Reforming the Spanish Senate: mission impossible?

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Attempts in recent years to reform the Spanish Senate have proven futile. This article attempts to extend the scope of the institutionalist approach to generate some theoretical insights on how and why attempts at reform of the Spanish Senate have failed. It will highlight some of the weaknesses of the Spanish Senate, both in terms of constitutional design and institutional development. Thus, the ambiguities of the 1978 Spanish Constitution, the breakdown of the transition's constitutional consensus, and the widely diverging positions among Spain's political parties on how to reform one of Spain's weakest institutions have made reform an almost impossible task. By using the case of Spanish Senate, the article tries to explain how attempts at reforming political institutions are influenced by both the historical context in which the institution was initially designed and the political context in which the institution has developed. Thus, the debate over Senate reform is analyzed by examining the Senate's institutional relationship and its relationship to broader political contexts such as the legacy of the transition to democracy, political parties, and a competitive institutional culture in Spain's system of intergovernmental relations. Finally, the article argues that Senate reform is crucial for the continued institutionalization of Spain's State of Autonomies which continues to lack both an institutionalized mechanism of cooperation between the Spanish central government and the autonomous communities and an effective second legislative chamber.

Introduction

The reform of upper chambers has become an increasingly important issue in West European parliamentary systems in recent years. Plans to reform upper chambers in the UK, Italy and Spain have been unveiled but have been carried out with varying degrees of success. This article examines Senate reform in Spain and how the issue of reforming this particular institution has become a highly controversial public policy. The article explores the attempts by various Spanish political forces to place the issue of comprehensive reform of the Senate

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on the political agenda. It will argue that a growing awareness among all of Spain's political forces on the need for Senate reform has not led to a convergence of proposals for reform. Thus, although the issue of Senate reform has become an important political issue, attempts at reform have failed in part influenced by both the historical and institutional contexts in which these attempts have unfolded. Much of the inertia surrounding Senate reform stems from Spain's transition to democracy and in particular, the political compromises that took place on the role of the Senate in Spain's State of Autonomies. In the final section, the paper will argue that until the Senate has been reformed, Spain's complex system of intergovernmental relations will continue to be characterized by ever-growing degrees of conflict with little chance of implementing institutionalized norms and procedures for conflict resolution among the different levels of governance.

**Understanding institutional reform**

This article derives much of its theoretical approach from New Institutionalism and its emphasis on the role of institutions to highlight how institutional rules can shape actors' views and behaviour. According to this approach, institutions demonstrate stability over time by constraining actors' behaviour and shaping the shared values and beliefs of its members (Peters, 1999). The approach focuses on the role of formal institutions, informal institutions and conventions, the norms and symbols inherent within institutions and policy instruments and procedures. Institutionalist approaches are limited in their applicability in the extent to which they overstate the importance of formal institutions and underemphasize the role of informal institutions and relationships between actors. Nevertheless, the institutionalist approach is useful in explaining how institutions constrain and facilitate actors' behaviour as well as influence their preferences, capabilities and choice of strategy. More generally, it is a valuable tool in explaining how and why institutions play a major role in the political process. The approach is concerned with the beliefs, values and cultures embedded within institutions and as such, facilitates the analysis and organization of the evolution of ideas within institutions. Thus, this article will test the usefulness of institutionalist approaches in understanding the problem of institutional reform. The article focuses both on structure and on agency in an attempt to avoid employing a static approach to understanding change (or in this case no change). In sum, the paper will try to address the question of how existing institutional approaches can help to explain the problems in reforming the Spanish Senate.
There are different types of institutionalist approaches, each of which refers to itself as 'new institutionalism' (historical institutionalism, rational choice institutionalism and sociological institutionalism) (Hall and Taylor, 1996). Despite differences between these approaches in their analysis of individuals' behaviour, their basic premise is that the institutional context in which individuals are embedded affects the decisions they are likely to make. In other words, institutionalists try to address the question of how the structure and organization of institutions influence actor’s behaviour. Armstrong and Bulmer (1998) argue that institutions have a 'selective function' in that they structure access to the decision-making process which in turn results into actors having differing levels of access to the decision-making process. In this respect, one of the basic assumptions of this approach is that institutional design determines future policy decisions by including some decisions and excluding others (Hall and Taylor, 1996) (Peters, 1999).

Another key institutionalist assumption is the logic of persistence or 'path dependency', that policy choices of the past, when the institution is being formed, have determining influence over future policies. According to Peters (1998), this means that those creating institutions need to be extremely careful in the design chosen. The underlying 'path dependency' and policy stability assumptions of new institutionalism have led some to criticize the approach for not sufficiently explaining policy or institutional change (John, 1998). Nevertheless, since a key assumption here is that 'politics rules' (Peters, 1998), the political environment and pressures of the time, very much influence the initial design and subsequent development of the institution. This 'path dependency' means that once the institutional framework is designed, future decisions are shaped by the options provided by the framework. According to Peters (1999), "that path may be altered, but it requires a good deal of political pressure to produce that change" (p. 63).

Once an institutional structure is created, it remains relatively stable, a situation known as 'punctuated equilibrium' (Krasner, 1984). Institutional change can happen either incrementally or abruptly (Peters, 1999). From an incremental point of view, the process of institutional change is gradual and evolutionary. In this respect, the change of the institutional structure relates to the institution's adaptability to a changing environment. However, institutional change can also occur when institutions gain more competencies over time or when policy decisions in one area increasingly begin to affect decision-making in other policy areas. Radical institutional change focuses less on the evolutionary approach
and more on particular moments in time, perhaps spurred on by a crisis or a series of external factors.

