

# WHY IS THE SPANISH UPPER CHAMBER SO DIFFICULT TO REFORM?

## Abstract

As in other countries, the Spanish upper chamber is facing harsh criticisms. 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? This research aims to explain the impasse of the reform of the Senate through evaluating three approaches. After stressing the qualities and defects of the legal inheritance and party bargaining frameworks, this paper argues 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.

**Keywords** Federalism, Reform, Senate, Spain, Upper Chamber

## Introduction

Upper chambers form a central issue in studies of federalism (Money and Tsebelis, 1992: 25–43; Riker, 1992: 101–116). In contrast to unitary states, federal upper chambers represent a forum for the representation of territories (as in the United States) and/or minorities (as in India). Through different systems of appointment (e.g., direct and indirect elections, co-option) federal bicameralism usually allows the accommodation of tensions between individual and collective rights. The creation of an institutional framework able to represent collective interests through a specific territorial chamber (with or without veto powers) is considered as a step towards the resolution of ethnic and territorial conflicts that considerably lowers the transaction costs of bilateral negotiations (Benz and Broschek, 2013). However, as stressed by Sartori (1994), Kymlicka (2009: 109–148) and Behnke (2013: 459–469), federalism is, at the same time, both the solution to territorial tensions and the cause of those conflicts. By transferring competences and resources to minority representatives, federalism tends sometimes to amplify their claims for autonomy or independence.

Upper chambers typically deal with tensions stemming from centralising pressures coming from national executive bodies and decentralising forces from peripheral governments. This phenomenon has generated a series of debates about the role of the Senate in countries such as Germany and Australia (Swenden, 2004). In recent years, some federal countries have undergone reforms of their upper chambers to improve or restrict the representation of their inner plurality.<sup>1</sup> At the same time, a number of unitary

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<sup>1</sup> For example, the 2011 reform of the Senate in Belgium amplified the powers and the mechanisms of the appointment of Belgian senators. The designation moved to a system of indirect election within language-based communities to amplify the decentralisation of that polity. On the contrary, Canada is a good

states, such as Croatia, Sweden and Denmark, have eliminated their upper chambers. In sum, the reform of upper chambers is on the agenda of several governments, even if it is difficult to implement (Russell, 2001: 442–461).

Historically speaking, Spain has been a bicameral State since 1837 (Paniagua, 1997: 410–422).<sup>2</sup> The 1978 Constitution defines the *Cortes* (Parliament) as being made of the Senate (*Senado*) and the Congress of Deputies (*Congreso de los Diputados*). The Constitution also defines the Senate as ‘[...] a chamber of territorial representation’ (Article 69). However, the Senate falls short of meeting this function and its public image has become eroded. It has recently faced harsh criticisms. Contrary to what might be expected of a multinational federal state, the Spanish Senate suffers a crisis of institutional legitimacy. A number of reforms have been proposed, and yet the upper chamber has remained largely intact, undergoing only minor changes. Drawing on the international comparison led by Russell and Sandford (2002: 79–89), we identify elements such as constitutional rigidity, vested interests or the attitude of governments that can constitute powerful obstacles to reforming the upper chambers. This article sets out to explain this institutional deadlock in the Spanish case.

The article presents three different approaches to explain this impasse. Firstly, institutionalist authors stress the importance of the inheritance in Spanish politics. These scholars argue that the legal difficulties in reforming the 1978 Constitution present an

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example of an English-speaking majoritarian state where a French-speaking minority from Quebec has received constitutional recognition, leading to the transfer of specific rights. Nevertheless, despite the decision adopted by the Canadian Supreme Court in 1998 that obliged federal states to guarantee the representation of minorities, including the non-territorialised ones, the federal government refused to modify the mode of designation of Canadian senators (Lecours and Béland, 2013: 93–113).

