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Introduction

chambers were called 'Senate'. Second chambers in different countries have evolved in different ways. In many countries, such as Britain and France, the second chamber has developed from a system of class-

The House of Lords is actually one of the largest parliamentary chambers in the world. The only parliament which is bigger is the (unicameral) Chinese National People's Congress with 2,970 members. The second chamber which comes nearest to the House of Lords in size is the French Senate, with 321 members. The average size of a second chamber for a country like the UK with between 10 and 100 million inhabitants is 90 members.

The absolute size of the House of Lords is also unusually large, as is the size of the House of Commons. Number of parliamentarians per head of population is relatively high in Britain as compared to, for example, the United States. However there are other countries of a comparable size (eg. France, Germany) where the size of the first chamber is similar and others (eg. Ireland) where the proportion of parliamentarians is relatively higher. These issues are not considered in detail here.

The smaller size of second chambers is often cited as a beneficial factor which, for example, makes debates and committees more manageable than those in the first chamber. This, coupled with other factors such as longer terms served by members of second chambers (discussed below), means that members of the chamber tend to work together more closely. This can help create a more constructive and less adversarial atmosphere in the chamber.

Methods of selecting members

First chambers in democracies are generally popularly elected by the people. Second tend to differ in their composition in some way, and may not be directly elected. Members of second chambers are chosen using a diverse range of methods. These may be broadly summarised as follows:

Direct election

In total, 24 of the 58 bicameral countries around the world use direct election by the people as the primary means of selecting members of the upper house. They however employ various electoral systems and means of distributing seats, which can be used to ensure that elections to the upper house differ significantly from those to the lower house.

The 20 countries in the table reflect the popularity of direct election. It is the commonest composition method amongst these second chambers. Seven are entirely directly elected and three more predominantly so. Elections employ a variety of systems - six using a broadly majoritarian system and four a broadly proportional system. But more important is the consideration of the upper house system in the light of that used for the lower house. In five cases, the lower house is elected using a proportional system, whilst the upper house uses a majoritarian system. In one case - Australia - the reverse is the case: the lower house is elected using the Alternative Vote, whilst the upper house is elected by the STV system of proportional representation. The US is the only country where both chambers use a majoritarian system, but the discrepancy between both the size of constituencies and the length of parliamentary terms makes these very different systems in practice. In three

Heredity

In only one other country in the world - Lesotho - is heredity the primary basis for upper house membership. In addition children of the king are entitled to sit alongside 71 other members in the Belgian upper chamber. (The other remaining parliaments including a hereditary element are the unicameral chambers of Zimbabwe and Tonga.)

Ex-officio

In some countries certain individuals - as with the Law Lords currently in the UK - become members of the upper house automatically. This is the case for ex-presidents in Italy, Chile, Kazakhstan, Uruguay and Venezuela.

Vocational / corporate

Territorial representation

The commonest representational base for second chambers around the world is territorial units - regions, provinces or states. In all federal bicameral states membership of the second chamber is based on representation of the states or regions. This is also true of around a quarter of unitary states.

However, as already indicated there are many different ways in which territorial units may be represented. State representation in an upper house may be of:

Powers

First and second chambers are generally also distinguished in terms of their powers. In the majority of cases the powers of the second chamber are less than those of the first. Of the 58 second chambers around the world, only two (in the US and Bosnia and Herzegovina) have greater powers than the lower chamber, 15 have roughly equal powers and 41 have fewer powers.

Generally government is not subje

In general the upper house has the power to either amend or reject legislation (subject to the dispute resolution procedure - see below). However, in some countries this is not the case. In Austria the upper house may not formally amend legislation, but may only 'object'. In the Netherlands and Russia the upper house may reject legislation, but cannot amend it.

Financial legislation

It is quite common for the second chamber to have more limited powers over financial legislation (as in the UK), or for this to be treated differently. Of course, financial legislation will be defined differently in different countries.

In addition to the seven countries in the table where ordinary legislation must be introduced in the lower house, another nine countries apply this rule to financial legislation. In Germany, financial legislation is treated as ordinary legislation and is thus introduced in the upper house. Aside from this there are only three countries where financial legislation may be introduced in the upper house - India, where the budget is introduced in both houses simultaneously, and Italy and Switzerland where the chambers have equal powers over all legislation.

In five countries the time given to the upper chamber to consider financial legislation is more limited than that given for ordinary legislation. In several, the powers of the upper house to amend financial legislation are more limited. In several cases the lower house has the final word on financial legislation, where it does not on ordinary legislation.