When it occurs (whether incremental or radical), change will take place when the institutional structure is faced by a crisis which requires it to change. This crisis is known as a 'critical juncture', leads to institutional change and towards another period of stability (Peters 1999). Nevertheless, even though institutions may be challenged or pressured by a variety of forces, they can resist these pressures without changing, known as 'critical moments'. What is important for the purposes of this study is to identify the conditions under which a 'critical moment' (when an opportunity for change arises) becomes a 'critical juncture' leading to either incremental or radical institutional change. In other words, once a policy path is chosen, policy-making will follow this path. Those moments when a policy path could be left or changed are called ‘critical junctures' (Peters, 1999). March and Olsen (1989) argue that the solutions chosen for institutions at so-called 'critical junctures' have often resulted in piecemeal or opportunistic pragmatism. In this respect, the process of institutional reform is highly sensitive to the political environment.

Reforming or changing institutions can often be more difficult than the initial design of the institution (Peters, 1998). Once designed, political institutions are difficult to change usually due to changing political priorities, strategies and values. In the case of the Spanish Senate, the initial design of the institution took place in a political climate of compromise and consensus. To reform the Spanish Senate today would require not only change in the structural sense but also changing the beliefs and values of political actors making the process of institutional reform politically sensitive and difficult. As Peters (1998) argues, reform, once an institution is created, is difficult but possible. In addition, the process of institutional reform is made more difficult once the values and beliefs associated with the institution and within the institution itself have become institutionalized.

Other authors have provided a more complex explanation of how institutions can change. March and Olsen (1989) have proposed six different courses of action which can lead of institutional transformation. These included processes of variation and selection, problem solving, experiential learning, conflict, contagion and turnover (March and Olsen, 1989). For purposes of this article, the focus will be here on conflict among individuals and groups as the main catalyst for change. In this situation, institutional change is characterized by confrontation, bargaining and negotiation (March and Olsen, 1989). In addition, March and Olsen (1989) also argue that successful reform entails being able to make the issue of
institutional reform into a political priority or into a public policy in itself. This will ensure that reform efforts are gradual and continuous ensuring long-term success rather than short-term and reactive measures.

Finally, ideas matter. According to the institutionalist approach, institutions like the Spanish Senate are not simply neutral arenas. Their organization, culture, norms and values structure access to the political process and in turn, institutions are "shaped by the social context in which they operate" (Putnam, p. 3). Institutionalism is useful as it can explain the change in ideas as a catalyst for incremental change rather than focusing on 'history-making decisions' as a catalyst for rapid change. Thus, institutional reform is shaped by a combination of factors including structure, history and ideas.

**Historical context**

As discussed in the previous section, the historical and institutional context in which the initial design of the Spanish Senate was established has influenced the way attempts at reform have unfolded. Throughout Spanish history and particularly in the nineteenth and twentieth centuries, the process of state-building has been characterized by a constant struggle between those advocating a strong centralized state and those supporting a more decentralized form of statehood. During the Franco regime, extreme centralization was seen as the solution to creating a stable and modern state. Following Franco's death in 1975, Spain's transition to democracy was characterized by a climate of consensual politics and cooperation among the negotiating political factions (Preston: 1986). Within this context, one of the most important issues became the question of regional autonomy and the creation of political and administrative arrangements to accommodate regional demands for decentralization. With varying degrees of enthusiasm, most politicians accepted the idea that unless the issue of the nations and nationalities that made up the Spanish state was addressed, little progress could be made to achieve a widespread acceptance of the Constitution and its political arrangements. It was widely acknowledged that a refusal or reluctance to address the issue of regional autonomy and cultural, linguistic and historical differentiations would endanger the consolidation and establishment of the post-Franco democratic regime. This new awareness provided the impetus to find a stable solution to the conflict (Preston: 1986) (Agranoff: 1993).
In essence, the structure of the Spanish state is the product of two processes, a *constitutional* process which concluded with the approval of the 1978 Constitution and a *statutory* process, beginning in 1979 and ending in 1983 in which Statutes of Autonomy were passed for Spain's 17 autonomous communities (Pérez Royo: 2000). In terms of the constitutional process itself, the 1978 document is a clear reflection of the political circumstances of its time, enshrining a variety of political ideals. Like its German and Italian counterparts, it represented a radical break from Spain’s immediate past incorporating many elements of traditional Western liberal democracies: the recognition of basic civil rights, the creation of a Constitutional Tribunal, and the establishment of a parliamentary system as the legislative body. The end result of the Constitution, based on a non-traditional model of territorial organization which does not conform to either a centralized or federal model, emerged from the social and political dynamics of the immediate post-Franco era, preventing the constitutional drafters from selecting a more traditional framework (Solozábal: 1996). This compromise gave rise to one of the key problems with the Spanish constitution, that it does not define or impose a structure for the Spanish state (Pérez Royo: 2000). So although it defines the Spanish state as a parliamentary monarchy, it does not define the power relationships between the different levels of government, provide a specific system of territorial distribution of powers, or even delimit Spain's autonomous communities. The text is often simultaneously contradictory and politically ambiguous, representing the spirit of compromise of the times. While the right attempted to preserve the centralized political structure established during the Franco regime, the more moderate Francoist forces as well as the political left sought to establish a model based upon the gradual devolution of power and services to the regional authorities. The compromise reached meant that the drafters of the Constitution recognized the various regions’ right to autonomy for either political or historical reasons. Linguistic, cultural and regional differences were to be recognized within a constitutional framework that would guarantee regional governments a certain degree of self-government. Formal recognition of the division of powers and responsibilities, both at the central and regional levels, would be outlined in the text although not specified.

