

(Lack of) Territorial Representation in the Spanish Senate: Constitutional Design and Political Practice

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ABSTRACT The Spanish Constitution defines the Senate as the “house of territorial representation”, yet the institution suffers from profound deficiencies that impede the realisation of this constitutional aspiration. In this article, we analyse these deficiencies from both a legal-constitutional and a political perspective. We start by discussing problems of constitutional design, including the Senate’s composition rules, its powers, and the regulation of minority language use within the chamber. We then consider the Senate’s position within the broader political context, showing how the design flaws are further exacerbated by the political practice of the institution. In particular, how the consistent dominance of the Partido Popular within the chamber—a party holding a rather sceptical stance towards the decentralisation of the state—has further undermined the Senate’s territorial function. This is compounded by a general lack of public understanding and trust in the Senate. We also show that the Senate’s deficiencies have important collateral effects on other elements within the constitutional system, notably Constitutional Court judicial appointments and the procedure of constitutional reform. Finally, we discuss possible pathways to reform. While the Senate’s fundamental reform is unlikely in the near future, as it requires constitutional amendment, we suggest that reforming the institution’s linguistic regime could be a welcome and feasible step in the right direction.

KEYWORDS Senate; territorial representation; Spain; second chambers; shared rule.

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RESUM Tot i que la Constitució espanyola defineix el Senat com la “cambra de representació territorial”, aquesta institució presenta profundes deficiències que impedeixen materialitzar aquesta aspiració constitucional. En aquest article, analitzem aquestes deficiències des d’una perspectiva juridicoconstitucional i política. Comencem analitzant els problemes de disseny constitucional, incloent-hi les normes de composició del Senat, les seves competències i la regulació de l’ús de les llengües minoritàries dins de la cambra. A continuació, situem el Senat en el context polític més ampli i mostrem com els defectes de disseny es veuen agreujats per la pràctica política de la institució. Particularment, el domini sostingut del Partit Popular en el si de la cambra —un partit que manté una posició força escèptica envers la descentralització de l’Estat— ha debilitat encara més la funció territorial del Senat. Aquesta situació es veu reforçada per una manca general de coneixement i de confiança de la ciutadania respecte de la institució. També posem de manifest que les deficiències del Senat tenen efectes col·laterals importants sobre altres elements del sistema constitucional, especialment pel que fa als nomenaments dels magistrats del Tribunal Constitucional i al procediment de reforma constitucional. Finalment, analitzem possibles vies de reforma. Tot i que és poc probable que es produeixi una reforma profunda del Senat a curt termini, ja que requereix una esmena constitucional, suggerim que una reforma del règim lingüístic de la institució podria constituir un pas factible i benvingut en la direcció adequada.

PARAULES CLAU Senat; representació territorial; Espanya; segones cambres; govern compartit.

Introduction

The Spanish Constitution entrusts the Senate with an important function in Spain’s territorial constitution: the provision of a mechanism through which the Autonomous Communities can participate in decision-making at the central level. Thus, Article 69.1 states that “[t]he Senate is the House of territorial representation.” However, an examination of the Senate’s actual institutional configuration—especially its rules of composition—leads to the opposite conclusion: the Senate is not designed as an effective shared-rule institution. This reveals an internal inconsistency within the Spanish Constitution. While Section 1 of Article 69 defines the Senate as the “House of territorial representation”, its Sections 2 to 6 establish rules of composition that render the institution structurally incapable of fulfilling this role. At a symbolic level, the Senate’s lack of territorial representativeness is accentuated by restrictions on the use of Spain’s official minority languages—Catalan, Basque, and Galician—in the chamber’s debates.

These constitutional design deficiencies are reinforced by political practices. On the one hand, the method by which senators are elected has resulted in an over-representation of Spain’s conservative party—the Partido Popular—traditionally more resistant to the expansion of Autonomous Community

self-governance. On the other hand, there is a general lack of understanding, and appreciation, of the Senate's functions among citizens, contributing to low levels of public trust in the institution.

The Senate's deficiencies extend beyond the institution itself, producing collateral effects in other parts of the constitutional system, thereby undermining the capacity of Spain's constitution to more broadly reflect territorial pluralism. Two collateral effects are analysed here: firstly, the degradation of the territorial dimension of appointments to other institutions—notably the Constitutional Court—and secondly, the weakening of territorial input into the constitutional amendment process.

This article examines the Spanish Senate's capacity to function as a chamber of territorial representation, considering both its constitutional design and its political practice. Before discussing the Senate's position, Section 1 clarifies the theoretical background of the analysis. Section 2 addresses the Senate's constitutional design, focusing on its composition and powers, as well as the regulation of minority language use within the chamber. Section 3 examines the political idiosyncrasies of a systematic majority of Partido Popular senators, and generally low levels of public support for the Senate. Section 4 analyses the collateral effects of these deficiencies. Finally, Section 5 discusses possible avenues for the institution's reform.

1. Federalism and Bicameralism

This article discusses the extent to which the Senate conforms to its definition as “House of territorial representation” in Article 69 of the Constitution. From this perspective, the argument advanced here is a doctrinal one, i.e., focused on the coherence between the institution's constitutional definition, on the one hand, and its design and practice, on the other. Yet from a broader perspective, the argument is underpinned by the theoretical framework of federalism. Federalism may be understood as a constitutional principle requiring a combination of self-rule—the establishment of autonomous sub-state units—and shared rule—the participation of those units at the central level.¹ According to its constitutional definition, the Senate is a key vehicle for exercising shared rule, facilitating Autonomous Community participation at the state level.

1. Elazar, *Exploring Federalism*, 5.

It may be objected that federalism provides an inadequate theoretical framework for analysing Spain's Constitution, which arguably falls short of establishing a genuinely federal organisation of power. While some have argued that Spain is an example of "federalism without adjectives",² others have preferred to describe Spain as "federalising"³ or "semi-federal",⁴ and still others have denied its federal character altogether.⁵ To address these concerns, it is important to clarify that federalism is used here as a *normative principle* rather than as a descriptive category. This approach follows Ronald Watts's distinction between "federalism" as a normative concept—referring to the advocacy of a multi-tiered government combining elements of shared rule and regional self-rule—and "federation" as a descriptive term, denoting systems in which neither the federal nor the constituent units are constitutionally subordinate to one another.⁶ From a descriptive standpoint, Spain may not qualify as a federation. From a normative perspective, however, federalism offers a useful—and frequently applied⁷—lens through which to analyse and assess the possible trajectories that Spain's territorial constitution may take. This approach, moreover, allows for (further) comparative study of many of the idiosyncrasies that Spain shares with other federal countries, such as linguistic diversity, the definition of the territories, and the demarcation of political and administrative powers.

Under the federal principle, bicameralism is one possible strategy to institutionalise shared rule, based on a system of "dual representation": the lower chamber is constituted on the "majoritarian principle of representation by population", whereas the upper chamber is constituted on the "federal principle of representation by region."⁸ By describing the Senate as a "House of territorial representation", the Spanish Constitution implies this distinction. Of course,

2. Sala, "Federalism without Adjectives in Spain".

3. Moreno, *La federalización de España*, 125.

4. Lijphart, *Patterns of Democracy*, 178.

5. Requejo, *Multinational Federalism and Value Pluralism*, 65-67.

6. Watts, *Comparing Federal Systems*, 8-9.

7. In addition to those previously mentioned, and among many others, see e.g., Convery and Lundberg, "Decentralization and the centre right in the UK and Spain"; Gordin, "Paradoxes of Federalism?"; López Basaguren and Escajedo San Epifanio, *The Ways of Federalism in Western Countries and the Horizons of Territorial Autonomy in Spain*.

8. Hueglin and Fenna, *Comparative Federalism*, 205.

what it represents are not the territories as such,⁹ but rather the peoples living in those territories, which the federal system organises through distinct sub-state units. There is ongoing scholarly debate as to how the Spanish Senate (or an alternative representative chamber) would ever be fully representative of its territorial components.¹⁰ For the sake of analytical clarity, territorial representation is understood here as a form of representation that entails the distinct presence of these sub-state units. As Enoch Albertí explains, it means that “certain bodies become present within the State’s decision-making mechanisms—bodies that have their own population or citizen base, that are recognised as having their own identity and political power, and that are distinct and differentiated from the general body, i.e., the federal people, the whole of which they form a part.”¹¹ The following sections analyse how and why the current Spanish Senate embodies this form of representation.

