Bicameral Legislatures
An International Comparison

Betty Drexhage

Cover photo
Aerial view of the national parliament of the Netherlands at the Binnenhof,
The Hague

Publication
Ministry of the Interior and Kingdom Relations
Directorate of Constitutional Affairs and Legislation

Translation
Linguist Link Europe, Amsterdam

Design
Xerox/OBT, The Hague

The Hague 2015
Foreword

The Netherlands has had a bicameral system since 1815 when the States General were divided into a First and Second Chamber. Since then this choice has often been open to discussion, but the situation has now lasted for 200 years. In many other countries, the parliament also consists of two chambers, albeit mainly in larger or federally-organised states. In many smaller and non-federal countries, a unicameral system prevails. Where there are two chambers, there is often a large measure of diversity in the composition, tasks and powers of upper houses, senates and other ‘second chambers’ as they are referred to in English.

In this publication, you will find an up-to-date overview of the design of bicameral systems in a large number of countries. It also describes the historical origin of the idea of a divided parliament, which functions it might discharge, and what effects a bicameral system has on policy, legislation and the formation of a government.

This publication is the result of a study conducted by Betty Drekhage for the Ministry of the Interior and Kingdom Relations. It follows a request by the Dutch parliament to be informed about the options that exist to change or enhance the role of the senate.

I hope that this publication can make a contribution to the debate and the exchange of ideas and experiences between the members of the European Centre for Parliamentary Research and Documentation. Furthermore, I hope that you have a very fruitful seminar.

The Hague, October 2015

Ronald Plasterk
Minister of the Interior and Kingdom Relations.
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1. Introduction

At the request of the Dutch parliament, the Dutch Minister of the Interior and Kingdom Relations commissioned a study into the design of bicameral systems in other countries. In September 2014, the results of that study were sent to both chambers of the Dutch parliament, as well as being published separately.

An English translation of the text of that publication is included in this booklet which is being published on the occasion of the European Centre for Parliamentary Research and Documentation seminar in November 2015 (organised by both chambers of the Dutch parliament), entitled ‘The practicalities, advantages and disadvantages of unicameral and bicameral parliamentary systems (Area of Interest Parliamentary Practice and Procedure)’.

The text first examines the proportion of bicameral systems in parliamentary democracies (Chapter 2) and then their origin and the functions assigned to them (Chapter 3). After that, the main similarities and differences between bicameral systems in a number of developed democracies is examined (Chapter 4) as well as the effects attributed to bicameral systems (Chapter 5). Finally, an impression is given for those same countries of the discussions that have taken place there and the developments that led to them (Chapter 6).

The text was completed in August 2014 and any subsequent developments have not been taken into account.

Because the text was originally written for Dutch members of parliament, who are familiar with the Dutch situation, information about the Dutch bicameral system is missing. It has therefore been added as an appendix.

In the literature, the chambers in a bicameral system are often designated as ‘first chambers’ and ‘second chambers’. However, that is confusing in the Dutch context, because the names of the chambers in the Netherlands are the other way around. Therefore the report always uses the terms ‘lower house’ and ‘senate’.

The most important literature consulted is referred to briefly in the footnotes. A bibliography is also given at the end of this study. In addition, data has been extracted from the database of the Inter-Parliamentary Union (IPU),1 the websites of the parliaments concerned, the up-to-date constitutional texts, and an overview of senates that appears on the website of the French senate.2

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1 www.ipu.org/parline-e/parlinesearch.asp.
2 www.senat.fr/senatsdumonde/pays.html.
2. **Bicameral systems – a few statistics**

Worldwide, only a minority of legislatures is bicameral. In the recent literature, the proportion is estimated at thirty to forty per cent. In April 2014, 79 bicameral systems were recorded in the database of the Inter-Parliamentary Union (41.15%) and 113 unicameral systems.³

![Figure 1 – Proportion of unicameral and bicameral systems worldwide](image)

In countries that the IPU considers to be in the European region, the ratio is approximately the same: 17 countries with a bicameral system (35.42%) and 31 with a single chamber:

![Figure 2 – Proportion of unicameral and bicameral systems in Europe](image)

³ The data in the IPU-database is based on reporting by the countries themselves. In the literature, some countries that have a bicameral system according to IPU data are considered as unicameral, because their ‘senate’ only has advisory tasks (e.g. Yemen, Ethiopia, Oman, Slovenia) and, conversely, some countries that are unicameral according to the IPU database are considered in the literature to be bicameral systems, because two decision-making assemblies are involved in passing legislation (e.g. Botswana, Iran, Indonesia). See, inter alia, Russell 2013, p. 134/135, note 5, and Norton 2004. This study takes the IPU data as a starting point.
### Unicameral and bicameral systems in the European region

<table>
<thead>
<tr>
<th>Unicameral</th>
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<td>1. Albania</td>
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<td>14. Latvia</td>
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<td>15. Liechtenstein</td>
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<td>16. Lithuania</td>
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<td>17. Luxembourg</td>
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<td>18. Former Yugoslav Republic of Macedonia</td>
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<td>19. Malta</td>
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<td>20. Moldova</td>
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<td>21. Monaco</td>
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<td>27. Serbia</td>
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<td>30. Iceland</td>
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<td>31. Sweden</td>
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Source: IPU/Parline database (April 2014)
The picture is not static. At the beginning of the twentieth century, unicameral systems were much rarer. Only twelve of the over fifty parliamentary states in the world had a unicameral system. These were mainly in the Balkans and in Central America, and in addition, a few very small European countries (Luxembourg, Liechtenstein, Monaco).\(^4\) By around 1950, this had increased to over 35 per cent (29 of the then 80 sovereign parliamentary states) and in 1980, 67.5 per cent of the parliamentary countries had a unicameral system.

Massicotte cites 33 countries which once had a bicameral system but that now have a unicameral system. Countries that switched during the 20th century from a bicameral system to a unicameral system include Greece (1935), New Zealand (1951), Denmark (1953), Sweden (1970), Portugal (1974), Turkey (1980), Iceland (1991) and Peru (1993). In 2009, Norway did the same. Individual states within federations displayed the same trend. The states of the United States and Australia almost all have a bicameral system; this has only been abolished in Nebraska (1937) and Queensland (1922). The Canadian provinces, Brazilian states and Nigerian regions all abolished their senate. In the German Empire, nine of the 25 states had a bicameral system, but under the Weimar Republic, Prussia was the only one. After 1949, Bavaria was the only state with a senate, which was then abolished in 1998. In India and Argentina, the number of states with a unicameral system has increased sharply, whereas the Swiss cantons have never had a bicameral system.

On the other hand, there are also newly-created or reinstated bicameral systems. According to Massicotte, there were seventeen in the period between 1950 and 1979 (compared with nineteen cases in which they were abolished) and 25 in the period between 1980 and 1999 (compared with six cases where they were abolished). Overall, the trend seems to have reversed slightly. While in 1980, 67.5 per cent of parliamentary countries had a unicameral system, in 2000 that had fallen to 64, and at present the figure is 59 per cent according to the above-mentioned IPU data. New or reinstated bicameral systems are mostly seen in countries which have re-drafted their constitution along democratic lines after a period of authoritarian rule (Spain, South Africa, some East European, African and Asian countries), but nowhere in longer-established democracies. In Eastern Europe, after 1989, most states opted for a unicameral system. The countries that opted for a bicameral system were Slovenia, Poland, the Czech Republic, Romania, Croatia, Serbia, Belarus and the Russian Federation. Croatia and Serbia have since abolished their senate again (in 2001 and 2003 respectively). In Romania, three-quarters of the electorate voted in 2009 to abolish the senate, but to date, no action has been taken to do so.\(^5\)

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\(^4\) Massicotte 2001, p. 153 onward, from which the following data is also borrowed.  
\(^5\) Walter 2010, p. 333.
Lijphart studied the thirty-six, longest-established democracies in 1999 and 2012. Two of his findings were:

1. Smaller countries tend to have a unicameral system; among larger countries, it varies.
2. The federal states all have two chambers; among non-federal states, it varies.

In the European region, we see the same, as shown by the following summary.

Proportion of states with a bicameral system in the European region

Source: IPU/Parline database (April 2014); population statistics cited from CIA The World Factbook.

The European federal states all have a bicameral system and the largest unitary states mostly have this system too. Only two non-federal states with a population greater than 40 million have a unicameral system - Ukraine and Turkey. Among the sixteen non-federal states with a population size between 5 and 40 million, there are eleven countries with a unicameral system: Portugal, Greece, Hungary, Azerbaijan, Sweden, Serbia, Bulgaria, Denmark, Slovakia, Finland and Norway. Non-federal states with a population size of less than 5 million almost all have a unicameral system (eighteen out of twenty). Altogether, in Europe there are only four non-federal states that, measured in relation to their population size, are smaller than the Netherlands and which have a bicameral system: The Czech Republic, Belarus, Ireland and Slovenia.
3. The origin of bicameral systems and the functions assigned to them

The phenomenon of the bicameral system has two very different historic origins. It was first established in England, and later in the United States of America. In both cases, this happened more or less by chance; it was not underpinned by a carefully thought-out philosophy about the institutional design of state government. Both models have since been widely imitated.

Multi-chamber systems were first created in unitary states as a method of representing various estates. In the Middle Ages, sovereigns consulted their vassals about matters such as waging war and taxation. The growing requirements of the royal coffers resulted in the circle of those who had to be consulted being gradually expanded, and frequently, different consultative bodies existed side by side for the various social estates. Sweden, for example, had four separate 'chambers' for such consultations: for the nobles, spiritual representatives, citizens and peasants. In the course of time - with the rise of absolutism - this type of consultation fell out of use in most countries, although the chambers often continued to exist. The development in England was unusual in two respects. Firstly, because in the fourteenth century, a system with only two chambers was created there: one chamber in which debate took place with the feudal lords (both spiritual and temporal) and a chamber where the citizens (commoners) from the counties and boroughs, including the gentry were represented. In addition, England was unusual because the parliament gradually became more powerful as a power other than the Crown. The bicameral system thus became an enduring institution in which both chambers could develop their own right to exist and their own legitimacy.

The power of England and the stability of its political institutions meant that the country often served as a model in theories of good governance during the seventeenth and eighteenth centuries. That also applied for the English bicameral system, which had come about due to practical considerations, but found a justification in this subsequent theorisation. This theorisation goes back to the ancient concept of 'mixed government' which can already be found in Aristotle: a wise constitution ought to combine elements of monarchy, aristocracy and democracy to prevent corruption and ignoring of the general interest.

Montesquieu was of the opinion that the political freedoms of citizens in England were best safeguarded, because the political power there was divided between the King, who had the executive power, and two legislative assemblies in which the various estates were represented. In this way, it was ensured that the

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6 Unless stated otherwise, the historic data in this chapter are cited from Chapter 1 of Tsebelis & Money 1997 and from Shell 2001.
7 See i.a. Patterson & Mughan 1999a, p. 2-3.
voice of the minority, which differed from the masses through birth, wealth or merit, was not lost, something which would be the case in a unicameral system:

“In (...) a state there are always persons distinguished by their birth, riches, or honours: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have, therefore, in the legislature ought to be proportioned to their other advantages in the state; which happens only when they form a body that has a right to check the licentiousness of the people, as the people have a right to oppose any encroachment of theirs. The legislative power is therefore committed to the body of the nobles, and to that which represents the people, each having their assemblies and deliberation apart, each their separate views and interests.”

In old confederal systems, there were never two or more chambers involved. However, when taking important joint decisions, there were often requirements for unanimity or qualified majorities. For example, that was the case in the German confederation (1815-1866) and the Swiss confederation (1291-1798) and in the Republic of the United Netherlands (1579-1795).

In the States General of the Dutch Republic, decisions could only be taken with unanimity (“gemeen advys ende consent”) about matters such as war, peace, truces, or financial contributions (Article IX, Union of Utrecht). And when the thirteen English colonies in North America formed a confederation at the end of the eighteenth century, they set up one joint Congress, in which each state had one vote and in which, for important decisions, a majority of nine states was required (Articles of Confederation, Article 9, para. 6).

When the Constitution was drafted for the newly formed United States, they ultimately opted for a bicameral system. The choice was a compromise between those who wanted a parliament in which the states, irrespective of their population size, would have an equal voice (as was the case in the confederal congress), and those who wanted a parliament for the newly formed federal state where the participating states were represented in proportion to their population size. It was not possible to reach agreement about this, and a system with two differently composed chambers ultimately appeared to be the only way out of the impasse. The solution found consisted of a directly-elected House of Representatives, where each voter had an equal vote in elections, and a senate to which each state could send two members, elected indirectly by the state parliaments. 8

8 Montesquieu 1748, p. 155.
10 Since 1913, the seventeenth amendment to the American Constitution has prescribed that the members of the senate should also be directly elected.
This is the first example of a bicameral system that was not intended to represent different estates or social classes. Instead, it was a parliament based on territory. Legislation would not only require a majority of the population behind it, but also - and independently of that - a majority of the states. In the Federalist Papers, written afterwards to convince the parliament of New York State to ratify the Constitution, the advantages that the Federalists ascribed to it were summarised. In the passages about the senate (Federalist LXII), Madison admits that this relies on a compromise, but he adds that this part of the Constitution could be more useful in practice than it appeared in theory, because it could prevent the larger states acting in their own interest at the expense of smaller ones. In the continuation of his argument, he does not see this as the real reason for the existence of the senate. This lies in four functions that, in his view, the senate must fulfil: (1) a senate doubles the certainty that the government will not neglect its tasks because it provides an extra check on it; (2) a senate can curb the other chamber if it gives into the urge to follow sudden and pronounced emotional reactions; (3) a senate can meet the need for knowledge about the laws and the interests of the country, and thus help to avoid mistakes; and (4), the senate can be a factor for stability that ensures continuity in the administration of the country, thus reinforcing the trust of other counties and avoiding too many laws being made and laws being changed too quickly. In his own words:

“First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. (…)

Second. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. (…)

Third. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no

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11 See also Pole 1992 about the creation of the American bicameral system.
permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads rather than the hearts of most of the authors of them. (…)

Fourth. The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success. (…)

Therefore, in Madison's view, the senate must be small and the Senators must be elected for a substantial period. The minimum age was set higher (30 years) than for members of the other chamber (25 years) and they had to have been an American citizen for longer (nine years).\footnote{Madison, Hamilton & Jay 1788, p. 366-369.}

The American model was soon emulated in other federal states and is all-pervasive in federal states until the present day.\footnote{With a few exceptions: Venezuela abolished its senate in 1999 and a number of mini-federations have a unicameral system (United Arab Emirates, Micronesia, Comores, St. Kitts & Nevis).} A bicameral system in federal states is a means of offering, at the level of the member states, a more equal representation than would be the case in a unicameral system that is constituted on the basis of one man one vote. In Europe, for example, this was the rationale for the bicameral system in Switzerland, which copied the US system in 1848 by way of a compromise to overcome a similar stalemate.

