

# Elected Second Chambers and Their Powers: An International Survey

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## Introduction

HOUSE OF LORDS reform is once again on Britain's political agenda. The Conservative/Liberal Democrat coalition government formed in 2010 has announced its intention to replace the currently unelected second chamber with one that is largely or wholly elected. In May 2011 it published a white paper and draft bill to achieve that end.<sup>1</sup> These proposals are controversial, and provoked a mixed reaction when presented to the two chambers of Parliament a month later.<sup>2</sup> The next step in the process is for a joint committee of both houses to consider the proposals, and report in spring 2012. This may be followed by formal introduction of a bill in 2012–13.

Lords reform has been discussed at length in Britain in the last fifteen years, with no fewer than five previous government white papers since 1997, plus a Royal Commission and numerous other reports. Most attention to date has focused on options for changing the second chamber's composition. Here the latest proposals seek to build on what has gone before, as parliamentary opinion appears to have gradually moved towards a largely or wholly elected chamber, with the Commons expressing its in principle support for this in 2007.<sup>3</sup> Relatively less attention has so far been given to the appropriate powers for a second chamber, and indeed how powers and composition interrelate. But focus has shifted in this direction with the publication of the latest proposals, for two reasons. First, because with the argument

over composition seemingly over, it is now important to consider what the repercussions of a largely elected chamber would be. Second, because clause 2 of the draft bill controversially suggests that: 'Nothing in the provisions of this Act . . . affects the primacy of the House of Commons . . . or the conventions governing the relationship between the two Houses.' This clause attracted much critical attention during the parliamentary debates.

Opponents of election to the House of Lords, and indeed some who support it, believe instead that a reformed chamber with a more democratic composition would inevitably make greater use of its powers—that is, that whatever is written into the bill, the conventions governing the relationship between the two chambers would change. This had previously been the conclusion of a joint parliamentary committee established in 2006 specifically to consider the conventions, which suggested that: 'If the Lords acquired an electoral mandate . . . their relationship with the Commons, would inevitably be called into question, codified or not.'<sup>4</sup>

In the face of such concerns, those on the government side have been keen to cite examples of bicameral parliaments overseas as evidence that greater 'democratic legitimacy' need not go alongside greater powers, or lead inexorably to more challenges to the elected lower chamber. For example, when the proposals were published, Deputy Prime Minister Nick Clegg emphasised that:

There are a number of bicameral systems in democracies around the world that perfectly manage an asymmetry between one chamber and the next, even though both might, in many cases, be wholly elected.<sup>5</sup>

During the debates in June 2011, various claims were made about international practice. Most notably, former Liberal Democrat leader Lord Ashdown told the House of Lords that: 'Of the 77 bicameral Chambers in the world, 61 are elected. In no single one of those has the primacy of the lower Chamber been affected.'<sup>6</sup> This intervention seemed to set off a parliamentary game of 'Chinese whispers', including Shadow Lord Chancellor Sadiq Khan suggesting to the Commons that: 'Of the 61 other bicameral Parliaments, none has an appointed upper chamber. All of them are elected and seen to be doing a pretty decent job.'<sup>7</sup>

The contradiction between these two statements already makes clear that there is a good deal of muddle surrounding the practice of bicameralism internationally, both in terms of second chambers' composition and their powers. The purpose of this article is therefore to try and set the record straight by presenting a brief and purely factual account on both matters. In doing so, the claims made by politicians in the current British debate will be critically examined. It is hoped that this will be of use to those engaged in the Lords reform debate, and perhaps to those in other countries considering similar parliamentary reforms. Given that no similar survey currently exists with respect to second chamber powers, the article should also be of wider interest to scholars and students of bicameralism.

The first section presents information about the composition of all the world's national second chambers that were operational in October 2011. The next section considers the powers with respect to the first chamber of all largely or wholly elected second chambers. The third section of the article looks briefly at a com-

mon feature of bicameralism: the use of joint committees to resolve intercameral disputes. The article concludes that bicameral arrangements are extremely diverse, both in terms of composition and powers.

The statements in recent debates have been somewhat misleading, in several respects. Directly elected second chambers are less common in parliamentary systems than might be assumed, although more common under presidentialism. In many such cases, chambers are 'co-equal', with no sense of the 'primacy' of the lower house. Nonetheless, amongst parliamentary systems, the formal powers of the House of Lords are relatively strong. If the chamber is reformed to become largely or wholly elected, and this causes it to make greater use of its powers, it would become one of the stronger second chambers in parliamentary systems internationally. This would be welcomed by some, who wish to see stronger checks on the United Kingdom executive and its majority in the House of Commons.

