

Second parliamentary chambers as safeguards against democratic backsliding? Case study of Czech and Polish senates

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Abstract

The Czech Republic and Poland represent countries with bicameral parliaments, where the existence of second chambers has often been questioned because both countries represent unitary political systems. While the demand for territorial representation is often quoted as the key reason for establishing second chambers, there are other principles of second chamber representation and / or roles they are playing. One of them is the expansion of the checks-and-balances system beyond the traditional executive – legislative – judicial triangle. The existence of two chambers also brings the check-and-balance principle inside the legislative branch itself. Second chambers are thus understood as certain guarantors of constitutionality and democracy. The article focuses on the role the second chambers in the Czech Republic and Poland have played in the process of preventing democratic backsliding, a recent phenomenon visible in CEE. The problem will be analyzed in the context of the compositional (in)congruence, the constitutional position and powers of both second chambers. It will also analyze whether the current Czech and Polish institutional frameworks allow for second chambers to act as guarantors of constitutionality and democracy.

Keywords: bicameralism, Senate, democratic backsliding, Czech Republic, Poland

Introduction

The third post-communist decade resulted in a decisive break from the previously prevailing liberal trajectory in many of the Central European countries. Even though each country exhibits different levels of weakening of the “liberal

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consensus” and undermining democratic institutions and the rule of law, a general trend to democratic backsliding has been observed in the region (Jasiewicz, 2007; Rupnik, 2007; Greskovits, 2015; Havlík, 2019; Bernhard, 2021). Yet, only the post-2010 changes to the Hungarian political system can be characterized as an “illiberal turn” producing more permanent political changes, while other Central European countries have rather seen “illiberal swerves” (Buštková and Guasti, 2017). This seems to be confirmed for example by the Freedom House’s Freedom in the World survey, which shifted Hungary from the “free” to the “partly free” category in 2019, while the other Central European countries have so far remained among the “free” countries, although their Freedom House ratings have been steadily declining in recent years.

Until now, “democratic backsliding” has been mostly studied in the context of the emergence of populist politicians and parties (Krastev, 2007; Dawson and Hanley, 2016; Havlík, 2019), with scholars first focusing on Poland (e.g., Jasiewicz, 2007; Stanley, 2015; Fomina and Kucharczyk, 2016; Przybylski, 2018; Sadurski, 2019), and especially on Hungary after Orbán and FIDESz-MPS have most strongly moved towards the illiberal direction (e.g., Bánkuti *et al.*, 2012; Pap, 2017; Krekó and Enyedi, 2018; Antal, 2019).¹ However, several studies on the most recent developments in Czech politics suggest that the Czech Republic may also face the threat of future political developments similar to Hungary and Poland (see e.g., Buštková and Guasti, 2017; Hanley and Vachudova, 2018) as the discourse of ANO 2011, the senior coalition party in 2017–2021 and still the strongest political party in the current Czech party system, fits into the pattern of the recent democratic backsliding in Central Europe (Havlík, 2019). But ANO 2011 has so far failed to form the majority needed to change the constitutional order.

The research above focuses on describing and explaining the occurrence of democratic backsliding, while our approach is going rather in an opposite direction, focusing on possible institutional barriers that contribute to the stability of liberal democratic features of respective political systems. Consequently, the focus of our research is on the institutional framework of political systems and its possible role in preventing the illiberal turn and / or democratic backsliding. Hence, the research is conducted within the framework of new institutionalism, with employing assumptions of the rational-choice approach, and follows a pragmatic approach (see Rose, 2013) that evaluates existing policies by asking how they work and what their consequences are.

As a source of inspiration, we will use the barrier approach to electoral reforms; however, we will modify it for the purpose of our study on the role of

¹ In this regard, however, Slovakia under Mečiar’s premiership in the 1990s should not be forgotten. This period is associated with efforts to concentrate and centralize power in the hands of the ruling coalition and the prime minister, violations of constitutionalism and tendencies to discriminate against the opposition. As a result, Slovakia was assessed as a defective or illiberal democracy (see e.g., Fish, 1999; Haughton, 2003; Henderson, 2004).

second chambers. Consequently, we will further use the barrier approach framework by applying it in the broader context of institutional reforms of the political (and constitutional) system, not just in the context of the processes of electoral system change as originally conceived by Rahat and Hazan (2011).

