



# PADEMIA PARLIAMENTARY DEMOCRACY IN EUROPE

Research Notes on Parliamentary Democracy 4/2017

## The failed reforms of the Spanish Senate

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**Series Editors:** Katrin Auel and Resul Umit

This research note series is published by the  
**PADEMIA: Parliamentary Democracy in Europe.**

# The failed reforms of the Spanish Senate

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*As in other countries, the Spanish upper chamber is facing harsh criticism. It has failed to fulfil its constitutional task as a chamber of territorial representation. Notwithstanding a number of proposed reforms, the Senado has remained almost unchanged since its creation in 1978. So why is it so difficult to restructure this chamber? In this research note, the authors explain the impasse of the reform of the Senate by evaluating three approaches. After stressing the qualities and defects of the legal inheritance and party bargaining frameworks, they argue that the joint-decision trap perspective can help to understand the two-fold dynamic of institutional obstruction and incremental change that has affected the Spanish Senate for the last 20 years.*

In federal and decentralised countries, upper chambers usually deal with tensions as a result of simultaneous centralising pressures coming from national executive bodies and decentralising forces from peripheral institutions. This phenomenon generated a series of debates about the role of the senate in countries such as Canada, Belgium or Spain. Although the 1978 Spanish Constitution defines the Senate (*Senado*) as '[...] a chamber of territorial representation' (Article 69), it falls short of meeting this function, and its public image has been eroded. Contrary to what might be expected in a multinational federal-like state, the Spanish Senate suffers a crisis of institutional legitimacy; a number of reforms have been advanced, and yet the upper chamber remains intact with minor changes. So, how to explain this institutional deadlock?

## *Criticisms commonly levelled against the Senate*

The first criticism regarding the Senate concerns its complex electoral system. 56 senators (from a total of 264) are appointed by the regional assemblies, while each of the 51 provinces elects four of the 208 directly elected senators by direct vote and partial block voting every four years. Parliamentary

groups representing territorial minorities would prefer an electoral system based on the autonomous communities as electoral districts in order to boost the federalisation of the regime.

The second limitation is its lack of legislative power. Although the 1978 Constitution grants some powers to the Senate, this chamber can easily be controlled by the other state institutions (*Congreso de los Diputados* and Cabinet). Such a situation of imbalance between the two chambers has made the Senate a rubber stamp chamber with almost no power.

Thirdly, despite the importance of upper chambers in federal politics, Spanish public opinion shows both large ignorance and deep criticism about the role of the Senate in the political system. In 2012, the Centre for Sociological Research (CIS) revealed that 30% of Spaniards had no idea about the exact role of the Senate within the constitutional regime. Moreover, the degree of satisfaction with respect to the work of the Spanish Senate was astonishingly low: only 7% of interviewees thought the Senate was doing a good or very good job while a majority of 52% of citizens would have preferred to abolish the Senate

### *The Legal Inheritance Argument*

Despite this criticism, a more far-ranging reform of the Senate remains highly improbable almost 40 years after its creation. Firstly, reforming the Senate would require a modification of the 1978 Constitution, which indicates that a majority of three-fifths of the Congress and the Senate is necessary to adopt a new regulation (Art. 167). Alternatively, a commission composed of members from both chambers could reach an agreement through an absolute majority in the Senate and a majority of two-thirds in the Congress. But finding such a super-majority is a very difficult task. Consequently, all proposals to reform the Senate presented in the last ten years have failed.

### *The Party Bargain Argument*

A reform of the Senate would therefore require the support of the Socialist Party (PSOE) and the conservative People's Party (PP), but these two parties have no incentive to undertake such a process of reform despite a large majority of MPs (80%) advocating for the Senate as a chamber of territorial representation. The Senate is frequently presented by social activists and emerging parties such as *Podemos* and *Ciudadanos* as an essential resource-provider for the PP and the PSOE's apparatus. The Senate is also depicted as an 'elephant's graveyard' where the PP and the PSOE send their old leaders at the end of their political careers. Thanks to the possibility of appointing senators directly through the regional chambers, the Senate typically provides a fall-back solution to PP and PSOE senior members. But this interpretation probably centres too much on the PP and the PSOE. The main peripheral nationalist parties (such as the Basque Nationalist Party – PNV – and the [former] Convergence and Union – CiU – in Catalonia) have perfectly incorporated the logic of the current system of bilateral relationships. The current system allows them to negotiate

