Consensus and dissent in the resolution of conflicts of competence by the Spanish Constitutional Court: the role of federalism and ideology

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Abstract: Given the lack of unambiguously constitutional foundations, Spain's Constitutional Court (TC) has being playing a leading role in building the regulatory framework of the Autonomic State. This paper analyses whether this function is sufficient to explain the level of agreement among TC justices when adopting their resolutions, and in particular, on reaching unanimous rulings. If so, the legalist/federalist model would be a more adequate model to explain the behaviour of TC justices than the other models proposed in the literature on judicial behaviour: the attitudinal and the strategic models. A database has been constructed for this purpose with the 390 positive conflicts of competence between the Central Government and the Autonomous Communities resolved by the TC from 1981 to 2017, which have been used to estimate various explanatory models of unanimous rulings. The results obtained show the importance of the legalist/federalist model when attempting to explain unanimity in the Court's pronouncements, but they also offer evidence that there are other factors that also influence the level of agreement among TC justices, remarkably the ideological ones.

Keywords: Constitutional Court, conflicts of competence, unanimity, federalism, ideology.

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1. Introduction

Throughout its existence, the Spanish decentralised State has lacked an unambiguously regulatory foundation. The distribution of competences between the Central Government (hereafter CG) and the Autonomous Communities (Spanish regions, hereafter ACs), arising from the Constitution is confusing and barely operational, while the constitutional regulations governing how revenues are allocated to different levels of government are scanty and somewhat vague (Aja, 2014; García Roca, ed., 2014). Consequently, the regional model has been constructed "on the fly", based on central and regional legislation, disputes and negotiations among administrations, and the jurisprudence of the Constitutional Court (*Tribunal Constitucional*: hereafter, TC) in resolving the constitutionality of laws and conflicts of competence between levels of government. Manuel Aragón, justice of the TC between 2004 and 2013, defines the Spanish State as an "Autonomic Jurisdictional State" (Aragón, 1986).

This paper seeks to establish whether the leading role the TC has been urged to play in this process is sufficient to explain the level of agreement among TC justices when adopting their resolutions, and in particular, on reaching unanimous rulings. If so, the "legalist model" (in this context, we can also call it the "federalist" model) would be a more adequate model to explain the behaviour of TC justices than the other models proposed in the literature on judicial behaviour: the "attitudinal" or "ideological" and the "strategic" models. With this aim, we have constructed a database comprising the 390 positive conflicts of competence between the CG and the ACs resolved by the TC from 1981 to 2017, which have been used to estimate various explanatory models of unanimous rulings. Due to confidentiality, we cannot determine how each justice voted in each ruling; only when they explicitly write or adhere to a particular opinion.[1] This limitation has forced us to explain the behaviour of the TC as a whole and not that of each of its members.

The paper is organised as follows. After this introduction, the second section reviews the literature on the determinants of unanimity in court decisions. The third section provides a brief description of the Spanish TC. The fourth section presents the database used in the study. The fifth and sixth sections discuss the empirical exercise, specifying and estimating several models in order to identify explanatory factors for the level of agreement in TC decisions. The paper concludes that there is empirical evidence that legalist/federalist

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[1] As stated in Article 233 of the Judiciary Power Act (*Ley Orgánica del Poder Judicial*), applicable to TC´s proceedings.

behaviour, linked to the goal of building a solid corpus of constitutional doctrine on decentralisation, has effectively been an important factor for explaining unanimity in the resolution of positive conflicts of competence between the CG and the ACs. But we have also obtained evidence that there are other factors that also influence the level of agreement among TC justices, especially several ideological ones. The main conclusions of the paper are summarised in the seventh section.

2. Review of the literature

The literature analysing the factors determining the unanimity of collegiate court decisions is based on a set of seminal explanatory models of judicial behaviour: the legalist or formalist model, the attitudinal model, and the strategic or rational choice model (Segal and Spaeth, 2002; Halberstam, 2008; Epstein, Landes and Posner, 2013). The legalist model asserts that judges mechanically interpret and apply the law in order to find the correct legal response to a conflict. The attitudinal model explains judicial behaviour as the result of justices' political and ideological preferences. Finally, the strategic model characterises judges as utility maximising agents whose behaviour is subject to exogenous restrictions, such as the institutional context in which they operate.

Within the strategic model, three hypotheses are of particular interest in an analysis concerned with identifying the determinants of unanimity in judicial decisions: the hypothesis of Shapiro, the effect of collegiality, and dissent aversion. In the first place, in accordance with Shapiro's hypothesis, constitutional courts are an extension of the CG (Shapiro, 1981, 2002, 2003), and therefore they will tend to unanimously favour the legal positions of that government.

Collegiality, understood as the deliberative process underlying interaction between justices, is an institutional arrangement that tends to reduce dissent (Edwards, 2003). The literature indicates various factors relating to collegiality which could favour unanimity, although many of them are difficult to measure, making any empirical approach a challenge. For example, the social benefits arising from acceptance in the group, justices' personalities, or the empathy that could arise among justices thanks to their continued interaction (Edwards, 2003; Smyth and Narayan, 2004).

However, there are three factors arising from this collegiate hypothesis which are econometrically estimated by the literature on judicial behaviour. Firstly, based on the evidence which emphasises subjects' predisposition to follow a leader (Stout, 2002), the

leadership role of the President of the Court – who in most contexts also has a casting vote – is a factor with a decisive influence on the deliberative process (Hensley and Johnson, 1998). Secondly, the number of members making up the college will determine the level of interaction between justices, with an expected greater positive effect on unanimity the fewer the number of justices (Edwards, 2003). And thirdly, there is modest evidence that the more different justices´ characteristics –i.e. gender, minorities–, the likelier it is to see dissent increased (Hettinger et al., 2003).

Dissent aversion is the third hypothesis forming part of the strategic model. It is based on the cost-benefit analysis of writing a dissenting vote (Epstein et al., 2011). The benefits associated with dissent relate to the potential influence of the dissenting vote, which could enhance the reputation of the justice who wrote it if it is embraced by legal doctrine. The main cost of dissent arises when writing a dissenting vote, as it increases the workload, both for the signatory and for the majority who must strengthen their argument, while (at the same time) it may lessen the *auctoritas* of the decision contained in the ruling.

All the above models have been empirically tested, but none has emerged as a single explanation for describing the unanimity of collegiate legal decisions (see Epstein et al., 2013; Dalla Pellegrina and Garoupa, 2013; Basabe-Serrano, 2014; and Tiede, 2016, for recent reviews of the theoretical and empirical literature).

For the legalist model, the literature highlights the clarity of the law (Hettinger et al., 2004) and the existence of precedents as factors favouring unanimity (Epstein et al., 2013). In other words, the resolution of what some scholars call uncontroversial or "routine cases" (Hensley and Johnson, 1998), which might be judged by a sub-set (chamber) of justices –as happens to be regarding the Spanish TC–, is positively associated with unanimity (Songer and Siripurapu, 2009).

For the attitudinal model, the literature identifies factors relating both to the ideology of the body appointing the justices, and to the ideology of justices themselves. Thus, the political consensus leading to the appointment, and the political affiliation of whoever appoints a justice, are two factors working against unanimity if the ruling favours the opposing party (respectively, Basabe-Serrano, 2014; Dalla Pellegrina and Garoupa, 2013). The ideology of the justices is confirmed by the literature, both in terms of ideological distances between magistrates -more dispersion meaning a higher probability of dissent (Hettinger et al., 2004; Goff, 2005)-, and in relation to the ideological nature of each case. If a case has little ideological content, this increases the probability of a unanimous ruling

(Epstein et al., 2013), while in civil rights cases, for example, there is less unanimity (Hensley and Johnson, 1998; Hettinger et al., 2004; Epstein et al. 2013).

