Representing the Nations and Regions in a new Upper House: Lessons from Overseas

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Executive Summary

A classic function of second chambers is to represent states, regions or provinces within the national parliament. This is now the commonest form of representation in second chambers around the world. In Britain the second chamber is being reformed alongside a programme of devolution to the nations and regions. This opens up the possibility of a 'territorial' upper chamber in which these nations and regions are represented. This briefing looks at the options for a territorial upper chamber, and in particular draws on experiences from six other countries: Australia, Canada, France, Germany, Italy and Spain.

Some of the key points raised in the briefing include:

- In all federal bicameral states membership of the second chamber is based on representation of the states or regions. Whilst Britain is not becoming a federal state, it has been suggested that the devolution programme is making us 'quasi federal'.1
- Territorial second chambers in other countries which do not take account of regional
 devolution can develop problems. For example, the French upper house represents local
 government and the Spanish upper house largely represents provinces (similar to English
 counties). In both cases the development of autonomous regions has led to calls for the
 upper house to be reformed. If the upper house included representation for Scotland,
 Wales and Northern Ireland, flexibility would need to be built in to allow for the
 development of English regional government.
- Representation in a territorial upper house may take many forms. For example the chamber may be directly elected - representing the people, or indirectly elected representing devolved assemblies or governments.
- A directly elected chamber may be democratically accountable, but it will have no automatic link with the devolved assemblies and governments. Such links are potentially one of the benefits of a territorial upper house these could help bind the union together and create a forum for the nations and regions to formulate collective views on UK policy.
- An indirectly elected chamber is more likely to provide such links, but suffers from other
 potential problems. Members who already hold positions in the devolved assembly or
 government would be unlikely to have time to attend Westminster regularly. Members
 elected by the assembly but who were not members of it would not automatically
 provide the same benefit in terms of links.
- The German and Spanish systems provide some ideas of how links could be built between
 the two levels, without the problems caused by dual mandates. Examples include the right
 for upper house members to speak in the devolved assembly in their area, the right of
 assembly members to question them, and the fight of devolved assemblies or governments TD0.001e according.

Introduction

The representation of territorial units is one of the classic functions of a second chamber. This model was developed in the US, at the time of federation, as a way of ensuring that small states had fair representation in the national parliament. It was then followed by many other federal states including Canada, Germany, Switzerland and Australia. The representation of territorial units is now the commonest form of representation in second chambers around the world. In all federal bicameral states membership of the second chamber is based on representation of the states or regions. However, territorial representation in the second chamber also applies in around a quarter of unitary states, such as France, Spain and Poland.

This briefing looks at different models for territorial representation in upper houses overseas, and lessons that may be useful in the reform of the House of Lords. It considers which level of government is best represented in an upper house, how seats can be distributed to territories, and the advantages and disadvantages of direct and indirect representation in the chamber. It also considers means of enhancing the territorial role of the chamber through other methods in addition to its composition. As well as territorial powers, it suggests various ways of using standing orders of the chamber which could greatly enhance its territorial role. The paper teorial are price that are presented in the chamber which could greatly enhance its territorious Twer. It stlooms Tc4 Tw 32aof the chamber that the chamber which could greatly enhance its territorious Twer. It stlooms Tc4 Tw 32aof the chamber that the chamber which could greatly enhance its territorious Twer. It stlooms Tc4 Tw 32aof the chamber that the chamber which could greatly enhance its territorious Twer. It stlooms Tc4 Tw 32aof the chamber that the chamber which could greatly enhance its territorious Twer. It stlooms Tc4 Tw 32aof the chamber that the cham

cabinets, headed by the state Minister President. These delegations often consist of representatives of different parties, as many state governments are coalitions, but votes are cast as a block by the delegation. Members of the Bundesrat change as state governments change.

