

Chapter 27

Spain: challenges to legitimacy and representation in a context of fragmentation and neoliberal reform

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Somewhat idiosyncratically the Spanish system of industrial relations, after the transition to democracy in the 1970s, began to develop a series of features that, while not quite at the level of organisation of the Nordic countries, did provide a stable framework for negotiations and mediation processes. Collective bargaining coverage has been high in relative terms even if trade union membership has been fairly low (see Table 27.1). Before the financial and economic crisis of 2008, Spain had experienced a long period of economic growth and the development of an intense process of social dialogue backed by state institutions. The extent of social dialogue, while not fully institutionalised, was significantly developed in some areas and there were robust informal relations between the leaderships of the main social partners. Although the implementation of social dialogue was not without its problems and tensions, it helped to expand the coverage of collective bargaining to the extent that during the 2000s it was among the highest in Europe, in terms of number of workers covered (Fernández Rodríguez *et al.* 2016a).

The industrial relations model has experienced significant changes in recent years, however. The severe economic crisis that hit Spain in 2008, a fatal combination of the international financial crisis, the collapse of a national housing market bubble and the development of austerity policies monitored by the European Union (EU), which were deployed before and after an EU loan to bail out the financial system, has had an enduring impact on society. Bankruptcies, high unemployment rates, social security cuts and rising household and business debt have led to a new scenario of growing inequalities and widespread poverty (Alonso 2014) that the tepid recovery of the past few years has been unable to reverse. These problems have further consequences that affect industrial relations as, since 2010, various governments have implemented legal reforms that have had a substantial effect on the patterns of social dialogue and collective bargaining.

Our argument in this chapter echoes those made elsewhere in these volumes in that, while the system of collective bargaining remains largely intact, there are issues of coverage and cohesiveness, as well as declining labour standards and social progress (see Rocha 2014). We also argue that these changes have created a more problematic and uneven system that, while in some cases also problematic for employers (see Fernández Rodríguez *et al.* 2016b), is beginning to undermine the unions' ability to pursue participatory labour relations through collective bargaining in such an increasingly fragmented context. First, a growing number of workers are beyond the effective remit of collective regulation even in areas in which there appears to be

Table 27.1 Principal characteristics of collective bargaining in Spain

Key features	2000	2016
Actors entitled to collective bargaining	Representative unions and employers' associations and works councils and firm representatives, as determined by the union elections, are entitled to engage in collective bargaining at the national or sectoral level and at the company level, respectively.	
Importance of bargaining levels	Collective bargaining occurs at all levels (company, provincial, industry or national), but company level agreements are favoured by the latest legislation (since 2012).	
Favourability principle/derogation possibilities	The favourability principle is applied in terms of national over industry, industry over company agreements. While there were no possibilities to derogate from agreements before the economic crisis, today there is the option of derogations (<i>inaplicaciones</i>) in certain circumstances.	
Collective bargaining coverage (%)	83	77
Extension mechanism (or functional equivalent)	Legal support for compulsory extension. There is the new possibility of derogations (<i>inaplicaciones</i>) in companies, however.	
Trade union density (%)	17	13.9 (2015)
Employers' association rate (%)	No data available	Estimated at 75% and stable, although data not confirmed by any reliable source

Sources: Ministry of Employment of Spain, OECD statistics, Fernández Rodríguez *et al.* (2016a and 2016b).

a collective agreement. Second, trade unions face an uphill struggle in terms of their coordination efforts, being already stretched by servicing workers' needs and collective negotiations, especially in smaller and medium-sized firms. Third, right-wing and centre forces initiated an ideological shift that, while not complete, is in fact degrading the language and practice of social dialogue. This has led to a new set of interests working against collective bargaining. There has also been more politicisation and juridification of labour relations. First, the courts and inspection services increasingly intervene in company activities; second, broader social mobilisation gives rise to new forms of conflict, both collective and individual. The extent to which such mobilisation can be sustained is another matter.

Industrial relations context and principal actors

Spain's recent history has been deeply influenced by the long dictatorship of Francisco Franco and the transition to democracy in the late 1970s. The economic model was historically based on protectionism, lack of innovation and a deskilled workforce: a country of 'bad firms but good business' (Sevilla 1985: 65). The dictatorship reinforced this approach, despite its obsolescence (Sola *et al.* 2013; Fernández Rodríguez and Martínez Lucio 2013). In this sense, the political exchanges and agreements during the transition to democracy in the 1970s played a key part in developing an employment relations framework. In April 1977, a year and a half after Franco's death, unions and employers' associations were legalised. The General Union of Workers (Union General de Trabajadores, UGT), the historical union linked to Spanish Socialist Workers

Party (Partido Socialista Obrero Español, PSOE), and the relatively new Workers Commissions (Comisiones Obreras, CCOO), with a mixed background but with links to the Communist Party of Spain (Partido Comunista de España), soon emerged as the main union confederations (Martínez Lucio 1990; Miguélez and Prieto 1999). Another landmark that same year was the Moncloa Pacts, involving most political parties, employers' associations and some unions. The Pacts provided a framework for the future of the Spanish economy, agreeing that a free market economy with social aspects would be established, and introducing some policies to limit inflation and achieve macroeconomic stability (Fishman 1996).

