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Comparing Upper Chambers Across the World

Paper Four: Roles, Functions and Powers

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Introduction

This is the fourth in a series of papers that explore and compare upper chambers across the world with the British House of Lords. By describing and analysing the variety of experiences that different countries have had with their upper houses, lessons can be learned. This topic has gained increased salience with the election of the Labour government in 2024, which has promised various reforms of the House of Lords in its election manifesto. This series of papers will provide information about upper houses in different countries to inform the debate over future reform of the Lords.

This paper will explore the roles, functions and powers of upper chambers and will look at what part they play in the political system of different countries. Building on the previous papers in this series, Canada, Australia, Germany and the United States will be the main cases for comparison, although other countries will also be considered. This paper finds that upper chambers have broad roles and functions to carry out those roles. They also are given powers in order to fulfil their functions. Although it is difficult to measure the overall power of upper chambers given this complex web of roles, functions and powers, some classification is possible. The strongest upper houses are co-equal with the lower house and have similar powers, whereas the weakest are subordinate to it. The final paper in this series will consider previous efforts to reform upper chambers and will look at both successful and unsuccessful examples of reform.

1. The Logic of Bicameralism and the Features of Upper Houses

1.1 Previous papers in this series have considered the ways in which upper chambers vary across the world. These papers have described many of the aspects of upper chambers, and how they differ in every country. At the heart of the story is the concept of bicameralism – the idea that government should be divided into two chambers or houses – as the features of second chambers flow from the justifications for bicameralism.¹ Some academics claim that second chambers exist primarily in order to produce a second opinion; they would be of limited use if they served the exact same role as the lower house.² As of 2024, there were 79 examples of countries that practice bicameralism.³ More countries have a unicameral legislature than a bicameral one, but bicameral countries tend to have a large population, with many of the world's most established democracies being bicameral.

1.2 Differences in the basis of composition and the method of selection help to ensure that the two legislative chambers are not the same and thus adhere to the underlying logic of bicameralism. Several models exist to justify the composition of upper chambers and to ensure that bicameralism works properly. In some cases, the upper house was designed to represent a financial or political

¹ Philip Norton, "Adding Value? The Role of Second Chambers," *Asia Pacific Law Review* 15, no. 1 (2007): 4.

² Adrian Vermeule, "Second Opinions and Institutional Design," *Virginia Law Review* 97, no 6, (2011): 1436.

³ Henry Bolshaw, "Second Chambers Around the World: Size and Membership," *UK Parliament*, September 5th, 2024, accessed February 10th, 2025, <https://lordslibrary.parliament.uk/second-chambers-around-the-world-size-and-membership/>.

elite. Other upper chambers have a composition based on territorial representation, whilst some, like the *Seanad Éireann* have a vocational model designed to ensure the representation of different sectors of society. Many upper chambers adopt a partisan logic in their composition, ensuring that the political make-up of the upper house does not merely mirror the lower house.⁴

1.3 Whilst lower chambers are typically elected on a universal franchise in modern democracies, upper chambers have a variety of methods of selection in order to differentiate themselves from their lower counterparts and to help fulfil their role in the bicameral system. Nearly a quarter of bicameral countries have a wholly elected upper chamber, but many use indirect elections in order to select their upper chamber. Other upper chambers, like the House of Lords for example, are appointed. About a third of countries use a mixture of selection mechanisms, rather than just one.⁵

1.4 It is important to discuss the different aspects of upper chambers that were the focus of the previous papers in this series, because these aspects to a large part determine the roles, functions and powers of upper chambers. They do not exist in a vacuum, and they all interact with each other in order to form the unique character of each country's upper house. This is why upper chambers are so diverse; because there are countless combinations of features that then have an impact on the powers and roles of the chamber. The House of Lords is unique in its method of selection, but it is also unique in terms of its size and history; this then means that its powers and roles are also unique.