The second process which gave rise to the present structure of the Spanish state, the *statutory* process, provided for a unique model of political decentralization in which there is no identical model of autonomy for any of the regions. Each of the autonomous communities has chosen, with varying degrees of success, its own model with the inclusion or exclusion of competencies that it wishes to control. The process of the decentralization of the Spanish
state has not ceased with the drafting and eventual enactment of the 1978 Constitution. The process has been one of evolution, in which the regions have negotiated and re-negotiated their statutes and competencies with the central government. In this statutory stage of the process, the structure of the Spanish state has not been defined by the 1978 Constitution but by a series of pacts between the major parties in 1981 and 1992. The result of these pacts could be interpreted as an attempt to homogenize the provisions extended by the 1978 Constitution to differentiate the so-called ‘historic nationalities’ and the other autonomous communities.

The legacy of the two processes which shaped the structure of the Spanish state has had several effects. First, the process of devolution in Spain has not been accompanied by the creation of effective mechanisms of dialogue, negotiation and coordination, institutions or processes needed to balance differing centres of power. The reasons for this vary. In addition to the inherent ambiguity of the Constitution, already mentioned, the Constitution did not anticipate any of these provisions. The consensual-minded drafters of the Constitution either did not foresee or chose to not address the issue of establishing both legal and institutional provisions for relations between the central government and the autonomous communities. They did not anticipate the impact that the development of the State of Autonomies would have on an institution like the Senate, when in fact the autonomous communities would soon begin to take centre stage. Part of the problem is the constitutional indecision on the form the Spanish state would take. The difficulties of predicting, in the late 1970s, what the final state structure would entail resulted in a lowest-common denominator approach towards drafting the Constitution and has influenced attitudes towards reforming the Senate. In many respects, the Constitution left the door open to reform and a variety of alternatives by not defining a specific state structure or how it is to be governed.

A second outcome of the State of Autonomies has been that during the 1980s and 1990s, regional governments, ruled by both nationalist and non-nationalist parties, preferred to rely on bilateral relations rather than establishing all-encompassing multilateral institutions of dialogue and coordination. In addition, the particular electoral agreements following the 1993 and 1996 general elections led to pacts with the main nationalist parties which emphasized the development of the government of the day’s programme rather than far-reaching and long term constitutional reform to institutionalize autonomous community-central government relations (Roller, 2001).
A third issue has been that the Constitution itself is seen as a sacred document, a historic agreement based on a period in Spain’s political history of rare consensual politics. The idea of it needing reform or amendments terrifies much of Spain’s political elite, taking into account Spain’s poor historical record in providing an enduring constitutional framework. Furthermore, the procedure for amending the Constitution is excruciatingly difficult making it virtually impossible to amend the Constitution. The focus of reform therefore seems to be more on achieving a consensus among the main parties rather than pressing for actual reform. The rationale for this attitude seems to be that ‘what was born from consensus, should be reformed by consensus’ (El País: 14 March 1998). Nevertheless, many of Spain’s existing political practices, such as the political appointments of magistrates and judges, have evolved outside the constitutional framework without any specific constitutional provision. Thus, the emphasis seems to be on reforming practices without actually having to ‘touch’ the Constitution. As a final point, the sheer rigidity of the Spanish Constitution (Cascajo and Bustos, 2001) is a disincentive. Reforming it would require 3/5 approval in each chamber.

Finally, the State of Autonomies has led a system of intergovernmental relations which has been described as 'competitive regionalism', characterized by a dual strategy of constitutional conflict and non-cooperation with the central state (Börzel, 2002). Although it has been argued that intergovernmental relations in Spain have gradually shifted to a more cooperative approach giving rise to a framework of multilateral cooperation (Börzel, 2002), the case of Senate reform clearly demonstrates that this transformation in Spain's institutional culture is still far from taking place. The case of Senate reform also highlights the ineffectiveness of the formal institutional framework, reinforced by an institutional culture of bilateralism, confrontation and competition (Roller, 2000). This institutional culture of 'competitive regionalism' has its roots in the institutional conflict and mutual distrust which characterized the statutory process of the State of Autonomies in the 1980s (Morata: 2001). Although the conflictual nature of intergovernmental relations has decreased since its height in the early 1980s, it has left an important legacy in the institutional culture of intergovernmental relations. In the case of the Spanish Senate, the language of reform has been highly confrontational and ideological reflecting the competitive institutional culture of Spain's State of Autonomies.

In sum, the creation of the Spanish State of Autonomies following the 1978 Constitution and the unique arrangements provided for the ‘historic communities’ were
attempts to accommodate historical political and cultural cleavages (which had traditionally hindered the stability of the Spanish state) within a climate of compromise and ideological change among the Spain's political elite. For most Spaniards, the fundamental transformation of the Spanish state has led to a widespread acceptance of the new constitutional arrangements (Roller, 2001). Nevertheless, the inherent ambiguity of the Constitution and the unfinished devolution process begun with the Statutes of Autonomy in the early 1980s have resulted in a climate of constant political negotiation between the state and sub-national forces. Nowhere is this more clear than the debate on reforming the Spanish Senate.

The Senate

The institutional and functional weakness of the Spanish Senate is largely due to the inability by the constitutional drafters to agree on any specific model for an upper chamber (Soto: 1998). The decision to create a bicameral parliamentary system was made to avoid the political polarization of the unicameral system imposed by the Second Republic’s 1931 Constitution. However, unlike the Congress of Deputies (the lower chamber) and other institutions which are based on imported models, the Senate is very much the product of a 'pick and mix' system based on compromise². With no clear historical precedent³, the constitutional drafters were forced to choose a chamber of 'mixed and hybrid' nature, in which it is easy to see what it is not but less clear to determine what its specific role and functions are (Visiedo Mazón, 1997). Thus, the Senate's weaknesses lie primarily in two areas: its composition and its role in the legislative process.

