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The Constitution Unit and

Introduction

The government has embarked on a two-stage reform of the House of Lords, with a declared long-term intention of creating a 'more democratic and accountable' upper house.² A recommendation for the form this house should take is due from the Royal Commission on Reform of the House of Lords, which is due to report at the end of 1999.

An obvious means of ensuring that a body is democratic and accountable is to elect it on a broad franchise. Thus to introduce these features into a reformed House of Lords could involve the creation of a new upper house which is either fully or partly elected by the people. Another alternative is to ensure that election plays a part in the process of selecting members, but that there is no direct link between the people and the members of the upper house – for example through elected councillors or MPs being responsible for choosing them. For this reason there is a distinction commonly drawn between 'direct' election by the people and more 'indirect' forms of election for upper houses.³

The majority of upper houses around the world include some element of election, most commonly direct election. A survey of the world's second chambers in 1996 found that 16 out of 58 chambers were entirely directly elected⁰⁰⁴ Tes.

Italy

Name of chamber	House of Deputies	Senate
Members	630	325 (not fixed)
Electoral system	Proportional	Proportional
Term of office	Up to five years	Up to five years

Australia

Name of chamber	House of Representatives	Senate	
House	6P0.926659.62007	659.34451	Tm(e)Tj10.98

Since 1948 elections to the Australian Senate have used the proportional system of the single transferable vote. Each state elects six members - half its total - every three years, for six year terms. For these elections the state comprises one large constituency. This major difference between the electoral system for the upper and lower houses means that the Senate is far less likely than the lower house to have a government majority - in fact this has now not occurred since 1981. Rather, the balance of power in the upper house is held by small parties and independents, which tend not to be represented in the lower house.⁷ The combination of half-Senate elections and the proportional system also mean that the Senate is far less susceptible to swings of political opinion which may affect the lower house.

In both Italy and Australia it was originally intended that the elections to the two houses of parliament should be at different times. The Italian constitution of 1948 gave the upper house a six-year term compared to a five-year term for the lower house. However, the Senate was dissolved a year early to coincide with the elections to the lower chamber in 1953, and again in 1958. In the end a constitutional amendment in 1963 shortened its term to five years. Consequently elections for the two chambers have always been held on the same day. In Australia Senators' terms are fixed at six years, whereas the election date for the lower house is in the hands of the government, with a maximum 2 a max

The powers and functions of the chamber

The Italian and Australian upper houses carry out all the classical functions of a parliamentary chamber. These involve the scrutiny and voting into law of legislation, monitoring and holding the government to account, and carrying out various forms of investigation and debate. They also perform a representative function – a factor particularly important in Australia where the Senate is constitutionally the voice of the states in the federal parliament. However their abilities to carry out these functions are crucially affected by the powers with which the chamber is vested.

The major part of the chamber's work, in both cases, is consideration of legislation. This work is carried out both in the plenary sessions of parliament and in parliamentary committees. In both countries the second chamber has considerable powers in this area. Unlike in Britain there is no concept of a 'suspensive veto' in either Italy or Australia. The second chamber has the power to reject any piece of legislation indefinitely, and there is no mechanism internal to parliament by which to resolve disputes that arise between the chambers. In Italy legislation which is amended or rejected by the Senate may shuttle indefinitely between the houses, unless one house backs down or the legislation is dropped. In some cases this situation may continue for many years before government abandons the legislation or in some way the differences are resolved.¹⁰ In Australia there is a resolution procedure which may be turned to in last resort. If legislation is rejected three times by the Senate (or amended by the Senate in a way the lower house does not accept), under certain conditions¹¹ the Prime Minister may initiate a 'double dissolution' of both houses of parliament. The disputed legislation may then be voted on again after the election and if the dispute continues the final say is given to a joint sitting of both houses – where lower house members outnumber Senators by two to one. However, in broad terms double dissolutions will tend to disadvantage the governing party, as electing all 12 seats in a state leads to a more proportional result in which minor parties will do better than in a half Senate election. Despite this disincentive governments have resorted to double dissolutions six times this century, the most recent being in 1987.

In practice much of the legislative scrutiny work in both countries takes place in committees. In both countries' upper houses, permanent committees broadly mirroring government departments are responsible for this work. In Italy the committees have an almost identical structure and role to committees in the lower house. In particular they share the unusual power of being able to agree laws without reference to the full chamber - the only issues which must be passed by the full house are those relating to the constitution, voting rights, international agreements and the budget. Thus a bill in Italy may pass between the relevant committees in the two chambers until it is agreed, without ever facing a plenary vote.¹² This

¹⁰ An extreme example of the Italian system was a bill to reform the rape laws, which shuffled between the chambers for 17 years before finally being agreed in 1995.

