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Reforming the Spanish Senate: a federalist proposal

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Contents

1.	Abstract	3
2.	Introduction	3
3.	Federalism and bicameralism: comparative notions	4
4.	The Spanish Senate	6
	a) Composition and election	6
	b) Functions	9
5.	A long-overdue reform.....	11
	a) Composition and election	11
	b) Functions	14
6.	Conclusion	15
7.	Bibliography.....	16

1. Abstract

Since the coming into force of the 1978 Spanish Constitution, the country has undergone a remarkable process of territorial decentralization. With its organization into «Autonomous Communities», Spain has developed many federal features, but the current institutional framework has still proved insufficient to articulate the existing regional demands. In particular, the Senate – which is nominally the «House of territorial representation» – has played an insubstantial role within the legislature and failed to convey successfully the will of the Autonomous Communities. The aim of this paper is to revise the composition, democratic legitimacy and functions of the Spanish Upper House, proposing a much-needed federalist reform that would enable it to honor its mandate.

2. Introduction

In accordance with the country's tradition,¹ the Spanish Constitution of 1978, which is still in force, established a bicameral Parliament («Cortes Generales») composed of the Senate (Upper House) and the Congress of Deputies (Lower House). Article 69.1 of the Constitution stipulates that the Senate shall be «the House of territorial representation».² The meaning of this phrase was unclear in 1978, given that the final shape that the state would take under the new Constitution, which opened the door to the creation of «Autonomous Communities»³ within Spain, was merely a matter of conjec-

¹ Bicameralism in Spain dates back to 1834, when the government led by Martínez de la Rosa supported a new Royal Statute that put an end to absolutism in the country. From that point on, the Spanish legislature has been organized according to a bicameral structure, except during the Second Republic (1931–1939). The existence of a legislature does not imply that all the different regimes that governed Spain since 1834 were democratic. Actually, it could be argued that the only democratic period in Spain before the current one was precisely during the Second Republic.

² *Spanish Constitution of 1978* (English version) (Madrid: Congreso de los Diputados, 2011), accessed May 15, 2014, http://www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf.

³ «Comunidades Autónomas» in Spanish.

ture.⁴ The so-called «historical nationalities»⁵ and Andalusia led the way and, eventually, all the other regions followed suit until the whole territory of the country was divided into 17 Autonomous Communities, together with the two North African «Autonomous Cities» of Ceuta and Melilla. The territorial development of the «Estado de las Autonomías»⁶ set the foundations for a process of decentralization that is still ongoing.

The 1978 Constitution cannot be considered a federal one, in part because the only pre-existing territorial units that it recognizes are the 50 Provinces – an entity created in 1833 – and the municipalities. Furthermore, although the aforementioned dynamics of regionalization and devolution have granted a high degree of «self-rule» for the Autonomous Communities, the «shared-rule» dimension is largely conspicuous by its absence.⁷ One of the elements that distance the «Estado de las Autonomías» from a federal model is the Senate, whose composition and functions have prevented it from living up to its constitutional mandate. This has deprived the Autonomous Communities of a suitable space of participation and common deliberation, thus exacerbating the territorial tensions that, for a long time, have characterized Spain.

In 1994, an ambitious reform of the Senate's regulations was undertaken in order to mitigate its flaws,⁸ but these can only be redressed satisfactorily through a profound constitutional reform, which the political parties have kept postponing. As a result of the Senate's continued ineffectiveness, many voices advocate its abolishment. This paper, conversely, will take a federalist stance in defense of a strong Spanish bicameralism, resorting to comparative law as the starting point of the proposed reform.

3. Federalism and bicameralism: comparative notions

The organization of the legislature is one of the most significant elements of every Constitution and, as such, it is frequently the object of much debate. In this regard, constitutional designers face a substantive choice between one legislative chamber (unicameralism) and two (bicameralism). Both models have clear advantages and disadvantages, which must be weighed upon consideration of other pre-established factors that define the nature of each state.⁹

⁴ See: Faustino Fernández-Miranda Alonso, «Los Problemas de la Distribución Territorial del Poder en España. La Reforma del Senado», *Revista de Derecho Político* no. 34 (1991): 77–121.

⁵ The Basque Country, Catalonia and Galicia.

⁶ «State of Autonomies», as the Spanish unique framework of territorial administration is popularly known. Its territorial development was finalized in 1983.

⁷ «Self-rule plus shared-rule» is a thumbnail definition of federalism, coined by Daniel J. Elazar. See: Daniel J. Elazar, ed., *Self-rule/Shared-rule: Federal Solutions to the Middle-East Conflict* (Lanham, MD: University Press of America, 1984).

