Intergovernmental relations in Spain: the case of bilateral negotiations[*]

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Intergovernmental relations (IGR from now onwards) are an essential institution of any decentralized state. Watts (1996) identified at least two crucial functions of

[*] Draft paper prepared for the "Septième Congrès triennal de l'ABSP: « L'État face à ses transformations", please do not quote without permission.

intergovernmental institutions which, noted, can work as formal or informal channels. The first function refers to conflict avoidance: IGR are crucial mechanisms to solve and avoid conflict between levels of government. This function becomes essential in federations where an important part of federal legislation must be developed by regional governments. The second function refers to institutional adaptation: IGR are also useful means to adapt the territorial model to new circumstances. These relations between governments can be vertical (state/federal level – regional/substate level) or horizontal (inter-regional). While executive federalism has been characterized by cooperative dynamics (i.e. Germany), in those cases characterized by a highly defined jurisdictional separation of powers (dual federalism), such as in the USA and as in Switzerland, IGR have been traditionally horizontal and focused on lobbying federal legislators (so-called "federalism without Washington" or "without Bern").

In this paper we would like to shed light on the role of a particular bilateral IGR mechanism in Spain: the bilateral commissions of cooperation (bilateral commissions from now onwards) that are aimed at mediating in those constitutional disputes on legislation involving central government and autonomous-community (AC) executives:. In our research we have analysed the activity and outputs of the bilateral commissions for the period 2000-2015. Using data from official sources (BOE, Official State Gazette) and secondary literature, we have built a database which contains all negotiations on Spanish-wide and autonomous-community legislation since 2000.

The article is divided into five sections. In the first section briefly we introduce bilateral commissions in the broad context of IGR in Spain. We show the importance of this mechanism in relation to the degree of vertical institutional conflicts concerning regional and state-wide laws. In the e second section, we start by defining the subject of our research and presenting the main characteristics of our database. Then we turn to provide an initial descriptive analysis of the evolution of the bilateral commissions based upon several descriptive variables such as type of legislation at stake and as the outputs derived from the negotiations. This initial and descriptive analysis is a first step towards a more ambitious objective: the explanation of variation among the cases. In the third section we approach the question of explaining variation and we focus on the political colour of parties in office as an explanatory variable. Finally, in the fourth and last section, we present our primary conclusions (still in progress). We claim that the use of the bilateral commissions, initially clustered around few autonomous communities, has become broad and general, although the patterns of behaviour and outputs differ significantly among autonomous communities. Central government predominant position has been clearly identified although, in principle, bilateral commissions are a framework of negotiations between equals.

1. Intergovernmental relations: the bilateral commissions

Since 1978, the working and evolution of the Spanish territorial model has been based upon the predominance of bilateral intergovernmental negotiations. According to

Colino, IGR in Spain are not particularly unique. Spanish IGR share characteristics and problems with other decentralised states such as the lack of constitutional provision of these mechanisms, an ineffective second chamber (Senate), as the lack of transparency or absence of rules and decision procedures in intergovernmental arenas among others (2014, 845–849).

However, there are at least five specific characteristics that can be attributed to the *sui generis* territorial model of Spain[1]. Firstly, there has been a traditionally high level of territorial conflicts concerning the distribution of powers. Secondly, there is a persistence of bilateral models of negotiations related to the political colour of regional and central cabinets. Thirdly, the central government has a dominant position that goes well beyond all constitutional attributions and that has been defined as interventionist. Fourthly, there is a tendency to prioritize legal confrontation instead of using political arenas. This fact is related to the dominance of legal training among senior civil servants (and politicians). Fifthly, concerning financial issues, there is a dependence on central government transfers which, in some cases, happens to be the preferred policy option in those regions that have refused to develop their own taxing powers (Colino 2014, 850–851).

These specific features of intergovernmental relations in Spain can be attributed to both its decentralized nature and its institutional setting. Since 1978, the *Estado de las Autonomías* has shown a dynamic development towards a decentralised model lacking any federal orientation. The inexistence of a "federal pact", (the "constituent" units, the autonomous communities, did not exist in 1978) has led to the prevalence of the central government and to a decentralisation process based upon multi-speed dynamics and characterized by the constitutional conflict. Indeed, the absence of a "federal rationale" is partially the product of a constitutional design that does not provide a framework for IGR[2]. Finally, the decentralized institutional setting has resulted in a mix of federal trends and demands (increased by a plurinational context), with territorial agreements and disagreements both within and between state-wide parties (PP[3] and PSOE[4]) and also between state-wide parties and regional parties (Requejo 2005).

In the current context of institutional crisis subject to increasing recentralizing pressures, on the one hand, and secessionist trends on the other (Grau Creus 2011), intergovernmental conflicts have become the rule, especially the constitutional challenges that either central government or the governments of the autonomous communities file before the Constitutional Court. IGR have been increasingly important as political arenas since there is a clear lack of institutionalized shared-rule compared to other territorial models (Hooghe et al. 2016).

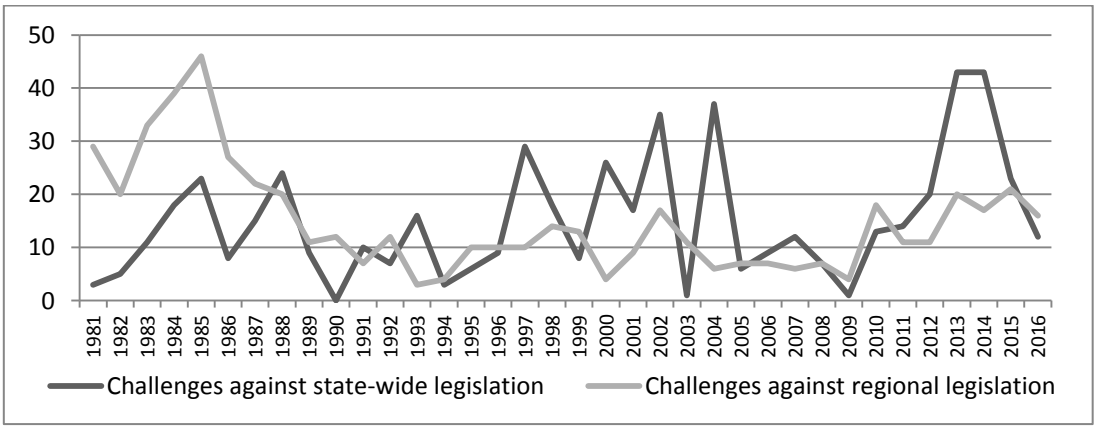
[1] On the Spanish territorial model (*Estado de las Autonomías*) see: (Requejo 2005; Aja 2007)
[2] The Spanish Senate is made up by a majority of provincial senators (lower level than ACs) elected on party-lines.
[3] *Partido Popular* / Popular Party
[4] *Partido Socialista Obrero Español* / Spanish Socialist Workers' Party

In this paper we focus on the bilateral commissions but other arenas such as the *Conferencias Sectoriales* or the *Conferencia de Presidentes* should not be overlooked[5].

