

Dynamic De/Centralization in Canada, 1867–2010

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There is an exceptional character to the Canadian federation when it comes to dynamic de/centralization. Despite expectations that forces of modernization and globalization centralize federations, Canada's overall "federal balance" has remained largely stable since 1867. Early in the federation's life, there was decentralization in the fiscal realm and in a few policy fields (e.g., finance and securities as well as employment relations). The last several decades have witnessed decentralization in several policy fields, such as agriculture, citizenship, and immigration, and natural resource, but also centralization in such crucial ones as social welfare and language. The overall slight decentralist path of the Canadian federation occurred primarily through non-constitutional means. Court decisions played a significant role in shaping this path early on, but it is the territorial diversity of the country, primarily but not exclusively nationalism in Québec, along with the original centralized nature of the Canadian federation, that fundamentally accounts for why Canada has not centralized like so many other federations.

There is much debate about de/centralization in the Canadian federation. The main narrative is that Canada has evolved from being centralized at its birth to being one of the world's most decentralized federations (Bakvis and Skogstad 2002, 4). Writing in 1951, constitutional expert F.R. Scott stated: "Since 1867 the jurisdiction of the central government has relatively decreased, and that of the provinces increased, to such an extent that in the opinion of many authorities the intentions of the Fathers of Confederation have been frustrated" (Scott 1951, 1108). In his *Unfulfilled Union* (first published in 1979), Garth Stevenson portrays the evolution of Canadian federalism as one of decentralization, arguing (and lamenting) that "power has flowed towards the provincial governments at the expense of the central government, at times with the latter's approval or acquiescence" (2009, 72). This picture of a decentralizing federation does not go unchallenged. Many (though not all) Québec scholars argue that the deployment of Canadian nationalism to secure unity in the context of a strong Québécois nationalist movement has coincided with the federal government entering provincial policy fields, in part through the use of its spending power

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(Gagnon 2003). From their perspective, the multinational nature of Canada has meant that the minority French-Canadian/Québécois community never fully trusted English-Canadians and therefore sought to protect their provincial autonomy, although not always successfully (Rocher 2012). Whether the argument is that Canada suffers from a “federal deficit” (Caron, Laforest, and Vallières-Roland 2006) or an absence of “the federal ideal” (Rocher 2006), the implicit (or explicit) reference is to the centralized nature of contemporary Canadian federalism.

A common weakness behind these different interpretations of de/centralization is that they involve broad characterizations of Canadian federalism.¹ Although these characterizations sometimes hinge on selected public policy fields (Gagnon 2003), or on fiscal federalism (Noël 2006), they are not the product of a comprehensive, fine-grained, analysis. Indeed, using case studies of a few policy fields to make an argument about centralization (or decentralization) in Canada may hide the fact that most policy fields, along with fiscal arrangements, suggest a different state of affairs. In addition, much of the scholarly discussion about dynamic de/centralization in Canada lacks the temporal dimension that can help identify change.

This article is part of a broader collaborative project seeking to trace and explain dynamic de/centralization in six federations (Canada, Australia, Germany, India, Switzerland, and the United States). The article proceeds from an assessment of static de/centralization at the end of every decade since 1867 based on the coding, along a seven-point scale, of twenty-two public policy areas and five fiscal indicators. The temporal dimension of the coding provides a portrait for dynamic de/centralization (the evolution in the relative authority of federal and provincial governments) in Canada. The article also develops an explanation for transformations in the relative authority between Canada’s orders of governments.

The article is divided into six sections. The first section briefly outlines the methodology behind the research. The second section presents the original constitutional distribution of powers in the Canadian federation. This is an overview of static de/centralization at the federation’s birth. The third section maps dynamic de/centralization in Canada by examining how the relative authority of the federal and provincial governments in twenty-two policy fields, and the fiscal autonomy of the provinces, has evolved since 1867. This section also identifies the direction, magnitude, tempo, and instruments of change. The fourth section presents static de/centralization as of 2010. The fifth section develops an explanation for the patterns of dynamic de/centralization identified previously. In its conclusion, the article summarizes how the Canadian federation has experienced an overall slight decentralization since 1867.

The main finding of this research is that Canada has defied predictions about the inevitability of dynamic centralization in federations and bucked the trend of centralist trajectories found in most other federal states. While this research reveals

that Canada has not experienced massive decentralization since its birth (in fact, decentralization has been slight), it shows that the Canadian federation has avoided overall centralization and, arguably, kept a reasonably good federal balance. Decentralization has taken place in the fiscal sphere as well as in many policy fields, but there has been centralization in some very important policy areas (e.g., social welfare). Decentralization in the first half of the Canadian federation's life came mostly as result of Judicial Committee of the Privy Council (JCPC) decisions and the constitutional room provincial governments had to tax while the politics of Canadian federalism, more specifically processes of nation-building in Québec and of province-building elsewhere, have induced decentralization in the last 75 years.

Methodology

This article provides a panoramic view of dynamic de/centralization in Canada by assessing twenty-two policy fields (on both legislative and administrative authority) and five fiscal categories on a seven-point scale for every decade between 1870 and 2010. For the policy assessment, on this scale, one represents a field where authority is exclusively federal; two represents a field where authority is almost exclusively federal; three represents a field where authority is predominantly federal government; four represents a field where authority is equally federal and provincial; five represents a field where authority is predominantly provincial; six represents a field where authority is almost exclusively provincial; and seven represents a field where authority is exclusively provincial. Autonomy in the fiscal sphere is also measured on a seven-point scale based on numerical indicators or on a qualitative assessment (see online Appendix for further details).

The coding reflects the relative authority of federal and provincial governments in a policy field, or in the fiscal sphere, at the end of a specific decade. It was validated by experts on each policy and of fiscal federalism as well as by specialists of Canadian and comparative federalism. Some policy fields unique to Canada (e.g., Aboriginal policy) were not included since they had no relevance for the other cases of the project. For the purpose of the coding process, all the policy fields were considered of equal importance since weighing them would have posed a significant methodological conundrum. However, the particular significance of de/centralization in specific policy fields is discussed in the article.

The coding method allows for a discussion of the direction (centralization or decentralization) and magnitude (how much change there is) of change. It reveals the form of de/centralization (legislatively and/or administratively, and in policy fields and/or the fiscal sphere). The coding method also provides for a sense of the tempo of de/centralization: its timing (when, in the life of the federation, change occurs); the sequence (the temporal order in which change happens); its frequency (the number of instances through which change occurs); and its pace

(micro-changes, incremental changes or critical junctures). Finally, the coding reflects any asymmetry.