⁸ This reform was well intended, as it was aimed at turning the Senate into a true chamber of the Autonomous Communities. The «General Commission of the Autonomous Communities» was created, which allowed the participation of the Autonomous Presidents and Ministers. See: Eliseo Aja, «La Reforma Constitucional del Senado para Convertirlo en Una Cámara Autonómica», in *Foro vol. 4: La Reforma Constitucional del Senado*, VV.AA. (Madrid: Centro de Estudios Políticos y Constitucionales, 2005): 13, accessed May 17, 2014, http://www.cepc.gob.es/docs/doc_publicaciones/coleccion_foro4.pdf?sfvrsn=4.

⁹ Unicameral legislatures have been credited for being able to enact legislation more rapidly. As the outcomes depend exclusively upon the performance of one chamber and a relatively reduced number of parliamentarians, unicameralism is also less costly and allows for a higher degree of accountability. On the other hand, bicameral systems facilitate a more deliberative approach, which is useful in order to deter the hasty passage of legislation

The vast majority of federal states opt for bicameral legislatures. Upper Houses, which in some countries used to serve as firewalls between the privileged and the lower classes, have gradually evolved to embrace territorial, ethnical and cultural sensitivities.¹⁰ Bicameralism is also present in several unitary states, but in many cases it has been abandoned (e.g. Iceland, New Zealand, Sweden).

Choosing a bicameral legislature opens up in itself a wide array of possible institutional designs. The following three factors must be taken into account:

- Composition of the Upper House: proportional to the population of the constituent units (e.g. Austria, Belgium), same representation for all constituent units regardless of population (e.g. USA) or intermediate formulas (e.g. Germany, Spain).
- Method of election/appointment of the members of the Upper House: direct elections (e.g. Australia, USA), appointment by the governments of the different constituent units (e.g. Germany) or appointment by the legislatures of the different constituent units (e.g. Austria, Netherlands). Some Upper Houses combine different systems (e.g. Spain). Upper Houses may reserve some seats to former presidents or other personalities, who become members for life (e.g. the former Senate of Venezuela¹¹). Other systems can also be used, such as royal appointment and inheritance in the UK's House of Lords, but they are a rarity.
- Balance of power within the legislature: the two Houses can have equal (e.g. Switzerland, USA), moderately unequal (e.g. Belgium) or clearly unequal powers (e.g. Austria, Spain).

Lijphart distinguishes four different types of bicameralism, with varying degrees of strength, that result from the interaction of the previous three variables. These are rough categories without clear-cut boundaries, but they constitute a valid comparative frame that will be used as a reference throughout this paper (see Table 1).

and to prevent the so-called «tyranny of the majority» (see: Alexis de Tocqueville, *Democracy in America* (London: Saunders and Otley, 1835–1840)). By providing a space for the representation of the plurality of nationalities or ethno-cultural groups that can be found in some states, bicameralism can be an effective tool to avert their possible marginalization.

¹⁰ One notorious exception is that of the United Kingdom, whose House of Lords is still very much an aristocratic chamber.

¹¹ With the adoption of the 1999 Constitution, the Venezuelan Senate was abolished. Nowadays, Venezuela constitutes a rare example of a federal country with a unicameral Parliament.

Table 1

	SYMMETRIC: the two chambers have equal or only moderately unequal powers and democratic legitimacy	ASYMMETRIC: the two chambers are highly unequal in terms of powers and democratic legitimacy
INCONGRUENT: the two chambers reflect a different basis of representation	STRONG BICAMERALISM (e.g. Australia, Switzerland, USA)	MEDIUM-STRENGTH BICAMERALISM (e.g. Canada, France, arguably Spain ¹²)
CONGRUENT: the two chambers reflect a similar basis of representation	MEDIUM-STRENGTH BICAMERALISM (e.g. Belgium, Italy, Netherlands)	WEAK BICAMERALISM (e.g. Austria, arguably Spain)

Source: compiled by author, based on Arend Lijphart, *Patterns of democracy* (New Haven: Yale University Press, 1999), 205–213.

4. The Spanish Senate

a) Composition and election

The drafting of the 1978 Spanish Constitution gave rise to a political tug-of-war centered on the composition of the Senate. The final formula, like in the case of so many other hot issues during the Spanish transition to democracy, was a result of a compromise between the conservative and the progressive forces,¹³ which had very different preferences regarding the territorial backbone of the state and the role that the Senate should play.

