

Bicameralism - its Relevance for Better Governance in Hong Kong

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Causes of Pro-democracy Mass Rallies & Upsurge in Mass Support for Democracy between 2003-2005

- i./ Severe inequality, uncertain economic restructuring, large executive-legislative tensions, perceived cronyism & unfair economic competition persist: bad for stability & prosperity
- ii./ Political System Cannot Effectively Represent Public Opinions –poor governance
- iii./ HK's Political System Lacks Procedural Legitimacy via Free & Fair Elections
- iv./ Political System Lacks Institutionalized Mechanism to Replace Incapable Leaders

A Democratically Elected Bicameral Legislature: Relevance for HK's Institutional Problems??

- Some leaders in HK's business sector may accept a "Bicameral" Arrangement"
- Not easy for them to agree on abolishing FCs entirely
- Their acceptance of a democratic and bicameral legislature reduces a major constraint & encourage CPG to rethink on setting a roadmap for full democracy in HK

Bicameral Legislatures: those whose deliberations involve two distinct assemblies (Tsebelis, 1997).
In 1999, 67 bicameral institutions or 38% of 178 legislatures in the world:

Fully Elected Senates			Partially Elected / Partially Appointed Senates		Appointed Senates
<i>Direct Suffrage</i>	<i>Indirect Suffrage</i>	<i>Mixed Suffrage</i>	<i>Direct Suffrage</i>	<i>Indirect Suffrage</i>	
Australia Bolivia Brazil Colombia Czech Rep. Dominican Republic Haiti Japan Kyrgyzstan Liberia Mexico Nigeria Palau Paraguay Philippines Poland Romania Switzerland Thailand United States Uruguay	Argentina Austria Bosnia-Her. Burkina Faso Ethiopia France Gabon Germany Mauritania Morocco Namibia Netherlands Russian Federation Slovenia South Africa Yugoslavia	Belgium Spain	Chile Italy	Algeria Belarus Botswana Egypt India Ireland Kazakhstan Madagascar Malaysia Nepal Swaziland Tajikistan	Antigua & Barbuda Bahamas Barbados Belize Cambodia Canada Fiji (Isles) Grenada Jamaica Jordan Lesotho Saint Lucia Trinidad & Tobago United Kingdom
21	16	2	2	12	14

Justifications of Bicameral & Unicameral Legislatures in HK

Strengths of Using a Bicameral Legislature	Strengths of Using a Unicameral Legislature
<ul style="list-style-type: none">- Can maintain Functional Constituencies & endow the new legislature with electoral legitimacy: As a middle-ground solution to the divisions on constitutional reform;	<ul style="list-style-type: none">- More familiar and comprehensible for HK people;
<ul style="list-style-type: none">- Bicameralism enhances a deepened debate to legislation;	<ul style="list-style-type: none">- Faster to enact proposed legislation than those in bicameral legislatures;
<ul style="list-style-type: none">- Bicameralism hampers the passage of problematic or reckless legislation; and supply improved monitoring of the executive branch;	<ul style="list-style-type: none">- Lesser costs to taxpayers and governments;
<ul style="list-style-type: none">- Bicameral legislature produced via the aforementioned methods can better help nurture political leaders and boost party development.	<ul style="list-style-type: none">- Fewer elected politicians for the public to monitor.

4 Problematic Arguments against bicameralism

- 1. Is bicameralism undemocratic?
- -Democracy:
 - a. allow meaningful political opposition; b. civil liberties;
 - c. most powerful leaders produced via free and fair elections.
 - -HK's bicameral legislature can be democratic, if power of Lower Chamber:
 - i./ is greater than that of Upper Chamber,
 - ii./ Upper Chamber mainly keeps delaying power over financial and non-financial legislation,
 - iii./ Lower Chamber has been constituted by direct elections & universal suffrage.

4 problematic arguments

■ 2. Is bicameralism outdated?

- A rise in number rather than decrease in the last 40 years.

- All G7 countries adopt bicameralism;

- in 1999, 17 OECD countries adopted it

- further rise from 67 in 1999 to 76 in 2005

3. Not for non-federal state?

- In 1999, 27.9% using it were unitary states

4. Only for populous countries?

- in 1999, 23% of micro-states adopt bicameralism

Powers, Composition, Efficiency & Origins of HK's Bicameral legislature

- Q.1: Powers of two chambers?
- Q.2: Composition of 2 chambers?
- Q.3: Efficiency: resolving of inter-cameral conflicts?
- Q4: Methods of electing two chambers?

(con't) Power & Composition of Upper Chambers' Members: principles from international experiences

- Actual Influences of Upper Chambers depend on
 1. Formal Power;
 2. Methods of Selection of Upper Chambers' Members – election, esp. direct election give them greater power;
 3. Different Electoral Methods for 2 Chambers,
 - e.g. ways they are elected & their terms of membership → smaller differences mean greater redundancy of two chambers -→ lesser powers for upper chambers.

Desirable Traits of 2nd Chambers: Lessons from 17 OECD bicameral legislatures

- Both strong and weak upper chambers undesirable: ideally they should force government to rethink problematic bills by power to delay passage of bills, without causing incessant legislative gridlocks
- Most lower chambers are more powerful than upper ones because of the larger electoral mandate of the former

Second chambers have less powers over financial legislation than non-financial ones: some 2nd chambers can initiate non-financial bills, but usually only lower chambers can initiate financial ones, given larger electoral legitimacy of lower chambers

To uphold solemnity of constitutions and safeguard human rights, amending constitutions needs clear endorsement of upper chambers

- Govt. should not control upper chamber to maintain its independent character

Desirable Roles and Functions of Second Chambers: international experiences

■ Scrutiny of Legislation

* A core function of upper chambers.

- Based on 20 countries, including 17 OECD members, the upper houses have delaying powers up
 - to 90 days at a maximum for ordinary legislation,
 - to 20 days in case of urgency for ordinary legislation,
 - to 30 days for financial legislation

■ Investigative Functions

■ Constitutional and Human Rights Scrutiny

■ Reflecting Territorial Perspectives

Composition & Powers of Upper Chambers' Members: international experiences

- Among 67 upper chambers of the world, direct elections, indirect elections, appointments and a mixture of appointments and elections are used to produce upper chambers
- Internationally, upper chambers lacking electoral legitimacy but having large power are vulnerable to incessant attacks of being illegitimate.
- To preserve bicameralism, more powerful upper chambers tend to be produced by direct elections
- - methods of election and powers of Upper chamber are clearly associated for 58 bicameral legislatures in the world!

Types of Elections and Powers of Second Chambers

Method of Selection	Power	Total
Direct Election	Greater or equal	13
	Lesser	11
Indirect Election	Greater or equal	2
	Lesser	13
Appointment	Greater or equal	2
	Lesser	13
Other	Greater or equal	0
	Lesser	4
Total	Greater or equal	17
	Lesser	41

Source: Coakley & Laver (1997)

Powers & Methods of Election of Upper chamber are clearly associated internationally

- -the more the upper chamber's members are appointed or produced by indirect election, the smaller their power should be because of smaller electoral legitimacy
- -e.g All Canadian Upper Chamber's members are appointed by ruling party - the former's ability to veto decisions from Lower Chamber discredits the legitimacy of the entire Upper Chamber

Implications on HK: Composition & Powers of its Second Chamber

Small franchises, limited Representativeness, non-inclusion of many other occupations & “excessively” pro-government stance of FC members undercut the public support for FCs.

- Therefore, if second chamber is composed entirely of the existing FCs, its electoral legitimacy will be challenged and its power needs to be limited.

Two Steps To boost Public Support and Powers of Upper House:

i./ Reform the Existing Functional Constituencies towards a More Democratic One:

Replace corporate voting by individual voting

- Abolish small FCs that represent insignificant sectors:

- In 2000, nearly half of the FC legislators were produced from FCs with less than 1000 registered voters.

ii./ Composition: Incorporate non-FC members to Upper House:

a. Indirect Elected Members

- Broaden territorial representation by allowing *“directly elected”* District Councilors to nominate and elect directly elected District Councilors and non-District Councilors for Upper House;
- Nurture political leaders, both within and outside political parties;

ii./ Composition: Incorporate non-FC members to Upper House:

a. (con't) Indirect Elected Members

- Ensure attention be given to local needs in the Upper Chamber;
- As those elected by the District Councilors for the Upper House may or may not be District Councilors, both “regional considerations” and Hong Kong-wide perspectives exist in Upper Chamber.

Overall Composition of Aforementioned Groups

- FCs and indirectly elected members:
50% each of the total seats

Powers of Upper Chamber in HK

- Given inclusion of FCs members in Upper Chamber, and that the Lower House be entirely directly elected, granting equal power to Upper House will create Severe Political Challenges for Upper House
- Therefore, following most OECD's countries, the major powers of HK's Upper Chamber are advisory and through its capacity to delay bills.

Power & Efficiency of Upper House in HK

- * Based on 17 OECD bicameral legislatures, HK's Upper House can delay up:
 - to 6 months at a maximum for ordinary legislation,
 - to 20 days in case of urgency for ordinary legislation,
 - to 3 months for financial legislation
 - Under adequate media attention, a short delay created by the second chamber over contentious bills may force the first chamber to rethink and/or amend.

(con't) Power of Upper House in HK: Scrutiny and Monitoring

- Arming the upper house with the capacity to veto financial bills easily can enhance legislative deadlocks, dampen monitoring power of legislature over the executive & slow down party development.
- * The scrutiny function of HK's Upper Chamber should remain its core one.

- * Bills for ordinary legislation can be initiated in either Lower or Upper House.
- * Bills for financial legislation, however, can only be initiated at the Lower House for its higher electoral legitimacy
- * Upper House should pursue vigorously its investigative role to monitor the government by adopting appropriate procedures and committees to fulfill their aims.

Power of Upper Chamber: Constitutional Guardian

- An exception to the advisory role of the upper house lies in the constitutional arena.
- Upper Chamber protects constitutional rights, by a veto or delaying power - amendments of the Basic Law need to be endorsed by 66.7% of members of both houses.

Efficiency: Resolution of Conflicts between Upper and Lower Chamber

- Different ways for resolving various legislations have been practiced internationally:

1. Suspensive System:

- Usually adopted in relatively weak chambers without a strong electoral mandate, through which the upper house can delay the bills passed by the lower one, but not veto them.

(con't) Efficiency: Resolution of Conflicts between Upper and Lower Chamber

2. Intercameral Conference Committees:

- Conference committees suggest proposals to the parent chambers without amendments.

Proposed Methods for Resolving Inter-cameral Conflicts in HK

- Suspense System: delaying powers for the Upper Chamber should be up to
 - 6 months at a maximum for ordinary legislation,
 - 20 days in case of urgency for ordinary legislation, &
 - 3 months for financial legislation
- Intercameral Conference Committees:
 - Formed either after the inter-cameral deadlocks after two conflicting readings in each house, or after conflicting reading in each House in urgent situations as agreed by the simple majority of both chambers.

(con't) Proposed Methods for Resolving Inter-cameral Conflicts in HK

- Formation of an equal no. of representatives from each House
 - The members are representatives of parties in each house based on their % of seats.
- Committees can only discuss areas of disagreement between the two houses over the concerned issues, and the final decision of each committee is reached in accordance with the simple majority of it.

(con't) Proposed Methods for Resolving Intercameral Conflicts in HK

The compromise proposed by the committees cannot be further amended by the Lower House.

- If the proposed compromise is rejected by the Lower House, the Lower House will have the last word.

