

An upper house in all but name?  
An analysis of the European Parliament<sup>1</sup>

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## **Abstract**

The European Parliament (EP) has long been seen as a relatively powerless institution, which played little part in the development of European Union (EU) legislation. This view has been somewhat reconsidered in recent years, following the introduction of the Co-decision procedure, which significantly increased the role of the EP in the European Union's legislative process. Some commentators have suggested that the EU now functions in the manner of a two-chamber legislature, but remains relatively weak in comparison to the majority of first chambers within parliamentary systems. In light of such claims, the aim of this paper is to explore the possibility that the EP can be better understood as akin to a second chamber, rather than relying upon a comparison with first chambers. This paper examines the structure and functions of the European Parliament in comparison to the roles and powers attributed to second chambers. By focusing upon the four main areas of EP power, namely, legislative, budgetary, and supervisory powers, and the ascent procedure, the paper highlights the fact that the EP's functions resemble the workings of a second chamber within a strong bicameral system.

## **Introduction**

As the least powerful of the institutions which combine to form the superstructure of the European Union, it is not surprising that the behaviour of the European Parliament has prompted only minimal examination by scholars interested in the European Union. Indeed, since the introduction of direct elections to the EP, commentators have frequently complained of the lack of interest which Members of the European Parliament (MEPs) themselves have in the legislature. Since its inception as a Common Assembly in 1952, the EP has expanded its area of influence significantly, via a series of intergovernmental conferences (IGCs), and developed from an appointed assembly of 78 members to an elected body with 626 members. During the period following the introduction of direct elections, the European Parliament's role in the Union's legislative process has increased to the point that commentators now claim that the European Union functions as a bicameral system, in which the European Parliament acts as a first chamber, and the European Council of Ministers operates as a second chamber.<sup>2</sup> Within this system, the Council of Ministers remains the more powerful of the two institutions. Despite the increased powers which the EP has gained over the last five decades, when compared with the lower houses of parliamentary democracies, the European Parliament appears to be a weak chamber with severely limited powers. Rather than dismiss the EP as a weak first chamber, the aim of this paper is to determine if a comparison with second chambers can better illuminate our understanding of the role played by the European Parliament. The format of this paper will proceed as follows: First, the general functions carried out by second chambers will be explored. Second, the European Parliament's functions will be compared with those attributed to second chambers. Finally, the type of bicameral system in which the EP operates as a second chamber will be explored.

## **The role and powers of second chambers**

The role which second chambers play within bicameral systems has been described by a number of commentators.<sup>3</sup> Patterson and Mughan argue that the role of second chambers is twofold: First, upper houses allow for differentiation in political representation. In the majority of bicameral houses, first and second chambers are elected via different methods,

thereby providing a greater opportunity for a wider selection of views held within the electorate to be represented within the chamber. Additionally, the existence of second chambers allows for redundancy in policy-making. Second chambers which act as 'a house of review', examine proposed legislation from the executive and provide a supplementary opinion, thereby possibly preventing error, delaying action until alternatives have been vetted satisfactorily, or postpone decisions until the disputants achieve consensus.<sup>4</sup> Russell suggests that there are two other roles fulfilled by a second chamber within a bicameral system. First, upper chambers provide an opportunity to 'spread the burden of parliamentary work'. Second, an upper chamber can act as a 'veto player' within the policy-making process, particularly if it has strong formal powers.<sup>5</sup>

Russell also examines the powers of upper houses and suggests that it is usual for second chambers to have powers which differ to those held by the first chamber.<sup>6</sup> The author claims that there are four main areas in which second chamber power is concentrated:

- 1) Ordinary legislation: In a number of bicameral systems, legislation can only be introduced in the lower house, while generally the upper house retains the power to either amend or reject legislation.
- 2) Financial legislation: In a number of second chambers, a limit on the time spent examining money bills exist. In the majority of bicameral systems, financial legislation is introduced only in the lower house.
- 3) Dispute resolution: A number of parliaments allow the lower house to have the final say during legislative disputes. A conciliation system does however exist in a number of systems, where either a joint committee or a joint sitting of parliament is called to adjudicate. A third alternative, allows for the 'shuttling' of legislation from one house to the other until agreement is reached. Dissolution is the rarely used fourth alternative.
- 4) Constitutional Amendments: In most cases, the upper house has a more powerful role when the legislation pertains to amendment of the constitution. It is common for constitutional amendments to require a qualified majority vote in both houses.

Russell also notes that second chambers may have the power to "make or break" governments. These powers tend to differ between systems and may be defined as appointment and scrutiny.

## The role of the European Parliament

Throughout the next section of this paper, the role and powers attributed to second chambers will be examined in relation to the European Parliament in an attempt to determine if the workings of the EP can be better understood via the discourse related to second chambers, rather than by literature devoted to the functions and behaviour of first chambers.

