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How Courts Decide Federalism Disputes: The Revaluation of Legal Merit in the Jurisprudence of the Belgian Constitutional Court

1. Introduction

One of the most urgent questions in contemporary federal theory is how institutions and procedures impact upon the centralization grade of multi-tiered systems. Unlike traditional 'coming together' federations, 21st century types of multi-tiered systems give evidence of decentralizing dynamics, leading to instability. In such states, the balance between autonomy and integrity, inherent to federalism (Friedrich 1968) is particularly delicate. Forced centralization efforts as well as far-reaching institutionalization of diversity may stimulate decentralization dynamics, to the point of secession. It is crucial to gain insight in the impact of federal institutions and processes on these dynamics to enable constitutional engineering with the purpose of maintaining the optimal balance between autonomy and integrity. This paper focuses on constitutional courts as one of such institutions.

In federalism literature it is claimed that courts impact the development of federalism (Hueglin & Fenna 2006) and that they do so in a centralist way, shifting powers from the federated to the federal government (Bzdera 1993; Shapiro 1981). Only a small number of courts have been labeled as 'non-centralist', and these include constitutional and supreme courts in Belgium, Canada, Germany, Nigeria, and Spain (Popelier 2017). Courts are easily labeled as 'activist', but there is no generally applied method for measuring whether courts take a centralist or non-centralist stance in their decisions, or which factors influence these decisions. This means there is a danger that evaluations are being made subjectively. For example, Belgian scholars usually argue that the Belgian Constitutional Court is non-centralist, but Flemish nationalists have denounced it for exhibiting a 'reformist unitary agenda' (Maddens 2017).

The purpose of this paper is twofold. First, it aims to construct a classification for measuring the position of a court in federalism disputes, which is applicable to all constitutional and supreme courts in federal states. This makes it possible to assess the impact of courts on the basis of daily practice instead of a handful of key judgments. It also facilitates comparative research as the (de)centralist stance of courts can be assessed using the same criteria. Second, it constructs and tests hypotheses about what determines variation across decisions within one court. The Belgian Constitutional Court is used as a case study. Being a multinational fragmenting federation, Belgium

has been called a 'model for the future' (Obinger 2005). In such system, the stakes of finding an optimal balance are higher than in more stabilized 'coming together' federations.

Utilizing a data set of 621 federalism disputes adjudicated by the Belgian Constitutional Court, we provide a comprehensive assessment of the factors affecting the probability of a centralist court decision. We construct a measure for identifying (predominantly) centralist, balanced and (predominantly) non-centralist decisions, which enables us to assess the position of courts in federalism disputes. Having applied this classification to the Belgian Constitutional Court, we then use three theoretical models to explain this Court's behavior: the legal model, the attitudinal model and the strategic model. We expect that legal merit and strategic considerations have the most significant impact on the Court's position in federalism disputes. The reasons are twofold. First, the Belgian dyadic federation, which is divided into two major linguistic groups, is a fragile one; courts will therefore act with particular caution. Secondly, the legislator has taken special precautions to reduce the effect of attitudinal factors as much as possible. To date, legal merit seems to have been overvalued by legal scholars unfamiliar with empirical research and undervalued by political scholars for lack of measurable indicators. This is expressed in the notion that the legal merit model is 'naïve': based on assumptions by legal scholars but not supported by empirical evidence (Cross & Nelson 2001). In this paper, we suggest proxies for measuring legal merit in federalism disputes and analyze their impact on a court's position in federalism disputes.

The paper is structured as follows. Section 2 discusses the Belgian political and institutional background. Section 3 presents the Belgian Constitutional Court's position in federalism disputes. Section 4 articulates our hypotheses about how this position can be explained. Section 5 introduces the data and our variables. Section 6 lays out the empirical approach and Section 7 presents the results. Conclusions are discussed in Section 8.

2. Political and institutional background

Belgium has evolved from a unitary state, established in 1830, to a dyadic federal state with confederal features. Federalism was seen as a device for dealing with tensions between two major language groups, Dutch-speaking Flemings and French-speaking Walloons, which arose out of cleavages in ideological preferences and socioeconomic status (Popelier & Lemmens 2015). This has resulted in a complex institutional framework with two types of overlapping sub-entities. The three Communities (the Flemish Community, the French-speaking Community and the German-

speaking Community) were created in response to the Flemings' demand for cultural autonomy and have competences in the fields of education, culture, use of language and 'person-related matters' (e.g. families, healthcare, social services). The three Regions (the Flemish Region, the Walloon Region and the Brussels Region) were constructed following the Walloons' demand for economic autonomy and have competences in the fields of economy, energy, housing and environment. The competences were allocated on the basis of exclusivity to ensure the autonomy and equality of the sub-states in relation to the federal authority. Shared competences and concurrent competences, in particular, are the exception rather than the rule.

Despite the six sub-states, Belgian federalism is in fact dyadic and revolves around the two major linguistic communities (Popelier & Lemmens 2015). For example, Parliament is composed of two language groups and the constitution requires linguistic parity in the composition of the federal government. Moreover, the regionalization of political parties and the absence of federal parties articulating federal interests have reinforced fragmenting dynamics (Verleden 2009). Having undergone six state reforms since 1970, Belgium is a fragile, divided federation (Popelier 2015). In such countries, constitutional courts are deliberately assigned the function of arbitrating salient inter-community conflicts in order to secure stability (Graziadei 2016). This puts pressure on the Belgian Constitutional Court to protect stability and consensus between the language groups.

This Court, then, was established in the 1980s as a result of the federalization process. Initially called the Court of Arbitration, it pronounced its first judgment on April 5, 1985. At first, it was a one-issue court, its only mandate being the resolution of disputes over the allocation of powers between the federal government and the sub-states. Gradually, however, it transformed into a fundamental rights court. Today, allocation of power disputes account for 15% of the cases brought before the Constitutional Court.

Only acts of the federal and state parliaments can be challenged before the Constitutional Court. Secondary legislation is reviewed by ordinary courts and administrative courts such as the Council of State. Cases can be brought before the Court through annulation requests or through preliminary proceedings. Any person with an interest can file an annulation request within six months after the publication of the act; federal and state governments can do so without demonstrating a specific interest. Moreover, any court can refer a preliminary question to the Constitutional Court, *ex officio* or at the request of one of the parties. If the Constitutional Court declares that an act is unconstitutional, the referring court cannot apply that act in the dispute before it.