Should CE solve inter-chamber deadlocks?

- Not desirable because:
- i./ Will undermine independence of legislature from the executive branch and the former's capacity to monitor the latter
- ii./ Should the CE remain less democratically constituted than legislature, the much weaker mandate of the executive branch than the legislature will risk depleting further the public support of the executive branch
- iii./ Other workable options for resolving intercameral conflicts are found internationally

Different electoral methods for 2 chambers

- 2 chambers should use different electoral systems to
- i./ produce representatives with different perspectives & expertise for better legislation & policy-making.
- ii./ ensure non-redundancy of the Upper House, thus safeguarding the *legitimacy* of bicameralism
- To enhance stability & monitoring power of the upper chamber, its members would hold office for 6 years and half of the members be elected every 3 years.
- FCs use first-past-the-post (FPTP) for electing legislators to Upper House.
- An open-list system of proportional representation should be used by directly-elected District Councilors.

Different electoral methods for 2 chambers

- FPTP is simple and can reduce multi-partyism: secure democratic stability.
- Open-list PR will reduce party control and hence increase non-partisan character of upper house.
- Use a mixed-member majoritarian system to produce the Lower House.
 - A single, Hong Kong-wide, closed list-tier using proportional representation will be used to elect 2/3 of seats in Lower House: can boost party discipline, representation of diverse views from big and small parties & territory-wide policy debates.
 - Use majoritarian elections for remaining 1/3 of seats in the Lower House - can ***broaden representation*** of the political system.

Different electoral methods for 2 chambers

- the mixed system partly comprises majoritarian principles, and therefore reduces the risks of multi-partyism which is associated with excessive executive-legislative deadlock and political instability.
- With the majoritarian element in the system, the risk of small and unpopular parties holding popular and larger parties to ransom is also reduced. Instead, the legislature is likely to be more politically accountable.

Passage of Motions/Bills

- To pass non-financial and financial bills initiated by legislators, 51% and 60% respectively, of votes of the total number of elected legislators of the Lower House (for bicameral legislature) are required.
- The relatively higher ratio required for passing financial bills reduces danger of excessive welfarism and resistance to implementing full democracy

Costs of delaying full democracy

- Lack of electoral legitimacy for Govt. → Reluctance to launch controversial yet urgent policies for HK's development: e.g. medical finance, taxation reform, fair-competition
- Severe inequality, uncertain economic restructuring, large executive-legislative tensions, perceived cronyism & unfair economic competition persist: bad for stability & prosperity
- Sluggish or pseudo-democratic reform only prolong risks of having HK's stability & prosperity undermined
- A democratic system with universal suffrage will be a necessary condition to enhance essential reforms to overcome the above problems & enhance HK's governance in the medium and long run.

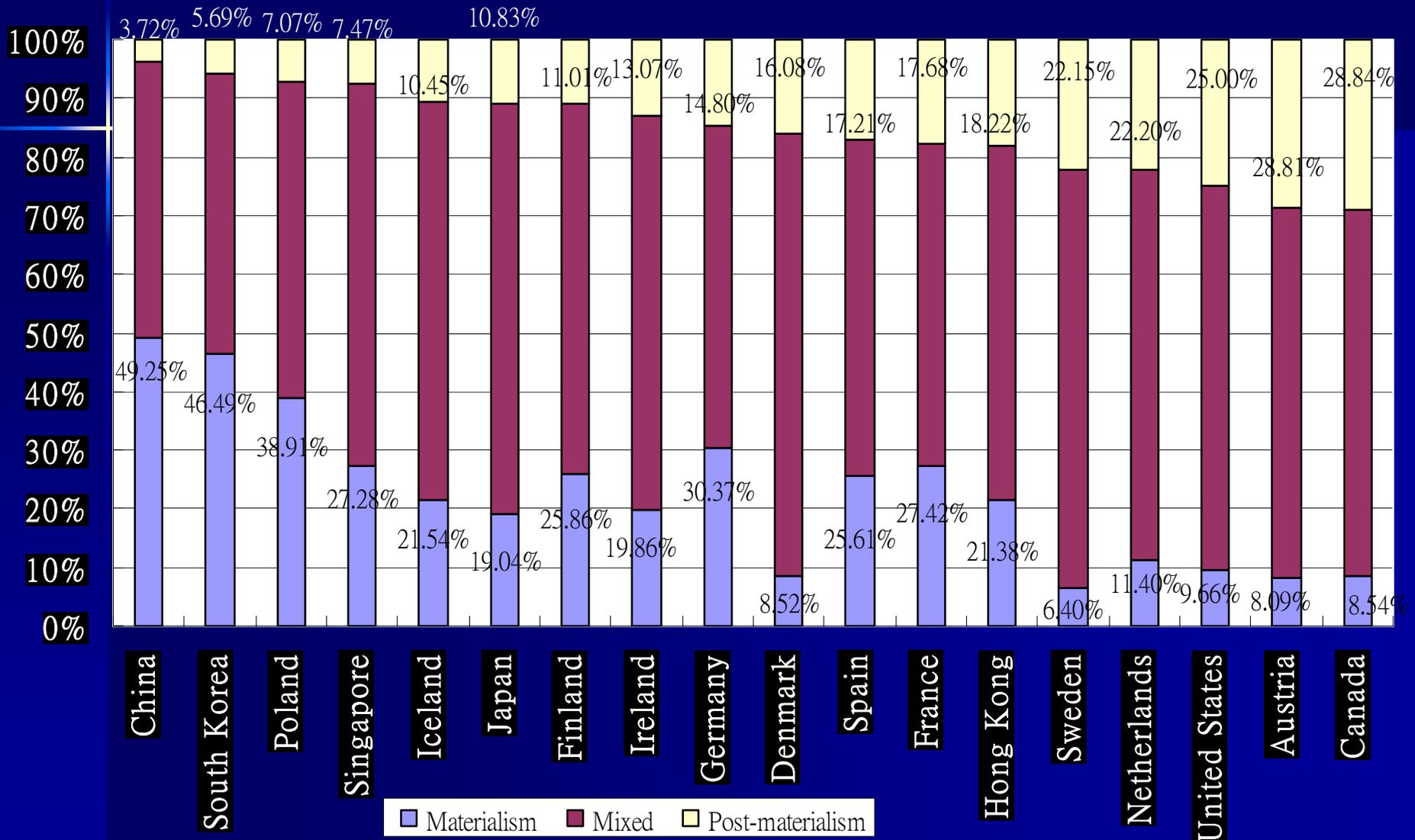
Support for full democracy persists

- My survey in June, 2005:
 - 73.5% agree/strongly agree electing govt. by universal suffrage “may have problems but it is better than any other form of govt.”
 - After the Central Govt.’s rejection of universal suffrage by 2008, 61% & 62% of public prefer to have it held electing the legislature & CE respectively in 2012
 - 3 Surveys from early 2000’s to June 2005 find “Post-materialistic Culture” can explain mass support for universal suffrage

Post-materialistic culture and democracy

- Emphasize freedoms, greater political participation & govt's respect of public opinions in policy making.
- Culture doesn't change overnight: a solid basis of support for full democracy exists, regardless of economic conditions.

Hong Kong Ranked Sixth in Post-materialism



Source: 2000-2001 World Values Survey and HKGCC 2005 Survey on Poverty, Welfare, and Political Reform.

Conclusion

- 1. Given benefits of universal suffrage for improving HK's governance, implement it for producing the legislature and CE in 2012;
- 2. Consider bicameralism – the most common form of legislature among richest democracies globally, as a “partial” win-win package to pan-democratic camp, general public & business sector to improve HK's governance both for the short & long-run

~ END ~

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in Hong Kong**

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**Proposal on Hong Kong's Political Reform : Bicameralism &
Electoral System**

- 1. Introduction**
- 2. Lessons from 20 Overseas Second Chambers: Roles and Functions of Second Chambers.**
- 3. Major principles of Reforming Existing Second Chambers: Desirable Characteristics of Second Chambers (Russell, 1999b; 2000, 247-94)¹**
- 4. Implications Drawn from International Experiences on Hong Kong: Composition & Powers of its Second Chamber**
- 5. Electoral Methods for Lower and Upper House in Hong Kong: Use of different electoral systems to produce the legislature.**

¹ 17 of those 20 second chambers are the OECD countries, which represent the full sample of bicameral legislatures among the OECD countries in 2000.

Legislative Reform

1. Introduction

Reforming Hong Kong's current ineffectual legislative branch is one of the centerpieces of this study's recommendations. Currently Hong Kong's legislature is neither fairly nor broadly representative of the Hong Kong community. It is also deprived enough institutional power to effectively check against the power of the Chief Executive and executive branch. As a result it is an institution crippled by a lack of popular support and governing power. This in turn results in a legislative body that has a poor record of policy deliberation and leadership cultivation.

To reconcile the need of electing its government via universal suffrage with Beijing's expectation of retaining some form of functional constituencies, the powers, composition and electoral systems of bicameral legislatures around the world are explored as a way out. More specifically, based on cross-national studies, suggestions for the powers, composition, ways for resolving inter-cameral conflicts and electoral systems of Hong Kong's bicameral legislatures are offered.

Considering the obvious strengths of bicameralism indicated in Table 1, it is recommended that a bicameral structure is worth considering to be established in Hong Kong.

Table 1: Justifications of Bicameral and Unicameral Legislatures in Hong Kong

Strengths of Using a Bicameral Legislature	Strengths of Using a Unicameral Legislature
♦ <i>Can maintain Functional Constitutencies and at the same time endow the new legislature with the aura of electoral legitimacy. It thus serves as a middle-ground solution to the highly divisive debates on Constitutional reform</i>	♦ More familiar and comprehensible for HK people
♦ Bicameralism enhances a deepened debate to legislation	♦ Faster to enact proposed legislation than those in bicameral legislatures
♦ Bicameralism hampers the passage of problematic or reckless legislation; and supply improved monitoring of the executive branch.	♦ Less cost to taxpayers and governments;
♦ Bicameral legislature help nurture political leaders and boost party development	♦ Fewer elected politicians for the public to monitor.

Its Lower Chamber will be entirely elected under universal suffrage. Appointed seats and indirectly elected ones will also appear as recommended earlier in the Upper House then. The term of the Lower Chamber will be kept as 4 years.

Summary of Recommendations and their Rationale

A Bicameral System:

1. The Legislative Council should be divided into two chambers: an Upper House and a Lower House.

Rationale: A bicameral legislature can **improve governance** by **better representation** of the interests and preferences of a diversity of constituencies (e.g. districts, functional constituencies, classes and groups with varied political beliefs), enhance **accountability and performance legitimacy** through **deepened policy deliberation** on legislation, and **cultivate leadership** via opening up political institutions to appointments and, more importantly, free and fair elections. This will strengthen the **electoral legitimacy** of the entire political system.

Bicameral Composition:

2. The Lower House would be made up of approximately 76 members, based on eleven OECD countries' bicameral legislature membership/population equivalency ratios, all of whom would be directly elected through universal suffrage (Appendix 5).

Rationale: The suggested method and composition can improve three areas of governance

through more equitable *representation, electoral legitimacy and accountability*.