Finally, for the strategic model, the empirical evidence shows that while a higher workload and a lower number of members of the college are factors which increase unanimity (respectively, Epstein et al., 2011; Songer and Siripurapu, 2009), the more time it takes to reach a decision, the less is the unanimity achieved (Hensley and Johnson, 1998). The importance of the leadership role of the president of the court is reflected in a significant influence on unanimity, with the sign depending on the particular justice occupying the presidency (Smyth and Narayan, 2004; Epstein et al., 2013). With regard to the institutional context, the literature has found evidence of the impact on unanimity caused by the approval of legislative reforms changing the system of appointing justices, as in the case of Chile, where that influence is negative (Tiede, 2016). Meanwhile, job security has been identified as a factor increasing dissent in collegiate courts, if ideology dominates the behaviour of justices (Epstein and Knight, 1998; Basabe-Serrano, 2014).

With regard to the case of Spain, research on the determinants of judicial behaviour has mostly focused on analysing the factors motivating the rulings themselves (Sala, 2010, 2011, and 2014; Garoupa, Gómez-Pomar and Grembi, 2013; López-Laborda, Rodrigo and Sanz-Arcega, 2018). All these papers dismiss the existence of a single model to explain the behaviour of the justices in the Spanish TC.[2] The determinants of unanimity in TC rulings in the context of judicial behavioural models have very rarely been studied in Spain, apart from works focusing on specific rulings (such as Ahumada, 2000). It is more usual to produce a descriptive analysis of the rulings, focusing on dissenting votes, there being hardly any use of econometric tools.

The pioneering study of Del Castillo (1987) analyses the rulings issued by the TC Plenary from the creation of the Court until December 1985. Its results, paving the way for the attitudinal model, suggest the existence of two blocs of justices, allowing the author to "presume the existence of a certain regularity in the behaviour of the two groups of justices, in terms of their dissenting votes" (Del Castillo, 1987: 185).

However, Ridaura (1988) makes a descriptive study of the dissenting votes of the reasoned orders and rulings issued by the TC from 1981 to 1987, and obtains the opposite conclusion, that "there do not seem to be consolidated unions of justices" (1988: 298).

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[2] Only Shapiro's hypothesis could be rejected outright (Garoupa et al., 2013; López-Laborda et al., 2018).

Also, during the period of study, no downward trend is observed in the number of dissenting opinions.

Ezquiaga (1990) also produces a descriptive analysis of the rulings issued by the TC from 1981 to 1988. His work found that dissenting votes are overwhelmingly issued in Plenary rulings, that a greater workload is associated with a lower ratio of dissent, and that among dissenting opinions, "in general we cannot say there are organised trends or groups of opinion" (Ezquiaga, 1990: 134).

With the same descriptive approach, Cámara Villar (1993) analyses, for the period 1981-1991, the dissenting votes by TC justices in rulings on fundamental rights. Regarding his results, the author finds evidence that a very large majority of dissenting votes are written in Plenary rulings, while in terms of ideological affinities, he states that "we cannot honestly answer the question of whether justices' votes coincide with a certain ideological consistency" (Cámara Villar, 1993: 381).

Finally, and again with a qualitative perspective, Bercholc (2016) compiles all the dissenting votes of the TC until 2011, identifying which justice issued which vote. Throughout the period studied by this author, about 80% of the Court's rulings were unanimous.[3] His results offer evidence in favour of the attitudinal and strategic models, showing how the unanimity of the Court, usually not very volatile, was significantly lower during the presidency of Casas Baamonde (2004-2010), which also coincided with a period of greater political polarisation.

As far as we know, the only paper to adopt an econometric approach in order to shed light on the determinants of unanimous rulings is that of Hanretty (2012), who analyses TC's rulings in which dissenting votes were issued during the period 2000-2009. Based on each justice´s estimated ideology (his/her "ideal point"), selecting two of them to represent each end of the ideological spectrum, Hanretty (2012) provides predictive evidence that ideological differences determine dissent.

Our research extends the previous contributions in four aspects. First, we provide an econometric analysis, going beyond the descriptive examinations which have dominated research on this subject in Spain. Second, the years studied (1981-2017) cover the entire period of activity of the TC, up to the present. Third, the database includes all positive conflicts of competence resolved by the TC during this period. Fourth and last, the

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[3] A figure that seems to be stable throughout time (Magalhães, 2002).

empirical exercises test, separately and jointly, all the models of judicial behaviour proposed in the literature.

3. Institutional background of the Spanish Constitutional Court

The Spanish TC belongs to the kelsenian tradition of concentrated constitutional review of legislation. As a constitutional organ, it takes part in "the political leading of the State" (García Pelayo, 1981: 22), contributing with its jurisprudence to "the creation of law" (Kelsen, 1934/2011: 94). TC rulings deploy their effects *erga omnes*.[4]

The Constitutional Court acts as a full Court (*Pleno*), Chambers (*Salas*) or Sections (*Secciones*). The full Court is composed of 12 justices, elected for a non-renewable nine-year term. Every three years a third of justices has to be replaced. TC justices elect among themselves a President, who has a casting vote. Candidates must be experienced jurists selected among (mainly) Law Professors and Justices, although public prosecutors, other civil servants and professional lawyers are also eligible.[5] Four candidates are proposed by the Congress (by a three-fifth majority), four by the Senate, (with the similar majority; since 2007, they are chosen among the candidates presented by the Legislative Assemblies of the ACs), two by the central government, and two by the self-governing body of the Judiciary (*Consejo General del Poder Judicial*).

The Constitutional Court consists of two Chambers. Each Chamber comprises six justices appointed by the full Court. The full Court and the Chambers establish Sections, comprising three justices, for the ordinary arrangements and the judgment or proposal, as appropriate, on the admissibility or rejection of constitutionals processes.

Rulings must be backed by a majority of justices, being dissenting votes allowed. It is worth mentioning that a Justice-Rapporteur is assigned to each case according to "a pre-established arrangement on the basis of objective criteria" (Ahumada Ruiz, 2000:171).

On territorial disputes between the central government and the regions, the TC resolves conflicts of competence (*conflictos de competencia*) and actions of unconstitutionality (*recursos de inconstitucionalidad*). Positive conflicts of competence are regulated by Articles 60-67 of the Constitutional Court Act (*Ley Orgánica del Tribunal Constitucional, LOTC*), and formalised

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[4] On the role played by the Spanish TC, see the recent work of Pérez de los Cobos (2017), former TC President (2013-2017).

[5] So far, just three justices were not either Professors or Justices.

before the TC when the central (regional) government considers that a regulation, resolution, or act by an AC (the CG) does not respect the order of competences established in the Spanish Constitution, the Statutes of Autonomy (the regional Constitutions), and the law.[6] If the controversial competence were attributed by a law, or a regulation with the force of law, the conflict of competences is processed as established for an action of unconstitutionality.[7]

4. The database. Descriptive analysis

As explained, the database includes the 390 positive conflicts of competence between the CG and the ACs resolved by the TC from 1981 to 2017. Figure 1 shows the conflicts resolved each year and those which were unanimously resolved. As shown in Figure 1, there are two periods with greater TC activity. The first, until the early nineties, can be explained by corresponding to the start-up of the Autonomic State, with a large transfer of competences to the ACs and considerable conflict between them and the CG (López-Laborda et al., 2018). The second period corresponds to the years 2012 to 2014, in which the TC recovers its activity after some years of conflict between the main political parties, which prevented even the normal renewal of the TC (Harguindéguy et al., 2018).

[FIGURE 1 ABOUT HERE]

Table 1 breaks down the above information into four panels. Panel A shows the number of conflicts filed by the CG, the ACs, or both governments,[8] and how many of these were resolved in favour of each litigant, and how many by unanimous ruling. The same data are shown in Panels B, C, and D for the conflicts affecting Catalonia, the Basque Country, and the other regions, respectively.

