

Contents

Introduction	1
Existence of second chambers	1
Composition of Second Chambers	2
Size.....	2
Methods of selecting members.....	3
<i>Direct election</i>	3
<i>Indirect election</i>	4
<i>Appointment</i>	4
<i>Heredity</i>	5
<i>Ex-officio</i>	5
<i>Vocational / corporate</i>	5
<i>Mixed membership</i>	5
Territorial representation	6
Parliamentary terms.....	6
Membership qualifications	7
Government members	7
Powers	8
Ordinary legislation	8
Financial legislation	9
Resolving disputes	9
Constitutional amendments.....	10
Other powers	11
Other factors	11
<i>Age</i>	11
<i>Constituency work</i>	11
<i>Media attention</i>	12
Table 1: Composition	13
Table 2: Powers	17
Case studies	22
Canada: Senate.....	22
Germany: Bundesrat	23
France: Sénat	24
Australia: Senate	26
Italy: Senato	27
Conclusions	28
References and further information	30

Introduction

This briefing is designed to give a flavour of the form that second chambers take in different countries around the world. This is intended to put the House of Lords in context, in terms of both its unusual features and some of the similarities it shares with other second chambers overseas. This in turn should help give a sense of perspective to possible directions for reform.

There are two forms of information provided in the paper. The first covers all second chambers in the world, based on information from the online database prepared by the Inter-Parliamentary Union (IPU), which collates information on the state of parliaments worldwide.¹ However, this is supplemented with more detailed information on 20 second chambers. This is for two reasons. The first is that in order to understand the workings of a second chamber it is necessary to look in more detail than is available from this source. Whilst the database provides good quality information about the composition of all second chambers it is rather more difficult to gather meaningful information on the powers and functions of such chambers. The second reason is that, as second chambers operate in a diverse range of countries in all continents, they are not all likely comparators for the UK.

The paper therefore provides more detailed information on a limited number of western democratic countries. For this purpose appropriate comparators were felt to be the countries in the OECD. All OECD member countries whose parliaments are bicameral have thus been considered. Of the 29 member countries of the OECD, 17 are bicameral. The remaining members (Denmark, Finland, Hungary, Norway, Turkey, Greece, Iceland, Luxembourg, New Zealand, Portugal and Sweden) all have single chamber parliaments. In addition, the paper considers three other countries: India, South Africa and the Russian Federation.

The paper is in three main parts. The first part provides a textual commentary about the existence, composition and powers of second chambers around the world and in these 20 countries in particular. The second presents the key information about the 20 main countries in two large tables, broadly covering the issues of composition and powers.² The third part provides some brief case studies looking at five of the countries and the advantages and disadvantages of their systems. The paper ends with some short conclusions.

Existence of second chambers

In November 1996 the Inter-Parliamentary Union database included details of parliaments in 178 countries, 58 of which had two chambers. 43 of these second

¹ This information is largely taken from a comprehensive survey of the database carried out in November 1996 by John Coakley and Michael Laver for the Irish government (details given at the end of this paper). Any changes since then will have been relatively minor.

² Information given is complete as far as possible. In a very few cases information was not readily available and is therefore not shown in the chart. In these cases any totals given in the text may not add to 20.

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-based representation, where the "upper" and "lower" chambers represented the respective classes. In contrast, in many federal states - such as Australia, Canada and the US - the second chamber was designed to represent the regions or states involved in the federation, whilst the lower chamber represented the population as a whole.

Territorial representation based on regions or states is now the most common foundation for a second chamber, even in non-federal states. Second chambers are most common in federal states, with 18 of the 22 such states listed by the IPU having a second chamber. This compares to 40 of the 156 unitary states. In some federal states, such as Australia and the US, state-level parliaments may also be bicameral. Forms of territorial representation are considered later in this paper.

