

Dynamic De/Centralization in the United States, 1790–2010

John Kincaid*

*Lafayette College; kincaidj@lafayette.edu

Part of a project measuring dynamic de/centralization across twenty-two policy fields and five fiscal indicators in six federations from their founding to 2010, this study finds slow but continual U.S. centralization in all fields followed by a mild centralization spurt during the 1930s and substantial acceleration during the 1960s and 1970s. Little fiscal centralization is found, except for increased conditions attached to federal aid. The principal instruments of centralization have been Congress and the Supreme Court; the principal political agents have been political parties and interest groups responding to opportunities created by exogenous forces such as market integration and technological change.

This research on de/centralization in the United States from 1790 to 2010 is part of a comparative project measuring dynamic de/centralization in Australia, Canada, Germany, India, Switzerland, and the United States. By “de/centralization,” we mean (a) from a static perspective, the distribution of power on a continuum from full centralization to full decentralization and (b) from a dynamic perspective, change in decentralist or centralist directions. Our goal is to present a detailed measurement and mapping of dynamic de/centralization in each country, with qualitative interpretations of the findings against theoretical expectations about centralization rather than hypothesis-testing causal analysis. The data and methods focus on such measurement and mapping, which allow for comparisons across time and policies within each federation and across all six federations. The project makes no normative judgments about de/centralization, and the theoretical, conceptual, and methodological bases are elaborated in the introduction to this special issue of *Publius*.

We measure de/centralization in legislative and administrative autonomy across twenty-two policy fields and five fiscal categories for each decade of each federation’s existence until 2010. In studying federal systems, “It is particularly helpful to distinguish between the legislative and the administrative spheres” (Brecht 1935, 341). Because federal systems are dynamic, one expects changes in power distributions (Friedrich 1968; Bednar 2008). We treat all the policy fields

equally. Ranking them on one dimension is impossible. Furthermore, different fields loom larger during different periods.

Legislative autonomy refers to state governments' control of primary legislative powers in a policy field. Administrative autonomy concerns the degree to which states can implement federal laws and their own laws consistent with their preferences. State administration of federal programs is frequently negotiated, and sometimes, the federal government permits autonomy through partial preemptions and waivers. Autonomy is measured from seven (exclusively state) to one (exclusively federal); four is equally state and federal. Fiscal autonomy includes five indicators also arrayed on 7-1 scales. We conceptualize dynamic de/centralization as encompassing direction of change, magnitude, tempo (as frequency, pace, timing, and sequence), form, and instruments of change.

The research finds legislative and administrative centralization across twenty-two policy fields in the United States being a continual, although slow, process for most policy fields until centralization accelerated in the late 1960s. However, the timing, pace, and sequencing of centralization varied across fields as political agents exploited opportunities at different times to enhance federal authority in different fields. In contrast, there has been little fiscal centralization, except for increased federal-aid conditions.

Past U.S. Centralization Research

"No question of government has been more vigorously debated than ... centralization versus states rights," wrote future U.S. Senator Paul H. Douglas (1920, 255). Americans have debated de/centralization since Anti-Federalists portrayed the Constitution as a plot to obliterate the states.

Political scientists initially studied centralization induced by the Supreme Court (Powers 1890; Scott 1909). Later, scholars employed empirical measures. Shumate (1935, 842) found that U.S. government office telephones listed in the Washington, DC directory increased from 663 in May 1932 to 892 by June 1935, while executive civil-service employees increased from 578,231 to 717,712. Fabricant (1953) examined relative growth by measuring increases of employees, expenditures, and capital assets for all governments for 1900–1949. All grew, but the federal government outpaced state and local governments. For instance, 45 percent of government capital assets belonged to the federal government in 1946, when compared with 16 percent in 1902. He also showed federal policies influencing state priorities, as in an increase of states' public welfare spending from 5.5 percent in 1903 to 13.5 percent in 1942.

Riker scored seventeen functions for 1790, 1850, 1910, and 1964 on a one (exclusively or almost exclusively federal) to five (exclusively or almost exclusively state) scale. Acknowledging his "highly subjective" scores, Riker (1964, 82) found

long-term centralization for fourteen functions, no change for morality and patriotism, and slight decentralization by 1964 for knowledge (from exclusively to predominantly federal). The average scores for all functions were 4.1 in 1790 to 4.0 in 1850, 3.5 in 1910, and 2.8 in 1964.

Stephens (1987) combined measures of federal versus state-local divisions of personnel, service delivery, and financial responsibility into a 1–100 federal centralization index. He found a centralizing trend from 27.4 in 1913 to 54.3 in 1986, although with war-related peaks of 67.9 in 1919 and 84.5 in 1945.

Measuring centralization in the United States and sixteen other countries as national government expenditures and revenues as a percentage of total expenditures and revenues, Krane (1988, 49) found “expansion of the national government’s role in policymaking” in the United States from 1895 to 1975, but with peaks and valleys along the way.

Bowman and Krause (2003, 319), examining federal statutes and executive orders for 1947–1998, concluded, “centralization triumphs in the end.” Centralization did not increase monotonically, but decentralizing steps were reversed, and no “devolution revolution” was evident. Similarly, Weissert and Uttermark (2017) examined health policy laws for 1977–2016 and found centralization under Democratic and Republican administrations. These studies measure the flow of dynamic de/centralization, not cumulative impacts.

All the above studies reported centralization, but only Riker measured centralization across policy functions from the founding. The following research refines and develops Riker’s method and also expands it to twenty-two policy fields and five fiscal measures, while increasing the time period to 1790–2010. The analysis estimates not only cumulative effects but also variations across time within and across the policy fields and, in contrast to previous research, seeks to assess the findings against a wide range of theoretical propositions about the evolution of federal systems. This research also allows de/centralization in the United States to be compared with that in five other major federations.

Comparative and Theoretical Contexts and Expectations

The theoretical expectations are spelled out in the introduction to this issue of *Publius*. Summarizing, we expect de/centralization to be shaped by various factors operating at different levels and times. We expect federations founded before World War I to be less centralized at birth than post-World War II federations. Relative decentralization at birth also will characterize federations born of a federal bargain.

Five socioeconomic forces are expected to spur dynamic de/centralization: technological change, increased mobility, market integration, globalization, and regional integration. Sociocultural trends will further drive centralization, namely

the evolution of citizen identification with the federation when compared to constituent communities and rising citizen expectations of governments' roles. Furthermore, economic and security shocks are frequently cited as centralizing. Trends and shocks also contribute to changes in collective attitudes via public opinion, interest groups, and the media and create incentives and opportunities for political actors. Thus, party nationalization, dominant party ideologies, and judicial preferences are expected to shape de/centralization, too.

The literature also led us to expect certain institutional factors to be important: number of constituent units and whether constituent units possess the residual powers, the federation's power distribution is dualistic, the federation is parliamentary, and direct democracy is available.