While the first governments of democratic Spain were centrist, led by the Union of the Democratic Centre (Unión de Centro Democrático), the framework was strongly influenced by 'Keynesian' and social democratic views. This led to the passing of the Workers' Statute (Estatuto de los Trabajadores) in 1980 and other progressive laws that reinforced the social nature of social dialogue and political economy (Alonso 2007). The core of the legislation related to collective bargaining was established back then, building a system in which so-called 'social agents' would represent the forces of capital and labour and negotiate anything related to industrial relations, with the cooperation and backing of the state. This was due to the weak civil society Spain inherited from the Franco period, which found expression in low levels of union membership, despite a brief boom in the late 1970s, and authoritarian management policies at the company level, especially in small and medium-sized firms (SMEs) (see Beneyto 2004, 2016). Over the coming years a model of unionism emerged in which industrial relations were dominated by two main left-leaning unions, the socialist UGT and CCOO, whose identity shifted over time within that spectrum. Other relatively progressive unions, such as the Workers' Union (Union Sindical Obrera) remained significant but received fewer union election votes. The anarcho-syndicalist National Confederation of Labour (Confederación Nacional de Trabajadores, CNT) and General Confederation of Labour (Confederación General de Trabajadores, CGT) continued to be a force in various sectors and maintained a critical stance on various employment and social issues. In some parts of Spain, such as the Basque country, a range of radical and Basque nationalist unions were also prominent, maintaining fairly high profiles and workplace presence. In some industries such as the civil service and airlines a range of unions represent various professional groups alongside the majority unions.

Collective bargaining emerged formally during the late 1970s, although some form of subjugated bargaining had existed in the late years of the regime, with the approval of specific legislation and ratification of ILO conventions. After the legalisation of the social actors, the system was organised around several levels of negotiation: national, regional, sector or industry, and company or organisation. The legitimisation of social dialogue is enshrined in the Spanish Constitution (Article 7) and confers the right on unions and employers' associations to negotiate and make agreements that may be statutorily extended; that is, any collective agreement made at higher than company level must be applied to all companies and to all workers at that level. The law prescribes how negotiations are to be conducted and the composition of the two sides. The negotiations are driven by employers and works councils but, at the higher levels beyond the local organisation, the agreement can be signed only by representatives of

the ‘most representative unions’ at the national or regional level, namely those that have achieved the strongest support in the works council elections (Hamann 2012).

Since the 1980s, CCOO and UGT have taken part in social dialogue as the ‘most representative unions’, accompanied in some regions by some Basque and Galician unions and by other unions in specific industries. While union density is not high (Gómez 2016), and UGT and CCOO do not disclose the number of their members, these unions remain influential, having consistently won works council elections, achieving more than two-thirds of the vote, and exerting influence on workers’ conditions through collective bargaining. At the national level, the representatives of the employers’ associations are the Spanish Confederation of Employers’ Organisations (Confederación Española de Organizaciones Empresariales, CEOE) and the Spanish Confederation of Small and Medium-Sized Employers (Confederación Española de la Pequeña y Mediana Empresa, CEPYME). At the industry level, a large number of federations are integrated in CEOE and it is estimated that employer association density is about 75 per cent (Nonell and Medina 2015). Having said that, employers’ association representatives seem to enjoy considerable autonomy and congresses are sporadic.

Paradoxically, it was PSOE, the social democratic party in government from 1982 to the mid-1990s, that adopted a technocratic, more neoliberal approach after its electoral success in 1982. Their aim was not only to overcome the various economic problems but also to meet the European authorities’ criteria for Spain’s full membership of the then European Economic Community. Therefore the PSOE cabinet, led by Felipe González from 1982 to 1996, undertook an ambitious agenda of reforms that led to the restructuring of the industrial sector, with the closure of workplaces in many public industries, mines and shipyards, as well as a new approach to the labour market and industrial relations (Koch 2006; Sola *et al.* 2013). Since then, a wide array of labour market reforms has been justified by the need for flexibility, a key factor in this economic structure. Moreover, unemployment has remained surprisingly high throughout the democratic period, rarely falling below 10 per cent. Finally, employers’ associations and a diverse group of economists and think tanks have been very successful in demanding a shift in industrial relations towards establishment of a neoliberal model. Part and parcel of this have been constant calls for ‘reform’, focusing on a supposed need to dismantle the ‘rigidities’ of the system (Fernández Rodríguez and Martínez Lucio 2013). The PSOE lost the elections in 1996, but its social variant of neoliberalism survived. The subsequent governments of the Popular Party (Partido Popular, PP) from 1996 to 2004, PSOE from 2004 to 2011 and finally PP again from 2011 to 2018 have followed a very similar policy of slow deregulatory creep in the labour market, particularly during periods of economic crisis. Reforms have been very much in line with European Commission recommendations and agendas, with their focus on flexicurity (see Keune and Serrano Pascual 2015). Consequently, labour market deregulation over the years has helped to introduce many types of contract and in general more instability for workers, spreading precarious conditions and creating a dysfunctional model that is neither socially fair nor economically productive (Sola *et al.* 2013).

The new economic model, which relied on low-productivity sectors, collapsed in 2008, leading to a huge recession and high unemployment, which was not reversed by brief

experiments with ‘Keynesian’ policies. The conservative PP won the November 2011 election with an absolute majority and developed even tougher austerity policies, together with welfare and labour market reforms (Molina and Miguélez 2013; Fernández Rodríguez *et al.* 2016b; Guillén Rodríguez *et al.* 2016). Despite all these efforts, unemployment has remained well over 20 per cent for most of this decade. The result is that Spanish society has become more unequal, particularly since the crisis started, and vulnerability has spread widely. The share of wages in the economy has been decreasing since 2000, but this tendency sped up with the crisis. It is important to highlight that the Gini coefficient has increased by 5 points, with real wages falling, whereas in most European countries the coefficient has remained stable or even fallen (see Chapter 1). Some forms of national-level social dialogue have been used at key times, however, and have played a role, albeit limited, on a range of wage issues and training agendas (González Begega and Luque Balbona 2014).