Article 69 of the 1978 Constitution establishes the Senate as a ‘Chamber of Territorial Representation’. This in itself was a novel concept, something that had never been attempted in Spanish political history. Thus, although the first part of Article 69 defines the Senate as a 'Chamber of Territorial Representation', in the remaining 5 sub-sections of Article 69 this initial claim is negated and the Constitution even seems to accept the provisional character of this institution and anticipates its reform (Visiedo Mazón, 1997). Even during the drafting the 1978 Constitution, the structure of the Senate became one of its most controversial elements. Some, particularly the Socialists and Communists, pressed for a federal chamber in which Senators would be appointed by the autonomous communities (hereafter CCAAs). The right demanded that all Senators be directly elected rather than appointed. The result,
like much of the Constitution, was a compromise by which 208 of the 259 senators are
directly elected with equal representation for each province (electoral unit) and with special
representation for the Balearic and Canary Islands as well as the city enclaves of Ceuta and
Melilla. Had the drafters of the Constitution considered having the directly elected Senators
chosen by autonomous community⁴, rather than by Spain’s provinces, the issue of the true
territorial representation of the Senate may not have been as controversial.

The election of provincial rather than regional representatives is very much a legacy
of the Spanish transition in which debates surrounding the establishment of an upper chamber
centred around how senators would be elected rather than the chamber's actual functions.
Here again the Senate fell victim to the political circumstances of the time by which it would
remain as a chamber partially composed of nominated rather than elected representatives
while the Congress of Deputies would become a fully elected chamber. In addition, the
resulting model was one of compromise, based on two very distinct conceptualizations of the
Senate, first, as a chamber designed to contain the 'excesses' of the Congress of Deputies and
second, as a purely territorial chamber (Solozábal: 1998). This move, very much indicative
of the spirit of compromise of the times, represented an attempt by the right to hold on to
timepower⁵.

From the beginning the Senate has tried to portray itself as a territorial chamber,
something where it has had more success in theory than in practice. The fact that the
electoral circumscription is based on the provincial unit rather than the autonomous
community has made the chamber more provincial rather than regional or 'autonomic'. In
addition, using the province as the base unit for the Senate's electoral circumscription has led
to severe distortions in terms of representation. For example, because of the ratio of 4
senators per province, regions like Castilla and León (population 2.5 million) have 36 directly
elected senators while Andalucía (population 7.2 million) has 32 Senators (Morata: 2001).
Thus, the Senate is an essence a hybrid chamber, with its dual composition (both elected and
appointed Senators) and vague structure (claims to represents Spain's autonomous
communities as a territorial chamber but is based on provincial electoral units). The
composition of the Senate is a problem insofar as it delegitimizes the Senate's claim of being
the territorial chamber and makes its self-proclaimed role as the centre of state-CCAA
relations even more difficult. Another problem with the composition of the Senate is that the
Senators appointed by the autonomous communities must renew their credentials or seek re-
appointment by their respective regional governments at the end each legislature, thereby undermining the electoral legislation and electoral cycle of each autonomous community.

In terms of its functions, Article 155 of the Constitution grants the Senate a quota in the appointment of members of certain state institutions such as the influential Constitutional Tribunal or the General Council of Judicial Power. The Senate also has the power to adopt legislative proposals from the different parliaments of the autonomous communities and present these to the Congress of Deputies as well as elaborate opinions on the central government’s economic plans. Nevertheless, its power remains limited, with the Congress of Deputies’ right to overrule any Senate amendments and vetoes. The executive branch is not accountable to the Senate, denying this chamber any significant influence in overseeing the government. Therefore, the Senate has tended to act more as a legislative ‘filter’ and is seen as a moderating influence by providing a second reading on legislation emanating from the Congress of Deputies and adding minor changes to legislative texts.

In addition, the Senate often duplicates the functions constitutionally exercised by the Congress of Deputies and instead serves as a second forum for political parties to present legislative initiatives, confirming its institutionalized subordinate position vis-à-vis the lower house. Arguably, the Senate could be described as a poor duplicate of the more influential Congress of Deputies (Moreno: 1998). In this sense, the problems with the Senate lie more with its constitutionally empowered functions rather than its actual make-up. Its legislative powers vis-à-vis the Congress of Deputies do not include the power to elect the prime minister or introduce a vote of censure or confidence. Thus, the Senate's weakness vis-à-vis the Congress of Deputies could be described as 'bicameralismo atenuado' (extenuated bicameralism) (Soto: 1998) or an 'unequal and imperfect' bicameralism (Visiedo Mazón: 1997). As a result of the institutional weaknesses of the Senate, both regional governments and regional and nationalist parties have been reluctant to use the Senate as a means of direct representation and dialogue with the government, relying instead on their political weight in the Congress of Deputies and through bilateral relations with the central government.

Proposals for Reform

As the last section has highlighted, the Senate's institutional development has been influenced by the legacy left by Spain's transition to democracy, both in constitutional terms and in political attitudes towards reform. Because the constitutional drafters did not anticipated
what the final territorial organization of the Spanish state would be, the Senate has suffered from the ambiguity of the Constitution and the unfinished process of devolution. In the first few years of Spain's transition to democracy however, the Senate played a much more important role than the one it would exercise in subsequent years, a role in which it would fall victim to the routine political process (Soto: 1998). Political and other societal factors have also played a role in moving along the more recent debate on reform. Reforming the Senate has a particularly symbolic importance for many of Spain’s nationalist movements. This importance derives from attempts during the Spanish Restoration (1876-1923) to democratize the Senate. Proposed reform of the Senate under the current 1978 Constitution dates back to 1989 when, in an attempt to avoid reforming the actual Constitution, proposals focused on reforming its procedures, rules and regulations rather than its composition or role in the legislative process.