[TABLE 1 ABOUT HERE]

Out of the 390 conflicts resolved during the period, 79.7% were unanimously resolved, practically the same percentage documented by Bercholc (2016) for all TC rulings until

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[6] The "negative conflict of competence" occurs when the CG (the AC) declines competence to resolve any claim, considering that the competence corresponds to an AC (to the CG or another AC): See Articles 68-72 LOTC. According to the Annual Report of the TC, between 1995 and 2017 only 8 negative conflicts were resolved by the TC.

[7] For a deeper explanation of conflicts of competence and actions of unconstitutionality, see Muñoz Machado (2007: 377 *et seq.*).

[8] Conflicts shown as filed by "both" correspond to appeals independently brought by the CG and the ACs and accrued by the TC. That occurs when different appeals share sufficient legal features that make them suitable for a single ruling (*ex* art. 83 LOTC).

2011. The percentage is slightly lower for conflicts affecting Catalonia (76%) and higher for those affecting the remaining regions (81.6%) and especially the Basque Country (87.4%).[9]

The TC resolves unanimously more conflicts filed by the CG (88.8%) than those filed by the ACs (76.3%). This is also true when conflicts affecting different ACs are observed separately. Where conflicts are filed by the regions, there is a strikingly high percentage of unanimous results in the case of the Basque Country (85%), compared to the lower percentage in the case of Catalonia (72.6%).

In contrast to the aforementioned result, unanimity is usually greater when the ruling favours the ACs than when it benefits the CG: in aggregate terms, 92% and 81.5%, respectively. This result is motivated by what happens with Catalonia and the Basque Country, but not with the rest of regions: in this case, the TC issues a slightly higher percentage of unanimous resolutions when the ruling favours the CG, 87.7% rather than 86.2%.

It is also worth remarking that the TC adopts unanimous decisions in a higher percentage of conflicts when they favour the administration bringing the case, although this is not fulfilled in the cases affecting regions other than Catalonia and the Basque Country. In the next section we propose a hypothesis linked to this result.

5. Specifications

As explained in the Introduction, the Spanish decentralised State has lacked a solid regulatory foundation, in such a way that the TC has had to contribute to the creation of the regulatory framework of the Autonomic State when resolving the constitutionality of laws and conflicts of competence between ACs and CG. The hypothesis we propose is that this important task explains by its own the level of agreement among TC justices, and specifically in rulings resolving conflicts of competence between the central and the regional governments.

If this hypothesis is not rejected by the data, we think that the legalist model would be the most appropriate model to describe the behaviour of TC justices. It is true that, *stricto sensu*, the legalist model asserts that judges mechanically interpret and apply the law in order to

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[9] The Basque government decided not to appeal to the Constitutional Court from 1990 to 2002. See García Roca (2004: 45).

find the correct legal response to a conflict. But, in this context of the construction of the Autonomic State, TC justices themselves are participating in the creation of the law and their behaviour cannot be alternatively explained by ideological or strategic reasons. For that reason, in this context we will call this model the legalist/federalist model. If our hypothesis cannot be sustained empirically, we would be interested in identifying whether the unanimity is better explained by the attitudinal or strategic model, or jointly by factors belonging to the three models of judicial behavior.

We propose the following specification for identifying the model which best explains the highest possible level of agreement among TC justices -in other words, unanimity:

(1) $$Pr\,(UNAN = 1\,|\,X) = CDF(X\beta)$$

where *Pr* denotes probability, and *CDF* is a cumulative distributive function that may be a standard normal distribution (in case a probit model is estimated), or a logistic function (in case a logit model is estimated). Besides, the dependent variable is *UNAN*, which takes the value 1 if the conflict is resolved unanimously, and 0 otherwise; *X* is the vector of explanatory variables; finally, β are the coefficients.

First, we will estimate equation (1) separately for each of the three hypotheses of judicial behaviour identified in the literature -legalist/federalist, ideological, and strategic-, using its own set of explanatory variables. Next, we will estimate equation (1) integrating the variables corresponding to the three models. As we will explain in the next section, this aggregate model is the one that best explains the decisions of the TC in the resolution of conflicts of competence between the CG and the ACs.

In what follows, we will describe the explanatory variables that we have selected, according to the literature, to integrate in each model. The descriptive statistics of all dependent and independent variables are shown in Table 2.

[TABLE 2 ABOUT HERE]

a) Legalist/federalist model

López-Laborda et al. (2018) empirically showed that in the Spanish case, Shapiro's hypothesis cannot be sustained, but neither can a so-called anti-Shapiro explanation. In other words, the TC is not predisposed to rule in favour of the CG or the ACs. In this paper we want to test the hypothesis that the TC has attempted to make a positive contribution to the development of federalism in Spain, while also limiting friction between levels of government. The variables we propose to test this hypothesis are:

-*CONFL*: A variable taking the value 1 for rulings issued in the period of greatest conflict between the CG and the ACs, from 1981 to December 1989 (the launching of decentralisation: see López-Laborda et al, 2018), and 0 from 1990 to 2017. If the TC wanted to soft the conflict between administrations, more unanimous resolutions would be expected in the first period. Consequently, we assign a positive sign to the coefficient of this variable.

-*CGPP*: A variable taking the value 1 if the right-wing Popular Party (*Partido Popular,* PP) was in government at the time of resolving the conflict, and 0 otherwise. Given that the PP favours decentralisation less than the left-wing Spanish Socialist Workers' Party (*Partido Socialista Obrero Español,* PSOE), we would expect a more didactic work from the TC when the PP was governing, and thus greater unanimity in its rulings, regardless of who the Court these favours. Note that we are not arguing that political factors affect the content of the ruling, but the degree of agreement reached by justices. Therefore, we expect a positive sign.

-*CAT/PV/CATPV*: Alternative variables taking the value 1 if the conflict affects (for being one of the litigants) Catalonia (*CAT*) or the Basque Country (*PV*) or either or both of them (*CATPV*), and 0 otherwise. If the conflict affects these regions, the TC will tend more towards unanimity, to strengthen the idea of agreement in the most important conflicts relating to the decentralisation of the State. Consequently, we expect a positive sign.

-*FAVOURFILER*: A variable taking the value 1 when the ruling favours the government (central or regional) filing the conflict, and 0 otherwise. Since giving the reason to the government that files the conflict means going against the government that originally exercised the competence, we would expect the TC to resolve more cases unanimously. This behaviour would also fit with the principle of deference which governs the actions of the TC. This variable can also be interpreted as a proxy for the quality of litigation (Dalla Pellegrina and Garoupa, 2013). We assign a positive sign to the coefficient of this variable.

-*MORETHANONEAC*: A variable taking the value 1 when the conflict affects more than one AC, and 0 otherwise. The hypothesis is that when more than one region is affected, the TC will be especially interested in being convincing in its ruling, whoever it favours, so a positive sign is expected for the coefficient of this variable.

-*CHAMBER*: This variable takes the value 1 if the ruling was issued by the Chamber and 0 if it was issued by the full Court. According Article 13 LOTC, "when a Chamber considers

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necessary to change on any point the constitutional case-law previously established by the Court, the matter shall be submitted to the full Court's decision". Consequently, we expect the probability of reaching unanimity to increase when the ruling is issued by the Chamber (Songer and Siripurapu, 2009; Epstein et al., 2013). A positive sign for the coefficient of this variable is then expected.

-*TIME*: A variable introduced as a trend. The hypothesis is that time passing will favour the development of a corpus of doctrine for the Autonomic State and therefore the conflicts resolved unanimously will increase. Again, we expect a positive sign.

b) Ideological model

According to the attitudinal or ideological model, the level of consensus among TC justices depends on their ideology -in other words, their "sincere behaviour". The variables associated with this model are the following:

-*CGPP*: This variable has been defined above. The hypothesis is that as PP is a more centralist party, when it governs ideological conflict will predominate among TC justices, rather than the search for consensus. Therefore, we assign a negative sign to the coefficient of this variable, unlike what we would expect if a legalist/federalist motivation were predominant in the behaviour of the justices.