Data and Methods

The primary data are constitutional provisions, federal statutes, Supreme Court rulings, and executive orders that initiated, advanced, or altered federal participation in the twenty-two policy fields culled from congressional records, Congress.gov, Supreme Court Reports, the American Presidency Project, and other sources. Fiscal data were drawn from U.S. Census reports. Each policy field and fiscal indicator was coded for each decade on the 7-1 scale as to its estimated degree of legislative and administrative de/centralization.¹ This yielded twenty-three time points, each having forty-four policy scores and five fiscal scores totaling 1,127 observations.

The coding involved some challenging considerations. Some fields were rather easy to code because there was almost no change over the twenty-three decades or there were abrupt decisive changes, as in *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) and the Immigration Act of 1891, which established exclusive federal supremacy over who is and who can become a U.S. citizen and who can immigrate legally. In such fields as health and education, coding required much longer cumulative assessments. Studies of the intergovernmental dynamics of K-12 education, for instance, usually focus on major acts such as No Child Left Behind (2001) and Every Student Succeeds (2015), often drawing systemic conclusions, but assessing de/centralization in K-12 education requires consideration of more than 200 federal statutes and more than 100 Supreme Court rulings—such as *Meyer v. Nebraska*, 262 U.S. 390 (1923), voiding a state law banning non-English public instruction; *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), striking down racial school segregation; *Engel v. Vitale*, 370 U.S. 421 (1962), prohibiting prayer in public education, *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), increasing student constitutional rights; and *Safford Unified School District v. Redding*, 557 U.S. 364 (2009), restricting certain searches of students. Most of the Court's rulings still constrain state authority despite

Justice Robert H. Jackson's admonition that the Court not become "a super board of education for every school district" (*McCollum v. Board of Education*, 333 U.S. 203 [1948]). Moreover, many acts have long-term impacts. For example, the 1986 Emergency Medical Treatment and Active Labor Act (requiring hospital emergency units to treat all arrivals regardless of ability to pay, citizenship, or legal status) is a thirty-three-year-old unfunded mandate.

Many federal acts have delayed impacts. Under the 1906 Antiquities Act, Presidents Theodore Roosevelt through Lyndon B. Johnson set aside 8.8 million acres of land and water for national monuments over sixty-three years. Presidents Jimmy Carter through Barack Obama designated 831 million acres over forty years (Carlton 2017). Some acts have indirect impacts. By mandating in 1845 that all federal elections be held on the first Tuesday after the first Monday in November, Congress pushed state elections toward the same schedule. Federal programs also evolve. Medicaid, enacted in 1965, affects states more substantially today than in 1990. Presidents and courts also make expanded and new uses of old statutes. For instance, the 1872 Mail Fraud statute had little impact on states until first used in 1973 and 1977 to convict two governors of corruption (Gray 1980).

The executive branch also forges novel interpretations. In 2016, President Obama used a new interpretation of the 1953 Outer Continental Shelf Lands Act to permanently ban offshore oil drilling on 3.8 million acres from Maine to Virginia and 115 million acres off Alaska's coast (Davenport 2016).

Regarding administrative autonomy, it is important to note that some statutes, such as the 1986 Emergency Planning and Community Right-to-Know Act, do not allow states to opt out in favor of direct federal regulation (Johnson 1994).

Only federal policies impinging on state authority are treated as centralizing. Until the 1930s, for example, federal culture policies were confined to federal lands, properties, and personnel and to exclusive federal powers such as coinage. The coding also does not assume states had policies displaced by federal rules but only that states had legal authority to make policy, although they often did occupy fields. For instance, every state and territory enacted food and drug laws before the 1906 federal law (Conover 1928). The coding excludes territories because their legal relationship with the federal government differs from states.

The scoring does not include non-policy-specific laws that govern a field, thus underestimating centralization. For example, colleges and universities must comply with the complex Sarbanes-Oxley Act (2002) mandating corporate accountability, but the act is not listed as primary data for higher education; it is coded for economic and financial regulation and for criminal law. Some laws, including multi-subject laws, are included in more than one field. The 1862 Morrill Act providing for land-grant colleges is included in agriculture and higher education. Some legislation has crossover impacts. The 1985 Food Security Act prohibits states that participate in the Supplemental Nutrition Assistance Program from collecting

sales taxes on food purchased with food stamps. It also mandates stringent environmental rules. Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 broadens the reach of Section 3789d(c)(3) of the 1968 Omnibus Crime Control and Safe Streets Act by allowing federal intervention to correct state or local police misconduct. In addition, “prospective interpretative statutes” (Rosenkranz 2002) control the interpretation of future laws unless a new statute declares the previous one inapplicable. Examples are the 1945 McCarran–Ferguson Act (a decentralizing act restoring insurance regulation to the states) and 1973 Endangered Species Act.

The coding also considers that all statutes are not equal. Most of the super-statutes identified by Eskridge and Ferejohn (2001) are centralizing. Most of the statutes Light (2002) identified as America’s greatest achievements are centralizing. Such statutes were treated as having more centralizing weight than others.

Static De/Centralization at the Founding

The U.S. federation was established in 1788 upon ratification of the U.S. Constitution, which created a redesigned union of thirteen states by mid-1790 and fifty by 1959. Although ratification was centralizing when compared with the Articles of Confederation of 1781, the federation was operationally non-centralized (see table 1) except for external affairs and defense. Further, most of the policy fields examined here are not mentioned in the Constitution (e.g., language and education). The mean legislative score for 1790 is 6.05; the mean administrative score is 6.36 (see table 1). The states also had considerable fiscal autonomy (see figure A2).

The peoples of the states delegated limited powers to the general government: principally (i) commerce (i.e., authority to borrow and coin money; regulate the value of money; punish counterfeiting of securities and money; regulate foreign, interstate, and tribal commerce; enact uniform naturalization and bankruptcy rules; fix weights and measures; establish post offices and post roads; and grant patents and copyrights) and (ii) foreign and military affairs (i.e., declare war; grant letters of marque and reprisal; punish crimes on the high seas and offenses against international law; raise armies and a navy; regulate land and naval forces; call up state militias to execute federal laws, suppress insurrections, and repel invaders; and organize, arm, and discipline the militias). Five important crosscutting powers are a broad power to tax independently, enact laws “necessary and proper” to implement Congress’s delegated powers, regulate the times and manner of elections of federal officers, govern a federal district and territories, and establish courts below the Supreme Court.

