A Problem of Identity: 
The French Sénat

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The French Senate is in search of its identity. Heir to a long and contradictory history, it seemed to take on a new life in the 1958 Fifth Republic constitution. But did it? Designed to support the head of state, it quickly found itself opposing him and was even threatened with elimination in 1969. A bastion of parliamentarism, it came to operate in a presidentialist regime where, anxious to stand aside from the to-and-fro of partisan politics, it nevertheless became enmeshed in a majoritarian political system.

Its ability to intervene in the legislative process is real but limited. A "chamber of reflection," it exercises influence by engaging in dialogue with the lower house and suggesting amendments to legislative proposals,
but deputies in the National Assembly have the last word. It cannot wholly control the government because it cannot vote it out of office. Nonetheless, it remains ever vigilant and intent on scrutinizing government actions and protecting individual rights and freedoms. In a changing world, it is a symbol of stability. More, as both the representative of the country's local communities and a force for moderation, it generates controversy by sustaining a political order and type of society rooted in France's rural past. A brake on hasty action in the eyes of its supporters, it is accused of immobilism by its detractors.

The question is whether the sense of security and responsibility that the Senate inspires is sufficient foundation for its legitimacy in the eyes of the French people.

**Historical Background**

The Senate has long been part of the French political landscape, although its political character and role have varied substantially over time. Bicameralism first emerged in France in 1795 as a result of the excesses of the single house and the weariness of a 1789 revolution in its final days. Under the Monarchy and the Empire, it became an aristocratic body and a force for moderation in national political life. It retained this character so that, by 1875, democrats in the newly established Third Republic wanted nothing to do with it, accepting its existence only in return for monarchist support of a republic widely anticipated to be very short-lived. The monarchists dominated the new republic's constituent assembly, but the pretender to the throne's excessive demands prevented them from reinstating a monarchist regime. Negotiation became necessary and the "conservative Senate" was part of the compromise. It gained important powers and, as the mouthpiece of the localities (communes and departments), it became synonymous with a rural France hostile to progressive ideas.

Royalist aspirations for the Third Republic did not last long. Republicans won the 1879 Senate elections and took control of an upper house of the Parliament that was to remain politically moderate and socially conservative, making extensive use of its political powers and institutional prerogatives and even going so far as to force several governments to resign. The Republican Left became lastingly hostile to the institution and
took advantage of its majority status in the Fourth Republic's constituent assembly in 1946 to launch a referendum on a return to unicameralism. The French people said no in May, and in October they endorsed a new constitution that created a Conseil de la République alongside a lower house elected by direct, universal suffrage. Limited bicameralism was re-established. Showing skill and resolution, the new "councillors" gradually increased their influence in the legislative process, and the measure of their hard work and growing prestige was the increased powers they received in the 1954 revision of the constitution.

Although never discussed in principle, the Senate's changed role in the 1958 constitution appeared to be a public recognition of, and tribute to, its Fourth Republic achievements. Its title was restored, as was its standing in government after the Fourth Republic interlude. It could no longer be dissolved, and its members were to be elected for nine years, with one-third of them standing for reelection every three years to make for institutional stability and continuity. Its president was given the right to nominate three of the nine members of the Constitutional Council, as well as the right to be consulted on important decisions affecting the nation. Most notably, the Senate president was to be consulted should the president of the Republic decide to dissolve the National Assembly or to take on himself the exercise of emergency powers in times of exceptional difficulties for the nation. He was also constitutionally mandated to assume the presidency when the office fell vacant, as it did, for example, when Charles de Gaulle resigned in 1969 and when Georges Pompidou died in 1974. The indirect election of senators through an electoral college was carried over directly from the Fourth Republic. Indeed, it was also the method adopted to choose the new head of state, the keystone of the Fifth Republic's constitutional edifice. Finally, under exceptionally important circumstances, for example, revision of the constitution or organic laws relating to it, the Senate was granted powers equal to those of the lower house. In short, the upper house of the Fifth Republic was not, in principle, the minor player its immediate predecessor had been.

But at the same time it was not the major player it had been in 1875. Its constitutional elevation in 1958 is not an accurate measure of the power and influence it has actually come to enjoy. Its problem has been that it operates in a bicameral framework that is both constitutionally unequal and tightly orchestrated by the executive power. The Senate is equal to the lower house (National Assembly) or subordinate to it depending on
whether or not the government chooses to intervene in disputes to give the last word to the lower house. In addition, having only a mandate to control the actions of ministers, the upper house is not empowered to censure the government of the day. It advises, it oversees, and it warns, but it does not override. Stated succinctly, it has "power without so much as exercising it" (Baguenard 1990, 19). Its influence derives from the political experience and local power bases of its membership.

An Element of Continuity

The Senate was designed to ensure that reason prevailed over passion and time and reflection over immediate action. It was to represent the deep and the lasting in French political life, while the National Assembly would voice the political concerns and anxieties felt in the country at any given moment. In this sense, the Senate would institutionalize the political moderation and wisdom accumulated over the years. Thus, unlike a lower house whose life was brought to a premature end in 1962, 1968, 1981, 1988, and 1997, it cannot be dissolved, and it does its job without serious interruption. The partial renewal of its membership every three years, for example, means that legislative proposals and parliamentary reports do not fall into a void as a new house is elected. It can also remain in session when the lower house has been dissolved. Senators enjoy a greater sense of security as well. At nine years, their term in office is the longest of any French elected official, lasting almost twice as long as the five years for which deputies are elected. Deeply rooted in their local communities, senators also frequently have their mandates renewed, which gives them a feeling of detachment from the day-to-day demands of running for office, a pride in their own independence, and a concern with the issues facing them currently. Lastly, the shared experience of participation in public life and the historical and calming atmosphere of the Palais du Luxembourg (the location of the Senate) promotes mutual courtesy and restraint.

The replacement of roughly one-third of senators every three years limits the scope for innovation. It is rare for more than one-sixth of its membership to be new recruits, even when the oldest members decide not to stand for reelection. It is not unusual for former deputies, ministers, and other leading personalities to end their political career in the upper house.
The two-stage method of electing the Senate has a conservatizing effect. The first stage is the election of the country’s municipal councils for a period of six years. The second stage is the appointment of delegates to the senatorial electoral college in each department that elects members of the upper house. An example of the results of this process is that the one-third of senators elected in 1980 (just before the Socialist victory in the 1981 presidential election) by municipal councillors who themselves took office in 1977 remained in place until 1989. By this time, François Mitterrand’s first term as president was already over.

Another force for conservatism is the age requirement. Senators must be at least thirty-five years old, whereas deputies need be only twenty-three. The result is not an assembly of the very old, since the average age today is sixty-one. Nonetheless, deputies are about ten years younger on average. More than by electoral law, however, this age difference is explained by the need to have proven oneself in public life before election to the Senate.

The Senate is thus the institutional expression of what is deep and long-standing about France, an upper house designed to remain calm regardless of the political forces buffeting the presidency and the lower house. But does this quality contribute to its effective oversight of government? It depends. The difficulty in giving a definitive answer to this question is that in the Fifth Republic the powers of legislative initiation and arbitration passed early from the Parliament to the president. The government may be theoretically responsible to the lower house, but in practice it answers to a head of state who is the nation’s chief policy maker. The regime became presidentialist in its infancy and has remained so since. The constitutional elevation of the Senate has been counterbalanced to some degree by the effective political demotion of both houses.

Deputies have adjusted to this new political reality with little resistance, whereas senators have balked at it, seeking instead to strengthen their position by defining and reinforcing their institutional identity and tailoring their behavior to changed circumstances. Their dream has been to play their constitutional role to the fullest in a balanced parliamentary system of government. But the relationship between the government and the Senate has in fact been unequal, since it has been based on the presumption of common goals and excluded all notion of serious rebellion on the Senate’s part. A more balanced relationship can only come into being if the Assembly is riven, partisan, and fragmented and thus unable to use its
constitutional supremacy to lord it over the Senate. But in the event of a presidential or governmental majority in the lower house, the Senate automatically becomes less useful to the political executive, and this is precisely the situation that came about early in the life of the Fifth Republic. The Senate's political role, behavior, and actions have thus become deeply influenced by its immediate political context and institutional environment. Its place and role in French political life is defined by decisions over which it has little control.