In unitary states, the English Upper House was imitated in the nineteenth century. Despite the still very limited suffrage, an extra, aristocratic chamber or senate with members selected from the notables was seen as a protection against the risks of rising democratisation and as a necessary buffer between the ruler and the people. The choice between a unicameral or bicameral system was often fiercely disputed, but was usually decided in favour of the nobility or the land-owning and ruling elite. That applied in the Netherlands, for example, as from 1815, under the influence of the Belgian members of the constitutional committee.\footnote{Re. the discussions in the constitutional commission, see Nifterik 2011.} In many countries, members of the senate were not elected but membership was ‘qualitate qua’ or members were appointed. Sometimes,
membership was hereditary, as in England. In the literature, bicameralism in this regard was designated as “a new institutional mechanism, created in the wake of the changing societal balance of power”, or an institutionalised compromise between old and new conceptions of legitimacy. Lijphart speaks about a ‘conservative brake’ as the most important original function of most senates.

Due to the extension of the franchise, the declining societal role of the nobility and the landowning classes, and the disappearance of the idea of representing the different estates, the political significance of senates in unitary states gradually diminished, their right to exist became less obvious, and their composition was subject to discussion. That led to either their powers being curbed - for example the Upper House in the United Kingdom in 1911 and 1947; the French Sénat in the Fourth and Fifth Republic - or their composition being brought into line with that of the lower house, as in Italy in 1948 and in the Netherlands in 1917 (apart from the indirect character of the elections). The latter also applied for countries such as Sweden, Denmark and New Zealand, although they subsequently abolished their senate. It also applied to Belgium, but the country has had a federal structure since 1993, and it altered the composition of its senate at the same time, as well as drastically reducing its powers.

Historically, the creation of bicameral systems, both in the federal and the aristocratic variant, always was a concession to those (states or estates) who risked losing power in the new setting. In emerging democracies, and up until the present day, the choice of a bicameral system appears as a means of dispelling fear about the consequences of democratisation and reconciling established elites with the democratisation process. In developed democracies, the rationale of a bicameral system is now sought primarily in the possibility of combining different systems of representation (particularly in federal systems) and in the possibility of reconsideration by a different chamber in the legislative, making it possible to avoid making mistakes and enhancing both the quality and the stability of the legislation. In majority systems of the Westminster model - where the government is part of the lower house and it tends to have a stable majority - a senate moreover is sometimes ascribed the role of giving more independent input into the parliamentary work, less determined by party discipline, and of paying more attention to the interests of minorities. A bicameral system is, for that reason, sometimes recommended as a means to protect minorities against a tyranny of the majority, for example, in Arab states.

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17 Schüttemeyer & Sturm, cited by Degener 2010a, p. 489.
18 Lijphart 2012, p. 190.
19 On this point, see Wasowicz 1992.
20 Ketterer 2001, p. 146.
22 Russell 2001, p. 442.
that have to deal with wide-ranging Islamic popular movements.\textsuperscript{23} Finally, a bicameral system may also increase efficiency because it is possible to divide the legislative workload between two chambers.\textsuperscript{24} That can be the case when the two chambers absorb a sort of division of labour (e.g. an emphasis on technical legal quality in the senate). In many bicameral systems, moreover, it can be decided to put bills to either house, and the senate also has a right of initiative.

In unitary states, bicameral systems are rarer - the smaller the state and the lower its population. From the literature consulted, it is not easy to deduce whether and why there is less need in those states for (independent) review or a division of tasks. In a single instance, the presumption was expressed that this has something to do with the greater homogeneity of small states or the reduced economic complexity and political stratification.\textsuperscript{25}

\textsuperscript{23} Albright & Weber 2005.
\textsuperscript{25} E.g. Muthoo & Shepsle 2008, Anckar 2013.
4. Similarities and differences between bicameral systems

If we compare parliaments in different countries, then the lower houses resemble each other, both in composition and powers. They are all directly elected based on a one man one vote system, their cooperation is required to bring about any formal legislation and for the approval of budgets and accounts, and - in countries with a parliamentary system - they can call the government or individual ministers to account and dismiss them. The composition and powers of senates, on the other hand, display a very great variety. They more often appear to be the result of historic compromises. This chapter attempts to make that variety more apparent.

In doing so, we will restrict our remarks to a set of well-known developed democracies - member countries of the OECD - because it is there that a comparison makes most sense. For the same reason, within those countries, we will restrict our remarks to those with a parliamentary system.

Apart from the Netherlands, there are fifteen OECD countries with a parliamentary system that have divided their parliament into two chambers. Nine of them are unitary states, ranked by population size: Japan, France, United Kingdom, Italy, Spain, Poland, the Czech Republic, Ireland and Slovenia. The other six are federal states: Germany, Canada, Australia, Belgium, Austria and Switzerland. The data is mainly extracted from the IPU database, the websites of the parliaments concerned, the constitutions of the countries concerned, and the summary that the French senate has posted on its website, supplemented by observations from the literature.

In the tables, the federal and non-federal (unitary) states are always shown separately, ranked by population size.

4.1 Composition of senates

Size

In almost all countries with a senate, the senate is smaller – often considerably smaller than the lower house. Lower houses usually have more than 100 seats, but the majority of senates have fewer than 100. You will find below the breakdown of lower houses and senates respectively by number of seats, according to the IPU data (April 2014).

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27 Fifteen OECD countries have a unicameral system: Denmark, Estonia, Finland, Greece, Hungary, Iceland, Israel, Korea, Luxembourg, New Zealand, Norway, Portugal, Slovakia, Sweden and Turkey. Three OECD-countries do not have a parliamentary, but a presidential system: the USA, Mexico and Chile.
In Europe, the United Kingdom is the only country with a senate that is larger - even much larger - than the lower house. The Upper House had, and still does have, an unusually large number of members, although their number was cut from about 1200 in 1999 to about 780 according to the current list on the website of the Upper House. The change in the composition due to the House of Lords Act at the end of 1999 did not succeed in removing all hereditary peers from the Upper House, but their number was reduced to one-tenth, while awaiting further reforms. Outside Europe, only Kazakhstan and Burkina Faso had until recently a senate that was larger than their lower house, but Kazakhstan's has since been cut to 47 members (compared with 115 in the lower house) and Burkina Faso abolished its senate, but then decided to reinstate it in 2013, this time consisting of 89 members (the lower house has 127).

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**Parliamentary term**

Just like lower houses, senates in most countries are re-elected at regular intervals and therefore the senators have a fixed term of office. This term is sometimes identical, but usually longer than that of the lower house. For lower houses, the term is usually four or five years, and in a single instance two, three or six. According to the IPU data (April 2014), senate terms are never shorter than four years, terms of five or six years are the most common, and there are also terms of office of eight or nine years. Below is the breakdown of lower houses and senates, respectively by term of office, according to the IPU data (April 2014).

**Figure 5 – Term of office of lower houses worldwide**

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<th>Term of Office</th>
<th>Number of Countries</th>
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<td>5 years</td>
<td>45</td>
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<td>6 years</td>
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**Figure 6 – Term of office of senates worldwide**

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<tr>
<th>Term of Office</th>
<th>Number of Countries</th>
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</tbody>
</table>
Changes in the term of office usually involve a reduction, for example in France in 2003, where the term of the senate was reduced from nine years to six years (the French lower house has a five year term). In countries where the term of office of the senate is equal to that of the lower house, both chambers are sometimes re-elected at the same time, as in Italy, Poland, Spain and – until recently - Belgium.

Countries which do not have a fixed term of office are the United Kingdom, where the members of the Upper House are members for life (except for bishops), and Canada, where that was previously the case, but where a retirement age of 75 has applied since 1965. In some senates, a small proportion of the members are appointed for life, for example in Italy.

A totally different type of exception is formed by federal countries where the senate consists of delegates from the states, such as in Germany, where the members of the Bundesrat are appointed by the governments of the Länder, and Austria, where senators are elected by parliaments of the Länder. Their term of office is equal to the term of the institutions that have delegated them. This also applies for Spanish senators who are delegated by the parliaments of the autonomous regions.

Quite a few other senates are not re-elected in one go, but partly at regular intervals, as used to be the case in the Netherlands. Among the fifteen OECD countries, that applies for example to the senates of Japan, France, the Czech Republic and Australia. The composition of the senates in Germany and Austria changes depending on the composition of the delegating bodies, and therefore also happens gradually. The same applies to an extent for Switzerland where voting for the senate is regulated by the cantons.

**Representation**
The composition of lower houses is generally based on the idea of direct representation of the population and the individual voters. For senates, usually a different basis is sought, which cannot be found nowadays in differences between estates.

In federal states, the basis is mostly territorial: representation of the constituent states or provinces. We have already seen that in the United States, where each state has an equal number of seats in the senate. The same applies in countries including Australia, the Russian Federation, Brazil, Argentina and Mexico. In Switzerland that is also the initial assumption, but the country also has a number of ‘half cantons’ which cannot delegate two, but only one senator. In Germany, the number of seats differs slightly - but not proportionally - in relation to the size of the Länder. In Austria, the senators are appointed by the parliaments of the Länder in proportion to the population size. In Belgium, the majority of
senators are appointed by the regional parliaments. In Canada the senators (appointed by the government) also have a link with the various provinces.

In unitary states too, senates often have a more pronounced territorial basis than the lower houses, such as in Spain, where the Constitution says in so many words that the senate is the house of territorial representation (Article 69). A proportion of the Spanish senators is appointed by the parliaments of the autonomous regions and the others are elected by the regional populations (equal number for each province), mainly via a majority system. Poland and the Czech Republic, which compose their lower house on the basis of proportional representation, have opted for a majority system to elect their senators for each territorial entity. The French senate is defined by the Constitution as the representation of the territorial communities of the Republic (Art. 24). The senators are elected by electoral colleges in each département, and the way in which the electoral system is designed builds in a pronounced over-representation of rural areas, so that the French senate tends to be known as the Chambre d’Agriculture.29

In Italy, there were plans in 1948 to have senate representation on a regional basis (20 regions), but because the regionalisation went very slowly due to political disagreements, and ultimately was only completed in 1970, nothing more came of it. This makes Italy the only country in Europe to have a senate that is elected on the same date and according to a virtually identical electoral system to that for the lower house. Since the Netherlands uses proportional representation for electing both chambers, in the literature, it is mentioned in the same breath as Italy,30 but the indirect election method and the non-simultaneous re-election of both chambers mean that in the Netherlands there are rather greater differences between the two chambers than in Italy. The Irish senate is predominantly composed on a corporatist basis. The same applies to the Slovenian senate.

Appointment or election
In principle, Senators are chosen in four ways: by direct election, by indirect election, by appointment, or ex officio. The IPU mapped this out for all the seats of all the senates combined.31

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29 Lijphart 2012, p. 197.
30 See, for example: Tsebelis & Money 1997, p. 53.
31 According to the IPU, the ‘other method’ in the chart concerns senators where no information is available about their appointment. The ex officio senators are presumably counted by the IPU among the appointed senators.
Senates in which all or most members are appointed are rare among OECD countries. This only applies to the British Upper House and the Canadian senate. Since 1999, the British Upper House has mainly consisted of members appointed for their lifetime (life peers). Appointments are made by the Crown on a proposal from the Prime Minister. The members of the Canadian senate are formally appointed by the Governor General, but in practice by the Prime Minister. The members of the German Bundesrat are appointed by the governments of the Länder from their ranks and they also act on behalf of their government. In Belgium, since May 2014, most members of the senate are appointed by and from the Community parliaments and the rest are co-opted by the other members. Since 1999, cooption is also the way in which hereditary peers in the House of Lords are replaced if a vacancy arises. In Ireland, eleven of the sixty senators are appointed by the President, which usually guarantees a government majority in the senate. In Italy, the President can appoint five senators for life as a recompense for exceptional merit in the social, scientific, artistic or literary sphere. Former presidents can take up a seat qualitate qua in the Italian senate. The same applies to the bishops in the British Upper House.

In most senates however, members are elected, directly or indirectly. According to Patterson & Mughan, in 2001 there were 21 senates where all senators were directly elected. Among the fifteen OECD countries this applies - mainly - to six countries: Japan, Italy, Poland, the Czech Republic, Australia and Switzerland. Elsewhere, a mix of direct and indirect elections have been used (for example in Spain and Ireland) or only indirect elections, as in France, Austria, Belgium and Slovenia.

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32 Russell 2000, p. 69.
33 Patterson & Mughan 2001, p. 41.
The age limits for voting and standing for election are sometimes higher for the senate than for the lower house. In Italy, a senator must be at least 40 years old (25 years for members of the lower house) and voters must be aged at least 25 (18 years for the lower house). In the Czech Republic, senators must also be at least 40 years old and 30 in Poland, Canada and Japan. In France, candidates for the senate must be at least 24 years of age (compared with 18 for the lower house); until 2011, the limit was age 35. In Ireland the minimum age for voting and standing for election is 21, compared with 18 for elections to the lower house. The right to vote in Ireland for that proportion of the senate that is directly elected (six senators) is limited to graduates of the two main universities.