## The European Parliament and the question of representation

Throughout its evolution, Member States of the European Union, acting in a manner similar to that exhibited by states operating within federal systems, attempted to ensure that they were properly represented in all three Community institutions. Smaller countries understandably, did not wish to be powerless in the shadow of larger States. As a result, all three institutions have been weighted in favour of the smaller nation state Members. In the Commission, all States provide one commissioner (with the exception of Germany, France, Italy, and the UK who provide two Commissioners). Within the Council, the eighty-seven seats are divided between the fifteen Member States, with the four largest States claiming a total of ten votes each, whilst Luxembourg, the smallest Member nation in terms of population, holds two votes.

The European Parliament continues the trend of over-representation for smaller States. Whilst Germany has the largest number of MEPs, ninety-nine, its citizen- MEP ratio is 1: 828 667. In comparison, each of the five MEPs from Luxembourg represent only 75 800 constituents.<sup>7</sup> The European Parliament was designed to overcompensate in favour of the smaller Member States. The form of representation supplied by the European Parliament also differs to that of the European Council of Ministers. Whilst Council ministers are elected officials, an election for the Council is not held. Rather, cabinet members from the Member States serve as councillors, therefore, when the Council is to discuss agricultural matters, the agricultural ministers from the fifteen Member States meet, and so forth. The make up of the Council changes regularly for two reasons:

- 1) Cabinet reshuffles lead to changes in portfolios and allow for the introduction of new ministers; and

- 2) General elections within the Member States take place at different times and with an election come either a change of government or a cabinet reshuffle.

Unlike the Council of Ministers, European wide elections are held to elect the European Parliament. Originally, far more diverse in character, the Community wide elections are becoming uniform, with MEPs from all Member States except Ireland and Northern Ireland (part of the UK delegation), being elected by proportional representation. A number of divergences exist in the list PR systems<sup>8</sup> employed by the Member States. States differ on the size of the constituency, which range from 11 regions (employed in the UK), to a single national constituency which is used throughout ten of the fifteen Member States. Additionally, seven of the Member States operate using a closed list ballot paper, in which a voter must choose between parties rather than candidates, whilst the remaining nations allow for voters to preference candidates. The direct election of European Parliament and the manner in which the method of selection differs to that of the Council of Ministers allows the Parliament to provide for differentiation in political representation. Whilst the Council represents the views of Member States, the Parliament, which operates on a party group basis rather than on national groupings, is able to provide the legislative process with another point of view.

## **The European Parliament and the question of redundancy**

The European Parliament's committee system allows the Parliament to provide what Patterson and Mughan describe as redundancy in policymaking. As in a number of chambers which act as a 'house of review', the EP operates using a system of committees. Similar to committees in both the Continental European and American systems, the EP's committees deal with all legislative proposals put forward by the Commission. A significant proportion of the committees' time is devoted to the consideration and adoption of draft reports and opinions, in fulfilment of Parliament's legislative, budgetary scrutiny and agenda-setting roles.<sup>9</sup> The committees carry out a number of additional activities, such as public hearings, cross-examination of Commission and Council representatives on general or specific issues, and meetings with delegations from national parliaments and non-governmental organisations.<sup>10</sup> It is inside the committees that Parliament's policy is formulated and from the workings of committees that Party Groups determine their views of upcoming legislation. Interestingly, in contrast to the Council and Commission, EP committee meetings are open to both representatives of other institutions and the general public.<sup>11</sup> Committees represent an opportunity for contact between

various institutions. The European Parliament insists that representatives of the Commission attend committee meetings to present their institution's point of view on the proposal being discussed. The Council Presidency is also invited to attend all committee meetings, and seats are reserved for Council representatives.<sup>12</sup>

The committee system operating within the Parliament has been described as the 'legislative backbone' of the EP,<sup>13</sup> and it would appear that the EP drew upon the example provided by upper chambers in many of the Member States which form the EU, when it established its strong committee system.<sup>14</sup> For example, the composition of the EP committees is very similar to that of the Italian Senato, where membership reflects the size of the various parliamentary groups, so that the committee tends to reflect the composition of the assembly as a whole.<sup>15</sup> The Parliament's ability to examine proposed legislation in detail provides the opportunity for delay, amendment and correction of errors, in other words actions which are traditionally associated with second chambers. The non-legislative tasks carried out by the EP committees, such as public hearings, and meetings with delegations from national parliaments and nongovernmental organisations, allows for what Russell describes as 'spread(ing) the burden of parliamentary work', thereby freeing up the time of both the Council and the Commission.

This section of the paper has highlighted the fact that the European Parliament conforms to the criteria of representation and redundancy established by Patterson and Mughan. It has also suggested that the EP committee system allows for a redistribution of parliamentary work, as described by Russell. The next section of this paper will study the powers of the European Parliament, using Russell's four categories of second chamber powers as a framework, and examine how the European Parliament is able to use these powers to act as a 'veto player'.