The first substantial reform did not take place until 1997 when the Senate's internal procedures were reformed to make the institution more of a territorial chamber. One of these measures included the establishment of a General Commission of the Autonomous Communities to facilitate the transition to a more territorial chamber. Later that year, a debate on Senate reform among the presidents of the autonomous communities led to the recommendation that the 1978 Spanish Constitution be amended to transform the Senate into a territorial chamber. This would put into practice the Constitution’s reference to the Senate as a ‘Chamber of Territorial Representation’ so that the Senate could serve as the official institution for the direct participation of the CCAAs in legislative matters. The reforms also provided that the Senate would serve as the CCAAs’ direct link with the European Union and would serve to represent their interest in financial matters. Instead of recurring to the Constitutional Tribunal for the resolution of disputes, the plan envisaged that the negotiation process take place in the Senate. Despite agreement on the need for reform, the proposed solutions remained controversial and the issue was left unresolved. Moreover, the Commission in charge of facilitating the transition has often been described as a ‘little Senate within a Senate’ but functioning more as an instrument of control of the central government rather than an institutionalized form of CCAA-central government relations (Aja: 1999). Since the PP came to power in 1996, the Commission has rarely met with little or no discussion on the important pacts (Barcelona Declaration and Lizarra Pact) agreed to by the nationalist parties or policies such as the budget or other areas which directly affected the CCAAs. Thus, since its original design, reform of the Senate, often referred to as
'infraconstitutional reform' (Visiedo Mazón: 1997) has been interrupted on several occasions by general elections with reforms never entirely implemented.

Proposals for reform vary greatly among the different political parties (see Table 1). For Basque, Catalan and Galician nationalists, a transformed Senate would have to reflect the hecho diferencial inherent in the Spanish state with special representative status for the ‘historic’ communities. In exchange for accepting the transformation of the Senate into a truly multilateral institution, nationalist parties have demanded the right to veto any legislation in the Senate which could affect their hechos diferenciales, such as language and culture, and their señas de identidad or ‘identity markers’, in itself a vague and ill-defined concept (El País: 10 March 1998). Demands for reform by the nationalist parties have been based on a growing perception that their respective nationalities are being diluted with the full development of the State of Autonomies and the café para todos syndrome (coffee for everyone, i.e. the same arrangements for everyone). In addition, nationalists claim that the Senate has not been transformed into the territorial chamber as stipulated by the 1978 Constitution. They argue that the political territoriality of the Spanish state is not uniform and that a truly territorial chamber would recognize and protect this diversity, enshrined by the hechos diferenciales. The concept of hecho diferencial is also defended by nationalists not only because of the previous existence of autonomous institutions in the Basque Country and Catalonia but also because of the political and electoral weight of nationalist parties in the three autonomous communities.

The Catalan nationalists coalition (CiU)’s insistence in the late 1990s to push forward its proposals for Senate reform complicated its relations with its partner in the governability pact, the ruling Partido Popular (PP). In 1998, CiU presented the PP government with a proposal to reform the Spanish Senate which would establish three different levels of hechos diferenciales. The first level would be composed of nationalities with a unique culture, language and a ‘clear will of political difference’, whatever exactly that refers to (El País: 16 February 1998). The second level would be composed of regions which have unique characteristics derived from their foral or legal status (Navarra and Aragón) or insular geographical position (Balearic and Canary Islands) with the third level covering the remaining CCAAs. Nevertheless, CiU’s proposals were criticized by the PP and other regional governments that constructing a multi-tiered institution where some CCAAs have more rights than others will relegate the latter to a ‘third community’ (El País: 24 February 1998). The nationalists’ proposals were criticized for aggravating tensions between the
CCAAs or transforming the Senate into a football league with each match having different rules (Aja: 1999). It came to no surprise therefore, that the Catalan nationalists’ proposals for reforming the Spanish Senate were blocked by the PP government in 1998.

Table 1  Proposals for reform of the Spanish Senate

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<th>Political force</th>
<th>Reason for reform</th>
<th>Proposals</th>
<th>Progress</th>
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| Nationalist forces (CiU, PNV, etc) | ▪ Symbolic importance  
▪ Backlash to the perceived 'homogenization' of State of Autonomies | ▪ Composition of Senate must reflect hecho diferencial (with special status for 'historic communities')  
▪ Organization of the Senate must reflect lack of uniformity in state structure  
▪ Demand right to veto any legislation which can affect their hecho diferencial  
▪ 1998 CiU 3 - tiered proposal (1st for 'historic nationalities', 2nd for CCAAs with special status and 3rd tier for all others) | ▪ Symbolic use of all regional language in the Senate  
▪ In 1993-1996 and 1996-2000 legislatures, nationalist parties exerted significant influence |
| PSOE | ▪ Spanish state is federal in all but name, Senate must reflect this  
▪ Would eliminate bilateralism of intergovernmental relations | ▪ Transform Senate into a federal chamber as part of a wider project of constitutional reform by modifying electoral base and ensuring uniform presence of all regional governments | ▪ (1994) - Commission for the Autonomous Communities created to facilitate the transition to a territorial chamber  
▪ Reform in the early 1990s also included making the Senate into the institution for the direct participation of regional governments in EU matters  
▪ 1987 - Unanimous Senate resolution: full completion of Spain's State of Autonomies involves Senate reform |
| PP | ▪ Must act as a 'second' chamber to Congress of Deputies  
▪ State of Autonomies has gone far enough, no need to empower the 'nationalities' in the Senate | ▪ Transform Senate into a 'second reading' chamber with a specific focus on State of Autonomies  
▪ Allowing regional presidents to attend Senate sessions without the right to vote instead of annual debate on State of Autonomies  
▪ Reinforce the Congress of Deputies' superior position in parliamentary process | ▪ Has absolute majority in the Senate since 2000 election  
▪ 1998 - suspended Senate reform  
▪ Unclear progress so far but no constitutional reform envisioned  
▪ 1996-2000 PP prime minister only |
The Spanish Socialist Party (PSOE)'s proposals for reform, on their hand, reflect their own federal vision for the Spanish state. Within the party itself, many argue that the Spanish State of Autonomies is a federal system in all but name, particularly its structure and although it does not function entirely as one, does take on many of the attributes of a federal system. For some, the Spanish state structure is already a federal one in terms of the level of competencies transferred to the CCAA level (Solé Tura: 1999) but lacks an adequate institution at the federal level for the participation of the ‘federal entities’. The problem is that the idea of federalism provokes similar reactions in Spain to those in the UK. Despite the perception that because of Spain’s multi-cultural and multi-national character, a federal constitutional system might have been more appropriate, the idea of federalism in Spain has historically been interpreted as a concept implying the dissolution of the state and the division of Spain (Moreno: 1997).