A Checkered History

The French upper chamber has had a checkered history since its contemporary inception at the outset of the Fifth Republic. The pattern of its development as a parliamentary institution is highly relevant to its present-day operation and performance.

*The Difficult Years, 1959–1974*

At the beginning of the Fifth Republic, all indications were that the Senate would perform the traditional upper house functions of overseeing and moderating the directly elected lower house. First elected in 1959, it immediately scotched this expectation. Far from acting as an appendage of the government, it distanced itself from it as the centrist groups dominant in the Senate rejected the Gaullist policies passed in the Assembly. The Left, well represented in the Assembly, defended the actions of a "republican Senate" standing against the encroachment of that other French political tradition, one-man rule in the form this time of President de Gaulle. How the constitution was to be interpreted proved a particular bone of contention. The Senate upheld a parliamentarism favoring both houses even while presidential preponderance increased. A clear sign of who was winning in the struggle came when the Constitutional Council struck down important provisions that the Senate had proposed in order to strengthen its hand vis-à-vis the government. The Senate took it upon itself in particular to establish controls over government that went beyond the strict provisions of the constitution, to manage its own parliamentary agenda better, and to intervene more effectively at the initiation stage of the legislative process. With failure, disillusionment set in.
The divorce finally came in autumn 1962. President de Gaulle announced his intention to hold a referendum revising the constitution to allow for the direct election of the head of state. Senators were furious not only that Parliament was to be bypassed but also that the referendum had been called in an unconstitutional manner. Senate President Gaston Monnerville went so far as to speak of abuse of authority. The stakes were high, and the successful passage of the referendum reinforced the presidential character of the regime, ending the situation where president and senators were accountable to similar electoral colleges. Widening the rift, the parliamentary elections held at the same time returned a Gaullist government with a clear majority in the National Assembly. The Senate was no longer needed by an executive allied with a lower house whose unremitting hostility it had previously taken for granted. Slipping from its position of conflict (and sometimes compromise), the Senate became politically isolated and marginalized.

Sidelined, the Senate lived through seven dark years. Its legislative proposals came to nothing, its leader was no longer received at the Elysée (the presidential palace), and government ministers practically never attended its public sessions. Procedural devices for ignoring an angry Senate were multiplied, and deputies were at last able to proceed with legislation. Relations sank to an appalling low. Moreover, to add insult to injury, the government mounted a public relations campaign depicting the upper house as serving no useful purpose and being systematically hostile to the government of the day.

Soon the very existence of the Senate was under threat. De Gaulle believed that no political system could accommodate a part that was dysfunctional for the whole and that no institution hostile to the principle of majoritarianism could be left in place. His aversion to the Senate finally crystallized with the referendum of April 27, 1969, asking the French people to approve his plans to “renew” (perhaps more accurately eliminate) the Senate. His proposal was to turn the upper house into a consultative council of mixed membership. Included in its ranks would be locally elected representatives, individuals nominated by social and cultural organizations, and delegates of French citizens living overseas. The local representatives were to be elected under a regionally based proportional system for a six-year term. The categories of socioprofessional senators were specified, but the question of who would choose them was left for future presidential
Most importantly, though, the reformed upper house would lose all its political power. It would give preliminary advice to deputies who would eventually enter into dialogue with it. But politically emasculated, it would be only a technical and consultative institution.

Alain Poher, the Senate president elected only in 1968, campaigned actively against de Gaulle’s referendum, helping to defeat it and save the upper house. It is impossible to say whether it was the Senate issue that determined the people’s negative vote, since the referendum encompassed several issues. What is certain, though, is that the referendum was effectively a personal vote of confidence in General de Gaulle and, on losing, he resigned immediately, although he was not constitutionally required to do so. Analyses of public opinion at the time show a Senate little known to the French people and widely perceived as archaic. Individual senators, though, were valued for their local ties and services. Bicameralism afforded the French a sense of security, and from that day the Senate’s right to exist has never again been brought seriously into question. Nonetheless, its future guaranteed, the upper house still needed to define its own identity and find a place for itself in the political process.

Safe, the Senate gradually normalized its relations with the other institutions of government. Official contact with the new president, Georges Pompidou, was resumed, relations with the government became less tense, and legislative procedures that had tied the Senate’s hands were relaxed. Dialogue with the lower house also increased, even if disagreement persisted on important issues.

The Senate emerged from its dark years in 1969. It was not, however, the legislative chamber envisioned in the 1958 constitution, the thorn it had been in the executive’s flesh in 1962, or the shadow of its former self proposed in the 1969 referendum. It remained anxious to affirm its uniqueness, its positive role in government. Thus, to strengthen its legitimacy, it adapted to France’s changing demography and, in 1976, expanded its number of members to accommodate increased population size in a number of departments. To increase its authority, it diversified and enforced more rigorously the means at its disposal to control the actions of government. In particular, it took on itself the defense of individual rights and freedoms and successfully brought cases before the Constitutional Council. To improve its own effectiveness, it reorganized both its operational procedures and its administration, increased the resources and
personal assistance available to its members, improved its public relations, and opened itself up to the outside world through public meetings, press conferences, information bulletins, and the like.

Its aim was clear. By reforming itself, it intended to change its image and play a distinctive role in the political process as an independent chamber operating on the fringes of the majoritarian system of government. But this role assumed that it would not soon be called upon to become a key cog in the workings of that same system.

The Pitfalls of Majoritarianism, 1974–1988

With the election of Valéry Giscard d'Estaing as president in 1974, presidential and senatorial majorities coincided for the first time. Indeed, still dominated by centrists, the Senate was better disposed to the new president than was the National Assembly with its continuing right-wing majority. From the outset, tensions existed between the centrist president and his Gaullist prime minister, Jacques Chirac. When Chirac resigned to be replaced by Raymond Barre, an economics professor with no strong partisan ties, tensions in the lower house intensified and the Senate went from being useful to the president to being indispensable. The government simply could not do without its support.

The upper house was overwhelmed with attention, and on the anniversary of its centenary in May 1975, the head of state publicly sang its praises. Three times in succession, and in accordance with Article 49.4 of the constitution, the Senate was invited unprecedentedly to give its opinion on the government's legislative agenda. It was also given the privilege of being informed about important governmental initiatives and legislative proposals before the National Assembly was. The Senate, for its part, was not sparing in its support for the government. When, for want of a majority, Prime Minister Barre ran into difficulties in the National Assembly and called for a vote of confidence on a bill, senators supported the prime minister's action in large numbers. When, at the end of 1978, a majority of deputies ignored government advice and voted in favor of state financing for European election campaigns, the Senate failed to place the measure on its legislative agenda, so the proposal died for not being enacted before the elections in question took place. Sometimes the Senate even contradicted itself by acceding to government requests to reject bills it had previously corrected.
This period of Senate-government cooperation was fruitful in terms of the passage of laws and the acceptance of Senate amendments. Inquiries were held on topics that above all else demonstrated to the French public the high levels of senatorial competence and effectiveness. Still, all was not well. The heightened workload and its unequal distribution gave rise to outbursts of bad temper and heated denunciations in President Poher's biannual public speeches. Moreover, the Senate's independence of the government was regularly proclaimed in speeches. The truth of the matter was that in effectively giving up its role as critic, the Senate took on the appearance of a rubber stamp legislature caught in the trap of the majoritarian system, especially when the stakes were high or the risk of conflict with the right-wing majority in the Assembly loomed.