The mixed system of election/appointment of the Spanish senators is highly complex. First of all, there is a fixed number of 208 «Provincial senators». Each Province elects 4 senators, except in the case of the three insular Provinces, which elect 6 (Tenerife), 5 (Gran Canaria) and 5 (Balearic Is-

¹² Although Lijphart places Spain in this category based on the theoretical incongruence of its bicameralism, I will argue later that the Spanish Senate and the Congress of Deputies actually have very similar compositions.

¹³ The Socialists and the Communists advocated an indirect election of the senators through the legislatures of the Autonomous Communities, whereas the conservatives were in favor of a direct election. See: Elisa Roller, «Reforming the Spanish Senate: Mission Impossible?» *West European Politics* Vol. 25, Issue 4 (2002): 78.

lands) senators respectively.¹⁴ The Autonomous Cities of Ceuta and Melilla, for their part, elect 2 senators each. All of these senators are directly elected by means of open lists with limited voting.¹⁵

The second category corresponds to the «Autonomic senators». Every Autonomous Community has the right to appoint a minimum of 1 senator, with an additional senator awarded for every million inhabitants. These senators are indirectly elected, through the Parliaments of the Autonomous Communities that they represent. In the current term, there are 58 senators appointed through this method, but the number varies from one term to another, given that it depends on the population.

This election system does not conform to the Senate's territorial mandate.¹⁶ As Leguina Villa points out, the Constitution set up «a hybrid system, with a notorious predominance of the Provincial level over the national or regional level, which, as all signs seem to indicate, has been adopted as a rigorously provisional solution until the state becomes fully regionalized, at which moment the necessary reform of the Senate's composition will have to be undertaken»¹⁷ [my translation]. Indeed, more than three fourths of the senators are elected through Provincial electoral units, which neglects the Autonomous Communities, causing severe imbalances that even fail to portray accurately the existing population differences (see Table 2, Graph 1).

¹⁴ In the Province of Tenerife, the island of Tenerife elects 3 senators and all the other islands (La Gomera, El Hierro and La Palma) elect 1 senator each. In the Province of Las Palmas, the island of Gran Canaria elects 3 senators and all the other islands (Fuerteventura and Lanzarote) elect 1 senator each. In the Province of Balearic Islands, the island of Mallorca elects 3 senators, the island of Menorca elects 1 senator and the islands of Ibiza and Formentera (combined) elect 1 senator.

¹⁵ In every electoral unit, with the exception of the Autonomous Cities and the islands that only elect 1 senator, the citizens have fewer votes (3, 2 in the largest islands) than there are senatorial positions available (4, 3 in the largest islands).

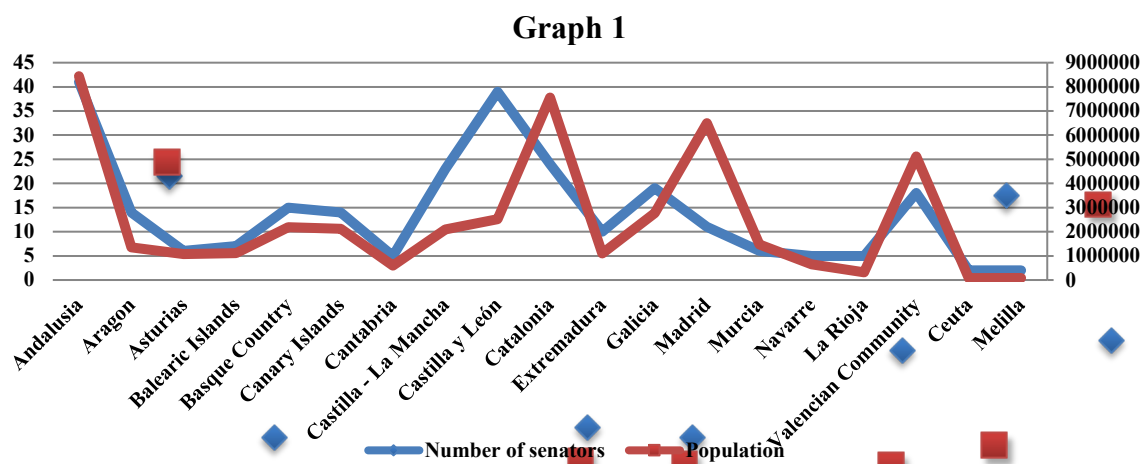
¹⁶ Ironically, this mandate is established in Article 69.1 of the Constitution, while the election system is described in Section 2 et seq. of the same Article.

¹⁷ Jesús Leguina Villa, «Las Comunidades Autónomas», in *La Constitución Española de 1978. Estudio Sistemático*, ed. Alberto Predieri et al. (Madrid: Civitas, 1980): 750.