-*CGTCSAMEIDEOL*: A variable taking the value 1 if at the time of the ruling the majority of TC justices share the same political ideology (left-wing or right-wing) as the CG, and 0 otherwise. We expect a negative sign: the shared ideology will mean majorities take precedence over the search for consensus (Dalla Pellegrina and Garoupa, 2013).

-*CAT/PV/CATPV*: The construction of these variables is also explained above. The ideological conflict can be expected to be stronger when these regions are affected, so a negative sign is expected, unlike what we assign to the same variables if a legalist/federalist motivation predominates.

-*DIFF*: A variable taking the value 1 if the conflict affects a region governed by a different political party than the one presiding over the CG at the time of ruling, and 0 otherwise. If both governments belong to the same political party, there will be no interest among the majorities or minorities of the TC in obtaining a given result. However, if both governments belong to different parties, dissent among the justices is more probable, so a negative sign is expected.

c) Strategic model

In the strategic model, the behaviour of TC justices depends on the institutional environment and strategic reasons. The variables associated with this model are:

-IDEOTCLEFT: This variable takes the value 1 if the majority of the TC is left-wing, and 0 if it is right-wing. The expected sign is ambiguous. On one hand, if the minority in the TC is left-wing, it could be more willing to reach a consensus in territorial issues than if the minority is right-wing, so the expected sign is negative. But the opposite sign could also be defended if we understand a left-wing majority to be more likely to look for unanimity on matters relating to the Autonomic State.

-IDEOTC%: A variable representing the percentage of justices belonging to the ideological majority (whether right- or left-wing). The hypothesis is that the smaller the minority, the more willing it will be to reach a consensus. We expect a positive sign for the coefficient of this variable.

-WORKLOAD: This variable measures, in months, the time from a conflict being admitted for discussion to its resolution. This variable also has an undetermined sign a priori. A delay in resolving the conflict could have a positive effect on the search for consensus (Epstein et al., 2011), or could be a symptom of general dissent in the TC (Hensley and Johnson, 1998).

-RAPPORTEUR&PRESIDENT: A variable taking the value 1 if the rapporteur and the president of the TC have the same ideology, and 0 otherwise. A positive sign is expected: If the president and the rapporteur share the same ideology, we can expect greater resistance to accepting an alternative opinion, so that strategically it makes sense not to dissent.

As indicated in the second section of the paper, within the strategic model it is worth highlighting the variables linked to the collegiate hypothesis. We have included in our specification the following variables:

-MALEPERIOD: A variable taking the value 1 for rulings issued in the period of time which no woman belonging to the TC (from January 1990 to December 1997). We are interested in contrasting whether the presence of women in the TC favours unanimity. The expected sign for the coefficient of this variable is positive (Hettinger et al., 2003). Note that this gender effect can also be checked with the variable *PRESIDENT*, which we refer to later.

-AVERAGEAGE: A variable representing the average age of the justices at the end of each year. An older Court, and therefore closer to (or even above) the retirement age, means that it is more likely (as it has been) that being a TC justice will be a justice´s last employment, which will probably discourage dissent. So, we assign a positive sign to the coefficient of this variable.

-CAREERMAGISTRATES%: A variable representing the percentage of justices coming from the judiciary, at the end of each year. On the one hand, career magistrates are used to the deliberative process in order to reach a ruling, which may favour their group-sense and therefore incentive their preference for unanimity. On the other hand, the more career magistrates, the more diverse is the Court´s background (the percentage of career magistrates never exceeds 50%: see Table 2), favouring dissent (Hettinger et al., 2003). This is why the expected sign for the coefficient of this variable is indeterminate.

-NEWJUSTICES: A variable taking the value 1 for rulings issued in the six months after justices are replaced, and 0 in the rest of the period. According to the literature, after each renewal a period of greater consensus can be expected, as the new members hope to be accepted within the group (Edwards, 2003). Therefore, the expected sign for the coefficient of this variable is positive.

-CHAMBER: This variable has been constructed as explained above. A positive sign is expected, as we can expect more interaction and collaboration among the six justices in the Chamber than among the twelve in the Plenary (Edwards, 2003; Songer and Siripurapu, 2009).

-PRESIDENT: One variable is constructed for each president of the TC, taking value 1 for rulings issued under their presidency, and 0 for the rest. The hypothesis is that some presidents favour consensus more than others, and this can influence the behaviour of the other justices (Hensley and Johnson, 1998; Smyth and Narayan, 2004; Epstein et al., 2013). For the first type of presidents, we expect a positive sign for the coefficient of this variable.

-TIME: As the members of the TC are appointed for a (non-renewable) nine-year period and a third of them are replaced every three years, time passing is expected to favour the collegiality effect (Edwards, 2003). Consequently, we expect the coefficient of this variable to take a positive sign, as it does in the legalist/federalist model.

-BOTHWIN: A variable which takes the value 1 if the ruling favours both sides of the conflict, and 0 otherwise. The hypothesis is that to protect consensus within the TC, there

will be more agreement when conflict is resolved favouring both sides. Therefore, we expect a positive sign for the coefficient of this variable.

6. Estimates and results

Given that the dependent variable *UNAN* is binary, we have estimated equation (1) using probit/logit models, selecting, as a generally accepted criterion, the one with the higher log-likelihood function in each estimate.

As a preliminary step, we analysed the correlation between the explanatory variables described above. For this purpose, we have calculated the Variance Inflation Factor (VIF) of each of the variables described in section five to confirm or discard possible multicollinearity problems. As a general rule, if a given variable presents a VIF higher than 10, there is evidence that the variable can be considered a linear combination of others which are also present in the estimate. We have proceeded as follows. In each specification, the variable with a VIF higher and greater than 10 is eliminated first, and so on with the remaining variables, until none of the regressors has a VIF greater than the critical value of 10. Tables 3 and 4 indicate the variables that have been eliminated in each estimate, if necessary.

We have first estimated each of the three models of judicial behaviour separately. The estimates are shown in Table 3. Applying the usual model selection criteria (AIC and BIC information criteria and logarithm of the likelihood function), we obtain that none of the three single models has unambiguously better explanatory power than the other two.

Next, we have estimated a joint model including the variables of the three models. The results of this estimate are shown in columns 1 and 2 of Table 4, and allow us to conclude that the explanatory power of the joint estimate is higher than that of each separate model. Therefore, as a main result, we cannot affirm that unanimity in the TC is satisfactorily explained by a single model of judicial behavior. As Table 4 show, the three models explaining the behaviour of judges contribute to varying degrees to determining the probability of the TC issuing a unanimous ruling. Because of this, we will comment only on the results of this joint estimate.

There are two variables in the legalist/federalist model whose coefficients are significant and with the expected positive sign: *FAVOURFILER* and *PV*. Thus, if the ruling favours

the side which filed the dispute or if it affects the Basque Country, there is a higher probability of reaching unanimity.

However, the coefficient of the variable *MORETHANONEAC* is also significant, but with the negative sign instead of the expected positive sign associated to the legalist/federalist model, so that if a conflict affects more than one AC, there is a lower probability of a unanimous ruling. To put it another way, the TC is more likely to reach a unanimous decision when the conflict of competence affects a single region. We have performed two complementary estimates, to examine whether this result can be explained by ideological motivations. In the first estimate, we have used the interacted variable *MORETHANONEAC*SAMEIDEOL,* which reflects the existence of two or more affected ACs of similar political affiliation. The coefficient of this variable is not significant. In the second estimate we have used the variable *MORETHANONEAC*DIFFIDEOL,* which reflects conflicts affecting various regions with different political affiliations. The coefficient of this variable has been found to be significant and with a negative sign, which may support the interpretation that when more than one region is involved, the ideological behaviour of the justices prevails.