The Constitutional Court was established with the explicit task of resolving allocation of power disputes as Belgium transformed into a federal state. As mentioned above, Belgian federalism was created as a form of multinational conflict management to enable the peaceful cohabitation of the two main linguistic groups within one state. To secure acceptance of the Court's judgments in both language groups, the legislator has taken precautions to reduce the effect of attitudinal factors wherever possible. The main guaranties lie in the composition of the Court and collegial decision-making. The Court is composed of twelve judges and is characterized by double parity. Linguistic parity combined with collegial decision-making and the absence of dissenting or concurring opinions is essential to ensure that neither major language group perceives the Court's judgments as partisan. Professional parity also means that half of the judges in each language group have legal backgrounds, whereas the other half have political backgrounds and have been members of federal or state parliaments for at least five years (Art. 34 Special Majority Law on the Constitutional Court – hereafter Law Const. Court).

Judges are selected by a two-thirds majority in, alternately, the House and the Senate and appointed by Royal Order (Art. 32 Law Const. Court). In practice, political parties select judges according to a rotation plan within each language group, based on the proportional D'Hondt system (Bossuyt 2011; Graziadei 2016). As a result, the political ideologies represented in the Court balance each other out. Two presidents are appointed, one from each language group. During each case, two judges, one from each language group, are appointed as reporters to prepare the bench deliberations. They are appointed randomly, on the basis of a list of all judges in each language group (Art. 59 and 68 Law Const. Court). Cases are decided in chambers of seven judges or – as is increasingly the case in recent years - in plenary sessions of ten or twelve judges. As a rule, cases are decided by the regular bench but are referred to the full bench at the request of one of the judges (Art. 56 Law Const. Court). Referral is optional when requested by one judge and obligatory if requested by two judges. In such cases, the judges believe that the case is important enough to require a decision from a larger panel, which includes more different perspectives. Linguistic parity is always guaranteed, with the remaining judge in a chamber of seven coming alternately from either the Dutch- or French-speaking language group. In plenary sessions, the tie-breaking vote rotates between the Dutch- and French-speaking presidents on a yearly basis. The knowledge that majority and tie-breaking positions shift every year encourages the reaching of compromises.

3. The Court's position

3.1.Measuring centralization

A classification for measuring the level of centralization was constructed on the basis of the case outcome. For each plea, we coded the extent to which the judgment benefited either the federal government or the sub-state. 'Benefit' means that according to the Court this entity was granted a specific competence, even if that entity had not requested that competence.

We coded the outcomes as follows:

- In Category 1, the outcome was entirely decentralist. This means that either a federal act was invalidated or a state act was considered constitutional in so far as it was challenged in the plea.
- In Category 2, the outcome is predominantly decentralist, but with some nuance. If (all or part of) a federal act was challenged, the Court invalidated most of it, but upheld a smaller part. If (all or part of) a sub-state act was challenged, the Court deemed it to be mostly constitutional, but invalidated a small part.
- In Category 3, the outcome was balanced. The first possibility was that the sub-state or the federal act was partly invalidated and partly upheld, in more or less equal proportions. Another possibility was that the Court invalidated the act when interpreted in one way, but considered it constitutional when interpreted in another way.
- In Category 4, the outcome was predominantly centralist, but with some nuance. If (all or part of) a sub-state act was challenged, the Court invalidated most of it, but upheld a smaller part. If (all or part of) a federal act was challenged, the Court deemed it to be mostly constitutional, but invalidated a small part.
- In Category 5, the outcome was entirely centralist. This means that either a state act was invalidated – annulled or declared incompatible with the constitution after a preliminary reference – or that a federal act was considered constitutional in so far as it was challenged in the plea.

3.2.The Belgian Constitutional Court's Level of centralization

Based on doctrinal appraisals, we expect the Constitutional Court to take a non-centralist position. If this is true, the question remains whether this position can be characterized as 'balanced' or rather as '(predominantly) decentralist' following our classification.

Table 1 shows that 48% of the plea outcomes in our data set were decentralist, and 43% were centralist. Another 3% were predominantly centralist, while 2% were predominantly decentralist. Overall, the Court thus seems to have been rather balanced in the period 1985-2016, though with a slightly greater tendency to pronounce decentralist decisions. Individual decisions, on the other hand, are rarely balanced (only 3% of the outcomes). This means that in most cases, the Court takes an extreme position: entirely centralist or entirely decentralist.

[Insert here Table 1]

Figure 1 shows the percentages of (predominantly) centralist, (predominantly) decentralist, and balanced decisions in each year of our observation window. Although some caution is advised because of the small number of decisions per year (21 on average), the figure does show some interesting evolutions. The figure shows a decreasing trend in the portion of (predominantly) centralist decisions from 1985 to 2000, which is then followed by an increasing trend. If we distinguish three main periods (disregarding 1985 because only two decisions were made in the first year of the court's existence), we see that the average proportion of (predominantly) centralist decisions fell from 52% in 1986-1995 to 36% in 1996-2005, but then increased to 51% in 2006-2016. Therefore, while the Court's decisions were mostly decentralist (49% of the outcomes) across the entire time span of 1985-2016, in recent years there has been a trend towards a more centralist stance, with centralist outcomes reached in the majority of cases in the years 2013-2016.

These trends are essentially mirrored in the proportion of (predominantly) decentralist decisions, while in most years, none of the decisions were balanced. Notably, it seems that the Court has resorted to balanced decisions more often in the last 10 years, though this is still very rare.

[Insert here Figure 1]

Interestingly, the type of act challenged before the Court seems to matter. If we separate cases in which a federal act was challenged from cases in which a state act was challenged, we find that in

the former set, 73% of the outcomes were centralist, while in the latter set, 69% were decentralist. We elaborate further on this while constructing Hypothesis 2 in Section 4.

The figure confirms the finding that while most constitutional and supreme courts have a centralist reflex, constitutional courts in multinational states tend to be more balanced (Popelier 2017). The principle of exclusive competences, which is predominant in the Belgian federal system, may also play a role: the federal priority rule in shared competences tends to have a centralizing effect. The research question, then, is how we can explain the centralist tendencies in the Court's jurisprudence. In the following section, we put forward a number of hypotheses.

4. Theory and hypotheses

4.1.The legal model

According to the legal model, legal merit explains legal outcomes. Judges interpret and apply the law on the basis of strictly legal sources, legal provisions, legislative intent and precedents, independent of political pressure and personal preferences (Cross & Nelson 2001; Dyèvre 2010; Segal & Spaeth 2002). It is important for courts to decide on legal merit, not only for reasons of correctness and fairness, but also for reasons of legitimacy. This is especially true for constitutional courts which have the power to invalidate acts voted by a representative parliament: when confronted with a counter-majoritarian obstacle, reliance on legal-technical expertise helps courts shape their image as neutral arbitrators rather than political actors.

