	-1	0	-1	0	-2
New South Wales	0(0)	0	-1	-1	0	-1	0	-2

Notes: See text for explanations. Coding is based on the respective constitutions.

## Restrictiveness I: Executive–legislative relations

The literature on parliamentary government highlights the design of no-confidence, investiture, and dissolution procedures (e.g. Bergman 1993; Cheibub et al. 2021; Goplerud and Schleiter 2016; Sieberer 2015) but has tended to neglect these procedures in theorizing the effects of second chambers on cabinet formation (but see Diermeier et al. 2007; Eppner and Ganghof 2017). Restrictiveness I captures them.

### Confidence

If the second chamber possesses the right to a no-confidence vote against the cabinet, it becomes more restrictive with respect to cabinet formation. The likely “equilibrium response to this institutional constraint is to form larger (perhaps even surplus) coalitions (possibly constituting a majority in both chambers)” (Diermeier et al. 2007: 248). In our sample, a second chamber with confidence authority existed in Belgium until 1993 and still exists in Italy (André et al. 2015; Russo 2015).

As explained in Chapter 3, the second chamber’s power to veto supply—that is, legislation appropriating funds for the ordinary annual services of government—might be used as a functional equivalent to a no-confidence vote, although many legal and political experts believe that is not actually the case (anymore) in Australia. We focus on the no-confidence vote but use the budget veto for a robustness test (see Table A3 in the appendix). The “confidence” column in Table 7.1 shows the values for the absolute budget veto in parentheses. Among the Australian cases, New South Wales, and Victoria (after the constitutional reform of 2003) stand apart as lacking it. A case that is more restrictive with respect to the budget is the second chamber in the Netherlands.

### Investiture

A second chamber also becomes more restrictive if it must explicitly agree to a new government taking office, typically called an investiture vote. This vote may be needed before the government can assume office or it may take the form of a compulsory confidence vote after the government has assumed office (Rasch et al. 2015: 3–4). The strictest version of an investiture vote requires an absolute majority (Cheibub et al. 2021). Even when only a simple majority is required, however, the need to achieve this majority *in both chambers* plausibly “incentivizes the formation of large coalitions” (Russo 2015: 137). Not surprisingly, we see the involvement of the second chamber in the government’s

investiture only in the two cases with a second chamber no-confidence vote: Italy and pre-1993 Belgium. In both cases, the vote is a compulsory confidence vote (Rasch et al. 2015: 343, Table 19.1).

### Dissolution

While no-confidence and investiture votes render second chambers more restrictive, the possibility of their dissolution works in the opposite direction. The threat of assembly dissolution can render obstructive behavior by opposition parties costly (Becher and Christiansen 2015). While the detailed rules for dissolution vary significantly in democracies (on first chambers, see Gøplerud and Schleiter 2016), we focus on whether second chambers can be dissolved (full or in part) under any circumstances (see also Thies and Yanai 2014: 60–61). This is impossible in Germany, Japan, pre-1984 Victoria, Western Australia, and Tasmania. The second chamber in the Netherlands can be dissolved, but since it is elected by provincial councils, a dissolution “could not possibly solve a political problem, should one arise between the government and the Upper House” (Besselink 2014: 1216).<sup>3</sup> Hence, we also treat this case as restrictive with respect to dissolution.

## Restrictiveness II: Taking actor and strategic constellations into account

While Restrictiveness I focuses on the core institutions regulating executive–legislative relations, Restrictiveness II adds specific institutional features that may reduce the effects of second chambers on cabinet formation. These design features imply important variation in the nature of the relevant actors and strategic situations. While we will model actors’ behavior in the statistical analysis, some important constitutional design differences cannot be adequately captured in the statistical model and thus ought to be part of the index.

