A political arena or a *chambre de réflexion*? An examination of the reflective role of Dutch senators

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ABSTRACT
Senators are expected to perform a reflective role: they are not supposed to simply look at the policy content of the legislation but also at its technical aspects and its constitutionality; moreover, they are expected to be more independent from the division between government and their own party. This article examines voting behaviour in the Dutch senate between 2000 and 2015 to determine to what extent this is the case. It finds that there are only small differences in the voting of senators and members of the house that can be explained by the reflective role of senators.

Introduction

Senates are considered to have a reflective function (Norton, 2007, p. 7).[1] They are expected to examine the quality of legislation. For senators to play this role they are supposed to behave differently from their colleagues in the house: senators are expected to play a reflective role. That is they weigh not just the policy direction of a bill but also its technical aspects and constitutionality and work independently from their party and the government (Mastias & Grangé, 1987, p. 90; Russell, 2000, p. 131). Yet surprisingly little is known about the extent to which they actually do this. This article will examine to what extent differences in behaviour between senators and members of the house can be attributed to the senators considering different arguments than house members do. *Do senators play the role of the reflective legislator or are they mainly partisan politicians?*

This article contributes to the debate about the added value of senates (Norton, 2007; Russell, 2000). In the last decades, a large number of bicameral

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countries has been debating whether to reform or even abolish their senate: this ranges from Italy and Ireland, where reform and abolition of the Senate were rejected in referendums (MacCarthaigh & Martin, 2015; Pasquino & Valbruzzi, 2017), via Spain and Canada (Docherty, 2002; Roller, 2002) where senate reform is debated but unlikely, or the Netherlands and France where reform of the Senate is, as of 2020, considered (Remkes et al., 2018),[2] to Belgium, where the senate was reformed to become a meeting place for the regions and communities (Goossens & Cannoot, 2013) and the United Kingdom, which replaced its mostly hereditary House of Lords with a mostly appointed house in 1999 (Russell, 2000, pp. 14–15). The debate about the future of the House of Lords is on-going. Some propose to make it a chamber of revision and review or a constitutional guardian (Russell, 2000, pp. 292–293). A key question is whether it is realistic to expect senates to perform reflective function.

To shed light on this question, this article examines the Dutch senate. The Dutch senate is selected for three reasons: the role conception of its members, the existence of the Dutch council of state and its powers. Firstly, senators consider the Dutch senate a *chambre de réflexion* meant to guard the quality of legislation (Wolters, 1981). Therefore, it is a likely case to find senators playing this reflective role. Secondly, a council of state exists that gives non-partisan judgments about the quality of the legislation under consideration. One can thus compare the voting behaviour of senators with these advices on legal quality. Thirdly, the senate has a veto over legislation. This means that a 'nay' vote in the senate can be treated the same as a 'nay' vote in the house, allowing for a direct comparison of votes in the two bodies. This article follows the proposal of Heringa (2014, p. 55) to compare the recommendation of the council of state to the actual voting in the senate. Is it the case that the council of state set up a shot (with a critical recommendation on a bill) so that the senate can score (by vetoing it)?

Theory

Authors have used different terms to describe the same two functions of senates: the first has been called the 'political' or 'distributive' dimension. or the 'representation' function or justification and the second the 'efficient' dimension, its 'reflection' function or the 'redundancy' justification (Norton, 2007, pp. 6–7; Patterson & Mughan, 1999, p. 12; Tsebelis, 1990; Tsebelis & Money, 1997, p. 15).

The political rationale for bicameralism concerns the distribution of powers between political players. It poses that the majorities in the two houses may have *different* preferences (Tsebelis & Money, 1997, p. 16). This will be the case if the two houses differ in composition, for instance because a particular group has better representation in the senate than in

the house, as is the case in the United States where the framers intended the house to represent the population and the senate the states (Madison, 1788). The idea is that bicameralism prevents a small majority in a single house from determining all legislation (Mill, 1861, p. 235). Political senators are expected to use the same political arguments as in the house, to divide themselves in government and opposition and to vote according to their policy preferences.

The reflective rationale for bicameralism poses that both houses have a *common* interest in the quality of legislation (Tsebelis & Money, 1997, p. 16). The work of senators is supposed to focus on this. Therefore, senates are at their best when they are characterised by 'moderation, quality of work, tenacity, the sense of conciliation [and] independence from the political balance of forces' (Mastias & Grangé, 1987, p. 90).

There are three key differences between a reflective and political ethos: firstly, where house members and political senators are supposed to look at whether they agree with the proposed policy, reflective senators are expected to review legislation on its quality. In the guidelines for checking legislative quality of the Dutch senate (Eerste Kamer, 2008), the term legal quality has two main components: the legality and the efficacy of the bill. The legality of a bill, includes its constitutionality (including a concern for civil rights), its consistency with international treaties and related legislation, to what extent it meets unwritten legal principles and its simplicity. The efficacy of a bill is understood as its effectiveness, its efficiency, feasibility and enforceability. In their reflective role, senates are thus both guardians of the constitution as well as checks on the technical quality of legislation.

Secondly, in the words of Mastias and Grangé (1987, p. 90) one virtue of senators is their 'independence from the political balance of forces'. Reflective senators are expected to work more independently from the government (Russell, 2001, pp. 446–447). Senates are characterised as having a more consensual and less adversarial political culture (Russell, 2000, pp. 131–132). Even in systems where there is a confidence relationship between the senate and the government, the government discipline may be less strict than in the house (Russell, 2001, pp. 448–449): senators tend to serve longer terms making them less sensitive to deselection threats from their parties and their experience and maturity may lead them to be less dependent on their party for their career.

