

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

*Meg Russell*

Senior Research Fellow

The Constitution Unit, University College London

## 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'.<sup>1</sup>
- 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 right of devolved assemblies or governments to address the upper chamber. Other arrangements such as seating upper house members in blocks representing the nations and regions, rather than parties, could also help build the territorial identity of the chamber.

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<sup>1</sup> See *Constitutional Futures*, Robert Hazell (ed.), Oxford University Press, 1999.

## 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 ends with some short conclusions, summarising some of the lessons for the UK.

The briefing draws primarily on the following examples, which all have 'territorial' second chambers (of very different kinds):

### *Australia*

Australia is a federation of six states, each of which has its own parliament and government. The Australian Senate comes very close to the classic US federal model. Each state is represented by 12 members in the Senate, irrespective of population (in addition two less populous 'territories' are represented by two seats each). Members of the Senate are directly elected, with half the Senators in each state elected every three years, for six year terms. Elections to the Senate use proportional representation (effectively by closed party lists at state level<sup>2</sup>) while elections to the lower house use the 'alternative vote' (AV) in single member constituencies.

### *Canada*

Canada is also a federation which was heavily influenced by the US model. It comprises ten provinces and two territories, each with their own parliament. The Senate is intended to represent these territorial units. Members are appointed by the Governor General (who represents of the queen) on the advice of the Prime Minister. Appointments are to age 75. Members of the Senate must live in the province which they represent.

### *Germany*

Germany is also a federal state, made up of 16 *Länder* which each have their own assemblies. The German upper house, the Bundesrat, is a unique parliamentary institution which represents the governments of the *Länder*. Its members comprise members of *Länder*

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<sup>2</sup> The Australian Senate elections are nominally by single transferable vote, which gives electors the chance to rank individual candidates by order of preference. However, voters may also choose to support a party list, which gives the party the decision how the voter's preferences are allocated. This is a popular option, given that the ballot paper may include dozens of candidates and is considered spoilt unless all the voter's preferences are used.

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*<sup>3</sup>, 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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<sup>3</sup> 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.

government. In France, Spain and Italy there are three such levels – broadly comparable to districts, counties and nations or regions in the UK. In France and Spain representation in the chamber is largely organised around the middle of these three levels, despite the existence of elected regional assemblies. However in France it is the members of the most local level who dominate the electoral college for the Senate and make up the majority of those elected by it. Italy, in contrast, organises elections to the Senate using the regions.

The level of government represented in a territorial second chamber is generally that which is most dominant. In federal states this is clearly the provinces or states. In Italy, France and Spain the choice is less clear, as regional autonomy has developed since the upper chamber was designed. Italy anticipated devolution to the regions in the design of its upper chamber, which is elected using regional boundaries. Both France and Spain have suffered in different ways from not building in such projections into the design of their Senates. French local government remains dominant, despite the development of regions, and the localities are resistant to the regions playing a higher-profile role. The Senate nominally represents the départements, but in fact remains dominated by overly traditional local government. This results in increasing tensions in the system. In Spain a lop-sided compromise was reached, with autonomous communities given one fifth of seats in the Senate. However, these authorities now cover all areas of Spain and are the dominant level of sub-national government. Hence the use of provinces to represent ‘territorial’ interests in the Senate looks increasingly inappropriate. Calls for reform are commonplace in both countries, and could perhaps have been avoided if flexibility had been built into the system to allow for territorial development over time.

## **Distribution of seats**

As already mentioned, the US Senate is the classic example of a territorial upper house. This model gives two seats in the Senate to each state in the US, irrespective of population. The design was the result of a compromise between large and small states which were entering the federation. Small states feared that their interests would be swamped in a parliament where the share of seats was based on population. In order to protect both large and small states the compromise was a bicameral parliament where the lower house was based on population and the upper house on equal representation for all states. Thus no law can be agreed without the backing of the majority of the people’s representatives and the majority of the states.

Many territorial upper houses have followed this model, in whole or in part. Thus while seats in lower houses are generally distributed in proportion to population, less populated areas may be over-represented in the upper house. The seats in the Australian Senate are distributed strictly on the principle of equality for states – each state has 12 Senators, although the populations of states vary enormously. The state of New South Wales has more than ten times the population of Tasmania, and in the lower house they have 50 and five seats respectively, but in the Senate they both have 12 seats. Canada applies a moderated version of this principle, where four broad ‘divisions’ of the country have 24 Senate seats each. However, the distribution of Senate seats is hotly contested by some under-represented provinces. In Germany a compromise principle is used, which neither gives equal representation to states nor is strictly based on population. The result is still that larger states are severely under-represented: the state of North Rhine Westphalia has almost 30 times the population of the state of Bremen but has only double the number of Bundesrat seats. In France, sparsely populated rural areas are over-represented, which results in a permanent centre-right majority in the Senate. A similar position applies in Spain, where the densely populated