France

France is a unitary state, although 22 directly elected regional councils were introduced in 1986. The Senate represents local government. Members are elected for nine-year terms in France's 100 *départements* (similar to English counties). They are elected by a complex electoral college dominated by councillors from local *communes*³, but also including departmental and regional councillors, and members of the lower house. Most members of the upper house are councillors, and many also hold positions as local mayors or presidents of regions or départements.

Italy

Italy is also a unitary state, which is in a similar stage of transition to France. Although the post-war constitution planned for the development of directly elected assemblies in the 20 regions, these were not established everywhere until the 1970s. The Senate nominally represents the regions. Until 1993 its members were elected from regional party lists, but following a change in the electoral system most members are now elected in single member constituencies, with proportional balance achieved at regional level through additional members.

Spain

The Spanish state has travelled further down the route of devolution, with considerable powers passed over to 17 'autonomous communities' since the new constitution was agreed in 1978. However, these autonomous communities – representing Spain's nations and regions – have developed unevenly both in terms of the pace of change and the level of powers devolved. When the Senate was established the degree of devolution was unanticipated, and most members – 208 of 257 – represent the less powerful 'provinces', which are similar to English counties. These members are directly elected. The remaining fifth of Senators are elected by autonomous community assemblies.

Which level of government should be represented?

The concept of territorial representation in the upper chamber raises particular challenges given the constitutional developments which are changing the face of the UK. The Scottish Parliament, Welsh Assembly and Northern Ireland Assembly create a new layer of devolved government, which may be extended over time to cover the English regions. However, the future pattern of development is uncertain.

In federal states there is a relatively clear choice about which level of government will be represented in a territorial chamber. This is illustrated by the representation of states and provinces in Australia, Germany and Canada. However, in non-federal states the choice may be less clear. All the countries considered here include more than one level of sub-national

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³ There are over 36,000 local authorities in France, known as *communes*. This amounts to more local authorities than the whole of the rest of Europe put together. The proliferation of local councillors – around 500,000 in total – accounts for their over-representation in the electoral college. Although the election takes place at the level of the département, councillors from the local level make up 95 per cent of voters.

Madrid area has double the population of Castilla-León, but the latter has four times the number of Senate seats.

The form of distribution of seats in an upper chamber may therefore be unbalanced, and frequently is, in order to provide a strong voice for small states or underpopulated areas. However, this may lead to controversy – particularly amongst larger states or more densely populated areas which as a result feel under-represented. This can be a particular problem if it results in a party political imbalance in the upper house – as in France. However, the problems caused by uneven representation in the upper house may have a beneficial side. The unequal nature of representation in the Australian Senate allows politicians and the public to view it as the 'unrepresentative' house, even though it is elected by proportional TD0.0007 Tc0l-ficSd ularly amongshytsolt@lstdp.sdbbitthesberts@lsatesa-firmabeatio6 S224130100009 TicSeouestic

Members of the chamber are selected directly for that purpose: this applies whether
members have been elected or appointed. They will either have a particular interest in the
work of the upper house, or be considered by others to be particularly suitable. Unlike
members who hold dual mandates (see below) those who represent the public directly are
more likely to be free of other commitments and able to apply themselves to the work of
the chamber on a full-time basis.

However, such a system also has a major disadvantage, which is:

• Members have no automatic connection with other governmental structures in the area TfOf3Tf3Dow it

Option 2: Representation of assemblies

If one of the objectives of the second chamber is to link national government to that in the territories, then one method is for its members to be elected 'indirectly' by members of subnational assemblies. This form of representation is also common overseas. In Spain one-fifth of members of the Senate are elected by the members of 'autonomous community' assemblies. In other countries – such as Austria and the Netherlands – all members of the upper chamber are elected in this way. In France members of the Senate are not elected to directly represent one particular local authority, but they are elected by a college largely made up of councillors, from a pool of candidates who are also mostly councillors.