## **The existence and composition of second chambers**

Lord Ashdown's comments were broadly correct about the number of second chambers internationally (though arguably about little else). Reliable information on this matter is available from the Inter-Parliamentary Union's extremely useful online database, and is regularly updated. The number of such chambers tends to fluctuate, in part due to changes in the number of national parliaments judged to exist by the IPU, and in part due to parliaments shifting from unicameral (single-chamber) to bicameral (two-chamber) and vice versa. On 5 October 2011, the IPU database included 190 national parliaments, of which 78 were bicameral and 112 were unicameral. In May 1999, the equivalent figures were 66

and 112, respectively.<sup>8</sup> Bicameralism therefore remains popular, and perhaps increasingly so.

Table 1 lists all of those countries judged bicameral by the IPU in October 2011, excluding Egypt and Tunisia (whose constitutions were suspended at the time). It also indicates the composition method of each second chamber, based on information from the same database, and whether the country in question was 'parliamentary' or 'presidential' (as further discussed below). We see that bicameralism is common in Europe (particularly in the more populous countries), the Commonwealth and the Americas. There are also examples elsewhere, including in Africa, the Middle East and Asia Pacific.

With respect to second chambers' composition, perhaps the most notable feature here is the diversity of methods used. First chambers are normally directly elected by the people, but of the 76 second chambers, only 21 are composed wholly in this way. Instead other composition methods are common. The first is 'indirect election'—that is, election by a group of people who were themselves chosen by the public. Election by members of regional or provincial parliaments is common for example (as in Spain and South Africa), or by local councillors (as in Ireland and France). Second chamber members can also be chosen by subnational governments (as in Germany). This presents something of a borderline case between election and appointment, but is classified here as 'indirect election'. Once these forms of election are included, 40 national second chambers are wholly elected.

More straightforward forms of appointment to second chambers are, however, common. Altogether, 17 of these chambers (including the House of Lords) have no elected members at all; a further 19 include some unelected members. This last statement makes clear another common feature of second chambers' composition: that it often mixes

members chosen in different ways. This is true of 23 chambers in total. In two cases this simply comprises a mixture of directly and indirectly elected members, but in 19 it combines some elected members and others who are unelected. Of these, 16 are majority elected, while three are majority appointed. Thus, 56 second chambers in total are largely or wholly elected (and three others include some elected members). This falls a little short of the 61 elected second chambers claimed by Lord Ashdown.

The inclusion of regime type in the table demonstrates that directly elected second chambers are significantly more common in presidential systems than parliamentary systems (such as that in the United Kingdom). We see that directly elected chambers are common in countries influenced by the United States model, particularly elsewhere in the Americas. In contrast, many Commonwealth countries have unelected second chambers. In other parliamentary democracies (for example, in Europe and Asia) the picture is more mixed. Notably, though, only five of the 36 parliamentary bicameral states have second chambers that are wholly directly elected. Even some presidential democracies include indirectly elected and appointed members in their second chambers.

The presidential model centres on a single individual with significant executive power.<sup>9</sup> In the United States and many countries modelled upon it, the President has a real veto over legislation. The same does not apply to either the Prime Minister or the head of state in most parliamentary systems. In parliamentary systems the government depends on the confidence of the legislature (though normally only the lower house) for its survival, while this does not apply in presidential states. Under presidentialism, therefore, the executive is far less dependent on the legislature, meaning that a strong legislature is less of a threat to government stability.

**Table 1: All 76 national second chambers, by composition and regime type, 5 October 2011**

	Parliamentary (36)	Presidential (40)
Wholly directly elected (21)	Australia, Czech Republic, Japan, Romania, Switzerland (5)	Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Haiti, Liberia, Mexico, Nigeria, Palau, Paraguay, Philippines, Poland, United States, Uruguay (16)
Wholly indirectly elected (17)	Austria, Bosnia and Herzegovina, Ethiopia, France, Germany, Netherlands, Pakistan, Slovenia, South Africa (10)	Congo, Democratic Republic of Congo, Gabon, Mauritania, Morocco, Namibia, Russia, Sudan (7)
Majority directly elected, minority indirectly elected (2)	Spain, Thailand (2)	
Majority directly elected, minority appointed (3)	Italy (1)	Bhutan, Burma (2)
Majority directly elected, plus indirectly elected, appointed and hereditary (2)	Belgium, Zimbabwe (2)	
Majority indirectly elected, minority appointed (11)	Cambodia, India, Ireland (3)	Afghanistan, Algeria, Belarus, Burundi, Kazakhstan, Rwanda, Tajikistan, Uzbekistan (8)
Wholly appointed (15)	Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, Saint Lucia, Trinidad and Tobago, Yemen (10)	Bahrain, Jordan, Madagascar, Oman, South Sudan (5)
Majority appointed, minority indirectly elected (3)	Malaysia (1)	Senegal, Swaziland (2)
Majority appointed, minority hereditary (1)	United Kingdom (1)	
Majority hereditary, minority appointed (1)	Lesotho (1)	

