

Dynamic De/Centralization in Germany, 1949–2010

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As part of the project *Why Centralization and Decentralization in Federations?*, this article measures dynamic de/centralization in Germany since 1949 and seeks to explain the patterns observed. It shows stability in numerous policy fields as well as an overall marked centralization over time, especially in the fiscal and administrative spheres. The principal instrument of dynamic de/centralization has been the enactment of legislation in fields of shared responsibility, with constitutional change also being important. In the 1950s and 1960s, an incremental centralization occurred as political and administrative elites strongly favored uniform living conditions. In a context of Keynesian interventionism and a broad consensus about social planning, the Great Fiscal Reform of 1969 amplified this centralizing trend. The East-West unification of 1989–1990 increased the economic and fiscal heterogeneity of the *Länder* and challenged the cultural norm of uniformity. The resulting federalism reforms of 2006 and 2009 blended decentralizing and centralizing measures.

The evolution of the Federal Republic of Germany (henceforth ‘Germany’) has been studied extensively with regard to particular instances of de/centralization. Yet, research that describes and explains continuity and change in the distribution of power between the federal and constituent governments over a long period is limited (Adelberger 2001; Benz 1999; Jeffery 2003; Kilper and Lhotta 1996; Klatt 1989; Lehmruch 2000, 2002; Oeter 1998; Renzsch 1991; Scharpf 2009; Sturm 2010). Specifically, we lack a precise mapping and analysis of the vertical distribution of legislative, administrative and financial power for the full life span of the federation. Since the existing literature does not quantify the magnitude of power changes, de/centralization cannot be compared well over time and with other federations.¹ This article seeks to fill this gap by measuring the level of federal and constituent power in twenty-two policy fields and five fiscal dimensions since 1949. Based on these data, we determine the frequency, direction, magnitude, tempo, and instruments of change. Our concept of de/centralization refers to the relationship between an individual *Land* and the central government. Thus, we do

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not consider horizontal coordination (or its repeal) an instrument of centralization (or decentralization), unless coerced by the federal government. Our concept of de/centralization differs from unitarization which is a process of harmonizing living conditions through centralization and/or horizontal coordination (Hesse 1962). Finally, this article develops an explanation for the patterns of dynamic de/centralization identified. It is part of a broader project seeking to trace and explain dynamic de/centralization in six federations.

Germany's federal system has been characterized by remarkable continuity (Kilper and Lhotta 1996, 151; Lehbruch 2002, 53). Benz (1999, 60) distinguishes four phases of federal development: unitarization and reform (1949–1969); incremental adaptation (1969–1989); exceptional centralization (1990); and asymmetric federalism (since 1991). A number of approaches have been proposed to explain de/centralization over time. Lehbruch (2002) argues that the federal power distribution has been rather immune to change because the basic characteristics of the federal order have been strongly path dependent. Centralization occurred due to the cultural orientations of political decision-makers towards uniformity and the primacy of the nation-state. Similarly, as the nation-state is no longer the undisputed frame of reference, decentralization became more likely since the 1990s. Sturm (2010) rejects the early path-dependent approaches and argues that the federal system changed when new societal problems emerged and affected political actors' perceptions and expectations. While the social narratives of modernization theory in the 1950s and 1960s, Keynesianism in the late 1960s and 1970s, and unification of 1989–1990 supported centralization, a counter social narrative of heterogeneity, lower redistribution and increased competition gained traction after the 1980s and fostered decentralization. Adelberger (2001) provides an institutionalist explanation, claiming that changes in the power distribution typically require *Bundesrat* approval, which the financially weak *Länder* employed to veto proposals to decentralize legislative or fiscal power to the regions. According to this approach, the poorer *Länder* preferred sharing decision-making power with the federal government if it provided needed fiscal resources. The federal government thus bought them out occasionally, resulting in centralization. The theoretical approaches mentioned, however, have not been able to systematically explain de/centralization over the full life span of the federation and with regard to the full set of policy areas and fiscal dimensions.

This article shows that de/centralization in Germany has varied greatly by policy fields. Half of all instances of de/centralization occurred in three out of twenty-two policy fields, namely social welfare and pre-tertiary and tertiary education. Ten policy fields did not undergo de/centralization large enough to be captured by our measurement scheme. Moreover, we demonstrate that one of the key characteristics of the federation has diminished: Germany has become less of an

administrative federation after unification as legislation has been decentralized and administration has been centralized.

The article proceeds as follows. The first section presents the research design. Second, we provide an overview of the federal system of Germany. In the next section, we present the static de/centralization at the creation of the federation. Fourth, we show how the distribution of legislative, administrative and fiscal power between the federal and *Land* governments has changed since 1949. This includes a discussion of the frequency, direction, magnitude, tempo, and instruments of change. Fifth, we explain these patterns of dynamic de/centralization, assessing hypotheses that were developed in the broader project. The conclusion reflects on the key findings of the article.

Data and Methods

The common methodology of the country studies of the broader project is fully discussed in the introduction to the special issue. In this section, we briefly recall the main points. This article measures static de/centralization in Germany at ten-year intervals since 1949 in twenty-two policy areas and five fiscal categories. Each data point is intended to capture the degree of autonomy of an individual *Land* vis-à-vis the federation in a given policy or fiscal area at the end of the respective year. In the policy sphere, we distinguish between legislation and administration and we assess autonomy in each of these two dimensions. Legislative autonomy relates to a constituent unit's control of primary legislative powers. Administrative autonomy concerns the degree to which a constituent unit implements laws of the central government as well as its own legislation. We measured legislative and administrative autonomy in policy matters on a 7-point scale where 1 is the lowest degree of autonomy and 7 is the highest: 1 = exclusively federal government; 2 = almost exclusively federal government; 3 = predominantly federal government; 4 = equally federal government and the *Land*; 5 = predominantly the *Land*; 6 = almost exclusively the *Land*; and 7 = exclusively the *Land*. Policy fields that have been fully delegated to the EC/EU are coded as non-available. When legislative or administrative power is shared with the EC/EU in a policy field, we only consider the power that remains with a *Land* or the federal government, and code the *Land* autonomy vis-à-vis the federation for this remaining portion of the power. As detailed in the Supplemental Online Codebook, we measured autonomy in the fiscal sphere on 7-point scales based either on numerical indicators, where available, or on qualitative assessment.

We coded autonomy in each category on the basis of constitutional and non-constitutional developments – such as the enactment of legislation and changes in fiscal transfers – that increased or decreased the legislative, administrative and fiscal autonomy of a *Land* each decade. Our principal sources were the law database

Juris, various editions of the Statistical Yearbook, and the scholarly studies of each policy and fiscal category. Each code underwent several rounds of internal discussion within the project team and was then subjected to external validation by experts of the policy and fiscal categories and experts of comparative federalism. The Supplemental Online Codebook details the codes for each category, indicates the sources they are based upon, and outlines the justification for the coding decisions.

To measure dynamic de/centralization, we computed the following statistics and mapped them longitudinally: (a) the modal and mean policy and fiscal scores, and the standard deviation among them, by time point; (b) the deviation between the legislative and administrative policy scores by category and in the aggregate, by time point (L–A deviation); (c) the total, modal, and mean frequency of score change by policy and fiscal category and in the aggregate; (d) the patterns of direction and magnitude of score changes; (e) the cumulative direction and magnitude of score change by policy and fiscal category and in the aggregate; and (f) the mean rate of score change per decade.