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 representation. This is probably the only factor which stops it challenging the supremacy of the lower house (in Italy, where representation of regions in the Senate is proportional to population, no such safeguard applies and the two houses are almost identical). However, it is also important to the integrity of the Australian Senate that its political balance is relatively unaffected by the way seats are distributed to states.<sup>4</sup>

## Direct or indirect representation?

Whilst distribution of seats is important, the most crucial factor in the design of a territorial house is who its members are there to represent. This decision can have a major impact on both the way the upper house runs and the extent to which it is connected to other governmental structures within the relevant territorial areas. There are broadly three possibilities here. The members of the upper house may represent the *governments* of the territorial units – as they do in Germany; the *assemblies* of the territorial units – as in France or for a fifth of the seats in Spain; or the *people* of the relevant areas – via direct election, as in Australia, Italy and most of the Senate in Spain, or via appointment, as in Canada.

### *Option 1: Representation of the people*

The most straightforward way of representing territorial units in the chamber is to represent the people directly. This is normally done by direct election, which is the method used for the US Senate<sup>5</sup> and in many other countries, including Australia and Italy. In Canada the representation of the people is also direct, but is via appointment, rather than election, of Senate members.

The **advantages** of this form of direct representation are:

- **If elected, the chamber is democratically accountable:** members of the public are fully involved in the selection of its members, and so should feel more sense of ownership of the chamber and its work. The political balance of the chamber will directly reflect the will of the public at the time that it was elected.

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<sup>4</sup> In fact the balance of seats in the Senate is surprisingly similar to the balance of the national vote. In 1998 the winning Liberal-National coalition won 40 per cent of the national vote and 43 per cent of seats in the Senate (whilst winning 54 per cent of votes in the lower house). The political balance in the Senate could however become less reflective of the national vote if strong regional parties developed. For example, a successful Tasmanian nationalist party could win a disproportionate number of Senate seats.

<sup>5</sup> Although the US Senate comprised representatives of state assemblies until 1913.

- **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 they represent:** if one of the purposes of the second chamber is to tie parts of the nation together, it will not do this without proper formal links to state or regional government. For example, although Australia, Canada and Italy have assemblies at the state, provincial and regional levels, respectively, there is no link between these assemblies and the upper chamber. Likewise there is no link provided with territorial governments. In fact all negotiation between the territories over policy matters takes place between their governments and assembly members in other forums – for example state premiers’ conferences and ministerial councils in Australia and federal/provincial conferences in Canada. In practice members of the upper house are just another breed of national politician, selected on a territorial basis. This situation is worsened in Canada by the fact that Senators are chosen by the Prime Minister, with no involvement from provincial governments or parliaments.

If such a territorial chamber were adopted, the following **practical issues** would need to be considered:

- **If members are elected, by what system?** It is desirable to ensure that the membership of the upper house is distinct from that of the lower house – thus if both are elected they should use different electoral systems. In Italy, where the members of both houses are elected on similar systems, the second chamber is not a true territorial chamber but simply a duplicate of the first chamber.<sup>6</sup>
- **If members are elected, when are they elected?** To avoid introducing extra elections it may be desirable to run upper house elections alongside others – for example general elections, European elections or local elections. If the upper house is designed to be a territorial house the most appropriate choice would be to elect it at the time that territorial chambers are elected. This reform has been proposed by the Socialist Party for the Spanish Senate, whose elections are currently run alongside general elections. If territorial elections are staggered, this creates a rolling membership for the upper house.
- **If members are appointed, who appoints them?** The credibility of the Canadian Senate as a territorial chamber is severely damaged by all appointments being made by central government. There have been proposals for many years that provincial premiers take over these appointments, or at least that Prime Ministers are obliged to choose from a shortlist prepared at provincial level.

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<sup>6</sup> In Italy the original intention was for the Senate to represent the regions in a more meaningful way. However, by the time regional assemblies were established, more than 20 years after creation of the Senate, direct elections using a similar system to the lower house had become entrenched. Many current reform proposals in Italy focus on turning the Senate into a genuinely regional chamber.

## ***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 sub-national 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 of government to understand each other better. The chamber enables representatives of different territories to debate amongst themselves and with central government, which may facilitate better exchange of information and help develop a sense of common strategy.
- **Selection of members of the upper house retains a democratic basis:** whilst not adding to 'voter fatigue' through more frequent elections.