The bilateral commissions have been much more active since 2000 precisely as a problem-solving institution. Although some of them existed since the 1980s, their role as mediators in constitutional disputes took longer to establish than other multilateral mechanisms. It was in 2000 when, initiated as a governmental bill, these mechanisms were included in the organic law that regulates the Constitutional Court (CC) (art. 33.2)[6]. According to central government, the objective was to define and set an institutional mechanism addressed to provide a bilateral institutional forum where to negotiate and solve intergovernmental disputes on constitutional encroachments and, therefore, to avoid the filing of challenges before the CC. In fact, the explanatory memorandum of the law (*Ley Orgánica* 1/2000) referred to the CC's opinion itself concerning the necessity to introduce this mechanism. The CC had repeatedly mentioned the general duty of cooperation within the *Estado de las Autonomías* (STC 80/1985) and, since the nineties, has been recommending a "…search of flexible mechanisms within the respect of the jurisdictional framework in order to reduce the degree of conflictivity" (STC 13/1992).

In this sense, the establishment of these mechanisms as a part of the CC organic law implied that once a dispute on a new piece of legislation had been defined (either by the governments of any AC or by central government), intergovernmental actors could call for a meeting of their corresponding bilateral commission with the objective of reaching an agreement to prevent a constitutional challenge. In any case, the lack of agreement would not prevent the challenge; rather, it would just delay it six more months from its initial deadline[7].

Graph 1. Challenges against regional and state-wide legislation (1981-2016)[8]



[5] We do not provide data on multilateral mechanisms, see: (Beilfuss 2007)

[6] See: two new sections were included in article 33 of the LOTC: https://www.boe.es/buscar/doc.php?id=BOE-A-2000-411

[7] Deadlines to challenge laws are three months since their official publication.

[8] Data from BOE and Ministry of Public Administration.

The introduction of this novel mechanism was justified by the facts. Graph 1 shows the level of conflict expressed as legislation challenges (to state-wide or regional legal pieces) since 1981 to 2016.

In fact, Graph 1 hides diverse patterns, since the level of conflict can be explained by multiple reasons across time. The beginning of the decentralisation process was extremly conflictive, that is when the fast-track ACs (Catalonia, Basque Country, Galice and Andalusia) developed their Statutes of Autonomy through regional laws while creating important tensions (Requejo and Nagel 2011). In the 90s these legal conflicts became more and more politicised and most of them arised since 1996, when the conservative and centralist party PP (*Partido Popular*) came to power. Empirical reserach has shown how the former conflictive ACs were replaced as "conflictive actors" by regions were PSOE was in office such as in Castilla La Mancha and as in Extremadura (Creus 2005). In any case, the introduction of the bilateral commissions was clearly justified in the light of the existing level of conflict and the lack of publicity of vertical bilateral cooperation relations[9].

Beyond these aspects related to the 33.2 mechanism provision, the bilateral commissions raise deeper legal and political issues. From a legal point of view it is unclear whether the agreements are legally binding. That is, when regional and central governments reach a "political" agreement on power distribution, should this agreement become a precedent for future CC decisions? This is also a problem from a democratic point of view. Is it legitimate to modify a law approved by the regional Parliament in an intergovrnmental agreement?

2. Description and analysis

There is little empirical research on the actual use and effects of bilateral intergovernmental mechanisms of cooperation based on empirical data (Colino 2013). Existing analysis have been centred on particular cases (i.e Catalonia and Aragon: Corretja, Vintró, and Gil 2011; Rondoní 2011; Callejón 2011); based exclusively on legal aspects rather than on IGR (Morales 2009; Royo 2013); focused on a concrete policy (Gallarin and Fernández 2004) and on the bilateral commissions, but without

[9] Finally, in this article we do not deal directly with some problems of the bilateral commissions related to how were designed in article 33.2. Beilfuss has pointed out several advantages and disadvantages of the 33.2 design that we also have acknowledged while analysing the result of bilateral meetings (Beilfuss 2007). On the one hand, bilateral commissions are composed of administrative units from central and regional governments with some expertise on the issue. Since the negotiation dynamic is not specified, meetings are normally hold through video-conferences and have an informal and felxible tone[9]. Moreover, the 33.2 mechanism institutionalises cooperation dynamics and helps to the detection of normative disagreements between governments. On the other hand, the lack of precision of the legal framework permits to not publish the results of some negotiations. Therefore, the legal design of the article provokes a lack of publicity and an opportunity for avoiding political costs to the implied actors when de outcomes are not satisfactory. Antoher important problem is how the restults of these negotiations are taken into account by Governments and Courts. Since the law does not forsee any accomplishment method there is a risk of losing its content (particularly when there are regional minority governments involved) (See: Beilfuss 2007, 26-35).

offering a general scope based upon complete empirical data (Ramos 2006; Beilfuss 2007).

2.1. Data and methodology

In this paper we use our own database on bilateral commissions built up on the official records from the Official State Gazette (BOE), ACs Official Gazettes and ministerial data as main sources of information. The database contains information of 396 negotiations. By negotiation we mean the official starting of a bilateral intergovernmental meeting addressed to deal with constitutional discrepancies related to concrete legislation passed by either the parliament of Spain or any AC parliament. To date (March 2017), there are sixteen established bilateral commissions (only the bilateral commission Central Government- Castilla y Leon has not been established)[10]. The database has information on the object of disagreement, the actor that initiates the disagreement, the span of time that each negotiation has taken, and the outputs of each negotiation.