## **The powers of the European Parliament**

The European Parliament has always been considered to be the weakest of the three EU institutions. Although the powers of the European Parliament have increased significantly via a series of Intergovernmental Conferences, the formal role of the Parliament is still very limited. According to Julie Smith, the powers of the European Parliament can be divided into four major categories, namely, Legislative Powers, Budgetary Powers, the Assent Procedure, and Supervisory Powers, interestingly, the first three of these powers basically mirror those previously attributed to second chambers by Russell.<sup>16</sup>

## **Legislative powers**

The role of the European Parliament within the decision-making process of the European Union has been radically transformed since the inception of the Common Assembly in 1952. The Treaties which led to the formation of the European Coal and Steel Community (ECSC) initially allowed the European Parliament to have only a consultative role in the creation of legislation: 'The legislative power handed over by the national parliaments to the Community was placed in the hands of the Council (composed of ministers from the national governments).'<sup>17</sup> Over the last fifty years, via negotiation with both the Council and Commission, and with the introduction of new treaties created during a series of intergovernmental conferences, the European Parliament has been able to increase the scope of its role in the formation of Community legislation.

### **The Consultation Procedure**

The form which the European Parliament's involvement in the development of legislation takes depends upon which area of Union law the legislation belongs. The original scope of the European Parliament's involvement rested with the Consultation Procedure. Under the Consultation Procedure, the European Commission proposes legislation, after which the European Parliament gives its opinions. Whilst in the EP, the legislation is examined by one of the seventeen permanent committees, and in consultation with the Commission, the committee suggests amendments to the legislation. The legislation is then introduced to the Parliament floor by the committee (represented by a rapporteur<sup>18</sup>), and Members vote on whether to accept or reject the amendments. Once Parliament has formulated its opinion on the legislation, the Commission then either accepts or rejects the amendments introduced by the Parliament. The legislation then passes to the Council, where a qualified majority is required to ensure the bill's adoption.<sup>19 20</sup>

### **The Co-operation decision**

The second decision-making procedure, is described as co-operation, and was introduced by the Single European Act, which was ratified by the Member States in 1987. Under the Co-operation Procedure, the Parliament is entitled to a second reading of the legislation, after the Commission has taken into account the original recommendations of the Parliament and the Council has made a decision as to whether or not it will pass the bill.

Once the legislation is returned, Parliament then has three months in which to decide which of three possible courses of action it wishes to take:

- 1) Explicit approval
- 2) Rejection of the text, which can only be overridden if the Council reaches a unanimous agreement to support the bill, in conjunction with the Commission
- 3) Propose amendments. If the amendments are accepted by the Commission then the Council may pass the legislation or by unanimous decision introduce their own amendments.

In the last two cases, a qualified majority rather than a simple majority is required within the Parliament to carry any changes.<sup>21</sup>

## **The Co-decision Procedure**

The third legislative procedure used within the Union, was introduced by the Maastricht Treaty (1992) and expanded by the Treaty of Amsterdam (1999). Officially named, 'the Procedure referred to in Article 189b', the Co-decision Procedure is identical to the Co-operation Procedure until the point of the EP's second reading of the proposed legislation. Three alternatives are then available to the EP:

- 1) Parliament may vote in favour of the bill, which then moves onto the Council and the legislation is adopted.
- 2) The Parliament can reject the bill and thus terminate the procedure if an absolute majority vote against the bill is procured on the floor of the Parliament.
- 3) The European Parliament may propose amendments to the common position established. The Council must then either, accept the Parliament's amendments, in which case the legislation is adopted; or it may reject the Parliament's amendments and convene the Conciliation Committee.

The scope of the Co-decision was expanded by the Treaty of Amsterdam, and now encompasses 38 areas or types of community action, spread over 31 Treaty Articles, thereby accounting for more than half of the European Union's legislation.<sup>22</sup> Nentwhich

and Falkner claim, 'In our view, Co-decision will from now on be perceived as *the standard procedure*, Consultation or Co-operation will be considered as the exception of the rule only'.<sup>23</sup> Shackleton argues that the arrival of the Co-decision Procedure with the Maastricht Treaty was widely heralded as a major advance for the European Parliament and the cause of parliamentary democracy at the European level.<sup>24</sup> Nentwich agrees, claiming that 'the reform of Co-decision finally puts the European Parliament on an essentially equal footing with the Council (as far as this procedure is concerned)...The 1996/97 IGC is indeed a major step towards a system based on bicameral parliamentary democracy at the EC level.'<sup>25</sup> The power ceded to the European Parliament via the introduction of the Co-decision procedure, is comparable to that of most second chambers which, in general, retain the power to either amend or reject legislation.<sup>26</sup> Indeed, the Co-decision procedure grants the EP a power similar to that of the German Bundesrat, where slightly more than half of all legislation is subject to the upper house's absolute veto.<sup>27</sup> With the introduction of the Co-decision procedure, the European Parliament is, within certain cases, able to act as the 'veto player' described by Russell.

