



# Upper Legislative Houses

## The Origins of Symmetry and Congruence

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Within the field of political science, an oft-unaddressed topic is the origins of upper legislative houses as an institution. Within the literature, the origins of individual upper houses are explained; however, no all-encompassing attempt at a theoretical framework exists to shed light upon how these bodies acquire their specific combination of power and representational mechanisms, which will be termed symmetry and congruence in this paper. Working primarily off of a federal model developed by Erik Wibbels with the addition of a unitary process, this thesis will present a model explaining the symmetry and congruence of upper legislative houses through the variables of distribution of regional economic specializations, inter-regional inequality, and inter-regional population variation. The model will then be substantiated and reinforced through case studies of the German Empire, Australia, India, France, and Sweden. Considering the small-scale nature of this theoretical exposition, the conclusion of this paper will present a framework through which a cross-national study of the proposed model can be conducted; this will include proposals for indices to measure both congruence and symmetry. Such a study could be the source of a future dissertation.

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Dedicated to my Grandfather

**DOMINICK GRAZIANO**

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**Chapter 1: Introduction**

*“The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.”<sup>1</sup>*

In *Federalist No. 62*, James Madison used the above defense to justify the existence of a bicameral legislature in the second government of the United States of America. He sensed the necessity for a bifurcated legislature with two chambers endowed with different representational mechanisms, believing that a popularly elected legislature would be given to volatile changes of opinion and could be swept up in majority-led popular fervor that would be detrimental to the United States as a whole. Madison wanted a Senate to check the powers of the House of Representatives; one house was wholly inadequate. As Madison attempts to explain the theoretical necessity of upper legislative houses, this thesis will seek to theoretically explain how such bodies come into existence, focusing particularly on the negotiation process.

Lower houses tend to have sweeping powers over legislation and represent the majority will of the enfranchised polity. However, across the world, as will be covered in the literature review, upper houses show great variance in the two primary aspects of legislative institutional structure: jurisdiction and composition. For example, the aforementioned US Senate has full powers of co-legislation and membership that

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<sup>1</sup> James Madison, "No 62: The Senate," In *The Federalist Papers*, edited by Clinton Rossiter, 374-80 (New York: Signet Classic, 1961), 377

overemphasizes the power of small states while the British House of Lords only has a power of delay and is composed of the remnants of the British aristocracy. How can the origins of these variances in jurisdiction and composition be explained, particularly when the jurisdiction and composition of the upper houses are considered relative to those of their respective lower houses?

To answer this question and echo the theoretical origins of Madison, this thesis will present a bifurcated model, which explains the process by which upper legislative houses come into existence in both unitary and federal systems, seeking to illustrate how they come to have jurisdictional symmetry or asymmetry relative to their respective lower legislative house and congruence or incongruence of representation. The necessity for such a forked model will be established in the functional analyses section of the literature review. The unitary process will be driven by devolution from monarchy with a strong time component. The federal process of upper legislative house origins will be driven by both institutional capacity and political economy approaches to the centralization/decentralization question. Sub-unit institutional capacity will underlie the component of the model that separates unicameral from bicameral legislatures in the federal process. Having regional elites as the negotiators in this process, the variables of distribution of regional economic specializations and inter-regional wealth inequality will inform their preferences over symmetry in the negotiation with each other. The variable of inter-regional population variation will inform their preferences over the congruence of the upper legislative house.

This thesis will not contain a large-scale study to substantiate the previously described model, but will rather present five case studies to prove the value and

workability of the variables and the negotiation process these variables inform. As a conclusion, a proposal for a large-scale, cross-national study will be postulated; such a study could come to underlie a future dissertation.

## **Chapter 2: Literature Review**

### *Literature Categories*

Among the literature concerning upper legislative houses, little attention is paid in attempting to understand the origins of these bodies in a unified, testable, theoretical framework. Instead, works fall broadly into one of two categories: descriptive works and functional analyses. Descriptive works seek not to explain the origins of the variations in upper legislative houses, but rather to explain their common features, to catalog variations in these features across the world, and to place upper legislative houses into different general categories based upon either their representation mechanism or competencies. Even though they do not seek to explain all upper houses, such analyses have weight, however, in attempting to explain the origins of these bodies because the classification systems indicate what authors consider to be the central components of an upper legislative house's power in a political system. In a model of upper house origin, the goals of the actors with regards to the institutional structure of these bodies would necessarily be informed by the same considerations that the authors use to classify these bodies.

Functional analyses seek to understand the policy implications of these bodies upon the operation of both the legislature and the government as a whole. Although it may seem on the surface that such works touch only upon the consequences side of

political institutions and not the origins side, these functional analyses provide a framework to understand what gives an upper legislative house power. This understanding goes beyond the classification systems of descriptive works, which are arbitrary and purely categorical. Although it is impossible to state the degree to which actors in a bargaining model are informed about the consequences of the institutional design for which they advocate, using these functional analyses of the consequences of legislative structure can help in developing the preferences of groups over upper house symmetry and congruence, the two dependent variables in this study.

Despite the lack of research dealing specifically with the origins of upper legislative houses, important parallel research can be found in a third category of research, namely the literature concerning federalism. As illustrated by Arend Lijphart's factor analysis of features of democracy in his work Patterns of Democracy, bicameralism tends to exist in those nations with decentralization; therefore, it is valid to analyze this literature.<sup>2</sup> Further justification for this foray into the literature on federalism can be found in the widely held notion that bicameralism is a primary component of the federal bargain; therefore, the same factors that drive decentralization may be behind the formation of upper houses and their endowment with specific competencies and membership arrangements. Even though no formal model explaining the origin of upper legislative houses exists within the literature, models do exist to explain the bargaining over federalism that results in centralization in a unitary state or decentralization in a federal state. The federal literature, however, cannot provide the entire model for the

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<sup>2</sup> Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press, 1999), 246



creation of upper legislative houses, considering that upper houses exist in non-federal nations.

*Descriptive Works*

In the early twentieth century, several volumes were published by British scholars that examined upper legislative houses or senates, depending on their chosen terminology, through the lens of the British House of Lords. An example of such a work is Second Chambers by J.A.R. Marriott, which describes in detail the upper chambers of seven nations. Of note among Marriott's broad conclusions is the notion that modern states have second chambers and if they do not, then their unicameral system is moving towards bicameral, specifically citing the failed unicameral governments of the United States, France, and the United Kingdom.<sup>3</sup> While this conclusion is rather broad and only serves Marriott's purpose of advocating for the reform of the House of Lords, his next conclusion touches upon a central tenet of the understanding of upper legislative houses, a tenet that will be repeated throughout the literature. Namely, upper legislative houses are necessary to the functioning of a federal government since they "[embody] and [enshrine] the federal principle of the Constitution."<sup>4</sup> This close relationship between the federal bargain and the need for an upper legislative house to maintain this bargain will come to inform this research into the origins of these bodies. If scholars view these bodies as necessary for the functioning of a federal government, then what factors within

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<sup>3</sup> Sir. J.A.R. Marriott, *Second Chambers; an Inductive Study in Political Science* (Oxford: The Clarendon Press, 1910), 239-241

<sup>4</sup> *Ibid.*, 241

a federal context drive the formation of upper legislative houses? These questions will be examined later in the review of some works from the federal literature.

An example of a more modern descriptive work concerning upper legislative house is Senates: Bicameralism in the Contemporary World edited by Samuel C. Patterson and Anthony Mughan. This book presents nine case studies of upper legislative houses from around the world, devoting a chapter to each one of the bodies. Though the chapters are not uniform in their composition, they generally provide background on each body's historical origins, composition, competencies, and functional ramifications in its government structure. From a depth of analysis perspective, these case studies succeed; however, the lack of uniformity in the chapters underlies the central issue with much research on upper legislative houses, namely that authors work too often on a case by case basis without trying to unify. Cases are not linked at the front-end, but rather in crosscutting conclusions as Patterson and Mughan draw.

First, they conclude that upper houses, which they term Senates, are generally the weaker of the two parliamentary bodies in a bicameral system.<sup>5</sup> Second, they argue that Senates are at their core “essentially contested institutions;” they are bodies whose existence and structure are constantly debated.<sup>6</sup> This conclusion provides particular justification for the research contained within this thesis because it is this contestation that makes studying these bodies necessary. Can we trace this contestation back to the body's origin? Additionally, as will be elaborated on in the theoretical chapter, the

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<sup>5</sup> Samuel Charles Patterson and Anthony Mughan, *Senates: Bicameralism in the Contemporary World*, (Columbus: Ohio State University Press, 1999), 338

<sup>6</sup> *Ibid.*, 338-339

contested nature of upper legislative houses will particularly inform their evolution in unitary systems.

Third, Patterson and Mughan draw the simple conclusion that Senates matter because their representational mechanism may be different than that of the lower houses and because Senates have influence over the legislative process and can drive policy creation in a certain direction.<sup>7</sup> This conclusion underlines the essential two aspects of a legislature's design and will partially contribute to the structure of the dependent variables for this thesis. If senates matter because of their powers and membership, then these are two aspects that should be accounted for in the outcomes of the bargaining game that this thesis will present. Fourth, they argue that functionally Senates have become more powerful in recent years despite their constitutional arrangements not changing.<sup>8</sup>

In a volume called Second Chambers edited by Nicholas Baldwin and Donald Shell, Samuel Patterson and Daniel Mughan offer a basic classification system for the competencies of upper legislative houses in their article "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers." Based upon their formal legislative powers, they break upper houses into five constituent categories: "Co-equal with Lower House," "Co-equal with Restrictions," "Limited Exclusive Powers, Veto," "Delay and Advisory," and "Subordinate to Lower House."<sup>9</sup> While such a classification system is a step beyond the case study based approach used by Patterson and Mughan in their aforementioned work, the categories remain broad and do not

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<sup>7</sup> Ibid., 340-342

<sup>8</sup> Ibid., 343

<sup>9</sup> Samuel C. Patterson and Anthony Mughan, "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers," in *Second Chambers*, eds. Nicholas D.J. Baldwin and Donald Shell (London: Frank Cass, 2001), 42

delineate between the houses in each category. Such a classification system works in attempts to illustrate upper house variation; however, for the purposes of an analysis of the origins of these bodies in this thesis, such a classification system does not capture enough variation and does not quantify and weight the powers of upper legislative houses. No attempt exists to delineate between what actually gives an upper legislative house power and weak, non-influential de-jure powers.

In his seminal work Patterns of Democracy analyzing the various aspects of thirty-six democracies, Arend Lijphart both seeks to define the functional aspects of bicameralism and develop a system of classification. This system is an expansion of those mentioned previously because it takes into account not simply the powers of the upper legislative house vis-à-vis the lower legislative house, but also seeks to include the nature of the representational mechanism in the separation of upper legislative houses into categories rather than simply define along only a competency basis.

Lijphart defines upper legislative houses along two dimensions: their symmetry of power relative to the lower house and the congruence of their membership relative to the lower house.<sup>10</sup> Although on the surface, symmetry may seem to be a measure of de-jure power, Lijphart includes both de-jure aspects of functional competency and de-facto power resulting from the electoral system.<sup>11</sup> More symmetric upper houses according to Lijphart have similar powers over legislation and have democratic legitimacy in having popularly elected members, assuming that lower houses have popularly elected

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<sup>10</sup> Lijphart, *Patterns of Democracy*, 206-207

<sup>11</sup> *Ibid.*, 205-206

members.<sup>12</sup> Congruence is measurement of the malapportionment of the upper house, using a gini coefficient of statistical dispersion as the quantifier.<sup>13</sup> Combining de-facto and de-jure power is partially dangerous because it muddles the index, making it unclear from where exactly the symmetry is being derived. Avoiding this problem will be a key concern in developing the definitions of symmetry and congruence, which will be the dependent variables within this thesis. De-jure will not be mixed with de-facto.

Like Mughan and Ross, Lijphart breaks the legislatures down into several categories; however, in keeping with his two dimensions of definition, Lijphart's categories account for both the symmetry and congruence of the upper houses. Lijphart assigns scores to each category, making a point not to give different scores to the two types of medium strength bicameralism. The categories are: Strong Bicameralism: Symmetrical and Incongruent, Medium Strength: Symmetrical and Congruent, Medium Strength: Asymmetrical and Incongruent, Between Medium Strength and Weak, Weak Bicameralism: Asymmetrical and Congruent, One and a Half Chambers, and Unicameralism.<sup>14</sup> Lijphart gives the bicameralism of each nation a score so that he can compare them to his scores of federalism, finding them to be correlated with an  $r$  of 0.64.<sup>15</sup> Therefore, among the thirty-six nations studied by Lijphart, strength of bicameralism and degree of federalism appear to be decently correlated. Lijphart explains the deviant cases or outliers that do not fit this correlation by the notion of

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 207-208

<sup>14</sup> Ibid., 211

<sup>15</sup> Ibid., 214

population size.<sup>16</sup> Among Lijphart's cases, all of the federal systems are bicameral and the unitary systems are evenly divided between unicameral and bicameral.<sup>17</sup>

Lijphart's book seeks to draw cross-national conclusions about the nature of democracy; therefore, he uses a factor analysis to see which democratic features are correlated with each another. With regards to nations with the feature central to the analysis of this paper, namely bicameralism, federalism/decentralization, constitutional rigidity, judicial review, and central bank independence appear to be features, at least within Lijphart's thirty-six cases, which are common among nations with bicameral legislatures.<sup>18</sup>

Lijphart also draws general conclusions about upper legislative houses, which are not universal. They are, however, valuable when attempting to give a basic sense of how upper legislative houses differ institutionally from lower chambers. First, most second chambers, with the glaring exception of the House of Lords, are smaller than their lower house counterpart.<sup>19</sup> Such a feature would seem to indicate that upper legislative houses have larger constituencies than lower legislative houses. This notion would fit with the idea of upper legislative houses either being representative of the constituent sub-units of a nation and/or the elites that are dominant in these subunits. Second, legislative terms in upper houses tend to be longer.<sup>20</sup> The commonality of this feature across the world gives the upper house as an institution the air of being more constant and less variable. While the majorities and power in the lower house can shift often, the upper house shows a

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<sup>16</sup> Ibid., 215

<sup>17</sup> Ibid., 202

<sup>18</sup> Ibid., 246

<sup>19</sup> Ibid., 203

<sup>20</sup> Ibid., 203

degree of opinion constancy. Another common feature is staggered elections.<sup>21</sup> This feature also speaks towards the previous discussion of a degree of constancy with only some members of the upper legislative house changing at any one time. Such a feature can also be linked back to the notion that the upper house plays the role of the informed advisor to policy with knowledgeable members staying in spite of possible volatile electoral politics in the lower chamber.

Rather than measure the power of an upper legislative house as the totality of its power over legislation combined with the nature of its election system, Giovanni Sartori develops a decidedly simpler method, focusing on vetoes and veto overrides. For Sartori, the powerful upper houses are those with concrete vetoes over legislation and those that are weaker only have a suspensory veto.<sup>22</sup> The power of the upper house is also a function of what percentage of the lower house is needed to override the veto with the vetoes of the most powerful upper houses being unable to be overridden by the lower.<sup>23</sup> Removed from Lijphart's measurement is the concept of direct election with Sartori stating that upper houses don't have to be elected to be powerful; there are powerful unelected bodies.<sup>24</sup> Sartori's decision to use the veto as the central competency of an upper legislative house is in keeping with the theories of decision-making described by George Tsebelis in his work Veto Players. Having a veto over policy, which can be held by a collective or individual player, is considered to be the central power of a political actor by

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<sup>21</sup> Ibid., 204

<sup>22</sup> Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives, and Outcomes*. 2nd ed. (Washington Square, N.Y.: New York University Press, 1997), 185 and 187

<sup>23</sup> Ibid., 187

<sup>24</sup> Ibid., Ibid

Tsebelis.<sup>25</sup> Sartori's definition also overcomes the problem of the merger of de-jure and de-facto power evident within Lijphart's symmetry index; therefore, it will come to play a large role in defining the variable of symmetry in this thesis.

A key distinction between upper legislative houses that is made by Sartori is the notion of considering upper houses in unitary and federal nations separately rather than collectively. For Sartori, among many authors, upper legislative houses, which represent the interests of the sub-units, are necessary to the functioning of a federal system. However, with upper legislative houses in unitary systems, Sartori notes an inherent paradox of their existence and structure. In order for an upper house to function in a unitary system, it can be congruent or symmetric, but not both.<sup>26</sup> This is in order to avoid gridlock in the legislative system that could cripple the entire government.<sup>27</sup> For Sartori, symmetric upper houses in unitary systems only work when the same group, for example a political party, controls both houses.<sup>28</sup> This inherent difference in the functional understanding of upper legislative houses points to a model of their origins that must account for a possible separate unitary and federal process of negotiation.

### *Functional Analyses*

A functional analysis that holds some interest for discussions of the origins of upper legislative houses is "Bicameral Winning Coalitions and Equilibrium Federal Legislatures" by Tasos Kalandrakis, in which the author examines in the federal context

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<sup>25</sup> George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton, N.J.: Princeton University Press, 2002), 2

<sup>26</sup> Sartori, *Comparative Constitutional Engineering*, 185-187

<sup>27</sup> Ibid.

<sup>28</sup> Ibid., 187



the distribution of a single resource across regions. This analysis is accomplished by arbitrarily dividing states into small and large categories, thus creating two subtypes.<sup>29</sup> Kalandrakis concludes from his model that increasing the representation for small states does not cause the policy outcome to improve for them and in some cases, the policy outcome is worse, thus creating a conclusion that seems almost paradoxical in nature.<sup>30</sup> Convention would seem to indicate that a state should get more favorable policies if it holds greater representation. Secondly, the more of each subtype that the legislature represents, the worse the policy outcomes will be for that subtype.<sup>31</sup> Since these conclusions seem to run counter to standard expectations as noted by Kalandrakis, their relevancy to creating models of upper legislative house origins is difficult to ascertain.<sup>32</sup> Would elites negotiating a new constitution be aware of these outcomes of representational systems upon distributive policies? Of course, it must also be noted that this analysis only deals with redistributive policies and not other areas of policy that may be of importance to elites.

The most prominent functional analysis of upper legislative houses is the book Bicameralism by Jeannette Money and George Tsebelis, which originated from their article entitled "Cicero's Puzzle: Upper House Power in Comparative Perspective." Although it may be a functional analysis, Money and Tsebelis make a series of general points about upper legislative houses that can prove useful in developing a model of the origins of these bodies. First, the authors offer an explanation for the lack of scholarship

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<sup>29</sup> Tasos Kalandrakis, "Bicameral Winning Coalitions and Equilibrium Federal Legislatures," *Legislative Studies Quarterly* 29, no. 1 (2004): 53

<sup>30</sup> *Ibid.*, 74

<sup>31</sup> *Ibid.*, 52

<sup>32</sup> *Ibid.*, 74

on upper legislative houses, acknowledging that the lack of comparative work on the upper legislative houses of the world is due to a disagreement about the legitimacy of the bodies.<sup>33</sup> Second, the three reasons given for bicameralism's existence are "the representation of distinct interests," "stability," and "quality assurance."<sup>34</sup> The first reason deals with congruence and the second two with symmetry with more powerful upper houses being able to have great influence over the legislative process and thus possibly provide a greater degree of policy continuity and a second opinion on pieces of legislation. Third, as the influence of the elites, which upper legislative houses were designed to represent, diminished, the legitimacy of unitary upper legislative houses diminished.<sup>35</sup> Fourth, like Sartori they note the inherent paradox of upper houses in unitary systems and offer two options for reform; either upper houses can increase congruence and keep their powers or have less de-jure power and keep incongruence.<sup>36</sup> Both of these paths will be accounted for in the unitary component of the model.

Money and Tsebelis focus on one single institutional aspect of upper legislative houses, namely the navette (shuttle) system, seeing how the structure of the conflict resolution procedure between the two houses affects which house has an inherent institutional advantage in affecting legislation. In a system in which the ultimate say over a piece of legislation is vested in the lower house, the upper house has more influence the

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<sup>33</sup> Jeannette Money and George Tsebelis. "Cicero's Puzzle: Upper House Power in Comparative Perspective," *International Political Science Review / Revue internationale de science politique* 13, no. 1 (1992): 26

<sup>34</sup> *Ibid.*, 27

<sup>35</sup> *Ibid.*, 26

<sup>36</sup> *Ibid.*, 28

more times they are able to comment and affect the bill.<sup>37</sup> “If there is another stopping rule (conference committee, joint session, etc.), the most powerful house loses power as the number of negotiating rounds increases.”<sup>38</sup> Regardless of the stopping rule, if the number of times the bill can shuttle between the two houses is fixed, “the house where the bill is initially introduced has an advantage.”<sup>39</sup> The interest in this research for developing a model of upper house origins, particularly with regards to symmetry, is that functionally the nature of the shuttle has an effect on the relative influence of each house over the legislative process. Therefore, elites negotiating at the birth of a nation may pay particular attention to the nature of the conflict resolution mechanism, hoping to structure it in a way that maximizes the power of the upper legislative house. The cases of Australia and India will illustrate that the nature of the navette system serves as a point of negotiation in the decision over symmetry.

In Bicameralism, Tsebelis and Money, before undertaking their functional analysis of the relationship between lower and upper legislative houses, define two aspects of such a legislature that are key to understanding the relationship between the houses. The two dimensions of bicameralism are the efficient and political.<sup>40</sup> The efficient is the idea that the two houses have common ground and want to change policies in the nation to be closer to the ideal point for the citizens; with changes, both houses end up better off.<sup>41</sup> On the other hand, the political or the redistributive is idea that there are

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<sup>37</sup> Ibid., 34

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> George Tsebelis and Jeannette Money, *Bicameralism*, Political Economy of Institutions and Decisions, (Cambridge, U.K: Cambridge University Press, 1999).16

<sup>41</sup> Ibid.

issues on which the two houses differ in their preferences and therefore will advocate for different policies; an outcome favorable to one house in this dimension will necessarily leave the other house less well off.<sup>42</sup> The political dimension will be of particular concern when crafting a model of upper house origins because necessarily, elites negotiating a new government particularly those that want an upper legislative house, will want to maximize their influence over this dimension in order to minimize unfavorable redistribution and maximize favorable redistribution.