The aim of the presented study is to apply the barrier model (or its absence) to possible institutional reforms undermining the democratic foundations of the Central European political systems, in particular the structure of legislative bodies. While the Hungarian and Slovak parliaments are unicameral assemblies, the Czech and Polish parliaments consist of two chambers, the Chamber of Deputies and the Senate in the Czech case, and the Sejm and the Senate in the Polish case. Considering that Slovakia went through a period of illiberal regime in the 1990s and Hungary is experiencing it now, while the Czech Republic seem to be more resistant to the illiberal trajectory, the question arises whether the existence of a bicameral parliament can prevent democratic backsliding. The question seems to be even more relevant as another Central European country, Poland, has experienced illiberal tendencies despite having a bicameral parliament. Thus, the existence of the second chamber does not automatically guarantee that the political system will be immune to illiberal tendencies. This builds the basis for research into the characteristics that a bicameral system must meet to fulfill this role effectively. Since the political developments in Poland and the Czech Republic are quite different in this regard, our case study also examines the position and role of the second chambers in the Polish and Czech political systems and their (in)ability and (in)capability to effectively block illiberal changes. The paper seeks to answer the following research questions: *Do the second chambers play any role in countering the democratic backsliding? And if so, what role can they play?*

While parliamentary second chambers represent one of the focal points in (comparative) federal studies (Riker, 1992; Swenden, 2004; Benz and Broschek, 2013; Gamper, 2018), there has been only limited interest in second chambers in unitary states which also include the Czech Republic and Poland. Research on bicameral parliaments in unitary systems has focused primarily on first chambers (see Mansfeldová, 2011; Sieberer, 2011). Any research focusing on second chambers in unitary states has addressed only a few cases and specific facets of these institutions (see Russell, 2000; Roller, 2002; Harguindeguy *et al.*, 2016; Wiecech, 2020). Finally, some scholars “have aimed to make praiseworthy generalizations about the strength of second chambers, but they have resulted either in undefined schemes or in partial analyses” (Vercesi, 2017, p. 605). Consequently, in this paper we seek to further the study of second chambers by focusing on unitary systems and their ability to prevent attempts to undermine the democratic foundations of political systems.

The article begins by briefly discussing the barrier approach and its use in our research. It continues with a brief overview of possible functions and powers of second chambers in unitary states in general. The subsequent part addresses a

comparison of the political role of the Czech and Polish Senate within the institutional framework of the respective political systems. This analysis will help to answer the research questions, which is complemented by a discussion of the limits of the research design and our main findings.

1. The barrier approach

The barrier model offers a theoretical background for a systematic study of attempts at institutional reforms in democratic political systems as it allows us to identify the possible trade-offs (illiberal) politicians may face. We build upon Rahat and Hazan's (2011) study that employed the barrier approach to apply the concept of non-reform to answer the question why the electoral system change was successful in some places but failed elsewhere. To do this, the authors synthesized two prevailing perspectives in the study of the electoral system change, namely institutionalism and the rational choice theory, to suggest a list of seven possible hurdles of different focus that may explain the cases of non-reform. These are: the procedural superiority of the *status quo* as a legal barrier, political tradition, social structure, system-level rationale, vested interests, veto players, and disagreement over consent as a game theory barrier. Jacobs and Leyenaar (2011) subsequently suggested grouping together the original barriers of "political tradition" and "social structure," and similarly combining "veto players" and "disagreement over content" into one barrier. Consequently, they reduced the list to five barriers: procedures, political tradition, the system balance and efficiency, actors' vested interests, and veto players. At the same time, Rahat and Hazan (2011) noted both the relative strength of the barriers (with political culture, social structure and system-level rationale as relatively passable barriers, procedures and disagreement over content as delaying barriers, and vested interests and veto players as major barriers), and their changing power in different political constellations (as some barriers seem to be more significant in one specific context than in another).

The barrier model has also been used previously in the context of second chambers. Through this approach, Russell and Sanford (2002) attempted to explain why second chambers are so difficult to reform. They listed five obstacles that prevent reforms of second chambers: the constitutional rigidity, wider constitutional disputes, vested interests, the attitude of government, and public opinion. The emphasis was on the last barrier, because, according to the authors, "the most important factor in deciding whether reform takes place is the interplay between government and public opinion" (Russell and Sanford, 2002, p. 88). Again, following Jacobs and Leyenaar (2011), we may reduce the number of barriers introduced by Russell and Sanford (2002) to three: procedures, actors' vested interests, and public opinion.