Sources: Composition of second chamber: IPU Parline Database, <http://www.ipu.org/>. Exceptions are Egypt and Tunisia, whose parliaments and constitutions are currently suspended. Russia is coded as indirectly elected, despite IPU description as 'appointed'. Representatives in the Russian upper house are indirectly elected by regional councils (see, for example, J. Henderson, *The Constitution of the Russian Federation: A Contextual Analysis*, Oxford, Hart, 2011, pp. 166–74). IPU classification therefore seems incongruous with their treatment of other countries such as Germany and South Africa. Bosnia and Herzegovina similarly classified by IPU as appointed but judged by the author to be indirectly elected, as members are chosen by subnational legislatures.

Presidential or parliamentary: World Bank dataset (described in T. Beck et al., 'New tools in comparative political economy: The Database of Political Institutions', *World Bank Economic Review*, vol. 15, no. 1, 2001, pp. 165–76, 2001). Data was from the version of the dataset updated December 2010, <http://go.worldbank.org/2EAGGLRZ40/>. Exceptions: Palau and Antigua and Barbuda are missing from this dataset; Pakistan and South Africa are placed in a third category on the basis that they have an assembly-elected president. All four were classified instead on the basis of their constitutions, and specifically on the presence or absence of a confidence vote.

## The powers of second chambers

As indicated above, British politicians have sought to make generalisations about the powers of second chambers, as well as their composition. This information is far less readily available, and is not collected by the IPU. It therefore needs to be gathered by carefully reading each individual country constitution and any secondary literature that exists.<sup>10</sup> I am only aware of one previous global survey of this kind, conducted by John Coakley and Michael Laver in 1997.<sup>11</sup> This classified second chamber powers as 'greater than', 'more or less equal to' or 'less than' the powers of the respective lower house. Such classification is very difficult in practice, given the great variety of possible second chamber powers. For example, such chambers may have power over public appointments, the signing of treaties, linguistic rights or other constitutional matters. For simplicity, and because none of these special powers apply in the case of the House of Lords, we focus here simply on second chamber powers over government legislation.

Even here the picture is not straightforward as second chambers often have different powers over different kinds of bills. The United Kingdom offers a good example. Here the Parliament Acts 1911 and 1949 reduced the power of the Lords from an absolute veto over all legislation to a delay of around a year on most government bills (as further discussed below). But there are a number of exceptions. First, the Acts stipulate that 'money bills' (that is, those dealing exclusively with 'charges') may be delayed by the Lords for only a month. Second, they specify that any bill seeking to extend the life of a parliament remains subject to an absolute veto. Third, and more importantly in everyday terms, the limitation on the Lords' powers was only applied to bills starting their parliamentary passage in the House of Commons.

Bills introduced in the Lords itself (which make up around a third of the total) therefore remain subject to the veto. As a result, governments tend only to introduce relatively less controversial bills into the Lords.

In other countries, it is likewise quite common for second chambers to have greater power over some legislative matters than others. As in the United Kingdom, reduced power over financial legislation, and increased power over key constitutional legislation, is particularly common. Further, in several federal countries where the second chamber represents subnational units (that is, provinces or states), it enjoys more power over legislation on regional matters, variously defined. This applies, for example, in Germany, and in South Africa, where bicameralism was based to some extent on the German model.

It is thus not straightforward to classify second chambers' legislative powers, even when constitutions are readily available and easy to interpret, which is not always the case.<sup>12</sup> On top of this, an added dimension of complexity is created by the various mechanisms through which second chambers may block or delay bills, and the various mechanisms by which conflicts of this kind between the chambers may be resolved.

As far as possible, given these caveats and limitations, Table 2 shows information for the legislative powers of all the largely or wholly elected second chambers above (excepting four cases for which no reliable data could be traced). This amounts to 52 cases, with the United Kingdom shown for comparison. In each case, the intention is to show the chamber's *maximum* power over 'normal' government legislation, excluding special cases such as financial, constitutional or emergency bills. Where more than one category of legislation might be considered 'normal' (for example, in Germany, where half of bills deal with regional matters), the chamber's maximum power is shown