The Constitution established a bicameral congress having a senate in which each state is represented by two senators selected by their state legislature (until 1913)

Table 1 Policy de/centralization scores: 1790, 1900, 2010

Policy field	Legislative			Administrative		
	1790	1900	2010	1790	1900	2010
Agriculture	7	5	2	7	7	3
Citizenship and immigration	6	1	1	7	3	2
Culture	6	6	4	7	7	4
Currency and money supply	6	3	1	6	3	1
Defense	4	4	2	4	4	2
Economic activity	6	5	3	7	6	3
K-12 education	6	6	4	7	7	6
Higher education	7	6	4	7	6	6
Elections and voting	6	6	2	7	7	6
Employment relations	7	6	4	7	6	5
Environmental protection	7	6	3	7	6	4
External affairs	1	1	1	2	1	2
Finance and securities	6	5	2	6	5	3
Health care	6	6	3	6	6	5
Language	7	7	4	7	7	6
Civil law	6	6	4	6	6	5
Criminal law	6	6	5	6	6	5
Law enforcement	6	6	4	6	6	5
Media	7	7	2	7	7	2
Natural resources	7	7	5	7	7	6
Social welfare	6	6	2	7	7	5
Transport	7	5	3	7	6	4
Total	133	116	65	140	126	90
Mode	6	6	4	7	6	5
Mean	6.05	5.27	2.95	6.36	5.73	4.09
Standard deviation	1.33	1.67	1.25	1.22	1.61	1.60
L-A mean deviation	-0.31	-0.46	-1.14	0.31	0.46	1.14

but who vote as individuals, not state delegations, and a house where each state is represented according to population. The president, who is elected independently through the electoral college, is the chief of state and military commander-in-chief. The Supreme Court, which asserted a judicial review power in *Marbury v. Madison*, 5 U.S. 137 (1803), consists of justices (now nine) appointed by the president with the Senate's consent.

The Constitution stipulates the supremacy of the Constitution, treaties, and constitutionally valid federal laws over conflicting state constitutions or statutes. However, the states possess all residual powers. Except for prohibiting state

impairments of contracts, restrictions on state powers are mild and pertain to state actions that would contradict federal powers or violate individual rights. Otherwise, the Bill of Rights, added to the Constitution in 1791, did not apply to the states; the Supreme Court first applied it to state and local governments in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897).

Although some early Court rulings such as *McCulloch v. Maryland*, 17 U.S. 316 (1819) and *Gibbons v. Ogden*, 22 U.S. 1 (1824) affirmed national power, two important rulings affirmed state powers. The Court held states can exercise seemingly exclusive federal powers so long as Congress does not preempt such laws or the Court does not deem them undue burdens on interstate commerce (*Sturges v. Crowninshield*, 17 U.S. 122 [1819]). This and other early rulings allowed states to widely regulate a changing society and economy during many decades of relative federal inaction. *Prigg v. Pennsylvania*, 41 U.S. 539 (1842) held that state officers are not required to enforce federal law: in this case, the 1793 Fugitive Slave Act.

Overview of Dynamic De/Centralization

This section analyzes results of the coding process and discusses patterns and trends.

Direction

Centralization is evident across the twenty-two policy fields (see [figure A1](#)), from almost exclusively state in 1790 to predominantly federal on the legislative side and equally federal and state on the administrative side. Both trends are consistent with intergovernmentalization ([Elazar 1984](#); [Wright 1988](#)); the first trend also is consistent with regulatory (U.S. Advisory Commission on Intergovernmental Relations 1984) or coercive ([Kincaid 1990](#)) federalism.

Only two fields experienced slight decentralization after 1970. External affairs went from one to two for 1970–2010 owing to state activities in foreign affairs ([Kincaid 1999](#); [Glennon and Sloane 2016](#)). These were coded under administrative authority because the federal government can quash such activities (e.g., *Crosby v. National Foreign Trade Council*, 530 U.S. 363 [2000] striking down Massachusetts' Burma boycott law). Language moved from three to four in 2010 owing to weakened federal rules on bilingual education. Six fields experienced one or more centralization episodes followed by decentralization. For example, the 1798 Alien and Sedition Acts were coded as temporarily centralizing for media in 1800 because newspapers were the major media. Five fields experienced one or more decentralization episodes followed by recentralization. Quite notable was decentralization of finance and securities in 1840–1860 when bank regulation returned almost exclusively to the states after expiration of the second U.S. bank ([Federal Reserve Bank of Philadelphia 2011](#)). Otherwise, temporary centralizing episodes

followed by postwar decentralization were associated with wars, such as federal controls on natural resources during World War II.

Four of the five fiscal measures experienced very mild centralization (see [figure A2](#))—a finding consistent with studies showing the United States to be comparatively non-centralized fiscally ([Kim and Blöchliger 2015](#)). Otherwise, the scope and stringency of federal-aid conditions showed the steepest centralization—from seven (very low) for 1790–1860 to six (low) for 1870–1910 and, finally, two (high) for 2000–2010. Own-source revenues out of total state and local government revenues were seven for 1790–1950, then six thereafter. The proportion of federal conditional transfers out of total state and local revenues stayed at seven for 1790–1950, dropping to six thereafter. Federal restrictions on state revenue authority were coded as six for 1790–1990 and five thereafter due to *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)—prohibiting most state sales tax collections from out-of-state vendors—and other federal acts. State and local borrowing authority was coded seven (very high) for 1790–1990 and six (high) thereafter due to *South Carolina v. Baker*, 485 U.S. 505 (1988), which placed some limits on state bonds, and other restraining federal acts.

Frequency

Across the twenty-two policy fields and twenty-three time points, there were seventy-eight score changes for legislative authority and fifty-nine for administrative authority (see [table 2](#)). Nine score changes were recorded for the fiscal measures, although five of the nine occurred for federal-aid conditions. On average, there were 6.5 score changes per decade across all measures. However, the average hides field and time variations. Elections and voting, economic activity, finance and securities, and citizenship and immigration each experienced the most score changes (six) for legislative authority. Changes in administrative authority were less frequent, although economic activity, agriculture, finance and securities, and citizenship and immigration each experienced five score changes. Only culture and external affairs experienced more administrative than legislative score changes. Legislative authority for external affairs was the only field showing no change.

Magnitude

From 1790 to 2010, the mean legislative score dropped from 6.05 to 2.95, while the mean administrative score declined from 6.36 to 4.09 (see [figure A1](#)). The magnitude of legislative change, which is about twice as large as administrative change, indicates greater centralization. The smaller magnitude of administrative change is consistent with states serving as administrative agents of the federal government. The magnitude of legislative change was greatest (five score points) in agriculture, citizenship, and immigration, and currency and money supply.