2. Deficiencies in Constitutional Design

2.1 A non-territorial composition

The Senate’s principal deficiency is its composition—more specifically, the method for selecting the senators. The Constitution establishes two types of senators. On the one hand, there are the directly elected senators, chosen by the population at large through direct suffrage every four years. In these elections, the electoral districts are the provinces¹²—a territorial unit of administrative, rather than political, significance. The provinces are different from the Autonomous Communities, which constitute the true political entities within Spain’s semi-federal system. Each province is allocated an equal number of senators.¹³

9. Albertí Rovira, “La representación territorial”, 1; Santaolalla López, “La representación territorial y el Senado”, 48.

10. For an overview of the development of this debate in the past decade, see, for example, Caamaño Domínguez, “Edmund Burke ha vuelto a morir”; Garrido López, “El Senado ante el enigma de la representación territorial”; Arroyo Gil, “Representación territorial y control político”.

11. Albertí Rovira, “La representación territorial”, 4. Translation by the authors.

12. Constitution of Spain, Art. 69.2.

13. Each province elects four senators, with the exception of the island provinces and the autonomous cities of Ceuta and Melilla, as regulated in the Constitution of Spain, Arts. 69.2 to 69.4.

There is no territorial element in the election of this first type of senators: the fact that they are directly elected, with the Autonomous Communities' institutions not intervening in their selection, prevents them from fulfilling the function of representing the Autonomous Communities at the central level. Moreover, Senate elections are held simultaneously with the elections for the Congress of Deputies (the other house), meaning that voters rarely differentiate between the two chambers, casting their ballots according to partisan rather than territorial considerations.¹⁴ Crucially, the directly elected senators comprise a majority within the Senate—currently, 208 out of the 266 Senate members are directly elected.

On the other hand, the Constitution provides for a second category of senators: those appointed by the legislatures of the Autonomous Communities. According to Article 69.5 of the Constitution, each Autonomous Community is entitled to nominate one senator, plus an additional senator for every one million inhabitants in its territory. For instance, the Parliament of Catalonia, with a population of over 7 million inhabitants, can appoint eight senators, while the Parliament of Galicia, with a population of over 2 million inhabitants, can appoint three. Thus, while senators of the first type are evenly distributed across the territory—each province electing four senators—those of the second type are allocated according to the population of each Autonomous Community, with more populous Communities appointing a larger number of senators.

The appointment of these senators introduces a stronger territorial element than that of the first category of senators, as it involves the direct participation of a political institution of the Autonomous Communities—their legislatures. In this sense, the presence of appointed senators aligns more closely with the constitutional description of the Senate as a “House of territorial representation”. There are, however, three problems. Firstly, as noted, these senators comprise a small minority within the Senate—currently only 58 out of 266 members, around one fifth of the chamber. Consequently, their presence does not significantly alter the institution's overall character.

A second problem arises from the requirement that the processes for appointing these senators in the Autonomous Communities' legislatures guarantee “adequate proportional representation”, according to the Constitution.¹⁵ This

14. Punset Blanco, “De un Senado a otro”, 109.

15. Art. 69.5.

constitutional requirement, which serves the legitimate goal of enhancing the proportionality of the Senate's composition, prevents the senators from being elected by the parliamentary majority supporting the government of their respective Autonomous Community. In practice, a broader political agreement is required.¹⁶ As a result, these senators do not represent a single position within each Autonomous Community—as Ramón Punset Blanco puts it, they are not representative of the “dominant political orientation” of each Autonomous Community.¹⁷ Rather, they represent the position of the political parties to which they belong.

This issue is compounded by a third problem: the senators are not subject to “imperative mandate.”¹⁸ That is, they are personally responsible for the votes they cast and the positions they take, and they cannot be removed if they fail to follow the position adopted by their appointing legislature. This prevents the legislatures of the Autonomous Communities from issuing orders and instructions. The freedom enjoyed by the senators means that the positions they adopt are not necessarily the positions of the Autonomous Communities—what Punset Blanco calls the “dominant political orientation” of each Community¹⁹—that they are supposed to be representing.²⁰

Overall, the Senate's composition rules do not reflect the institution's constitutional description as a “House of territorial representation.” The Autonomous Communities intervene in the selection of only a small fraction of its members. Even these appointed senators are not, in practice, tied to the Autonomous Communities in any meaningful sense: they are not chosen by the parliamentary majority supporting the Community's government, nor can they be removed if they disregard the position of the Community's legislature. Unsurprisingly, senators therefore tend to group along partisan

16. The Autonomous Communities enjoy some discretion in deciding exactly which system they use to appoint their senators. However, according to the Constitutional Court, the “adequate proportional representation” requirement means that they cannot follow a simple majoritarian criterion in which the winning party in the Autonomous Community is able to appoint all the senators. See the Constitutional Court judgment 40/1981, legal ground 2.

17. Punset Blanco, “De un Senado a otro”, 128.

18. Constitution of Spain, Art. 67.2.

19. Punset Blanco, “De un Senado a otro”, 128.

20. Blanco Valdés, “Los Senados y la fantasía de la representación territorial”, 139.

rather than territorial lines and vote according to party affiliation rather than territorial considerations.²¹

2.2 Limited powers on territorial matters

Beyond the rules governing its composition, some scholars argue that the Senate's lack of territorial character is also evident in its limited powers over specifically territorial matters.²² Indeed, the Senate does not possess any general powers to intervene in issues of particular importance for territorial autonomy. In most matters—whether territorial or not—it intervenes as a subordinate chamber of second thought, generally with powers to delay but not to veto legislation passed by the Congress of Deputies.²³ Notably, the Senate plays no special role in the enactment of the Statutes of Autonomy, the basic laws establishing the self-government of the Autonomous Communities.

This lack of territorial specificity in the Senate's functions has some exceptions. The most important is arguably the Senate's role in applying Article 155 of the Constitution, a mechanism of federal coercion that allows the central government to adopt the "necessary measures" to ensure that an Autonomous Community complies with their constitutional obligations. Such measures can only be imposed with the Senate's approval by absolute majority, without any intervention by Congress. However, this mechanism is reserved for highly exceptional circumstances and has, in practice, only been used once, in response to the Catalan secessionist attempt in 2017.²⁴

There are three other autonomy-related matters in which the Senate exercises equal powers to those of the Congress, rather than acting as subordinate to it: the process for enacting harmonisation Acts, which coordinate the laws of the Autonomous Communities;²⁵ the creation of a solidarity fund to redress

21. Territorial groups within the Senate do exist, grouping the senators by territory of origin. However, these are subordinate to the party-based political groups, and their activity is almost non-existent. See Punset Blanco, "De un Senado a otro", 111-112.

22. E.g., López Basaguren, "The Secession Issue", 242-244; Arbós Marín, "El Senado".

23. Constitution of Spain, Art. 90.

24. For an analysis of the Senate's role in the application of Article 155 following Catalonia's secession attempt, see López Basaguren, "The Secession Issue".

25. Constitution of Spain, Art. 150.3.

inter-territorial economic imbalances;²⁶ and the authorisation of extraordinary agreements of horizontal cooperation between the Autonomous Communities.²⁷ In practice, however, these powers have become irrelevant: only one harmonisation Act was ever adopted, and this was declared largely unconstitutional; the solidarity fund plays a marginal role in the distribution of financial resources; and extraordinary cooperation agreements are virtually non-existent.²⁸

Overall, therefore, the Senate holds powers that are not specific to territorial matters. This is said to further demonstrate its lack of territorial character. This argument rests on the assumption that shared rule has a “defensive” function²⁹—that is, it understands shared rule essentially as a mechanism by which the sub-state units can defend their autonomy from central intrusions. From this perspective, the Senate, as a shared rule institution, is conceptualised as a guardian of Autonomous Community self-government. If the Senate lacks the specific powers necessary to perform such a guardianship role—the argument claims—it cannot be properly regarded as a “House of territorial representation.”