However, these advantages are weighed against **disadvantages** in practice. For example:

- **Dual mandates:** If the second chamber is to have a direct link with sub-national assemblies, these assemblies can be required to elect Senators from amongst their own members. However, this raises the problem of members holding dual mandates. Local councillors in France have little difficulty attending sittings of both the Senate and their local authority, because local authorities hold plenary meetings only infrequently. However, councillors are still burdened with local casework and other duties, and those who are mayors or presidents of their councils have particular difficulties fulfilling their national roles. This creates serious problems with absenteeism from the chamber.<sup>7</sup> Even greater problems apply in Spain, where autonomous community assemblies in some areas meet on most days of the week. This presents insuperable practical difficulties for those holding dual mandates. In some cases it leads parties to run candidates who are not members of the assemblies – in particular the Basque nationalist party does not permit dual mandates as it considers membership of the Basque assembly to be a full-time job.

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<sup>7</sup> This is equally a problem in the French lower house, which also includes a lot of local councillors and mayors amongst its members.

- **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 government issues than in any other subject.
- **There are no links to territorial governments:** In binding regional and national structures together it may, in any case, be insufficient to achieve this through links to territorial assemblies. In practice decisions at sub-national level are taken by governments, and unless the upper chamber creates a link to these, negotiations and agreements between territories will continue to take place at inter-ministerial conferences. Thus the upper chamber may be sidelined as a chamber of territorial interests and instead tend to become a chamber of purely party interests. In Spain the election of Senators by regional assemblies never results in government members being elected, as they are too busy with their responsibilities to also attend the Senate. Thus members elected are sometimes junior backbenchers who have no major input into regional decision-making. Often these will be sent to the Senate at the start of a promising career in order to gain national experience, or at the end of a long career as a political prize.
- **Lack of voter engagement:** Whilst the absence of direct elections can be a benefit, through avoiding voter fatigue, it also has its disadvantages. In countries where the upper chamber is indirectly elected the public are likely to have less understanding and interest in the institution. This may lead to lack of confidence in the chamber and calls for its reform.

This discussion raises a number of **practical issues** which must be addressed in the design of a chamber with an indirectly elected element. These include:

- **Must those elected be members of the assembly which elects them?** If they are this is liable to lead to problems with dual mandates, if they are not they may have no real links with the assembly.
- **How is party balance achieved?** Are the members a simple product of a proportional election in the territorial assembly, or is the number of members from each party predetermined (as in Spain)? If the latter is this proportional to the membership of the assembly, or the share of votes in the territorial area?
- **How are members elected?** Even if the party balance is predetermined, the members may be elected either by the whole chamber (as in Spain) or by separate party groups (as is likely to apply if the 'Weatherill' amendment is accepted for the transitional House of Lords).
- **When are members elected?** In most countries which use indirect elections, members from the territories change when territorial chambers are renewed. This creates a rolling membership of the upper house.

### ***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.<sup>8</sup> 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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<sup>8</sup> 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 strengths in the provincial assemblies. It might be possible to demand that members of a territorial UK upper house act this way, which would require negotiation between the parties in each territorial area on each issue. If the balance of parties in the territorial blocks approximated to that in the respective assemblies this could also help ensure that there was some consistency of view coming from the territorial area.
- **Reporting to territorial assemblies:** In Australia, Canada and Italy there is no link at all between members of the Senate and the state/provincial/regional assemblies. In France the only link with local authorities is an informal one, via the dual mandate. Even in Spain where the regional members of the Senate are elected by regional assemblies, there is no formal reporting mechanism or accountability to these assemblies. The exception to this rule is Germany, where Bundesrat are constantly answerable to Länder assemblies because they are members of Länder cabinets. This accountability will include answering for their actions on Bundesrat matters. In addition some assemblies have special Bundesrat committees to monitor the work of the chamber, and in all cases there will be debates in the state assembly if the government is due to take a decision on a key issue before the Bundesrat.

Although these features are unique to Germany, there is no reason why they should not 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 issues before the upper house which they wanted to raise for debate.

- **Speaking rights for ministers from territorial assemblies or governments in the upper chamber:** A central feature of the German system is that members of Länder governments have access to a national parliamentary platform to air their views on policy. This does not only apply to the Bundesrat: members of Länder cabinets also have speaking rights in the lower house, the Bundestag. In Spain, members of regional governments have the right to speak in a special Senate committee on regional affairs, but not in the chamber itself. In none of the other countries considered here is there any such link. However, the ability for representatives of territorial assemblies or governments to speak in the upper house would be an appropriate reciprocal arrangement if members of the upper house can speak in territorial assemblies. Again, this would avoid the difficulty of dual mandates, whilst creating a real link between the upper chamber and the territories. Some regulation would probably be necessary, in order to ensure that territorial representatives didn't simply