Thirdly, reflective senators are expected to be more independent from their party. One can predict how voting of political senators vote on basis of their party's policy positions (Bräuninger & König, 1999; Cutrone & McCarty, 2006). A reflective senators' work is characterised by conciliation and moderation (Mastias & Grangé, 1987, p. 90). If senators are more independent from their party and more sensitive to non-political arguments, they are likely to be more independent from the programmes of their parties. Indirectly elected senates may be insulated from the pressures of elections (Russell, 2001,

p. 451) and therefore may have more liberty to deviate from their party's electoral mandate. This means that ideological distance matters less for their voting behaviour.

From the perspective of the political rationale, senators are not different from house members from the same party in terms of their policy preferences and their position in the division between government and opposition. From the perspective of the reflective rationale, senators use different criteria when assessing legislation: they look at legal quality and not just policy content; they are more independent from the government and their party. Therefore, reflective senators may vote against a bill that members of the house voted in favour of because they are concerned with the quality of the bill. Reflective senators can vote in favour of a bill that members of the house voted against, because they see their role as assessing the quality of legislation not the substance.

(1) **Legal Quality Hypothesis**: The quality of legislation matters more for the voting behaviour of senators compared to members of the house.
(2) **Government Hypothesis**: The division between government and opposition matters less for the voting behaviour of senators compared to members of the house.
(3) **Ideology Hypothesis**: Ideological distance matters less for the voting behaviour of senators compared to members of the house.

The theoretical underpinning of our expectations is role theory (Andeweg, 2014; Eulau, 1963; Van Vonno, 2012): it holds that political behaviour 'is always conducted in the performance of a political role' (Eulau, 1963, p. 40). The expectations that politicians themselves and others have about their work, as well as the rules and incentives of the institution that they function in, cause them to behave differently than if they would have been elected to the house.[3] This article distinguishes between the political role and the reflective role. This distinction has been used to describe senates, with authors like Russell (2000, p. 131) and Andeweg (1992) referring to differences in 'ethos' or 'political culture' between senates and houses. The goal of the article is to observe the behavioural consequences of this role, ethos or culture.

Note that a senate can have a reflective function even if senators do not play the role of the reflective legislator. In the oft-used metaphor 'Philip sober' may have a different view from 'Philip drunk' (Wallace, 1894). The majority in the senate may stop 'sudden and violent passions' that have taken over the majority in the house (Madison, 1788). A senate is likely to play this role if its composition diverges from the house's composition (Lijphart, 1999).[4] The effects of incongruence will be considered in section 7.

Case selection

The goal of this article is to examine parliamentary voting in a bicameral polity. The selected case must meet two criteria: its senate must have the power to veto legislation and there must be some body that gives an external, non-partisan source of consideration on the quality of all legislation (a council of state). The first requirement is necessary for a controlled comparison of votes in the senate and the house. If the senate only has the power to delay legislation or send it back to the house, votes in the senate cannot be directly compared with votes in the house because they have a different meaning (Fisk, 2011). Second, there must be a council of state. That is there must be a comprehensive, *ex ante* non-partisan source of considerations about the quality of legislation. Table 1 provides an overview of thirteen senates in advanced industrial democracies. Italy and the Netherlands meet both these conditions. The Italian senate is seen as co-equal with the Chamber of Deputies due to its symmetric powers and its direct election (Patterson & Mughan, 2001, p. 42; Russell, 2000, p. 59). In contrast, scholars and senators themselves consider the assessment of the quality of legislation the most important role of the indirectly elected Dutch senate (Andeweg, 1992; Andeweg & Irwin, 2014, p. 166; Andeweg & Van Vonno, 2018; Eerste Kamer, 2008; Van den Braak, 1998, p. 446; Wolters, 1981). The role conception, relationship to the government, insulation from direct election, make the Dutch senate a more likely case than the Italian senate to see reflective senators.

The Dutch senate and council of state

In general, the Dutch senate is seen as a *chambre de réflexion* (Andeweg & Irwin, 2014, p. 166; Wolters, 1981, p. 141), but this is not undisputed. The

Table 1. Thirteen senates.

Country	Senate	Election	Veto	Council of State
Austria	*Bundesrat*	Indirect	Suspensive	–
Australia	Senate	Direct	Full	–
Belgium	*Senaat/Sénat*	Indirect	Suspensive	*Raad van State/Conseil d'État*
Canada	Senate/Sénat	Appointed	Full	–
France	*Sénat*	Indirect	Suspensive	*Conseil d'État*
Germany	*Bundesrat*	Indirect	Full	–
Ireland	*Seanad*	Mixed	Suspensive	–[a]
Italy	*Senato*	Direct	Full	*Consiglio di Stato*
The Netherlands	*Eerste Kamer*	Indirect	Full	*Raad van State*
Spain	*Senado*	Mixed	Suspensive	*Consejo de Estado*
Switzerland	*Ständerat/Conseil des États*	Direct	Full	–
United Kingdom	House of Lords	Mixed	Suspensive	–[b]
United States	Senate	Direct	Full	–

Source: Tsebelis and Money (1997, pp. 48–52) and Drexhage (2014).
[a]Ireland has a council of state but it is a ceremonial body advising the President consisting out of members of the executive, legislature and judiciary amongst others.
[b]The United Kingdom has a council of state that can serve to temporarily replace the monarch.

