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A case of top-down intergovernmentalism? The Spanish bilateral cooperation commissions

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ABSTRACT


This article analyses the dynamics of a specific intergovernmental-relations (IGR) mechanism that exists in Spain: the bilateral cooperation commissions (BCC). These commissions are intergovernmental negotiation forums designed to address discrepancies on legislation in a bilateral and pre-emptive way, before they escalate to the Constitutional Court (CC). Using official data, we construct a database of all negotiations between 2000 and 2021. Our results align with prior research on this subject and mirror broader trends within the Spanish territorial model and its IGR: the hierarchical nature of the IGR structure, and the relevance of inter- and intra-party competition in shaping it. These results also illustrate that the weaknesses of IGR in Spain and, by extension, of shared-rule, mirror the subordinated structure of self-rule throughout the Spanish system.

KEYWORDS


Spain; intergovernmental relations; federalism; multilevel governance; self-rule; shared-rule; inter- and intra-party relations; democracy

Introduction

In 1999, the Spanish central government tabled a bill to amend the law regulating the composition and functioning of the Spanish Constitutional Court (Organic Law 2/1979). The amendment, which was approved in 2000 (Organic Law 1/2000), regarded an apparently minor issue: the redefinition of a bilateral intergovernmental instrument that, at the time, was only used very infrequently: the bilateral cooperation commissions (BCCs). This instrument had previously been defined in 1992 in a short section of the Spanish law on the general principles of administrative procedures.¹ This 1992 law defined it in rather vague terms as a bilateral intergovernmental interaction forum, and failed to attribute any specific functions to it. This legal definition did not mean that these seventeen BCCs (one for each autonomous community) actually existed, since establishing them depended on a discretionary formal agreement between the central government and each of the autonomous communities

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¹Spanish Law 30/1992, on general legal and administrative procedures (repealed in 2015) at <https://www.boe.es/buscar/act.php?id=BOE-A-1992-26318&p=20151002&tn=6> (last accessed 07 January 2025).

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(Beilfuss 2007; Roig 2015; Jiménez 2000). Neither did this legal definition of them imply that the ones that existed were functioning correctly: official data provided on the website of the Spanish Ministry for Territorial Policy show that all the BCCs met very infrequently.² It was the amendment made in 2000 that redefined the instrument by giving it a clear role: that of acting as an institutional gatekeeper for the Constitutional Court (CC) in relation to one of the Court's key functions: settling intergovernmental disputes regarding rival interpretations of the distribution of powers, a matter with which the Court was absolutely overwhelmed at that time. The new role attributed to the BCCs was intended to alleviate this situation.

The 2000 amendment defined the BCCs as providing an optional window of opportunity for governments to negotiate bilaterally in order to resolve discrepancies³ regarding encroachments of powers in terms of each other's legislation. This window of opportunity, if opened, lasts from three to nine months, which is the deadline for challenging legislation before the CC. In other words, the BCCs were given the job of preventing constitutional challenges being filed without attempts having been made at prior negotiation,⁴ albeit within a time limit. The redefinition of the role of the BCCs implied that intergovernmental relations (IGR), which had barely been developed institutionally in Spain (Colino 2013), would be indirectly involved in judicial review: in their new role, the BCCs would be able to settle disputes politically that otherwise would have been settled directly by the CC.

In other words, the BCCs having their remit reshaped explicitly acknowledged the pivotal role played by politics in the interpretation of the multilevel distribution of powers in Spain. Since then, the existence of agreements reached in BCC settings between the autonomous communities (ACs) and the central government has led some analysts to conclude that the amendment has partially succeeded in reducing territorial controversies (De la Quadra-Salcedo Janin 2021); however, this is a conclusion that is rejected by other scholars (Harguindéguy, Fernández Rivera & Sánchez Sánchez 2021). In this article, we perform a systematic analysis of a novel dataset comprising all BCC outcomes in the twenty-two years following the introduction of the amendment in 2000 ($N = 737$). We aim to explain the determinants of BCC negotiation outcomes and, at the same time, to provide an overall assessment of the mechanism within Spanish IGR dynamics. Our findings are relevant not only for this particular case but also for the international literature on federalism and decentralisation, since it focusses on the impact made by party politics on both the dynamics of IGR and the whole federal/decentralised institutional setting.

²See the ministry website at https://mpt.gob.es/en/politica-territorial/autonomica/coop_autonomica/comisiones_bilaterales.html (last accessed 07 January 2025).

³Throughout the article we use the term 'discrepancy' when we refer to BBCs; and 'conflict' when we refer to an appeal to the CC being filed.

⁴The amendment (2000) can be seen at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2000-411>; the report by the Consejo de Estado can be seen at <https://www.boe.es/buscar/doc.php?id=CE-D-1999-1788>.

The article is divided into four sections. In the first section we briefly introduce the context of IGR in Spain and the specific role of BCCs. We describe the importance of this mechanism in solving interpretative discrepancies on the distribution of powers laid out in state-wide and regional laws and we emphasise its impact on shaping decentralisation.⁵ In the second section, we present our main hypotheses and methods. Then, in the third section, we provide an initial descriptive analysis of the evolution of the BCCs based on some key variables, such as the type of legislation at stake and the outcomes derived from the negotiations. This initial descriptive analysis is the first step towards a more ambitious objective: using a multivariate analysis, we aim to explain the variance that exists regarding different actors' use of the mechanism, and the different types of outcomes that result from the negotiations. Finally, in the last section, we present our conclusions. The contribution of our analysis is three-fold. Firstly, we present a novel dataset comprising all BCC outcomes between 2000 (when it was introduced) and 2021 ($N = 737$). The dataset includes other variables that can contribute to explaining these outcomes (timing, type of agreement, party in government and policy area of the dispute topic). Secondly, using a statistical analysis, we explore the overall impact and determinants of the BCC outputs; that is, we test the relevance of party politics in shaping the outcomes. Thirdly and finally, we relate our findings on BCCs to the existing literature on IGR and to the analysis and conceptualisation of decentralisation in Spain.

Intergovernmental relations in Spain

Since 1978, the evolution of the Spanish territorial model has been based on a predominance of vertical and bilateral intergovernmental negotiations (that is, between different levels of government – the central and the regional) and a lack of relevant horizontal and multilateral interactions (that is, between more than two same-level governments); this contrasts with other systems such as those in place in Canada or Germany (Grau 2000; Requejo 2001; Aja 2003; Bossacoma & Marc 2019; Muro & Lago 2020; Lago 2021). According to Colino and Parrado (2009) and Colino (2013), IGR in Spain take place in several political and institutional arenas, none being particularly unique to Spain. Spanish IGR share characteristics and problems with other decentralised states, including a lack of constitutional provision for these mechanisms, an ineffective territorial second chamber (Bossacoma & Marc 2019), a lack of transparency, and the absence of rules and decision-making procedures in intergovernmental arenas, among other problems (Colino 2013).

⁵In this article, we use 'state-wide laws' to refer to laws passed by the central institutions (the Spanish government and parliament) and 'regional laws' to refer to laws passed by the institutions of the autonomous communities.

Nonetheless, the Spanish IGR system has six features that, although to some extent being shared with other decentralised countries, can be considered particularly distinctive. Firstly, despite the decentralisation that was established in the early 1980s, aimed to accommodate territorially political demands, its principles were far from being based on a federal pact (i.e. an agreement among equals) but largely reflected the power pyramid described by Elazar (1987, p. 35), that is, the dominance of the central government in the hierarchy. Secondly, powers being decentralised to the autonomous communities did not take place in all of them simultaneously, but following a multi-speed process. These changes were also characterised by high levels of constitutional disputes over the division and scope of powers between the central and regional institutions. Consequently, the CC's rulings have been paramount in shaping the 'de/centralisation dynamics' of the Spanish system, as mentioned in the introduction. And as many academics have noted, the Court rulings have followed a general tendency that can be observed in other decentralised systems, i.e. favouring central government interpretations in disputes about the distribution of powers (Viver 2011; Saunders 2013; E. C.; Adam 2017; Kössler 2022). Thirdly, in the absence of a constitutional design that provides a framework for IGR, intergovernmental party congruence and inter-party competition play an important role in explaining the functioning and outputs of IGR negotiations (Bolleyer & Bytze 2009; Swenden & McEwen 2014). Fourthly, the central government has a dominant position that goes well beyond what is attributed to it in the constitution, to the extent that it has been defined as clearly interventionist (Agranoff & Antonio Ramos Gallarín 1997; Requejo 2005). Fifthly, legal clashes tend to take priority over political bargaining. This is very much related to the predominance of the legal backgrounds shared by senior civil servants (and politicians) (Coller, Ferreira Do Vale & Meissner 2008). Sixthly, the regions which do not have their own taxing powers are highly dependent on central government financing (Colino 2013). The central government's spending power is, therefore, a variable that strongly shapes the terms of intergovernmental bargaining (Molero 2001; Maiz, Caamaño & Azpitarte 2010).