To explain dynamic de/centralization, we assess the plausibility of the hypotheses developed in the introductory article, which theorize the effects of antecedent conditions, socio-economic and socio-cultural trends, shocks, collective attitudes, political agency, and institutions on *Land* autonomy. We base the plausibility assessment on the data gathered (see Supplemental Online Codebook), relevant literature and our expert knowledge. As a first hypothesis, we expect the German federation to be more centralized at the outset than other federations because it is a young federation and did not originate from a federal bargain. Following this reasoning, it is assumed that the German federation has since experienced less centralization than other federations. Dynamic centralization in Germany is expected due to socio-economic trends, globalization, and Europeanization. From a sociocultural perspective, it is hypothesized that centralization occurs because firstly citizens' identifications shift from the constituent units to the federation as a whole and secondly citizens change expectations towards the role of government. Furthermore, Germany is more likely to having experienced centralizing steps during shocks, particularly through fiscal instruments. Socio-economic and socio-cultural trends are assumed to change collective attitudes, which create conditions for political actors' agency. With regard to political agency, we expect centralization due to the nationalization of the party system, by left governments (as opposed to decentralization by right governments) and by a centralist constitutional court. Finally, institutions are hypothesized to have the following effects: *Länder's* residual powers limit centralization, while administrative federalism and parliamentarism facilitate centralization. Administrative federalism is assumed to result primarily in legislative centralization through the instrument of framework legislation.

Characteristics of the Federal System

The Federal Republic of Germany was founded in 1949 after the collapse of the Third Reich, the end of the Second World War, and the Allied occupation. The American, British, and French occupation zones were united to form the democratic Federal Republic while the German Democratic Republic (GDR) was created in the Soviet occupation zone in East Germany. The foundation of the Federal Republic revitalized a federal tradition that originated in the revolutionary constitution of 1849 but was only put into practice with the creation of Bismarck's federal national state in 1871.² The constituent units, the *Länder*, were recreated after 1945; they then established a central government through the constitution, the Basic Law. The Basic Law was a compromise between the preferences for a centralized federal state by the German representatives in the Parliamentary Council and the preference for a more decentralized federation on the part of the Western Allies.

Parliamentary System

The constitution created a parliament named *Bundestag* (federal assembly) to represent the people as a whole. It also established the *Bundesrat* (federal council) to represent the *Länder*. While the *Bundesrat* formally is a constitutional organ outside of parliament, it is considered by some as a functional equivalent of a second chamber. Members of the *Bundestag* have been elected every four years, in 1949 mostly directly, since 1953 equally directly and through lists. Members of the *Bundesrat* are sent by the *Land* governments. Germany has a classic parliamentary system in which the chancellor is elected by the *Bundestag* and the ministers are appointed by the federal president upon suggestion by the chancellor. These fundamental principles of the institutional set-up remained unchanged over time.

The federation was originally composed of eleven *Länder* and *West Berlin*, each having equal status and retaining residual powers. After a merger of three *Länder* in 1952 and the accession of *Saarland* in 1957, the federation consisted of ten *Länder* and *West Berlin*. In 1990, the GDR acceded to the Federal Republic, adding five re-constituted *Länder* and bringing the total to sixteen. The *Länder* have between three and five (after the unification, six) seats in the *Bundesrat*, while the number of seats in the *Bundestag* is strictly proportional to population. The *Bundesrat* is less powerful than the *Bundestag*, but has a significant co-decision making role that gained importance over time. This trend was halted by the Federalism Reform of 2006, which reduced the proportion of federal laws requiring *Bundesrat* approval (Stecker 2016). The constitution mandates that the Federal Constitutional Court (FCC) act as a federal umpire and review the constitutionality of federal and *Land* laws. The federation is monolingual.

The Länder in a System of Integrated Federalism

With regard to power distribution, Germany represents a special case because a significant part of the power of the constituent units is shared with either the other *Länder* or the federal government. Taking into account only its legislative, administrative or fiscal autonomy means underestimating *Land* power because we need to consider the influence of a *Land* in participating in federal legislation through voting in the *Bundesrat* and in joint policy-making with the federal government. Compared to autonomous decision-making, however, these channels of influence grant the individual *Land* a significantly smaller amount of power.³

Static De/Centralization at the Outset

The federation was considerably more centralized at its foundation than other federations at the time of their birth. If compared to other federal states in 1950, however, Germany was only slightly more centralized, as shown in other articles in this special issue. The Basic Law was characterized by a strong functional division of power. Legislation rested predominantly with the federal level as shown by the mean score of 3.43 for all policy fields (table 1). In contrast, the *Länder* were predominantly responsible for administration (mean score of 5.29). By enumerating the legislative and administrative powers of the federal level, the Basic Law paved the way for further centralization. The differences in legislative power distribution across policy fields were pronounced, as indicated by a standard deviation of 1.96. For half of the twenty-two policy fields analyzed, the central government through the *Bundestag* had exclusive or almost exclusive control over law making. The legislative prerogatives of the *Länder* comprised the typical subnational domains of culture, education and law enforcement as well as media and natural resources. More importantly for the *Länder*, they monopolized or almost monopolized administrative power in thirteen policy fields. Only in two areas did the federal government implement the majority of its policies, namely external affairs and currency and money supply. The lower standard deviation of 1.27 across policy fields underlines that administrative powers were consistently attributed to the constituent units.

The *Länder* and municipalities also had substantial fiscal autonomy, as demonstrated by a mean score of 4.8 (table 2). The local governments could set the rates for taxes on local business and real estate. While the *Länder* lacked own-source tax revenues, they could collectively co-decide with the federal government and its majority in the *Bundestag* on all other major tax laws through the *Bundesrat*. Conditional grants by the federal government played only a minor role for *Land* finances and had rather strong strings attached. Finally, the constituent units were fully autonomous in borrowing.

Table 1 Static policy de/centralization, 1950 and 2010

	1950		2010	
	Legislative	Administrative	Legislative	Administrative
P1 Agriculture	2***	5**	2***	6**
P2 Citizenship and immigration	1***	4**	1***	4**
P3 Culture	6***	6***	6***	5**
P4 Currency and money supply	1***	3*	N/A***	2**
P5 Defense	N/A***	N/A***	1***	1***
P6 Economic activity	2**	5**	2**	5**
P7 Education—pre-tertiary	7***	7***	7***	6**
P8 Education—tertiary	6***	7***	6***	6***
P9 Elections and voting	3***	5***	3***	5***
P10 Employment relations	2***	4*	2***	4**
P11 Environmental protection	4*	6**	2***	6**
P12 External affairs	2***	2**	2***	2**
P13 Finance and securities	2***	6***	2***	4***
P14 Health care	4*	6**	2***	6**
P15 Language	4**	5**	4**	5**
P16 Law—civil	2***	6***	2***	6***
P17 Law—criminal	2***	6***	2***	6***
P18 Law enforcement	6**	6**	6**	5**
P19 Media	6***	6***	6***	6***
P20 Natural resources	6***	6**	2***	6**
P21 Social welfare	2***	6**	2***	3**
P22 Transport	2***	4**	2***	4**
Total	72 ^a	111 ^a	64 ^a	103
Mode	2	6	2	6
Mean	3.43	5.29	3.05	4.68
Standard deviation	1.96	1.27	1.91	1.52
L–A mean deviation	–1.86	1.86	–1.63	1.63

Note: 1 = exclusively general government; 2 = almost exclusively general government; 3 = predominantly general government; 4 = equally general government and constituent units; 5 = predominantly constituent units; 6 = almost exclusively constituent units; 7 = exclusively constituent units.

