The political power of the French Senate: Micromechanisms of bicameral negotiations

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In comparison with the extensive powers of the French Senate under the Third Republic, the constitutional role of the upper legislative house in the French Fourth and Fifth Republics has been highly circumscribed; in cases of disagreement, the National Assembly is granted the ultimate power of decision. This article compares three explanations of senatorial influence under these institutional constraints. The first account accords influence to senatorial wisdom; the second refers to presidential attitudes toward the Senate; the third attributes senatorial influence to a series of institutional and political factors. Four case studies of senatorial influence are analysed. Although the legislative outcomes are consistent with both the second and third explanations, the details of the negotiation process provide additional support for the institutional/political explanation.

The contribution of a second legislative chamber to the political process has been debated throughout modern French history. Although efforts to create a unicameral parliament after World War II failed, the constitutional role of the Senate in the Fourth and Fifth Republics has been highly circumscribed. Whereas during the Third Republic, the Senate was accorded powers equal to those of the National Assembly, during the Fourth and Fifth Republics, the National Assembly is granted the ultimate power of decision in case of disagreement between the two legislative houses. Under these institutional constraints, legislative analysts sought to determine whether the Senate is 'henceforth useless', or whether it continues to contribute to legislative outcomes.

Three theories of the Senate’s role have been proposed. According to the

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first, the French Senate continues to influence legislation through the forcefulness of its wisdom and expertise. According to the second, the influence of the Senate depends on the role ascribed to it by the government and, in particular, by the President of the Republic. According to the third, the Senate’s power varies with a series of rules that the government applies to the legislative process (where to introduce a bill, how many times a bill is read in each house, who makes the final decision) and with political conditions affecting the impatience of each chamber to see a law materialise.

The goal of the article is to assess the influence of the Senate in the legislative process and to test these three theories through a series of case studies. Although the evidence from four cases cannot be considered conclusive, all of the cases indicate that the Senate influences legislation even when the National Assembly makes the final decision. We conclude that the third approach, which emphasizes institutional and political constraints, most fully accounts for both the process of bicameral negotiations and the legislative outcomes.

The article is organised as follows. Section I offers a brief overview of the institutional features of bicameralism in France. Section II outlines the different theories of senatorial influence and their predictions regarding the legislative process and outcomes. Section III presents four case studies. In order to facilitate comparisons across them, first we present the relevant variables according to each theory; then we describe the legislative process; finally we present the outcome (the law). Section IV summarises the evidence and suggests additional avenues of research.

I. THE LEGISLATIVE PROCESS

According to the Constitution of the French Fifth Republic, a bill becomes law if it is voted in identical terms by both chambers or if the National Assembly, upon the request of the government, makes the final decision. The process by which the two houses review and approve new legislation is complex. Article 34 proclaims ‘the law is voted by Parliament’ and, until the last stage, legislative responsibilities of the National Assembly and the Senate are almost identical. Bills can be proposed by either the executive (projects) or by the legislators themselves (propositions). Whereas members of Parliament introduce bills in their respective houses, government bills, with the exception of the annual budget, can be introduced in either house. Bills passed by the originating house are then forwarded to the second house for review, a process labelled a navette, or shuttle. If the second house amends the legislation, it returns to the first house for repassage; discussion
is limited to those articles of legislation remaining in dispute. If disagreement continues, the navette is prolonged indefinitely unless the government chooses to intervene.

The government can intervene in the navette only after the legislation has been reviewed twice by each house, or after a single reading if the government determines that the legislation is 'urgent'. By intervening, the government calls into play a conference committee (*commission mixte paritaire*), composed of equal numbers of senators and representatives. The conference committee deliberates on only those articles in dispute and attempts to draft legislation acceptable to both houses. If a compromise is reached, the new version is resubmitted to both houses for approval. Amendments, at this point, require the approval of the government. If a compromise cannot be negotiated, or if either house rejects the conference committee version, the government can ask the National Assembly to vote in last resort (Article 45.4 of the Constitution).

At any point the government can introduce amendments reinstating its preferred version of the text and can limit parliamentary amendments by calling for a vote under closed rule (*vote bloqué*). The government can even apply Article 49.3 according to which a bill is transformed into a question of confidence and is adopted by the National Assembly unless the government is voted down through a censure motion.

After a bill is voted by Parliament (whether by both houses or by the National Assembly alone) and before it is implemented, it can be challenged before the Constitutional Council. The challenge can originate from the President of the Republic, the Prime Minister, the President of one of the houses of Parliament, or, since 1974, from 60 members of Parliament. The provision for the 60-member Parliamentary challenge was introduced by the Giscard government and its impact was underestimated at the time (it was called a *reformette*, or 'little reform'). However, since it provides any major party the possibility of challenging legislation, the reform has been responsible for a substantial increase in power of the Constitutional Council since 1974 and a spectacular rise in prominence since 1981.

The formal process of bicameral interaction indicates that the French navette system is composed of several different games. One is a bargaining game between the two houses; a second is the intervention of the government which chooses the rules, and/or permits the National Assembly ultimately to decide; and a third involves the possible intervention of the Constitutional Council. We focus on the game between the two legislative houses and assess the relative power of the Senate and the National Assembly.

Although the National Assembly is constitutionally endowed with the ultimate power of legislation, the Senate was originally expected to support
the President of the Republic against a divided National Assembly. The 1958 Constitution called for Senators and the President to be elected indirectly from analogous electoral colleges. The constituent assembly anticipated an upper house which was ideologically compatible with the President and which, in alliance with the executive, could veto legislation initiated by the National Assembly. The framers of the new constitution hoped thereby to bypass some of the divisive and fractionated party politics characteristic of both the Third and Fourth Republics and to reinforce the power of the presidency. However, the reality of the Fifth Republic proved much different. The 1962 parliamentary elections provided a Gaullist (near) majority in the National Assembly and a referendum that same year transferred the presidential elections from the electoral college to the general public. An unanticipated majoritarian National Assembly evolved within the presidential system. Given the changed circumstances, French political scientists began to question both the role and the effectiveness of the Senate in the legislative process.

II. THREE THEORIES OF SENATORIAL INFLUENCE IN SEARCH OF DATA

There are three different explanations of senatorial influence: (1) the wisdom and expertise approach; (2) the Presidential attributes approach; and (3) the institutional/political approach. We present each one in turn and explain their expectations about the legislative process. In much of the literature, the first two dimensions are intertwined, making it difficult to test adequately their relative explanatory power. The purpose of this article is to pitch the three explanations against each other in order to examine their relative fit with the data.