However, even legal merit cannot always predict judicial behavior (Cross & Nelson 2001). This is especially so in constitutional adjudication, which is often based on vague and principled rules that leave much room for discretion and interpretation. Therefore, methods of interpretation can lead to different outcomes. For example, in several judgments, the Belgian Constitutional Court had to decide whether the ban on tobacco advertisements was a sub-state or federal competence. One could argue that such a ban serves preventive health care, which is a competence of the Communities in Belgium. The Court, however, opted for another method of interpretation, based on parliamentary documents. According to these documents, the federal authorities transferred all authority for preventive health care to the Communities, with the exception of the Food Products Act. The content of the Food Products Act that was in force when this power was transferred to the Communities, determined what 'food products' are – and this included tobacco products. Hence,

this line of interpretation, based on the intention of the political actors revealed in the parliamentary documents – frequently used by the Court to solve federalism disputes – led in this case to a surprising result in favor of the federal government (Const Court No 6/92, 5 February 1992; Const Court No 102/99, 30 September 1999; Const Court No 36/2001, 13 March 2011). This example shows that even if jurists only rely on legal analysis, they may still arrive at different outcomes. Another example relates to when a special law transferred power over local entities (municipalities and provinces) to the Regions: in its prior advice, the Council of State warned that this violated the Constitution, whereas the Constitutional Court raised no objections on the basis of equally sound legal arguments (see Council of State 2001 and Const. Court No 35/2003, 25 March 2003).

All things considered, it is difficult to measure the importance of legal merit in the case outcomes of federalism disputes. In Belgium, it is required to ask the Council of State, an independent body of jurists, for legal advice at the end of the decision making procedure of most laws. Hence, we could verify the extent to which the Court deviates from the advice of the Council of State. This, however, presupposes that the Council of State decides on the basis of legal merit only. Moreover, it loses sight of the fact that on the basis of legal analysis alone, a case may lead to different outcomes.

Instead, we use the degree of centralization in the Belgian constitutional framework as a proxy for legal merit. The Constitutional Court is a guardian of the Constitution. Hence, we can expect that the more (de)centralized the constitutional framework is, the more legal bases can be found for determining a (de)centralist outcome. In other words: if the Belgian Constitutional Court takes a non-centralist stance, it might merely reflect a decentralist constitutional arrangement. In Belgium, each state reform has increased the degree of decentralization, so we expect to see a decrease in centralist outcomes with every reformed state structure. We therefore hypothesize that, all else being equal, each state reform decreases the probability of a centralist outcome in federalism disputes (Hypothesis 1).

Second, if judges decide based on legal merit, it is likely that the Constitutional Court takes the constitutionality of the parliamentary act as a point of departure and will have a preference for the method of interpretation that results in the validity of the act before it. This would explain our observation in Section 3 that challenging federal acts mostly results in centralist outcomes and challenging sub-state acts in decentralist outcomes.

In Belgium, the Constitutional Court intervenes quite often compared to other courts: parliamentary acts are invalidated in 18% of judgments (De Jaegere 2017). Still, most acts are upheld, and invalidations are often limited to a small part of the act. In addition, the notion that courts interpret Acts of Parliament in conformity with the Constitution has in fact become a legal principle in Belgium, as pronounced by the Court of Cassation in the *Waleffe* case (Supreme Court 20 April 1950, *Pas*. 1950, I, 560). This principle can be seen as a response to the counter-majoritarian difficulty. This difficulty is a much-debated argument against the constitutional review of parliamentary acts based on the notion that constitutional adjudication implies a balancing act that is political in nature and should therefore be left to parliament – the best representative of the people's voice – as opposed to unelected courts (Bickel 1962). The involvement of parliament in the selection of judges, the representation of the most important political parties in the composition of the Constitutional Court, and deliberative guarantees all help to compensate for but do not entirely resolve the counter-majoritarian problem. As a result, courts are generally deferential towards Parliament.

Of course, the preference for a declaration of constitutionality has consequences for our analysis. If a federal act is challenged (i.e. the federal government is the defending party) and declared constitutional, the outcome is in favor of the federal government and therefore qualifies as centralist. If a sub-state act is challenged (i.e. a federated government is the defending party) and declared constitutional, the outcome is decentralist. Therefore, we expect that, if the defending party is the federal government, the probability of a centralist outcome is higher than when a sub-state government is the defendant, and vice versa (Hypothesis 2).

In order to differentiate between cases in which legal merit plays a more or less substantial role, we also hypothesize that legal merit is more important when the political stakes are low, and leaves more room for other explanatory factors when the political stakes are high. Therefore, we control for the presence of a political conflict between opposing government parties. If the case places federal and sub-state governments in opposing roles, with one challenging the act and the other defending it, there is a political disagreement as to which body has competence over the matter. This conflict does not arise if the defending party is the only government actor, or if the federal or sub-state governments intervene in support of the defending party. In that case all political actors agree that the act was adopted in accordance with the competence allocation rules. This reveals political agreement as to the constitutionality of the act. Therefore, we hypothesize that the Court's

preference for the method of interpretation that results in the validity of the act before it is stronger in the absence of a political conflict (Hypothesis 3). The effect is expected to be smaller in the event that there are two opposing governments. In other words, we expect the size of legal merit to depend on whether the disputes constitutes a political conflict.

4.2.The attitudinal model

In the attitudinal model, judges act according to their ideological preferences (Dyèvre 2010; Segal & Spaeth 2002; Unah & Hancock 2002). This model has mostly been used to explain the behavior of the US Supreme Court. By contrast, the design and functioning of specialized constitutional courts in the European model are considered either to guarantee political neutrality (Ferejohn and Pasquino 2004) or at least to make it impossible to empirically test the impact of ideological preference due to their closed and consensual deliberations. Emerging scholarship nevertheless applies the attitudinal model also to European courts, revealing that judicial behavior in Germany, Italy, Portugal, Spain and Belgium is also influenced by political preferences (Dalla Pellegrina & Garoupa 2013; Dalla Pellegrina *et al.* 2016; Garoupa *et al.* 2013; Magalhaes 2013). The question is whether political or ideological preferences also determine the centralist or non-centralist behavior of a court.

We assume that, while the decision-making is collegial, the president and reporters play a potentially decisive role: the president because of his or her tie-breaking vote, and the reporters because they write the drafts that structure the deliberations. For this reason, we use president and reporter characteristics to test whether judge characteristics matter.

Our first attitudinal hypothesis is that political party affiliation of the president and the reporters impacts court outcomes (Hypothesis 4 and hypothesis 5a, respectively). The green and extreme left parties on either side of the language barrier have always taken more pronounced unitary stances and judge affiliation with these parties is therefore expected to increase the probability of a centralist decision. Flemish-nationalist parties, the Francophone Défi and the former Rassemblement Wallon movement historically take confederalist or even separatist positions. Considering the position these parties take in disputes on the Belgian's state structure, we expect that affiliation with nationalist parties decreases the probability of a centralist decision, all else equal.

Liberal, Christian democratic parties and socialist parties cover both centralist and decentralist tendencies and have changed position over time. Therefore, we cannot predict ex ante in which direction president or reporter affiliation with one of these parties will affect the outcome of the case.