^aTwenty-one categories only.

Confidence rating: *low, **medium, ***high.

Table 2 Static fiscal de/centralization, 1950 and 2010

	1950	2010
F1 Proportion of own-source revenues out of total CU&local govt revenues ^a	3**	1***
F2 Restrictions on own-source resources ^b	4***	3***
F3 Proportion of conditional grants out of total CU&local govt revenues ^c	7**	7**
F4 Degree of conditionality (for conditional grants only) ^b	3*	5**
F5 CU public sector borrowing autonomy ^d	7***	3***
Total	24	19
Mean	4.8	3.8
Core mean ^e	5	4
Standard deviation	2.05	2.28

Note: ^a1 = 0–14; 2 = 15–29; 3 = 30–44; 4 = 45–59; 5 = 60–74; 6 = 75–89; 7 = 90–100; ^b1 = very high; 2 = high; 3 = quite high; 4 = medium; 5 = quite low; 6 = low; 7 = very low; ^c1 = 86–100; 2 = 71–85; 3 = 56–70; 4 = 41–55; 5 = 26–40; 6 = 11–25; 7 = 0–10; ^d1 = very low; 2 = low; 3 = quite low; 4 = medium; 5 = quite high; 6 = high; 7 = very high; ^e(F1 + F3)/2.

Confidence rating: *low, **medium, ***high.

Overview of Dynamic De/Centralization

Frequency

Across seven time points (1950–2010) we have recorded twenty-six score changes in the policy sphere and nine changes in the fiscal area (table 3).⁴ While policy scores change on average 4.3 times per decade, the frequency of policy de/centralization varied between one in the 1980s and 1990s and seven in the 1960s (figure 1). Moreover, we observe more instances of de/centralization in legislation (fourteen) than in administration (twelve). Changes of legislative power occurred rather episodically, ranging from no changes in the 1980s and 1990s to four changes in the 1970s and 2000s. Administrative tasks were redistributed more regularly. After three and four changes in the first two decades, only one or two revisions per decade were noticed since the 1970s. The fiscal autonomy of the *Länder* was considerably changed in the 1960s as we find changes in all fiscal indicators. Minor revisions occurred in the 1950s, 1990s, and 2000s.

Dynamic de/centralization has affected twelve out of twenty-two policy fields and all fiscal categories. Change has been most frequent in pre-tertiary education and social welfare (five score changes each) as well as in tertiary education (three score changes); these policy fields comprise half of all policy changes. Two instances of de/centralization occurred each in environmental protection, health care, criminal law, and natural resources. In ten policy fields, changes were too small to be captured by our coding scheme.

Table 3 Frequency and magnitude of dynamic de/centralization by policy and fiscal category

	Total	Total L	L +1	L -1	L -3	L cD&M	Total A	A +1	A -1	A -2	A cD&M
P1	0	0	0	0	0	0	1	1	0	0	+1
P2	0	0	0	0	0	0	0	0	0	0	0
P3	1	0	0	0	0	0	1	0	1	0	-1
P4	1	0	0	0	0	0	1	0	1	0	-1
P5	0	0	0	0	0	0	0	0	0	0	0
P6	0	0	0	0	0	0	0	0	0	0	0
P7	5	2	1	1	0	0	3	1	2	0	-1
P8	3	2	1	1	0	0	1	0	1	0	-1
P9	0	0	0	0	0	0	0	0	0	0	0
P10	0	0	0	0	0	0	0	0	0	0	0
P11	2	2	0	2	0	-2	0	0	0	0	0
P12	0	0	0	0	0	0	0	0	0	0	0
P13	1	0	0	0	0	0	1	0	0	1	-2
P14	2	2	0	2	0	-2	0	0	0	0	0
P15	0	0	0	0	0	0	0	0	0	0	0
P16	0	0	0	0	0	0	0	0	0	0	0
P17	2	2	1	1	0	0	0	0	0	0	0
P18	1	0	0	0	0	0	1	0	1	0	-1
P19	0	0	0	0	0	0	0	0	0	0	0
P20	2	2	0	1	1	-4	0	0	0	0	0
P21	5	2	1	1	0	0	3	0	3	0	-3
P22	0	0	0	0	0	0	0	0	0	0	0
Total	26	14	4	9	1	-8	12	2	9	1	-9
Mode	0	0	-	-	-	-	0	-	-	-	-
Mean	1.18	0.64	-	-	-	-	0.55	-	-	-	-

	Total F	F +1	F -1	F -3	F cD&M
F1	2	0	2	0	-2
F2	1	0	1	0	-1
F3	2	1	1	0	0
F4	2	2	0	0	+2
F5	2	0	1	1	-4
Total	9	3	5	1	-5
Mode	2	-	-	-	-
Mean	1.8	-	-	-	-

Note: L = legislative, A = administrative, F = fiscal; +1, -1, -2, -3: direction and magnitude of score changes; cD&M: cumulative direction and magnitude.

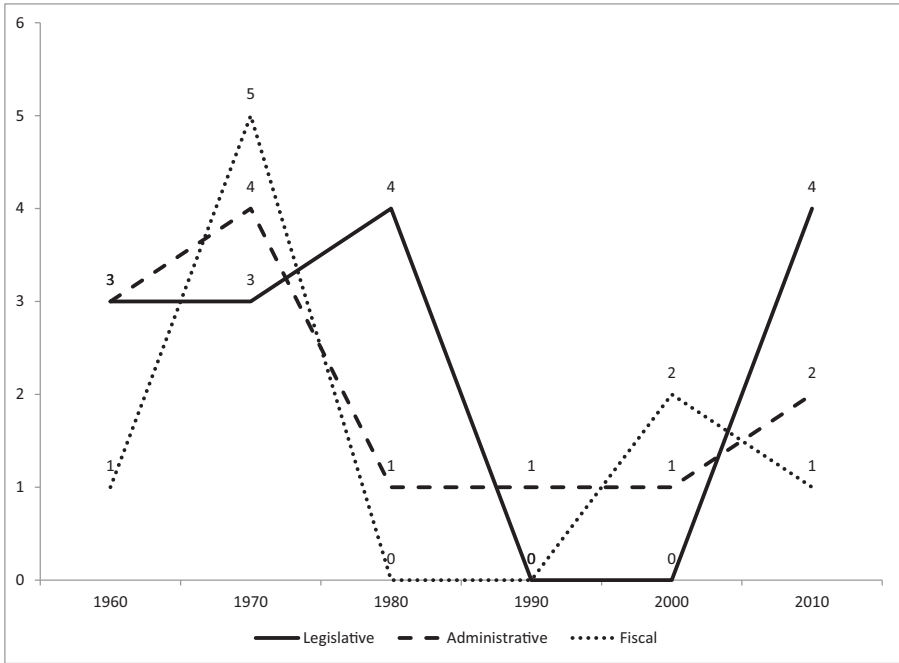


Figure 1 Frequency of dynamic de/centralization by time point.