Senatorial Expertise and Wisdom

According to this line of analysis, senatorial influence can be explained by its expertise, wisdom and representation of specific interests. This approach can be interpreted in either a broad or a narrow manner. Broadly speaking, the Senate differs structurally from the National Assembly. Its members, drawn from a pool of distinguished individuals, are more knowledgeable about all types of legislation and more insulated from the whims of public opinion. Their input is useful in all areas of legislation. Thus, Maus cites ‘traditional senatorial wisdom’ as well as the Senate’s long-established role (enracinement). Tardan labels the Senate a ‘house of reflection’ that exerts its influence through ‘a perfect understanding of the subject’. Grangé refers to the ‘normative’ influence of the Senate.
A narrower interpretation suggests that Senate expertise is not uniform but concentrated in specific areas that reflect the training and interests of the Senators themselves, an expertise that changes with the changing composition of the Senate. Following this line of reasoning, Lassaigne, Marichy, Mastias, and Grangé identify specific areas of senatorial interest and expertise: family law, civil liberties, local government, and agricultural policy, among others.21

There are two logical expectations from this theory. If the influence of the Senate is due to expertise and wisdom, then this influence should be constant as long as expertise and wisdom remain constant.22 Moreover, if the Senate’s opinion is expert, the National Assembly should adopt immediately or very quickly the improvements offered by the Senate. Because the cases selected fall under widely acknowledged areas of senatorial expertise, senatorial amendments should have not only a consistently high success rate, they should also be accepted immediately (in the first round) or soon thereafter (second round), with infrequent use of the conference committee.

Presidential Attributes

Discussions of the legislative process in France are invariably distinguished according to the presidential term of office.23 This is because, until 1986, the President, the government and the National Assembly had similar ideological tendencies. When combined with the semi-presidential institutional structure (long term of office, ability to appoint the government, ability to dissolve the legislature), this allowed the president to dominate the legislative process. There are two variants of the presidential attributes approach.24

The first variant emphasises the willingness of the President to work with the Senate. It analyses the President’s conception of legislative institutions, from de Gaulle’s preferences for a functionally designated advisory body, to Pompidou’s expectation of senatorial oversight, to Giscard d’Estaing’s desire for political support.25 The second variant focuses on the degree of ideological or political congruence between the President, as representative of the executive branch, and the Senate.26 The degree of congruence decreases the divergence in preferences and enhances the level of influence.

Both variants provide a similar analysis of senatorial influence, emphasising the presidential terms of office. The 1958 to 1962 period was one of political uncertainty and constitutional elaboration. But beginning in 1962, when de Gaulle’s power and prestige were enhanced,27 the centrist Senate began to be systematically excluded from the legislative process.28
Ultimately, de Gaulle proposed an institutional reform of the Senate, modifying its traditional membership and responsibilities. When the referendum incorporating these reforms failed, de Gaulle resigned from the presidency. His successor, Pompidou, normalised relations with the Senate although he remained ideologically distant. The presidential victory by Giscard d'Estaing in 1974 brought with it a period of close collaboration. Mitterrand's victory brought the Senate a mixed but mainly negative bag. On the positive side, more bills were introduced in the Senate (relative to de Gaulle) and declarations of urgency were less frequent; these factors tended to improve the legislative dialogue. On the negative side, the growing failure of conference committees to reach agreement and the resort to National Assembly definitive votes decreased Senate input.

This theory attributes variable senatorial influence to the occupant of the presidency. Greater senatorial influence occurs during the Giscard presidency; at the other extreme, the smallest senatorial influence is during the de Gaulle and the Mitterrand (1981–86) presidencies, while the Pompidou presidency is located in between.

**Institutional/Political**

This approach focuses on the game between the two legislative houses. We explain it in more detail than the other theories because it is relatively new, and the reasoning may not be familiar to comparativists. The theory distinguishes between two types of senatorial influence, that which improves legislative efficiency and that which exhibits redistributive consequences. To illustrate these two concepts, we can think of the legislative space as two dimensional, with the preferred points of the National Assembly and the Senate designated by points N and S along the horizontal axis, and the status quo by Q. Any vertical movement from the status quo toward the line segment NS is an improvement in legislative efficiency. It makes both the Senate and the National Assembly better off. Any horizontal movement toward either house's preferred position indicates a redistributive or power dimension; one house achieves an outcome closer to its preferred position and the other house moves further away from its preferred outcome.

The redistributive game is modelled in turn as a bargaining game where one chamber makes an offer to the other chamber, which can either accept or reject it. If the second chamber rejects the offer, it then makes the next offer to the first chamber, which either accepts or rejects it. The game continues until an offer is accepted, or until the government convenes a conference committee or asks the National Assembly to decide. This game has variable rules which are determined by the government. Indeed the
government can decide whether to introduce the legislation in the National Assembly or in the Senate, how many rounds the process should last, and whether or not the National Assembly should have the final word. But the government's preferences are close to those of the National Assembly, because the government remains in power only through the support of the National Assembly.

The bargaining game is driven by an assumption of impatience. A bill today, the reasoning goes, is better than a bill tomorrow. There are a number of reasons why each house values legislation today over legislation tomorrow. If the issue is politically divisive, early agreement limits the political fallout from the legislation. In the case of fiscal or administrative crises, quick agreement resolves the crisis. Public opinion is important as well. Parties come to power with a political platform that promises specific pieces of legislation; failure to pass legislation will be interpreted by the public as failure and lead to declining popularity. Finally, as time passes, the firmness of the legislators' political commitments may decline, causing legislators to change their votes and making successful passage less likely. All these factors suggest that a deal today is preferred over a deal tomorrow.

This approach provides a series of conclusions concerning the relative power of the two houses. First, the player with the greatest impatience is the weakest player. In its eagerness to see legislation passed, that house is willing to offer concessions to reach agreement.

Second, when the National Assembly has the final word, the power of the Senate increases with the number of negotiation rounds. This can be understood intuitively by considering that each additional required reading by the Senate delays the passage of legislation. Three readings delay legislation more than two readings, which delay legislation more than a single reading. Given the National Assembly's impatience for legislative passage, the greater the number of required readings, the greater the ability of the Senate to extract concessions from the National Assembly in order to forego the delay.

Third, if there is an integer number of possible negotiating rounds, the house where the bill is introduced first has an advantage. This advantage is independent of the stopping rule that the government selects (conference committee, National Assembly, or no interference at all) and increases with the number of rounds.

These deductions hold provided that each house knows how impatient the other house is (that is, how many concessions it is willing to make in order to reach an agreement today). If players know each other's level of impatience they understand the consequences of the institutional context and will always reach agreement on the first round. If, however, one house prefers the status quo, then agreement will never be reached. A National
Assembly vote is required or the shuttle will last indefinitely. This is the case under Socialist rule between 1981 and 1986 when the Senate favoured the status quo ante over the Socialist legislative programme and the proportion of bills voted by the National Assembly alone rose dramatically.