We also analyze the effect of the judge's language group. Flemish judge presidents[1] should, *ceteris paribus*, take a more decentralist position than French-speaking judges, who we would expect to take a more balanced or centralist position (Hypothesis 5b). This hypothesis is based on the fact that Flemish parties are usually the requesting party for new state reforms, contrary to Francophone parties.

4.3.The strategic model

According to the strategic model, judges seek to maximize the effectiveness and implementation of their decisions (Bailey & Maltzman 2011; Epstein & Knight 2003; Friedman 2005; Spiller & Gely 2008). Therefore, they anticipate and adapt to the potential reactions of political actors, other courts, litigants and the general public (Vanberg 2005). Maintaining stability is one possible strategy for enhancing compliance among political actors and creating legitimacy in the eyes of the public. As mentioned above, this is especially important for the Belgian Constitutional Court, which operates in the delicate political context of a divided state. It has also been noted that courts in devolutionary multinational countries are more likely to take a non-centralist stance. This is understandable, since in multinational states, securing autonomy and diversity can serve as a device for stability, yet only to a certain degree: even in multinational states, excessive disintegration can constitute a threat to the country's stability. This might explain why courts in devolving multinational federations are non-centralist but not outspokenly decentralist, and it might, in particular, explain centralizing trends in the Belgian Constitutional Court's jurisprudence. Therefore, we expect centralization trends in the Court's jurisprudence to reflect a pursuit of stability.

We operationalize this expectation in two different ways. First, we select salient cases, defined as cases on which the court places particular weight. This includes politically salient cases with higher visibility that potentially raise major policy questions as well as legally salient cases that

[1] Given that there is always one Flemish reporter and one French-speaking reporter, and given the closed and consensual deliberations (we have no information on individual judge votes), this hypothesis is only relevant for the president.

influence the development of the law (De Jaegere 2017). If the hypothesis is valid, we can expect the Court to be more careful and take a more centralist approach when the stakes are higher. Thus, the probability of a centralist outcome in federalism disputes increases, *ceteris paribus*, when the case is salient (Hypothesis 6). Second, we identify politically turbulent periods which might have led the Court to take a more careful and thus centralist approach. More specifically, we identify periods in which the federal executive resigned before the end of his/her term as a proxy for periods of political crisis and instability. Our expectation is that in periods of political instability, the probability of a centralist outcome in federalism disputes increases when other factors remain constant (Hypothesis 7).

5. Data and variables

5.1.Data

We collected data on all judgments related to federalism disputes pronounced by the Belgian Constitutional Court between 1985 (i.e. the first federalism dispute pronounced) and 2016. We defined federalism disputes as cases in which a parliamentary act of the federal government or the sub-states was claimed to violate the rules on the allocation of competences.

In divided societies such as Belgium, where federalism is a device for managing multinational conflict, disputes over any issue that divides national groups are federalism-related. For example, the famous 'BHV' judgment No2 centered on election rules and the equality and non-discriminatory principle, yet the outcome caused a rift between the French-speaking and Flemish parties, which in turn resulted in a government crisis and, ultimately, a state reform towards further decentralization (Const. Court No 73/2003, 23 May 2003). However, it is difficult to select such cases on the basis of a predetermined model intended for use in any federal country. Disputes over the allocation of powers, on the other hand, influence the power relations between the federal government and sub-states in a more direct way and can therefore serve as a proxy for federalism-related issues.

We limited the analysis to judgments in which the Court made a final decision on the merits of the case, excluding rejections on the ground of inadmissibility or intermediary judgments such as preliminary references to the Court of Justice of the European Union. We also selected only those judgments in which the Court allocated a competence to the federal government instead of to the

state and vice versa, excluding disputes between states, as the latter do not reveal tensions in the power relations between the federal and state authorities. This resulted in a sample of 457 judgments. In these judgments, the Court sometimes replied to several pleas. Since the outcome sometimes differed from plea to plea, we coded these pleas separately, but only insofar as they concerned federalism disputes and were dealt with by the Court as separate pleas. Where the Court grouped different pleas into one response, these were coded as a single plea. This resulted in a sample of 621 legal pleas. Table 2 provides full description of all variables included in our dataset. Table 3 presents descriptive statistics.

[Insert here Table 2]

[Insert here Table 3]

5.2.Key variables of interest

State reforms (Hypothesis 1)

To test Hypothesis 1, we divided the time span of our data set into periods characterized by a certain level of centralist constitutional state structure. Belgium is a fragmenting federal state that has gradually evolved from a unitary state into a federal system with confederal traits. This process can be divided into seven stages (Popelier & Lemmens 2017):

- 1831-1970: Belgium is a unitary state.
- 1970-1980: Belgium becomes a regional state. Belgium is divided into four linguistic regions, and three 'Cultural Communities' are created with legislative powers in cultural policy areas. The Constitution lays the foundations for the creation of Regions with legislative powers. Institutional arrangements are introduced to protect linguistic groups.
- 1980-1988: The 'Cultural Communities' receive more powers, turning them into 'Communities'; territory-based competences are assigned to the Flemish and Walloon Regions; the Court of Arbitration is established to adjudicate federalism disputes.
- 1988-1993: A third Region is created, the Brussels-Capital Region; the competences of the Communities are extended and the Court of Arbitration's jurisdiction is extended.
- 1993-2001: The Constitution describes Belgium as a federal state. The competences of both the Regions and the Communities are extended and their Parliaments are henceforth

elected directly. The national Senate is transformed to partially represent the Communities.

- 2001-2012: The competences of the Regions are extended and the Brussels institutions are modified. The Court of Arbitration's jurisdiction is widened and it is now named 'Constitutional Court'.
- 2012-present: After a long political crisis, a new state reform is negotiated. More competences are transferred to the sub-states. The electoral constituency of Brussels-Halle-Vilvoorde, the only constituency to cross linguistic borders, is split up. The organization of the judiciary and the municipalities in and around Brussels is modified to ease linguistic tensions. The Senate is reformed into a genuine sub-state chamber, albeit without substantial legislative powers. The term for the federal Parliament is extended to five years, in line with the sub-state Parliaments.

The Belgian Constitutional Court pronounced its first judgment in 1985, in the middle of the third phase. We therefore divided our data set into six periods (see Table 2), taking into account the five state reforms that occurred after 1985. Our hypothesis was that the Court's jurisprudence exhibited an increasingly decentralist trend with the implementation of every state reform.[2] We used the request date rather than the date of the judgment to construct our dummies, because in disputes over the allocation of powers, the Court must apply the rules that were in force when the act was adopted.

Federal government defendant (Hypothesis 2)

In order to take into account whether the defendant was a federal or a sub-state government, we constructed a dummy variable. Table 3 shows that in 38% of the pleas, the federal government was the defending party.