### *Federalism Research*

One article within the federal literature that is relevant to the topic of upper legislative houses is “Rethinking the Origins of Federalism: Puzzle, Theory, and Evidence from Nineteenth-Century Europe” by Daniel Ziblatt. In this article, Ziblatt argues through an analysis of the historical unifications of Italy and Germany in the late nineteenth century that the institutional capacity of states undergoing unification will play a role in determining the level of centralization in the newly formed nation.<sup>43</sup> Under this theory, decentralization will only occur when sub-units of an emerging nation have the capacity to discharge the duties that a federal relationship would entrust to them.<sup>44</sup> Ziblatt also believes that this capacity imbues the sub-units with the power to negotiate.<sup>45</sup> If the condition of sub-unit capacity to discharge the duties of a federal state is not met, a nation will become centralized with the sub-units being absorbed into a unitary

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<sup>42</sup> Ibid.

<sup>43</sup> Daniel Ziblatt, "Rethinking the Origins of Federalism: Puzzle, Theory, and Evidence from Nineteenth-Century Europe," *World Politics* 57, no. 1 (2004): 77-78

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

structure.<sup>46</sup> Although not encompassing enough to explain the existence of bicameralism in unitary states, Ziblatt's model does hold promise in explaining why nations do not become federal and thus would have a lower chance of having an upper legislative house, considering that in a unitary system, an upper house is not necessary for the government to function.

Erik Wibbels postulated another model of federal birth in his paper "Decentralized Governance, Constitution Formation, and Redistribution;" however, unlike Ziblatt, he takes a political-economy approach. In this work, the nature of the governmental structure in a nation with respect to the power of the national government vs. the power of the sub-unit governments is explained as the product of a redistributive conflict. Under Wibbels' model, the key actors are the regional elites, who wish to protect their economic interests vis-à-vis the elites in other regions and the central government, feeling that a centralized government will redistribute across the sub-national units.<sup>47</sup> The two primary factors that influence the desires of these elites are inter-regional factor endowment variation and inter-regional inequality.<sup>48</sup> The factor endowment variable shapes the preferences of the sub-unit elites with regards to centralization while the inter-regional inequality variable shapes the preferences of the sub-unit elites with regards to both centralization and economic redistribution across regions by the central government.<sup>49</sup>

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<sup>46</sup> Ibid.

<sup>47</sup> Erik Wibbels, "Decentralized Governance, Constitution Formation, and Redistribution," *Constitutional Political Economy* 16 (2005): 166.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 168-170

Wibbels argues that when factor endowments vary across the sub-units, the elites in those regions will work to constrain the power of the national government, fearing that economic policies may be put into place that work against their specific economic interests.<sup>50</sup> One such constraint offered is bicameralism.<sup>51</sup> With regards to inter-regional inequality, Wibbels postulates that when there is a high degree of inter-regional inequality, the resulting nation, whether federal or unitary, will have redistribution.<sup>52</sup> Additionally, inter-regional inequality can have an effect upon the centralization of the state.<sup>53</sup> Particularly, when poorer regions in a nation fear control of the national political apparatus by a group of more populous wealthier regions, the poorer regions will fight for further constraints upon the national government in an effort to protect their economic interests.<sup>54</sup>

The model also delves into the relationship between inequality in urban and rural regions and its effect upon the redistribution demanded as a result of the inter-regional inequality. Wibbels develops a framework through which to understand the direction of the flow between urban and rural areas.<sup>55</sup> If inequality within urban areas is relatively small, then redistribution will be “mixed.”<sup>56</sup> If urban inequality is high and rural inequality is low, the flow will be from rural areas to urban area.<sup>57</sup> And finally, when inequality is great in both urban and rural areas, the redistributive flow will be from urban

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<sup>50</sup> Ibid., 166

<sup>51</sup> Ibid., 168

<sup>52</sup> Ibid., 170

<sup>53</sup> Ibid., 168

<sup>54</sup> Ibid., 168

<sup>55</sup> Ibid., 170-171

<sup>56</sup> Ibid. 171

<sup>57</sup> Ibid.

areas to the rural area.<sup>58</sup> Since this section of the model does not offer further explanation of how the government will be set up and deals only with the nature of redistribution, it will not be included in the model. The key point to note from this portion of Wibbels' argument is that elites in different areas, namely urban and rural, can form a coalition against the center in spite of the different nature of their economic systems.<sup>59</sup>

Like Wibbels, Pablo Beramendi seeks to explain the origins of federalism and centralization using a political economy model. However, while he agrees with Wibbels on the core, underlying pivot point of analysis, namely economics, Beramendi's explanatory variables are different. Both authors cite inter-regional inequality as central to the understanding of decentralization; however, while Wibbels uses inter-regional factor endowment variation to explain the level of decentralization and resulting redistribution, Beramendi cites the possibility of crises within the labor market as the second germane factor within his model.<sup>60</sup> Beramendi seems to be more interested in asset specificity as opposed to factor endowments, in which Wibbels is interested. A combination of these two approaches will be offered in the model in this thesis.

Under Beramendi's model, wealthy regions will always want to decentralize to avoid redistribution.<sup>61</sup> Logically, it would follow that the wealthier a region, the more it will prefer decentralization. Poorer regions will generally seek centralization, believing that the more powerful the central government, the greater amount of redistribution there

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid., 170

<sup>60</sup> Pablo Beramendi, "Inequality and the Territorial Fragmentation of Solidarity" *International Organization* 61, no. 4 (2007): 785

<sup>61</sup> Ibid., 793

will be toward the poorer regions as the national government creates collective goods.<sup>62</sup> However, poor regions may seek to avoid centralization when they have a highly specialized economy that could possibly suffer under the collective economic policies of the central government.<sup>63</sup> Also under this model, the relationship between decentralization and inequality is not that the former causes the latter, but rather that the latter helps to create the former, which then helps maintain the latter.<sup>64</sup> Key to note is that Beramendi seems to assume that the political actors are aware of the inequalities within the nation and are aware of the results of a particular type of regime structure. Through his statistical analyses, Beramendi finds that that the larger the income inequality, the more decentralized the welfare state will be.<sup>65</sup> While Beramendi deals specifically with the welfare state, the underlying logic of his conclusion will partially come to underlie the prediction of the effect of inter-regional inequality on the symmetry of an upper legislative house in the theory of this thesis.

In their article "Political Confederation," Jacques Cremer and Thomas Palfrey theorize about how the representational mechanism of legislative houses in confederations are decided upon, not specifically dealing with upper legislative houses, but rather both houses. To simplify their analysis, they define two types of representation mechanisms: unit representation and population representation.<sup>66</sup> The level of centralization in the confederation affects the type of representation that small and large

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<sup>62</sup> Ibid

<sup>63</sup> Ibid.

<sup>64</sup> Ibid., 786

<sup>65</sup> Ibid., 801-802

<sup>66</sup> Jacques Cremer and Thomas R. Palfrey, "Political Confederation." *The American Political Science Review* 93, no. 1 (1999): 70



states desire with each one having the opposite preference.<sup>67</sup> Small states prefer unit representation when centralization is greater and large states prefer population-based representation when centralization is greater.<sup>68</sup> Cremer and Palfrey's analysis is valuable in informing the preference of the elites in the bargaining game that is presented in this thesis, seeing as their research concerns itself directly with understanding the form of representation desired by sub-units in an emerging government.

An alternative to the political economy approach to understanding federalism is the ethnic approach. An ethno-federal state is a nation in which at least one of the constituent sub-units of the federal state has an ethnically based membership.<sup>69</sup> Ethno-federal states can have a core ethnic region that either represents the majority of the population or represents 20% more of the population than the next smallest ethnic group, which is an arbitrary definition created by Henry Hale.<sup>70</sup> Ethnicity functions to create such a system when it is not defined as a sense of self, but rather a sense of self in relation to the entire society.<sup>71</sup> Ethnic groups are established on the basis of a group's position relative to some standard point of reference in the society.<sup>72</sup> The central notion of ethno-federalism is that different ethnic groups have varying interests and will wish to protect those interests vis-à-vis the other ethnic groups; therefore, an ethnic based federal power sharing agreement is agreed upon which allows the ethnic groups some regional control over governance. Although Hale does not mention the notion of an upper

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<sup>67</sup> Ibid., 71

<sup>68</sup> Ibid.

<sup>69</sup> Henry E. Hale, "Divided We Stand: Institutional Sources of Ethnofederal State Survival and Collapse," *World Politics* 56, no. 2 (2004): 167

<sup>70</sup> Ibid., 169

<sup>71</sup> Henry E. Hale, "Explaining Ethnicity," *Comparative Political Studies* 37, no. 4 (2004): 463

<sup>72</sup> Ibid., 465

legislative house in his article, it can be surmised that in an ethno-federal system, an upper house would fulfill the role of representing the ethnic groups on the national level. The issues driving the ethnic groups preferences over the power of the upper legislative house would therefore necessarily be different than the issues in the socioeconomic models.

However, even though the ethnic may appear to be distinct from the economic, it is possible for the two to become married into a single unified theory. In his article “Explaining Ethnicity,” Henry Hale explains that ethnic identity and socio-economic group status, the driving force behind the preferences of the elites in the political economy models of federalism, can become coterminous with one another.<sup>73</sup> Hale offers three examples of research that have examined this issue. Bates observed that in Africa socioeconomic and ethnic divides tended to coincide.<sup>74</sup> Hechter worked to show that ethnic identities come to be associated with positions within the class system; groups eventually become tied to certain socioeconomic class levels and only have certain opportunities available to them.<sup>75</sup> Dawson worked with the United States and looked to see how the African American ethnic identity is inherently united with their economic position.<sup>76</sup> When ethnicity and economic status merge in this manner, it becomes difficult to discern which one is informing the preferences of groups with regards to federalism, seeing as both could be informing their preferences. The line between economically based federalism as an institution from which the redistributive scheme of a

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<sup>73</sup> Hale, “Explaining Ethnicity,” 476

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

nation is derived and ethnically based federalism as an institution of power sharing blurs when such economic distinctions are made, thus rendering ethno-federalism a weaker explanation.

### *Literature Review Summary*

The descriptive works provide two levels of justification for the presentation of a theoretical framework to explain the origins of upper legislative houses. First, the prevalence of works throughout the 20<sup>th</sup> century that trace the origins of individual upper legislative houses highlights the lack of movement towards finding a unified framework to explain this extant institution. Scholars have presented unified frameworks for democratization as a process and for the debate over centralization/decentralization government structure at the national level; however, the institution of the upper legislative house, which lies at the intersection of these two processes is only minimally addressed. Second, the descriptive works that seek to categorize upper legislative houses into groups based upon their capabilities and membership simply serve to highlight the tremendous variation that a unified model such as the one that will be presented in the next chapter would be necessary in order to explain.

The functional analyses illustrate two points that will help to inform the model presented in the chapter immediate following this summary. First, a distinction exists between those upper legislative houses within unitary systems and federal systems; therefore, a theoretical framework will need to account for this bifurcation and present two parallel processes. Second, functional analyses illustrate that upper legislative houses at the present have a much more easily definable function within federal, decentralized governmental systems, and are often considered necessary to the functional

stability of a federal system. Therefore, the literature, which presents unified frameworks for understanding the centralization/decentralization debate across the world, will serve as a starting point for a model explaining the origins of the symmetry and congruence of upper legislative houses. Wibbels suggestion that an upper legislative house can be a component of the restraints upon the center imposed by constituent sub-units further substantiates this connection.<sup>77</sup> Inspiration from his model as well as Daniel Ziblatt's model will help to form the negotiation process within the federal side of the model.

### **Chapter 3: Theoretical Model**

#### *Dependent Variables*

Before delving into the specifics of the model, it is necessary to provide an introduction to the two aspects of upper legislative houses that this thesis seeks to explain. The two dependent variables will be a measure of the symmetry of upper legislative houses' power (jurisdiction) and a measure of the upper houses' congruence (composition). Both will be considered relative to the lower house. The inspiration for these variables is drawn from Arend Lijphart's book Patterns of Democracy, in which he classifies upper legislative houses based upon the symmetry of their jurisdiction relative to the lower house and on the congruence of the membership based upon a Gini coefficient.<sup>78</sup> It is important to note that both of Lijphart's variables and their respective counterparts within this thesis are relative variables; they seek to quantify and represent a relationship between the two houses, owing to the fact that upper legislative houses are

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<sup>77</sup> Wibbels, "Decentralized Governance," 168

<sup>78</sup> Lijphart, *Patterns of Democracy*, 205-210

not island institutions. Their power can only be defined as a component of a larger legislative structure with the interaction between the two houses being paramount.

However, unlike Lijphart, this thesis will define symmetry in a narrower sense. Whereas Lijphart focuses on both the de-facto and de-jure power of an upper legislative house, particularly taking into account the notion that direct elections give a body greater legitimacy, this thesis will instead focus on de-jure powers over legislation, feeling that symmetry should encompass only legislative power.<sup>79</sup> Working off of the theoretical ideas of Tsebelis in Veto Players, symmetry will be a measure of whether the upper house has an absolute or a qualified veto over legislation.<sup>80</sup> Consideration will be given to which types of bills an upper legislative house can veto, what percentage of the lower legislative house is capable of overriding, and what type of conflict resolution mechanism exists between the houses. De-facto power at the moment of constitutional crystallization is also difficult to determine given that the governmental structure has just come into existence. Whether direct elections leads to greater legitimacy in a specific nation would require examination of the period following the founding, a period outside of the purview of this thesis; therefore, only de-jure symmetry will be considered.

The congruence variable will be an exploration into the equity of representation of the upper and lower legislative houses, looking at how the representational mechanisms of the two bodies represent the enfranchised polity. Equity will be measured in terms of whether the apportionment mechanisms ensure equal representation for all members of a polity. The variable of congruence will specifically be a comparison between the equity

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<sup>79</sup> Ibid., 205-206

<sup>80</sup> Tsebelis, *Veto Players: How Political Institutions Work*, 17

of the two houses, attempting to see primarily whether the malapportionment or lack thereof of the two houses within a legislature are relatively similar or different. Equal levels of malapportionment will be termed congruence while varying levels of malapportionment will be termed incongruence.

### *The Unitary Fallacy*

Drawing from the federalist literature in order to create a model explaining the origins of the symmetry and congruence of upper legislative houses relative to the lower houses introduces a paradox. How can the federalist literature be used to explain the variation in the upper legislative houses of unitary nations? Can the same model explain unitary upper houses and federal upper houses or is there an inherent difference that requires a bifurcated model with a unitary and a federal path? As indicated by Giovanni Sartori, an inherent difference in the nature of the structure of upper legislative houses in unitary and federal systems exists; they have different requirements in order to function effectively.<sup>81</sup> Therefore, it is logical to think that they result from different processes.

Federalism models, including those postulated by Wibbels, Beramendi, and Ziblatt, focus on sub-units and those who control them as the primary negotiators of the federal compromise, and as Wibbels notes, an upper legislative house is often a component of this compromise.<sup>82</sup> Looking at Ziblatt's work on sub-unit governmental capacity and combining it with the notion that upper legislative houses are the

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<sup>81</sup> Sartori, *Comparative Constitutional Engineering*, 185-187

<sup>82</sup> Wibbels, "Decentralized Governance," 168

institutionalization of the federal principal at the national level,<sup>83</sup> states with weak sub-units would not end up with an upper legislative house during the negotiation process.<sup>84</sup> Ziblatt uses the example of the unification of Italy by Piedmont.<sup>85</sup> As discussed earlier, the key to the Ziblatt notion of the negotiation of federalism is not a Rikerian security conflict, but rather a question of institutional capacity.<sup>86</sup> States with sub-units incapable of providing services to their citizenry become unitary under the Ziblatt framework with the state initiating unification taking ultimate control over the nation because it is able to provide the necessary public goods to the citizenry.<sup>87</sup> With Ziblatt hinging the capacity of negotiation upon this institutional capacity, weak sub-units unable to negotiate a federal relationship would concurrently be unable to negotiate an upper legislative house.<sup>88</sup> Therefore, it should be expected that those nations with unitary systems should not have an upper legislative house. However, under this framework, how can the House of Lords in unitary Great Britain and the Sénat in unitary France be explained?

Using federalism models to craft a model explaining upper legislative house symmetry and congruence would be to partially assume that all democracies result from such a negotiation process; however, such a notion would fail to encompass unitary cases, which did not arise out of a federal negotiation with a resulting unitary system as under the Ziblatt framework. Unitary systems necessarily are defined by a lack of sub-unit interests; therefore, outside of the cases like Piedmont Italy, sub-unit elites could not

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<sup>83</sup> Marriot, *Second Chambers; an Inductive Study in Political Science*, 239-241

<sup>84</sup> Ziblatt, "Rethinking the Origins of Federalism," 77

<sup>85</sup> *Ibid.*, 79-80

<sup>86</sup> *Ibid.*, 77

<sup>87</sup> *Ibid.*, 77-78

<sup>88</sup> *Ibid.*

be the negotiators of the governmental system. Therefore, considering the central nature of these states, it would be logical to believe that the negotiators of the compromise were national groups, existing across the nation, rather than particularistic, local elites as in the Wibbels model.<sup>89</sup> One can look at Daron Acemoglu and James Robinson's book Economic Origins of Dictatorships and Democracy, which seeks to understand democratization through the lens of a redistributive conflict between the citizenry and the elite, to help find a road map to understanding this nationally based process of upper house origins.<sup>90</sup>

In their unifying model, Acemoglu and Robinson (A&R) divide the populace into the citizenry and the elite with the former preferring democracy because it furthers their economic interests and the latter preferring authoritarianism because it furthers their interests.<sup>91</sup> The citizenry prefers a more democratic government that will produce public goods for the benefit of the entire polity and the regional elites prefer either a lack of redistribution from their interests or redistribution in favor of their interests. Although the Wibbels model uses sub-unit elites as the actors, the preferences of these groups match with the preferences of the groups in the nationally based model of A&R. Groups wish to institute a political system in which their economic interests are represented and protected. In order to see if the A&R division can be used to understand the origins of upper legislative houses within a unitary state, a cursory analysis of a nation becomes necessary.

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<sup>89</sup> Wibbels, "Decentralized Governance," 166

<sup>90</sup> Daron Acemoglu and James A. Robinson, *Economic Origins of Dictatorship and Democracy* (Cambridge; New York: Cambridge University Press, 2006), 22-23

<sup>91</sup> Ibid.



One clear example of a unitary nation with an upper legislative house is the United Kingdom, disregarding the current trajectory of the United Kingdom towards decentralization with degrees of autonomy being given to Scotland, Northern Ireland, and Wales. Looking at the names of the two bodies of the British Parliament provides further justification for this analysis. The names of House of Commons and House of Lords correspond to the negotiating groups in Acemoglu and Robinson's model. The commons are the citizenry and the lords are the elite. The democratization process of Great Britain was characterized not by a marked and sudden change but rather a slow and gradual change over the course of more than a century; reform not replacement characterized the British example. Britain falls firmly within what Samuel P. Huntington defined as the first wave of democratization in his landmark work The Third Wave, in which he comes to define and interpret the processes that have driven the democratizations in the latter half of the twentieth century.<sup>92</sup> For Huntington, the first wave of democratization was a period from roughly 1828-1926 that was characterized by a gradual transition to democracy.<sup>93</sup>

The House of Lords at the time of its inception was a body built around the landed aristocracy of Great Britain, being composed of hereditary peers and the Lords spiritual, the leaders of the Church of England. Originally, the House of Lords was the more powerful of the two houses of parliament, producing the prime minister of Britain. However, over the course of its existence, the power of this upper house has waned as the

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<sup>92</sup> Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, The Julian J Rothbaum Distinguished Lecture Series (Norman: University of Oklahoma Press, 1991), 14

<sup>93</sup> *Ibid.*, 16-17

House of Commons has asserted itself to become the dominant legislative body in British government. Reforms to the system of government have stripped the House of Lords of all but a suspensory veto over legislation. Most important among these reforms was the Parliamentary Act of 1911, which stripped the House of Lords of its ability to veto monetary bills passed by House of Commons, thus illustrating the underlying economic origins of upper legislative houses.

In Britain, the upper house protected the interests of aristocracy, which arose out of the court of the monarchy and the feudal system of Britain. The interests of this group were often in direct conflict with the interests of the Commons as illustrated by the social insurance programs put in place by the Lords in order to appease the rising Commons, programs which ran counter to the interests of the Lords. Fearing an uprising, however, the Lords offered the Commons an olive branch instead of altering the political system. The House of Lords only gave up ultimate power to the House of Commons when it could no longer sustain an appeasement system, thus fitting with Acemoglu and Robinson's notion that actors will fight for political institutions that protect their interests.<sup>94</sup> Only when the king threatened to dilute the power of each Lord by granting more titles did the House of Lords ultimately succumb to the power of the rising commons and relinquish its power to veto revenue bills.

From this cursory analysis of the House of Lords, a possible explanation for upper houses in unitary systems emerges. Upper legislative houses occur in unitary systems despite the fallacy of their existence with respect to federalism, because they are

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<sup>94</sup> Acemoglu and Robinson, *Economic Origins of Dictatorship and Democracy*, 24

remnants of the monarchies that once ruled these societies, having represented the aristocracy. Rather than evolving in a single moment of constitutional crystallization, a single moment of democratization, these nations underwent a gradual process of democratization and reform, which has resulted in once symmetric and incongruent upper legislative houses becoming asymmetric or congruent, thus bringing them in line with Sartori's notion that an upper legislative house in a unitary system can be either congruent or symmetric but not both.<sup>95</sup> Devolution from monarchy thus serves as the unitary component of the bifurcated model required to explain the origins of upper legislative houses.

