Federalism in Flux:
Three Candidate Models
to Explain Trends in Federal Decentralization

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July 2014*

Abstract

Federations are characterized not only as “centralized” or “peripheralized”, but as “centralizing” or “peripheralizing”—indicating that a federal system’s nature is dynamic and that those dynamics can be captured by a single measure. They are trends. This paper contributes to the emerging literature in federal dynamics by considering three models to explain the formation of federal trends and their dynamics: interest-based pressure, path dependence, and cultural spillovers. I argue that of the three candidate models, the cultural spillovers model has the best potential to capture trends across policy domains. Furthermore, equipped with this model, we may better understand moments of acceleration, leading to tips in the balance of power between federal and state governments that lead to a new era of centralization or peripheralization.

*Prepared for the annual meeting of the International Political Science Association, Montréal, Québec, July 2014. I presented an earlier version at the conference “Federalism in Flux” at the University of Wisconsin Law School, November 2013.
“By the steady accumulation of small changes you get new species.” —Charles Darwin

Federal systems are characterized broadly in many forms: by the extent of their internal diversity, by their hierarchical structure (i.e. picket fence, marble cake), or by the parity of their units (symmetric vs asymmetric). Perhaps no quality is more often invoked than the a federation’s relative centralization—roughly, the ratio of national to subnational power. If a federation is characterized as centralized, then one expects relative uniformity of laws, little opportunity for diverse input from the subnational governments, and cohesive policy-making. In decentralized federations, one expects policies to vary across units, and that the national government will face state-organized audience costs, and potential vetoes, when it attempts to make policy. All else equal, a decentralized federation is perceived as sacrificing efficiency and cohesion in order to augment diverse representation and experimentation. In addition to painting a broad brush about their existing quality, scholars describe federal dynamics. Federations are characterized not only as “centralized” or “peripheralized”, but as “centralizing” or “peripheralizing”—indicating that a federal system’s nature is in flux and that those dynamics can be captured by a single measure.

The study of federal dynamics is nascent, and in Benz and Broschek’s agenda-setting volume (2013) they ask: what changes in a federal system, why does it change, and how—by what means? (2013:3) This paper focuses
on changes to the division of governmental authority between federal (national) and state (subnational) governments. What we are interested in is a tendency, a trend.

For example, let’s say, for the sake of discussion, that the boundaries of authority separating the United States’ federal and state governments have changed over time. Let’s further agree with the bulk of analysts that in general the trend has been toward increasing centralization, with some degree of reperipheralization under the Reagan Administration and Chief Justice Rehnquist. Finally, let’s lay on the table the recent fiddling with the boundaries in policy domains as diverse as voting rights and gun control, and the states’ confident pushing from below in matters of marijuana legalization and gay marriage, while resisting federal plans to expand Medicaid. Some say that these developments signal a resurgence of state influence, and that the United States is on a path toward greater decentralization; others, citing the federal government’s use of its spending powers and preemption, say that U.S. federalism is dead, that centralization has locked in.

In this essay I examine the theoretical basis of this interpretation: that a series of events might become a trend, one so significant that it reshapes the nature of the federal constitutional relationship. It is counterpoised against two alternatives: first, that the authority shifts are unrelated, and therefore any patterns discerned are spurious, no more than momentary alignments, like casting double sixes. A second alternative would grant that the coince-

\[^{1}\text{Kollman 2013.}\]
dence of centralized or decentralized authority shifts is real, but that it is attributable to an exogenous force, such as a world war that calls for the central coordination of all domestic matters. As soon as the exogenous force is relieved then the pattern is free to change, the current arrangement has no endogenous effect on the future shape of the federal system. Against these two alternatives—spurious patterns and exogenous force—stands the alternative: that these periods dubbed the “age of federalism” or “the end of federalism” or a “new era of states’ rights” are real trends that have meaning, that the alignment of shifting power, whether simultaneous or sequential, is related, and that the array of power between federal and state governments shapes the direction of future authority migration.

It is intriguing to reduce the complexity of a federal system to a single dimension given all of its competing interests, overlapping jurisdictions, and interwoven policies. A singular characterization of the nature of a federal system is intuitively justifiable and a handy comparative assessment, but analytically trying. Data to support the characteristic of “centralized” or “centralizing” is sparse and can be misleading. Even a measure as readily quantifiable as the ratio of national to subnational budgets offers imperfect comparisons; it misses budget mandates set by another level, such as Germany’s harmonization requirement that straps the subnational budgets. In

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2Fiscal decentralization data are available through the OECD and the World Bank; see Rodden 2004 for suggestions for best use. Hooghe, Marks, and Schakel (2010) have a comprehensive, multi-dimensional dataset of regional autonomy. Halberstam and Reimann (2014) assess legal uniformity across 20 federations and the Council of Europe has assembled country reports on regional governance for each of its 47 members. Watts (1999) is
the United States, where the peacetime ratio of national to subnational budgets has never been higher, the federation is not as centralized as it might seem. States are enjoying a political resurgence, contradicting national law on marijuana legalization, setting new definitions of marriage contracts, and entering into policy realms once deemed inherently national, such as immigration. At the same time, there are centralizing trends in the US federation, with the national government’s increased use of preemption and its spending powers to shape state policy. The simplicity of a fiscal measure, or any other single data point, doesn’t capture the nature of the federal relationship. The United States’ federal system appears to be in flux, but even the best data set available, Hooghe, Marks, and Schakel’s (2010) comprehensive cross-country appraisal of regional authority in 42 democracies, shows no change to the extent of U.S. state authority since 1950. There has been no formal institutional change to the federal system, but its nature has varied nonetheless.