Creating a Centralized Federation: The Compromise of 1867

The creation of the Canadian federation in 1867 was the product of a compromise. Although the formation of a new state from the British colonies of Nova Scotia, New Brunswick, and the Province of Canada (Canada East and Canada West since the 1840 Act of Union) offered potential security and market benefits to political and economic elites (as well as a way out of the gridlocks resulting from dual prime ministerships in the Canadas), finding agreement on the structures of this state proved difficult. For the French-Canadians of Canada East, a decentralized federation was the preferred model (Silver 1982). Their political leaders felt that, as a culturally distinct minority community in the new state, French-Canadians would be better protected against a “tyranny of the majority” with extensive, constitutionally specified, political autonomy. Supporters of “Confederation” (as the union project was typically referred to) in Canada West were very hesitant to adopt a federal model (with the United States just coming out of a bloody civil war not helping the cause of federalism), preferring unitary structures instead. However, the unitary state was a non-starter for French-Canadians elites, many of whom rejected the idea of political union altogether.

Negotiations about such a union in the 1860s suggested that a centralized federation would be the likely compromise.² The apparent centralized nature of a potential Canadian federation galvanized opposition to the project, not only among French-Canadians, but also in Nova Scotia and New Brunswick (Rocher 2016). Confederation nonetheless won majority support in all four colonial parliaments and the new federal state was born.³ The parliamentary system of the former colonies was retained, and legislative and administrative powers for each field were assigned to the same order of government.⁴ From the original four provinces, the Canadian federation grew to include ten provinces by 1949. The crucial characteristic of the new federation was its binational nature, with French-Canadians entering the new state as a political community, concentrated in the province of Québec, sharing the French language and Catholic religion.⁵

The *British North America Act* (B.N.A. Act) that gave life to this state included many features showing that the intent of the Fathers of Confederation was to have a rather centralized federation. For example, the Parliament of Canada was allowed to reserve and to disallow provincial legislation (articles 55, 56, and 90); the federal government appoints the lieutenant-governors of provinces as well as judges of the most important provincial courts; the Parliament of Canada makes laws for “the Peace, Order and good Government of Canada” (article 91), a broad, wide-ranging clause serving to assign residuary powers to the federal government; and federal

legislation prevails in case of conflict in the two concurrent powers of agriculture and immigration. The existence of the powers of reservation and disallowance as well as the power to appoint lieutenant-governors and provincial court judges led K.C. Wheare (1963, 18, 20) to conclude that these “unitary elements” meant that “the Canadian Constitution is quasi-federal in law.”

The nature of the division of powers in articles 91 and 92 of the B.N.A. Act also suggests that the original intent was to have a centralized federation (Stevenson 2009, 33). Indeed, most powers that were deemed to be important for government towards the end of the nineteenth century were attributed exclusively or almost exclusively to the Parliament of Canada. For example, the B.N.A. Act gave the Parliament of Canada exclusive power over currency and money supply (articles 91, sections 14, 19, and 20), defense (article 91, section 7), and criminal law (article 91, section 27). The Parliament of Canada was given almost exclusive power over transportation (the federal parliament can legislate over “navigation and shipping” as per article 91, section 10 as well as ‘railways’), and citizenship and immigration (the federal parliament was given exclusive power over citizenship as per article 91, section 25 on “naturalization and aliens,” but shares the immigration field with the provinces as specified in article 95). The Parliament of Canada is also predominant in financial regulation as it is given exclusive power over “banking” (article 91, sections 15 and 16) while provinces oversee other borrowing institutions. The policy areas where provinces could exercise exclusive or almost exclusive control were, in the late 1800s, considered to be either of secondary importance or at the margin of government action. Hence, education (article 93), civil law (“property and civil rights in the province,” in article 92, section 13) and health care (“hospitals” as per article 92, section 7) were specifically assigned to the provinces.⁶ The coding shows that, in 1870, most policy fields were exclusively, almost exclusively, or predominantly powers of the federal parliament (see table 1). The mean score for legislative powers in 1870 is 3.75. Thus, from a policy perspective, Canada was centralized at its birth, much more significantly so than the United States or Switzerland and more so than Australia as well.

The B.N.A. Act was silent or virtually silent on many fields (e.g., culture, language, environmental protection, media, employment relations, and social welfare), some of which would only later become the subject of public policies. As a result, Canada’s original constitution created important potential for change in the relative balance of authority between federal and provincial governments.

From a fiscal point of view, the B.N.A. Act also shows signs of centralization. Perhaps most significant is that “[I]n sections 91 and 92 the provinces were restricted to ‘direct’ taxation, which was not expected to be of major importance, giving Parliament the exclusive right to impose ‘indirect’ taxes, of which the customs tariff was then the most important” (Stevenson 2006, 3). The constitutional design for fiscal federalism was meant to produce provinces with limited own-source revenues.⁷ Indeed, the coding shows a “3” for the category

Table 1 Static de/centralization in 1870

Public policy areas	1870	
	Legislative	Administrative
Agriculture	2	2
Citizenship and immigration	2	2
Culture	3	3
Currency and money supply	1	1
Defense	1	1
Economic activity	4	4
Education (pre-tertiary)	7	7
Education (tertiary)	7	7
Elections and voting	4	4
Employment relations	1	1
Environmental protection	6	6
External affairs	1	1
Finance and securities	3	3
Health care	6	6
Language	6	6
Law civil	7	7
Law criminal	1	4
Law enforcement	6	6
Media	NA	NA
Natural resources	6	6
Social welfare	NA	NA
Transport	2	2

corresponding to the proportion of own-source revenues out of total constituent unit revenues in 1880.⁸ Considering the limited own-source revenues of provinces early on, the fact that there was no constraint on these resources is not significant. The B.N.A. Act also laid out a system of yearly grants to provinces (section 118). These grants were unconditional (as reflected by the “7” code for the category corresponding to the proportion of federal conditional grants out of total constituent unit revenues), but their modest value meant that they did little to mitigate the fairly centralized nature of Canada’s original fiscal arrangements (see [table 2](#) for coding on fiscal indicators for 1880).

Dynamic De/Centralization

In 1986, Richard Simeon spoke about Canada’s “exceptionalism” when it came to de/centralization. Whereas mainstream thinking held that “[M]odernization and

Table 2 Fiscal indicators 1880

Fiscal indicators	1880
Proportion of own-source revenues out of total constituent unit revenues	3
Restrictions on own-source revenues	7
Proportion of federal conditional transfers out of total constituent unit revenues	7
Degree of conditionality (for conditional transfers only)	NA
Constituent unit public sector borrowing autonomy	7

centralization went hand in hand,” Simeon found that Canada experienced decentralization beginning in the 1960s (Simeon 1986, 449). There is much truth to Simeon’s assertion, although decentralization began earlier, especially in the fiscal realm. Moreover, there was also centralization in some policy fields as well as in some aspects of fiscal federalism at different times.