However, shared rule in federalism also fulfils a more positive and constructive role.³⁰ Beyond protecting territorial autonomy, shared rule provides a vehicle through which sub-state units cooperate and coordinate with the central government and with one another.³¹ From this perspective, the Spanish Senate should not be understood merely as a defensive shield for the Autonomous Communities, but as an institution that enables their meaningful participation in the decision-making processes of the state as a whole. Rather than acting solely as a guardian of territorial autonomy, the constructive dimension of shared rule points to the Senate’s role as a forum of cooperation. In this light, the Senate may still be fulfilling a valuable function, even if its powers are not confined to territorial matters: as an institution whose main function is to

26. *Ibid.*, Art. 158.2.

27. *Ibid.*, Art. 145.2.

28. Varela Suanzes-Carpegna, “La reforma constitucional del Senado”, 157-158; López Basaguren, “The Secession Issue”, 243-244.

29. Requejo and Sanjaume-Calvet, “Defensive Federalism”, 12.

30. On the two dimensions of shared rule, see McEwen, “The Limits of Self Rule Without Shared Rule”, 72-73.

31. This constructive dimension of shared rule substantially overlaps with the notion of ‘cohesion’ central to Patricia Popelier’s theory of federalism. See Popelier, *Dynamic Federalism*, 52.

participate in the ordinary legislative process across all matters—as is currently the case—it can be seen as fulfilling a desirable cooperative shared-rule role.³²

A further issue concerns not the matters on which the Senate has authority, but the *strength* of that authority. As mentioned, the Senate is subordinate to the Congress in the legislative process. While legislation can be introduced in the Senate,³³ the first reading always occurs in Congress: only after the Congress has expressed its position does the Senate intervene.³⁴ Its veto is only suspensive;³⁵ at most, it can delay enactment for to two months, or 20 days in cases of urgency.³⁶ This is a significantly short timeframe for the Senate to make meaningful contributions to the legislative process.³⁷ Using Arend Lijphart's terms, Spain is an instance of "asymmetrical bicameralism", with the Senate in a position of inferiority relative to the Congress.³⁸ That the main institutional channel for Autonomous Community participation in the centre—as envisaged in the Constitution—possesses such weak powers illustrates the limited weight that the Spanish Constitution assigns to shared rule.

Nevertheless, the issue of the Senate's powers is secondary to, and dependent upon, the problem of its composition. Granting the Senate more powers without reforming its composition would not bring the institution closer to its constitutional characterisation as a "House of territorial representation". As Roberto Blanco Valdés observes, what makes a second chamber a territorial chamber "is not the mere fact that such a power of veto exists, nor even the subject matters to which that veto may apply, but rather that the veto expresses the position of the federated units and not that of the nation's electorate."³⁹ In fact, given the political practice of the Senate—explained in

32. This view seems to be followed by Blanco Valdés, "Los Senados y la fantasía de la representación territorial"; and Varela Suanzes-Carpegna, "La reforma constitucional del Senado".

33. Constitution of Spain, Art. 87.1.

34. *Ibid.*, Art. 90.

35. *Ibid.*, Art. 90.2. Exceptionally, the Senate holds veto power over the three autonomy-related issues discussed above, as well as over certain processes of constitutional amendment discussed below.

36. *Ibid.*, Art. 90.3.

37. Varela Suanzes-Carpegna, "La reforma constitucional del Senado", 155.

38. Lijphart, *Patterns of Democracy*, 193-199.

39. Blanco Valdés, "Los Senados y la fantasía de la representación territorial", 140. Translation by the authors.

the next section—increasing the institution’s powers without addressing its composition could have the opposite effect: in practice, it could slow or stop federalising and decentralising reforms.

2.3 The (lack of) recognition of Spain’s minority languages in the Senate

Spain is a multilingual country. Six Autonomous Communities recognise languages other than Castilian as co-official: Catalan (or Valencian) in Catalonia, the Valencian Community, and the Balearic Islands; Basque in the Basque Country and Navarre; and Galician in Galicia.⁴⁰ The presence of distinct languages is closely linked to strong sub-state identities within these territories, which many inhabitants experience as *national* identities, based on distinct cultures. From this perspective, Spain may be understood as a “plurinational” or “multinational” constitutional system in which several national communities coexist.⁴¹

If the Senate is to play the role of “House of territorial representation”, it should arguably reflect one of the most salient features of Spain’s territorial pluralism: linguistic diversity. Transforming the Senate into a multilingual chamber would align it with the legislatures of other multilingual constitutional systems, such as Canada,⁴² Belgium,⁴³ and the European Union.⁴⁴

40. For an overview of the progress and challenges of plurilingualism in Spain’s institutions, see Ridao-Martín, “Avances y retos del plurilingüismo”.

41. On multinational or plurinational federalism generally, see Tierney, *Constitutional Law and National Pluralism*; Requejo, *Multinational Federalism and Value Pluralism*; Gagnon, *The Legitimacy Clash*.

42. English and French may be used in the debates of both Houses of the Parliament of Canada, both languages must be used in the Houses’ records, and the Acts passed by Parliament must be published in both languages, according to Section 133 of the *Constitution Act, 1867*. However, a significant difference with Spain is that in Canada both French and English are official at the federal level—see S 16(1) of the *Canadian Charter of Rights and Freedoms*. In Spain, in contrast, Catalan, Basque and Galicia are only official at the Autonomous Community level.

43. French and Dutch are used in both houses of the Belgian Parliament, in line with the “freedom of language” guaranteed by Art. 133 of the Belgian Constitution and the *Law of Equality*, of 18 April 1898.

44. The European Union has 24 official languages, according to the *Regulation No 1 determining the languages to be used by the European Economic Community* of 1958, and they can all be used in the European Parliament and the Council of the European Union. It must be noted,

At present, however, the use of Catalan, Basque, and Galician in the Senate remains highly restricted. Most of the chamber's business can be conducted only in Castilian. The other official languages of Spain can be used solely to defend motions and during debates in the General Commission of the Autonomous Communities, one of the Senate's standing committees.⁴⁵ They are excluded from the Senate's most important functions, particularly its role in the legislative process and its general mechanisms for holding the government accountable.

In 2023, the Rules of the Congress of Deputies—the lower chamber—were amended to permit the use of Catalan, Basque, and Galician within it, following an agreement between the Spanish government and sub-state nationalist parties.⁴⁶ This reform applies exclusively to the Congress, leaving the Senate largely unilingual. The result is a paradox that starkly illustrates the Senate's design deficiencies: the Congress, constitutionally designed to embody a more unified form of political representation, has become multilingual, whereas the Senate—purportedly the “House of territorial representation”—remains largely unreflective of Spain's linguistic diversity.

3. Deficiencies in Political Practice

The territorial dimension of the Spanish Senate is thus greatly restrained by its constitutional design. In addition, there are two key political dynamics that further aggravate this deficiency. Firstly, the dominance of the Conservative Partido Popular (PP) in the chamber—a party that has traditionally held a rather sceptical stance towards the decentralisation of the Spanish state—has arguably further weakened the territorial function of the Senate. Secondly, there is an overall lack of public trust in, and credibility of, the Senate, which is linked to and potentially affects its efficacy as a representative of territorial interests. This section analyses how these dynamics have developed and what they mean for the future of the Senate as a territorial

however, that the EU is a supranational polity rather than a federal state. Despite this, the federal principle has often been used as a useful lens for analysing the development of the EU. See, e.g., Larsen, *The Constitutional Theory of the Federation and the European Union*.

45. The General Commission of the Autonomous Communities was created in a reform in 1994, as developed below.

46. Reform of the Rules of the Congress of Deputies, 25 September 2023, BOE-A-2023-19919.

chamber. It is worth noting that this analysis does not aim to trace the direction or measure the impact of these dynamics; rather, we argue that they are both the source and result of the compositional issues laid out above, and thus deserve further dedicated study as internal characteristics.

3.1 A Partido Popular-dominated Senate

To analyse how the Partido Popular dominates the Senate, and what this dynamic entails for the chamber's territorial function, it is necessary to briefly refer to the Spanish electoral system by which the majority of senators are elected.⁴⁷ The electoral system of both Congress and Senate elections is well-known to favour the over-representation of large parties. The key feature producing this result has been the choice of province as the electoral constituency.⁴⁸ As a consequence, Spain has functionally been a two-party system (at the state level) for most of its recent democratic history, with both the Congress and Senate alternating between majorities led by PP and by PSOE (the Partido Socialista Obrero Español), sporadically supported by non-state-wide parties. This two-party trend only came to an end in the last decade, with the eruption of new state-wide parties—including Podemos, Ciudadanos, Sumar, and VOX—into all levels of government.⁴⁹

In the Senate elections, this dynamic is reinforced by the fact that each province is assigned the same number of senators, favouring a significantly disproportionate representation of rural provinces with smaller populations.⁵⁰ Given the conservative-leaning vote dynamics in such provinces,⁵¹ the result has been a historical over-representation of PP senators. The PP has thus often formed a majority in the chamber either by itself, or with the support of conservative nationalist parties, sometimes also over-represented due to their concentration in small (non-state-wide) territorial circumscriptions.