Table 2 Patterns of dynamic de/centralization from mean least to most centralized

Policy field	First year of lowest score (and score)		No. of years from 1790 to lowest score		Mean score 1790–2010		No. of score changes 1790–2010	
	Leg.	Adm.	Leg.	Adm.	Leg.	Adm.	Leg.	Adm.
Natural resources	1950 (5)	1950 (6)	160	160	6.4	6.7	4	1
Language	1970 (3)	1970 (6)	180	180	6.0	6.8	5	1
Employment relations	1980 (4)	1970 (5)	190	180	5.8	6.2	3	2
Environmental protection	2000 (3)	2000 (4)	210	210	5.8	6.1	4	3
Criminal law	1980 (5)	1990 (5)	190	200	5.8	5.9	1	1
Higher education	1990 (4)	1810 (6)	200	20	5.7	5.8	3	1
Law enforcement	1990 (4)	2000 (5)	200	210	5.7	5.9	2	1
Culture	1980 (4)	1990 (4)	190	200	5.6	6.5	2	3
Civil law	2010 (4)	1990 (5)	220	200	5.5	5.6	2	1
K-12 education	2000 (4)	1960 (6)	210	170	5.4	6.4	2	1
Health care	2010 (3)	1980 (5)	220	190	5.3	5.8	3	3
Social welfare	2010 (2)	1970 (5)	220	180	5.1	6.3	3	2
Media	1940 (2)	1940 (2)	150	150	5.1	5.1	5	5
Elections and voting	2010 (2)	1970 (6)	220	180	5.0	6.7	4	1
Transport	1980 (3)	1980 (4)	190	190	5.0	5.6	4	3
Economic activity	1940 (3)	1990 (3)	150	200	4.8	5.3	6	6
Agriculture	1980 (2)	1990 (3)	190	200	4.6	6.0	5	4
Finance and securities	2010 (2)	1970 (3)	220	180	4.2	4.4	6	5
Defense	1940 (2)	1960 (2)	150	170	3.1	3.4	4	2
Currency and money supply	1920 (1)	1920 (1)	130	130	2.8	2.7	4	4
Citizenship and immigration	1900 (1)	1920 (2)	110	130	2.7	3.7	6	5
External affairs	1790 (1)	1820 (1)	0	30	1.0	1.4	0	4

Legislatively, no policy field was exclusively state by 2010. Three fields were exclusively federal, six almost exclusively federal, four predominantly federal, seven equally federal and state, and two predominantly state. For administrative authority in 2010, one was exclusively federal, four almost exclusively federal, three predominantly federal, three equally federal and state, seven predominantly state, and five almost exclusively state.

The magnitude of change for four of the fiscal measures was one point each, signaling little centralization. Only the scope and stringency of federal-aid conditions centralized steeply (see figure A2).

Pace, Timing, and Sequence

More than a century—sometimes two centuries—passed after 1790 before centralization reached its contemporary point in all fields except external relations (see [table 2](#)). Legislative authority for external affairs was coded exclusively federal in 1790 because the Constitution deprived the states of a legally independent international voice. The administrative side was coded as almost exclusively federal for 1790–1810 due to remnants of state international activities, which may be why [Riker \(1964\)](#) did not code external affairs as exclusively federal in 1790. However, the federal government quickly consolidated authority through the Neutrality Act of 1794, Logan Act of 1799, and other acts. Citizenship and immigration was the next field to become exclusively federal, but not until 1891. Legislative authority for currency and money supply became predominantly federal by 1870 because federal taxes had extinguished state bank notes. The field became exclusively federal by 1920 due to the 1913 Federal Reserve Act and other actions.

Mild centralization on four fiscal measures came very late, with score changes from seven to six in 1960 for own-source revenues and also federal conditional transfers out of total state-local revenues. State borrowing authority was very high until 1990 when it shifted to high. Federal restrictions on state revenue authority were low (six) until 1990 when they shifted to quite low (five).

Overall, the pace of centralization was slow until picking up speed in the twentieth century. Slight decentralization (see [figure A1](#)) occurred from 1790 to 1850 due partly to the federal government's inability to sustain a U.S. bank and bankruptcy laws. This period was followed by mild, gradual centralization (a 1.04 mean-points legislative change) from 1860 to 1930, with the Progressive reform era (1890–1920) registering only slight centralization (0.5 mean-points change). Centralization spiked during the New Deal (0.55 mean-points change), although not as steeply as one might expect from critics who viewed the New Deal against the preceding seventy years of mild centralization. Three factors mitigated centralization. First, New Deal legislation focused predominantly on economic, not social, matters. Second, party bosses ensured that most legislation placed limited restraints on states' powers; federal programs were cooperative and friendly to state and local administration; and New Dealers preserved dual federal and state banking, dual regulation of such matters as securities and telecommunications, and sole state regulation of insurance. Third, some acts had delayed effects. Notably, the 1938 Fair Labor Standards Act (FLSA)—the last major New Deal act—was not applied to state and local government employees until 1966.

More substantial centralization (0.82 mean points) occurred from 1960 to 1980 as Congress and the Supreme Court acted increasingly on social matters and expanded federal power into the remaining policy fields, including areas previously having few federal constraints, such as culture, education, environmental

protection, health, and language. For example, while the national endowments for the arts and humanities, created in 1965, involved more state supports than constraints, other statutes had constraining impacts. Among these were the 1966 National Historic Preservation Act, 1974 Archeological and Historic Preservation Act, and 1976 Copyright Act that preempted remaining state copyright laws. Creation of the U.S. Environmental Protection Agency in 1970 and passage of most of today's major environmental legislation occurred during the Nixon–Ford years (1969–1977). Medicaid was created in 1965 along with an avalanche of health-care legislation. Title VI of the 1964 Civil Rights Act, the 1968 Bilingual Education Act, and Section 203 of the 1975 Voting Rights Act imposed non-English language rules on the states, some reaching broadly. If “a state or county court that receives federal funding is part of a unified court system, then” Title VI applies to all the system's courts (Abel 2009, 8). The 1980–2010 period showed more gradual centralization (0.41 mean points) involving further expansions of federal power in most policy fields—the 2010 Affordable Care Act being a notable example.

Quickened centralization during the twentieth century is illustrated in figure A3 showing numbers of score changes per decade across the twenty-two policy fields. However, the pace varied among fields. While agriculture showed gradual stepwise legislative centralization over 190 years, media regulation shifted from exclusively state until 1910 to predominantly federal by 1940, as the federal government asserted authority over electronic media and imposed some limits on state authority over print media, such as *Near v. Minnesota*, 283 U.S. 697 (1931) that voided a state law targeting “malicious” newspapers and *Grosjean v. American Press Co.*, 297 U.S. 233 (1936) that struck down a state tax on newspapers.

The mean 1790–2010 legislative and administrative scores in table 2 roughly measure the sequencing of centralization across the fields. The early centralizing fields were those from external affairs to elections and voting. Civil law, law enforcement, and criminal law experienced later centralizing movements, while media, social welfare, health care, K-12 education, culture, higher education, environmental protection, employment relations, language, and natural resources (off federal lands) experienced even later centralization. Natural resources were coded as still predominantly state, partly because the federal government did not regulate fracking in 2010 (Warner and Shapiro 2013).

Asymmetry

Many federal policies have asymmetric impacts by affecting only some states or some states more deeply than others. States such as Alaska and those of the mountain West having huge tracts of federal land have less territorial governance authority than other states, although the federal government shares revenue from resources exploitation in those states and makes payments in lieu of taxes.