As democratic backsliding is considered a consequence of changes in electoral rules and the Constitution seeking to concentrate power and permanently weaken the

opposition, we first need to identify the barriers that enable these changes to be countered. However, since our research focuses on post-communist democratizing countries, the communist legacy appears to be an important contextual factor, as a result of which the significance of cultural and societal barriers weakens and thus, the range of relevant actors is mainly limited to political elites. At the same time, the (political) actors' vested interests may be twofold in this regard, to maintain or to change the *status quo*. But whether they succeed largely depends on whether the institutional framework allows them to push for change.

Consequently, the veto players and procedures may be considered the main barriers that illiberal politicians will face and are thus instrumental in explaining the chances of success of democratic backsliding in the post-communist countries of Central Europe. Surmounting these hurdles may be crucial to reducing the checks and balances in the political system and thus undermining the political and constitutional order in the country, while not overcoming them allows *the status quo* to be maintained. On the contrary, the other barriers appear to be easy passable or even rather irrelevant in our case.

If we consider the relevant veto players to be “individual or collective actors whose agreement ... is required for a change of *the status quo*” (Tsebelis, 2002, p. 289), we should draw the attention to the presidents and the second chambers in the case of bicameral parliaments among political institutions (assuming, of course, that executives rely on a majority in parliament, or in its first chamber in the case of bicameralism). In this regard, another important contextual factor is that Central European political systems are conceived as parliamentary systems. Hence, presidents are rather symbolic and ceremonial heads of state and as such have only limited powers, especially in cases of electoral and constitutional reforms, and as a result, the role of the presidents as veto players is rather limited. At the same time, the executive is dependent on the legislature; the government must maintain the confidence of the parliament and the parliament can dismiss the government via a vote of no-confidence. However, this power applies mostly to first chambers. In turn, many parliamentary systems empower the executive to dissolve the legislature, namely its first chamber, while there is generally no power to dissolve the second chamber, whose existence is often permanent (it is renewed in stages).

That leaves us with the second chambers as potential institutional veto players within the policy-making process. To cite Russell (2013), “bicameralism provides one of the most obvious potential institutional checks on the power of political executives” (Russell, 2013, p. 370). Consequently, the second chambers may also create “checks and balances” against attempts at legal forms of illiberal transformations, thus hindering the political concentration of power and blocking democratic backsliding. On the contrary, the absence of any political, “branch-based separation of powers” (Ganghof, 2021) allows the ruling majority to make “perfectly legal institutional transformations that gradually establish authoritarianism” (Weyland, 2020, p. 393) or democratic backsliding if it seeks to do so. The case of

Hungary, with a unicameral parliament and a strongly disproportional electoral system capable of transforming a majority of votes into a supermajority of parliamentary seats (as was the case in 2010), may serve as a deterrent here.

For Tsebelis (2002), however, the second chambers can only act effectively as veto players if they have a distinct partisan balance from the other actors they seek to counter, especially executives and first chambers. Conversely, if the second chamber has a similar or even identical partisan majority as the first chamber and / or the executive, the second chamber's influence on policy may diminish as it may be effectively "absorbed" by the first chamber (cf. Russell, 2013).

Last, but not least, this shifts our attention to procedural barriers. Of course, it is not the existence of the second chamber as such that makes it a relevant veto player, but its substantial legislative powers (and the will and sufficient democratic legitimacy to use it) that allow it to act in such a way. In the context of facing the democratic backsliding, we are referring here primarily to the second chamber's absolute veto power that is applicable at least in certain types of legislation, such as constitutional and electoral laws and their amendments, in which the second chamber cannot be overridden by the first chamber (any such law and / or amendment must be adopted by both chambers in the identical wording), or even requiring a qualified majority (supermajority) in case of constitutional changes. In such a case, it might not even matter if the second chamber lacks robust veto power on ordinary legislation and can in such a case be overridden by the first chamber.

2. Second chambers in unitary states: an overview of functions and powers

There are currently seventy-nine bicameral parliaments out of 193 countries in the world (i.e. about 40% of countries have bicameral parliaments), with unitary states representing approximately two-thirds of these cases². Thus, bicameral parliaments have been quite common and frequent legislative arrangements in both federal and unitary systems (see e.g., Tsebelis and Money, 1997; Lijphart, 1999; Patterson and Mughan, 1999; Riescher *et al.*, 2000; Tripathi, 2002; Kysela 2004) as well as in both territorially big and small countries (see Anckar, 2018).