Extent of bargaining

Collective bargaining in Spain is based on the extension principle. Nevertheless this takes place only occasionally in national agreements that the government considers especially important or that concern the implementation of certain policies. There have been almost no agreements of this type since 2006. Besides, statutory extension may, paradoxically, have sometimes discouraged workers from joining unions given that they could benefit from agreements anyway. The unions considered this collective bargaining system to be very successful, however. During the boom years of 1997–2007, GDP growth was high and the employment level at a historical peak of 20 million, unemployment was historically low and collective bargaining had expanded substantially. By 2008 the Collective Agreements Statistics (Estadística de Convenios Colectivos) reported 5,987 collective agreements covering 1,605,195 companies and 11,968,148 workers (Aragón *et al.* 2009). Employers were less satisfied, however, claiming that this inhibited deeper reforms to deregulate the economy and the labour market. Agreements have tended to last two years or more, almost invariably starting from the beginning of the year, although negotiations can begin at any time. While negotiations usually take place between unions and employers’ associations, in specific cases they are also sometimes signed by the government to provide a further element of legitimacy. It is also important to note that lower-level agreements used to include a clause providing additional payments if inflation exceeded an agreed level. The latest data on collective bargaining coverage are presented in Figure 27.1.

New legislation established a new paradigm, accompanied by a new economic landscape. The rise of new managerial structures, with the extension of multi-service corporations, which cover various types of work and sectors, in some cases within the same workplace, has made it much more difficult for unions to negotiate. Moreover, in many companies there have been renegotiations with the threat of employers opting out (*descuelgue*) of an agreement. In later years, agreements continued to be reached and the number of agreements not implemented has fallen since 2013 (see Figure 27.2). The role of industry- and provincial-level bargaining emerged as a point of contention for some on the right of the political spectrum, who claimed it leads to ‘rigidities and

Figure 27.1 Collective bargaining coverage in Spain, 2000–2016

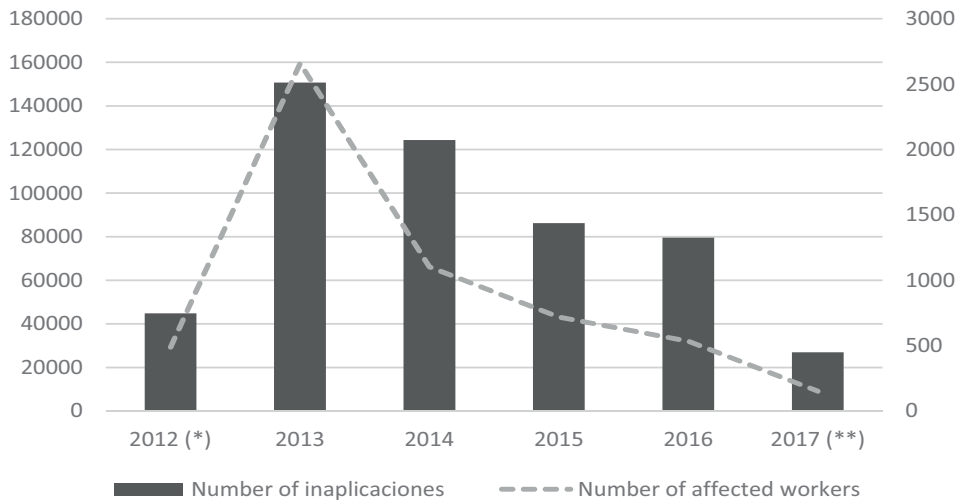


Note: Data from 2016 are provisional.

Source: Ministry of Employment, Spanish Social Security.

inflexibilities'. Another major point of contention was the failure to revise collective agreements and the effects of agreements remaining in force after expiry if no new agreement has been reached (so-called 'ultra-activity') (Fernández Rodríguez *et al.* 2016a). One outcome of the crisis is that many agreements were not renegotiated and re-signed, but instead renewed automatically (Fulton 2013). Automatic renewals in the absence of a new agreement fuelled the right-wing critique of growing bureaucratic inertia in labour relations and their alleged failure as a vehicle for workplace dialogue. This anti-industrial relations narrative predates the crisis but was accelerated by it (Fernández Rodríguez and Martínez Lucio 2013), and several reforms were pushed through in 2010, 2011 and 2012, the latter being particularly important.

In response to criticisms of so-called 'ultra-activity' the new regulations of 2012 envisage one year's automatic extension of collective agreements while a new agreement is negotiated. If there is no new agreement after one year, the current agreement ceases to exist and instead a higher-level agreement or the Statute itself become the framework for labour relations. This would mean the end of 'ultra-activity'. Recent judicial decisions have emphasised, however, that conditions 'gained' by workers who were already in the company when the agreement was signed cannot be taken away because they are part of their 'contract'. That is, the end of the agreement would apply only to new workers (see Todolí 2015). In any case, to avoid further disputes, when an agreement is signed nowadays, the parties often agree to include a clause stating that the agreement will be extended for three years or more (there are no limits in the law) while the new agreement is being negotiated.

Figure 27.2 Derogations from collective agreements (*inaplicaciones*), Spain, 2012–2017

Note: * From March to December. The 2012 reform was passed in February 2012. ** Provisional data April 2017.
Source: Ministry of Employment, Spain.