Then, in mid-1981, the political circumstances in which the Senate found itself were transformed when a leftist majority was returned in the Assembly, a majority that supported the equally newly elected Socialist president, François Mitterrand. The Senate was implacably opposed to both and found itself on the horns of a dilemma. How could it avoid lapsing into being entirely peripheral to the political process? Should it cultivate obstructionism, or should it retreat from the majority-opposition confrontation and speak with its own voice? Its solution was to acknowledge its fundamental political opposition to the new majority, while not entering into an opposition of principle characterized by blanket hostility. It opted instead for moderation and compromise. Taking on itself the detailed reading and amendment of legislative proposals largely initiated by the government, its measured response helped to enact into law bills it valued highly and dealing with issues like the abolition of the death penalty and the elimination of military security courts. Yet later on its behavior changed, as it could not disguise its complete disagreement with the lower house, and its refusal to compromise resulted in its outright rejection or disruption of legislative proposals coming before it.

This political disagreement had very real practical consequences. The nature of the dialogue between the two houses changed, and the hostility between them crystallized. The government increasingly resorted to procedures designed to expedite the passage of legislation, procedures that served to limit Senate involvement in the legislative process and the opportunities it was afforded to express its opinion. The Assembly ignored established conciliation procedures, and the Senate turned to previously little-used devices to assert its authority. It made particularly abundant
use of the "preliminary question" and the "inadmissibility provision." Relations grew ever more polarized, and the National Assembly took more and more decisions that the Senate then rejected, particularly on budget bills.

Even if the breakdown in relations was not total, Senate opposition to the government was even more comprehensive than it had been in the 1962–69 Gaullist era. The tense relations between them reached their climax in summer 1984 over a bill concerning state support for private schools. The Senate cleverly played for time, counted for support on public opinion hostile to the proposal, and argued bitterly with the president over plans to submit the issue to a referendum. The upper house's show of strength and determination paid off, and the bill was withdrawn. To be sure, such incidents did not threaten the existence of the Senate itself, but norms of behavior took a sharp turn for the worse. Systematic resort to delaying tactics became routine, relations between senators deteriorated, debate took on a more confrontational tone, bitter quarrels broke out between government supporters and opponents, and rules of procedure became weapons. Issues that it was widely agreed needed to be looked at carefully were not subjected to detailed political scrutiny, and recourse to the Constitutional Council became automatic when legislation was adopted against the advice of the Senate.

The 1986 legislative elections brought this unhappy period to an end. The right won a majority in the National Assembly, and Jacques Chirac became prime minister. His relations with the president during this period of cohabitation were heavily strained, and the consequences for the Senate were two. First, with the prime minister professing his high esteem for the Senate, the passage of legislation once again became a cooperative effort. Alain Poher, president of the Senate, even spoke of a "reactivation of bicameralism" at the same time as protesting against the government's tendency to declare all its bills urgent and the consequent overcrowding of the legislative calendar. In general, though, the Senate no longer sought systematically to hinder government decision making.

Second, the Senate became an active and partisan participant in the conflict between president and prime minister. Its traditional calmness and slow pace was the first casualty. Its work rate speeded up, and its skill at standing back from the fray when appropriate was seriously impaired, as was its ability to debate issues, to engage in constructive dialogue, and to improve bills.
Looking to help the government in innovative ways, the Senate even accelerated (and cut short) debate on opposition-inspired preliminary questions designed to sabotage government proposals of which the Senate as a whole approved. The opposition, for its part, delayed the adoption of government bills as long as possible, especially when it was of the impression that the relevant committee was not fully satisfied with how the bill was written. But regardless of whether it be as victim or accomplice, the Senate was again caught up in the turbulence of the majoritarian political system. Could it ever hope to find a middle way?

Missed Opportunities, 1988–1997

The 1988 legislative elections brought a minority Socialist government to power and, not being in the majority, it had to be more subtle in its relations with the Senate. According to circumstance, concessions were encouraged or held back. Even so, successive prime ministers differed in the kind of relations they established with the upper house. The Senate suffered an identity crisis.

A climate of mutual respect prevailed during Michel Rocard’s premiership. His demonstration of symbolic and political respect for the Senate was deeply appreciated. Six senators were appointed to his cabinet, and unprecedentedly the prime minister attended a president’s conference setting the weekly agenda for the upper house, breaking with the tradition whereby the government was represented by the minister in charge of relations with Parliament. In addition, he dutifully solicited Senate approval of his policies (Article 49.4) and made clear in a memo circulated to ministers the importance he attached to free parliamentary discussion. The effect on policy making was positive since, even during difficult times, dialogue was the norm and compromise was often sought.

But this interlude was brief. Rocard’s successors neither used the same methods nor obtained the same results. Dialogue between the chambers hardened, agreement became less common, and resort to urgency procedures became ever more frequent. Senatorial oversight tightened up, especially on European questions. Action and reaction were widely perceived as being motivated by mutual hostility. Thus, the government did not appreciate Senate endorsement of a preliminary question to reject its 1993 proposed budget. The Senate in its turn reacted equally badly to a December 1991 bill altering its representational base.6 Taking advantage of
a proposal to revise the constitution (for which its support is necessary), it even increased its powers in regard to the passage of an organic law.

But this increase and its return to a confrontational relationship with the government could not hide the fact that the Senate was experiencing its own internal crisis. Numerous criticisms had been made of its method of recruitment, its ways of operating and carrying out its responsibilities, its failure to reflect adequately on the legislative proposals coming before it, its membership, and its lack of originality. These criticisms came from across the political spectrum, papering over substantial differences in opinion about how best to coordinate the senatorial majority and whether to oppose the government through constructive dialogue or intransigent opposition. Rules of procedure were modified to increase effectiveness, and some innovative proposals were introduced by young senators, only to be watered down and lead to no more than limited reform. With a divided majority and suspicious opposition, agreement could be reached on nothing more. A problem was that some ideas, like increasing the powers of committees, were before their time.

A right-wing majority then carried the day in the 1993 parliamentary election, and two years later Chirac succeeded Mitterrand as president. Initially, therefore, the political context of the new parliament was one of cohabitation (Gicquel 1996) and the Senate generally took advantage of the situation without experiencing too many drawbacks as a result of it. Faced with a massive but largely inexperienced right-wing majority, it was able to play a more prominent role in mediating conflicts that did not set president and prime minister poles apart. Sometimes it played a moderating role, sometimes it improved the text of bills, sometimes it held debates that were less harsh and polarized in tone than their counterparts in the National Assembly, and sometimes it turned to good account its experience, its local roots and its independence.

The period was reminiscent of its successes in the 1970s as all laws but one were passed by agreement in both houses. Eighty-five percent of Senate amendments were upheld in the Assembly, and the high quality of a number of debates in the upper house was publicly recognized. Still, the period was not without its problems. One bill out of five was examined under conditions of urgency, the workload became heavier and heavier, the number of extraordinary sessions multiplied, and the rules governing the debate of a number of bills did not allow a calm and measured
examination of their provisions and generated heated rejoinders from the opposition. Scrutiny relaxed a little except on European bills, where a new procedure enabled both houses to examine directives affecting French legislation.

The internal reform of the Senate continued apace. René Monory, its president newly elected in October 1992, wanted reflection to be aimed not only at correcting existing problems but also at anticipating the future. He opened the institution to the outside world, developing international exchanges, welcoming foreign heads of government, and generally communicating a more attractive portrayal of what the Senate did. But on all these points, the Senate found itself in competition with a National Assembly also engaged in enhancing its parliamentary role. Thus, a 1995 constitutional revision broadened the scope of the referendum, put in place a system of parliamentary immunity, and increased the length of the parliamentary session from six to nine months. Moreover, priority is now given in one sitting per month to the legislative agenda set by each house and not the government, each now determines the days and hours of its own sittings, and the rights to initiate legislation and to control the government have been made easier. The Senate's reputation as a careful and valuable lawmaker has benefited from the originality of some of its innovations in the area of controlling the government.

A Chamber of Reflection

Legislation is shaped by iterative negotiations between the two houses of Parliament under government direction. After two readings of the bill (one if it is declared urgent), the government can appoint a conference committee drawn in equal numbers from both houses to hammer out a mutually acceptable final version of the bill. These are officially called *Commissions Mixtes Paritaires* (CMP). Each CMP is made up of seven deputies and seven senators who strive to produce a bill all can support when the government submits it to each house. The government alone has the right to propose or accept amendments to this bill. When agreement cannot be reached, the government can declare the National Assembly version of the bill to have carried the day once it has received a new reading in each chamber. Such is the philosophy behind Article 45 of the
Constitution. The Senate's role in this process is one of reflection; it suggests textual modifications and amendments to legislation in its discussions with the government and the lower house. But is it effective and influential in this role?