Resolving disputes

A key determinant of the power of an upper house is the way in which disputes with the lower house over legislation are resolved. There are three common ways for this to happen.⁵

First, one house may have the last word. The UK is unusual in that the 'suspensive veto' power of the House of Lords is defined in terms of the length of time which must pass before the lower house has the last word. Whilst suspensive vetoes are common overseas it is more usual for the delay to be caused simply by the length of time the upper house has in which to consider the legislation. After this the lower house can veto straight away. This applies, for example, in Austria, Belgium and Poland, and requires only a simple majority in the lower house. In three cases - the Czech Republic, Japan and Spain - a qualified majority (absolute or 2/3 majority) may override an upper house veto. In the Netherlands the upper house has the last word and in Mexico either house may have the last word, depending where the bill was introduced.

Another common option is to use a joint committee or joint session of both houses to adjudicate. In India a joint session of both houses resolves disputes. In five countries

⁵ These issues are discussed in more detail in a separate briefing: Resolving Disputes between the Chambers, Constitution Unit, May 1999.

a joint committee is used. In Switzerland the proposal of the joint committee must be accepted by both houses, or the bill fails. In France the joint committee's proposal is put, but if it fails the lower house has the deciding vote. In Russia and South Africa this may happen only given a 2/3 majority in the lower house. In Germany the lower house has the last word on some legislation, but on matters concerning the states the upper house has a veto. In this case the joint committee may be called twice, but if agreement is not reached the bill falls.

The third common procedure is simply for bills to shuttle between the houses until agreement is reached. This is the case in Canada (where an upper house veto is very rare in practice), in Italy and in the US. In the latter a joint committee may also be formed at any point, but its recommendations are not binding.

The final and most drastic option for resolving disputes is dissolution. This is the formal procedure in Australia, where both houses may be dissolved following a protracted dispute, and if necessary the bill will be put to a joint session of both houses following elections. This has happened on several occasions.

Constitutional amendments

It is usual for the upper chamber to have different powers over legislation which amends the constitution. For example in France the Senate has a total veto in the case of constitutional amendments, but only a delaying power over ordinary legislation. In Germany constitutional amendments must be passed by both houses with a two thirds majority. The UK is the only one of the 20 countries considered not to have a

Other powers

Where an upper chamber has limited powers over legislation, it will also tend to have limited powers to scrutinise government. It is quite unusual for government to be subject to a confidence vote in the upper house, although this does apply in some countries such as Italy where the upper chamber has equal powers. In some countries questioning of government ministers in the upper house is more limited than in the

Media attention

Because political leaders tend to be concentrated in the lower house, media attention on upper houses is often reduced. We see this in the House of Lords, but the same pattern seems to be repeated in most countries overseas.

Combinations of these factors tend to mean that upper house members work more closely together, scrutinise legislation in more detail, become more expert in specialist topics and operate in a more consensual way which is less driven by the party whip. These are the distinguishing features of second chambers, which often help ensure that they make a distinct and valuable contribution to the legislature. Of course, this can be over stated - on key issues chambers seem to divide along party lines, however the chamber is composed.

Table 1: Composition

	Lower House Size	Upper House Size	Composition	Term	Government members
Australia Senate	148	76 (51%)	Directly elected Senators elected by single transferable vote in six states and two territories. States have 12 seats each irrespective of population. Territories have two seats each. Lower house elected by alternative vote.	6 years for state Senators (half in each state elected every 3 years) and 3 years for territory Senators. Terms normally fixed.	Ministers may be drawn from either house. Ministers attend and speak only in the house of which they are a member, but may appear at committees in the other house. Questions in both houses.
Austria Federal Council (Bundesrat)	183	64* (35%)	Indirectly elected Members elected by provincial assemblies. Between three and 12 per province depending on population. Proportional system with at least one seat for second largest party guaranteed.	No fixed term - members change when provincial assemblies elected (5-6 yrs).	Ministers need not be members of either house of parliament. May attend either house and answer questions in both. Members of Provincial Governments may also attend the upper house and have right to be heard on matters concerning their provinces.
Belgium Sénat	150	71* (47%)	Mixed (largely directly elected) Forty members directly elected, 25 by Flemish		

Czech Republic Senat	200	81 (40%)	Directly elected Elected by majority vote in single member constituencies. Lower house is elected by a proportional system.	6 year fixed terms, one third elected every 2 years.	Ministers may be members of either house, or none. Have right to attend and speak in either house, irrespective of membership.
France Sénat	577	321 (56%)	Indirectly elected Senators are elected in 100 “départements” by an electoral college of councillors and MPs. Each has between one and 12 Senators, based on population but with overrepresentation of rural areas. An additional 12 Senators are elected to represent French citizens living abroad.	9 years, one third elected every 3 years.	Ministers may not be members of either house. May attend either house and speak. Answer questions in both houses.
Germany Bundesrat	656*	69 (11%)	Indirectly elected Members are appointed by state governments from		