A more interesting and realistic application of the same framework is where one house does not know the other house's level of impatience. The navette will continue until the uninformed chamber obtains a better understanding of the opposing chamber's impatience. The length of the navette process depends on the amount of uncertainty in the game; the less well informed a chamber, the more likely the process will take more rounds to complete.

This third theory makes a series of assumptions about the micromechanisms of negotiations and comes to several conclusions concerning the power of each house as a function of the institutional rules selected by the government and the impatience of each player. According to this theory, legislators will tend to defect over time, reducing the likelihood of successful passage; moreover, greater impatience produces greater concessions; finally, the National Assembly invariably offers concessions to the Senate despite its ability ultimately to prevail.

We distinguish two types of impatience that drive the bargaining game between the Senate and the National Assembly. The first is systemic impatience, which we attribute to the breadth and strength of the current political coalition. If the dominant party (coalition) has a large majority, defections have little effect on the ultimate passage of legislation; it can afford to be patient. Similarly, if one party dominates the political coalition, defections from coalition members are less threatening. In the opposite case, where the political opposition is strong and the coalition partners large, defections threaten the passage of legislation and the dominant party is impatient to see its legislation passed. In other words, internal divisions as well as external opposition raise the level of impatience.

The second type of impatience is bill specific. Some bills are more important to the National Assembly than others; for these bills the National Assembly will grant more concessions in order to obtain senatorial agreement and quick passage of the legislation. In cases 3 and 4, the systemic level of impatience is held constant by selecting legislation passed by the same National Assembly; the cases vary in terms of bill specific impatience associated with political controversy.

In the French legislature, both systemic and bill specific impatience vary in the National Assembly but remain constant in the Senate. In the case of systemic impatience, the strength and breadth of the National Assembly vary substantially over time while the composition of the Senate remains relatively constant. In the case of bill specific impatience, the institutional
provisions of the French Fifth Republic make the National Assembly more accountable to the electorate than the Senate; under specified circumstances, the National Assembly can be dissolved. The Senate, on the other hand, is never dissolved, Senators are elected indirectly and have long (nine year) terms of office. For the National Assembly, legislation that threatens governmental stability in some fashion is more politically significant than other pieces of legislation. The Senate, by constitutional provision, is much less affected by political crisis and public opinion and therefore debates each piece of legislation with the same level of patience.

III. THE MICROMECHANISMS OF BICAMERAL NEGOTIATIONS

Here we describe intercameral negotiations over four pieces of legislation. All the bills deal with areas of senatorial expertise. Two of the cases occurred under the Pompidou presidency, one under Giscard d'Estaing, and one was initiated under Pompidou but concluded by the same Parliament under Giscard. Two cases (3 and 4) were debated by the same legislature, elected in 1973. For each of the four cases, we delineate (1) the independent variables, the level of senatorial expertise, presidential attributes, and indicators of the National Assembly's level of impatience; (2) the issue at stake; (3) the initial positions or policy preferences of the National Assembly and the Senate; (4) the negotiation process; and (5) the legislative outcome. The distance between initial position and outcome indicates relative house power.

Case 1. Penal Code Reform, 1977–78

This legislation was introduced under the presidency of Giscard d'Estaing during the second legislative session of 1977. The debate continued after the March 1978 National Assembly elections which produced a conservative coalition. The impatience of the National Assembly was high because the coalition was threatened by potential defections by coalition partners and by the strength of the Left opposition. The two parties of the Right, the RPR (Rassemblement pour la République) and the UDF (Union pour la démocratie française) were matched closely in strength – 154 RPR seats and 123 UDF seats – and the Left reached its second strongest position in the history of the Fifth Republic – 199 seats. Senatorial expertise was high because penal code reform falls into an area of traditional senatorial interest in civil liberties. Giscard d'Estaing was ideologically close to the Senate's centrist majority and he viewed the Senate as an appropriate partner in the legislative process.
During the discussion of penal code reform, the government introduced an amendment on prison reform that eventually became the stumbling block to Senate approval of the bill. The discussion focuses on the amendment, rather than the other portions of the bill.45

In 1945, the prison system had been structured to provide digressive security levels for the inmates within a single institution. The sentencing judge followed the inmate’s progress and transferred the inmate from one category to another based on rehabilitation progress. A 1975 administrative reform of the prisons provided digressive levels of security between institutions, requiring the inmate to move from facility to facility throughout his rehabilitation. The constitutionality of this administrative reform had been challenged and a case was pending in front of the Conseil d’État.46 The government hoped to avoid this challenge by modifying the prison statutes through legislation.

The National Assembly supported the amendment, introduced by the government, that shifted responsibility for the inmate’s progress from the judiciary to prison administrators. The Senate objected to the manner in which the issue was broached, through an amendment. The senators argued that prison reform was a matter for legislative review, but the entire issue of incarceration should be examined in light of the current conditions of severe overcrowding, inmate unrest, and the rash of successful escapes. They rejected the transfer of authority over inmates from the judiciary to the administration because it concentrated too much power in prison administrators and undermined individual (prisoner) rights.

The government introduced the amendment to the bill on penal code reform during the National Assembly’s first reading, subsequent to the Senate’s first reading. The National Assembly approved the amendment along with the other articles, some of which had been modified by the Senate. The bill then shuttled back to the Senate for approval. When confronted with the amendment during the second reading of the bill, the senators flatly rejected it.

The government reinstated the amendment during the National Assembly’s second reading and it was duly approved. The ensuing disagreement between the two houses forced the government to call for a conference committee to resolve the issue. The committee sided with the Senate and recommended that the two legislative houses reject the amendment. The government proceeded to reintroduce the amendment on the third reading. This was accepted by the National Assembly but the amendment was rejected again in the Senate. Rather than vote the bill in last resort, the National Assembly modified the amendment to include judicial review of inmate transfers, except in emergencies. This compromise was insufficient to gain Senatorial approval in a fourth reading,47 but the
government resubmitted the compromise bill for National Assembly approval, rather than the original version.\textsuperscript{48} 

In this case, some of the predictions of the three theories coincide; all three predict that the Senate should have substantial influence over the legislative outcome.\textsuperscript{49} However, the explanatory power of the theories can be evaluated on other grounds. Reference to senatorial expertise cannot explain why the navette proceeded four rounds before the National Assembly recognised the Senate's superior wisdom. Agreement should have proceeded quickly but did not. Furthermore, reference to the cordial relations between the Senate and the President fails to clarify why senatorial suggestions were not fully implemented. The government reinstated its original amendment twice and overruled the compromise negotiated in conference committee that reflected senatorial preferences. Although ideologically similar, the President and the Senate did not agree on all issues. When preferences varied, senatorial influence diminished.

