



The US Senate: Lessons from South Asia

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Elected representatives serve as a check on direct forms of rule. Constitutional rights serve as a check on majoritarian forms of rule.

Both representation and rights stand ‘in between’ the people and power: both serve as a constraint on direct forms of majoritarian democracy.

When US Senator Mike Lee (R-Utah) announced that America was ‘not a democracy’ (ruled directly by the people), Edward Luce from the *Financial Times* found himself reminding readers that, technically, in a constitutional sense, Lee was correct.

Whilst lower chambers like the US House of Representatives rotate their full membership every two years in an effort to closely reflect shifts in popular opinion, upper chambers like the US Senate rotate only one-third of their members every two years, precisely in an effort to *avoid* the shifting politics of popular whim.

This role—*slowing* the pace of political change—has put upper chambers in the firing line of those pressing for more ‘democratic’ forms of government. But a comparative perspective focused on upper chambers in India and Pakistan reminds us why recalcitrant upper chambers often attract the *admiration* of ‘democratic’ activists focused on a minority-friendly patterns of political power.

In the United States, Democratic Party hopefuls have not limited their electoral aspirations to the White House and the US House of Representatives; they understand that, if they don’t control the US Senate as well, their reform initiatives may be stifled: from a green economy to constraints on the gig economy, from healthcare to housing, from women’s rights to marriage rights, bills with support in a Democratic White House and House of Representatives could die in the Senate.

Decrying institutions like the US Senate that give conservative rural states like Wyoming the same

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With electoral polls trending in their favour and bitter memories of 2016, when Democratic presidential candidate Hillary Clinton won the US popular vote but lost its decisive Electoral College vote (which, again, favours small rural states), party supporters insist that, in the interests of ‘democracy’, the voice of the majority should prevail.

Looking towards South Asia, however, those same Democratic Party supporters often *applaud* the recalcitrance of India’s upper house (Rajya Sabha) and Pakistan’s upper house (Senate).

In fact neither India nor Pakistan allows for direct elections to its upper chamber; instead, directly elected members from each state or provincial legislature serve as an electoral college to *indirectly* elect most of the upper-level representatives.

In Pakistan’s upper house, each province has the same number of representatives, but in India (unlike the US) the number of each state’s upper-house representatives is roughly proportional to each state’s population.

In both countries, however, upper-chamber members serve six-year terms (as in the US), meaning that Prime Ministers rooted in more frequent elections to population-based lower houses often face resistance from upper-chamber members still tied to older electoral contests.

In fact it is precisely this upper-house *lag* that US Democratic Party supporters with an interest in minority rights have, somewhat ironically, come to appreciate in both India and Pakistan.

Led by Prime Minister Narendra Modi, India’s ruling Bharatiya Janata Party (BJP) is widely associated with an assault on Muslim minority rights as well as a thinly veiled contempt for institutional checks and balances, placing even the autonomy of India’s famous Supreme Court in question.

But the BJP’s assault on minority rights has found its greatest resistance in India’s upper house (Rajya Sabha), where an opposition coalition holds more seats than a coalition led by the BJP. When the Rajya Sabha’s BJP Chairman refused to divide the Rajya Sabha for a crucial recent vote, the opposition was justifiably outraged.

It may be that, in coming years, the membership of India’s upper house will tip in Modi’s favour; the BJP is intensely focused on winning state-level elections. But, if that happens, India’s Rajya Sabha under Prime Minister Narendra Modi will simply begin to behave more like the US Senate under President Donald Trump—in short, it will fail to slow India’s ‘popular’ turn towards political over-centralisation and Hindu majoritarianism.

India’s upper house, in other words, will *fail* to achieve what it was explicitly designed to do.

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described as a military stooge, but in Pakistan’s upper chamber (Senate) the PTI and its allies hold

fewer seats than the opposition, making it impossible for the PTI or its military patrons to achieve the two-thirds majority of both houses required to amend Pakistan's constitution.

This is important, because an 18th Amendment jointly sponsored by Pakistan's most important opposition parties in 2010 devolved more powers—and more money—to Pakistan's ethnic-minority provinces.

The Pakistan Army argues that this amendment left Pakistan's central budget with insufficient resources to meet the army's (famously insatiable) needs; in fact army chief explicitly recommended changing it. Former Prime Minister Nawaz Sharif has accused the army of rigging Pakistan's lower-house elections to bring Imran Khan to power in 2018; now, Senate elections scheduled for March 2021 are being closely watched, particularly by those with an interest in ethnic minority rights and decentralised forms of power.

Will Pakistan's Senate continue to *slow* the country's over-centralisation of power? Much hinges on future elections to the Senate.

Observers of this year's US election are keenly focused on constitutional provisions that appear to constrain 'democratic' forms of power—from indirect presidential elections via America's Electoral College to an (unelected) US Supreme Court to state-based counter-majoritarianism in the composition of the US Senate.

Given the utter failure of America's current Senate to serve as a check on patterns of executive over-centralisation rooted in the White House, America's Democratic Party has argued in favour of a more decentralised, diversity-friendly, 'democratic' approach to power.

But, if Democrats win control of the White House, the House of Representatives, and the Senate, with further conversations about increasing the size of the US Supreme Court and 'packing' it with Democratic appointees, concerns about over-centralisation and majoritarian forms of power will simply shift.

If this happens, Democrats would do well to remember the work of India's Rajya Sabha and Pakistan's Senate. The underpinnings of justice are not grounded in political centralisation or majoritarianism.

What we see around the world is an acute appreciation for the *risks* of majoritarianism and an appreciation for constitutional mechanisms designed to cultivate, but also *moderate*, 'democratic' forms of power.

Banner image: People protest outside the United States Capitol in January 2020. Source: Flickr/Don

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