<sup>2</sup> The exceptions being Primo de Rivera’s dictatorship (1923–31), the Second Republic (1931–39), Francoism (1939–75) and the transition to Democracy (1976–79).

obstacle course that only a super-majority could overcome. But such a super-majority is hard to mobilise with a proportional electoral system, even one often producing majoritarian outcomes such as in post-transition Spain. Secondly, drawing on the sociology of party organizations, failure to reform might be interpreted as the outcome of the vested interests in maintaining the *status quo* by the two main parties. Since there are organic connections between the internal apparatus of the main parties and the representative institutions they have occupied since the transition (Coller, 1999: 193–221), party bargaining over reform of the Senate ends in failure because the institutional symbiosis between parties and representative institutions provides no incentives to modify the rules and role of the upper chamber. This article proposes an alternative explanation based on empirical data drawn from a survey carried out in 2009-10 and published by the Centre for Sociological Research (CIS) (Centro de Investigaciones Sociológicas, 2011). We explain the current stalemate by stressing the existence of a Spanish version of the joint-decision trap dilemma.

The article is divided into three sections. Section one sets up the research question, presenting the problems of legitimacy faced by the Senate in the Spanish political system. Section two explains the failed attempts at reforming the chamber. Section three deals with the three competing explanations for the blocked reform before concluding with some theoretical comments.

## **I. A problem of legitimacy**

### *1.1 A biased representation*

The first bias of the Senate is the problem of electoral constituencies. This chamber currently includes 266 members: 208 are elected directly by popular vote and 58 are appointed by the regional assemblies. According to the Constitution, the 208 directly elected senators are returned in multi-member constituencies based on the provinces, with elections held every four years on the same day as those for the members of the Congress of the Deputies. The voters of each of the 51 provinces elect four senators without regard to population.<sup>3</sup> The senatorial elections are the only ones where Spanish voters can cast votes for individuals rather than blocked party lists (*panachage*). In parallel, 58 senators are appointed by the regional parliaments of the autonomous communities (one for every community, plus one additional senator per million citizens).<sup>4</sup> The imbalance between those two systems is frequently criticised by parliamentary groups representing territorial minorities, who would prefer an electoral system strictly based on the autonomous communities as electoral districts in order to boost the federalisation of the regime.<sup>5</sup> The electoral system thereby operates against transforming the Senate into a chamber representing regional interests.

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<sup>3</sup> Large, insular provinces, such as Gran Canaria, Mallorca and Tenerife, elect three senators. In the same way, small islands, such as Menorca, La Palma, Ibiza-Formentera, Fuerteventura, Lanzarote, La Gomera and El Hierro, elect one senator. Lastly, the two Spanish autonomous cities located in Africa (Ceuta and Melilla) elect two senators.

<sup>4</sup> Nine senators for Andalusia, eight for Catalonia, seven for Madrid... and one for La Rioja.

<sup>5</sup> See table 4 below: 67% of MPs from nationalist parties and 60% of regionalist parties prefer the region (autonomous community) as the electoral district.

Secondly – as in France or in the United States – the Senate faces the problem of disproportional representation of Spanish provinces caused by the electoral system (Penadés and Urquizu 2007): Soria (the smallest constituency of the state with approximately 100,000 inhabitants) and Barcelona (one of the largest ones with about 5.5 million inhabitants) are represented by the same number of directly elected senators. The implication of this system is obvious: the ratio between seats and electors demonstrates that the number of votes needed for electing one senator in 2011 in the province of Soria (about 19,300) was considerably less than the number of votes required in the province of Barcelona (about 1,007,000). This allocation considerably favours small rural provinces with respect to large and urban constituencies. This is crucial in Spain since this country has had one of the highest rates of urbanisation in Western Europe since the 1960s (about 77.4% of Spaniards are currently living in urban areas) (United Nations, 2014). This contradiction tends to undermine the role of territorial representation of the Senate as assigned by the Constitution.

### *1.2 A limited power of policy-making*

As observed in other countries, the second limitation faced by the Senate is its lack of legislative power (Patterson and Mughan, 2001: 39–60). Although the 1978 Constitution grants some powers that are hardly used,<sup>6</sup> and some others that can be

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<sup>6</sup> According to Article 155 of the Constitution, the Senate can apply disciplinary measures to presidents of autonomous communities. Nevertheless, that right has never been put into practice. In turn, Article 61 of the Local Regime Act authorises the Senate to suspend city councils. It has applied that power once, when it dissolved the Marbella local government in 2006 because of a corruption scandal.