directly with the central government on account of their potentially pivotal party status. A federal Senate would oblige the Basque and Catalan nationalist parties to bargain openly in a multilateral organisation probably dominated by other non-nationalist regional governments. Overall, and as paradoxical as it may seem, the parties representing the principal minorities of Spain do not advocate the federalisation of the Senate.

### *The Joint-decision Trap Argument*

Is there a Spanish version of the joint-decision trap dilemma? As it currently stands, party proposals for reforming the Senate run against the opposition of powerful veto players. Our study identified three broad interest coalitions with incompatible interests. The alliance led by PNV and CiU believe the Senate should aim to reflect the national specificities of cultural minorities. In 1998, CiU submitted a reform whereby the 'historical' nationalities (Catalonia, Galicia and the Basque Country) would enjoy a specific veto right within the Senate over legislation affecting their regions. But that project was rejected. In January 2011, Spanish senators were finally allowed to debate in four of the country's languages (Catalan, Galician, Basque and Spanish) as a partial recognition of the cultural differences between the Spanish regions.

Leftist groups (PSOE and IU) advocate the conversion of the Senate into a multilateral forum where autonomous communities and the central state can resolve territorial issues. As early as 1977, Socialist deputies proposed a federal Senate along with Catalan nationalists, based on an equal representation of ten deputies per Spanish region but this project was boycotted by the conservatives. In 1994, the General Commission for the Autonomous Communities was finally created within the Senate. Recently, there are electoral promises within the left advocating for the federalisation of the Senate.

Lastly, conservatives (PP) consider that the rise of autonomies is associated with a loss of grip of central state institutions on territorial politics. The PP has opposed all proposed reforms of the Senate (especially when it obtained an absolute majority as in 2000 and 2012) and advocated bilateral relationships with regional governments in order to maintain the leadership of the central state. The PP has consistently blocked the work of the commissions set up in 1996 and 2012 to study possible reforms of the upper chamber.

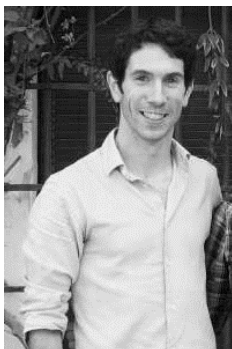
In contrast to the other interpretations, the joint-decision trap framework has the advantage of shedding a new light on two interrelated phenomena. On the one hand, it allows an explanation of the deadlock impeding the reform of the Senate. Political parties – and especially the biggest ones (but not only) – have perfectly integrated the rules of the game designed during the Transition. Accordingly, they adapted their behaviour to the new institutional context by using the Senate for internal purposes. This is why the PP, the PSOE and to a certain extent the PNV and CiU exert their veto power at the Congress and the Senate for limiting the scope of reform proposals. On the other hand, the concept of ‘least common denominator’ bargaining also allows an

understanding of the incremental modifications of the upper chamber such as the creation of the General Commission for Autonomous Communities or the translation office for regional languages.

### *Conclusion*

The favourite argument of this paper was that the blocked reform of the Senate can be best understood as a case of joint-decision trap. In accordance with the inheritance argument, rules constrain actors’ strategies; and in line with the party bargaining perspective, it is obvious that some political parties have made full use of the Senate’s resources. But the examination of political coalitions shows that three incompatible projects are currently on the table: a federal reform proposed by Socialists, a two-speed reorganisation pushed by peripheral nationalists, and a marginal modification of the current situation planned by Conservatives. Each player uses its veto power to block the adversaries’ proposals and only limited and incremental changes are allowed through a series of agreements based on the lowest common denominator principle.

*This note represents the views of the author and not those of PADEMIA. It is based on the authors’ [recent article](#) forthcoming in Parliamentary Affairs.*



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