In addition, the conflictual character of territorial politics in Spain has also involved IGR. This has become more accentuated with the tensions caused by increasing recentralising pressures, on the one hand, and secessionist trends on the other (Grau 2011; Cuadras-Morató 2016; Bossacoma & Marc 2019; Colino 2020), which have intensified since 2010. Compared to other territorial models, the Spanish system clearly lacks institutionalised shared-rule policies (Hooghe et al. 2016) and this has led to IGR being dominated by party politics. The management of the recent COVID-19 pandemic crisis starkly exposed the grave weaknesses of the horizontal, multilateral intergovernmental culture (Sanjaume-Calvet & Grau 2021).

Bilateral cooperation commissions as an IGR mechanism

As set out in the introduction, the extraordinary volume of constitutional challenges that the Spanish Constitutional Court (CC) was dealing with was at the root of the legislative re-shaping of the BCCs in 2000. In the early years of the decentralisation process (1981–1990), there had been a plethora of disputes regarding the scope and distribution of powers, especially between the central government and the fast-track regions (Catalonia, the Basque Country, Galicia and Andalusia).⁶ These constitutional conflicts skyrocketed between 1996 and early 2000, when the conservative People's Party (PP, *Partido Popular*) was in power in the central government. Empirical research has shown that during that time, the regions where the Spanish Socialist Workers' Party (PSOE, *Partido Socialista Obrero Español*) was in power took the lead in challenging Spanish legislation before the CC. This showed that inter-party competition at the state-wide level (i.e. central government vs. opposition) was by then a significant variable in shaping constitutional conflicts (Grau 2005).

When in 1999 the central government tabled the bill that defined the role of the BCCs as gatekeepers for the Court, constitutional conflicts were at one of their all-time peaks. The government's objective of reducing the number of disputes was clearly connected to increasing the effectiveness of the CC, a political concern that it shared with the PSOE, its main opposition party at the time. This shared perspective made it quite difficult for the PSOE to oppose the bill, although it did express some concerns. The PSOE underlined the negative effects that the bill might have on intergovernmental cooperation: by enhancing the already dominant position held by the central government, it would jeopardise the role of the BCCs as effective (and trusted) conflict-prevention mechanisms.

For the regions, however, and especially for the regional parties in office at the time, there was a particular tactical incentive in circumventing the Court to solve discrepancies: to avoid the automatic suspension of all challenged legislative sections when the central government requested this measure. These suspensions had become an all too frequent consequence of central government challenges on regional legislation. The Spanish constitution (section 161.2) and the Organic Law on the Constitutional Court (section 30) confer this discretionary power exclusively on the central government, shaping an

⁶As mentioned earlier, decentralisation of powers to the autonomous communities was carried out according to a multi-speed process, as established in different sections of the Spanish constitution. Section 143.2, in connection with section 148.2, established a general process for territories to become autonomous communities (self-rule) that implied a gradual path – five years at least. This was the path followed by thirteen of the seventeen autonomous communities. Section 151 of the constitution established a 'fast-track' to self-rule which depended on two conditions being fulfilled: 1) a referendum being held on the issue, and 2) that the results of the referendum should confirm, with an absolute majority of votes, the autonomous community being established. Strictly speaking, only Andalusia followed this fast-track path. As for Catalonia, the Basque Country and Galicia, their immediate access to self-rule came via the constitutional recognition of the legitimacy of those referendums held during the 2nd Republic (1931–1939) for the same purpose (2nd Transitory Disposition of the Spanish Constitution).

asymmetry regarding regional power within the constitutional review system (Pérez Eulate 2018).⁷ Therefore, given the negative consequences that constitutional appeals made by the central government could have on the implementation of regional legislation, the regional parties considered the new role of the BCCs in a positive light.⁸

Although the 2000 amendment placed the regions in a slightly better position to negotiate disputes with the central government, it did not diminish the influence of central government power. Quite the opposite: it enhanced it, just as the PSOE had said during the parliamentary debates on the amendment. The reasons for this are the following: first of all, if no agreement was reached, the option of taking the case before the Court was still in place, as was the central government's power to suspend regional legislation. Secondly, and precisely because the use of the suspension powers was always 'in the air', the two sides never negotiated on an equal footing: the central government's suspension powers greatly conditioned the negotiations. Thirdly, at the time the amendment was made, the state-wide and regional party systems were strongly majoritarian (revolving around the two main state-wide parties,⁹ the PSOE and the PP, although with significant exceptions in the Basque Country and Catalonia), and mirrored each other (Simón 2013; Mónica 2020). Consequently, there was a high level of governmental party congruence between the two levels of government. In this political context, intra-party power relations also had an effect on intergovernmental relations: given the hierarchy that existed between each national party organisation and its regional structures, intra-party power relations aided the central government in maintaining its dominant position in the negotiations.

Hypotheses

IGR has been a much-discussed topic in the fields of federal studies and territorial politics (Bolleyer & Bytzek 2009; Bolleyer, Swenden & McEwen 2014; Poirier & Saunders 2015; Poirier 2023). From a comparative perspective, most of the research conducted on it has explored the different mechanisms through which IGR are materialised, *de jure* and/or *de facto* (Agranoff 2004). When studying the phenomenon, understanding how IGR is effectively structured has usually been carried out by identifying and comparing institutions and mechanisms (Poirier & Saunders 2015).

⁷A suspension initially applies for a 5-months period, after which the Court can raise the suspension or extend it for another 5 months, and then again, successively.

⁸This tactical preference partially explains why the Catalan and Basque nationalist parties eventually gave their support to this legislative amendment. The other part of the explanation lies in the political preference for bilateral IGR that these parties have always manifested. See the discussions in the official gazette of parliamentary proceedings (*Diario de Sesiones*).

⁹By state-wide party (SWP), we refer to those political parties that operate across all of Spain, as opposed to parties that primarily operate within a specific autonomous community (non-state-wide party, NSWP).

Among the range of IGR mechanisms, beyond legal analyses, BCCs stand out as one of the least empirically studied mechanisms in terms of actual use (Colino 2013; Harguindéguy, Fernández Rivera & Sánchez Sánchez 2021). Existing studies have centred on particular cases (i.e. Catalonia and Aragon: Corretja, Vintó, and Gil 2011; Balaguer Callejón 2011), or have examined legal aspects rather than IGR (Morales & Jesús 2009; Eva 2013), or have focused on one specific policy (Ramos & Alda 2004) or on the bilateral commissions themselves, but none has offered a general overview based on extensive empirical data (Ramos 2006; Beilfuss 2007). Roig (2015) made a notable effort to systematise the results of the bilateral commissions almost a decade ago, but his work did not offer a statistical analysis of all the meetings that had taken place and the results of the negotiations. Roig's empirical work identified that the working of BCCs had so far amplified asymmetries in the cooperative intergovernmental dimension in favour of the central authorities, something that had been voiced in parliamentary debates (2015, 9–10).

Two recent analyses of cases regarding the Valencian Community and Catalonia found similar results. In a systematic analysis of the first 20 years of existence of the central government-Valencian Community BCC, Gimeno (2020) described its performance as a 'partial success': although BCC negotiations had avoided several constitutional challenges to regional laws being filed, no agreements on central government bills had materialised. In addition, both the central and regional executives had continued to use constitutional challenges along with BCC negotiations. These findings have been corroborated in the case of the central government-Catalonia BCC. The authors of a recent study also found strong asymmetry in that BCC, as well as a predominance of interpretative agreements and an absence of modification agreements when state laws were the object of the negotiations (Digón et al. 2021). Moreover, in this specific study the authors tested the effects of partisan negotiations and did not find any correlation between the type of agreement and political colour of the executives.