The coefficient of the variable *CGPP* has been also found to be significant, but with the negative sign predicted by the ideological model. Therefore, the probability of the TC resolving a conflict of competence unanimously is lower if the PP is in government.

There is a variable of the strategic model whose coefficient is significant, with a positive sign as expected: if the rapporteur and the president of the TC have the same ideology, this increases the probability of a unanimous ruling (*RAPPORTEUR&PRESIDENT*). In addition, although we do not find presidencies who favoured unanimity, we do find one justice whose presidency reduces the probability of the TC reaching unanimity when resolving conflicts of competence: Miguel Rodríguez Piñero, from 1992 to 1995 (*MRP*). This is the variable with a higher marginal effect (Table 4, column 2).

The overall estimate also shows that, contrary to expected by strategic (collegiate) hypothesis, if both sides benefit from the ruling (*BOTHWIN*), this reduces the probability of a unanimous ruling. This result indicates that justices tend to agree more when the ruling favours one of the sides, and this might be interpreted from the point of view of the legalist/federalist model: the TC prefers greater clarity in the distribution of competences between the CG and the ACs. Another possible explanation to this negative sign, also according to the legalist hypothesis, is that cases decided in favour of both sides may be

more complex, e.g., because they may have mores issues at stake, and that reduces the prospect of reaching a unanimous decision.[10]

To sum up, the results obtained offer evidence that the legalist/federalist behaviour, linked to the goal of building the legal framework of the Autonomic State, seems to be effectively an important factor for explaining unanimity in the resolution of positive conflicts of competence between the CG and the ACs. But we have obtained evidence that there are also other ideological and strategic factors determining the existence or otherwise of consensus.

[TABLES 3 AND 4 ABOUT HERE]

6.1 Additional estimates

To complete the previous results, we have run several additional estimates. First, to examine in depth the differences in the rulings affecting different ACs that show Panels B, C and D of Table 1, we run regressions on sub-samples of rulings involving the Basque Country, Catalonia or any of the two ACs.

The results of these estimates are shown in columns 3 to 8 of Table 4. In general, the results obtained for the whole sample are maintained, although the coefficient of *BOTHWIN* is no longer significant. In addition, the coefficients of some variables of the three models of judicial behaviour are now also significant: *CAT* (legalistic/federalist), *CGTCSAMEIDEOL* (attitudinal), *AVERAGEAGE, CAREER MAGISTRATES%* (strategic/collegiate). Consequently, although there are evident differences in the degree of agreement reached by TC justices when disputes affect different ACs, our results suggest that the three behavioural models are still relevant to explain unanimity in these rulings.

Next, we have replaced the dependent variable *UNAN* in (1) with the variable *%ACCORD*, which measures the percentage of justices supporting each TC ruling (more precisely, the percentage of justices that does not expressly oppose the opinion of the majority in a dissenting vote). As shown in Table 2, the average percentage of agreement among the justices in resolutions of conflicts of competence is very high: 96%. The independent variables are the same as in the previous estimates, with the same expected sign.

Bear in mind that we are not measuring exactly the same thing with this estimate and with the previous ones. Until now, we have tried to identify the determinants of the existence of

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[10] We thank a referee for suggesting us this interpretation.

consensus in the TC, in other words, agreement by 100% of the justices. With this new estimate, we want to find what the varying levels of agreement, from 50% to 100%, depend on.

As *%ACCORD* is a continuous variable, we estimate this using heteroscedasticity-robust ordinary least squares. The results are presented in Table 5, and show the importance of the ideological variables. The percentage of agreement among TC justices is reduced during PP governments (*CGPP*), if Catalonia is involved in the conflict (*CAT*), if the conflict affects more than one region (*MORETHANONEAC*), and if the CG and a majority of the justices share the same ideology (*CGTCSAMEIDEOL*).

The only variable in the legalist/federalist model whose coefficient is significant and with the expected positive sign is, again, *FAVOURFILER*, so the percentage of agreement among justices increases when the TC rules in favour of the administration which filed the dispute. There is no variable included in the strategic hypothesis whose coefficient has finally been significant.

[TABLE 5 ABOUT HERE]

7. Concluding remarks

The role played by the Constitutional Court in the resolution of conflicts of power between levels of government, common in a decentralised State, is usually discussed in Spain. In López-Laborda et al. (2018) we offered evidence that the resolutions of conflicts of competence between levels of government cannot be explained by a favourable predisposition of the TC neither towards the CG nor towards the ACs.

In this paper we obtain some additional results. First, the role the TC has had to take on in the construction of the Spanish Autonomic State has had a positive influence on the search for consensus among its justices, when resolving disputes on the distribution of competences between the CG and the ACs. This result emphasises the importance of the legalist/federalist model when trying to explain justices' behaviour.

But, second, the legalist/federalist model cannot explain on its own the rulings unanimously reached in the TC. We have also obtained evidence that there are additional ideological and strategic factors determining the existence or otherwise of consensus among justices. In particular, when, instead of focusing on unanimous resolutions (with an agreement of 100% by the justices), we try to identify the factors explaining that more justices support the rulings (with an agreement from 50% to 100%), we find that the

attitudinal or ideological model seems to be the decisive one -although again not the only one- in the explanation of judicial behaviour.

As in López-Laborda, Rodrigo and Sanz-Arcega (2018), we should conclude the paper with a caveat. Conflicts of competence represent only a small part of the disputes between the CG and the ACs that end up being judged by the TC (Aja, 2014), and they share some characteristics that should be noted. First, they have a very specific objective: to decide on the ownership or exercise of a competence. Second, as explained in the introduction, conflicts affect regulations, resolutions and acts, but not laws: competence conflicts affecting laws should be treated as actions of unconstitutionality. Although we do not think that these unique features justify differentiated behaviour by the TC, since the rate of unanimous rulings regarding conflicts of competence equals TC justices rate of consensus for all types of rulings (at least until 2011), we cannot be sure that the results found in this paper can be extrapolated to any other dispute between the Central Government and the Autonomous Communities.

References

Aja, E. (2014): *Estado autonómico y reforma federal (Autonomic State and Federal Reform)*, Madrid: Alianza Editorial.

Ahumada Ruiz, M.A. (2000): "La regla de la mayoría y la formulación de doctrina constitucional. *Rationes decidendi* en la STC 136/1999" (The majority rule and the writing of constitutional doctrine. Rationes decidendi within the 136/1999 Constitutional Ruling), *Revista Española de Derecho Constitucional*, 58: 155, 188.

Aragón, M. (1986): "¿Estado jurisdiccional autonómico?" (*A Jurisdictional Autonomic State?*), *Revista Vasca de Administración Pública*, 16: 7-12.

Basabe-Serrano, S. (2014): "Determinants of Judicial Dissent in Contexts of Extreme Institutional Instability: The Case of Ecuador´s Constitutional Court", *Journal of Politics in Latin America*, 6 (1): 83-107.

Bercholc, J.O. (2016): *La producción del tribunal constitucional español a través del ejercicio de control de constitucionalidad de los actos normativos de los otros poderes políticos de estado (1980-2011). Un estudio empírico-cuantitativo, con análisis cualitativo agregado, sobre el rol desempeñado por el Tribunal Constitucional en el sistema político-institucional de España (The production of the Spanish Constitutional Court through the exercise of control of constitutionality of the normative acts of the other political powers of State (1980-2011))*, doctoral thesis, University of Castilla-La Mancha.

Cámara Villar, G. (1993): *Votos particulares y derechos fundamentales en la práctica del Tribunal Constitucional español (1981-1991) (Dissenting votes and fundamental rights in the praxis of the Spanish Constitutional Court (1981-1991))*, Madrid: Ministerio de Justicia, Secretaría General Técnica.

Dalla Pellegrina, L. and N. Garoupa (2013): "Choosing between the government and the regions: An empirical analysis of the Italian Constitutional Court decisions", *European Journal of Political Research*, 52 (5): 558-580.