Political conflict (Hypothesis 3)

To determine whether the dispute constituted a political conflict, we used a dummy that equals 1 if at least two government parties opposed each other in the case and 0 in cases in which a non-

[2] Of course, a difference-in-difference framework using another country's Constitutional Court decisions would be the optimal strategy for analyzing whether state reforms impact the centralist stance of the court in federalism disputes. However, there is no suitable control group for this purpose. Therefore, as is common in situations like these (see, e.g. Grembi & Garoupa 2013), we used dummy variables to take into account the different periods. The disadvantage, of course, is that such a dummy partly reflects other circumstances that are characteristic of that particular period.

government party and the defendant government were opposed and other government parties did not intervene or only intervened in support of the defendant party. We found that such a political conflict arose in 50% of the cases.

Reporter and president characteristics (Hypotheses 4, 5a and 5b)

First, we control for judge ideological affiliation. In another study on the Belgian Constitutional Court, Dalla Pellegrina *et al*. (2016) used a variable indicating the president's and reporters' affiliation with the petitioner's coalition as a measure of judge ideology. This is not useful for our study on federalism disputes, however, since the president and reporters are likely to be affiliated with the defendant's coalition because sub-state and federal coalitions in Belgium usually overlap. Instead, we take into account whether an influential member in the panel, such as the president or the reporter, is affiliated with a specific political party (rather than checking whether they are affiliated with the petitioner's coalition). In identifying the judges' political affiliations, we were able to rely on Moonen's specifications (Moonen 2015).

As shown in Table 3, 37 percent of the decisions were taken by a judge panel with a liberal president. Presidents are a little less often from a socialist (34%) or Christian democratic (29%) party. There never was a president from a green or nationalist party.

Regarding the two reporters in the judge panel, at least one was from a socialist party in 60 percent of the decisions. At least one reporter was from a Christian democratic or liberal party in 51 and 48 percent of the decisions, respectively. Only in 16 percent of the decisions, at least one reporter was from a green party. A reporter from a nationalist party is rare (1 percent), which is not surprising since only recently the first judge nominated by a nationalist party has been appointed.

We also controlled for the president's language background, but not for that of the reporters as one from each language group is appointed to each case. In our data set, 53% of the decisions were made by judge panels with a Flemish president.

Salience (Hypothesis 6)

Following De Jaegere (2017), we used three proxies for measuring the salience of a case. First, we used participation to measure whether a large number of individuals (more than five) was involved and if there was party diversity (i.e. the involvement of more than two types of litigant). Types of litigant included, for example, institutional parties (federal or state governments),

individuals, industry, NGOs and local authorities. In our data, 97% of the cases had either a large number of individuals or party diversity (or both).

Second, we looked at whether the decision was taken by a full bench (i.e. 10 or 12 judges) or a regular bench (i.e. 7 judges). In our data set, just under half of the decisions (48%) were taken by a full bench.

Third, we controlled for media attention. Using data gathered by the media office of the Constitutional Court, and taking into account the most circulated newspapers in both the Flemish and Walloon Regions, we were able to verify how many articles appeared in the newspapers on a certain case before the pronouncement of the judgment. As Table 3 shows, only 17% of our cases were covered in the media.

Political instability (Hypothesis 7)

Since the Court's first judgment in 1985, three periods of political crisis have occurred:

1) 1987-1988: Christian democratic prime minister Martens headed the government in diverse formations from 1979 to 1991. The coalition formed in 1985 (Martens VI) fell on 2 October 1987. A transitional government (Martens VII) was succeeded, a year later, by a new coalition (Martens VIII).
2) 1991-1992: Political disputes led to the resignation of Martens VIII. A new formation (Martens IX) was in power for a brief period, until Prime Minister Martens was ousted to make room for a new coalition under the Christian democratic prime minister Dehaene.
3) 2008-2011: After the elections of 10 June 2007, it proved difficult to form a new government. After 194 days of negotiations, the outgoing liberal prime minister Verhofstadt formed an interim coalition that was in power from 21 December 2007 to 20 March 2008, followed by a definite coalition led by Christian democratic prime minister Leterme (Leterme I). This coalition was troubled by political disputes over state reform and a certain electoral district. Leterme I resigned nine months later and was succeeded by a coalition under prime minister Van Rompuy. Van Rompuy resigned eleven months later, when he was appointed president of the European Council. Leterme II took over but resigned five months later on 26 April 2010. New formation negotiations advanced with difficulty. As a result, the outgoing Leterme II government stayed on for another 541 days – more than a year and a half. On 6 December 2011, the socialist prime minister Di Rupo started a new coalition.

We consider each of these three periods to be politically instable periods. Of the judgments included in our data set, 19% fell during a period of instability.

6. Empirical strategy

Our dependent variable C is the centralization classification that we constructed in Section 3. The underlying, unobserved, continuous latent variable C^* can be thought of as the propensity to identify the case outcome as being centralist. This resulted in the following model:

$$C_i^* = \alpha + V_i\beta + W_i'\gamma + X_i\delta + (V_i * X_i)\zeta + \kappa_P + \lambda_{R1} + \mu_{R2} + \theta_t + \nu_l + \varepsilon_i \quad (1)$$

V_i is a dummy that equals one if the defendant is the federal government. The vector W consists of dummies that measure whether a case is salient: $Participation_i$ (equals one if the case involved more than five individuals and/or more than two different party types), $Full\ bench_i$ (equals one if the case was resolved by a full bench rather than a regular bench), $Media_i$ (equals one if the case was covered by the news media). X_i takes into account whether there is a political conflict or not. A political conflict arises when both the defending and initiation parties are governments (i.e. one federal and one sub-state government). There is no political conflict if either a non-government party is initiating party and a government is defendant or if a government is the initiating party, and the government that wrote the act does not intervene to defend the act. We add an interaction term $V_i * X_i$ to test whether the impact of the defendant is dependent on whether a political conflict arises.

κ_P are president fixed effects, while λ_{R1} and μ_{R2} are reporter 1 and reporter 2 fixed effects, respectively. θ_t represent judgment year fixed effects, and capture factors that vary over time but affect all cases. ν_l consists of a full set of legal domain fixed effects.[3] Since each observation consists of a Court decision (one judgment can consist of multiple decisions), standard errors are clustered at the judgment level.

To test Hypothesis 1, we modified specification (1) and replaced the judgment year fixed effects by dummies that reveal whether the date of request occurs after the first, second, third, fourth or fifth state reform (see Section 5.2. and Table 2).

[3] These were: tax law, judicial organization and civil procedure, commercial and finance law, environmental and energy law, spatial planning, (other) administrative law, cultural law, labor and social security law, substantive and procedural criminal law, educational law, organization of the State, social services, the law of property and special contracts, and remaining categories.