considered complementary to the ones assigned to the lower chamber,<sup>7</sup> the Senate can easily be controlled by the other state institutions. It then constitutes a case of ‘weak parliamentarism’ as defined by Lijphart (1986). For instance, contrary to the German *Bundesrat*, the veto power of the Spanish Senate can be overruled by the lower chamber and by the Cabinet. Contrary to the Congress of Deputies, the Senate does not participate in the election of the Prime Minister, and it cannot introduce a vote of no confidence or a motion of censure. Such a situation of imbalance between the two chambers has been described as an ‘attenuated bicameralism’ (Soto Carmona, 1998: 24–57) and has made the Senate a rubber stamp chamber with almost no power (Maurer, 1999: 25–45).

In these conditions, the capacity of the Senate to articulate territorial issues is extremely limited, and minority representatives have been quite reluctant to use the upper chamber to express their claims. Conversely, cultural or territorial minorities as well as regional governments have found functional equivalents to the Senate as alternative fora to voice their demands and advance their own interests, such as the Congress of Deputies, the Constitutional Court or the sectoral conferences and bilateral commissions (Agranoff, 1993: 1–28; Moreno, 2001). Consequently, the Senate has lost an opportunity to reinforce its role as a key institution in a multinational federal democracy.

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<sup>7</sup> The Senate can appoint some members of key institutions, such as the Constitutional Court (art. 159), as well as proposing parliamentary initiatives to the *Cortes Generales*. As a second legislative chamber, the Senate sometimes introduces some very marginal changes to bills and is frequently presented as a forum designed to moderate the proposals of the Executive and Congress.

### *1.3 Public opinion between ignorance and criticism*

Despite the importance of upper chambers in federal states, Spanish public opinion displays both large ignorance and deep criticism about the role of the Senate in its political system. The Centre for Sociological Research (CIS) has led various studies about the relationship between citizens and the Senate. In 2008, the CIS (2008) showed that only 9% of interviewees knew the name of the president of the Senate. Moreover, only about 50% of people interviewed by the CIS thought the *Senado* was a very important institution for Spanish democracy. In line with these results, the CIS revealed that 30% of Spaniards had no idea about the exact role of the Senate within the constitutional regime.<sup>8</sup> Likewise, the degree of satisfaction with respect to the work of the Spanish Senate is astonishingly low since only 7% of interviewees think the Senate is doing a good or very good job and a majority of 52% of citizens would like to abolish the Senate (Centro de Investigaciones Sociológicas, 2012).

#### ***Table 1 about here***

A recent survey polled opinions on citizens' preferences for the future role of the Senate (Centro de Investigaciones Sociológicas, 2012) (Table 1). A majority of citizens (52%), of those who had opinions, opted for its abolition, suggesting that they did not see any useful political role for the Senate as such. A little more than a quarter (28%)

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<sup>8</sup> Interestingly, the CIS stopped asking about the Senate after November 2010 when approximately 60% of interviewees answered that the Spanish upper chamber paid too much attention to irrelevant problems (Centro de Investigaciones Sociológicas, 2010).

preferred either the *status quo* or sought to confer the Senate with veto powers on matters related to the autonomous communities. Only a tenth (11%) expressed a preference for the Senate to become a chamber for territorial representation. Additionally, the high percentage of ‘do not know/did not answer’ responses (31%) says a lot about the fuzzy conception of the Senate by Spanish citizens. Beyond surveys, the electoral support with respect with the Senate has also evolved over time (Figure 1).

***Figure 1 about here***

The percentages of abstention, blank votes and invalid ballots in Senate elections are generally higher than in elections for the Congress. Spanish citizens recently showed their discontent *vis-à-vis* the Senate at the 2011 and 2015 general elections when they were asked to elect the members of the Congress and the Senate. The suffrages for electing senators included 1,264,000 blank votes in 2011 (four times more than for the Congress) and 980,000 blank votes in 2015 (five times more than for the Congress); 905,000 invalid ballots in 2011 (three times more than for the Congress) and 800,000 invalid ballots in 2015 (three times more than for the Congress); about 180,000 electors only voted for the Congress of Deputies in 2011 and this number arose to 480,000 in 2015.