Second parliamentary chambers³ are remarkably diverse in many respects. Second chambers may perform a variety of different roles and functions, they may be based on different principles of legitimacy (territorial, estate, interest groups and corporations, minorities, etc.), and they may provide a potential tool for checking

² Inter-Parliamentary Union (n.d.), retrieved from <https://www.ipu.org>.

³ In a general sense, we use the term "second chamber," with this term being used here to refer also to "upper chamber," "upper house," "senate," etc, for two reasons. First, although the great majority of second chambers bear the designation "Senate," some have other names like "council," "chamber," or "house," and in one case even "assembly" (in Tajikistan). Second, as Coakley (2014, p. 548) pointed out, the term "Senate" itself may be confusing in some contexts (e.g., the *Länder* level in Germany).

and balancing both the executive branch (Russell, 2013) and first chambers. However, different roles are linked not only to the principles of representation but also to different types of governmental systems. For example, the confirmation of presidential nominees by the second chamber is quite a frequent feature existing in presidential systems with autonomous executive power. On the contrary, the involvement of second chambers in the installation of executive power in the parliamentary form of government is rather exceptional (e.g., Italy or Romania).

The widely accepted approach to classifying the second chambers' strength was formulated by Lijphart (1984, 1999) who identified two key structural dimensions influencing the importance of second chambers in the political process: 1.) the formal powers of the second chamber (compared with the first chamber) and relations with the first chamber, and 2.) whether the political composition of both chambers is the same (same majorities) or different (divided or split majorities).

Regarding the relative formal powers, bicameral parliaments can be classified as either symmetrical, if both chambers have an identical or very similar range of powers and democratic legitimacy, or asymmetrical, if the second chamber is de facto subordinated to the first chamber. Focusing on the composition of the bicameral parliaments, we can distinguish between incongruent situations, when the two chambers differ in their composition, and congruent situations, when both chambers have the same composition, which is often a result of elections being held at the same time and with the same or similar electoral systems. Other prominent scholars, such as Sartori (1994) and Tsebelis (2002), draw attention to the same two dimensions, in the case of the latter, however, emphasized the greater role of political parties.

Considering formal powers, the general trend in bicameral parliaments in unitary states is that second chambers tend to be significantly weaker than first chambers (with the notable exception of Italy, the Netherlands, and Romania among the EU countries). There are even some cases where second chambers have only consultative roles (e. g. Slovenia). Although the second chambers usually have veto power to use to block legislation, such veto usually has only a suspensive form as it can be overridden by the first chamber. There are, however, some special cases defined in each respective countries' constitutions, when consensus between both chambers is required. Such cases usually include the adoption of a constitution and constitutional changes and amendments, other cases where consensus is needed differ from country by country. We will look at some of them in the next part of the paper.

At the same time, in most parliamentary systems, the executive is legitimized by the first chambers only, and is therefore responsible exclusively to the first chambers. Logically, the first chambers usually have exclusive power to pass a no-confidence motion against the incumbent executive or approve the state budget. Second chambers are usually excluded from these decisions.⁴

⁴ In Italy, the Netherlands, and Romania, the second chamber has the final veto on all legislation, including budgetary decisions. Regarding the oversight of the executive, in Italy

However, the absence of the power of the no-confidence vote does not necessarily weaken the second chamber, but on the contrary it may give it a comparative advantage over the first chamber. In this regard, Olson (1994) pointed to a certain paradox of the vote of confidence in parliamentary systems, which is intended as a parliamentary check on the executive, but in fact has led “to exactly the opposite flow of control” (Olson, 1994, pp. 77–78). As Russell (2001) says, the power of the confidence vote forces the members of the first chamber into party discipline in order to maintain a stable executive, thereby jeopardizing the chamber’s ability to perform its supposed oversight function over the executive. Consequently, the relationship of the second chamber to the executive may resemble that of the second chamber to the executive in presidential systems, as there is a greater separation between the members of the second chamber and the executive. The members of the second chamber may thus act more independently and “second chambers may therefore provide an important counterbalance in an otherwise executive-dominated parliament” (Russell, 2001, p. 447).⁵

In the context of compositional congruence, legislative terms of office tend to be longer in the case of the second chambers than in the case of the first chambers, and quite a common feature of second chambers is their staggered elections.⁶ At the same time, the choice of different electoral formula (or method of selection) between chambers is also quite a common feature. As Russell (2001) pointed out, both the need to face re-election less frequently and the partial renewal of the second chamber via staggered elections reducing the impact of the electoral cycle may further enhance independence of the members of the second chamber.