The Aim: To Amend Bills

The right to initiate laws is shared between parliamentarians and a government that introduces legislative proposals into the house of its choice. The exception is financial bills, which deputies have to see first. Parliamentarians introduce their own legislative initiatives in the house to which they belong, although these rarely become the law of the land. As in most European countries, virtually all legislation originates with the government. From 1959 to 1995, 89 percent of the laws passed were government initiated, 8 percent started life in the National Assembly, and 3 percent began in the Senate (112 of a total 3,522 bills). Deciding which of its legislative proposals survive is often the work of the upper house itself. Of every 100 of them, less than 10 are considered and lead to a report from the relevant committee. To succeed, the proposed bill must be able to win majority support in the Senate, it must be legally admissible, and the parliamentary timetable, which is controlled by the government, must not be too congested. This means that no more than four or five Senate-initiated bills are adopted each year.

The Senate has no means of making the National Assembly take its legislative initiatives seriously, especially when the government is not on its side. The Senate deplores its helplessness since it feels that deputies ought to look at its suggestions, if only to reject them. Overall, its record is not strong, although it must be said that the number of Senate-initiated bills to become law has doubled to 6 percent of the annual total under favorable political circumstances. Moreover, others of its initiatives show up later in government-sponsored bills so that the true measure of the Senate's legislative influence is not this 3 percent figure alone. In fact, it is the amendment, not the legislative proposal, that is the Senate's stock in trade, and it is in its suggesting amendments that reflection finds its reward thanks to the quality of the upper house's scrutiny of bills and its open discussion of them.

The number of senatorial amendments has been growing rapidly since 1970. Nearly 5,000 are put down each year, and about 2,000 of these
are accepted. They mostly reflect the opinion of the majority, although the opposition is not altogether without success. Above all, however, the amending process attests to the influence of the permanent committees. These are the authors of one-third of the amendments proposed, but of 80 percent of those accepted. Other amendments are sometimes withdrawn before being put to the vote because the ministerial promise of concessions obviates the need for them. Thus, depending on political circumstances, the National Assembly accepts 50 to 85 percent of the amendments adopted by the Senate, and many of them find their way in some form or other into the final bill.

Senatorial amendments vary in character. Some correct inaccuracies, others improve the wording of drafts, and still others fill in gaps—all of which are important contributions when legal documents are involved. At bottom, the amendments often attest to an interest in the principles of law and a practical concern with putting the written texts into practice. That is, Senate amendments aim to make the content of legislation precise and broadly applicable. They affect all areas of legislation, but the most significant ones involve matters relating to local communities, to agriculture, to legal frameworks (individual law, commercial law, and so on), and to improving financial rectitude. When Senate amendments overturn the initial provisions of a bill and form a coherent package of their own, they amount to real counterproposals, and it is not unusual for senators to rewrite a bill of which an administration far removed from the French people or deputies pressed for time were the original authors or first readers. Thus, if the purpose of a second chamber is to perfect legislation technically, then the Senate serves this purpose. But it is able to do so only in consultation with other political actors.

A Constructive Dialogue

The goal of interaction between the two houses of Parliament is reconciliation through dialogue. Working together guarantees a higher quality legislative process. Each house checks the other, the contemplation of problems is more profound, ideas are made more precise, and compromises are sought. The more readings of bills there are, the more an influence for the Senate is ensured. Indeed, contrary to received wisdom, harmony between the houses is the norm. The consensual adoption of legislation is the rule, recourse to the CMP is rare, and never more than a
third of them fail to produce legislative proposals that pass into law. It is political circumstances that produce the variation. Except in moments of high tension, the Senate obstructs only if basic principles are at issue or if it sets a high value on a provision under negotiation. Its more normal role is to correct and regulate.

The Senate can be presumed to be influential to the extent that bills are passed into law only after agreement between the two parliamentary houses has been reached. From 1959 to 1980, such was the case 85 percent of the time, although this figure fell in later years. Between 1981 and 1985, the period of the Senate’s liveliest opposition to the government, it was 62 percent, rising again to 73 percent during the cohabitation between President Mitterrand and Prime Minister Chirac. The upper house’s return to an opposition role between 1988 and 1992 then brought it back down to 63 percent and it rose again to 76 percent in the 1993–95 period. The evidence is conclusive.

The CMP has been used more and more often since 1974, but it is an ambivalent device. For senators, it can promote conciliation if committee members are chosen to reflect faithfully the different shades of opinion in the two houses, if it does not divide into opposing camps at the first sign of difficulty, if the need for reciprocal concessions is widely accepted, and if the government does not change its recommendations. If these conditions are met, it becomes a useful parliamentary tool, since it allows negotiated agreements to be reached as long as disagreement on principles is not absolute. The government, by contrast, sees the CMP as a device for speeding up the legislative process and for stimulating dialogue within the majority. According to the times and the individual cases at hand, it is a device that fulfills perfectly one or the other of these political roles. The bottom line is that when the Senate is in accord with the government, it gets something out of the CMP, but finds this to be far less the case in times of disagreement.

This means that the final decision has rested with deputies only rarely. Indeed, it did so with only 60 (or about 3 percent) of the 2,121 bills passed into law between 1959 and 1980. At the height of the 1962–69 crisis, the same unilateral action was taken on only 6 percent of successful bills. This figure fell below 1 percent from 1974 to 1980 and to one single bill in the 1986–87 session and one more from 1993 to June 1996. During these last three periods, senatorial and presidential majorities were the same, but this has not always been the case. When the Socialists held the presidency
and the Left enjoyed a majority in the lower house between 1981 and April 1, 1986, unilateral Assembly action occurred on 26 percent of the bills passed and on 18 percent of them from 1988 to 1992.

The difficulties in the relations between Senate and National Assembly in these two periods do not mean that the Senate played a lesser role in the legislative process. Rather, insurmountable disagreements were encountered on profoundly important legislative proposals concerning nuclear armament, civil liberties, the organization of the social security system, several finance laws, and, not least, a number of large-scale reforms undertaken by the Left after 1981 (nationalizations, and so on). The increase in disagreement, in other words, reflected political differences rather than institutional decay. With the exception of the occasions when the Senate was tempted to play the role of political advocate, dialogue between the two houses was not useless. Disagreement was persistent but often partial, and a number of important Senate amendments were kept in bills that became law without direct approval of the upper house being sought. All in all, then bicameralism seems to be working well. Nonetheless, the balance achieved remains fragile, since obstacles to its proper functioning remain ever present.

Two Obstacles: The Government and Time

The Senate's strength lies in calculated delay and compromise, yet it is the government that decides whether it should have the opportunity to exercise fully its powers of reflection. Do the constraints that it can impose in the form of overloading the parliamentary timetable and setting its agenda limit the Senate's contribution to legislative outcomes? One of its presidents, Alain Poher, argued in a speech in December 1981 that free and open discussion "can only take place in an atmosphere of mutual respect, understanding, and tolerance," and the upper house itself has vehemently denounced externally imposed constraints of any kind. It is a body that has traditionally interpreted its own rules of procedure flexibly and liberally. The length of debates has often been unlimited, delegations of competence have infrequently been extended, and the rights of individual senators have been widely taken for granted. However, the emergence, most notably in 1986, of obstructive practices inspired by National Assembly hostility and part of a more general deterioration of relations between majority and opposition led to the reform of Senate rules of
procedure. The number and length of interventions from the floor was limited, proposed amendments and subamendments could be rejected more easily, and the president was strengthened in his power to direct proceedings.