In general, changes in legislative and administrative powers occurred independently of each other. Only in three policy fields do we observe a modification in both law making and implementation over time, namely pre-tertiary education, tertiary education and social welfare. In nine policy fields, either legislative or administrative tasks were redistributed between the federal and state governments.

Direction

Changes in the federation have predominantly been in the direction of centralization: twenty out of twenty-six changes of the policy score and six of the nine changes in the fiscal sphere weakened the autonomy of the constituent units. With regard to the cumulative effect of de/centralization from 1950 to 2010, the centralizing trend is even more systematic. Not in a single policy field were legislative powers decentralized over the whole life span of the federation. However, cumulative centralization can only be reported for three legislative domains: environmental protection, health care, and natural resources. In four other policy fields, legislative centralization and decentralization cancelled each other out over time. With regard to administration, seven out of eight policy fields that underwent change also display cumulative centralization. Agriculture is the

only policy field that shows cumulative administrative decentralization. The different dimensions of the fiscal power of the *Länder* show diverging developments over time. Whereas the proportion of own-source revenues out of all revenues, the restrictions on own-source revenues and the borrowing autonomy were changed in favor of the federal government, the proportion of conditional grants remained unchanged and restrictions on the usage of these grants were loosened.

Magnitude

Over the course of its life span, the federation was centralized only modestly in the legislative sphere, more so in the administrative sphere, and strongly in the fiscal relationships between the *Länder* and the federal government. The respective mean scores decreased from 3.43, 5.29 and 4.8 in 1950 to 3.05, 4.68 and 3.8 in 2010 (figure 2). While the federal level only gained a few additional powers in law making, this change should not be underestimated as the federal government already possessed the majority of legislative prerogatives at the foundation of the Federal Republic. The characteristic pattern of a functional division of power (of federal legislation and *Land* administration) remained in place, as the modal legislative and administrative scores of two and six are constant over the six decades. The *Länder* lost fiscal autonomy over time; yet most of the change originated from a single alteration, the introduction of a strict balanced budget rule in 2009.

Dynamic legislative centralization, cumulated from 1950 to 2010, has been highest in natural resources (a -4 decrease) and environmental protection and health care (a -2 decrease respectively) while it has been absent in the other nineteen policy fields. Administrative centralization was strongest in social welfare (a -3 decrease) and finance and securities (a -2 decrease) while in fourteen policy fields we recorded no change. With regard to fiscal federalism, the borrowing autonomy of the *Länder* was diminished from very high to quite low. Moreover, the *Länder* and municipalities covered expenditure needs decreasingly with own-source revenues and increasingly with unconditional grants and shared tax revenues, limiting their fiscal autonomy (a -2 decrease). Conditional grants continued to contribute less than ten percent of all subnational revenues for most decades, but the constituent units were able to lower the restrictions placed on these conditional grants (a $+2$ autonomy increase) (tables 2 and 3).

Tempo

Dynamic de/centralization has been characterized by the interplay of long periods of incremental change and reform periods producing more or less far-reaching effects. The overall very gradual pace of dynamic de/centralization is reflected in

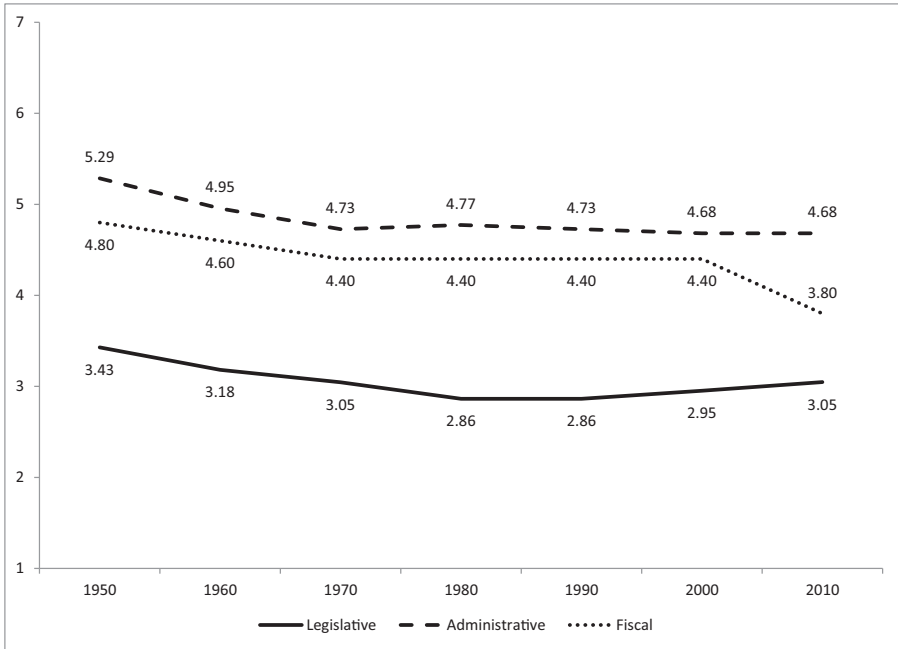


Figure 2 Mean static de/centralization, 1950–2010.

our data as follows. Whereas the power distribution changed at each time point, the magnitude of change, measured as the difference between the mean score for static legislative or administrative de/centralization in all policy fields of two subsequent time points, peaked at a mere -0.33 for the administrative sphere and -0.25 for the legislative sphere in 1960, respectively (figure 2). Changes in the individual policy fields between time points were almost exclusively of small magnitude: thirteen out of fourteen legislative alterations and eleven out of twelve administrative alterations were changes of one point only (table 3). Similarly, the fiscal autonomy of the *Länder* was amended by one-point de/increases eight out of nine times. The introduction of a strict balanced budget rule in 2009 represents the noteworthy exception of a sudden -3 decrease.

While the evolution of German federalism has been characterized in the largest part by incremental change, the 1960s stand out in terms of the frequency and magnitude of centralization and come closest to representing a critical juncture.⁵ Legislative or administrative centralization occurred in seven instances between 1961 and 1970. Furthermore, five changes of the fiscal autonomy of the *Länder* had a slightly centralizing effect overall. Most of these changes followed from a series of constitutional amendments, referred to as the Great Fiscal Reform of 1969, that extended and consolidated the integrated model of federalism (Renzsch 1991).

It was designed to allow for the Keynesian steering of the national economy and a grand planning of society through the coordination of all levels of government. As both the Christian and Social Democrats agreed on the reform aims of welfare expansion, uniformity and economic growth and stabilization, the constitution could be amended easily (Benz 1999, 62). This reform program blended measures that weakened as well as strengthened *Land* policy autonomy. While the central government gained the right to finance hospitals and to engage in joint education planning with the *Länder*,⁶ it reduced its encroachment on selected other *Land* competences by introducing joint tasks to the constitution. Those joint tasks had already existed based on bilateral agreements between the federal and individual *Land* governments that gave the federal government enhanced flexibility. Due to the reform, from now on the federal government and all the *Länder* collectively co-decided on them. With regard to fiscal autonomy, on one hand, local governments had to share a portion of their revenues from a local business tax with the federal government (in exchange for shared tax revenues) and *Land* borrowing became restricted by needs of macroeconomic stabilization. On the other hand, the *Länder* benefitted from fewer restrictions in conditional grants for joint tasks.