### *The Actors*

The bifurcated nature of the model with both a unitary and federal dimension necessitates two separate sets of actors; therefore, there will be one set for each division of the model. In the unitary process, the negotiation over the nature of the upper legislative house will occur between a national elite and the citizenry. In the federal process, the negotiation will occur between the elites of different sub-units. Certain underlying principles, however, will inform the preferences of all actors, whether they are national or regional, over the institution of the upper legislative house in their respective unitary or federal system. First, according to Acemoglu and Robinson, the actors will fight for the political institutions, which will protect their interests, because these

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<sup>95</sup> Sartori, *Comparative Constitutional Engineering*, 185-187

institutions are “durable.”<sup>96</sup> In this theoretical framework, the institution over which they will be fighting will be an upper legislative house. Second, all actors in negotiating the symmetry and congruence of an upper legislative house will attempt to maximize their utility with respect to what Tsebelis and Money term the political or redistributive dimension of bicameralism in order to ensure economic policies, which benefit their interests.<sup>97</sup> The political or redistributive dimension are those areas in which the upper and lower legislative houses do not agree on policies.<sup>98</sup>

### **Unitary Division Actors**

In the unitary half of the model, the actors will be defined as nationally, not regionally based groups. Drawing off of Acemoglu and Robinson, the actors will be defined as the citizenry and elite. The delineation between these two groups will be their level of control over the economy, namely the means of production. The elite controls the means of production while the citizenry is the agent of production, the labor force. Considering that the unitary half of the model is based off of devolution from monarchy, the elite will be the aristocratic elements of society, which are the original holders of power in the upper legislative house at the moment of its inception in the autocratic system. The elite in the unitary dimension will wish to maintain both the symmetry and incongruence of the upper legislative house in order to protect their economic interests vis-à-vis the citizenry. However, as the economic power of the citizenry increases and the strength of the landed industries diminishes over time, the elite will be faced with calls to

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<sup>96</sup> Acemoglu and Robinson, *Economic Origins of Dictatorship and Democracy*, 24

<sup>97</sup> Tsebelis and Money, *Bicameralism*, 16

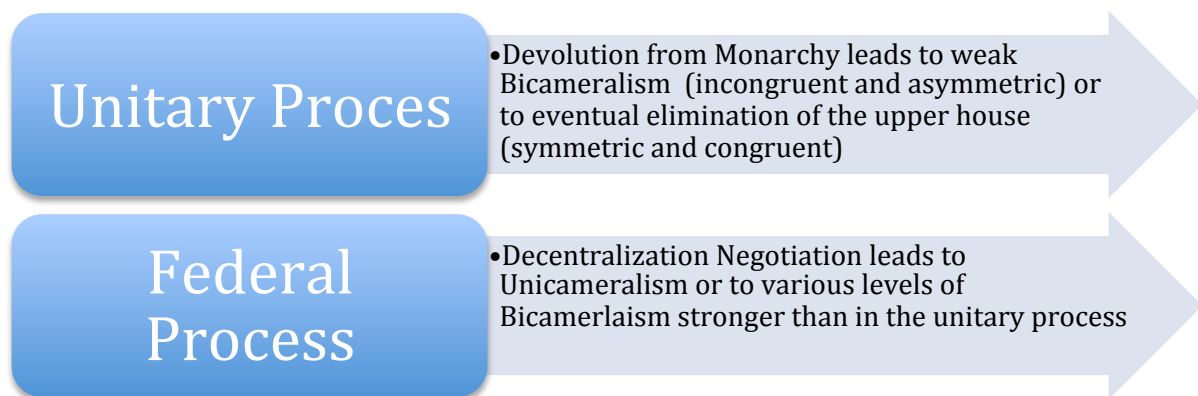
<sup>98</sup> Ibid.

make their house either more congruent or less symmetric. As calls for reform of the upper house mounted from the citizenry, the elite would attempt to steer the reform down the path of less symmetry if they felt that given greater congruence, they would be incapable of maintaining enough power in the new body to truly shape policy. Such a pathway was chosen in Great Britain with the House of Lords choosing to lose its influence over monetary bills rather than be subject to expansion and thus diminution of the power of each member's vote. If the elite felt that it could maintain enough of presence in the upper house given a more congruent representation system, then it will choose this path rather than allow the jurisdiction of the body to be circumscribed. Expectation of electoral success will lead to the elite choosing this path, while a lack of confidence in the ability to maintain adequate representation through a more congruent representational system will lead to the asymmetry path.

### **Federal Division Actors**

In the federal half of the model, the actors will be regionally, not nationally based. The negotiation over the nature of the upper legislative house will thus be between regionally based elites, and not a centralizing force and a national elite. As will be discussed in the description of the variable distribution of economic specializations, the elite in each region will be considered to be the controllers of the means of production of a region's largest industry as determined by what percentage of the regional GDP it represents in the industry A vs. B framework. In the factor specificity arrangement, determination of the elite will be simpler with the elite being the wealthiest components of the society, namely the ones that control the factors that underlie their sub-units economy.

Regional elites in the federal process will seek an upper legislative house to represent their voice at the national level in their attempt to avoid redistribution of their wealth towards poorer sub-units, enact redistribution towards their interests, and in order to ensure economic policies, which are favorable towards the economic conditions of their respective regions. Informing the preferences of these elites will be the variables of distribution of regional economic specializations and inter-regional inequality. Both of these variables relate the personal situation of each elite to the systemic conditions across the entire nation. Coalitions will form among sub-unit elites with similar specializations and similar levels of wealth. Negotiations in the federal cases could be termed purely federal with the only actors present at the negotiation being the elites from the sub-units as defined under the two processes designated in the previous paragraph. The writing of the Constitution of the United States illustrate the notion of a purely federal negotiation without the presence of a centralizing political force in the form of the masses. The discussions over the structure of the constitution occurred simply between representatives of the states.



**Figure 1: Bifurcated Model**

*Democracy from Monarchy*

As discussed previously in this chapter, the centralized nature of the system of monarchy imposes a different democratization process than the one outlined in the federalist literature. Due to the central nature of a monarchy, the negotiation happens between groups with the regional component absent; therefore, the sub-unit capacity to negotiate in keeping with Ziblatt's model has to be taken to be zero.<sup>99</sup> However, the originally strong monarchies with their supporting aristocracies come to create upper legislative houses that are always incongruent with the upper house representing the aristocracy and the lower house representing the common citizenry. Through evolution, the upper houses in former monarchies will become weaker, leaving them asymmetric and incongruent or symmetric and congruent as postulated by both Sartori<sup>100</sup> and Tsebelis and Money.<sup>101</sup> Upper legislative houses that follow the latter of the two paths may continue through the devolution process and be eliminated entirely as in the case of Sweden, which will be covered later.<sup>102</sup>

This does not presuppose, however, that every upper legislative house that descended from a monarchy is equally as powerful. Unlike in the federal process, which occurs at a singular moment of constitutional crystallization, the devolution from monarchy is a gradual process; therefore, upper houses can be at different moments within the process at the same calendar date.<sup>103</sup> However, the ultimate conclusion of such

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<sup>99</sup> Ziblatt, "Rethinking the Origins of Federalism: Puzzle, Theory, and Evidence from Nineteenth-Century Europe," 77-78

<sup>100</sup> Sartori, *Comparative Constitutional Engineering*, 185-187

<sup>101</sup> Tsebelis and Money, *Bicameralism*, 34-34

<sup>102</sup> *Ibid.*, 35

<sup>103</sup> Huntington, *The Third Wave*, 16-17

a gradual process will be a combination of incongruence and asymmetry or congruence and symmetry. One of the two institutional dimensions must change in order for the house to continue to exist. The basic tenet of the remainder of the model will be that outside of these monarchical cases, the debate over centralization vs. decentralization is endogenous to the process of democratization.

### *Unicameral or Bicameral*

Before being able to determine the relative symmetry and congruence of upper legislative houses, it is necessary to first delineate between nations that will become unicameral and those that will become bicameral in the constitutional negotiation process. The factor of infrastructural capacity of the sub-national political units helps to explain the separation of the cases into these two groups. The understanding for this delineation is drawn from the aforementioned article by Daniel Ziblatt, in which he argues that decentralization will only occur when sub-units of an emerging nation have the capacity to discharge the duties, which a federal relationship would entrust to them; Ziblatt also believes that this capacity imbues the sub-units with the power to negotiate.<sup>104</sup> If the condition of sub-unit capacity to discharge the duties of a federal state is not met, a nation will become centralized with the sub-units being absorbed into a unitary structure.<sup>105</sup> Therefore, in this model, those cases in which the sub-units do not have the institutional capacity to discharge the duties of a state within a federal framework will have unicameral parliaments, not needing a body to represent non-

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<sup>104</sup> Ziblatt, "Rethinking the Origins of Federalism," 77-78

<sup>105</sup> Ibid.



existent sub-units that do not have a strong enough negotiating position from which to advocate for an upper legislative house.

*Symmetry Dimension: Distribution of Economic Specializations*

As discussed by Professor Wibbels, regional factor endowments represent such qualities as “geography, soil, rainfall, temperature, etc.” that determine the nature of the economic system in the sub-units.<sup>106</sup> Although Wibbels bases the definition of his primary variable of differentiation on the notion of factor endowments, a close reading of his article illustrates that he uses the notion of factor endowments to inform a simplified variable of economic specialization. Rather than account for every aspect of a region’s economic system, Wibbels defines each region by its primary form of industry. According to Wibbels, “where regional leaders depend on divergent economic bases, concern that any single or coalition of regions will dominate national politics and make policy to its own benefit will lead regional elites to lobby for constraints on the central government.”<sup>107</sup>

There is no one metric used by Wibbels, such as a divide between rural and urban wealth or a divide between agricultural and industrial wealth. Wibbels’ analysis, therefore, seems to lack operationalization because he feels that each debate over centralization is unique and can only be specified to the generic variables of regional factor endowment variation and inter-regional wealth inequality. He is particularly keen on not choosing a specific divide between economic specializations, such as between

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<sup>106</sup> Wibbels, “Decentralized Governance,” 166

<sup>107</sup> Ibid., 168

industry and agriculture, or commerce and agriculture (as chosen by Ziblatt in his example of the unifying German empire),<sup>108</sup> noting that the divide could encompass a divide between small scale and plantation agriculture in a non-industrialized nation.<sup>109</sup>

With Wibbels noting a need at the end of his article for a greater degree of operationalization, this thesis in adapting his theory of decentralization to the notion of upper legislative house origins will operationalize his variable of factor endowment variation to a degree. Similar to Wibbels, no specific divide will be presented, particularly considering that democratizations have happened across the course of economic history and in countries at different moments in the process of economic modernization. However, this thesis will attempt to operationalize what will be termed skewed distribution of regional economical specializations and what can be termed balanced distribution of economic specializations. Balanced and skewed will occur in two separate frameworks:

- A delineation between regions involved in economic sector A or B with the bargaining weight of each group defined by its total production
- A delineation between regions based upon the mobility of their assets, particularly in the face of an economic crisis or changing economic conditions.

### **Sector A vs. B Distribution Arrangement**

In order to complete this operationalization, the economic specialty of each region in the evolving nation will be defined as that industry which comprises the greatest

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<sup>108</sup> Daniel Ziblatt, *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism*. (Princeton, N.J.: Princeton University Press 2006), 34

<sup>109</sup> Wibbels, "Decentralized Governance," 167

component of the regional GDP. In this method, the bargaining power of the regional elites that control these modes of production in these economic specialties is being ascribed to their economic might as measured by production. The total production for each of the specialties would then be calculated. For example, the agricultural production of each region primarily involved in agriculture would be added together, specifically not accounting for agricultural production in those regions in which agricultural production is not the primary industry because it is to be assumed that the most powerful elites in those regions are engaged in another form of industry, namely their region's specialty. A comparison will then be made between the total productions of each specialty, using the calculated totals obtained by the above method.

The preferences of the sub-unit elites will thus be informed by how their economic interests relate to the systemic conditions of the entire nation. Considering the power of regional elites to form coalitions with those elites in regions with similar economic interests to them, the strongest upper legislative houses will result when there is a 1:1 ratio in the total production of the two specialties. This will be termed balanced distribution and will be the most polarized arrangement with two equally powerful sides wishing to protect their interests vis-à-vis the other side. As the ratio of specialties production becomes more skewed (for example 2:1, 3:1, or in the most extreme case, 100% of production in the same industry), the symmetry of the upper legislative house would decrease, seeing as the polarization would become less severe, and the group with a greater amount of production would hold more influence in the negotiation process. These ratios outside of 1:1 will be termed skewed distribution of economic specialization. The preferences and outcomes of this variable of distribution of regional economic

specialization are built around the notion of coalition building between the elites of sub-units with the same economic specialty.

If for example, production in those regions primarily engaged in agriculture totaled \$50 million per year and production in those regions primarily engaged in industry totaled \$50 million per year, then it would be logical to predict that this nation would have a relatively symmetric upper legislative house, seeing as economic policy would be highly polarizing, and each of the two coalitions of sub-unit elites would wish to imbue an upper legislative house with as strong of a veto over policy as possible in order to allow their representatives to protect their interests. Regions with the same economic specialty would work together in the bargaining process to achieve the most symmetric upper house possible in an effort to protect their economic interests by preventing economic policies that would work not towards the good of their regional economic base, but rather towards the economic strengthening of the entire nation. This distribution scheme will come to underlie the case studies of the German Empire and India.

### **Factor Specificity Distribution Arrangement**

Unlike the previous distribution definition scheme for the variable of distribution of regional economic specializations, this definition scheme will be based upon models of asset specificity. Such a distribution definition is valid because the federal component of the model necessarily entails a sub-unit giving up some of its sovereignty to a central government authority; a national government tasked with overseeing the economy of an

entire nation will be less specifically concerned with regional demands for protection because it is responsible to the entire nation.<sup>110</sup> Therefore, regionally based elites negotiating the federal compromise will be inclined to ensure some degree of representation for their sub-unit specifically in order to guarantee that their calls for protectionism are heard at the national level.<sup>111</sup>

Rather than use a pure Heckscher-Ohlin model, in which factors can move easily across different components of the economy, or a Ricardo-Viner model, in which some factors cannot easily move across components of the economy and are thus static, this thesis will use a generalization of the latter model, which is more applicable to defining sub-unit economic specialization.<sup>112</sup> The generalized model, which was discussed by James Alt et al., allows even those factors with high specificity a degree of mobility, thus permitting both “cross-class coalitions ...and class-based coalitions.”<sup>113</sup> By taking away the strict requirement of factors being either fully mobile or some factors being completely static, the factor specificity model becomes more applicable to real world situations.<sup>114</sup> Factors are never purely mobile or immobile.

Like the Industry A vs. Industry B economic specialization scheme, coalition building between sub-unit elites with similar economic interests will be considered to be key to informing how this variable affects the symmetry of an upper legislative house. Rather than sub-unit elites breaking down by industry, sub-unit elites in this scheme will

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<sup>110</sup> James E. Alt, Jeffrey Frieden, Michael J. Gilligan, Dani Rodrik, and Ronald Rogowski, "The Political Economy of International Trade: Enduring Puzzles and an Agenda for Inquiry," *Comparative Political Studies* 29, no. No. 6 (1996): 703

<sup>111</sup> Ibid.

<sup>112</sup> Ibid., 692

<sup>113</sup> Ibid. 697

<sup>114</sup> Ibid., 697

divide along factor specificity lines. Elites in sub-units with generally immobile assets, such as land, which can only support a single industry, or highly specialized labor, will be protectionist. However, elites in sub-units with generally mobile assets, such as a high degree of capital or land whose use can be changed easily and quickly, will be open to free trade because they could derive greater utility from the factors with a greater market within which to utilize them. The onset of an economic crisis, requiring short-term changes in factor use will exasperate these conflicts, particularly when such a crisis affects an industry with highly immobile assets.

When the split between the GDP of these two groups of region types is 1:1, the most symmetric upper legislative house will result because as previously discussed in the A vs. B arrangement, economic, particularly trade policy, will be highly polarizing with each sub-unit wishing to grant its regional representative as much influence as possible on the national level to either instigate free trade or enshrine protectionism for the sub units, depending upon the sub-unit type. As the relationship between the two groups becomes more skewed with either protectionists or free trade supporters comprising significantly more than half of the total GDP of the future nation, then the upper house will be less symmetric with the degree of skew determining the level of symmetry. This distribution arrangement will be at the heart of the Australian case study, in which the colonies of the nation divide along free trade and protectionist lines.

#### *Symmetry Dimension: Inter-Regional Inequality*

The variable of inter-regional inequality forms the other component of the symmetry dimension, informing the preferences of sub-unit elites over the institution of

the upper legislative house at the moment of constitutional crystallization. Justification for the inclusion of this variable comes from the research of Pablo Beramendi, who was able to prove through statistical analyses that the larger the income inequality between sub-units, the greater the level of decentralization in a political system.<sup>115</sup> Linking this with Wibbels model, in which an upper legislative house is defined as a constraint on the center, it is logical to think that greater income inequality would lead to a more symmetric upper legislative house with greater influence over economic policy.<sup>116</sup> Therefore, even though Wibbels primarily uses this variable to determine how redistribution will occur, this thesis will expand upon his foundation and have it play a larger role in shaping the institutional arrangement of upper legislative houses.<sup>117</sup> Inter-regional inequality will be considered using the per-capita income of sub-units. Although this may seem like a simplification, considering that the model concerns itself with the actions of elites in the sub-units, the use of this data to represent this variable is justified because in those regions where the per capita income is higher, generally the wealth of the elites in those regions will be higher.

Like distribution of regional economic specializations, elites' preferences with regards to inequality are informed based upon their own personal situation and how it relates to the systemic arrangement of inequality. In general, as Wibbels states, poorer states will seek to check the powers of the wealthier states, fearing that they will dominate the political system and use the system to further only their economic interests

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<sup>115</sup> Beramendi, "Inequality and the Territorial Fragmentation of Solidarity," 801

<sup>116</sup> Wibbels, "Decentralized Governance," 168

<sup>117</sup> *Ibid.*, 170

and redistribute towards themselves.<sup>118</sup> Such an arrangement would serve to only increase the level of inequality in a nation. Wealthier states, fearing calls for redistribution from the poorer sub-units will work towards limiting the power of the poorer states on the national level by seeking to grant themselves a check over the economic policies of the nation. Under the auspices of this model, this translates to both groups concurrently seeking to increase upper legislative house power in order to grant them a stronger veto over economic policies that would seek to redistribute away from their interests and a greater ability to propose policies, which would redistribute towards their interests.

Negotiating power in this dimension will be based off of regional population with the raw number of people in a region informing the strength of the elite to negotiate the symmetry of an upper legislative house. Poor states will be delineated from rich states on the basis of whether their per-capita income at the time of union is above or below the national average per-capita income. When the population of the poor states is equal to the population of the wealthy states, then a highly symmetric upper legislative house will result, as there will be equal calls for redistribution from both sides. As the population of one coalition becomes larger and comprises a majority of the population, the upper house will be less symmetric, seeing as the disadvantaged group has less leverage.

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<sup>118</sup> Ibid., 168



*Congruence Dimension: Inter-Regional Population Variation*

In order to explain the congruence of an upper legislative house, the variable of inter-regional population variation was added to the two variables drawn from Wibbels' model. Under circumstances in which the variation between the sub-unit populations is high, a less congruent upper house will be produced, over-representing the interests of the less populous constituent units of the nation. Under circumstances in which the regions are roughly equal in population, the upper legislative house will be largely congruent, equally representing the sub-units. Such a framework assumes that the bargaining position of elites in negotiating the congruence or incongruence of an upper legislative house is based upon regional population; therefore, a sub-unit with a population of 50 million thus has more negotiating power than a region with a population of 25 million people.

The mechanics of the congruence dimension rest upon the fact that overrepresentation is of particular importance to sub-units with lower populations. In cases in which upper legislative houses are symmetric to the lower house, smaller states will wish to be over-represented. This is partially in keeping with Cremer and Palfrey's finding that small states prefer unit representation when centralization is greater and large states prefer population-based representation when centralization is greater.<sup>119</sup> Assuming that the lower legislative house is based upon population, small states will have a high incentive to seek a higher percentage of the vote in the upper legislative house than population alone would grant. In asymmetric cases, small states will have less incentive

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<sup>119</sup> Jacques Cremer and Thomas R. Palfrey, "Political Confederation," 71

to seek overrepresentation because such representation would serve them relatively minimally given the limited jurisdiction of the upper legislative house. More populous states will be willing to grant incongruent representational mechanisms within the upper legislative house due to there being an underlying incentive for union. Such an incentive could be security based as in the Riker framework or such an incentive could be economically based with the larger states for example seeking the benefits of union on international trade. An economic crisis could also be informing the underlying incentive of the larger states to grant incongruent representation to the smaller states.

Although the primary basis for power and influence within this negotiation will be population size, an interaction could also exist between the variables of inter-regional population variation and inter-regional inequality, particularly with regards to rich regions with low populations. Considering that within this model, the regional economic elites are the primary negotiators of the federal compromise and that their economic purchasing power denotes their bargaining power, elites that are wealthy relative to other elites may be in a strong position to negotiate overrepresentation in their upper legislative houses. Therefore, their portion of representation would be in proportion to the economic purchasing power and would be greater than the representation that their population strength alone would garner in a federal upper house.

### *Outcomes of Model*

Combining both the symmetry and congruence dimension produces eleven possible outcomes with two drawn from the unitary process and nine from the federal process. With each arrangement of the independent variables informing symmetry and

congruence in the federal dimension, a picture will be painted as to how the negotiation between the groups whose preferences are defined by these variables comes to produce each specific arrangement. The two outcomes of the unitary dimension depend on whether the elites have chosen either the greater congruence or the greater asymmetry path as the evolution path of their upper legislative house; such a model assumes that an upper legislative house will evolve not on the basis on the variables of the federal dimension, but simply due to the elite losing power over the means of production.

The possible outcomes under the symmetry dimension are denoted by ordinal scores of one through five with a higher bicameralism score indicating an upper house that is more symmetric to its corresponding lower house than a house with a smaller bicameralism score. These scores are designed to merely rank the categories relative to one another without saying anything as to the degree of difference between the categories. They do not presume to say that there is the same difference in symmetry between Level 1 and Level 2 bicameralism and Level 2 and Level 3 bicameralism. For the federal dimension, scores indicate an arrangement of the independent variables, which produce a level of symmetry; these arrangements are listed in the chart below. In keeping with Wibbels' model, in which factor endowment variation is the key variable, distribution of regional economic specializations will be considered to be the independent variable with a greater effect on symmetry than inter-regional inequality.<sup>120</sup> It is important to note that Level 1 is a unique arrangement of bicameralism because although one of the bodies with this score may have greater jurisdiction than a body with Level 2

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<sup>120</sup> Wibbels, "Decentralized Governance," 168 and 170

bicameralism, it is still considered weaker because necessarily the existence of the body is in doubt due to the lack of a federal principle to underlie its existence; the unitary nature of its government makes it Level 1. Aside from unicameralism, each bicameralism score has both a congruent and an incongruent variant.