Dutch senate was instituted in 1815 as a conservative body meant to balance out the power of elected house of representatives (Remkes et al., 2018, p. 40; Van den Braak, 1998, pp. 34–35).[5] Currently, the senate has 75 members and is indirectly elected by provincial councillors for a four-year term.[6] The electoral system is designed to precisely reflect the provincial election results at the voter-level. National parties control the nomination process. In general, the house is considered to have political primacy (Van den Braak, 1998, p. 446). The senate, for instance, tends to be uninvolved in the cabinet formation process. Most scholars and politicians consider the senate's role in examining laws on their legal quality its added value to the political system (Andeweg & Irwin, 2014, p. 166; Wolters, 1981, p. 141). As Dutch judges lack the right to constitutional review, parliament and in particular the senate is expected to exercise this function *ex ante*. The senate has codified this in the aforementioned guideline concerning legislative quality (Eerste Kamer, 2008). In a 2017 survey, however, MPs recognise that as elected politicians they are sensitive to political arguments and political pressure (Andeweg & Van Vonno, 2018, pp. 27–28). As Andeweg and Irwin (2014, p. 166) describe: 'senators from governing parties sometimes grudgingly [accept] bills that they consider to be unsound and senators from opposition parties [vote] against bills that muster in a technical sense for political reasons'. More positively put, the veto power of the senate is unconditional: senators are free to reject or adopt a bill for any reason, the substance of bill, its constitutionality and the continuation of the cabinet (Elzinga, 2014). As both houses tend to have the same composition and a veto over legislation, differences between the house and the senate in terms of voting are likely to result from differences in political and constitutional culture between the two houses (Andeweg, 1992, p. 130).

To tap into this culture, one can examine surveys of senators and house members that were held in 1979, 1990 and 2017. Senators indicated the most important role of the senate is ensuring the quality of legislation (Andeweg, 1992, pp. 137–138; Andeweg & Van Vonno, 2018; Wolters, 1981, p. 145). Senators kept more distance from the government, the coalition agreement and party politics (Andeweg, 1992, pp. 132–138). At the same time, almost half of the senators thought they had to follow their colleagues in the house as much as possible (Wolters, 1981, p. 148). When the senate and the house voted differently, MPs attributed this to a number of factors including changes in opinion within their party over time, to the fact that the senate is not bound to the coalition agreement and legal quality (Wolters, 1981, pp. 143–144). In recent years, senators observe that their work has become more politicised (Andeweg and Van Vonno 2018, p. 28).

An important reason for the perceived weakness of the Dutch senate is its congruence with the house. As can be seen in Table 2, since 2010, however,

most governments have been minority cabinets in the senate despite having majorities in the house.

When one looks at the career paths of senators, however, there are reasons to expect them to be both independent from party politics and well-equipped to judge legislative quality. First, senators tend to be legal experts: of the 212 senators who served between 2000 and 2015, 31 per cent had a law degree. 27 per cent had a PhD (often in law). The position of senator is a part-time position and senators often have made a career in another field.[7] Senators are often at the end of their career.[8] It does not happen often that senators embark on a political career after they have been senator.[9] Given that senators tend to have most of their political career behind them, they are unlikely to sacrifice the need for reflection to their own political future (Andeweg & Van Vonno, 2018, pp. 27–28).

This article analyses to what extent senators follow the advice of the council of state. The Dutch council of state currently has two functions: it advises the government on the quality of each individual bill and serves as the highest court for administrative cases. The council consists out of legal experts, former legislators, former ministers and judges.[10] It is likely that the senate heeds the advice of the council of state given that in the aforementioned guidelines on legal quality, senators are recommended explicitly to check to what extent the government has implemented the council of state's advice. Moreover, the fact that two former chairs of the senate sat on the council of state in this period indicates that the relationship is likely to be productive.

When studying parliamentary voting in the Netherlands, four things should be noted: firstly, although both the government and the members of the house have the right to initiate legislation, 98 per cent of legislation

Table 2. Government majorities in different houses 1998–2015.

Cabinet	In office	House		Senate	
		Election	Percentage	Election	Percentage
Kok II	1998–2002	1998	65%	1995	51%
				1999	53%
Balkenende I	2002–2003	2002	62%	1999	52%
Balkenende II	2003–2006	2003	52%	1999	57%
				2003	55%
Balkenende III	2006–2007	2003	48%	2003	52%
Balkenende IV	2007–2010	2006	53%	2003	59%
				2007	52%
Balkenende V	2010	2006	33%	2007	31%
Rutte I[a]	2010–2012	2010	35%	2007	47%
				2011	36%
Rutte II	2012–2017	2012	52%	2011	40%
				2015	28%
Rutte III	2017–current	2017	51%	2015	51%
				2019	43%

[a]Rutte I was a supported minority cabinet. With their support party they had a majority in the house but not in the senate.

originates from the government. Legislatives votes are almost always concern government bills. Secondly, legislation follows a strict cycle. After the cabinet decides on the text of the bill, the bill is sent to the council of state, which comments *ex ante* on the quality of the bill. The cabinet is not required to revise the bill in response to the council's comments. Next, the bill is discussed in a house committee. The government can choose to revise the bill after comments from the house committee but it can also choose to bring the bill to the plenary. The plenary votes on amendments and the bill. Adopted bills are then sent to the senate. The government can no longer rewrite the bill and the senate cannot adopt amendments. The senate can veto legislation or it invite the government to introduce a navette, which would address the concerns of the senate (Tsebelis & Money, 1997, p. 51).[11] This navette then goes through all the previous stages and is voted on at the same time as the bill it is supposed to fix. The third notable thing about parliamentary voting in the Netherlands is that nearly all parliamentary votes are counted per party and party discipline is extremely high (Van Vonno, 2016). Therefore, voting is analysed at the party level. Finally, the Dutch parliament operates consensually. Between 1998 and 2015 77 per cent of all legislation passed through both chambers without a single 'nay'-vote in either house. The study of legislative voting in the Netherlands is the study of a large share of 'yeah' votes and small share of 'nay' votes.