Our first set of hypotheses is entirely derived from the previous academic contributions mentioned above; they are based on the expected outputs of the BCCs if certain conditions are met. In order to understand the expected results, it is important to note that there are three possible outcomes¹⁰ (1) no agreement is reached and, therefore, a constitutional challenge is filed; (2) agreements are reached on the basis of a consensual re-interpretation of the case; and (3) agreements are reached that involve a commitment to pass a legislative amendment following the terms fixed in the negotiation process.

The findings from previous large-N studies carried out in other ACs, one regarding a central government-Valencian Community BCC (Gimeno 2020) and the other a central government-Catalonia BCC (Digón et al. 2021), lead us

¹⁰This will be discussed in more detail in the next section.:

to hypothesise that BCCs, as a form of vertical IGR, will reduce the number of constitutional challenges in all ACs.

H₁: The use of BCCs reduces the likelihood of the central government challenging regional legislation or regional governments challenging state-wide laws in the CC.

Recent comparative research has highlighted the predominantly bilateral nature of Spanish IGR (Franco-Guillén 2019; Adam & Hepburn 2021). Although these authors focus on specific policies, they agree that Spanish BCCs are not highly institutionalised and often suffer from a so-called 'shadow of hierarchy' or vertical asymmetry, in which the central government tends to dominate over regional power. In this line, we expect to find that, overall, in the framework of the BCCs, the central government will achieve its objectives and priorities to a greater extent than regional governments, both in terms of reaching agreements and modifying regional laws. Moreover, we expect legal modification agreements to be less common for decrees, since these are pieces of legislation that are introduced by the executives themselves. We assume that they will be more reluctant, since they are the direct 'authors' of these legislation pieces, to agree on any modifications negotiated within BCCs.

H₂: BCC negotiations are more likely to result in agreements on regional laws than on state-wide laws.

H_{3a}: Agreements that require legal modifications to avoid challenges in the CC are more frequent for regional laws than for state-wide laws.

H_{3b}: Agreements requiring legal modifications to avoid challenges in the CC are less frequent for decrees, whether issued by regional or central governments.

Our second set of expectations is related to the degree of discrepancies between the central and regional governments. We assume that between the 2000 and 2022 the greatest source of constitutional appeals on the scope of powers was linked to the wave of statutes of autonomy¹¹ reforms, in which some regions extended their potential for self-government, and channelled discrepancies through BCCs (Orte & Wilson 2009; Morales & Jesús 2009; Grau 2011; Colino 2020). A further source of constitutional appeals came, to a lesser extent, from the self-determination demands in Catalonia (Bossacoma & Marc 2019; López & Sanjaume-Calvet 2020).

H_{4a}: The wave of amendments to statutes of autonomy in the early 2000s led to an increase in the number of BCC negotiations in their regard.

¹¹The basic legal framework of an autonomous community is its statute of autonomy. Statutes of autonomy possess a dual legal character: they serve as the basic laws of the autonomous communities while also functioning as organic laws in Spain.

H_{4b}: Regions that reformed their statutes of autonomy experienced an increase in filings before the CC following BCC negotiations.

In H4a our dependent variable is the number of BCC negotiations. And in H4b, it is their success, proxied by the absence of a further challenge to the CC after BCC negotiations.

Our third set of expectations aims to explore the effects of the extra-legal dimension of the BCCs that have been pointed out by legal scholars. To what extent does political bargaining play a role in being able to reach agreements and avoid challenges in the CC? We formulate specific hypotheses that tackle the political dimension of BCCs, working on the assumption that partisan politics might play a role in their outcomes, as previous research has pointed out (Harguindéguy, Fernández Rivera & Sánchez Sánchez 2021). We also draw on the literature about how party congruence in multilevel settings might affect coordination and cooperation between the central and regional governments (Falcó-Gimeno & Verge 2013; Martínez-Cantó & Bergmann 2020; Bäck et al. 2013). We assume that partisan politics, i.e. when both sides in the negotiations have the same political colour, will make it easier to reach agreements.

H₅: BCC negotiations between central and regional governments are more likely to result in agreements when both governments are led by the same political party.

Finally, we formulate a sixth hypothesis based on the evidence suggested by previous research. For example, Harguindéguy, Rodríguez-López and Sánchez (2017), based on Maiz, Caamaño and Azpitarte (2010), tested the role of the Spanish lower chamber as the negotiation space between majorities and territorial minorities and found a positive correlation between absolute majorities and inter-governmental conflicts, regardless of which party was leading the central government (PP or PSOE).

H₆: BCC negotiations are less likely to result in agreements if the central government has an absolute majority in the national parliament.

Methods and operationalisation

In this paper, we use a novel database about BCCs, mainly fed by the records of the Official State Gazette (BOE), the ACs' Official Gazettes, and ministerial data.¹² The database contains information on the 737 negotiations that took place from 2000 to 2021. By negotiation, we mean the official initiation of bilateral

¹²See the Supplementary Materials in this article; the dataset is public access.

intergovernmental meetings addressed to deal with constitutional discrepancies related to concrete legislation (including decrees) passed by either the Spanish parliament or any AC parliament. As of 2021, all ACs had an established BCC.¹³ The negotiations database is structured by case and contains information on the object of the disagreement, the actor initiating the disagreement, the duration of each negotiation, its outcome, and if there is a subsequent challenge to the CC. When it comes to the different outcomes of BCC negotiations (our dependent variable), these are firstly classified according to (a) whether there is an agreement; and (b), when there is an agreement, its substantive content. We identified three types of agreements¹⁴

Interpretation agreement

Both governments agree on a certain interpretation of a piece of legislation. For example: on 11 November 2013, the central government and the Andalusian government reached an agreement on how to interpret the retail opening hours set out in the Andalusian Decree-Law 1/2003 on internal trade (internal trade is an AC jurisdiction). Both governments agreed that these should follow the framework of the state-wide Basic Law 7/1996 on retail trade. Since this agreement settled the dispute, it avoided a challenge being launched before the CC.

Modification agreement

The two governments agree on further legislative modifications based on the terms of the negotiated agreement. For instance, on 18 October 2011, the central government and the Extremadura government reached an agreement on Extremadura Law 2/2011 on the modernisation and development of the tourist sector. The two governments agreed on the modification of some sections of the law (article 50, sections one and four) and the revocation of another (section two). The basis of the agreement was the application of the liberalisation rules established by Spanish Law 17/2009 on free access to activities and services, deriving in turn from European Union Directive 2006/123/CE on the internal services market. In 2012, the parliament of Extremadura approved the modification that had been agreed upon, by means of Decree-Law 1/2012. The explanatory memorandum of this regional decree-law specified the need to adapt the norm to the European Union (EU) rules and to implement a bilateral agreement as a means to avoid a constitutional challenge being launched by the central government.

¹³That is, through the 33.2 Organic Law of the Constitutional Court (LOT) procedures.

¹⁴The possibility of reaching interpretative and modification agreements was not initially included in the law that was proposed by the central government. Pressure exerted by PNV (Basque Nationalist Party) and CiU (*Convergència i Unió*, Convergence and Union), Basque and Catalan non-state-wide parties, respectively, led to these possibilities being introduced in article 33.2.:

Other agreement

This category is less frequent and includes different types of agreements. Most items in this category are agreements on passing new legislation, not on modifying or interpreting existing norms. An example of these agreements is one reached by the central government and the Canary Islands government on Spanish Law 13/2010 on pollution rights within the aviation market. The Canary Islands asked for more information on the environmental consequences of this law as applied to the AC. Both governments agreed on the need to monitor this pollution and analyse its consequences.

Despite this categorisation, it is in fact not unusual for the three types of agreements to coexist in a single case, and, therefore, the outcome is not always as clear-cut as in the examples given above. Because of this, and aiming to simplify matters, the different combinations of outputs can be summarised into five levels of a categorical variable: 0) disagreement (with or without a challenge taken to the CC); 1) interpretation agreement; 2) modification agreement; 3) interpretation and modification agreement; 4) other agreement. From these variables, we create a dichotomous variable: ‘agreement’, which groups together all cases where there is some form of agreement, and another that groups together those where there is ‘no agreement’ (See [Table 1](#)).

Table 1. List of main variables of BCC negotiations in the dataset ($N = 737$).