¹¹ The legislation must be rejected twice by the Senate, after which three months must elapse before it is agreed again in the lower house and rejected again by the Senate. The Prime Minister must ask the Governor General for a dissolution, which the Governor General must agree to. A double dissolution election may not be called within six months of the due date of election of the lower house.

¹² The decision on whether to agree a bill in committee or in the full chamber is made by the president of each chamber independently, so it is also quite possible that a bill will be referred to the full plenary of one house, but agreed by a committee in the other.

provision has contributed to the fact that Italy has the highest legislative output of any parliament in Europe. In the 1980s around one half of all bills were agreed in committee.

into the budget, which are not mirrored by any form of budget hearings in the lower house. Thus party competition in the Senate has created an important element of accountability in the Australian parliament.

In Italy many of the same procedures and structures exist. However, the lack of difference between the politics of the chambers means the essential tension existent in Australia is absent. Whilst committees in both chambers take hearings on bills, and

government in Australia outside of Tasmania.¹⁷ The second factor that prevents the domination of the lower house by the Senate is the system of equal representation for states. Under this system all states have 12 members of the Senate, despite large disparities in population. For example in the lower house, which is based on population share, Tasmania has five members whilst New South Wales has 50. This feature enables government members to claim that the Senate does not reflect the population and that, in the famous words of Prime Minister Paul Keating, Senators are “unrepresentative swill”. In fact the share of seats in the Senate is always very close to the share of votes nationally, although of course the system at least contains the potential for this not to be the case - for example if a successful party were to develop based in one or two small states alone.

A second chamber too like the first?

So a directly elected second chamber is likely to demand considerable powers, and to use them to the full. But does this simply create a duplicate, and thus a rival, to the lower house? Is it possible for a second chamber to be directly elected and yet add something distinctive to functions

The result of the similarities between the chambers is a high degree of scepticism in Italy as to the worth of the second chamber as currently constituted. There have been numerous calls for reform. However, these fit within a context of general dissatisfaction with the current constitution. Other matters – such as reform of the electoral system, the judiciary, and possible adoption of a directly elected president – are considered as being of higher priority. In January 1997 a joint committee was established to review the constitution, and proposed a

Conservatives' Andrew Tyrie.²⁰ Offering the attractions of democratic legitimacy and public involvement in its selection, such a chamber would be a radical departure from the current House of Lords.

Directly elected chambers exist in many countries. Based on this experience, and the experience of Italy and Australia in particular – as outlined in this briefing, we can draw numerous lessons about the way such a chamber might operate in the UK.

A directly elected chamber would be powerful. The legitimacy it enjoyed would ensure that it had little hesitation in using whatever powers it was given. This would provide a strong contrast to the current House of Lords, which has the power to delay ordinary legislation for 13 months, financial legislation for a month, and to veto delegated legislation, but has used these powers only extremely rarely.

The chambers examined in this briefing have extensive powers – far more extensive than the formal powers the House of Lords has now. Consideration might be given to creating a directly elected chamber with the powers of the current House of Lords, or even to reducing these powers on the basis that they would be more likely to be invoked. However, it is questionable whether such a situation would be stable. A directly elected upper house, and particularly one elected on a proportional system, would be unlikely to be satisfied to remain subordinate to the House of Commons for long. If the upper house had the power to initiate legislation there is a strong possibility that it

The example of Italy demonstrates the problems of having an upper house that is too like the lower house. If both houses are to be directly elected it seems essential that they use different electoral systems.²² However, this leads to the questions about legitimacy mentioned above, and to arguments about which house is more genuinely 'representative' of the views of the public.²³

Within the British context this important factor means that establishment of a directly elected upper house could not be considered in isolation. Whilst the electoral system is in question for the lower house – following the report of the Jenkins Commission on the Voting System²⁴ and prior to a referendum on the issue – it would be unwise to fix an electoral system for the upper house. The two must be considered in conjunction, and it

It seems clear

The Constitution Unit and the House of Lords

This research 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. This is the third briefing in the series coming from this project. The final output from the project will be a book, due to be published in November 1999.

The Constitution Unit has already produced a report and six briefings on reform of the House of Lords:

Reform of the House of Lords (report) - £15

Reform of the House of Lords (briefing) - £3

Reforming the Lords: A step by step guide - £5

Rebalancing the Lords: The numbers - £5

An Appointed Upper House: Lessons from Canada - £5

A Vocationally Based Upper House?: Lessons from Ireland - £5

'Democracy Day': Planning for referendums on PR and Lords reform - £5

To order any of these documents, request a publication list, or be put on the Constitution Unit mailing list for publications and events, please contact the Unit using the details given on the cover of this document.

A Directly Elected Upper House: Lessons from Italy and Australia

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