_Schematically_

The following summary shows the size, parliamentary term and method of election of the senates in the fifteen OECD countries previously mentioned, separated into unitary and federal states. The countries are always shown in decreasing order of population size. Under election method, the abbreviation ‘PR’ stands for proportional representation and ‘MS’ for majority system.
<table>
<thead>
<tr>
<th>Unitary states</th>
<th>Number of senate members (number of lower house members)</th>
<th>Term of senate in years (term of lower house)</th>
<th>Election method senate</th>
<th>Election method lower house</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>242 (475)</td>
<td>6 (4)</td>
<td>Direct. Every three years, half of members stand for re-election: 146 via MS and 96 via PR.</td>
<td>Direct (300 MS; remainder PR)</td>
</tr>
<tr>
<td>France</td>
<td>348 (577)</td>
<td>6(5)</td>
<td>Indirectly elected by special electoral colleges per département (326) and for the overseas territories (10) and French citizens living abroad (12).168 via MS in the smaller départements; the rest via PR. Every 3 years, half the senators stand for re-election.</td>
<td>Direct (MS)</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>779 (650)</td>
<td>N/A (5)</td>
<td>665 appointed (life peers), 88 elected by (a proportion of) Upper House members (hereditary peers) and 26 qualitate qua (bishops)34</td>
<td>Direct (MS)</td>
</tr>
<tr>
<td>Italy</td>
<td>315+ (630)</td>
<td>5 (5)</td>
<td>315 directly elected in regions (PR; 12 seats MS). Appointed: every president may appoint 5 senators for life (at present there are 7 in the senate). Qualitate qua: former presidents (currently 1)</td>
<td>Direct (PR, 1 seat MS)</td>
</tr>
<tr>
<td>Spain</td>
<td>266 (350)</td>
<td>4 (4)</td>
<td>208 members directly elected (MS) from within the provinces (4 each), islands and overseas territories (3, 2 or 1); 58 elected by, and usually also members of, the parliaments of the 17 autonomous regions (PR if more than 1 senator may be appointed).</td>
<td>Direct (PR; 2 seats MS)</td>
</tr>
<tr>
<td>Poland</td>
<td>100 (460)</td>
<td>4 (4)</td>
<td>Direct (MS)</td>
<td>Direct (PR)</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>81 (200)</td>
<td>6 (4)</td>
<td>Directly elected (MS). Every two years, one-third stand for re-election.</td>
<td>Direct (PR)</td>
</tr>
</tbody>
</table>

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34 According to the website of the House of Lords, consulted on 14 April 2014. The numbers are variable. Lords who cannot take part in the work of the House of Lords because they have an incompatible occupation or because they have requested and been granted leave of absence are not counted in this. On the same date, there were 55 of these according to the website.
<table>
<thead>
<tr>
<th>Country</th>
<th>Seats (Total)</th>
<th>Non-Party Seats</th>
<th>Method</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>60 (166)</td>
<td>5 (5)</td>
<td>Direct (PR)</td>
<td>43 (divided between 5 sectors of society), indirectly elected by a panel consisting of members of the new lower house, the outgoing upper house, and local councils. 6 directly elected by graduates of the two main universities (3 each). The other 11 are appointed by the president.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>40 (90)</td>
<td>5 (4)</td>
<td>Direct (PR)</td>
<td>Indirectly elected by elected representatives of interest groups: 22 by local representatives (MS), 6 from the non-profit sectors, 4 employers’ representatives, 4 workers’ representatives, 4 for farmers, craftsmen/women, merchants and liberal professions combined.</td>
</tr>
<tr>
<td>Federal states</td>
<td>Number of senate members (number of lower house members)</td>
<td>Term of senate in years (term of lower house)</td>
<td>Election method senate</td>
<td>Election method lower house</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------------</td>
<td>----------------------------</td>
</tr>
</tbody>
</table>
| Germany        | 69 (598+)                                                | N/A (4)                                    | Appointed by the governments of the Länder. | Direct (MS; supplemented by PR)
| Canada         | 105+ (308)                                               | N/A (4)                                    | Appointed for life by the Governor General following a proposal by the Prime Minister (regional allocation). Resignation at age 75. Possibility of adding 4-8 members if the chambers are in a stalemate situation. | Direct (MS) |
| Australia      | 76 (150)                                                 | 6 (3)                                      | Directly elected (PR). Every three years, half of members stand for re-election. | Direct (MS) |
| Belgium        | 60 (150)                                                 | 4 (4)                                      | 50 chosen by and from the community parliaments, 10 coopted members. In addition, the grown-up children of the King may sit in the senate ex officio, but do not vote. | Direct (PR) |
| Austria        | 62 (183)                                                 | N/A (5)                                    | Elected by and from the parliaments of the Länder (PR). | Direct (PR) |
| Switzerland    | 46 (200)                                                 | 4 (4)                                      | Directly elected by the cantons. Usually MS (but may vary per canton). | Direct (PR; 5 seats MS) |

Source: IPU/Parline April 2014 and parliamentary websites

4.2 Powers of senates

Legislative powers
For all senates, participation in the creation of legislation is the most important task. Usually a senate has a right of veto in that regard. It may be an absolute right of veto - the consent of the senate is a requirement - or a suspensory right of veto, where the senate can send a proposal back (sometimes several times) to the lower house with its comments or amendments, but ultimately, the lower house has the final say. An absolute right of veto for the senate is seen mainly in federal presidential systems (such as the United States and some South American countries).

35 The number of members of the German Bundestag varies due to so-called Ausgleichsmandate (balance seats) and Überhangmandate (overhang seats). As a consequence of this, in April 2014, the Bundestag had 631 seats.
36 For Belgium, the situation shown is that which has applied since May 2014.
In countries with a parliamentary system, an absolute right of veto is more rare, even if they are federations. The senates in Canada, Switzerland and Australia have an absolute right of veto for all legislation. For the German Bundesrat, this only applies for amendments to the Constitution and for legislation which affects the position of the Länder (approximately 39 per cent of the total). For other legislation, the Bundesrat only has a suspensory veto. In Austria, the senate only has an absolute right of veto for changes to the constitutional rules about the powers and responsibilities of the Länder or about the senate itself. The Belgian senate only has a suspensory right of veto and recently that has been restricted to changes to the Constitution and some other legislation with a constitutional character. The Belgian senate is no longer involved in most legislation. In unitary states, a suspensory right of veto is the most usual one. Of the nine unitary OECD countries studied with a bicameral system, only Italy has granted the senate an absolute right of veto, as has the Netherlands (see the appendix).

Figure 9 - Veto rights in European OECD countries with a bicameral system

Many senates have both the right of initiative and the right of amendment. In each of the OECD countries from our summary, the senate has a right of initiative. The right of amendment is only absent in Austria and Germany.

In many countries, the senate must put a bill on its agenda or debate it within a given period, and if it fails to do so, the bill is deemed to have been adopted. Where deadlines apply, they are often shorter for budget proposals and urgent
proposals. In any case, for budgets and other financial proposals, there are often different rules. Some senates are not involved in that at all (for example in the Czech Republic, Belgium and Austria) and some senates can amend ordinary bills, but not budget bills (e.g. United Kingdom and Ireland) or reject them (Poland).

Dispute settlement in the legislative procedure
In some countries, if a senate has a suspensory right of veto and/or a right of amendment, the verdict on it is left to the lower house without further delay. For example, that is the case in Spain, Poland, the Czech Republic, Ireland, Slovenia, Japan and Austria. If that is not possible, or in some cases is deemed undesirable, a mechanism is needed to encourage both chambers to accept identical texts. Such a mechanism is also possible where a senate has an absolute right of veto without a formal right of amendment, as in Germany, where a proposal can be referred to a mediation committee.

The most common dispute resolution mechanism is the so-called shuttle or navette, where the texts are sent back and forth between the two chambers once or a number of times. In Italy, Canada and Australia this is the only mechanism: a bill goes back and forth until an identical text is adopted in both chambers or the bill is withdrawn from the agenda. In Australia, this may be combined with dissolution of both chambers and, in the most extreme cases, a joint meeting. The United Kingdom also has a shuttle, but since 1911, under certain conditions it can be curtailed after one round, provided that at least one year (until 1949 it used to be two) has lapsed since the bill was passed for the first time by the lower house. In this kind of case, the decision by the lower house takes precedence. However, this option has rarely been used. In practice, the unwritten Salisbury doctrine is more important, according to which the upper house does not vote down any bills that were announced in the governing party’s election manifesto.

In France and Switzerland, the starting point is a shuttle, but this can be followed by setting up a committee, consisting of members of both chambers, which has the mission of drafting a compromise text. In Switzerland, both chambers vote again on a compromise text. This happens in France too, but ultimately the decision by the lower house - at the request of the government - is decisive. In Germany, a mediation committee is an option which the Bundestag or the government can decide on, or for which the Bundesrat itself can take the initiative. If the proposal of the committee is adopted in the Bundestag, but rejected in the Bundesrat, then there are two possibilities. The first is that a proposal for which the consent of the Bundesrat is required is then rejected. For other proposals, the Bundestag can overrule the opinion of the Bundesrat, but if the Bundesrat rejects it by a two-thirds majority, a two-thirds majority is also required in the Bundestag.
**Oversight powers**

Most authors feel it is self-evident and just that in a parliamentary system the lower house - not the senate - is the place where governments should present themselves and where they can be dismissed. Many constitutions actually provide for this in as many words. Most senates do have a right of information and often a right of inquiry too, and can make recommendations to the government or express their opinion about government actions, but votes of confidence in the government or the submission of no-confidence motions is usually reserved for the lower house. Only in Italy can both chambers - so the senate too - dismiss a government by adopting a no-confidence motion, but in practice, political conflicts are usually fought out in the lower house. The only examples where a government had to resign after a no-confidence vote in the senate were the Andreotti government in 1972 and that of Prodi in 2008. In Switzerland, the position of both chambers is identical (Art. 148 of the Constitution), but there, neither chamber can dismiss the government. Although the Australian senate cannot dismiss the government via a motion of no confidence, it can achieve the same end by approving or rejecting budgets, as it did in 1974 and 1975. In many other countries, the senate is either not involved with the budget or its veto right on budgets is restricted.

On the other hand, most senates can also not be dissolved, or only at the same time as the dissolution of the lower house. In Poland, dissolution of the lower house automatically entails dissolution of the senate. In Italy and Spain, it is true that the Constitution does allow separate dissolution of the chambers, but in practice both chambers are elected at the same time and therefore dissolution only takes place simultaneously for both chambers. In Australia, simultaneous dissolution of both chambers is a possibility if no agreement can be reached about a bill.

Apart from Italy and - to a lesser extent - Japan and Switzerland, in the sources and literature consulted, no examples were found of parliamentary systems where the senate plays a role in the formation of governments. Italy is also an exception on this point. The Italian constitution provides that the government must enjoy the confidence of both chambers. Here, a new government must present itself in both chambers within ten days after taking office in order expressly to obtain that confidence. In Japan, where the lower house appoints the Prime Minister, the senate has to consent to the appointment, but - in case of a difference of opinion - ultimately the lower house decides. The Japanese senate cannot dismiss the government. In Switzerland, the members of the government are appointed by both chambers deciding together, but in the Swiss tradition, the members of the current government are invariably reappointed, unless they decide to resign. They cannot be dismissed prematurely by either chamber.

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40 Russell 2000, p. 203.
**Other powers**

In some countries, the senate has some additional powers, for example in case of impeachment or the initiation of a criminal prosecution for official misconduct against the president (Italy, Ireland, the Czech Republic), the appointment of a president (Italy), or the appointment of members of a constitutional court (The Czech Republic, Italy). In Italy, these powers are exercised as part of a joint meeting of both chambers.

**Schematically**

The following summary shows the legislative powers of the senate, the methods of conflict resolution in the legislative procedure, and the applicability of the confidence rule in the senate for the fifteen OECD countries with a bicameral parliamentary system.

<table>
<thead>
<tr>
<th>Unitary states</th>
<th>Legislation</th>
<th>Different rules for budget</th>
<th>Conflict settlement in case of contradictory views in 2 houses</th>
<th>Confidence of the senate also required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>Suspensory veto (absolute veto on amendments to the Constitution) Right of amendment. Right of initiative. Time limit: 60 days.</td>
<td>Time limit: 30 days.</td>
<td>Lower house can take final decision by a 2/3rds majority. Possibly joint committee. For the budget it is always joint committee, but if that does not help, the decision by the lower house shall prevail. In case of amendments to the Constitution, consent of the senate is necessary.</td>
<td>No</td>
</tr>
<tr>
<td>France</td>
<td>Suspensory veto (absolute veto on amendments to the Constitution) Right of amendment. Right of initiative.</td>
<td>Time limit: 15 days.</td>
<td>Shuttle, possibly followed by joint committee (on initiative of the government), possibly followed by final decision by lower house (on initiative by the government). In case of an amendment to the Constitution, the shuttle continues until agreement is reached.</td>
<td>No</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Suspensory veto. Right of amendment. Right of initiative.</td>
<td>On 'money bills' there is no right of amendment or initiative.</td>
<td>Shuttle, but after a second rejection by the House of Lords, the law can be ratified, provided a year has lapsed (a month in the case of money bills) between the first time the bill is passed by the Commons and the second time it is sent to the Lords.</td>
<td>No</td>
</tr>
</tbody>
</table>
## Similarities and differences between bicameral systems

<table>
<thead>
<tr>
<th>Country</th>
<th>Veto.</th>
<th>Shuttle until identical text is adopted in both houses or one of the houses rejects the bill.</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Veto. Rights of amendment. Rights of initiative.</td>
<td>Shuttle until identical text is adopted in both houses or one of the houses rejects the bill.</td>
<td>Yes</td>
</tr>
<tr>
<td>Spain</td>
<td>Suspensory veto (absolute veto on amendments to the Constitution) Rights of amendment. Rights of initiative. Time limit: 2 months (or 20 days for an urgent bill).</td>
<td>Lower house always has the final say. Sometimes preceded by a joint committee. For amendments to the Constitution, it is always a joint committee, after which both houses vote again.</td>
<td>No</td>
</tr>
<tr>
<td>Poland</td>
<td>Suspensory veto (absolute veto on amendments to the Constitution) Rights of amendment. Rights of initiative. Time limit: 30 days.</td>
<td>Budget cannot be rejected. Time limit: 20 (or 7) days.</td>
<td>No</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Suspensory veto (absolute veto for amendments to the Constitution, electoral law, rules about parliament and approval of human rights conventions). Rights of amendment. Rights of initiative. Time limit: 30 days.</td>
<td>No role in deciding the budget.</td>
<td>No</td>
</tr>
<tr>
<td>Ireland</td>
<td>Suspensory veto. Rights of amendment. Rights of initiative.</td>
<td>For 'money bills' no right of initiative or amendment. Time limit: 21 days.</td>
<td>No</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Suspensory veto. Rights of amendment. Rights of initiative.</td>
<td>Lower house always has the final say.</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal states</th>
<th>Legislation</th>
<th>Different rules for budget</th>
<th>Conflict settlement in case of contradictory views in 2 houses</th>
<th>Confidence of the senate also required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>Veto for approx. 40% of all laws. For other laws only the possibility of objecting (boils down to a suspensory veto and right of amendment). Right of initiative. Time limit: 6 or 3 weeks</td>
<td>Right of amendment</td>
<td>For veto laws: mediation by a joint committee, followed by another reading. For non-veto laws, possibly also a joint committee, but lower house has final say (sometimes 2/3 majority required).</td>
<td>No</td>
</tr>
<tr>
<td>Canada</td>
<td>Veto. Right of initiative. Right of amendment.</td>
<td>Right of amendment limited.</td>
<td>Shuttle until agreement is reached or further debate is suspended.</td>
<td>No</td>
</tr>
<tr>
<td>Australia</td>
<td>Veto. Right of initiative. Right of amendment.</td>
<td>No right of initiative or amendment.</td>
<td>Shuttle until agreement is reached or further debate is suspended. After two rounds, the Governor General may dissolve both chambers and - if that doesn't resolve the conflict - convene a joint meeting to take the final decision.</td>
<td>No</td>
</tr>
<tr>
<td>Belgium</td>
<td>Only for some laws, suspensory veto and right of amendment and initiative. No role for most laws.</td>
<td>No role in budget laws.</td>
<td>Shuttle but lower house always has the final say.</td>
<td>No</td>
</tr>
<tr>
<td>Austria</td>
<td>Suspensory veto (absolute veto for changes to the constitutional rules about the senate or powers of the regions). Right of initiative. No right of amendment. Time limit: 8 weeks.</td>
<td>No role.</td>
<td>Lower house has final say (except for laws where absolute veto applies).</td>
<td>No</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Veto. Right of initiative. Right of amendment.</td>
<td>Shuttle, with a joint committee after three rounds, followed by a last vote in both chambers.</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

4.3 Strong and weak bicameralism

It is the combination of the method of composition and the powers of senates that determine their power in relation to the other chamber and the government. Lijphart cites three factors that - in association - are decisive for answering the question of whether we can describe bicameralism as strong or weak.\(^{41}\)

Firstly the formal powers of the senate. Usually, in the event of a conflict, the decision of the senate can be overridden by the lower house. Among the 36 countries that Lijphart studied in 2012 - both parliamentary and presidential systems - he mentions Italy, Switzerland, the USA, Argentina and Uruguay as systems where formally, both chambers have an equal position. Once that was also the case in Belgium, Denmark and Sweden, but the latter two countries have since switched to a unicameral system and in Belgium, since 1993, there has been no question of equality anymore.