Bicameralism is correlated not only with the form, but also the size of the state. All four of the federal states without a second chamber have populations below two million, and in Europe the largest country without a second chamber is Portugal (population 10 million). Although several countries have abolished their second chambers in recent times, these have all been relatively small states - for example New Zealand in 1950 (population 3.5 million), Denmark in 1953 (population 5.2 million), Sweden in 1970 (population 8.7 million) and Iceland in 1991 (population 300,000). Some federal states, such as Germany and Switzerland, began with a one chamber parliament and developed a second chamber later to represent their regions. Overall there is no clear trend worldwide either towards or away from two-chamber parliaments.

Composition of Second Chambers

The first key difference between a first and second chamber is generally their composition. The main elements of this are discussed below, and demonstrated in table 1 for the main 20 countries under consideration.

Size

An important distinguishing feature of second chambers is that they are generally smaller than first chambers. In fact Britain is one of only three countries in the world with a second chamber larger than the first (the others being Kazakstan and Burkina Faso). On average second chambers worldwide have around 60% of the number of members of the first chamber.

The table demonstrates the extraordinary size of the UK's second chamber compared to the 19 main comparator countries. The House of Lords has almost twice as many members as the House of Commons. In comparison all the other countries considered have second chambers smaller than the first. In only one case is the second chamber more than 60% of the size of the first (Spain at 74%). The biggest difference in size between the chambers is in Germany, where the second chamber is only 11% of the first chamber's size.

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

countries both houses use a proportional system for their election. However, in Belgium directly elected members make up only part of the second chamber, and in Japan different systems, with different parliamentary terms, apply. Only in Italy are two chambers elected using very similar systems with identical parliamentary terms.

In some countries there are other differences between the elections, for example in Italy voters in upper house elections are limited to those over 25, compared to 18 for voters for the lower house. Differences in the form of territorial representation are considered below.

Indirect election

Seventeen countries around the world use some form of “indirect election” as the predominant means for selecting members of the upper chamber. In six of the 20 countries considered in the table the upper house is entirely indirectly elected, and in two countries it is mostly so. Indirect election may take many guises, in each of which the electorate plays a part in the process, but not a direct one. For example, in France and Ireland a mixture of councillors and MPs make up an electoral college for the upper house. In Austria and India state parliaments elect its members. In Germany state governments appoint its members from amongst themselves.

Thus in most, but not all, cases indirect election is a means of representing local or regional government in the upper house. With the exception of the unitary states of France and Ireland, indirectly elected chambers in the table use this method to represent self-governed provinces or states in a federal system. Of these six federal states, three send representatives of their provincial legislatures and Germany is the only one where members solely represent their provincial governments. One - Russia - sends one representative of each. The last - South Africa - allows parties to appoint members on the basis of their strength in the provincial legislatures. Note that several other federal states - Australia, Mexico, Switzerland and the US - have an upper house which represents the states, but which is directly elected.

Appointment

Fifteen countries worldwide use appointment as the predominant means of selection to the upper house. However, the only western industrial country having a wholly-appointed upper house is Canada, where all members of the Senate are appointed by the Governor General, on advice of the Prime Minister.³ The other wholly appointed chambers are Thailand (where appointees are required not to be party members), Antigua, Bahamas, Barbados, Belize, Burkina Faso, Fiji, Grenada, Jamaica, Jordan, Saint Lucia and Trinidad and Tobago. In several countries a small number of appointees are included amongst members of the second chamber. These include India (12 out of 245), Ireland (11 out of 60) and Italy (eight out of 325). Only two countries, Malaysia and Swaziland, combine a significant number of appointees with (indirectly) elected members.

³ For details see *An Appointed Upper House: Lessons from Canada*, Constitution Unit, November 1998.

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

In some upper chambers there is an attempt to represent vocational or corporate groupings. The main example of this is Ireland, where the bulk of members of the Senate are (indirectly) elected representing five vocational categories. However, in practice these members are elected on a purely party-political basis.⁴ Other examples of this are Morocco, where two-fifths of the upper house are selected by trade unions, industry and agriculture, and India, where 12 members of the upper house are appointed on the basis of achievement in the arts, science and literature. The Bavarian state upper house, which was recently abolished, was also elected on a corporate basis.