### Party discipline

Studies of cabinet formation usually assume disciplined parties and thus use variables such as the number of parties or their ideological differences. While this assumption is generally justifiable, state delegations in the German Bundsrat are *constitutionally required* to vote as a block. This requirement renders

<sup>3</sup> It is perhaps more adequate to say that it would be unlikely to solve a political conflict between parties, but it might solve one within parties. If there is a lack of party discipline, for instance, dissolving the second chamber could potentially be used to replace defectors with party loyalists.

strict party discipline impossible and party unity in legislative voting less probable. The Bundesrat is therefore a more permissive veto player (Tsebelis 2002, Chapter 2).<sup>4</sup>

### **Decision-making flexibility**

As argued in detail in Chapter 6, the specific combination of electoral systems in the bicameral systems of mainland Australia renders second chambers less restrictive. First chambers' alternative vote systems tend to lead to one-party majority cabinets in the center of the political space, which can often build flexible, issue-specific legislative coalitions in second chambers that are proportionally elected and lack confidence authority. This design facilitates an actor constellation in which the majority party has incentives to govern with flexible, issue-specific legislative coalitions (Tsebelis 2002: 97–99). As a rough approximation, we therefore consider a bicameral system to be more permissive when single-seat district electoral systems in the first chamber are combined with proportional representation in the second chamber.

Decision-making flexibility is also affected by the difference between bicameralism and supermajority requirements. When a one-third minority in parliament can veto legislation, the flexibility of the government in choosing between different support parties is reduced and the incentives for building larger cabinets increases. The Finnish minority veto is therefore coded as more restrictive.

### **Compositional instability**

The standard approach to modeling cabinet formation looks at distinct bargaining situations; for example, when a new cabinet is formed after an election. The cabinet-builders are assumed to make a decision about what kind of coalition they want to form and whether it will have a majority in the first and second chambers. However, they are likely to seriously consider the majority status in the second chamber only when this status will be stable for some time. If actor and preference constellations in the second chamber change frequently, coalition-builders may disregard the second chamber and prefer to seek issue-specific support for particular pieces of legislation (see Fortunato et al. 2013).

<sup>4</sup> The lack of party discipline also makes it harder for opposition parties to create a credible veto threat based on vote-seeking incentives (Ganghof and Bräuninger 2006). A good example is a major German tax reform in 2000, when a Social Democratic–Green government made no concessions to the oppositional Christian Democrats because it was able to strike minor deals with different state governments (Ganghof 2006: 133–134).



We have therefore compared the average number of changes in second-chamber composition during one first-chamber term. This number is below or around one for all cases except Germany and Tasmania, which have values around four. In Germany, the composition of the Bundesrat can change with every state election. In Tasmania, it can change every year due to the system of yearly staggered elections. As explained in Chapter 6, this system facilitates the dominance of independents in the second chamber (Sharman 2013: 341) and further increases permissiveness (see our reasoning on party unity in ‘Party discipline’ above). The respective constitutional rules in Germany and Tasmania thus reduce restrictiveness.

### Summary

The two indices reveal important design differences between symmetrical second chambers. Restrictiveness I applies standard arguments about executive–legislative relations to second chambers. The more comprehensive Restrictiveness II adds more case-specific design features. While we have isolated the different features for the purpose of index construction, they can, to some extent, be seen as packages. This is one of the reasons why we will focus mainly on the more comprehensive Restrictiveness II. The values on this index reflect the different models of bicameralism. At one end of the spectrum are the highly restrictive second chambers in (pre-reform) Belgium and Italy, which fully extend the logic of a parliamentary system to the second chamber. As we will see, these cases rely on high congruence in the composition of the two chambers of parliament, so that more specific features of permissiveness are unnecessary. At the other end, we have the more permissive second chambers in Australia and Germany. These cases are designed to allow for bicameral incongruence. Hence, they not only tend to be more permissive in the basic design of executive–legislative relations, but also add specific permissive features. These features differ according to the underlying model of representation. In Germany’s territorial model, second-chamber composition changes frequently and states are required to vote as a block. In Tasmania’s non-partisan model, frequent composition changes go hand in hand with a chamber dominated by independents. In mainland Australia’s partisan model, majoritarian elections for the first chamber are combined with proportional representation in the second chamber. Without denying the coherence of these models, we can use the two indices to explore how the restrictiveness of second chambers conditions their effects on cabinet formation, as well as their institutional stability.