The second factor that Lijphart considers important is the method of election or selection of the senators. Senates who have no direct electoral legitimacy, because they are elected indirectly or even appointed, lack the democratic legitimacy and therefore the actual political influence that they would have if they were directly elected, even if they sometimes have apparently strong powers (example: in Canada). On the other hand, a senate that is directly elected can use this to compensate to an extent a lack of formal powers.

The third factor that Lijphart takes into account is the question of whether minorities are over-represented in the senate. Usually this takes the form of an over-representation of smaller states or provinces in relation to their size, as in the USA, Canada, Australia, Germany and Switzerland, or an over-representation of rural areas compared with urban areas, as in France. In Australia, minorities in the senate are better represented, since elections to the senate use the system of proportional representation, while the majority system is used for elections to the lower house. In other bicameral systems, both chambers are elected via a comparable electoral system, such as in Italy and (apart from the indirect character of the elections) also in the Netherlands. Lijphart considers a senate stronger if its composition differs from that of the other chamber.

Based on these three factors, Lijphart makes an analysis of the strength of bicameralism in the countries he studied. He says the strongest systems are those where both the power and the legitimation of both chambers is approximately equally strong (the chambers are symmetrical) and the senate provides for an over-representation of minorities in comparison with the other chamber (the composition of the chambers is incongruent).\(^{41}\)

\(^{41}\) Lijphart 2012, p. 192 onward.
This gives the following picture for the most important states he studied:

<table>
<thead>
<tr>
<th>Incongruent (over-representation of minorities in the senate)</th>
<th>Symmetric (powers and legitimacy approximately equal)</th>
<th>Asymmetric (powers and/or legitimacy very unequal)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strong bicameralism</strong></td>
<td>Argentina</td>
<td>moderately strong bicameralism</td>
</tr>
<tr>
<td></td>
<td>United States</td>
<td>Canada</td>
</tr>
<tr>
<td></td>
<td>Switzerland</td>
<td>Spain</td>
</tr>
<tr>
<td></td>
<td>Australia</td>
<td>India</td>
</tr>
<tr>
<td></td>
<td>Germany</td>
<td>France</td>
</tr>
<tr>
<td><strong>Congruent (no over-representation of minorities in the senate)</strong></td>
<td><strong>Moderately strong bicameralism</strong></td>
<td><strong>Weak bicameralism</strong></td>
</tr>
<tr>
<td></td>
<td>Italy</td>
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He describes the Netherlands as moderately strong because of the absolute veto right of the senate. The United Kingdom is a case apart, because the (asymmetric) upper house is, in strict terms, incongruent (over-representation of minorities), but this is a relic of a pre-democratic period. Therefore, Lijphart positions it between moderately strong and weak.

Russell comes to comparable conclusions in her comparative study in which she attempts to learn lessons from foreign bicameral systems for the reform of the House of Lords.\(^{42}\) She cites composition, powers and legitimacy as the three factors that determine the strength of a senate.

A senate is stronger if its composition is different from that of the lower house, as is the case with the House of Lords. On the other hand, the Italian senate is indistinguishable from the Italian lower house, because it is elected on the same day and according to a virtually identical electoral system. Although the Italian senate has strong powers and, by virtue of being directly elected, also has strong legitimacy, according to Russell, it has no clear influence and actually just contributes to delay and confusion. In Italy, the frustration that causes has led to reform proposals aimed at a different composition or abolition of the senate. The Irish senate does not differ in practice from the Irish lower house. Although on paper, the composition of the Irish senate is completely different, the appointment of senators is totally controlled by the political parties and the incumbent government - since moreover the Prime Minister appoints a number of senators - can always be sure of a majority in the senate. The strength of the Australian senate derives from the fact that the party composition tends to be different from that in the lower house. Since the senate is elected based on proportional representation, there are more small parties represented in it and

\(^{42}\) Russell 2000, p. 245 onward.
usually, neither the government nor the opposition have a fixed majority there. In addition, the Australian senate has strong legitimacy, because it is directly-elected, and has strong powers: it has an absolute veto and can block legislation with no time limit. In the senates of Ireland and Spain, the government not only always has a majority, but they also have only a limited period to debate bills, and they can only delay them for a very short time. These senates are generally described as very weak.

On the other hand, Russell points out in this regard that a lack of strong powers can contribute to the functions of independent assessment and concentration on legislative quality that are frequently ascribed to senates: party discipline will be felt less and the media attention will also put decision-making under less pressure, partly because senates generally cannot dismiss governments. For this reason, in the literature an identical party political make-up of both chambers is sometimes seen as an advantage: a senate can devote its energies to improving the quality of legislation without creating the suspicion that it might be doing it for party political reasons.\(^3\)  

Legitimacy is the third factor that, according to Russell, determines the strength of a senate. The House of Lords is a good example of this. On paper, it is fairly powerful, but it rarely uses its powers, because it lacks legitimacy due to its composition. This also applies to the Canadian senate: on paper it is one of the strongest senates, but due to its composition it has so little political credibility that in practice, it is one of the weakest senates. The actual influence of a senate can therefore deviate from its formal powers.

Both Russell and Tsebelis & Money nuance Lijphart’s findings. Russell considers that Lijphart links the legitimacy of a senate too unilaterally to the question of whether it is directly elected or not. In addition, in her opinion, it is important to what extent the party representation within the senate can be deemed a reflection of voters’ preferences, even if a senate is not directly elected. That reflection was greatly improved in the House of Lords after the removal of a large number of Conservative hereditary peers in 1999 and the appointment of a large number of new life peers. There are indications that the Lords have since gained in self-confidence and, as a result, is taken more seriously by the government, although that was certainly not the intention of the changes.\(^4\)

Tsebelis & Money also emphasise the importance of party representation as well as the influence that institutionalised dispute resolution mechanisms have on the relationship between the two chambers and on the position of a senate.\(^5\)

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\(^3\) Oireachtas Library & Research Service 2012, p.11 and the literature cited therein.  
\(^4\) Russell 2010.  
In a review of the American system of separation of powers, the constitutional scholar Ackerman concludes that strong bicameralism (two differently composed chambers, but whose powers are similar) is not compatible with a parliamentary system, because it is hard to imagine a solution for the case where both chambers would like a different government.\textsuperscript{46} If both chambers are composed differently - which is almost by definition the case in federal systems - they can only be completely equal if, in addition, the executive is entrusted to a president not dependent on the parliament. With its differently composed but completely equivalent chambers, Switzerland seems to have escaped this pattern, but according to Ackerman, it pays a different price: the Swiss government is not revocable and the Swiss system is essentially apolitical; it comes under pressure as soon as the political situation becomes more volatile. If the composition of both chambers is not or not significantly different - as in Italy - a perfectly symmetrical bicameral system is, according to Ackerman, compatible with a parliamentary system. But in that case, the senate runs the risk of becoming a ‘pointless extra wheel’, that generates additional complexity and a lack of transparency, and has little value added in terms of useful review.

Norton - himself a member of the House of Lords – downplays the whole distinction between strong and weak bicameralism in the UK context. In his opinion, a senate that becomes strong undermines political accountability and therefore the position of both parliament and the voter because it divides accountability and introduces redundancy in the system: if the government and lower house no longer call the shots, voters cannot settle the score with them at the next election. Anyone who feels that checks and balances are very important can, in his opinion, opt for a system with divided accountability. However, someone who finds it more important that the popular will prevails should opt for unicameralism, or for asymmetric chambers which do not dilute accountability to the lower house. Therefore, in his opinion it is logical that those - like himself – who wish to keep an appointed House of Lords, should advocate as the second-best choice the abolition of the upper house, rather than a directly elected upper house.\textsuperscript{47}

\textsuperscript{46} Ackerman 2000, p. 670-685.  
\textsuperscript{47} Norton 2007.
5. Effects

Studies of the effects of bicameral systems come mainly from the angle of political economy. Their authors generally use game-theoretic models of decision-making and voting behaviour to develop hypotheses that are then tested on case studies or large data sets. In the earliest studies, the emphasis is on the US Congress and comparable very strong senates in presidential systems of government, but later studies also focus on parliamentary bicameral systems.

In a recent summary of the game-theoretic literature, one of the most important findings was that in symmetrical and incongruent bicameral systems (strong bicameralism in the terms used by Lijphart) it is more difficult to change the status quo: decisions about legislation are more difficult to reach and once they are taken, they are more difficult to change again. According to Tsebelis & Money, this applies to all bicameral systems: the existence of an additional chamber changes the outcomes of legislative procedures, even if the extra chamber does not have an absolute right of veto (as in France or the United Kingdom) and even if the political composition of the chambers differs hardly or not at all (as in Italy).

Delay (or the threat of delay) is the most important means of power at the disposal of a senate and its negotiating position is stronger depending on whether the government or the lower house are in more of a hurry and less capable of short-circuiting the delay. The result is that in any type of bicameral system it is more difficult to change the status quo than in a unicameral system. Governments then have more difficulty in implementing their policy programmes. The stability of policy and legislation in a bicameral system is therefore greater, but the stability of government is weaker. Both effects are stronger as the composition of the two chambers differs more. Whether the greater policy stability is regarded as an advantage or disadvantage depends of course, according to Tsebelis & Money, on the assessment of the status quo. There are also authors who do not refer in this regard to ‘policy stability’ but to ‘innovative weakness’ or ‘inertia’.

Some early game-theoretic authors rated a bicameral system positively, because in their opinion, there is a smaller risk that on complex issues, a minority may ‘hijack’ the decision-making, and therefore, there are greater guarantees that...

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48 Uhr 2008.
50 For examples, see Tsebelis & Money 1997, chapters 6, 7 and 8, Vatter 2005, Uhr, Bach & Massicotte 2011, Congleton 2003.
51 Concerning the latter, also see Druckman & Thies 2002, which will be mentioned again later.
parliamentary decisions will be supported by a majority in society. Tsebelis & Money do not find this hypothesis convincing, because the risk referred to by these authors (from their game-theoretic models) hardly exists in the real world, if at all, or only under very exceptional circumstances. Even then, the risks are even smaller if qualified majorities are used in a unicameral system. Ackerman concurs and describes attempts by game theorists to justify a senate as showing ‘a certain amount of intellectual desperation, offering strained rationalisations for an institution that may have lost its raison d’être’. In 2006, Cutrone & McCarty analysed in a summary article the whole game-theoretic literature about bicameral systems and come to comparable conclusions. In their opinion, there are no arguments that can be drawn from game theory that would give a reason to choose a bicameral rather than a unicameral system.

Moreover, coalition governments (and therefore multi-party systems) have comparable effects on decision-making to those of bicameral systems because the power is divided across multiple agents who have to reach agreement among themselves. Brennan & Hamlin point out that besides the longer time taken for decision-making, and the risk of gridlocks, there are other costs associated with these forms of power-sharing: the political responsibilities are less clear and governments are found to be less inspiring of trust if decisions are perceived by voters to be the result of tedious negotiations between parties or as the outcome of strategic behaviour by rival centres of power.

There have been a few studies into the effect of bicameral systems on the level of government spending and budget deficits, but the results of this are not clear-cut. For the United States, it appeared to be the case that budget deficits were higher if House and Senate were dominated by different parties. In contrast, in a study of parliamentary systems, Heller concluded that bicameral divergence (a divided parliament) leads to lower budget deficits, although deficits in general are higher if two chambers have to vote on the budget rather than as in a unicameral system. He explains this by the high level of party discipline in parliamentary systems, which means that electoral considerations can turn out differently than in the American system, where individual members of Congress are out ‘to bring home the bacon’ for their constituencies.

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55 Ackerman 2000, p. 681.
56 Cutrone & McCarty 2006.
58 Brennan & Hamlin, p. 252.
60 Heller 2001.
61 Heller 1997.
When considering Germany, Schwarz stated that the (federal) budget deficit was higher in periods when the government in office did not have a majority in the Bundesrat. He explains this by the fact that the opposition in the Bundesrat can block government proposals with impunity and can keep the budget deficit high. This is because voters tend to punish the parties in the federal government for a faltering economy and not the parties of the opposition or (in the German case) the Länder.

In the literature, it is sometimes assumed that the number of laws passed in a bicameral system is lower than in a unicameral. However, in a study of this among four US states that have switched at some time from one to the other system, this could not be demonstrated. In that regard, it should be pointed out that the senates concerned could not only reject legislative proposals, but also had a right of initiative.

The influence of bicameral systems on the stability of a government is examined by Druckman & Thies using a sample of 202 governments in ten countries (including the Netherlands). In their sample, they observed that governments that had a majority in both houses lasted - all other things being equal - longer than governments that only had a majority in the lower house. They found no indications that it mattered whether both chambers did or did not have the same powers (in the sample, that was the case of almost half of the countries studied). In a later study, Druckman, Martin & Thies assert that in the formation of a government, parties often take account of the membership of the senate. In this study too, they found no indications that the powers of the senate made a difference to the outcome. Volden & Carruba observed that the mere fact that a potential government coalition has no majority in the senate still does not explain the existence of oversized coalitions, but if the largest party in the lower house is different from the largest party in the senate, coalitions are significantly often formed more broadly than would have been necessary based solely on the composition of the lower house.

The ending of the complete equality of both chambers in a system like the Italian one, according to Diermeier, Eraslan & Merlo, would not so much have the consequence that governments are more stable and therefore can last longer on average, but mainly that the governing coalitions can be more narrowly-based.
They base this conclusion on data about Belgium, Sweden and Denmark. The explanation for this lies, according to them, in the fact that those forming the cabinet are not only striving for the longest possible term of office of a cabinet, but also to achieve the greater possible share for their party in the policy formation and in the number of cabinet seats. Therefore, the result is always a trade-off between both factors.
6. Developments and discussions in other countries

According to Russell, senates are controversial by nature. In some countries there is criticism about their undemocratic composition (United Kingdom, Canada) or about an unequal representation of the population (France, Australia, Canada), but where a senate is composed in the same way as the lower house (as in Italy), doubt is cast on the usefulness of the senate. Strong senates (as in Japan, Germany, Australia) are sometimes regarded as annoying meddlers, but weak ones (as in Ireland) are criticised precisely for their weakness. With the exception of Germany, the design, powers or continued existence of the senate regularly comes up for discussion in all countries with a bicameral system. Proposals for reform take every possible shape and form, but actual reforms rarely happen. According to Russell & Sandford, the most important cause of that is a lack of clarity about the purpose of a senate. In addition, changes often require amendment of the constitution and discussions about reform of the senate are often bound up with discussions about other constitutional questions, such as the position of provinces or autonomous regions or the design of the electoral system. Furthermore, according to these authors, the interests of members of parliament (both houses), political parties and government usually do not run parallel, and sometimes also change over time. Finally, according to them, public opinion is mostly interested in other matters, or regards government proposals for reform with suspicion.