		Distribution of Regional Economic Specializations	
		Skewed Distribution of Economic Specializations	Balanced Distribution of Economic Specializations
Regional Distribution of Wealth	Equal	Level 2 Bicameralism - Weak Upper House	Level 4 Bicameralism – Medium Strength Upper House
	Unequal	Level 3 Bicameralism - Medium Strength Upper House	Level 5 Bicameralism - Strong Upper House

**Figure 2: Federal Process Symmetry Dimension Variable Arrangements**

**1. Unicameralism:**

Utilizing an expansion of the Ziblatt institutional capacity based approach to federalism, unification of sub-units will occur not as an agreement between sub-units, but will rather be imposed by the most powerful sub-unit.<sup>121</sup> Lacking regional institutional capacity, sub-unit elites at the time of union will be incapable of negotiating a federal government and will instead be subject to a unitary system.<sup>122</sup> Being incapable of negotiating power retention by the sub-units, the elites will also be incapable of negotiating an upper legislative house to represent their interests and thus the resulting system will be unicameral.

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<sup>121</sup> Ziblatt, “Rethinking the Origins of Federalism,” 77-78

<sup>122</sup> Ziblatt, “Rethinking the Origins of Federalism,” 77-78

**2. Level 1 Strength Bicameralism, Congruent:**

Level 1 Strength Bicameralism is one of the two outcomes under the unitary dimension of the model. Such an upper legislative house devolves from an aristocratic upper legislative house instituted during a monarchy. This outcome occurs when the elite for whom an upper legislative house was instituted to enfranchise during a period of monarchy chooses to have the house retain its symmetry rather to circumscribe its jurisdiction by making it less symmetric. The calls for such a reform would come from below with the citizenry tiring of legislative conflicts with the upper house. This elite would be confident in its ability to retain enough seats in the more congruent house to ensure adequate representation of its interests. Such an elite, despite its diminishing economic strength, would still represent a large enough chunk of the nation's population to have representatives elected to the upper house. It is important to note that this outcome is underlined by a gradual transition process, so in general, the elite will only be giving up some incongruence each time that the upper house is reformed. This outcome will be covered in the case study of the Swedish Första Kammaren. In Sweden, the outcome was taken to the extreme with the upper house becoming more congruent throughout time and then eventually being eliminated in the 1960s.

**3. Level 1 Strength Bicameralism, Incongruent:**

Like the congruent case of level 1 strength bicameralism, this incongruent variant results from devolution from an aristocratic upper house with its basis in a monarchy. However, unlike in the congruent case, the elite, which is represented by the upper house in this case, does not feel that it could maintain adequate representation if the house was to become more congruent, so instead they will choose the path of asymmetry when the

citizenry calls for the reform of the upper legislative house due to frustration with its non-concurrent opinions. The elites in this case would not be confident in their ability to retain seats in elections. Level 1 Bicameralism with incongruence can also result specifically when the elites, who occupy the upper legislative house, are individually afraid of losing their seats under a new representational mechanism, as was the case with the threatening of the King in Britain to dilute the power of each member of the House of the Lord by granting more titles. This outcome will be covered in the case study of the French Sénat in which the body over the course of its history has evolved from both an incongruent and symmetric body to become an incongruent and asymmetric body.

#### **4. Level 2 Strength Bicameralism, Congruent:**

This arrangement results from a situation in which the independent variables are organized as such: skewed distribution of economic specializations, low levels of inter-regional inequality, and low levels of inter-regional population variation. In the production of this type of bicameralism with an upper house, which is highly asymmetric, the two dominantly sized elite coalitions will hold the power over the shape of the constitution. For regional economic specialization, the elites representing the states with the specialization, which is less than 50% of the total production of specialties, will be those calling for an upper legislative house. Lack of a high degree of inequality between the sub-units may mean that no wealth based coalitions form at all. The lack of polarization in either dimension will not imbue them with a strong ability to call for an upper legislative house; therefore, the strong coalitions will grant them a decently asymmetric upper legislative house in order to ensure the benefits of union, particularly because they can use both their economic and population might to wield significant

influence in the more powerful of the two houses, namely the lower house. The upper house thus represents a concession. Considering the relative weakness of an upper house in level 2 bicameralism, namely its inherent asymmetry, calls from less populous states for incongruent representation to over-represent their interests will not be substantial. When the upper house has little ability to affect policy, there is little need for overrepresentation; therefore, it is more likely that the resulting upper house will have a representation system, which grants representatives using a method that ensures congruence.

#### **5. Level 2 Strength Bicameralism, Incongruent:**

This arrangement results from a situation in which the independent variables are organized as such: skewed distribution of economic specialization, low levels of inter-regional inequality, and high levels of inter-regional population variation. The incongruent version of level 2 strength bicameralism will follow the same negotiation process over symmetry as the congruent version of level 2 strength bicameralism. This outcome will in actuality be quite rare because due to the relative weakness of the upper legislative house, low population states will have little incentive to advocate for incongruent representation because such representation will grant them little veto over policy. However, even though empirically this case would rare, it is necessary to account for it theoretically given the possibility of its existence under the framework of this paper.

#### **6. Level 3 Strength Bicameralism, Congruent:**

This arrangement results from a situation in which the independent variables are organized as such: skewed distribution of economic specializations, high levels of inter-regional inequality, and low levels of inter-regional population variation. At the heart of

determining how the bargaining between elites on the basis of wealth plays out at the national level is both the size of the income gap between the wealthier states and the poorer states and the population size of the wealthy and the poor state coalitions. As the size of the income gap increases, the strength of the calls from either side for the strengthening or weakening of the upper house will increase. Whether these groups will be calling for a more symmetric or less symmetric upper legislative house will be determined by the population ratio of the two coalitions. Severity thus plays a role. The rich states in particular will want to have a veto over the will of the lower house, feeling that it may put into place redistributive policies, which are counter to the interests of wealthier elites.

As the ratio of the population of the rich states to the poor states approaches 1:1, the calls for a more symmetric upper house will increase, seeing as redistributive policy will become more and more polarized with nearly equal weight being on both sides. Both sides will wish to increase the number of possible veto points present within the government in order to ensure themselves the greatest possible chance of stopping policies, which would be detrimental to their monetary interests. As the population proportion moves away from one to one, the calls from the less populous side for a more symmetric upper house will increase; however, the more populous coalition will heed those calls based upon the necessity of full unification. If unification is more pressing, such as during an economic crisis, then the more populous side will be willing to grant a greater degree of symmetry than if unification is not needed immediately. However, it is important to note that with these more unbalanced coalitions, the upper house will be less symmetric than in the 1:1 coalition arrangement. As in previous arrangements, lack of a



high degree of variation between the populations of the sub units will cause them to agree to a representation system that grants each sub-unit representation, which matches its population. The case of India will be used to illustrate this outcome of the federal dimension of the model.

#### **7. Level 3 Strength Bicameralism, Incongruent:**

This arrangement results from a situation in which the independent variables are organized as such: skewed distribution of economic specializations, high levels of inter-regional inequality, and high levels of inter-regional population variation. The negotiation process for this outcome will match the negotiation process of outcome number six with respect to symmetry; however, due to a high degree of variance in the population of the states within the newly emerging nation, small states will be advocating for their over-representation in the upper legislative house, particularly small rich states. The calls for incongruence will be compounded if the small states are predominantly wealthy or poor because then the independent variables are cross cutting. The more populous states, knowing that they will represent a greater proportion of the seats in the lower house than the less populous states and considering the low degree of symmetry between the two house, will be willing to grant this incongruence in order to ensure the possible benefits of union.

#### **8. Level 4 Strength Bicameralism, Congruent:**

This arrangement results from a situation in which the independent variables are organized as such: balanced distribution of economic specializations, low levels of inter-regional inequality, and low levels of inter-regional population variation. A balanced distribution of economic specializations will precipitate stronger calls from both

coalitions (whether they are organized along Industry A vs. B lines or on factor specificity lines) than the wealth based coalitions, considering that the safety of the industries, which form the livelihood of the elites will be in jeopardy. With each of the elite coalitions having distinct economic interests, differing from one another and the nation as a whole, they will have a strong need for regionally based representation on the national level. The lack of strong wealth based coalitions calling for a stronger house for purely distribution based reason will this leave this negotiation without the compounding factor, which underscores level 5 bicameralism; therefore, it would not be surprising to such an upper legislative house in level 4 bicameralism to have limited powers over certain types of tax legislation.

The balanced nature of the two specializations will precipitate a compromise between the two coalitions in order to ensure that both of their unique interests are represented nationally. Each one will be seeking to have an effective veto to possibly override the other coalition and/or the lower legislative house. By simply increasing the number of veto players, this can be achieved. Due to the low levels of inter-regional population variation, the elites will negotiate and agree with one another that states should have representation that reflects their population or that each state should have equal representation, a representational mechanism which may cause incongruence at a future date as population patterns change.

#### **9. Level 4 Strength Bicameralism, Incongruent:**

This arrangement results from a situation in which the independent variables are organized as such: balanced distribution of economic specializations, low levels of inter-regional inequality, and high levels of inter-regional population variation. The

negotiation process of outcome number nine will mirror outcome number eight, which is described above, in the symmetry dimension; however, it will vary in the congruence dimension. In this case, small states, particularly due to the high level of symmetry within the upper legislative house will seek to be overrepresented in said house, perhaps seeking equal representation for each sub-unit. The more populous states will grant incongruence in order to ensure full support for union among all of the sub-units. There must thus be an underlying benefit of union. The case of Australia will be used to substantiate how the above combination of variables will produce a relatively symmetric upper legislative house with incongruent representation.

#### **10. Level 5 Strength Bicameralism, Congruent:**

This arrangement results from a situation in which the independent variables are organized as such: balanced distribution of economic specializations, high levels of inter-regional inequality, and low levels of inter-regional population variation. The calls for a symmetric upper legislative house will be particularly strong if the coalitions are crosscutting and poor regions generally fit into one of the specializations and the rich states fit into another. It is not unfathomable to see such an arrangement, considering that different forms of industry often yield different levels of production simply due to the value of the products they produce.

Even if the coalitions are not cross cutting, the multitude of different groups clamoring for unique representation at the national level will necessitate the inclusion of an upper legislative house to ensure that each type of regional elite has some form of representation in the new government. Rather than turn control over the nation to a nationally elected parliament by the people, the regional elites will necessarily want to

ensure that some form of regional representation exists to espouse their interests. The great divergence of these interests along wealth and specialization lines will necessitate a compromise in which the upper legislative house is highly symmetric to the lower. The elites will wish to codify this institution given the later possibility that they will be unable to retain control of a popular house, thus ensuring that regional representation with a strong veto always exists at the national level. Due to the low levels of inter-regional population variation, the elites will negotiate and agree with one another on states having representation that reflects their population or each state having equal representation, a representational mechanism which may cause incongruence at a future date as population patterns change.

#### **11. Level 5 Strength Bicameralism, Incongruent:**

This arrangement results from a situation in which the independent variables are organized as such: balanced distribution of economic specializations, high levels of inter-regional inequality, and high levels of inter-regional population variation. The negotiation process for the symmetry dimension will follow the same logic as in outcome number ten; however, the congruence dimension will vary. Considering the high level of symmetry between the upper and lower house due to the need for representation of economic specializations and groups of differing wealth, small states will have the greatest desire in this outcome for incongruent representation. An underlying benefit of union, which could be economically or security based, will encourage the more populous states to grant the less populous state this incongruence. In giving them incongruence, however, they will ensure that such incongruence does not fully diminish large state power in the upper house. Such an assurance mechanism could be a possible

supermajority approval mechanism for constitutional changes. The case of the German Empire of 1871 will be used to illustrate how the above combination of variables produce level 5 strength bicameralism with incongruent representation.

### *Theoretical Chapter Summary*

The model presented here is comprised of several levels in an attempt to be all encompassing and create a framework through which all upper legislative houses can be understood. A degree of parsimony has been sacrificed in order to achieve breadth, thus a summary of the steps of the process and the variables involved becomes necessary. The first level encompasses the bifurcation of the model into the unitary dimension and the federal dimension with the former being based upon devolution from monarchy and the latter on an endogenous discussion of centralization/decentralization that accompanies the discussion over the upper legislative house. The devolution can either proceed towards symmetry and congruence or asymmetry and incongruence. The second level separates unicameralism from bicameralism in that the sub-units unable to discharge the duties of the federal bargain will not be able to negotiate bicameralism. The third level and fourth level encompass how distribution of regional economic specializations and inter-regional factor inequality inform the symmetry of the upper legislative house. The fifth level with the variable of inter-regional population variation informs the level of congruence of the upper legislative house relative to its lower house counterpart.

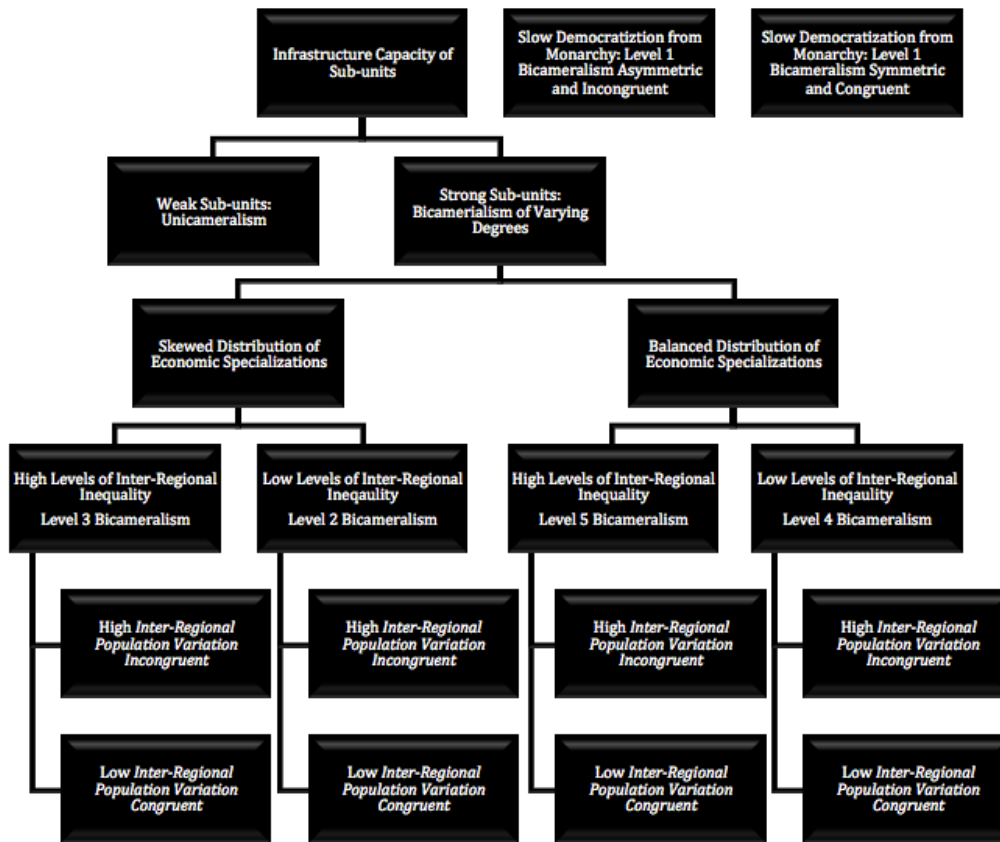


Figure 3: Theoretical Model Summary

### Chapter 4: Case Studies

In order to illustrate the viability of the model presented in this thesis, five case studies will be outlined within the parameters discussed within the theoretical chapter. Three of these case studies will be used to illustrate the endogenous federal negotiation process that produces bicameralism of levels two through five. For these three federal case studies, the symmetry dimension will be discussed first followed by the congruence dimension. Both of these sections will be further subdivided into three sections in the following order: outcome of the dimension, how the independent variables inform the outcome, and finally the historical background of the negotiations over the upper house.

		Distribution of Regional Economic Specializations	
Regional Distribution of Wealth		Skewed Distribution of Economic Specializations	Balanced Distribution of Economic Specializations
	Equal	Level 2 Bicameralism - Weak Upper House	Level 4 Bicameralism – Symmetric  <b>Australia</b>
	Unequal	Level 3 Bicameralism – Asymmetric  <b>India</b>	Level 5 Bicameralism – Highly Symmetric  <b>German Empire</b>

**Figure 4: Federal Cases Variable Arrangements**

- The case of the German Empire, which was founded in 1871, is the case of both balanced distribution of economic specializations and high levels of inter-regional wealth inequality. This produces a nearly perfectly symmetrical upper house, the Bundesrat. In terms of the congruence dimension, the case of the Bundesrat will be used to illustrate how high inter-regional population variation leads to a highly incongruent upper legislative house. The German Empire is thus Level 5 Bicameralism with incongruence.
- The case of Australia at the moment of union and independence from Great Britain is the case of balanced distribution of economic specialties, but low levels of inter-regional wealth inequality. These conditions produced the Australian Senate, which is less symmetric than the Bundesrat but more symmetric than the third federal case. Like the German Empire, incongruence in the Australian Senate will result from inter-regional population variation, particularly with the higher population states, such as Victoria, granting the lower population states, such as Tasmania, incongruent

representation in order to secure the benefits of union, particularly in the face of an economic crisis. Australia is thus Level 4 Bicameralism with incongruence.

- The case of India at the moment of independence from Great Britain will serve as the case of equal distribution of economic specialization and high levels of inter-regional wealth inequality producing the Indian Rajya Sabha, a body that is less symmetric than both the Bundesrat and the Australian Senate. The asymmetry of the Rajya Sabha when combined with a lack of high levels of inter-regional population variation led to congruence. Representation was based upon population for both houses with the upper house having half as many members. India is thus Level 3 Bicameralism with congruence.

The other two case studies will be used to illustrate the unitary process of the bifurcated model, which explains weak bicameralism and possible elimination of an upper legislative house as resulting from devolution from monarchy. Since a gradual process of reform defines these bodies, the case studies of France and Sweden will be presented chronologically.

- The French Sénat will serve as the case that illustrates the process by which an upper legislative house transforms into being asymmetric while remaining incongruent, producing a body with Level 1 Bicameralism. The case will follow the Sénat through its incarnations in the Third, Fourth, and Fifth French Republics.
- Sweden will illustrate the other possible unitary path with an upper legislative house transforming into being congruent while remaining symmetric. The case of the Swedish Första Kammaren (First Chamber) will also show the ultimate conclusion of this type of transformation, namely the elimination of the upper legislative house



under the reasoning that it simply mirrors the opinions of the lower house and is thus redundant.

*Bundesrat of the German Empire: Federal Process Symmetric and Incongruent*

**Symmetry Dimension in Germany**

To counter the possible argument against the inclusion of the German Empire as the case used to represent the combination of factors that produced the most symmetric upper house, due to the fact that necessarily both the Bundesrat and the Reichstag, the legislative bodies of the Empire, were weak relative to the Chancellor and the Kaiser, it is necessary to discuss the fact that this thesis seeks not to explain absolute power, but rather a power relationship. In analyzing upper houses as a component of a bicameral legislature, this thesis seeks to understand the way in which the jurisdictional interaction between the two houses manifests itself in the constitutional negotiation process. In simplest terms, the power measurement of the upper legislative houses is founded upon a comparison with the lower house. As will be illustrated in the following case study of nineteenth century Germany, the two legislative houses in the empire had similar jurisdiction and were thus highly symmetric.

Before laying out the process by which the variables informed the preferences of the actors and the negotiating process by which the upper house of the German Empire came into existence, it is necessary to lay out the powers of said body and how they related to the powers of the lower house. Under the auspices of the 1871 constitution, two legislative houses existed within the German Empire, the Bundesrat (Federal Council) and the Reichstag (Imperial Diet). Article 5 of the Constitution of the German

Empire states that the approval of both the Bundesrat and the Reichstag is “necessary and sufficient for the passage of a law.”<sup>123</sup> Both bodies operate under a majority vote mechanism as further enumerated by Article 5; therefore, no cumbersome super-majority mechanism is placed upon either the states or the enfranchised polity in order to voice their support or lack of approval for legislation.<sup>124</sup> Within the constitution, no override mechanism between the two chambers exists.

Although the Bundesrat is granted certain special executive and judicial powers not reserved for the Reichstag,<sup>125</sup> the council cannot constitutionally go around the popularly elected body, needing its approval for legislation.<sup>126</sup> A unique provision of the constitution of the German Empire is an explicit protection of unique sub-unit interests. In both the Bundesrat and in the Reichstag, pieces of legislation that affect only certain sub-units can only be voted upon by the representatives of those sub-units as stipulated in Article 9 of the Reich Constitution,<sup>127</sup> essentially ensuring protection for special privileges granted to certain states in the spirit of unifying the German states.<sup>128</sup> Regionalism is thus preserved at the federal level.