Variable	Name	Type	Levels/Values
Date	Time	Date	Min: 2001-03-14/ Max: 2022-08-31
Autonomous community	AC	Categorical	17
State-wide legislation		Binary	Yes/No
Regional legislation		Binary	Yes/No
Agreement		Binary	Yes/No
No challenge to CC	Success	Binary	Yes/No
Type of agreement	Negotiation outcomes	Categorical	Disagreement/ Interpretation/ Modification/ Int. & Mod./ Other
Absolute majority central	Absolute majority in central parliament	Binary	Yes/No
Same political party in central and regional executives	Congruent	Binary	Yes/No
Different state-wide party (SWP) in central and regional executives	Incongruent SWP	Binary	Yes/No
SWP in central executive and non-state-wide party (NSWP) in regional executive	Incongruent NSWP	Binary	Yes/No
Royal decree-law	Decree	Binary	Yes/No
Regional decree-law	Decree (regional)	Binary	Yes/No
State-wide law	State law	Binary	Yes/No
Regional law	Regional law	Binary	Yes/No
AC that reformed its statute of autonomy between 2000 and 2021	Statute	Binary	Yes/No

Our dataset includes other additional variables that we use as *independent variables*. Firstly, the specific dates of the beginning and end of a negotiation ('Time'), a continuous variable (log) expressing the number of years between the introduction of the BCC amendment in 2000 and the year the negotiation takes place. Then, three binary variables to capture similarity or dissimilarity of the political colours between central and regional executives. 'Incongruent SWP' means that the governing party at regional level is a state-wide party (SWP) which is not simultaneously governing at central level. 'Incongruent NSW' means that there is a non-state-wide party (NSWP)¹⁵ governing at the regional level. This means there is no party congruence, given that no NSW has held power in the Spanish government. Finally, 'Congruent' means that the same SWP is governing at both levels. The three variables capture the prevailing political situation in place when the negotiations between the executives took place. There is also a dichotomous variable that captures the existence of absolute majorities in the central chamber during the negotiations: 'Absolute majority central' (see Table 1). Four binary variables, 'Decree', 'Decree (regional)', 'State law' and 'Regional law' capture if the piece of legislation is a state-wide (royal decree) or regional decree or is a state-wide or regional law. The 'Statute' binary variable refers to whether the statute of autonomy of the particular AC has been reformed or not.

To test H_1 , H_2 , H_{3a} , H_{3b} , H_{4a} and H_{4b} , further descriptive analysis is conducted. For H_1 , we focus on how the challenges filed before the CC evolve over time and by type of legislation and examine the effect of BCC on the reduction of constitutional conflict between central and regional governments (defined as 'Success' and proxied by the absence of a further challenge to the CC after a BCC negotiation). For hypotheses H_2 and H_3 , we analyse the percentages of the different BCC outcomes regarding regional and central government legislation in order to account for the territorial dynamics in the BCCs. To test hypothesis H_{4a} we analyse the number of BCC negotiations, comparing ACs that had reformed their statutes of autonomy with those that had not. And for hypothesis H_{4b} , we compare these two groups of ACs in terms of how successful their BCCs are.

Finally, to test H_5 and H_6 , we build a multivariate analysis that includes the political and partisan dimensions of the negotiations (Jiménez 2000). To do so, we run a series of logistic regressions, with their dependent variables being the outcomes of the different BCCs and 'Success'. In some models, we fix the effects of ACs to rule out that the results could be driven by specific ACs.

In H_1 , our dependent variable is constitutional conflict. Its proxy is the number of lawsuits filed before the CC between the central government and the regions. In H_2 and H_3 , the dependent variables are the percentage of the different BCC outcomes by regional and central government legislation (laws

¹⁵See footnote 9 for a definition of SWP and NSW.

and decrees). In H_{4a} , our dependent variable is number of BCCs. And in H_{4b} , the dependent variable is a successful outcome, proxied by the absence of a subsequent challenge to the CC after a BCC negotiation. In both hypotheses H_5 and H_6 , the dependent variables are the likelihood of achieving each of the possible BCC outcomes described above.

Results

Descriptive and bivariate results

In the period between 2000 and 2021, the performance of the new cooperation mechanism analysed in our study can be seen as reflecting a form of ‘learning process’. Although they were legally introduced in 2000, BCCs were barely used initially. During the first year of their existence, BCCs were used on only six occasions, five of them regarding disputes on regional legislation and just one regarding state-wide legislation. Of these six negotiations, two ended in agreements which solved the disputes, with Madrid and Navarra respectively modifying their regional laws 9/2000 and 18/2001; two other BCC negotiations did not have the results of their outcomes published and the other two led to challenges before the CC.

However, this handful of initial experiences were followed by a remarkable evolution occurring. From 2006–2007 to 2022, almost all the BCCs held at least one meeting dealing either with Spanish or AC legislation. We observe

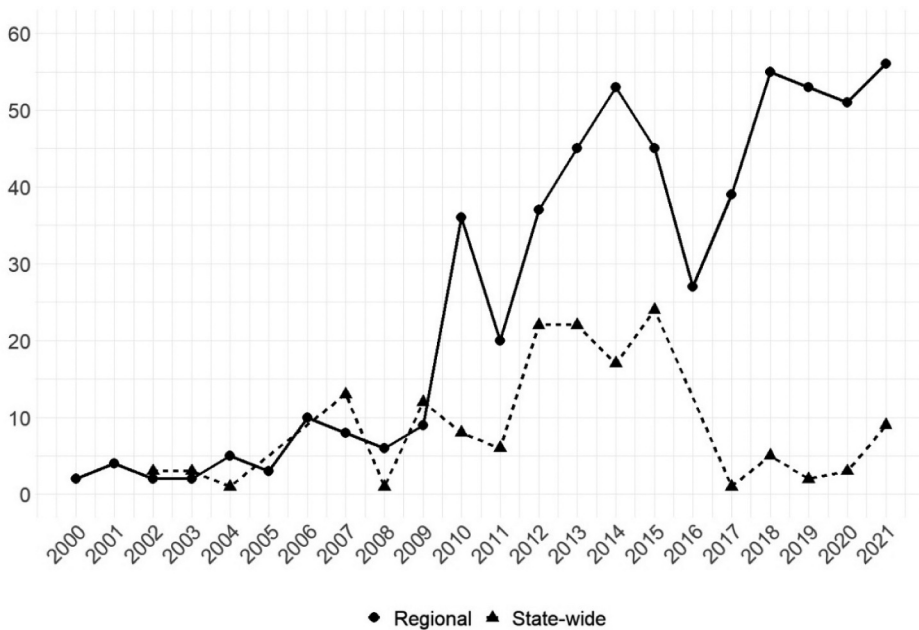


Figure 1. Cases of bilateral cooperation commission negotiations by type of legislation (2000–2021). $N = 737$. The figure includes all BCCs from 2000 to 2021.

a predominance of BCC negotiations regarding regional legislation (See Figure 1), since the existence of 17 regional parliaments means that far more legislative activity takes place in them than in the Spanish parliament. Over time, BCC negotiations on regional legislation have become not only far more frequent but have also resulted in many more agreements. This pattern has been similar across ACs, although with some important differences. Nonetheless, the observed pattern of fewer BCC cases on state-wide legislation does not appear to correlate positively with the number of challenges brought before the CC. While most negotiations focus on discrepancies over regional legislation – often initiated by the central government – conversely, the majority of challenges before the CC due to failed negotiations involve central government legislation.¹⁶ Moreover, at first glance, no notable reductions are observed in constitutional intergovernmental challenges after the introduction of the BCCs in 2000 (See Figure 2).