**Table 2: Elected second chambers and their powers (with United Kingdom for comparison)**

	Parliamentary	Presidential
No override power	<i>Bosnia and Herzegovina, Germany (JC)<sup>a</sup>; Italy; Switzerland (JC); Netherlands<sup>b</sup>; United Kingdom (unelected, Lords bills only); Zimbabwe*</i>	<i>Algeria (JC); Argentina<sup>c</sup>; Brazil; Chile (JC)<sup>d</sup>; Colombia (JC); Dominican Republic; Haiti (JC); Kazakhstan; Liberia; Mexico; Nigeria; Palau*; Paraguay<sup>e</sup>; Philippines (JC); Rwanda* (JC); United States (JC)</i>
Joint sitting (A= by absolute majority, % = by super-majority)	<i>Australia (A)<sup>f</sup>; India; Pakistan; Romania (JC)</i>	<i>Bhutan; Bolivia (A); Burma; Uruguay (66%); Uzbekistan* (A)</i>
Super-majority	<i>Japan (66%); South Africa (JC) (varies)<sup>g</sup></i>	<i>Belarus (66%) (JC); Burundi (66%) (JC)<sup>h</sup>; Namibia (varies)<sup>i</sup>; Russia (JC) (66%); Tajikistan (66%)</i>
Absolute majority	<i>Austria; Czech Republic; Spain; Thailand (JC)</i>	<i>Afghanistan (JC)<sup>j</sup>; Morocco (JC); Poland</i>
Normal majority	<i>Belgium<sup>h</sup>; France (JC); Ireland; Slovenia<sup>*h</sup>; United Kingdom (unelected, Commons bills)</i>	<i>Gabon (JC); Mauritania (JC)</i>
No clear upper house role	<i>Ethiopia*</i>	

Notes: Italics denote wholly or mostly *indirectly* elected, others wholly or mostly directly elected. JC = joint committee included within the conciliation process (see below for discussion). \* Based on limited information. Excluded countries: Cambodia, Congo, Democratic Republic of Congo (no English-language constitution available), Sudan (operating under a 2005 'interim' constitution, which does not contain specific information on legislative process); plus Egypt and Tunisia, as in Table 1. <sup>a</sup>Germany: Second chamber can veto completely on regional issues. On others, a two-thirds upper house majority may only be overridden by two-thirds lower house majority (or normal majority by normal majority). <sup>b</sup>Netherlands: Cannot amend bills, can only vote to reject or approve. Rejection used rarely. <sup>c</sup>Argentina: Rejection of a bill cannot be overridden. On amendments, two-thirds upper house majority may only be overridden by two-thirds lower house majority. <sup>d</sup>Chile: A two-thirds upper house majority cannot be overridden. <sup>e</sup>Paraguay: If the originating chamber re-passes its bill with an absolute majority, it may only be overridden by the revising chamber with a two-thirds super-majority. <sup>f</sup>Australia: joint sitting can only be held after an emergency general election caused by the dispute. <sup>g</sup>South Africa: On regional issues, two-thirds, following a joint committee. On federal issues, normal majority, no joint committee. <sup>h</sup>Belgium, Burundi, Slovenia: Can amend only; cannot reject bills. <sup>i</sup>Namibia: ordinary lower house majority overrides, except where second chamber vetoes a bill completely and by two-thirds majority, when two-thirds lower house majority required to override. <sup>j</sup>Afghanistan: If joint committee fails, but bill is approved by lower house, it may vote it through in the next parliamentary session with an absolute majority.

and any special cases are indicated in footnotes.

The table shows that just under half of elected second chambers (22) have an absolute veto power over normal legislation—that is, if the chamber rejects (or in

most cases amends) a bill, the executive and first chamber have no way of imposing their will. In cases where the second chamber veto is absolute, it makes little sense to speak of the 'primacy' of the lower house. Such a statement would

certainly not be recognised in the United States, for example. Instead, the two chambers may be considered essentially 'co-equal'. Hence it is clearly not accurate to claim, as Lord Ashdown does above, that 'in no single case' does an elected second chamber challenge the primacy of the first chamber. Neither can it be said, in Nick Clegg's words, that the two chambers 'perfectly manage an asymmetry'. Instead they might be considered, at least on the important matter of government legislation, to be symmetrical.

This kind of arrangement is particularly common in presidential systems, making up 16 of the 22 cases. Co-equality between the chambers is much less common in parliamentary systems. In the six cases where this does apply (in addition to the Lords' veto on Lords-initiated legislation) some caveats should be noted. First, as already indicated, the German *Bundesrat* has a veto over only around half of government bills. Second, the Netherlands is likewise not a straightforward case, as here the second chamber has no power to amend legislation, but can only reject it. In practice this appears to be essentially a 'nuclear option', used very rarely, and instead the threat of its use may encourage the government and lower house to amend bills to meet second chamber concerns.<sup>13</sup> Third, for Zimbabwe only limited information was available. This leaves just three bicameral parliamentary systems (Bosnia and Herzegovina, Italy and Switzerland) where an absolute second chamber veto power definitely applies to all ordinary legislation, and may actually be used. We see therefore that the House of Lords' power over government bills initiating in the Lords is strong in international terms.