Prior to this nearly critical juncture, in the federation's first two decades (1950s and 1960s), an incremental centralization occurred that reversed the dual elements of the federal system in the Basic Law and strengthened the central government (Hesse 1962). As the demands of the Allies to balance power and follow a US dual model of federalism were no longer enforced by a veto position, the federation moved closer to the preferences of the German actors after the war (e.g., as expressed in the Parliamentary Council). In 1960, three administrative, three legislative, and one fiscal scores changed compared to the initial distribution of power. The federal parliament legislated more comprehensively in health care and environmental protection, and new federal institutions such as the Federal Labor Office and the (highly independent) central bank, the *Bundesbank*, were founded. This incremental centralization extended into the 1960s when the federal parliament passed encompassing laws in social welfare and the central government gained the right to supervise many banks and employ its police forces in case of national emergency. This centralization was based on the long-held attitudes of both the political and administrative elites and the general public to provide for uniform living conditions throughout Germany (Lehmbruch 2000, 104–111, 2002). Moreover, extensive federal law making was eased by uniform majorities in both parliamentary chambers and the low level of federal distributional conflicts and differences between the *Länder* (Benz 1999, 61f.).

The unification of Germany in 1989–1990 was a missed critical juncture and presents a negative case of dynamic de/centralization as only one score change in 1990 and three score changes in 2000 occurred. Many conditions were favorable to change. These included the strong exogenous shock of having to integrate a

sizeable country; the apparent problem of increasing socio-economic, fiscal and political-cultural heterogeneity (Jeffery 2003); demands for specialized regional economic policies due to globalization and Europeanization (Sturm 2010, 43); and performance deficits with regard to joint decision-making (Scharpf 2009). Yet, the political actors did not use this window of opportunity to introduce structural changes. Because of the time pressure and the complexity of the situation, no efforts were made to draft a new constitution (Benz 1994, 99; Kilper and Lhotta 1996, 249). Technocratic management led by the federal government best matched the risk aversion of most actors (Lehmbruch 2000, 187). While a Constitutional Commission was created in 1992, the resulting constitutional amendment left the status quo mostly intact, following the interests of the conservative-liberal federal government and the poorer *Länder* (Gunlicks 1994, 89; Jeffery 1995, 258–260). Thus, unification had a delayed effect on the federal system, paving the way for dynamics that unfolded over a decade later.

The constitutional reforms of 2006 and 2009, known as the Federalism Reforms I and II, were the second most significant event of dynamic de/centralization as legislation in four policy fields and one fiscal indicator underwent change. While it is too early for a definitive assessment,⁷ the frequency and magnitude of change appear to be too small and the overall direction of change too ambiguous to conceptualize these reforms as a critical juncture. Nevertheless, these constitutional amendments are significant as they for the first time decentralized the federation in a number of legislative fields, namely tertiary education, criminal law and social welfare. However, the *Länder* lost legislative voice in natural resources in addition to accepting strict borrowing rules.⁸ The contextual factors favoring reform during the unification intensified. The central and regional party systems increasingly fragmented, coalition patterns within the *Land* governments diverged, divided government became more common and the cleavages between Western and Eastern *Länder* as well as wealthier and poorer *Länder* deepened. In this context, some affluent *Länder* demanded a more dual, competitive model of federalism, but the economically and financially weaker *Länder* refused far-reaching reforms while the federal government sought to reduce the approval rights of the *Bundesrat*. Rulings by the Federal Constitutional Court restricted federal law making substantially, forcing the federal government to make more concessions to the *Länder*, which facilitated the reform in 2006 (Scharpf 2009, 94–97, 108).

Instruments

The main instrument of dynamic de/centralization has been the enactment (and in two cases the repeal) of legislation by the central and *Land* governments in a field of common responsibility, which was not triggered by a constitutional amendment. This instrument accounts for sixteen out of thirty-five score changes. In a notable

number of these cases, centralization occurred as the federal parliament legislated more comprehensively in an area of concurrent legislation (e.g., health care and natural resources). Other examples of this instrument include the creation of federal administrative agencies, which replaced or complemented subnational agencies (e.g., the Federal Labor Agency and Federal Office for Banking Supervision), and the engagement in or withdrawal from joint tasks such as education planning by the federal government. A slightly less important instrument were constitutional amendments that were subsequently implemented by legislation or administrative regulations. We record fourteen score changes for this instrument. Framework legislation had played a minor role compared to exclusively federal, exclusively *Land* and concurrent legislation and had only captured parts of the policy areas analyzed here, before this type of legislation was abolished in 2006. Thus, both the growing body of federal framework laws (Kilper and Lhotta 1996, 164) as well as the partial withdrawal from framework law making in tertiary education in the 1990s and 2000s were too limited to trigger a change in policy scores.

Rulings by the Federal Constitutional Court did not have an immediate effect on policy or fiscal scores, but their influence should not be underestimated. Due to a series of judgments in the early 2000s,⁹ the federal parliament could no longer legislate uncontestedly in many areas of concurrent and framework legislation and was thus forced to trade some legislative powers to reclaim its contested law-making powers as part of the Federalism Reform of 2006 (Scharpf 2009). Furthermore, in some cases the Court prevented the federal government from intervening in exclusive policy competences of the *Länder* such as education (Concordat case 1957, BVerfGE 6, 309) and media regulation (TV case 1961, BVerfGE 12, 205; Blair and Cullen 1999, 133–136). As a result of the Concordat case, the federal and *Land* governments settled on the Lindau agreement, according to which the federal government has to obtain the consent of all *Länder* prior to signing international treaties in fields of exclusive *Land* competence (Blair and Cullen 1999, 134). Furthermore, with two decisions in 1975 and 1976, the Court restricted the conditionality of federal investment aid by ruling that the federal government has to respect *Land* investment plans and limit itself to fitting them into a coherent plan (Blair and Cullen 1999, 143f.). Overall, however, the Constitutional Court showed considerable self-restraint, which benefitted the more active central government. The Court did not stop legislative centralization for many decades as it refused to examine whether federal laws in concurrent legislation fulfilled the conditions for federal law making in these areas, as laid down in the so-called necessity clause (Schneider 1999, 75f.). Similarly, the Court allowed the federal government to enact rather extensive framework laws that regulated beyond basic principles and even specified details as long as those laws allowed the *Länder* to fill the framework (Blair and Cullen 1999, 129).

Additionally, the Court imposed little constraint on the right of the federal government to instruct *Land* administrations working on its behalf (Kilper and Lhotta 1996, 174f.).

The use of international treaty powers in the context of European integration influenced the federation as virtually all policy fields were at least partially Europeanized. Both the central and the *Land* governments lost legislative and administrative autonomy (Grotz 2007; Benz 1999, 72ff.). While the central government was typically compensated with voting rights at the European level, namely in the Council of the EU (which, however, increasingly decides based on majority rule), the *Länder* had to extend their influence on the German vote through several reforms especially since the late 1980s. Even as the *Länder* were collectively compensated, the individual *Land* lost legislative autonomy. The *Länder* gained additional autonomy only occasionally; for example, they can choose between federal and EU co-financed programs in agricultural policy and economic development (Benz 1999, 75; Mehl and Plankl 2002, 206). While we agree with these general findings in the literature, we trace only one scoring change directly to European integration while in other cases Europeanization effects were too small or both the central and *Land* governments lost autonomy simultaneously. Horizontal joint action continues to be a key element of the federation, but was not formally imposed by the federal level. Fiscal instruments only account for two of the nine changes of fiscal autonomy, namely the amount of federal conditional grants provided to the *Länder*. Two other score changes follow from the disproportional growth of revenues from different taxes.