Combining the two above-discussed dimensions we can classify bicameral parliaments according to their relative strength. Lijphart classifies bicameral parliaments as “strong,” “medium-strong”, and “weak.” Strong bicameralism is conditioned by both power symmetry and compositional incongruence, i.e. second chambers have identical or similar powers to first chambers, but different composition. In medium-strong bicameralism, either symmetry or incongruence is missing. Finally, weak bicameralism is characterized by both power asymmetry and compositional congruence between both chambers (Lijphart, 1999, pp. 203–213).

and the Netherlands the second chamber has the power to issue a no-confidence motion, while in Romania the second chamber has this power, but the joint approval of the first chamber is requested.

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⁶ However, there is always no difference in timing of elections, e.g., in Belgium, Italy, Poland, Romania or Spain (in the case of directly elected senators).

Similarly, Coakley (2014) recently proposed a threefold classification of second chambers depending on their relative power with “high,” “medium,” and “low” categories. The high category includes second chambers with identical or similar powers as first chambers, which, moreover, cannot override the second chambers’ vetoes. In contrast, the low category consists of second chambers that are, in fact, weaker in formal powers than the first chambers as their vetoes can be overridden by first chambers. The medium category lies somewhere in-between these two categories, with the second chambers’ vetoes able to be overridden by the first chambers, but under more strict and difficult rules.

However, “all second chambers exercise influence even if they are considered weak or insignificant” (Tsebelis and Money, 1997, p. 211). But as Russell (2013) pointed out, in order to function effectively and to have *de facto* political influence, the second chambers not only need different composition and / or reasonably strong formal powers, but also sufficient legitimacy to use these powers. Moreover, it is the perceived legitimacy that “critically affects the functioning of bicameralism” (Russell, 2013, p. 385). Hence, a convincing theory of a second chambers’ strength needs to be explicitly three-dimensional. Even though the perceived legitimacy is clearly related to composition and powers, it has its own independent existence; while formal powers’ (a)symmetry and compositional (in)congruence are inherent features of second chambers, they necessarily gain their legitimacy from the outside.⁷

Building upon Russell’s (2013) three-dimensional approach, Vercesi (2017) proposed a more elaborated analytical framework for measuring the second chambers’ strength considering all three dimensions together. With regard to formal powers, Vercesi considers two indicators: 1.) power to issue a no-confidence motion and 2.) power of final veto on legislation. The compositional (in)congruence is operationalized through three indicators, which are 1.) the timing of selection, 2.) method of selection, and 3.) the variation in the representative principle. Last, but not least, the measurement of perceived legitimacy is decomposed into two indicators, namely 1.) the source of democratic legitimation and 2.) the way in which interests are represented. For each dimension, the scores are clustered to obtain an index of strength (the proportion of the sum of the values in each dimension out of the total possible score). Thus, each dimension is a continuum. The overall strength of a second chamber is calculated as the simple mean between the three normalized indices. As a result, based on its strength in each dimension, each second chamber can be placed within a cubic (i.e. three-dimensional) space encompassing all the possible types of second chambers’ roles in the decision-making process.

⁷ Lijphart (1984, 1999) considered legitimacy an important factor influencing the second chamber’s strength as it may affect its ability to use its powers. However, Lijphart considered legitimacy only part of the power (a)-symmetry (rather than an explicit dimension).

3. Czech and Polish Senates in a comparative perspective

Neither the Czech Republic nor Poland represents cases of strong bicameral parliaments, as the first (lower) chambers have in most of the cases the dominant role in both the legislative process and in many of the non-legislative areas, namely in the relations towards the executive. Legislative amendments and / or vetoes coming from both the Czech and the Polish Senate can be overridden by the first chambers by a simple majority of all members and no qualified majority is required (Constitution of the Czech Republic, art. 47; Constitution of the Republic of Poland, art. 121). The top executive institutions (cabinets, councils of ministers) are responsible exclusively to the first chamber, which has the power to initiate and pass the confidence and no-confidence motions (Constitution of the Czech Republic, art. 68 and 72; Constitution of the Republic of Poland, art. 155, 157–160). Still there are some major differences between the Czech and Polish Senates that distinguish both second chambers, in particular regarding their role to prevent illiberal turns, which is the main aim of this paper and will be dealt with later.