47. We are referring here to the first category of senators identified in Section 2.1—the elected senators, which are a majority within the Senate.

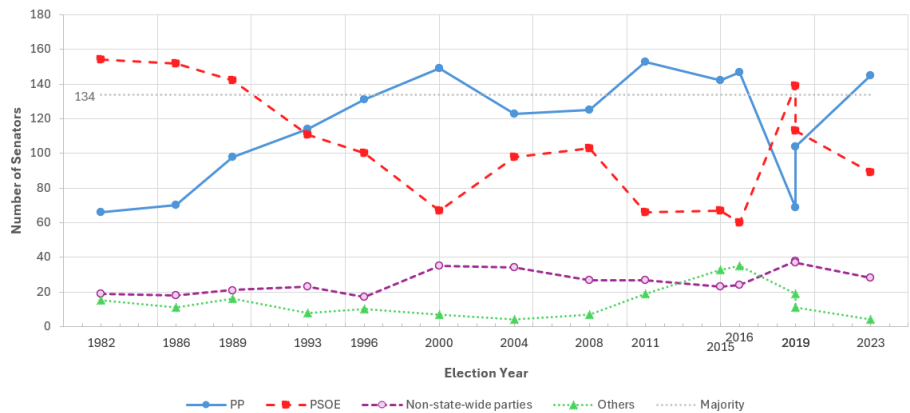
48. Hopkin, "Spain", 378.

49. Lancaster, "The Spanish General Elections of 2015 and 2016".

50. Harguindéguy, Coller and Cole, "Why Is the Spanish Upper Chamber So Difficult to Reform?", 533.

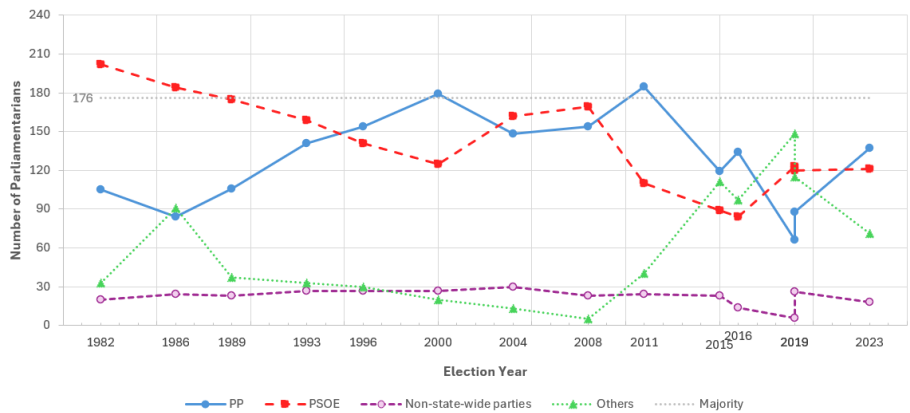
51. López Basaguren, "The Secession Issue", 248.

Figure 1: Evolution of the number of senators by political party



Evolution of the number of senators voted in for, respectively, Conservatives (blue), Socialists (red), non-state-wide (most notably, CiU, PNV, and Coalición Canaria) parties (purple), and other smaller parties taken together (green). The majority (grey) is roughly 134 senators. The timeframe runs from 1982, the beginning of the 2nd legislature, as that is when Alianza Popular (PP's predecessor) entered the Senate with its Popular Parliamentary Group. Developed in-house; data obtained from Senate official records per legislature, retrieved from <https://www.senado.es/web/composicionorganizacion/gruposparlamentarios/gruposparlamentariosdesde1977/index.html>.

Figure 2: Evolution of the number of deputies by political parties



Evolution of the number of deputies voted into Congress for, respectively, PP (blue), PSOE (red), non-state-wide (most notably, CiU, PNV, and Coalición Canaria) parties (purple), and other smaller parties taken together (green). An absolute majority is roughly achieved with 176 members of one group; a simple majority is usually 170 members. Developed in-house; data obtained from Congress official records per legislature, retrieved from <https://www.congreso.es/es/grupos/composicion-en-la-legislatura>.

The following graphs succinctly illustrate how often the Spanish Senate has been PP-led, and how that compares to the PP-PSOE balance in Congress.

As the graphs show, the PSOE had the upper hand in both Congress and Senate during the first 15 years of Spanish democracy. Since 1993, however, the PP has systematically been the largest group in the Senate, including during all the PSOE periods of government, with the sole exception of the 2019-2023 legislature (when the PSOE held a narrow advantage of just nine senators). Additionally, throughout more than half of this 30-year period, the high number of PP senators has allowed them to hold the majority on their own (2000-2004; 2011-2015; 2015-2019; and since 2023), being very near the majority threshold in the other three legislatures and thus likely dependent on the support of conservative non-state-wide parties. This trend demonstrates that the Senate has barely changed its composition, and experienced little ideological diversity, for the better part of recent Spanish democratic history. This conservative over-representation is particularly stark in comparison to the Congress, where the results have always been much tighter and the largest two parties (PP-PSOE) have often alternated government and, more recently, had to seek coalitions with smaller parties.

Why does this long-term PP majority matter when analysing the territorial role of the Senate? *A priori*, this consistent conservative tendency could be a (somewhat anomalous) idiosyncrasy of the Spanish political system, having no bearing on the territorial dimension of the second chamber. However, existing research shows that senators are not primarily guided by territorial concerns or mandates but rather by their party line,⁵² and the territorial question is an ever-present discursive struggle among political parties in Spain. This party-following tendency is partly explained by the compositional faults explained earlier, such as the election of senators according to provincial districts rather than Autonomous Communities, which undermines their territorial commitments.⁵³ It is also, however, an important consequence of the primacy of parties' disciplinary powers, which are extensive and actively

52. There is widespread consensus that party dynamics prevail over territorial ones in the Senate, see, among others, Caamaño Domínguez, "Edmund Burke ha vuelto a morir", 68; López Basaguren, "The Secession Issue", 261. Whether any other country's Second Chamber has managed to fully disentangle itself from the influence of party politics is a different matter (see Garrido López, "El Senado ante el enigma de la representación territorial").

53. Castellà Andreu, "The Spanish Senate after 28 Years of Constitutional Experience".

restrain the senators' capacity to act on their territorial interests for fear of sanctions.⁵⁴ Furthermore, the political culture of the Senate has evolved in such a way that territorial matters have been displaced onto alternative forums, such as sectoral conferences, bilateral commissions, or even the Congress.⁵⁵ Senators of all colours, but especially those from the PP, are thus likely to minimise the territorial dimension of their activities and to prioritise general party lines.

At this central level, the PP is known to hold a unified conception of the Spanish nation and a rejection of plurinationality. This vision translates into political positions generally favourable to centralisation, in which the central level of government is seen as constitutionally dominant.⁵⁶ PP senators are thus likely to follow this view. A brief historical analysis demonstrates that the PP has developed an increasingly complex and generally unenthusiastic relationship with the decentralisation of Spain over the last few decades, particularly since the 2000s. More in-depth analyses have been carried out elsewhere,⁵⁷ but the key elements to consider are the official arrival of the Autonomous Communities and the devolution of powers over the 1980s and early 1990s. These events were defining moments in both the role of territorial politics in the newly (re)established Spanish democracy, and the specific political units and powers that it would entail. Within this context, both the PP and its direct predecessor until 1989—Alianza Popular, hence AP—were markedly centralist in comparison to the PSOE, advocating for “regionalism” as a sort of administrative decentralisation not providing any form of genuine self-rule.⁵⁸ It is safe to say, however, that neither the AP nor the early-years PP were as sceptical of devolution as contemporary PP has arguably become.

54. See Gómez Perpinyà, “Los partidos políticos como freno a la representación territorial en el debate en torno a la supresión del Senado”, 134, for a legal analysis of how (not) protected senators' territorial links are, and how this dynamic negatively affects the territorial dimension of the Senate.