Del Castillo, P. (1987): "Notas para el Estudio del Comportamiento Judicial. El Caso del Tribunal Constitucional" (Notes for the Study of Judicial Behavior. The Case of the Constitutional Court), *Revista Española de Derecho Constitucional*, 20: 177-191.

Edwards, H.T. (2003): "The effects of collegiality on judicial decision making", *University of Pennsylvania Law Review*, 151 (5): 1639-1690.

Epstein, L., W. M. Landes and R. A. Posner (2013): *The Behavior of Federal Judges. A Theoretical and Empirical Study of Rational Choice*, Cambridge, MA: Harvard University Press.

Epstein, L., W. M. Landes and R. A. Posner (2011): "Why (and when) Judges Dissent: A theoretical and empirical analysis", *Journal of Legal Studies*, 3 (1): 101-137.

Epstein, L. and Knight, J. (1998): *The Choices Justices Make*, Washington, DC: CQ Press.

Ezquiaga Ganuzas, F.J. (1990): *El voto particular (The dissenting vote)*, Madrid: Centro de Estudios Políticos y Constitucionales.

García Pelayo, M. (1981): "El status del Tribunal Constitucional" (The status of the Spanish Constitutional Court), *Revista Española de Derecho Constitucional*, 1 (1): 11-34.

García Roca, J. (2004): "La consolidación de la democracia y justicia constitucionales" (The Consolidation of Constitutional Democracy and Justice), *Revista Jurídica de Castilla y León*, Número Extraordinario. 25 años de Constitución: lo que nos une: 33-50.

García Roca, J., ed. (2014): *Pautas para una reforma constitucional. Informe para el debate (Guidelines for Constitutional Reform. A Report for Discussion)*, Cizur Menor: Thomson Reuters Aranzadi.

Garoupa, N., F. Gomez-Pomar and V. Grembi (2013): "Judging under Political Pressure: An Empirical Analysis of Constitutional Review Voting in the Spanish Constitutional Court", *Journal of Law, Economics, and Organization*, 29 (3): 513-534.

Goff, B. (2005): "Supreme Court consensus and dissent: Estimating the role of the selection screen", *Public Choice*, 122: 483-499.

Halberstam, D. (2008): "Comparative Federalism and the Role of the Judiciary", in G. A. Caldeira, R. D. Kelemen and K. E. Whittington, eds., *The Oxford Handbook of Law and Politics*, Oxford: Oxford University Press.

Hanretty, C. (2012): "Dissent in Iberia: The ideal points of justices on the Spanish and Portuguese Constitutional Tribunals", *European Journal of Political Research*, 51: 671-692.

Harguindéguy, J.-B., G. Sola Rodríguez and J. Cruz Díaz (2018): "Between justice and politics: the role of the Spanish Constitutional Court in the state of autonomies", *Territory, Politics, Governance*, DOI: 10.1080/21622671.2018.1557073

Hensley, T.R. and S.P Johnson (1998): "Unanimity in the Rehnquist Court", *Akron Law Review*, 31 (3): 387-408.

Hettinger, V.A., S.A. Lindquist and W.L. Martinek (2004): "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals", *American Journal of Political Science*, 48 (1): 132-137.

Hettinger, V.A., S.A. Lindquist and W.L. Martinek (2003): "Separate Opinion Writing in the United States Courts of Appeals", *American Politics Research*, 31 (3): 215-250.

Kelsen, H. (1934/2011): *Teoría Pura del Derecho (Pure Theory of Law)*, Madrid: Trotta.

López-Laborda, J., F. Rodrigo and E. Sanz-Arcega (2018): "Is the Spanish Constitutional Court an instrument of the central government against the Autonomous Communities?", *Constitutional Political Economy*, 29 (3): 317-337.

Magalhães, P. C. (2002): *Judicial Decision-Making in the Iberian Constitutional Courts: Policy Preferences and Institutional Constraints*, PhD Dissertation, Department of Political Science, Ohio State University.

Muñoz Machado, S. (2007): *Derecho Público de las Comunidades Autónomas II (Autonomic Public Law II)*, 2nd ed., Madrid: Iustel.

Pérez de los Cobos Orihuel, F. (2017): "El papel del Tribunal Constitucional en el Estado Autonómico" (The role of the Spanish Constitutional Court within the Autonomic State), *Teoría y Realidad Constitucional*, 40: 369-384.

Ridaura Martínez, M.J. (1988): *La jurisprudencia del Tribunal Constitucional español a través del voto particular (The jurisprudence of the Spanish Constitutional Court throughout the study of dissenting voting)*, doctoral thesis, University of Valencia.

Sala, G. (2010): *Can Courts Make Federalism Work?: The Impact of the Constitutional Court on Federal Conflict in Spain*, doctoral thesis, Yale University.

Sala, G. (2011): "Courts as Political Institutions with Legal Constraints: Evidence from Spain", presented at the *ECPR General Conference 2011*.

Sala, G. (2014): "Can Courts Make Federalism Work? A Game Theory Approach to Court-Induced Compliance and Defection in Federal Systems", *Economies*, 2 (193-217).

Segal, J. and H. Spaeth (2002), *The Supreme Court and the Attitudinal Model Revisited*, New York, NY: Cambridge University Press.

Shapiro, M. (1981): *Courts. A Comparative and Political Analysis*, Chicago and London: The University of Chicago Press.

Shapiro, M. (2002): "The Success of Judicial Review and Democracy", in M. Shapiro and A. Stone Sweet, *On Law, Politics and Judicialization*, Oxford: Oxford University Press.

Shapiro, M. (2003): "Judicial review in developed democracies", *Democratization*, 10 (4): 7-26.

Smyth, R. and P. Narayan (2004): "Hail to the Chief! Leadership and Structural Change in the Level of Consensus in the High Court of Australia", *Journal of Empirical Legal Studies*, 1 (2): 399-427.

Songer, D.R. and J. Siripurapu (2009): "The Unanimous Decisions of the Supreme Court of Canada as a Test of the Attitudinal Model", *Canadian Journal of Political Science / Revue canadienne de science politique*, 42 (1): 65-92.

Stout, L.A. (2002): "Judges as Altruistic Hierarchs", *William & Mary Law Review*, 43 (4): 1605-1627.

Tiede, L. B. (2016): "The political determinants of judicial dissent: evidence from the Chilean Constitutional Tribunal", *European Political Science Review*, 8 (3): 377-403.

