

Sub-national Second Chambers and regional representation: International Experiences
Submission to Kelkar Committee on Maharashtra

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October 2011

The principle of the upper house of the legislature being a house of legislative review is well established in federal and non-federal countries like. Historically from the 17th century onwards, upper houses were constituted to represent the legislative interests of conservative and corporative elements (House of Lords in the UK or Senate in Bavaria or Bundesrat in Imperial Germany) against those of the 'people' as represented by elected lower houses (e.g. House of Commons). The United States became the first to use the upper house as the federating chamber for the country. This second model of bicameralism is that associated with the influential 'federal' example of the US Constitution, in which the second chamber was conceived as a 'house of the states'. It has been said in this regard that federal systems of government are highly conducive to bicameralism in which a senate serves as a federal house whose members are selected to represent the states or provinces, with each constituent state provided equal representation. The Australian Senate was conceived along similar lines, with the Constitution guaranteeing each state, again regardless of its population, an equal number of senators. At present, the Australian Senate consists of 76 senators, 12 from each of the six states and two from each of the mainland territories.⁶⁰ The best contemporary example of a second chamber which does, in fact, operate as an effective 'house of the states' is the German Bundesrat, members of which are appointed by state governments from amongst their members, with each state having between three and six representatives, depending on population. Additionally, both Ethiopia (House of the Federation) and Russia (Federation Council) have adopted the federal representation model for their upper houses. However, except Australia, none of the other significant commonwealth federation uses their upper houses as a true federating chamber, including Canada and India. Upper chambers which have no popular basis for their membership have been greatly diminished in their position vis-à-vis lower chambers in most countries.

While bicameralism, is a widespread method of organizing national legislatures, it is more rarely found in *subnational* legislatures, although there are notable exceptions. Among them, forty-nine American states (all except Nebraska), five Australian states (all except Queensland), two Ethiopian regions (out of ten), five Indian states (out of twenty-five) and eight Argentine provinces (out of twenty-four) split their legislative assemblies into two houses. Autonomous republics in Russia have from time to time added and disbanded upper chambers to their legislatures, but at this point in time most have done away of these. Therefore, this note will focus on how the American, Argentine and Australian upper chambers are constituted. In each case we will look closely at least two subnational cases, since in all three countries there exists some variation in the way that their upper houses function or are elected.

United States

In the United States of American, sub-national legislatures are all modeled on their national counterpart. Therefore each state has House of Representatives/Assembly and a Senate. Until 1964, state senators were generally elected from districts that were not necessarily equal in population. In most cases state senate districts were based partly on county lines; in the vast majority of states the senate districts provided proportionately greater representation to rural areas. In this sense they were closer to the principle of being

federating chambers. However, in the 1964 decision *Reynolds v. Sims*, the U.S. Supreme Court ruled that, unlike the United States Senate, state Senates must be elected from districts of approximately equal population. The eight justices who struck down state senate inequality based their decision on the principle of "one person, one vote". In his majority decision, Chief Justice Earl Warren said "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." However, in dissent, Justice John Marshall Harlan II argued that the decision violated the federal principle. He noted that the US the Constitution explicitly grants two senators per state, regardless of population, and if the decision stood, then the United States Constitution's own provision for two United States Senators from each state would then be Constitutionally suspect as the fifty states have anything but "substantially equal populations."

Since then periodic campaigns have been mounted to restore balance of power between urban and rural representation through the use of state Senates. The United States in heavily urbanized giving urban areas much greater representation in the senate based on equal representation. The example of California is provided below.

California State Senate currently has 40 members. Prior to 1968, each county was allocated one Senate seat. In practice this meant that Los Angeles County with 6 million residents had the same level of representation as Alpine County, with a population of only 100,000. Senate reform has since reorganized the state into 40 single member electoral districts of roughly equal population such that each senator represents approximately 846,791 Californians. The current system of representation allows poorer urban areas to have greater representation in the Senate.

Senators are limited to serving two four-year terms, which are staggered so that half the membership is elected every two years. The Senators representing the odd-numbered districts are elected in years evenly divisible by four. The Lieutenant Governor is the ex-officio President of the Senate and may only use his vote to break a tie. The senators from the even-numbered districts are elected in the intervening even-numbered years. The Senate in California may initiate bills of all types. All Senate initiated bills require support and reconciliation from the State Assembly before signature into law, and vice versa. Furthermore, the Senate also vets gubernatorial appointments.