For the PSOE however, Senate reform is one step towards correcting the ambiguous and conflictual institutional arrangements of the State of Autonomies. Reforming the Senate would also eliminate the bilateral cooperative relations between the individual CCAAs and the central government, creating a truly multilateral or ‘intergovernmental’ institution (Aja: 1999) and would represent a decisive step towards transforming the Spanish state into a truly functioning federal system. The Senate would thus be able to accommodate the different hechos diferenciales to substitute the current bilateral relations between central government and the CCAAs. The PSOE's proposals for the Senate would involve reforming the Constitution only inasmuch that it would strengthen the Senate by modifying its electoral base and ensuring the presence of the CCAAs.

For the PP, its position on Senate reform has been more complex. When it came to power in 1996, it was pressured by its regional presidents and parties to transform the Senate into a more uniform institution, with all CCAAs represented equally. On the other hand, it was also pressured by its nationalist allies to strengthen the bilateral arrangements in place between the central government and the 'historic nationalities'. With its absolute majority in
the Senate (112 Senators following the 1996 general election and 127 Senators following the 2000 general election), the PP government announced its intention to undertake Senate reform. In May 1996, the Senate unanimously voted to appoint a commission responsible for drawing up proposals for reform.

Nevertheless, the PP's proposals for reform very much reflect its view that the Congress of Deputies should continue to play the predominant role in the legislative process. Thus, its proposals have included transforming the Senate into a ‘second reading’ chamber, giving the Congress of Deputies the final say in any major changes introduced by the Senate to legislation, and allowing CCAA presidents to attend Senate sessions without the right to vote. All in all, the PP's proposals have focused on finding a solution which would not entail constitutional reform but in 1998, the PP government suspended any further attempts to reform the Senate accusing the nationalist opposition of discriminating against other CCAAs in their proposals for Senate reform (El País: 14 March 1998).

With the exception of 1997, the annual debate on the State of Autonomies was not held during 1996, 1998 and 1999 leading many to believe that Senate reform is unlikely to occur for a long time. During the past legislature, Prime Minister Aznar only attended one session of the Senate, during the February 1997 debate on the State of Autonomies. In a sense, the willingness to reform the Senate abates whenever a particular party comes to power with the reluctance of strengthening an institution relatively easy to manipulate. Furthermore, few parties or institutions have been willing to shoulder the burden of reforming the Senate. The Senate’s own 1999 annual report on the autonomous communities refers to the ‘paralysis of the State of Autonomies’ as a result of the lack of reform in areas such as the Senate, the CCAA financial system and the CCAAs’ role in EU decision-making mechanisms (El País: 19 October 2000). Nonetheless, the last reform of the Senate, mainly procedural, took nearly 7 years from the time the Senate approved plans for the need to reform (1987) to the reforms' actual approval (1994).

The difficulties of institutional reform

Debate on the Spanish Senate has also centred on whether its weaknesses are derived from the relative subordinate position assigned to it by the 1978 Constitution or whether Spain's political forces have transformed the Senate into a mere political talk-shop limited in function to second parliamentary readings (Soto: 1998). Nevertheless, aside from the diverging party
political proposals for reform, there are other reasons why the Spanish Senate has proven so
difficult to reform. First, the ambiguity surrounding constitutional provisions for a territorial
chamber and the lack of a clear institutionalized framework for CCAA-central government
relations have complicated matters. Thus, although the provisions laid out for
decentralization in the 1978 Constitution have been successful in many ways, it has failed to
anticipate the central role played by the CCAAs in the State of Autonomies and the growing
influence of nationalist parties throughout Spain. One explanation could be that constitutional
ambiguity in fact promotes differing interpretations and while at the same time ensuring the
durability of the system (Erk and Gagnon, 2000). However, the Spanish model of
constitutional ambiguity lacks mutual trust, a key element in the proper functioning of
constitutional arrangements, mutual trust, is lacking (Erk and Gagnon, 2000).

A second and related problem has been the institutional culture of intergovernmental
relations, described as 'competitive regionalism' (Börzel, 2002). As described above, the
State of Autonomies has bred an institutional culture of constant negotiation, bilateralism and
the proliferation of provisional and ad hoc measures. The system of Sectoral Conferences
between the CCAAs and the central government and bilateral negotiations has taken over the
exercise of functions theoretically belonging to the Senate. Many of the conflicts between the
central government and CCAAs are in themselves of a bilateral nature, with both parties
preferring to resolve their dispute through either bilateral negotiations or in extremis by the
Constitutional Tribunal. In this respect, the Senate’s true function does not correspond to its
constitutional function as a territorially representative chamber. This emphasis on bilateral
relations has also meant that nationalist parties have been reluctant to endorse reform which
would transform the Senate into a truly multilateral institution. In other words, if bilateral
relations have benefited the stronger CCAAs so much, why push for reforming an institution
which may homogenize CCAA demands, limiting the institutionalization of the hecho
diferencial? More simply, would the Catalan or Basque governments accept the resolution of
disputes or negotiations over their fiscal pacts with the central government through a
multilateral institution dominated by autonomous communities led by non-nationalist party
representatives?