In his comparative analysis of ten European second chambers, Vercesi (2017) assessed the Czech and Polish Senates as rather weak second chambers. However, the Czech Senate is still much stronger than the Polish Senate, which, according to the results of the analysis, is somewhat closer in terms of its strength to the House of Lords in the United Kingdom, one of the weakest second chambers. Similarly, Patterson and Mughan (1999), when examining the symmetry of formal powers between first and second chambers, assessed the Polish Senate and the House of Lords in the United Kingdom as being subordinated to first chambers, while the Czech Senate was assessed as a slightly stronger chamber that is largely advisory and may delay the passage of laws.

The first major factor that affects the ability of the second chamber to act as counterbalance to the first chamber, is the timing of elections, which can substantially influence the partisan composition of both chambers. In the case of the Polish Senate there is no difference in timing of elections to both parliamentary chambers (Constitution of the Republic of Poland, art. 98), which results in the almost identical partisan majorities in both chambers. The post-1989 empirical evidence shows that the incongruent situations have been quite rare in Poland. If we exclude the period following the semi-free elections in 1989 and the period following the 1991 elections which led to the atomized parliament with twenty-nine political parties gaining seats, the divided or split majority (i.e. incongruence) occurred only once, following the most recent elections in 2019. While Law and Justice (PiS) and its partners received absolute majority in the Sejm (235 out of the total 460 seats)⁸,

⁸ National Electoral Office, Polish Parliamentary Elections 2019 – Sejm Voting Results. Warsaw: National Electoral Office (retrieved from. <https://sejmsenat2019.pkw.gov.pl/sejmsenat2019/en/wyniki/sejm/pl>).

they narrowly lost majority in the Senate (48 out of total 100 seats)⁹. All other elections held in Poland between 1993 and 2019 always led to the same majorities in both chambers.

Table 1. Comparing second chambers' strength in the Czech Republic and Poland

Czech Republic		Poland	
<i>Description</i>	<i>score</i>	<i>description</i>	<i>score</i>
Formal powers of the second chamber			
oversight of government	<i>not allowed to issue a no-confidence motion</i>	<i>not allowed to issue a no-confidence motion</i>	0
final veto	<i>on constitutional matters and some ordinary legislation</i>	<i>on constitutional matters</i>	6
Compositional incongruence between chambers			
timing of elections	<i>majority selected in a different moment</i>	<i>no difference</i>	0
method of selection	<i>different electoral formula</i>	<i>different electoral formula</i>	3
representative principle	<i>no difference</i>	<i>minority based a different principle</i>	1
Perceived legitimacy of second chamber			
direct election	<i>wholly directly elected</i>	<i>wholly directly elected</i>	10
representation of interests	<i>representation of high-profile figures and expertise</i>	<i>N/A</i>	0
Total score	0.5480		0.4687

Source: Authors' representation based on Vercesi, 2017

The second major factor is the strength of formal powers of the second chambers. The Polish Senate has only one strong formal power – to block constitutional changes. Amending the Polish Constitution is the only legislative procedure where both chambers must agree on the same version of the bill (Constitution of the Republic of Poland, art. 235). All other legislation can be passed by the Sejm despite the Senate's veto and / or amendment (Constitution of the Republic of Poland, art. 121–122). Also, legitimization of top judicial authorities, incl. Constitutional Tribunal (equivalent of the Czech Constitutional Court) and the Tribunal of State (institution trying impeachments of President, Cabinet Members, Sejm and Senate members, as well as other top state officers, such as Chief of Staff of the Armed Forces or Governor of the Polish National Bank) is exclusively in the hands of the Sejm (Constitution of the Republic of Poland, art. 194 and 199). Therefore, the same Sejm majority that legitimizes the executive also has an impact on the composition of top judicial bodies that solve politically the most sensitive

⁹ National Electoral Office, Polish Parliamentary Elections 2019 – Senate Voting Results. Warsaw: National Electoral Office (retrieved from. <https://sejmsenat2019.pkw.gov.pl/sejmsenat2019/en/wyniki/senat/pl>)

issues. This feature substantially weakens not only the Senate as the second chamber, but also the role of the top judicial authorities to serve as potential barriers against illiberal tendencies.