3. The Upper House should have:

- a) 50% of members produced by elections among reformed functional constituency members (FC) (with reform features such as replacing the corporate voting by individual voting, and/or abolishing small FCs that represent insignificant sectors. In 2000, nearly half of the FC legislators were produced from FCs with less than 1000 registered voters).
- b) 50% of members produced by elections among directly-elected District Councilors, who can nominate and select directly-elected District Councilors or non-District Councilors into the Upper Chamber, to strengthen the territorial representation of the chamber.
- c) A final tally of approximately 62 members, following calculations based on equivalency ratios for upper house legislators in bicameral legislatures in eleven OECD countries (Appendix 5), with the recommended distribution of Upper House members proposed in a) to b) above).

Rationale: The proposed composition for an Upper House can improve HK's governance by:

- **Broadening representation:** through a more equitable incorporation of interests of different districts, classes (Functional Constituencies), political beliefs/forces
- **Enhancing accountability:** through the inclusion of broad expertise and perspectives to help block problematic legislation and improve monitoring of the executive branch.
- **Improving public policy deliberation:** through members who are elected by directly-elected District Councilors
- **Cultivating leadership:** through more participatory legislative activities, more political leaders will be cultivated.
- **Strengthening legitimacy:** with 50% of Upper House members elected by directly-elected District Councilors, electoral legitimacy is boosted. In addition, with stronger governance capacity as outlined above, the credibility of the entire political system is strengthened.

Bicameral Powers

4. The Upper and Lower Houses in Hong Kong should not have equal powers.

Rationale: This is to avoid legislative gridlock. *Political accountability and performance legitimacy* will be strengthened by legislative effectiveness.

5. The Upper House in Hong Kong would primarily scrutinize and monitor the legislative process, with powers to delay ordinary legislation for up to 6 months, financial legislation for up to 3 months, and to 20 days in case of urgency.

Rationale: These arrangements provide a good balance between legislative efficiency and **political accountability**.

6. Either House will have the power to initiate ordinary bills, but financial bills can only be initiated in the Lower House.

Rationale: Given the greater electoral mandate of the Lower House, this arrangement will boost the legitimacy of the bicameral legislature.

7. The Upper House will have the power to veto legislation related to the constitution, and any Basic Law amendments will require two-thirds approval from both houses. The role of the CE and China's National People's Congress in approving HK's legislative changes, as specified in the Basic Law, will remain unchanged.

Rationale: This will promote mutual trust between the Central & Hong Kong Governments.

8. Inter-chamber deadlocks should neither be resolved by the Chief Executive nor the Executive Branch. Instead an inter-cameral conference or committees should be set up to resolve inter-cameral conflicts.

Rationale: This arrangement, consistent with international practice in many places, will promote legislative **accountability** and **legitimacy** by forcing the legislature to resolve their own disputes.

Electoral Methods

9. The two chambers should utilize different electoral systems to produce representatives with different perspectives and expertise for better policy deliberation.

Rationale: Different electoral methods will ensure non-redundancy of the Upper House, thus ensuring the **legitimacy** of the bicameral arrangement.

10. To enhance the stability of the upper chamber, upper house members would hold office for 6 years and half of the members would be elected every 3 years.

Rationale: This will promote monitoring of the Upper House & therefore improve the **accountability and performance legitimacy of Hong Kong's political system**.

11. Functional constituencies should use first-past-the-post (FPTP) for electing legislators to the Upper House. An open-list system of proportional representation should be used by directly-elected District Councilors.

Rationale: FPTP is simple and can reduce multi-partyism. Open-list will reduce party control and hence increase non-partisan character of upper house.

12. A mixed-member majoritarian system should be used to produce the Lower House.

- a) A single, Hong Kong-wide, closed list-tier using proportional representation will be used to elect two-thirds of the seats in Hong Kong's Lower House. This suggested measure can boost party discipline, *policy deliberation, political accountability and performance legitimacy*.
- b) The remaining one-third seats in the Lower House, chosen by majoritarian elections, should be elected by double-seat constituencies, using a double-vote electoral system. It can *broaden representation* of the political system.

Rationale: Given the criticism of an overly narrow constituency focus in the current LegCo, the mixed electoral system improves the balance between district and territory-wide representation while limiting the potential of multi-partyism.

The suggested reform for the legislature is summarized in Table 2 below.

Table 2: Reforming the Legislative Council in 2012

Unicameral/bicameral?	Bicameral
Size	Upper Chamber: 62 Lower Chamber: 76 members
Terms of office	Upper Chamber: 6 years; a half of them elected or appointed every three years Lower Chamber: 4 years (concurrent with that of the Chief Executive –reduce no. of relevant parties and legislative-executive deadlocks)
Method of selection	<p><u>Lower Chamber: Mixed system</u></p> <ul style="list-style-type: none"> ■ 2/3 of the seats: Proportional Representation with closed lists (can maximize party discipline & minimize executive-legislative deadlocks) ; the whole HKSAR as one constituency ■ 1/3 of the seats: (a) double-seat and double-vote electoral system; help reduce multi-partyism and dangers of political instability <p><u>Upper Chamber: Mixed system</u></p> <ul style="list-style-type: none"> ■ 50% of the seats: functional representation (with reform of the current system) ■ 50% of the seats: elected by all directly elected district councilors from 5 MERGED districts (N.B. non-district councilors themselves may run as candidates)
Power of the second (i.e. upper) chamber	<p>-Given Inclusion of FCs and/or appointed members in the Upper Chamber, and the Lower House be entirely directly elected, granting equal power to Upper House will create Severe Political Challenges for Upper House</p> <p>-Therefore, the major powers of HK's Upper Chamber are advisory and through its capacity to delay bills:</p> <p><i>Scrutiny and Monitoring Power of Upper House in HK</i></p> <p>HK's Upper House can delay up to 6 months at a maximum for ordinary legislation, to 20 days in case of urgency for ordinary legislation, and to 3 months for financial legislation. The duration is already longer than similar bicameral legislatures in OECD.</p> <ul style="list-style-type: none"> - Under adequate media attention, a short delay created by the second chamber may be powerful enough to force the first chamber to rethink. -Arming the upper house with the capacity to veto financial bills easily enhances legislative deadlocks, dampen the monitoring power of the legislature vis-a-vis the executive as a whole, and slow down the party development. <p>*Lower House needs 60% of members' votes for passing financial bills, and 51% for non-financial bills.</p> <p>* bills for ordinary legislation can be initiated in either Lower or Upper House. Bills for financial legislation, however, can only be initiated at the Lower House</p> <p>* Upper House should pursue vigorously its investigative role to monitor the government, by adopting appropriate procedures and committees</p>

	<p>to fulfill their aims.</p> <p><i>Constitutional Guardian</i></p> <p>*An exception to the advisory role of the upper house lies in the constitutional arena.</p> <p>*Upper Chamber Protects constitutional rights, by a veto or delaying power - amendments of the Basic Law need to be endorsed by 66.7% of members of both houses.</p>
Resolution of inter-chamber gridlock	The Chief Executive should not step in. Instead, inter-chamber committees will be formed; the lower chamber can either accept or reject the consensus reached by the committee but not amend it
Reforms of functional representation	<ul style="list-style-type: none"> ■ Further enfranchisement of functional constituencies can raise the public support for them and the Upper House as a whole. ■ Corporate voting in functional representation should be abolished and replaced by individual voting ■ Abolish constituencies with small size and representing insignificant sectors

Next, the proper roles and major principles of organizing bicameral legislatures will be outlined, in the light of the experiences of 17 OECD bicameral legislatures (Russell, 1999b; 2000, 247-94). Given the long history of bicameralism from many of those 17 OECD countries, lessons about bicameralism drawn from those societies should be seriously considered.

2. Lessons from 20 Overseas Second Chambers: Roles and Functions of Second Chambers (Russell, 2000, 262-94)

(For more detailed comparative analyses of bicameralism abroad, please refer to Appendix 2 of this document.)

The major goals of bicameral legislatures are to promote governance by:

1. Better representing the preferences of different constituencies (e.g. districts, class or political beliefs),
2. Enhancing a deepened debate to legislation,
3. Hampering the passage of problematic or reckless legislation; and supply improved monitoring of the executive branch.

They can fulfill those goals by exercising 4 functions:

- i./ Scrutiny of Legislation;*
 - ii./ Investigative Functions;*
 - iii./ Constitutional and Human Rights Scrutiny and*
 - iv./Reflection of Regional Perspectives.*
- i./ Scrutiny of Legislation*

Overseas experiences of the upper chambers show that they can perform impressive and detailed legislative scrutiny, and introduce many detailed amendments that tremendously enhance the quality of government bills. More specifically,

- * Detailed scrutiny of legislation should be a core function of upper chambers.

Legislators of the lower chamber may undergo multiple pressures and cannot adequately handle the large volume of legislation. They have been inclined to concentrate on the broad direction of policy rather than on the details of bills. Members of the upper chambers can scrutinize bills in greater details with greater expertise.

* In the light of the practices of bicameral legislatures among OECD countries, in order to balance between the need for lower chambers to achieve effective legislation and the role of the upper chamber to manage to pressure the government to rethink, the upper house needs to have delaying powers up to 6 months at a maximum for ordinary legislation, to 20 days in case of urgency for ordinary legislation, and to 3 months for financial legislation (Russell, 2000; see Appendix 1).

ii./ Investigative Functions

Upper chambers in many overseas countries have contributed to parliamentary work by launching detailed study of issues of public interest. Upper house may be in a better position to perform investigation than the lower house, as the members of the former may have more time, and conduct their business away from the media limelight.

iii./ Constitutional and Human Rights Scrutiny

- A new upper chamber that receives public support can contribute to scrutinizing constitutional changes and human rights. In terms of protecting human rights, the upper chamber can establish a committee examining all bills for compliance with the international human rights.

iv./ Territorial Chamber

The upper chamber can act as a territorial chamber and bring a regional perspective to the legislative, investigative, and constitutional roles of the chamber.

3. Major principles of Reforming Existing Second

Chambers:

Desirable Characteristics of Second Chambers (Russell, 1999b; 2000, 247-94)²

*Both strong and weak upper chambers can cause undesirable effects. A very strong upper house with an absolute veto can trigger legislative gridlocks and incapacitate the government in implementing policies. A very weak upper chamber may suggest that it may be disregarded by the lower chamber and the public. Arguably, the attractive scenario is a political system that permits the upper chamber to force the government to rethink truly problematic bills, without causing incessant legislative gridlocks (Russell, 2000, 264-5).

* Second chambers have lesser powers over financial legislation and more power over constitutional amendments: Leaving financial legislation to the lower house recognizes the greater mandate passed from the electorate to the lower chambers in general around the world, and to preempt financial or political crisis out of excessive delay in passing financial legislation.

* Second chambers should have no powers to remove government from office: to respect the generally greater mandate to the lower house, the power of removing government from office should not be given to the upper chambers. Such power may only be possessed by those upper houses constituted entirely by direct elections. Yet, a directed elected upper house may then produce many gridlocks with the lower house as a result of their equal powers.

* The two chambers should have different functions, or else the upper chamber will become redundant - It is quite widespread for the first lower house to concentrate on the

² 17 of those 20 second chambers are the OECD countries, which represent the full sample of bicameral legislatures among the OECD countries.

broad direction of policy, while the upper chamber shoulders greater duty for meticulous legislative scrutiny, as found in Germany (Russell, 1999b).

* The upper house should stand for the territorial nature of the state: the second chamber should have members representing the provinces, regions, or states in the national legislature, as found in Germany, Australia, and the United States.

* Government/governing party should not control the upper chamber: it will help maintain the independent character of the upper chamber that can provide more effective check on the lower house and the government. The different electoral methods for the two houses to be elaborated below will enhance the independent character.