Methods

The goal of this article is to determine what can explain differences in voting behaviour between the house and the senate. The dependent variable of the study is whether a parliamentary party group in the house or the senate voted in favour or against a specific piece of legislation. The data on parliamentary voting in the house and the senate comes from the website of the Dutch senate.[12] The texts on the senate website were parsed and transformed to a data matrix. For reasons of comparability, the study concerns only legislation that was voted on in both chambers and parties that have had representation in both chambers. This data concerns the period between 1998 and 2015. As the dependent variable is dichotomous, logistic regression is employed. Each case in the data set is how a parliamentary party group voted on a specific bill. The observations are not independent: in particular, parliamentary party groups are voting on the same legislation. Therefore, votes are clustered at the level of the bill (2490 levels) in Stata. Table 3 provides the descriptive statistics of the employed variables.

In order to differentiate between the house and the senate, an independent variable is included that is one of if the vote occurred in the senate and zero for the house. The first hypothesis concerns the quality of legislation. As discussed above, recommendations by the council of state are used as an

Table 3. Descriptives.

Variable	Mean	Median	S.D.	Min.	Max.	N
Government	0.22	–	–	0.00	1.00	98640
First Chamber	0.50	–	–	0.00	1.00	98640
Yes Votes	0.95	–	–	0.00	1.00	75933
Amended Bill	0.23	–	–	0.00	1.00	98472
Distance from the Government	0.31	0.28	0.21	0.00	1.00	72591
Council of State Recommendations	0.24	0.20	0.23	0.00	1.00	59760

indicator of the quality of legislation. All recommendations on the website of the Dutch council of state were downloaded. These texts were parsed to search for the specific formulations (see Table 4) that indicate the different levels of concern the council of state has, from having no concerns to advising the government not to send the bill to parliament.[13] This data concerns the period between 2000 and 2014. For comparability in the regression analysis, this variable was re-calculated so it is bounded between zero ('no comment') and one ('do not send this bill to parliament'). The data from the council of state and the senate was then matched.[14] In total the data set consists out of 2542 bills that were voted on in the Dutch parliament between 2000 and 2015.

It is important to note that the council of state recommendations are only a proxy for the quality of the bill in the senate: the government may have reacted on the council of state's recommendation by changing the text of the bill. The extent to which the advice of council of state may actually affect how house and senate groups voted, depends on whether the advice is still valid. The council of state writes its advice before a bill is sent to the house of representatives. If the house amended the legislation, the advice of the council of state may no longer be valid: through amendments, the house may have solved the issues the council of state was concerned about, or it may have introduced new problems with legislative quality. Therefore, senate groups may have both more and less reasons to vote against amended bill. To model this, a variable that reflects whether amendments

Table 4. Recommendations of the council of state.

#	Label	Formulation	N
1	No concerns	The bill does not give the council of state reason to make substantial remarks.	1054
2	Give attention	The council of state suggests that you send the bill to the house after attention has been given to the above.	227
3	Take into account	The council of state suggests that you send the bill to the house after the above has been taken into account.	907
4	Do not send but	The council of state suggests that you not send the bill to the house but after the above been taken into account.	247
5	Do not send in this form	The council of state has such objections to the proposal and suggests that you do not send the bill to the house in this form.	43
6	Do not send	The council of state has such objections to the proposal and suggests that you do not send the bill to the house.	12

were adopted concerning each bill, is included. This data was drawn from Louwerse et al. (2017). 23 per cent of bills were amended. In order to model the effect described above, a three-way interaction between whether legislation is amended, the council of state advice and whether the vote occurred in the house or senate, is added. The expectation is that senate and house groups will differ in the extent to which they take into account council of state recommendation for unamended legislation. The expectation is that for amended legislation such a pattern will not be present.

Two additional variables are included: first, for government participation, it was noted whether parties supplied ministers at the time of the vote. Second, as the study only concerns votes on government bills, one can use the ideological difference between the government and the legislators' party as an indicator of ideology. The Chapel Hill Expert Survey is used to measure party positions (Bakker et al., 2015a, 2015b).[15] The government position is calculated as the mean of the government parties' positions weighted by the number of ministers of the cabinet of each party. This variable was standardised so its minimum is zero and its maximum is one to one in order make it comparable to other variables.

In some additional analyses in section 7 the use of navettes is analysed in detail. The information on the navettes was drawn from the site of the Eerste Kamer (2016).