1.5 Whilst chambers may have similar powers on paper – both the Italian Senate and the Nigerian Senate for example, are co-equal with their lower houses – the political history and situations in these countries could mean that in fact the two chambers operate differently. This is why it is extremely difficult to classify the powers of second chambers. Not only do they have a wide range of powers, from common powers such as delaying and revising bills, to more special ones such as power over appointments or treaties; their *de jure* powers may not reflect the political reality in which they operate.⁶ This paper will therefore not attempt to systematically classify the powers of second chambers across the world, in relation to their upper houses. Instead, it will broadly consider the different roles and functions of upper chambers, and the powers that they have, with a particular focus on the British House of Lords.

2. Roles, Functions and Powers of Upper Chambers

2.1 Upper chambers have a particular part to play in the workings of the political system. Whilst words like 'roles', 'functions' and 'powers', are often used to describe what an upper chamber does in the operation of a political system, these terms can be conflated with each other and become a source of confusion, so it is important to define them. There is overlap between these terms, and some features of upper chambers can be difficult to categorise, yet they still provide a helpful framework for analysis of the responsibilities of second chambers.

2.2 Roles are the most macro-level features of a second chamber. Broadly put, they are the justification for the existence of the second chamber, and the justification of bicameralism as a whole. The role of a second chamber describes why it exists, and what its general purpose is. Roles are the features which are most commonly shared between different upper chambers because they are the least specific and seem to be similar whatever the additional historical or political context.

⁴ Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived*. (Oxford: Oxford University Press, 2013), 42-46.

⁵ Petr Svoren, *Comparing Upper Chambers Across the World: Composition and Selection*, Research Paper, Office of the Convenor of Crossbench Peers. (London: House of Lords, 2025): 10

⁶ Meg Russell, "Elected Second Chambers and Their Powers: An International Survey," *The Political Quarterly* 83, no. 1 (2012): 121.

2.3 Functions are the concrete tasks and activities that are performed in order to carry out these roles. Functions are what the upper house does on a daily basis and describe the specific things that the upper house does as part of the broader political system. If roles describe why upper houses exist, functions describe what they do.

2.4 Powers are the most micro-level features of a second chambers. They are the legal and procedural ways in which the upper house carries out its function. Powers are the specific things that the upper house can do constitutionally. They are not to be confused with 'power' in general which refers to the way in which the upper chamber is stronger or weaker politically than its lower counterpart.

3. Roles

3.1 Roles describe the purpose for which upper chambers are designed for. Upper chambers have a variety of roles, with three standing out in particular. They are the role of 'redundancy', representation and checks and balances.⁷ All three are important and they help to justify bicameralism, as they are roles that cannot be effectively played by the lower house alone. The effectiveness with which certain upper houses perform these roles differs and is dependent on a variety of factors.

Redundancy

3.2 Redundancy, by its nature, requires an upper house, a second chamber. It means that the same function is repeated in a very similar setting. The law is, in effect, scrutinised twice. The idea is that the second chamber provides a second look, or a second opinion. When legislation is put before the legislature the intention is that it will be improved with the help of a 'extra set of eyes'.⁸ This role can be fulfilled without judging whether one chamber is better at a certain function than another; simply by performing that function twice the end result should be better. Things that were overlooked, or mistakes that were made are taken care of by the other house.

3.3 In practice, upper houses do not simply repeat the work done by the lower chamber. In many cases they do more of a certain type of work, and they perform it more effectively.⁹ In terms of doing more detailed legislative work and scrutiny, upper chambers tend to excel at this. Whilst the executive may be part of the lower chamber meaning that the lower house is the initiator of most of the important legislation, legislative debates in the lower house tend to be more about principle rather than the detailed contents of the law itself. It is the repetition of the legislative process in the upper house, where there is typically a less partisan atmosphere, and more time, where a lot of legislative heavy lifting occurs.¹⁰ The less partisan atmosphere of the upper house is also helpful to government ministers. In a unicameral system there is pressure on a government minister not to give way or to revise a view, because it will be seen as weakness. This leads to bad policy-making and legislation. In a bicameral system, due to redundancy, the same minister can say, without loss of face "we can look at this again" and then bring forward appropriate amendments in the Lords. In this way, the second look by the upper house allows for a second look by the executive.