The political/institutional approach explains senatorial influence in terms of the narrowness of the majority coalition. The National Assembly was impatient because it feared defections and was ultimately forced to make concessions in order to pass the legislation. The adoption of senatorial preferences in conference committee, where the National Assembly was represented by its majority, indicates that some members of the majority had begun to defect. Given its power ultimately to prevail, had the National Assembly been patient – that is, if it had a broad majority – it could have returned to its initial position in the final vote. Yet, because of defections from the majority, the National Assembly accepted a compromise that acknowledged senatorial preferences.

\textbf{Case 2. Local Government Reform, 1971}

The legislation on local government reform was introduced by the Pompidou government. He was supported in the National Assembly by a broad conservative majority, 354 seats of the 487 seat National Assembly, elected in the wake of the civil disturbances of May 1968. In addition, the Gaullist UDR (\textit{Union des Démocrates de la République}) had won, for the first time ever, a solid majority in its own right, 293 seats.\textsuperscript{50} With a broad and strong coalition, National Assembly patience was high.

On issues of local government, the Senate is both interested and expert.\textsuperscript{51} The French Senate is an indirectly elected body whose electoral college is composed of local government councillors. As a result, many Senators are local councillors as well. They therefore have intimate knowledge of the problems confronted by the communes and departments and political interests in protecting them. According to a recent analysis, 'the defense of
the commune, in addition to [representing] a certain conception of society and of democracy, has appeared to many as a means to defend the Senate itself, [which is] charged to represent it (emphasis in the original).\(^{52}\)

Pompidou's relations with the Senate were located somewhere between de Gaulle's ostracism of the Senate and Giscard's cordiality. Pompidou made an effort to rehabilitate the Senate into the legislative process after de Gaulle's efforts to exclude it. For Pompidou, as for Giscard, the Senate was a legitimate political partner in the legislative process. However, unlike Giscard, the Senate's centrist majority was ideologically distant from Pompidou's Gaullist philosophy.

Local government reform has long been a political issue in France.\(^{53}\) In 1971, the basic unit of local government, the commune, had remained virtually unchanged since the 1789 revolution. In the census of 1968, France still counted 37,708 communes, more than half of which had fewer than 500 inhabitants.\(^{4}\) Despite efforts to encourage the fusion of these units in 1884, 1890, 1959, and 1966, little progress had been made.\(^{45}\) The government argued that this structure was outmoded and inefficient and proposed a law that would allow the executive branch, through its representatives, to force the fusion of communes, with a goal of 2,000 units of local government. In opposition stood the Senate.

The debate centered on the degree of voluntarism associated with the reorganisation of local governments. The government proposed, and the National Assembly supported (351 to 99, first reading), a programme that called on the departmental prefects (appointed by the central government) to publish a reorganisation plan after consulting with locally elected councillors.\(^{56}\) The plan was then presented to the affected municipal councils and ultimately to the departmental general council. However, in case of local disagreement, the prefect could promulgate the plan through a decree of the Conseil d'État. Alternatively, the prefect could poll the local population through a referendum; the electorate could defeat the reorganisation plan only by qualified majority (two-thirds of the voters and one half of the registered voters).

The Senate agreed to debate the legislation,\(^{57}\) but proposed three major amendments (as well as several minor amendments). The first involved delegating control over the development of the reorganisation plan to local elected councillors; the second involved removing any administrative control over the implementation of the plan; the third sought to delay the implementation of the legislation until after appropriate legislation on local fiscal reform had been passed. These modifications were supported by the Senate overwhelmingly, 169 to 34 (only the UDR parliamentary group voted against the proposals).\(^{58}\)
government provisions, only to have them replaced by the Senate, in its second reading, with the original amendments. In the conference committee, the National Assembly did compromise, deleting measures that permitted the Prefect to petition the Conseil d'État. However, the role of the prefect in formulating the plan remained substantial. In addition, the recourse to referendum, whose qualified majority would be difficult to obtain, left too much power in the hands of the central government according to senatorial tastes. Finally, the National Assembly refused to subordinate the institutional reform to fiscal reform.

The Senate therefore voted twice against the conference committee's report despite the recommendation of the committee rapporteur, who warned that a Senate rejection would permit the National Assembly to vote on its original bill rather than the compromise version. Finally, the government asked the National Assembly to vote last resort, which they did by voice vote. The loss was bitter. According to Senator Lefort (Communist parliamentary group), "this text is very far from that which had been adopted by the Senate".

The senatorial expertise argument clearly fails to predict the stunning defeat of the Senate in this case. Given the Senators' clear expertise in local government (as well as their interests in maintaining local bases of political support), the Senate's inability to defend its position belies an argument based on the Senate's 'perfect understanding of the subject'.

The presidential and political/institutional analyses are more difficult to distinguish; both predict that Senate preferences would be disregarded. The former approach refers to the ideological differences between the Gaullist president and the centrist Senate; this is substantiated by the fact that only the Gaullist parliamentary group in the Senate supported the government proposals against an opposition uniting the remainder of the political spectrum. The latter refers to the breadth of the majority coalition in the National Assembly; because defections did not threaten the ultimate passage of the legislation, the National Assembly could afford to retain its initial preferences. However the presidential approach cannot explain the National Assembly's willingness to offer some concessions to the Senate: the deletion of the prefect's power to implement reorganisation over local opposition via the Conseil d'État. Given the ideological differences between the President and the Senate, and the ability to pass legislation in the National Assembly without coalition partners; from the presidential attributes perspective, there is no logical reason why the government did not revert back to its initial position. In contrast, the political/institutional approach anticipates concessions, in this case minor concessions, in order to speed passage of the legislation.

In the next two cases, the composition of the National Assembly remains
constant, illustrating the variation in impatience across individual pieces of legislation. The National Assembly that passed both pieces of legislation was elected in March 1973; the conservative coalition consisted of 183 RPR deputies, 55 deputies from the Républicains Indépendants, and 30 deputies from the Centre Démocratique. The Left comprised 85 deputies from the French socialist and communist parties. The period is marked by President Pompidou's death in April 1974 and the subsequent election of Giscard d'Estaing to the presidency after the passage of the bill on employee dismissals and in the midst of the abortion debate.\(^{60}\)

**Case 3. Legalisation of Abortion, 1973–74**

Legislation on abortion was initially introduced under Pompidou and reintroduced under Giscard d'Estaing. Because it involved civil liberties and family law, it came under the umbrella of senatorial expertise. Indicators of the National Assembly's impatience to deal with the issue are numerous. The public debate over the abortion issue reached a level the government could not afford to ignore. The newly-formed feminist movement in France had declared abortion a *cause célèbre*.\(^{61}\) In 1971, the "Manifesto of 343 Women" was published, signed by well known women who had undergone illegal abortions, demanding legalised abortion. They noted that 300,000 to 900,000 illegal abortions were performed every year in France, resulting in innumerable injuries and some 300 deaths annually.