Post-Civil War Reconstruction (1865–1877) of the southern states by the federal government, which included military occupations, had deep asymmetric impacts on those states (Foner 1988). *Brown v. Board of Education* of Topeka, 347 U.S. 483 (1954) affected states having de jure school segregation; *Keyes v. School District No. 1*, Denver, 413 U.S. 189 (1973) affected states having de facto school segregation. Grant formulas distribute federal dollars differentially, and some states receive less federal spending than their taxpayers contribute to the U.S. treasury, while others receive more (Kiernan 2018). Overall, although, multiple asymmetries probably counterbalance each other, producing a generally symmetric system.

Form

Centralization occurred in both the legislative and administrative spheres. However, the widening difference between the mean legislative and administrative scores at each decade (see figure A1), which is a measure of system duality, has increased slightly since 1930, suggesting that states have lost more legislative than administrative autonomy and that U.S. federalism has moved more toward “indirect federal administration” (Macmahon 1972, 22), whereby states are increasingly administrative agents for the federal government. This is consistent with the nationalist school of legal federalism that celebrates “the power states enjoy as national government’s agents” (Gerken 2014, 1893) and with others who contend: “Many state workers function as de facto federal bureaucrats” (DiIulio 2016, 535).

Instruments

What instruments contributed to dynamic de/centralization? Federal judicial rulings occupied first place for more than a century after 1789; federal statutes moved into first place by the 1930s. Nineteenth-century Congresses enacted few laws constraining states’ powers. The Supreme Court issued numerous rulings. Field (1934, 233) concluded in 1934 that the Court had favored the federal government during the previous 145 years. “The states . . . have had to play against the umpire as well as against the national government.” However, especially after *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) suddenly shifted the Supreme Court’s jurisprudence from opposition to support for commercial regulation, Congress occupied first place as legislative activity accelerated with few judicial restraints, particularly after 1960.

Treaties have been only modestly centralizing mainly because the Senate has refused to ratify many rights conventions, such as the Convention on the Rights of Persons with Disabilities, on the ground that such treaties would violate U.S. sovereignty. Instead, Congress has used constitutional provisions other than the treaty power to enact comparable domestic legislation, such as the 1990 Americans

with Disabilities Act. Most notable for centralization, though, is the 1918 Migratory Bird Treaty Act sustained in *Missouri v. Holland*, 252 U.S. 416 (1920), which held that a treaty can allow Congress to act outside its constitutionally enumerated powers and abrogate the Tenth Amendment. However, the Supreme Court pulled back slightly by weakening the migratory bird rule in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) and by holding that a woman who caused a chemical burn on her husband's lover's thumb could mount a Tenth Amendment defense against a federal criminal charge of violating the 1998 Chemical Weapons Convention Implementation Act (*Bond v. United States*, 564 U.S. 211 [2011]).

Executive orders played a small role. However, a full measure of executive influence would also include signing statements, proclamations, memoranda, and especially agency regulations, which have proliferated under the "administrative state" (Waldo 1948) and "administrative presidency" (Nathan 1983). The Court's *Chevron* doctrine (*Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 [1984]), moreover, defers to agencies' regulatory interpretations of statutes, and in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), the Court said states must rely on the political process, not the Tenth Amendment, to limit federal regulation.

Constitutional amendments played small direct but big indirect roles. Seven amendments directly constrained states' authority: amendment XIII abolishing slavery, amendments XV, XIX, XXIII, XXIV, and XXVI expanding voting rights, and Prohibition (repealed in 1933). Other amendments played indirect roles because their impacts depend on congressional and judicial implementation, and they crosscut all twenty-two policy fields. The Fourteenth Amendment (1868) was the most consequential for centralization, especially via the Supreme Court's equal protection jurisprudence and its incorporation doctrine applying amendments I, II, IV, V, VI, VII, VIII, and IX to the states, as in *Roe v. Wade*, 410 U.S. 113 (1973) in health policy, *Miranda v. Arizona*, 384 U.S. 436 (1966) in law enforcement, and other rulings affecting K-12 and higher education, employment relations, language, social welfare, and transportation. Amendments X (reserved powers) and XI (states' sovereign immunity) were decentralizing in intent, although, in the twentieth century, the Supreme Court blunted that intent by declaring the Tenth "a truism" in *United States v. Darby Lumber Co.*, 312 U.S. 100 (1941) and by limiting states' sovereign immunity, beginning with *Ex Parte Young* 209 U.S. 123 (1908) but slightly reversing course in *Seminole Tribe v. Florida* 517 U.S. 44 (1996), then narrowing *Seminole* in *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006). Amendments XVI (federal income tax) and XVII (popular election of senators) in 1913 had centralizing effects by giving the federal government a powerful revenue source with which to entice states to implement federal objectives and by bringing the Senate closer in line with public opinion (Crook and Hibbing

1997) rather than state legislators' preferences, although Riker (1964) argued the Seventeenth Amendment largely codified rapidly developing practice.

Assessing Dynamic U.S. De/Centralization against Theoretical Expectations

This section seeks to assess the extent to which the U.S. case fits the literature's theoretical expectations discussed briefly earlier and fully in the introduction to this *Publius* issue. This assessment raises possible directions for explanation, but full explanation is beyond the scope of this study. Discussions of explanation as they pertain to the six federations are in the concluding article of this issue.

The expectation that pre-World War I federations and those created by a federal bargain would be less centralized at birth than later federations, and that most centralization would occur after World War I, fit the United States (plus Australia and Switzerland but not Canada). The mean static de/centralization in 1790 was 6.05 (legislative) and 6.36 (administrative). The mean legislative score changed from 4.91 in 1920 to 2.95 by 2010, although the largest changes first occurred during the New Deal and then more massively after 1960.

None of the expected impacts of institutional properties, such as number of states and location of residual powers, materialized for the United States, a finding consistent with the analysis in the concluding article for this *Publius* issue that these factors were not important across the six federations.

To what extent, then, did technological change, increasing mobility, market integration, globalization, and regional integration drive de/centralization? Because technological change has been continuous since the founding, and the 1793 invention of the cotton gin, for example, helped perpetuate slavery, technology was not significantly centralizing. The era of greatest technological change, 1870–1970 (Gordon 2015), is not associated with consistently greater centralization (see figure A1). Moreover, the centralizing spurts that occurred in the 1930s and 1960s were not responses to technological change. Technology appears to have been important only in media (after the invention of radio)—the score for which dropped from seven in 1910 to two in 1940, and transportation where interstate railroads and air travel stimulated federal regulation, leading its score to change from six in 1880 to three by 1980. In elections and voting, the absence of modern technology prompted the 2002 Help America Vote Act.