Mixed membership

As indicated by several references above, it is relatively common for an upper chamber to include a mixture of members selected in different ways. Of the 20 countries in the table, six have some form of mixed membership for the upper house.

However, mixed chambers tend to be predominantly selected in one way. The commonest form of mixture is a predominantly elected chamber with a small number of appointed or ex-officio members. This is demonstrated in the table by the 11 appointed members in Ireland, 12 in India and a small but variable number in Italy. But there are examples of other models. The most diverse mix found is in Belgium, where the new constitution of 1993 included directly elected, indirectly elected, co-opted and ex-officio (hereditary) members in the new second chamber. The Spanish second chamber also comprises a mixture of directly and indirectly elected members, but with the latter accounting for only 19% of members.

Looking further afield, in Morocco 162 members are indirectly elected by regional councils and 108 selected by vocational groups. In Pakistan 79 members are indirectly elected by provincial assemblies and eight are elected by members of the lower house. In Malaysia 43 appointed members sit with 26 indirectly elected members, and in Swaziland the Senate comprises 20 appointed and 10 indirectly elected members.

⁴ For details see *A Vocational Upper House?: Lessons from Ireland*, Constitution Unit, February 1999.

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:

- **the governments** - through appointment by those governments, as in Germany
- **the parliaments** - through election by those parliaments, as in the Netherlands, Austria and India
- **the people** - through direct elections as in Switzerland, Australia and the US, or even through appointment, as in Canada.

It is also very common for this territorial representation to be reinforced by the equal representation of states or regions, irrespective of population. For example in Australia each state has 12 representatives in the Senate, although the population of states varies from 500,000 to six million. In the US every state has two Senators. This principle of equal representation, which can be a key difference between the two chambers, also applies in South Africa, Pakistan, Mexico, (unitary) Poland and the Russian Federation. This ensures that legislation cannot pass without majority approval in a majority of states.

In other states-based second chambers representation of states is based on population. This is the case, for example, in Austria. In many, representation takes some account of population but still gives relatively more seats to less populous states. This is the case in Germany and Canada.

Parliamentary terms

It is often the case that members of an upper chamber serve longer terms of office than members of the lower chamber. Life membership of the House of Lords is obviously an extreme example of this. Amongst the countries considered in the table, six years is the commonest length of parliamentary term, where this is fixed. This applies in six countries. Four countries have five year terms, four have four year terms and one - France - has nine year terms. As in the UK, terms in Canada are not fixed, and the same applies to appointed members in India and hereditary members in Belgium.

It is also often the case that the second chamber will be renewed in parts to allow longer terms to be combined with relatively frequent elections. Examples include the US, where Senators serve six year terms with one third elected every two years, Australia, where Senators serve six year terms with half elected every three years and France, where Senators serve nine year terms with one third elected every three years. In some cases the term of office will not be fixed in this way. For example in Austria, Germany and Russia members of the upper house change when state governments change. In all these examples - and in the UK and Canada - the upper

house thus has a rolling membership and need not (or cannot in some cases) ever be dissolved. Such a system adds to the continuity of the chamber, and can help to build relationships amongst its members (especially when coupled with long terms).

Membership qualifications

In many cases different membership qualifications apply to the upper and lower houses. In some countries these include property qualifications which are a hangover from a traditional class-based system. However, another common feature is a higher age qualification for membership of the upper house. Thus 14 second chambers worldwide - including Canada, India, Mexico and the US - have a minimum age qualification of 30 to sit in the second chamber. Eight - including France - use 35, four - including Italy - use 40, and one - Congo - requires members of the upper house to be at least 50. This, coupled with other factors, often means that the average age in the upper chamber is higher than that in the lower chamber.

Government members

Five of the key 20 countries considered operate a system of strict 'separation of powers', with government members not able to be members of parliament. In the remainder of countries government members may be in parliament, although in three cases they may not be members of the upper house (in all of these this is because the upper house is indirectly elected and includes members from provincial assemblies or governments). In several cases government members may be appointed from either inside or outside parliament. In ten cases members may be appointed from either house, although in some, such as Canada and Ireland, appointment of ministers from the upper house is limited by convention (the same is true of members of the cabinet in Britain).