Direction and Form of Change

The federation’s overall trajectory has been slight decentralization. Decentralization has occurred in nine policy fields (see figures A1, A2, and A3) while centralization is visible in five (see figures A4 and A5). In eight others, there was no change (see figures A6 and A7).⁹ The importance of specific policy fields can be debated, but it is worth pointing out that there has been centralization in social welfare (certainly a key policy field in a modern state) and on language policy (also a particularly relevant policy field in a multilingual society). In short, while from a policy perspective, the dominant trend has been decentralization, there is also evidence of centralization. Typically, the form of de/centralization has involved synchronized change along the legislative and administrative dimensions. Only in a couple of policy fields (immigration and health care) was there change along one dimension while the other one remained unchanged at the same time.

A clearer decentralist trend can be observed in the fiscal sphere. While the proportion of federal conditional grants out of total provincial revenue has (very slightly) increased since 1867 (indicating some centralization), the proportion of provincial own-source revenues out of total provincial revenues has increased (indicating some decentralization) and the degree of conditionality for grants has diminished (also indicating decentralization). There was no change on own-source revenue restriction and borrowing autonomy (see figure A8 for fiscal indicators).

Magnitude of Change

The magnitude of change for most policy fields where there has been decentralization is modest, corresponding to a one-point change on our seven-

point scale. The lone exception is employment relations, which weighs heavily on the overall trend as there was a change from one to six. In the fields where there was centralization, the magnitude of change is more significant, particularly in social welfare, language, and environmental protection where there was a move of between two to four points on our scale. In the fiscal sphere, the magnitude of decentralization over the life of the federation has also been significant. Indeed, for the proportion of own-source revenues and the degree of conditionality, there has been a three-point cumulative change for each.

Tempo of Change: Frequency, Pace, Timing, and Sequence

Policy de/centralization in Canada has not been very frequent insofar as individual policy fields have typically seen only one instance of change in the life of the federation (see [figures A1–A5](#)). In these fields, the pace of change corresponds primarily to “micro-changes;” only in employment relations was there a critical juncture in the form of a 1925-JCPC ruling. In a few fields, there was more than one instance of change and these instances typically went in the same direction (e.g., social welfare and environmental protection). In these fields, change was incremental.

On two out of our five fiscal indicators, there was several instances of change (proportion of own-source revenue out of total provincial revenues as well as degree of conditionality), and in both of these cases change went almost completely in a straight decentralist direction. Here, change also was incremental.

The timing of decentralization in the policy fields where it occurred seems to validate Simeon’s view that there was a decentralizing turn in the 1960s and the 1970s. This was the case, for instance, in agriculture. According to [Skogstad \(1987, 49\)](#), “[U]ntil the 1960s, despite agriculture being a shared jurisdiction, provincial governments had been content to let the federal government assume the major responsibility and incur the bulk of expenses associated with that responsibility.” Indeed, federal authority was helped by the wars and the crisis, as well as the perceived nation-building aspects of agricultural policy. It was also helped by the provinces’ reluctance to take on the spending commitments linked to agricultural policy-making. Then, starting in the 1970s, “provincial economic goals rather than political motives of province-building (...) caused the policy field to change from one occupied virtually exclusively by the federal government to one where provincial activity vies with the federal” ([Skogstad 1987, 53](#)). In such fields as immigration and external affairs, decentralization occurred a little bit later, in the 1980s and the 1990s. For example, there has been a “federalization of immigration,” at least when it comes to administrative authority, which was first triggered by Québec’s claims for more power in this field. Administrative

decentralization continued in the 1990s as a result of similar demands from other provinces (Paquet 2016).

In terms of the sequence of change, decentralization in fiscal federalism started early, before decentralization in policy fields. By the 1930s, the proportion of provincial own source revenue out of total provincial revenues had reached 90 percent—a 7 in our coding (Perry 1997, 15), up significantly from the first decades of the federation when it was under 60 percent.¹⁰ After World War II there was some fiscal centralization: the coding goes from 7 to 6 in the provincial own-source and proportion of federal conditional grants categories, where it has remained virtually locked-in at 6. Federal–provincial transfers have always been mostly unconditional. The first conditional transfers came in the form of shared-cost programs, which “began in 1919 and covered vocational education, highway construction, employment offices, and venereal disease prevention” (Perry 1997, 79). For several decades, the degree of conditionality of these shared-cost programs was medium to quite high, thus introducing some centralization into Canada’s fiscal federalism. In the 1970s, and then in the 1990s, the degree of conditionality diminished as the federal government restructured and then cut its transfers to the provinces. Indeed, contemporary fiscal federalism features three main transfers: equalization, which is completely unconditional; the Canada Health Transfer (CHT), formally tied to the provinces respecting the broad principles of the *Canada Health Act* (Maioni 2012, 172); and the Canada Social Transfer (CST), whose sole condition is that provinces do not impose a minimum residency requirement for receiving social assistance. Of course, the federal government unilaterally decides on the nature of the conditions as well as the sums transferred to the provinces.

As previously mentioned, the 1960s and 1970s saw decentralizations in such policy fields as agriculture, immigration, and external relations. However, the second half of the twentieth century also featured centralization in other policy fields. In social welfare, centralization came fairly early as the federal government assumed responsibility for unemployment insurance in 1940 and old age security in 1951. In 1965, the federal government, in concert with the provinces, created the Canada Pension Plan and Québec, in the middle of its Quiet Revolution, developed its own. “From an area of virtually absolute provincial dominance in the 1860s, income security has emerged as an area of decisive federal dominance in the 1980s” (Banting 1987, 45). Federal politicians were, until the 1970s, happy to leave environmental protection to the provinces. In responding to occasional calls for the federal government to take a more active role in remediating pollution, ministers argued that “the conservation of natural resources within the provinces is primarily a provincial responsibility” (Harrison 1996, 63). Important federal legislation on environmental protection eventually came in the 1970s. On language, the *Constitution Act 1982*, through the Canadian Charter of Rights and Freedoms,

placed a new constraint on provinces since provincial governments now have to offer primary and secondary school instruction in the language of the official linguistic minority of a province (section 23, 1). The *Official Languages Act* of 1988 brought federal linguistic legislation in line with the parameters of the Charter (Cardinal 2015).

Asymmetry

Recent policy decentralization has often been asymmetrical. In some policy fields, asymmetry involves a few provinces, but typically Québec has led the way in claiming more autonomy. For example, the Québec government was the first provincial government to ask for, and receive, the administrative authority to choose a large proportion of its immigrants (Paquet 2016). Several other provincial governments followed suit but Québec still has the most developed immigration policy. A similar pattern occurred in external relations. Although the Québec government developed a presence abroad (in France) in the early years of the federation (Balthazar 2003), it was the nationalism of the 1960s Quiet Revolution that gave the province special incentives to develop its own international relations (Lecours 2005). As was the case for immigration, some other provinces (most importantly Alberta) eventually developed external relations, although not to the extent of Québec's (Lecours 2009). In social welfare, asymmetry involves only Québec because it is the sole province to have its own pension plan, although the Québec Pension Plan and the Canada Pension Plan are highly coordinated.