The information given below covers developments and discussions in fourteen of the sixteen parliamentary OECD countries with a bicameral system. Finally, some information is added about the Scandinavian countries which switched to a unicameral system.

Japan

Before the Second World War, Imperial Japan had a bicameral system with a classic chamber of the nobility besides the lower house. During the negotiations with the American headquarters of General MacArthur as from the end of 1945, the choice between a unicameral and a bicameral system was one of the most important points of contention. The Americans advocated a unicameral system, because Japan - unlike the United States - was not a federal state. The Japanese government was suspicious of party democracy according to the Western model advocated by the Americans, and pressed for a bicameral system based on the argument that this would ensure more thorough debate on legislative proposals.

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68 Russell 2013, p. 128.
70 Russell & Sandford 2002.
71 Slovenia and the Netherlands are missing: in the available literature, insufficient information could be found about Slovenia; for the Netherlands, information can be found in the appendix.
72 Taken from Rosenzweig 2010, Thies & Janai 2013, Tsebelis & Money 1997, p. 185-189.
The result was a bicameral system in which both chambers are directly elected and in which the lower house can outvote the senate, but to do so would in most cases need a two-thirds majority. In practice, that is something approaching an absolute right of veto (anyhow, for amendments to the constitution, the senate has an absolute right of veto). In case of disputes between the chambers, a joint committee can be set up to work out a compromise proposal, but in the committee, a two-thirds majority is also required to take decisions. The result is that, on paper, Japan has one of the strongest senates. The difference from Australia is that the Japanese senate cannot block budget legislation and from Italy that the Japanese senate cannot dismiss the government. Unlike in Italy, the two chambers in Japan are not elected at the same time (moreover, the senate is re-elected in parts) and the voting system is also slightly different, which means that the composition of the senate does not automatically reflect that of the lower house.

During the first decades under the new constitution this posed no problem for governments in office. Due to the dominance of the Liberal Democrats (LDP) in both houses, the close cooperation between government and government parties, and the high level of party discipline, the Japanese senate was hardly able to carve out a specific position in the decision-making process. Only at the end of the twentieth century did that start to change as the power base of the governing LDP crumbled. From 1989 onward, no single party had a majority in both chambers at the same time, and governing coalitions only had it half the time, and then often because additional parties were involved to form the government with a view to the composition of the senate. Especially in the years between 2007 and 2009, when the LDP coalition had a majority in the lower house but the largest opposition party had a majority in the senate, there were regular clashes between the two chambers. It is true that the government had a two-thirds majority in the lower house, but using it would have been seen by most Japanese voters (76%) as an admission of weakness. Nevertheless, it was used seventeen times in those two years, and the threat of it probably had its effect much more often. In general, more than twice as many bills fail in a divided parliament, while forty per cent fewer proposals are submitted in the first place. Governments arriving after elections to the lower house frequently have great difficulty converting their manifesto into legislation.

From 1945, the raison d'être of the Japanese senate has been subject to much discussion. At first because it appeared that its existence offered no added value, and mainly involved a duplication of procedures. Reform proposals were then aimed mainly at a different manner of composition in order to ensure a more independent attitude, or sometimes also at a stricter division of powers between chambers. Since the 1990s, voices have also been raised about curbing the powers of the senate.
An amendment to the Constitution is necessary to change the position of the senate, and that would require a two-thirds majority in both houses. The prospects of that do not appear great.

_France_73

The current French senate is based on the Constitution of the Fifth Republic, established in 1958 under De Gaulle. Apart from the members who represent the French overseas territories and the French abroad, the members are elected per _département_ by special electoral colleges consisting of members of the lower house and regional, provincial and local representatives. In total, the electoral colleges have approximately 150,000 ‘grands électeurs’, including over 140,000 representatives of municipal councils. The breakdown of the number of senators across the _départements_ and the electoral system used - both for the election of the members of the electoral college and for the election of the senators themselves - cause a strong over-representation of rural areas and of conservative political groups. Until 2011, the senate had never had a left-wing majority. The number of dual mandates is high (as it is in the French lower house): in 1993, over 90 per cent of the senators also had a position in the local or regional administration as an administrator or elected representative.

The senate contributes to the legislation by amending bills, sometimes radically. According to Mastias, during the 1970s, the senate made about 5,000 amendments per year and - depending on the political situation - 50 to 85% of them were accepted by the lower house. Usually both chambers agree, but if that is not the case, the government and the lower house have the final say. The government may - already, after one negotiating round in both chambers - set up a joint mediation committee of both houses (Commission Mixte Paritaire). The proposal by the committee can then only be amended by the government and, if the senate disagrees, the government may declare that the decision of the lower house is decisive. Only for amendments to the constitution and for legislation affecting the senate itself does the senate have an absolute right of veto.

The position of the senate and its manner of action has changed significantly over the years, depending on the political hue of the government and on the question of whether the directly elected president and the majority of the lower house are of the same political hue. In the initial years of the existence of the senate, mainly from 1962 when President De Gaulle was elected directly and in addition had a majority in the lower house, the senate was hardly taken seriously and risked becoming marginalised.

In a constitutional proposal by De Gaulle, the senate would partly be converted into a chamber on a corporatist basis, but this proposal, which contained several subjects, was rejected in 1969 by a referendum. In periods when the government has a majority in the senate, but not in the lower house (minority government) or the government is of a different political hue than the President (cohabitation), the senate always proved to be a bulwark to prop up the government and it was also used as such by the government. The helpfulness shown, according to Mastias, was often to the detriment of the quality of the senate work because the traditional composure and the pace of work came under pressure. Left-wing governments, on the other hand, have always had a lot of problems in the (conservative) senate, even when they were of the same political hue as the president, and had an ample majority in the lower house, as was the case post-1981 under President Mitterand. Then, the senate made systematic use of points of order and other delaying tactics and appeals to the Constitutional Court (73 in a period of five years). The number of laws that were adopted with only the support of the lower house rose during that period to 26% (compared with 3% in the period 1959-1980).

Criticism of the senate and of the senators became more intense under the presidency of Mitterand and it also no longer came mainly from the left-wing parties. Both the recruitment of senators and the senate's working methods were subject to discussion. The senate was described as a ‘bastion du conservatisme’, ‘la forteresse de l'opposition’ and ‘une anomalie historique’. It was accused of a lack of actual reflection about legislative proposals. Internally, the senate had also reached a crisis, but none of the proposals for reform was successful. A bill to amend the composition of the senate, with the aim of making the representation more proportional to the population size of the municipalities, ran aground in 1991 after the senate had refused to put it on the agenda. In 1999, a virtually identical bill was brought forward by the Jospin socialist government, and after a lot of discussion - and amendment by the senate - ultimately passed into law, albeit only in 2003. This reduced the term of the senate from nine to six years. In 2007, a broadly based constitutional commission (led by Balladur) proposed radical measures to correct the biased representation in the senate, but in the constitutional review of 2008, this was dropped and an initiative proposal submitted in 2008 by the leader of the socialist group in the lower house (Ayrault), which did want to implement it, even failed in the lower house.

After the crisis of the 'eighties and 'nineties, the senate once again devoted more of its energies to improving the quality of legislation and protection of basic rights. The senate reformed its own procedures and became more communicative to the outside world. The bicameral system as such, according to Mastias, is no longer a matter of discussion in France, but the conception the senate has of its role is, in his view, still uncertain, because it alternated between either moderating and improving government plans or - under left-wing
Developments and discussions in other countries

governments - swimming against the political tide. Its barely changeable political composition makes it impossible for the senate to produce changing majorities, and therefore adapt to altered circumstances. According to Mastias, that is not the picture in public opinion. There, the senate is a symbol of calm and vigilance, although it does not always seem to live up to that ideal. Russell mentions a study showing that 46% of French voters believe the senate does a good job, compared with 38% who feel the same about the lower house, but she does not rule out that many interviewees confused the senate with the Constitutional Court.74

United Kingdom75
House of Lords reform has been on the political agenda in the UK for a very long time. The powers of the Lords were curtailed considerably in 1911, after the Conservative-dominated Lords had voted down the budget of the Liberal government in 1909, but that government remained in control twice following new elections. From then on, the Lords would no longer be able to reject budgets, and for other laws, their right of veto was replaced by a power of delay of approximately 2 years. After that, the lower house’s decision could prevail. The considerations of the Parliament Act 1911 announced further reforms: the replacement of the House of Lords by a ‘Second Chamber constituted on a popular instead of hereditary basis’. The bill was adopted with support from the Lords (by 131 to 114 votes) under the threat of appointment of a large number of extra, liberal Lords. Following a proposal by the Labour government, in 1949, the possibility for the Lords to delay legislation was reduced to one year. The Parliament Act 1949 was adopted using the procedure under the Parliament Act 1911 (i.e. after a two-year delay). In practice, the procedure under the Parliament Acts is hardly used,76 though the possibility of using it may have its influence on the behaviour of the Lords. Another important matter was the way in which the Salisbury convention has been applied since that time: the Lords do not block any legislation announced in the election manifesto of the governing party.77

A subsequent major change was the introduction of life peerages in 1958. Intended (by a Conservative government) to keep the number of members of the Lords within limits, it had precisely the opposite effect. A government proposal in 1968 that aimed, among other things, to further curb the powers of the Lords was withdrawn again in 1969, because the debate was taking too long and the Wilson government had other priorities. Various initiative proposals submitted afterwards did not pass into law.

75 Taken from Russell 2000, p. 9 onward, Russell 2013 and the website of the House of Lords.
76 According to the website of the British parliament, this has happened seven times since 1911, of which four were after 1949, and three were under the Blair Labour government (1999, 2000 and 2004).
77 Dymond & Deadman 2006.
In 1999, the Labour government proposed, as a first step on the road to further reforms, to remove all hereditary peers from the House of Lords. In the law that was ultimately adopted after extensive debate and much consultation, as a compromise and via a Lords’ amendment, 92 seats were reserved for hereditary peers.\(^78\) In combination with the appointment of a large number of new life peers by the Labour government, this brought about a more balanced political composition of the Lords and, as a consequence of that, a relatively strong position for the Liberal Democrats and the almost 200 independent peers or *crossbenchers*.

In the literature, the pre-1999 House of Lords was considered (including by Lijphart) as one of the weakest senates. According to some, the United Kingdom actually had a de facto unicameral system. According to Russell, that was clearly changing post-1999, although that was not the aim of the reforms.\(^79\) Due to their perceived greater legitimacy, the Lords grew more assertive, which is expressed in a higher number of defeats for government bills, both from Labour and Conservative governments. More than in the past, proposals by the Lords were adopted by the government and the lower house. She considers that the position of backbenchers in the governing parties in the lower house also was strengthened by this.

The changes since 1999 have also provoked discussion about the validity of the Salisbury convention. The Liberal Democrats consider themselves not bound by it (they see it as an arrangement between Labour and the Conservatives), but a joint committee of both houses in 2006 concluded that the convention still applies, but that a rebalancing of the relationship between the two chambers, and therefore of the associated conventions, would become necessary if it were decided to elect all or some of the members of the upper house.\(^80\) Nothing has come of the further reforms announced so far, although they have been announced several times in Queen’s speeches, and various government memoranda and party reports have been devoted to them, and although a state committee and a joint parliamentary committee have worked on them.\(^81\)

The Conservative/Liberal coalition government at the time of writing announced in its programme that it would make proposals for a mainly elected upper house based on proportional representation. In June 2012, a bill was submitted in the lower house that foresaw a House of Lords with 450 members, 360 of them elected and the rest appointed. The term of office of all members, except for the bishops, would be 15 years without the possibility of re-election or re-appointment. Elections would be held every five years, always for 120 of the 360

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78 On this point, see Cockerell 2001.

79 Russell 2013, p. 294-299.

80 Joint Committee on Conventions 2006, p. 23 e.v.

seats, and at the same time as elections to the lower house. No change would be
made to the powers of the upper house (the Parliament Act 1949 would remain
in force). The bill then came up against resistance from conservative
backbenchers in the lower house. Some feared that the primacy of the lower
house would be compromised if the members of the Lords were directly elected.
Others thought that the government should have other priorities at a time of
economic crisis. In other parties and in the House of Lords, there was also
criticism. The bill was withdrawn in September 2012.

Public opinion in the United Kingdom shows little interest in issues of
constitutional reform, including House of Lords reform, compared with
economic issues or crime. Interviewees do appear keen both on the
reinforcement of legitimacy via the introduction of elections and the
independence of many of the current, appointed members of the House of
Lords.

Italy
As a reaction to the Mussolini era, it was the express intention of the new Italian
Constitution of 1948 to spread power as widely as possible and incorporate a
large number of checks and balances into the political system. Many wanted -
besides the choice of proportional representation - a bicameral system in which
the senate was granted the same powers as the lower house. The Communist and
Socialist members of the constitutional committee, who would rather have seen a
unicameral system, agreed on condition that both chambers were directly
elected. In addition, the senate was intended to represent the regions. In theory,
three-quarters of the senators from every region were elected in single-member
electoral constituencies and the rest of the senate seats were filled based on
proportional representation. Because a 65% majority was required in order to be
directly elected in the single-member constituencies, something which was rarely
achieved by a candidate, in practice it boiled down to a completely proportional
distribution, as applied for the lower house. In the final analysis, the only
difference between the election of the two chambers was that the age for voting
and standing for election for the senate elections was much higher than for
elections to the lower house. The powers of each chamber were virtually identical
too.

As a result of the electoral system, a very large number of parties were
represented in both chambers, forming a government was a difficult process,
most governments fell quickly, and new elections had to be held regularly

82 House of Lords Reform Bill 2012-2013; the content and features of the bill can be found via
services.parliament.uk/bills/2012-13/houseoflordsreform.html.
83 Cruse 2012.
84 Taken from Lodici 1999, Russell 2000, p.57-59 and p. 231-232, Bartole 2006, Hornig 2010,
Zucchini 2008 and the IPU/Parline database.
(always for both chambers at the same time). The lack of decisiveness of governments was further exacerbated by the slowness of the legislative processes, something which was caused by the complete equality of both chambers of the parliament and by the lack of an effective conflict solution mechanism (proposals could be sent back and forth indefinitely). Attempts - since the early 'seventies - to revise the constitution have come to nothing. Critics of the bicameral system who advocated curbing the powers of the senate or abolishing it altogether, identified it with the dysfunctioning political system as a whole, but the actual cause, according to Lodici, was not due to the bicameral system, which did indeed need to be toned down somewhat, but in the extremely large number of political parties in Italy and the large number of bills on the order paper, which were often futile proposals.