Results

The analysis below examines under which conditions parliamentary party groups vote in favour (or against) bills. First, the effect of council of state recommendations on how the two chambers vote on amended and unamended legislation is examined. This is visualised in Figure 1 and shown in Table 5. When the council of state has no concerns on unamended legislation senate parties have a 96.7 per cent chance to vote in favour of a bill and house parties have a 95.9 per cent chance. This is a small, but marginally significant difference (at the 0.1-level). This outcome provides limited support for the Legal Quality Hypothesis: on bills where there are no concerns about the legal quality, senators are more likely to vote in favour. When one moves towards more critical recommendations, one can see a decline in the extent to which both party groups in the house and senators vote in favour of bills. This decline is sharper for groups in the senate compared to those in the house. At recommendation level 3 (take into account), the overlap between the confidence intervals is such that, statistically, the senate groups vote against legislation as often as groups in the house. Beyond that level the voting patterns of parliamentary party groups in the house and the senate are statistically indistinguishable. When it comes to amended legislation, differences are less pronounced. When it comes to
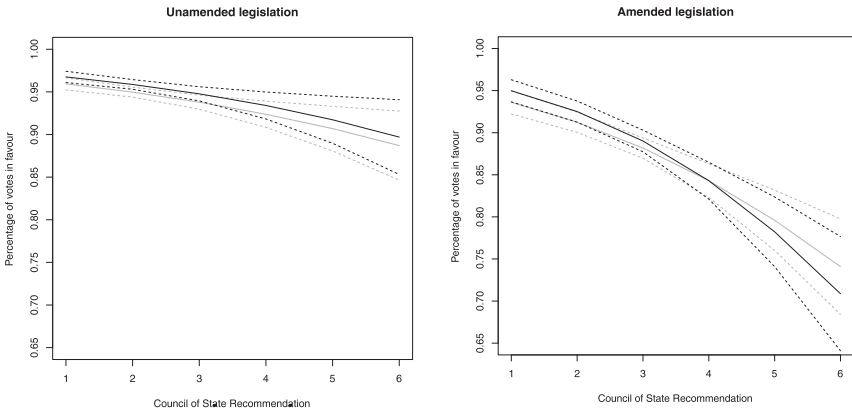
Figure 1. Council of state recommendation, chamber and parliamentary voting on amended and unamended legislation. Based on Table 5. Black line for the senate and the grey line for the house. Note that the *y*-axis is truncated to show the area of relevant variance and that the label on the *x*-axis reflects meaningful categories and not the actual value of the independent variable which was recalculated to fall between zero and one.

Table 5. Explaining 'yes' votes in the house and senate.

Variable	Coefficient
Intercept	3.76***
	(0.11)
Government	1.95***
	(0.15)
Distance from the Government	−2.02***
	(0.11)
Council of State Recommendation	−1.15***
	(0.28)
Senate	0.18*
	(0.10)
Amended Bill	−0.50***
	(0.15)
Council of State Recommendation * Amended Bill	−0.63
	(0.39)
Senate * Government	−0.34**
	(0.15)
Senate * Distance from the Government	0.15
	(0.12)
Senate * Council of State Recommendation	−0.12
	(0.21)
Senate * Amended Bill	0.03
	(0.12)
Senate * Council of State Recommendation * Amended Bill	−0.31
	(0.29)
N	
Pseudo-loglikelihood	
Pseudo-R-squared	
Wald Chi-squared	

Logistic Regression with standard errors clustered by bill.
*** < 0.01 < ** < 0.05 < * < 0.1.

unamended legislation on which the council of state expressed no concern, senate groups have a 95.0 per cent chance to vote in favour, compared to 93.6 per cent in the house. When one moves to the more critical council of state recommendations, namely beyond level 4 (do not send but), senate groups are more likely to vote against legislation than house groups. However, because of the size of the confidence intervals none of the differences between the house and the senate are significant when it comes to amended legislation. The similarity in voting between house and senate is in line with the expectation that due to the adopted amendments the council of state recommendations are no longer valid.[16]

All in all, the differences are very small and barely significant, but they are in line with the hypothesis: when there were no issues with legal quality, parliamentary party groups in the senate are more likely to vote in favour of legislation than parliamentary party groups in the house. Sensitivity to council of state recommendations only very marginally differentiate the house and senate.

Figure 2 shows the results for the interaction relationship between government status and the voting behaviour of parliamentary party groups in the house and the senate. When parliamentary party groups are in opposition, they are more likely to vote against legislation than when they are in government. There are however marked differences between the groups in the house and the senate. In the senate opposition parties are more likely to vote in favour compared to opposition parties in the house (92.6 vs. 91.5 per cent). This is a small but significant difference (at the 0.05-level). In contrast, government parties are more likely to vote in favour of legislation in the house compared to the senate (98.6 vs. 98.3 per cent). This difference is not significant. This means that in the house the difference in the likelihood of voting in favour between the opposition and the government is larger than in the senate (7.2 per cent vs. 5.8 per cent – which is significantly different). All in all, these results confirm the Government Hypothesis: opposition senators are slightly but significantly less adversarial than their house colleagues. The opposite is not true for government senators and house members, however.