Explaining Dynamic De/Centralization

Antecedents

To explain the depicted patterns of dynamic de/centralization in Germany, we assess the plausibility of the hypotheses developed in the introductory article to this special issue and noted briefly at the start of this article. At the outset, the federation was rather centralized in legislation, while the *Länder* possessed significant administrative and fiscal autonomy. Compared with federations that are older and originated from a federal bargain, Germany was more centralized with regard to legislative and fiscal power in the beginning. This confirms the theoretical expectation. Contrary to the theoretical expectation, however, it was more *decentralized* administratively than Australia or Canada as Germany followed the “administrative federalism” model and the historically strong *Land* administrations had quickly been reestablished after the war. With regard to change over time, the magnitude of dynamic legislative and administrative centralization in Germany has

been smaller than in the older federations, based as they were on a federal bargain (except for Canada).

Socio-Economic Trends

Socio-economic changes have been an important factor for dynamic de/centralization in Germany. The centralization in the 1950s and 1960s was based on the development of Germany as a democratic industrial society with increasing economic interrelations and geographic and social mobility (Schneider 1999, 59f.). However, these socio-economic conditions only caused centralization because the political parties shared a belief that the territory to which a citizen belonged was subordinate to the functional needs of the economy and the right to uniform living conditions (Lehmbruch 2000, 104). Thus the evidence from Germany supports the impression that modernization leads to centralization with regard to the direction of change. However, the supporting evidence is less definite regarding the form of change; in the eight policy fields expected to experience centralization,¹⁰ which represent 38 percent of all policy fields, only eight out of twenty instances of centralization occurred (40 percent). While pre-tertiary and tertiary education, environmental protection and criminal law experienced at least instances of temporary centralization, the federal government did not extend its power in economic regulation, civil law, media, and transport. Another initial condition that contributed to the centralization in the early decades was the need for reconstruction after the war, the fair distribution of costs involved, and the compensation of economically disadvantaged regions that bordered the GDR (Jeffery 2003, 44; Kilper and Lhotta 1996, 158f.).

The impact of globalization and Europeanization on the vertical distribution of power is very policy-field specific. Globalization has strengthened the federal government through its power to negotiate international treaties, which is only limited with regard to exclusive competences of the *Länder* (Concordat case of the FCC). Yet, it also reinforced the preferences of the affluent *Länder* to use their scope of action in industry and technology policy in the 1980s (Lehmbruch 2000, 125f.) and to gain legislative influence in economic policy in the 2000s in order to support a specialized competitive regional economy. The latter aim was amplified by the increasing economic competition in the European Single Market, yet was only marginally achieved by the 2006 Federalism Reform. In sum, the evidence from the German experience supports the hypothesis that globalization results in centralization. As already discussed, Europeanization overall likely had a rather centralizing effect (Bulmer 1999, 317–319) because the individual *Land* lost considerable decision-making power and the *Länder* were only collectively and not even fully compensated with the right to (co)define the German vote. However, the literature lacks studies that measure the effect of Europeanization on the

distribution of power between the federal government and individual *Land* governments in specific policy fields.¹¹ In other words, we do not know precisely how individual *Land*'s autonomy—as compared to federal government's power—has been affected by European integration. Since we cannot fill this research gap in our article, we follow the general consensus in the literature that Europeanization is among the more important drivers of de/centralization (Grotz 2007).¹²

Socio-Cultural Trends

Socio-cultural factors appear to have been a major cause of dynamic de/centralization in Germany. We base this assessment on the literature cited in this subsection and in the Supplemental Online Codebook. The political and administrative elites had deep-rooted cultural orientations that favored uniformity and central decision-making and significantly contributed to the centralizing changes since 1949 (Lehmbruch 2000, 108). Especially since the 1990s, however, these orientations have lost force as the nation state is no longer an undisputed reference frame, the national economic and judicial unity is challenged by European integration and the decentralization paradigm has been established in Europe (Lehmbruch 2002, 106f.). These socio-cultural changes, reinforced by the increasing heterogeneity of the *Länder*, were a precondition for the recent decentralizing reforms. With regard to the citizens, national identifications have dominated from the birth of the federation due to two reasons: some *Länder* did not represent traditional state territories and twelve million refugees and expellees spread across the territory after 1945. As an exception, Bavaria has always had a distinct regional identity, which, however, is more cultural and emotional than political and is complemented by a similarly strong national identity (Oberhofer et al. 2011, 176–178, 180f.; Petersen et al. 2008, 568f.). Furthermore, this Bavarian identity was only mobilized to achieve decentralizing reforms by the Christian Social Union (CSU) governments when the *Land* left its agricultural past behind and became an economic frontrunner.¹³ Overall, citizens' national identifications appear to have contributed to centralization as hypothesized. This is, however, not due to a shift of these identifications towards the federation over time but because the initial constitutional power division was more decentralized than German citizens preferred.

The expectations of citizens towards the role of government in the economy and society have changed considerably and contributed to centralization in a few policy fields. Most noticeably, the central government extended social welfare and health care when its tax revenues increased significantly because of the economic boom in the 1950s and 1960s. The expansion of these policy fields continued even in the age of limited economic growth after the oil crisis in the early 1970s. In social welfare, a rising number of disadvantaged groups were compensated by federal laws, while

in health care, the federal legislator mandated insurance programs to cover an expanding number of services. The federal parliament also took the leading role in environmental protection from the 1970s onwards when this cause became a major concern for many Germans. Federal law making could ensure uniform provision of health care and social benefits across Germany and prevent a race to the bottom in environmental standards. The evidence suggests that the demands of citizens for bigger government had a centralizing effect, as hypothesized.

Shocks

Shocks had ambiguous effects on the vertical distribution of power in Germany. The economic shock of the oil crises of 1973 and 1979–1980, in combination with the structural crises in the mining, steel, and textile industries, undermined central government finances. The federal government initially provided additional investment funds to the regional and local governments, thereby increasing conditional grants. Yet, at the beginning of the 1980s, these temporary investment funds were not prolonged and the federal grants for joint tasks were even reduced under Chancellor Kohl (Lehmbruch 2000, 125; Scharpf 2009, 43), which strengthened the fiscal autonomy of the *Länder*. The shock of unification and the end of the Cold War did not alter the relationship between the central and constituent governments in the medium term. In the short term, however, the federal government took over economic policy-making powers for the new *Länder* in the early 1990s and primarily financed their economic and fiscal convergence (Benz 1999, 67f.; Lehmbruch 2000, 131). In other cases, shocks triggered permanent centralization, e.g., in law enforcement during the Red Army Faction terrorism in the 1970s and 1980s, or through the introduction of balanced budget rules for the *Länder* during the financial crisis of 2007. Overall, the German case supports the postulated hypothesis in that severe shocks led to a permanent or at least immediate centralization, although this effect was not particularly strong and in some cases reversed in the medium term, partially even leading to some decentralization. The evidence also confirms that fiscal instruments dominate as the instruments of centralization in times of shock.