Amid a series of political scandals, in 1993 the Italians voted by referendum for a mixed and ultimately less proportional electoral system, partly inspired by the situation in the United Kingdom. As a result of this referendum, the 65% rule was abolished for the senate elections in 1993 and the seats in individual constituencies were allocated to the candidate with most votes. A comparable electoral system would apply to the lower house. A splinter party clause was also introduced but this did not lead to chamber compositions looking like those in the United Kingdom. In 1999, in the two chambers, 44 political movements were still represented, 26 of them with only one seat. The cause of this was partly the political crisis fuelled by corruption scandals, whereby the old parties - in particular the Christian Democrats - were as good as swept away. The new electoral system mainly led to complex electoral agreements between political groups within rather loose coalitions and to a considerable centralisation of candidate selection. Because the senate had fewer members, the number of groups there was rather smaller than in the lower house. The results of the elections after 1993 also differed between the chambers for the first time: the first Berlusconi government (1994/1995) had a majority in the lower house but not in the senate while, for the two governments between 1999 and 2001, it was the other way round. Since 1993, the chambers have increasingly disagreed about bills (approximately 22% between 1996 and 2006), even in periods when the majorities in both houses did match. Zucchini sees the origin of this not just in the changes to the electoral system, but also and mainly in the reduced discipline within the parties in the chambers, compared with the pre-1993 period.

In 2005, the electoral system was changed again and replaced by a system of proportional representation with regional electoral lists. In addition, a bonus was awarded to the party or coalition which gained the most votes within a region: that party was certain of 55% of the regional seats. For the lower house, a comparable system applies, but on a national scale: the political party or coalition that wins the most votes is assured of having at least 340 of the 630 seats. So a small difference in election results between party coalitions can lead to a big
Developments and discussions in other countries

difference in the number of seats, especially in the lower house. In the senate, the
effects are less pronounced, because the bonus there is defined per region. The
call for a change in the electoral system in order to guarantee viable governments
has not died down since, but a referendum held in 2009 in which it was proposed
to only award the bonus to parties and no longer to coalitions was invalidated
due to a low turnout (78% of votes cast were in favour of the proposal, with
turnout of 23%).
In 2013, the new electoral system yielded results that did not produce a majority
in the senate for the party coalition that won the lower house elections. In
December of the same year, the Constitutional Court of Italy decided that the
current electoral system is unconstitutional, for the reason, inter alia, that there is
no lower limit for the bonus rule and a party coalition that only achieves a very
small majority receives the entire bonus.\footnote{Reuters, 4 December 2013, \textit{Italy's top court rules electoral law breaches constitution},
www.reuters.com/assets/print?aid=USBRE9B30YW20131204.}

The current Renzi government wants to reform the senate and has tied its
political destiny to that aim. On 31 March 2014, the Italian cabinet accepted a
proposal to amend the Constitution that would put an end to the equivalence of
the two chambers and cut the total number of MPs. According to the proposal,
the new Senato delle Autonomie would have a hundred members and consist of
the presidents of the autonomous regions and provinces, the mayors of the
regional and provincial capitals, two representatives per region or province (to be
elected from and by the regional and provincial parliaments), and two mayors to
be chosen by an electoral college in which all mayors from the region or province
have a seat. The new senate will no longer be able to withdraw its confidence in
the government and, for most legislation, only has the possibility of proposing
amendments to the lower house, which always takes the decisions. It only has a
right of veto for certain constitutional laws.\footnote{www.governo.it/governoinforma/dossier/ddl_revisione_constituzionale/}
On 2 August 2014, the Italian senate adopted the proposed changes.\footnote{Taken from Juberías 1999, Russell 2000. p. 65-68 and p.233-234, Sánchez Navarro 2006,
Cordes & Kleiner-Liebau 2010.}

\textit{Spain}\footnote{88}

After the end of the Franco era and the restoration of Spanish democracy, the
country opted for a bicameral system. From the outset, there was a lot of
discussion about the composition of the senate, in connection with discussions
about the status of autonomous regions in Spain. In the constitution of 1978, a
senate was ultimately chosen where four members from each of the Spanish
provinces would be directly elected and in which the yet to be formed
autonomous regions would each have their own delegation based on their
population. In practice, both chambers are elected at the same time and their political composition hardly diverges. However, the rural provinces - and therefore the conservative parties - are slightly over-represented in the senate. Due to the operation of the electoral system, the government often has a larger majority in the senate than in the lower house. The parliaments of the - now seventeen - autonomous regions delegate their senators based on proportional representation. In most regions, these senators are also chosen from the members of the regional parliament, and have to resign if they lose their regional seat.

The Spanish senate is involved in all legislation, but its position in the legal and regulatory process is a lot weaker than that of the lower house. Within two months, it can issue a veto on a government bill or amend it, but the lower house always has the final say. The lower house or the government can cut the period of two months to twenty days for urgent laws. Only for important constitutional changes is the express consent of two-thirds of the senate required - in two rounds - and here too, the lower house can overcome a possible stalemate with an exceptional majority. The government is subject to scrutiny by the senate, but the senate cannot dismiss the government and is also not involved in the formation of a government.

The senate amends about half the government bills it debates, but if the government has a majority in the senate, then this mainly concerns technical improvements or amendments that the government itself considered desirable after debate in the lower house. After the 2004 and 2008 elections, when the conservative opposition in the senate had a majority, the senate also used its powers in a more political sense.

Although Lijphart rates the Spanish senate - due to the over-representation of regional minorities - as one of the moderately strong senates, it is also classified in the literature as extremely weak, comparable with the Austrian senate. There is a lot of dissatisfaction with the composition and the workings of the senate and, since the 1990s, there has been a lot of discussion about it. Juberías writes about “a veritable Babel of propositions, programs, projects and plans” and “a cacophony of reform plans”. The proposals for change are very diverse and there does not seem to be any consensus about them in sight, partly due to the intimate connection with the discussions about autonomy of the regions. Where the main national parties do seem to agree is that the role of the senate in the formation of the government and oversight of the government must not be strengthened, but that it ought to be given a greater role in legislation affecting the autonomy of the regions and in multilateral negotiations between the central
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In the literature, all sorts of variants can be found, including adopting the German model. After two failed attempts by successive governments to come up with a reform proposal, in 2006 the Zapatero government sought advice from the Spanish Council of State. It came up with a moderate opinion that resembled fairly closely the existing situation, but which did provide for a reduction in the number of senators, a stronger emphasis on the representation of the autonomous regions, longer and more flexible deadlines for the senate, and stronger powers on matters affecting the autonomous regions. To date this has not led to concrete proposals.

Poland

The Polish senate came into existence in 1989 as a result of the round table conference between the ruling Communist party and the - at that time still illegal - Solidarity opposition movement. The Communists proposed that Solidarity could take part in the elections - controlled by the Communists - for the unicameral parliament, but Solidarity demanded free elections. A separate senate was chosen as a compromise. It would consist of 100 members for which the choice of candidates would be free - which was different from the elections for 299 of the 460 seats in the lower house. The senate would only get a suspensory veto and the lower house could frustrate it with a two-thirds majority. The Communists judged that this would jeopardize neither their de facto autocracy, nor the election (by a majority of two-thirds) of the Communist Party leader as president by a joint session of both chambers. But things actually turned out differently. Solidarity won all 161 lower house seats for which they could put up candidates plus 99 of the 100 senate seats. The unexpected result of the 1989 elections was an important factor in the ending of Communist rule. The introduction of the senate was also seen as a return to the democratic traditions of Poland from the time before the Communists took power, and abolished the former senate in 1946.

Since 1989, the party landscape in Poland has changed radically with every round of elections but this has always affected the lower house and the senate in the same way. Although the election method for the two chambers was different and there was soon more tinkering with the electoral system, the chambers which are elected at the same time always had similar majorities.

It is true that the senate played an important role in the transition to the post-Communist democratic regime, but since then its role, composition and powers have been controversial. Tensions between the two chambers already arose with the preparation of the new constitution. It did not prove possible to set up a joint

89 The nationalist parties in the Basque Country and Catalonia do not want reform of the senate, but only a reinforcement of their autonomy.


91 Taken from Jedruch 1992, Olson 1999, Suchocka 2006 and the website of the Polish senate.
constitutional committee and both houses came up with their own draft which did not lead to a consensus before the (early) elections of 1991. In 1992, a provisional constitution was drawn up which continued in force until 1997. According to this “little constitution”, the lower house could overrule decisions by the senate by an absolute majority. The senate had thirty days to give its opinion on bills (seven if it concerned urgent proposals). The president was now elected directly and proportional representation was introduced for the lower house.

In the first six years of its existence (1989-1995), the senate rejected fifteen bills, amended over 200 (approximately one-third of the total) and submitted 48 initiative proposals. In slightly over half the cases, the senate veto was overruled by the lower house. The vicissitudes of senate amendments and initiative proposals display approximately the same picture. During this period, and to the annoyance of the senate, the government and lower house made full use of the option to put the senate under pressure by declaring bills to be urgent.

When the new Constitution of 1997 was being prepared, a proposal to abolish the senate was rejected by only three votes in the constitutional committee consisting of 46 lower house members and ten senators. Ultimately, in 1997 not much changed in the rules about the senate. In 2011, the election method changed: the senators have since been elected in 100 single-member electoral constituencies. However this has not silenced the discussion. The Citizens’ Forum, which has been the largest party in the Polish government since 2007, would prefer, its manifesto says, to abolish the senate or at least cut half of it. At present, the Citizens’ Forum has an ample majority in the senate (63 of the 100 seats) and almost half the seats in the lower house.

The Czech Republic

The Czech Republic became an independent state on 1 January 1993 - after the peaceful separation of Czechoslovakia. At that moment, the new Constitution, which was drawn up in late 1992 under severe time pressure and without a lot of discussion, also came into effect. On many points, it drew on the pre-Communist Constitution of 1920, including the choice of a bicameral system on which the conservatives had insisted. It took until 1996 before the senate was actually elected. Until then, the lower house performed the tasks that were ascribed to the senate and it was in no hurry about drawing up the electoral law for the senate. Meanwhile, opposition grew against the bicameral system, even in conservative circles. According to a radio interview, the Prime Minister in the then government actually did not see it as useful. It was proposed twice in the lower house to opt for a unicameral system, but both attempts failed. President Havel

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93 IPU/Parline database.
94 Taken from Wagnerova 2006, Walter 2010 and the website of the Czech senate.
was one of the main proponents of a senate. What he had in mind was a sort of ‘council of the wise’ which, acting in the general interest, would be able to offer a balance to the lower house, dominated by topical events and party political wrangling (the minimum age to stand for election to the Czech senate is therefore 40).

The Czech senate consists of 81 members who are directly elected in single-member electoral constituencies (in two rounds if necessary). The term of office of the members is six years and, every two years, one-third of the members are replaced. The senate cannot be dissolved. It only has an absolute right of veto for amendments to the Constitution and the electoral law, and for the ratification of major treaties. For the rest, the senate can approve, reject or amend government bills within thirty days. After rejection or amendment by the senate, the lower house votes on the bill again. A bill amended by the senate can be adopted by a simple majority in the lower house. It can also accept the original text again, but in that case an absolute majority of votes is required. The latter also applies to a bill rejected by the senate.

In the first eight years of its existence (1996-2004), out of a total of almost 1150 bills, the senate rejected 44 and amended 207. Of the 207 amended proposals, 132 were adopted by the lower house. In 61 cases, the lower house text was adopted and fourteen bills were finally not adopted. After the Czech Republic joined the EU, the senate held up the ratification of the Lisbon Treaty - for which its consent was mandatory - for a long time.

The senate is not popular with the people. It is widely considered superfluous, something which is evidenced by the very low turnout in senate elections. The first time that the senate was elected, the turnout in the first round was only about 35%, and in the second round barely 30%; at the next elections (1998), in the second round, almost 80% of voters stayed at home. Since then, the picture has not changed. Social Democrat voters in particular stay at home, which led to their party not winning a single senate seat in 2004. The Social Democrats are, understandably, in favour of abolishing the senate. Others advocate a reform into a parliament of the regions or indirect election by local authorities. However, an amendment to the constitution requires the approval of three-fifths of the senators, so that is not very likely.

Ireland95

The current Irish senate (Seanad Éireann) was created under the 1937 Constitution. Inspired by the encyclical Quadragesimo Anno by Pope Pius XI (1931), the country opted for a corporatist design, which also ensured that the government could always rely on a majority in the senate. The senate consists of

95 Taken from Oireachtas Library & Research Service 2012 and Russell 2000, p. 68-73 and 234-236.
sixty members, 43 of them elected indirectly by panels to represent certain vocational categories (culture and education, agriculture and fisheries, employees, industry and commerce, the public and social sector). Six members are directly elected by graduates of the two main universities (three each). The other eleven are appointed by the Prime Minister, usually from the government parties. Elections take place shortly after the elections to the lower house. The way in which the indirect elections are held is rather complex. Organisations of the various vocational groups only play a role in choosing candidates for a proportion of the seats. Candidates can also be nominated by members of the lower house and the senate. The election itself occurs via an electoral college consisting of the members of the new lower house, the members of the outgoing senate and all Irish local councillors (in 1997, there were a total of 992). There are almost no candidates without a link to a political party and the ultimate composition of the senate is mostly a faithful reflection of the party relationships in the lower house.

The Irish government is not accountable to the senate. The role of the senate is essentially limited to legislation. It can reject or amend bills adopted by the lower house, but the lower house has the final say. Ultimately, the senate can hold up bills for 90 days at most (21 days if it concerns a money bill). Since 1937, the senate has twice rejected a law - in 1959 and 1963 - and in both cases, the lower house nevertheless adopted them.

Since 1937, there has been discussion in Ireland about reform of the senate. Ten official reports have been published, many motions adopted, and a proposal submitted to get more universities involved in the election of university members, but this has not led to any changes. None of the reports recommended abolition of the senate. Extension of its legislative powers also seems not to be under consideration, at least not in the last three reports (1997, 2002 and 2004). However, all the reports presented proposed that the majority of the senate should be directly elected, while maintaining the university seats and the senators appointed by the Prime Minister.

From 2009, the discussion was not about reform, but about abolition. In the 2011 elections, all major political parties, with the exception of the Greens, advocated the abolition of the senate as part of broader reforms aimed at reducing the size and cost of the political system. However, in October 2013, a proposal to abolish the senate was rejected by the Irish electorate in a referendum: 51.8 per cent were against and 48.2 per cent for (turnout was nearly 40 per cent).96

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96 Irish Times, Seanad to be retained after Government loses referendum, 5 October 2013.
Developments and discussions in other countries

Germany

The design of the German Bundesrat has historic roots in the system of government of the German Empire and the Weimar Republic. With the unification of Germany in 1871, besides the democratically elected Reichstag, a consultative body of the regions in which the German principalities had joint absolute right of veto over all legislation was established. This Bundesrat was in fact a continuation of comparable councils that already existed at the time of the Holy Roman Empire and the German Confederation (1815-1866) and North German Confederation (1866-1871), which did not have an elected parliament. The purpose of keeping them in 1871 was to provide a conservative counterweight to the democratic developments and give the German princes a role in the organisation of the new confederation. When the Weimar Republic was created in 1919, popular sovereignty was the starting point and the federal character of the German state was mitigated. The Reichsrat created - based on the example of the Bundesrat – was, after much debate, still a representation of the governments of the Länder, but now it had only a suspensory veto.