Security of bargaining

Security of bargaining refers to all the factors that determine the unions' bargaining role, such as regulations on strikes, union recognition and representativeness. The Spanish industrial relations system is based on competitive union elections in workplaces and companies that determine their representativeness in terms of the union and works council presence within the company. These elections determine the actors' legitimacy in terms of collective bargaining at the local, company, industry and national levels, based on a series of thresholds. Collective bargaining has also been critical for various social benefits provided by the firm, wage increases, wage-scale issues and a number of other things. The calculation of pensions and employment benefits derives from agreements reached in the collective bargaining process. One criticism of collective bargaining is that, in contrast to larger firms, SMEs have tended to rely on agreements at other levels, such as the industry or the province, for their wage increases and working hours, rarely engaging with broader issues.

Since the 1970s Spain has had some of the highest levels of collective action in Europe, although its breadth has varied (Rigby and Marco Aledo 2001). In fact, over the past five years the level of strike activity has remained somewhat below the levels registered in the past (Duran *et al.* 2017). A number of the union members that we interviewed were very open about the new pressures in negotiations. Recently, some employers have been emphasising a desire to reach collective agreements, claiming that it is important to keep social dialogue going and that CCOO and UGT are responsible partners, unlike some more radical unions that are starting to emerge. The prevailing perception among union representatives in recent years, however, both at grassroots level and in positions

of responsibility in their organisations is that legal changes since 2010, but particularly the reform of 2012, have strengthened the bargaining position of employers and their representatives, weakening trade union bargaining power. With legal pressure on strikes and picketing, as well as lawsuits initiated at the request of public authorities, an element of intimidation has crept in, together with opposition to recent reforms. The focus of some of these more challenging elements has been on the conduct of strikes and related activities, but the legislation, which is part of the Organic Law on Trade Union Freedoms, has not been fundamentally altered in recent years, characterised by austerity policies, in terms of how strikes are called and ballots held, which are in keeping with some of the better labour rights practices in the EU. The level of strikes has indeed altered in recent years: in terms of days lost there has been a steady decline from approximately 1,300,000 days lost in 2009 to around 400,000 in 2016 (ILO 2017); the increase in 2017 should be attributed to the general strike in Catalonia.

Level of bargaining

The Spanish system could be called ‘mixed’ in that bargaining occurs at national, industrial, provincial and company levels. In theory, until recently all agreements had to defer to and not go beyond standards set at a higher level, although there may be exceptional circumstances. The way negotiations evolve depends on the industry: for instance, in the chemical industry or financial services agreements are reached at the national level, and then further arrangements may be made at the company level. Meanwhile in construction most of the discussions take place at the provincial level, although there are other levels. They all share a similar organisational form, however: discussion of the contents of the collective agreement, after which the other levels are informed of the outcomes to develop the bargaining process, with, finally, an assessment of the best way to implement them. Table 27.2 presents a breakdown by number of agreements, companies and workers covered, as well as levels.

In some instances, there are national agreements between employers and representative unions to establish a framework of basic conditions, especially on wage increases (see Guillén Rodríguez *et al.* 2016; Guillén Rodríguez and Gutiérrez Palacios 2008). Certain aspects of this framework have remained in place in the current context of austerity policy, but some constraints apply to elements of collective bargaining. In various sectors there is a national sector-level agreement that sets minimum pay and working conditions. The best coordinated industry-level bargaining can be seen in chemicals, with peak-level bargaining between the main confederations, covering 3,000 companies or so. The industry-level affiliates of CCOO and UGT tend to play a pivotal role in this collective bargaining and social dialogue, although some pressures are emerging. For example, the main unions at the industry and national levels oppose a breakaway agreement for the plastics sector as the conditions of the main chemical agreements were considered to be better. In the industry-level agreement for the construction industry various employment conditions are also implemented in local provincial construction agreements. This is beginning to create much more of a patchwork of agreements. In the metals sector, this problem of coordination has become much more acute. Coordination is also becoming an issue in industries such as food, where there

Table 27.2 Collective agreements in Spain, 2000–2017

	Total number of collective agreements (known and registered)			Collective agreements - company level		Collective agreements - national/provincial level	
	Collective agreements	Number of companies	Number of workers	Collective agreements	Number of workers	Collective agreements	Number of workers
2000	5,252	1,198,270.0	9,230,366.0	3,849	1,083,274.0	1,403	8,147,092.0
2001	5,421	1,293,185.0	9,495,978.0	4,021	1,039,456.0	1,400	8,456,522.0
2002	5,462	1,302,302.0	9,696,530.0	4,086	1,025,929.0	1,376	8,670,601.0
2003	5,522	1,281,388.0	9,995,049.0	4,147	1,074,151.0	1,375	8,920,898.0
2004	5,474	1,282,400.0	10,193,500.0	4,093	1,014,700.0	1,381	9,178,900.0
2005	5,776	1,314,000.0	10,755,700.0	4,353	1,159,700.0	1,423	9,596,000.0
2006	5,887	1,457,000.0	11,119,300.0	4,459	1,224,400.0	1,428	9,894,900.0
2007	6,016	1,413.7	11,606.5	4,598	1,261.1	1,418	10,345.4
2008	5,987	1,605.2	11,968.1	4,539	1,215.3	1,448	10,752.9
2009	5,689	1,520.5	11,557.8	4,323	1,114.6	1,366	10,443.2
2010	5,067	1,481.1	10,794.3	3,802	923.2	1,265	9,871.1
2011	4,585	1,170.9	10,662.8	3,422	929.0	1,163	9,733.8
2012	4,376	1,162.0	10,099.0	3,234	925.7	1,142	9,173.3
2013	4,589	1,312.9	10,265.4	3,395	932.7	1,194	9,332.7
2014	5,185	1,436.9	10,304.7	4,004	867.2	1,181	9,437.5
2015	5,642	1,201.9	10,227.3	4,493	846.9	1,149	9,380.3
2016 (*)	3,594	1,068.0	8,577.0	2,759	546.3	835	8,030.7
2017 (*)	1,848	597.9	4,146.8	1,378	252.8	470	3,894.0

Note: Known and registered collective agreements. * Provisional data April 2017.