## How do second chambers affect cabinet formation?

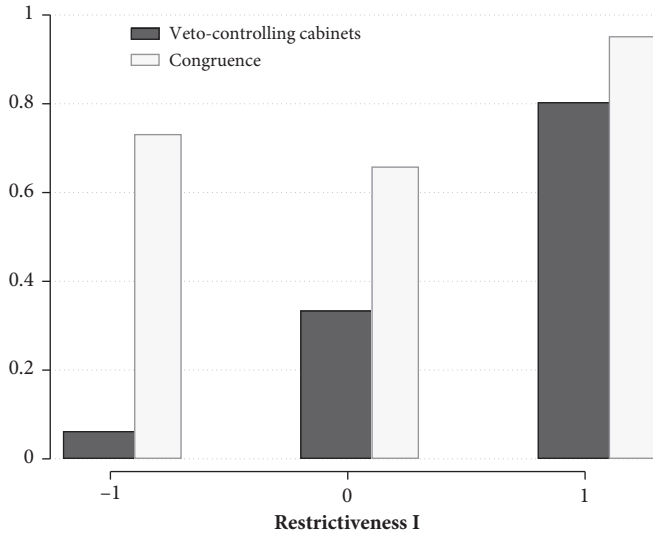
How do second chambers affect cabinet formation? A fairly large literature on this question has remained inconclusive (e.g. Druckman and Thies 2002; Druckman et al. 2005; Eppner and Ganghof 2015, 2017; Ganghof 2010; Mitchell and Nyblade 2008; Sjölin 1993; Thürk et al. 2021; Volden and Carrubba 2004). We argue that this is partly due to the neglect of second chambers' more detailed design; that is, their restrictiveness. More specifically, we want to explore two hypotheses. The main one is that more restrictive second chambers tend to have a greater effect on cabinet formation. The supplementary hypothesis is that constitutional designers are likely to understand this causal consequence and thus have strong incentives to make sure that a highly restrictive second chamber has a similar or identical composition as the first chamber.

To explore these hypotheses, we analyze 369 government formations in 28 democratic systems between January 1975 and March 2018 (see appendix for details and data sources). Of these, 154 government formations happened in the presence of a symmetrical second chamber. Our analysis is unique in that it includes the bicameral Australian states into the comparison of democratic nation-states. To the best of our knowledge, the combination of parliamentarism (in the first chamber) and symmetrical bicameralism at the subnational level exists only in Australia. Given the important institutional variation that the Australian states add to the sample, as well as the similarity of cabinet formation processes at national and state levels, we have strong reasons to combine the information at national and state levels. For consistency, we also include the unicameral Australian state of Queensland.

### A simple descriptive look

To take a first look at the data, consider Figure 7.1. It evaluates both hypotheses by displaying the degree of bicameral congruence and veto control at different levels of restrictiveness. We use Restrictiveness I here, since it is simpler and better suited to a bivariate analysis.<sup>5</sup> *Congruence* is the share of potential first-chamber majority cabinets that control the institutional veto point (i.e. have a second-chamber majority or a first-chamber two-thirds majority in Japan

<sup>5</sup> Recall that Restrictiveness II is meant to capture aspects of actor constellations in ways that complement the regression model. Its additional items logically imply a lack of congruence and would thus bias the bivariate analysis.



**Fig. 7.1** How second-chamber restrictiveness shapes congruence and veto control in 28 democracies, 1975–2018

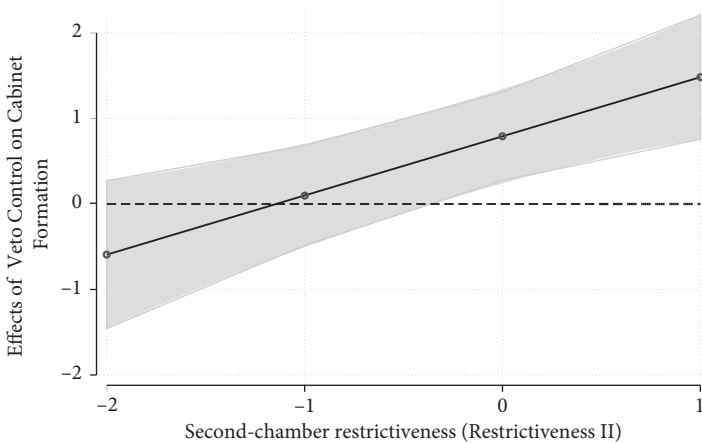
*Notes:* see text.

or a two-thirds majority in Finland). *Veto-controlling cabinets* is the share of actually formed cabinets that control the institutional veto point.