Attitudes

To discuss the impact of the collective attitudes of citizens, organized interest groups and the media, we draw on the literature cited hereafter. Citizens and media outlets mostly favor uniform policies across Germany (Scharpf 2009, 123f.), which can be achieved by either centralization or horizontal coordination. In the 2000s, citizens and the media pressured political actors to harmonize the highly decentralized policy field of pre-tertiary education. This resulted in an even stronger coordination of *Land* education policies on the one hand and investment

programs by the federal government to expand child-care facilities and all-day schools on the other. Citizen attitudes supportive of unitary governance restricted governmental positions in some cases, yet mostly reinforced governmental preferences. The media mostly do not create but merely voice the unitary orientations of German citizens (Funk 2013, 222). The processes of the two largest reforms of the federal order (1969, 2006) did not attract major interest from the media or the citizenry. Contrary to the theoretical expectation, the attitudes of citizens and the media did not change significantly even as contextual factors varied over time. The support for uniform policies has been continuously high across Germany even for *Land* tasks such as education, local election law and law enforcement (Grube 2001, 109f.). In 2007, more citizens still favored a greater role for the federal or local level than for the *Länder*, with the exception of the citizens of Bavaria (Wintermann and Thieß 2008, 19). Moreover, the vast majority of citizens across all *Länder* and major political parties favor uniform tax rates (Petersen et al. 2008, 576), which explains the lack of public support for expanding own-source revenues of the *Länder*. The voting patterns of citizens strongly nationalized in the 1950s and 1960s, signaling a low demand for regional diversity. There is mixed evidence on whether voters have increasingly based their decisions in *Land* elections on *Land*-specific conditions and issues after unification (Burkhart 2005; Hough and Jeffery 2003; Jeffery 1999, 339). Interest groups have generally preferred centralization since the birth of the federation because it ensures uniformity of law for their members who are affected by the law, matches their own centralized organizational structure (Kilper and Lhotta 1996, 158f.; Scharpf 2009, 124) and limits the number of actors they have to lobby in order to have their preferences taken into account. Overall, the impact of lobbying interests on de/centralization is small as the institutional interests of governments and administrations typically dominate. All in all, the evidence supports the impression that the collective attitudes of citizens, interest groups and the media had a centralizing effect of small magnitude as intervening variables between structural change and political agency. They were rather facilitators than drivers of change and mostly in line with governmental preferences.

Agency

In Germany's monolingual federation, almost all parties have organized as federation-wide parties and thus have had no foundational decentralizing agenda. This contributed to centralization (Kilper and Lhotta 1996, 158f.). Two exceptions are noteworthy: the CSU is a Christian Democratic party which only competes in Bavaria and forms a joint parliamentary group with the Christian Democratic Union (CDU) in the *Bundestag*. The CSU has advocated decentralization in recent decades, with limited effect, but did not strongly defend regional autonomy in the

early decades when most of the centralization occurred. “The Left”, founded in 1989 as the Party of Democratic Socialism (PDS), can be considered a regional party as its electoral strongholds are mostly in Eastern Germany and it represents this regional cleavage (Patton 2000); however, its impact on de/centralization has been negligible, and it increasingly has become a national party since a merger in 2007. After unification, the party systems at the regional and federal levels have diverged and the regional units of the parties increasingly developed *Land*-specific manifestos for *Land* elections (Bräuninger and Debus 2012). However, the denationalization of the party system has not yet affected the magnitude of de/centralization (Detterbeck 2016). Overall, the hypothesis about the centralizing effect of a nationalized party system finds empirical support.

Parties differed to some degree in their preferences towards federal uniformity and diversity; yet this hardly played a role in de/centralization. In the Parliamentary Council, CDU representatives mostly favored a federal order, while the Social Democratic Party (SPD) and Free Democratic Party (FDP) advocated a decentralized unitary state. These attitudes quickly converged when they were challenged by institutional interests. The CDU, which led the federal government, aimed to integrate the *Länder* in a national entity, while the opposing SPD wanted to strengthen the *Bundesrat* (Kilper and Lhotta 1996, 157). In the last few decades, the FDP has changed its position and pushed for decentralization and enhanced competition between the *Länder* (Lehmbruch 2002, 54). These party ideologies were not influential (see also Döring and Schnellenbach 2011, 94), which disconfirms the hypothesis according to which left governments centralize and right governments decentralize a federation. The most important processes of de/centralization, namely the incremental centralization of the 1950–1960s and the constitutional reforms in 1969 and 2006–2009 were in principle agreed on by all major parties. The initial centralization occurred even under CDU-led federal governments. While the SPD/FDP governments between 1969 and 1982 were responsible for legislative centralization, the SPD/Green governments (1998–2005) did not change the federal balance. Decentralization demands from the 1990s onwards rather came from CDU/CSU-led *Land* governments, yet were not based on party political convictions but on the economic and fiscal prosperity of these *Länder*. Poorer, CDU-led *Länder* rejected these claims, as did less affluent SPD-led *Länder*.

The Federal Constitutional Court had an important impact on de/centralization with several rulings, but compared to other federations it engaged in judicial self-restraint and left room for political discretion (Blair and Cullen 1999, 148), as already explained. Its judicature was mostly centrist and did not stop the ongoing centralization. This also followed from its emphasis on the protection of basic rights, such as the equal treatment of human beings across Germany, which limited the autonomy of *Land* law making (Kilper and Lhotta 1996, 162). The Court

vigorously defended *Land* autonomy only when it saw violations of fundamental principles of the federation, notably federal encroachment on exclusive competences of the *Länder* (Blair and Cullen 1999, 148). This changed in the 2000s with a series of *Land*-friendly judgments, which resulted in legislative decentralization. Thus, we confirm the hypothesis: Centralization is more likely to occur under a centralist constitutional court.

Institutions

While the hypotheses on the effects of institutional factors on dynamic de/centralization can be best assessed from a comparative perspective, the German case provides the following findings. In contrast to the theoretical expectation, the allocation of residual powers to the *Länder* did not prevent centralization for two reasons. First, the federal parliament interpreted its legislative powers extensively, also using implied powers (Klatt 1989, 187f.; Scharpf 2009, 19). Second, new tasks were quickly assigned to the federal exclusive or concurrent legislation by constitutional amendment (i.e., with *Bundesrat* approval), such as defense in 1954, nuclear energy in 1959, gene technology, organ transplants and in vitro fertilization in 1994. Similarly, air traffic administration became a federal duty in 1961.

Germany's federation follows the administrative model, which—in line with the hypothesis—facilitated centralization as the federal parliament regularly encroached on areas of shared responsibility. Yet, contrary to the theoretical expectation for administrative federations, the use of concurrent rather than framework legislation was the main instrument of non-constitutional centralization. Furthermore, the federal government was able to accumulate power through constitutional revisions rather easily mainly because the *Bundesrat* and not the *Land* parliaments is required to approve a transfer of power. The *Bundesrat* is composed of *Land* government ministers who were frequently willing to upload tasks to the federal government in exchange for co-decision-making rights for the *Bundesrat*. This allowed them to free themselves from the interests of their party groups and become visible to national media. Nevertheless, the *Bundesrat* vetoed or threatened to veto a number of de/centralizing changes, such as centralizing attempts by the federal governments in the 1970s and 1980s (Benz 1999, 64ff.), considerably limiting the magnitude of de/centralization. Similar to *Land* governments, the *Land* ministerial administrations preferred coordination with the federal administration (or other *Land* administrations) to coordination with politicians in their own *Land* (Scharpf 2009, 57). Also contrary to the theoretical expectation, centralization occurred almost as frequently in the administrative as in the legislative realm—to some degree because legislation was already rather centralized at the outset. Only when adding instances of decentralization, were changes of legislative powers more frequent than in the administrative field.