## **II. Thirty years of failed reforms**

### *2.1 Towards an asymmetrical federalism?*

There have been a number of (failed) initiatives to transform the upper chamber. From a programmatic perspective, when talking about the reform of the Senate, three broad interest coalitions can be identified. The first one is the alliance led by the main peripheral nationalist parties, such as the Basque Nationalist Party (*Partido Nacionalista Vasco*, PNV) and the Catalan Convergence and Union (*Convergència i Unió*, CiU). These parties believe that the Senate should aim to reflect the *hecho diferencial*, that is, the national specificities of cultural minorities.

In 1998, CiU submitted a reform for reshaping the Senate through a multi-tiered system, in which the ‘historical’ nationalities (Catalonia, Galicia and the Basque Country) would enjoy a specific veto power over legislation affecting their regions. This first group would have been followed by a second cluster made up of regions with a special status (Navarre, Andalusia, the Balearic and Canary Islands), and by a third cluster, grouping the rest of the autonomous communities. This two-step proposal generated significant controversy and was finally abandoned; partly because of the parliamentary alliance between the CiU and the conservative People’s Party (*Partido Popular*, PP) and partly because of the criticisms of the Navarrese, Andalusian, Balearic and Canarian regional leaders who were excluded from policymaking (Vigala Foruria, 2013: 63–82).

## 2.2 Towards multilateralism?

Leftist groups (like the Spanish Worker Socialist Party – *Partido Socialista Obrero Español*, and United Left, *Izquierda Unida* – IU) advocate, with more intensity than others, the conversion of the Senate into a territorial chamber in a federal system. According to Spanish Socialists, it is essential to adapt the Senate to the *de facto* federal

*praxis* of the Spanish state. In particular, for the PSOE the Senate has to become a multilateral forum where autonomous communities and the central state can resolve territorial issues. From this viewpoint, bilateral relationships are no longer acceptable in such a federal-like polity.

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 (Bayona, 2002: 1–7). In 1987, the CiU Senator Trías Fargas submitted a new resolution backed by the Socialists for favouring a *rapprochement* between the Senate and the regional governments. In the early 1990s, the PSOE proposed converting the Senate into a bridging institution between the regional governments and the European Union. In 1994, the General Commission for the Autonomous Communities was finally created within the Senate (Varela Suanzes-Carpegna, 2006: 143–168). The members of this Commission were supposed to have legislative authority on all the territorial issues of the ‘state of autonomies’. Despite the reactivation of that project in 2010, these developments have still not produced any substantial change in the governance of the upper chamber. By the same token, the PSOE along with the PNV and CiU promoted the creation of a translation office. In January 2011, Spanish senators were 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.

### 2.3 Towards centralisation?

Lastly, conservatives (PP) favour a modified version of the *status quo*, whereby the existing Senate would remain, but would acquire veto powers on issues relating to the

autonomous communities. In this zero-sum game, the rise of the ‘autonomies’ is associated with a weakening grip of central state institutions on territorial politics. When in opposition, the PP has advocated more closely involving the presidents of the autonomous communities with the activity of the Senate. When it has obtained an absolute majority (as in 2000 and 2012), however, the party has quickly shelved all proposals to reform the upper chamber. The PP has traditionally favoured the Congress of Deputies in order to maintain the Senate in the subordinate role of second reading chamber. It has boosted bilateral relationships with regional governments in order to maintain the leadership of the central state. The debate on the state of the autonomies, organised every year at the Senate, rarely attracts first-order politicians from the right. Similarly, the work of the commissions studying possible reforms of the upper chamber launched in 1996 and 2012 by the PP has constantly been delayed by conservative senators themselves (Vigala Foruria, 2013: 63–82).

### **III. Explaining reform failures**

#### *3.1 The inheritance argument*

In a seminal paper, Elisa Roller (2002: 69–92) stated that the reform of the Spanish Senate was a ‘mission impossible’. Literally speaking, this statement may be too strong but history proved her right, since the reform of the Senate remains highly improbable almost 40 years after its creation. Different reasons relating to the legal inheritance of this institution have been proposed to explain this situation.