The advantages of such a system include the following:

- There is an institutional link: instead of having two disjointed bodies of politicians representing the same territorial area as might happen with direct election or appointment there is a formal connection between the two levels of government. Upper house members who answer to an electorate of local or regional politicians should be more likely to familiarise themselves with the politics of the territory in question. In some systems members elected indirectly must be members of the assembly which elected them (eg. The Netherlands), and in others this is not a requirement (eg. Spain). However, whether or not upper house members are local politicians themselves they are more likely to bring these local interests to the table than members who are directly elected.
- The second chamber can help bind different levels of government together: indirectly elected upper house members with links to territorial assemblies may help different levels

• Links with the assemblies may not be meaningful: Members of the Spanish Senate who are elected by territorial assemblies, but are not members of them, may have almost as little contact with these assemblies as their directly elected counterparts in Italy or Australia. In fact these members are frequently accused of being solely representative of their party, rather than their autonomous community, and indistinguishable from the directly elected Senators they share their benches with. Even those who are members of their assemblies provide no formal report from the Senate to their assembly or from their assembly to the Senate. There is no real evidence that the Senate spends more time debating regional issues than the lower house. Likewise in France the Senate is more a house of conservative rural interests than an institutional link between national and local government. The Senate seems to take no more interest in local governmentse in Fr

Option 3: Representation of governments

The German parliament is the only example in the world where the upper chamber is entirely comprised of members of the governments of the member states.⁸ It has been said that the closest comparator to the German Bundesrat is the European Council of Ministers.

There are considerable advantages to such a system:

- It creates real institutional links between states and the centre: The Bundesrat links senior decision-makers from all the states, and provides a forum for debate and negotiation with representatives of central government and MPs. It means that separate state-federal conferences, while these still go on, are part of the same decision-making process, rather than divorced from it as in Canada and Australia.
- It makes intergovernmental relations transparent: Whilst inter-ministerial conferences and bilateral negotiations between states and the centre may take place out of the public eye, the Bundesrat allows access to the media and other interested parties, and its decisions are on the public record. The existence of this forum forces state and central governments to make their positions clear and their decisions more transparent.
- It genuinely binds regional and national concerns together: Because state governments can scrutinise national policy, and because they bring their own policy concerns to the table, this fosters a better understanding between the states and the centre and allows joint strategies to be developed. It may even result in territorial governments being prepared to effectively 'pool' their powers to legislate upwards since they have an opportunity through the upper house to influence national legislation. This happens to some extent in Germany.
- **No voter fatigue:** As with a chamber representing the assemblies, this model does not require direct voter involvement

Nevertheless there are also major **disadvantages** to such a system, even where – unlike in the UK – there is a federal system within which it can operate:

- Dual mandates: The problem of dual mandates is even greater for those who are members of territorial governments than for those who sit in assemblies. The result is that the German Bundesrat is not a parliamentary chamber in the usual sense of the term. It meets only once every six weeks, for a session which generally lasts around half a day. There are no lengthy debates in plenary sessions, with most negotiation going on in committee. Instead plenary sessions, which are generally poorly attended, are quick and efficient events where positions negotiated in committee are formally voted on. Meanwhile the committees themselves are attended almost exclusively by civil servants, who deputise for ministers.
- Lack of public involvement: Even more than where second chambers' members are elected by territorial assemblies, the public are excluded from the choice of who sits in the chamber. This has the potential to lead to discontent about the work of such an exclusive institution. Although these problems do not generally occur in Germany, there is some concern about the extent to which decisions are taken by bureaucrats in committees behind closed doors.

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⁸ The upper chamber of the Russian Federation includes two representatives from each territory, one representing the government and the other the parliament.

Whilst there are a number of **practical issues** which would need to be considered in the design of such a chamber these are not considered here as this is not a model which could be adopted in the UK in the short to medium term.