## Dispute resolution

The process which takes place in the Conciliation Committee can, using Russell's classifications, be described as dispute resolution. The Conciliation Committee is made up of fifteen Council representatives and an equal number of parliamentarians, and has a period of between six to eight weeks to formulate a compromise. If a compromise is not reached within the specified timeframe, the bill fails automatically. Following the establishment of a compromise position, the legislation will only prove to be successful if it is approved by both the Council and the Parliament. If either body rejects the compromise position, the procedure is terminated.<sup>28</sup>

Up until the entry into force of the Amsterdam Treaty, 165 Co-decision procedures were completed. In 99 cases (60 percent), agreement was reached without convening the conciliation committee (63 cases where the common position was accepted by the Parliament without amendment, plus a further 36 where the Council accepted all of Parliament's amendments). This leaves 66 cases where the conciliation committee was convened, of which 63 were completely successful.<sup>29</sup>

The Conciliation Committee system used with the EU legislative process is, in many ways, similar to the Conference Committee system utilised in the Federal German Parliament. Both systems allow the committees to discuss the entire bill, and the systems allow for

trade-offs across issues. In addition, when ratifying the agreed upon position, neither system allows for the introduction of amendments to the committee's reports by either of the houses.<sup>30</sup> The Conference Committee system is also utilised in France, although the Committee is far more limited in the scope of its duties, than either of the committees employed within the EU and Germany.<sup>31</sup>

## Budgetary powers

The European Parliament had developed other powers comparable to those of second chambers operating within parliamentary systems. The additional powers include the EP's role within the budgetary process, which, as in the case of its legislative powers, has increased significantly over time. The EP first acquired significant budgetary powers in 1970, with the introduction of the Community's 'own resources', which were primarily derived from customs duties, and a percentage of VAT (Value Added Tax) receipts from across the Union.<sup>32</sup> Westlake writes that:

Parliament's budgetary powers were consolidated by further treaties (1975, 1977) and by decisions or agreements between the institutions (1972, 1975, 1982, 1985, 1988, and 1993). Today, the Parliament and the Council, respectively representing the people and the States, constitute the twin arms of the budgetary authority. Only the European Parliament's President may sign the Union budget into law, a power confirmed by the European Court of Justice's jurisprudence.<sup>33</sup>

According to Westlake, despite its seemingly powerful position, the European Parliament is still limited in the influence it exerts over the budgetary process. The most significant limitation placed upon the Parliament lies in the distinction between 'compulsory' and 'non-compulsory' Union expenditure.<sup>34 35</sup> The Parliament has the right to allocate and increase non-compulsory expenditure, it does not, however, enjoy the same rights with compulsory expenditure. Indeed, once the Council has completed its second reading of the budget, the level of compulsory expenditure is fixed, and the European Parliament is unable to suggest further amendments during its second reading of the budget draft.<sup>36</sup> The budgetary process which takes place within the European Union is set out in Article 227 of the Treaty of the European Union, and is quite complex. (See Appendix 1)

The Parliament's powers in relation to the budget are two-fold: First, any amendments to non-compulsory expenditure added by the European Parliament in the chamber's second reading of the budget, that passed through the plenary session with an absolute majority

(consisting of three/fifths of the Parliament), cannot be rejected by the Council.<sup>37</sup> The parliament also has the ability to reject the budget outright if a plenary vote is successfully passed with a two-thirds majority. The EP has rejected the budget on three occasions so far. Unlike the situation within the Australian system, the rejection of the budget by the Parliament does not bring the Union to a standstill. If a budget has not been passed by January 1, the Commission is permitted each month, under Article 227, to spend either one twelfth of the previous year's expenditure, or one twelfth of the stalled draft budget, the sum depending upon whichever figure is smaller. This system allows for the continuing function of the Union, but does not allow for the initiation of any new programmes.<sup>38</sup> The European Parliament's most significant power in relation to the budgetary process, namely that of discharge, is actually classified as a supervisory power, and will be discussed in further detail at the end of this section.

## **Constitutional amendments**

The Parliament's power in relation to constitutional amendments lies in the area of assent. Under the Single European Act (SEA) which came into force in July of 1997, the European Parliament has the right to 'joint decision-making for accession and association agreements'.<sup>39</sup> The EP's role in the assent procedure was consolidated by the Treaties of Maastricht and Amsterdam. Under the assent procedure, the Council unanimously adopts a procedure, which the Parliament either approves or fails. All EP votes on issues of accession, sanctions in the event of a breach of human rights and the creation of a uniform electoral system, require an absolute majority to pass, which can be difficult to achieve in light of the high levels of absenteeism in the Parliament.<sup>40</sup> According to Corbett, the assent procedure is 'a cruder form of Co-decision in that there is no scope for Parliament to put forward amendments to the measure in question'.<sup>41</sup> In the lead-up to the proposed European Union expansion scheduled to take place before the June 2004 European Parliament elections, the EP's power in relation to the assent procedure becomes increasingly important, as the Parliament has the power to halt any new State from being included in the Union.