The outputs of negotiations are classified according to (a) whether there is an agreement; (b) and, when there is an agreement, its substantive content. We have identified three types of content[11]:

- *Interpretative:* both governments agree on a certain interpretation of a norm. For example: in November 11th 2013, the Central and Andalusian governments reached an agreement of how to interpret the periods of sales envisaged by the Andalusian Decree-Law 1/2003 on internal trade (internal trade is an AC jurisdiction). Both governments agreed that these periods should be scheduled within the framework prescribed by the state-wide Basic Law 7/1996 on retail trade. This agreement avoided a challenge before the Constitutional Court since the dispute was settled.

- *Legislative modification*: both governments agree on a further legislative modification based upon the terms of the negotiated agreement. For instance, in October 18th 2011, The Central and Extremadura's governments reached an agreement on the Extremadura Law 2/2011 on the modernisation and development of the tourist sector. Both governments agreed on the modification some sections of the law (Article 50, sections one and four) and the suppression of another (section 2. The bases of the agreement were the application of the liberalisation rules established by the Spanish Law 17/2009 on free access to activities and services which derived from the Directive 2006/123/CE on the internal European Union services market. In 2012, the Parliament of Extremadura approved the agreed modification by means of a a decree-law (

[10] That is through the 33.2 LOTC procedures.

[11] The possibility of reaching interpretative and modification agreements initially was not included in the law that was proposed by Central government. It was because of the pressures from CiU and PNV (Basque and Catalan non-state-wide parties) that these possibilities were introduced in article 33.2.

Decree-Law 1/2012). The explanatory memorandum of this regional decree-law specified the necessity to adapt the norm to the EU rules and to implement the bilateral agreement as a means to avoid a constitutional challenge from central government.

- *Other:* this category is less frequent and includes agreements of diverse nature. Most of them agree on passing further new legislation, but neither to modify nor interpret existing norms. An example of these agreements refers to the one reached by Central and Canary Islands governments on the state-wide law 13/2010 on pollution rights within the aviation market. Canarias asked for more information on the environmental consequences of this law when applied to the islands Both governments agreed on the necessity to monitor such pollution market and analyse its consequences.

However, as a matter of facts, it is not unusual that the three types of agreements would coexist in a single case, and, as a consequence, the final outcome is not always as clear as shown in the preceding examples. In this sense, and with the aim to simplify, the different combinations of outputs can be summarized into six categories: 0) Disagreement (with or without challenge before the CC); 1) Interpretative; 2) Legislative modification; 3) Other; 4) Interpretative and legislative modification; 5) Interpretative and other.

We do not envisage a complete analysis to explain the developments of the bilateral commissions. A number of variables should be taken into account to perform a complete analysis including not only the political colour of regional and central cabinets, but also the concrete powers in dispute, case law on each disputed matter, political context, information on the civil servants, etc. In this article, we have a more limited scope and we will focus on a descriptive and a partially-explanatory analysis.

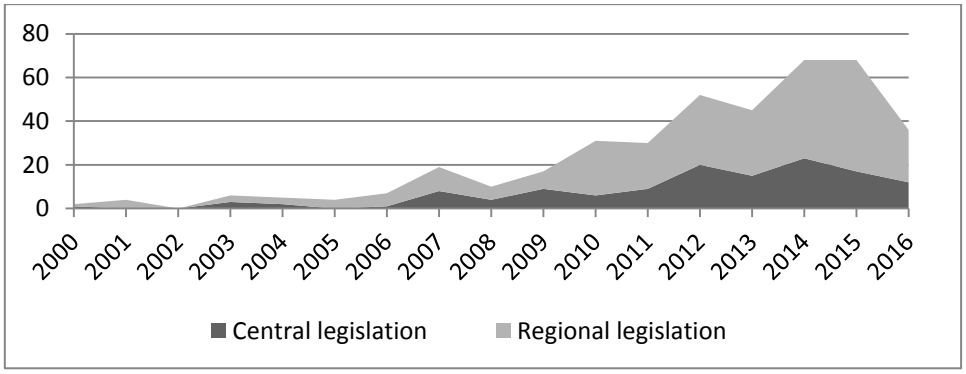
On the descriptive side we look for the evolution and outputs of the bilateral commissions. By which government are bilateral commissions most commonly used? Which are the most common outcomes? How bilateral activities are regionally distributed? We have enough information to answer these questions since the establishment of these institutional mechanisms in 2000. In the next two subsections we present the evolution and features of these mechanisms and the cross-time and cross-region variability of the latter both in terms of use and efficacy.

2.2. Evolution and features of bilateral commissions 2000-2016

The mapping of bilateral commissions since 2000 has been highly heterogeneous. In fact, we observe important cross-time and cross-region differences in both directions of the bilateral relationships. As the mechanism can be initiated by the centre on regional legislation and on Spanish legislation by an AC. Between the period 2000-2016, the evolution of the mechanism b was a sort of “discovery process”. In their new shape provided in 2000, bilateral commissions were virtually not used for their first years of

existence. During the first two years this bilateral mechanism was only used six times, five of them on disputes on regional legislation and one on state-wide legislation. Only two of these negotiations ended up in an agreement, Madrid and Navarra respectively modified the 9/2000 and 18/2001 regional laws; two other bilateral commissions never published the results of their respective outcomes and the rest derived in challenges before the CC. However these first experiences did not impede a remarkable evolution. Since 2006-2007 to 2016, almost all bilateral commissions have held at least one meeting dealing either with Spanish or AC legislation. As we show in Graph 2 the use of bilateral commissions has been clearly dominated by negotiations on regional legislation. Negotiations on regional legislation account for 62% out of the almost four hundred cases; only in 2009 the majority of negotiations were held on state-wide legislation.