Firstly, the Senate is difficult to reform or abolish because it is part of the Spanish liberal legacy. Secondly – and more importantly – the Spanish Senate is said to be difficult to reform because such a process requires a modification of the 1978 Constitution (Visiedo Mazón, 1997; El País, 2000). Article 167 of the Spanish Constitution regulates the reform of the Senate and states that a majority of three-fifths of the Congress and the Senate is necessary. 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. Considering the previous attempts to modify the design of the Senate, finding such a super-majority is a very difficult task (Penadés and Urquizu, 2007). As evidence of this, several proposals to reform the Senate have been presented in the last ten years (e.g. for the chamber to specialise in territorial issues or for moving the Senate to Barcelona) but none of them has been successful. The Senate has remained practically unchanged since 1978.

Last but not least, the inheritance argument also draws on the specific political conditions of the democratic transition in Spain. Authors influenced by historical new institutionalism have pointed to the importance of political bargaining during the crafting of the Constitution to explain the current design of Spanish institutions (Roller, 2002: 69–92; Ferri Durá, 2009). While Basque and Catalan deputies conceived of Spain as a state made up of different nations, the conservative Popular Alliance and the more liberal Union for the Democratic Centre actively promoted the idea of the unity of the Spanish nation-state. Meanwhile, the PSOE advocated a kind of federal arrangement. The final outcome of the complex negotiations was the creation of a mixed political system with an upper chamber combining centralising elements and federal features. Good or bad, this institutional design was produced after a process of cross-party bargaining among political forces that agreed to deliberate on the new rules of the game.

But such conditions of cross-party debate have been difficult to sustain in post-transition Spain. The Spanish political system has been converted into a majoritarian polity over the years; as a result, the consensual re-shaping of institutions is highly improbable (Hopkin, 2005: 6–26).

For these three reasons, the diagnostic of the inheritance argument is plainly accurate. The reform of the Senate is complex and it depends heavily on the rise of a consistent majority promoting political change. Nevertheless, since 2011 this theory has lost part of its heuristic capacity. The robust character of this interpretative framework was called into question after the summary reform of the Constitution achieved by Premier José Luis Rodríguez Zapatero on 23 August 2011, only 15 days after being publicly announced. Anticipating European Union-level pressures, the 2011 constitutional reform imposed a limitation on public debt and constitutionally embedded the need to pay off interest on the debt over any other expenditure.<sup>9</sup> The revision of Article 135 was made in the whirlwind of the 2008 financial crisis under the pressure of European and international authorities (International Monetary Fund, European Commission and European Central Bank) to avoid a new case of bankruptcy in Spain after the Portuguese, Greek and Irish bailouts. The reform received the support of the PSOE, PP and the regionalist-conservative Union of the Navarrese People deputies.

### *3.2 The party bargain argument*

The second interpretative framework is influenced by the sociology of party organisations and centres on the symbiotic relations between political parties and

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<sup>9</sup> Previously, Article 13.2 of the Constitution had been reformed in 1992 to allow European foreign citizens living in Spain to participate in municipal elections.

representative institutions (Barnes *et al.*, 1985: 695–720; Hopkin and Paolucci, 1999: 307–339). Indeed, the support of the main state-wide political parties lies at the core of the reform of the Senate (Alonso de Antonio, 2005: 359–407). This chamber has been led successively by all Spanish dominant parties since the democratic transition: the Union for the Democratic Centre (1977-82), the PSOE (1982-96 and 2004-11), and the PP (1996-2004 and since 2011). Their support is needed to reform this institution. But a modification of the Parliament's design would necessarily alter the imbalance between the two chambers and Spanish political parties would have to adapt their electoral and parliamentary strategies to this new context.

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 (El País, 2015). The PP and the PSOE controlled 225 out of 266 seats in October 2015 (161 and 64, respectively). Drawing on the literature on party cartelisation (Katz and Mair, 1995: 5–28), criticisms have focussed on two kinds of instrumental uses of this chamber. On the one hand, the Senate reputedly provides public funds for feeding the party apparatus of the PP and PSOE. The 55 million euro budget managed by the Senate in 2015 is an important source of funding for the political parties' spending, through the salaries of senators (about 7,000 euros per month), the specific financial compensation for senators living outside Madrid (about 1,800 euros per month), transport fees (about 760,000 euros for all senators for the second trimester of 2015), the salaries of 37 parliamentary assistants along with the specific grant for political groups (between 433,000 euros and 3,500,000 euros per group (Senado de España, 2015).