Shortly thereafter, a second manifesto was published, in which 331 doctors declared that they had performed or aided in the performance of abortions. Moreover, they stated they did not fear prosecution. The law was openly flaunted and the government was forced to respond. But the public debate was only fuelled further in late 1972 by publicity over the prosecution of a 17 year old girl who received an illegal abortion aided by her mother and two friends. By October of 1972, the number of articles dealing with abortion in six major daily newspapers rocketed from an average of less than 25 per month to more than 150 per month, an average maintained for the next two and a half years.\(^{62}\) In this nominally Catholic nation, 75 per cent of the public supported the liberalisation of abortion in February 1973. Moreover, 62 per cent of those surveyed deemed the government 'hypocritical' for failing to deal with the problem.\(^{63}\) In other words, these events indicate high levels of impatience on the part of the National Assembly to resolve the issue. As noted above, Pompidou's relations with the Senate were marred by ideological differences while Giscard's relations with the Senate were good.

The abortion issue was a subject of debate during the March 1973 legislative campaign and the government submitted legislation in the first
legislative session after the elections. Since 1810, abortion was considered a criminal act in France, punishable by imprisonment. In the early 1970s, the laws governing abortion dated from the 1920s; the law of 31 July 1920 outlawed advertisement and the sale of abortion remedies and the law of 27 March 1923 admitted abortion only when the mother’s life is ‘seriously threatened’.

The position of the ruling conservative majority in the National Assembly reflected a recognition that the current situation was untenable but the solution favoured a modest expansion of therapeutic abortion and additional financial and social support for pregnant women. The Senate, on the other hand, was more liberal than the National Assembly and preferred outright legalisation of abortion in the early weeks of pregnancy.

The first government project was presented to the National Assembly on 7 June 1973. This bill reflected the position of the Gaullist UDR. It expanded the circumstances under which abortion would be permitted by extending the notion of a woman’s health to include psychological as well as physical dimensions. However, the decision depended on the opinion of two physicians rather than the individual woman, who could only request consideration. Unfortunately, no majority could be found to support this legislation and it was referred back to committee in December, 1973. But public opinion continued to press for a solution to the problem.

President Pompidou died on 2 April 1974; in the ensuing presidential elections, Valéry Giscard d’Estaing was elected. Rather than resurrecting the bill referred back to committee in December 1973, the new Secretary for Health, Simone Veil, proposed a more liberal approach to abortion that relied on the opposition for support. The government ultimately chose to offer a temporary solution: a five year trial period during which abortion in the first ten weeks of pregnancy was legalised, but only after the pregnant woman underwent a series of administrative hurdles. Abortion continued to be viewed as a ‘last resort’, an act to be discouraged by a series of constraints. The woman was required to undergo counselling from a doctor and a social worker, to wait for seven days, then to request the abortion again, this time in writing. As an additional disincentive, abortions were excluded from the state supported system of national health insurance. The Left unanimously supported the liberalisation whereas only 55 of the 174 UDR members voted for it, 26 of the 52 centrists and in Giscard’s own party, the Independent Republicans, only 17 of 65.

The legislation passed in the National Assembly on 29 November 1974 and shuttled to the Senate. The areas of agreement were large because this second bill closely resembled the Senate’s initial preferences. Still, the Senate failed to ratify Article 7 dealing with health insurance funding. They sought to include abortion procedures under national health care coverage
while the government bill specifically excluded it from coverage. In addition, it responded to the Debré amendment, which was introduced in the National Assembly on the first reading and sought to prevent the creation of ‘abortion clinics’ by requiring that abortions performed at any hospital not exceed 25 per cent of the total surgeries performed. The Senate broadened that clause to include 25 per cent of ‘surgeries and obstetrical operations’.

Returning to the National Assembly on 19 December, the two main points remaining in dispute were the definition of abortion clinics and health insurance funding. In its second reading, the National Assembly rejected the Senate wording on abortion clinics and repassed Article 7 that prevented the payment of abortions through national health insurance. Shuttling back to the Senate, the senators agreed reluctantly to Article 7 but rejected the wording on abortion clinics. In the conference committee, the senatorial wording was retained and subsequently the bill was passed by both houses of Parliament.

The abortion case outcome conforms with all three theories which predict important senatorial influence over the outcome. However, the case provides some clues that permit us to distinguish between the presidential explanation and the institutional/political explanation. Given the supposed ideological congruence between the President and the Senate, it is odd that the government was forced to rely on the Left opposition for passage of the legislation in the Senate. Not only did the Gaullist RPR defect from the parliamentary majority, Giscard’s own party, the UDF, defected as well. Only 26 per cent of the UDF parliamentary group voted for the government bill. While the outcome coincides with the prediction, the underlying antecedent condition – ideological congruence – was lacking. The political/institutional approach, on the other hand, can straightforwardly predict from the high level of National Assembly impatience the high level of senatorial influence.

Case 4. Employee dismissals, 1973
In contrast to the abortion issue which erupted into a political crisis, the legislation on employee rights in case of dismissal was a routine piece of legislation that elicited little public debate. The bill was introduced under the Pompidou presidency. The lack of impatience on this issue is visible in a variety of ways. In contrast to the abortion legislation, there was no particular crisis that needed quick resolution. The legislation was introduced as part of a long-term project by the Ministry of Labour, Employment and Population to update the French labour code and many of its provisions merely acknowledged prior government decrees, common practice, and prior legislation. It was initiated by the previous Minister of Labour and
proceeded through the usual channels. A draft bill was submitted to the Economic and Social Council in December 1972 for comment. When the opinion of the Council was received the following March, the legislation was duly revised. It was finally submitted to the National Assembly on 25 April 1973. A major justification for the labour code revision was to coordinate employee job security with employee profit sharing plans; profit sharing plans, however, were introduced originally under de Gaulle fourteen years earlier, in 1959. Speed of passage clearly was not a priority; in other words, National Assembly impatience was low. Because it involved an issue of civil liberties, the legislation was considered an area of senatorial expertise. As noted above, Pompidou had normalised relations with the Senate but remained ideologically distant.

At issue were the conditions under which an employer could fire an employee. Shortly after the French Revolution, feudal rights and corporate privileges were abolished and contractual freedom recognised. A century later, with the rise of trade unionism, the law of 27 December 1890 recognised that unilateral cancellation of contracts may give rise to damages, the first legal recognition of an employee’s right to job security. However, despite additional legislation in 1928, the burden of proof regarding arbitrary dismissals fell on the employee and damages were rarely awarded. Certain categories of workers (such as union representatives and pregnant women) gained special protection from dismissal, but most workers were still vulnerable to the arbitrary actions of employers. The majority of the 61,000 cases heard each year by the French labour courts, the Prud’hommes, dealt with arbitrary dismissals.