Italy Senato	630	325* (52%)	Mixed (largely directly elected) 315 members directly elected by form of additional member system using regions (similar to lower house). Each president may appoint up to five life members (currently there are eight). Ex-presidents have ex-officio membership (currently two).	Up to 5 years (same day as lower house elections).	Ministers, including the Prime Minister, may be members of either house or none. Ministers attend both houses - irrespective of which they are a member in - for debates, bills, questions, etc.
Japan House of Councillors (Sangiin)	500	252 (50%)	Directly elected 152 members elected using majoritarian system in 47 constituencies with 2-8 members each. 100		

Table 2: Powers

	Ordinary legislation	Financial legislation	Dispute resolution	Constitutional amendments	Other powers
Australia Senate	Bills are introduced in either house. Upper house may amend or reject any legislation.	Must be introduced in lower house. Upper house may not amend but may “suggest” amendments, or reject.	Only means of resolving disputes is to dissolve both houses of parliament.	Must pass at least one house with absolute majority and then pass referendum by majority and with support in at least half the states.	

Austria

Federal

			session decides.		
Ireland Seanad	Bills are introduced in either house. Upper house has 90 days to consider bills passed by lower house.	Must be introduced in lower house. Upper house has 21 days to consider it and may not amend but only 'suggest' amendments. Seanad may ignore suggestions.	Lower house can override upper house veto within 180 days.	Treated as ordinary legislation, but must then pass a referendum.	
Italy Senato	Both houses have equal powers to introduce, amend and reject legislation.	Treated as ordinary legislation. Budgets introduced in two houses alternately each year.	No means of resolving		

Netherlands

First
Chamber

majority.

months delay.

As members are appointed there is no concept of constituency work in the upper house, whilst this is very time consuming for members of the lower house.

The last two factors mean that Senators are well placed to carry out detailed scrutiny of bills and committee enquiries

Disadvantages:

Despite its nominal provincial basis, there are no links at all between the Senate and provincial governments or parliaments. Co-ordination between the centre and the provinces goes on through other channels, whilst provincial governments call for involvement in Senate appointments, and reallocation of seats.

The main problem is lack of public respect for Senate due to its appointed basis. It is not seen as democratically legitimate. Appointees are seen as recipients of cynical patronage - particularly as the Prime Minister only appoints from his own party.

This means that this formally powerful house does not use its powers, as it is not accepted that an unelected house should be able to overturn an elected one. Challenges are rare, and only ever when political balance in the two chambers is different.

Powers: Sénat has only power of delay over most legislation. On constitutional amendments it has an absolute veto. Financial bills must start in the lower house and delay time is shorter. Government not subject to confidence vote.

Disputes: Disputes over legislation are referred to a joint committee of both houses. If its recommendations are not accepted, the lower house prevails.

The French Sénat builds on a long tradition of indirect representation of local government in French upper chambers. It fits within an extensive system of local government - France has around 37,000 local authorities.

Australia: Senate⁷

- Background:** Dates to Australian federation, 1900.
- Composition:** Members directly elected to represent states, using form of single transferable vote. Each state has 12 Senators and two territories have two each.
- Size:** 76 members
- Lower house:** House of Representatives has 148 members elected by alternative vote.
- Term of office:** Six years, with half elected every three years.
- Powers:**

Voters appear to support the system. An increasing number vote for minor parties, and split their votes between upper and lower house elections.

Disadvantages:

Governments are constantly frustrated by the Senate, particularly when it blocks election commitments. Both major parties oppose it in government but support it in opposition.

In contrast to most upper houses, party discipline and control is tighter in the Senate than lower house because of the close political balance there.

Competition between the parties for votes has led to Senators developing a constituency workload. This leads to some duplication, and less time for parliamentary work.

Directly elected Senators have no real link to state governments or parliaments. They represent parties far more than states, and relations between national and state governments uses other channels.

Italy: Senato⁸

- Background:** Established under new post-war constitution, 1948.
- Composition:** Most members directly elected using similar proportional system to lower house. Ex- presidents are ex-officio members, plus up to five members appointed by each president.
- Size:** 325 members at present.
- Lower house:** House of Representatives has 630 members.
- Term of office:** Five years, with elections held for both houses simultaneously.
- Powers:** Totally equal powers. Can initiate, amend or reject any bill. Initiation of budgets alternates between chambers. Government subject to confidence vote in both chambers.
- Disputes:** No means of resolving disputes between the houses.