To test Hypothesis 4, we dropped λ_{R1} and μ_{R2} (the reporter fixed effects) from equation (1). Instead, we included a vector Y, which consists of reporter political affiliation dummies (green, liberal, socialist and nationalist) that indicate the party affiliation of at least one of the reporters of decision i, where affiliation with a Christian-democrat party is the reference category. Hence, the dummy ≥ *1 green reporter*, for example, measures whether at least one of the two reporters was affiliated with a green party (either the Walloon or Flemish green party).

Similarly, to test Hypotheses 5a and 5bwe dropped the president fixed effects in equation (1) and instead included a vector Z, which consists of president ideological affiliation dummies (socialist and liberal) that indicate the party affiliation of the judge who was president at the time the decision i was taken, where affiliation with a Christian democratic party is the reference category. Vector Z further also controls for the president being Flemish (rather than francophone).

Finally, we re-estimated specification (1) by replacing the judgment year fixed effects by a dummy that revealed whether the case was resolved in a period of instability, in order to test Hypothesis 7.

The observed categories (entirely decentralist, predominantly decentralist, balanced, predominantly centralist and entirely centralist) were tied to the latent variable by this measurement model:

$$C_i = \begin{cases} 1 \text{ (entirely decentralist)}, & \text{if } C_i^* \leq a_1 \\ 2 \text{ (predominantly decentralist)}, & \text{if } a_1 < C_i^* \leq a_2 \\ 3 \text{ (balanced)}, & \text{if } a_2 < C_i^* \leq a_3 \\ 4 \text{ (predominantly centralist)}, & \text{if } a_3 < C_i^* \leq a_4 \\ 5 \text{ (entirely centralist)}, & \text{if } C_i^* > a_4 \end{cases}$$

Where $a_1 < a_2 < a_3 < a_4$.

That is, we observed a case outcome C_i in one of the five ordered categories, these categories being separated by the threshold parameters (the a's).

We estimated a proportional odds model and obtained marginal effects on an entirely centralist outcome (i.e. category 5). This allowed us to observe the change in the probability of an entirely centralist decision as a consequence of a one unit change in a particular independent variable. We will first obtain estimates from the ordered probit model, and consequently from the ordered logit model as a robustness check.

7. Results

In Section 3 we established that, overall, the Belgian Constitutional Court takes a balanced, non-centralist stance, though it has exhibited some centralist tendencies in recent years. This study made use of three models – legal, attitudinal and strategic – to construct hypotheses in an attempt to explain variation across Court decisions.

Column (1) of Table 4 shows the results of our basic specification. Columns (2) and (5) drop year fixed effects to test Hypotheses 1 and 7. Columns (3) and (4) show the estimations for reporter characteristics (Hypothesis 4) and president characteristics (Hypotheses 5a and 5b), respectively.

[Insert here Table 4]

7.1.The legal model

We first hypothesized that, all else being equal, a higher degree of centralist constitutional state structure should increase the probability of a centralist outcome in federalism disputes (Hypothesis 1). All state reform dummies are statistically significantly different from zero (see column (2) of Table 4). Furthermore, the state reform dummies are jointly significant at the 1% significance level.

If a request was lodged before the 1988 state reform (but after the 1980 state reform) the probability of an entirely centralist decision decreases statistically significantly with 91%, compared to decisions with requests dated before the 1980 state reform. This effect becomes larger with every subsequent state reform, although the impact of the last state reform is somewhat smaller than the fifth one. Nevertheless, the last state reform still has a very large negative impact on the probability of an entirely centralist outcome.

Next, we hypothesized that if the defending party was the federal government, the probability of a centralist outcome would be higher than if a sub-state government was the defendant (Hypothesis 2). Furthermore, we expected this legal merit effect to be more important when the political stakes were low (Hypothesis 3). These hypotheses are confirmed by our results. If a federal act was challenged in the absence of a political conflict, the probability of a validation – qualified as an entirely centralist outcome – increases by 57%, all else being equal (see Column (1), Table 4). This means that what we qualify as centralist and decentralist outcomes, partly reveals the concern of the Court to interpret the act as constitutional out of respect for Parliamentary sovereignty. As we expected, this effect is mitigated when government parties oppose each other (i.e. if there was a

political conflict). In this case, the probability of an entirely centralist outcome increases by only 26 percent when the federal government is the defendant, compared to when a sub-state government was the defendant.[4]

7.2.The attitudinal model

We hypothesized that judge affiliation impacts the probability of an entirely centralist outcome (hypotheses 4 and 5a). We further expect that Flemish judge presidents should, *ceteris paribus*, decrease the probability of an entirely centralist outcome compared to Francophone judges (hypothesis 5b).

When it comes to the reporters, ideological affiliation only matters to a very limited extent. If there is at least 1 reporter from a green party, the probability of a centralized decision decreases on average with 14 percent, *ceteris paribus* (see column 4, Table 4). This is counter-intuitive, considering the green parties' views on the Belgian state structure. However, a closer look at the data provides more insight into this finding. It appears that there have been only two judges from a green party. Furthermore, one of them was a judge-jurist and hence political influences might be limited compared to judge-politicians. In this case, our result seems to reflect the personal preference of two particular judges rather than the influence of party affiliation.

Column (3) of Table 4 shows that the affiliation of judge president do not impact the centralist stance of the Court in a particular case, either. We further find that the language of the president judge does not statistically significantly affect the probability of an entirely centralist decision. Therefore, we find no evidence for Hypotheses 5a and 5b.

Of course, these results need not indicate that the attitudinal model has no explanatory power whatsoever. It might be a consequence of the lack of variation in these variables. In our data set, we have a maximum of nine judge reporters with the same ideology. Therefore, to better disentangle the effect of party ideology, we necessitate more judges in our data set so that each political party is represented by a sufficiently large number of judges. This is not always the case in our data set. This problem cannot be solved at this point, given that we used the entire population of federalism disputes.

[4] The unreported marginal effects on an entirely decentralist outcome (i.e. category 1) show that in the absence of a political conflict, when a federal government was defendant, the probability of a decentralist outcome decreases by 60% compared to when the sub-state government was defendant. The decrease is smaller (27%) when two governments opposed each other. Because of space considerations, we do not report these results. The tables are available on request.

7.3.The strategic model

We hypothesized that centralization trends in the Constitutional Court's jurisprudence reflect a pursuit of stability. We expected the probability of a centralist outcome in federalism disputes to increase when the case was salient (Hypothesis 6) and in periods of political instability (Hypothesis 7).

Hypothesis 6 is partly confirmed. Column (1) of Table 4 shows that panel size matters: when a case was decided in a plenary session, the probability of a centralist decision increases by 7%. We find no statistically significant impact among the other salience proxies (participation and media attention). Neither do we find any evidence to support Hypothesis 7. Political instability has no significant impact on the Court's position in federalism disputes (see Column (5) of Table 4).