Instruments of Change

The instruments through which de/centralization has taken place have been overwhelmingly non-constitutional. Constitutional amendments have been the instrument of change only in two cases. The use of constitutional amendments was most significant in the area of social welfare. The federal and provincial governments negotiated three constitutional amendments to the B.N.A. Act in 1940, 1951, and 1964 in order to enable the federal parliament and government to legislate and administer unemployment insurance, old age security, and pension plan programs (Guest 1997). During the constitutional negotiations leading to the 1982 *Constitution Act*, provinces pushed to have a "resource amendment" that would strengthen provincial responsibility over natural resources. This amendment was the "only component of the 1982 constitutional patriation package that purported to alter the division of federal-provincial legislative powers, and it represents the first amendment to the Constitution since Confederation that has had the effect of strengthening the legislative authority of the provinces" (Moull 1987, 413).

Court rulings have been instrumental in shaping de/centralization in Canada. In the first half of the federation's history when the United Kingdom's JCPC served as the ultimate court of appeal for division of powers questions, several decisions interpreted federal powers narrowly and provincial ones expansively (Stevenson 2009, 45–48). For example, a 1925-JCPC decision indicated that the federal *Industrial Disputes Investigation Act* (1907) was beyond the powers of the Parliament of Canada since it was about civil rights and municipal institutions (Di Giacomo 2001). The consequence of this decision was to make the field of employment relations almost exclusively provincial after it had been exclusively federal. In the 1937 *Labor Conventions* case, the JCPC specified that provinces were responsible for the implementation of international treaties falling into their spheres of jurisdiction. As a result, the international treaty-making power of the federal government was constrained. Moreover, several rulings affected de/centralization after the Supreme Court of Canada became the ultimate court of appeal in 1949, but without a clear trend. On environmental protection, for example, the Supreme Court of Canada's 1988 *Crown Zellerbach* decision explicitly linked the federal government's authority over water pollution to the "Peace, Order, and Good Government" clause. This decision served to establish the constitutional validity of the federal 1988 *Canadian Environmental Protection Act* and secure a greater federal presence in environmental protection (Juillet 1998, 198). However, in 2011, after the federal government sought to create a national securities regulator, the Supreme Court of Canada confirmed that securities regulation was a provincial responsibility as per the provinces' constitutional power over "Property and Civil Rights" (article 92-13).

Much of de/centralization has come as a result of the significant constitutional room that exists in many fields. For example, the B.N.A. Act is virtually silent on language, and the federal government simply chose not to legislate on linguistic policy before the 1960s when the Pierre Trudeau government sought to redefine Canadian identity whereas, for example, the province of Manitoba adopted an *Official Language Act* as early as 1890. Environmental protection, a field not specifically mentioned in the B.N.A. Act, was viewed until the 1970s as a marginal domain for government action, and the federal government legislated on the environment mainly when "pollution" came to be seen as a significant problem. In these two fields, centralization occurred because the federal government started taking interest in the policy areas, primarily for political reasons in the case of language, and mostly as a result of the general broadening of the role of government and the societal expectations attached to it in the case of environmental protection.

Decentralization has occurred in a similar fashion. On immigration, a shared jurisdiction, many provinces recently found an economic rationale for selecting their own immigrants whereas for more than a century they had been happy with

the federal government fully assuming this role. Something very similar occurred with respect to external affairs, a field where the B.N.A. Act is mostly silent. On agriculture, also a shared jurisdiction, provincial governments shied away from the expenses associated with involvement in the field until the 1970s.

Contemporary Static De/Centralization

The process of dynamic de/centralization discussed below has produced a federation with a more equal balance between federal and provincial authority than originally existed. Provinces now have exclusive, almost exclusive or predominant power in seven policy fields while for the federal parliament it is nine. The federal and provincial parliaments exercise equal authority in six policy fields (see [table 3](#)). Moreover, Canada has remained a strongly dual federation as change in the balance of legislative power for a policy field has typically been accompanied by a similar change in administrative power. In the fiscal sphere, Canada is quite decentralized as three indicators show a ‘7’ and the other two show a ‘6’ (see [table 4](#)).

From a comparative perspective, Canada stands out for its decentralization. Indeed, out of the six cases of this collaborative project, Canada is the most decentralized when it comes to legislative power and fiscal federalism (tied with the United States for the latter).

Nation-Building, Province-Building, and the Rise of Competitive Executive Federalism: The Root Causes of De/Centralization in Canada

The slight policy decentralization that occurred in the first 75 years or so of the federation owes a lot to the nature of the original constitutional settlement for at least two reasons.

The first reason is the centralized design of the federation that came into being in 1867. Indeed, the adjective “quasi-federal” used by [Wheare \(1963, 20\)](#) to characterize the Canadian federation at its birth suggests that there was more room for decentralization than centralization. The second reason is the “dual,” or “classical,” nature of the Canadian federal constitutional order. In this type of “watertight” division of powers, the federal government could not easily use framework legislation to “nationalize” public policy. On education, for example, the “dual” nature of Canadian federalism probably helped to keep the provinces completely autonomous rather than having to meet certain national objectives and standards through framework legislation.

The role of the JCPC in bringing about decentralization in the federation’s first several decades has been well documented ([Scott 1951](#); [Stevenson 2009](#)). Perhaps most importantly, the JCPC provided a narrow interpretation of the federal

Table 3 Static de/centralization, 2010

Public policy areas	Legislative	Administrative
Agriculture	3	3
Citizenship and immigration	2	3
Culture	4	4
Currency and money supply	1	1
Defense	1	1
Economic activity	3	3
Education (pre-tertiary)	7	7
Education (tertiary)	7	7
Elections and voting	4	4
Employment relations	6	6
Environmental protection	4	4
External affairs	2	2
Finances and securities	4	4
Health care	5	6
Language	4	4
Law civil	7	7
Law criminal	1	4
Law enforcement	6	6
Media	1	1
Natural resources	7	7
Social welfare	3	3
Transport	4	4

Table 4 Fiscal indicators

Fiscal indicators	2010
Proportion of own-source revenues out of total constituent unit revenues	6
Restrictions on own-source revenues	7
Proportion of federal conditional transfers out of total constituent unit revenues	6
Degree of conditionality (for conditional transfers only)	7
Constituent unit public sector borrowing autonomy	7

government’s “Peace, Order, and Good Government” power (its apparent residual power), “which it seemed to regard as little more than a supplement to Parliament’s enumerated powers, and one which could not be used to ‘trench’ on the enumerated powers of the legislature” (Stevenson 2009, 49). The “Peace, Order, and Good Government” clause was redefined as an emergency clause

(Simeon and Robinson 1990, 53), effectively placing federal and provincial governments on the same constitutional level (Stevenson 2009, 150). Therefore, the federal government possessing residual powers did not lead to centralization. On the role of the JCPC, it is unlikely that its decisions *alone* took the federation in a direction “it would not otherwise have taken. It is evident that on occasion the provinces found an ally in the Privy Council, and that on balance they were aided in their struggles against the federal government. To attribute more than this to the Privy Council strains credulity” (Cairns 1971, 79).