But lack of ministers in membership of the chamber does not necessarily deny upper house members the ability to question and debate directly with government. The UK is unusual in limiting access to the parliamentary chamber only to ministers who are members of that house. This rule also applies in Australia, which was modelled on the British system. In only one other country are ministers unable to attend and speak in both houses - this is the US, where separation of powers means ministers may not attend either chamber. In all the remaining countries ministers may attend and speak in either house, irrespective of whether they are members. In many cases ministerial presence may be demanded by the upper house and in several cases ministers from the lower house - even including the Prime Minister - answer parliamentary questions there.

In addition, in at least two cases where the upper house represents the provinces, members of sub-national government may attend and speak in the upper house. This applies in Austria and South Africa. In Germany members of the upper house - who are themselves members of state governments - may also attend and speak at the lower house and its committees.

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 subject to a confidence vote in the upper house, and often it can only delay, rather than veto, legislation. Usually the powers of the second chamber over financial legislation are less than that over ordinary legislation, although powers over constitutional matters may be greater. In some cases other categories of legislation are also treated differently. This may give an upper chamber based on regional or state representation greater powers over legislation affecting state institutions and their responsibilities. Such systems apply in Germany, Belgium and South Africa.

The powers of the 20 second chambers we are considering in detail are summarised in table 2. These powers are also discussed below. For reasons already mentioned, information about powers of other second chambers is limited.

Ordinary legislation

For the purposes of this paper, ordinary legislation is broadly defined as government legislation which is not of a financial or constitutional nature (in individual countries definitions will differ). The paper does not give any consideration of, for example, private members' legislation, which exists in most countries and is often open to members of the upper house.

In 13 of the countries ordinary legislation may be introduced in either house, as in the UK. In the other seven legislation may only be introduced in the lower house. In three of these - Spain, Poland and the Czech Republic - this signifies a relatively weak house with few powers over legislation. However, in the Netherlands the opposite is the case - legislation is considered in the lower house first but the upper house then has a veto. In two cases - Russia and Austria - this signifies a clear division of responsibility between the two houses, where the upper house is the states' house. A similar division applies in Germany, which is unique in that all legislation is introduced in the upper house before passing to the Bundestag.

In ten cases the upper house has a fixed period to consider legislation. However, this varies considerably. For example, in Poland and the Czech Republic the upper house is limited to 30 days consideration and in Austria to eight weeks. However in India the upper house has six months to consider legislation, and the same time limit is applied to the lower house. In other countries there may be no formal time limits, or these may be set in standing orders, but in any case conventions may apply or pressure be brought to bear by government to ensure legislation is considered promptly.

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 written constitution or to use a special procedure to agree constitutional change. In all the others a special procedure applies for legislation which seeks to amend the constitutional document.

The commonest procedure for constitutional amendment, which applies in 14 of the countries in the table, is to require a qualified majority vote in both houses of parliament - using an absolute majority or 2/3 or 3/5 majority. In some cases this is combined with other requirements - in Mexico and the US it must then be approved by the states and in Australia is subject to a referendum which demands a majority in at least half the states. In Spain unless a 3/5 majority is achieved in both houses, 1/10 of members of either house may call for a referendum. A similar provision exists in Italy. In Belgium and the Netherlands both houses of parliament must be dissolved, and both new houses must approve the constitutional amendment by a 2/3 majority.

In other countries less stringent parliamentary conditions apply, but may be combined with a referendum. In France once both houses have passed the bill it is then approved either by a joint sitting or a referendum. In Switzerland, unless both houses can agree, the change is subject to a referendum. In Austria only the lower house must approve the bill, but the upper house may call a referendum. In Ireland the bill is treated as ordinary legislation but a referendum is automatic. In Canada the upper house may delay only, but any change is subject to agreement in a majority of states.

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 lower house, or may not apply at all.