In sum, we conclude that our hypothesis that centralization trends in the Court's jurisprudence reflect a pursuit of stability cannot be confirmed in a convincing manner. The results do demonstrate that salience increases the probability of centralist outcomes, but only when it comes to panel size (referral to the full bench). The fact that more cases are now sent to the plenary session may therefore partly explain the increase in centralist decisions in recent years. As the other variables of salience do not produce significant results, we may assume that it is the dynamics of deliberation in a plenary session, rather than the salience of the case itself, that leads to more centralist (or 'conservative') decisions.

7.4.Robustness checks

The ordered logit model

To test the robustness of our results, we re-estimate our specification using an ordered logit model. The results, shown in Columns (1) to (5) in Table 5 are qualitatively the same as those reported in Table 4. The most notable difference is that the state reform dummies increase in magnitude.[5]

[Insert here Table 5]

Alternative measure of case salience

[5] We also estimated a probit model in which the dependent variable equals 1 if the outcome is centralist or predominantly centralist and zero if the outcome is balanced, decentralist or predominantly decentralist. Again, results are qualitatively the same.

In a final analysis, we constructed a different proxy for case salience rather than using participation, full bench, and media. If a case had none of these three characteristics of case salience, we defined it as 'not salient'. If the case had one, two or all three of the salience characteristics, we defined it as having a low, medium or high degree of salience, respectively. Since only 11 cases exhibited no salience whatsoever, we used cases with both no salience and low salience as a reference. In medium salient cases the probability of an entirely centralist outcome increases on average by 6% compared to cases that were not salient or low salient, *ceteris paribus*. This effect is even larger (9%) for highly salient cases. Both effects are statistically significant at the 10% level.

8. Conclusion

The purpose of this paper was, first, to construct a classification for the position of courts in federalism disputes. Applying this approach to the Belgian Constitutional Court, we find that the Court generally takes a balanced position, pronouncing a substantial number of both centralist and decentralist decisions. This is in line with our expectations: an earlier cross-country study revealed that while courts often have a centralizing effect, they are perceived as more balanced in multinational states.

Second, we provide empirical evidence that reveals which factors determine variation in the Court's centralist stance across case outcomes. We explored three models for the construction of explanatory factors: the legal, attitudinal and strategic models.

The legal model proved to be a promising one if conceived as the Court's desire to enforce the constituent's choices and to uphold Acts of Parliament. This is evidenced by the highly significant and large in magnitude effect of the defending party on case outcome. We found that, all else being equal, the probability of a centralist outcome increases by 57% when the federal government is the defendant (in the absence of a political conflict). Conversely, sustained decentralist dynamics (in the form of state reforms) have resulted in a significant decrease in centralist outcomes. We classify this under the legal merit model, as we presume that an increasingly decentralized state structure affords courts more legal grounds for decentralist outcomes.

By contrast, ideological preferences and party affiliation, which have proven to be important factors in explaining the behavior of the US Supreme Court, do not influence the Belgian

Constitutional Court's position. However, future research should clarify whether the absence of significant results are a consequence of a lack of variation in judge affiliation in our data set.

Strategic considerations do play a role in the sense that a case decided in a plenary session increases the probability of a centralist decision by 7%. Although panel size matters, we find no statistically significant impact of participation and media attention. It is therefore unclear whether the effect of panel size is due to the salience of the case, or the result of the dynamics of deliberation in plenary sessions. However, when using alternative measures of case salience, we found that the probability of a centralist outcome is higher in medium and high salience cases compared to cases that had a rather low degree of salience or none at all. This is evidence of the hypothesis that centralization trends reflect a court's pursuit of stability.

The pursuit of stability may also impact the *reasoning* of the judgments. This is material for further study. In the meantime, our study revives the importance of the legal merit model. It is vital for courts' credibility and legitimacy that their decisions rely and are perceived to rely on legal analysis. Institutional design, with regard to the composition of the court, the selection of judges and the deliberation process, is the crucial factor needed to bring this about.

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TABLE 1—LEVEL OF CENTRALIZATION OF COURT OUTCOMES

Level of centralization	Freq.	Percent
Centralist	266	42.83
Predominantly centralist	19	3.06
Balanced	20	3.22
Predominantly decentralist	15	2.42
Decentralist	301	48.47
Total	621	100.00

TABLE 2—VARIABLE DESCRIPTION

Variable name	Description
Dependent variable	
Centralization level	Categorical variable = 1 if entirely decentralist outcome, = 2 if predominantly decentralist outcome, = 3 if balanced outcome, = 4 if predominantly centralist outcome, = 5 if entirely centralist outcome
Party characteristics	
Federal gov defendant	Dummy = 1 if federal government is the defending party.
Salience	
Participation	Dummy = 1 if case involved ≥ 5 individuals and/or more than two types of litigants.
Full bench	Dummy = 1 if case resolved by full bench (i.e. 10 or 12 judges).
Media	Dummy = 1 if case was covered by the news media.
Conflict	
Political conflict	Dummy = 1 if case brings federal and sub-state governments in opposing roles, one challenging and the other defending the act
President characteristics	
Flemish president	Dummy = 1 if president is Dutch speaking.
Liberal president	Dummy = 1 if president is from a liberal party.
Socialist president	Dummy = 1 if president is from a socialist party.
Christian democratic president	Dummy = 1 if president is from Christian democratic party [Reference category].
Reporter characteristics	
≥ 1 green reporter	Dummy = 1 if at least one of the reporters is from a green party.
≥ 1 liberal reporter	Dummy = 1 if at least one of the reporters is from a liberal party.
≥ 1 socialist reporter	Dummy = 1 if at least one of the reporters is from a socialist party.
≥ 1 nationalist reporter	Dummy = 1 if at least one of the reporters is from a nationalist party.
≥ 1 Christian democratic reporter	Dummy = 1 if at least one of the reporters is from a Christian democratic party [Reference category].
Instability	
Instability	Dummy = 1 if date of judgment is in period of instability.
State reform dummies	
State reform 1	Dummy = 1 if date of request is before 1980 state reform [Reference category].
State reform 2	Dummy = 1 if date of request is before 1988 state reform, but after 1980 state reform.
State reform 3	Dummy = 1 if date of request is before 1993 state reform, but after 1988 state reform.
State reform 4	Dummy = 1 if date of request is before 2001 state reform, but after 1993 state reform.
State reform 5	Dummy = 1 if date of request is before 2012 state reform, but after 2001 state reform.
State reform 6	Dummy = 1 if date of request is after 2012 state reform.