Indeed, maintaining the centralization present in the B.N.A. Act would have necessitated some form of consensus around an almost unitary conception of the Canadian state. Instead, there was much opposition to the 1867 B.N.A. Act because it was too centralist. Explaining early policy decentralization in Canada involves taking into account political agency as well as a sociological–territorial dimension. There was an important tension between societal preferences, as articulated by provincial leaders, and the constitutional structure. The multiple territorial cleavages of the federation generated these tensions, starting with the French–English cleavage. As Jan Erk (2010) has suggested, ethno-linguistic heterogeneity favors decentralization in federations and, with the establishment of a majority French-speaking and Catholic province of Québec, the Canadian federation gave a majority of French-Canadians “their” government. However, sociological bilingualism in the new federation was not nearly as important as its political binational nature.

Indeed, the idea of a French-Canadian nation, bound by the French language, Catholicism, and social conservative practices (Balthazar 2013), meant that Québec governments would almost systematically oppose any centralist movement in the federation. As indicated previously, there were also powerful forces against the centralist B.N.A. Act in New Brunswick and Nova Scotia (Rocher 2016) and, although the anti-confederation parties themselves barely survived the creation of the new state, skepticism towards centralization remained. In other words, the idea of provincial autonomy “had already become a fundamental standard of political discourse” by the very early days of the federation (Vipond 1985, 275). Interestingly, it was Ontario, the province where opposition to Confederation was the weakest, that spearheaded the so-called provincial rights movement against centralization for the first thirty years or so of the federation (Armstrong 1981). When the Western provinces joined the federation, their relationship with the federal government was immediately strained by the latter’s control of natural resources (Janigan 2012). The sentiments of “Western alienation” (Gibbins and Arrison 1995) that quickly developed made sustaining centralization very difficult. The last province to enter the federation, Newfoundland, did so in 1949, not without a strong internal opposition that announced a fierce defense of its identity and autonomy within Canada (Vézina and Basta 2014). In short,

“organized political support for a centralist vision simply did not exist” (Simeon and Robinson 1990, 53). Even the World War I, which triggered a *War Measures Act* that gave broad powers to the federal government, did not lead to durable centralization largely because of political and societal opposition almost everywhere in the country but especially in Québec. Simeon and Robinson argue that, during his first years as prime minister (1921–1926), William Lyon Mackenzie King’s “inaction” on federalism (i.e., his failure to centralize) “was motivated by his fear of antagonizing a Catholic and conservative Quebec, opposed to the extension of the state, and especially the federal government, into new social or economic policy areas” (Simeon and Robinson 1990, 48).

Decentralization in the fiscal sphere, mainly visible in the sharp increase of provincial own-source revenue during the first sixty years or so of the federation,¹¹ was the product of a similar set of factors. Although the B.N.A. Act gave the federal government the main revenue-generating power of the day (customs duties), the constitutional framework did not exclude provincial governments implementing direct taxation. As the system of federal subsidies originating in the B.N.A. Act proved inadequate to sufficiently finance most provinces, several provincial governments began using succession duties as well as personal income and corporation taxes. Crucially, the constitutionality of some of these moves was upheld by the JCPC (Stevenson 2009, 128). Therefore, from a fiscal federalism perspective “[I]ncreasing provincial power continued to bear fruit in the 1920s, despite the temporary interruption caused by the war” (Stevenson 2009, 129).

The Great Depression and the World War II triggered some centralization. In the 1930s, provincial governments were in a precarious fiscal situation because they had to finance “relief” services then delivered by municipalities. The federal government responded by offering “relief grants,” which at first came with some conditions but were later integrated into the general (unconditional) system of subsidies (Perry 1997, 18). The ad hoc nature of these fiscal arrangements prompted the federal government to create the Royal Commission on Dominion-Provincial Relations (or Rowell–Sirois Commission) in 1937 to make recommendations on fiscal federalism and the division of powers more generally. The Commission’s 1940 report deplored the fact that the federal government did not have “adequate control over the money which was spent and administered by nine different provinces and by hundreds of municipalities” (Perry 1997, 20). It also recommended that unemployment insurance and old-age pensions become the exclusive responsibility of the federal government. In 1940 and 1951, respectively, constitutional amendments were enacted to allow the federal government to create and administer programs in these two areas, a significant social welfare policy centralization for the federation. Even under war conditions, unanimous consent for the 1940 amendment was made possible only as a result of the defeat of

Québec's then most nationalist party (the *Union nationale*) at the 1939 provincial election. The war years also saw the federal government take over all personal and income taxes, with the provinces receiving unconditional per capita grants in return through an arrangement dubbed "tax rentals."¹²

Unlike what happened after the World War I, the centralist momentum that emerged during the World War II remained for a couple of decades. The "tax rental" agreements were renewed. The federal government developed its practice of shared-cost programs,¹³ which "obliged the provinces to satisfy federal criteria if they wished to receive federal funding" (Perry 1997, 173). It kept its newly found authority over employment insurance and old-age pensions.

The decentralization we observe in several policy fields beginning in the 1960s and 1970s challenges the notion that macro-structural change such as technological innovation, increased population mobility, and continental integration inevitably leads to centralization. More important for understanding dynamic de/centralization in Canada are nationalism, province-building, political agency, the structure of the party system, and intergovernmental relations.

The central force for policy decentralization during the last fifty years or so has been *Québécois* nationalism. The transformation of nationalism in Québec from a conservative, autonomist and essentially defensive political force into a dynamic, state-anchored, nationalist movement seeking, at a minimum, to re-structure the federation in the direction of decentralization (and preferably in an asymmetrical fashion) weighed heavily on the Canadian federation. Put simply, Québec governments, whether formed by the *Parti libéral du Québec* (PLQ) or the secessionist *Parti Québécois* (PQ) have consistently striven to increase the autonomy of the province, with the PQ having independence as its ultimate objective. Nation-building was a common objective of both Québec political parties. It is, therefore, no coincidence that policy decentralization in the 1960s and 1970s occurred in fields that were of particular importance for Québec in the context of the Quiet Revolution (e.g., immigration and external relations). Moreover, Québec was sometimes the only province interested in assuming new powers, therefore introducing some asymmetry into the federation. Continental integration, first coming in the form of a free-trade agreement with the United States in 1988, has limited the ability of the federal government to centralize and helped the Québec government make the claim that the province was becoming less economically reliant on the Canadian market.