In the context of the aforementioned principals and lessons, the following implications can be drawn on Hong Kong.

4. Implications Drawn from International Experiences on Hong Kong: Composition & Powers of its Second Chamber

If Hong Kong is to set up a second chamber, its members may contain functional constituencies. Given the small franchises for many functional constituencies (FCs) as compared with those of geographical constituencies, the corporate voting for some FCs, and other inherent problems of FCs, the public support of FCs will be challenged incessantly. Indeed, a representative sampled survey conducted in December, 2004 registered that while 16% and 60% agreed respectively that FCs should be abolished all at once or step by step, only 13% of respondents said FCs should not be abolished (DeGolyer, 2005).

Given the small public support of the FCs, the power of the second chamber composed entirely of the existing functional constituencies will accordingly be limited. To boost the public support and powers of Hong Kong's Upper House, it should contain both reformed FCs, and other more representative components.

4.1 Reform the existing functional constituencies towards a more democratic one:

4.1.1: Replace the corporate voting by individual voting:

Almost half of the FCs have exclusively or predominantly incorporated or unincorporated bodies as their electorate (Young, 2005, 19). Those with a high proportion of corporate voters are FCs that tend to have poor performance when measured quantitatively (Young, 2005, 19).³ The FCs with corporate voters tend to perform poorly partly because the corporate voters are more concerned with using their representatives to protect their corporate or sectoral interests (Young, 2005, 19), at the expense of the societal interests at times. Hence, it is recommended that individual voting rather than corporate voting should be used for the FCs in the Upper Chamber.

4.1.2: Abolish some existing FC that are small in size and represent only insignificant sectors: In 2000, nearly half of the FC legislators were produced from FCs with less than 1000 registered voters (see Appendix 3). The narrow franchises of such FCs not only undercut their representativeness for the community, but also prompt their representatives to be lax in playing out their role as legislators. The laxity of such FCs members has been borne out by some quantitative evidence (Young, 2005, 19). Abolition of those FCs with very small eligible voters will help promote the public support of the second chamber.

4.2 Incorporate members other those of functional constituencies into the second chamber to boost its overall public support:

Broaden territorial representation of the second chamber by allowing directly elected

³ The performance is measured “in terms of membership in LegCo committees, chairmanship and deputy chairmanship of committees, attendance rate at Council and committee meetings for 2003-2004 only, and questions asked and motions without legislative effect raised, including amendments to motions.....An overall ranking was done on the basis of the summed ranks of each legislator in all of the categories (Young, 2005, 15).”

members of Hong Kong's directly elected District Councilors to nominate and elect non-District Councilors to stand for elections for the second chamber. To reduce the workload of District Councilors and Upper Chamber legislators, the directly elected District Councilors need to elect non-District Councilors into the Upper Chamber.

To reduce the parochialism of District Council members, serious consideration should be made for merging the 18 District Councils into 5, i.e., 1 on HK Island, 2 in Kowloon and 2 in N.T.; and steps be taken to increase their powers up to the previous Urban Council/Regional Council. The merging may not only reduce the parochialism of its members, but also nurture more political leaders, and help improve the quality of members of Upper House. Also, cross-district meetings can be convened for issues cutting across districts.⁴

The advantages of this method are manifold:

First, it raises the interest for aspiring politicians for joining parties and running for the District Councils as a way of moving up the political ladder. Second, it ensures adequate attention be given to local needs in the Upper Chamber, thus complementing the territory-wide perspective provided by the appointed members and/or members from the functional constituencies. Third, the fact that the indirectly elected members and the electoral methods for producing such members in the Upper Chamber differs from those in the Lower House will diminish the danger of redundancy for the upper chamber and encourage different perspectives of the two chambers. Fourth, as those nominated and elected by the District Councilors for the Upper House may not be District Councilors, there is no prima facie evidence to allege that the indirectly elected Upper House members will be parochial in their outlook. Finally, an additional institutionalized avenue for nurturing political leaders in Hong Kong is forged that will simultaneously nurture political leaders especially among parties, encourage parties engaging in

⁴ The idea and benefits of merging were communicated to me by Ivan Choy during discussions.

territory-wide policy debates, and thus promote party development.

4.4 Overall Distribution of the Aforementioned Groups

Functional constituencies and indirectly elected members can take up 50% each of the total seats in the Upper Chamber. The aforementioned suggested distribution of different types of members for the upper chamber is based on Table 3 below, in which option C can maximize the attainment of goals for the bicameral legislature:

		perspectives	perspectives
3. Blocking the passage of problematic or reckless legislation; and supply improved monitoring of the executive branch.	FC Easily subject to pressure from Executive branch and least able to monitor it.	Subject to less pressure from Executive branch and more able to monitor it than the L.H.S.	More able to do so than the L.H.S.
4. Overall ability to fulfill goals of bicameral legislature	Lowest	Low	Strongest

4.5 Powers of Upper Chamber in Hong Kong

Should the Upper and Lower Chamber in Hong Kong have equal power?

Among most bicameral structures that share equal power in the world now, members of the Upper House are overwhelmingly produced by direct elections, enabling them to enjoy more or less the same mandate as the lower houses. Such cases include Australia, Switzerland, United States and Colombia (after 1991) (Lijphart, 1999, 212).

Given the inclusion of functional constituencies and/or appointed members in the Upper Chamber, and the Lower House will be entirely directly elected, granting equal power to the Upper House will renew incessant and severe political challenges to the public support of the Upper House in Hong Kong and institutionalize conflicts surrounding the bicameral legislature. Therefore, as practiced elsewhere, the major powers of Hong Kong's Upper Chamber are advisory and through its capacity to delay bills.

Scrutiny and Monitoring Power of Upper House in Hong Kong

* The Upper House needs to have reasonably long delaying powers for both financial and non-financial bills. In the light of the practices of 17 OECD bicameral legislatures, the Upper House in Hong Kong can delay up to 6 months at a maximum for ordinary legislation, to 20 days in case of urgency for ordinary legislation, and to 3 months for financial legislation. *The proposed duration has already been longer than the counterparts in OECD bicameral legislatures that have similar types of members in the upper house (Russell, 2000; see Appendices: 5a & 5b). On determining the duration of delay, a careful balancing has to be paid between effective monitoring from the Upper House and effective and efficient legislation in the Lower House. At a time when adequate media and public attention is secured on an issue, a short delay created by the second chamber may be powerful enough to force the first chamber to rethink (Russell, 2003, 314).*

*Arming the upper house with the capacity to veto financial bills easily is conducive to legislative deadlocks and mounting challenges against the public support of the upper chamber. It will dampen the monitoring power of the legislature vis-a-vis the executive as a whole, slowing down the party development.

* The scrutiny function of Hong Kong's Upper Chamber should remain its core one. It can supplement the Lower House by injecting a different standpoint by using legislative procedures not used in the lower chambers.

* To enable the Upper Chamber to exercise fully its legislative functions, bills for ordinary legislation can be initiated in either Lower or Upper House. Bills for financial legislation, however, can only be initiated at the Lower House, as a due respect for its greater mandate, as in some overseas countries (Appendix 1).

4.6.3 Constitutional Guardian

An exception to the advisory role of the upper house lies in the constitutional arena. The upper chamber should protect or enhance constitutional rights and amendments, by a veto or delaying power. For instance, amendments of the Basic Law need to be endorsed by two-thirds of members of both houses.

4.6 Resolution of Conflicts between Upper and Lower Chamber

4.6.1 Should the inter-chamber deadlocks be resolved by the Chief Executive or Executive Branch?

Such deadlocks should neither be resolved by the Chief Executive nor the Executive Council for a few reasons: First, such a proposed resolution will undermine the independence of the legislature from the executive branch and thus the former's capacity to effectively monitor the executive branch and correct problematic policies.

Second, should the Chief Executive or executive branch remain less democratically

constituted than the legislature, the much weaker mandate of the executive branch than the legislature will risk depleting further the public support of the executive branch if it decides on intercameral conflicts. This is especially the case if the conflicts involved are highly contentious policies, or when the executive-led resolutions are rejected by the public. Political crises for the entire executive branch may ensue from some unpopular resolutions.

Third, other workable options for resolving the intercameral conflicts are found internationally that may work one way or another.

4.6.2 Existing methods for Resolving Intercameral Conflicts (Russell, 1999a, 2000; Tsebelis & Money, 1997, 69)

Different ways for resolving various legislations have been practiced internationally, which include:

Suspensive system (Russell, 1999a, 9):

It is usually adopted in relatively weak chambers without a strong electoral mandate, through which the upper house can delay the bills passed by the lower one, but not veto them. Despite the larger formal power of the lower houses over the final decisions of bills, several factors can shape the government to modify bills:

First, a specified number of shuttles between the chambers can permit negotiations between the two chambers when the bills shuttles back and forth (Russell, 1999a, 9).

Second, a period of delay can be imposed by the upper chamber for passing bills. During the delayed period, the government-led lower house is motivated to bargain and gain the support from the upper one, and external social groups can have time to reflect over the relevant issues and generate support or pressure on the government.

Shuttles & Dissolving of Legislatures

For those lower houses sharing equal powers with the upper houses, the former

cannot override the latter and the intercameral disputes may engender a nonstop shuttle with neither side surrendering (Russell, 1999a, 9).

Intercameral Conference Committees

The third type of resolving intercameral conflicts is through the conference committees with members coming from both chambers. The significance of conference committees lies in their capacity to suggest proposals to the parent chambers without amendments (Tsebelis & Money, 1997, 176). The conference committees vary among themselves in terms of i./ who can call the committee, ii./who the members are, iii./ whether members have temporary or permanent membership; iv./ the restrictions on the committees in terms of the scope of discussion, scope of compromise and availability of tradeoffs across issues; v./ the decision rule on committees' decisions; vi./whether committees proposals can be amended, and vii./ which actor has the final say (Tsebelis & Money, 1997, 178-9; Russell, 1999a, 7-8).

4.6.3 Proposed Methods for Resolving Intercameral Conflicts in Hong Kong

Infinite shuttles and dissolving of legislature may obviously impact negatively Hong Kong's governance and should be avoided. In line with the international norms, delaying powers for the Upper Chamber should be up to 6 months at a maximum for ordinary legislation, to 20 days in case of urgency for ordinary legislation, and to 3 months for financial legislation (Russell, 2000; Appendix 4a, 4b). The shorter period granted for the financial bills reflects the intention to avert financial or fiscal losses for various territories out of any prolonged procrastination. To reiterate, the suspensive power for the upper chamber can, amid other favorable conditions stated earlier, still exert pressures on the lower house in amending some highly controversial bills and policies.

Another mechanism for resolving intercameral conflicts in Hong Kong is through intercameral conference committees. The intercameral conference committees can be formed either after the deadlocks ensued from two conflicting readings in each house, or one after conflicting reading in each House in urgent situations as agreed by the simple majority of both chambers. The intercameral joint committee, with 7 representatives from each house, will be formed. The seven members are representatives of parties in each house bases on their proportions of seats. The committees can only discuss areas of disagreement between the two houses over the concerned issues, and the final decision of each committee is reached in accordance with the simple majority of it. The compromise proposed by the committees can not be further amended by the Lower House. If the proposed compromise is rejected by the Lower House, the Lower House will have the last word (Russell, 2000, 35; Tsebelis & Money, 1997, 178).

On constitutional issues, i.e., on matters relating to the amendments of the Basic Law, in order to uphold the solemnity of the mini-constitution and protect China's sovereignty, approval from two-thirds of the members from both Houses is required.