55. For an analysis of what these alternative avenues look like, see, for example, Harguindéguy, Collier and Cole, “Why Is the Spanish Upper Chamber So Difficult to Reform?”; Rodríguez López et al., “The Perfect Storm?”.

56. Verge, “Party Strategies on Territorial Reform”, 322-323.

57. Among others, Grau Creus, “A Step Backwards or a Step Forwards?”; Harguindéguy et al., “La gouvernance territoriale espagnole à l'épreuve de la crise économique”; Sanjaume-Calvet and Paneque, “Shared or Self-Rule?”; Verge, “Party Strategies on Territorial Reform”.

58. Verge, *Ibid.*, 322-323.

In fact, as research has shown,⁵⁹ the PP was substantially open to decentralisation until late in the 1990s, often partnering up with conservative non-state-wide parties to expand its own electoral horizons. The peak of this ‘autonomist’ attitude was the arrival of the PP into state power in 1996, after 14 years of PSOE governments. The PP’s accession to government was only possible thanks to the parliamentary support of *Convergència i Unió* (CiU), a Catalan nationalist centre-right party. In exchange for this support, PP offered CiU greater economic autonomy and the transfer of additional competences to Catalonia.

Since the early 2000s, however, the PP’s attitude has shown a slow but increasing aversion to decentralisation. The party’s largest concern has allegedly been the need to protect the Spanish state against the cultural, identitarian dimension behind demands for greater autonomy from certain Autonomous Communities, at times combined with demands for secession. These demands are seen by the PP as a threat to their unified conception of the Spanish nation.⁶⁰ This preoccupation has informed one of the PP’s main strategies in recent decades: the progressive reduction of all territorial powers to merely administrative matters, leaving political decisions (especially related to fiscal matters) to the central government.⁶¹ This objective has often been pursued through a second strategy: the demand that any institutionalisation of territorial interests must be applied symmetrically to and by all Autonomous Communities.⁶² Since complete homogeneity is unlikely because of the original asymmetrical constitutional set-up of the Autonomous Communities, as well as practically difficult to implement because of past political compromises (including their own with CiU in 1996), the PP’s solution has been to push for the restriction of *any* further territory-based powers.

This disinclination for devolution and competence transfers has become one of the party’s main discursive tools, frequently featured in electoral pro-

59. Convery and Lundberg, “Decentralization and the Centre Right in the UK and Spain”, 395; Verge, *Ibid.*, 324-325.

60. Verge, *Ibid.*, 331.

61. Grau Creus, “A Step Backwards or a Step Forwards?”, 269; Convery and Lundberg, “Decentralization and the Centre Right in the UK and Spain”, 398.

62. *Ibid.*, 400; Verge, “Party Strategies on Territorial Reform”, 331.

grammes⁶³ and characteristic of both the PP's years in central government⁶⁴ and its more recent opposition to the PSOE executive. As Convery and Lundberg put it, "Reducing power for the regional governments is being portrayed by the PP as a way to make Spain more 'viable'."⁶⁵ An anecdotal, yet illustrative, example of how this discourse has seeped into the Senate is the following intervention by PP senator Inmaculada Hernández. During a debate in March 2025 about the possible transfer of management of municipal civil servants to their respective Autonomous Communities, Hernández stated that "the transfer of powers from national authorities is not decentralisation, it is dismantling the State from within."⁶⁶ This quote illustrates the PP's generally unfavourable attitude towards territorial powers, reflected as well in the activity of the Senate.

What has this discourse translated to in policy terms? In practice, the PP has been, since its first time in state government in 1996-2000, much more internally divided over the topic of decentralisation than expected.⁶⁷ It has often favoured bilateral agreements with specific regional governments, and even proposed decentralising measures in Autonomous Communities under their control, directly contradicting its goal of full symmetry. A paradigmatic case is the 2006 Statute of Autonomy of Valencia, approved by the PP and PSOE both in Congress and in the Valencian Parliament, under the PP regional government of Francisco Camps. At the same time as this Statute was being unanimously accepted, the PP was using the central arena to dispute, in an

63. See Gómez Fortes and Cabeza Pérez's analysis of the Regional Manifestos Project in "Spain".

64. Harguindéguy et al., "La gouvernance territoriale espagnole à l'épreuve de la crise économique", 114; Novo Arbona et al., "Building a federal state", 268.

65. Convery and Lundberg, "Decentralization and the Centre Right in the UK and Spain", 401.

66. Quote retrieved from the PP's official press repository: <https://www.pp.es/actualidad/articulos/el-pp-denuncia-que-la-cesion-de-competencias-delos-habilitados-nacionales-no-es-descentralizacion-es-desmantelar-el-estado-desde-dentro> Original text is: "[la] cesión de competencias de los habilitados nacionales no es descentralización, es dismantlar el Estado desde dentro."

67. For an overview of how the PP's policies have been non-cohesive with the party's self-stated territorial ideals, see, among others, Grau Creus, "A Step Backwards or a Step Forwards?", 268; Keating and Wilson, "Renegotiating the State of Autonomies", 545-546; Verge, "Party Strategies on Territorial Reform", 328-329.

“unusually comprehensive” appeal,⁶⁸ the Catalan proposal that was being simultaneously developed. Many of the provisions that the PP challenged in the Statute of Catalonia, such as setting up their own fiscal agency, were being proposed in Valencia, and had also been accepted in other Autonomous Communities such as Andalusia.⁶⁹ The result of this contradiction was a myriad of internal conflicts between the regional branches (Andalusia, Catalonia) and the central PP, who “obliged the regional PP to distance itself from the proposed reform[s].”⁷⁰

Despite its self-proclaimed interest in regional governments having only administrative (and not political) powers, which reveals a very unstable picture of self-rule possibilities in Spain, the PP has also favoured self-rule agreements over shared rule. In fact, its policy activity has frequently and rather systematically weakened mechanisms of shared rule. Key examples of this undermining approach are, among others, its opposition to Autonomous Communities shaping the Spanish position in the European Union, and, most importantly for this paper, blocking the Senate reform that would turn it into a chamber of true territorial representation.⁷¹ This last tool, the blocking of a potential reform, has been used by PP senators even though the commissions looking into the possibilities were set up by PP governments.⁷²

In this context of complex and often contradictory positions within the PP, there is thus reasonable doubt that PP senators, in their position as largest party group in the second chamber, would favour, or even partake in, territorial work in the Senate. There are two additional indications in this regard. First, the regional branches of the party have historically been subordinated to the state-wide party and its objectives,⁷³ leading to issues such as the intra-PP conflicts regarding the 2006 Statutes of Autonomy.⁷⁴ While

68. Basta, “The State between Minority and Majority Nationalism: Decentralization, Symbolic Recognition, and Secessionist Crises in Spain and Canada”, 64.

69. *El Periódico*, “La Generalitat constata que seis estatutos tienen artículos similares a los de la Carta catalana impugnados por el PP”.

70. Keating and Wilson, “Renegotiating the State of Autonomies”, 546.

71. Verge, “Party Strategies on Territorial Reform”; López Basaguren, “The Secession Issue”.

72. Virgala Foruria, 2013, as cited in Harguindéguy, Coller and Cole, “Why Is the Spanish Upper Chamber So Difficult to Reform?”, 536.

73. Grau Creus, “A Step Backwards or a Step Forwards?”, 269.

74. Keating and Wilson, “Renegotiating the State of Autonomies”, 545-546.

further research into the intricacies of these internal dynamics would be of great value, this tendency within the PP to favour the central party lines has, to date, been well established. In addition to the previously mentioned constraints imposed by the existence of party disciplinary powers,⁷⁵ PP (and PSOE, for what it is worth) parliamentarians and senators have been shown to primarily follow party discipline over (rare) internal deliberation or (almost never) voting against party lines.⁷⁶ PP regional electoral programmes also often present more policy proposals and frameworks for the state level than for their own region.⁷⁷ PP senators are thus arguably likely to follow these trends and disregard, as the PP at large does, the shared-rule character of their role.