3.4 The role of redundancy is an important one, but there is also a danger in it. If the two chambers are too similar, then the process of redundancy becomes, in effect, redundant. Instead of a second thought, the upper chamber simply repeats what the lower chamber does and slows decision-making down. This danger is exacerbated when the two chambers have a similar composition as in Italy, where the two chambers have a similar political make-up as they are both elected using the same

⁷ Meg Russell, "What Are Second Chambers For?," *Parliamentary Affairs* 54, no. 3 (2001): 443.

⁸ Vermuele, "Second Opinions and Institutional Design," 1436.

⁹ Russell, "What Are Second Chambers For?," 451.

¹⁰ Russell, "What Are Second Chambers For?," 451.

electoral system on the same day. This leads to legislative gridlock, an undesirable outcome.¹¹ Whilst bicameralism tends to reduce the rate of policy change due to the greater number of veto players, and this is often seen as an advantage of the system, it can in some cases go too far and become ineffective. The House of Lords tends to perform this role well, because it is effective at carrying out its functions and is substantially different from the House of Commons.

Representation

3.5 Representation is another key role of upper chambers and refers to how the upper chamber should ideally represent a different set of people or interests than the lower house does.¹² Typically the role of representation is a major concern when designing a second chamber because it can inform the basis of composition and the method of selection. Whether the chamber is built on the elite model, the territorial model, the vocational model or the partisan model is reflective of the type of representative role that it was designed to play. However, the role is more complicated than mere design of the upper house.

3.6 The House of Lords was originally designed to represent the political and financial elite. Historically, this meant the aristocracy.¹³ Whilst some historical traces of this role remain, its nature has changed over time. With the elimination of most of the hereditary peers under the House of Lords Act 1999, the Lords has taken on a broader, if unclear, representative role. The fact that the Lords has become a chamber focussed on the expertise and experience of its members, means that it in effect represents a vast and diverse range of people. From former Prime Ministers and Supreme Court judges, to writers, campaigners and academics, the Lords does indeed represent the interests of people different from those represented by the House of Commons.¹⁴ Yet the fact that it has no new formal representative role and logic is a possible weakness.

3.7 Bicameralism exists predominantly in large states and in federal states meaning that the representative role of the upper house is usually a territorial one.¹⁵ The United States is the classic example of an upper house that has a strong representative role as there are two Senators that are elected for each state – regardless of the state's population – and there is a strong norm of Senators standing up for the interests of their state, even though it may displease their party or the President. Canada and Australia also have upper chambers with this territorial role, but they are also examples of when the role is not carried out as well as it could be.

3.8 Despite the fact that the Canadian Senate and the Australian Senate were designed to play a strong territorial role in a federal state, the behaviour of the two chambers is not that different from upper houses with no strong territorial role. Party loyalty and ideology is the typical deciding factor for votes as Senators do not vote in state blocs like they do in the *Bundesrat*, Germany's 'very federal' second chamber.¹⁶ Some scholars have gone as far as to doubt whether the Australian Senate is really a 'States House', though others allege that much of the chamber's territorial role plays out behind the scenes and so is not as visible.¹⁷

¹¹ George Tsebelis, "Compromesso Astorico: The Role of the Senate after the Italian Constitutional Reform." *Italian Political Science Review* 47, no. 1 (2017): 90.

¹² Russell, "What Are Second Chambers For?," 443.

¹³ Donald Shell, "The History of Bicameralism," *Journal of Legislative Studies* 7, no. 1 (2001): 7-8.

¹⁴ Eve Collyer Merritt, "Who is in the House of Lords? Members with Backgrounds and Professional Experience in Public Life," *UK Parliament*, March 11th, 2025, accessed May 12th, 2024, <https://lordslibrary.parliament.uk/house-of-lords-backgrounds-in-public-life/>.

¹⁵ Meg Russell, "The Territorial Role of Second Chambers," *Journal of Legislative Studies* 7, no. 1 (2001)

¹⁶ Russell, "The Territorial Role of Second Chambers," 114.