Argentina

Each province essentially replicates the presidential system of government at the national level under which a governor is responsible for the executive branch, and the legislature is independently elected and has a distinct existence, exercising functions broadly comparable to those of Congress. Fifteen provinces and the City of Buenos Aires have unicameral legislatures; the remaining eight provinces (Formosa, La Pampa, Province of Buenos Aires, La Rioja, Santa Cruz, Salta, San Luis, and Santiago del Estero) have bicameral legislatures. Generally, the former are the smaller and less populous provinces, with the exception of Cordoba, which abolished its second chamber, the Senate, in 2001, largely for reasons of cost. Provinces with a bicameral system tend, conversely, to be the more populous provinces. In such provinces the lower house, generally called the house of deputies, is constituted so as to represent the people by reference to population size, while the provincial upper house, or Senate, represents the various geographic departments of the province. The example of Santa Fe province is provided below.

Santa Fe province is the country's largest agricultural producer with a population of 3.2 million people and 6.5 million cattle and the centre of Argentina's soybean crop, spread over an area of 155,000 sq km. The province is also home to the country's main petrochemical industry and port located in the city of Rosario. At the turn of the last century the

landowning gentry lobbied to ensure that balance of interests between rapidly urbanizing Rosario and Santa Fe City was appropriately balanced against the interests of the large agricultural hinterland. The state has since been divided into 19 administrative departments. The state elects 50 deputies to the lower Chamber of Deputies, and 19 senators to the Senate. Each department elects one senator for a four year term. This allows the department of Gararey (pop. 19,000) the same level of representation in the Senate as Rosario (pop. 1.2 million). Overall the two major urban departments Rosario and Santa Fe City (La Capitale) is home to 53% of the population but hold only 10% of seats in the Senate. This balances rural interests against an urban dominated lower house – the Chamber of Deputies.

Just like their US counterparts, Argentine provincial Senates may initiate any kind of legislation, and all legislation requires Senate approval before being signed into law. Typically, the qualifications for election as senator are more stringent than are those for the lower house, on the grounds that, as with Congress, a provincial senate has greater powers in relation to, for example, the approval of the appointment of judges. This is a hangover from former conservative times, but in fact Senates, where they exist, are politically more important than is the houses of deputies.

Australia

Australia is perhaps unique among the Westminster democracies in having a directly elected upper house the Senate. Whereas the Senate in Australia was conceived of as a federating chamber, the states upper houses or Legislative Councils were established as conservative breaks on popularly elected legislative assemblies. However, demands for abolition and/or reform at various points between the 1950s and late 1990s, led to the abolition of the Queensland Legislative Council and reform of Councils in Tasmania, New South Wales, South Australia, Western Australia and Victoria. The emergence of popularly elected Legislative Councils with powers analogous to the Australian Senate, have ensured 'strong bicameralism' whereby upper chambers retain the ability to force amendments on bills sent up for assent from the Assembly.

The case of the Victoria Legislative Council is most instructive in this regard. Prior to 2006, the state of Victoria was divided into 22 provinces. Each province elected two members to the Legislative Council. In 1999, the Labour government had proposed a reduction in the number of Council seats to 35 by reducing the number of provinces to five. Each province would then elect seven members. However, this bill along with an electoral reform bill was defeated in both houses on the concern that the reduction in the number of Provinces would lead to significantly less representation for rural Victoria, an issue of the highest sensitivity across Australia even today. Under the pre-2006 set up, rural Victoria had 16 of 44 seats (36.36%) of the seats. Given the opposition to diluting rural representation, in 2003, the Labour government proposed a new reform package. When ultimately passed, the new structure maintained balance between urban and rural Victoria and shaped the current structure of the Legislative Council.

The system changed for the 2006 Victorian election. Under the new system the state is divided into eight electoral regions, each electing five members for fixed four-year terms unless the Assembly is dissolved sooner. Each region elects five members of the Legislative Council by single transferable vote. There are now 40 members of the Legislative Council, four fewer than before. However, the electoral districts have been drawn up to ensure that three out of eight districts represent rural voters, i.e. 15 of 40 seats (37.5%) thereby slightly increasing the share of rural representation. Another element of the reform is the Legislative Council can no longer block finance bills introduced by the Assembly. The

reforms have made it easier for minor parties to gain election to the chamber and possibly gain the balance of power, as opposed to majority control by a single major party.