Table 2

Autonomous Community	Provincial senators	Autonomous Senators	Total	Population (2013)
Andalusia	32	9	41	8440300
Aragon	12	2	14	1347150
Asturias	4	2	6	1068165
Balearic Islands	5	2	7	1111674
Basque Country	12	3	15	2191682
Canary Islands	11	3	14	2118679
Cantabria	4	1	5	591888
Castilla – La Mancha	20	3	23	2100998
Castilla y León	36	3	39	2519875
Catalonia	16	8	24	7553650
Extremadura	8	2	10	1104004
Galicia	16	3	19	2765940
Madrid	4	7	11	6495551
Murcia	4	2	6	1472049
Navarre	4	1	5	644477
La Rioja	4	1	5	322027
Valencian Community	12	6	18	5113815
Ceuta	2	0	2	84180
Melilla	2	0	2	83679
Total	208	58	266	47129783

Source: elaborated by author.



Source: elaborated by author.

By establishing the nineteenth-century Province as the main electoral unit, the Spanish Constitution revitalized a centralist proposal, «even if it is now concealed, one might say, under the protection provided by [its] rhetorical reference to the territorial entities».¹⁸ In addition, the Province is also the electoral unit in the elections to the Congress of Deputies, which concur with the elections to the Senate. This has caused the two chambers to have very similar compositions, despite the incongruent nature that Lijphart attributes to Spanish bicameralism and the existence of open lists in the case of the Senate,¹⁹ as opposed to closed lists in the case of the Congress of Deputies. In light of this, it follows that most elements related to the composition of the Senate are characteristic of a weak bicameral system bereft of federal roots.

b) Functions

The Council of State, the supreme consultative body of the Spanish government, declared in 2006 that «in its present form, and considering its relation with the Congress of Deputies, [the Spanish] Senate is extraordinarily large and singularly devoid of power».²⁰ In effect, the functions that the so-called «Fathers» of the Constitution assigned to the Senate destined it to play a nearly testimonial role in most legislative procedures.²¹ Furthermore, the Upper House does not intervene in the investiture or the cessation of the government.²²

¹⁸ Jaime Ferri Durá, *El Porvenir del Senado* (Madrid: Secretaría General del Senado, 2009): 284. See also: Jordi Solé Tura, «Por Fin La Reforma del Senado», *El País*, April 26, 2000, accessed June 10, 2014, http://elpais.com/diario/2000/04/26/opinion/956700005_850215.html. The overrepresentation of rural areas showed in Table 2 and Graph 1 (e.g. Castilla – La Mancha, Castilla y León) benefits the right-wing parties, as traditionally these areas are much more conservative. See: Politikon, *La Urna Rota: La Crisis Política e Institucional del Modelo Español* (Barcelona: Debate, 2014), 59.

¹⁹ Despite the existence of open lists, Spanish voters tend to give all of their votes to candidates that belong to the same party. See: Politikon, *La Urna Rota*, 65.

²⁰ Consejo de Estado, «Informe sobre Modificaciones de la Constitución Española» (2006), 240, accessed May 3, 2014, <http://www.consejo-estado.es/pdf/MODIFICACIONES%20CONSTITUCION%20ESP.pdf>.

²¹ The institutional ostracism of the Senate, which isolates it from public scrutiny, has created the perfect conditions for veteran politicians to seek «golden retirements» in its confines, to the further discredit of the chamber.

The Spanish Senate is a full-fledged parliamentary chamber,²³ inasmuch as it is involved in the passage of all acts. As a general rule, the Senate constitutes the chamber of second thought,²⁴ given that the legislative process commences in the Upper House, except in a negligible number of cases.²⁵ The Constitution gives the Senate a very limited time period – 2 months, or 20 days in case of urgency – to amend by a simple majority the bills²⁶ approved by the Congress of Deputies, or veto them by an absolute majority, although in most cases such veto only suspends the enactment of the bill in question. Indeed, the subordination of the Senate to the Congress of Deputies is clearly evidenced by the ease with which the latter can overturn an amendment or veto issued by the former. The Congress of Deputies is obliged to take the amendments of the Senate into consideration, but a simple majority suffices in order to accept them or reject them. As for the Senate's veto, it can be immediately overridden by an absolute majority of the Congress of Deputies, or by a simple majority once two months have passed since it was interposed.