On the other hand, 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 career (El Mundo, 2015). Thanks to the possibility of appointing senators directly through the

regional chambers, the Senate typically provides a fall-back solution to deal with senior members of the PP and PSOE. Although the opposite trajectory is also possible,<sup>10</sup> the Senate has become a dignified final posting for most presidents of autonomous communities, mayors of large cities and party cadres following electoral defeat.<sup>11</sup> Such a dynamic of elite circulation reflects the process of professionalisation of politics in Spain and the need for the members of big parties ‘living for and off politics’ to find an elected position to guarantee their incomes. From this point of view, there are no incentives to change the current system. Big parties – conceived as rational actors – have a strong tendency towards risk aversion. This orientation logically leads them to prefer the *status quo* rather than a change that could modify their access to representative institutions.

From a theoretical viewpoint, this interpretation is attractive since it explains in a simple fashion the institutional deadlock of the upper chamber through inner party politics. Nevertheless, it probably centres too much on the PP and the PSOE. The focus should be broadened to include other political actors present in the Senate. For instance, the main peripheral nationalist parties (e.g., the Basque Nationalist Party – PNV – and Convergence and Union – CiU – in Catalonia) have perfectly incorporated the logic of the current system of bilateral relationships. This institutional dynamic favours their

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<sup>10</sup> For instance, María Dolores de Cospedal was a senator from 2006 to 2011 and then became president of Castile-La Mancha.

<sup>11</sup> The list of former presidents of autonomous communities who became senators is long: José Montilla (PSOE, Catalonia 2006-10), Alberto Fabra (PP, Valencia 2011-15), Luisa Fernanda Rudí (PP, Aragon 2011-15), José Ramón Bauzá (PP, Balears 2011-15), Pedro Sanz (PP, La Rioja 1995-2015), Marcelino Iglesias (PSOE, Aragon 1993-2011), Vicente Álvarez Areces (PSOE, Asturias 1999-2011), Francesc Antich (PSOE, Balears 2007-11), Joan Lerma (PSOE, Valencia 1982-95), José Antonio Griñán (PSOE, Andalusia 2009-13) and Juan José Lucas (PP, Castile and León 1991-2001).

interests since it allows them to negotiate directly with the central government in a series of different fora, such as the sectoral and bilateral conferences, without the other autonomous communities. Instead of this, 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 earnestly and persistently the federalisation of the Senate since they have a vested interest in keeping the *status quo* (Aja, 1999; Moreno, 2001).

### 3.3 *The joint-decision trap argument*

The third argument for explaining the blockage of Senate reform is the existence of a Spanish version of the joint-decision trap dilemma.<sup>12</sup> In short, the incompatibility between the party proposals and the existence of veto players impedes any relevant modification of the *status quo*. While a large majority of relevant decision-makers agree on the need for a change, they disagree on important details. As a survey of parliamentary elites shows (Table 2), the vast majority of regional and State deputies and senators (80%) prefer to keep the upper chamber but transform it into a territorial chamber of representation; around 8% prefer to keep the Senate, giving it veto powers in matters related to the autonomous regions; 7% of politicians want to abolish the Senate, and a minority (3.5%) prefers the *status quo*.

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<sup>12</sup> First identified by Fritz Scharpf (1988: 239–278) in German federalism, the ‘joint-decision trap’ can be described as a configuration in which players can mutually veto the proposals of the other participants. In such conditions, decisions are constantly delayed or taken at the lowest common denominator.

***Table 2 about here***

Therefore, most politicians think that the Senate should become a *de facto* territorial representation chamber, although there are differences among parties. Firstly, leftist groups (PSOE and IU) advocate the transformation of the Senate. Secondly, conservative (PP) and regionalist groups (nationalists from the Canary Islands, Aragon and Andalusia, for instance) are conscious of the territorial function of the Senate, but advocate strengthening its veto powers over the autonomous communities. Thirdly, peripheral nationalist groups (mainly the Basque Nationalist Party or PNV and the Catalan Convergence and Union or CiU) overwhelmingly believe in the transformation of the Senate, although one quarter of them prefer to abolish it.