## Appointment and scrutiny

As in case of the European Parliament's legislative and budgetary powers, the supervisory powers of the Parliament have increased significantly through a series of both intergovernmental conferences and inter-institutional agreements. According to Westlake, the European Parliament 'possesses a small arsenal of traditional parliamentary powers for scrutinising the activities of, and holding to account, the other community institutions'.<sup>42</sup> Both the Commission and the Council are obliged to reply verbally or in writing to questions put to them by the European Parliament.<sup>43</sup> This form of questioning has appeared to be far more successful in relation to the Commission rather than the Council, as the response comes from the Commissioner responsible for the area in question and the Commissioners are assisted by research staff. On the other hand, the Council's response comes not from an expert, but from the President-in Office, who is additionally limited by the difficulty of presenting a pre-emptive Council response, as often the Council has yet formalised its policy in relation to the issue.<sup>44</sup> Under the Treaties, the Commission, the Council of Ministers, Court of Auditors and the European Council, are all required to submit an annual report of activities to the Parliament. These reports are required to provide formal, public, quotable information, thereby allowing the European Parliament to possess essential raw material for adequate control and scrutiny.<sup>45</sup>

The European Parliament has two other supervisory roles. The first relates to its power over the appointment of the Commission. Prior to the ratification of the Maastricht Treaty, the Commission was appointed collectively by the Member States for a term of four years. From 1979 onwards, the Parliament has delivered a vote of confidence in every incoming Commission. This Practice was codified in 1983, and the Commission now delays taking its oath of office until it has received a vote of confidence from the Parliament. Under the Maastricht Treaty, the Parliament has gained more influence over the composition of the Commission via Article 158. According to the current Treaties, nominated Commissioners must appear in confirmation hearings 'before the appropriate parliamentary committees, according to their prospective fields of responsibility.'<sup>46</sup> The Parliament is still limited in its power over the appointment of the Commission. It cannot veto individual nominees, and only has the ability to approve or reject the Commission as a whole. The Parliament also has a role in the nomination for President of the Commission. Whilst the Maastricht Treaty only allowed the Parliament to be consulted on the issue of the Commission Presidency, in 1993 the Parliament chose to hold a vote on the President-designate. Although the Parliament's vote was non-binding, the nominated candidate, Jacques Santer, announced that he would withdraw his candidature if the Parliament were to vote

against him.<sup>47</sup> The Treaty of Amsterdam transformed the Parliament's vote on the Presidential nominee into a binding one.<sup>48</sup>

The Parliament also has the ability to censure the Commission, which requires a two-third majority of the votes cast, representing a majority of the current Members of Parliament.<sup>49</sup> To date, Parliament has never adopted a censure motion, but in March 1999, the Commission was forced to resign *en masse* to avoid such an occurrence.<sup>50</sup> Nine censure motions have been tabled in the Parliament, but all have either been withdrawn or defeated on the floor.<sup>51</sup> A motion of censure can only be addressed to the Commission as a whole, but the Parliament does have the ability to adopt a resolution which criticises an individual Commissioner, and indeed, there is nothing to prevent the Parliament from calling for a Commissioner to resign.<sup>52</sup>

The last of the European Parliament's supervisory powers relates to the discharge of the budgetary funds to the Commission. Discharge is 'a formal process which marks the closure of the accounts for the financial year in question and also serves as a political verdict on the performance of the Commission.'<sup>53</sup> Each year the European Court of Auditors (ECA) draws up an annual report in respect to the European Union's budget for the financial year. This report is sent to the European Parliament, which then decides if the Commission should be granted discharge. The Parliament has the ability to freeze certain items in the budget, and to release the funds only when it feels that certain conditions have been met. Alternatively, it can refuse to grant discharge for the entire budget. According to Corbett:

The act of granting discharge is more than mere endorsement. Article 89 of the Financial Regulation, which lays down the detailed rules for preparing and executing the budget, requires all institutions to 'take appropriate steps to act on the comments appearing in the decisions giving discharge.'<sup>54</sup>

The issue of discharge came to the forefront of European Union politics in 1999, when the European Parliament refused to discharge funds and attempted to censure the Commission thereby proving that the Parliament was prepared to use its powers to their full extent.

The EP's capabilities in terms of appointment and scrutiny, allows the chamber to exercise a distinct set of powers over the executive like commission. However, the scrutiny powers which the EP holds over the Council, are limited, and reinforce the idea that the Parliament is considered to be a less powerful institution than the Council. The powers held by the European Parliament, namely those of influence in the development of union

legislation, its role in the budgetary process, the influence of the Parliament in the ascent procedure, and its appointment and scrutiny powers, are basically identical to the powers traditionally attributed to second chambers operating in bicameral parliamentary systems.

## **What form of bicameralism is used within the European Union?**

If one accepts the premise that the European Parliament more closely resembles the workings of a second rather than a first chamber, the question of 'what form of bicameralism operates within the European Union?' arises. The final section of this paper will use Lijphart's typography to determine that the European Parliament works as a second chamber in a medium strength bicameral system.

Lijphart claims that there are three major differences between first and second chambers, which can be used to determine if strong or weak bicameralism exists within a two-chambered legislature. The first is the 'formal constitutional powers that the two chambers have. The general pattern is that second chambers tend to be subordinate to first chambers'.<sup>55</sup> Russell agrees, suggesting that, in the majority of cases, second chambers tend to have different powers from lower houses and, in most parliaments, are less powerful than first chambers.<sup>56</sup> Lijphart's second determinate of strong bicameralism is in the method of selection used for second chambers. He writes, 'Second chambers that are not directly elected lack the democratic legitimacy, and hence the real political influence, that popular election confers. Conversely, the direct election of a second chamber may compensate to some extent for its limited power.'<sup>57</sup> Using these two criteria, Lijphart claims that bicameral legislatures can be classified as either symmetrical or asymmetrical: 'Symmetrical chambers are those with equal or only moderately unequal constitutional powers and democratic legitimacy. Asymmetrical chambers are highly unequal on these regards.'<sup>58</sup> The third and final factor highlighted by Lijphart, is the design of second chambers. Lijphart writes that second chambers which over-represent certain minority groups, either by design or via electoral methods can be classified as incongruent. He cites second chambers operating within a federal system, as the classic example of incongruent bicameralism.<sup>59</sup> Those second chambers which are elected in an identical or similar manner to the first chamber are described as congruent.<sup>60</sup> Lijphart argues that by using the two afore mentioned divisions, it is possible to construct a classification of the cameral structures. He claims that there are four principal categories: Strong bicameralism, medium-strength bicameralism, weak bicameralism, and unicameralism.