The final hypothesis concerns the ideology of the senate and house parties. As can be seen in Figure 3, there is a significant interaction effect: ideology matters slightly less in the senate compared to the house. When one looks at parties that have the same policy position as the government, senate parties have a 97.1 per cent chance of voting in favour, compared to 96.9 per cent in the house. This difference is not significant. When one moves to parties furthest from the government, parties in the senate have an 84.9 per cent chance of voting in favour while parties in the house have an 82.2 per cent chance of voting in favour. This difference is significant beyond the midway point of the x-axis in Figure 3. The Ideology Hypothesis is corroborated: senate groups with policy preferences far from the proposed legislation
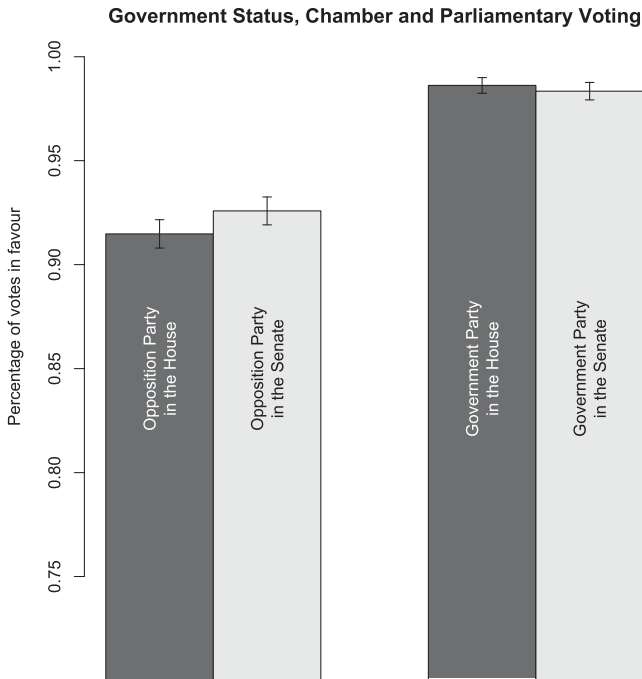
Figure 2. Government status, chamber and parliamentary voting. Based on Table 5. Black bar for the senate and the grey bar for the house. Note that the *y*-axis is truncated to show the area of relevant variance.

are indeed more likely to vote in favour, than parliamentary party groups in the house with the same policy preference.

All in all, voting patterns in the Dutch senate appear to be primarily characterised by a general culture of consensus (both the house and the senate tend to vote in favour of legislation over 90 per cent of the time). The political role of senators (the sizeable effect of ideology and government) is of greater importance than their reflective role (the small effect of council of state recommendations for unamended legislation).

Implications and objections

This section will consider a number of implications and objections to the results above. Firstly, the results showed some tensions within the conception of a reflective senator. Reflective senators are expected to act in a less adversarial way (Russell, 2001, p. 443). This is reflected in the fact that in general senators are more likely to vote in favour of legislation. On the other hand, reflective senators are supposed to scrutinise legislation more critically. The crossing pressures of conciliation and detailed scrutiny result in a situation
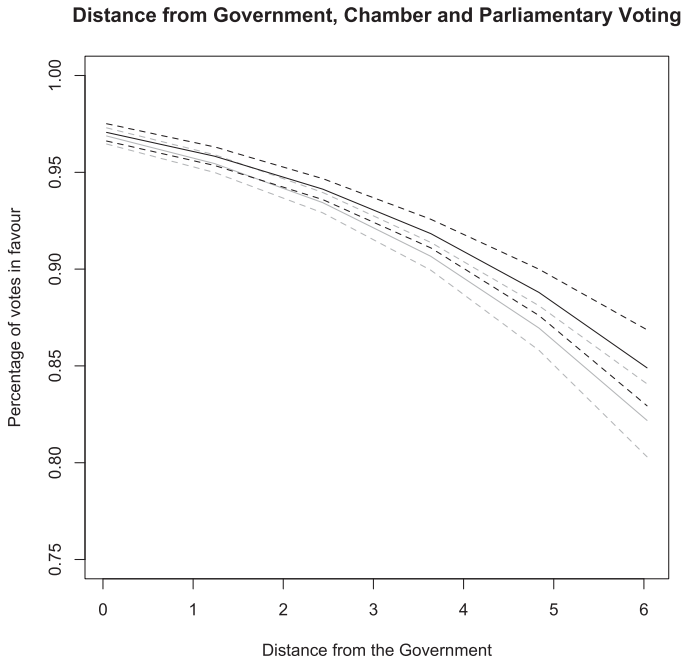
Distance from Government, Chamber and Parliamentary Voting

Figure 3. Distance from the government, chamber and parliamentary voting. Based on Table 5. Black line for the senate and the grey line for the house. Note that the y-axis is truncated to show the area of relevant variance and that the label on the x-axis reflects meaningful categories and not the actual value of the independent variable which was recalculated to fall between zero and one.

where senators are more likely than house members to vote in favour of bills without quality concerns but that when the quality of the legislation becomes an issue there is no significant difference between house and senate. If the Dutch senate had been less consensual it could perhaps fill its scrutiny role better.

Second, if the senate and the house vote so similarly, both tend to vote in favour in legislation with large majorities and the composition of the Dutch senate is mostly congruent to the house, is the senate able to block legislation? Table 6 shows the percentage of bills rejected by the senate per council of state recommendation. It shows on the whole that the senate rejected 0.6 per cent of bills, comparable to figures from other bicameral systems where the senate has a veto (Fisk, 2011). These were the bills that tended to have more critical recommendations from the council of state.[17] Therefore, the senate is not very effective in blocking bills with legal quality deficiencies. The alternative that the senate has to blocking the bill, is threatening a veto unless a navette is introduced. If the senate is successful at demanding navettes there is no need for veto a lot of legislation. As can be seen in Table 6, navettes were

Table 6. Rejections and navettes.