As in the 1851 phrase “Go West, young man,” geographic mobility has been high for most of U.S. history and not, therefore, markedly centralizing. In fact, geographic mobility has declined since the 1970s (Schleicher 2016), while mean legislative centralization has increased from 3.77 in 1970 to 2.95 in 2010. However, externalities are another form of mobility. Externality mitigation across states emerged as a significant policy issue during the 1960s, fostering centralizing trends

in environmental protection (with fourteen major federal environmental laws enacted in 1969–1974) and, to some extent, in agriculture, currency, employment relations, health, and law enforcement. Advocates of nationalizing Aid to Families with Dependent Children criticized ‘welfare magnets’ generating races to the bottom (Peterson and Rom 1989), but a conservative-centrist coalition rejected nationalization in the 1996 welfare reform (Beer 1998).

Market integration appears to have been significant in ten of the fields: agriculture, currency and money supply, economic activity, employment relations, finance and securities, civil law, criminal law, law enforcement, media, and transportation. Integration accelerated after the Civil War, generating cries for federal regulation. Leading arguments have long been that states are too puny (Roosevelt 1910) or incompetent (Lowrie 1922) to regulate the national economic forces created by market integration. Usually, big business also endorses centralization, preferring federal regulation over fifty state regulators as occurred in the first major corporate regulatory push for federal over state regulation of railroads in the 1880s (Callen 2016).

Globalization appears not to have been significantly centralizing when one considers that centralization in policies relevant to globalization, such as economic activity, finance and securities, and electronic media, was well advanced before the term ‘globalization’ achieved common use during the 1980s. The nature of radio, for instance, necessitated the 1929 Radiotelegraph Convention and General Supplementary Regulations signed by seventy-eight countries. Globalization has not been a centralizing factor in such fields as culture, health, and social welfare, although concerns about global economic competition have motivated some centralization in K-12 and higher education (Heise 1994), although not in Canada (Wallner 2014).

Regional integration through the North American Free Trade Agreement (NAFTA) is thinner than European integration and, hence, not significantly centralizing. However, a centralizing cudgel in NAFTA and the General Agreement on Tariffs and Trade is that these agreements also lower nontariff trade barriers. Foreign entities challenge state and local environmental, safety, public health, and other regulations as nontariff barriers. The federal government has broad authority to preempt such regulations (Cooper 1993), about which Public Citizen (2009) sounded an alarm.

The expectation that rising citizen identification with the federation would foster centralization seems partially borne out, although we lack objective historical measures. After the Civil War, northerners identified increasingly with the union but southerners reasserted state identities (Key 1949) and, acting through Congress (Farhang and Katznelson 2005), retarded centralization until about the mid-1960s.

Public expectations of government have increased (Chinni 2018) since House Speaker Joe Cannon averred in 1908: “The country don’t need any legislation”

(Cheney and Cheney 1983, 127). In most fields, nationally organized interest groups pressed for expansive federal policies. As Douglas (1920, 262) put it, for instance: “The good-roads movement caused Congress in 1916 to pass an act providing federal aid for post roads.” The League of American Wheelmen, founded in 1880, lobbied Congress for “heavy government oversight” of major roads (Jaffe 2010), as did the American Automobile Association founded in 1902.

Because farmers have produced for commerce, not subsistence, whenever possible since 1789 (Hurt 1994), farmers were among the earliest to demand federal action, including the first clientele department—Agriculture, established in 1862. During the late nineteenth century, Americans expended “Vesuvian energy” (Schlesinger 1933, 410) creating nationwide associations. However, state and local party bosses and southern congressmen blunted centralizing action until the 1960s, when the power of the bosses and southerners waned and many new interests devoted to social issues such as equality, welfare, and environmental protection demanded federal action (Anderson 1955). In the culture field, for example, artists agitated for New Deal recognition, but the Arts Project of the Works Progress Administration so disappointed them that artists organized more effectively to demand better national policies. The zenith of their success came during the 1960s (Smith 2008).

Since the founding, state and local officials also have expected federal action. Political scientists quickly recognized that states “agreed to accept national control over their internal roads, educational affairs, forestry, agriculture, and other matters in exchange for” money (Beard 1931, 61). Because states entered most policy fields before the federal government, they had bureaucrats who often solicited federal aid and regulations. The 1916 Federal Aid Road Act incorporated a model bill written by the American Association of State Highway Officials. In health policy, Deutsch (1948) noted that state mental hospital administrators welcomed him to photograph institutional conditions so as to induce more state and federal funding and regulation. State and local public employee unions also lobby for expanded federal power. They precipitated some of the most important centralizing twentieth-century federalism cases, especially *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), which overturned *National League of Cities v. Usery*, 426 U.S. 833 (1976), applying the 1938 FLSA to state and local governments (Kincaid 1993). If personnel control is a sine qua non of sovereignty, then through litigation, state and local government employees hugely diminished the authority of state and local voters and elected officials across policy fields traditionally viewed as state functions.

Economic and security shocks have not been notably centralizing. At least forty-seven panics, recessions, and depressions have occurred since 1789 (Glasner and Cooley 1997). The only contractions associated with heightened centralization scores in this study were the forty-three-month Great Depression (1929–1933),

thirteen-month 1937–1938 recession, and eighteen-month recession of 2007–2009. However, confounding this thesis is that most centralizing measures were enacted only after Democrats won control of the Congress and presidency. The United States has been at war in some form for 165 of its 228 years of existence (author's calculation). Major wars requiring societal mobilization—the Civil War and two world wars—registered temporary but little long-term centralization in this research. This is also a matter of how one counts the impact of war. For instance, the 1862 Morrill Act, Pacific Railway Acts of 1862 and 1863, and creation of the Agriculture Department were not products of the Civil War per se but of the absence from Congress of southerners who had opposed all three measures before the war.

The intergovernmental distribution of responsibilities is sensitive to public opinion (Arceneaux 2005), and compared to the nineteenth century, Americans support a larger federal role in most fields. Although public views on which order of government should predominate vary among fields, and citizens desire state and local roles in most fields (Thompson and Elling 1999), the public usually gives the federal government priority (Schneider and Jacoby 2003; Konisky 2011). Furthermore, many federal policies, such as Medicare and Medicaid, toward which many Americans were hostile before 1965, now enjoy strong public support consistent with rising public expectations noted earlier.

Political agency—especially interactions between interest groups and the parties—appears to have been the most important centralization driver. Political actors, functioning through government institutions, determined responses to the exogenous forces identified in the literature, such as technological change, economic and security shocks, and market integration. For example, the rise of the automobile—a technological innovation—generated political pressure for a substantial federal highway presence in the United States but not in Canada (Turgeon and Vaillancourt 2002). The Republican response to the Great Depression differed from the Democratic approach. In fact, depression had ended in March 1933 (National Bureau of Economic Research 2017) when Franklin D. Roosevelt became president.