The Italian second chamber is one of the most powerful in the world. It is one of the only examples of a Senate which can bring the government down through a vote of no confidence. It is also unusual in that it is elected using a virtually identical electoral system, on the same day as the lower house.

The main advantages and disadvantages of the system can be summarised as follows:

⁸ For more details see A Directly Elected Upper House: Lessons from Italy and Australia, Constitution Unit, May 1999.

Advantages:

The directly elected basis of the house means it has democratic legitimacy to use its powers to the full, including holding government to account.

It also has some of the general advantages common to other second chambers: it is smaller, its members are generally older, it is less in the media spotlight.

Disadvantages:

There is little to distinguish the two houses, aside from these features. The upper house largely duplicates the work of the lower house and adds little to the system except delay.

This leads to questioning the purpose of bicameralism in Italy, and calls for major reform such as changing to a regionally-based chamber.

Conclusions

There is much we can learn from overseas about the key elements of success in a second chamber. This paper shows that there are diverse models for second chambers around the world, and even amongst western democracies. However, some relatively constant elements seem to apply.

Size and atmosphere of the chamber

The UK is very unusual in having such a large second chamber. The small size of second chambers generally helps, along with older average age of members, longer terms, and the renewal of the chamber in parts, to a close working relationship between members and more independence.

Distinct composition

The Italian example shows that there is little point in a second chamber which simply duplicates the first. The composition of the second chamber allows for a different form of representation - for example representation of territorial units, indirect election, appointment of experts or experienced politicians, inclusion of independent members, small parties or other groups not represented in the lower chamber. Most second chambers use such a form of distinct composition.

Powers

The House of Lords is not unusual in having lesser powers than the first chamber. In terms of formal powers, second chambers which are fully or largely directly elected are generally more powerful. In five of the ten cases of directly elected chambers seen in the tables - Australia, Italy, Mexico, Switzerland and the US - the powers of the second chamber are roughly equal, or greater than, those of the first. The eight second chambers which are indirectly elected are generally weaker. The exception is Germany, which has equal powers with the lower house over the 60% of legislation which affects the states. The Indian second chamber, which represents the states, is also relatively powerful, whilst the upper house in the Netherlands has a veto but no amending powers. Otherwise these chambers, in

France, Ireland, Austria, Russia and South Africa are relatively easily overridden by the lower house.

Protecting the constitution

The UK is unique amongst the 20 main comparator countries in having no special process for the agreement of constitutional amendments. In most cases the upper house has more powers in this area, and may have an absolute veto or the power to call a referendum.

Composition, legitimacy and powers

The link between composition and powers demonstrates how it is essential that the composition of the chamber is seen to have legitimacy, and can carry public support. The chambers considered in this paper - particularly in the case studies - demonstrate the connection between the issues of composition and powers. In many cases the second chamber has been given formal powers befitting to its composition. In some, the powers of the chamber in practice are different to its formal powers because of its composition. In both the UK and Canada the upper chamber has a distinct membership, but does not have the credibility to make full use of its powers.

Thus the composition and the powers of second chambers - which form the structure of this paper - can be seen to be inextricably linked. They cannot therefore be considered independently. In the design of the new House of Lords the balance between composition, legitimacy and powers will need to be carefully considered.

There are many other difficult issues which will need particular attention. Based on overseas experience, three others are as follows:

Territorial representation

Whilst this is the most popular basis for representation in second chambers, there are various ways in which it may be achieved. As the examples above show, there are advantages and disadvantages of different models. The uneven devolution underway in Britain presents an additional challenge.

Party balance and independents

A classic problem with second chambers is that they can act as a permanent block where party balance is opposed to the lower house, but a rubber stamp where balance is the same. To mitigate these problems it may be desirable to cultivate independence amongst party representatives, and to include independent crossbench members in the house. However, there is little evidence of success overseas in these areas.

Mixed composition

While different systems have their disadvantages one alternative is to devise a mixed system of membership. Again there are few examples of this operating overseas, so it is difficult to predict both the dynamics of a house with mixed membership and how mixed membership (particularly of appointed and elected members) would affect the perceived legitimacy of the house.

In conclusion there are many models of successful second chambers overseas, and even more models of less successful ones. However, chambers which are successful in their own terms - such as those in Germany and Australia - carry out very different functions within the system in their countries. In devising a reformed House of Lords the foremost question is therefore what role we want the new chamber to fulfil. There may then be various means in which we can achieve this, and overseas examples can provide both positive case studies and cautionary tales.

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The Inter-Parliamentary Union's online database can be found at:
<http://www.ipu.org/parline-e/parlinesearch.asp>