¹⁷ Campbell Sharman, "The Australian Senate as a States House," *Politics* 12, no. 2 (1977): 64-66; Russell, "What Are Second Chambers For?," 445.

3.9 What is evident from those examples is that in order for the upper chamber to properly act out its representative role, it must have functions and powers that allow it to do that; this is the key difference between the Australian and Canadian examples, and the German one where the *Bundesrat* has special territorial powers and rules, not just a formal logic of composition designed to ensure territorial representation. The *Seanad Éireann* serves as a similar cautionary example. Members are meant to ensure vocational representation, but in practice this is simply a formality during the candidate selection process, and the chamber runs predominantly along partisan lines.¹⁸

3.10 The House of Lords may seek to redefine its representative role in a territorial or vocational manner, but in order to do this successfully its functions and powers may have to change as well. Although the Lords does skew towards London and the South-East of England in terms of its membership, creating a chamber which effectively represents the nations and regions of the country would involve doing more than changing the balance of peers.¹⁹ Likewise, whilst the vast range of expertise in the Lords could act as a good basis for vocational representation, for the role to be truly carried out it is not just a matter of having the right membership, but of giving it the appropriate powers to fulfil that role.

Checks and Balances

3.11 The idea of checks and balances and separation of powers, was one of the earliest justifications for a second chamber, going all the way back to Montesquieu.²⁰ Bicameralism has a rich tradition in some of the world's most consolidated democracies such as the United States and the United Kingdom. Second chambers are often designed to ensure that the lower chamber does not become overmighty, and they are also there in order to place a restraint on the executive, acting as a 'veto-player' in the political process.²¹ This role is crucial; in the words of Meg Russell, 'the power of second chambers over governments may indeed be their single most influential defining characteristic'.²²

3.12 The role of the upper house in providing checks and balances is dependent on the powers of the second chamber. Many upper chambers have powers of delay, such as a three-month delay in the case of the *Seanad Éireann* or up to a year of delay in the British House of Lords, though often these powers come with caveats for money bills, as well as de facto restrictions based on the alleged illegitimacy of the upper chamber (for example, the Salisbury-Addison Convention means that since the House of Lords is unelected it does not reject on Second Reading nor pass any wrecking amendments to a Bill that was in the winning party's manifesto though some of the details and boundaries of this are disputed). Stronger upper houses, like the United States Senate or the Italian Senate can outright block legislation and have co-equal powers with the lower house meaning that they are effective in carrying out their role in providing checks and balances.²³

3.13 Many upper houses carry out this role effectively. Even though delay powers may seem quite weak, especially if they are of a short duration, and the government can afford to wait the issue out, sometimes a delay can significantly alter the legislative calendar and provide the government with a

¹⁸ Meg Russell, *A Vocational Upper House?: Lessons from Ireland*, (London: Constitution Unit 1999): 3-4.

¹⁹ UK Parliament, "House of Lords Data Dashboard: Regional Representation in the House of Lords," *UK Parliament*, February 8th, 2023, accessed May 11th, 2025, <https://lordslibrary.parliament.uk/regional-representation-in-the-house-of-lords/>.

²⁰ Montesquieu, *The Spirit of the Laws*, ed. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (Cambridge: Cambridge University Press, 1989), 160.

²¹ Russell, "What Are Second Chambers For?," 443.

²² Russell, "What Are Second Chambers For?," 446.

²³ Samuel C. Patterson and Anthony Mughan, "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers," *Journal of Legislative Studies* 7, no. 1 (2001): 42.

strong signal of opposition.²⁴ Stronger powers make this role easier to carry out, but it is also a question of the upper chamber's legitimacy as well as its penchant for such behaviour.