Parties have long been seen as crucial agents for de/centralization in federal systems (Riker 1964). Rejecting the American Political Science Association's call for more nationalized and disciplined parties, Grodzins (1960) contended such parties would destroy cooperative federalism. The confederated party system of the 1820s to 1960s, which was rooted in city halls, county courthouses, and state capitals, largely accounts for centralization's long gestation because it restrained nationalizing pressures from increasingly nationalized interest groups (Skocpol et al. 2000). Truman (1962, 133) argued federalism itself accounted for non-centralized parties but predicted that the rise of strong interest groups crosscutting states and demanding “standardized national solutions” could produce “a more explosive

politics” fostering party and governmental centralization. This occurred in the late 1960s when social movements seeking equal rights and social justice assailed the party system and initiated in 1968 the expulsion of state and local bosses from the parties. These movements, plus other developments, including candidate-centered campaigns funded by national organizations and the Supreme Court’s reapportionment rulings in *Baker v. Carr*, 369 U.S. 186 (1962) and its progeny, fostered a more nationalized polity in an environment variously characterized as interest-group liberalism (Lowi 1969) and the “policy-minded polity” (Jenkins and Milkis 2014, 8).

Diminished influence of state and local officials on the electoral fates of federal officials and recognition by members of Congress and presidents that their fortunes lie with their national party, party primary voters, and national interest groups fostered more centralizing legislation. Such legislation was associated with left-of-center parties—Progressive and later liberal Republicans and post-1932 Democrats—until the 1980s when broadened nationalization encouraged conservative Republicans to nationalize policy preferences as well (Conlan 1991). Since then, both parties have pursued preference nationalization while seeking refuge in states’ rights when out of power in Washington, DC. Although the Supreme Court has been more centralist than not since 1789 (Somin 2017) and was markedly centralist under liberal Republican Chief Justice Earl Warren (1953–1969), many federalism issues, such as preemption, defy the “traditional conservative-liberal alignment” (Dickinson 2011). The movement does not reverse because centralizing policies attract vested interests (Grossman 2014) and generate new norms, such as the legitimation of federal protection of minority rights since the 1950s.

However, one regional interest, the white South, played an outsized role. From 1789 to 1861 and the 1880s to 1960s, the white South, while internally diverse, adeptly arrested unwanted centralization (Gibson 2012; Heineman 2016). Absent the ‘solid South,’ nationalists from Alexander Hamilton to Daniel Webster and the Roosevelts would likely have divided state and local party bosses frequently enough to promote earlier centralization. Waning white southern power during the 1960s enabled heightened centralization.

Conclusions

The federal system moved from almost exclusively state authority in 1790 to predominantly federal authority in 2010. The system also became more administrative in terms of declining state sovereignty and rising state administration of federal policies. Fiscally, there was little centralization except for increased federal-aid conditions. Importantly, centralization was not uniform; it varied in magnitude, pace, and the like across policy and fiscal fields. Further, centralization proceeded at a snail’s pace for most of U.S. history, requiring more

than 100 years for twelve policy fields to reach their current centralization level and 200 or more years for nine to do so (table 2).

Arguably, the early centralizing fields (from external affairs to elections and voting) have clear textual bases in the Constitution. Civil law, law enforcement, and criminal law, which experienced later centralizing movements, also have textual bases in the Constitution; however, the framers and the Court saw these as dualistic—the federal government having its civil and criminal laws (with the Constitution specifying four crimes) and law enforcement (i.e., U.S. marshals established in 1789), while each state maintained its civil and criminal codes and law enforcement. In contrast, media, social welfare, health care, K-12 education, culture, higher education, environmental protection, employment relations, language, and natural resources (off federal lands) lack explicit textual bases in the Constitution.

The common historical pattern for the latter fields traditionally regarded as state domains was for the federal government to enter a field, such as health care, under an arguably clear constitutional rubric, as in establishment of the Marine Hospital Service (1798) and postage-free distribution of vaccines (1813). Sometimes, early federal intervention mandated cooperation with states, such as a 1799 act directing federal customs officials and revenue-cutter captains to help enforce state quarantine laws. After expanding within its domain, the federal government offered financial aid, although sometimes short-lived, as in an 1866 act funding state quarantine enforcement but directing the treasury secretary not to “add to, modify or supersede any state regulation” (Maxey 1908, 622). Information collection and research also commonly enhanced federal involvement from the 1860s to 1930s. Further expansion, with judicial support, begins to impinge on state authority through broad use of a constitutional provision, such as the commerce clause, as in the 1879 Interstate Quarantine Act. After enactment of the first modern grant program (Smith–Lever) in 1914, matching grants became the principal federal footholds in state domains, with aid conditions being the chief regulatory tool. But grants increased slowly from twelve in 1920 to 132 in 1960 before leaping to 534 by 1981 and 1,196 by 2016 (Dilger 2017). At the same time, the Supreme Court, especially after 1937, usually upheld federal power expansions, often through the commerce clause and Fourteenth Amendment. The contemporary era began in the late 1960s with unprecedented proliferations of grants, preemptions, mandates, and federal court orders and consent decrees.

Except for increased federal-aid conditions, fiscal centralization has been slight. Possible reasons are that the Constitution denies states the two most divisive levies—import and export taxes—and, as Hamilton predicted (Kincaid 2014), the federal and state tax systems have rarely collided. Except for state taxes that impede interstate commerce or discriminate against other states, parties and interests have few incentives to constrain states’ revenue authority, especially because state

revenues finance so much of federal program administration. Rather than preempt states' revenue authority in order to increase federal taxes to finance federal initiatives, Congress and presidents avoided the appearance of "overcentralization" (Roosevelt 1910, 27) by enticing states to cofinance federal programs.

Finally, this research raises questions about periodizations of American federalism and the many "federalisms" populating the literature (Stewart 1984). Overall, it is difficult to identify critical junctures, although 1937 and 1968 are candidates because of the 1937 transformation of the commerce clause and 1968 transformations of the party and interest group systems and resulting heightened centralization. However, one can identify critical junctures in many policy fields, such as the Fourteenth Amendment of 1868 for citizenship and the 1913 Federal Reserve Act for currency and money supply. Hence, efforts to identify periods and new federalisms need to specify their referents carefully.

Notes

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1. The coding was done by the author of this article based on the intergovernmental impacts of federal statutes, court rulings, and other actions and on reviews of secondary literature on those impacts. The coding then assessed the cumulative impacts of federal policy on state authority in each policy field during each decade. External coding validation was sought by sending the data and coding to policy-specific experts, having the data and coding discussed and reviewed by all the project's other researchers, and holding a workshop with experts on U.S. federalism and public administration to reach a coding consensus. Thus, also included for all decennial codes is a high, medium, or low confidence level in the Supplemental Online Coding file accompanying this article, along with all the data.