In all other overseas cases, including in the majority of parliamentary systems, there is some means for second chamber objections to government legislation to be overridden. Often, as in the United Kingdom on Commons-initiated bills, the second chamber may simply be overridden

by a vote in the first chamber sooner or later. It is relatively common, however, for this to require some kind of special majority. In seven cases, an absolute majority of first chamber members is needed to vote down second chamber objections, and in another seven a 'super-majority' of first chamber members (usually 66 per cent) is required. This can present serious difficulties, since if the government controls less than two thirds of lower house seats it may effectively face a permanent and universal veto. For example, in Japan there has been much instability in recent years caused by second chamber vetoes, and it has become necessary to form 'oversized majorities' (that is, exceeding 50 per cent of lower house votes) in order to ensure that the government has a second chamber majority.<sup>14</sup> Hence for these countries as well, Nick Clegg's statement that other countries 'perfectly manage asymmetry', and Lord Ashdown's suggestion that lower house primacy is unchallenged, appear inaccurate.

Beyond these cases, there are nine countries where resolution between the two chambers can only ultimately be achieved through a joint sitting of the members of both. Generally such an arrangement will favour the lower house as it is the norm (though not in Britain) for second chambers to be significantly smaller than first chambers. However, in some cases an absolute majority, or even a super-majority, at a joint sitting is required. When compared with all of these examples, the House of Lords' power over Commons-initiated legislation on the face of it looks fairly modest.

Although Table 2 gives a good initial indication of elected second chamber powers, there are other factors which it does not make visible. One, noted by the bracketed term 'JC', is that the resolution process between the chambers in many countries includes deliberation by some kind of joint parliamentary committee. These arrangements vary significantly,

and are discussed in a separate section below. The second factor, which is completely invisible in Table 2, is the extent to which second chambers which lack an absolute veto power can use the power of delay to exercise influence. Table 3 therefore concentrates on those elected second chambers where absolute veto power is lacking, showing the mechanism by which disputes can be resolved and the length of time for which the second chamber may delay passage of a bill. Whereas in Table 2 the Lords' powers over Commons bills looked relatively weak in comparative terms, this table makes the picture appear rather different, with the House of Lords at the 'stronger' end of the spectrum.

The first row in the table is not directly comparable with the rest as it does not represent a specific time period, but a mechanism. Here a bill may pass without second chamber support, but only in a new parliamentary session. This is the mechanism that applies in the United Kingdom. The Parliament Acts require that a bill objected to by the Lords (and where the Commons is not prepared to compromise) must be reintroduced in the next session, with at least twelve months having elapsed since its initial Commons second reading. The Lords' delay power is often summarised as being 'around a year', but in practice it may vary substantially: from much less than a year following the Lords' intervention (if the bill was introduced in the Commons early in a session, and reached the Lords late<sup>15</sup>) to much more than a year (particularly in a long parliamentary session, such as the current session 2010–2012).

A similar mechanism is set out in the constitution of Afghanistan, which states simply that a rejected bill may be approved by the lower house alone 'in the next session'. Better known, and far tougher, is the arrangement in Australia, where ultimate resolution of disputes requires an extraordinary 'double dissolution' of both chambers of parliament,

followed by fresh elections to both. If this is insufficient to resolve the dispute, a joint sitting may subsequently be held. This sets a very high political price for governments wishing to resolve an intractable intercameral dispute. There have been six such double dissolutions since 1900, followed in only one case by a joint sitting.

In most cases in the table the mechanism for resolving disputes is more straightforward. In several, the constitution specifies some kind of minimum delay period which the second chamber may impose to disrupt legislation. However, this delay period is often short. For example, in Poland (although the chamber is directly elected, and the system presidential) the constitution states that the second chamber has only thirty days to consider legislation. If a bill is not passed within this period, it is taken as approved. If the second chamber raises objections within the thirty-day period, these may be immediately overridden by an absolute majority in the lower house. In cases such as this, the delay power of the second chamber is clearly far less than that enjoyed by the House of Lords. There are various similar examples and others where no delay period at all is specified in the constitution (though some of these chambers in practice may get longer to consider legislation than Poland's thirty days). Only in India does the constitution specify a delay power of more than six months (after which a dispute can be resolved in a joint sitting), and in Thailand the delay period is slightly shorter, at 180 days.