But despite having become less tolerant with their own minorities, senators protested no less when the government took advantage of its constitutional powers to dictate to them. The working conditions it imposed were a particular source of discontent. In recent years, the volume of parliamentary work has increased constantly, and at a considerable rate, and the principal cause has been the multiplication of the number of legislative texts needing to be examined. The problem has been compounded, however, by the election of new senators with energetic young aides, competition among senators active in debate, desire on their part to speak longer, and even the occasional desire to delay proceedings. The length of time debates took doubled between 1976 and 1986, and they were distributed unevenly over the year. To make matters worse, a balanced allocation of bills to the different chambers for their first reading was established only recently. The number of special sessions multiplied and debate on the floor of the house, often marked by absenteeism, gave too many opportunities for technical interventions more appropriately discussed in committee. It is still too early to judge how the August 1995 constitutional change introducing a single, nine-month session affected these problems, but there does seem to have been some improvement. The timing of sittings is better, while their number has not increased. The parliamentary week is also better planned and night sittings have been minimized.

However, the archaic and ineffective framework of the budget debate has not been changed. Debates on the floor of the Senate and in committee meetings sometimes take place simultaneously, and the same ground is covered in both venues. The daily timetable is still not known any more than three weeks in advance. Similarly, the government retains its right to declare a matter urgent without justification. The effect of this declaration is to limit the time for discussion to one reading of the bill in each chamber before it proceeds to the CMP. The Senate often receives the bill second so that its proposed amendments become known only to the seven deputies who, together with seven senators, make up the CMP. The Senate thus appears less as an important participant in the legislative process and more as a simple giver of advice that is immediately open to negotiation.
This recourse to the declaration of urgency appears to be meant less to encourage ill-considered discussion and more to bring debates to a quicker conclusion. Since 1978, its more frequent invocation has gone hand in hand with a heavier parliamentary workload, which would indicate that it is but one facet of the race against time.

To rush does a disservice to the Senate. Often legislation will better stand the test of time if it has received careful and extensive deliberation. Haste is all the more unwelcome to senators, since it is the direct result of the government setting the order of parliamentary business. It controls the administrative preparation of legislative proposals, it sets the parliamentary agenda and the convening of CMPs, and ultimately it writes the decrees putting laws into practice. The Senate does not appreciate abuse of this position of power because it stands in a special relationship to time. It is not only its responsibility to symbolize stability, to look to the long rather than short term, but also it needs to take its time if it is to maximize its influence on legislation.

Moreover, it finds every opportunity to give itself time for reflection. The government may control the daily parliamentary agenda, but the Senate sets its own meeting hours and can, according to its own rules, limit its sittings to three days a week. It knows how to manage its own time and has the freedom to organize it, which obliges the government to negotiate with it how it is used and on which issues. It sometimes chooses its moment to strike and, as in the 1984 conflict over private schools, it knows how to mobilize public opinion behind an issue. Politically, calculated slowness can allow it to win concessions when the government is pressed to bring another bill before it for consideration. Institutionally, it strengthens the Senate because it can be used to calm tensions, to accelerate the passage of legislation, to delay it, and even to obstruct it. Procedurally speaking, time is essential to the in-depth study of government proposals, to the holding of hearings, and to judging proposals for change against past experience.

Having the ability neither to block nor to impose, never mind to take the initiative, the Senate polishes bills by amending them and making skillful use of interhouse deliberations. Supporters interpret senatorial reflection in terms of maturation, while opponents see it as an almost insurmountable obstacle to legislative effectiveness. The same disagreement is sometimes seen in judgments about the way in which the Senate performs its oversight function.
Parliamentary Oversight

Since 1969, the Senate has been particularly anxious to exercise and develop its oversight function. In this regard, it enjoys all the same rights as the National Assembly but one, the ability to dismiss the government. Both chambers have comparable resources, although each tends to use them differently. Both have similar rights to investigate and to question, but they differ with respect to the areas they choose to investigate and scrutinize as well as to the means they bring to bear on this task.

The Investigative Function

The Senate cannot veto government bills, nor can it censure the government or pass a vote of no confidence. The prime minister alone has the option of asking it to approve a general policy declaration, and he values the opportunity to test the water at his discretion, since he is not obliged to resign if the Senate vote goes against him. He resorts to this procedure solely to enhance the legitimacy of his government by demonstrating to the public and to the lower house that the majority in the Senate is favorable to his policies. It can also serve as a public expression of the respect the prime minister has for the upper house, a gesture of goodwill that has the advantage of entailing no political risk. Such a gesture was made for the first time only in 1975 when relations between the Senate and governmental authorities were normalized under President d’Estaing. It then became the norm whenever the right was in power. Cleverly, however, the left-wing Rocard government resorted to it on issues, like the 1989 collapse of communism in Eastern Europe and the 1991 Gulf War, where consensus already existed. The Senate was more gratified by this consultation than it was influential over policy.

Such might also be the case in instances of the upper house questioning government intentions and actions. To be sure, the means for it to inform itself about them are not lacking. In addition to the abundant information they receive from a variety of sources, individual senators, just like deputies, have the right to question the government, and both groups of parliamentarians avail themselves of this right to much the same extent. The problem, however, is that written questions (more than 5,000 a year), oral questions (recently on the rise), and question time (televised twice a month) do not provide the opportunity for a real dialogue. Rather, the
Senate has shown more inventiveness in the exercise of its scrutiny function when it acts collectively. In its desire to place government actions under the microscope and to defend individual rights and freedoms, it has developed some unusual oversight mechanisms.

Investigation requires a request originating within Parliament asking to find out more about something than the government has voluntarily divulged in response to questions (Duhamel 1995, 284). The request can involve big issues of governmental policy direction as well as smaller scale, more topical ones; it inevitably leads to a debate and to the house taking a public position on the issue. Several permanent organs of the Senate combine to perform its general oversight function. Here are some examples. One, at the request of one committee or another, ministers frequently appear to explain and defend their policies. Two, the budget debate, held in public session, allows senators to scrutinize proposals in detail and, where necessary, to demand explanations on individual provisions. Specialists from the Finance Committee may also at any time after the vote verify the uses of the sums requested in the budget of the ministry under scrutiny. The administration of the publicly owned enterprises is subject to similar scrutiny. Three, the Senate’s European Union Delegation keeps track of the Union’s activities, and the government refers to it community policy or spending proposals that fall within the domain of law constitutionally reserved for the Parliament. The Delegation can thus play a role in preparing the resolutions the Senate adopts to alert the government to unusually far-reaching community decisions. Fourth, the Parliamentary Office for the Evaluation of Scientific and Technological Decisions, which is shared by both houses, provides experts to help parliamentarians make informed decisions. In the same manner, the recently created Office for the Evaluation of Legislation and Office for the Evaluation of Public Policy should serve as useful investigative tools.

Any senator can oblige the government to discuss a matter publicly. Oral questions that engage it in debate force it to accept an exchange of viewpoints pertaining to matters that it itself may not have broached. Grouped by theme, questions offer the opportunity to examine some aspect of government policy from every angle. Usually specific but of general interest and sometimes aimed at specifically European issues, the oral question was long a great success in the Senate at the same time that it had been abandoned in the National Assembly. It would involve the government in some twenty involuntary debates a year. Its importance is now
on the decline, however. Its utility as an oversight tool was always limited by the fact that such debates never ended in a vote. More recent developments have diminished its utility still further. These include a lack of time, competition from other forms of interrogation, and a general increase in the number of public hearings in the Senate.

Other bodies can intervene at short notice. Thus, for example, the Senate can focus on a current problem and create a committee of inquiry with special powers. These committees are convened to gather information on specific questions or on the running of public services and the nationalized industries with a view to submitting their conclusions to the chamber that created them. They cannot address or pursue inquiries on matters already under judicial investigation, and their work cannot last longer than six months. Their powers are extensive, including control over the committee’s terms of reference and the place of the hearing, the ability to hold it in public, and the ability to summon documents and persons deemed necessary to its successful conduct. Though not having the prestige of their longer-established American counterparts, these committees nonetheless have an impact. Their reports are published, and they often contain criticisms and concrete proposals for action, thus serving as a reference document that others can use.