The analysis supports our two hypotheses. When restrictiveness is very high, congruence is very high, too: around 95% of potential first-chamber majority cabinets *automatically* control majorities in the second chamber. Cabinet-builders rarely have to make a special effort to achieve a second-chamber majority. By contrast, when restrictiveness is intermediate or low, congruence is lower. Veto control becomes less necessary and more difficult to achieve. The degree to which it is achieved is higher at an intermediate level of restrictiveness, as we would expect.

### A multivariate analysis

Of course, a host of other variables influence cabinet formation and thus need to be controlled for. To do so, we follow the standard approach to modeling cabinet formation in political science (Druckman et al. 2005; Martin and Stevenson 2001). We use conditional logit regression models to estimate how the various properties of all governments that could form—all potential governments—affect their relative probabilities of being chosen as the actual



**Fig. 7.2** The interplay of second-chamber restrictiveness and veto control in 28 democracies, 1975–2018

Notes: see text.

government. Any combination of parties with parliamentary representation at the time of government formation is one potential government. Our sample contains 577,879 potential governments. The dependent variable in the statistical model indicates the potential governments that actually formed. These 369 governments are coded one, the others zero.

To evaluate our main hypothesis, we focus on the *interaction* of the two explanatory variables analyzed in Figure 7.1. The first indicates whether the potential government controls a second-chamber majority or equivalent veto point (Veto control),<sup>6</sup> the second measures second chamber restrictiveness (Restrictiveness II).<sup>7</sup> As in Figure 7.1, our interest is in how restrictiveness *conditions* the causal effect that veto control has on the likelihood that a potential government is chosen. We discuss the specification of cabinet formation opportunities, the choice of control variables, their empirical measurement, and the detailed regression results in the appendix. Here, we want to get straight to the estimated interplay of restrictiveness and veto control, which is visualized in Figure 7.2.

<sup>6</sup> In Finland, the value is one if the potential cabinet holds 66% or more of the seats (thus making a minority veto against the coalition numerically impossible). In Japan, it is one if the potential cabinet either has a majority in the second chamber or a two-thirds majority in the first chamber (which can override a second-chamber veto).

<sup>7</sup> We use Restrictiveness II because we used Restrictiveness I above and the composition of the two chambers can now be captured by various controls. As before, however, our conclusion for the other index would not be substantially different (see Table A3 in the appendix).

The horizontal axis shows the different levels of second-chamber restrictiveness. The vertical axis shows the statistical model's answer to the question whether governments with a second-chamber majority (i.e. with veto control) are more likely to form: Positive values suggest a positive answer. The diagonal line shows the interplay of the two variables, with the shaded area representing the uncertainty of the estimation (95% confidence interval). The results are as expected. Potential governments are more likely to become the actual government if they control a second-chamber majority (or a minority veto) *and if the design of the second chamber is restrictive*. In systems with the most restrictive second chambers, the chance of a potential government to be chosen as the actual government is about 4.5 times larger if its parties jointly control a second-chamber majority, everything else being equal.<sup>8</sup> The estimated effect of veto control reaches statistical significance only at the two highest levels of restrictiveness. Permissively designed second chambers have no measurable effect on cabinet formation.

Since these results are based on a number of simplifying assumptions, they should be seen as multivariate observations that corroborate the simpler picture in Figure 7.1. However, our causal interpretation of the regression analysis is corroborated by much qualitative evidence. Most importantly, this evidence also shows that the permissively designed second chambers in Australia have not affected cabinet formation (Ward 2012). For Germany, the qualitative evidence for a second chamber effect is also weak, given that more plausible explanations exist for the formation of “grand coalitions” of the two major parties (Proksch and Slapin 2006). For restrictive second chambers, by contrast, qualitative studies have consistently underlined their effects on cabinet formation, especially in Italy (when congruence was not perfect) and Japan (Hyde 2011: 172; McCargo 2010: 472; Rosenbluth and Thies 2010: 106–107; Takenaka 2012). The same is true for the Finish minority veto (Karvonen 2014: 80–82).