Graph 2. Evolution of bilateral commissions by type of legislation (2000-2016)[12]



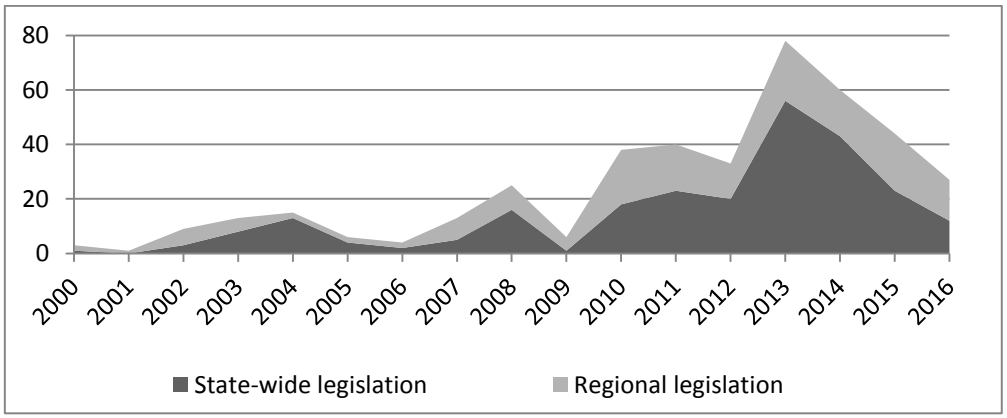
This predominance of regional legislation conflicts was an expected outcome of our analysis. After all, there is far more regional legislative activity (there are 17 regional parliaments). However, as Graph 3 indicates, there is a clear correlation between the patterns observed on bilateral commissions' activity and the number of challenges to the CC. First of all, it can be observed a similar cross-time level of conflict, rapidly increasing since 2006-2007. Secondly, there is an inverse relationship between types of law. Although the majority of negotiations refer to disputes on regional legislation (and, thus, on negotiations initiated by the central government), by contrast, the majority of challenges before the CC issued from failed negotiations refer to Spanish legislation.

These similarities and differences raise relevant questions to our research. One of them is the relation with the political context. In this sense, in 2006 and 2007 the level of conflict increased in parallel to the wave of self-government reforms (reforms of the self-government charts – Statutes of Autonomy) that involved five ACs: Valencian Community, Catalonia, Balearic Islands, Andalusia, Aragon and Castilla y León; later on, in 2009, Navarre and, in 2011, Extremadura, also reformed their Statutes[13]. These new regional frameworks, and their legal deployment, could be the source of these

[12] The source of all graphs, tables and figures is the database built on BOE information (Official State Gazzette) publications.
[13] Canary Islands, Castilla La Mancha and Basque Country initiated reform processes but did not ended reforming their Statute.

levels of conflict[14]. Another question refers to the rather unclear effects of the new bilateral mechanisms. So while it seems clear that their use is related to the level of regions-center conflict, it has also to be evaluated whether they avoid direct challenges to the CC. Data seem to point out a positive effect on regional legislation, but not on state-wide legislation.

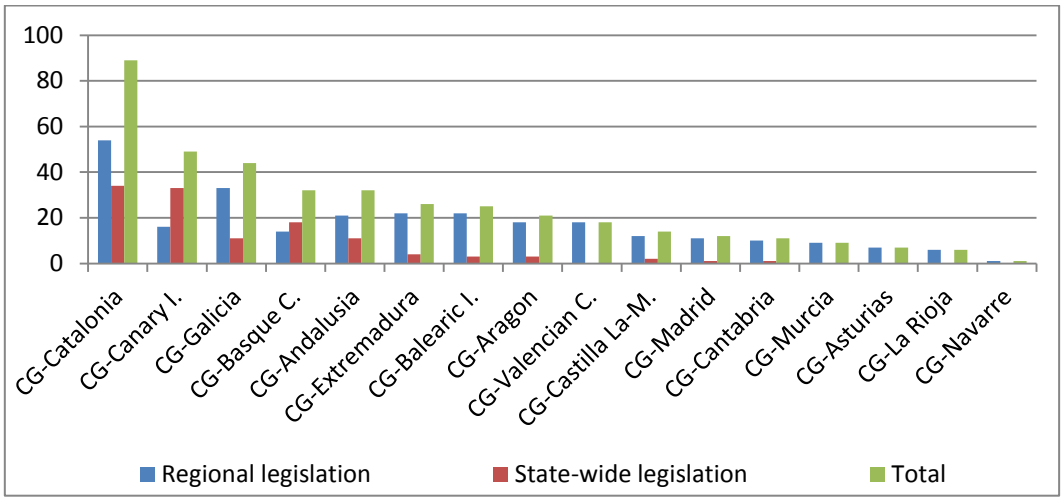
Graph 3. Total constitutionality challenges by type of legislation



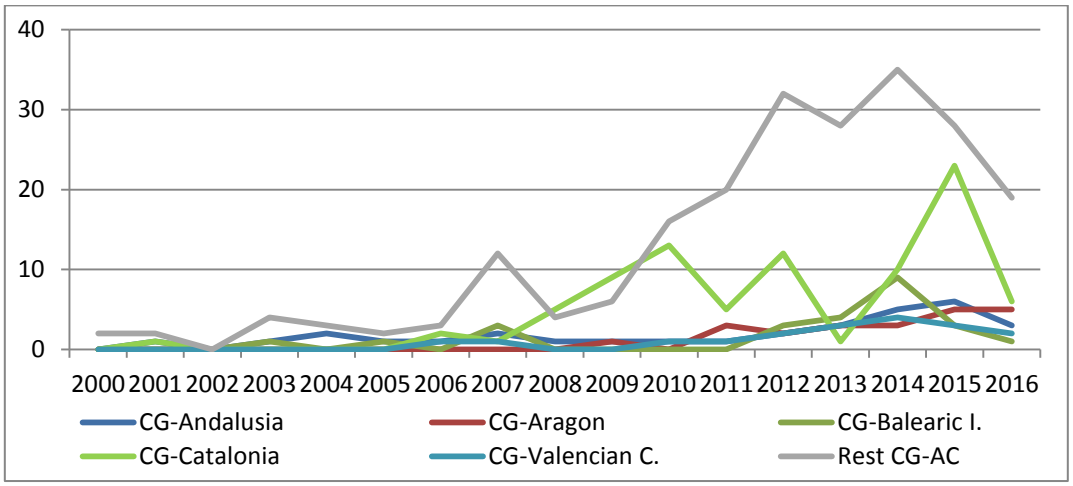
The distribution of bilateral commissions by regions and type of legislation (See Graph 4) sheds some light on the intuitions derived from the cross-time analysis and points out other relevant aspects. We observe a heterogeneous use of this type of bilateral relations that is not directly related to the Statutes of Autonomy reforms. In fact, Catalonia, Canary Islands and Galicia are responsible for almost a half of bilateral commissions' initations (46%). Catalonia reformed its Statute of autonomy in 2006, but that is not case for the Canary Islands and Galicia. In fact, the Valencian Community and also the Balearic Islands show a relatively low activity in spite of reforming their Statutes. Beyond overall activity, a second relevant feature is the distribution of regional vs. state-wide legislation negotiations. Some bilateral commissions, a majority, do not tend to open negotiations on regional legislation but only on regional laws. Finally, against the general trend we observe the cases of Canary Islands and Basque Country that negotiate more central pieces of legislation than regional ones.