Turning to the variable of distribution of regional economic specializations, the states, which would come to comprise the German Empire, will be divided using the Industry A vs. Industry B framework. The level of commercialization, which

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<sup>123</sup> *German Constitutional Documents since 1871: Selected Texts and Commentary*, Edited by Gwendolen Margaret Carter, John H. Herz and Louise W. Holborn (New York: Praeger, 1970), 100

<sup>124</sup> *Ibid.*

<sup>125</sup> Otis H. Fisk, *The Constitution of the German Empire: A Sketch* (Cincinnati, Ohio: Court Index Press, 1916), 20

<sup>126</sup> *German Constitutional Documents since 1871: Selected Texts and Commentary*, 24

<sup>127</sup> "The Reich Constitution of 1871," In *The Democratic Tradition: Four German Constitutions*, edited by Elmar M. Hucko, 119-45 (Leamington Spa, UK: Berg Publishers Limited, 1987), 125

<sup>128</sup> Fisk, *The Constitution of the German Empire: A Sketch*, 19

coincidentally was also a geographic division, serves as the primary separation point between the two coalitions of states, which would come to define the negotiation over the German constitution. The northern states, particularly those in the northwest, were experiencing high levels of commercialization at the time of unification, and had a particular desire to create a unified German state without customs and duties between the sub-units.<sup>129</sup> In contrast, the southern German states had less developed commercial sectors, relying on small-scale manufacturing and agriculture for their economic livelihood.<sup>130</sup> Fearing the effects of a customs union with free borders on their economies of scarce factors, these states tended to show strong degrees of regionalism and opposition to union.<sup>131</sup> The immobility of the factors of agriculture and cottage industries would also help to intensify this regionalism. The need for an upper legislative house would thus be most readily apparent among those states with scarce factors because they would feel an inherent desire in a national setting for a strong degree of regional representation. The free-trade coalition in response to the calls for an upper house among the protectionist states would also wish to have symmetric representation of regions on the national level in order to enshrine their free trade ideas in the national government and prevent protectionism from hurting the bottom line of their industries.

In terms of the effects of inter-regional inequality on the negotiations over the Bundesrat, supporting evidence of the power of wealth coupled with state size illustrates that support for union in the German Empire was largely divided upon monetary lines.

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<sup>129</sup> Ziblatt, *Structuring the State*, 34

<sup>130</sup> *Ibid.*, 34-35

<sup>131</sup> *Ibid.*

The two primary states in the negotiation process were Prussia and Bavaria with the former being the “initiator” of union and the latter being the primary resistor.<sup>132</sup> Ziblatt calculated the national mean GDP per capita for the states that would comprise the empire and found that aside from the outliers of Baden and Saxony, the support for union was largely drawn along rich state/poor state lines.<sup>133</sup> Those states with above average GDP per capita were supportive of union and those states with below average GDP per capita were resistant to union.<sup>134</sup> These figures and the sub-units’ support for union are cataloged in Figure 3. It is important to note that in determining whether a state was pro or anti-union, Ziblatt used a historical approach, examining primary source documents to create a picture of the state’s position.<sup>135</sup> Further evidence for support for union among the wealthy can be found in the fact that areas with high GDP per capita tended to have a higher percentage of their population being members in the Nationalverein, an association supporting union.<sup>136</sup>

Led by Bavaria, the poor states, which were resistant to union, would be the primary group calling for regional representation on the national level, feeling that they would be dominated by the wealthy states with national economic policies working to their advantage. The case of the pre-existing Zollverein customs union, which will be discussed later in the case study, will come to illustrate the legitimacy of this fear. The case of Bavaria’s relative poverty and its traditional economic base illustrate that crosscutting did exist in this case, thus compounding the calls for a symmetric upper

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<sup>132</sup> Ibid., 27

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid., 26

<sup>136</sup> Ibid., 41

house. Looking at available data from 1850 to 1860, the wealth divide between the two key states in the coalitions: Prussia and Bavaria, was substantial with Prussia having a per-capita GDP approximately 50% greater than Bavaria.<sup>137</sup> Although comprehensive population figures for the time of union do not exist, looking at state budget expenditures from the mid-nineteenth century illustrate that the budgets of the poor states totaled 100,000 RM less than the budgets of the wealthy states, thus indicating a degree of population imbalance in the form of a 3:2 ratio of citizens in poor states to citizens in rich states.<sup>138</sup> Therefore, the coalitions were not in perfect balance, but neither was completely dominant, thus giving Bavaria and its allies a firm bargaining position through which to advocate for upper house symmetry.

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<sup>137</sup> Ibid., 27

<sup>138</sup> Ibid.

TABLE 2.3  
German and Italian Pre-National States, 1850–60

	<i>Political Executive's Orientation towards National Unification</i>	<i>Economic Modernization, 1849–61 (GDP per capita)</i>	<i>State Size, 1850–52 (budget size x 1,000)</i>
<i>1. Big, Poor States</i> (above national mean state size, below national mean wealth)			
Bavaria	Hostile	385 RM	64,143 RM
Kingdom of Two Sicilies	Hostile	174 lire	151,000 lire
<i>2. Small, Poor States</i> (below national mean state size, below national mean wealth)			
Mecklenburg Schwerin	Resistant	474 RM	9,570 RM
Mecklenburg Strelitz	Resistant	474 RM	2,233 RM
Württemberg	Resistant	489 RM	21,943 RM
Kurhessen	Resistant	496 RM	11,353 RM
Papal States	Hostile	230 lire	41,000 lire
Tuscany	Resistant	239 lire	33,000 lire
Modena	Resistant	236 lire	9,000 lire
Parma	Resistant	236 lire	11,000 lire
Hessen Darmstadt	Resistant	539 RM	11,266 RM
Baden	Supportive	486 RM	18,217 RM
Holstein	Resistant	533 RM	20,387 RM
Hannover	Resistant	464 RM	28,160 RM
Oldenbourg	Resistant	455 RM	4,910 RM
<i>3. Small, Rich States</i> (below national mean state size, above national mean wealth)			
Bremen	Supportive	750 RM	3,197 RM
Hamburg	Supportive	800 RM	9,413 RM
Saxony-Coburg	Supportive	553 RM	653 RM
Saxony-Weimar	Supportive	553 RM	4,577 RM
Saxony	Resistant	671 RM	24,880 RM
Nassau	Supportive	604 RM	6,773 RM
<i>4. Big, Rich States</i> (above national mean state size, above national mean wealth)			
Prussia	Initiator	565 RM	227,017 RM
Lombardy-Veneto	Supportive	358 lire	89,000 lire
Piedmont	Initiator	401 lire	112,000 lire
<i>National Mean Scores</i>			
Italian states	NA	268 lire	64,000 lire
German states	NA	547 RM	66,956 RM

**Figure 5: GDP per capita of the German Sub-Units and their Opinions regarding Union (Daniel Ziblatt, *Structuring the State*, 27)**

Negotiation of the federal compromise that would come to define the German government from 1866 till the end of World War I is largely seen as an agreement between monarchs; it was started not by the people in a grassroots fashion or by a singular monarch.<sup>139</sup> Therefore, in a sense, the negotiators in Germany were the pinnacle of elites, the sovereigns of separate and distinct states coming together to merge their lands into one super-state. Ziblatt makes a point to highlight that these sovereigns were all “unelected.”<sup>140</sup> Due to the crushing of the revolution in the 1840s, the will of the citizenry was also broken, leaving only the possibility for a regional elite based negotiation. Unicameralism also does not result in the German Empire because as evidenced by the research of Ziblatt, the sub-units have the capacity to discharge the federal bargain and thus the capacity to negotiate.<sup>141</sup>

The case of the Zollverein customs union, a pre-unification attempt at cooperation among the German states, substantiates the desire among the economically less developed states to protect themselves from the possible perils of a unified market. Bavaria extracted special conditions in the union even though the union was a net benefit for the state in its attempt to increase state revenue.<sup>142</sup> However, looking to the outcomes of the Zollverein after its existence for three years, the fears of the southern states over a lack of benefits to their regional wealth were confirmed, as Prussia seemed to be drawing the majority of the economic benefit from the customs union with inter-regional trade

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<sup>139</sup> Ibid., 129

<sup>140</sup> Ibid.

<sup>141</sup> Ibid., 138-139

<sup>142</sup> Ibid., 49-50

heavily favoring the north.<sup>143</sup> Therefore, the southern coalition had reason to fear that unification, particularly one precipitated by Prussia, would possibly be detrimental to their local economic interests, particularly since Bavaria was an economy caught in the guild system with protectionism extending to insulation of already established industries within the state, preventing the establishment of new industries unless old ones closed.<sup>144</sup>

At the founding of the North German Federation, scholars contend that after the rejection of a proposal for a unitary government drafted by his chosen constitution drafter Max Duncker, Otto von Bismarck, State Minister of Prussia, set about drafting a proposition for a governmental structure, which would appeal to all of the German states.<sup>145</sup> The unitary proposal was rejected because it did not secure adequate representation for state interests at the national level, instead turning power over to a popularly elected parliament, an institution that mirrored the future Reichstag of the empire.<sup>146</sup> Bismarck's counter proposal had at its core a firm belief that the North German Confederation would not be the end of the unification process with the southern German states eventually joining the newly formed nation state; in fact, Bismarck highlights in a dictate that one of the primary reasons he rejected the centralized proposal of Duncker was that it would not appeal to the southern German states.<sup>147</sup> These southern German states as previously discussed would desire this regionally based representation due to both their relative poverty and developmentally backwards economic system; therefore, Bismarck chose a federal government.

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<sup>143</sup> Ibid., 39

<sup>144</sup> Ibid.

<sup>145</sup> Ibid., 134

<sup>146</sup> Ibid., 13

<sup>147</sup> Ibid., 135



The new German nation-state needed to have “not a single Ministry but a Federal Diet, a body consisting of delegates from the individual governments.”<sup>148</sup> Bismarck’s ultimate goal was the unification of Germany and he was willing to make power and jurisdiction based compromises in order to achieve this goal.<sup>149</sup> He knew he could structure a system that would ensure Prussian leadership of the unified Germany while satisfying the regional need for strong representation at the federal level; by giving the Bundesrat an absolute veto over Reich legislation, he was able to achieve this compromise and ensure the unification of Germany with the expansion of the confederation to encompass the south. The leverage of these local interests, particularly those of Bavaria, can also clearly be seen in the institutionalization of special arrangements within the eventual constitution. For example, while Prussian businessmen saw an inherent value in having a centralized railway system within Germany,<sup>150</sup> Bavaria was able to garner an exception to the policy that railway regulation was a competency of the Reich.<sup>151</sup> Regional particularism was thus at the heart of the German constitution.

### **Congruence Dimension in Germany**

The representation in the Bundesrat was granted to the kingdoms, duchies, free cities, and principalities of the empire, thus making it a firmly federal house in which the interests of the governmental entities that ceded some sovereignty to the Reich had their

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<sup>148</sup> Lothar Gall, *Bismarck, the White Revolutionary*, (London: Allen & Unwin, 1986), 317

<sup>149</sup> Ziblatt, *Structuring the State*, 138

<sup>150</sup> John Merriman, *A History of Modern Europe: From Renaissance to the Present* (New York: W.W. Norton and Company, 2004), 729

<sup>151</sup> “The Reich Constitution of 1871,” 133-134

voices heard.<sup>152</sup> Some scholars argue that the Bundesrat was in effect a body of monarchs.<sup>153</sup> This is further reinforced by the fact that according to Article 6, no state could split its votes within the Bundesrat (a representational system which exists in Germany to this day in the current iteration of the Bundesrat).<sup>154</sup> In the Reichstag, however, the members are as stated in Article 21 of the constitution to be “representatives of the entire people,” thus creating a national legislative body concerned with the interests of the enfranchised polity.<sup>155</sup> While the Reichstag was elected by all men over the age of twenty-five with seats allocated by the sub-units 1867 population, the Bundesrat’s representational mechanism was designed as a compromise to ensure full support for union.<sup>156</sup> Specifically, the high number of very low population German states when contrasted with the almost singularly monolithically populous Prussia creates a situation in which there was a high degree of inter-regional population variation and thus strong calls for incongruence.

The incongruence of the German Bundesrat can be easily understood thorough an examination of the representation of the largest state within the Reich, namely Prussia. As per the constitution of the Reich, there were fifty-eight total votes within the Bundesrat; Prussia was granted 17 or 31% of these votes.<sup>157</sup> In the period leading up to unification, Prussia contained approximately 57% of the total population of what would

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<sup>152</sup> Fisk, *The Constitution of the German Empire: A Sketch*, 17

<sup>153</sup> Ziblatt, *Structuring the State*, 129

<sup>154</sup> *German Constitutional Documents since 1871: Selected Texts and Commentary*, 24

<sup>155</sup> *Ibid.*, 23

<sup>156</sup> Fisk, *The Constitution of the German Empire: A Sketch*, 24-25

<sup>157</sup> Fisk, *The Constitution of the German Empire: A Sketch*, 17

become the German Reich.<sup>158</sup> Therefore, the kingdom was severely underrepresented, and 26% of the votes in the Bundesrat were malapportioned. Use of such a population estimate is necessary, as noted by Ziblatt, because the amount of data on sub-unit population at the time of German unification is so sparse that Ziblatt himself had to utilize state budget expenditures to determine whether or not a state was small or large rather than its population base.<sup>159</sup> The Kingdom of Prussia should in a congruent representation system have had approximately 33 of the 58 seats within the Bundesrat and should have been able to easily dominate the body. Twenty-six of the seats within the Bundesrat were apportioned to states within the Reich that would not have these seats under a perfectly proportional system. Although it is somewhat irrelevant to the moment of the constitutional crystallization, available sub-unit population data from 1910 illustrates the population domination of Prussia continued with the kingdom comprising 40,165,219 people out of the 64,925,993 people in the Reich in 1910.<sup>160</sup> This equates to approximately 62% of the total population of the Reich.

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<sup>158</sup> Ziblatt, *Structuring the State*, 11

<sup>159</sup> *Ibid.*, 28

<sup>160</sup> Fisk, *The Constitution of the German Empire: A Sketch*, Appendix

The votes of the twenty-five states in the Bundesrat became re-adjusted as follows:

	No. of Votes
Kingdom of Prussia (with the former votes of Hanover, Kurhesse, Holstein, Nassau and Frankfort),	17,
Kingdom of Bavaria,	6,
Kingdom of Saxony,	4,
Kingdom of Württemberg,	4,
Grand Duchy Baden,	3,
Grand Duchy Hesse,	3,
Grand Duchy Mecklinburg-Schwerin,	2,
Grand Duchy Brunswick,	2,
Grand Duchy Saxe-Weimar,	1,
Grand Duchy Mecklinburg-Strelitz,	1,
Grand Duchy Oldenburg,	1,
Duchy Saxe-Meiningen,	1,
Duchy Saxe-Altenburg,	1,
Duchy Saxe-Coburg-Gotha,	1,
Duchy Anhalt,	1,
Principality Schwarzburg-Rudolstadt,	1,
Principality Schwarzburg-Sondershausen,	1,
Principality Waldeck,	1,
Principality Reuss of the Elder Line,	1,
Principality Ruess of the Younger Line,	1,
Principality Schaumburg-Lippe,	1,
Principality Lippe,	1,
Free City of Lübeck,	1,
Free City Bremen,	1,
Free City Hamburg,	1,
<b>Total,</b>	<b>58.</b>

Figure 6: Apportionment of Seats in the Bundesrat (Otis H. Fisk, *The Constitution of the German Empire: A Sketch*, 17)

The impetus for unification came from Prussia<sup>161</sup> with Otto von Bismarck, the Minister President of Prussia, leading the negotiation and shaping the eventual nation and

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<sup>161</sup> Ziblatt, *Structuring the State*, 27

its constitution.<sup>162</sup> In the negotiations for the North German Confederation, the governmental entity, which would be enlarged to create the Reich in 1871, Bismarck faced opposition to his design of the representational system of the Bundesrat. The representatives of smaller states, such as Saxony Colburg and Saxony Weimar, pressed Bismarck to abandon the tradition of the Permanent Diet of the Holy Roman Empire in favor of an upper house modeled upon the British House of Lords.<sup>163</sup> Their primary reason for such a call was a fear that the Prussians would overtly control a territorially based representational body through their population hegemony.<sup>164</sup> Bismarck's solution as the crafter of the constitution was to grant representation in the Bundesrat that did not match population distributions; he granted the smaller states the representation they desired, thus inducing a degree of incongruence. Of the twenty-five principalities, kingdoms, duchies, and free cities that comprised the German Empire, seventeen of these had only one vote in the Bundesrat.<sup>165</sup> Such compromises were necessary for the approval of the constitution that would eventually come to form the empire.<sup>166</sup>

Under the provisions of the model, Prussia as the dominant high population state must have been willing to grant this incongruence in the Bundesrat because of some underlying benefit of union. First, Bismarck was working towards union to satisfy the interests of Prussian businessmen, who supported his North German Confederation because it would mean no customs duties between the German states as well as a

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<sup>162</sup> "Imperial Germany," In *Milestones, Setbacks, and Sidetracks: The Path to Parliamentary Democracy in Germany*, edited by Lothar Gall (Berlin: German Bundestag, 2003), 96

<sup>163</sup> Ziblatt, *Structuring the State*, 137

<sup>164</sup> Ibid.

<sup>165</sup> Fisk, *The Constitution of the German Empire: A Sketch*, 17

<sup>166</sup> Ziblatt, *Structuring the State*, 138

centralized managed railroad; therefore, we have an underlying economic reason for union that Prussians, particularly those in the Bismarck camp, could have seen as outweighing the possible granting of underrepresentation to their state of Prussia in the Bundesrat.<sup>167</sup> Bismarck was managing his coalition of Iron and Rye. Second, by relinquishing proportional representational rights within the Bundesrat, Prussia was not relinquishing their influence over the federal system. The aforementioned possible criticism comes into play here in that the Emperor and his appointed Chancellor largely dominated the Reich, rather than the legislative bodies; “Germany would be an autocracy based on the alliance of throne and aristocracy.”<sup>168</sup> The Prussian King sat on the throne of the entire German Empire and the chief governmental officer of the nation, the Chancellor, who also served as the President of the Bundesrat, only required the Emperor’s confidence. The federal system in particular that would come to underlie the North German Confederation and the Empire was preferred by Prussian leaders simply because they believed it would ensure their dominance at the national level; therefore, concessions over representation in a single body were a small price to pay.<sup>169</sup>

*The Senate of Australia: Federal Process Symmetric and Incongruent*

### **Symmetry Dimension in Australia**

Comparatively to the German Empire, the Australian Senate has a slightly less symmetric relationship to the lower house. The two bodies are co-equal in their authority

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<sup>167</sup> Merriman, *A History of Modern Europe: From Renaissance to the Present*, 729

<sup>168</sup> *Ibid.*, 731

<sup>169</sup> Ziblatt, *Structuring the State*, 136

over the laws of the union with the majority approval of both bodies required for bills to become law.<sup>170</sup> The Senate, however, has a restriction against it with respect to a particular type of bill, a restriction that did not appear in the German Empire. The Senate is barred from amending financial bills, though it can return them to the House of Representatives for amendment.<sup>171</sup> The House of Representatives can in turn choose to accept or reject the amendments requested by the Senate, having full authority to do so.<sup>172</sup>

The other key difference between the basic legislative approval relationship between the houses in Australia and in the German Empire, which is serving as the case of near perfect symmetry, is that the Constitution of Australia includes a conflict resolution procedure for when the two houses cannot agree on a piece of legislation. In the resolution procedure, the will of the lower house is considered to be the higher and more supreme will; the system is triggered when the Senate does not pass a bill that has passed through the House or when the House chooses to reject the amendments proposed and passed by the Senate to the House's non-financial bill.<sup>173</sup> Although the procedure is burdensome, involving dissolution of parliament and a joint sitting, its design shows an inherent preference for the will of the polity over the will of the states, and from a constitutional perspective, the procedure imbues the lower house with a method through

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<sup>170</sup> Samuel C. Patterson and Anthony Mughan, "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers," 55

<sup>171</sup> Ibid.

<sup>172</sup> "The Constitution of the Australian Commonwealth: As on 1 January 1901," In *The Centenary Companion to Australian Federation*, edited by Helen Irving, 442-62 (Cambridge, UK: Cambridge UP, 1999), 451

<sup>173</sup> John Uhr, "Generating Divided Government: The Australian Senate," In *Senates: Bicameralism in the Contemporary World*, edited by Samuel Charles Patterson and Anthony Mughan (Columbus, OH: Ohio State University Press, 1999), 94

which to check the authority of the Senate, a check which did not exist in the German Empire.<sup>174</sup>

Looking at the variable of distribution of regional economic specializations, Australia can be divided into two coalitions with the factor specificity scheme. Alfred Deakin, delegate to the constitutional convention, states that when the delegates met in Adelaide, a division arose between colonies which were in favor of free-trade and those in favor of protectionism with Victoria as an outlier of a protectionist colony that no others liked.<sup>175</sup> New South Wales serves as the primary example of a colony strongly in support of free trade.<sup>176</sup> Economic competition between the colonies was a common feature of British Australia with Queensland going against South Australia and Victoria competing with New South Wales.<sup>177</sup> This regionalism can be tied to how the differing economic systems underlying the colonies functioned and how they were affected by the depression. Each colony's position regarding free trade or protectionism was as follows:

- **Victoria** – Victoria's protectionist policies were founded in a desire to make its labor force highly regionally specific. Victoria had invested heavily in the mining of gold during the rushes; however, the depletion of these assets left it with an employment void because mines were not mobile assets.<sup>178</sup> Due to a lack of significant land, Victoria expanded into the manufacturing sector; to keep this industry functioning, Victoria sought protectionism to avoid having its labor force move across borders as

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<sup>174</sup> Ibid.

<sup>175</sup> Alfred Deakin, *The Federal Story; the Inner History of the Federal Cause, 1880-1900*. Edited by J. A. La Nauze (Parkville, Victoria: Melbourne University Press, 1963), 79

<sup>176</sup> Ibid.