A third problem is the continued debate of what to do about continuing to
institutionalize the hecho diferencial. Senate reform for nationalist parties is essentially
another step towards the constitutional recognition of their cultural, linguistic and national
distinctiveness. Nevertheless, is a tension between ‘constituting political procedures (which
inevitably posit some stability of identity and require exclusions of certain differences) and celebrating the fluidity of heterogeneous differences’ (Squires 1996: 215). For reformers, there are two potential solutions to this problem (Goodin, 1996). The first option would be to grant Spain's 'historic nationalities' an autonomous decision-making sphere which the State of Autonomies addresses. The second alternative would involve granting these groups the power of veto over collective decisions. This strategy is more controversial as it excludes other groups and avoids the issue of delimitating the areas where these collective decisions are made. It is this strategy which is pursued by Catalan, Basque and Galician nationalists in the area of Senate reform. Given the serious differences among Spanish political forces on the issue of Senate reform, perhaps the best solution would be what has been termed a ‘second-best constitution’, where the ideal is not pursued and instead, a compromise is sought on the best possible solution (Goodin, 1996).

A fourth problem in reforming the Spanish Senate has been the resistance of other institutions, most notably the Congress of Deputies, to reforming an institution which could threaten its prominent role in the legislative process. Immediate reform seems unlikely as ‘no government willingly reforms an institution which has not created it any problems to establish another much more powerful one’ (Aja 1999: 216). In its present form, the Spanish Senate is essentially a duplicate of the Congress of Deputies and its functions are rather more subordinate. As the present institutional arrangements stand, the autonomous communities have no institutional forum within which to dialogue with each other or with the central government. This raises the question of the balance of power between the two chambers in the legislative system. If the Senate were to be granted more or less a co-legislative status along with the Congress of Deputies, the latter would continue to have the final say in legislation with the CCAAs continuing to feel marginalized from decision-making. If on the other hand, both chambers are granted equal status, this would undermine the historic nationalities’ claims for preferential treatment, strengthening the process of homogenization. This would be particularly problematic if the Senate’s voting procedures were limited to simple majority, where crucial policy votes could be decided by one or two autonomous communities, thereby limiting the influence of the historic nationalities. A third alternative would be granting the Senate legislative powers in policy areas reserved exclusively to the autonomous communities. Here however, the unfinished process of devolution would complicate determining which policy areas would be in the Senate’s sphere of influence.
A fifth problem in reforming the Spanish Senate is the legacy of the Spanish transition, and in particular the issue of constitutional reform. For many, the ‘present Senate was and is the great error of the Constitution’ (Solé Tura: 2000). In order to address one of the main weaknesses of the Senate, its composition, constitutional reform would be necessary. This has raised fears that constitutional reform would leave the Constitution open to other attempts at reform and perhaps unleashing a ‘fever’ of autonomy measures lacking co-ordination and stability. Similarly, there has been talk of a relectura or ‘re-reading’ of the Constitution. The example most often cited by advocates is that of the recent abolition of compulsory military service without reforming the Constitution, a move which at the time was thought to require a constitutional amendment. Simplified, the options are two-fold. The first would entail reforming the Senate by amending the Constitution (Title III), a move supported by most nationalist parties and the PSOE (the latter opting for a federal chamber based on the German Bundesrat). The second option would involve exploiting the possibilities for reform offered by the Senate’s own current regulations, a move supported by the current PP government. Nevertheless, given the fact that the timid reform of the Senate regulation carried out in 1994 have failed to transform the Senate into an efficient Chamber of Territorial Representation, it is clear that attempts to cosmetically alter its institutional design have been futile.

Nevertheless, given the divergence of political opinions on the need for constitutional reform, it is unlikely that the Senate will be reformed by sweeping constitutional changes in the next few years. In constitutional terms, defining the public interest is necessary before embarking on institutional design (Elkin, 1996). Clearly, the political climate at the time of the drafting of the Constitution did not allow the drafters too much leverage in measuring public opinion. Initially, the Senate was a product of the 1976 Ley para la Reforma Política⁹ which established it as the chamber responsible for drafting the constitutional text. Within a few years, it became clear that Spanish political elite were reluctant to reform a law which had served to end the institutional legacy of the Franco regime and give way to a democratic system (Visiedo Mazón, 1997). In addition, both the historical, political and time constraints affected the drafters’ ability to generate more radical and definite proposals for the final structure of the Spanish State of Autonomies. In this respect, the Senate is very much a product of the transition but its institutional development has also been very much constrained by the legacy of the transition. Critics argue that reforming the Senate is impossible without achieving some sort of prior consensus on the form it should take rather
than approving proposals for reform by simple majority. They argue that as the Constitution and its subsequent institutional arrangements were conceived by consensus, anything that is derived from it should be too (El Pais: 14 March 1998). The problem with this argument is that the constitutional consensus that characterized Spain’s transition to democracy has evaporated and has been replaced with a more confrontational institutional culture in its intergovernmental relations. Thus, although there is clear consensus among most Spanish political forces on the need to reform the Senate, reforming the Constitution is much more controversial.