Figure 1. Total conflicts of competence resolved each year and conflicts resolved by unanimous ruling (1981-2017)
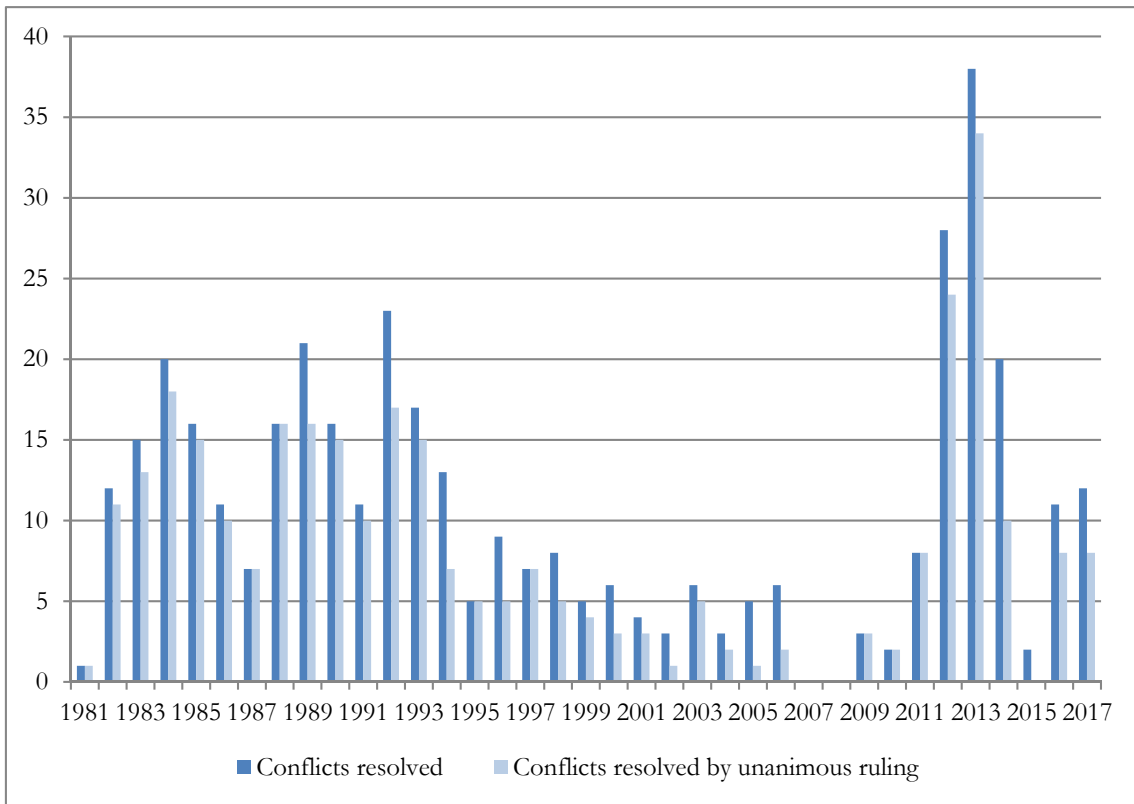
Notes: The bars of the left plot the number of conflicts of competence resolved each year by the Spanish Constitutional Court, from 1981 to 2017. The bars of the right depict the number of conflicts that were ruled unanimously.

Source: Own elaboration.

Table 1. Conflicts resolved in favour of each level of government, according to whom filed the conflict, 1981-2017

A) Total

		FAVORABLE TO			
		CENTRAL GOVERNMENT	**AUTONOMOUS COMMUNITIES**	**BOTH**	**TOTAL**
FILED BY	**CENTRAL GOVERNMENT**	43 41 95.3%	38 35 92.1%	17 11 64.7%	98 87 88.8%
	AUTONOMOUS COMMUNITIES	121 93 76.9%	48 44 91.7%	109 75 68.8%	278 212 76.3%
	BOTH	4 3 75.0%	2 2 100.0%	8 7 87.5%	14 12 85.7%
	TOTAL	168 137 81.5%	88 81 92.0%	134 93 69.4%	390 311 79.7%

B) Catalonia

		FAVORABLE TO			
		CENTRAL GOVERNMENT	**AUTONOMOUS COMMUNITY**	**BOTH**	**TOTAL**
FILED BY	**CENTRAL GOVERNMENT**	12 12 100.0%	13 12 92.3%	7 5 71.4%	32 29 90.6%
	AUTONOMOUS COMMUNITY	54 35 64.8%	29 27 93.1%	74 52 70.3%	157 114 72.6%
	BOTH	1 1 100.0%	1 1 100.0%	1 1 100.0%	3 3 100.0%
	TOTAL	67 48 71.6%	43 40 93.0%	82 58 70.7%	192 146 76.0%

C) Basque Country

		FAVORABLE TO			
		CENTRAL GOVERNMENT	AUTONOMOUS COMMUNITY	BOTH	TOTAL
FILED BY	CENTRAL GOVERNMENT	14	8	7	29
		14	8	4	26
		100.0%	100.0%	57.1%	89.7%
	AUTONOMOUS COMMUNITY	31	11	18	60
		25	11	15	51
		80.6%	100.0%	83.3%	85.0%
	BOTH	1	0	5	6
		1	0	5	6
		100.0%	-	100.0%	100.0%
	TOTAL	46	19	30	95
		40	19	24	83
		87.0%	100.0%	80.0%	87.4%

D) Other Autonomous Communities

		FAVORABLE TO			
		CENTRAL GOVERNMENT	AUTONOMOUS COMMUNITY	BOTH	TOTAL
FILED BY	CENTRAL GOVERNMENT	18	17	3	38
		16	15	2	33
		88.9%	88.2%	66.7%	86.8%
	AUTONOMOUS COMMUNITY	46	11	26	83
		40	9	17	66
		87.0%	81.8%	65.4%	79.5%
	BOTH	1	1	2	4
		1	1	1	3
		100.0%	100.0%	50.0%	75.0%
	TOTAL	65	29	31	125
		57	25	20	102
		87.7%	86.2%	64.5%	81.6%

Notes: The table shows the conflicts of competence resolved in favour of each level of government between 1981 and 2017, according to who raised the case: the central government, the Autonomous Communities or both governments. In each box, the first row corresponds to the total of conflicts resolved, the second to unanimously resolved conflicts, and the third to the percentage that the latter represents over the total. Panel A depicts the total number of conflicts ruled in this period. Panel B informs just about conflicts affecting Catalonia. Panel C provides information about conflicts in which the Basque Country was involved. And panel D refers to conflicts affecting other regions but Catalonia or the Basque Country.

Source: Own elaboration.

Table 2. Descriptive statistics of the endogenous and exogenous variables

VARIABLE	UNAN	% ACCORD	CGPP	CGTC SAME IDEOLOGY	CAT	PV	CATPV	DIFF	IDEO TCLEFT	IDEOTC%	WORK LOAD	RAPPORTEUR & PRESIDENT
Mean	0.80	0.96	0.44	0.62	0.49	0.24	0.68	0.68	0.71	0.67	60.45	0.70
Median	1	1	0	0.49	0	0	1	1	1	0.64	58	1
Maximum	1	1	1	1	1	1	1	1	1	0.83	154	1
Minimum	0	0.5	0	0	0	0	0	0	0	0.5	3	0
Standard deviation	0.40	0.09	0.50	0.49	0.50	0.43	0.47	0.47	0.45	0.12	35.35	0.46
Coefficient of skewness	-1.48	-2.61	0.26	-0.49	0.03	1.19	-0.78	-0.79	-0.93	0.30	0.25	-0.87
Coefficient of kurtosis	3.19	9.39	1.07	1.24	1.00	2.43	1.61	1.63	1.86	1.52	2.31	1.76

Table 2. Descriptive statistics of the endogenous and exogenous variables (continued)

VARIABLE	CONFL	FAVOURF ILER	TIME	MORETHAN ONEAC	MALE PERIOD	AVERAGE AGE	CAREER MAGISTRATES%	NEW JUSTICES	CHAMBER	BOTHWIN
Mean	0.31	0.26	195.5	0.07	0.26	61.82	0.33	0.16	0.08	0.34
Median	0	0	195.5	0	0	60.67	0.33	0	0	0
Maximum	1	1	390	1	1	55.09	0.5	1	1	1
Minimum	0	0	1	0	0	68.36	0.13	0	0	0
Standard deviation	0.46	0.44	112.73	0.26	0.44	3.47	0.12	0.37	0.27	0.48
Coefficient of skewness	0.85	1.12	0	3.24	1.10	0.34	-0.01	1.84	3.04	0.66
Coefficient of kurtosis	1.72	2.24	1.80	11.53	2.21	1.79	1.82	4.38	10.28	1.43

Table 2. Descriptive statistics of the endogenous and exogenous variables (conclusion)

VARIABLE	*MGP* M. García Pelayo	*FTV* F. Tomás y Valiente	*MRP* M. Rodríguez Piñero	*ARB* A. Rodríguez Bereijo	*PCV* P. Cruz Villalón	*MJP* M. Jiménez de Parga	*MCB* M. Casas Baamonde	*PSS* P. Sala Sánchez	*FPC* F. Pérez de los Cobos	*JGR* J. González Rivas
Mean	0.17	0.23	0.12	0.07	0.04	0.03	0.05	0.16	0.13	0.02
Median	0	0	0	0	0	0	0	0	0	0
Maximum	1	1	1	1	1	1	1	1	1	1
Minimum	0	0	0	0	0	0	0	0	0	0
Standard deviation	0.38	0.42	0.32	0.25	0.19	0.16	0.21	0.36	0.34	0.13
Coefficient of skewness	1.74	1.31	2.37	3.39	4.80	6.00	4.33	1.89	2.19	7.26
Coefficient of kurtosis	4.03	2.72	6.61	12.52	24.04	37.03	19.72	4.58	5.80	53.73

Notes: The table provides the descriptive statistics of all dependent and independent variables included in the specifications.