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Appendix

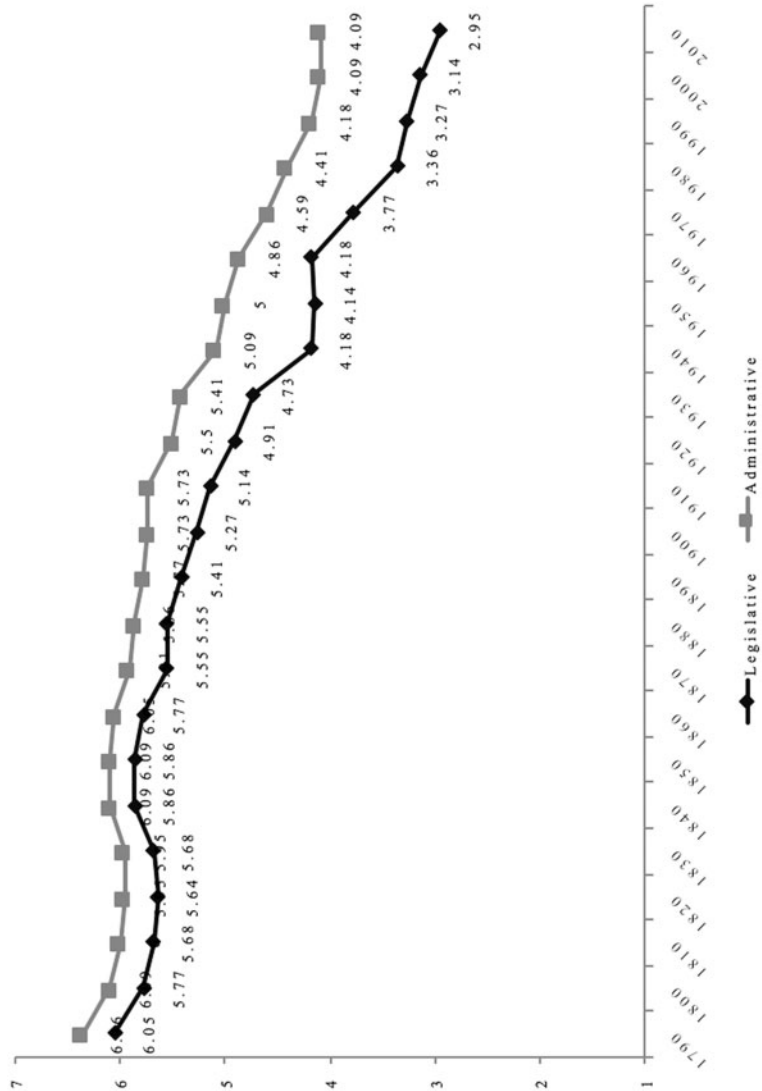


Figure A1 Mean static policy de/centralization by decade, 1790–2010.

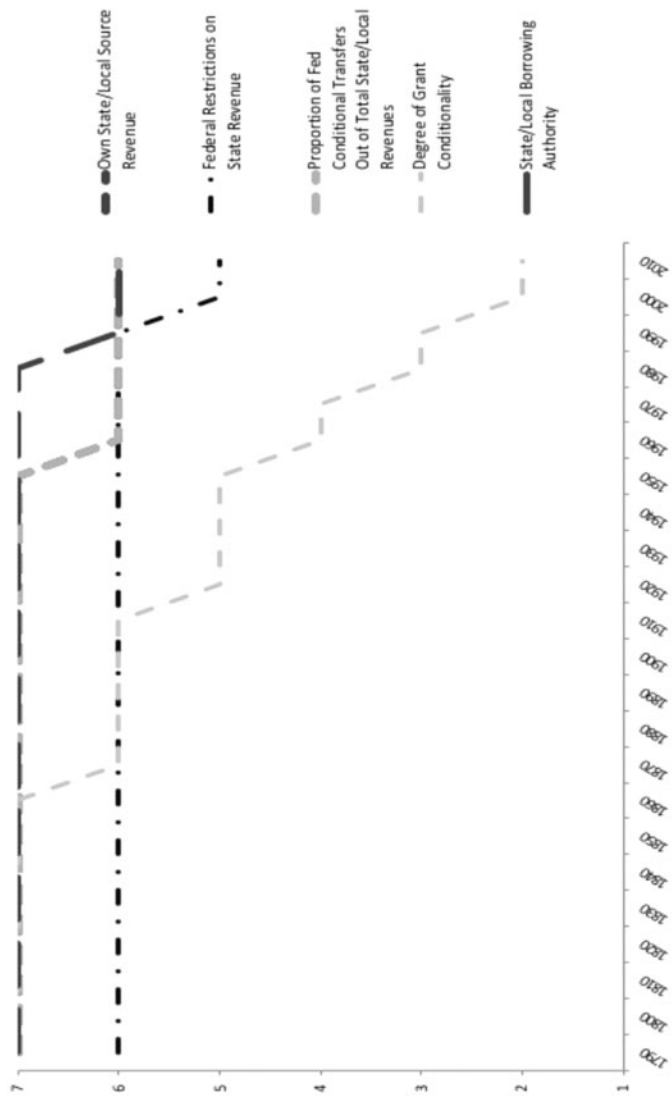


Figure A2 Historical de/centralization trends of fiscal indicators by decade.

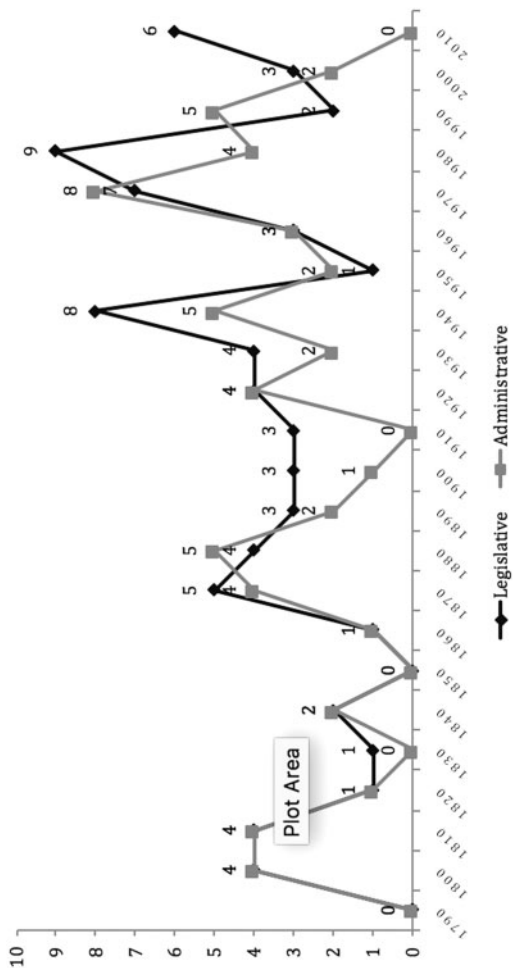


Figure A3 Frequency of dynamic policy de/centralization by decade, 1790–2010.