In the design of the new Federal Republic after the fall of the Third Reich, the choice of a bicameral system as such was not disputed, but the form that it took was. The Social Democrats and part of the Christian Democrats wanted a senate which would be indirectly elected by the parliaments of the Länder, in which the members should have a free mandate and which was subordinate to the directly elected Bundestag.

The Christian Democrats of the southern Länder were in favour of a Bundesrat which should consist of representatives of the governments of the Länder and which would need to have absolute right of veto again for all legislation. The compromise was finally a Bundesrat in the latter sense, but with severely limited powers.

Germany thus created its very own variant of the bicameral system in which the Länder as such contribute through the Bundesrat to both the legislation and government of the Federal Republic.

The members of the Bundesrat are not elected as such and they do not have a free mandate: they take part in the deliberations on behalf of the state governments in which they participate and which have delegated them (the Bundesrat is therefore more similar to the European Council of Ministers than to the senates of other countries). Depending on the population size, each state has at least three and up to six votes in the Bundesrat. The votes of each Land must be cast ‘einheitlich’ (on pain of nullity) and for decision-making an absolute majority is required. In Bundesrat committees members are usually represented by officials from their Land.

The role of the Bundesrat in legislation varies. For so-called ‘objection laws’ (Einspruchsgesetze) it only has a suspensory veto whereas for ‘consent laws’ (Zustimmungsgesetze) it has an absolute veto. Which laws are consent laws is laid down in the Constitution. These are laws on subjects which particularly affect the interests of the Länder. In case of disagreement between the two chambers, a proposal can be made to the permanent mediation committee consisting of an equal number of members from both chambers and which meets in secret. This committee may be convened by the Federal Government, the Bundestag, and the Bundesrat (only once each on the same proposal). In periods when the opposition is in the majority in the Bundesrat, this happens to almost twenty per cent of the bills (between 80 and 90 percent of these mediation attempts are successful). With government proposals, the Bundesrat additionally has an early opportunity to exert influence since it can make initial comments at the beginning of the procedure, after which a proposal is often adjusted in consultation between the Federal Government and the governments of the Länder. The Bundesrat also participates in administrative measures: many implementing regulations issued by the Federal Government, require its approval.

The debate in Germany about the role and position of the Bundesrat cannot be separated from the wider debate on the German version of federalism in which the division of responsibilities between federation and Länder is organized not by subjects but by functions: legislation is mainly a federal matter, but administration and implementation of laws is the responsibility of the states. The high level of cooperation and coordination that is required for this calls for a lot of consultation, negotiation and compromise.

This Politikverflechtung critics say, leads to inefficiencies, unnecessary blockages, and a lack of adaptability. The relative predominance since German reunification of fiscally weak states has exacerbated this. In German constitutional literature, the Bundesrat structure is criticised both from a democratic viewpoint and from the viewpoint of separation of powers (“Executiv-föderalismus”). It is also pointed out that political accountability lacks transparency and that democratic control by the regional parliaments is hardly significant. This criticism has not led to proposals for a different composition of the Bundesrat. However in this context, the extent of the right of veto of the Bundesrat for consent laws is a matter of discussion. The expectation (in 1948) that this veto would apply only to a small proportion of the legislation has not come true because the Federation has increasingly taken on powers and because the Constitutional Court has proven to interpret the relevant constitutional provisions very broadly. At one point the consent requirement applied to almost sixty per cent of the federal

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99 See Katz 2007, p. 196-197 and the literature cited there.
legislation. As a result (and intention) of the so-called Föderalismusreform, the proportion of laws for which an absolute right of veto applies, has been restricted to less than forty per cent since 2006.\textsuperscript{100} This has largely been done by allowing the Länder the right to deviate from certain federal laws in exchange for giving up the right of consent. Negotiations on these reforms were difficult and the debate does not seem finished.

\textit{Canada}\textsuperscript{101}

The Canadian senate has 105 members: 24 each for Ontario, Quebec, the four Western provinces combined and the Atlantic provinces combined, and the rest for the remaining territories. The members are formally appointed by the Governor-General, but in fact by the Prime Minister, who normally nominates only members of his or her own party. The composition of the senate is generally considered unbalanced, both with regard to the population sizes of the provinces and the representation of the political parties. Except for budgets and tax laws, the senate formally has equal powers with the lower house. However, because of its lack of legitimacy, it has long been customary - and seen as correct - that it rarely blocks bills passed by the lower house regardless of the political composition of the government. The result of the above was that the senate was considered by many observers and public opinion as a whole as totally superfluous and largely as a pension scheme for politicians of the ruling party. In the literature, it is even referred to as “one of the most discredited legislative bodies in the democratic world”.\textsuperscript{102}

In the period between 1984 and 1997 this changed.\textsuperscript{103} In 1984, a long period of liberal governments came to an end. A Conservative government came into power (the Mulroney government) with a very large majority in the lower house, while the senate was liberal dominated and a prominent Liberal became opposition leader in the senate. That situation led to regular clashes between the government plus the lower house on one side and the senate on the other, which rejected bills, delayed them or (sometimes repeatedly) sent them back to the lower house with substantial amendments. In 1990, Mulroney used a never previously used article of the Canadian Constitution by appointing eight additional Conservative senators. Along with the fifteen conservatives whom he had appointed to vacant jobs since 1984, that assured him of a narrow conservative majority in the senate. However, the independent attitude of the senators meant that the government still encountered considerable opposition in the senate. In 1993, the conservative party of Mulroney was virtually wiped out in the lower house election and the new Liberal government (Chrétien) had to

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\textsuperscript{100} Nolte & Meerpohl 2006 and Bundesrat website.
\textsuperscript{101} Taken from Franks 1999, Russell 2000, p. 52-54 and p. 229-231, Zinterer 2010, Uhr, Bach & Massicotte 2011 and the website of the Canadian government.
\textsuperscript{102} Uhr, Bach & Massicotte 2011, p. 82.
\textsuperscript{103} See concerning this period Uhr, Bach & Massicotte 2011.
\end{flushright}
contend with a lower house in which the Conservatives had only two seats, but a senate in which they still had a majority. In 1997, the Liberal majority in the senate was restored and until 2006 the incumbent government therefore once again had a majority in the senate. The Conservative Harper government that took office in 2006 also had to contend with a senate dominated by Liberals until 2010.

While some applauded the activism of the senate - as a counterweight to the lower house dominated by the government - it provoked discussion about the method of composition of the senate and the practicability of having two chambers that are both ideologically motivated. There seems to be broad consensus in Canada that reform is necessary, but two government proposals (1969 and 1978), a senate committee (1980), a joint parliamentary committee (1984), a State Commission (1985) and two major packages of constitutional reform that also included proposals about the senate (1987 and 1992) have not led to agreement. All proposals gave the provinces more influence over the selection of senators, but that is where the similarities end. Stumbling blocks are mainly the distribution of senators between the provinces and the autonomy aspirations of Quebec. In the view of Russell, the proposal by the joint parliamentary committee of 1984 was the most balanced. It would have led to a direct elected senate in which the number of seats of the provinces would have depended on their population, although not fully proportional (much like in Germany) and which would no longer have an absolute right of veto but only a suspensory veto.

The government welcomed the report by the committee, but it was never implemented. While Franks calls the Canadian senate an anachronism and an anomaly, he expects nothing from any new proposed constitutional reform. He suggests to impose a binding recommendation on the Prime Minister and to limit the powers of the senate, which can be done by parliament itself through statute. For that he considers no constitutional amendment necessary.

The current Conservative Harper government has set itself the goal of making an old wish of the western provinces come true and reforming the senate in order to create a Triple E Senate (Elected, Equal, Effective). Since 2006, several bills have been submitted to shorten the tenure of senators and to allow voters in the provinces a vote on the nomination of senators by the Prime Minister, but none of these have been passed. The latest proposal, which was submitted in 2011, is still pending while awaiting a ruling by the Supreme Court as to which procedure for constitutional amendments applies (Canada has several) and whether not only the shortening of the tenure of office, but also the consultation

104 Russell 2000, p. 231.
of voters requires an amendment of the Constitution. The federal government believes that consulting voters can be made possible without amendment to the Constitution and that for shortening of the term of office, debate on the proposal for an amendment to the Constitution in the federal lower house and the senate would suffice. The provinces argue that both issues require a constitutional amendment and that the “7/50 formula” applies, according to which the agreement of at least seven provinces is required, together accounting for at least fifty per cent of the population, while the senate would, in that case, only have a suspensory veto.106

Australia107
Just as in the US, the Australian bicameral system is a compromise to get the smaller states of the newly formed federation over the line and put an end to a protracted debate over the design of the federal parliament. Part of the compromise was that the senate was given a veto over virtually all legislation, but that the Governor General could dissolve both chambers when a bill was rejected twice by the senate, after which a joint session of both newly elected chambers could decide the matter. For budget and tax laws, the senate was not granted any right of amendment, but it could ask for amendment or reject the proposal. This too was part of the compromise between the large and the small states of the new federation.108

On balance, this gave Australia a bicameral parliamentary system that was a mix between the British model (the relationship government - lower house) and the US one (a directly elected senate with many powers).

Originally the Australian senate had six delegates for each of the six states. This was later expanded to twelve seats for each state and two seats for each of two federal territories; the senate now consists of 76 members. The term of office for state senators is six years and that of the senators from the other two territories three years. Every 3 years, half the senators stand for re-election. Initially, the senators were - like the members of the lower house - directly elected according to the British variant of the majority system. This meant that the government usually had an even larger majority in the senate than in the lower house. In 1948, the Labor party even took 33 of the (then) 36 senate seats. However, fearing a substantial loss of seats after an anticipated election defeat, the government changed the electoral system for the senate into a system of proportional representation. The result was that Labor indeed managed to retain many seats, but that this inadvertently introduced a system where the relations

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between the two chambers of parliament and between senate and government - and thus the character of the senate - were fundamentally changed. The electoral system which has applied since 1949 for the senate means that the senate has many more small political groupings, which means that neither the incumbent government nor the current opposition in the lower house usually has a majority in the senate. The result is that the smaller parties in the senate and the independent senators have a disproportionate influence.

The senate makes frequent use of its right of amendment (on approximately thirty percent of all bills), but blocks whole legislative proposals much less frequently. An exception was the period after 1972, which resulted in 1974-1975 in a constitutional crisis. When in 1972 - after 23 years of liberal-conservative governments - a Labor Government took office, the senate suddenly rejected about one in six bills and in 1974 it even refused to debate budget proposals unless the government first promised to call new lower-house elections. This led to the third double dissolution in Australian history. In the subsequent elections, Labor again achieved a majority in the lower house, but not in the senate. The new senate rejected the six legislative proposals which formally triggered the dissolution for the third time. They were finally adopted at a joint session of both chambers (the only time this procedure has been followed so far). In 1975, the senate again refused to deal with budget proposals until new elections were called.

Negotiations went nowhere and the Governor General then introduced a still controversial constitutional novelty by dismissing the government, which had a majority in the lower house, and – at the request of an interim Prime Minister appointed by him - dissolving both chambers again. The formal reason this time was the number of 21 bills which now met the condition that both houses had voted on them twice without this having led to a consensus. In the subsequent elections, the opposition won a majority in the lower house.

Since these events, the method of composition and the powers of the senate have been the subject of occasionally heated discussions in Australia. All kinds of proposals have been made to change something about the situation: adapting the powers of the senate (especially for budgets and other financial regulations), conflict resolution in a joint session without prior dissolution of the chambers, making it impossible for ministers to have a seat in the senate, holding the elections for both chambers at the same time, abolition of proportional representation, splinter party clauses, switching to the German Bundesrat model or even the U.S. presidential system. Only the proposal to hold the elections simultaneously has ever been put to a referendum - four times in fact - but was

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109 Ackerman uses these events as an illustration of his thesis that strong bicameralism is incompatible with a parliamentary system. See Chapter 4 and Ackerman 2000 p. 672-674. Concerning this period, see also Uhr, Bach & Massicotte 2011.
rejected. Political parties are generally a bigger supporter of changes when they are in government than when they are in opposition.

The senate has not been this militant again since 1975. In 1981 and 1993, budget laws were again amended at the insistence of the senate, but political parties have spoken out against the outright blocking of the budget adoption by the senate in order to prevent a repetition of the crisis of 1974-1975. Double dissolutions occurred again in 1983 and 1987.

**Belgium**

The changes in the position of the Belgian senate are closely linked to broader changes in the Belgian state system. Until 1993 the - mainly directly elected - Belgian senate had almost the same powers as the Belgian lower house. This was a situation that was similar to Italy and which in Belgium also led to considerable criticism and reform proposals. The situation changed in 1993 when Belgium became a federal state. Henceforth, the senate would have forty directly elected senators, 21 senators appointed by and from the community parliaments, and ten co-opted senators. As a body, the senate should be a political reflection of the outcome of the direct elections. The government was no longer accountable to the senate and the role of the senate was restricted by legislation: the senate would still have an absolute right of veto for some constitutional legislation, but apart from that, it would have a limited suspensory veto (comparable with Austria) or the senate would no longer be involved in legislation (for budget laws, for example). The senate was expected to be a real *chambre de réflexion* and a meeting place for the three regions and three linguistic communities.

In 2014, the 'sixth state reform' occurred. Part of this comprehensive package of measures is a revision of the rules of the senate. After the elections of May 2014, the Belgian senate no longer has any directly elected senators, but it consists of fifty senators appointed by and from the community parliaments, plus ten co-opted senators. The senate is now considered the 'assembly of the regions and communities': there they can enter into dialogue with each other and with the federal government and senators can represent the interests of the regions and communities through the senate. The cooperation of the senate is only required concerning changes to the constitution and the law on the organization and institutions of the federal state and the regions and communities. In that regard, the senate has no right of veto. Within thirty days, it can amend a government bill and send it back to the lower house which can adopt the amended bill or amend it again. If the lower house amends the bill itself, it goes back to the senate once. If the senate does not adopt it, but sends it back again amended (which must be done within fifteen days), the lower house then takes the final decision (Art. 77-79 Constitution).

110 Taken from Alen 1992, Scholsem 2006 and the website of the Belgian senate.
Austria

Composition and powers of the Austrian senate can be traced back to a compromise between Social Democrats and Christian Democrats from 1920. For the then new federal republic, the Christian Democrats would have preferred a senate modelled on the US, both in terms of composition (each state having an equal number of members) and in powers (equivalent to the lower house). The Social Democrats - whose powerbase was mainly in the capital Vienna - initially did not want a federal chamber at all.

The members of the Austrian senate are elected by the parliament of nine Länder on the basis of proportional representation. The number of senators per Land depends on the population. The Land with the largest population may elect twelve senators. The other Länder proportionally less with a minimum of three. Currently, the senate has 62 members. Senators themselves need not be a member of the parliament of their Land, but that is allowed. They are replaced when the parliament of their Land is re-elected and their term of office is therefore the same as that of the representatives of the Land (5 or 6 years; this varies per Land). Unlike the members of the German Bundesrat, Austrian Senators do have a free mandate: they do not take instructions from the parliaments of the Länder and cannot be revoked. The heads of government of the Länder are entitled to participate in the debates.