#	Label	Rejected	Navettes	N
1	No concerns	0.2%	0%	1054
2	Give attention	0%	0.4%	227
3	Take into account	0.8%	1.4%	907
4/5/6	Do not send (but/in this form/at all)	1.7%	2.0%	302
Sum		0.6%	0.8%	2490

Recommendations 4/5/6 are taken together to prevent individual occurrences from creating large outliers.

only introduced in 0.8 per cent of the bills. They are introduced more often to fix bills with greater quality concerns than bills with no quality concerns.[18] The small number of rejections and the small number of navettes indicate that the power of the senate to block or threaten to block legislation on basis of legal quality is limited.[19]

Finally, one may argue that a senate's reflective role is not dependent on why the individual senators vote in favour or against legislation. Rather if the senate has an alternative majority from the house, its 'sober Philip' can review the actions of the 'drunk Philip'. What is necessary for a reflective senate is not that senators behave differently, but rather a lack of congruence. Until 2010 the Dutch governments had majorities in the senate. Since then governments that were minority governments in the senate have governed the Netherlands. Table 7 shows a difference between voting patterns under majority and minority cabinets: the senate is as likely to reject legislation form minority governments compared to majority governments. There is a non-significant increase from 0.5 to 0.8. All these rejections concern bills where the council of state expressed some concern about quality. The senate was as likely to (successfully) demand navettes under minority governments though: there is a non-significant *decrease* from 0.9 to 0.7 per cent. All in all, when both Philips were 'drunk' the one corrected the other in only 0.5 per cent of the cases; whereas when one was 'drunk' and the other 'sober', this percentage increased by a meagre 0.3 per cent.

Table 7. Comparing legislation from governments with and without a majority in the senate.

#	Label	Majority	Minority
1	No concerns	0.2%	0%
2	Give attention	0%	0%
3	Take into account	0.5%	1.4%
4/5/6	Do not send (but/in this form/at all)	1.5%	1.9%
Percentage rejected		0.5%	0.8%
Percentage navettes		0.9%	0.7%
Average majority house		96.3%	94.7%
Average majority senate		97.0%	93.9%
Median council of state recommendation		2	3
N		2997	1113

Recommendations 4/5/6 are taken together to prevent individual occurrences from creating large outliers.

Perhaps the minority governments anticipated a more adversarial senate and therefore sought broader majorities for their legislation and wrote less controversial legislation. The fact that the last two governments did not have a majority in the senate has created the need for government and opposition parties to reach policy compromises: in the period studied, the cabinet Rutte II has forged seven major policy compromises with opposition parties. Only one of these compromises agreements was struck by means of a navette. For the other cases, the cabinet anticipated not having majority and the coalition and some opposition parties came to an agreement before the bill was discussed in the senate. Despite these cross-cutting legislative alliances, the support for legislation in this period declined: Table 7 shows that the majorities in the senate were actually smaller during the minority governments than during the majority governments. These decreases in majorities are small but significant (a decrease of 1.6 per cent of the seats in the house and of 2.1 per cent of the seats in the senate). Not only could minority governments rely on less support than majority governments, their legislation also had *more* quality concerns. as is evident from the advices of the council of state: due to small shifts in underlying categories, the median council of state recommendation shifted from level 2 (give attention) to 3 (take into account).[20] It is not the case that minority governments improved the quality of their legislation because they anticipated a more adversarial senate. Instead, these minority governments brokered controversial policy deals with opposition parties, which could rely on less support than what had been authored by previous majority governments.

The proof for a more reflective senate when the government does not have a majority there compared to periods when the government has a majority, is even more limited than the proof for more reflective senators: most differences are not significant and only in one case does the pattern go in the expected direction.

Conclusion

This article examined empirically to what extent the roles of the reflective and political legislator structure voting behaviour in the Dutch senate. When looking at the behaviour of senators, their tendency to vote in favour of legislation (shared by members of the house) is the most striking feature of their behaviour. The explanatory effect of ideology and government participation indicate that senators tend to play a political role, just like members of the house: voting in favour on legislation because they are member of government parties and voting against if they are far away from the government. The difference between the senate and the house is limited: Dutch senators prioritise programmatic differences less than members of the house and are more independent from the government. There is a minute difference in the extent

to which members of the house and the senate Dutch senators are more sensitive to the quality of legislation. All in all, senators play the role of the reflective legislator slightly more often than members of the house. This small difference, however, is far-removed from the notion that the primary role of senators is to assess the quality of legislation; for the most part their work appears to be structured by a political logic. The possibility that it is not the way that individual senators acts that underlies the reflective role for a senate but rather whether the senate had the same majority as the house was also examined. These results are even less supportive of this notion.

As of 2020, the role of the Dutch senate is actively reconsidered. In 2018, the state committee-Remkes, consisting out of former politicians and experts, proposed to give the senate the power to send legislation back to the house, which would then be forced to reconsider it (Remkes et al., 2018). If the senate has more options than a veto and the existing navette, it is better equipped to ensure the quality of legislation. The Dutch government has adopted this suggestion. The government has now also proposed staggered elections for the senate (a third of the senate every three years). If the senate is elected in a staggered way, the senate will be more insulated from electoral changes. It is unlikely that either of these reforms will greatly enhance the ability of the senate to ensure legislative quality. As we showed in paragraph 7, the composition of the senate does not markedly affect its ability to weigh the quality of legislation. The proposed right to send back legislation to the house would force the house to reconsider legislation but then would leave the final vote in the house. This counts on the willingness of house members to play the role of reflective legislator. Yet, in the house, as this article shows, political arguments weigh as stronger or even stronger than in the senate.

What do these results say beyond the borders of the Dutch case? In many ways the Dutch senate is a likely case to find reflective senators: not only because they are elected indirectly and not involved in cabinet formation, but in particular because senators themselves see the role of their institution primarily as *chambre de réflexion*. Even in this house the effects are extremely small. Given these marginal differences, it is unlikely that in systems where because of direct election pressures or the representation of specific regional interests, political arguments weigh heavier, senators will show even the small inclination towards the reflective senator found here. In countries with senates that are similarly insulated from political considerations, similar weak differences between the senate and the house are likely to be found.