Source: Own elaboration.

Table 3. Results of the probit/logit estimation for *UNAN. Separate models*

	Federalist model		Ideological model		Strategic model [a]	
	Coef.	$\partial P(Y=1)/\partial X_j$	Coef.	$\partial P(Y=1)/\partial X_j$	Coef.	$\partial P(Y=1)/\partial X_j$
CONFL	0.84					
CGPP	-0.41		-0.54***	-0.15		
CAT	-0.29		-0.22			
PV	0.34		0.22			
FAVOURFILER	1.22***	0.14				
MORETHANONEAC	-0.85*	-0.15				
CHAMBER	-0.24				-0.20	
TIME	0.0003					
CGTCSAMEIDEOL			-0.33*	-0.09		
DIFF			0.05			
IDEOTCLEFT					-0.74	
IDEOTC%						
WORKLOAD					0.01	
RAPPORTEUR&PRESIDENT					0.54*	0.08
AVERAGEAGE					-0.08	
MALEPERIOD					0.20	
CAREER MAGISTRATES%					-0.41	
NEWJUSTICES					0.26	
PRESIDENT					*MRP* [b]: -1.53** / ARB [c]: -1.09*	-0.30 / -0.20
BOTHWIN					-0.71**	-0.11
CONSTANT	1.27**		1.34***		6.97	
Number of observations	**390**		**390**		**390**	
LR χ^2 (*Prob* > χ^2)	**34.13 (0.00)**		**17.34 (0.0039)**		**38.01 (0.0025)**	
Log. Likelihood function	**-179.47105**		**-187.86445**		**-177.53198**	
AIC / BIC	**376.94/412.64**		**387.73/411.53**		**391.06/462.45**	
Predicted pseudo R^2	**0.0868**		**0.0441**		**0.0967**	
Observations correctly classified in the estimation (%)	**80.51%**		**79.74%**		**79.49%**	

Notes: The table provides the estimates of the determinants of unanimous TC rulings in the three models of judicial behaviour separately. The results correspond to a *probit* or *logit* model, attending to the conventional choice of whichever of the two which presents the greater estimated value of the log-likelihood function. For each model, the table shows, in columns, the value of the estimated coefficient of each variable and the marginal effect of the significant variables over the probability that the endogenous variable takes the value 1.

*** Coefficient significant at 1%, ** Coefficient significant at 5%, * Coefficient significant at 10%.

[a] The following variables have been eliminated when estimating the strategic model due to multicollinearity problems: *TIME, IEDOTC%, FTV* (Francisco Tomás y Valiente) and *PSS* (Pascual Sala Sánchez).

[b] This *dummy* corresponds to the presidency of Miguel Rodríguez Piñero (*MRP*).

[c] This *dummy* corresponds to the presidency of Álvaro Rodríguez Bereijo (*ARB*).

Source: Own elaboration.

Table 4. Results of the probit/logit estimation for *UNAN. Integrated model*

	Whole sample		PV		CAT		PV / CAT	
	Coef. (1)	$\partial P(Y=1)/\partial X_j$ (2)	Coef. (3)	$\partial P(Y=1)/\partial X_j$ (4)	Coef. (5)	$\partial P(Y=1)/\partial X_j$ (6)	Coef. (7)	$\partial P(Y=1)/\partial X_j$ (8)
CONFL								
CGPP	-0.88***	-0.13	-1.76**	-0.10	-0.95*	-0.13	-1.42***	-0.19
CAT			2.74*	0.06				
PV	0.65*	0.08			3.18**	0.19		
FAVOURFILER	1.17***	0.13	2.86**	0.08	2.57***	0.23	2.75***	0.23
MORETHANONEAC	-0.98**	-0.17	-2.64**	-0.26	-1.80**	-0.35	-1.31**	-0.22
CHAMBER								
TIME								
CGTCSAMEIDEOL					-1.09**	-0.14	-0.90**	-0.10
DIFF								
IDEOTCLEFT								
IDEOTC%								
WORKLOAD								
RAPPORTEUR&PRESIDENT	0.57**	0.08			0.70*	0.10	0.65*	0.09
AVERAGEAGE			0.11***	0.004	0.03***	0.004		
MALEPERIOD								
CAREER MAGISTRATES%			-14.24**	-0.53				
NEWJUSTICES								
PRESIDENT	*MRP* [c]: -1.40***	-0.26			*MRP* [a] -1.59** *ARB* [b] -1.46**	-0.30 -0.27	*MRP* [a] -1.21**	-0.20
BOTHWIN	-0.61**	-0.09						
CONSTANT	1.60***						2.02***	
Number of observations	390		95		192		266	
LR χ^2 (*Prob > χ^2*)	45.83 (0.00)		24.12 (0.00)		44.49 (0.00)		47.83 (0.00)	
Log. Likelihood function	-173.62075		-22.176051		-83.785818		-112.98133	
AIC / BIC	363.24/394.97		56.35/71.68		187.57/214.89		239.96/265.05	
Predicted pseudo R²	0.1166		(-)		(-)		0.1747	
Observations correctly classified in the estimation (%)	80.26%		90.53%		82.29%		81.58%	

Notes: The table provides the estimates of the determinants of unanimous TC rulings considering a joint model of judicial behaviour, including the variables of the federalist, ideological, and strategic models. The model is first estimated for the whole sample and then successively for the conflicts only affecting Basque Country (*PV*), Catalonia (*CAT*) or any of these two communities (*PV / CAT*). The results correspond to a *probit* or *logit* model, attending to the conventional choice of whichever of the two which presents the greater estimated value of the log-likelihood function. For each model, the table shows, in columns, the value of the estimated coefficient of each variable and the marginal effect of the significant variables over the probability that the endogenous variable takes the value 1. The following variables have been eliminated when estimating the overall model due to multicollinearity problems: *CONFL, TIME, IEDOTC%, FTV* (Francisco Tomás y Valiente), *PSS* (Pascual Sala Sánchez), and *FPC* (Francisco Pérez de los Cobos).
*** Coefficient significant at 1%, ** Coefficient significant at 5%, * Coefficient significant at 10%.
[a] This *dummy* corresponds to the presidency of Miguel Rodríguez Piñero (*MRP*).
[b] This *dummy* corresponds to the presidency of Álvaro Rodríguez Bereijo (*ARB*).
(-) In this model, the predicted pseudo R² is not estimated because no constant term is included.
Source: Own elaboration.

Table 5. Result of the MCO estimate for *%ACCORD*

	Coefficient
CGPP	-0.04***
CATPV	-0.02**
FAVOURFILER	0.03***
MORETHANONEAC	-0.04*
CGTCSAMEIDEOL	-0.03***
CONSTANT	1.00***
Number of observations	390
F (5, 384)	5.45
$Prob > F$	0.0001
R^2	0.091

Notes: The table shows the MCO estimates of the determinants of the variable *%ACCORD*, which measures the percentage of justices supporting each TC ruling, providing just the coefficients of the variables that achieved significance.
*** Coefficient significant at 1%, ** Coefficient significant at 5%, * Coefficient significant at 10%.

Source: Own elaboration.