The government bill, that the National Assembly approved, attempted to strike a balance between employer and employee rights: ‘a delicate equilibrium between the legitimate preoccupation of the worker with greater dignity and security and the equally legitimate concern of employers to assure the competitiveness of firms’. The Senate, on the other hand, favoured a broader and more systematic protection for employees from arbitrary dismissals.

The legislation served mostly to update the labour code according to prevailing practices, government decrees and other legislation. The innovative aspects of the legislation dealt with three issues. The first was the introduction of a conciliation period before an employee could be fired. The second divided the burden of proof, in case of suit, between the employee and the employer rather than falling on the employee alone. Finally, it introduced the rehiring of the employee as a method of resolving arbitrary dismissals. The text was voted in the National Assembly and shuttled to the Senate for review.

In first reading, the Senate offered amendments to six articles; three
were of an editorial nature; three were substantive. The first substantive amendment completely reversed the burden of proof on the employee and shifted it to the employer; the second extended these guarantees to employees with one year continuous service rather than the two year minimum proposed by the government; the third dealt with French employees in foreign subsidiaries.

When the legislation returned to the National Assembly, the committee report recommended retaining all the senatorial amendments. But the National Assembly as a whole, by government request, accepted only the editorial changes and the amendment on foreign subsidiaries while reinstating the original burden of proof clause and two year minimum employment requirements. The Senate, in its second reading, again amended the legislation to reflect its original preferences on the burden of proof and extension of coverage. The conference committee was unable to reach agreement and, after a third reading, the government asked the National Assembly to vote in last resort.

Again, the senatorial expertise theory fails to predict the lack of senatorial influence. The Senate presented a case for expanded employee protection but failed to convince the National Assembly that this solution improved the initial legislation. In this case, the redistributive dimensions of the legislation are relatively transparent: extending employee rights reduced employer discretion and flexibility. The Senate favoured a solution that shifted the balance from employers to employees further than the National Assembly desired. It is not surprising, then, that Senate recommendations were recognised as redistributive rather than efficient.

The two other explanations are congruent with the outcome. From the perspective of the presidential approach, Pompidou was ideologically distant from the Senate and rejected its recommendations. The institutional/political explanation emphasises the high degree of National Assembly patience, minimising the level of concessions.

IV. SUMMARY AND CONCLUSIONS

Before summarising the evidence, there is one point worth mentioning. In all four cases, the Senate had a non-negligible impact on the content of the bill. This is true not only when the National Assembly made concessions in order to assure the agreement of the Senate, but even in those cases where the National Assembly made the final decision. This finding does not contradict any of the theories presented here. It demonstrates that the Senate influences the decision-making process even if, in the end, some of its objections are overruled. Even under the institutional constraints of the
French Fifth Republic, the Senate is hardly 'useless', as some observers claim.  

Table 1 summarises the analysis of the four cases. On the basis of this table, the flaws of the first theory – senatorial wisdom – are readily visible. The most common method of making use of senatorial wisdom is by defining those areas of specific interest and/or expertise. There is substantial consensus regarding those areas: family law, civil liberties/civil rights, agriculture, local government, and fiscal reform. Each of our four cases fell under an area of senatorial expertise, yet the Senate was able to influence significantly the outcome in only two cases, penal code reform and the legalisation of abortion.

<table>
<thead>
<tr>
<th></th>
<th>Influence</th>
<th>Expertise</th>
<th>Presidency</th>
<th>Impatience*</th>
<th>Rounds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Penal Code Reform</strong></td>
<td>Large</td>
<td>High</td>
<td>Giscard</td>
<td>High</td>
<td>4</td>
</tr>
<tr>
<td>(1978)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Local Government Reform</strong></td>
<td>Small</td>
<td>High</td>
<td>Pompidou</td>
<td>Low</td>
<td>4½</td>
</tr>
<tr>
<td>(1971)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Legalisation of Abortion</strong></td>
<td>Large</td>
<td>High</td>
<td>Pompidou/Giscard</td>
<td>High</td>
<td>3</td>
</tr>
<tr>
<td>(1973/74)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Employee Dismissals</strong></td>
<td>Small</td>
<td>High</td>
<td>Pompidou</td>
<td>Low</td>
<td>3½</td>
</tr>
<tr>
<td>(1973)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* See text for definitions and operationalisation of impatience.

Furthermore, if expertise or wisdom is the primary explanatory variable, the National Assembly should readily agree to the improved legislation and the navette should end in one or two rounds. The four bills required between three and four and a half rounds and in three cases, the National Assembly voted in last resort. These events are incongruent with an explanation that bases senatorial influence on the level of expertise.

The theory of senatorial expertise is incomplete rather than incorrect. As we noted above, there are two types of senatorial influence, efficient and
redistributive. Expertise is undoubtedly a factor in the acceptance of some senatorial amendments and our cases illustrate some efficient amendments. One example is the inclusion of French employees in foreign subsidiaries in the legislation on arbitrary dismissal (case 4). What the expertise theory fails to acknowledge and, therefore, cannot explain is the redistributive influence of the Senate, where senatorial preferences are incorporated in the legislation despite different National Assembly preferences.

The other two theories fare equally well in terms of predictions in our (admittedly restricted) data set. The presidential attributes theory does well in predicting senatorial input in legislative outcomes: Giscard was consistently more willing to compromise on penal code reform and abortion than was Pompidou, on local government reform and employee dismissals.77

The institutional/political explanation, based on the level of National Assembly impatience, is also consistent with all four outcomes. For the first two cases we see that systemic impatience, based on the breadth and strength of the National Assembly, explains when the National Assembly will make concessions to the Senate. Table 2 summarises the indicators of systemic strength for the two cases in question and the degree of Senate influence. The evidence in the last two case studies demonstrates that where impatience is asymmetric, the house with the least patience tends to provide more concessions to the opposing house.

**Table 2**

**SUMMARY OF SYSTEMIC MEASURE OF IMPATIENCE**

(Figures represent seats in National Assembly (percentage*))

<table>
<thead>
<tr>
<th>Bill</th>
<th>Dominant Party of Majority</th>
<th>Subordinate Party of Majority</th>
<th>Strength of Opposition</th>
<th>Senate Influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penal Code Reform (1978)</td>
<td>154 (31%)</td>
<td>123 (25%)</td>
<td>199 (41%)</td>
<td>large</td>
</tr>
<tr>
<td>Local Government Reform (1971)</td>
<td>293 (60%)</td>
<td>94 (20%)</td>
<td>91 (19%)</td>
<td>small</td>
</tr>
</tbody>
</table>

* Percentages do not add to 100 per cent because some deputies are not affiliated with any party.

Note: High dominant party of majority scores represent patience; high subordinate party scores and high opposition scores represent impatience.