This study contributes to the on-going debate about the relevance of senates. The idea that senators or senates play a reflective role of house of revision or guardian of the constitution received limited support. Voting patterns in the Dutch senate appears to be primarily characterised by a general culture of consensus, next by political role and finally by the role of the reflective

legislator. When the house and the senate have different majorities, the reflective role of the senate is not noticeably increased. A difference in political culture, role conception or ethos between the house and the senate will only lead to a minimal difference in outcomes between the two chambers.

Notes

1. This article will consistently use the term house to refer to what is generally called the First Chamber and senate to refer to what is generally called the Second Chamber, as in the Netherlands, the terminology (First and Second Chamber) is reversed.
2. Mallet, V. (28/9/2019) 'Macron moves to replace Senate amid constitutional reforms' *Financial Times* https://www.ft.com/content/a4982180-c9ad-11e9-a1f4-3669401ba76f
3. There are a number of typologies of parliamentary roles. The reflective and political roles are similar but not identical to the role of partisan and parliamentarians used by Andeweg (1997). Partisans are pursue the interests of their parties; parliamentarians defend the common interest of parliament.
4. Although even a congruent house and senate may vote differently as senators may have different preferences from house members for instancing originating from regional differences (Heller, 2001).
5. It also served as a house for the nobility from the South of the Netherlands that joined the North of the Netherlands in 1815, where the nobility has been less powerful. Between 1815 and 1848 the senate was appointed and the house elected indirectly, since 1848 the senate is elected indirectly and the house is elected directly.
6. Under special conditions the senate's term can be dissolved prematurely, but this has not happened since 1995.
7. For instance, 17% of senators in this period were professors.
8. 17% were member of the house before they became senator and 10% were member of the cabinet.
9. Only 3% of senators became a member of the house afterwards and 2% became a member of the cabinet.
10. Of the 45 individuals who served as member of the council of state between 2000 and 2014, 84% had a law degree. 32% had a PhD (often in law) and 45% were professor (often in law). 18% were former judges. 14% were former members of the cabinet, 18% were former members of the house and 16% were former senator. The king, the queen and an adult heir apparent are formally also member of the council but do not attend meetings.
11. This is a navette in single round negotiation where only the government can initiate them and the senate retains its veto.
12. This data was made available by the Parliamentary Documentation Centre.
13. The council of state only uses these formulations when dealing with government bills. 2% of bills that are initiatives by MPs are disregarded as well as three cases, where the council of state did not use a standard formulation.
14. The two institutions do not use the same unique identifiers consistently. 1715 (42%) bills were matched on the basis of the dossier number of the bill. 827 (20%) were matched on basis of the name. The remaining 1567 (38%) bills were not matched: either because they are specific budgetary bills on which

the council of state does not advise (29%) or because no advices were available for the period 1998–2000 (5%). In 4% of the cases the matching failed. If there were double matches because there were multiple recommendations by the council of state only the final advice was included. More than one advice is included when the government sends the council a new text in reaction to their comments.

15. For each vote the expert survey that was closest to the election date of the parliament in question, was selected, as this is the point when MPs receive their mandate: the 1994 and 1998 Tweede Kamer elections were linked to the 1999 CHES, the 2002 and 2003 Tweede Kamer election to the 2002 CHES, the 2006 Tweede Kamer election to the 2006 CHES, the 2010 Tweede Kamer elections to the 2010 CHES and the 2012 Tweede Kamer elections to the 2014 CHES. The 1999 Eerste Kamer election was linked to the 1999 CHES, the 2003 Eerste Kamer election to the 2002 CHES, the 2007 Eerste Kamer election to the 2006 CHES and the 2011 Eerste Kamer election to the 2010 CHES. The SGP is missing from the 2006 CHES, PvdD from 2006 CHES and 50Plus from 2010 CHES.

16. Amended legislation is more often rejected than unamended legislation. Whether or not amendments are proposed on a bill may indicate to what extent a bill is politically controversial. Those are more likely to be rejected. The results indicate that senators are less likely to vote against 'uncontroversial' legislation about which council of state had not objections, than parties in the house.

17. The two bills at level 1 were changes to the constitution in second reading. In those cases the council of state's advice was already incorporated into the bill in the previous stage. In the second reading a constitutional revision needs a two-thirds majority, which increases the chance of rejection.

18. It is not the case that recent governments have relied more on the navettes than before. Since 1980 the number of navettes oscillates around 2.7 per year. Before that navettes were used much less often. Neither the period since 1998 (with 2.8 navettes on average) or the period of minority government since 2010 (with 2.8 navettes on average as well) differ from this period. In this sense, the current use of the navette is quite limited and nothing new.

19. The analysis only concerns government bills. 2% of legislation that comes to the senate, is authored by members of the house. The council of state does not use the same formulations to characterise bills as they do for the government; so one cannot determine the legal quality in the same fashion. Many of these proposals tapped into controversial issues like freedom of religion or the functioning of democracy. The senate blocks those frequently; five out of fifty initiative bills were blocked by the senate. For five, a navette was introduced by the authors to address the concerns of the senate.

20. Category 1 declined from 43% under majority cabinets to 41% under minority cabinets. Category 2 declined from 10% to 8%. Category 3 increased from 36 to 37%. The more critical advices increased from 12% to 13%. The net result of these small changes is shown in Table 7.

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