Source: Ministry of Employment, Spain.

may be national industry-level agreements for specific parts of the industry, creating complex structures and challenging union coordination. In some cases, provincial industry-level collective agreements, in which an industry is covered by a regional local agreement, may become a reference point for the industry as a whole, representing almost a macro-level framework agreement. In many cases collective agreements at the firm level are meant to exceed the conditions laid down at higher levels. In some cases, as in the chemicals sector, there are so-called *pactos de aplicación*, agreements that, in the main, apply to higher levels, as opposed to traditional collective agreements that can extend the main content of a higher agreement. In the case of chemicals there may be no desire to push for a specific company agreement to avoid conflict between management and the unions: it may be in the interests of management and in some cases even the union as this 'stabilises' or even closes discussion in such contexts. To some extent this can depoliticise collective bargaining, although decentralisation can change this (Fernández Rodríguez *et al.* 2016b).

The recent collective bargaining reforms introduced not only lower dismissal costs and new prerogatives for employers, but two key changes in particular (Meardi 2012). First,

company-level agreements were given absolute precedence over multi-employer ones, including employers' prerogatives to reduce wages without union consent, subject to arbitration. Second, the period of so-called 'ultra-activity' was reduced. Whereas in the past, after expiry, collective agreements continued in force indefinitely in the absence of a new agreement, this has been restricted to a maximum of two years, after which all established rights from previous agreements terminate until a new agreement is signed. As a result, company agreements have precedence in key areas; in addition, companies in financial difficulties are able to suspend many agreed terms and conditions (Fernández Rodríguez *et al.* 2016b). This reform represents a fundamental about-turn in the traditional arrangements of collective bargaining in Spain and has encountered opposition from unions. Despite two general strikes in 2012 and conversations between several political parties seeking to repeal it, the law remains on the statute book.

In terms of difficulties of coordination between levels of collective bargaining, a major challenge to the traditions of labour relations and regulation is being posed by deindustrialisation, outsourcing and offshoring. The car industry is a classic case of outsourcing and complex supply chains, within the framework of which the reach of unions beyond minimal conditions established at higher levels is uncertain (Las Heras 2017). One could argue that this is a 'mixed system', with various levels interacting and various approaches to collective agreements. These gaps mean that the so-called articulation or coordination of bargaining (Molina 2007) has come under further challenge. This has been accelerated by recent statutory reforms, especially those of 2012, which, at least in theory, have privileged the firm as the main space for collective bargaining in the sense that the specific and 'exceptional' conditions and problems of the firm can be used to supersede agreements established elsewhere. These reforms may lead to new tensions in and between unions.

The emergence of multi-service companies has been a major source of disruption. They have created a new type of bargaining space, in the form of hybrids that do not necessarily respect national or provincial-level agreements in specific industries, but rather constitute a cross-industry company space. Subcontracting has been used in some cases to establish agreements below framework standards negotiated at industry level. These companies also play on legislative ambivalence. This is a curious redefining of the regulatory space (see MacKenzie and Martínez Lucio 2005 for a discussion of the concept of regulatory space) whereby local corporate spaces see agreements signed that straddle industrial boundaries. In such cases workers may be moved by a firm from a specific national agreement to a local 'multi-industry' or 'service' agreement which does not match the standards outlined above. For the unions, this creates a problem because these new activities somehow evade the established structures of trade union governance and activism, conducted as they are in spaces with uneven worker representation and in overlapping sectors given the multi-service nature of the firms (UGT 2016).

Finally, it is worth mentioning the complexities that these levels attain in the public sector, due to the decentralised nature of the Spanish state. While the state still controls certain areas, such as national defence, the diplomatic corps and ministries, many public workers in health care or education, who constitute the largest body of workers, are employees of the autonomous regions and their institutional bodies,

such as hospitals or universities. While centralised forms of bargaining do exist at a national level, due mainly to the civil servant status of many of these workers, in various autonomous regions there are also additional regional collective bargaining processes that can improve agreements. This can create regional disparities.

Depth of bargaining

In the context of Spanish collective agreements, we understand ratification as either the acceptance by the workers' assembly of a pre-agreement signed by the committee, when it is a company-level agreement, or as acceptance by the union bodies in the case of a higher-level agreement. That is, it is an internal union procedure regulated by the union's rules and the dynamics of the negotiations. Therefore there is no settled procedure, rather it depends on the particular circumstances. In terms of national union governance at the beginning of collective bargaining cycles,¹ unions hold various multi-level meetings to discuss the basic demands to be presented in the following round. Each collective agreement is distinct and there are no fixed terms of negotiation or fixed expiry dates. Currently, the period of a year seems to have become a typical bargaining cycle because it is the minimum extension guaranteed by the current legislation. This does not mean, however, that negotiations can take up to several years. In any case, to start negotiations and therefore begin the cycle, one of the parties, whether the unions or employers' associations, 'renounces' the current collective agreement.