<sup>177</sup> Roger McGhee, "The Long Boom, 1860-1890." In *Essays in Economic History of Australia: 1788-1939*, edited by James Griffin (Brisbane, Australia: Jacaranda Press, 1967), 174

<sup>178</sup> Ibid., 167



it built industry.<sup>179</sup> Victoria wanted to make a non-specific factor specific. Tariff leagues sprung up in the colony, particularly among industrialists.<sup>180</sup> In fact, Victoria wanted all of the colonies to adopt protectionist economic systems.<sup>181</sup>

- **New South Wales** – The colony of New South Wales in contrast to its fellow populous southern neighbor, Victoria, was the leader of the free-trade coalition in constitutional negotiations. Although the colony had a degree of industrialization,<sup>182</sup> New South Wales was the hub of growth in the wool industry.<sup>183</sup> The colony along with Victoria had 75% of the sheep in the colonies in 1862.<sup>184</sup> The factors in New South Wales were thus highly specific, and in order to help them weather the storm of the depression caused by the downturn in the wool industry, New South Wales sought strong, national free-trade policies.<sup>185</sup> Declining revenue from New South Wales abundant resource of land also contributed to this desire for free trade.<sup>186</sup>
- **South Australia** – Although normally a protectionist colony, a downturn in the viability of the agricultural industries it relied upon for its livelihood pushed South Australia towards becoming a free trade supporter.<sup>187</sup> South Australia's assets were thus highly specific, being primarily in land-based industries. A drought had pushed

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<sup>179</sup> Edward Shann, *An Economic History of Australia* (Melbourne: Georgian House, 1930), 268-269

<sup>180</sup> McGhee, "The Long Boom, 1860-1890," 166

<sup>181</sup> Edward Shann, *An Economic History of Australia*, 275

<sup>182</sup> Roger McGhee, "The Long Boom, 1860-1890," 165

<sup>183</sup> *Ibid.*, 146

<sup>184</sup> *Ibid.*

<sup>185</sup> L'Hullier, Leon. "Depression and a National Economy." In *Essays in Economic History of Australia, 1788-1939*, edited by James Griffin, 186-206 (Brisbane, Australia: Jacaranda, 1967), 194

<sup>186</sup> Roger McGhee, "The Long Boom, 1860-1890," 169

<sup>187</sup> J.C. Bannon, "South Australia," In *The Centenary Companion to Australian Federation*, edited by Helen Irving, 130-185 (Cambridge: Cambridge University Press, 1999), 144

the colony into the ensuing Australian depression before the other colonies.<sup>188</sup> South Australia thus sought access to the waterways in New South Wales in order to increase its ability to trade and thus recover its burgeoning industry.<sup>189</sup>

- **Queensland** – In the years leading up to union, Queensland's agricultural system became much more diversified, focusing on industries other than husbandry.<sup>190</sup> This diversification led to less factor specificity in the face of the economic depression and made Queensland firmly protectionist.<sup>191</sup> It feared economic hegemony by the southern colonies.<sup>192</sup> Queensland had a degree of agricultural flexibility. However, Queensland's voice was not heard at the negotiations over the constitution because it chose not to send any delegates, thus making its opinion largely irrelevant.<sup>193</sup>
- **Tasmania** – Due to its small size, the colony of Tasmania became one of the leading proponents of protectionism amongst the colonies. The Tasmanian government sought like Victoria to maintain a degree of asset specificity through government intervention with the imposition of tariffs.<sup>194</sup> In that way, they believed that the Tasmanian economy could flourish. Removing the protective tariffs would have the disastrous consequences of both decimating the Tasmanian economy and the Tasmanian government, which would then have had no revenue.<sup>195</sup> Protectionism was thus a way of life in Tasmania, being used to prevent the colony's absorption into

<sup>188</sup> Ibid., 143

<sup>189</sup> Alfred Deakin, *The Federal Story; the Inner History of the Federal Cause, 1880-1900*, 82

<sup>190</sup> Geoffrey Bolton and Duncan Waterson, "Queensland," In *The Centenary Companion to Australian Federation*, edited by Helen Irving, 93-128 (Cambridge, UK: Cambridge UP, 1999), 115

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid., 105

<sup>194</sup> James Warden, "Tasmania," In *The Centenary Companion to Australian Federalism*, edited by Helen Irving, 187-218 (Cambridge, UK: Cambridge UP, 1999), 198

<sup>195</sup> Ibid., 196

Victoria.<sup>196</sup> However, it must be stated that Tasmania saw the underlying benefits of union in that being part of a federation could give it access to greater resources.<sup>197</sup>

- **Western Australia** – Among the colonies, Western Australia did not suffer as badly during the depression due to profits from its extraction industries, particularly gold.<sup>198</sup> The colony's capital was heavily invested in the mining industry and was thus not very mobile, thus leading to a dearth of other industries. In order to support its citizens, Western Australia turned to tariffs on products from other colonies, firmly making it a protectionist.<sup>199</sup>

It is interesting to note that generally in Australia, factor specificity arguments are reversed from the traditional logic with the colonies with immobile factors supporting free trade due to a need to overcome this high level of specificity in the face of an economic crisis. Under the auspices of the model, the coalitions, which arose out of these factor arrangements, are the protectionists: Victoria, Queensland, Tasmania, and Western Australia, which sought to protect their factors by making them specific, and the free-traders: New South Wales and South Australia, who wanted high factor mobility in order to help their ailing economies. Due to its high population and strong nationalism,<sup>200</sup>

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<sup>196</sup> Ibid.

<sup>197</sup> Ibid., 195-196

<sup>198</sup> Brian de Garis, "Western Australia," In *The Centenary Companion to Australian Federation*, edited by Helen Irving, 285-325 (Cambridge, UK: Cambridge UP, 1999), 293

<sup>199</sup> Ibid., 298

<sup>200</sup> Marian Quartly, "Victoria," In *The Centenary Companion to Australian Federation*, edited by Helen Irving, 219-83 (Cambridge, UK: Cambridge UP, 1999), 220-221

however, Victoria tended to side with its archrival New South Wales, thus making the free-trade coalition New South Wales, Victoria, and South Australia.<sup>201</sup>

The free-trade colonies would be those in support of a weak upper legislative house, feeling that intensely regionally derived policies would not benefit their economic situation. The protectionist colonies, which also tended to be the less populous colonies, would be in support of a strong upper legislative house in an effort to ensure that their intensely regional economic interests were protected and represented, particularly in the face of the Australian depression of the 1890s. They feared that a unified economy would simply overwhelm their smaller economies with factor specificity decreasing as a result of less inter-colonial trade barriers. They felt they needed to maintain high specificity in order to flourish, thus they would seek symmetry for the house designed to represent the will of the states in crafting national economic policy, which would inherently not be fully in line with their economies.

Turning to the variable of inter-regional inequality, a lack of data prevents a fully definitive statement into whether there was high or low levels of inter-regional wealth inequality in Australia at the time of union; however, using backwards induction, it can be surmised that wealth inequalities did not exist at high enough levels for them to become a factor in the negotiations over the governmental structure of Australia. In the 1901 birth of the modern, unified Australia, the federal government was given great authority over taxation and was then charged with distributing this revenue to the

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<sup>201</sup> de Garis, "Western Australia," 297

states.<sup>202</sup> Had elites within the regions been concerned with the possibility of redistribution across the sub-units, they would not have put into place such a tax system, which gives significant taxing ability to the center and allowed for open interpretation of whether the power to tax is concurrent, a quality which eventually led to the federal government taking over all taxing authority.<sup>203</sup>

Looking through a first hand account of the birth of a unified Australia written by Alfred Deakin (future Prime Minister of Australia), a man who discusses his role as a delegate in the third person, it becomes clear that the disagreement over the existence, jurisdiction, and representational structure of the future Australian Senate and the federal system as a whole occupied a significant portion of the delegates' time in negotiations over their new government.<sup>204</sup> Each colony seemed to have a different picture of this institution. Examining the negotiations between the colonies from a historical perspective illustrates that regionalism and that coalition building among similarly minded groups played a role in the structuring of the Australian Senate. For example, during the 1891 negotiations, the Tasmanian delegate Adye Douglas was well known for being intensely locally oriented in his advocacy rather than focusing on larger ideological questions; he, like many other delegates, saw the future through the lens of his individual colony.<sup>205</sup> The small colonies in particular were criticized during the conventions for being overly "[parochial]" in their outlook towards unification, instead of seeing

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<sup>202</sup> Marjorie Jean Holmes, *The Australian Federal System*, Edited by Campbell Sharman (Sydney, Australia: G. Allen & Unwin, 1977), 136

<sup>203</sup> *Ibid.*

<sup>204</sup> Alfred Deakin, *The Federal Story; the Inner History of the Federal Cause, 1880-1900*

<sup>205</sup> *Ibid.*, 44

themselves as a larger part of a whole.<sup>206</sup> Even protectionist Victoria was largely on the side of union, perhaps having the greatest degree of nationalism amongst the colonies.<sup>207</sup>

Nationalists from the populous states of Victoria and New South Wales were dissatisfied with the equal representation arrangement of the Senate, which created incongruence between the two legislative houses; therefore, they sought to place certain curbs on the powers of this body in order to protect their local interests, which they felt would be threatened by the less populous colonies with their overrepresented views.<sup>208</sup> It is important to note that Victoria in particular saw its local interests as national.<sup>209</sup> The small protectionist colonies in turn wanted to maintain the symmetry of the upper house, particularly with regards to financial bills because they feared that the two larger colonies would dominate them and not give them the assistance they needed due to their backwards economies, which could only support their populaces with protectionism.<sup>210</sup>

It is important to note that Victoria and New South Wales were fighting for greater asymmetry on behalf of different economic interests; Victoria wanted to defend its own protectionist economy while New South Wales wanted to fight for free trade.<sup>211</sup> Most likely, Victoria's population brought it in line with its fellow populous colony of New South Wales and away from the coalition of protectionists. The free traders wanted and got the aforementioned deadlock breaking mechanism that slightly favored the House

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<sup>206</sup> Helen Irving, "New South Wales," In *The Centenary Companion to Australian Federation*, edited by Helen Irving, 19-92 (Cambridge, UK: Cambridge University Press, 1999), 70

<sup>207</sup> Marian Quartly, "Victoria," 220-221

<sup>208</sup> Nicholas Aroney, *The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution* (Cambridge: Cambridge University Press, 2009), 244

<sup>209</sup> Marian Quartly, "Victoria," 220-221

<sup>210</sup> de Garis, "Western Australia," 296

<sup>211</sup> Alfred Deakin, *The Federal Story; the Inner History of the Federal Cause, 1880-1900*, 79

of Representatives over the Senate.<sup>212</sup> The two populous states were also able to limit the power of the Senate to amend financial bills by persuading a few delegates from free-trade South Australia, which had already shown a tendency to prefer less power in the hands of the Senate in 1891,<sup>213</sup> and protectionist Tasmania to vote for circumscribing the Senate's power of amendment.<sup>214</sup> Although Brian de Garis argues that this vote ran counter to the economic interests of South Australia, seeing as the colony had a strong desire for the breaking down of trade barriers to have access to the waterways of New South Wales, South Australia's siding with New South Wales should not be considered surprising.<sup>215</sup> Its desire for a free trade environment, which only union could bring, helped it to overcome its qualms with relinquishing some symmetry.

The unification of the colonies at the turn of the century marked the first step in the transfer of fiscal authority to the center; with successive economic crises, the commonwealth government gained more taxing and revenue powers from the colonies.<sup>216</sup> The protectionist colonies, however, due to their small, non-diversified economies were somewhat resistant to union, feeling that they would be financially overpowered at the federal level.<sup>217</sup> Inter-regional wealth inequality, however, and the fears of the colonies regarding union were irrelevant at the time of union because in the 1890s, Australia entered a period of economic depression fueled by bad investments within the wool industry, thus placing the colonies in a similar financial situation at the time when the

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<sup>212</sup> Nicholas Aroney, *The Constitution of a Federal Commonwealth*, 244

<sup>213</sup> Alfred Deakin, *The Federal Story; the Inner History of the Federal Cause, 1880-1900*, 44

<sup>214</sup> de Garis, "Western Australia," 297

<sup>215</sup> Ibid.

<sup>216</sup> Marjorie Jean Holmes, *The Australian Federal System*, 136

<sup>217</sup> de Garis, "Western Australia," 296

constitution crystallized.<sup>218</sup> Thus, calls for union escalated among the colonies, which felt a need for a centralized financial administration in order to combat the effects of the depression.<sup>219</sup> As a component of this depression, each of the colonies, whether they were small or large in population, also faced a large overseas debt burden, which severely impeded their ability to recover on their own, thus strengthening these calls for a centralized financial administration.<sup>220</sup> On an income basis, the economic crisis was thus a unifying factor. The less populous colonies were thus willing to grant the populous colonies restrictions to the upper house, and as will be discussed in the congruence dimension, the more populous colonies were willing to grant incongruence.

### **Congruence Dimension in Australia**

Moving to the congruence dimension, representation in the Australian Senate was granted along colonial lines with each of the six colonies submitting to union being guaranteed an equal amount of representation with an enforceable minimum of six Senators for each state.<sup>221</sup> On the other hand, representation in the lower house was granted to the entire populace of Australia with seats allocated to the colonies based upon their populations, guaranteeing 5 representatives to each state.<sup>222</sup> Using census data from 1901 and the Samuels and Snyder formula<sup>223</sup> for calculation, this representational system produced an upper house in which 34.3% of the seats were malapportioned and 3.8% of

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<sup>218</sup> Leon L'Hullier, "Depression and a National Economy," 186-188

<sup>219</sup> Ibid.

<sup>220</sup> McGhee, "The Long Boom, 1860-1890," 181

<sup>221</sup> "The Constitution of the Australian Commonwealth: As on 1 January 1901," 444

<sup>222</sup> Ibid., 446

<sup>223</sup> David Samuels and Richard Snyder, "The Value of a Vote: Malapportionment in Comparative Perspective," *British Journal of Political Science* 31, no. 4 (2001): 660-662



the seats were malapportioned in the lower house.<sup>224</sup> Therefore, a high degree of incongruence existed in the Australian Parliament right after its birth due to its representational structure. This incongruence continues to today. In 1996, 29.62% of the seats in the Australian Senate are malapportioned while in the Australian House of Representatives, 2.41% of the seats were malapportioned; therefore, the representational systems introduced in 1901 continue to produce incongruence between the two bodies.<sup>225</sup>

A similar situation arose in Australia as in the German Empire with the small sub-units being resistant to union feeling that they would be overpowered at the federal level if representation were to be purely based upon population. The fervent nationalists from Victoria were overruled by the near unanimous support for incongruence supported by the delegates of the other five colonies.<sup>226</sup> During the negotiations over the Australian constitution, a prevailing ideological perspective, to which all but Victoria submitted, was that each of the colonies submitting to union was a sovereign entity.<sup>227</sup> It was not a people that were uniting, but rather a group of colonies; therefore, some form of representational mechanism taking this into account should exist.<sup>228</sup>

Resistance did arise to this arrangement, particularly among the delegates to the constitutional convention from Victoria, including Isaac Isaacs and Alfred Deakin, who had a distinctly more nationalist perspective.<sup>229</sup> In particular, Isaacs worried about the

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<sup>224</sup> "Appendix 2: The Commonwealth in 1901," In *The Centenary Guide to Australian Federation*, edited by Helen Irving, 439-41 (Cambridge, UK: Cambridge UP, 1999), 441

<sup>225</sup> David Samuels and Richard Snyder, "The Value of a Vote: Malapportionment in Comparative Perspective," 660-662

<sup>226</sup> Nicholas Aroney, *The Constitution of a Federal Commonwealth*, 195

<sup>227</sup> *Ibid.*, 221

<sup>228</sup> *Ibid.*

<sup>229</sup> *Ibid.*, 195-196

undemocratic nature of the unequal representation mechanism in the Senate, which he felt was overstating the power of the less populous states; he was quite concerned over the fact that this equal representation mechanism could only be changed through a constitutional amendment procedure that required each colony with its equal share of votes to approve it, thus ensuring that eventual change was highly unlikely.<sup>230</sup> However, in the end, the compromise decided upon gave each state equal representation in the Senate. The larger states were able to circumscribe the powers of the Senate over financial bills and were able to get a deadlock breaking mechanism, which favored the lower house, in which they would hold the majority of power. Therefore, the negotiations over the Senate of Australia thus illustrates that symmetry and congruence are factors, which should be concurrently considered.

*The Rajya Sabha of India: Federal Process Asymmetric and Congruent*

**Symmetry Dimension in India**

The Parliament of India is divided into two bodies: the Lok Sabha, the lower house, and the Rajya Sabha, the upper house. Their relationship can be most accurately described as asymmetric. Like in the previously discussed cases of the German Bundesrat and the Australian Senate, the upper house's approval is required for the passage of legislation within India; however, restrictions exist that place severe limitations on the upper house's ability to affect legislation in all competency areas of the

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<sup>230</sup> Ibid., 131

national government.<sup>231</sup> The upper legislative house has no absolute power to veto any tax/money bill; the lower house has the ultimate authority over these measures.<sup>232</sup> Further restricting the power of the Rajya Sabha to veto legislation is the fact that the ultimate authority on whether something is considered a money bill is vested with the speaker of the lower house.<sup>233</sup> The restriction with money bills, however, does not affect appropriations bills, which allocate money from the Consolidated Fund of India to the sub-units.<sup>234</sup> On such bills, the approval of the Rajya Sabha is required for passage.<sup>235</sup> Such bills are important for sub-units wishing to influence redistribution because India has a centralized tax system in which the money for the sub-units activities is allocated from the center.<sup>236</sup> The influence of the Rajya Sabha in financial matters is thus mixed; it does not have sweeping power over all forms of monetary legislation, but rather only over one specific type.

Unlike in Australia, the conflict resolution procedure in India grants the lower house a significant advantage in overriding the will of the upper house rather than simply providing a last resort. In the case of a deadlock between the two houses, a joint sitting of the Indian Parliament is held with a majority of the entire legislature needed to pass a bill.<sup>237</sup> Such a system heavily favors the lower house, considering that in a joint sitting, the lower house being larger comprises approximately two thirds of the room, thus

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<sup>231</sup> Samuel C. Patterson and Anthony Mughan, "Fundamentals of Institutional Design: The Functions and Powers of Parliametary Second Chambers," 42

<sup>232</sup> "Constitution of India," edited by Ministry of Law and Justice (Government of India, 2007), 52-53

<sup>233</sup> Ibid., 54

<sup>234</sup> Rajya Sabha Secretariat, "Rajya Sabha - an Introduction." National Informatics Centre, Parliament Informatics Division, [http://rajyasabha.nic.in/rsnew/about\\_parliament/rajya\\_sabha\\_introduction.asp](http://rajyasabha.nic.in/rsnew/about_parliament/rajya_sabha_introduction.asp)

<sup>235</sup> Ibid.

<sup>236</sup> "Constitution of India," 162-164

<sup>237</sup> "Ibid., 50-52

permitting it to overcome the barrier of the Rajya Sabha by negating its members, who only have real influence in their own body.<sup>238</sup> Of note among other powers of the upper house is its ability to vote to give some of the powers reserved to the states of the Indian federation to the central government.<sup>239</sup> Such a power creates evolving federalism.

Unlike in Australia and Germany, the economic specializations of the sub-units of India at the time of union were wholly the same. Using the Industry A vs. B definition scheme, a majority of the production in every sub-unit was engaged in the same industry. In 1949, 55% to 77% of the total production for every sub-unit within British India was engaged in “primary services.”<sup>240</sup> Industrial production only accounted for more than 25% of the total production within one state, Bombay.<sup>241</sup> Commercial production’s highest proportion of a sub-unit’s production was in Madras where it only accounted for one fifth of total production within the sub-unit.<sup>242</sup> The production output of these two states, which were the least heavily involved in agriculture are shown on the following page in Figure 7. Therefore, at the time of independence and union, the regional economic specialization of the sub-units was highly skewed with all of the states having the same principal economic base. The sub-units thus had a shared economic destiny and thus policies that created communal goods would benefit them collectively. Calls for a highly symmetric upper legislative house based upon this variable would thus be minimal or non-existent.

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<sup>238</sup> Ibid., 38-39

<sup>239</sup> N.K. Trikha, *Second Chamber of Indian Parliament* (Navrangpura, Ahmedabad: Allied Publishers Private Limited, 1984), 31

<sup>240</sup> Wibbels, “Decentralized Governance,” 178

<sup>241</sup> Ibid.

<sup>242</sup> Ibid.