There are a few instances in which the Senate is granted a reinforced institutional position.²⁷ But leaving those very exceptional procedures aside, we can conclude that the Senate is, in the words of De Carreras Serra, «a body of very limited institutional weight and [...] without any decisive func-

Furthermore, it has become what Albertí Rovira describes as «a parliamentary refuge for the government to introduce modifications to bills discreetly, [...] far from the attention of the media and the public opinion». See: Enoch Albertí Rovira, «La Reforma Constitucional del Senado a la Hora de la Verdad», in *Foro Vol. 4: La Reforma Constitucional del Senado*, VV.AA. (Madrid: Centro de Estudios Políticos y Constitucionales, 2005), 36, accessed May 17, 2014,

http://www.cepc.gob.es/docs/doc_publicaciones/coleccion_foro4.pdf?sfvrsn=4.

²² This is a typical feature of parliamentary systems. See: Lijphart, *Patterns of democracy*, 205. The Senate only has the ability to control the government by inspecting its activity (e.g. interpellations, summons, enquiry committees, petitions) and by authorizing international treaties and legislative decrees.

²³ And not a semi-parliamentary «council» like in the case of the German Bundesrat.

²⁴ It must be noted that in Spain the governmental bills – «projects» – are always referred to the Congress of Deputies, whereas in countries like Italy the government is entitled to channel its legislative initiative through both the Upper and the Lower Houses.

²⁵ The procedures leading to the adoption of decisions by the Cortes Generales in the events foreseen in Article 145.2 (authorization of cooperation agreements between Autonomous Communities) and Article 158.2 (distribution of resources from the Fund of Inter-territorial Compensation) of the Constitution commence in the Senate.

²⁶ Both ordinary acts (approved by a simple majority of the Congress of Deputies) and organic acts (approved by an absolute majority of the Congress of Deputies) follow the same procedure.

²⁷ Firstly, Article 155.1 of the Constitution, which stipulates that, if an Autonomous Community were to ignore its Constitutional and legal obligations, the Senate shall adopt the necessary measures to guarantee their fulfillment. This is the only constitutional provision that demands an exclusive participation of the Senate, although it has never been invoked. Secondly, Article 150.3 of the Constitution, which resolves that the passage of a harmonization act – aimed at harmonizing the legislative dispositions of the Autonomous Communities, if needed to protect the general interest of Spain – requires an absolute majority in both Houses. Thirdly, Articles 167 and 168 of the Constitution, on the two procedures for constitutional reform, which require qualified majorities in both Houses. Finally, Article 74.2 of the Constitution, which determines that in the situations foreseen in Articles 94.1 (ratification of some international treaties/agreements), 145.2 (authorization of cooperation agreements between Autonomous Communities) and 158.2 (distribution of resources from the Fund of Inter-territorial Compensation), a simple majority in both Houses shall be needed. In the event of a discrepancy between the Congress of Deputies and the Senate, Article 74.2 requests a Mixed Committee composed of an equal number of deputies and senators to intervene and propose a new bill to both Houses. If the discrepancy persisted, the Congress of Deputies would decide by an absolute majority.

tion regarding the organization of the ‘Estado de las Autonomías’.²⁸ This even led Solé Tura, one of the Fathers of the Constitution, to label the Senate as its «greatest error».²⁹

5. A long-overdue reform

a) Composition and election

With respect to the composition of the Spanish Upper House, first and foremost it is imperative to determine its territorial foundation. It seems clear that the Autonomous Communities should acquire more weight and prevail over the Provinces, but some observers argue that the latter – taking into account their constitutional recognition and historical entrenchment,³⁰ as well as the need to guarantee their autonomy – should maintain a certain degree of representation.³¹ However, given the large number of Provinces and their uneven distribution within the 17 Autonomous Communities, this arrangement is bound to generate imbalances that would hinder the Senate’s ability to establish itself as a true federal chamber. Another argument to abolish the figure of the Provincial senators arises from the need to potentiate a more incongruent bicameral system.

Once concluded that the Autonomous Communities and Autonomous Cities should constitute the only territorial pillars of the Senate, two other issues related to the composition of the Upper House need to be settled. Firstly, apropos the relationship between the constituencies’ seats and their population, it seems sensible to apply a formula that guarantees some sort of degressive proportionality,³² correcting the existing disparities between Autonomous Communities. Secondly, regarding the size of the chamber, a reduction of the exceptionally high number of senators would be desirable,³³ although it should not be drastic so as not to severely undermine proportional party representation. Bearing these principles in mind, a possible option would consist of allocating 6 fixed senators to all

²⁸ Francesc de Carreras Serra, «Reformar la Constitución para Estabilizar el Modelo Territorial», in *La Reforma Constitucional: Hacia Un Nuevo Pacto Constituyente?*, VV.AA. (Madrid: Centro de Estudios Políticos y Constitucionales, 2009), 107.

²⁹ Solé Tura, «Por Fin La Reforma del Senado».