TABLE 3—SUMMARY STATISTICS

Variable	No. Obs.	Mean	Std. Dev.	Min.	Max.
Dependent variable					
Centralization level	621	2.89	1.92	1	5
Party characteristics					
Federal gov defendant	621	0.38	0.49	0	1
Salience					
Participation	621	0.97	0.16	0	1
Full bench	621	0.48	0.50	0	1
Media	621	0.17	0.38	0	1
Conflict					
Political conflict	621	0.51	0.50	0	1
President characteristics					
Flemish president	621	0.53	0.50	0	1
Liberal president	621	0.37	0.48	0	1
Socialist president	621	0.34	0.47	0	1
Christian democratic president	621	0.29	0.45	0	1
Reporter characteristics					
$\geq$ 1 green reporter	621	0.16	0.37	0	1
$\geq$ 1 liberal reporter	621	0.48	0.50	0	1
$\geq$ 1 socialist reporter	621	0.60	0.49	0	1
$\geq$ 1 nationalist reporter	621	0.01	0.11	0	1
$\geq$ 1 Christian democratic reporter	621	0.51	0.50	0	1
Instability					
Instability	621	0.19	0.40	0	1
State reform dummies					
State reform 1	621	0.00	0.06	0	1
State reform 2	621	0.13	0.34	0	1
State reform 3	621	0.12	0.32	0	1
State reform 4	621	0.32	0.47	0	1
State reform 5	621	0.33	0.47	0	1
State reform 6	621	0.10	0.30	0	1

TABLE 4—REGRESSION RESULTS

	(1)	(2)	(3)	(4)	(5)
Federal gov defendant	0.5666***	0.5482***	0.5573***	0.5555***	0.5669***
	(0.0508)	(0.0483)	(0.0501)	(0.0529)	(0.0483)
Participation	-0.0183	-0.0531	-0.0904	0.0014	-0.0925
	(0.1243)	(0.1282)	(0.1222)	(0.1257)	(0.1284)
Full bench	0.0688*	0.0737**	0.0756**	0.0765**	0.0790**
	(0.0358)	(0.0372)	(0.0365)	(0.0356)	(0.0373)
Media	0.0204	0.0154	0.0183	-0.0012	0.0189
	(0.0427)	(0.0431)	(0.0454)	(0.0440)	(0.0424)
Political conflict	0.1081**	0.1112**	0.1148**	0.0925**	0.1264***
	(0.0452)	(0.0447)	(0.0449)	(0.0464)	(0.0454)
Defendant X conflict	-0.3062***	-0.2625***	-0.3022***	-0.2908***	-0.2848***
	(0.0733)	(0.0706)	(0.0723)	(0.0756)	(0.0702)
State reform 2		-0.9101***			
		(0.1434)			
State reform 3		-1.1982***			
		(0.1717)			
State reform 4		-1.3520***			
		(0.2271)			
State reform 5		-1.5014***			
		(0.2385)			
State reform 6		-1.4185***			
		(0.2535)			
Flemish president				0.0782	
				(0.0734)	
Liberal president				0.0257	
				(0.0624)	
Socialist president				0.1263	
				(0.0983)	
≥ 1 green reporter			-0.1432**		
			(0.0567)		
≥ 1 liberal reporter			-0.0103		
			(0.0378)		
≥ 1 socialist reporter			-0.0130		
			(0.0384)		
≥ 1 nationalist reporter			-0.1210		
			(0.1588)		
Instability					-0.0450
					(0.0455)
Observations	621	621	621	621	621
Pseudo R-squared	0.2902	0.2601	0.2640	0.2728	0.2501
Legal domain FE	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	No	Yes	Yes	No
President FE	Yes	Yes	Yes	No	Yes
1st rapporteur FE	Yes	Yes	No	Yes	Yes
2nd rapporteur FE	Yes	Yes	No	Yes	Yes

Centralization level is the dependent variable. The table shows marginal effects on an entirely centralist outcome (i.e. category 5).
Heteroscedasticity robust standard errors clustered at judgment level in parentheses.
*** p<0.01, ** p<0.05, * p<0.1

TABLE 5—ROBUSTNESS CHECKS

	(1)	(2)	(3)	(4)	(5)	(6)
Federal gov defendat	0.5620***	0.5470***	0.5505***	0.5530***	0.5629***	0.5666***
	(0.1403)	(0.0442)	(0.1069)	(0.0765)	(0.0541)	(0.0501)
Participation	-0.0066	-0.0343	-0.0847	0.0131	-0.0781	
	(0.1382)	(0.1483)	(0.1265)	(0.1423)	(0.1431)	
Full Bench	0.0730*	0.0819**	0.0774*	0.0849**	0.0847**	
	(0.0415)	(0.0395)	(0.0401)	(0.0389)	(0.0397)	
Media	0.0204	0.0109	0.0141	-0.0068	0.0167	
	(0.0433)	(0.0443)	(0.0464)	(0.0447)	(0.0430)	
Political conflict	0.1224**	0.1200**	0.1238**	0.1040**	0.1327***	0.1042**
	(0.0567)	(0.0470)	(0.0531)	(0.0499)	(0.0482)	(0.0448)
Defendant X conflict	-0.3115***	-0.2683***	-0.3017***	-0.2962***	-0.2884***	-0.3058***
	(0.1136)	(0.0746)	(0.0948)	(0.0928)	(0.0759)	(0.0725)
Medium salient						0.0590*
						(0.0357)
Highly salient						0.0914*
						(0.0501)
State reform 2		-1.7613***				
		(0.2108)				
State reform 3		-2.1036***				
		(0.2216)				
State reform 4		-2.2722***				
		(0.2656)				
State reform 5		-2.4203***				
		(0.2670)				
State reform 6		-2.3429***				
		(0.3053)				
Flemish president				0.0874		
				(0.0794)		
Liberal president				0.0368		
				(0.0666)		
Socialist president				0.1304		
				(0.1053)		
≥ 1 green reporter			-0.1441**			
			(0.0641)			
≥ 1 liberal reporter			-0.0083			
			(0.0386)			
≥ 1 socialist reporter			-0.0109			
			(0.0400)			
≥ 1 nationalist reporter			-0.1170			
			(0.1764)			
Instability					-0.0453	
					(0.0462)	
Observations	621	621	621	621	621	621
Pseudo R-squared	0.2914	0.2618	0.2628	0.2732	0.2505	0.2899
Legal domain FE	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	No	Yes	Yes	No	Yes
President FE	Yes	Yes	Yes	No	Yes	Yes
1st rapporteur FE	Yes	Yes	No	Yes	Yes	Yes
2nd rapporteur FE	Yes	Yes	No	Yes	Yes	Yes

Centralization level is the dependent variable. The table shows marginal effects on an entirely centralist outcome (i.e. category 5).
Heteroscedasticity robust standard errors clustered at judgment level in parentheses.
*** p<0.01, ** p<0.05, * p<0.1

Formatted Table

FIGURE 1—EVOLUTION OF PERCENTAGE OF CENTRALIST, DECENTRALIST AND BALANCED DECISIONS