Once we examine the process of bicameral negotiations, the superiority of the institutional approach becomes evident. The presidential approach emphasises both the attitudes of the president toward the Senate as a legislative institution and the ideological congruence between the Senate and the President. Valéry Giscard d'Estaing was favourably disposed toward the Senate on both dimensions. Yet, in case 1, the compromise – judicial review rather than judicial control over prisoner rights – failed to satisfy the Senate. And the Senate refused to ratify the bill, requiring the executive to ask for a National Assembly vote of last resort. Resort to a National Assembly vote against the opinion of an ideologically congruent Senate contradicts the hypothesised outcome. In case 3, although the outcome is congruent with the predictions, the abortion legislation illustrates a wide degree of ideological disagreement. These examples point to a problem of internal logic; ideological congruence indicates similar preferences and therefore little need for influence. It does not explain why influence should exist where preferences are dissimilar.

The institutional/political approach provides a series of predictions concerning not only the outcome of bicameral negotiations, but also the process of these negotiations. The process of bicameral negotiations is congruent with the predictions in all four cases. For example, we mentioned in the beginning of this section that, in all four cases, the National Assembly made concessions and concessions increased as the number of rounds increased even when it made the final decision. Similarly, the case of penal code reform illustrates the potential for defection from the initial position as the bill shuttles between houses of the legislature. In this particular case, the coalition was narrow and weak. The National Assembly voted three times for its initial position, yet defections were visible beginning with the conference committee and forced the National Assembly to modify its original position. Ultimately the sentencing judge was provided a continuing role in reviewing administrative decisions over inmates. The potential for defection motivates the impatience of the legislators to pass the legislation as quickly as possible.

In general, the institutional/political theory is superior to the Presidential approach because the institutional variables included in the study of the navette system (where the bill is introduced, how many rounds it can shuttle, who makes the final decision) are readily available for other countries and, consequently, comparative expectations can be formed. For example, in countries like the United Kingdom, Austria, and Spain, when a bill is introduced in the lower house first, their navette systems are identical except for the number of readings required by the upper house. Our expectation is that the countries that require two readings (the UK) will have stronger upper houses than the countries that require only one reading.
(Austria and Spain). Similarly, in those countries where legislation can be introduced in either house, the shift in power from one house to the other is more important in countries without stopping rules, like Switzerland, Italy, Belgium, and the United States, than in countries with three readings, like France; a change in the initiating house in France is more significant than in Australia with two required readings; and the same change is more important in Australia than in Ireland, with only one reading. It is difficult to see how the Presidential attributes thesis would generalise in settings other than France.

Moreover, case studies similar to the ones presented here can be collected for other legislatures and the theoretical expectations that the more impatient chamber will make more concessions (when institutional constraints are held constant) can be evaluated. However, the best method to advance the theoretical comparison is to increase the sample size. This paper is the first one that follows legislation in detail by identifying the positions of the two chambers and locating the final legislative outcome between the expressed positions of the Senate and the National Assembly. Many more detailed studies of this sort are required in order to test the different theories with confidence.

NOTES

2. During the Third Republic, legislation required the assent of both houses, providing the Senate with veto power over legislation. During the Fourth Republic, the National Assembly could ultimately decide, but only after certain delays (D. Maus, Le Parlement sous la V République (Paris, Presses Universitaires de France, 1985)). In the Fifth Republic, after two (in the case of urgency) or three readings, the government may ask the National Assembly to decide.
7. We analysed six cases in detail but two are excluded from the article due to space constraints. These cases provide additional evidence to support our contentions.


9. The budget is always introduced first in the lower house. The budgetary powers of both the National Assembly and the Senate are curtailed by the executive branch of government. The National Assembly has a mere 40 days to review financial legislation; the government can then refer the budget to the Senate, which has an additional 15 days to respond. In case of disagreement, procedures for normal legislation are followed with the proviso that Parliament has a maximum of seventy days from the initial deposit of the bill to reach agreement. After 70 days, the government can enact the budget by ordinance. See Article 47 of the Constitution (F. Luchaire and G. Conac, *La Constitution de la République Française*, 2e édition (Paris: Economica, 1987), p.914).

10. According to internal National Assembly and Senate regulations Article 108, paragraph 3 and Article 42, paragraph 10, respectively (Luchaire and Conac, *La Constitution de la République Française*, p.871).

11. In practice, the Senate selects its representatives through proportional representation, while the National Assembly is represented by its own majority. After the victory of the Left in 1981, the National Assembly regulations were modified to resemble those of the Senate (Grangé, *L'Éfficacité normative du Sénat*).

12. The government, if displeased with the conference committee compromise, is not required to submit the joint text to Parliament for final approval. After 15 days, the house which last read the bill can restart the legislative process (Bourdon, *Les assemblées parlementaires*, p.125).

13. According to Article 45, paragraph 3 of the Constitution (Luchaire and Conac, *La Constitution de la République Française*).


15. For a discussion of restrictive practices on the floor of the National Assembly, see J.D. Huber, 'Restrictive Legislative Procedures in France and the United States', *American Political Science Review*, 86 (1992), pp.675–87. For a case where Article 49.3 is applied to transform a minority on an electoral law into a majority, see G. Tsebelis, *Nested Games: Rational Choice in Comparative Politics* (Berkeley, CA: University of California Press, 1990), Ch.7.


18. Maus, 'Le Sénat, L'Assemblée nationale et le Gouvernement'.

19. Tardan, 'Le rôle législatif du Sénat'.

20. Grangé, 'L'Éfficacité normative du Sénat'.


22. One might argue, as did one reviewer, that expertise is a continuous rather than a dichotomous variable. Instead, we believe that 'expert opinion' presents a solution that makes all parties better off and, as such, is easily recognisable. The problem, of course, is that much partisan debate is cloaked in efficiency terms. However, the redistributive consequences of the so-called 'efficient' solutions are generally understood, giving rise to extended debate. See below for expanded explanations of 'efficient' and 'redistributive' influence. An additional problem with adopting a definition of expertise as a continuous variable is the inability to distinguish behaviourally between the expertise approach and the political/institutional approach.