Those who were not in favour of eliminating the Senate were asked how they would prefer to elect senators in the future. Indirectly, this is also a way of detecting the functions attributed to the upper chamber: those who think that senators should be elected by regional parliaments or governments understand that the Senate should be a territorial chamber of representation, while those who opt for keeping the current election system are in favour of the *status quo*.

***Table 3 about here***

The favourite option of politicians is the current situation (52%) followed by the general election option without interference from regional institutions (34%) (see Table 3). There are some relevant differences according to parties or blocks of parties since the statistical significance of chi-square indicates that there is an association between party and options for electing senators. It seems that the large national governing parties

– PP and PSOE – have a majority of members of parliament (MPs) favouring the *status quo* (60% and 52%, respectively) while the majority of IU (55%) and regional elected officials (44%) prefer to transfer the responsibility of electing senators directly to the citizens rather than maintaining the *status quo* or allowing regional institutions to nominate senators. Compared with national parties, peripheral nationalists (30%) and regionalists (25%) show large proportions of MPs favouring the election of senators by regional parliaments or governments, although both groups of MPs prefer the transfer of responsibility of elections to citizens (39% and 44%, respectively). The fact that the majority of PP and PSOE MPs favour the *status quo* shows that the resistance to change lies with the two major parties.

A way of assessing the relevance of the Senate for elected MPs (those who would be in charge of reforming the institution) as a chamber of territorial representation is to ask about the type of electoral district politicians would favour in the case of senators being elected by all citizens (the second preferred option, as can be seen in Table 3) rather than by regional chambers or regional governments. Although deputies and senators are almost equally divided between the region and the province as the final electoral district, a small majority of them (54%) believe that the province, not the region, would be an adequate district.

***Table 4 about here***

The differences among parties do not occur by chance and data in Table 4 show this with more or less intensity: the majority of MPs in the IU, as well as the peripheral nationalists and regionalists choose the region as the electoral district. However, in the two largest national parties, the situation is slightly different. The PSOE's MPs are

aligned with the rest, though a high proportion (47%) dismiss the regional dimension of the future Senate. The PP's representatives position themselves clearly in agreeing with the 'province' as the future electoral district (69%), although almost a third of them (31%) maintain, like the majority of representatives of the other parties, that the region should be the electoral district.

All in all, the large majority of MPs would make the Senate a chamber of territorial representation in which senators would be elected by a system similar to the current one (a mixture of citizens' election and designation by regional chambers). The majority of representatives would strengthen the territorial dimension of the Senate. However, the logic of this position is diluted, since the electoral district would be the province, rather than the region, thus reducing the incentives to create regional platforms to compete in elections. Lack of consensus on these relevant issues and, especially, the resistance to change among MPs from the large national parties (PP and PSOE), prevents the success of attempts at reforming the Senate.

In an institutional context where every player can use his/her veto power, the ideological incompatibility between the different political parties' proposals for reorganising the upper chamber is so deep that a consensual decision is out of reach. Therefore, only lowest common denominator solutions can be reached. In contrast to the other interpretations, the joint-decision trap framework has the advantage of shedding a new light on two interrelated phenomena. On 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 have 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 in the

Congress and the Senate in order to limit 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**

Since its creation during the transition, the Spanish Senate has been shown to be a poor institution for representing territorial interests. Its diminishing performance in terms of representation, policy-making and public opinion raises the possibility of institutional reform. Nevertheless, such a reform has been delayed to date. This paper aimed to understand the roots of this institutional blockage.

Firstly, from a historical new-institutionalist perspective, the democratic transition’s constitutional agreements produced a strong path dependency effect that impeded any modification of the initial design of the regime for almost 40 years. This point of view is interesting but, after the rapid reform of the constitution achieved in 2011 – though exceptional and led under external pressure – it failed to provide a convincing causal relationship to explain why the reform of the Senate remained impossible for so many years. Drawing on the sociology of party organisation, a second argument stressed the symbiotic relationship between the Senate – understood as a resource provider – and the apparatus of the main political parties (PP and PSOE). According to this perspective, the Senate had become a cash machine and a backup plan for defeated leaders of the two main parties. But, once again, this vision lacks a broader focus since other parties –

like the predominant Basque and Catalan nationalist formations – took maximum advantage of the Senate too. From this perspective, it seems the defence of the Senate is mainly a question of the struggle between insiders (aiming to keep the chamber as it is) and outsiders (trying to modify the rules of entrance).