5. Electoral Methods for Lower and Upper House in Hong Kong: Use of different electoral system to produce the legislature.

5.1 Should Proportional Representation System Alone be Applied to Elect the Entire Legislature?

There are a number of sound reasons against adopting proportional representation alone to produce legislators of both chambers:

Using the same electoral formula to produce members of both chambers will likely

yield legislators of similar backgrounds and views. It would risk turning the upper chamber into a redundant one. Former cross-national findings allowed presidential democracies are more prone to collapses than parliamentary ones in the last few decades (Przeworski et. al., 2000; Linz, 1994). A major alleged cause for the collapses in presidential democracies has been that when a president does not have a “legislative majority” or “near- legislative majority” in the legislature, his/her motions/bills are more likely to fail to secure passage. The repeated failures would favor severe instabilities and democratic breakdowns in presidential democracies (Mainwaring, 1997a, 1997b).

When the number of relevant parties or mutli-partyism increases in legislatures, inter-party conflicts tend to escalate, and the aforementioned executive-legislative deadlocks, or failures to secure at least a “near- legislative majority” are more likely (Linz, 1994). It is mainly because different contending parties tend to be different or adversarial in legislatures against the president’s party in order to gain more power or win in the next round of legislature or presidential elections. Therefore, when number of relevant parties or multipartyism is high, the presidential party is only one of the many in the legislature (be it a small or relatively larger one), the presidential party will find it much harder to secure the support of the legislative-majority or near-legislature majority in the legislature than when the multipartyism is low.⁵ The aforementioned allegations of the detrimental effect of multipartyism on democratic survival has been corroborated in our original cross-national research of 78 countries from 1950 to 2000.

Proportional representation has been proven by cross-national research of being most conducive to multipartyism among all electoral systems (Norris, 2004, 85-7; Table 4),

⁵ It is true that in the US, where the number of relevant parties is small, is also full of gridlocks. The case of the US reveals that when the two chambers share equal power, and when check-and-balance is emphasized, gridlocks between two major parties can also be serious. Therefore, as unfolded in the subsequent sections, special care should be exercised in the electoral systems for producing the legislative and chief executive to minimize excessive gridlocks and ungovernability. That said, under multipartyism, the chance for the president’s party to be unable to secure the passage of the bills of his or her party will be higher than under a two-party system.

despite its having some advantages (Table 5). Therefore, using proportional representation alone may endanger Hong Kong's long-term political stability should the Chief Executive be democratically elected in future.

Table 4: Electoral Systems & Mean Numbers of Relevant Legislative Parties

	Mean number of relevant parliamentary parties (with over 3% of seats)	Number of countries
Majoritarian	3.33	83
Mixed-member Electoral System	4.52	26
Proportional Representation System	4.74	61
Article I. TOTAL	4.12	170

Note: The data includes the results for 1,263 parties contesting the latest elections to the lower house of parliament from 1995 to June 2000. Parliamentary parties are defined as those winning at least one seat in the lower house. The results of the elections were calculated from *Elections Around the World*. www.agora.stm.it/elections/alllinks.htm

Source: Adapted from Norris (2005)

Besides, proportional representation favors the formation of coalition government. It thus allows tiny minority parties to hold large parties to ransom in coalition negotiations. In Israel, to illustrate, extremist religious parties are usually pivotal to government formation, while Italy has suffered fifty years of unsteady shifting coalition governments (Reynolds & Reilly, 1997, 65). This electoral system has been usually used in societies of marked social divisions along linguistic, regional, religious or ethnic lines for effectively defusing potentially severe social conflicts and better conflict resolution.

Table 5: **Electoral Systems** in Comparison: Common **Advantages** of Each System

Plurality-Majoritarian (PM)	Proportional Representation (PR)	Mixed-member Electoral System
A simple method that also links	Reduces the disparity between a party's	Combines the positive elements of both

<p>representatives with particular geographic areas.</p>	<p>share of the national vote and number of seats in parliament.</p>	<p>the purely proportional and majoritarian systems</p>
<p>Tends to encourage the existence of two or three major parties with ideologies that lean left and right. It is argued that this creates a clearer choice for voters. (Whereas in a PR system, voters may be confused by a multitude of parties with narrow interests.)</p>	<p>Facilitates the participation of many political parties, representing a broad spectrum of interests and a variety of views. The argument is that this allows for greater voter choice (than in the PM system).</p>	<p>The PM elements allow for direct representation, while the PR elements allow for some minority representation, more voter choice and party accountability (as described below).</p>
<p>Because there are fewer and more distinctly different parties, this system discourages coalition governments, allowing for a stronger and more coherent parliamentary opposition. Some argue that such a system is more efficient than broad based coalitions in terms of decision making, both within the legislature and between the executive and the legislature.</p>	<p>Because there are more participating parties than in the PM system, the likelihood of coalition governments is greater. This is considered a favorable development in some cases, because broad coalition governments must achieve consensus and therefore can foster stability in policy making.</p>	<p>In theory, a this system should lead to a less fragmented party system than a pure system of proportional representation, but possibly a broader based government than in a PM system.</p>
<p>It benefits broadly-based political parties, who must try to attract a majority of votes in a given race by acting as umbrellas to different interests -- rather than encouraging smaller parties that might exacerbate ethnic, religious or regional differences.</p>	<p>Facilitates minority party representation. (Cited as potentially important in divided societies, whereby certain ethnic, regional or religious interests would otherwise be completely locked out of the political process by a dominant party or parties.)</p>	<p>Small minority parties who have been unsuccessful in the plurality-majority elections may still be rewarded for their votes received by winning seats in the proportional allocation. Further, in highly divided societies a semi-proportional system would likely lead to less polarisation than in a PR system.</p>
<p>It provides for a stronger link between legislators and their constituents, since legislators represent particular geographic areas rather than just parties. This is a way to hold the members more directly accountable to their constituents.</p>	<p>If candidates are elected based on the appeal of a party platform, rather than the popularity of a given candidate, the entire party can be held accountable for adhering to the platform.</p>	<p>The PM elements allow for direct representation, while the PR elements allow for some minority representation and party accountability.</p>
<p>It provides an opportunity for popular</p>	<p>Can encourage the election of women</p>	<p>The system can allow for more women or</p>

<p>independent candidates to be elected, particularly important in developing countries where parties are weak and candidates may be selected based on kinship or patronage.</p>	<p>(and minorities). If a party puts a woman on the electoral list, she may get elected based on the party's overall popularity. Women are less likely to get elected in some countries if they are directly facing a male candidate in election. PR lists also allow parties to establish gender quotas for nominations.</p>	<p>minorities on the list portion of the system, while also allowing for independent candidates.</p>
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Source: Adapted from United Nations Development Programme

(<http://www.undp.org/governance/parldev/docs/impact.htm>)

5.2 Electoral Method for Upper House for its Indirectly Elected Members & its Term

Directly elected District Councilors will use plurality formula to elect 50% of the members in the upper chamber. To minimize redundancy of the Upper Chamber, the term of each Senator is 6 years, with half of them elected every three years.

5.3 Mixed-member Electoral System for Hong Kong's Lower House: its Strengths

Mixed-member electoral system is recommended for the Lower House in Hong Kong, i.e. using majoritarian principle in single-seat or multi-seat districts to elect a portion of the legislators and the proportional representation system to elect the remaining seats. The mixed-member system was first adopted by Germany in 1953 (Thames, 2005, 282). In early 2000s', over 15 countries of different regions and stages of democratic

development already adopted the mixed electoral system.⁶ During the last 15 years, it has become a most popular electoral system for both established and new democracies to emulate. For instances, Italy, New Zealand, Mexico, Israel, Venezuela, Bolivia, and Japan have all embraced the system in the past decade. Besides, new democracies of the post-communist bloc, including Hungary, Lithuania, Macedonia, Georgia, Ukraine, Armenia, Albania, Russia, Azerbaijan, Kyrgyzstan, Kazakhstan, and Tajikistan have also taken up mixed-member system amid their transitions to democracy (Thames, 2005, 282-3). Those new democracies, side by side with others, have elevated the total number of countries adopting the mixed-member electoral system to 30 in January, 2005 (Table 6).⁷

Cross-national experiences show (Norris, 2004; Shugart & Wattenberg, 2001) that the mixed-member electoral system carries a number of advantages⁸:

First, as the system differs from the one producing legislators for the upper house, it would be more likely to generate legislators with different perspectives between the two chambers. The mixed system will thus contribute to the independent character of the upper chamber from the lower chamber.

Second, as the mixed system partly comprises majoritarian system, which is least conducive to multipartyism among electoral systems, the mixed system will be less likely than the proportional representation system in forging multipartyism for the lower house (Norris, 2005; Shugart & Wattenberg, 2001, 583). Consequently, the mixed system may lessen the risks of excessive executive-legislative deadlocks as well as political instabilities. Likewise, another danger brought by the proportional representation

⁶ Those 15 countries include Armenia, Georgia, Japan, Lithuania, Macedonia, Mexico, Russian Federation, Thailand, Ukraine, Hungary, Italy, Bolivia, Germany, New Zealand, and Venezuela (Shugart & Wattenberg, 2001, 15; LeDuc et. al., 2002, 46).

⁷ See <http://www.idea.int/esd/world.cfm>, accessed on April 19, 2005. Those 30 countries include Taiwan and South Korea.

⁸ The evidence-based advantages have posed forceful challenges to Sartori's harsh criticisms of the mixed-member system (Sartori, 1994, 74-5), who blasted it as a miscarriage between the majoritarian and proportional representation system.

election, i.e., with small and unpopular parties holding the ransom of the popular and larger ones, will also be reduced. Instead, as the mixed system partly comprises the majoritarian system, the aforementioned danger arising from smaller parties is lessened, and can make the legislature more politically accountable.

Third, the inclusion of both proportional representation and majoritarian election in the mixed system will encourage respectively the dual emphasis of territory-wide, programmatic representation and individual geographical constituencies' interests (Shugart & Wattenberg, 2001, 587-91). For the closed-list proportional representation system, parties are allowed to fix the priority of candidates for either a single "territory-wide" list or some large constituencies. Consequently, contending parties will be encouraged to launch a wide appeal to the electorates by focusing on "territory-wide" policies (Shugart & Wattenberg, 2001, 590). Besides, when a single list is adopted for the entire territory, owing to the difficulty to engage in street campaigning for a nation-wide constituency, professionals who do not enjoy street campaigning will also be more motivated to run in elections when parties give their names higher priorities in fixing the list of candidates.

Fourth, the use of proportional representation in the mixed system can also permit a greater diversity of views to be articulated in the legislature and in government, as parties are represented in both (LeDuc, Niemi & Norris, 2002, 62). It will enhance the effective representation of smaller parties into the legislature, thus articulating the interests for minority groups (Shugart & Wattenberg, 2001, 584).

5.4 Specific Electoral Arrangements for the Lower House in Hong Kong

There are two major types of mixed-member systems. The first one is called mixed-member majoritarian, as found in 21 countries in March 2005, under which the legislature has two tiers of members - with some elected by proportional representation,

and others by majoritarian methods. The second type is called mixed-member proportional, which can be found in 9 countries in January 2005, where proportional representation seats are scattered in a compensatory manner, in order to compensate weaker parties that perform poorly in single-member seats and to produce a legislature where each party gets its fair share of seats (Blais & Massicotte, 2002, 54-5; Shugart & Wattenberg, 2001, 13-24).