[14] All "reformed" Statutes have regulated bilateral comissions following article 33 LOTC reform in 2000 (Expósito Suárez 2010).

Graph 4. Bilateral commissions (2000-2016). Absolute frequencies



Graph 5. Evolution of the bilateral commissions



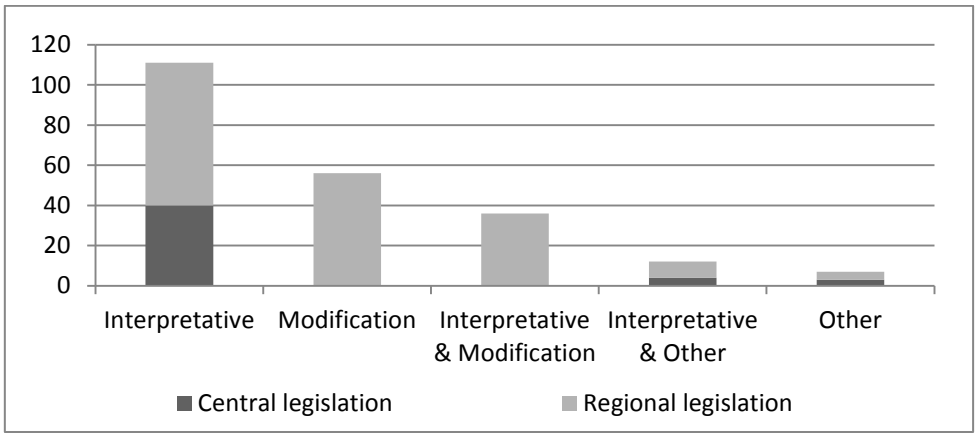
The general increase in use of bilateral commissions does not seem to be related to the "reformed" regions. Except for the case of Catalonia, the rest of regions that consistently increased the use of bilateral commissions do not have a reformed Statute. As we have shown the origin of the use of bilateral commissions has been basically related to regional legislation. In the next section (3), we explore some explanations on this variability.

2.3. Type of agreements reached in bilateral comissions

A vast majority of agreements reached in bilateral commissions are of an interpretative nature. Typically the two governments reach a common reading of the concrete piece of legislation that generated controversy. This kind of agreement amounts to 85% (40 out of 47) of agreements on state-wide legislation and 70% on regional legislation (105 out of 175). In fact, when there has been a negotiation on a regional law, 41% of

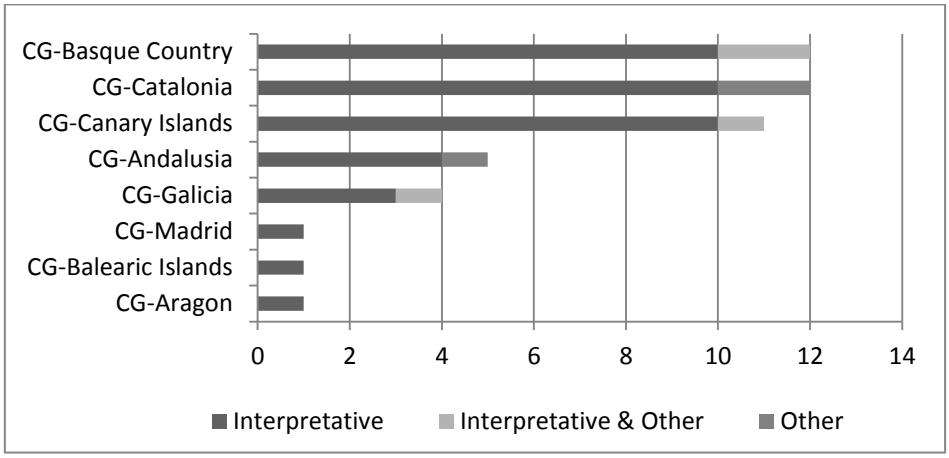
agreements have been interpretative and 21% was also interpretative, but including some legislative modifications, while 5% included interpretation and other kinds of agreements (mainly normative development). Agreements including legislative modifications are only reached when negotiating on regional legislation, 53% of regional negotiations ended up in a legislative modification (See Graph 6).

Graph 6. Type of agreement by type of legislation



Variability across regions concerning types of agreements (See Graph 7, Graph 8) is also considerable. As we mentioned, agreements on state-wide legislation are rare and four ACs concentrate 85% of them (Andalusia, Canary Islands, Catalonia and Basque Country). The Basque region is an outlier since is the most active region in reaching state-wide legislation agreements (12 out of 47), all of them concluded since December 2011, but is far less active in the negotiation of regional legislation (8 out of 147). A reverse case would be Galicia or Extremadura. The former has reached four agreements on state-wide legislation and the latter zero, but they reached respectively 23 and 15 agreements on regional legislation.