The Austrian senate belongs to the extremely weak senates. The senate does not have a right of veto or amendment. If it has reservations about a bill, it can make them known in writing within eight weeks to the lower house, which takes the final decision. The senate is not involved in budget laws and much of the financial legislation. The consent of the senate is only required for constitutional changes and amendments to organic laws that affect the powers of the senate itself or the powers of the Länder. The senate makes little use of its power to oppose bills and insofar as it does, in most cases this has no effect.

In the Austrian literature, the senate is generally regarded as a failed institution. Proposals for change diverge widely: abolition, switch to the German model, a corporatist composition, direct elections, expanding the powers of the senate, setting up a mediation committee, changes in the legislative procedure. The political parties have very divergent opinions. The Social Democrats and the Greens are in favour of direct elections, if (which they prefer) the senate cannot be eliminated completely, but against the German model (direct representation of the Länder governments in the senate with a tied mandate). The Christian Democrats and the ÖVP are in favour of a model like the German one and also want to increase the powers of the senate.

111 Taken from Grabenwarter 2006, Fallend 2010 and the website of the Austrian Parliament.
In the years 2003–2005, there was a wide-ranging discussion in Austria about constitutional renewal which involved social groupings and representatives of all political parties and all levels of government ("Austria Convention"). In this context, various proposals have been made to strengthen the position of the senate, to change the composition of the senate, or completely abolish it, but none of the proposals could count on sufficient support.

Switzerland

The Swiss lower house has 200 seats allocated through a system of proportional representation in national elections. The right to vote for the 46 seats in the Swiss senate is a cantonal matter. Each canton may elect two delegates, the six “half-cantons” one. Today all cantons elect their senators in direct elections. In all cantons except one, this is done through a majority system. In all cantons except five, this is done on the same day as the elections for the lower house. In three cantons senators are still elected by acclamation in a popular assembly that takes place in the open air.

The equal representation of the cantons in the senate means that the agricultural, Catholic and French-speaking cantons are proportionally, heavily over-represented. Among the political parties, the Christian Democrats have, until now, always been significantly over-represented in the senate and the Socialists significantly under-represented. To date, this has not led to significant party political clashes between the two chambers because the many contradictions which characterise Swiss society and the long tradition of consensus politics make broad compromises necessary. This is reinforced by the fact that legislation must be referendum-proof.

The Swiss senate has the same powers as the lower house. When there is a disagreement, a proposal goes back and forth between the two chambers up to three times. After that, if necessary, a joint committee is set up (Einigungskonferenz) to reach a compromise. If the proposal of the committee is not accepted by one of the chambers, it is deemed rejected. Usually, a solution is found in this way. Between 1992 and 2008, a joint committee was set up sixty times, and only three times was a result not achieved.

In the 1970s, a comprehensive review of the Swiss Constitution was organised. In this context, the role and composition of the senate have been discussed. According to some commentators and political parties, that was even the main objective of the whole operation. The criticisms related mainly to the fact that the senate was no longer a real representation of the cantons (due to the direct election and the free mandate), but on the other hand the different societal groups and political parties were very disproportionately represented. The

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112 Taken from Riescher 2010 and Malinverni 2006.
proposals for change varied rather a lot: abolition of the senate, increasing the number of seats, different allocation of seats, a closer relationship with the cantonal parliaments or governments (as in the German Bundesrat), a stricter division of labour between the two chambers, having differences of opinion settled by the lower house or by a joint session. There seemed to be no consensus about it and, at this point, nothing has altered in the new 1999 Constitution.

The Scandinavian countries

From 1814 to 2009, Norway had a unique variant of the bicameral system. The Norwegians chose only one assembly but, after taking office, the parliament divided itself into two parts which each had to debate legislative proposals. The sole aim was to ensure a second opinion in the legislative process. The ‘senate’ created in this way (a quarter of the total members) had a suspensory veto. Eventually (after two rounds) the entire parliament could take a final decision by a two-thirds majority. This was never really controversial, though the membership of the divided college was unpopular and the second reading usually a formality. In 2007, the parliament decided (with one vote against) to end this way of working and replace it with debating bills in the plenary parliament in two (sometimes three) rounds, between which there always had to be at least a few days. This has been done since 2009. Iceland followed the Norwegian example of 1934 when it switched (in 1991) to a fully unicameral system.

Sweden changed its parliament, still based on the representation of four estates, to a bicameral parliament in 1866. The new senate was a concession to the nobility and clergy who lost their own representation, and to conservative forces in general, which feared democratization. The senate was indirectly elected by decentralised assemblies which were themselves elected with a very limited voting right, based on income and property. Both chambers were equal and there was no effective mechanism for resolving conflicts that occurred regularly in the first decades of the existence of the bicameral system. The mutual conflicts grew less after the beginning of the twentieth century, when both chambers adopted universal suffrage (the senate remained elected indirectly and in phases by provincial and municipal councils) and the senators, moreover, operated less individualistically due to the rise of the party system. Because the composition of both chambers had grown very similar, the raison d’être of the senate was undermined, but this did not initially lead to much debate. Swedish political culture continued quite pragmatically with the bicameral system: the chambers usually debated proposals simultaneously, they set up joint committees that already sought compromises beforehand, and sometimes both chambers deliberated jointly.

114 Christened by Lijphart a one and a half-chamber system (Lijphart 2012, p. 199).
115 Website of the Norwegian parliament.
From 1936, Social Democrat-dominated governments often had a majority in both chambers of the parliament. Changing voter preferences only fed through to the senate gradually, due to its phased replacement, while the Social Democrats were relatively strongly represented in municipal councils and therefore in the senate. In response, the Liberals argued more and more insistently for the abolition of the senate. The conservatives wanted to introduce the possibility for a chamber minority to demand a corrective referendum on bills adopted. After an electoral reform in 1952, the Social Democrats lost their majority in the lower house, but they could remain in power with the support of a majority in the senate and of the farmers’ party in the lower house. Besides the liberals, other major opposition parties gradually advocated a unicameral system based on full proportionality. The Social Democrats only agreed to this in 1966 after they had lost the municipal elections and had no more prospect of maintaining their majority in the senate. The Social Democrats and the Communists, as well as the middle-class opposition parties, expected that their chances of participating in future governments would be increased due to the changes in the electoral system, or the abolition of the senate. Since 1970, the Swedish parliament has only one chamber, chosen on the basis of proportional representation, with a threshold of four per cent. There have been no serious proposals to return to a bicameral parliament since then.

Denmark underwent a similar development. In 1915, the senate was reformed and the political composition became more proportionate and so the regular stalemates that resulted from its earlier, highly conservative composition came to an end. The legislative powers of both chambers were very similar (only budgets could not be voted on by the senate). The rationale of a bicameral system was less and less clear, mainly because the senate offered a duplication of what had already been discussed and decided in the lower house. The Social Democrats were particularly in favour of abolishing the senate and when they came into government they proposed this (in 1934). However, the proposal was blocked by the senate.

In 1939, a proposal supported by all major parties was submitted to a referendum. It included an option for a model such as Norway had then (see above). In the referendum held on it (in Denmark this is mandatory for constitutional amendments), more than 90 per cent of voters supported the proposal but that was not enough, because this - due to the low turnout - was half a percentage point below the prescribed threshold. Finally, in 1953 it got through. The solution chosen with the support of almost all parties was a unicameral system. In return for the abolition of the senate, the possibility was created for one-third of the parliament to demand a referendum on a law adopted, with the exception of budgets and laws on taxes, salaries or pensions. The Danes adopted this proposal in a referendum: more than three-quarters of the voters were in favour, and the turnout this time was just enough to make the referendum valid.
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Bibliography


Appendix

The Dutch Senate

The Kingdom of the Netherlands began its existence in 1814 with a unicameral system. Then, after just one year, a new Constitution had to be drawn up due to the merger with Belgium which was a consequence of the decisions taken at the Congress of Vienna. The Belgian members of the commission preparing the new Constitution pressed successfully for a bicameral system based on the English model to ensure the continued influence of the nobility, something which they advocated, and thus to avoid misguided and hasty legislation. An upper house would also be able to maintain a balance between the monarch and the people because it would form a bulwark around the throne. Since then, the Netherlands has had a bicameral system and the system was even kept after Belgian independence in 1830.

Initially, the members of the senate were appointed for life by the King from those whose birth, fortune or merit put them among the notables of the country. The minimum age for appointment was 40. In 1848, this was lowered to 30 years of age. In that same year, the King's right of appointment was abolished and replaced by the indirect election of Senators by the members of the provincial councils (the lower house has been directly elected since 1848). Eligibility would henceforth only be determined by the level of income tax assessment and the term of office was set at nine years, with one-third of members being replaced every three years.

Between 1917-1922, universal suffrage was introduced in the Netherlands. Furthermore, since 1917, the lower house has been elected on the basis of proportional representation. The right to stand for election was made equivalent for both chambers and there were no longer any requirements concerning wealth (but the age limit of 30 years was maintained). In 1922, the system of proportional representation was also introduced for the senate. Indirect election by the provincial councils was maintained, but the term of office was reduced to six years, with half the members of the senate having to stand for re-election every three years.

Later, the number of members of the senate was increased once again to 75 and the minimum age for membership of both chambers was lowered (currently: 18 years). Since the 1983 amendment to the constitution, all members of the senate have to stand for re-election every four years, shortly after the elections for the provincial parliaments.

Membership of the senate is a part-time mandate. The senate usually meets (outside recesses) just one day per week. The financial remuneration of Senators is approximately one-quarter of that of members of the lower house.

The senate debates on all bills that have been passed by the lower house. That also applies to the annual Budget Acts. The senate can adopt or reject a bill but it does not have a right of amendment, or a right of initiative. So in the Netherlands, bills cannot be sent back and forth between both chambers, as is the case in many other countries. The decisions by the senate are definitive. They are also not subject to a legal deadline. Amendments to the Constitution must be voted on twice in both chambers (with elections to the lower house in between) and in the second vote, they must obtain a two-thirds majority in both chambers.

Although the Dutch senate has no right of amendment, it can exert considerable influence on the content of bills. Firstly because, on sensitive issues, the government and the lower house anticipate the possible decision by the senate. In addition, the senate - with the threat of using its right of veto - may elicit promises from the government about the implementation of the law or about the submission of a bill to change the law. It can even defer the debate on a bill while waiting for an amendment proposal to be submitted by the government.

Since the 1983 amendment to the Constitution, the senate has regularly made use of these possibilities, both for remedying legal-technical flaws and for reasons of political content. In the fifteen years preceding 1983, only six bills were amended on the initiative of the senate (three for legal-technical objections and three for political objections by the senate), while eleven bills were rejected by it and six were withdrawn by the government during the debate. In the fifteen years immediately following the 1983 amendment to the Constitution, these numbers were significantly higher: 49 bills were amended on the urging of the senate, 18 of them for political reasons, 20 bills were rejected, and 22 were withdrawn by the government. That picture has not changed fundamentally since.

The senate plays no role in the formation of cabinets. Coalition agreements are signed by party leaders of the governing parties in the lower house, but not by their political allies in the senate. However, the senate does have powers to oversee ministers and the cabinet (right to information, right of inquiry), but makes far more sparing use of them than the lower house. Furthermore, the senate does not have an oral question time, and a parliamentary inquiry has never taken place to date. The principle is that political primacy lies with the directly-elected lower house.
In Dutch constitutional law, it is a controversial question whether ministers and cabinets should resign if the senate expresses a vote of no confidence in them, as is the case in the lower house based on unwritten constitutional law. In practice, the question has never arisen in the senate. However, ministers have resigned on their own initiative after a defeat in the senate, and that (or even the resignation of the whole cabinet) has been threatened in the senate. Just like the lower house, the senate can be dissolved by the government. For the senate, early elections only have a limited effect because they are elected by the provincial councils which have a fixed term of four years.

Since 1945, the cabinets formed after elections to the lower house have always had a majority in both chambers of the parliament. That changed for the first time in 2010. The parties in the current government do not hold a majority in the senate either. The consequence of that was that the current cabinet had to make concessions on many points to three non-government parties in the lower house (the ‘constructive opposition’) in order to ensure that they had the support of the representatives of those parties in the senate. In March 2015, new elections were held for the provincial parliaments followed by new elections to the senate. In the new senate, twelve parties have seats; the groups of the two government parties and the three parties of the ‘constructive opposition’ no longer have a majority there.

In the Netherlands, as in other countries, the senate is not an institution that is unchallenged. From its inception in 1815, voices have been raised calling for the senate to be abolished. During the amendments to the Constitution of 1848, 1922, 1956 and 1983, this issue was also raised, but ultimately it was always decided to keep the senate so as to maintain a safeguard against hasty, ill-considered, decision-making. Since the 1983 amendment to the Constitution, the question whether some change ought to be made in the method of election or in the powers of the senate has been raised several times in parliament: once by a commission set up by the lower house (1993), twice by the cabinet (1997 and 2000), and once by a citizens’ convention (2006). Then, the question was mainly whether there could be a return to the pre-1983 election method (re-election of half the Senators every three years) and whether the senate should not be given the power to send bills back to the lower house if it had objections to them. The proposals on these points were not comprehensively debated in parliament and did not lead to any further decisions being taken.

Since the 1990s, the political landscape in the Netherlands has changed significantly. From a country where the electorate’s party allegiances seemed almost to be set in stone, the Netherlands has developed into a country with the
greatest electoral volatility in Europe.\textsuperscript{117} The large parties of the political centre have contracted considerably. This makes forming a government a more difficult exercise and it diminished the stability of governments, partly due to the increased likelihood of the political composition of both chambers of parliament diverging sharply.

All this has made the question about the role and position of the senate topical again, at least in the specialist literature.\textsuperscript{118} In 2013, the position of the senate was put back on the political agenda by the leader of the liberal government fraction in the lower house. He was annoyed with the decisions of the senate, which in his opinion undermined the political primacy of the lower house. Then in 2014, the senate itself came up with the plan to set up a commission to consider the long-term survival prospects of the Dutch political system. As of now (June 2015), nothing has yet come of it.

\textsuperscript{117} Jacques Thomassen, Carolien van Ham and Rudy Andeweg, \textit{De wankele democratie}, Amsterdam 2014, p. 185.

The legislatures of many democratic states consist of two chambers: a lower house and an upper house or senate. There is a large measure of diversity in the composition, tasks and powers of senates. In many countries, the position of the senate is in debate.

In this publication, you will find an overview of the design of bicameral systems in a large number of countries. It also describes the historical origin of the idea of a divided parliament, which functions it might discharge, and what effects a bicameral system has on policy, legislation and the forming of governments.

This publication is the result of a study conducted by Betty Drexhage for the Ministry of the Interior and Kingdom Relations of the Netherlands. It follows a request by the Dutch parliament to be informed about the options that exist to change or enhance the role of the senate. This English translation is being published on the occasion of the European Centre for Parliamentary Research and Documentation seminar in The Hague, in November 2015, entitled ‘The practicalities, advantages and disadvantages of unicameral and bicameral parliamentary systems (Area of Interest Parliamentary Practice and Procedure)’. The seminar was organised jointly by the Senate and the House of Representatives of the Dutch Parliament.