Our analysis thus provides a deeper understanding of why strong bicameralism does not generally require the formation of broader, oversized cabinets to be stable. If the design of the second chamber is sufficiently permissive, a behavioral equilibrium can emerge in which ideologically compact cabinets, backed by first-chamber majorities, seek flexible and issue-specific majorities in the second chamber—regardless of whether the legislative support partners

<sup>8</sup> The effect size has to be exponentiated to calculate the change of the odds ratio, in this case  $e^{1.5} \approx 4.5$ .

in this chamber are parties, independents, or state governments. This interpretation of the evidence is further corroborated when we turn to comparative patterns of second-chamber reform.

### **Restrictiveness and constitutional reform**

If strong bicameralism were fundamentally incompatible with a no-confidence vote in the first chamber, we should expect this institutional combination to be relatively unstable. This section shows that this is not the case. When we take into account how restrictive the design of second chambers is with respect to cabinet formation, we can better understand patterns of constitutional reform or stability. More specifically, we have to look at the interplay of how restrictive second chambers are and how they are composed. High congruence and low restrictiveness are alternative ways of stabilizing symmetrical second chambers. If either of these conditions is present, we do not necessarily expect strong pressures for constitutional reform. By contrast, if a restrictive design of the second chamber combines with incongruent compositions of the two chambers, a strong impetus for reform becomes more likely.

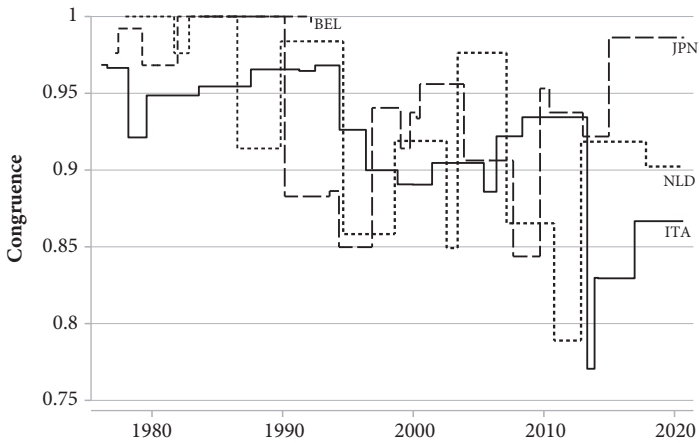
#### **Symmetrical and restrictive second chambers can be stable, when they are congruent**

Symmetrical and restrictive second chambers can be stabilized by a congruent composition of both chambers. Figure 7.3 shows the congruence over time in the relatively restrictive second chambers in Belgium, Italy, Japan, and the Netherlands.<sup>9</sup> As before, congruence is defined as the proportion of potential first-chamber majority cabinets that control a second-chamber majority. Let us take a closer look at these cases.

#### **Belgium**

Congruence in Belgium was almost perfect, so that restrictiveness did not necessitate reform. However, high congruence raises questions about the purpose of a second chamber. The Senate was reformed in 1993 as part of a broader reform of Belgian federalism. It became not only less restrictive, with the cabinet becoming accountable only to the first chamber, but also asymmetrical.

<sup>9</sup> While the data set for the regression analysis extends only until 2018 (see appendix), we extended the analysis of congruence in these four cases to September 2020.



**Fig. 7.3** Bicameral congruence in four democracies with symmetrical and restrictive second chambers, 1975–2020

Notes: see text.

In 2014, it was weakened further and lost its participation in the standard legislative procedure (Goossens and Cannoot 2015; Vercesi 2019).

### Italy

Congruence was very high in Italy until the early 1990s but declined afterwards, due to electoral reforms. This decline combined with the Senate's restrictiveness to intensify constitutional reform pressures. While initiatives to reform the Senate's powers date back to the 1980s (Vercesi 2017: 606), the last attempt was made in 2016, shortly after bicameral congruence had reached a low point (Figure 7.3). A constitutional reform proposal was accepted by both chambers but ultimately rejected in a referendum (Baldi 2018). The reasons for this rejection are numerous (Bergman 2019; Caccarini and Bordignon 2017; Di Mauro and Memoli 2018). What is crucial here is that the proposal went far beyond reducing the Senate's restrictiveness. It would have turned the Senate into a much smaller and asymmetrical chamber: indirectly elected and with only suspensive veto power on ordinary legislation (Romeo 2017; Vercesi 2019). Moreover, the reform was connected to a previously passed—and subsequently replaced—electoral reform that would have increased the disproportionality of the electoral system (D'Alimonte 2015). The new electoral system (named "Italicum") granted an absolute majority of seats to the list obtaining at least 40% of the votes or—in case no list reached this threshold—to the winner of a run-off election held between the top two parties. Rather than merely reducing the