Québec governments animated by nationalism applied the most pressure on the federal government, but other provincial governments also took autonomist position.¹⁴ For example, the early struggle of Western provinces, particularly Alberta, to take ownership of the natural resources on their territory provided a decentralist impulse and strengthened provincial identities. Beginning in the 1960s, Québec's claims for constitutional change, which pushed many of the provinces to develop

their own constitutional agenda, accelerated and intensified “province-building,” which also found roots in the distinct regional economies of the country (Esman 1984). Indeed, one could argue that “[S]ince 1867 Canadians have been engaged in more than the construction of a new state; they have been building provinces,” and that a major contributor to the decentralist momentum of the 1960s was a “relatively great increase in the competence and confidence of provincial administrations and a consequent growth in elites who identified their prospects with the fortunes and favors of the provincial governments” (Black and Cairns 1966, 27, 35).

This province-building, and the ensuing decentralization, was aided by three factors. The first is that the period of major shared-cost programs produced a vast growth of provincial expertise in many policy fields. The second is that provincial governments have no effective voices within central institutions (the Canadian Senate being an appointed body historically structured by party discipline), and therefore needed to develop agency to communicate with the federal government (Esman 1984). The third is the structure of the party system. For the most part, provincial and federal political parties are organizationally distinct (Simeon 1972, 31–33). Freed from the constraints that integration of political parties across the levels of government could pose, provincial politicians have demonstrated strong assertiveness, even antagonism at times, towards the federal government. Nowhere was this more visible than in the development of a new type of intergovernmental relations famously characterized by Richard Simeon as approximating diplomatic relations between sovereign states (1972, 214). In turn, these intergovernmental relations helped the process of province-building by contributing to the developing view among many Canadians that the provincial government was the political authority struggling on their behalf for resources and standing within the federation. Increased expectations about the role of government in the post-war era also benefited provinces because they are constitutionally empowered to act in policy areas (notably health, education, law enforcement, many social welfare programs) that touch citizens more directly than most federal policies. Interestingly, parliamentarism in Canada did not translate into centralization, despite the fact the concentration of power in the hands of the executive is considered to be extreme (Savoie 1999).

As we indicated earlier, there was also some policy centralization during the 1960s and 1970s. Part of this centralization corresponded to the further expansion of the welfare state. The efforts by Pierre Trudeau’s government to create a “just society” provide some validation for the notion that left of center parties are likely to be centralizing agents. However, another dimension of this policy centralization was the product of a conscious attempt on the part of that Liberal government to generate a new type of nation-building in Canada, one that involved the redefinition of the country’s linguistic regime, in an effort to counter the rise of the

secessionist movement in Québec. The so-called Trudeau vision of Canada (McRoberts 1997) featured a strong federal government overseeing the crafting of a society where citizens enjoyed robust rights protection (Laforest 1992). The combination of national unity, social cohesion objectives, and individual rights protection favored efforts to centralize the federation. The greater presence of the federal government in language policy, especially through the constitutionalization of a Charter of Rights and Freedoms in 1982, owed much to Trudeau's nation-building efforts. The pushes and pulls of the competitive (pan-Canadian and Québécois) nation-building processes that unfolded from the 1960s to the early 1980s accounted for the presence of both centralizing and decentralizing trends. Societal expectations of greater government involvement in fields such as social welfare and environmental protection also helped the federal government enhance its policy role in these areas.

The fiscal decentralization that occurred between the 1970s and the 1990s in the form of a loosening of conditions on federal transfers to the provinces owed much to the new *Québécois* nationalism and the more general process of province-building. Provincial tolerance for shared-cost programs decreased drastically. Indeed, many provinces felt that these programs “skewed provincial priorities, that they fostered more uniformity than desired in a federal state, that conditions were often onerous and blocked provincial innovation, that they were begun, modified and terminated by the federal government, and that they failed to take into account variations in provincial capacity to raise matching funds” (Simeon and Robinson 1990, 199). From the federal government's perspective, shared-cost programs had nation-building properties because they allowed Ottawa to approximate national standards. The discontent these programs generated in many provinces, especially in Québec, may have produced “nation-destroying” effects instead (Telford 2003). Provincial pressures led to shared-cost programs in health and post-secondary education being replaced by the less conditional Established Programs Financing (EPF) transfers in 1977. The Canada Assistance Plan (CAP), the major transfer for social assistance funding, retained a shared-cost structure. The transition from EPF and CAP to the Canada Health and Social Transfer (CHST) (divided into the CHT and the CST, in 2004) was first and foremost the product of the federal government seeking to balance its own budget; as a consequence, it had to somewhat reduce the conditionality of transfers.

Since the 1990s, the status quo has basically prevailed when it comes to policy de/centralization. However, this status quo should not obscure the fact that both centralist and decentralist pressures have permeated Canadian federalism during the last 30 years. For example, after the 1995 Québec referendum on independence, the Liberal federal government attempted to achieve some provincial coordination in the area of social welfare through the Social Union Framework Agreement (SUFA). However, the Québec government opted not to sign SUFA (Noël 2000)

and the whole project petered out. The Conservative Harper government was ideologically less keen on pan-Canadian programs and sought, for its first several years in power, to practice what it called “open federalism”—a decentralist approach to managing the federation that was, according to the Conservative Party of Canada, the most sensible for national unity (Montpetit 2007)—in order to woo Quebecers. Nevertheless, Québec governments, especially but not solely when formed by the PQ (1994–2002 and 2012–2014), continued making claims for further decentralization, for example, in the policy field of culture and in the fiscal sphere more generally.

Conclusion

This research provides partial validation for the main narrative on the evolution of federalism in Canada. Overall, the path has been a decentralist one but, contrary to that narrative, decentralization has been slight. Indeed, the extent of the historical decentralization of the Canadian federation may be exaggerated in the literature (Stevenson 2009). Another way to characterize Canada’s dynamic de/centralization is to say that the federation has remained overall fairly stable in the relative authority of its federal and provincial governments. What is certain, though, is that Canada defies assumptions about the inevitability of centralization in a modern federation. The “exceptionalism” of Canadian federalism is thus confirmed from the point of view of de/centralization (Simeon 1986); the forces of modernization and globalization did not induce centralization in Canada.

The reasons for the overall slight decentralist path are many, starting with the simple but important fact that the country was created as a highly centralized federation, which meant there was little room to further strengthen the powers of the Parliament of Canada. Also important is that the JCPC interpreted provincial powers expansively, and that its many judgements in the first sixty years or so as the ultimate court of appeal of the federation favored decentralization, or at least constrained centralization.