23. Two alternative ways of analysing the legislative process are by the government (by prime minister) and the legislature (by legislative elections). These breakdowns are rarely, if ever, used.
24. After 1986, when a conservative legislature and government 'cohabitated' with a socialist president, analyses invariably included a dual breakdown, by president and by government.
27. As noted above, de Gaulle’s power was enhanced by two factors. The first was a positive vote on the referendum transferring presidential selection from indirect to direct elections. The second was the reinforcement of Gaullist power in the 1962 National Assembly elections which gave de Gaulle a near majority in that legislative body.
29. No prediction has been made for the cohabitation period of 1986–88.
31. We assume that the two dimensions can be separated and distinguished in legislative provisions. If the two dimensions cannot be untangled, a legislative provision represents a diagonal movement from the status quo toward the NS line segment, where efficiency gains must be weighed against the losses associated with movement away from the house’s preferred position.
33. The model is more fully developed in Tsebelis and Money, ‘Bicameral Negotiations’. There, we make the argument that uncertainty refers either to the position of the National Assembly or to its impatience.
34. Similarly, if the default solution is a conference committee, the most powerful house loses power as the number of negotiating rounds increases. Our model does not predict the outcome of conference committees. However, if that is known, then the results are parallel to those involving National Assembly vote of last resort.
35. For further explanations see Tsebelis and Money, ‘Bicameral Negotiations’.
37. This is not necessarily true of other bicameral legislatures.
39. See Article 12 which permits the President to dissolve the National Assembly upon appropriate consultations. However, the President’s power is limited by a provision that assures the new National Assembly a minimum one year life.
40. Three of the cases were selected from Grangé’s list of Senate ‘successes’ and ‘failures’; see footnotes on pages 965, 966, and 967 (Grangé, ‘L’Éfficacité normative du Sénat’), these were supplemented by the abortion case. Selection was limited by the availability of complete records of the parliamentary debates in the UCLA collection, where the primary research was completed.
41. As noted above, this includes both the president’s views on the role of the Senate in the legislative process and the degree of ideological congruence between the president and the Senate.
42. The level of senatorial impatience is not discussed because it remains constant throughout the period; see Maus, Les grands textes de la pratique institutionnelle, for the breakdown of political parties in the Senate.
43. See Maus, Les grands textes de la pratique institutionnelle, for electoral outcomes. The total number of seats was 491, requiring a majority of 246.
44. Grangé, ‘L’Éfficacité normative du Sénat’.
45. The legislation initially introduced in the Senate was composed of three major components: the secrecy of criminal investigations, reform of the judicial police, and jury selection. The
Senate won concessions on these issues as well. The article dealing with secrecy of criminal investigations was eliminated altogether and the qualification requirements for judicial police were raised in order to meet senatorial objections (Journal Officiel de la République Française (Paris, Assemblée Nationale, Sénat, 1977, 1978)).

46. The Conseil d'État is the highest administrative court in France (B. Chapman, Introduction to French Local Government (London: George Allen & Unwin, 1953)).

47. There is a discrepancy between the debate proceedings which record a Senate rejection of the legislation on the fourth reading (30 June 1978) and a request by the government for a National Assembly vote in last resort (1 July 1978) and the publication of the law which shows Senate adoption of the legislation, followed by National Assembly adoption.

48. According to the Constitution (Article 45), the government can either submit the conference committee’s version or the version last voted in the National Assembly.

49. Grangé (‘L’Éfficacité normative du Sénat, p.967) considers the 1978 penal code reform a senatorial failure. However, as noted in the text, although the Senate was unable to gain its preferences, the legislation was modified to include judicial review of transfers, an important control over prison administration and a reinforcement of individual rights.

50. This is an earlier incarnation of the contemporary RPR, the Gaullist conservative party.


52. Delcamp, Le Sénat et la décentralisation, p.57.

53. The layers of local government in France in 1971 are as follows, from the smallest to the largest unit: commune, canton, arrondissement, department, and region (Chapman, Introduction to French Local Government).


55. The 1884 law encouraged the fusion of communes; the 1890 law created syndicats or organisations grouping several communes for the purpose of providing a service to the member communes, such as water supply or trash disposal; the 1959 law created both districts (grouping urban communes) and syndicats à vocation multiple (organisations providing several services to member communes); the 1966 law created communautés urbaines or organisations that grouped urban communes. With the exception of the 1966 law which dictated the creation of four communautés urbaines, these laws were voluntary. Therefore, by 1971, less than one-third of the nation’s inhabitants lived under some form of intercommunal co-operation and the fusion of communes was almost non-existent (Journal Officiel, 1971).

56. Communes elect a conseil municipal from which is selected a mayor. Departments elect a conseil général, headed by a president. The prefect is the Ministry of Interior’s representative in the department and has, in 1971, extensive control over the formulation and implementation of policy (Chapman, Introduction to French Local Government).

57. Article 91, paragraph 4 of the Senate’s regulations defines the procedure of the question préalable which determines whether deliberation of the legislation will proceed. In this case, the question préalable was defeated.


60. Maus, Les grands textes de la pratique institutionnelle.

61. In 1970, several dozen women placed flowers at the grave of the unknown soldier in honour of someone ‘even more unknown than the soldier – his wife’, thereby marking the first public display of the feminist movement in France (F.A. Isambert and P. Ladrrière, Contraception et avortement. Dix ans de débat dans la presse (1965-1974) (Paris: Éditions du Centre National de la Recherche Scientifique, 1979)).

62. Isambert and Ladrrière, Contraception et avortement.


64. Background on the abortion issue in France as well as a presentation of the political debates can be found in L’avortement. Histoire d’un débat (Paris: Flammarion, 1975) and Peyret, L’avortement.

65. The Senate did not debate this first piece of legislation because the government, lacking a majority in the National Assembly, sent the bill back to committee. Nonetheless, we know
the party positions on abortion (Peyret, *L'Avortement*, Ch.13) and the political composition of the Senate, which indicates a majority favouring legalisation. Furthermore, the debates and votes of the Senate on the second bill support our contentions. 

66. As noted above, the parliamentary majority did not change. The newly elected president was not clearly on the side of legalised abortion. His campaign speeches on the subject tended to obscure rather than clarify his position. Policy statements included both 'respect for life' and 'freedom of conscience for every woman' (Peyret, *L'Avortement*, p. 165).

67. *L’Avortement*.

68. The bill did permit poor women to apply for welfare funding for abortions, a procedure that required a separate application through the local government’s social services department.


71. This legislation dealt with individual dismissals and specifically excluded layoffs for economic reasons.


74. A fifth case, excluded because of space constraints, documents concessions to the Senate under Mitterrand, when a majority of the Left dominated the National Assembly.

75. See note 3 above.


77. There is some readily available evidence that may cast doubt on this conclusion. For example, it is argued that Pompidou, had he lived, would have offered substantial concessions on the abortion issue (*L’Avortement*). Both Grangé (‘*L’Éfficacité normative du Sénat*’) and Mastias (‘*Histoire des tentations du Sénat*’) point to several pieces of legislation where the Senate was powerless under Giscard d’Estaing precisely because relations were good (see below). Certainly, the expansion of the analysis to include a larger number of bills would indicate whether one can rely on the theory of presidential attributes.

78. Money and Tsebelis, ‘*Cicero’s Puzzle: Upper House Power in Comparative Perspective*’.

79. This is true, *ceteris paribus*. However, caution must be used in making comparative statements; the results of the model are derived holding the level of impatience constant and impatience may vary across bills and across time – as this article amply illustrates.

80. These examples are for non-financial legislation; rules may change for financial legislation. See Money and Tsebelis, ‘*Cicero’s Puzzle: Upper House Power in Comparative Perspective*’.