Senate's restrictiveness, the reform would have been a rather drastic shift towards simple majoritarianism (Chapter 5). This allowed the opponents of the reform to successfully frame it as undermining checks and balances and threatening democracy (Ceccarini and Bordignon 2017: 294). After the constitutional reform had been rejected, the electoral system was changed once more (Masseti and Farinelli 2019) and congruence increased again—thus helping to stabilize, for the time being, Italy's symmetrical and highly restrictive bicameralism.

### Japan

Japan's second chamber is relatively restrictive, despite fulfilling the minimal conditions for a semi-parliamentary system (Chapter 3). It cannot be dissolved and it lacks the kind of specific restrictiveness-reducing features we find in the Australian cases or in Germany (see Figure 7.1). As noted in Chapter 3, moreover, experts on Japan hold that the second chamber has a *de facto* no-confidence vote because it can veto "budget-enabling bills" and combine censure motions with a boycott of assembly deliberations (Thies and Yanai 2014: 70; Takayasu 2015: 161). The House of Councillors may thus be even more restrictive than the formal constitutional rules captured in Table 7.1 suggest. Hence, we might expect bicameral incongruence to trigger debates about constitutional reform.

This is also what we see (Heeß 2017: 280–287), but the phases of troubling incongruence were very brief. From 1956 to 1989, the Liberal Democratic Party (LDP) held single-party majorities in both chambers. Incongruence increased afterwards, but Thies and Yanai (2014) show that we have to distinguish two types of situations. When the government merely lacks a majority in the second chamber, it is often able to round up party support on an *ad hoc* basis for each bill. By contrast, when the second chamber is controlled by the main opposition party or coalition, legislative effectiveness drops substantially and the government's ability to govern may be undermined. The latter periods were rare and brief, however. They existed from 2007–2009 and 2011–2012 and, in the first of these, the government actually controlled a veto-proof supermajority in the first chamber. It is not surprising, therefore, that constitutional reform debates did not gain much traction (Heeß 2017: 280–287). As reflected in Figure 7.3, the dominance of the LDP in both chambers has been re-established in recent years (Jain 2020), which weakens incentives for a reform of bicameralism.



### The Netherlands

In the Netherlands, congruence had also been very high until the end of the 1980s but decreased and fluctuated afterwards. The second chamber thus became a significant constraint some of the time. Coalition-builders were not always willing or able to control a majority in the second chamber but instead sought issue-specific support. While this pattern bears some similarity to what we see in Australia, it also differs in crucial respects. Due to the permissive proportional representation system in the first chamber, (a) the government consists of two or more veto players; and (b) issue-specific agreements with opposition parties are often already achieved in the first chamber (and merely accepted by the second chamber). Hence, the second chamber plays a very limited role in the process, and its main effect is to increase the *de facto* majority requirement in the first chamber (State Commission 2019: 217). Due to this increase, however, the reduced congruence contributed to a broader debate about constitutional reform.

### Incongruent second chambers can be stable, when their design is permissive

That a similar composition of the two chambers can stabilize a powerful second chamber is no new insight. What has been neglected in the existing literature is how incongruent second chambers can also be stabilized by a permissive design. Five cases entered the period under consideration with relatively permissive designs (based on Restrictiveness II, see Table 7.1): the Australian Commonwealth, Germany, New South Wales, South Australia, and Tasmania. If a no-confidence vote in the first chamber were fundamentally “incompatible” with strong bicameralism, we would expect these cases to be inherently unstable. But this is not what we see.

### Australia

In the four Australian cases, second chambers did not see a reduction of their legislative veto power, and they did also not become more congruent. The institutional equilibrium was stabilized by the fact that second chambers did not affect cabinet formation. Second-chamber reform or abolishment is sometimes proposed publicly, of course, especially by proponents of “simple majoritarianism” (Chapter 5), but there were no serious attempts in that direction. As Mainwaring et al. (2019: 267) note for South Australia, for example: “From time to time, there have been calls to abolish the second chamber ...