Senate confrontations, led by the PP majority, also hint at larger dynamics of electoral interest, using the second chamber as an additional avenue for party-driven struggles rather than its own independent chamber. A recent example is the PP senators' veto of the 2024 'budget stability path'. According to this amendment, proposed by Pedro Sánchez's PSOE government, all Autonomous Communities were to enjoy more flexible deficit margins for two years, to allow greater spending and borrowing power at both the autonomous and local levels. The PP used the Senate to express its negative opinion of not only this budgetary change but of the government's economic policies in general, with one PP senator arguing that they would not want to be 'accomplices' to the PSOE Executive.⁷⁸

As a result of the delayed approval of the budget after the Senate's opposition, several Autonomous Communities, including most of those run by PP, had to overturn and re-do their own budget, which they had developed and approved within the (foreseen) amendment. In the case of Andalusia (PP-run since 2022), for example, this meant a re-adjustment of 200 million euros.⁷⁹

75. Gómez Perpinyà, "Los partidos políticos como freno a la representación en el debate en torno a la supresión del Senado", 126.

76. Sánchez Medero and Cuevas Lanchares, "La disciplina partidista en el Congreso de los Diputados", 209.

77. Gómez Fortes and Cabeza Pérez, "Spain", 214.

78. Larrouy and Riveiro, "El PP veta dar más dinero a las comunidades autónomas para castigar al gobierno de Sánchez".

79. Ugena, "El PP tumba la senda de déficit que ha aprobado en las autonomías donde gobierna".

This is evidently anecdotal, but it nonetheless depicts a larger trend, where PP senators follow their party's guidelines, using the Senate as an extended forum of electoral struggle, even at the expense of the Autonomous Communities they are supposed to be representing. With internal dynamics as complex as these playing out in the Senate, in addition to the deficiencies in constitutional design analysed earlier, this chamber could hardly become the venue for territorial representation that it is meant to be.

3.2 Public (dis)trust & (dis)interest

The Senate's political function, and more specifically its territorial dimension, is further affected by citizens' lack of understanding of, and appreciation for, the chamber's work. Given the widely accepted tendency of the Senate's political activity reflecting the same party lines and arguments as in Congress,⁸⁰ it is thus not surprising that Spanish citizens may be unaware of the distinct (territorial) functions that the Senate could exercise on its own. The deficiencies in its design and practice, as developed above, make it one of the unfortunate second chambers with little to no political legitimacy.⁸¹ Last but not least, the multiple failed attempts to reform the Senate—explained below—have continuously eroded its public image. In the words of Harguindéguy, Coller and Cole, the Spanish Senate “suffers a crisis of institutional legitimacy”,⁸² reflected both in the political controversies surrounding it and in the systematically low levels of public support for the institution.⁸³

In practical terms, this distance between the citizens and the Senate would be most easily observed with behavioural data. There is, unfortunately, a serious lack of information in this regard since the Spanish Sociological Research

80. As seen above, Caamaño Domínguez, “Edmund Burke ha vuelto a morir”, 68; López Basaguren, “The Secession Issue”, 261.

81. For a comparative analysis of the levels of input-throughput-output legitimacy of Second Chambers, and the reason behind the low scores of the Spanish Senate in all three dimensions, see Mueller et al., “A New Index of Bicameralism”.

82. Harguindéguy et al., “Why Is the Spanish Upper Chamber So Difficult to Reform?”, 531.

83. This low level of institutional legitimacy in the eyes of the citizens is often cited as one of the main reasons for reforming or even abolishing the Senate (see, among others, Caamaño Domínguez, “Edmund Burke ha vuelto a morir”; Santaolalla López, “La representación territorial y el Senado”).

Centre (CIS) stopped including questions about the Senate in the early 2010s. According to Harguindéguy, Collier and Cole's analysis of the official reports undertaken before then, citizens already presented a very low (7%) degree of satisfaction: about a third (30%) of respondents declared not to know the exact role of the Senate; the majority (52%) preferred to abolish it; and only 11% would have wanted it to become a chamber of territorial representation.⁸⁴ Similarly, at the time, blank and invalid votes for senators were three and five times more frequent, respectively, than those for parliamentarians.⁸⁵ Given that both chambers are elected at the same time and voters just need to prepare an extra envelope for their Senate preferences, the fact that five times as many people go out of their way to specifically invalidate their Senate vote already shows a grave lack of interest in, if not rejection of, this institution. Although the gap is not as big at present, the trend continues: in the 2023 general elections, where the PP once again obtained a Senate majority but was not able to form a state government, there were twice as many blank (380,580) and invalid (559,603) votes for Senate than for Congress (199,392 and 261,078, respectively), for roughly the same number of total votes.⁸⁶

In addition, recent research such as that by Simón Astudillo and López Alonso shows that there is a mismatch between citizens' most pressing concerns and what they consider the Senate to be useful for.⁸⁷ In their analysis of all citizen petitions that the Senate has received since 2004, they observe an overwhelming majority of administration-related queries and personal complaints, such as procedural mistakes within divorce or child custody proceedings. Petitions related to the Senate's political decision-making, or to the larger questions (e.g., economy and territory) that larger-scale surveys identify as Spaniards' most frequent concerns, are extremely rare. These results (and arguably the absence of state research into the evolution of public opinion of the Senate) suggest that citizens' perception of the Senate is not that of a chamber from which they can expect much politically, but rather one that occupies a constitutionally marginal role within the system.

84. Harguindéguy et al., "Why Is the Spanish Upper Chamber So Difficult to Reform?", 535.

85. *Ibid.*, 535.

86. Data obtained from RTVE's (public broadcaster) official results breakdown: <https://resultados-elecciones.rtve.es/generales/2023/congreso/>.

87. Simón-Astudillo and López-Alonso, "Peticiones al Senado".

In terms of territorial matters, Spanish citizens generally have a favourable view of sub-state territorial authorities, regional governments and further devolution. This positive perception holds despite the fact that regional elections remain second-order and citizens admit not always knowing which authority is responsible for which competences.⁸⁸ A well-established argument for why Spanish regional elections seem to be second-order, despite the relevance of the territorial question, is the simultaneity of state and regional elections in most Autonomous Communities.

Whereas this coincidence of state-regional elections is increasingly broken due to the shorter legislatures of the last 15 years (including 3 snap elections in 2011, 2016, and 2023), Senate elections continue to be on the same date as Congress general elections, as both chambers are always dissolved together. That is legally not necessary; Article 115 of the Constitution considers the possibility of dissolving Senate and Congress powers separately, which would in turn call for elections on different dates. This would clearly imply a break with Spain's accepted practice, where simultaneous elections for the two are expected, but if the Senate and the Congress really fulfil distinct legislative functions and represent the population in different ways, why would one (Congress) determine the time limits of the other (Senate)? Such a discursive and institutional separation could favour a more defined public understanding of the different powers and objectives of each chamber, including the fact that the Senate is available and intended for greater territorial representation.

4. Collateral Effects

The Senate's deficiencies—both in terms of constitutional design and political practice—not only affect the nature of the institution itself, but also have cascading effects on other parts of the Spanish constitutional system, the territorial dimension of which is undermined in addition.

A first collateral effect concerns how other key constitutional institutions are appointed. The Senate plays a role in appointing the members of several institutions: it selects four of the twelve judges of the Constitutional Court;⁸⁹ ten

88. Gómez Fortes and Cabeza Pérez, "Spain", 197.

89. Constitution of Spain, Art. 159.1.

of the twenty-one members of the General Council of the Judiciary (Consejo General del Poder Judicial),⁹⁰ which is in charge of the government of the judiciary;⁹¹ and six of the twelve members of the Court of Auditors (Tribunal de Cuentas), responsible for controlling public accounts and auditing the finances of political parties.⁹² The Senate also participates in the appointment of the Defensor del Pueblo, the Spanish ombudsman.⁹³ The involvement of the Senate—the “House of territorial representation”—in these appointments is intended to ensure that these institutions reflect Spain’s territorial diversity, thereby enhancing their legitimacy from the perspective of the Autonomous Communities. In other words, the Senate is meant to provide territorial input into these appointment processes.

However, the constitutional design deficiencies of the Senate—particularly in terms of its composition—undermine the territorial input that these processes are supposed to include. In this way, the absence of genuine territorial representation in the appointments can weaken the legitimacy of these institutions. Consequently, the Senate’s incapacity to function effectively as a “House of territorial representation” affects not only its legislative function, as argued above, but also the composition of several other key institutions, making them less reflective of Spain’s territorial pluralism. This represents a significant collateral effect of the Senate’s design deficiencies.