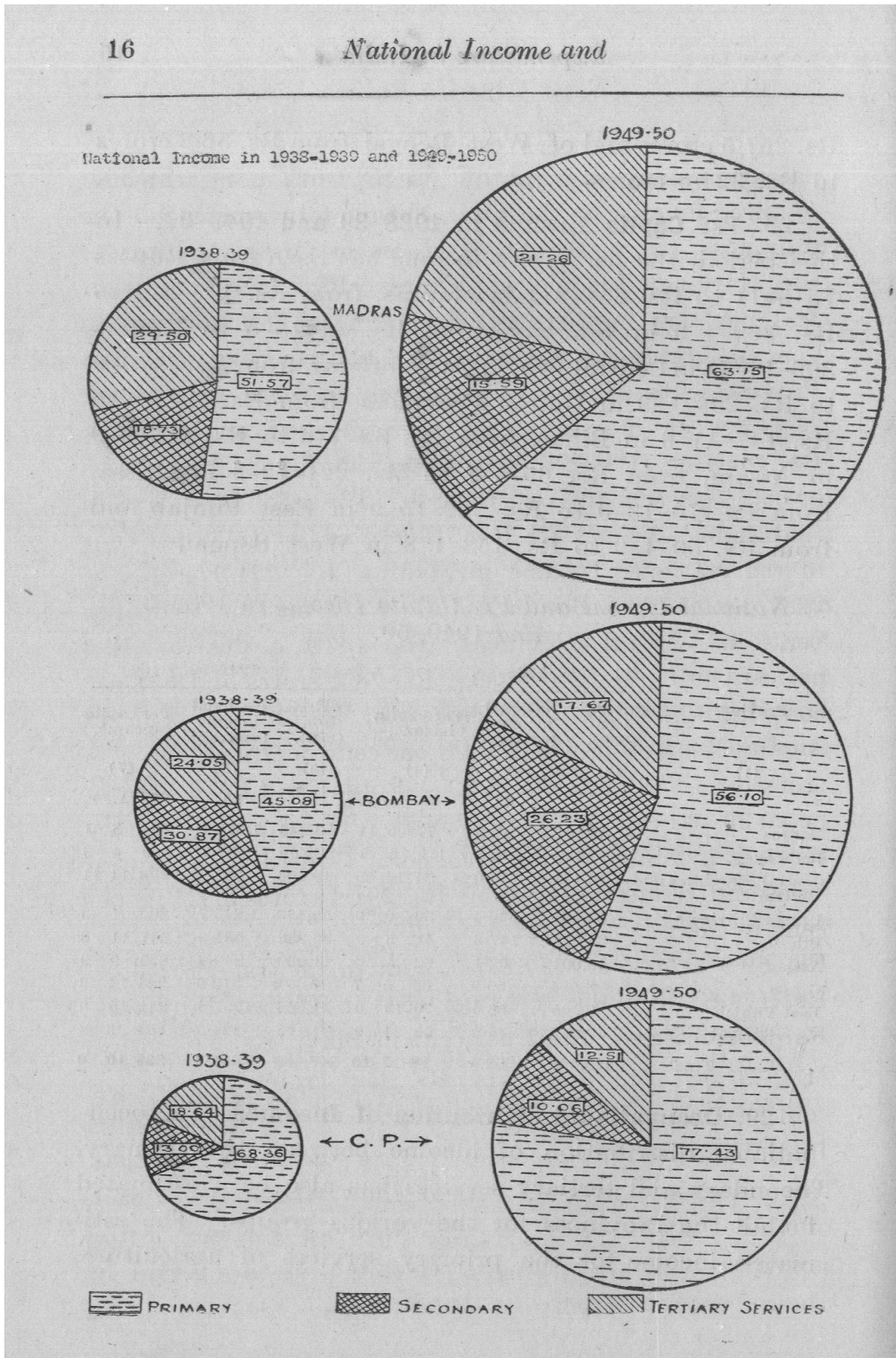


Figure 7: Production Breakdown of Three Indian Sub-Units in 1949 (Balasubrahmanya Natarajan, *An Essay on National Income and Expenditure in India*, National Income and Expenditure in India (Madras: Economic Adviser to the Government of Madras, 1949), 16)

Turning to inter-regional inequality, at the time of union, the sub-units of India had vastly different levels of wealth, although they were primarily engaged in the same form of industry: agriculture.<sup>243</sup> The success, or lack thereof, of the agrarian industry within different sub-units played a large role in creating this inter-regional inequality.<sup>244</sup> The wealthiest region of Bombay had a per-capita income more than double that of the poorest region of Bihar.<sup>245</sup> Looking at sub-unit level data from 1949, 62% of the population of India lived within regions in which per-capita income was below the national average, leaving 38% in regions with above average per-capita income.<sup>246</sup> Using a simpler separation scheme, only two states within India had per-capita incomes over RS 300 with a large cluster with per-capita incomes around RS 225.<sup>247</sup> Therefore, not only did India have a high degree of wealth inequality, but the population of the country was also skewed towards the poorer sub-units. Such a skew with the population biased towards the less wealthy sub-units will create calls for a unicameral system if the debate over the second chamber encompasses its existence. If the presence of an upper legislative house in the Indian system is considered necessary then the poor state coalition will be calling for the body to be asymmetric to the lower house, particularly considering that a universally franchised lower house will represent the interests of the populous coalition.

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<sup>243</sup> Ibid., 180

<sup>244</sup> Ibid.

<sup>245</sup> Balasubrahmanya Natarajan, *An Essay on National Income and Expenditure in India*, National Income and Expenditure in India (Madras: Economic Adviser to the Government of Madras, 1949), 15

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

*National Income and Per Capita Income in 1938-39  
and 1949-50.*

Province.	1938-39.			1949-50.		
	Popula- tion (000).	National income (crores).	Per capita income.	Popula- tion (000).	National income (crores).	Per capita income.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		RS.	RS. A. P.		RS.	RS. A. P.
Madras .. ..	47,757	369.5	77 5 11	53,846	1,370.4	254 8 1
Bombay .. ..	20,459	235.8	115 4 1	23,209	857.1	369 4 9
Central Provinces and Berar.	16,478	140.0	84 15 5	18,206	558.8	306 14 11
United Provinces ..	53,921	318.4	59 0 9	59,580	1,245.7	209 1 3
Bihar .. ..	35,613	147.3	41 5 9	39,352	581.3	147 11 6
Assam .. ..	10,001	62.1	62 1 6	11,050	249.3	225 9 9
Orissa .. ..	8,554	55.9	65 5 7	9,472	212.9	224 12 3
East Punjab ..	9,405	66.6	70 13 0	11,548	257.5	222 15 9
West Bengal ..	17,257	86.8	50 4 9	21,195	324.5	153 1 8
Total ..	219,445	1,482.4	68 7 10	247,458	5,657.5	228 10 0

**Figure 8: Per-Capita Income of the Indian Provinces in 1949 (Balasubrahmanya Natarajan, *An Essay on National Income and Expenditure in India*, 15)**

At the time of the birth of India's first government, which operated independent of the British Empire, India had already had a long tradition with bicameralism. The British had imposed bicameralism on its colonies in hopes that the more conservative and wealthy members of society would help protect the interests of the mother country.<sup>248</sup> Therefore, a certain aversion to the notion of an aristocratic upper legislative house existed in India at the time of union.<sup>249</sup> From a historical perspective, the delegates negotiating the constitution of India seemed to be attempting to fit the notion of an upper legislative house into their society with a high level of inequality, thus in a nation where

<sup>248</sup> R.C. Tripathi, *Emergence of Second Chamber in India* (New Delhi, India: Rajya Sabha Secretariat, 2002), 63

<sup>249</sup> *Ibid.*, 79

the vast majority of people were poor, the symmetry of the old British institution was whittled away. With administration of some government programs being devolved under the constitution,<sup>250</sup> delegates, such as Shri Naziruddin Ahmad, felt that a national voice for the states was necessary.<sup>251</sup> He feared unicameralism with representatives directly responsible to the people would neglect the opinion of the states with the representatives not identifying with their regions.<sup>252</sup> The calls for a wide breadth of opinion at the national level overcame the arguments that an upper house would just be a hindrance to the implementation of policy.<sup>253</sup>

One can see this in the constitutional negotiations, in which the plight of “backward classes” was often considered in an attempt to ensuring that the wealthier elements of Indian society were not overrepresented.<sup>254</sup> The 62% of the population living within the poor states truly seemed to hold the power over the negotiations of the Indian constitution. The ultimate expression of the power of this voice is the enshrinement within the Constitution of India with the principle that the central government of India will work to minimize economic inequalities between the people of the country.<sup>255</sup> The need to minimize inequality even surfaced in the decision to create the Rajya Sabha at all with M.K. Gandhi saying that such a body was redundant and a waste of financial resources.<sup>256</sup> The wealthy voice thus appears to be largely silent. When this is combined

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<sup>250</sup> Trikha, *Second Chamber of Indian Parliament*, 19-20

<sup>251</sup> R.C. Tripathi, *Emergence of Second Chamber in India*, 79

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> Ajay Kumar Singh, "Founding Father's Vision of the Indian Constitution." In *Constitutional Nation Building*, edited by Akhtar Majeed, 6-33 (New Delhi: Centre for Federal Studies, 2001), 8

<sup>255</sup> "Constitution of India," 179

<sup>256</sup> Trikha, *Second Chamber of Indian Parliament*, 3



with the historical aversion to the House of Lords and its analog in the Indian dominion, the origins of the asymmetry – particularly financial matters - of the Rajya Sabha is clear.

### **Congruence Dimension in India**

Moving to the congruence dimension, the names of the two houses when translated into English substantiate that these two bodies represent distinct sectors of the society. Under Article 79, the lower house is called the “House of the People,” thus representing the enfranchised polity of India, and the upper house is called the “Council of States,” thus representing the interests of the states specifically.<sup>257</sup> The appointment of the members of the Rajya Sabha by the parliaments of the sub-units of India further helps to reinforce this dual representation system.<sup>258</sup> Unlike in the previous two cases, however, the representation within the lower house and the upper house follow similar apportionment mechanisms. Seats in both the upper<sup>259</sup> and lower<sup>260</sup> legislative houses within the Indian parliament are allocated based upon population. The upper house, having half the number of members as the lower house, will inherently be more malapportioned.<sup>261</sup>

Due to the uniting of the small provinces into groups during the negotiations over the constitution, the inter-regional population variation in India at the time of union was

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<sup>257</sup> "Constitution of India," 38

<sup>258</sup> Ibid.

<sup>259</sup> Rajya Sabha Secretariat, "Rajya Sabha - an Introduction." National Informatics Centre, Parliament Informatics Division, [http://rajyasabha.nic.in/rsnew/about\\_parliament/rajya\\_sabha\\_introduction.asp](http://rajyasabha.nic.in/rsnew/about_parliament/rajya_sabha_introduction.asp)

<sup>260</sup> "Constitution of India," 39

<sup>261</sup> Ibid., 38-39

not high.<sup>262</sup> Additionally, no hegemonic population heavy region like Prussia existed; therefore, calls for incongruence at the national level would be minimal from a population perspective. The relative asymmetry of the Rajya Sabha with regards to issues of redistribution will also contribute towards weakening the overall calls within the emerging nation for the upper legislative house to have representation, which does not fall along population lines.

Looking to Arend Lijphart's calculations of the incongruence of the Rajya Sabha in 1996, compared to Australia's Senate, India's upper house is relatively congruent. While the 50% of the "most favorably represented voters" in Australia have approximately 74% of the seats within the Senate, the 50% of the "most favorably represented voters" in India only have 56.8% of the seats in the Rajya Sabha.<sup>263</sup> Looking at Samuels and Snyder's numbers, India in 1991 under its representation system had an upper legislative house in which 7.47% of the seats were allocated to areas which would not have the seats given no malapportionment.<sup>264</sup> In the lower house, 6.22% of the seats are malapportioned, thus the two bodies are thus largely congruent with one another.<sup>265</sup>

Although agreement largely existed among the delegates as to the representational scheme of the Rayja Sabha, amendments to the constitution were proposed to alter the proportionality of the two houses. Delegate Misra Shri Lokantha was particularly apprehensive. He argued that if the two houses followed the same basic apportion

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<sup>262</sup> "Text of the Debates Held in Constituent Assembly on Articles Relating to 'Council of States' Contained in Draft Constitution Prepared by Drafting Committee," In *Emergence of Second Chamber in India*, edited by R.C. Tripathi, 208-357 (Rajya Sabha Secretariat, 2002), 219

<sup>263</sup> Lijphart, *Patterns of Democracy*, 208

<sup>264</sup> Samuels and Snyder, "The Value of a Vote: Malapportionment in Comparative Perspective," 660-662

<sup>265</sup> Ibid.

scheme, then having two houses would be irrelevant because they will undoubtedly agree.<sup>266</sup> A real Council of the States in his eyes would represent each of the sub-units of India equally and in that way, their unique interests could be represented.<sup>267</sup> Being from Orissa,<sup>268</sup> a state, which comprised only 4.5% of the total population of India at the time of union, such a position from Shri Lokantha is not unexpected under the provisions of the model.<sup>269</sup> Reading the debates over the Constitution, it is clear this proposal went nowhere with the delegates.<sup>270</sup> Such an outcome is in keeping with the population distribution of the states not causing strong calls for incongruence.

*The Sénat of France: Unitary Process Asymmetric and Incongruent*

The institution of bicameralism has been a component of French governmental structure for more than two hundred years, coming into existence in 1795.<sup>271</sup> However, the notion of a representative assembly of the aristocratic components of society can be traced even further back to the French Assembly of Notables, an institution used by the Bourbon monarchy to justify some semblance of representation in an absolutist system.<sup>272</sup> Rather than recount the entire history of this body, this thesis will present the evolution of the Senate from the Third Republic through the Fourth Republic and conclude with the fifth and current French Republic. In this time, the body supported by the monarchists

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<sup>266</sup> "Text of the Debates Held in Constituent Assembly," 223

<sup>267</sup> Ibid.

<sup>268</sup> "List of Current Members of Rajya Sabha (Term Wise): Members with 3 Term(s)." Rajya Sabha Secretariat, <http://164.100.47.5/Newmembers/mpterm.aspx>.

<sup>269</sup> Natarajan, *An Essay on National Income and Expenditure in India*, 15

<sup>270</sup> "Text of the Debates Held in Constituent Assembly," 223-224

<sup>271</sup> Jean Mastias, "A Problem of Identity: The French Senat," In *Senates: Bicameralism in the Contemporary World*, edited by Samuel Charles Patterson and Anthony Mughan (Columbus, OH: Ohio State University Press, 1999), 162

<sup>272</sup> Merriman, *A History of Modern Europe: From Renaissance to the Present*, 264

will be transformed from a symmetric body to an asymmetric one, retaining its characteristic incongruence in the face of the rising center.

Beginning with the French Third Republic, the Senate's continued existence became a component of a compromise, which would allow the republic itself to come into being from the monarchy in 1875, thus making the Sénat a firmly political institution rather than an intellectual one as was partially the case in the German Empire and Australia.<sup>273</sup> Republicans during the debates over the structure of the new government were willing to grant the prior holders of powers: conservatives and monarchists, a body to represent their interests legislatively.<sup>274</sup> While the new Chamber of Deputies would be elected directly by the male population of France, the Sénat would acquire an indirect election system in which seats would be allocated to the various communes of France equally, ignoring population variations with the local boards choosing the Senators.<sup>275</sup> By representing each commune equally, the institution was designed specifically to over-represent rural interests, which were believed by conservatives to be more conservative.<sup>276</sup> Such overrepresentation spoke to the power of the peasant farming industries in France at the founding of the Third Republic; the industrial revolution had only just begun in 1875, leaving France without a strong manufacturing class.<sup>277</sup> The full co-legislative authority (with the exception of the requirement that "finance bills" must originate in the Chamber of Deputies) of this body meant incongruence in the

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<sup>273</sup> David Thomson, *Democracy in France since 1870*, edited by Royal Institute of International Affairs, Oxford Paperbacks; 194 (London: Oxford UP, 1969), 91-92

<sup>274</sup> *Ibid.*, 92

<sup>275</sup> *Ibid.*, 93

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*, 44-45

representational structure meant that the full effects of symmetry would be felt within the third Republic.<sup>278</sup>

The strength of republican forces would reach their climax at the time of the founding of the fourth French Republic; the Senate faced elimination, survived it, and ended up severely emasculated. The Constituent Assembly tasked with drafting the constitution of the new republic after the end of World War II originally created a legislature without an upper house, switching to a unitary system.<sup>279</sup> This proposal can be linked to the strong bargaining position of the industrialized working class in 1945, whose parties made up the vast majority of the Constituent Assemblies.<sup>280</sup> However, the citizenry of the Republic voted down this constitution, forcing the creation of a new assembly, which proposed a more conservative constitution with the institution of the Sénat restored under the name of Council of the Republic.<sup>281</sup> The passing of the second proposal speaks to the fact that the peasant classes were not as weak as in the 1945 assembly; they did fare better than the industrial classes during WWII.<sup>282</sup> The fact that the addition of the Sénat allowed the constitution to pass speaks to the fact that the body continued to serve as a piece of a compromise. Although it restored the body, the assembly granted the Sénat severely restricted powers with regard to legislation, relegating it to an advisory position due to a strong desire to keep the majority of control

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<sup>278</sup> "Law of February 24, 1875, Relating to Organization of the Senate," In *France: Empire and Republic, 1850-1940: Historical Documents*, edited by David Thomson, 62-63 (New York: Walker and Company, 1968), 63

<sup>279</sup> David Thomson, *Democracy in France since 1870*, 237

<sup>280</sup> *Ibid.*, 247

<sup>281</sup> *Ibid.*, 239

<sup>282</sup> *Ibid.* 247

over the government in the hands of the National Assembly.<sup>283</sup> This desire can also be seen in the control the National Assembly exercises over the executive in the Fourth Republic.<sup>284</sup> Incongruent representation was thus tempered by a high degree of asymmetry.

The founding of the Fifth Republic would mark a return to a slightly stronger Senate; however, despite this slight increase in power, the overall trajectory of movement towards asymmetry from symmetry holds. With a return to a slightly more autocratically driven constitutional process (constitutional negotiations over the new republic occurred largely behind closed door and had a distinctly Gaullist bent to them.<sup>285</sup>), the Sénat reappeared in a slightly stronger form than under the previous Fourth Republic. General de Gaulle seemed to see a positive effect of having a more influential Sénat, even arguing at one point for it to have distinct divisions to deal with different issues, such as culture.<sup>286</sup> Although largely still subservient to the will of the lower house,<sup>287</sup> the new Sénat has coequal powers over legislation depending on whether the government of France intervenes on its behalf.<sup>288</sup> The incongruent representation system first introduced during the Third Republic would hold through to the Fifth Republic, thus continuing the relationship under the Fourth Republic in which the upper house was asymmetric but allowed to retain incongruence.<sup>289</sup>

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<sup>283</sup> Ibid.

<sup>284</sup> Ibid., 236

<sup>285</sup> Ibid., 265

<sup>286</sup> Jean Mastias, "A Problem of Identity: The French Senat," 195

<sup>287</sup> Ibid., 164-165

<sup>288</sup> Samuel C. Patterson and Anthony Mughan, "Fundamentals of Institutional Design: The Functions and Powers of Parliametary Second Chambers," 55

<sup>289</sup> Jean Mastias, "A Problem of Identity: The French Senat," 164

Transforming from the Third Republic through the Fifth, the French Sénat evolved within a unitary framework from a highly symmetric body to a decently asymmetric one, illustrating that as the power of the monarchy and its supporters fades, the symmetry of an upper legislative houses whose origins were as an aristocratic council for the monarchy fades if incongruence is to be maintained. The rising power of the working classes of society over the peasant class will necessitate this political arrangement as a compromise to keep the upper house in existence within a unitary system, in which it serves no distinctly regionally based function.

*The Första Kammaren of Sweden: Unitary Process Symmetric and Congruent*

While the French Sénat represents a case in which an upper legislative house, which was both symmetric and incongruent, transformed into being asymmetric in order to maintain its existence against a rising center, the case of the Swedish Första Kammaren represents the opposite. Rather than maintain its incongruence and lose jurisdiction, the Swedish upper house altered its representational arrangement in order to maintain legislative influence. It is important to note that the invention of the unicameral parliament from the bicameral in Sweden was an organic internal transformation rather than an importation of institutional design from one of its Nordic counterparts.<sup>290</sup>

The notion of an upper legislative house in Sweden can be traced back to the thirteenth century in which the King exercised control over his centralized state via an

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<sup>290</sup> Neil Elder, *The Consensual Democracies?: The Government and Politics of the Scandinavian States*. Edited by David Arter and Alastair H. Thomas (Oxford, UK: Robertson, 1982), 119

“aristocratic council of lords.”<sup>291</sup> The need for representation of different groups within the Swedish nation as precipitated by strong separatist movements resulted in the creation of the Swedish parliament, the Riksdag, in 1435 with an estate each to represent the “nobles, the clergy, burghers, and peasant landowners;” each estate in turn had its separate parliamentary institution, essentially creating a quadricameral system.<sup>292</sup> Therefore, a long tradition exists within Sweden for the representation of different social classes through structured legislative bodies.

Bicameralism as a formal institution would come into being in Sweden in 1866 when the aforementioned four estates system was replaced by two houses with a distinctly incongruent bent.<sup>293</sup> One incongruent system was replaced by yet another incongruent system. In keeping with the names upper and lower house, the houses of the first bicameral Swedish Riksdag were designed from the outset representationally to divide along economic lines. The upper classes, including its aristocratic elements, were represented in the upper chamber, and in the lower chamber, the people of more modest wealth, including the “middle class” and agricultural interests were represented.<sup>294</sup> Like in France, the local farming interests were a bit overemphasized.<sup>295</sup> The upper house used a wealth-based system to determine the number of votes, judging for example joint stock companies based upon the size of their holdings.<sup>296</sup> This first foray into true

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<sup>291</sup> Nils Bertel Einar Andren, *Government and Politics in the Nordic Countries: Denmark, Finland, Iceland, Norway, Sweden* (Stockholm, Sweden: Almqvist & Wiksell, 1964), 139

<sup>292</sup> *Ibid.*, 139-140

<sup>293</sup> *Ibid.*, 146

<sup>294</sup> *Ibid.*, 148

<sup>295</sup> *Ibid.*

<sup>296</sup> Neil Elder, *The Consensual Democracies?: The Government and Politics of the Scandinavian States*, 121



bicameralism in Sweden produced two houses of equal legislative power with specific representational interests, thus beginning the arrangement that upper legislative houses in unitary systems originate, namely symmetric and incongruent.<sup>297</sup>

The difficulty of such a legislative system without any semblance of crosscutting interests between the two houses is near constant disagreement and opposition between the two houses.<sup>298</sup> In Sweden, this was most evident in the fact that the landed farming interests through the “Country Party” sought to undermine the government of Sweden at every turn even when the government was amenable to its interests.<sup>299</sup> Such intense particularism by the land based economic leaders was undermined by the arrival of the industrial revolution, which worked towards realigning the political power within Sweden as the wealth of the industrial classes increased and the wealth and political capital of the farming classes declined.<sup>300</sup> Reforms in 1909 and 1921 sought to address the problem of the two houses; however, unlike in France, the Swedes sought to solve the Riksdag’s problems by altering the representational structure and not the jurisdictional arrangements.<sup>301</sup> In 1909, congruence increased as universal male suffrage was introduced for the lower house and wealth requirements were eased for the Första Kammaren.<sup>302</sup> In 1921, congruence increased to a near maximum point as universal franchise for both men and women was extended for the election of both houses, thus

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<sup>297</sup> Nils Bertel Einar Andren, *Government and Politics in the Nordic Countries: Denmark, Finland, Iceland, Norway, Sweden*, 148

<sup>298</sup> Neil Elder, *The Consensual Democracies?: The Government and Politics of the Scandinavian States*, 121

<sup>299</sup> Nils Bertel Einar Andren, *Government and Politics in the Nordic Countries: Denmark, Finland, Iceland, Norway, Sweden*, 148

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*

<sup>302</sup> *Ibid.*, 149

creating two bodies that essentially represented the same interests;<sup>303</sup> however, it is important to note that election for the upper house were still indirect through local governmental bodies.<sup>304</sup>

The period of formal Swedish bicameralism would come to an end in 1966 when a proposal in the works since 1954 with a unicameral parliament would become the foundation of Swedish democracy.<sup>305</sup> The movement towards congruence necessitated by the constant disagreement of the two houses helped to make such a two-house legislature largely irrelevant. Even the Social Democrats, who enjoyed strong support in the upper house, were willing to support the unicameral arrangement when it seemed that the indirectly elected body could no longer protect their interests, seeing as they had done badly in the elections of 1966 for the Första Kammaren.<sup>306</sup> Utilizing a proportional representation system with seats allocated on both a local and a regional level,<sup>307</sup> the new Swedish Riksdag became a body with little malapportionment; only 1.1% of the seats in 1997 in the unicameral parliament were apportioned to places which would not have those seats given perfect population based representation.<sup>308</sup>

The Riksdag thus illustrates the counter path of the French Sénat, becoming congruent to the point that the upper house was all-together eliminated. Without strong regional interests calling for regional representation, the Första Kammaren became a

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<sup>303</sup> Ibid.