In many countries the upper house has significant other powers, beyond those over legislation and government scrutiny. The commonest of these are involvement in the choice of the head of state, and of senior judges.

In five cases the upper house is involved in the election of the President. This happens in a joint session in Austria, the Czech Republic, Italy and Switzerland. In India the two houses are part of a larger electoral college. In Italy, Switzerland and the US, approval of the upper house is required for appointment of ministers. In Japan the upper house is involved in election of the Prime Minister, but the lower house has the last word. In Italy the government may be brought down by a no confidence vote in the upper (or lower) house.

In eight countries the members of the upper house are involved in selecting members of the highest courts. In most countries this duty is shared with the lower house, but in two cases it belongs to the upper house only.

Other factors

As well as simple rules of composition and powers, there are other factors which help to give second chambers around the world their distinctive character. Just three of these are mentioned below.

Age

As mentioned above, in many cases a higher qualification age is set for membership of the upper chamber. This and other factors mean its members may be older on average than those in the lower house. This applies in countries like the UK and Canada where members are generally appointed at the end of their career, in countries like Germany and France where membership of the upper house is dependent on holding other office, and in other countries such as Ireland simply as a product of tradition.

Constituency work

Often upper house members are less susceptible to constituency work - for example because they are appointed and have no constituency, because they represent a large region or state, or because they do not represent voters directly. This may give members more time for parliamentary work.

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

Table 2: Powers

Case studies

The paper now draws on a number of case studies of second chambers overseas, in order to see how particular combinations of composition and powers tend to operate in practice.

Canada: Senate⁶

Background: Dates to Canadian federation, 1867.

Composition: Members appointed by Prime Minister to represent provinces (where they must reside). Number of seats per province unequal, ranging from six to 24.

Size: 104 members

Lower house: House of Commons has 301 members elected by first past the post.

Term of office: Appointment is until age 75. Senate is never dissolved.

Powers: Formally has almost equal powers. Can amend or reject any bill indefinitely, except a constitutional bill if agreed by the provinces directly. Cannot initiate money bills. Government not subject to confidence vote.

Disputes: No means of resolving disputes between the houses.

The Canadian Senate was closely modelled on the House of Lords at the time of Canadian federation. In the absence of an aristocracy, a wholly appointed chamber was devised. Appointments are made by the Governor General on the advice of the Prime Minister. The chamber was given equivalent powers to the House of Lords at the time, which now makes it formally one of the most powerful second chambers in the world. However, the reality is that it does not use its powers.

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

Advantages:

- The basing of membership on the provinces can provide Cabinet ministers from areas where the governing party is unrepresented in the lower house. However in practice this rarely happens.
- The Senate is a repository of political knowledge and provides a resting place for retired politicians, which is helpful to the government.

⁶ For more details see *An Appointed Upper House: Lessons from Canada*, Constitution Unit, November 1998.

- 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.
- The stigma of an appointed membership means much good work, for example on Senate committees, goes unnoticed.

Germany: Bundesrat

Background: Established in German post-war constitution, 1949.

Composition: Members appointed by state governments from among their members. Between three and six members per state.

Size: 69 members.

Lower house: Bundestag has at least 656 members elected by additional member system in 328 single member constituencies and 16 list areas corresponding to states (number of members varies where necessary to ensure a fully proportional result).

Term of office: Members change as and when state governments change. House is never dissolved.

Powers: Power of veto over bills affecting the states and over constitutional bills - around 60% in total. Otherwise may be overridden by lower house. Government not subject to confidence vote.

Disputes: A 'Mediation Committee' comprising 16 members from each house proposes a compromise position if agreement is not reached.

The Bundesrat is a central and well established part of the German federal state, providing a forum for negotiation between central government and the Länder (states) which implement most government policy.

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

Advantages:

- The Bundesrat effectively ties state and federal governments together. It provides a forum, largely through its committees, for federal and state governments to agree the direction of policy together.
- Members of the Bundesrat are state premiers and senior ministers, representing their governments. State representatives sit together and vote as a block, even where the state government is a coalition. This reduces the scope for party battles between the houses. However, party balance of the two houses is still a major factor in their relationship.
- There is widespread respect and satisfaction with the chamber. Germany appears to be one of the few countries where there is no pressure to reform the upper house.