³⁰ Article 137 of the Constitution stipulates that Spain shall be «organized territorially into municipalities, Provinces and the Autonomous Communities that may be constituted». This reveals the ambiguous nature of Article 69.1, according to which the Senate shall be «the House of territorial representation». Nonetheless, this ambiguous nature has not prevented the lack of direct representation of the municipalities in the Senate and, therefore, should not be an obstacle either for the abolishment of the provincial senators.

³¹ See: José Antonio Alonso de Antonio, «Algunas Propuestas para la Reforma Constitucional del Senado», *Foro, Nueva Época, Revista de Ciencias Jurídicas y Sociales* no. 2 (Madrid, 2005): 373. The Council of State is in favor of this arrangement. See: Consejo de Estado, «Informe sobre Modificaciones de la Constitución Española», 242.

³² «Degrressive proportionality» means that although constituent units are not granted an equal number of seats, the least populous ones have more seats than they would if a strictly proportional formula were applied. In the Spanish case, this intermediate formula appears to be the most suitable option. Giving all the constituent units the same weight is more typical of federal states created through an agreement between preexisting states («coming-together» federations, e.g. USA). On the other hand, establishing a total proportionality between seats and population would undermine the federal nature of the chamber.

³³ In most bicameral systems, the number of seats of the Upper House oscillates between $\frac{1}{4}$ and $\frac{1}{2}$ of the number of seats of the Lower House. In Spain, the Congress of Deputies has 350 members, which means that the size of the Senate is more than $\frac{3}{4}$ the size of the Lower House. See: Consejo de Estado, «Informe sobre Modificaciones de la Constitución Española», 240.

Autonomous Communities, with an additional senator for every 750,000 inhabitants.³⁴ The Autonomous Cities would maintain their 2 senators. With the population figures of 2013, that would reduce the number of seats from 266 to 158 and the ratio between the seats held by the most and the least populated Autonomous Communities from 8.2 to 2.8 (see Table 3 and Graph 2, and compare with Table 2 and Graph 1).³⁵

Table 3

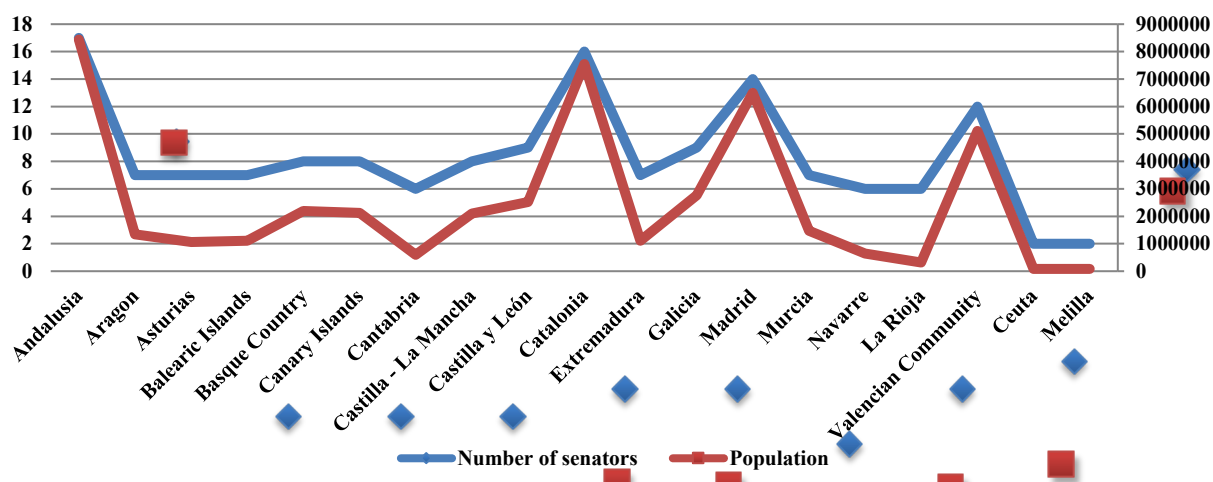
	Fixed senators	Additional senators	Total	Population (2013)
Andalusia	6	11	17	8440300
Aragon	6	1	7	1347150
Asturias	6	1	7	1068165
Balearic Islands	6	1	7	1111674
Basque Country	6	2	8	2191682
Canary Islands	6	2	8	2118679
Cantabria	6	0	6	591888
Castilla – La Mancha	6	2	8	2100998
Castilla y León	6	3	9	2519875
Catalonia	6	10	16	7553650
Extremadura	6	1	7	1104004
Galicia	6	3	9	2765940
Madrid	6	8	14	6495551
Murcia	6	1	7	1472049
Navarre	6	0	6	644477
La Rioja	6	0	6	322027
Valencian Community	6	6	12	5113815
Ceuta	2	0	2	84180
Melilla	2	0	2	83679
Total	106	52	158	47046104

Source: elaborated by author.