Beyond the frequency of both BCC negotiations and challenges made to the CC, we aim to address the effectiveness of this bilateral IGR mechanism in averting further legal challenges (H_1). That is, we aim to evaluate whether these negotiations really avoid direct challenges being made before the CC. The data (See Figure 3) appear to point to the overall positive effect of BCCs in

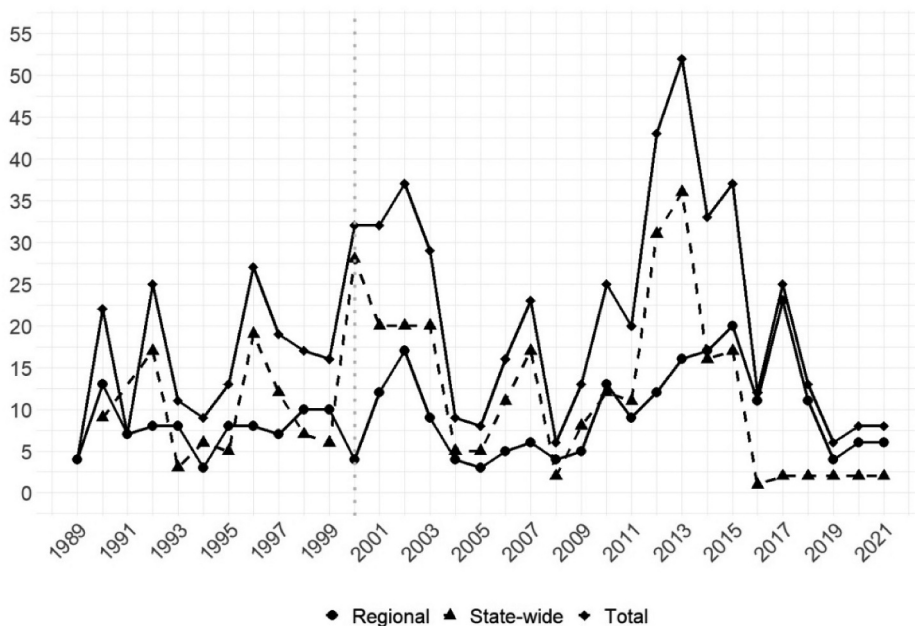


Figure 2. Challenges to the constitutional court by type of legislation (1989–2021). $N = 657$. The figure includes all challenges regardless of whether BCC negotiations took place or not.

¹⁶ As we show below, even in some cases where an agreement was reached, challenges to CC were filed. These represent 8.8 per cent of cases.

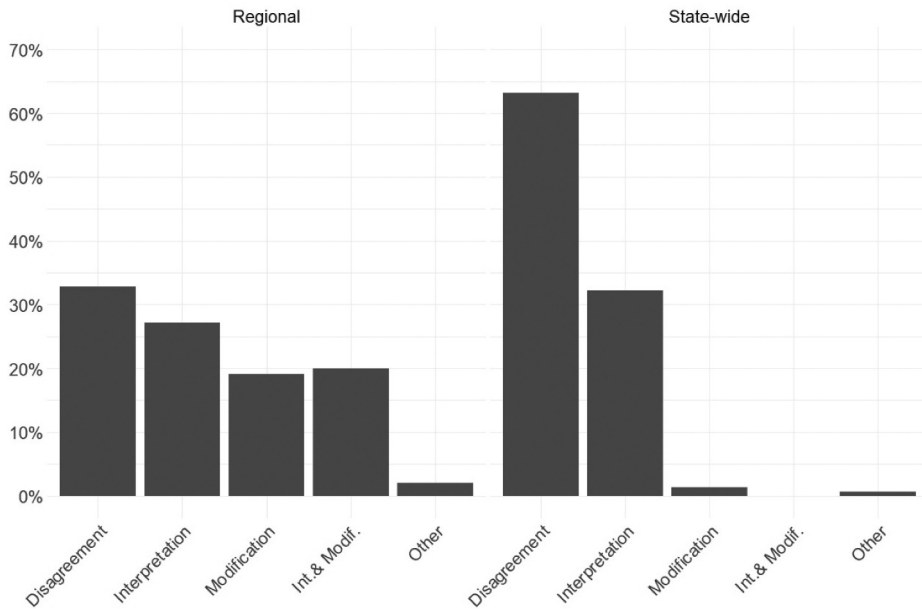


Figure 3. Distribution of bilateral cooperation commission results by type of legislation. $N = 737$. The figure includes all BCC negotiations from 2000 to 2021.

avoiding CC challenges and in agreements being reached. Of the 737 negotiations that took place in BCCs, we found some kind of agreement was reached in 449 of them, while in 288 cases no agreement was reached, either because both sides officially stated that the negotiations had failed, or because the negotiations did not end in any official statement being made. When agreements were reached, challenges to the CC were infrequent, occurring in only 8.8 per cent of cases. However, according to our data, when there was no final agreement, 59 per cent of cases ended up in a CC challenge. While 78.2 per cent of BCC negotiations regarding regional laws avoided a challenge being filed to the CC, the success rate was far lower for state-wide laws: only 52.3 per cent of negotiations avoided a further legal challenge being filed by a regional executive.

In other words, if the possibility of BCC negotiations had not existed and the executives had instead filed a challenge, from 2000 to 2021, 431 more challenges would have been filed in the CC regarding regional legislation and 78 more regarding state legislation. These results confirm our H_1 : BCCs have reduced potential conflict between central and regional governments in terms of avoiding some legal discrepancies reaching the CC, but they have been more effective in preventing challenges filed by the central government than by regional governments.

Examining these general numbers reveals significant variability. As shown in [Figure 3](#), we find evidence of a strong imbalance in terms of whether

agreements are reached and what types of agreements. We find clear evidence of the asymmetry in favour of the central government described in the literature. As expected in H_2 , more agreements were reached in regional than in state-wide laws. And as expected in H_{3a} , the modification outcome was far more common in regional laws (with only one case regarding state-wide legislation) and, as we shall show later (see Figure 6), H_{3b} is confirmed since, according to our data, modification agreements are more common for laws than for decrees.

So far, we have confirmed our first set of hypotheses H_1 , H_2 and H_3 : the introduction of this specific cooperation mechanism (BCCs) has indeed been effective in reducing the number of conflicts by avoiding some legal discrepancies reaching the CC, although the number of challenges did increase after the wave of statute of autonomy reforms. The increase in the challenges made to both regional and central government legislation from 2006 was parallel to the wave of reforms being carried out to some ACs' self-government charters – their statutes of autonomy. This involved five ACs: the Valencian Community (in 2006), Catalonia (in 2006), the Balearic Islands (in 2007), Andalusia (in 2007), Aragon (in 2007) and Castilla y León (in 2007); later on, Navarre (in 2009) and Extremadura (in 2011) also reformed their statutes of autonomy. These new regional frameworks and their legal deployment might be the source of these higher levels of conflict as correctly expected in our H_{4a} and H_{4b} .¹⁷ In any case, this positive outcome was far more pronounced for regional laws than for state-wide laws. When BCCs deal with state-wide laws, the regions do not come out of the negotiations with modification agreements, and over six times out of ten do not reach any agreement at all; they eventually file challenges with the CC just as they used to previously.

Yet there is a significant degree of variability across regions that remains unexplained. A quick glance at the regional distribution of BCCs shows that their impact varies across regions and does not actually fit the patterns derived from the statute of autonomy reforms (as had been expected in H_{4a} and H_{4b}). We observe a variegated distribution of negotiations, agreements, and types of agreements (see Figures 4 and 5).

Firstly, most of the negotiations are concentrated in very few of the regions. In fact, matters regarding Catalonia, the Canary Islands and Galicia represent 16.7 per cent, 9.2 per cent and 8.4 per cent of all negotiations respectively, that is, one third of the total for the whole period. Catalonia amended its statute of autonomy in 2006, but that was not the case of the Canary Islands or Galicia. Secondly, and apart from the overall activity that took place in the BCCs, another relevant feature is the distribution of regional vs. state-wide legislation negotiations. Some BCCs exclusively opened negotiations on regional laws (Asturias, La

¹⁷ All 'reformed' statutes of autonomy have regulated bilateral commissions following article 33 of the LOTC reform made in 2000 (Expósito Suárez, Israel 2010). Murcia (2013), Castilla la Mancha (2014) and Canarias (2018) later reformed their statutes of autonomy as well, but only on minor issues. See: https://mpt.gob.es/politica-territorial/autonomica/Estatutos_Autonomia/Estatutos_reformas.html [Accessed 8 April 2023].