According to Lijphart, strong bicameralism is characterised by both symmetry and incongruence. It should be noted that truly symmetrical bicameral legislatures are rare, and most parliaments which are classified as being an example of strong bicameralism, are moderately asymmetrical. In medium-strength bicameralism, one of these two elements is missing; this category is divided into two subclasses according to whether symmetry or incongruence is the missing feature. The third category is weak bicameralism in which the chambers are both asymmetrical and congruent. Finally, the fourth category is that of unicameral legislatures.<sup>61</sup> Using Lijphart's criteria, the next section of this paper will examine the European Parliament, and attempt to determine what form of bicameralism operates within the European Union.

In relation to Lijphart's first criterion, the European Parliament is bound by a set of powers formally ascribed in a series of treaties. The role played by the Parliament in the legislative process of the European Union is subordinate to that of the European Council of Ministers; however, the parliament does retain a veto over approximately half of all Union legislation, as well as a veto over further European Union expansion. Lijphart's second determinant of bicameralism, direct elections, has been used by the European Parliament since 1979. Although the European Parliament is not equal in power to the Council, it retains enough power to be defined as only moderately asymmetrical. As previously highlighted, the European Parliament allows for the over-representation of smaller Member States. Additionally, the Parliament is selected in a method which is radically different to that of the Council of Ministers. This difference in appointment methods, as well as the over-representation of smaller States, meets the necessary criteria for incongruence between the two chambers. Using Lijphart's model, the moderately asymmetrical nature of the relationship between the Council and the European Parliament, in addition to the incongruence which exists between the two institutions, ensures that the system must be described as one of strong bicameralism.

## **Conclusion**

Patterson and Mughan claim that the role of an upper house is to provide for differentiation in political representation, to allow for a close examination of legislation in order to prevent errors that may have arisen, and to delay the introduction of new legislation until all possible alternatives have been examined.<sup>62</sup> The European Parliament fulfils all of these roles. The European Parliament's method of election differs from that of the Council of Ministers, whose members are elected during national elections, usually

held on a different day to that of the EP election and, by representing a different constituency of a representative chamber. Additionally, in its restricted role within the legislative procedure, the EP's main function is to act as a 'house of review', in which it utilises its strong committee system to explore the repercussions of future Union legislation. As highlighted throughout this paper, the EP also conforms to the two additional roles which Russell ascribes to second chambers, namely, acting as a 'veto player' and helping to 'spread the burden of parliamentary work'. The European Parliament not only fulfils roles similar to those carried out by the majority of second chambers, it also holds powers which are generally attributed to second chambers. The influence which the EP has in the formulation of ordinary Union legislation; the role played by the Parliament in the budgetary process; the method of dispute resolution used in the conciliation committees; and the impact the Parliament plays in the accession process, are akin to the powers of second chambers. Having established that the EP does behave in a manner normally associated with second chambers, the paper was able to use Lijphart's typology, to highlight the fact that the EP behaves in a manner similar to that of a second chamber operating in a strong bicameral system. By establishing a framework in which the behaviour of the European Parliament can be readily understood through the role and behaviour of second chambers, future scholarship may be able to concentrate on the achievements of the Parliament, rather than lament its lack of powers as compared to first chambers within parliamentary systems.

## Appendix one

### How the budgetary process works

During February and March, all three institutions prepare their own annual budgets. Within this period, a trialogue<sup>63</sup> meeting is organised, and the institutions discuss possible priorities for the budget prior to the Commission releasing its draft.<sup>64</sup> The Commission then produces a draft of the Community's budget, after which the Council and Parliament hold informal discussions. In July, the Council has its first official reading of the budget. Prior to the Council's adoption of the draft budget, a second trialogue is held, with the aim being to seek agreement on the shape and content on the budget, before the draft is sent to the European Parliament in September.<sup>65</sup> In addition to the trialogue held between the two institutions, an official conciliation meeting between parliamentary representative and the budget ministers in Council is held. This provides both institutions with the opportunity to narrow the range of differences which may exist, before the Council holds its first reading of the draft.<sup>66</sup> Following the Council's adoption of the draft, a third trialogue is then held prior to the EP's first reading of the draft, after which a second conciliation meeting can also be held if it appears that positions of both the Council and the Parliament are somewhat distant.<sup>67</sup> In October, the EP forwards its amendments back to the Council, for a second Council reading. At this point, a fourth trialogue takes place in an attempt to overcome any outstanding differences prior to the EP's own second reading in December.<sup>68</sup> A third conciliation meeting is then held between the Council and the Parliament, usually the day before the meeting of Budgets Ministers to adopt the Council's second reading. 'At this stage, the position of the two parties is much better known but Parliament has an opportunity to make clear what it expects from the Council in light of its own first reading'.<sup>69</sup>

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## Endnotes

<sup>1</sup> I Would like to thank Dr. Narelle Miragliotta, Dr. Bruce Stone, Associate Professor Campbell Sharman and Simon Thackrah for their comments and advice.