Thus, although a House of Lords' veto may be overridden by a simple majority in the House of Commons, the chamber's potential to disrupt government legislation (even when introduced in the Commons) is relatively high compared to many parliamentary systems. A substantial delay power, of a kind enjoyed by the House of Lords and the second chambers of India and Thailand, is nonetheless a far more flexible weapon than the first cham-

**Table 3: Delay powers of elected second chambers without absolute veto (plus United Kingdom for comparison)**

	Joint sitting**	Super-majority**	Absolute majority	Normal majority
Delay until next session (actual time varies)	Australia		<i>Afghanistan (JC)</i>	United Kingdom (Commons bills)(unelected)
Delay of 6+ months	<i>India (6 months)</i>			
Delay of 2–6 months	<i>Pakistan (90 days)</i>		Thailand (180 days) (JC)	<i>Ireland (90 days); Spain (2 months)<sup>a</sup></i>
Delay of up to 2 months	Romania (45 days) (JC)	<b>Belarus (20 days)(JC); Burundi (30 days)(JC)<sup>b</sup>; Germany (6 weeks)(JC)<sup>c</sup>; Japan (60 days)(JC); Russia (14 days)(JC)</b>	<i>Austria (8 weeks); Poland (30 days)</i>	Belgium (60 days) <sup>b</sup>
Override available immediately (or no period specified)	<b>Bhutan; Bolivia; Burma; Uruguay*; Uzbekistan*</b>	<i>Namibia<sup>d</sup>; South Africa<sup>e</sup>; Tajikistan</i>	Czech Republic; <i>Morocco (JC)</i>	<i>France (JC); Gabon (JC); Mauritania (JC); Slovenia<sup>*b</sup></i>

Notes: As above, italics denote wholly or mostly *indirectly* elected, others wholly or mostly directly elected. Bold denotes presidential countries, others are parliamentary. JC = joint committee included within the conciliation process (see below for discussion). \* Based on limited information. \*\* For full details see Table 2. Excluded countries: as above, plus Ethiopia. NB. Germany included even though it has a veto on some bills. <sup>a</sup>Spain: Amendments overridden immediately by normal majority; vetoes overridden absolute majority, or normal majority after two months. <sup>b</sup>Belgium, Burundi, Slovenia: Can amend only; cannot reject bills. <sup>c</sup>Germany: Second chamber can veto completely on regional issues. On others, a two-thirds upper house majority may only be overridden by two-thirds lower house majority (or normal majority by normal majority). <sup>d</sup>Namibia: ordinary lower house majority overrides, except where second chamber vetoes a bill completely and by two-thirds majority, when two-thirds lower house majority required to override. <sup>e</sup>South Africa: On regional issues, two-thirds, following a joint committee; on federal issues, normal majority, no joint committee.

ber super-majorities required in countries such as Japan. A delay mechanism requires the first chamber to reflect, and allows time for public and media debate on the disputed issues in the bill. But if on reflection the first chamber and the government wish to proceed, they ultimately can.

Of course, a key question is not only what formal powers are enjoyed by a second chamber, but the extent to which

these are in practice actually used. The House of Lords has over the past century not used its powers to anything like their full potential, largely because of the evident ‘illegitimacy’ of its membership (particularly when this was largely hereditary, pre-1999).<sup>16</sup> As argued by the joint committee on conventions, this may well change should the chamber’s membership be reformed. In other bicameral

states, it is generally the party balance of the second chamber with respect to the first which determines the level of conflict, rather than concerns about legitimacy (though in cases like the appointed Canadian Senate legitimacy is important). Where both chambers are democratically elected, but differ in their partisan composition, the second chamber is less likely to exercise restraint over use of its powers, as some examples here testify. Hence many parliamentary systems that ‘perfectly manage asymmetry’ in fact do so through the second chamber having far more limited powers than exist in the United Kingdom. In other cases, as already discussed, relations are not always as harmonious as some contributors to recent debates have suggested.

## The use of joint committees to resolve intercameral disputes

Before concluding, it is worth reflecting briefly on one mechanism for resolving intercameral disputes which is fairly alien in the British context: the use of joint parliamentary committees to negotiate compromise between the chambers. As indicated in Tables 2 and 3, this is fairly common in other bicameral parliaments. Although not the main focus of this article (and a fairly complex topic in its own right), it is hard to get a full picture of other second chambers’ powers without some indication of how these joint committees work.