³⁴ With this proposed system, the insular specificity would disappear, which would potentially leave some islands without direct representatives in the Senate. However, that is a price that must be paid in order to guarantee the equal treatment of all Autonomous Communities.

³⁵ In light of the present climate of political tension in Spain, involving separatist movements, we must pay special attention to the effects of any proposed reforms on the representation of Catalonia. According to this proposal, its quota of representation in the Senate would increase, and it would only have one less senator than the most populated Autonomous Community (Andalusia), whereas nowadays it has 17 less.

Graph 2



Source: elaborated by author.

A burning issue remains: which method of election or appointment should be employed? There are many proponents³⁶ – among them the Territorial Council of the Spanish Socialist Worker's Party (PSOE)³⁷ – of a Bundesrat-like model, according to which the governments of the Autonomous Communities would be in charge of appointing the senators. This system would facilitate the relationship between the different layers of the administration and make the Spanish bicameral legislature more incongruent, but it would alter completely the nature of the Upper House, sacrificing plurality, transparency and democratic legitimacy.³⁸ Maintaining the system of indirect election through the Autonomic Parliaments that is now in place, for its part, would buttress territorial representation, but also at the expense of democratic representation.³⁹ All in all, the proposed abolishment of the Provincial senators – currently, the sole source of direct popular legitimacy – leaves only one viable alternative: a direct election of the Autonomic senators. If the «Cortes Generales» are to become more symmetric, it is safe to assume that this is the only solution that public opinion will regard as coherent and acceptable.⁴⁰

With this reform, the electoral unit would shift from the Province to the Autonomous Community, and the senators would be elected concurrently with the members of the Parliaments of their respective Autonomous Communities or Autonomous Cities.⁴¹ As these elections are not held simultaneously in all the Autonomous Communities, the Senate would have to become a permanent cham-

³⁶ See, for instance: Aja, «La Reforma Constitucional del Senado», 11–31; Ferri Durá, *El Porvenir del Senado*.

³⁷ Consejo Territorial del PSOE, «Hacia Una Estructura Federal del Estado» (Granada, 2013): 13–15, accessed June 7, 2014, <http://www.psoe.es/source-media/000000562000/000000562235.pdf>.

³⁸ For convincing critiques of this system, see: Albertí Rovira, «La Reforma Constitucional del Senado a la Hora de la Verdad», 33–50; Consejo de Estado, «Informe sobre Modificaciones de la Constitución Española», 234–235.

³⁹ Alonso de Antonio, «Algunas Propuestas para la Reforma Constitucional del Senado», 374.

⁴⁰ Logically, other formulas such as the designation of members of the Upper House by single-person organs (e.g. Canada, UK) and the existence of senators for life have been rejected for this reason as well.

⁴¹ The Autonomous Cities of Ceuta and Melilla do not have Autonomic Parliaments, but local assemblies.

ber,⁴² not subject to dissolution except in the event of a constitutional reform through the special procedure stipulated in Article 168 of the Constitution. These elements would prevent the composition of the Upper House from replicating that of the Lower House, which is one of the risks that a system of direct election entails.

b) Functions

If the Senate is to uphold its constitutional mandate, its position within the Spanish institutional framework must enable it to emerge as an effective outlet for the claims of the Autonomous Communities. Therefore, the Upper House should acquire specialized functions, which must translate to a reinforced role in the enactment of bills that affect co-legislative or executive competences held by the Autonomous Communities,⁴³ or with a clear Autonomic impact.⁴⁴ These bills would follow a special legislative procedure initiated in the Senate. In the event of a discrepancy between the two Houses, a Mixed Committee composed of an equal number of deputies and senators would intervene – proposing a new bill to both Houses – and, if the discrepancy persisted, the Congress of Deputies would decide by an absolute majority.⁴⁵

By means of this procedure, the Autonomous Communities would contribute to shaping the «basic legislation» of the State, which must be subsequently developed by the Autonomic Parliaments. Thereby, there would be a reduction in the exceedingly large number of conflicts between the State and the Autonomous Communities generated by this type of legislation.⁴⁶ In addition to this, it would be consistent with the territorial nature of the Senate to allow the Autonomic Parliaments to refer their bills – «propositions» – to this House, and not just to the Congress of Deputies.