This collateral effect is particularly concerning in relation to the Constitutional Court, which plays the role of arbiter in conflicts between the central government and the Autonomous Communities.⁹⁴ The Court itself has recognised that the Senate’s role in appointing its members is intended to embody a “principle of territorial representation”, reflecting “an unequivocal

90. *Ibid.*, Art. 122.3.

91. The General Council of the Judiciary exercises functions relating to appointments, promotions, inspections, and disciplinary proceedings within the judicial career, among other matters. It also manages administrative aspects of the court system and issues advisory reports on draft legislation affecting the judiciary. It has the constitutional mandate of safeguarding judicial independence. The Council does not, however, exercise judicial functions itself. Its functions are regulated in the Constitution of Spain, Art. 122, and in the Organic Law 6/1985, of the *Poder Judicial*, Art. 558-565.

92. Organic Law 2/1982, of the *Tribunal de Cuentas*, Art. 30.

93. Organic Law 3/1981, of the *Defensor del Pueblo*, Art. 2.

94. On the role of the Constitutional Court in Spain’s territorial constitution generally, see Casañas Adam, “The Constitutional Court of Spain”.

constitutional intent to integrate the State's territorial structure into the composition of the Constitutional Court."⁹⁵ Given the Senate's deficiencies, the absence of effective territorial input into the Court's composition may undermine the institution's legitimacy, particularly regarding the extent to which it is perceived as an impartial arbiter by the Autonomous Communities. This lack of territorial input may prove particularly problematic given the Court's behaviour: as recent research shows, the Court's rulings tend to be biased in favour of the central government and against the Autonomous Communities.⁹⁶

The Senate's deficiencies also have collateral effects on the constitutional amendment procedure. The Senate plays a prominent role in constitutional amendment. Under the ordinary amending procedure set out in Article 167, amendments must be approved by a three-fifths majority in both the Congress and the Senate. If this threshold is not met, a joint commission—comprising an equal number of members from each chamber—is formed to draft a new text, which is submitted once again to both chambers for approval. Should this second vote also fail, the Congress may adopt the amendment by a two-thirds majority, provided that the Senate approves it by an absolute majority. Once the amendment is approved, one tenth of the members of either chamber may request that it be submitted to a referendum.

The Senate's role is even more decisive under the "aggravated" amendment procedure established in Article 168, which applies to the most fundamental provisions of the Constitution. In this case, the Senate enjoys an absolute veto: the amendment must be approved by a two-thirds majority in both chambers. Following this approval, both chambers are dissolved and new elections are held. The newly elected Congress and Senate must then approve the amendment again by a two-thirds majority. Finally, the amendment must be ratified by referendum.

The Senate's role in the procedure of constitutional amendment can be understood as embodying the same "principle of territorial representation"

95. Constitutional Court judgment 49/2008, legal ground 13. Translation by the authors.

96. Vallbé et al., "Judicial Review and Territorial Conflicts". We should note, however, that the Court also made some decisions in defence of the Autonomous Communities—that is why, until 2010, it was generally accepted that its intervention had been fairly balanced overall. On this point, see Casañas Adam, "The Constitutional Court of Spain", 387-388.

which grounds the Senate's intervention in the appointment of constitutional judges. The participation of the Senate thus provides territorial input into the process of constitutional amendment. This is particularly significant given the lack of any *direct* participation of the Autonomous Communities in the amending procedure. The representation of the constituent units in constitutional amendment is a concern generally present in most federal or semi-federal constitutions.⁹⁷ Other constitutions provide for the *direct* involvement of the sub-state units in the process—in Canada, most provisions of the Constitution can only be amended with the direct consent of some or all of the provinces;⁹⁸ in the United States, constitutional amendment requires the consent of three quarters of the states.⁹⁹

In contrast, in Spain, the Autonomous Communities have no direct say in the amendment process.¹⁰⁰ Thus, the Autonomous Communities can be understood as being represented *indirectly* through the participation of the Senate, the “House of territorial representation”. Involving the second chamber in constitutional amendment is a common feature of other federal systems, such as Germany,¹⁰¹ Belgium¹⁰² or Austria,¹⁰³ where it serves as a channel for territorial input. In Spain, however, the constitutional design deficiencies of the Senate frustrate such territorial input, making the amendment procedure effectively unreflective of Spain's territorial diversity. This is another significant collateral effect of the Senate's design deficiencies.

This last collateral effect can have profound implications for constitutional and democratic legitimacy. Hypothetically, an amendment approved unilaterally by the institutions of the central level would risk alienating the Autonomous Communities from the constitutional system—particularly those Communities with strong constitutional and cultural identities, such as Catalonia and the Basque Country. In practice, however, this has not been

97. Aroney, “Formation, Representation and Amendment in Federal Constitutions”, 326.

98. *Constitution Act, 1982*, Part V.

99. Constitution of the United States, Article V.

100. Beyond a weak right to propose the Congress to initiate the amending procedure. On this point, see Guénette, “Initier le processus constituant en contexte plurinational”, 46, 68-70.

101. Basic Law (*Grundgesetz*) of Germany, Art. 79.

102. Belgian Constitution, Art. 195.

103. Federal Constitutional Law (*Bundes-Verfassungsgesetz*), Art. 44.

an important concern, since the Spanish Constitution is seldom amended.¹⁰⁴ Since 1978, it has been amended only three times, two of which were in response to requirements from the European Union.¹⁰⁵ This infrequency is due to the stringency of the procedures set out in Articles 167 and 168,¹⁰⁶ as well as to a strong political norm against amendment, as this is generally regarded as a “political taboo”.¹⁰⁷ Should this pattern change and amendments become more frequent in the future, the Senate’s lack of territorial character could lead to fundamental constitutional tensions, potentially affecting the legitimacy of the system and trust in it.

5. Pathways to Reform?

There is broad academic consensus that the Spanish Senate does not operate effectively as a “House of territorial representation”.¹⁰⁸ However, there is less agreement on how—if at all—this problem should be addressed. A reform was attempted in 1994, when the Rules of the Senate—the chamber’s standing orders—were amended to improve the institution’s territorial character. The main novelty of the reform was to create a new standing committee, the General Commission of the Autonomous Communities, dedicated to debate and reflection on Spain’s system of territorial government.¹⁰⁹ The newly created General Commission was given an important status,¹¹⁰ being the largest

104. Alienation of the Autonomous Communities—especially Catalonia and the Basque Country—has resulted from the Constitutional Court’s interpretation of the Constitution, rather than its amendment. See Casañas Adam, “The Constitutional Court of Spain”.

105. The first amendment, adopted in 1992, extended the right to suffrage in order to comply with the requirements of the Treaty on European Union; the second, in 2011, introduced the principle of budgetary stability to implement the European Fiscal Compact; and the third, in 2024, introduced a terminological change concerning the rights of persons with disabilities.

106. Some scholars have described certain parts of the Constitution as being *de facto* unamendable. See, e.g., Bossacoma Busquets, “Self-determination and Coercion in Spain”, 299.

107. Ferreres, *The Constitution of Spain*, 58.

108. The scholars cited in Section 1 above are generally illustrative of this consensus—e.g., Punset Blanco, “De un Senado a otro”; Blanco, “Los Senados y la fantasía de la representación territorial”; López Basaguren, “The Secession Issue”; Arbós Marín, “El Senado”; Varela Suanzes-Carpegna, “La reforma constitucional del Senado”; Arroyo Gil, “Representación territorial y control político”.

109. Rules of the Senate, Art. 56.

110. López Basaguren, “The Secession Issue”, 244.

of all committees within the Senate.¹¹¹ The executives of the Autonomous Communities were given the right to participate in the Commission's debates.¹¹² Once a year, the Commission was required to hold a general session to evaluate the State of the Autonomies.¹¹³ Notably, the use of Catalan, Basque and Galician was permitted in the Commission's debates.¹¹⁴

Instead of reforming the rules of composition—which would have required amending the Constitution—to enhance the territorial representation of the Senate, the strategy of the 1994 reform was to create a body of territorial representation *within* the Senate. However, the new General Commission failed to bring about any meaningful change. The Autonomous Communities have generally attached little importance to the Commission, with the Communities' presidents not normally participating in its debates.¹¹⁵ More generally, the questions raised in the Commission's debates have not had any significant impact on the evolution of Spain's territorial system of government, which has made the experience of the Commission largely frustrating.¹¹⁶

In 2004, the government proposed amending the Constitution to pursue a more ambitious reform of the Senate. It commissioned a report from the Council of State (Consejo de Estado), which was published in 2006. In the report, the Council of State explored different options for reforming the Senate's composition and powers.¹¹⁷ However, the government failed to put forward a specific reform proposal, arguing that political consensus was lacking, and the Constitution was ultimately never amended. This was the last serious attempt to reform the Senate.