<sup>2</sup> See for example, Netwhich and Falkner 1997; Tsebelis and Money 1997; Hix 1999; Neureither 1999; Muntean 2000; Faas 2002.

<sup>3</sup> See for example, Tsebelis and Money 1997, Lijphart 1999, Patterson and Mughan 1999, Russell, 2000.

<sup>4</sup> S., Patterson, & A., Mughan, *Senates: Bicameralism in the Contemporary World*, Ohio State University Press, Columbus, p 15

<sup>5</sup> M., Russell, 'What Are Second Chambers For?', *Parliamentary Affairs*, Vol. 54, 2001, p 443

<sup>6</sup> M., Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press, Oxford, 2000, p 32

<sup>7</sup> Corbett Et. al., *The European Parliament*, Fourth Edition, John Harper Publishers, London 2000, p 12

<sup>8</sup> Systems of proportional representation within multiple-member districts are designed to give political parties a share of the legislative seats directly proportional to their share of the votes cast in the election. (G. Lowenburg, & S. Patterson, *Comparing Legislatures*, Little Brown and Co., Boston, 1979)

<sup>9</sup> K., Neureither, 'The European Parliament', in N. Nugent, (Ed.), *Developments in the European Union*, Macmillan, London, 1999, p 78

<sup>10</sup> *Op. Cit.*, Corbett, p 122

<sup>11</sup> There is, however, an exception to this rule: committees may decide to divide the agenda for a particular meeting into items which are open and those which are closed to the public.

<sup>12</sup> C., Neuhold, 'The Legislative Backbone', Keeping the Institution Upright? The Role of the European Parliament in the EU Policy-Making Process', *EIoP*, Vol. 5 No. 10, 2001, <http://eiop.or.at/eiop/texte/2001-010a.htm> , p 9

<sup>13</sup> M., Westlake, *A Modern Guide to the European Parliament*, Pinter 1994, p 191

<sup>14</sup> *Ibid.*,

<sup>15</sup> C., Lodici, 'Parliamentary Autonomy: The Italian Senato', in *Op. Cit.*, Patterson and Mughan, p 244

<sup>16</sup> J., Smith, *Voice of the People*, The Royal Institute of International Affairs, London, 1995, p 74 ff.

<sup>17</sup> *Op. Cit.*, Corbett, p 176

<sup>18</sup> Rapporteur is an institution unknown to Anglo-Saxon parliaments, but frequent in Continental European ones. A specific member of the committee (and not the chair) is assigned the responsibility for putting together the committee's position on a bill, to report on the floor, to express the committee's positions by accepting or rejecting amendments on the floor, and to follow the bill on behalf of the parliament. (Tsebelis and Money P 204)

<sup>19</sup> *Op. Cit.*, Corbett, p 177

<sup>20</sup> The Consultation Procedure is still in use today and deals with legislation from areas as diverse as:

Common Community Policies

Institutional Matters

Budgetary Matters

Citizens Rights

Police and judicial Co-operation. (Corbett, p235)

<sup>21</sup> Under the Treaty of Amsterdam (1999) 'all legal bases subject to Co-operation were transferred to Co-decision with the exception of the following, all in the area of Economic and Monetary Union:

Article 99(5) -rules for the multilateral surveillance Procedure

Article 102(2) -Definitions for the application of the prohibition of privileged access

Article 103 (2)-Definitions for guarantees against community liability

Article 106 (2)-measures to harmonise the denominations and technical specifications of Euro coins.

<sup>22</sup> *Op. Cit.*, Corbett, p 191

<sup>23</sup> Nentwich, M., Falkner, G., 'The Treaty of Amsterdam: Towards a New Institutional Balance, *EloP*, Vol. 1 1997, No. 15, <http://eiop.or.at/eiop/texte/1997-015a.htm> , p3

<sup>24</sup> *Op. Cit.*, Shackleton, p 327

<sup>25</sup> *Op. Cit.*, M., Nentwich, & G., Falkner, p 2

<sup>26</sup> *Op. Cit.*, Russell, p 38

<sup>27</sup> W., Patzel, 'The Very Federal House: The German Bundesrat', in *Op. Cit.*, S., Patterson, & A., Mughan, p61

<sup>28</sup> With the entry into force of the Amsterdam Treaty on 1 May 1999... the Maastricht provision enabling Member States to reintroduce the common position after a failure in conciliation has been removed. From now on if the two sides fail to agree, the procedure is at an end, with neither the full council nor the plenary of the Parliament being able to alter the result of the negotiations between their respective delegations. (Shackleton P326)