3.14 An upper chamber that doesn't ever oppose the lower house or the executive does not do a good job at ensuring checks and balances. For example, the Irish upper house has fairly weak powers already, but its composition (the *Taoiseach* can appoint members to help ensure that the chamber has a government majority) means that often it is little more than a rubber stamp.²⁵ If the upper house rarely challenges the government, many of the benefits of bicameralism are lost. In the Irish example, the *Seanad* is unpopular with the public, although it was narrowly and surprisingly saved from abolition during a referendum in 2013.²⁶

3.15 Some upper chambers may extend the role of providing checks and balances in the political system to safeguarding the political system as a whole. The Czech Senate for example is seen as a stabilising force and a guardian of Czech democracy, preventing any possible democratic backsliding.²⁷ In other countries, upper houses play an important role when it comes to constitutional matters, and act as an important check on the executive.²⁸ The House of Lords, for example, can veto a bill which would extend the life of a parliament, whilst a 2/3 majority in the United States Senate is required for amendments to the constitution. In this way upper houses have a key role in ensuring the functioning of a democratic political system. The fact that in general the executive only rarely has the power to dissolve the upper house, means that they are free to enact this role without impediment.

4. Functions

4.1 If roles are the aims of the upper house, then functions are activities that are performed to fulfil those roles. Functions are the day-to-day business of the upper house. The main function of upper chambers is in regard to legislation; they are after all part of the legislative branch. Mostly these functions concern legislative review. This means that upper houses largely focus on examining, debating, scrutinising and amending the bills passed by the lower house. They may use their powers, such as those of delay, or veto, to carry out these functions. In some political systems, upper chambers can also initiate legislation, though this occurs more in systems with a powerful upper house. Finally, upper houses may also have additional functions, such as those relating to the constitution, foreign policy, or the executive. Some functions are closely tied to roles and thus have already been alluded to in previous parts of this paper.

4.2 If the role of the upper house is to be a chamber of redundancy and place of 'sober second thought', then this role is most often embodied in the chamber's legislative functions. As this series of papers has shown, upper houses are remarkably different from one another. However, as Meg Russell has written, 'a concentration on detailed legislative work is one of the striking features of many second chambers of diverse powers and composition.'²⁹ Second chambers take a second look, and iron out any potential flaws or inadequacies before a bill becomes law. For a variety of reasons, upper chambers do the legislative legwork, and they tend to do it well. The thorough work of

²⁴ Russell, "What Are Second Chambers For?," 451.

²⁵ Russell, "What Are Second Chambers For?," 454.

²⁶ Muir MacCarthaigh, and Shane Martin, "Bicameralism in the Republic of Ireland: The Seanad Abolition Referendum." *Irish Political Studies* 30, no. 1 (2015): 121-131.

²⁷ Jan Hruška and Stanislav Balík, "Control Body, Representative of Regions, or Elitist Chamber of Wisdom? The Perceived Roles of Upper Chambers and the Case of the Czech Senate," *The Journal of Legislative Studies* (2024): 5.

²⁸ Meg Russell, "Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards," *Journal of Legislative Studies* 7, no. 1 (2001).

²⁹ Russell, "What Are Second Chambers For?," 451.

legislative scrutiny is, in general, not shared equally between both houses, though this is dependent on the design of the bicameral system.

4.3 The House of Lords, for example, has taken on an increasingly large workload when it comes to legislation. Between 1970 and 2000, legislative work in the Lords tripled; attendance went up in this period and the late-night parliamentary sittings and detailed legislative review became commonplace, with the house shaking off its previously sleepy image, especially since the 1999 reforms when it began to take an even more active and insistent role.³⁰ This shift is partially possible because of the composition of the Lords with life peers sometimes being experts in their field and thus able to provide the precise knowledge that Members of Parliament, who are required to be more generalist, may lack.

4.4 Chambers with a similar composition to their lower counterparts may be less effective at carrying out this function. If upper chambers share a similar party balance to the lower house there may be less of a desire to scrutinise government legislation properly and there is a danger of the chamber becoming a rubber stamp. Appointed houses may have the necessary expert members in order to scrutinise laws effectively, but the perceived limitations of legitimacy by some (as is the case in Canada and the United Kingdom) may mean that upper houses are reluctant to use their powers to carry out their functions to the full.³¹ Still, appointed upper house members play a slightly different role to elected politicians. In the United Kingdom, peers do not have a constituency and thus are not required to represent a specific electorate and to deal with problems that voters may have. They also do not need to seek re-election and can therefore spend more time on legislative duties.