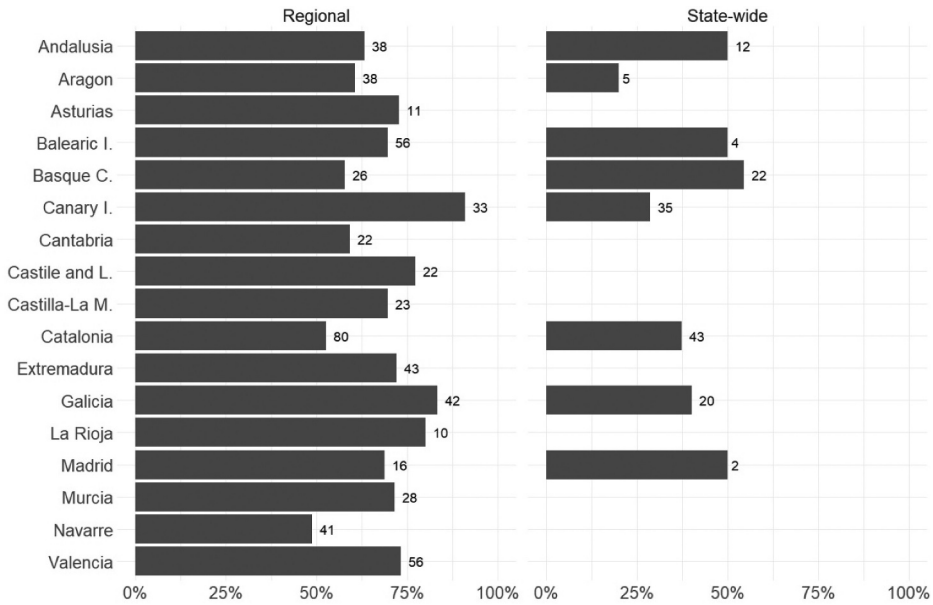


Figure 4. Agreement rates in bilateral cooperation commissions by region and type of legislation. $N = 737$. This figure shows the percentage of BCC negotiations from 2000 to 2021 that resulted in an agreement, categorised by region and type of legislation. The numbers within each category indicate the total number of negotiations for that specific category. For instance, about 65 per cent of BCC cases in Andalusia addressing regional legislation ($n = 38$) concluded in an agreement.

Rioja, Murcia, Navarre and Valencia) and others almost exclusively on regional laws (Cantabria, Castilla y León and Castilla-La Mancha), with practically no negotiations carried out on state-wide legislation. Thirdly, and against the general trend of BCCs being principally related to regional legislation, one region, the Canary Islands, negotiated on more state laws than regional laws. Overall, the general increase in the use of BCCs does not appear to be related to the reform of the statutes of autonomy, refuting hypothesis H_{4a} , which had anticipated a connection. Except for the case of Catalonia, the other regions that consistently increased the use of bilateral commissions were not regions that reformed their statutes of autonomy. Finally, Navarre and Catalonia show the lowest rates of agreement on regional laws, while Galicia and the Canary Islands have the highest rates of agreements reached. The variability is not only notable in terms of usage and agreements but on the type of agreements as well. [Figure 5](#) shows significant cross-region variability of agreements on regional legislation.

In several ACs, most agreements were of an interpretative nature, but in Aragon, Cantabria and Valencia there was a predominance of modification agreements. Modification agreements are probably the most interesting type of agreement since they involve the regional executive making a commitment

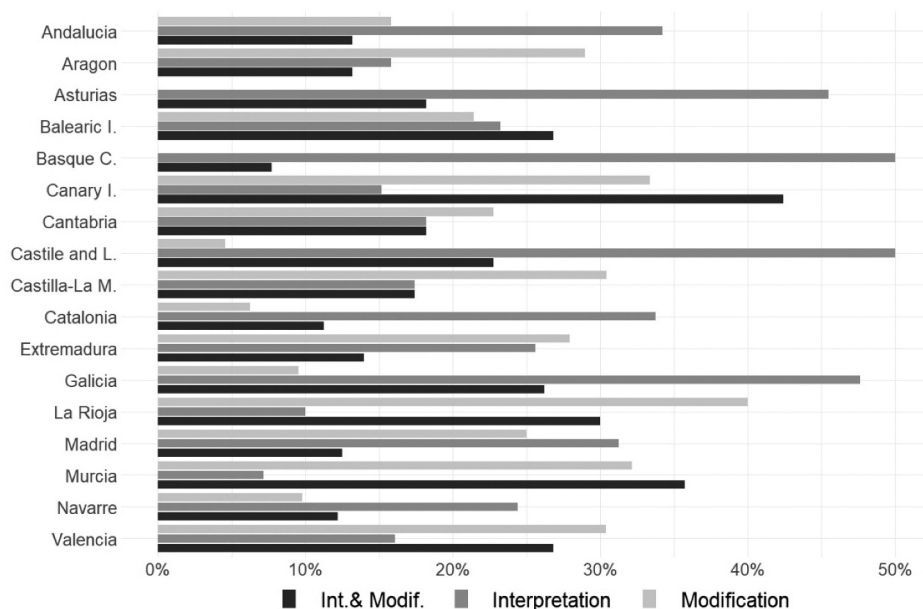


Figure 5. Results of bilateral cooperation commissions on regional legislation by region. $N = 585$. The figure shows the outcomes of all BCCs on regional legislation from 2000 to 2021, categorised by region.

to modify laws in the regional parliament.¹⁸ There are also important variations in interpretation agreements across regions; they do not involve legislative changes being carried out in a parliamentary procedure but do indicate a degree of consensus on how the norm will be legally interpreted in the future. Therefore, variability in the terms of the agreements reached and types of agreements which are not explained by statute of autonomy reforms must be related to other factors and remain unknowns which need to be investigated further by using a multivariate analysis in a study that goes into more depth (see next subsection).

This analysis will be even more complex if we introduce another observed bivariate item such as the degree of success of the negotiations by region and type of legislation. By degree of success, we mean cases in which an agreement is reached, and the law is not challenged in the CC. As we mentioned earlier, in many cases success is synonymous with an agreement in the BCC, but not always. In any case, we count a success as the absence of a further challenge to the CC. In Figure 6, we show that, again, success varies significantly by type of legislation. Aragón, the Basque Country, Catalonia and Navarre show the lowest scores for success in terms of regional laws (the majority of cases). Overall, at the regional level, there is a higher degree of

¹⁸ As mentioned in the previous section, there is no guarantee that the terms of this agreement will be respected by the regional executive and the norm does not foresee any control mechanism.

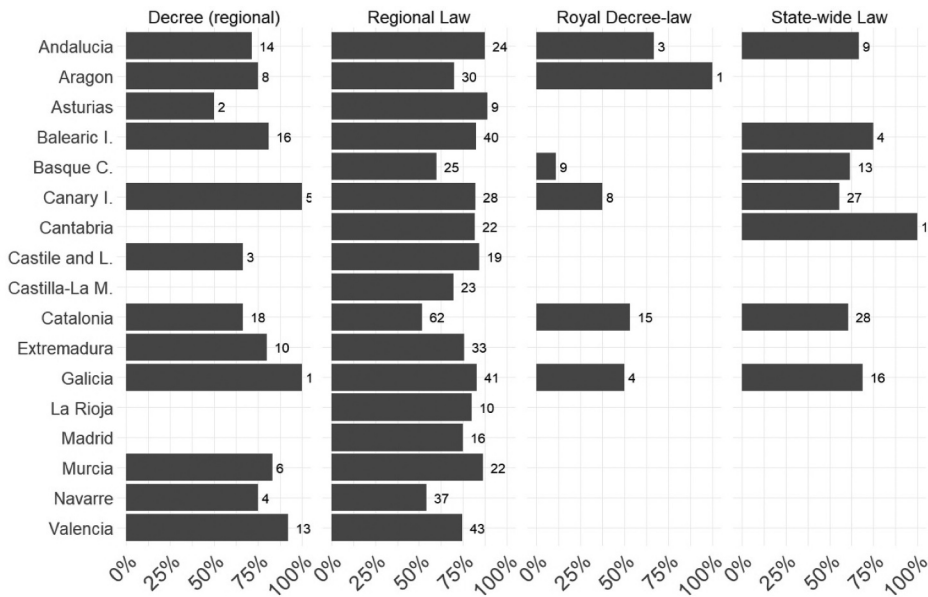


Figure 6. Success of bilateral cooperation commissions by region and type of legislation. $N = 737$. This figure shows the percentage of BCCs from 2000 to 2021 that resulted in an agreement, categorised by region and type of legislation. The numbers within each category indicate the total number of cases for that specific category. For example, approximately 70 per cent of BCC cases in Andalusia that addressed regional decrees ($n = 14$) concluded in an agreement.

success for laws than for decrees. This is logical, and again confirms our hypothesis H_{3b} , since decrees are initiated by the regional government, and we can assume that the regional executive will be less prone to modifying its own decrees. There are relatively fewer cases of this in negotiations on state-wide legislation, except for Catalonia and the Canary Islands, again with varying rates of success.