The favoured argument of this paper completes the first two. It contends that the blocked reform of the Senate can be best understood as a case of the 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.

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## Tables and figure

**Table 1** Preferences about the future role of the Senate (in %)<sup>13</sup>

Citizens’ preferences for Senate	%	(N)
To abolish it	52	(885)
Leave it as it is now	28	(479)
Leave it as it is now but give Senate veto power in matters related to the State of Autonomies	9	(154)
Transform it into a chamber of territorial representation.	11	(176)
TOTAL (N)	100	(1704)

**Source** Authors’ elaboration from CIS (2012)

<sup>13</sup> The total sample of citizens is 2,478, and 31% are recorded as Do not know/Did not answer.

**Table 2** Preferences about the future functions of the Senate (%)<sup>14</sup>

	Parties						Total (N)
	PP	PSOE	IU	Peripheral nationalists	Region- alists	Others	
Abolish it	8.7	3.8	0	24.0	11.1	0	7.7 (44)
Leave it as it is now	5.8	1.3	0	6.0	0	0	3.5 (20)
Leave it as it is now but give it veto powers in matters related to the State of Autonomies	15.3	2.5	0	4.0	16.7	0	8.4 (48)
Convert it into a chamber of territorial representation	70.2	92.5	100	66	72.2	100	80.3 (457)
Total	100	100	100	100	100	100	100
N	(242)	(239)	(18)	(50)	(18)	(2)	(569)

**Source** Authors' elaboration from CIS (2011)

<sup>14</sup> Chi-square is 70.857 and its significance (p value) is 0.000. Chi-square is reduced (53.043) but its significance remains at 0.000 when peripheral nationalists are divided into Catalan, Basque and Galician peripheral nationalist parties.

**Table 3** Election of senators in future elections (%)<sup>15</sup>

	Parties						Total (N)
	PP	PSOE	IU	Peripheral nationalists	Region- alists	Others	
Directly elected by citizens	30.6	33.3	55.6	39.1	43.8	50	34 (186)
Elected by the regional chambers	6.8	12.4	16.7	28.3	25	0	12 (65)
Appointed by the regional governments	2.1	2.1	5.6	2.2	0	0	2 (12)
Elected by the current system	60.4	52.1	22.2	30.4	31.2	50	52 (288)
Total	100	100	100	100	100	100	100
N	(235)	(234)	(18)	(46)	(16)	(2)	(551)

**Source** Authors' elaboration from CIS (2012)

<sup>15</sup> Chi-square is 35.796 and its significance (p value) is 0.002. Chi-square is reduced (35.796) but its significance remains at 0.002 when peripheral nationalists are divided into Catalan, Basque and Galician peripheral nationalist parties.

**Table 4** Electoral district for Senate elections (%)<sup>16</sup>

	Parties						TOTAL (N)
	PP	PSOE	IU	Peripheral nationalists	Regionalists	Others	
Region	31.2	53.1	83.3	66.7	60	100	46 (252)
Province	68.8	46.9	16.7	33.3	40	0	54 (291)
Total	100	100	100	100	100	100	100
N	(231)	(226)	(18)	(51)	(15)	(2)	(543)

**Source** Authors' elaboration from CIS (2827)

<sup>16</sup> The wording of the question was: 'in the case of all senators being elected by citizens, do you think the electoral district should be the region or the province?' Chi-square is 47.343 and its significance (p value) is 0.000. Chi-square is higher (51.616) but its significance remains at 0.000 when peripheral nationalists are divided into Catalan, Basque and Galician peripheral nationalist parties.

**Figure 1** Participation rates in elections to the Congress and the Senate (in %)

Figure 1 uploaded as a TIFF document (step 5 of the submission process)

**Source** Authors' elaboration from Ministerio del Interior (2016)