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 by representatives of the relevant assembly. Unfortunately such first reading debates take place in the lower chamber rather than the Senate. In Italy a similar provision applies, but there is no particular relationship between bills proposed by the regions and the 'regional' upper house. In Germany the members of state cabinets have a direct opportunity to propose legislation, through their membership of the Bundesrat. If the power of national legislative initiative were ever to be given to territorial assemblies in the UK, the introduction of such bills could be through a territorial upper house. This might include the right for representatives of such assemblies to introduce their bills to the chamber.
- **Absence of ministers from the upper house:** The nature of the German Bundesrat is such that its members could not be appointed to the federal cabinet, because of their existing state responsibilities. This creates an additional form of separation between the two chambers, helping to reinforce the Bundesrat's distinct territorial identity. No similar provision exists in Australia, Italy, Spain or Canada – although appointment of cabinet members from the latter two is rare.<sup>9</sup> If members of an upper chamber were engaged in some of the activities listed above – such as addressing territorial assemblies and their committees, dealing with territorial legislation, and scrutinising national legislation from a territorial perspective – this might be more than enough to occupy their time without also taking up ministerial appointments.

## Conclusions

As stated at the beginning of this paper, territorial representation is now the commonest form of representation in upper houses around the world. This applies particularly in federal states. Whilst Britain is not a federal state, the progress of devolution in the UK means that a more territorial politics is emerging. It is thus natural to at least consider the introduction of a territorial second chamber to replace the House of Lords, or a strong territorial element in any reformed house.

However, the uneven pattern of devolution in the UK makes it difficult to design such a chamber. It is currently unclear whether regional assemblies will develop throughout

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<sup>9</sup> In France members of the cabinet may not be members of either parliamentary chamber.

England. Even if they do, devolution will remain 'asymmetrical' with different powers devolved to Scotland, Wales, Northern Ireland and the English regions. These factors present particular challenges in the design of a territorial second chamber for Britain.

However, as discussed in this briefing, there are a number of lessons which we can learn from overseas in order to help create such a chamber. Some of these are positive experiences and others are pitfalls to be avoided. Presented in the order in which they were discussed in the paper, some of these lessons are:

- **Which level of government should be represented?**

With the territorial politics of Britain shifting, it is not obvious which level of government might be represented in a new territorial second chamber. In most countries this would be the regions, states or provinces. In Britain the answer is clear in the case of Scotland, Wales, Northern Ireland and London, as assemblies are already on stream for these areas. Governmental structures are emerging in the English regions, with the formation of regional chambers, and may develop into directly elected regional assemblies. This would therefore be the natural level to represent. To different degrees the Spanish, Italian and French examples all teach us that it can be problematic not to properly anticipate the development of regional government. If this were accepted in the UK some form of transitional procedures would need to be built into the chamber to enable English regional government to be accommodated if this develops.

- **Distribution of seats**

In many countries an equal number of seats in the upper chamber is given to each territorial area, irrespective of population. This ensures that less populated areas have a strong voice, but also reinforces the less democratic and more subservient nature of the upper chamber. In other countries some compromise between equal territorial representation and representation based on population is found. Over-representation of less populated areas becomes problematic if this introduces a political bias in the chamber. In the UK the population of the nations and English Government Office regions is relatively evenly spread by comparison with some countries which use the principle of equal state representation – ranging from 1.7 million in Northern Ireland to 7.9 million in London. However the impact of equal representation on party-political balance would need further study and consideration. Given the above figures one immediate result would be the over-representation of the Northern Irish parties in the upper chamber, for example.

- **Direct or indirect representation?**

Representation in a territorial upper house may be of either the governments, the assemblies or the people of the territories concerned. In the UK case the first of these options is not applicable in the short to medium term. If assemblies are represented by their own members this creates a serious problem with dual mandates (especially given the workload of the assemblies and the geographical distances involved in the UK) which seems to make such an option impractical. It also, in itself, is not enough to guarantee good links between the nations and regions and the national parliament. Election of members who do not sit in the assemblies could be carried out either directly by voters, which is perhaps most democratic, or by assembly members, which would help avoid voter fatigue. Where assemblies do not exist at present indirect elections might use councillors as an electoral college, coupled with mechanisms to ensure the political balance of the members elected mirrored that of the region at a general election. An alternative is appointment of members to represent territorial areas. This risks creating a chamber that is less legitimate in the eyes of the public. If such a solution was used it would be advisable to ensure there is input, at least, from the nations and regions into the appointment process.

- **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.

The Constitution Unit has already produced a large number of publications on reform of the House of Lords:

- Reform of the House of Lords (report) - £15
- Reform of the House of Lords (briefing) - £3
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- An Appointed Upper House: Lessons from Canada - £5
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