Both characteristics we mentioned earlier create an asymmetry between the two chambers highly in favour of the Sejm. The roots of the overall weakness of the Polish Senate can be traced back to the period of its (re)foundation. The second chamber in Poland was restored as one of the outcomes of the roundtable talks between representatives of the Polish United Workers' Party (aka communist party) and the Solidarity (an opposition movement) in the spring of 1989. The Communists agreed that the entire Senate be elected freely (unlike the Sejm of which only 35% of seats were elected freely) in exchange for its weak powers and "non-precise constitutional definition" (Kubát, 2005, p. 60; Hayden, 2006).

On the contrary, regarding the Czech Senate, we argue that the Czech Republic is alternating between weak and medium strong bicameralism. The Czech Senate has slightly stronger formal powers than its Polish counterpart thanks to the final veto not only in the case of the Constitution and constitutional laws (and their amendments), but also on some ordinary legislation, in particular electoral laws that need to be passed by both chambers symmetrically (Constitution of the Czech Republic, art. 39 and 40; Just, 2012, p. 164). Another feature contributing to the slightly stronger powers of the Czech second chamber is the legitimization of the Constitutional Court Justices who are confirmed by the Senate, i.e. institution that does not legitimize the executive (Constitution of the Czech Republic, art. 84). In addition, the Czech Senate has a stronger overall position in the political system than the Polish Senate due to the different election dates for each chamber, the different terms of office of each chamber and staggered elections in the case of the Senate, which allow for (and often have resulted in) a compositional incongruence. Out of more than twenty-five years of existence of the bicameral structure in the Czech Republic (since the establishment of the Senate in 1996), for half of the period the political composition of both chambers was different and majorities in both chambers were divided or split (incongruent situation). This situation is possible due to conditions set by the Constitution of the Czech Republic¹⁰ and electoral law, which set both different timing of the elections as well as different electoral systems. The above-mentioned features are complemented by the possibility of the first chamber, the Chamber of Deputies, to be dissolved, while the Senate is non-dissolvable institution

As a comparison of the Czech and Polish Senates shows, although both chambers are rather weak regarding their formal powers, (in)congruence of the

¹⁰ Constitution of the Czech Republic (1993). Prague: Chamber of Deputies (retrieved from <https://public.psp.cz/en/docs/laws/constitution.html>) and Constitution of the Republic of Poland (1997). Warsaw: Sejm (retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>).

composition between both parliamentary chambers is an important factor. If the party composition of both chambers is identical or similar, i.e., the ruling party or parties can count on the majority in both chambers (such as in most of the post-1989 situation in Poland), the second chamber is usually subordinate to the first chamber, regardless of the extent of their powers. If, on the other hand, the party composition of the chambers is different (as in half of the cases in the Czech Republic), second chambers are usually more independent and thus may contest decisions of the executives and first chambers. This gives the Czech Senate a comparative advantage over the Polish Senate in countering any possible attempts at illiberal swerves. Moreover, the potential of the Polish Senate to prevent illiberal turns is very much limited, compared to the Czech Senate. Thanks to the Senate's role in the political system, the Czech constitutional system includes a more complex set of checks and balances and therefore seems to be more resilient to constitutional changes, while the ability of the Polish Senate to prevent an illiberal turn is very much limited. Recent political developments in both countries can serve as tangible evidence.

Despite the disadvantage of the Polish Senate compared to its Czech counterpart, still the potential to prevent democratic backsliding is theoretically relatively higher than in case of countries with unicameral systems. The case of Hungary shows that unicameralism with both parts of the executive branch (the President and the Cabinet / Council of Ministers) as well as the top institution of the judicial branch (the Constitutional Court) being legitimized by such a single chamber is vulnerable to illiberal turns. Thus, one majority in a single-chamber parliament can put all the power in the country into the hands of a single ruling party and / or coalition. Not to mention if such a majority is qualified (constitutional). This situation happened in Hungary during the 2010 elections, and was repeated in the 2014, 2018 and 2022 election, when FIDESz-MPS party with its pre-election coalition partner KDNP has always won more than two thirds of seats in the unicameral National Assembly, which allowed them to adopt a new Constitution, new electoral law, and other laws necessary for making substantial changes in the entire political system.