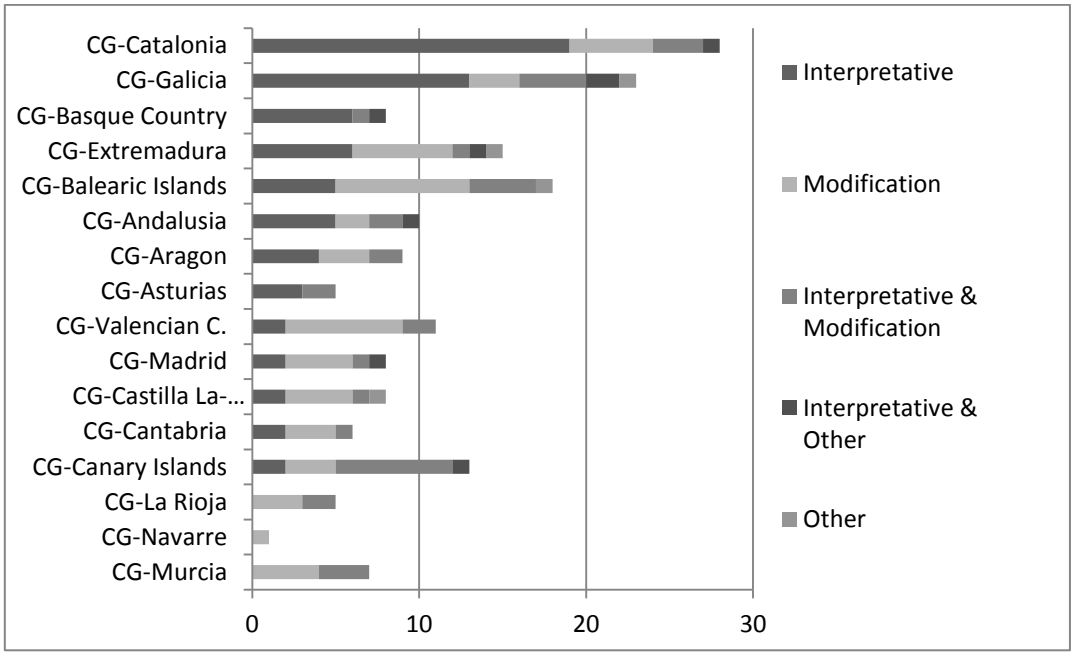
Graph 7. Type of agreement by bilateral commission (state-wide legislation)



In general we observe two relevant patterns concerning the type of agreements reached by ACs and central government related to territorial heterogeneity. First, there is a clear

concentration on few regions when agreements are related to state-wide legislation and only two regions (Andalusia and Catalonia) have reached agreements other than strictly interpretative. Second, less active regions tend to reach more modification agreements on regional legislation than more active regions. For instance Murcia has reached seven agreements on regional legislation and zero on state-wide legislation and all of them implied a legislative modification. By contrast, Catalonia has reached 12 agreements on state-wide legislation and 28 on regional legislation, but only eight implied a legislative modification.

Graph 8. Type of agreement by bilateral commissions (regional legislation)



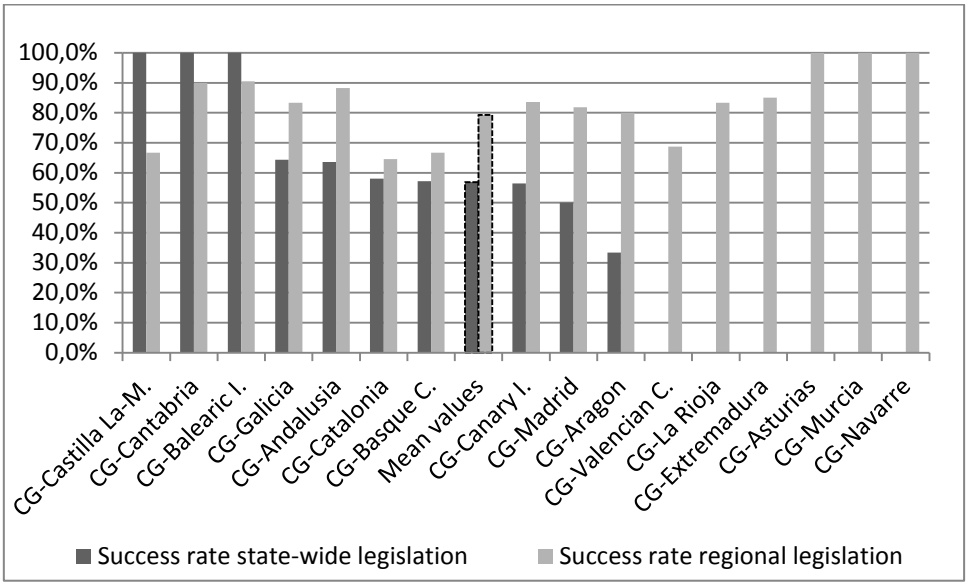
2.4. Efficacy rates by legislation and ACs

Finally, we evaluate the efficacy of the 33.2 mechanism. In order to perform this evaluation we calculate the "efficacy" of bilateral commissions expressed as the percentage of all negotiations that end up in an agreement. We have to remind that the objective of this new mechanism introduced in 2000 was precisely to avoid CC challenges (filed by regional or central governments) through negotiations and agreements within these bilateral frameworks. We already have seen in Graph 3 that challenges have not disappeared neither decreased. In fact, our data has shown a strong trend towards more constitutional conflicts (challenges) both on regional and state-wide legislation since 2006-2007. Nonetheless, we can perform a closer analysis looking at overall "efficacy" by regions and by type of legislation.

Again there is a clear variability among cases (See Graph 9). First, there is a much higher rate of efficacy when negotiating regional than state-wide legislation. That is, bilateral commissions initiated by central government have an efficacy rate of 79,3% while bilateral commissions initiated by regional governments on state-wide legislation

have an efficacy rate of 56.8%. Second, efficacy rates on regional legislation do not have a clear pattern and have to be explained by other variables than Statute reforms. For instance, Balearic Islands have an efficacy rate over 90% and Catalonia of 64,2% but both reformed their Statutes.