Powers

The German Bundesrat is successful at binding the states and the national parliament together because of the particular nature of German federalism. Whilst most policy is decided in outline at national level, the implementation of this policy, and the consideration of its detail, goes on in the Länder. This is illustrated by the fact that just 10 per cent of German civil servants are employed at national level. The Länder are the mechanism for implementation of government policy and thus central to decision-making. This is reflected in their powers in the Bundesrat, where they have an absolute veto on all bills affecting their work – around 60 per cent of legislation. This includes most financial legislation. The existence of two categories of legislation in Germany, and the power of Bundesrat veto over one of them, further strengthens the institution and the links between national and state levels.

If the powers of the Bundesrat were not so considerable, it would not be able to maintain the involvement of senior government ministers from the Länder. This would not be feasible if, for example, the upper house had only the power to delay legislation by two months, as in Spain. Here the Senate has no special powers over legislation affecting the regions, and this undermines its position as a territorial chamber. In France the upper house can be overridden by the lower house on all bills except for constitutional amendments. Such weak powers account for the relative tolerance by the public of its conservative bias and poor performance as a territorial chamber. If a chamber is to function effectively as a territorial upper house, these examples suggest that it must be given some genuine powers over territorial issues. However, in order to earn these powers it must also be seen as representative and legitimate by the public.

Achieving genuine territorial representation

Amongst the examples considered in this briefing only one—the German Bundesrat—can be considered as a genuine territorial chamber. Not only do its members come from the states, but they represent state interests in a meaningful way, and thus help to bind the states to the centre. But even if the German model were a desirable one for the UK, it will not be achievable in the near future. Regional government has yet to develop across most areas and the nature of the relationship between the centre and the territories will be very different to that in Germany, even if it does.

However, there are other aspects of the German system, aside from the representation of state governments in the Bundesrat, which help make the upper house an effective territorial chamber. Some of these, alongside some lessons from other countries, could be used to create more genuine links between the centre and the territories than exist in many second chambers:

• Sitting in territorial groups: The German Bundesrat is the only one of the territorial second chambers considered here where the members sit in territorial, rather than party, groups. However, such an arrangement would be straightforward to implement in any territorial chamber. In the French, Italian, Australian, Canadian and Spanish chambers members who nominally represent a territorial unit immediately form parliamentary groups on the basis

of parties and in most cases vote consistently as party blocks. Although the introduction of territorial seating blocks would not prevent this, it would be an important symbolic gesture and might encourage some collective work amongst members of different parties representing the same geographical area.

- Voting in territorial groups: More important than seating arrangements in the German upper house is the fact that its members vote as territorial blocks. A position must therefore be negotiated amongst members of the group who may represent different parties on every decision taken. In Germany this is quite natural, as the members of the groups work together in state coalition governments. In fact the positions they take in the Bundesrat are not a matter of negotiation amongst individual delegates but the product of state government policy. However a similar arrangement exists in the South African upper house, which represents the provinces, where certain decisions are taken by each province having one block vote. Here the members are appointed by parties to reflect their in the provincial assemblies. It might be possible to demand the UK upper house act this way, which would require negotiation territorial area on each issue. If the balance of parties in the termination to that in the respective assemblies this could also help ensure consistency of view coming from the territorial area.
- Reporting to territorial assemblies: In Australia, Canada and Ita between members of the Senate and the state/ provincial/ regional the only link with local authorities is an informal one, via the dual where the regional members of the Senate are elected by regional as formal reporting mechanism or accountability to these assemblies. The rule is Germany, where Bundesrat are constantly answerable to Lände they are members of Länder cabinets. This accountability will include all actions on Bundesrat matters. In addition some assemblies have special Becommittees to monitor the work of the chamber, and in all cases there will state assembly if the government is due to take a decision on a key issue before Bundesrat.