Ethiopia

Ethiopia became a federal republic in 1995. Ethiopian federalism, like that in India is built around the recognition of linguistic and ethno-cultural groups. Within the federal structure, the different multicultural elements are reflected in the state members. The nine states are organized based on settlement patterns, language, identity, and consent. Accordingly, the nine states are Tigray, Afar, Amhara, Oromia, Somalia, Benshangul Gumuz, Gambella, Harari, and the SNNPR (Southern Nations, Nationalities, and Peoples Region). Ethiopia is organized as a parliamentary democracy with two houses of parliament, the lower house being the House of People's representatives and the upper house being the House of Federation. The House of Federation has no legislative function but has an important role with regard to fiscal equalization and dispute resolution within the federation. Each Nation, Nationality and People is represented in the House of the Federation by at least one member and by one additional representative for each one million of its population. There are a total of 112 members in the House of Federation and are elected by the state assemblies (called the State Councils). At the subnational level, only Harari and the SNNPR have bicameral legislatures. The case of SNNPR is particularly relevant for India.

SNNPR is one of the largest regions in Ethiopia, accounting for more than 10 percent of the country's land area. The population in 2010 was estimated at about 16 million people, representing almost a fifth of the country's population. The SNNPR is the most ethnically diverse region of Ethiopia, inhabited by more than 80 ethnic groups, of which over 45 (or 56%) are indigenous to the region. These ethnic groups are distinguished by different languages, cultures, and socioeconomic organizations. Although none of the indigenous ethnic groups dominates region, there is a considerable ethnic imbalance within the region. The largest ethnic groups in the SNNPR are the Sidama (17.6 percent), Wolayta (11.7 percent), Gurage (8.8 percent), Hadiya (8.4 percent), Selite (7.1 percent), Gamo (6.7 percent), Keffa (5.3 percent), Gedeo (4.4 percent), and Kembata (4.3 percent). While the Sidama are the largest ethnic group in the region, each ethnic group is numerically dominant in its respective administrative zone, and there are large minority ethnic groups in each zone. The languages spoken in the SNNPR can be classified into four linguistic families: Cushitic, Nilotic, Omotic, and Semitic.

For the sake to administrative efficacy, the state has been organized a federated entity rather and creating a mosaic for smaller administratively and possibly financially unviable states. Based on ethnic and linguistic identities the region is at present divided into 13 Zones-sub-divided in to 126 Woredas and 8 Special Woredas. Each Zone is roughly equivalent to the Autonomous Councils seen in India, with roughly similar functions. Each Zone is divided into Woredas (districts). In each Zone there is one dominant ethnic group coexisting with a number of smaller ethnic groups who are represented at the Woreda level. Special Woreda, are an administrative subdivision which is similar to a Zones in function, but including local government functions, covering an area that is ethnically homogenous. The State Council (assembly) is elected on the basis of population and is the effectively the state legislature.

The upper house, Council of Nationalities, acts as the federating chamber for the region. It is composed of representatives of the region's ethno-linguistic communities (nationalities). Currently, they are 62 in number. Each nationality is represented in the CN at least by one representative (there are about 56 nationalities in the region). For every one million population, there will be an additional one representative. Members of the CN are elected by the respective Council of each nationality. Note that each of these nationalities has their

own self-administration at the sub-regional administration (Zonal, special *woreda* (district) or *woreda* level). It means they have their own Councils (elected representatives) at that particular level.

The Council of Nationalities has no legislative role (but it may sometimes propose constitutional amendment and, as the constitution states, may also participate in the amendment process. To what extent it participates is not clear). Law making is the exclusive power of the State Council. The former rather checks the constitutionality of the laws by way of interpretation. It may declare the law made by the State Council unconstitutional. The powers and functions of include of the CN include interpretation of the state's constitution (with professional support from the regional Council of Constitutional Inquiry), deciding on questions of self-administration in the regional state, strengthening of the unity of peoples' of the region, based on equality and consent, resolves disputes between the different tiers of government and initiates amendment of the state's constitutions and is involved in its amendment process. Unlike the two Federal Houses, which sometimes hold joint sessions on certain matters such as introduction of new taxes, the two Councils of the region have no such sessions. They are independent from one another with their own respective functions and responsibilities.

Conclusion

In the four country cases looked at above, it clear that except in the case of Australia, all the others originally established upper chambers at the state level as a federating institution which represented sub-regional interests in the state legislature. When Australian states reformed their Legislative Councils, making them more representative, at least one state- Victoria- reconstituted the its upper house as a federating institution. Both the Ethiopian and Australian experiences demonstrate that it is possible to reconcile strong bicameralism with a parliamentary set-up provided there are well laid down provisions to prevent deadlock.