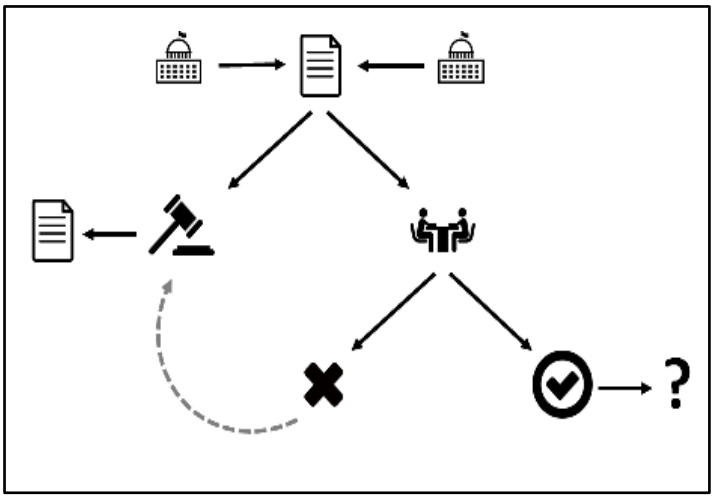
Graph 9. Efficacy rates by legislation and bilateral commissions



3. Explaining variability: the political hypothesis

Our descriptive analysis shows an important degree of variability in terms of use and results of bilateralism that remains to be explained. Once we have a general picture of the bilateral commissions and their procedures (see Figure 1) there are at least three different issues (or levels of decision) related to this variability.

Figure 1. Bilateral comissions under article 33.2 LOTC (simple scheme)



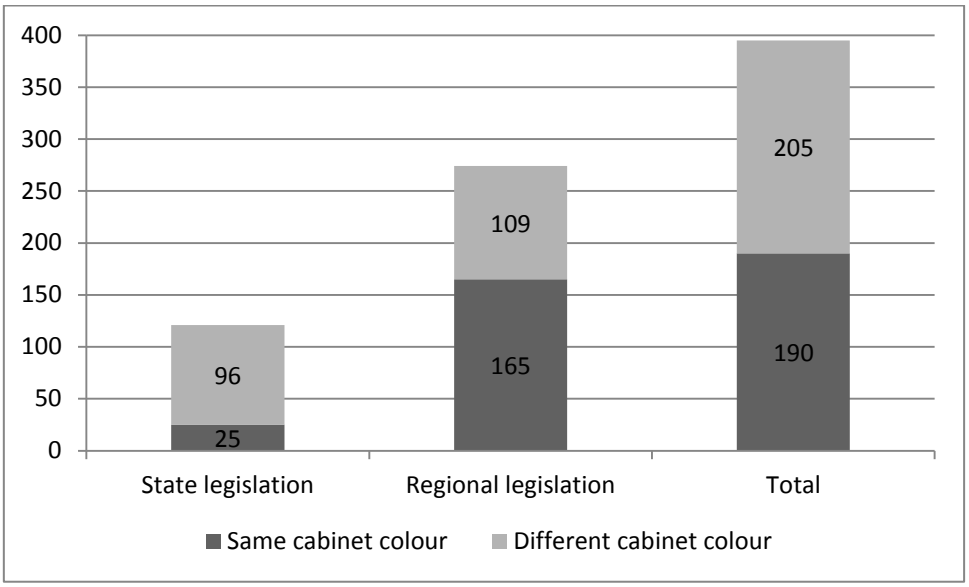
First, we should know why governments (central and regional) make the decision to open a bilateral negotiation on a new piece of legislation instead of taking it directly to the CC. Second, the outcomes of the bilateral negotiation, agreement or failure, have to be explained. . Finally, in case of agreement, we can also wonder why negotiators choose one particular type of agreement (interpretative, legislative modification, etc.).

Rational actors would try to pursue an expected successful path to get to their objective. Therefore, we should know a number of variables related to the expectations of each actor, at least when they make the decision to enter into bilateral negotiations or not. Unfortunately we do not have at our disposal a high number of variables for explaining each decision/negotiation stage outcomes. In this third section we will focus on one particular hypothesis based on the political correspondence between levels of government. We do not have much information on the concrete negotiators and policy-makers involved in each level of government. Obtaining such information would require qualitative techniques and having access to concrete civil servants.

We have discarded the hypothesis of regional Statute's reforms, since we do not observe (except for the Catalan case) significant differences in trends and outcomes between reformed Statute regions and non-reformed regions. An alternative hypothesis could be related to the overall levels of conflict. That is, the more total conflicts measured by direct CC challenges, the more bilateral commissions' activity and, perhaps, less efficacy. This hypothesis would only explain activity and efficacy but not outputs. However, it seems that the levels of conflict are not related to bilateral activity. In our data, we do not observe any association between high or low levels of conflict and the particular degree of efficacy.

In this section we focus on one particular hypothesis related to governments "political colour". We have included data on the political party that was in office for each bilateral negotiation and for each level of government. Therefore, we perform an analysis of the use and outcomes of bilateral commissions by parties in power at state-wide level (PP 2000-2004/2011-2016; and PSOE 2004-2011) which have also been in power at regional level. In fact, only Andalusia has been ruled by the same party for the whole period, but in any case, all ACs have reached agreements with central governments of the same or a different political colour (at regional or state level) except for Cantabria and Navarre (this AC has only reached one agreement in 2001).

Graph 10. Absolute number of bilateral commissions by cabinet colours



The political colour seems to be relevant when initiating a bilateral negotiation (See Graph 10). The opening of negotiations on state-wide legislation seems far more common when cabinets are hold by different political parties (79%), whereas we observe a reverse trend on regional legislation: only 40% of negotiations occur when the parties in office are different.

This fact is a relevant finding since points out a relatively dominant position of central government over this kind of intergovernmental relations. That is, bilateral commissions' activity is more probable to happen when the central government deals with disputes on regional legislation with politically related regions (same party). When this is the case, the autonomous communities tend to be more prone to modify and/or interpret their own legislation than to negotiate on state-wide legislation. Therefore, it can be said that politics matters in this arena, even though such arena seems to be usually dominated by highly qualified public officers.

In order to grasp how politics matters to bilateral negotiations we have analysed the outcomes by political colour (See Table 1 and Table 2). Once again, we find evidence that this is a salient variable to explain bilateral relations. It is salient not only concerning the use of bilateralism, but of its outcomes. If we focus on state-wide legislation, when central and regional cabinets have different political colours negotiations, most of the times, end up in challenges to the CC (50.5% of the cases); this is a less common outcome when both levels of government are ruled by the same party (37.5%). We do not observe a significant difference between PP and PSOE governments in the number of cases of negotiations on state-wide legislation.