The suggested legislative specialization of the Senate should be introduced without prejudice to its current functions. The Upper House must remain involved in the passage of all acts, as its possible transformation into a chamber with exclusively territorial functions – in the style of the Bundesrat – would limit the input of the Autonomous Communities in the formation of the state's will.⁴⁷ Actually, it would even be desirable to give more prominence to the Senate in the ordinary legislative procedure as well. To that end, some measures worth considering include extending the time period at

⁴² The Council of State has also suggested this solution, which is perfectly viable, as the Senate does not intervene in the investiture or cessation of the government. See: Consejo de Estado, «Informe sobre Modificaciones de la Constitución Española», 307. See also: Albertí Rovira, «La Reforma Constitucional del Senado a la Hora de la Verdad», 48; Alonso de Antonio, «Algunas Propuestas para la Reforma Constitucional del Senado», 385.

⁴³ That is to say all the competences that do not belong exclusively to the State or to the Autonomous Communities (see Article 149 of the Constitution).

⁴⁴ This concept could be constitutionally regulated more or less flexibly. It should include, at least, the reform acts of the Statutes of Autonomy, as well as the acts provisioned by Articles 150 (framework acts, transference or delegation acts and harmonization acts), 156.2 (transfer of taxes to the Autonomous Communities), 157.3 (granting of subsidies or financial aid to the Autonomous Communities) and 158.2 (Fund of Inter-territorial Compensation) of the Constitution.

⁴⁵ One of the advantages of this solution is that this procedure is already envisaged in Article 74.2 of the Constitution, in relation to Articles 145.2 and 158.2. The passage of the organic acts that followed this procedure, however, would require an absolute majority in both Houses, instead of a simple majority.

⁴⁶ Alonso de Antonio also makes this point. See: «Algunas Propuestas para la Reforma Constitucional del Senado», 385. Thanks to this new role envisaged for the Senate, the heavy workload of the Constitutional Court would decrease.

⁴⁷ Aja is the clearest defendant of excluding the Senate from the ordinary legislative procedure, following the German model. See: «La Reforma Constitucional del Senado», 21. For an opposite position, see: Consejo de Estado, «Informe sobre Modificaciones de la Constitución Española», 245–246.

its disposal for presenting amendments and interposing a veto, and enabling it to issue such veto along with an alternative text that the Congress of Deputies would have to pronounce on.⁴⁸

Although requiring the Senate's participation in the investiture and cessation of the government would be ill-advised and not supported by comparative law, it could be appropriate to provide the Upper House with enhanced mechanisms of parliamentary control.⁴⁹ Finally, some minor adjustments could be conceived in order to turn the Senate into a forum of inter-territorial dialogue and cooperation – complementing the present forms of intergovernmental relations⁵⁰ – and enable the Autonomous Communities to have more of a say in European matters.

6. Conclusion

It is clear that an eventual reform of the Spanish Senate will have to be a result of an agreement between the political parties, since ample majorities are required in order to modify the Constitution. Both the nature and the scope of action of the Upper House will be extremely contentious issues whose resolution will reflect an amalgamation of political interests. In spite of this, the academic circles can still aim at shaping the terms of the debate by suggesting possible courses of action. With this paper, the author has strived to make a modest contribution to this cause.

Recent events – such as the rise of separatist movements, especially prominent in Catalonia – have made evident that the «Estado de las Autonomías», in its present design, lacks enough vitality to keep articulating the various territorial and cultural demands that coexist in Spain. In this regard, the Spanish Senate has been an obstacle since its very conception, as it has prevented the country from constituting itself as a genuine federal state.

This paper has rejected outright the abolishment of the Senate, making a case instead for significant variations in its composition, its democratic legitimacy and its functions. All the different proposals have been made with an eye to drawing the Upper House closer to the Autonomous Communities and fostering a more incongruent, symmetric and ultimately stronger bicameral system in Spain. These developments are crucial in order to achieve a more balanced legislative procedure and establish solid mechanisms of inter-territorial interaction and participation at the central level.

Evidently, the proposed reform of the Senate would not be a panacea, but it could propel a different institutional and social paradigm, more sensitive to the claims of centrifugal forces. There is no question that Spain is at a crossroads and must decide which path to take. Federalism might be, as it has been for many other countries, the safest bet.

⁴⁸ As Alonso de Antonio suggests. See: «Algunas Propuestas para la Reforma Constitucional del Senado», 393.

⁴⁹ For example, in terms of authorizing international treaties, following the Belgian and German models. According to the current Constitution, the Spanish government can assume international obligations in matters that affect exclusive competences held by the Autonomous Communities, or even transfer their exercise to international bodies without their consent.

⁵⁰ For instance, the multilateral Sectorial Conferences. However, intergovernmental relations in Spain are characterized by a lack of proper organization and an excessive bilateralism.

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