Table 6: Thirty Countries Adopting Mixed-member Electoral System in early 2005

21 Countries with Mixed-Member Majoritarian System		9 Countries with Mixed-Member Proportional System
Andorra	Philippines	Albania
Armenia	Russian Federation	Bolivia
Azerbaijan	Senegal	Germany
East Timor	Seychelles	Hungary
Georgia	Taiwan	Italy
Guinea	Tajikistan	Lesotho
Japan	Thailand	Mexico
Kazakhstan	Tunisia	New Zealand
South Korea	Ukraine	Venezuela
Lithuania	Pakistan	
Monaco		

Sources: <http://www.idea.int/esd/type.cfm?electoralSystem=Parallel>;
<http://www.idea.int/esd/type.cfm?electoralSystem=MMP>

Mixed-member majoritarian system is preferred to mixed-member proportional for producing the lower house of Hong Kong for the following reasons:

First, comparative studies have shown that the mixed-member majoritarian system is more capable than the mixed-member proportional in correcting excessive party fragmentation (Shugart & Wattenberg, 2001, 582-7), which may help reduce policy

paralysis, preclude unaccountable “blaming” game, and minimize the undesirable effects on governance commonly associated with excessive partyism (Jones, 1995; Reynolds, & Reilly, 1997).

Second, even among the mixed-member majoritarian systems, the proportional representation tier has allowed smaller parties to survive in case they are reluctant to line up with more dominant parties (Shugart & Wattenberg, 2001, 584).

Third, the compensatory mechanisms of the mixed member proportional system would mean that the tier of proportional representation system carries larger weight in determining the overall electoral results than the tier shaped by the majoritarian system. Countries adopting such compensatory mechanism include, for instances, Germany, Italy and New Zealand. Its complex nature and the possible lack of knowledge among electorates of its character (Reynolds & Reilly, 1997, 75) offer another ground in preferring the mixed-member majoritarian rather than the mixed-member proportional one for Hong Kong.

In the light of the aforementioned international experiences:

1. To facilitate the Lower Chamber becoming a key forum for in-depth exchanges among legislators with different interests, experiences and expertise, it should contain 76 members. This range is slightly smaller than 77, i.e., the average number of legislators per capita among 11 OECD countries with bicameral legislatures. Given the compact nature of Hong Kong, the slightly smaller number of legislators in Hong Kong is acceptable (Appendix 4). A single closed list-tier using proportional representation will be used to elect two-thirds of the seats in Hong Kong’s Lower House. Given the compact nature of Hong Kong, a single Hong Kong-wide list and two-thirds instead of one-half of the seats in the Lower House will be produced to encourage more intensive and extensive territory-wide policy debates among competing political forces. Such debates are essential for

Hong Kong to cope with challenges of different kinds and for prompting its continued prosperity and stability.

2. The D'Hondt Formula is recommended as it has been recognized in comparative research to be less favorable for party fragmentation vis-à-vis other commonly used formula (Blais & Massicotte, 2002, 48-9).⁹

⁹ Among PR systems, some means of determining the allocation of seats among those contesting the election needs to be made. One formula commonly adopted to do this is the highest average systems -the d'Hondt version. It is a kind of highest-averages methods, demanding the number of votes for each party to be divided successively by a series of divisors. Seats are distributed to the parties that obtained the highest resulting quotients, up the total number of seats available. In the d'Hondt formula, divisors adopted are 1, 2, 3, 4 etc. (Blais & Massicotte, 2002, 48-9):

“The highest average system divides each party's votes by successive divisors and then allocates seats to the parties in descending order of the quotients. Table 1 shows the results using the d'Hondt highest average system to allocate the seats.

Four-member constituency, 20,000 votes cast
division by d'Hondt divisors

Party	Votes	Divisor: 1	Divisor: 2	Divisor: 3	Total Seats
A	8,200	8,200(1)	4,100(3)	2,733	2
B	6,100	6,100(2)	3,050(4)	2,033	2
C	3,000	3,000	1,500	1,000	0
D	2,700	2,700	1,350	900	0
TOTAL	20,000				4

Source: Dick Leonard and Richard Natkiel, *World Atlas of Elections: Voting Patterns in 39 Democracies*, The Economist Publications, London, 1986, p. 3.

In this example, the number of votes received by each party is successively divided by d'Hondt divisors (1,2,3). Seats are allocated once the use of all the divisors has been completed; in this way it is possible to compare the quotients and allocate the seats on the basis of their descending order. Party A, with the highest quotient of 8,200, is awarded the first seat; its third-highest quotient of 4,100 gives it the third seat as well. Party B's second highest quotient of 6,100 gives it the second seat and its quotient of 3,050 gives it the fourth, and last, seat. It is clear from this example that the d'Hondt system tends to award seats to parties that receive the largest share of the votes cast, a factor which indicates that this system does not provide a large measure of proportionality (O'Neal, 1993).”

3. For the tier chosen by majoritarian elections, a possible option is available for producing the legislators in the lower house: 33.3% of the seats will be elected via double-seat constituencies, double-vote electoral system based on 12 new geographical constituencies for Hong Kong, producing in total 24 legislators for the lower house via this method. The double-seat constituencies and double-vote electoral system means in each of the 12 geographical constituencies, two legislators will be elected. Each voter can vote for two candidates and the electoral outcome is determined by simple plurality method. In each of the 12 constituencies, two candidates obtaining the highest number of votes will be elected. 12 geographical constituencies suggest that the enfranchised population in each constituency is neither too small nor too large. Such a method ensures accountability to local interests, assuming that the total number of legislators in the Lower House will be 76.

Because of the compact nature of Hong Kong, using double-seat, double-vote can keep the total number of geographical constituencies reasonably moderate, instead of producing too many constituencies. In case many geographical constituencies are produced, the geographical size and population of each geographical constituency will shrink, raising the danger of including too many legislators from small constituencies obsessed with parochial matters of those constituencies.¹⁰ The double-seat constituencies, double-vote method will also be comprehensible for Hong Kong voters, especially as it was once used in the early

¹⁰ A recent comparative research has found that the mixed-member system can potentially forge a “mandate divide” in legislatures, because directly single-member district legislators have an incentive to get involved in parochial issues and proportional representation legislators are motivated to focus on territory-wide issues (Thames, 2005, 282). This is especially more likely in societies where a low level of party system institutionalization are found, which implies a weaker party discipline and capacity to contain the “mandate divide”.

1990s for the legislature election.

Thus far, no solid empirical evidence has been found for proving the existence of coat-tail effects under this electoral system for Hong Kong in the past (Ma & Choy, 2003, 18-19). Though labels of parties may influence the electoral results, there is no evidence that such labels will enlarge their effects to a greater extent under this system than others. Besides, party labels can reduce excessive fragmentation and ungovernability.

Appendix 1: Powers of 20 Second Chambers – with 17 of OECD Member States

	Ordinary legislation	Financial legislation	Dispute resolution	Constitutional amendments
Australia: Senate	Bills are introduced in either house. Upper house may amend or reject any legislation.	Must be introduced in lower house. Upper house may not amend but may 'request' amendments, or reject.	Only means of resolving disputes is to dissolve both houses of parliament.	Must pass at least one house with absolute majority and then pass referendum by majority and with support in more than half the states.
Austria: Bundesrat	Bills are introduced in lower house. Upper house can object within eight weeks, but cannot amend.	Upper house cannot object to federal budget.	Lower house can override upper house veto.	Passed by lower house only, but if one-third of upper house members demand it, there must be a referendum.
Belgium: Sénat	Two kinds of legislation: 'ordinary' bills start in lower house and pass automatically unless 15 senators demand a review within 15 days (Sénat then can consider for 60 days); 'bicameral' bills, covering, e.g., foreign affairs, need support of both chambers.	Treated as ordinary legislation.	Lower house can override upper house veto on 'ordinary' legislation.	Require both houses to be dissolved, and two-thirds majority in both new houses.
Canada: Senate	Bills are introduced in either house. Upper house may amend or reject any legislation.	Must be introduced in lower house. Upper house may amend but not increase costs.	No means of resolving disputes --bills may shuttle indefinitely.	Senate can only block for 180 days, but must also be agreed by legislative assemblies in two-thirds of provinces, comprising 50% of population.
Czech Republic: Senate	Bills are introduced in lower house. Upper house has 30 days to review.	Treated as ordinary legislation.	Absolute majority of deputies can overrule upper house veto.	Must be passed by three-fifths majority in both houses.
France: Sénat	Bills are introduced in either house. Upper house has right to amend or veto any legislation.	Must be introduced in lower house. Upper house may have as few as 15 days to consider it.	After two readings in each house, or one in case of urgency, joint committee proposes a compromise, which cannot be amended. If rejected, lower house has last word.	There and 'organic' laws (covering, for example, the electoral system) must pass both houses and then either a joint sitting by three-fifths majority or referendum.
Germany: Bundesrat	Upper house sees and comments on all legislation before introduction in lower house. After lower house reading bills return to upper house for approval.	Treated as ordinary legislation, except budget which is introduced in both houses simultaneously.	Joint committee recommends a compromise, which usually cannot be amended. Then upper house has veto on bills affecting the states (around 60% of bills) , lower house has last word otherwise.	Must be passed by two-thirds majority in both houses.

India: Rajya Sabha	Bills are introduced in either house. Reviewing house has six months.	Most such bills must be introduced in the lower house, but budget is introduced in both houses simultaneously and upper house has 14 days to review (lower house is decisive).	If upper house passes unwelcome amendments, rejects the bill, or fails to consider it within six months, joint session decides.	Must be passed by two-thirds majority in both houses and majority of total membership of both houses.
Ireland: Seanad	Bills are introduced in either house. Upper house has 90 days to consider bills passed by lower house.	Must be introduced in lower house. Upper house has 21 days to review. Can 'suggest' amendments, but lower house may ignore.	Lower house can override upper house veto within 180 days.	Treated as ordinary legislation, but must then pass a referendum.
Italy: Senato	Both houses have equal powers to introduce, amend, and reject legislation.	Treated as ordinary legislation. Budgets introduced in two houses alternately each year.	No means of resolving disputes—bills may shuttle indefinitely.	Must pass both houses by two-thirds majority. If not by absolute majority, subject to referendum if requested by one-fifth of members of either house, 500,000 electors, or five regional councils.
Japan: Sangūn	Bills are introduced in either house. Upper house has 60 days to review legislation.	Must be introduced in lower house. Upper house has 30 days to review. Lower house has last word.	Two-thirds majority in lower house overrules upper house veto. Lower house may call a joint mediation committee, but has the last word.	Must be passed by two-thirds majority in each house.
Mexico: Cámara de Senadores	Bills are introduced in either house. Both houses may amend or reject legislation.	Must be introduced in lower house. Lower house has last word on spending and upper house on tax.	Bill shuttles twice then 'review' house has the last word.	Must be passed by two-thirds majority in both houses, and by half of all provinces.
Netherlands: Eerste Kamer	Bills are introduced in lower house. Upper house can reject, but not amend, bills.	Treated as ordinary legislation.	Upper house has last word.	Require both houses to be dissolved, and two-thirds majority in both new houses.
Poland: Senat	Bills are introduced in lower house. Upper house has 30 days to review legislation.	Treated as ordinary legislation.	Lower house can override upper house veto.	Must be passed by two-thirds majority in lower house and absolute majority in upper house.
Russia: Council of the Federation	Bills are introduced in lower house. Upper house cannot amend bills but may reject within 14 days.	Treated as ordinary legislation.	Joint committee recommends a compromise, which may be overridden by two-thirds majority in lower	Some must be passed by three-fifths majority in both houses, others treated as ordinary legislation.