Although these features are unique to Germany, there is no reason why they should apply equally well to a second chamber which represents territorial assemblies, or even one which is directly elected. Members of the upper house representing a territory could be required – whether or not they are members of the territorial assembly – to come and answer regular questions in the assembly and/ or account for their work in its committees. Members might also be given automatic speaking rights in the assembly if there were

abuse access to the national stage in order to publicise partisan agendas. In Germany speaking time in the Bundestag is strictly allocated to parties and any external speaker cuts into the time allocated to their party's parliamentary group. With this arrangement the system seems to regulate itself effectively, through party channels. In designing such a system speaking rules might also be introduced to require territorial representatives to restrict their speeches to purely territorial issues.

- Territorial committees or debates in the upper house: If the upper house is the territorial chamber, it should also be given primary responsibility for any special debates or scrutiny on territorial issues. In the Spanish Senate a special committee exists for territorial issues, which scrutinises legislation from this perspective and provides a general forum for debate amongst representatives of the nations and regions. There is also formally an annual debate in the chamber itself on the state of devolution in Spain. Although these initiatives have had little impact in Spain, due to lack of political will, they are more than exists in many other countries. There is no reason why they should not succeed elsewhere.
- Initiation of legislation by territories: In Spain autonomous communities may propose legislation to the national parliament, which may be introduced at the first reading debate

Powers

The territorial nature of the chamber will be reinforced if it is given some powers which specifically relate to territorial matters. In policy terms it is difficult to predict what these might be in advance of devolution in England. However at the outset the chamber could be given special responsibility as the guardian of the new constitutional settlement, including devolution, and a special role in any future developments. The powers of the chamber could be kept under review if devolution in England occurs.

• Achieving genuine territorial representation

It may at first seem instinctively obvious that links between the second chamber and the nations and regions will be greater if its members hold dual mandates. Although the German Bundesrat is a case in point, the Spanish Senate demonstrates that dual mandates are no guarantee of genuine links between the centre and the regions. In all the other countries considered here, the second chamber plays no real territorial role, beyond bringing party representatives to the chamber who have weak links with a province, region or state. However, there are many ways in which a chamber could be made more territorial, through standing orders of the chamber and of the territorial assemblies themselves. Some of these are discussed in the text, including speaking rights of upper house members in territorial assemblies, speaking rights of territorial assembly members in the upper house, seating and voting arrangements, annual debates on the territorial settlement and use of special committees both in the second chamber and territorial assemblies. These mechanisms, which are little used overseas, could be critically important in building a genuinely territorial chamber.

Finally, one concern which might be raised about the introduction of a territorial chamber in the UK is whether such a chamber would be able to retain the level of maturity and expertise which is generally associated with the House of Lords. Experience from some overseas countries suggests that these factors need not be lost, although others show the potential for this to happen. The Spanish and Australian Senates, in particular, are occupied by members who are largely indistinguishable from the kind of party representatives in the lower house. On the other hand Italy, which also has a directly elected upper house, has a tradition of mature individuals with a record of experience sitting in the upper house. This is partly a product of the minimum qualification of 40 years of age for membership of the chamber. It is also a feature of tradition, whereby the parties habitually put respected national figures at the head of their regional lists for the Senate. This pattern, which has never applied in Australia (despite a similar electoral system) has now broken down following the change to an electoral system entirely based on single member constituencies. Under a system where members of the new upper house were elected, directly or indirectly, to represent the nations and regions of the UK, a list-based system might enable parties to place senior and respected members at the head of these lists. A tradition of this might be started if existing life peers were to seek continued membership of the new upper house through running on party lists. This could be further encouraged by a qualification age higher than that for the House of Commons. A system of appointment on a territorial basis would obviously offer the same opportunity. If appointment and election using party lists were both seen as inappropriate, an alternative would be to balance territorial representatives in the chamber with some form of national members who were more likely to bring the desired qualities.

The Constitution Unit and the House of Lords

The research for this briefing was carried out as part of a comparative project on second chambers overseas, based at the Constitution Unit and funded by the Leverhulme Trust. The aim of the project is to inform the debate about reform of the House of Lords in the UK. The final output from the project will be a book, due to be published in New Year 2000.

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