The binational nature of Canada has been decisive in bringing about decentralization and countering attempts at re-centralization. Nationalism in Québec has meant that there is a powerful built-in bulwark against centralization. At the same time, post-war centralization in policy fields such as language and social welfare had a (Canadian) nation-building rationale. Therefore, much of the post-war de/centralization tensions owed to the competitive nation-building exercises occurring in the country.

But there is more than Québec to consider for explaining why and how centralization has, for the most part, been stymied in Canada. Other provinces have developed into political communities whose governments could, albeit to varying degrees, take on the federal government with support from their residents. Helped

by the development of more extensive intergovernmental relations under the guise of “executive federalism” in the 1960s, the historical process of province-building has meant that centralization is not immediately and automatically accepted in Canada. Of course, in many provinces, centralization is sometimes tolerated or even welcomed (Young, Faucher, and Blais 1984, 787–790) but, contrary to other federations, it is also very often viewed critically and indeed opposed. As provincial governments have become central in the life of most Canadians,¹⁵ their political displacement by the federal government tends to be at the very least questioned. As one observer put it while commenting on de/centralization in Australia and Canada: “Australia does not have the good fortune of having a Québec, but it also does not have some of the other regional diversities that help keep the Canadian federation much more decentralized” (Fenna 2007, 302).

This presence of strong provincial identities, including nationalism in Québec, means that, contrary to developments in other federal systems (Muro 2014), a future significant centralization of the federation is unlikely despite a federal government currently formed by the center-left Liberal Party of Canada, which has been prone to favor a strong central government in the past. Indeed, above and beyond party ideology and political agency, the territorial structure of Canadian federalism represents a formidable obstacle to any centralist intent.

Supplementary data

Supplementary data are available at *Publius: The Journal of Federalism* online.

Appendix

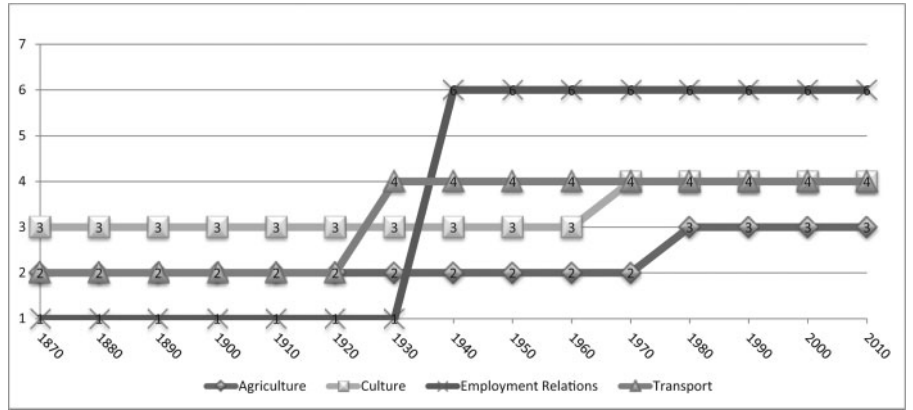


Figure A1 Decentralization in agriculture, culture, employment relations, and transport.

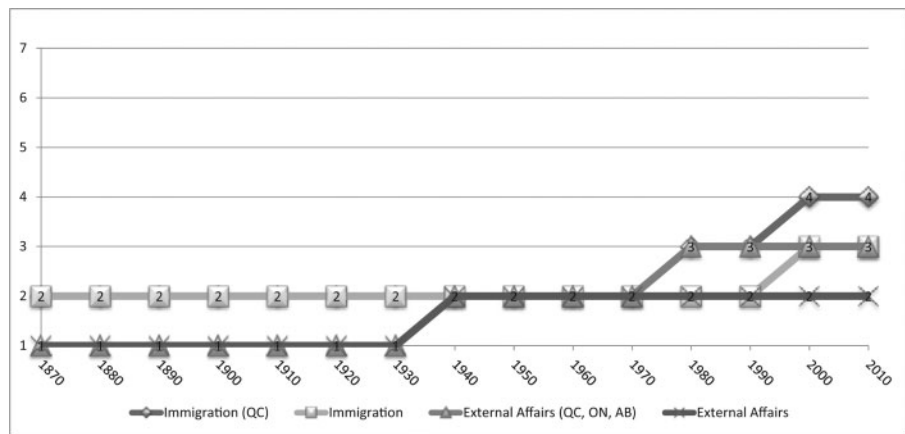


Figure A2 Decentralization in immigration and external affairs.

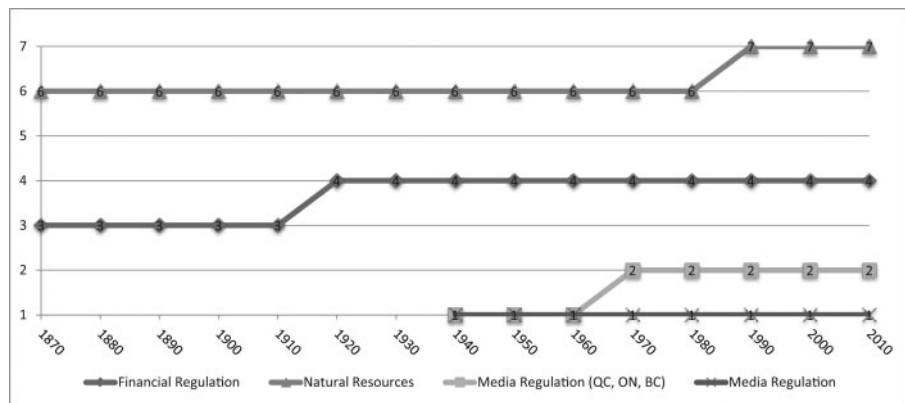


Figure A3 Decentralization in financial regulation, media regulation, and natural resources.

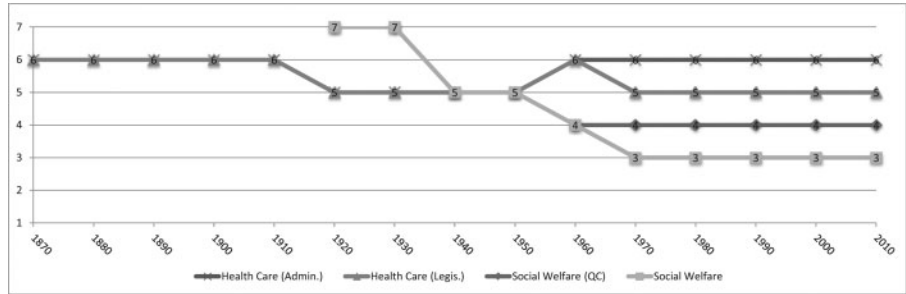


Figure A4 Centralization in social welfare and health care.