The parliamentary system has rather favored centralization. The executive-federalism style of vertical intergovernmental relations that typically goes together with a parliamentary system has become markedly elaborate in Germany and has further weakened the decision-making power of the *Land* parliamentarians because of the self-interest logic of executives.

Conclusions

While the German federation has shown significant continuity in a majority of policy fields since its inception, it has nonetheless undergone quite a marked de/centralization since 1949.¹⁴ The federal government extended its legislative rights modestly and its administrative rights to a stronger degree. The loss of autonomy for the *Länder* was greatest in the fiscal sphere. This overall trend is occasionally breached by instances of decentralization. The assessment of twenty-two policy fields and five fiscal indicators demonstrates that many changes, which are analyzed in the academic literature, are too small to be considered a significant change of the vertical distribution of power of the federation overall. Three processes or events stand out in terms of the magnitude of change in the federation. First, an incremental centralization occurred in the 1950s and 1960s. Second, the Great Fiscal Reform of 1969 amplified this centralizing process and came closest to constituting a critical juncture. Third, the federalism reforms of 2006 and 2009 combined both decentralizing and centralizing measures, but do not represent a critical juncture. Dynamic de/centralization was mostly the result of the enactment of legislation by either tier of government in a field of common responsibility and to a lesser degree of constitutional amendments. Rulings by the Federal Constitutional Court mostly confirmed changes set by parliaments and governments.

These findings are consistent with a funnel of causality approach for explaining dynamic de/centralization and come to the following stylized results. The federal order was frequently centralized because socioeconomic and sociocultural changes as well as a particular founding condition reinforced the unitarist cultural attitudes of political and administrative elites and the citizenry. More specifically, increasing geographic mobility in an industrialized society, the need for coordination and planning in a complex and interdependent world, and the increasing demand of citizens for bigger government coincided with an initial constitutional division of power that was, in part, determined by external forces. All major parties, the federal and *Land* administrations, as well as the vast majority of citizens, had strong historically grown cultural orientations towards uniformity. Important scope conditions for the centralization were the judicial self-restraint by the Federal Constitutional Court, nationalized parties and centralized interests groups. After unification, when socio-economic conditions changed, especially as the economic

and fiscal heterogeneity of the *Länder* increased, and the cultural orientation towards uniformity among the political and administrative elites was partially undermined, centralization was mostly halted. Efforts to substantially increase the autonomy of the *Länder* failed as a consequence of institutional constraints that the economically and fiscally weaker *Länder* were able to mobilize, using their veto power in the *Bundesrat* to preserve their institutional interests.

With regard to the general discussion of dynamic de/centralization, the German case highlights that in spite of a generic centralizing trend, decentralization occurred sporadically, partially even simultaneously due to package deals and the independence of policy fields. As a result, legislation in Germany today is not more centralized than in the other federations analyzed (except Canada), making the German federation less unique than often portrayed. Germany stresses the importance of a misfit of the initial constitutional set-up with the preferences of political actors which jointly create frictions that were gradually reduced. It underlines that governments and their institutional interests matter as federal and *Land* governments mostly monopolized the process of changing the vertical distribution of power and often narrowly defended their economic and fiscal interests, using their veto power in case of constitutional amendments.

Supplementary Data

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

Notes

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1. The Federalism Reform of 2006 led to different assessments of the magnitude of change. While Sturm (2010, 47) considers the reform a deviation from the federal developmental path Germany followed since 1871, Kropp (2011, 30) observes far-reaching path stability and Scharpf (2009, 108) argues that the *Länder* only won limited scope of action. Our measurement shows a considerably high frequency of change by the reform when compared to the low frequency and mostly gradual pace of de/centralization in Germany between 1949 and 2010. The immediate decentralizing effect was unprecedented, yet fairly limited.
2. The analysis starts in 1949 to fulfil the scope condition of a continuous democratic regime.
3. For the entirety of the *Länder*, however, shared-rule is highly relevant. Joint decision-making may leave the *Länder* with very substantial administrative power if the federal level cannot or does not want to steer the implementation because it lacks resources

or the legitimacy to set implementation goals. For example, in transportation policy, the federal level decides which road, railway and waterway transportation projects it funds among those proposed by the *Länder* and municipalities. Yet, it exerts only limited influence because the norm of regional proportionality prevents the federal government from funding strictly according to utility (Schöller-Schwedes and Ruhrort 2008, 238, 250). Similarly, the federal government was not able to steer the construction of local roads (1971–2006) as it could not monitor the large number of projects.

4. Minor adjustments of the power distribution are not coded as change. For example, the transfer of some small-scaled and insulated matters from concurrent legislation to exclusive *Länder* legislation as part of the Federalism Reform of 2006 did not substantially extend *Land* autonomy in economic activity. This included regulating shop closing time, gastronomy, amusement arcades, fairs, exhibitions, markets, and exhibit of people.
5. By critical juncture we mean a brief time period in which an exogenous event has opened up potential for path change because alternative options long thought to be irrelevant suddenly become serious options for reform (Capoccia and Kelemen 2007).
6. Vertical coordination in education planning was weak prior to the reform of 1969 and not based on bilateral agreements.
7. The ambiguity of recent reforms is discussed by Behnke and Kropp (2016).
8. In a *quid pro quo* for the additional legislative power, the *Länder* also accepted to reduce the proportion of federal laws requiring *Bundesrat* approval. The latter measure decreased the autonomy of an individual *Land* rather slightly.
9. The Court decided to examine whether federal legislation is necessary according to the criteria set out in Art. 72 par. 2 GG. Until then, it left this examination to the federal legislator. The new jurisdiction started with a ruling on old-age care (*BVerfG 2 BvF 1/01*, 24 October 2002) and continued in the junior professor decision (*BVerfG 2 BvF 2/02*, 27 July 2004) (Scharpf 2009, 93f.). It was triggered by a constitutional amendment in 1994 that made the necessity criteria more restrictive and explicitly authorized the Court to umpire corresponding disputes (*ibid.*).
10. Defense was already exclusively federal in the beginning and is thus excluded from the calculation.
11. For each major transfer of competences to the European level in each of our twenty-two policy fields, one would need to assess (1) to which degree this competence previously belonged to the federal or *Land* governments and (2) how each government was compensated for with regard to deciding on the German vote for this competence.
12. This literature is presented in more detail in the Supplemental Online Codebook, pp. 59–60.
13. For example, Bavaria pushed successfully for decentralization in the Federalism Reform of 2006 together with other affluent *Länder*.

14. We might rather overestimate the frequency and magnitude of centralization because the concept of constituent units' autonomy employed in the broader project highlights self-rule over shared rule and shared rule has increased in Germany at least in the first decades.

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