Multivariate results

In this subsection, we aim to explain the variability of outcomes of BCC negotiations by using a more complex approach. We conduct a series of logistic regression analyses, both multinomial and binary, to unpack the partisan dimension of BCC negotiations (H_5 and H_6). Each analysis is conducted separately for regional legislation negotiations ($N = 585$) and state legislation negotiations ($N = 152$). Our findings throughout this subsection point to political partisanship and majorities affecting BCC outcomes. Although the variance explained by the models is not very high, we believe the evidence indicates a relevant effect.

In Table 2, we compare the likelihoods of the different BCC negotiation outcomes – as dependent variables – Modification, Interpretation,

Table 2. Multinomial logistic regression model on regional legislation negotiation outcomes compared to a 'No Agreement' outcome.

	Dependent variable:			
	Interpretation (1)	Modification (2)	Interpretation-Modification (3)	Other (4)
Incongruent SWP	−0.576** (0.280)	−0.191 (0.286)	−0.573* (0.318)	−0.657 (0.669)
Incongruent NSWP	−0.556* (0.308)	−0.763** (0.343)	−1.021*** (0.363)	−0.208 (0.691)
Congruent	−0.029 (0.269)	0.672** (0.267)	−0.218 (0.314)	−0.429 (0.607)
Absolute Majority Central Parliament	−0.034 (0.238)	−0.572** (0.274)	−0.405 (0.273)	−0.330 (0.678)
Statute	−0.361 (0.241)	−0.642** (0.270)	−0.724*** (0.282)	−0.846 (0.621)
Decree	−0.439 (0.310)	−0.048 (0.333)	−0.399 (0.318)	1.790** (0.688)
Time	0.591* (0.334)	0.079 (0.318)	0.904** (0.392)	−0.358 (0.722)
Fixed effects ACs	No	No	No	No
Observations	159	112	117	12
Akaike Inf. Crit.	1,680.711	1,680.711	1,680.711	1,680.711

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$.

Table 3. Logistic regression models on successful outcomes of regional legislation negotiation.

	Dependent variable:		
	Success		
	(1)	(2)	(3)
Incongruent SWP	−0.234 (0.234)	−0.311 (0.240)	−0.472** (0.267)
Incongruent NSWP	−0.903*** (0.228)	−0.966*** (0.233)	−0.690* (0.381)
Absolute Majority Central Parliament		−0.166 (0.210)	−0.281 (0.226)
Statute		−0.377* (0.210)	1.348** (0.656)
Decree		0.282 (0.273)	0.224 (0.288)
Time		0.128 (0.275)	−0.507 (0.385)
Fixed effects ACs	No	No	Yes
Observations	585	585	585
Log Likelihood	−329.443	−327.010	−313.195
Akaike Inf. Crit.	664.886	668.021	672.391

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$.

Table 4. Multinomial logistic and logistic regression models on state-wide legislation.

	Dependent variable:			
	Interpretation (Multinomial log-linear)		Success (Logistic)	
	(1)	(2)	(3)	(4)
Incongruent SWP	−0.561 (0.574)	−0.857 (0.753)	−1.324** (0.523)	−3.022*** (0.936)
Incongruent NSWP	0.107 (0.449)	0.368 (0.738)	−0.662 (0.435)	−1.207 (0.744)
Absolute Majority Central Parliament	0.228 (0.390)	0.098 (0.452)	0.112 (0.356)	0.272 (0.433)
Statute	0.077 (0.381)	32.159*** (0.883)	−0.055 (0.359)	−20.478 (1,605.911)
R. Decree	−1.167*** (0.448)	−1.178** (0.487)	−0.977** (0.381)	−0.642 (0.427)
Time	0.519 (0.593)	−0.893 (0.787)	0.020 (0.539)	0.777 (0.737)
Fixed effects ACs	No	Yes	No	Yes
Observations	49	49	152	152
Log Likelihood			−98.743	−82.482
Akaike Inf. Crit.	191.798	191.545	211.486	200.965

Note: ** $p < 0.05$; *** $p < 0.01$.

Interpretation-Modification, and Other, against the likelihood of a No Agreement outcome for regional laws. We do the same in Table 3, with Success as the only dependent variable for regional laws. In Table 4, we compare the likelihood of Interpretation and Success for state-wide laws. In

the Operationalisation section we have detailed the dependent variables we are using.

Focusing first on partisanship dynamics, [Table 2](#) yields negative coefficients in the association between opposing parties, either SWP nor NSWP, leading the central and regional governments and all BCC negotiation outcomes, compared with No Agreement. In other words, having opposing parties in central and regional governments increases the likelihood of a No Agreement outcome. Results show that under conditions of SWP incongruence, the coefficients are statistically significant for Interpretation outcomes but not for Modification or Interpretation-Modification outcomes. Conversely, under NSWP incongruence, coefficients are statistically significant for Modification and Interpretation-Modification outcomes, while it is not significant for Interpretation outcomes. This suggests that when a SWP and a NSWP are in the central and regional governments, respectively, agreements are less likely than if the governments are led by two SWPs. However, when controlling for the effects of ACs (see [Table A1](#) in Supplementary Materials), we find that the opposition coefficients for NSWPs are less robust than those for SWPs. Specifically, among the coefficients for both NSWP and SWP incongruence, only the coefficient for the Interpretation outcome under SWP incongruence reaches conventional significance. This could be because in [Table 2](#) the significant effect of NSWP models was mostly driven by specific ACs. Despite this, we still observe an overall negative association between political incongruence and the achievement of all types of agreements.

In [Table 3](#), in the models for the Success dependent variable – which we consider to be avoiding challenges being filed before the CC – we find similar results. All the models (column 1, 2 and 3) yield negative coefficients for political incongruence between central and regional governments. However, for SWP incongruence, none of the coefficients reach conventional significance. In contrast, coefficients for NSWP incongruence in models 1 and 2 are statistically significant, but not in model 3 when the effects of ACs are controlled. This suggests that having different party affiliations in central and regional governments increases the likelihood of challenge being filed before the CC when a NSWP is present in the regional government. Nonetheless, controlling for AC effects indicates that these results may be driven by specific ACs.

Overall, these results provide evidence of partisan dynamics existing in BCC negotiations, confirming H_5 . This finding suggests different negotiation patterns depending on the political colour and nature of the executive, although these effects could also be related to the specific content of the regional legislation in cases in which there are NSWP executives.

When we focus on how having an absolute majority in the central parliament affects BCC outcomes (H_6), the evidence is less clear. In our model in [Table 2](#), all ‘Absolute Majority Central Parliament’ coefficients are negative, which would

imply that having an absolute majority in parliament decreases the chances of reaching any kind of agreement. However, these results are only statistically significant in the case of the Modification outcome.¹⁹ Similarly, our results suggest that when the central government lacks an absolute majority in parliament, there is a higher likelihood of reaching a modification agreement in BCCs. This could be explained by the dynamics of multilevel governance, where some SWPs in a minority central government may seek out agreements with NSWPs to secure their support in parliament. Finally, when we look at the different outcomes in BCCs between ACs that reformed their statutes of autonomy with those that did not (Tables 2 and 3), our data show ambivalent results. In Table 2, all the ‘Statute’ coefficients are negative, but only Modification and Interpretation-Modification are statistically significant. Similarly, column 2 in Table 3 shows a negative coefficient for the effect of these reforms on the success of BCC negotiations, with a p-value of less than 0.1, indicating marginal statistical significance. These results could lead us to conclude that statute of autonomy reforms have led to a lessened likelihood of achieving agreements within BCCs. However, when the effect of the AC is fixed (see column 3 in Table 3 and Appendix), the effect of the reform on the success of BCC negotiations becomes positive and is statistically significant. The explanation is that the legislative application of statutes of autonomy has had a diverging impact depending on the region. In some regions, such as Catalonia, more conflicts with the central government have occurred, which does not allow us to either confirm or reject H_{4b} . Further studies should explore this variability across regions from a more detailed (and legal) perspective.