Disadvantages:

- The Bundesrat is not a parliamentary chamber in the usual sense. It meets in full session only 12-15 times a year in order to formally pass legislation agreed in committee. There is little debate.
- In fact Bundesrat members are not directly involved in much of the detailed work. Their seniority in state governments means that most committee work is left to officials.
- Even if the Bundesrat model was favoured, it is difficult to envisage at present how it could fit within Britain's evolving, uneven, federal structure. This would depend on devolved English governments.

France: Sénat

Background: Established in fifth republic constitution, 1959.

Composition: Members elected in "départements" by an electoral college including MPs and councillors. Each département elects between one and 12 Senators.

Size: 321 members

Lower house: House of Representatives has 577 members elected by double ballot.

Term of office: Nine years, with one third elected every three years.

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.

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

Advantages:

- The composition of the upper house acknowledges the centrality of local government within the French political system, and binds it closer to national government.
- The different representative base of the upper house gives it a distinct personality from the lower house, and its own culture and procedures have developed.
- The long terms of office served by Senators, and the fact that they have established credentials in their parties and communities - generally as local mayors - creates the potential for independence of debate and expert input.

Disadvantages:

- The complex, two-stage, electoral system used for the Sénat over-represents rural areas. This creates a permanent majority for the political centre right. The upper house has never been controlled by either the Socialists or the Gaullists.
- The pressure of dual local and national mandates creates a problem with absenteeism.
- Senators tend to represent party interests far more than local government interests. There are no clear examples of the upper house putting a local government perspective on legislation - its position depends instead wholly on the political balance of the chamber.
- The innovative dispute resolution procedure used to result in genuine dialogue. But the outcome of joint committees is now predictable on political lines and the stigma of not reaching agreement has disappeared. Now the lower house usually prevails.

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:	Virtually equal powers. Cannot initiate or amend money bills but can “suggest” amendments or reject. May reject or amend any other bill. Government not subject to confidence vote.
Disputes:	Major disputes between houses may be resolved by dissolving both houses and having fresh elections (followed by joint sitting, if necessary).

The Australian parliament is also much influenced by the British system, but instead of adopting an appointed chamber like the Canadians, the Australians devised a directly elected chamber to represent their states. Now elected by proportional representation, it sits alongside a lower house elected on a similar basis to our House of Commons. Since the early 1980s no government has controlled the upper house, and the balance of power has rested with minor parties and independents.

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

Advantages:

- The system provides for majoritarian and proportional chambers working alongside each other. This offers some of the benefits of both systems. Whilst government’s mandate is accepted, the proportional element in upper house prevents government passing laws without popular support, as the small parties will court public opinion by blocking them.
- Proportional representation ensures that there are representatives of each party in each state. As in Canada, this can ensure regional balance in cabinets, as well as in party groups.
- The close political balance in the house has helped a powerful and effective committee system to develop. Scrutiny in the upper house is now very detailed.

⁷ For more details see *A Directly Elected Upper House: Lessons from Italy and Australia*, Constitution Unit, May 1999.

- 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.

References and further information

- Coakley, J. and Laver, M. (1997). 'Options for the Future of Seanad Éireann', in *The All-Party Oireachtas Committee on the Constitution, Second Progress Report: Seanad Éireann*. Dublin: Government of Ireland.
- Derbyshire, J. D. and Derbyshire, I. (1996). *Political Systems of the World*. Oxford: Helicon.
- Lijphart, A. (1984). *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries*. New Haven: Yale University Press.
- Patterson, S. C. and Mughan, A. (1999) *Senates*. Columbus, Ohio: Ohio State University Press.
- Tsebelis, G. and Money, J. (1997). *Bicameralism*. Cambridge: Cambridge University Press.
- The Inter-Parliamentary Union's online database can be found at: <http://www.ipu.org/parline-e/parlinesearch.asp>