In total, 19 of the 51 elected second chambers discussed above include a joint

**Table 4: Use of joint committees to resolve intercameral disputes where second chamber elected (all cases)**

Procedure after committee → How committee created ↓	Equal approval by both chambers	Lower chamber has final override	Other
Triggered automatically	<i>Algeria; Chile; Colombia; Haiti; Philippines; Rwanda*; Switzerland</i>	<i>Belarus (66%); Burundi (66%); Russia (66%); Thailand (after 180 days)</i>	<i>Afghanistan<sup>a</sup>; Romania<sup>b</sup></i>
Created at executive discretion		France; <b>Gabon</b> ; <i>Mauritania</i> ; <i>Morocco (abs. maj.)</i>	
Created at request of second chamber		South Africa (regional bills) <sup>c</sup> ; Germany (other bills)	
Created at request of first or second chamber	<b>United States</b>		
Created at request of executive, first or second chamber	Germany (regional bills)		

Notes: Italics denote wholly or mostly indirectly elected, others wholly or mostly directly elected. Bold denotes presidential countries; others are parliamentary. \* Based on limited information. <sup>a</sup>Afghanistan: if the joint committee agrees, the legislation passes straight to the executive for enactment. If it cannot agree, the bill is considered defeated, but may be passed by the lower house alone in the next parliamentary session. <sup>b</sup>Romania: if the joint committee is unable to produce an agreement approved by both chambers, the matter is referred to a joint sitting. <sup>c</sup>South Africa: on other bills no joint committee applies, and first chamber can overrule by normal majority.

committee in the resolution process. Commonly such committees are made up of an equal number of members from both chambers, and try to reach agreement on the more contentious aspects of bills when the second chamber has raised objections. These arrangements differ widely. Table 4 classifies joint committees by just two aspects of their role in the process: how the committee is created, and what happens after its deliberations.

It is first notable from the table that joint committees are more common in presidential (14 cases) than parliamentary (six cases) systems. Second, we see that joint committees are most commonly established automatically after a dispute between the chambers has reached a given stage. For example, in Chile a bill rejected by the second chamber is referred directly to a joint committee, as is a bill amended by the second chamber if these amendments have been rejected by the first chamber. Thus there may either be a degree of 'ping-pong' between the chambers before the joint committee is established, or it may come into being very early on. In other countries creation of the committee is not automatic, but instead at the discretion of the executive, the second chamber, or both.

In systems where the second chamber enjoys an absolute legislative veto, any proposals emerging from the joint committee must of course be approved by both chambers. This is the case in several presidential systems, but also in Switzerland and Germany (on regional bills). In other cases, the first chamber has the final say if the second chamber rejects the joint committee's compromise (or if no such compromise was found). Here the second chamber's role may be anything from relatively weak to relatively strong. The table demonstrates presence of a 'French model', exported to three other countries with strong French influence: here the executive retains discretion not only to establish the joint committee, but also to

invite the first chamber to approve the legislation alone if negotiations fail. This creates little incentive for first chamber members to compromise. At the other end of the spectrum, the second chamber's refusal to agree to a joint committee compromise can only be overridden by a two thirds first chamber majority: as in Russia, for example. This creates a far greater incentive to listen to second chamber concerns, as does the 180-day delay in Thailand. Other more unusual cases are indicated in the notes to the table.

In looking to overseas experience to inform debates on House of Lords reform, political actors in the United Kingdom might therefore consider whether some kind of joint committee arrangement for resolving intercameral disputes would be desirable. In designing such a system, however, the devil is in the detail. As well as the factors already indicated, in some cases, for example, the committee may be restricted to dealing only with specific disputed clauses, while in others it can find trade-offs in other parts of the bill. In some, the joint committee's proposals may be presented on a take-it-or-leave-it basis to the two chambers, and in others may be amended. These kinds of details can be critical to how such arrangements work.<sup>17</sup>

## Conclusion

This article has reviewed the basic patterns of second chamber composition and powers internationally. It has shown that bicameralism is common, in both parliamentary and presidential systems. Elected second chambers are relatively more common in presidential systems, in part due to United States influence, but the composition of second chambers varies widely, with indirectly elected, directly elected and unelected members often serving (in both presidential and parliamentary states) and with many chambers having a mixed membership

between these groups. Second chamber powers also vary widely. In presidential systems relative 'coequality' or 'symmetry' between the chambers is common, with the second chamber having an absolute veto over all or most bills. This applies to many directly elected second chambers, but also some which are indirectly elected. In parliamentary systems it is more usual for there to be a means of overriding second chamber objections to government bills. Amongst this group the existing powers of the House of Lords are relatively strong, as it retains an absolute veto on those government bills which start their passage in the House of Lords, and a lengthy delay over bills which start in the House of Commons.