At the national level, this involves representatives of the industry-level federations. Some unions allow for more discussion and reflection than others but in general, and in theory, there is input from below and this cascades to the industry federations or their bargaining sphere. There are various approaches to legitimising collective bargaining strategies, such as votes among union representatives. Much may depend on the union in question, however, including the strength of its branch traditions and the role of assemblies and other forms of democracy. The majority unions tend to coordinate their rounds of discussions using established processes so that some congruence emerges, although this varies, depending on relations between the larger confederations. In recent years, in the face of the economic crisis and deregulation, inter-confederal coordination has increased. Smaller, albeit significant unions such as CNT or CGT have on occasion found themselves unable to influence discussions and agreements because the 'representative unions' emerge on the basis of workplace union elections: the two main confederations tend to win the majority of votes at most levels, apart from in some autonomous states such as the Basque country.

Mergers within the industry trade union federations have led to more inter-sectoral coordination, even though mergers within confederations are not always driven by bargaining and organising logic, but sometimes by internal financial considerations (see Waddington 2006 for a discussion of mergers generally within unions). Within

1. Note that these cycles in themselves are relatively less coordinated than previously given the changes we outline below.

the union movement key federations, as in the metal and chemical industries, have a strong general influence on proceedings, affecting the way demands and overarching policies are framed in relation to collective bargaining and employment policy. The outcomes of such internal discussions may vary from specific or flexible guidelines on pay, to recommendations on working hours and specific working conditions through to the establishment of national policies and frameworks on prevalent themes, such as industrial development in general and in specific industries. In view of the austerity policies of recent years, for example, sustaining employment has become a key factor in informal mediation.

Degree of control of collective agreements

Control of collective bargaining operates at various levels. One could argue that at the higher levels concertation and coordination have been extensive, although this has been challenged in recent years (Molina and Miguélez 2013). There has been a shift from a relatively consistent tripartite set of relations to more specific and less frequent agreements between employers and major union confederations (Molina and Rhodes 2011): processes of political exchange may provide a supportive framework for a coordinated collective bargaining system (Molina 2005). National-level relations between employers and majority union confederations may be one form of control that provides an overarching political narrative and a set of commitments on aspects of bargaining. At the company and higher levels, the relevant committees (*comisiones paritarias* and *comisiones mixtas*) oversee the implementation of agreements and are underpinned by legislation. Overall there are few variations in core content but on occasions anomalies are referred to the courts by committees. Some of the more regulated industries, such as chemicals, have centralised mediation processes as well, although this may simply reflect the nature of embedded social dialogue in that industry. With the increasing emphasis on productivity-related pay variables some unions are sensing an emerging disconnect in these structures. Unions themselves tend towards regulating collective issues and conditions and, increasingly, individualised employment conditions are much harder to engage with.

In some cases, there may be less variation in content, especially where there is a strong tradition of collective bargaining and strong informal and formal relations between employers' federations and industry-level union structures, as in the chemicals sector. There may also be strong overarching bipartite structures that monitor questions of implementation with relevant monitoring mechanisms. In some sectors there are also national commitments to training, with firms being asked to develop training-related committees for employee development. The state plays a key role in supporting these, although effectiveness very much depends on the industry in question and the extent of social dialogue culture. How collective bargaining is sustained and enhanced within the firm will also depend on the strengths and abilities of local union branches and works councils. SMEs are not always able to monitor and challenge failures by employers and management to comply with an agreement's content. So, while there is a general tendency to sustain the content of agreements, the primary instability arises from how that content is changed and shifted during negotiations in larger firms.

But employers' strategies are not always the main challenge to traditional forms of collective bargaining. The very nature of union compromises and the more 'realistic' exchanges that take place between the more representative unions and management can create challenges. There are differences even between the main union confederations on the use of representative opinion or even open assemblies to reach final decisions on collective agreements. With broader political exchanges taking place between management and unions on a range of issues, and in a context in which sacrifices are being made in various areas, such as working hours and pay, we have seen an emerging challenge to the relative consensus with regard to collective bargaining. There are signs of greater resistance among independent unions or the more critical factions in the majority confederations, especially the CCOO. The anarcho-sindicalist tradition in Spain, represented by CNT and CGT, has been able to exploit these inconsistencies or compromises, especially with regard to increasing health and safety problems and precariousness in workplaces. Changes to shift patterns and working-time systems, and increases in working hours, have been a major rallying point for many minority unions. The role of the open worker assembly meeting in Spanish industrial relations is important: it remains a space in which workers can challenge decisions in and problems related to the process and content of collective bargaining. The failure to regulate or effectively control internal flexibility and mobility, part of the trade-off with stability in terms of external mobility and flexibility, is a major point of contention. Some observers detect a generational shift among other things because the working conditions in which younger workers are growing up are quite different from those experienced by older workers. Even the tradition of social dialogue is generally perceived to be fracturing as a consequence of such developments (Fernández Rodríguez *et al.* 2016a). The telecommunications industry, for example, especially Telefonica, but also agriculture have seen demonstrations against restructuring involving a range of independent voices and networks, especially in the context of new social movements (De Guzmán *et al.* 2016). Even with this fracturing, however, and with a more radical form of labour representation in some autonomous states, such as the Basque country, the general panorama of representation has been maintained, as union elections show.