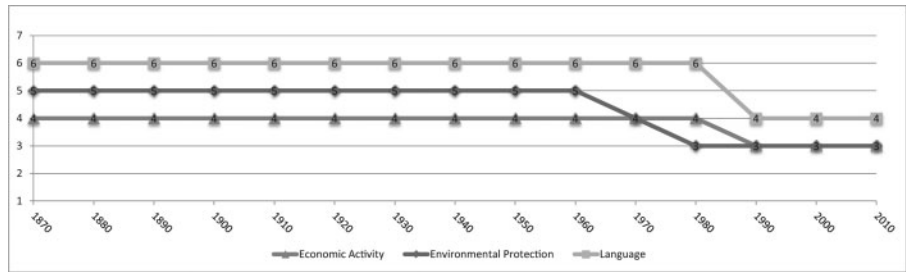


Figure A5 Centralization in language, environmental protection, and economic activity.

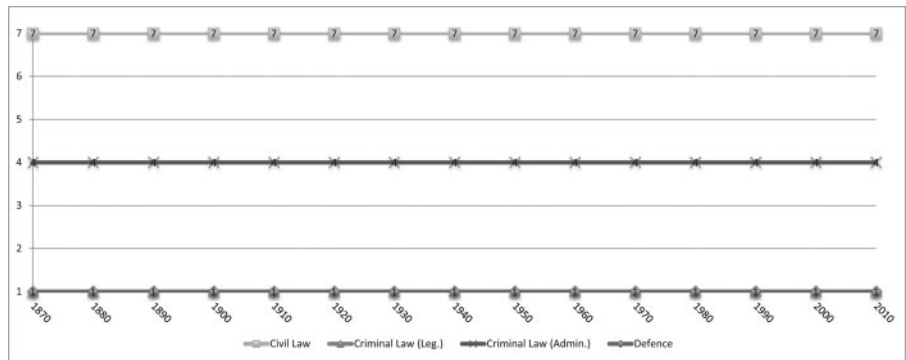


Figure A6 No change in civil law, criminal law, and defense.

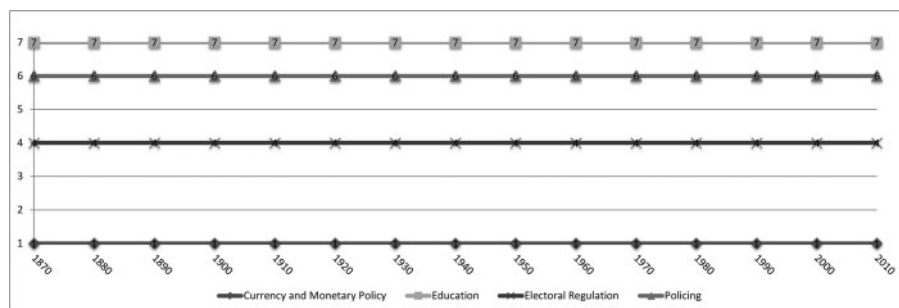


Figure A7 No change in currency and monetary policy, education, electoral regulation, and policing.

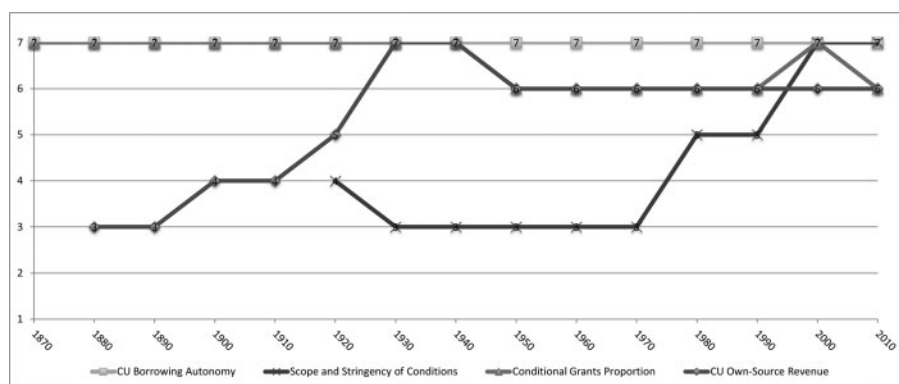


Figure A8 Fiscal indicators.

Notes

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1. Ronald L. Watts (2008) is a partial exception here as he distinguishes between various policy fields and also considers fiscal indicators when assessing the relative degree of decentralization of Canada in relation to other federations.
2. Indigenous peoples, women as well as most who did not own considerable private property were completely excluded from these negotiations.
3. This parliamentary support owed much to the market opportunities the business elite felt Confederation would provide. The extent of the broader public support for the project is more difficult to evaluate. Prince-Edward-Island and Newfoundland were also invited to join Confederation but initially declined.

4. The lone exception is criminal law. Criminal law represents an oddity in the division of powers since the exclusive power of the federal government is legislative only. Administrative responsibility is shared between federal and provincial governments. Baker (2014) has remarked on this lone “German-style” feature in Canadian federalism.
5. The presence of Aboriginal peoples was another element of sociological multi-nationalism of Canada, but from they were excluded from the political union.
6. In Québec, this division of powers protected the role of the Catholic Church in education and health care.
7. The federal government also absorbed provincial debts (section 111).
8. The first year where data is available is 1874.
9. On education, see Wallner (2014).
10. Of courses, provinces did not consider this a good thing since they were suffering from a shortage of financial resources. The same was true for the federal government, which is why it reduced provincial transfers.
11. For example, by 1929, federal grants accounted for only one-tenth of provincial revenue (Stevenson 2009, 129; Perry 1997, 15).
12. The fairly slight centralization in the fiscal sphere and important centralization in the policy field of social welfare during the 1940s and 1950 speak to the common narrative of wartime and post-World War II strengthening and expansion of the provincial government. For example, writing in 1958, J. A. Corry was writing: “A province can not hope to run successfully against the tide of national development (...) The most it can hope to hold is freedom for minor adventure, for embroidering its own particular patterns in harmony with the national design, for playing variant melodies within the general theme” (1958, 108)
13. “The first real shared-cost programs began in 1919 and covered vocational education, highway construction, employment offices, and venereal disease prevention” (Perry 1997, 179). Shared-cost programs were also used in the 1920s and 1930s, but in a fairly limited fashion.
14. The potential asymmetry that could result from Québec’s demands found much opposition in several provinces, especially those with a strong identity. These provinces (most often Alberta) sometimes made their own decentralist claims. These territorial dynamics have been observed in other federal systems (Colino and Hombrado 2015).
15. More generally, provincial identity is real in Canada. For example, in eight provinces out of ten, fewer than 25 percent of people consider themselves “Canadian only” (in Ontario, where it is 39 percent, and in British Columbia, where it is 26 percent). The author thanks Antoine Bilodeau, Luc Turgeon, Ailsa Henderson, and Stephen White for granting me access to this data stemming from the 2014 *Provincial Diversity Project*.

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