There appears, however, to be limited appetite for a unicameral system, such as in Queensland.” Similarly, Clune and Smith (2019: 229) maintain that after the development of the Legislative Council from an appointed to an elected house of review, the “institutional framework of NSW politics currently appears to be relatively settled.”

### Germany

Germany differs from the Australian cases in that, as part of a broader federalism reform, symmetry was reduced somewhat. However, the goal was not to change but to restore what the designers of the Germany constitution had originally intended. Germany’s Basic Law makes a distinction between consent laws (*Zustimmungsgesetze*) and objection laws (*Einspruchsgesetze*); only for the former is the Bundesrat’s active approval (by absolute majority rule) indispensable. The German second chamber was thus never intended to be fully symmetrical. The Parliamentary Council that designed the constitution had expected the share of consent laws to amount to no more than 10%, but it ended up fluctuating around an average of 55% (Stecker 2016). The federalism reform enacted in 2006 reduced this share to 39% overall, while failing to achieve any reduction in the area of tax laws (Stecker 2016). Hence, the reduction of symmetry constituted no systematic departure from the original design, which is relatively permissive and reduces the Bundesrat’s effect on cabinet formation. Had this design been more restrictive, the German reform debate would have been completely different.

### Restrictive and incongruent second chambers tend to trigger reform

We expect stronger pressures for second-chamber reform when this chamber is (a) symmetrical; (b) incongruent; and (c) restrictive. We can also formulate more precise expectations about what kind of reforms to expect. Reducing symmetry or increasing congruence are not the only two options; it might also be sufficient to make the second chamber less restrictive with respect to cabinet formation.

Our evidence corroborates these expectations. The three cases of symmetrical bicameralism that entered our analysis as relatively restrictive and incongruent—Finland, Victoria, and Western Australia—have all been

substantially reformed to reduce symmetry and/or restrictiveness.<sup>10</sup> Given the historical origin of the respective institutional veto points, the reform processes also had a similar political component. Since the minority veto in Finland and the second chambers in the Australian states had been created as conservative brakes on popular majorities and the socialist movement, the political right had traditionally opposed constitutional reforms. Successful reforms thus required either favorable political conditions for the left or socioeconomic changes that made the constraint of the veto point felt more equally on both sides of the political spectrum.

### **Finland**

In Finland, the relevant veto point was not a second chamber, and it was restrictive partly for this reason. A minority veto is unavoidably supermajoritarian, which makes issue-specific majority formation more difficult. It had originally been “enacted to protect the constitution from socialist takeover,” but was later “used by the socialist block to protect the welfare state against the threat from the right” (Sundberg 1993: 420). Once both sides of the political spectrum felt the constraint of the veto, it was not difficult to achieve agreement on constitutional reform—despite the fact that constitutional amendment procedures are not particularly permissive in Finland (e.g. Tsebelis 2017, 2020). Since a minority veto is inherently restrictive, the reform implied its abolishment.

### **Western Australia**

The second chamber in Western Australia was restrictive because it cannot be dissolved, had an absolute budget veto, and was elected under the same electoral system (alternative vote). Hence, it tended to become a rubber stamp when the same party controlled both chambers and created sharp partisan conflict when the second chamber was controlled by the opposition party (Black 1991; de Garis 2003; Phillips 1991). Moreover, massive vote weighting (malapportionment) in favor of rural areas meant that the problem was highly asymmetrical: conservative parties had a guaranteed second-chamber majority (Davies and Tonts 2007). A reform opportunity emerged in the 1980s, when a Labor government made a deal with the National Party holding the balance of power in the second chamber. The Labor Party’s main interest was to abolish malapportionment in both chambers, but PR in the second chamber was what

<sup>10</sup> Sweden had abolished its upper chamber already by 1970. This reform was triggered, in part, by its restrictive effect on cabinet formation. However, the details are complex and summarized elsewhere (Eppner and Ganghof 2017: 182).

it could get (for details, see Pepperday 2002; Phillips 2013). The reform was also influenced by the previous introductions of PR in the second chambers of the Australian Federal Parliament (1949) and the parliaments of South Australia (1963) and New South Wales (1978). These had turned second chambers into more effective houses of review, while also making them more permissive. Additional reforms were considered at various points in time (including the abolishment of the budget veto), but second-chamber PR was sufficient to create an equilibrium (for details, see Pepperday 2002; Phillips 2013).