Collective agreements are revised by public officials before being published in state bulletins in order to certify that the contents of the agreements comply with the law. Furthermore, while there are state mechanisms for resolving differences related to the implementation of agreements and general differences between management and unions, regional autonomous governments have developed or inherited from the central state forms of state intervention to assist them in the stable and consistent application of agreements. Regulatory roles can vary depending on the competences, roles and capabilities of specific local government mechanisms across Spain. Another important development is the increasing juridification of the industrial relations system. Unions' use of labour courts in response to the undermining of collective bargaining systems and failures to implement certain features of them has been growing. Conflict levels remain fairly high in relation to the application and, occasionally, suspension of agreements. Systematic wage cuts and increasing precariousness of employment have contributed to this growing resort to the courts as a new space of conflict, one that was once seen largely as a fail-safe mechanism and means of state intervention to address anomalies

in collective bargaining. The state is now a more active agent in many respects, which is curious given that deregulation is premised on the so-called rolling back of the state (see Fernández Rodríguez *et al.* 2016b) and the courts have been increasingly challenging firms' increasingly unilateral actions. Within CCOO, while previous debates saw the early phases of juridification prior to the 2008 austerity crisis as representing a depoliticising and individualising of industrial relations, more recently, according to some observers, that debate has shifted:

In turn this space is being increasingly used by unions to collectivise and 'collect' cases to avoid multiple complex individual cases ... yet the problem is that the labour reforms have led to a monetising of individual labour decisions on issues such as unfair dismissal and in turn there are problems of people having to wait for these decisions due to delays and then, on occasion, not getting management decisions reversed. (Interview, senior CCOO unionist)

This process of individualisation in some respects runs parallel with the way the state in the United Kingdom used Employment Tribunals to resolve and monetise collective problems in labour relations and employment practice (Howell 2005). What is more, the more restrictive aspects of legislation on collective action and picketing, which have their origins in the Francoist dictatorship and remained dormant for some time, have posed a challenge to unions when attempting to mobilise against management, although to some extent the legislation has further politicised aspects of industrial relations. Various manufacturing companies have often responded harshly to trade union collective action and have made extensive use of coercive options made available by the state on occasion.

Scope of agreements

In this section we look first and foremost at the range of issues covered by collective agreements. In industries with stronger and more coordinated company and multi-employer bargaining traditions there is scope to address issues of flexibility, shift systems and 'pools of hours' (*bolsas de horas*, free time granted to compensate for overtime during peak periods of activity) from a worker-friendly perspective. Early retirement schemes are common as a point of negotiation. Questions of bullying and harassment have often been addressed and regulated within collective agreements and there has been a growing sensitivity to green issues. Numerous collective agreements contain elements of unilateral management decision-making, generally preserving management's 'right to manage'. While many issues are non-negotiable, limits are put on management in terms of the need to negotiate various terms and conditions of employment. Much depends not only on the higher-level contents of industry-level or related cross-company agreements, but also on the balance of forces and traditions in any one bargaining unit. In some contexts, a supply-side orientation has come to dominate aspects of bargaining and relations between union, management and state, as have issues such as training. This was a significant feature of collective bargaining renewal up until the Great Recession (Martínez Lucio 2002).

Critiques of collective bargaining argue that much of it tends to be oriented towards pay and specific working conditions, such as working hours, shifts and social benefit schemes. But this ignores the broad role played by institutions of collective bargaining in relation to health and safety in firms and in multi-employer bargaining frameworks. There are also special agreements or components of agreements that deal with retirement and redundancy processes. Although under equality legislation firms with over 250 staff are required to develop equality plans, development of the appropriate structures and activities varies widely and, in some cases, can be merely symbolic. Issues around bullying and even the environment have emerged in various cases as topics for collective bargaining and are increasingly present at least in formal terms, but their scope is very uneven and generally focused on more advanced large and medium-sized firms.

The main challenge is to extend these new types of content systematically in an environment in which the framework and content of collective bargaining are being challenged. The removal of the automatic extension of a collective agreement when no agreement has been reached on a new one means that unions effectively have to start negotiations from scratch when this happens. Sustaining new initiatives in relation to equality, for example, is difficult when the core terms and conditions of employment and relevant frameworks are being challenged and threatened, if not dismantled, as part of 'restructuring' drives. Outsourcing and temporary work are also no longer so tightly regulated within the framework of collective bargaining. Many industry-level agreements include clauses that are not being complied with due to the economic circumstances of the firm. Thus local collective agreements may be modified to exclude provisions of higher-level multi-employer agreements, but the statistics will not capture such a development as the latter agreements still exist formally. Broader overarching structures have also been steadily undermined. We mentioned the role of the committees (*comisiones paritarias*) earlier, but for example in tourism and hospitality they are virtually non-existent or very weak. There is no real and effective application of EU provisions on information and consultation beyond key industries and larger firms, although one could argue this is the case in much of southern Europe. Such structures emerge mainly in reaction to proposed closures or staff reductions. In some cases, such as the automobile industry, industrial observatories (*observatorios sectorales*), which represent an institutional space enabling greater dialogue on a wider variety of issues, have been undermined by the right-wing governments of the past few years.

While there have been general guidelines on pay and working conditions for some time, with varied success depending on the context, there has also been an increasingly perceived need for flexibility to accommodate specific strategies for sustaining employment in the context of alarmingly high unemployment levels generally. One could also argue that unions have accepted greater flexibility in various cases in terms of the content of agreements or the criteria for negotiation: these compromises have emerged due to the concern that systems of collective bargaining and joint regulation may be more systematically challenged by employers and management and undermine the very fabric of industrial relations. The aim of the larger, more institutionalised unions has been to sustain the processes of collective bargaining, even if the content of agreements appears to be deteriorating, with a view to maintaining a basis for

negotiation over the longer term in case the situation improves. In this respect, the authors' current research suggests that formal criteria are accompanied by a growing flexibility as regards economic factors (increasing precariousness in the labour market) and political factors (policies of deregulation in terms of workers' rights), underpinned by what Rocha (2014) calls a more authoritarian climate of industrial relations in Spain.