4.5 Some upper chambers use committee systems in order to scrutinise bills and to perform their legislative function. The Australian Senate is especially renowned for its committees. The chamber is elected by proportional representation, unlike Australia's lower house, and this means that governments rarely have a majority and smaller parties and independents play an outsize role. The Senate effectively guides the passage of legislation and has been called the 'legislative powerhouse of parliament'.³² This example highlights the crucial impact that composition has on how an upper chamber works. In Australia, the partisan logic of composition means that the Senate can carry out its function effectively; in Ireland, the domination of the lower house and the executive means that the Senate is less effective.

4.6 Depending on the overall strength of the second chamber, it may also function as a place of legislative initiation. Chambers that are elected and have co-equal powers with the lower house tend to place an emphasis on this function. For example, the United States Senate and the Italian Senate play a fairly large role in initiating legislation whereas in Europe, it is often understood that the government, and the lower house, takes the legislative lead giving the upper house more of a consultative role.³³ In general though, money bills tend to originate with the lower house so even the upper chambers that take more of a role enacting legislation typically have this constraint placed upon them – the Australian Senate cannot initiate money bills for example.³⁴

4.7 Functions and powers have some degree of overlap. The American Senate has some powers over foreign policy, such as the ratification of treaties, and this means that the Senate therefore

³⁰ Michael Wheeler-Booth, "Procedure: A Case Study of the House of Lords," *Journal of Legislative Studies* 7, no. 1 (2001): 86.

³¹ Patterson and Mughan, "Fundamentals of Institutional Design," 47.

³² Russell, "What Are Second Chambers For?," 452.

³³ Hansko Broeksteeg and Erik Knippenberg, "The Role of the Senate in the Legislative Process." *Maastricht Journal of European and Comparative Law* 13, no. 2 (2006): 219-237.

³⁴ John Uhr, "Explicating the Australian Senate," *Journal of Legislative Studies* 8, no. 3 (2002): 12.

adopts a foreign policy function. For example, the United States Senate has ratification power over treaties, and they must pass with a 2/3 majority.³⁵ A recent example of the Senate performing this function is when they rejected the UN Convention on the Rights of Persons with Disabilities (CRPD), as it did not get the required super-majority of votes.

5. Powers

5.1 Powers are the steps that upper chambers can take in order to perform their functions and fulfil their roles. They describe the legal and constitutional levers that the upper chamber can pull to exercise power in the political system. Powers are closely related to functions. A chamber may be given specified functions in the constitution and then receive powers in order to carry them out, or it may be given powers and use them to create and enact a new function over time. Many of these powers have already been explained above, when discussing how upper chambers fulfil their roles and functions, yet it is worth going over some of them again in more detail.

5.2 Upper chambers tend to have a substantial set of legislative powers with co-equal chambers having access to a wider and more powerful set of options. One typical set of powers are delay powers which are used to signal displeasure with bills that have passed the lower chamber. The House of Lords has the power to delay bills for up to one year through parliamentary ping pong.³⁶ In Ireland, the maximum delay for legislation is ninety days, whilst in Japan and Spain it is just two months – the longer delay, the more significant the powers of the chamber are, as they can do more to thwart the lower house.³⁷ The effects of the delay can range from a minor annoyance to a significant set-back depending on factors such as the stage in the parliamentary term, and the political climate of the time.

5.3 There are other powers that upper houses have beyond formal delay. One such method is the ability to call for a joint conference committee to create a compromise between the lower and upper chamber. In France, when the Assembly and the Senate disagree the government can call for a *commission mixte paritaire* to draft a compromise text, with the National Assembly having the final say – in practice this is rare however, as the two bodies usually resolve their problems informally or the government withdraws the bill.³⁸ The German *Bundesrat* has similar powers in the form of conciliation committees that mediate between the two chambers.³⁹ The *Bundesrat* is more powerful when it comes to legislation that affects the *Länder*, where it has an absolute veto whereas on ordinary legislative business its veto can be overturned by the *Bundestag*.