### Victoria

The second chamber in Victoria had been restrictive in the same way as its Western Australian counterpart. Its ultimate reform came later, in 2003, but was more far-reaching. However, a first step towards greater permissiveness was already made in 1984. The Labor government had wanted to abolish the absolute budget veto completely but had to compromise with the Liberal and National Parties, which had a second-chamber majority. The opposition agreed to the compromise because (parts of) it agreed that the Council's indirect power over the survival of the government was "excessive," "undemocratic," and "indefensible," and because it feared that Labor would soon win a Council majority (Costar 2008: 204–206; Strangio 2004: 42). The reform provided a maximum four-year term for the Legislative Assembly, with the first three years being fixed. The Council was thus deprived of the ability to force an early Assembly election by blocking supply. In addition, and for the first time, the reform linked second and first chamber terms, with half the Councillors retiring at each Assembly election (Strangio 2004: 42).

A more far-reaching reform became possible when Labor won, in November 2002, a majority in both chambers. It could have abolished the second chamber altogether, as it had attempted many times in the past. By 2002, however, the party's position had changed to reducing second-chamber restrictiveness further. This was achieved in three main ways (compare Table 7.1): The absolute budget veto was now fully abolished, the dissolution of the entire second chamber (as part of a double dissolution) became possible, and—as in the other mainland states—PR was introduced (Costar 2008).

Victoria went further than Western Australia in that the reform also affected the symmetry of bicameralism, at least to some extent. When there is bicameral disagreement over a bill, it is designated a "Disputed Bill" and referred to a Dispute Resolution Committee comprising seven members of the Assembly and five of the Council. If the dispute resolution process fails to achieve an

acceptable compromise, there are two options: (a) the premier may advise a dissolution of both chambers, following which the bill may be put before a joint sitting of the two chambers; or (b) the bill may be held over and placed before a joint sitting after the next scheduled election of both chambers. Since the joint sitting favors the larger chamber, it compromises the veto power of the second chamber.

Two points should be noted here. First, the power of the second chamber remains substantial because the premier will often be hesitant to go to an early election over a single bill and because, in the absence of dissolution, legislation can potentially be delayed for a long time. Since governments are unlikely to wait for several years, bicameral compromise will often be the more attractive option (Tsebelis and Money 1997). Second, and more importantly, there is no reason to believe that this reduction of symmetry was necessary; it reflected the power of Labor in the reform process. The reduced restrictiveness would, in all likelihood, have been sufficient to bring Victorian bicameralism into an equilibrium.

### Summary and limits

The results of our qualitative explorations are in line with expectations. High congruence and low restrictiveness are alternative options for stabilizing powerful second chambers. When congruence decreases (increases), reform pressures tend to intensify (weaken). When low congruence and high restrictiveness come together, constitutional tensions tend to become high and may trigger reform. Finally, and most importantly, reforms do not need to reduce the legislative veto power or legitimacy of second chambers—it is sufficient to make them more permissive with respect to cabinet formation.

Our analysis has obvious limits, too. As the case discussions are highly condensed and do not systematically take other explanations into account, we cannot gauge the *relative* explanatory importance of second-chamber restrictiveness. For example, a standard explanation would be that the institutional difficulty of changing constitutions (sometimes called constitutional rigidity) helps to explain patterns of stability and change. Another, developed in detail by Katja Heeß (2017), focuses on whether second chambers or other veto points strengthen or weaken the democratic legitimacy of a constitution. We do not argue against these explanations but see them as potential complements to ours. Our focus was not on building a multifactor explanation of second-chamber reform or stability, but on exploring the causal effects of second-chamber restrictiveness.

## Conclusion

We can firmly reject the idea that constitutional designers who prefer “strong” forms of bicameralism necessarily have to accept either a presidential system of government or oversized and ideologically heterogeneous cabinets. Strong bicameralism is fully compatible with parliamentarism in the first chamber, as long as the design of the second chamber is sufficiently permissive with respect to cabinet formation. The second chambers’ lack of a no-confidence vote is not only one of the defining features of semi-parliamentarism (Chapter 3), but it is also a crucial feature of a second chamber that puts less constraint on cabinet formation. If strong bicameralism is semi-parliamentary and designed permissively, it does not require presidentialism but can be an alternative to it.