For a long time after 1960, the Senate made this kind of committee its specialty. Then, the National Assembly imitated it, and the two houses have sometimes even been in competition on matters being investigated. During its periods in opposition, the Senate has made extensive use of the committee of inquiry to embarrass the government in sensitive areas. Today, it is used less. To address technical questions or reflect on societal problems, recourse to more flexible arrangements is preferred. Depending on the specifics of individual cases or on the practical advantages of specific arrangements, information gathering groups are formed from the membership of the relevant permanent committees. Examples are the commissions on decentralization in 1983 and on the state of school buildings in 1973. Study groups are another option, and individual parliamentarians have even been deputed to write reports on special topics. But common to all these efforts to increase senatorial influence and better inform the French is that they are meaningful exercises only if they remain rigorous, nonpartisan, and accessible to minority groups. As instruments wielded by the majority, they have less signifi-
cance. Overall, though, their balance sheet is positive and the reports produced clearly reflect Senate initiative and thoughtfulness.

Finally, its control over the implementation of laws has effectively enlarged the means through which the Senate can assert itself. The separation of the domain of law from executive rule making (Articles 34 and 37 of the constitution) means that, in the absence of implementation decrees ("décrets d’application") not all provisions of a bill can always be put into practice efficiently. It is the government that dictates the contents and the timing of the publication of these decrees so that parliamentary recommendations do not always make themselves immediately felt. To limit and expose governmental abuses of this power, senators keep close track of the implementation of bills that have been voted upon. At the beginning of every session, each of the Senate's six standing committees checks that enabling legislation has been passed in the desired time. The results of their inquiries are published and, in cases of delay, conveyed to the prime minister. He is not bound to act on this report, but it can be persuasive enough to influence his behavior. Delays are now rarely of scandalous length.

Protecting Rights and Freedoms

For many observers it is the upper house's defense of civil liberties that is one of its most valuable and characteristic activities. It also occupies a central position in its own self-image, being evident in the rejection of legislative proposals and, still more, by referring them to the Constitutional Council. For the Senate to reject a legislative proposal is a serious matter for three main reasons. These are the political conflict it generates, the protection of social groups favored by the Senate, and a concern for rectitude in financial and legal matters, especially as they relate to legal principles and the protection of individual and collective freedoms. Rejection by the Senate does not in and of itself prevent a bill from becoming law, since the government and National Assembly can pass it without upper house consent. By appealing to the Constitutional Council, however, the Senate can have a say in whether the bill is constitutional or whether it respects the jurisdictional boundaries between lawmaking and rulemaking. As long as the Council is seized of the matter, this is a useful weapon for the Senate and has become frequently used by it.
Prior to the 1974 constitutional revision, only the president of the Republic, the prime minister or the presidents of the two houses of Parliament could refer a bill to the Constitutional Council. Since then, however, sixty deputies or the same number of senators acting together have enjoyed the same right. The appeal floodgates were opened. The president of the Senate was initially reluctant to risk the prestige of his office by taking advantage of this new opportunity, but ordinary parliamentarians were another story. They resorted to it not only to show their concern for the law but also to win partisan points against the government. But more interesting than motivations is the object of appeals from the Senate. Until 1969, the Senate was anxious above all to protect the rights of Parliament. Since then, it has taken on itself more the defense of the rights of citizens.

Breaking sharply with the past, the 1958 constitution curtailed the policy areas in which Parliament had the right to make law. The Senate took this change badly. Rule- and lawmaking each had its own domain, and the apportionment of competences between them gave rise to various legal disputes between the upper house and the government. The Senate president referred these disputes on several occasions to the Constitutional Council in order to get an authoritative interpretation of the scope of the legislature's field of competence. He got no satisfaction until 1968 when the Council recognized the Senate's lawmaking character with its endorsement of a bill guaranteeing the status of veteran to soldiers who had fought in North Africa. For eight years afterwards, governments gave up defending the regulatory character of provisions challenged as not being so by either house. Three further decisions favoring Parliament reinforced this behavior. One such decision followed a Senate initiative and was handed down on May 8, the anniversary of victory in the Second World War. The symbolism was powerful.

Preoccupied with parliamentary rights and still ambivalent about the Constitutional Council, the Senate had shown little confidence in challenging the constitutionality of laws. After all, this same Council, when approached by Senate President Monnerville in 1962, had declared itself not competent to judge the constitutionality of the proposed referendum on the direct election of the president. The attitude of both the Senate and the Council began to change only in 1969. The former wanted to revive its political role and the Council to enlarge its. The Senate president referred two new pieces of legislation, both concerning individual freedoms, to the Council. As well as the Preamble to the Constitution, his argument
invoked the 1789 Declaration of the Rights of Men and Citizens and fundamental principles of French law. The Council decided in his favor in both instances, thereby both expanding the principles to which laws must conform beyond the articles of the 1958 constitution and condemning governmental challenges to freedom of association (January 16, 1971) and the principle of equality before the law (December 27, 1973).

Senators have embraced this right to appeal with great enthusiasm, referring seventy-three cases to the Council between 1981 and 1986, for example. Their rate of success, however, has not been uniform. When the disputed bill has raised serious legal questions and Senate argumentation has seemed to derive from first principles, it has frequently carried the day. But when it has been overtly partisan, as in the cases of nationalization and the question of the state's role in private education, success rates have been patchier and defeat more common. The Council's deafness to partisan argument has also been apparent in its unresponsiveness to opposition senators when governmental and senatorial majorities have overlapped.

The existence of a meaningful avenue of appeal has strengthened the Senate as well, more generally, as the opposition to the government of the day. Dialogue between the two chambers and with governments has become more the norm. The threat of appeal, evoked by senators, has made the three partners to the legislative process more realistic for fear of the debilitating effects of reversal.

Senatorial oversight has thus taken a variety of forms and, regardless of who holds political power, is particularly necessary in the political system that is the Fifth Republic. More than in other forms of government, power tends to flow to power in a system that is presidentialist and majoritarian because in it ideas and goals are shared by the head of state, the government, and the majority in the lower house. In this context, the principal role of the Senate is to block or moderate the actions of deputies. It is not just also to control the possible abuse of power by those at the helm of government. The Senate's role is to be the voice of criticism, and it is not enough to show evidence of reflection in the improvement of legislative proposals or vigilance in the oversight of government actions, if it is to be performed effectively. Public attention and respect must also be won. It must therefore function as a nationally representative body, but the method of its election, the social role it sets for itself, and the steadfastness of its political orientation all provoke debate, questions, and sometimes polemics.
A Controversial Representational Base

The Senate reflects the geography of France, its land and communities, whereas the National Assembly represents its demography and the current state of public opinion. Article 24 of the Constitution sets this difference in stone: "The Senate shall be elected by indirect suffrage. It shall ensure the representation of the territorial units of the Republic. Frenchmen living outside France shall be represented in the Senate." In keeping with tradition, the Fifth Republic grants privileged status to intermediary bodies deeply rooted in the localities. Senators therefore are indirectly elected by departmentally defined colleges made up for the most part of local elected officials.

Pronounced Inequalities

The constitutional provision allowing for the parliamentary representation of French citizens living overseas is novel and places their representatives in a Senate that has often shown a special concern for their problems. The Higher Council of French People Overseas appoints twelve senators by proportional representation and, since 1982, has itself been directly elected by French adults living permanently abroad and registered with their embassy or consulate. The 309 other senators are chosen by electoral colleges comprised of officials holding elected office within departments. Favoring the department in this way is no accident; it is a unit seen as being sufficiently small to sustain close contact between candidates and electors. Each college is composed of several hundred people. Election campaigns are muted and incumbents have the advantage of already knowing personally all those whose support they need to win. Colleges themselves are made up of deputies (elected nationally), departmental councillors, councillors from regions of which the department is part, and municipal councillors or their delegates. All these people are directly elected by universal suffrage, although the different categories of local communities are not equally represented in the college. In fact, the communes virtually monopolize its membership. They provided, for example, 95.5 percent of those taking part the last three times the colleges have met to elect senators. The Senate, therefore, is first and foremost the creature of the communes.