Within existing scholarship, we can distinguish two general positions on Senate reform. On the one hand, there are those who argue that senators should be appointed by the institutions of the Autonomous Communities.

111. Rules of the Senate, Art. 51.3.

112. *Ibid.*, Art. 56 bis 2.2.

113. *Ibid.*, Art. 56 bis 7.

114. *Ibid.*, Art. 59 bis 9.

115. Punset Blanco, "De un Senado a otro", 114.

116. López Basaguren, "The Secession Issue", 246; Varela Suanzes-Carpegna, *Ibid.*, 160.

117. On the issue of Senate reform in the report, see Rubio Llorente and Álvarez Junco, *El Informe del Consejo de Estado Sobre la Reforma Constitucional*, Part 4.

Among those, some, taking inspiration from the German *Bundesrat*, argue that they should be appointed by the Communities' executives.¹¹⁸ Such a reform would convert the Senate into a forum of intergovernmental cooperation, similar to the Council of the European Union. Other scholars contend that senators should be appointed by the legislatures, rather than the executives, of the Autonomous Communities. They argue that the Communities' legislatures should designate all senators—rather than only a minority, as is currently the case—using a method not based on proportional representation, unlike the present system.¹¹⁹ In general, these proposals also support granting the appointing body—whether the executives or legislatures—the power to remove senators who fail to represent their positions.¹²⁰

On the other hand, there are those who argue that the Senate should not be reformed.¹²¹ These scholars agree with the analysis that the current Senate is not configured as an effective “House of territorial representation”, but disagree that this is a bad thing. They argue that shared rule already exists in Spain through the political action of the sub-state nationalist parties in the Congress of Deputies, as well as the power exerted by the territorial leaders within the state-wide parties.¹²² According to them, party-political logic will always prevail over territorial representation, thereby making any Senate reform inevitably unsuccessful.¹²³ Furthermore, some maintain that the presence of a chamber of territorial representation is not an intrinsic feature of federalism.¹²⁴ Consequently, they oppose Senate reform, with some even advocating for the institution's elimination.¹²⁵

118. Arbós Marín, “El Senado”; Aja Fernández, “La reforma constitucional del Senado”.

119. Punset Blanco, “De un Senado a otro”; Varela Suanzes-Carpegna, “La reforma constitucional del Senado”.

120. *Ibid.*, 126; Varela Suanzes-Carpegna, *Ibid.*, 164.

121. Garrido López, “Pero... ¿Puede ser el Senado una cámara de representación territorial?”; Sáenz Royo, “Parlamento, partidos y Estado autonómico”; Ruipérez Alamillo, “¿Podría suprimirse el Senado español mediante la técnica de la reforma constitucional?”.

122. Sáenz Royo, “Parlamento, partidos y Estado autonómico”, 176-186; Garrido López, “Pero... ¿Puede ser el Senado una cámara de representación territorial?”, 103-104.

123. Sáenz Royo, “Parlamento, partidos y Estado autonómico”, 186-190; Garrido López, “Pero... ¿Puede ser el Senado una cámara de representación territorial?”, 92-100.

124. Ruipérez Alamillo, “¿Podría suprimirse el Senado español mediante la técnica de la reforma constitucional?”.

125. Garrido López and Sáenz Royo, “Razones para plantear la supresión del Senado”.

Whether or not Senate reform is desirable, it is clear that achieving it would not be an easy feat. The failure of the 1994 attempt illustrates that any meaningful reform must address the Senate's composition, changes that would require a constitutional amendment and, therefore, qualified majorities in both the Congress and the Senate.¹²⁶ The necessary political consensus for such a reform is lacking, and none of the main political parties regards Senate reform as a priority. Moreover, as noted, amending the Constitution in Spain is a "political taboo".¹²⁷ Thus, there is little realistic chance that the composition rules of the Senate will ever be reformed.

Nonetheless, reforming the institution's linguistic regime would be an easier task, as it would only require modifying the chamber's standing orders—the Rules of the Senate—which may be amended by an absolute majority of senators.¹²⁸ Just as the Congress recently amended its own standing orders to permit the use of Catalan, Basque and Galician, the Senate could do the same. In practice, however, such reform would likely depend on the support of senators from the Partido Popular, which has traditionally been dominant in this chamber and currently holds an absolute majority of seats, as explained above. Although the Partido Popular's leadership has been openly opposed to allowing the use of Catalan, Basque and Galician in the Congress,¹²⁹ the party appears more receptive to this possibility in the Senate.¹³⁰ While such an amendment would not address the Senate's fundamental deficiencies, it would nonetheless constitute a step in the right direction.

More generally, the fact that a fundamental reform of the Senate is unlikely does not mean that shared rule is and will be absent from Spain's territorial constitution. A degree of shared rule exists in the relations between the executives of the Autonomous Communities and the central government.¹³¹ It is also present in the participation of certain non-state-wide parties—notably the Catalan and Basque nationalist parties—in state governance through

126. Under the procedure established in Art. 167 of the Constitution, explained above.

127. Ferreres, *The Constitution of Spain*, 58.

128. Constitution of Spain, Art. 72.1.

129. Vich, "El PP s'oposa a l'ús del català al Congrés", *ElNacional*.

130. Their latest party manifesto states that "we will keep the possibility of the use of the co-official languages in the Senate". See the *Partido Popular's Ponencia Política*, approved in July 2025, 15.

131. García Morales and Arbós Marín, "Intergovernmental Relations in Spain".

their influence in the Congress, as well as in the regional structures within state-wide parties.¹³² In fact, comparative constitutional law scholarship has suggested that second chambers are often not adequate vehicles for sub-state participation.¹³³ However, intergovernmental relations in Spain have also been criticised for their top-down hierarchical nature;¹³⁴ therefore, their contribution to shared rule is also limited. In any event, Senate reform should be conceived as part of a broader strategy to enhance shared rule, including strengthening intergovernmental relations.

Concluding Remarks

This article analyses the deficiencies that are preventing the Spanish Senate from performing the role of “House of territorial representation” assigned by the Constitution. The analysis addresses both constitutional design and political practices. In terms of constitutional design, we have noted a lack of connection between the Senate’s composition and the Autonomous Communities that the chamber is supposed to represent, as well as an absence of one of the most significant markers of territorial diversity in Spain—plurilingualism. At the level of political practices, we have examined how the fact that the Senate has traditionally been dominated by the Partido Popular, a party with a difficult and often contradictory relationship with power decentralisation, is arguably affecting the chamber’s territorial work. These (limiting) dynamics are further compounded by a lack of understanding of, and appreciation for, the chamber by the general public. Last but not least, we have shown that the Senate’s deficiencies have collateral effects on other elements of the Spanish constitutional system, notably the process of appointing Constitutional Court judges and the procedure for constitutional amendment.

Addressing the Senate’s fundamental deficiencies in terms of territorial representation would require substantial reform, which has proven difficult to carry out. While understanding these constraints, we argue that there are two possible distinct modifications that would improve the Senate’s territorial role. The first and most important, albeit difficult, would be to reform

132. Sáenz Royo, “Parlamento, partidos y Estado autonómico”, 176-185.

133. Palermo, “Beyond Second Chambers”.

134. Sanjaume-Calvet et al., “A Case of Top-down Intergovernmentalism?”.

the Senate's rules of composition to ensure greater involvement of the Autonomous Community institutions: all senators should be appointed by either their respective Community's executive or legislature. This change would not only increase the representation of the Autonomous Communities, but it would also help palliate political trends like that identified in this paper, where the Partido Popular's complicated relationship with territorial decentralisation has arguably shaped their senators' activity for the past thirty years. Because such a reform is unlikely in the near future, we also suggest a second, more feasible change: the amendment of the Senate's standing orders to allow the use of Catalan, Basque and Galician in its debates. While this would not remedy the chamber's structural deficiencies, it would nonetheless constitute a welcome and realistic first step forward.

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