Conclusions

There is a wide range of ways and reasons to criticize the existence of bicameral parliaments, which is what some scholars and politicians do. Second chambers may be considered marginal if they have weak formal powers, or overly disruptive if they are strong in their formal powers. If weak in powers, second chambers are sidelined and powerless within the policy-making process. If strong in powers, they tend to be accused of making the legislative process cumbersome and expensive and thus delaying necessary legislation and inhibiting reform processes. From a different point of view, second chambers may be criticized for being too similar, and therefore superfluous, or too different, and therefore inhibiting, in

composition compared to the first chamber. Given their controversial nature, most second chambers (in both advanced and emerging democracies) are facing efforts to abolish or at least significantly weaken them. In this regard, Russell stated “a constant temptation for governments to seek to sideline” second chambers (Russell, 2001, p. 454), Mughan and Patterson even described second chambers as “essentially contested institutions” (Mughan and Patterson, 1999, p. 338).

With a special focus on the Central European region, we do not share the view that second chambers are unnecessary institutions. Even though Coakley (2014) observed the “strange revival of bicameralism” in the late twentieth century, primarily referring to the new democracies (including the Central European region), we consider bicameralism to be an effective institutional framework in which institutional veto players can counter democratic backsliding. Thus, we follow Russell’s view (2019) that bicameralism as “the frequently controversial institutional structure could even be seen as peculiarly well suited to our present populist times” (Russell, 2019). As the experience with the Czech Senate shows, second chambers may be more independent from the executives, depending on the majorities in first chambers and thus may serve as the most obvious effective institutional checks on the power of the executives (while first chambers often obviously may not).

As a result, it is the second chambers in particular that may act in a complementary and constructive manner as safeguards for the quality of democracy and guarantors of institutional continuity and integrity as they may serve as possible checks to avoid arbitrary constitutional and political reforms undermining democracy. But the inclusion of a second chamber in the institutional framework not only adds a possible veto player, but also promotes broader consensus in policy-making and decision-making processes which in general may be of more benefit to emerging democracies.

We argue, however, that it is not the existence of the second chamber *per se* that makes it possible to counteract democratic backsliding, but much rather its role within the overall institutional framework of a given political system. Above all, second chambers should be endowed with sufficient powers to counter any illiberal trends and changes in the political system. They need not involve strong bicameralisms, because even second chambers with quite limited formal powers can be influential. But where necessary, the second chamber may block legislation, making it an important “veto player” in the process of policy making. Above all, their powers may be greater over constitutional changes in order to play a key role in constitutional revisions (e.g., the need for the second chamber’s approval by a qualified majority for any constitutional amendment to be accepted, which means that the legal barrier to constitutional change is quite high) and over changes in electoral systems (e.g., the need for the second chamber’s approval, albeit by a simple majority) in order to deter attempts at such reforms. The presence of the Senate (as a sufficiently empowered veto player) seems to be the most crucial barrier for constitutional and electoral reforms in the Czech Republic.

Building upon the analysis of second chambers in the Czech Republic and Poland, we can conclude that only second chambers endowed with sufficient powers to counter illiberal changes and with a distinct party balance from that in the first chamber may be considered effective and hence can fulfill the role of safeguard against democratic backsliding.

As a limitation of our findings, we acknowledge that the importance of the second chambers can be further strengthened or weakened by their perceived legitimacy (cf. Russell, 2001, 2013). However, this perspective is beyond the scope of the present case study. At the same time, our research seems to demonstrate that institutional veto players indeed can counteract democratic backsliding. However, we are aware that liberal democracy can be undermined or even overturned also without constitutional reforms, sometimes even without ordinary legislation changes, by using executive orders. As Levitsky and Ziblatt (2018) observed, military and other violent seizures of power are rather rare today as democracies die slowly in barely visible steps and at the hands of elected leaders who subvert the very process that brought them to power.

Another limitation may be the choice of a top-down approach remaining another potential barrier in the form of social protest aside from our concern. Societal pressures, too, may play an important role and deserve deeper attention. As Bernhard (2021) observed, Law and Justice (PiS) in Poland, unlike FIDESz-MPS in Hungary, has faced greater counterpressure of organized protest from below that has contributed to the preservation of minimal levels of democracy in Poland. Psychological factors may also play a role, e.g., the fear of being labelled anti-democratic in the eyes of the public and / or foreign political partners may prevent some (populist) politicians from introducing reforms towards illiberalism. Last, but not least, it is external actors who can hinder illiberal swerves. In this respect, the European Union seems to be the most important external force that may, at least to some extent, influence post-communist countries through both positive incentives and conditional counter-pressures in the political, economic, and constitutional issues. All of the above-mentioned views represent further possible perspectives for future research.

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