			house.	
South Africa: National Council of Provinces	Bills are introduced in either house. For ordinary legislation upper house members have one vote each. For bills affecting provinces each province casts one block vote.	Must be introduced in lower house, but otherwise treated as ordinary legislation.	Joint committee recommends a compromise, which may be overridden by two-thirds majority in lower house.	Must be passed by two-thirds majority in lower house and six out of nine provinces in upper house, voting as blocks.
Spain: Senado	Bills are introduced in lower house. Upper house has two months to review, or 20 days in case of urgency, and may introduce amendments with an absolute majority.	Treated as ordinary legislation.	Lower house can override upper house amendments. Upper house veto may be overridden by an absolute lower house majority, or a simple majority after two months delay.	Most changes must pass by three-fifths majority in both houses. Joint committee can propose compromise, which requires two-thirds majority in lower house and absolute majority in upper house. Also subject to referendum if requested by one-tenth of members of either house. ⁱ
Switzerland: Ständerat	Bills are introduced in either house. Both houses have veto power over legislation.	Treated as ordinary legislation.	Joint committee recommends a compromise. If this is rejected, the bill fails.	Unless passed by both houses, requires referendum.
UK: House of Lords	Bills are introduced in either house. Upper house may amend or reject legislation. However, by convention upper house does not reject legislation implementing government's manifesto commitments.	Bills classified as 'money bills' must be introduced in lower house. Upper house may only delay for one month.	Lower house can override upper house veto approximately one year after bill's introduction in new parliamentary session.	Treated as ordinary legislation, except bill to extend life of a parliament, which lord can veto.
USA: Senate	Bills are introduced in either house. Senate can amend or reject any legislation.	Must be introduced in lower house, but otherwise treated as ordinary legislation.	Shuttles indefinitely, but joint committee, with non-binding outcome, may be called at any time.	Must be passed by two-thirds majority in both houses, and ratified by three-quarters of states within seven years.

Source: Russell (2000).

Appendix 2: Misconceptions, Size, Methods of Producing, Powers & Composition of Second Chambers: International Experiences

Definition and Popularity of Bicameralism Around the world.

“Bicameral legislatures are those whose deliberations involve two distinct assemblies (Tsebelis & Money, 1997, 15).” In spite of the much earlier origins of it in the 14th-century English parliament, bicameral legislatures are relative modern structures that only became more popular in the 18th and 19th centuries (Tsebelis & Money, 1997, 15). The upper houses of the world’s parliaments are most commonly called senates. In 1999, 67 bicameral institutions could be found in the world, taking up almost 38 per cent of 178 legislatures in existence (Patterson & Mughan, 2001, 39-40). Table A1 below shows that upper houses can be located in all parts of the globe:

Table A1: Methods of Producing the World's Senates and Second Chambers

Fully elected Senates			Partially elected/partially appointed Senates		Appointed Senates
<i>Direct suffrage</i>	<i>Indirect suffrage</i>	<i>Mixed suffrage</i>	<i>Direct suffrage</i>	<i>Indirect suffrage</i>	
Australia Bolivia Brazil Colombia Czech Republic Dominican Republic Haiti Japan Kyrgyzstan Liberia Mexico Nigeria Palau Paraguay Philippines Poland Romania Switzerland Thailand United States Uruguay	Argentina Austria Bosnia-Herzegovina Burkina Faso Ethiopia France Gabon Germany Mauritania Morocco Namibia Netherlands Russian Federation Slovenia South Africa Yugoslavia	Belgium Spain	Chile Italy	Algeria Belarus Botswana Egypt India Ireland Kazakhstan Madagascar Malaysia Nepal Swaziland Tajikistan	Antigua-and-Barbuda Bahamas Barbados Belize Cambodia Canada Fiji (Isles) Grenada Jamaica Jordan Lesotho Saint Lucia Trinidad and Tobago United Kingdom
21	16	2	2	12	14

Source: Forum of the World's Senate 2000

(<http://www.senat.fr/senatsdumonde/english/english-synthese.html>)

One may argue that bicameralism is not suitable for Hong Kong, given that it is adopted in federal and populous states, and that bicameralism is declining in popularity around the world. Such an argument has been built on some common misconceptions:

Common Misconceptions of Bicameralism:

Is there a Global Contraction of Bicameralism?

Though most of the world's parliaments are unicameral, in 1999, 67 bicameral institutions could be found (Patterson & Mughan, 2001, 40). While it was true to say that more countries abolished their upper chambers than created or restored it between 1960 and 1979 (Massicotte, 2001, 154), the declining trend of bicameralism has been reversed recently. From 1980 to 1999, only six second chambers were eliminated, while 11 were reinstated and 14 created anew. In short, between 1980 and 1999, there has been a net increase in bicameral structures when compared with the previous two decades (Massicotte, 2001, 154)

Are bicameral legislatures only found in federal and big countries?

Though there is positive association between bicameral legislatures and federal structures, about a third (29.7%) of unitary countries also practice bicameral parliamentarism (Patterson & Mughan, 2001, 45). Also, though bicameral states can usually be found in more populous countries, in late 1990s, 23% of the world's micro-states, i.e., those with a population of a million or less, are bicameral (Anckar, 1998).

Are upper houses and bicameralism undemocratic institutions?

To be elaborated below, the relative majority of the upper houses are directly or indirectly elected. Among those where appointments prevail as the dominant method of selecting members for upper chambers, their powers are usually far more limited than those produced via elections.

Size: A crucial feature of upper chambers is that they are usually smaller than the lower chambers. For example, upper chambers have around 60% of the number of members of the lower chambers on average among the 17 bicameral legislatures within the OECD countries (Russell, 1999, 3).

The smaller size of the upper chambers is regarded as favorable for making debates and committees more manageable than those in the lower chambers. This, together with other elements like having longer terms served by members of upper chambers, suggests that members of the upper chamber tend to work more closely together. This can foster a more constructive and less adversarial atmosphere in the legislature (Russell, 1999, 4).

Methods of Producing Members in the Upper Chambers around the World:

Lower chambers in democracies are popularly elected by the people. Second chambers are mostly fully elected by the people (Forum of the World's Senate, 2000). In 2000, of a total of 67 bicameral legislatures, 39 of them have an upper chamber in which all members are directly or indirectly elected. Other upper chambers were produced by appointment, or a mixture of direct and indirect elections (Forum of the World's Senate, 2000) (Table A1).

Direct Election

Among the 67 upper chambers around the world, 23 were produced by direct election, in whole or in part in 2000 (Table A1), making it the most common method of selecting representatives for the upper chambers in the world (Forum of the World's Senates, 2000).

Noticeably, many of those directly elected upper chambers have employed different electoral systems and ways of distributing seats from those of lower chambers, for guaranteeing that elections to the second chambers differ prominently from those of the first chambers (Russell, 1999b, 4), in order to avoid creating a redundant second

chamber.¹¹

Powers of Second Chamber

Cross-national studies highlight that the effectiveness or actual political significance of the second chambers depends on their i./ formal power, ii./ their methods of selection of members in the second chambers, and iii./ the extent of differences between the two chambers in terms of the ways they are produced, the voting rules within the two chambers and the terms of membership (Cowen et. al., 1992). Upper chambers with large formal power may not exercise substantial power in reality if the members of the chambers are produced neither directly nor indirectly elected. The unelected character will result in a lesser public support for the upper chamber and therefore smaller political influence. For instance, though the House of Lords has great powers to delay legislation, it did not use such powers frequently because of the perceived deficit of an unelected house, comprising many hereditary members, challenging the will of a popularly elected lower house (Russell, 2000, 41). A summary of the relationship between the composition and powers of second chambers conducted in mid-1990s testified to the close relationship between composition and powers of second chambers (Coakley & Laver, 1997; see Table A2). When the compositions of the first and second chamber are the same, the second chamber will be regarded as redundant, and its power will then suffer (Lijphart, 1999; Sartori, 1997).

¹¹ For instances, among the 17 of the OECD countries and three other countries of India, South Africa and the Russian Federation that have employed bicameralism, in five cases, the first chamber is elected by proportional system, whereas the second chamber employs a majoritarian system. In one case, i.e. Australia, the first chamber is elected by the Alternative Vote, while the upper house is produced by the STV system of proportional representation. The US has been the only case where both chambers adopt a majoritarian system, but the difference between the size of constituencies and the length of parliamentary terms render the two chambers very different in practice (Russell, 1999, 4-5).

Table A2: Types of Elections and Powers of Second Chambers, 1996

Method of Selection	Power	Total
Direct Election	Greater or equal	13
	Lesser	11
Indirect Election	Greater or equal	2
	Lesser	13
Appointment	Greater or equal	2
	Lesser	13
Other	Greater or equal	0
	Lesser	4
Total	Greater or equal	17
	Lesser	41

Source: Coakley & Laver (1997)

In the majority of legislatures in the world, the powers of the lower chambers are larger than those of the second because of the greater mandate of the former. It has been estimated in 1996 that 41 of the upper chambers had fewer powers than the first chambers (Table A2 above). In general, upper chambers can only delay the passing of bills, rather than rejecting them, as found in some countries of Appendix 1. However, it is also widespread to see the varied powers of the upper chambers over different legislations (Russell, 2000, 33; Appendix 1). For instance, financial legislation or money bills must be introduced in the Lower House in the United Kingdom, and the Upper House may only delay it for month at a maximum. Differences in powers usually pertain to ordinary legislation, financial legislation, and legislation on constitution (see Appendix 1; Tsebelis & Money, 1997).

Composition of Second Chamber (Russell, 2000, 294, 336-8)

Members of the upper chamber should enrich the lower chamber through their interests, skills, knowledge and experiences. Members need to be broadly representative of the population in terms of gender, class, geographical spread, political wills and fields of expertise. They have to be regarded as independent so that they can

sustain the backing of the public. Equally important, they need to have sufficient time and skill so that they can shoulder the onus of legislative work. They therefore should avoid entangling in constituency work in order to concentrate their attention on legislative work, and to avert being carried away by partisan or electoral considerations. They also need to enjoy the support of the public, so as to confront the lower house over unpopular and impracticable policies. The possible modes of composition of the upper chambers are as follows:

Direct Election

* While a directly elected chamber will enjoy popular support, it needs to be planned in way that avoids challenging the supremacy of the lower house. Therefore,

* the electoral system needs to be dissimilar to that of the lower house, and not promote constituency work, so that members of the upper house can devote more time to detailed legislative work. A chamber elected using the ‘open’ lists would help. “The open list is used in the most of European proportional representation systems. It gives electors choice of marking their favorite candidate and in this way they can change the order on the party list (Návrát, 2003).”

* The elections can be timed to match either with general elections, or elections of local assemblies, to minimize voters’ fatigue.

Indirect Election

* An indirectly elected chamber will represent territorial interests, and can preempt the exhaustion of voters by avoiding another set of elections for the public. In late 1990s, seventeen countries in the world use some sort of indirect election as the major method to produce members of the upper house. Indirect election takes many forms, in which the electorate formed by the public contributes to the process, though not a direct one. To illustrate, “in France and Ireland, a mixture of councilors and MPs make up an electoral college for the upper house. In Austria and India state parliaments elect its

members. In Germany state governments appoint its members from amongst themselves (Russell, 1999b, 5).”