Another challenge that has been observed is the creation of hybrid agreements between various sectors and activities within firms to reduce the influence of a higher-level agreement. 'Fictitious agreements' involving little real input or meaningful debate also exist, however, especially in smaller firms. Indeed, some employers use a basic template designed by legal consultants that has little meaningful content for workers. Legal consultancy firms have been emerging to assist smaller employers bypass meaningful collective bargaining and to enable them merely to pay lip service to external agreements or frameworks. Although within the EU there is some interest in the extension of social and workers' rights, it very much depends on the local and national context and since the 1980s there has been little general innovation in the form and content of Spanish labour relations, apart from on issues such training and equality and even the latter have experienced serious operational obstacles. The feeling among many unionists interviewed by the authors is that there needs to be a much higher level of commitment to questions of worker participation in the EU and at the transnational level through a greater adherence to framework agreements.

Conclusions

Overall, at least on paper, the system of collective bargaining in Spain remains fairly well regulated, with a relatively high level of collective bargaining coverage, well over 75 per cent even during the worst times of the economic crisis, and of involvement on the part of what could be considered representative unions. Indeed, over the past 30 years a certain degree of coordination had emerged. There has been substantial innovation as new contexts have emerged and the union movement has maintained an extensive system of internal (intra- and inter-union relations) and external governance (employer and state relations) in respect of joint regulation. There is growing concern, however, that this is increasingly nominal in some cases and that the extent of regulatory reach is limited in various contexts, even when a formal agreement has been reached. This could be argued to have been the case in some industries for some time prior to the current austerity crisis. Various challenges both to the external governance of regulation and the trade unions' ability to govern themselves can be identified.

First, in southern Europe, austerity measures and neoliberal policy approaches on the part of the EU have robustly underpinned national government efforts to weaken joint regulation and union influence. Second, while different terms and conditions of employment have been established in various industries, with the public sector tending towards a more centralised model, while certain key industries, such as chemicals, have a strong tradition of coordinated industry-level bargaining, there are signs of greater fragmentation and gaps in certain areas. In retail, for example, this has been due to a series of local provincial agreements that make up a complex pattern of regulation that in

the current circumstances undermines attempts at coordination and threatens to curtail it across the sector. We are also seeing more and more grey areas between different kinds of workers within industries being exploited to establish local ‘agreements’ that undermine national or higher-level standards, as established through collective bargaining. In addition, agreements are very difficult for the unions to monitor in industries dominated by small and medium-sized companies: there have always to some extent been grey areas in which implementation is limited to specific features of the collective agreement. Third, the legitimacy of unions has been challenged for various reasons beyond the fact that the legal framework is less supportive and that political exchanges with the government on social issues have been less fruitful in an age of austerity and right-wing policymaking. The almost Reagan-like challenge to the role of unions that has been developing in the past ten to fifteen years on the Spanish centre-right and its media has crystallised in a body of recent legislation that allows firms to opt out of agreements in particular circumstances (Fernández Rodríguez and Martínez Lucio 2013). This has had the effect of posing resource problems for unions that must monitor an ever-wider range of management behaviour and actions aimed at bypassing or not implementing provisions agreed in collective bargaining. In some cases, it has forced majority larger unions to face the wrath and criticisms of smaller, more radical unions, especially when terms and conditions have been agreed that fail to sustain adequate levels of employment or endanger the process of collective bargaining itself. This also means that collective bargaining has not expanded as strongly as it could have done to encompass a new set of progressive issues and agendas in a consistent manner. What is more, the new social movements and ‘new left’ that have emerged in the past five to ten years have been critical of the unions’ more institutionalist roles and their perceived distance from younger workers and their precarious labour market conditions, even if on questions of migration unions have been relatively proactive in terms of service and information.

Finally, the irony is that the extent of overall change has to some extent politicised collective bargaining, leading to a degree of union mobilisation and increasing recourse to the labour courts. This has created a new form of mobilisation alongside the more institutionalised form of industrial relations. This is a curious form of historical irony in which industrial relations finds itself between the vestiges of a coordinated model, on one hand, and a more social or mobilising model, on the other, as seen in the early years of democracy in the 1970s and 1980s, albeit without the latter’s full scope. What is more, the greater fragmentation of labour and employment relations means that constructing and developing further democratic engagement from within the unions and the workforce with regard to the design, content and negotiation of collective bargaining is likely to be a challenge and put pressure on unions’ bureaucratic structures.

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All links were checked on 8 January 2019.

Abbreviations

CCOO	Comisiones Obreras (Workers' Commissions)
CEOE	Confederación Española de Organizaciones Empresariales (Spanish Confederation of Employers' Organisations)
CEPYME	Confederación Española de la Pequeña y Mediana Empresa (Spanish Confederation of Small and Medium-Sized Employers)
CGT	Confederación General del Trabajo (General Confederation of Labour)
CNT	Confederación Nacional del Trabajo (National Confederation of Labour)
PP	Partido Popular (Popular Party)
PSOE	Partido Socialista Obrero Español (Spanish Socialist Workers Party)
UGT	Unión General de Trabajadores (General Union of Workers)
USO	Unión Sindical Obrera (Workers' Union)