<sup>29</sup> Shackleton, 'The Politics of Co-Decision', *Journal of Common Market Studies*, Vol. 38 No. 2, June 2000, p 327

<sup>30</sup> G., Tsebelis, & J., Money, *Bicameralism*, Cambridge University Press, Cambridge, 1997, p 178-179

<sup>31</sup> J., Mastias, 'A problem of Identity: The French Sénat' in Patterson, & A., Mughan, *Senates : Bicameralism in the Contemporary World*, Ohio State University Press, Columbus, 1999, p 175

<sup>32</sup> *Op. Cit.*, p122

<sup>33</sup> *Ibid.*, p 123

<sup>34</sup> *Ibid.*,

<sup>35</sup> Compulsory expenditure refers to all spending which directly result from the various Treaties, or from acts adopted in accordance with the Treaties. It broadly includes all agricultural expenditure, refund to Member States and expenditure arising from International Agreements with third countries. All other expenditure is deemed non-compulsory. (Westlake p 123)

<sup>36</sup> *Op. Cit.*, Corbett, p 225

<sup>37</sup> *Op. Cit.*, Smith, p 78

<sup>38</sup> *Op. Cit.*, Corbett, p 224

<sup>39</sup> *Op. Cit.*, Smith, p 88

<sup>40</sup> *Op. Cit.*, Corbett, p 204

<sup>41</sup> *Ibid.*,

<sup>42</sup> *Op. Cit.*, Westlake, p 174

<sup>43</sup> *Op. Cit.*, Smith, p 74

<sup>44</sup> *Op. Cit.*, Corbett, p 249

<sup>45</sup> *Ibid.*, p 250

<sup>46</sup> *Ibid.*, p 235

<sup>47</sup> *Ibid.*, p 235, *Op. Cit.*, Smith, p 75

<sup>48</sup> *Op. Cit.*, Corbett, p 235

<sup>49</sup> No. 34.7, *European Parliament Rules of Procedure*, 14<sup>th</sup> Edition, 1999, p 26

<sup>50</sup> In November of 1998, the ECA published its annual report relating to the 1997 budget. The report claimed that £3 billion (approximately five percent of the total EU budget) had been either 'wasted, embezzled or misspent.' The report was highly critical of the Commission and concluded by stating:

The incidence of errors affecting the transactions underlying the Commission's payments is too high for the Court to provide assurance about their legality and regularity. Many of the errors found in the payments provide direct evidence of failure to implement the control mechanisms... or to apply request checks before payments are made. (Tomkins p745)

To deal with situation, the European Parliament adopted a resolution which led to the creation of a Committee of Independent Experts. The role of the committee was defined as follows:

The Committee of Independent Experts to be convened under the auspices of the Parliament and the Commission detects and deals with fraud, mismanagement and nepotism, including a fundamental review of Commission practices in the awarding of all financial contracts.<sup>50</sup> ([www.europarl.eu.int/dg3/experts/en/reso14en.htm](http://www.europarl.eu.int/dg3/experts/en/reso14en.htm))

As a result of the Committee's report, the Commission resigned *en masse*, however, due to existing guidelines, all twenty Commissioners continued to work, until such time as a replacement Commission was installed. This outcome led the Conference of the Presidents of the Political Groups of the European Parliament to release a statement in which it claimed that it had 'unanimously stressed the need for the current Commission to be replaced as soon as possible.' The Conference also claimed that the Commission 'no longer had the confidence of the Parliament or the public at large.' (Tomkins p747

<sup>51</sup> *Ibid.*, p 243

<sup>52</sup> *Ibid.*, p 244

<sup>53</sup> A., Tomkins, 'Responsibility and Resignation in the European Commission', *The Modern Law Review*, September 1999, p 745

<sup>54</sup> *Op. Cit.*, Corbett, p 253

<sup>55</sup> *Ibid.*,

<sup>56</sup> *Op. Cit.*, Russell, p 33

<sup>57</sup> A., Lijphart, *Patterns of Democracy: Government and Performance in Thirty-Six Countries*, Yale University Press, New Haven, 1999, p 206

<sup>58</sup> *Ibid.*,

<sup>59</sup> *Ibid.*, p 207

<sup>60</sup> *Ibid.*, p 210

<sup>61</sup> *Ibid.*, p 211

<sup>62</sup> *Op. Cit.*, S., Patterson, & A., Mughan, p 9

<sup>63</sup> Trialogues are informal meetings held between the Parliament, the Council Presidency and the Commission. Trialogues are used during both the conciliation process (used during the Co-decision procedure) and the budget process. Trialogues allow each side to negotiate more freely in the non-official setting, and as there are a significantly smaller number of people present during the meeting, the process tends to work somewhat faster than either the conciliation meetings. (Corbett p 199)

<sup>64</sup> *Ibid.*, p 219

<sup>65</sup> *Ibid.*, p 220

<sup>66</sup> *Ibid.*,

<sup>67</sup> *Ibid.*, p 221

<sup>68</sup> *Op. Cit.*, Smith, p 78

<sup>69</sup> *Op. Cit.*, Corbett, p 223