Our findings on state-wide legislation are similar to those on regional legislation, although there are far fewer cases of it in our statistical models (Table 4). In Models 1 and 2, we specifically compare the probabilities of an ‘Interpretation’ outcome versus a ‘No agreement’ outcome, excluding other potential outcomes from the analysis.²⁰ Again, we find that having two different SWPs in central and regional government has a negative effect on the likelihood of a BCC outcome to be Interpretation, and also on avoiding a challenge being filed before the CC (‘Success’). However, this is only statistically significant in the latter. When it comes to the effect of having a NSWP governing at the regional level (‘Incongruent NSWP’), the results are more ambiguous. While its coefficients in terms of an Interpretation outcome occurring in a BCC are positive, they are negative for Success. However, neither is statistically significant. This finding suggests a specific political dynamic for state-wide legislation involving confrontational dynamics between SWPs when opposing SWPs are in power at the central and regional levels (PP vs. PSOE and vice versa). This is reinforced since NSWP executives also show a negative correlation with successful negotiations.

¹⁹Note that the results do not vary greatly if we fix the effects of ACs (see Table A1 in Supplementary Materials).

²⁰This focus on ‘Interpretation’ versus ‘No Agreement’ is due to the limited number of cases for the other outcomes. For a model comparing all potential outcomes, see Table A4 in Supplementary Material.

Another difference with regional legislation is the effect of having an absolute majority in parliament ('Absolute Majority Central Parliament') on BCC outcomes and success, where none of the coefficients are statistically significant.

Furthermore, two additional aspects are observed when looking at the results in Table 4. First, laws that are the result of Royal Decrees ('R. Decree') are far less prone to producing interpretative outcomes in BCCs, and less prone to avoiding challenges being filed in the CC, but the latter is not significant when the effect of ACs is fixed. Since these pieces of legislation are proposed by the central government itself, it will be far less flexible about negotiating these kinds of agreements with the regions (again this finding confirms H_{3b}). Second, ACs that have reformed their statute of autonomy ('Statute') tend to reach more Interpretative outcomes than those who have not, but there are no statistically significant results on other types of Success, which does not allow us to accept our H_{4b} by using only descriptive evidence. This finding is counter intuitive. One potential explanation is that the legal development of these statutes is somehow re-negotiated and endorsed by SWPs in interpretative agreements made in BCCs. Thus, this could be an additional function of BCCs: to offer an institutional channel to re-negotiate statutes of autonomy.

Discussion

Our analysis focuses on identifying the overarching trends and patterns related to the activity and outcomes of the bilateral cooperation mechanism that had been outlined in article 33.2 Organic Law of the Constitutional Court (LOTC) and that underwent a legislative reform in 2000 (Organic Law 1/2000) to institutionalise it in the Spanish territorial system. Our primary emphasis is on two key dimensions: the nature of the legislation under dispute (central or regional) and the resulting outcomes, categorised as agreements (with a specific focus on agreement types) or conflicts (such as a constitutional challenge to the CC being filed). The analysis illustrates at least three major issues.

Firstly, the role of constitutional courts in shaping federations, as authors such as Poirier and Saunders (2015), Aroney and Kincaid (2017) and Popelier and Bielen (2019) have already highlighted. That is, the outsize role that intergovernmental political actors have attributed to the CC in Spain.

Secondly, the case of BCCs also contributes to illustrating that intergovernmental relations can shape and transform the institutional setting even if they, apparently, do not hold a strong role in the system. IGR in Spain are defined as weak and barely institutionalised. Notwithstanding, the BCCs deal with and make decisions on issues concerning the distribution of powers. They do so in a way that mainly aligns with party politics, as our findings suggest. BCCs do indeed prevent some of the disputes reaching the Constitutional Court but underline the importance of party politics in defining constitutional disputes, something that is common in all federations and decentralised systems (Behnke

& Benz 2009, p. 213; Fenna & Schnabel 2024). However, the paradox is that by seeking to reduce politically motivated conflicts being filed before the Court, the BCCs' gatekeeper role can actually strengthen intra-party and inter-party competition in shaping the resolution of these disputes, that is, their outcomes.

Thirdly, and linked to the previous point, intra-party politics contribute to shaping the resolution of disputes not only because politics is a driver of intergovernmental relations. Intra-party politics exists within and responds to the top-down and hierarchical nature of both intergovernmental relations and decentralisation in Spain. The BCC outcomes thus reflect institutional and intra-party hierarchies. Finally, our contribution targets the specific dynamics of intergovernmental decentralisation relations in Southern Europe. Our findings are particularly relevant for cases of decentralisation such as IGR in Italy, in which disputes over jurisdiction cause high levels of conflict (Ceccherini 2021; Salvati 2022).

Indeed, our findings are consistent with the previous literature on BCCs and IGR in Spain which indicates their hierarchical functioning. At the same time, we provide a new contribution to the field of study by using an original dataset and a unique analysis of the outcomes of BCC negotiations over the last two decades (2001–2021). As Beilfuss (2007), pp. 35–36 predicted, this bilateral cooperation mechanism included in article 33.2 of the Organic Law on the CC is in practice mostly used by the central government, and displays a strong imbalance of power between central and regional governments in favour of the central government. In fact, Beilfuss hoped that the progressive incorporation of the mechanism into all ACs would alter the dominance of the central government in these negotiations, but our data does not confirm this hypothesis. There is still an important imbalance in terms of how BCCs are initiated. In our database, only 152 out of 737 negotiations were initiated by regional governments to contest state-wide legislation.

Beyond adding to the evidence underlining the central government's leading role, our analysis of BCCs yields evidence on five relevant issues. First, in the 2006–2008 period and also from 2009 onwards, there was a substantial increase in both the generalised use of the BCC mechanism and direct challenges made before the CC. Second, a clear pattern emerges in terms of types of agreements reached at the end of the negotiations, depending on the pieces of legislation negotiated. Agreements on state-wide legislation have hardly ever included any commitment to carry out legislative modifications; in other words, regional governments' bargaining expectations appear to be limited to achieving interpretative agreements at the state-wide level since they do not expect any legal modifications. Third, the success of the BCCs as gatekeepers of constitutional appeals to the Court is not bidirectional but mostly top-down. That is, in 78.2 per cent of the cases that deal with regional legislation, negotiations avoided challenges being brought before the CC and managed to reach agreements; however, this success rate dropped to 52.3 per cent when the

negotiation dealt with state-wide legislation. Fourth, the logistic regressions performed in the last section show clear political influence both regarding the use and the efficacy of BCCs. As we might expect, the use of BCCs to debate regional legislation is far more common when both levels of government are in the hands of the same party. However, when negotiations are on state-wide legislation, most are held between governments of different political colours. In terms of success and agreements, agreements being reached on regional legislation are more common when both governments share the same political colour.

Conclusions

A general overview of our findings raises both theoretical and explanatory issues. In theoretical terms, we observe that the bilateral mechanism analysed in this paper is clearly vertical but not bi-directional. Both its use and its outcomes are biased towards the dominance of the central government in Spain. The predominance of negotiations on regional legislation, of legislative modification agreements and of high rates of success when the same party rules both levels of government are consistent findings that reinforce the inequality thesis. This theoretical conclusion should be complemented with a deeper examination of the variability in terms of uses and outcomes that we do not tackle in our research.

The striking rise in levels of conflict (measured as constitutional challenges) since 2009 is probably related to a recentralisation trend of Spain's *Estado de las Autonomías* (state of autonomies). This recentralisation has been a trend observed by several authors since the beginning of the economic crisis or even before it, ever since the statutes of autonomy reforms (Cole, Harguindéguy & Pasquier 2015). To understand this phenomenon in a more comprehensive way, issues that contribute to a high number of bilateral negotiations and conflicts must be examined, such as the political and legal evolution of Catalonia since its statute was reformed in 2006.

Future research on this topic is imperative, since numerous questions remain unanswered. The exploration of additional exogenous variables is necessary to elucidate temporal and regional variations in a comprehensive way. Case-studies should also be considered and additional juridical variables should be included, such as specific discrepancies regarding powers and other aspects covered in the existing legal studies scholarship (Expósito Suárez, Israel 2010; Ramos 2006). Nevertheless, the overarching perspective of the evolution of the BCCs over the past two decades paints a picture of a Spanish territorial model and IGR that are characterised by escalating political tensions and conflicts between governmental tiers as described in the extant literature (Agranoff & Antonio Ramos Gallarín 1997; Franco-Guillén 2019; Colino 2020). We uphold that bilateral cooperation can be an important mechanism in multilevel political

systems, but we can now assert that the Spanish BCC system falls short of achieving the federal ideal of cooperation on an equal footing between the central government and the regions.

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No potential conflict of interest was reported by the author(s).

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