

## **Reforming The Spanish Senate: The Proposals in The Council of State Report of 2006**

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### I. The Senate in the Spanish Constitution of 1978.

In March 2005 the Spanish Government asked the Council of State to report on four different proposals for amending the Constitution of 1978. The most important of them was about the reform of the Senate. The consultation document is drafted in a cautious and guarded way that is typical of the spirit in which the subject of constitutional reform is addressed in contemporary Spain. Our Constitution, said the Government, is both “the culmination and the most characteristic symbol of a collective success”. No other Constitution had given Spain more “truly democratic stability” or had enjoyed the same wide support. Therefore, only “limited changes” should be introduced in the 1978 Constitution. In addition, the need for those changes should be generally felt. That is certainly the case of the Senate, as we shall immediately see.

According to the 1978 Constitution, the parliament (*Cortes Generales*) represents the Spanish people and consists of the Congress of Deputies and the Senate (article 66.1). The Senate is defined as “the chamber of territorial representation” (article 69.1). The key components of Spain’s territorial organization are its seventeen Autonomous Communities, or regions, whose right to autonomy is solemnly recognized in article 2 of the Constitution. However, only a small number of Senators (56 out of a total of 264) are appointed by the legislatures of the Autonomous Communities. The remaining 208 Senators are elected by universal suffrage, but the electoral district is the province, not the Autonomous Community. Provinces are local government units that could be roughly compared to the counties in the United States. There are fifty provinces and, despite their subordinate position in Spain’s territorial organization, they are very important in the electoral system, because all members of the Congress of Deputies and most Senators are elected in provincial districts (four Senators are elected in every province). The Congress and the Senate have the same term of office (four years), they have always been dissolved simultaneously, and, therefore, elections for both chambers have always taken place on the same day.

As a standard text on the Spanish political system observes, “decentralization has taken the form of devolving political power to Spain’s seventeen *regional* governments, while 208 of [the Senate’s 264] seats are allocated through *provincial* elections (...). This lack of fit destroys the effectiveness of the Senate as chamber of territorial representation in several ways” (Gunther, Montero, and Botella, 2004). The same authors go on to say that “for these reasons, the Senate has not been regarded as a legitimate arena for the representation and articulation

of regional interests, and numerous proposals have been made for its radical restructuring". It should be added that the Senate's influence on the legislative process is limited: bills are initiated in the Congress of Deputies, the Senate has only two months to veto or amend a text approved by Congress, and the Senate's vetoes or amendments can be easily overridden by Congress (article 90 of the Constitution). Besides, the Senate does not intervene either in the investiture of a new Prime Minister or in the vote of confidence of an existing one: both functions are entrusted only to the Congress of Deputies.

## II. The Council of State proposals for reforming the Senate.

In February 2006, the Council of State, which is the Government's supreme advisory body, approved a report on constitutional reform that was published in book form along with the academic papers presented at a symposium jointly organized by the Council of State and the Center for Political and Constitutional Studies ("El informe del Consejo de Estado sobre la reforma constitucional. Texto del informe y debates académicos", 2006). The current situation of Spanish political life, which is characterized by confrontation along party lines, makes it unlikely that a constitutional reform of the Senate will be undertaken soon. However, the problem is here to stay and, given the prestige and independence of the Council of State, its report will remain a very important reference on the subject for many years.

In the Council of State's view, the nature of the Senate as "the chamber of territorial representation" should have effects on its functions, its composition, and its institutional position within the *Cortes Generales*. In a general way, the report proposes to strengthen the Senate's participation in the legislative function by extending to four months the period the upper house has to veto or amend bills approved by Congress. More specifically, the Council of State suggests that bills that particularly affect the Autonomous Communities should originate in the Senate. The report contains the following catalog of such bills: delegation of State powers to the Autonomous Communities (article 150 of the Constitution); rules on the cooperation of the State and the Autonomous Communities in tax matters (article 156.2); regulation of the financial resources of the Autonomous Communities (article 157.3); correction of interterritorial economic imbalances (article 158.2); and any other bills whose relevance on regional affairs justifies, in the Government's opinion, their being initiated in the Senate.

In relation to the Senate functions as a "place of cooperation" between the State and the Autonomous Communities, the Council of State formulates a proposal that is probably inspired in the German *Bundesrat*: the Senate, and the Senate committees, may request the presence of members of the governments of the Autonomous Communities; in turn, the members of the regional governments may ask to be heard in the Senate and in its committees.

The composition of the Senate has always been the most important issue in all debates on the Spanish upper house reform. As was remarked before, the current composition does not correspond to Spain's regional structure. The Council of State report tries to correct this "lack of fit" by enhancing the participation of the Autonomous Communities in the Senate. The report uses a combination of three criteria: equal distribution of Senators among the seventeen

regions; distribution in proportion to each region's population; and distribution that takes into account the number of provinces included in every region (for instance, the Castile and León region has nine provinces, while Madrid and four other regions have only one). After outlining three models, the Council of State expresses a preference for one in which each Autonomous Community would elect six Senators, plus an additional Senator for every one million inhabitants, and an additional Senator per province. The adoption of this model would result in a chamber composed of 234 Senators and their distribution among the regions would be significantly different from the existing one. Finally, the report favours the election of Senators by universal suffrage over their appointment by the regional legislatures.

The timing of the elections for the Senate is an important point in the Council of State report. The Council recommends that elections for each region's Senators coincide with the elections for that region's legislature. The Senate would thus become a permanent chamber with no term of office and an institutional life separate from that of the Congress of Deputies. The Senate renovations would be partial and successive, and their timing would depend on the calendar of regional elections. If the Senate is reformed along these lines, rules on the chamber's dissolution should also change. In the current system, the Prime Minister may dissolve the Congress, the Senate, or both houses (article 115 of the Constitution). Also, if within two months after the first vote of investiture, no candidate to be Prime Minister has obtained the confidence of Congress, the King must dissolve both houses and call new elections (article 99.5). In the Council of State proposal, the Prime Minister would be empowered to dissolve the Congress, but not the Senate; and only the Congress would be automatically dissolved in the hypothesis contemplated by article 99.5.

In a concluding remark, the Council of State says that the reforms discussed in its report would give rise to a permanent Senate that, while not achieving parity with the Congress, would increase its specific weight and would channel the participation of the Autonomous Communities in forming the will of the State.

#### QUOTED BIBLIOGRAPHY

Richard Gunther, José Ramón Montero, and Joan Botella, "Democracy in Modern Spain", Yale University Press, 2004.

Francisco Rubio Llorente and José Álvarez Junco, eds., "El informe del Consejo de Estado sobre la reforma constitucional. Texto del informe y debates académicos", Centro de Estudios Políticos y Constitucionales, Madrid, 2006.