The analysis of negotiations on regional legislation offers an even more interesting picture: as we had observed, the reaching of agreements is a rather common outcome. Moreover, when both governments are ruled by the same party, agreements reach 75.6% of the cases instead of 52.2% when parties in office are different. Thus, when

central government has been held by either the PP or the PSOE the rates of efficacy (agreement) have scored above 70%, with a remarkable exception. Efficacy rates fall to 45.2% when PP is in power in central government and negotiations with a regions governed by a different party.

Table 1. Government colour, challenges and efficacy (on state-wide legislation)

	Agreement	Challenge
PP_1	3 (33,3)	3 (33,3)
PSOE_1	5 (33,3)	6 (40)
PP_0	28 (35,4)	37 (46,8)
PSOE_0	9 (50)	12 (66,7)
Same Gov.	8 (33,3)	9 (37,5)
Different Gov.	37 (38,1)	49 (50,5)

Table 2. Government colour and efficacy (on regional legislation)

	Agreement	Challenge
PP_1	81 (75,0)	12 (25,0)
PP_0	38 (45,2)	28 (54,7)
PSOE_1	35 (77,8)	14 (22,2)
PSOE_0	22 (71,0)	6 (29,0)
Same Gov.	136 (75,8)	26 (17,0)
Different Gov.	60 (52,2)	34 (29,6)

Finally, we do not observe any impact of this political variable on the type of agreements. Both interpretative and modification agreements are equally common when governments are ruled by the same or by different political parties (See Table 3).

Table 3. Agreements on regional legislation by cabinet political colour

	Interpretative	Modification
Same Cabinet	(44%)	(56%)
Different Cabinet	(43%)	(57%)

4. Main findings

Our findings are consistent with the preceding literature on bilateral commissions (Beilfuss 2007) and bilateral relations (i.e Colino 2013), but also provide new a contribution to the field of study. As Beilfuss (2007, 35–36) predicted almost a decade ago, mechanism of bilateral cooperation included in article 33.2 are basically used by

the central government and show a strong imbalance of power between central and regional governments in favour of the former. In fact, Beilfuss hoped that the progressive incorporation to the mechanism of all ACs would change the dominance of central government in these negotiations, but our data does not confirm this hypothesis. There is still an important imbalance in terms initiation of bilateral cooperation. In our database only 121 (30.6%) out of 395 concluded negotiations have been initiated by regional governments.

Beyond the evidence of the central government's leading role, in the light of our analysis on the last sixteen years of bilateral relations, we gathered evidence on five relevant issues. First, in the period 2006-2008 and from 2009 onwards there is a substantial increase in both the use of the bilateral mechanism and direct challenges before the CC. Second, there is a clear pattern in terms of types of agreements depending on the negotiated pieces of legislation. State-wide legislation is never the object of a modification agreement; regional governments can only reach interpretative agreements with central government (with some exceptions related to Canary Islands). Third, the efficacy of the 33.2 is not bidirectional. That is, negotiations avoid challenges before the CC and manage to reach an agreement in 79.3% of the cases when dealing with regional legislation, but this efficacy rate drops to 56.8% when the deal is with state-wide legislation. Fourth, the analysis performed in the last section shows a clear political influence both on use and efficacy of bilateral cooperation. As we could expect the use of bilateralism to discuss regional legislation is far more common when both levels of government are ruled by the same party. However, when negotiations are on state-wide legislation, a majority of them are held between governments with a different political colour. In terms of efficacy, agreements on regional legislation are more common when both governments share the same political colour, being 75.8% of the cases. Finally, we do not observe salient differences between governments led by PP or PSOE except when PP negotiates on regional legislation with a region ruled by a different party, in this case challenges account for 54.7% of the cases.

A general view of our findings raises both normative and explanatory issues. In normative terms, we observe that the bilateral mechanism analyzed in this paper is clearly unequal in "federal terms". Both its use and its outcomes are biased towards a dominance of central government. The predominance of negotiations on regional legislation, legislative modification agreements and high rates of efficacy when the same party rules both levels of Government are consistent findings reinforcing the inequality thesis. This normative conclusion should be completed with a deeper comprehension of variability in terms of use and outcomes that we do not account for in our research.

The striking increase in levels of conflict (both in bilateral cooperation and constitutional challenges) since 2009 is probably related to a recentralization trend of the *Estado de las Autonomias*. This recentralization has been a tendency observed by several authors since the beginning of the economic crisis and even before, since the Statutes of autonomy reforms (Maiz, Caamaño, and Azpitarte 2010; Viver i Pi-Sunyer

2011; Cole, Harguindéguy, and Pasquier 2015). Particular cases that amount for an important number of bilateral negotiations and conflicts, such as the Catalan political and legal evolution since the Statute reform in 2006, have to be taken into account for a complete understanding of this phenomenon. Both the economic and political contexts can explain these trends and particular cases. However, further research can grasp on their relationship with the specific bilateral mechanism analyzed in this paper.

5. Conclusions

Our analysis has been addressed to, first of all, identify some general trends and patterns regarding the activity and the outputs of the bilateral mechanism envisaged in article 33.2, paying special attention to two aspects: the type of legislation on dispute (central or regional) and the type of output: agreement (and which type of agreement) or conflict (i.e. the filing of a constitutional challenge before the Constitutional Court). Secondly the analysis has been oriented to connect these trends and patterns with possible causal mechanisms explaining variability. In this case we have focused on the political dimension of negotiations measured as the party in office by levels of government.

The findings of this article are consistent with former research on this subject and general trends of the Spanish territorial model. Bilateral commissions are cooperation mechanisms aiming at avoiding filing constitutional conflicts before the CC. As we have shown, this objective is partially achieved. While agreements of interpretation or modification account for a majority of negotiations on regional legislation, agreements on state-wide laws are less common and often end up before the CC. Furthermore, evidence of the types of agreements and politicization of bilateral cooperation indicate a clear dominance of the central level of government using the mechanism when the same party rules regional and central governments.

Further research has to be carried out on this topic since there are a number of questions still to be answered. We will need more exogenous variables to explain cross-time and cross-regional observed variability. However, the "big picture" of bilateral commission's evolution during the last sixteen years reflects a Spanish territorial model characterized by increasing political tensions and conflicts between levels of government. We began pointing out the importance of bilateral cooperation in multilevel political systems; we can now affirm that bilateral commissions do not accomplish the federal ideal of equal footing cooperation.

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