Moreover, the way the representation of communes within the college
is determined generates further serious inequalities. The problem is that the number of representatives enjoyed by each commune is not always proportional to its population size, and the smallest, i.e., most rural, communes are most advantaged by this disparity. Those with fewer than 1,000 inhabitants are overrepresented, while towns with more than 20,000 inhabitants, making up 40 percent of the country's total population, are seriously underrepresented. Department-by-department analysis shows that representational distortions are the norm (Grangé 1988, 1990). In 38 departments, delegates from communes with fewer than 2,000 inhabitants are in the majority, while the population of these same communes constitutes less than half the total population of the department. More generally, half of those responsible for electing senators represent only one-third of the French population. This distortion is aggravated by the fact that the relatively few departmental councillors that there are in the colleges tend to overrepresent rural areas.

The magnitude of the distortion is a function of the relationship between each department's urban and rural populations. If their demographic structure is more or less the same, then, as in Paris and its suburbs, distortion is nonexistent, just as it is in departments that are almost exclusively rural. By contrast, rural overrepresentation is especially marked in the one-third of departments that are part urban and part rural. Moreover, contrary to what apologists for these inequalities claim in order to justify them, it is not the poorest or least inhabited departments that are the least well represented in senatorial electoral colleges. With the exception of a few mountain regions, this honor falls on the towns and villages of regions where agriculture is quite prosperous and the economy is in fundamentally good shape (Grangé 1988, 1990). Thus, the indirect election of the Senate acts as a prism that severely distorts its sociological and demographic representational base.

This distortion is worsened by communal delegates to the electoral college being chosen by different electoral systems. In communes of less than 3,500 inhabitants, they are elected by majority vote by municipal councillors themselves elected on the same basis. In more populated communes, municipal councillors are chosen according to an electoral system that combines proportional representation and majoritarianism, but up to the point of communes having 9,000 inhabitants, their electoral college delegates are still chosen on the majoritarian principle. Indeed, only the extra delegates allotted to towns with more than 30,000 people are chosen by
proportional representation. Thus, in the smaller communes (those with less than 9,000 inhabitants), the delegation to the Senate electoral college is chosen wholly by the majority in control of the municipal council. In urban communes, by contrast, political minorities can win delegates thanks to proportional representation. The system works, therefore, to increase the representation of political majorities in small and average-sized communes already advantaged by boasting a number of delegates disproportionate to their population.

A separate provision of the electoral law distorts the distribution of seats between departments. The number of seats per department is not, as in the U. S. Senate, equal regardless of population size. Equally, it is not proportional to population size. Each department with less than 150,000 people returns one senator. A seat is then added for every extra 250,000 inhabitants or fraction of that number. Discrepancies between population size and number of seats inevitably follow. Lozère, for example, has 75,000 inhabitants and one seat, whereas a department with twelve times as many inhabitants is entitled to only four seats. Departments with heavy population densities are thus penalized, and redistricting, which last took place in 1976, is not written into the law, so population movement since then has been ignored. The result is that if the last census, taken in 1990, were used to redraw the boundaries of the 304 metropolitan seats on the basis of population size, 20 rural departments would lose a representative to the benefit of more urbanized departments.

Finally, the electoral system varies with the number of seats to be filled in each department. Most common is majoritarianism with two rounds of voting, and it takes place in departments not returning more than four senators. Candidates present themselves as individuals or as a member of a list, vote splitting is allowed, and the two ballots take place on the same day. An absolute majority is required to win on the first ballot, but a plurality suffices to win on the second. An alternate is elected with each victorious candidate.\textsuperscript{12} The fifteen departments with five or more seats return ninety-eight, or one-third of, metropolitan senators. In them, proportional representation is used, and neither vote splitting nor preferential voting is allowed. Seats are awarded to candidates in accordance with their placement on party lists. The preponderance of majoritarianism only serves to aggravate the representational distortions described earlier. The political majority in the most rural departments guarantees itself
a monopoly or quasi-monopoly of representational opportunities in the Senate, while a proportional system, in promoting minority representation, ensures that the more populated departments will not have the same opportunities.\textsuperscript{13}

\textit{Notables and Mediators}

The electoral system, indirect election, and the composition and departmentally based character of the electoral college all lead to the choice (one might say, co-optation) of local notables experienced in public service. Above all else, senators are citizens active in civic and local life. They have proved themselves at the grassroots level. Not surprisingly, therefore, electoral college delegates are not distributed uniformly across socio-professional groups. The agricultural professions or professions closely tied to peasant life are heavily represented in the upper house, constituting 17 percent of its metropolitan membership as opposed to nearly 4 percent of that of a National Assembly that is more representative of the French population at large. Educators and professionals in the fields of commerce and industry are also numerous, while lawyers, a traditionally important group, are declining in number, currently constituting 12 percent of senators. Practitioners in the medical professions are constantly growing in number and now constitute 16 percent of members. Wage earners, and notably workers, are underrepresented.

Being knowledgeable and experienced mediators, senators act as two-way channels of communication between the central government and the localities. Rooted in the latter, they claim to be their voice in Paris and their authoritative mediators. They preside over the main associations of elected local officials, of French mayors, of presidents of the departmental councils, and numerous other specialized bodies. Their local roots and popular election allow senators to speak for the institutions whose main concerns and interests they share. The senator is not a locally elected official sitting in Parliament, but a parliamentarian chosen by locally elected officials. Thus, many of them remain locally elected officials while sitting in the Senate. This was the case for more than 90 percent of all senators in September 1993. Their ranks included 171 mayors, 66 municipal councillors, 34 departmental council presidents, 124 departmental councillors and 32 regional councillors (including three presidents). Some of these statistics are similar to those found in the National Assembly. The big
difference, though, is that the deputy seeks to consolidate his position in national political life by holding local office, whereas accession to the Senate is recognition of distinguished achievement in local affairs and the crowning point of an individual's public career. It is rare for it to represent a starting rather than a finishing point.

Given these circumstances, it is not surprising that the Senate holds detailed debates on problems affecting local life and claims the right to be the first to consider bills touching on such matters. Senators thus accord a threefold significance to their representative mission: (1) to reiterate that the Senate is the natural advocate and defender of France's local communities; (2) to maintain that this role is its constant preoccupation; and (3) to show through its actions that it ensures the defense of these communities and the values (liberty, community, and tradition) they uphold.

This frame of mind results in a desire to keep the institution as it is. Senators reject the notion that other forms of collective representation, notably one that is socioprofessionally based, can replace or be combined with its territorial character. Change thus becomes suspect and reforms are kept to a minimum because senators feel comfortable with what is. The commune and the department are valued for what they are, and restructuring proposals entailing combining them, introducing new ones, or promoting the virtues of the region over the longer established departments and communes are distrusted. Developments in the overseas territories are followed attentively, and local elected bodies, their legal standing, and spheres of competence are protected by avoiding local referendums or any other form of direct citizen participation in the life of the community. The Senate's goals are instead to enhance local autonomy, to change fiscal policy in the localities' favor, and to reinforce the authority of mayors.

Championing representative democracy in this traditional form, senators effectively defend the local system in force and the local elected officials in place. System of government and rural civilization are seen as one and the same thing. This is not to argue that the Senate is a chamber of unbending agricultural defense. Rather, it gives institutional expression to the deliberate choice of a way of life. Stability, caution, and experience are all values that it honors and respects. The problem is that, based on a rural, artisan, and declining society long symbolized by the politico-administrative units of commune, canton, and department, the Senate does not capture the complex reality of French society as it is today.
Rather, it is sliding quietly into the role of protector and champion of social groups and forces that, more marginalized than oppressed, are threatened by the way the country is evolving. The association between the upper chamber and an out-of-date social order is well reflected in the small number of female senators. While growing in number, there are still only 18, or about 6 percent. Their numbers in the National Assembly are barely higher, having varied between 2 percent and 7 percent up until 1997. But more to the point, women senators are almost all elected on PR party lists and usually belong to parties of the Left. Thus, sexual equality is far from having been achieved, largely because the Senate has set itself up as the defender of a social order that belongs to the past.