5.4 As previously mentioned, upper houses have a role in ensuring there are adequate checks and balances in the political system, and they are often given powers in relation to this, especially in regard to constitutional change. In general, upper chambers are given more powers in this area, meaning that constitutional change is harder to pass than normal legislation. In France, constitutional change must be passed in both chambers; in non-constitutional cases, the lower chamber can override the *Sénat*. In Japan, two-thirds of both houses are required for constitutional change.⁴⁰ Interestingly, some systems do not have difficult provisions for constitutional change; in Ireland, the process is the same as it would be for ordinary legislation and no special powers are granted to the

³⁵ Michael J. Glennon, "The Senate Role in Treaty Ratification." *American Journal of International Law* 77, no. 2 (1983): 257-280.

³⁶ Russell, "What Are Second Chambers For?," 450.

³⁷ Russell, "What Are Second Chambers For?," 450.

³⁸ Russell, "What Are Second Chambers For?," 450.

³⁹ Matthias Niedobitek, "The German Bundesrat and executive federalism," *Perspectives on Federalism* 10, no. 2 (2018): 208.

⁴⁰ Russell, "What Are Second Chambers For?," 451.

Senate. In the United Kingdom, because of the uncodified constitution, constitutional changes are passed like any other law.⁴¹

5.5 Upper houses also have other constitutional powers. In Italy and Spain, the upper house can call for a referendum under certain circumstances. The British House of Lords also has a little-known power that it can veto a bill designed to extend the duration of a parliament (although this has never been done).⁴² Whilst not strictly a power over constitutional change, the American Senate can safeguard the constitution through its powers of impeachment. As stated in Article One, Section Three of the Constitution, 'The Senate shall have the sole Power to try all Impeachments.'⁴³ A two-thirds majority vote in the Senate is needed to impeach and remove the President. The Brazilian Senate and the Indian upper house have a similar set of powers.

5.6 Some upper chambers also have a variety of other, more minor powers. These differ greatly from country to country and it is difficult to cover every last one of them. As mentioned in a previous section of this paper, upper chambers may have limited foreign policy powers, such as the power to ratify treaties. Some of the other powers that the upper chambers have can also overlap with this function. The United States Senate has the power to appoint cabinet positions such as Secretary of State, which have a foreign policy impact. The Senate confirmation process can be circumvented by the President, however, through temporary appointments, or by putting a greater emphasis on roles that do not require a Senate vote, such as National Security Adviser.

6. Strength of the Upper House

6.1 This paper has served as an overview of the roles, functions and powers of upper houses. Whilst a comprehensive overview of these features of upper chambers is difficult because there is such a wide range of them, this paper has picked out some of the key examples and explained how these features buttress and support one another, with powers supporting functions and functions supporting roles (and considerable overlap between the three).

6.2 If it is tricky to describe the roles, functions and powers of upper chambers, it is even more difficult to classify the overall power of the chamber, given the problems with empirically measuring such power, and the great variety of combinations of functions, roles and powers.⁴⁴ An influential approach was Arend Lijphart's classification of democracies around the world which distinguished between consensus democracies that had 'strong' bicameralism and thus strong second chambers, and majoritarian democracies that had weaker second chambers or were unicameral.⁴⁵ Other approaches have taken a more focussed look at upper chambers and described them as being 'greater than', 'more or less equal to', or 'lesser than' than the lower house – with the vast majority of upper chambers being less powerful, and some being co-equal to their counterparts.

6.3 A more detailed classification is offered by Samuel Patterson and Anthony Mughan and is reproduced with ten bicameral democracies that are comparable to the United Kingdom in Table 6.4.⁴⁶ They have five categories of upper chamber strength. The categories are clearly described with typically directly elected chambers with extensive powers like the United States Senate being categorised as 'co-equal'. The rung below them is only slightly weaker and thus 'co-equal with restrictions'; the Australian Senate is otherwise co-equal, but its inability to amend money bills helps

⁴¹ Russell, "Responsibilities of Second Chambers", 65.