Some of the statements which have been made about the international practice of bicameralism during recent British debates on reform have been somewhat misleading. First, elected second chambers are now common, but not as ubiquitous as some contributors to these debates have suggested (particularly in parliamentary systems). Second, the 'primacy' of the first chamber is not recognised in those systems where the chambers share coequal powers (particularly in presidential systems). Third, it is mistaken to assume that relations are harmonious in other bicameral systems. Powerful second chambers in other parliamentary systems, such as those in Japan and Australia, have at times caused significant aggravation—though this may not always be seen as a bad thing. Finally, some bicameral arrangements are in fact far more asymmetrical than those at Westminster, with the second chamber having only very limited powers. If the first chamber can override second chamber concerns within a matter of a small number of days or weeks, second chamber resistance may be only a minor irritation.

Having considered the information in this article, two key questions for the British reform debate remain. First, to

what extent would the House of Lords, if transformed into an elected (or largely elected) chamber, make use of the substantial powers that it has? This of course is unknown. In practice it would be dependent on the extent of partisan conflict between the chambers, as well as on how political culture develops over time. The experience from other bicameral states suggests that elected chambers generally feel far freer to use their powers than does the current House of Lords. So the second critical question, which is perhaps even more difficult than the first, is how powerful it is desirable for the reformed British second chamber to be? Some would argue, and some argued in the recent parliamentary debates, that it would be good for British politics if the second chamber acted as a greater constraint on government and the House of Commons. What this article has demonstrated is that a reformed House of Lords left with its existing powers, if it chose to use these more freely, would be one of the more powerful such chambers amongst parliamentary democracies. For examples of how this could change British politics reformers might look to countries such as Australia, Germany, Italy, India, Japan, Switzerland and Thailand.

## Notes

- 1 House of Lords Reform Draft Bill, Cm 8077, London, The Stationery Office, May 2011.
- 2 For a discussion of some of the main controversies around Lords reform see M. Russell, House of Lords reform: are we nearly there yet?, *The Political Quarterly*, vol. 80, no. 1, 2009, pp. 119–25.
- 3 In a series of free votes, the Commons supported a wholly elected chamber by 337 to 224, and an 80 per cent elected chamber by 305 to 267. However, there are reasons to doubt the sincerity of these votes (see House of Commons Hansard, 27 June 2011, column 677 [Stuart Bell] and column 679 [Paul Murphy]).
- 4 Joint Committee on Conventions, *Conven-*

- tions of the UK Parliament, London, Houses of Parliament, 2006, paragraph 61.
- 5 Evidence to the House of Lords Constitution Committee, question 217, 18 May 2011.
  - 6 House of Lords Hansard, 21 June 2011, column 1198.
  - 7 House of Commons Hansard, 27 June 2011, column 653.
  - 8 M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford, Oxford University Press, 2000.
  - 9 There are various definitions of 'presidentialism' and 'parliamentarism', and also examples of systems which do not fit either model easily—in particular the 'semi-presidentialism' seen in France and elsewhere, where a directly elected president shares power with a prime minister and cabinet dependent on the confidence of parliament. Rather than coding for this somewhat contentious variable, the classification in the table is based on an existing dataset, with additions/amendments as indicated in the notes.
  - 10 I am grateful to Simon Kaye for doing much of the difficult information gathering on this task.
  - 11 'Options for the future of Seanad Éireann', in *Second Progress Report of the All-Party Oireachtas Committee on the Constitution*, Dublin, The Stationery Office, 1997.
  - 12 An example of lack of clarity is the Rwandan constitution, which states that in the event of disagreement between the two chambers, a joint committee is established to negotiate a compromise, but simply adds that '[i]n the event that the compromise decision is not adopted by both Chambers the bill is returned to the initiator' (Article 95). In the absence of any other readily available information about Rwandan bicameralism, this has been assumed to mean a veto power. It is accepted that such interpretation may be flawed in some cases, and these cases are indicated in the tables with asterisks.
  - 13 As described in G. T. Kurian, ed., *World Encyclopaedia of Parliaments and Legislatures*, Washington, DC, Congressional Quarterly, 1998.
  - 14 See, for example, 'Japanese coalition frays', *Wall Street Journal*, 14 December 2009, or for a longer discussion, T. Ohta, 'One house better than two?', 2 February 2010, <http://www.japaninc.com/node/4369>
  - 15 As in the case of the European Parliamentary Elections Bill, introduced in the Commons in October 1997, amended by the Lords a year later, but passed under the Parliament Acts in December 1998.
  - 16 For a discussion of the extent to which the post-1999 House of Lords is making greater use of its powers, see M. Russell, 'A stronger second chamber? Assessing the impact of House of Lords reform in 1999, and the lessons for bicameralism', *Political Studies*, vol. 58, no. 5, 2010, pp. 66–85.
  - 17 For a slightly longer discussion of these issues, see M. Russell, *Second Chambers: Resolving Deadlock*, London: Constitution Unit, 1999.