An Unchanging Political Orientation

Perhaps unsurprisingly given the Senate's self-image, its political majority displays political orientations that have remained constant since the first wave of Fifth Republican senators took office in 1959. Little has changed as the result of the turnover of either individual senators or of generations of them. Moderates dominate the chamber, largely because parties distant from the political center are only weakly represented in it. The Ecologists and far-right National Front do not have a member between them, and the Communist contingent has never been more than 8 percent of the total body. The Socialists have done better, often constituting about 20 percent of the membership and boasting 24 percent of it today. Despite being the dominant group in the National Assembly, the Gaullists claimed only between 10 and 13 percent of the total membership. Since 1983, however, the party has reaped the benefits of having built itself up both as a grassroots organization and as an influence in agricultural circles; it is now the single largest group in the Senate with 29 percent of the seats.

It is the parties at the center and center-right of the political spectrum that have always formed the majority in the second chamber and provided its president. In former times, they claimed about three-fifths of the seats, a figure that has fallen to a little above 40 percent now. Split into various groups with ever-shifting identities, they nonetheless display enduring characteristics that tie them to traditional political families. Thus, for example, the Independent Republicans (RI) practically absorbed a "peasant group" that had remained autonomous until 1980. Even so, the once
preponderant RI has declined in recent times to the benefit of a centrist group whose name has varied but whose members come for the most part, although not always, from the ranks of Christian Democrats. The Democratic Left (renamed the Democratic and European Social Rally) aspires to unify the heirs of radicalism (which was very influential in the Third Republic) and moderates, some of whom belong to the government majority and some to the opposition. Unlike the Union for the Democratic Center in the National Assembly, in other words, no single group unifies centrist forces under a single banner. Rather, there is a simple system of liaisons and agreements whereby political groups are united by shared affinities and behaviors that themselves set the Senate apart in the French political system. These include most clearly courtesy, restraint, and individualism.

The limited change in the Senate is highlighted by the changing pattern of election outcomes in recent years. A few shifts in the distribution of seats have taken place to the benefit of the Centrist Union and then of the Gaullists; even the Socialists have experienced a slow growth in their numbers. Nonetheless, the general character of the Senate has remained unchanged because the Center and the Right have always commanded two-thirds of the seats and remained firmly in control of an institution that has withstood the changes that shook and transformed the National Assembly in 1962, 1968, and 1981. Indeed, the insulation of the Senate from the sometimes radical changes following from other electoral outcomes has been a constant of French political life. This insulation is particularly apparent in departments, where Senate elections continually return monolithic majorities of the right, while the National Assembly vote is more evenly distributed. The alternation of political ideologies in power is unknown in the Senate.

But does the Senate’s being shielded from the pendulum swings of French political life not prevent it being the force for balance and accommodation that many see as its political role? Is it not instead a partisan institution protecting a particular sociopolitical order?

Conclusion: An Uncertain Identity

To be sure, the Senate’s legitimacy is widely accepted. Time has done its work and it has become part of the French political landscape. In spite of
its limited opportunities for action, of operating within the constraints of a rationalized parliamentarism, of the emergence of presidentialism, of a majoritarian and bipolarized regime, and of occasional deep conflict with the government actors running the country, it has made skillful use of longevity and compromise. Combining persuasion and amendment, negotiation and accommodation, pressure and retreat, reflection and imagination, it has managed to carve out a place for itself in the new political regime that is the Fifth Republic. Still, it has not always taken full advantage of the political opportunities available to it. Nor has it been constant in the political role it has chosen for itself. Depending on who formed the majority and the circumstances of the time, it has either moderated the actions of a regime in which power is concentrated or tried to swim against the political tide. But the way it is recruited has frozen its partisan composition, and its consequent failure to produce alternating majorities has limited its ability and its will to adjust to changing political circumstances.

However, this is not its image in public opinion. Better known, appreciated by locally elected bodies, esteemed for the quality of its work, it is perceived to symbolize calmness, vigilance, and security as it moderates, corrects, humanizes, and protects. Given this image, the Senate’s calling is always to be the chamber in which dialogue takes place, in which different points of view are expressed, and in which original contributions to political debate are made. Its specific role must be adversarial both to complete the work of the lower house and to set itself apart from the government of the day. But this role can be too demanding for this Senate. As it has found, it is not always possible to fulfill tasks that are to some degree at odds with each other, while at the same time conforming to the image that the public has of it. The Senate is still searching for its identity.

Notes

This chapter was translated from French by Anthony Mughan.

1. The form the Senate would take remained vague for several weeks. At Bayeux on June 16, 1946, General de Gaulle made a famous speech on the form of government he preferred for the Fourth Republic. In 1958, he envisioned dividing the Senate into three groupings—two territorial (metropolitan, overseas) and one economic and cultural. But he soon renounced this plan, although it was to reappear in another form in 1969.
2. The principle of election of the president by direct, universal suffrage was adopted in 1962. Prior to that time, the constitution allowed for his appointment by a national electoral college of about 80,000 people. The composition of this body was similar to that choosing senators on a department-by-department basis. This is the method by which de Gaulle was elected president in 1958.

3. The organic law of December 28, 1976 added 33 seats in 29 of France's 100 departments in order to take account of an increased population shown in the 1975 census. The existing number of seats was not redistributed because the Senate was anxious not to reduce the representation of the two departments, Paris and la Creuse, that had lost population.

4. Article 49.3 of the constitution sets up a novel procedure: the National Assembly has to accept a legislative proposal in its entirety or pass a vote of no confidence in the government. If there is no censure vote, the legislation is accepted without being voted upon any further. This procedure could not be invoked in the Senate since that body does not have the right to dismiss the government by a vote of no confidence. It was often used in the Assembly by Raymond Barre as a means of bypassing Gaullist obstructionism. It was particularly effective because, although the Gaullists may not have liked certain legislative proposals, they did not want to give the Left an opening by censuring d'Estaing's centrist government and precipitating new elections.

5. The "preliminary question" is intended to determine whether there is any justification for proceeding with consideration of a bill. The "inadmissibility provision" involves Senate recognition that a legislative proposal is inconsistent with some constitutional provision. The Senate's acceptance of either claim entails automatic rejection of the bill.

6. The government presented three proposals intended to correct representational inequalities. These were (1) the election by each municipal council of delegates whose number was to be determined by the population size of the commune (one delegate for each 500 inhabitants or fraction of that number), (2) the designation of municipal council delegates by proportional representation in communes with 3,500 inhabitants or more, and (3) election of senators by proportional representation in departments with at least three Senate seats. The Senate rejected these proposed changes by voting in favor of a preliminary question on the issue, and refused to discuss further reforms of the Senate.

7. One of the early effects of the August 1995 revision of the Constitution was that the Senate examined eleven such initiatives between October 1995 and June 1996, suggesting a possible revival of its legislative initiative.

8. Reserved for the National Assembly, the prerogative to dismiss is considered to be compensation for being liable to dissolution. The Senate cannot be dissolved.

9. These broad constitutional principles are fleshed out by more easily modified laws concerning the composition of the Senate and the elections and terms of office of its members. Election disputes and the constitutionality of each chamber's rules are determined by the Constitutional Council.
The French Senate

The Senate comprises 321 seats; 304 of them are allocated to departments (296 in metropolitan France, and 8 overseas); 3 to overseas territories (New Caledonia, Polynesia, and the Wallis and Futuna Islands); 2 to communities with special standing (Mayotte and Saint-Pierre-et-Miquelon); and 12 are reserved to French people living outside France.

The presence of deputies in these colleges is somewhat incongruous, since they are the only national political figures in them. Departmental councillors are elected by majority ballot held in cantonal districts. Regional councillors are elected within departments, but represent the whole region of which their department is a part. Municipal councillors run France’s communes.

The alternate takes up the seat most commonly if the person elected to it dies or assumes a cabinet position, but not if the senator resigns. In departments where proportional representation is used, it is the leading unsuccessful candidate on the senator’s party candidate list who replaces him or her.

When its existence was threatened, the Senate adopted a proposal in 1968 to bring departmental representation up to date, and foresaw a subsequent reform of the composition of electoral colleges to reflect population changes in the department. The National Assembly did not get around to considering this proposal, however, and it has now lapsed.

References and Sources