* As it can be too onerous for members of local assemblies to attend meetings in the upper chambers, they can elect people outside local assemblies to sit on their behalf in the upper chambers.

Appointment

In 1999, 40% of the upper houses in the globe had appointed members (Patterson & Mughan, 2001, 47).

* A smaller number of appointees can bring independent members to an otherwise party-dominated chamber. If both chambers are dominated by the same party, the monitoring function of the upper chamber will diminish, and the possibility of intercameral logrolling or political exchanges among contending parties in parliamentary democracies will also mount (Heller, 2001, 59).

*If the upper chamber has appointed members, all of them need to be independents. In case party appointees are incorporated, their proportion should be small.

*An Appointments Commission that has public support will make appointments to the upper house. Under-represented social groups may be considered to be included in the chambers. Retired senior politicians, civil servants, senior lawyers or judges, academics may also be included. Practising experts can also be included as advisers in the upper chamber on particular bills, rather than the members of the chamber itself.

* The number of appointees needs to be fixed or close to be fixed. The variable nature of the number of membership can easily lend to political manipulation.

* It is prevalent in overseas legislatures that a rolling membership of upper house members is institutionalized so that the upper house would not be dissolved by government, and that it never has a more recent mandate, and therefore greater public support than the lower house. The inability of governments to dissolve the upper

chambers provides the latter strength, which is balanced by its weaker power than those of the lower houses. Rolling membership also contributes to a more stable party balance, turning the chamber less liable to swings in public opinions and more capable of exercising moderating influences.

Mixed Chamber

* If a mixed chamber would comprise both directly and indirectly elected members, indirectly elected members may have limited rights in certain decisions in relation to nations or regions.

* Most suggestions for a mixed chamber involve the inclusion of elected and appointed members. Limited data from overseas cases suggest that controversy may break out easily if appointed members could decide on the voting outcomes.

Appendix 3: Small Number of Registered Voters among Some FCs

Functional Constituency Research Project 2004

Table B: 2000 FC Legislator Website Availability By FC Size (as at 11 Sept 2004)

Functional Constituency Legislator	Website Availability & Last Updated	Total No. of Registered Voter (2000)	No. of Registered Bodies (2000)	No. of Registered Individuals (2000)
Education Cheung Man-kwong (張文光) [DP]	Yes (June 2004)	71,390		71,390
Health Services Michael Mak Kwok-fung (麥國風)	Yes (May 2004)	31,661		31,661
Accountancy Eric Li Ka-cheung (李家祥)	Yes (July 2004)	12,785		12,785
Social Welfare Law Chi-kwong (羅致光) [DP]	Yes (Sept 2004)	7,897		7,897
Medical Lo Wing-lok (勞永樂)	Yes (July 2004)	7,724		7,724
Catering Tommy Cheung Yu-yan (張宇人) [LP]	Yes (June 2004)	6,968	298	6,670
Engineering Raymond Ho Chung-tai (何鍾泰)	Yes (July 2004)	6,035		6,035
Textiles and Garment Sophie Leung Lau Yau-fun (梁劉柔芬) [LP]	No	4,697	4,627	70
Legal Margaret Ng (吳靄儀)	Yes (July 2004)	4,181		4,181
Information Technology Sin Chung-kai (覃仲楷) [DP]	Yes (Sept 2004)	3,861	185	3,676
Architectural, Surveying and Planning Lau Ping-cheung (劉炳章)	No	3,832		3,832
Wholesale and Retail Selina Chow Liang Shuk-yee (周潔怡) [LP]	Yes (July 2004)	3,375	1,548	1,827
Commercial (Second) Philip Wong Yu-hong (黃宜弘)	No	1,831	714	1,117
Import and Export Hui Cheung-ching (許長青) [HKPA]	No	1,445	817	628

Functional Constituency Research Project 2004

Commercial (First) James Tien Pei-chun (田北俊) [LP]	Yes (Dec 2003)	1,325	1,325	
Sports, Performing Arts, Culture and Publication Timothy Fok Tsun-ting (霍震霆)	No	1,262	1,247	35
Tourism Howard Young (楊孝華) [LP]	Yes (Feb 2004)	909	909	
Industrial (First) Kenneth Ting Woo-shou (丁午壽) [LP]	No	822	820	2
Real Estate and Construction Abraham Shek Lai-him (石禮謙)	No	695	399	296
Industrial (Second) Lui Ming-wah (呂明華)	No	624	624	
Financial Services Henry Wu King-cheong (胡經昌)	Website inaccessible	548	468	80
Labour Chan Kwok-keung (陳國強) [DAB] Li Fung-ying (李鳳英) Leung Fu-wah (梁富華)	Website inaccessible Yes (May 2004) Website inaccessible	455	455	
District Council Ip Kwok-him (葉國謙) [DAB]	Yes (Mar 2004)	433		433
Finance David Li Kwok-po (李國寶)	No	182	182	
Insurance Bernard Chan (陳智思)	Website inaccessible	181	181	
Agriculture and Fisheries Wong Yung-kan (黃容根) [DAB]	No	167	167	
Transport Miriam Lau Kin-yea (劉健儀) [LP]	No	153	153	
Heung Yee Kuk Lau Wong-fat (劉皇發)	No	148		148

Source: Young, 2005.

Appendix 4a: Institutional Features of the Navette (Non-Financial)

Nomination of Senate	Country	Introduction of Non-Financial Legislation	Number of Rounds	Final Decision	Comments
Appointed	Canada	Either house	3/2	Conference committee	Formally, upper house has the same powers as lower house; in practices, upper house rarely rejects or even amends legislation and thus plays mainly an advisory role
	United Kingdom	Either house	3/2 or 2	Two successive approvals by lower house	1 year must elapse between 1 st and 2 nd approval by lower house; legislation is not returned to lower house after 2 nd upper house rejection; 2 positive lower house votes are sufficient for passage
Partially elected by indirect suffrage	Ireland	Either house	2 or 5/2	Conference committee, or lower house after 90 days	Upper house has 90 days to review legislation; lower house must pass decisive resolution within 180 days thereafter
	Italy	Either house	Indefinite	No stopping rules	
Fully elected senates by mixed suffrage	Belgium Article 77 legislation	Upper house	Indefinite	No stopping rules	Lower house retains right of legislative initiative, in which case legislation is introduced in lower house
	Belgium Article 78 legislation	Lower house	2	Lower house	Upper house retains right of legislative initiative, in which case legislation is introduced in upper house, adding 1/2 round
	Spain Article 74 Legislation	Upper or lower house, depending on content	5/2	Conference committee, then lower house	Article 74 deals with treaties and autonomous communities
	Spain Article 87 Legislation	Lower house	1	Lower house	Upper house has 2 months to review legislation (20 days in case of urgency)

Fully elected senates by indirect suffrage	Austria	Either house	5/2 or 3	Dissolution/new election; if continued disagreement, joint session	Absolute majority of total membership of the legislature required for passage; 3 months must elapse between 1 st and 2 nd approval of lower house
	France	Either House	Indefinite; 3 (2 if urgent)	Conference committee, then lower house	Government decides where bills are introduced, the number of rounds, and whether lower house decides
	Germany	Government bills in upper house; otherwise either house	2 or 5/2	Conference committee, lower house decided by majority or 2/3 majority in specific cases; otherwise, upper house retains veto power	
	Netherlands	Lower house or joint session	1/2	Upper house	Upper house has no amendment powers
Fully elected senates by direct suffrage	Australia	Either house	5/2 or 3	Dissolution/new election; if continued disagreement, joint session	Absolute majority of total membership of the legislature required for passage; 3 months must elapse between 1 st and 2 nd approval of lower house
	Czech Rep.	Lower house	1	Lower house	Upper house has 30 days to review legislation
	Japan	Either house	1	Conference committee or lower house by 2/3 majority	Upper house may have a maximum of 60 days to review legislation
	Mexico	Either house	3/2	Reviewing house, by majority	Partially approved bills may be forwarded to executive for promulgation
	Poland	Lower house	1	Lower house, by absolute majority	Upper house has a maximum of 30 days to review legislation
	Switzerland	Either house	7/2	Conference committee	Each house retains veto power
	United States	Either house	Indefinite	Conference committee (at any time)	

Source: Tsebelis and Money (1997) Bicameralism; Senate of the World <http://www.senat.fr/>

Appendix 4b: Institutional Features of the Navette (Financial)

Nomination of Senate	Country	Introduction of Financial Legislation	Number of Rounds	Final Decision	Comments
Appointed	Canada	Lower house	2 or 3	Conference committee then reviewing house	Formally, upper house has the same powers as lower house; in practices, upper house rarely rejects or even amends legislation and thus plays mainly an advisory role
	United Kingdom	Lower house	1/2	Lower house	Upper house can delay a maximum of 1 month
Partially elected by indirect suffrage	Ireland	Lower house	1	Lower house	Upper house may recommend changes to lower house within a maximum of 21 days
	Italy	Alternately in lower and upper houses	Indefinite	No stopping rules	
Fully elected senates by mixed suffrage	Belgium	Lower house	0	Lower house	Article 74 defines budgetary legislation as the responsibility of the king at the lower house only
	Spain	Lower house	1	Lower house	
Fully elected senates by indirect suffrage	Austria	Lower house	0	Lower house	Upper house cannot raise objections to federal budget, among other restrictions
	France	Lower house	3 (2 if urgent)	Conference committee, then lower house	Government decides number of rounds; budget must be enacted within 70 days or the government can enact by decree
	Germany	Upper house	2 or 5/2	Conference committee; lower house decides by majority or 2/3 majority in specific cases; otherwise, upper house retains veto power	

	Netherlands	Lower house or joint session	1/2	Upper house	Upper house has no amendment powers
Fully elected senates by direct suffrage	Australia	Lower house	1	Lower house	Upper house has no power of amendment but may communicate suggestions to lower house
	Czech Rep.	Lower house	1	Lower house	
	Japan	Lower house	1	Conference committee then lower house	Upper house has 30 days to review
	Mexico	Lower house	1/2 or 3/2	Lower house for budget of expenditures; upper house for taxes or loans	
	Poland	Lower house	1	Lower house, by absolute majority	Upper house has a maximum of 20 days to review legislation; government may dissolve lower house if it fails to enact the budget within 3 months
	Switzerland	Alternately in lower and upper house	7/2	Conference committee	Both houses retain veto power
	United States	Lower house	Indefinite	Conference committee (at any time)	

Source: Tsebelis and Money (1997) Bicameralism; Senate of the World <http://www.senat.fr/>

Appendix 5: Projection of Number of Legislators in HK based on 11 OECD bicameral countries in late 1990s

Country	Total Member in Lower House	Total Member in Upper House	Total Population (1999)	Lower House's population per member	Upper House's population per member
Australia	148	76	18967000	128155	249566
Austria	183	64	8092000	44219	126438
Belgium	150	71	10226000	68173	144028
Canada	301	104	30491300	101300	293186
France	577	321	58620300	101595	182618
Ireland	166	60	3752000	22602	62533
Italy	630	315	57646000	91502	183003
Netherlands	150	75	15805000	105367	210733
Spain	350	259	39167744	111908	151227
Switzerland	200	46	7136000	35680	155130
UK	659	1207	59500900	90290	49297
Average:	319	236	28127659	88049	119093

Hong Kong 76 56 6720700 88049 119093

Source: Russell (2000), World Bank, *World Development Report*, 2001, and CIA Factbook 1999.

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