⁴² Russell, "Responsibilities of Second Chambers", 65.

⁴³ United States Senate, "Constitution of the United States," *Senate.gov*, 7th July, 2025, accessed 7th July, 2025, <https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm>.

⁴⁴ Russell, "Elected Second Chambers and Their Powers," 121.

⁴⁵ Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven, CT: Yale University Press, 1984).

⁴⁶ Patterson and Mughan, "Fundamentals of Institutional Design", 42

to place it in this category. In the middle is the German Bundesrat because it has some ‘limited exclusive powers’ relating to the *länder* and veto over the 60% or so of laws that relate to the federal states. On the weaker end of Patterson and Mughan’s classification are the Austrian *Bundesrat* and the Dutch *Eerste Kamer* which are in the category of ‘delay and advisory’ and finally there are chambers like the Polish Senate and the Japanese House of Councillors which are seen as ‘subordinate to the lower house’.

6.4 Table of Upper House Strength⁴⁷

Country	Name of Upper House	Constitutional Powers
Australia	Senate	Co-equal with Restrictions
Canada	Senate	Delay and Advisory
France	Senate	Subordinate to the Lower House
Germany	Bundesrat	Limited Exclusive Powers, Veto
Ireland	Seanad	Subordinate to the Lower House
Italy	Senate	Co-equal with the Lower House
Japan	House of Councillors	Subordinate to the Lower House
Spain	Senate	Subordinate to the Lower House
United Kingdom	House of Lords	Subordinate to the Lower House
United States of America	Senate	Co-equal with the Lower House

6.5 Whilst such categorisation of upper houses is undoubtedly useful, there may be some issues with it. It is difficult to get across the subtle intricacies in the relationship between the two bicameral houses, and, for example, reducing the House of Lords to being simply ‘subordinate to the lower house’ eliminates the nuance in the power dynamic between the Lords and the Commons. It also eliminates the distinctions within each category. For example, the Lords has significantly greater delay power than the Japanese House of Councillors, but they are both ultimately seen as ‘subordinate to the lower house’.

6.6 Moreover, whilst measuring the formal powers of the upper chamber is important, it does not take into account the thorny issue of upper chamber legitimacy.⁴⁸ Chambers which have somewhat large formal powers, such as the Canadian Senate, are restrained by their perceived lack of legitimacy meaning that they rarely wield their full power. This is why the Canadian Senate is typically judged to be a fairly weak chamber in practice. Another classic example of this is the House of Lords which constrains itself by not opposing the second or third reading of any government bill that was promised in its election manifesto.⁴⁹ Some scholars have argued that as a result of the 1999 reforms the House has gained legitimacy and thus become ‘more confident, assertive and influential’ and more willing to exercise its formal powers.⁵⁰ More reforms to the Lords, if carefully considered, could lead to greater power and legitimacy still.

⁴⁷ This table shows the strength of the upper chamber in ten democracies that are comparable with that of the United Kingdom. The strength is based on the de facto powers of the upper chamber, rather than simply their official formal powers, which may not always be exercised. The classification of constitutional powers is based on the classification by Patterson and Mughan, “Fundamentals of Institutional Design”, 42.

⁴⁸ Meg Russell, “Rethinking Bicameral Strength: A Three-Dimensional Approach.” *The Journal of Legislative Studies* 19, no. 3 (2013): 371.

⁴⁹ Meg Russell, “Rethinking Bicameral Strength,” 377.

⁵⁰ Meg Russell, “Rethinking Bicameral Strength,” 378.

7. Further Papers

7.1 This paper is the penultimate paper in the series with the next and final paper covering experiences of upper chamber reform, how successful or unsuccessful such reforms were, and why upper houses are difficult to reform in general. Once the series is complete these papers will be re-released as an updated single document.

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