<sup>304</sup> Neil Elder, *The Consensual Democracies?: The Government and Politics of the Scandinavian States*, 119

<sup>305</sup> Nils Bertel Einar Andren, *Government and Politics in the Nordic Countries: Denmark, Finland, Iceland, Norway, Sweden*, 149-150

<sup>306</sup> Neil Elder, *The Consensual Democracies?: The Government and Politics of the Scandinavian States*, 119

<sup>307</sup> Nils Bertel Einar Andren, *Government and Politics in the Nordic Countries: Denmark, Finland, Iceland, Norway, Sweden*, 150

<sup>308</sup> Samuels and Snyder, "The Value of a Vote: Malapportionment in Comparative Perspective," 661

body that simply mirrored the beliefs of the lower house; therefore, it was eliminated, rather than simply curbing its power and maintaining its distinctly incongruent membership system.

*Case Study Summary*

In keeping with the bifurcated model and the different structural principles of the case studies, two summaries will be presented. A chart will summarize the three federal case studies: Germany, Australia, and India, together and then an individual diagram will summarize France and Sweden.

Nation	German Empire	Australia	India
Year of Founding	1871	1901	1949
Upper House	Bundesrat	Senate	Rajya Sabha
Lower House	Reichstag	House of Representatives	Lok Sabha
Majority Needed for Approval in Two Houses	Majority in Upper and Lower	Majority in Upper and Lower	Majority in Upper and Lower
Special Legislative Restrictions	Bills only affecting certain states are only voted on by those states	Upper house cannot amend financial bills; it may only return them to the lower house with suggestions	Rajya Sabha can suggest amendments to financial bills, but the Lok Sabha does not have to accept them; does not affect Appropriations Bills
Override Mechanism	No Override	Lower house can seek a dissolution of Parliament to resolve its disagreement with the Senate	Joint Sitting of both Houses, in which the Lok Sabha can override the Rajya Sabha due to its larger membership
Underlying Benefit of Union	Security	Weather Economic Crisis through a centralized financial administration	Independence from Great Britain
<b>Symmetry Dimension</b>			
Symmetry Level	Highly Symmetric	Symmetric with Restrictions	Asymmetric
Bicameralism Level	Level 5	Level 4	Level 3
Specialization Scheme	Industry A vs. B Scheme	Factor Specificity Scheme	Industry A vs. B Scheme
Balanced or Skewed	Balanced	Balanced	Skewed
Specialization Divide	Commercialized States v. More Agricultural States	Free-Trade v. Protectionism	Primary Industry of All States was Agriculture
Inter-Regional Inequality	High	Low	High
Inequality Coalitions	60% of population in wealthy states; 40% in poor states	Not applicable; economic crisis created a need for fiscal union and cooperation	60% of population in poor states; 40% in wealthy states

Nation	German Empire	Australia	India
Congruence Dimension			
Congruent or Incongruent	Incongruent	Incongruent	Congruent
Representation Basis in Upper House	Given to States	Given to States	Given to States
Apportionment in Upper House	Regardless of population, guarantee that each state will have at least one representative in the Bundesrat; specific apportionment scheme codified in constitution	Equal Number of Senators for Each State; minimum of six guaranteed to each state	Rajya Sabha has a limit on how many members it can have; those members are apportioned among the provinces based on population
Representation Basis in Lower House	Given to the People	Given to the People	Given to the People
Apportionment in Lower House	Apportioned based upon 1867 population of sub-units	Minimum of 5 from each state with representatives being apportioned based upon the population of each state	Apportioned throughout India based upon population
Inter-Regional Population Variation	High	High	Average (not a large number of small states due to unity of provinces)
Percentage of Seats in Upper House, which are Malapportioned	26%	34.3% (1901)	7.47% (1991)
Percentage of Seats in Lower House, which are Malapportioned	Assumed to be significantly less than 26% due to apportionment mechanism	3.8% (1901)	6.22% (1991)

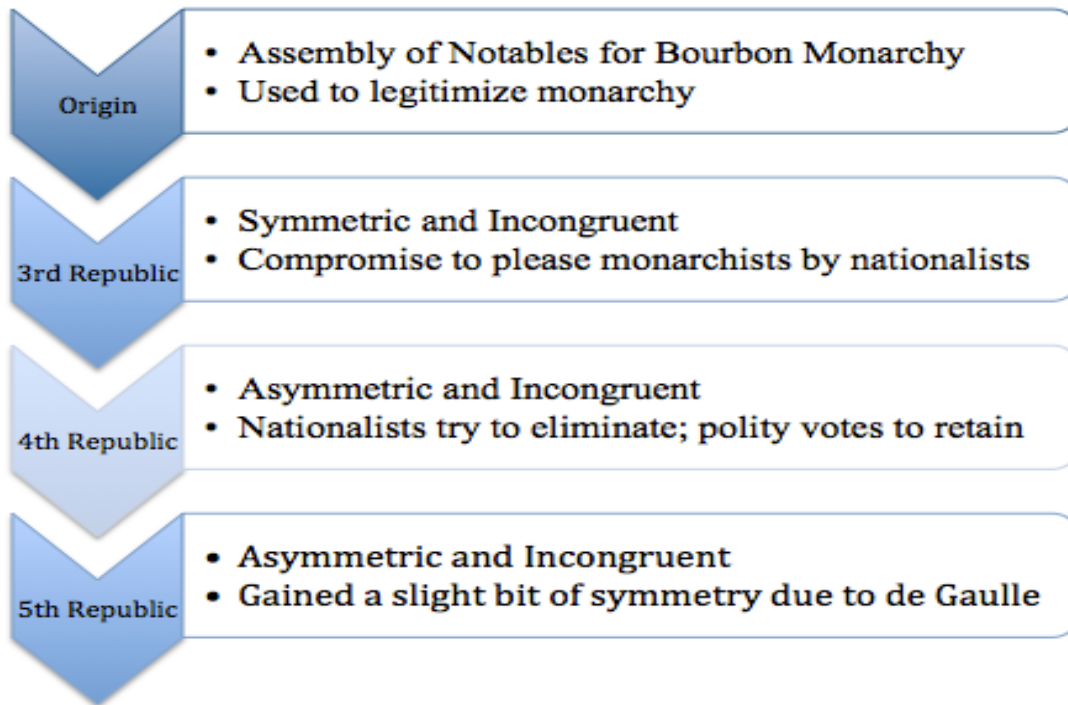


Figure 9: Summary of French Case Study and the Evolutionary, Inherent Process of Reform of Unitary Upper House

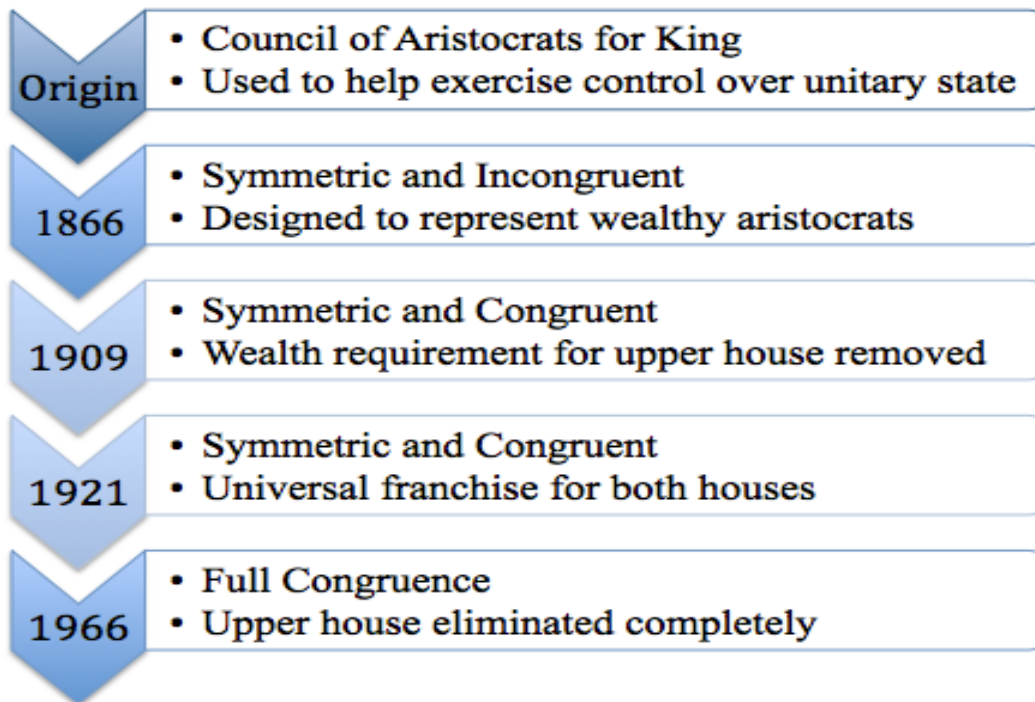


Figure 10: Summary of Swedish Case Study and the Evolutionary, Inherent Process of Reform of Unitary Upper House

**Chapter 5: Conclusion: Proposal for a Large-Scale Study***Viability Conclusions of the Model after Case Studies*

Although the selected case studies represent only a small portion of the total number of nations worldwide with bicameral legislatures, they seem to indicate that the model presented within this thesis is viable for a large-scale study. In particular, the historical documentation of the negotiations over the constitutions of the German Empire, Australia, and India illustrate how the factors of distribution of regional economic specializations and inter-regional wealth inequality play a role in the discussions over how both the federal relationship should be structured and more importantly how the jurisdictional arrangement of the upper legislative house should be designed. In fact, looking at first hand accounts of the Australian and Indian cases, it is interesting to note the length of time devoted to the discussion of the upper legislative house in the endogenous federal bargaining procedure.

The Australian case, however, illustrates two limitations of the model. First, while distribution of regional economic specialization (factor specificity scheme) partially influenced how the colonies formed coalitions, other un-accounted for variables seemed to be affecting the preferences and coalitions of the colonies. The protectionists with the exception of Victoria were on the side of greater symmetry for the Senate. The cross specialization coalition of New South Wales and Victoria, however, illustrates that sub-unit population should also be considered in the symmetry dimension. Its influence is not simply confined to the congruence dimension. Second, the model in its presentation assumes that symmetry is decided first and then congruence based upon the level of symmetry. However, in Australia, the notion of equal representation in the Senate was

decided upon first and due to the imposition of this mechanism, the populous states aligned to try to limit the powers of the upper legislative house. A revised model would have to take into account that symmetry and congruence could be decided in any order or concurrently.

Moving to the congruence dimension, inter-regional population variation does inform the nature of the representational system for upper legislative houses. The case studies clearly illustrate that incongruent representation represents a compromise granted by the more populous states during the negotiation in order to achieve the approval of the less populous states. In the German Empire in particular, we have a clear illustration of a populous state, namely Prussia, granting greater representation to the smaller states than population would afford them, thus sacrificing its own representation and ensuring union. In India, the lack of a symmetric upper house weakened calls for incongruence in the upper house as predicted by the model.

Separating the model into a unitary and a federal negotiation process was the correct course of action. The negotiation processes in the German Empire, Australia, and India were regionally based; however, in France and Sweden, the process remained centralized like their governmental structures. Looking at France, we have national political factions, monarchists and republicans, battling one another over the structure of the legislature, imposing territorial representational systems from the top down in order to achieve a compromise, which would represent all political factions. In Sweden, negotiations occurred not between local populations but rather between political parties and national economic groups, who were considering their ultimate survival. The processes are thus different enough to warrant a bifurcated model. However, within the



dissertation, which this thesis will underlie, it would be necessary to better define the negotiation process that is present in unitary systems, coming to discover how the preferences over outcomes of the groups negotiating the modified upper houses come to be defined.

### *Large Scale Study Introduction*

Due to the inherent time constraints imposed upon a senior thesis, a large-scale study of upper legislative houses was not conducted as a component of this thesis and a case study based approach was used. The primary issue arose in the realm of data collection. Since the model focuses not on the current state of upper legislative houses and how the current economic and population situations in each nation come to define these bodies, data would have had to have been collected that describes the situation at the moment of each nation's constitutional crystallization. When this time element is combined with the emphasis upon regional variation, which underlies the federal component of the theoretical framework, data collection becomes doubly difficult and moves further beyond the time constraints of a senior honors thesis. Thus, discussion of a large-scale, cross-national study was abandoned early on, and this thesis took on a theoretical exposition format similar to the article by Erik Wibbels' titled "Decentralized Governance, Constitution Formation, and Redistribution," from which inspiration for the model presented in Chapter 3 was garnered.

However, the unfeasible nature of a large-scale study within the time limitations of a senior thesis written over the course of seven months does not preclude the future completion of such a study as component of a doctoral dissertation or a book, considering

the origins of upper legislative houses. As Daniel Ziblatt took his theory of infrastructural capacity being the key variable underlying the process of a nation becoming federal or unitary from the article “Rethinking the Origins of Federalism: Puzzle, Theory, and Evidence from Nineteenth-Century Europe” to the book *Structuring the State*, this thesis will grow beyond the theoretical exposition painted here and be transformed into a full-scale analysis of the implications for this model of upper legislative house origins across the history of the world.

Thus, as a conclusion to this thesis, a proposal for a large-scale, cross-national study will be laid out. The discussion will include proposals for two indices: one to measure the symmetry of an upper legislative house relative to a lower legislative house and one to measure the congruence of the upper legislative house. The symmetry index will primarily be based upon the powers of veto and override. The congruence index will use a measurement of malapportionment developed by David Samuels and Richard Snyder, which was used earlier in the case studies. The indices will not be exhaustive but will rather encompass those key aspects of symmetry and congruence that respectively grant the upper houses legislative weight and an imbalance in representation.

### *Symmetry Index*

For the index measuring the jurisdictional symmetry of the upper houses, the primary measure of the upper houses’ symmetry vis-à-vis the lower house will be a measure of whether the consent of the upper house is required for legislation to be passed, seeing as sub-unit elites wishing to protect their interests would wish to endow an upper legislative house with a tangible veto over policy passed by the lower house. This is in keeping with George Tsebelis’ theories and models in his work *Veto Players*, in

which he analyzes the decision making of governments based upon a framework that those who affect policy are those whose approval is required for the passage of legislation.<sup>309</sup> With the power to veto, an upper legislative house can influence the lower house to pass bills amenable to its interests and strike down those bills passed by the lower house that run counter to the interests of the majority in the upper house. The power to veto can be contrasted with the power of delay, which only constitutes a tangible power when a piece of legislation is time sensitive.

Weighting of this power will be based upon the majority needed in the upper legislative house to pass or reject legislation. Necessarily, an upper house in which only a majority is required is more symmetric than an upper house in which a super-majority is needed because the constraints upon its power are less severe. The measuring of power symmetry will continue with a factor to account for the ability of the lower legislative house to override the actions of the upper legislative house; like with the aforementioned measure of the upper legislative houses' ability of consent, this power will be weighted based upon the majority needed in the lower house to override. If the lower house cannot override, then the index will account for the nature of the conference committee system; inclusion of such a measure can be justified through the research of George Tsebelis and Jeanette Money, which was discussed earlier in this thesis. They conclude that the nature of the navette (shuttle) system can affect which body has greater influence over policy.<sup>310</sup> A particular house that underscores the power of such a system is the previously discussed Australian Senate, which has such a burdensome three month long navette

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<sup>309</sup> Tsebelis, *Veto Players: How Political Institutions Work*, 17

<sup>310</sup> Money and Tsebelis, "Cicero's Puzzle: Upper House Power in Comparative Perspective," 40

process that it constitutes an effective veto against the actions of the Australian House of Representatives.<sup>311</sup>

Criticisms may arise that this index is overly simplified and does not account for enough variation with the power of upper legislative houses, considering that the powers of such bodies are quite unique to the individual nation. The treaty approval of the US Senate can serve as such an example of such a power. However, such a simplification is necessary in order to consider all upper legislative houses upon a level playing field, seeing as an exhaustive index often muddles meaning by seeking to include too many factors in a single rating. An example of such an index is the Parliamentary Powers Index developed by M. Steven Fish and Matthew Kroenig in their Handbook of National Legislatures: A Global Survey. By including so many factors in their index, variations between legislatures are difficult to discern from the scoring since two nations with a score of 0.63 may be endowed with completely different powers; however, they receive the same score.<sup>312</sup> If the index of upper legislative house symmetry accounts only for the legislative process, then each score will have a clear and definite meaning. Two upper houses with a score of seven for example would have the same level of symmetry because a score of seven would indicate a specific institutional arrangement.

### *Congruence Index*

Of key importance with the index measuring the congruence of upper legislative houses will be to keep it simple and workable. The measurement of congruence should

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<sup>311</sup> Uhr, "Generating Divided Government: The Australian Senate," 94

<sup>312</sup> M. Steven Fish, *The Handbook of National Legislatures: A Global Survey*, edited by Matthew Kroenig (Cambridge: Cambridge University Press, 2009)

seek to simply account for the amount of malapportionment in the representational structure and not seek to include a measurement of the selection mechanism's effects upon representational structure. Rather than use Lijphart's gini coefficient of statistical dispersion, a cross-national study based off the theories of this thesis would seek to use a system developed by Samuels and Snyder in their article "The Value of a Vote: Malapportionment in Comparative Perspective." Their measurement system uses a simple formula that calculates what percentage of the seats would not be assigned to certain constituencies if there was no malapportionment; therefore, a score of 5 would indicate that 5% of the seats are allocated to areas that would not have those seats given no malapportionment.<sup>313</sup> Unlike gini coefficients of statistical dispersion, whose meaning is only evident to someone who understands such a statistical calculation, Samuels' and Snyders' numbers present malapportionment in an easily understandable framework. By avoiding gini coefficients as a method of malapportionment calculation also avoids the possibility of confusion with the oft-used gini coefficients of inequality, a misunderstanding that occurred once during the writing of this thesis. The formula used by Samuels and Snyder for the calculation is:

$$MAL = 1/2 \sum |s_i - v_i|^{314}$$

MAL is the notation they use to represent malapportionment.<sup>315</sup>  $S_i$  is the proportion of seats assigned to district "i" and  $v_i$  is the proportion of the population that

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<sup>313</sup> Samuels and Snyder, "The Value of a Vote: Malapportionment in Comparative Perspective," 654-656

<sup>314</sup> Ibid., 655

<sup>315</sup> Ibid., 654-655

lives within that district.<sup>316</sup> While such a system could be cumbersome to use when analyzing legislative houses with a large number of districts, such as the United States House of Representatives or the British House of Commons, considering that the districts of many upper legislative houses are based upon relatively large territorial divisions, such as states, calculation using this system will not be so cumbersome as to be a hindrance to the usage of his measurement system. Calculation for the Australian Senate at the time of union for example would only encompass only six terms in the summation function.

### *Case Selection*

The success or failure of such a broad cross-national study would very much hinge on the selection of chosen cases for the study. Under ideal conditions, which rarely exist in the field of political science, in order to truly assess the validity of the model, the cases would encompass all democracies throughout the history of civilization; however, the problem of data availability makes such a large study all but impossible. The model presented hinges upon knowing the economic and population conditions of the sub-units of an emerging nation at the time of constitution crystallization. While such economic and population figures are relatively easy to locate in twentieth century democracies (one can look to the easy availability of the United States Census data for each state in the union), historical data concerned with sub-units is not easily and readily available. Difficulties even presented themselves with the five case studies of this thesis. Regional economic data on Australia at the moment of union was difficult to locate; therefore, backwards induction through examination of tax procedures was required in order to

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<sup>316</sup> Ibid., 655

prove an initial condition at the time of union rather than using raw data. Within the studies cited in this thesis, Beramendi's model explaining decentralization illustrates this issue; rather than use historical data to understand the birth of the relationship, Beramendi works towards measuring changes in the decentralization/centralization relationship over a period of 20 years during the institutions' existence.<sup>317</sup> Such analytical designs overcome the problem of a lack of data availability; however, they introduce the problem of possible "reverse causality," with the dependent variables actually being the cause of independent variables and not vice versa, thus clouding the results of such a study.<sup>318</sup> Dealing with the moment of crystallization avoids this problem because the institutions are just coming into existence; therefore, their structure cannot be the cause of the conditions informing the preferences of the actors negotiating the new institutions.

If I were to complete the large scale, cross-national study testing the model, I would tend to prefer historical data even though its availability may be limited in many cases. Even though the model is designed to explain the relationship between upper legislative houses and lower legislative houses, all cases need not be bicameral systems. The emergence of unicameralism is accounted for in federal negotiation cases using Ziblatt's framework of sub-unit capacity and in unitary cases through upper house devolution to symmetric and congruent. Such devolution ends in unicameralism. Careful attention would need to be paid in order to ensure that the elimination of cases because of a lack of data neither skewed the results towards substantiating the claims of the model nor skewed them towards disproving the model's claims. If a paring down of the cases is

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<sup>317</sup> Beramendi, "Inequality and the Territorial Fragmentation of Solidarity," 783

<sup>318</sup> *Ibid.*, 796-797

necessary, care will be taken not to sample on the dependent variables so as not to bias the results of this analysis.

By crafting these two indices and ensuring case selections, which do not bias the results, this cross-national study could take the foundation laid in this thesis for understanding the origins of upper legislative houses and transform it into a dissertation. Such a dissertation could go a long way towards helping us to understand these bodies, which have become a common feature of legislatures across the world.



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