Finally, since major institutional change has yet to take place in the Spanish case following the initial design of the institutional structure, the expectation is very much that institutional reform will not occur unless radical changes are imposed by a crisis. Unless the main political forces converge in their proposals for reform, this 'critical juncture' is unlikely to take place soon. In addition, the higher the degree of integration of an institution in the established political order, the less likely it will mean that institutional reform can take place without affecting existing institutional arrangements (Krasner, 1988). In many ways, Senate reform is viewed as inseparable from the full implementation and more importantly, institutionalization of the State of Autonomies. Reform has been attempted through a series of ad hoc committees and political party proposals. These timid attempts at reform very much reflect the institutional and historical context in which they have taken place. Attempts at reform have become enmeshed with the very sensitive issue of constitutional reform and the legacy of the Spanish transition to democracy.

Conclusion

This article has attempted to trace the futile attempts at reforming the Spanish Senate over the last few decades. It has highlighted the two main weaknesses of the Spanish Senate: its composition and function. More specifically, the article employs an institutionalist approach to understanding institutional reform (or non-reform in this case) which has allowed the analysis to shift away from a purely formal and constitutionalist approach to institutional change and take into account less formalized arenas such as political pressures. Furthermore, the institutionalist approach has generated several conclusions about the nature of institutional reform.
First, that institutional culture matters. In the specific case of the Spanish Senate, one of the questions asked was how the culture of conflict and bargaining that characterizes Spain's system of intergovernmental relations have affected the evolution of institutional norms and in particular, attitudes towards institutional reform. This concern with institutional values is important since it implies that attitudes towards any constitutional reform will be influenced by existing beliefs and cultures embedded within these institutions. Thus, the paper has argued that not just the actions but the very preferences of individuals and groups are shaped by institutional structures. Using this approach, the paper concludes that the institutional and historical legacy of the Spanish transition to democracy, both in terms of its influences on formal and informal institutions, have dictated attempts to reform the Spanish reform and in particular hindered any type of compromise on institutional reform.

Second, that institutions do not just act as constraints on actors' choices but since they are products of history ('path-dependency'), they are also often solutions to important political problems, e.g., the problem of creating political stability within a fragile transition from an authoritarian to democratic regime (Lijphart, 1977). Thus, institutional design and subsequent reform can be linked to the nature and importance of the problem being solved. From the case of the Spanish Senate, it is clear that decisions of the past affect the dynamics of political development by creating opportunities and constraints in political strategy, institutional reform and policy outcomes.

Finally, since attitudes towards institutional reform can be seen as an outcome of a process of historical adaptation and attitudes shaped within a specific institutional context, there is an emphasis on the need to identify variables that can be shown to have explanatory power. This raises the question of what the institutionalist approach can predict about the future of Senate reform. First, it cannot predict if and when this Senate reform will take place. What it can predict, is that any attempts at Senate reform will be influenced by the legacy left by Spain's democratic transition, constitutional ambiguity, the institutional culture of competitive bargaining between and among Spain's autonomous communities and the state, and a divergence of preferences among Spain's political forces on the alternatives for Senate reform. The institutionalist approach is also based on a recognition that preferences are not fixed and exogenous but may change as a function of political learning in a given institutional and historical context. This leaves open the option for change. Will Senate reform be negotiated gradual political change or imposed radical constitutional change? If the assumption is that institutional reform can only be brought on by a change in institutional
culture, this begs the question, what will bring on a change in institutional values? Although the article does not claim to suggest any specific scenarios which might facilitate a change, the basic claim is that because of the importance of past choices and the legacy of the past, institutions like the Spanish Senate are difficult but not impossible to change.

In view of the obstacles (the divergent positions on the issue by all political parties, lack of consensus on reform, bilateral nature of CCAA-central government relations, unfinished process of devolution), this paper has highlighted the difficulties in engaging in reform of the Senate. Whether Spain's institutional culture of competitive regionalism and conflict will be successfully exploited to facilitate institutional reform remains to be seen but it is likely that substantial reform may not be undertaken until the process of devolution has come to an end. Creating a Senate where the autonomous communities have a decisive influence in the policy process has become increasingly controversial in recent years. In addition, because Senate reform may require constitutional reform, the comprehensive nature of institutional reform here clearly requires a high level of institutional consensus. As the process of devolution begins to draw to a close, the present system of bilateral relations between the central government and the CCAAs may not be able to handle the increasingly complex policy-process which will gradually affect the CCAAs more as a whole rather than on an individual level. Nevertheless, the uniqueness of the Spanish case may result in the state having to adopt a completely different approach, very much like its original decision in establishing the State of Autonomies.

References:


El País


1 In this context, the term *federal* implies a constitutional solution intended to reconcile differing ethnic or sub-national tensions rather than interpreted in pure administrative or regulatory terms.

2 There were various proposals during the drafting of the Constitution for its role with three very different models including proposals that it be transformed into a territorial chamber (the non-PSOE left as well as Catalan and Basque nationalists), autonomous chamber (other non-PSOE leftist forces) or provincial chamber (AP, UCD and PSOE).

3 During the only two other times that Spain experimented with democracy, 1812 and 1931, the constitutional drafters opted for unicameral system.

4 Despite the fact that there are also 51 senators who are directly appointed by the CCAA parliaments


6 *Hecho diferencial* is the recognition that the ‘historic nationalities’ of Catalonia, the Basque Country and Galicia are to be differentiated by right and not privilege.

7 In 2001, the PP government used the Senate to veto, for the first time, an agreement between two autonomous communities (Andalucía and Extremadura) on regional television broadcasting. This has led to accusations that it has used its current absolute majority in the Senate to halt any attempts by regional governments to maximize their autonomy (*El País*, 27 September 2001).

8 Author’s translation.

9 The *Ley para la Reforma Política* provided the reforms which essentially dismantled the institutional structure of the Franco regime and paved the way for the first parliamentary elections in 1977.