This paper is written with the hope that theory generation can help us understand (and perhaps even spot) trend formation even in the absence of strict measures. With a model of trend formation in hand, data might be used to support the hypotheses that the model generates, rather than serving, inductively, as a source of explanation.

While some changes are brought about through institutional transformation, more often the change cannot be traced to the formal adjustment of a single-source comparative reference. See References for more information.
constitutional rules governing the distribution of authority between federal and state governments. In other work (Bednar 2009) I have described a model for slow change in federalism’s boundaries by focusing on the system of safeguards that reacts to attempts to change the location of authority. To explain the other side of the dynamic equation, the demand for change, theorists have multiple modeling choices. In this essay I evaluate three: interest-based pressure, path dependence, and cultural spillovers. I consider the capacity of each to contribute to an understanding of trend formation.

In federal systems there are two approaches to understanding authority migration: through behavior or through institutions. The behavioral side represents the demand for authority migration, such as legislative proposals that push at the boundaries of authority. The institutional side represents the systems of safeguards (structural, judicial, political, popular) that react to these demands. Quite obviously, a change to the formal institutions can lead to a near immediate rearrangement of the federal-state relationship. In this essay I focus on the behavioral drivers, setting aside institutional changes for two reasons. First, most institutional changes will have a behavioral story in its background. If institutions change they are either redesigned intentionally—as in constitutional adoption or amendment—or their evolution is tolerated, which is a behavioral feature. (I will return to this point below, when discussing Kollman 2013.) Second, the nature of the federal

\[3\] I am going to TRY to hew to behavioral models, but those who know my work know that I don’t think that behavior can be usefully separated from institutions, or vice versa. I say a small bit more in the conclusion on this point.
bargain can shift absent any formal institutional shift. It is important, as federalism scholars, that we develop models to capture these institution-free fluctuations.

I will also simplify the story of institutions. The set of safeguards is complex, a system of imperfect, interconnected parts, that in ordinary operation does allow for small modifications to the boundaries. In other work (Bednar 2009) I have written at length about change through the institutional side, and so here I will invoke it only to frame the behavioral questions. For the present purposes we will concentrate on the behavioral side: the forces that shape the demand for change. That said, the division between perspectives is not tidy, as when the Court rules expansively or when political agents respond to boundary-shifting legislation with federalism-changing tactics of their own. This essay embraces those efforts.

To understand demand for centralization or decentralization we need a theory that will do two things: it must help us understand why authority in distinct domains would move at the same time, and why that movement would have bearing on the future authority migration. Why would the pressures on the federal boundaries organize into patterns of centralization or peripheralization that can be discerned historically, even if they are difficult to identify in the midst of a transformation? A useful model must be able to explain the outcome, given a drive.

I propose three models for understanding the changes to the federal system: **Model A: interests**, that the distribution of authority changes in
response to changing policy-maker preferences, **Model B: Path Dependence**, that it evolves along a traceable path of historically contingent elite decisions, and **Model C: cultural spillovers**, that it is bound by culture. These three models are related. They build in complexity, and each subsequent one at least nods in the direction of the prior models. Each of these three models has benefits. In the end, I conclude that the interest-based model is ineffective at explaining trends. Historical institutionalism is limited to elite decisions, but some iterations of the model—currently, intensive case studies—draw relationships across policy domains that could explain trends. Cultural spillovers is appealing for incorporating social forces but is essentially untested in federalism studies, so its usefulness has yet to be established.

In the next section I build in more detail the notion of trends in order to improve the criteria for model evaluation. The subsequent three sections each consider the three candidate models in turn.

### 1 Three Questions for Modeling Federalism Trends

The three candidate models will be evaluated for their ability to address three questions related to the aggregation of incidents (i.e. legislative acts, judicial decisions, or political maneuvering) into a trend that serves as a heuristic to define the nature of a federal relationship. First, how does centralization
become part of the policy debate? Second, how do trends toward or against centralization spread across domains? And, finally, how do trends manifest temporally? The first of these requires the most fleshing out.

One of the more puzzling aspects of the trends in federalism is how particular policy domains become subject to federal-state bargains in the first place. Gun control, abortion, immigration, affirmative action, health insurance, marriage rights: on the face of it, none of these policy areas make one think about the federal-state balance of power, and yet, federalism animates discussions over these policy areas far beyond the courtroom, and their resolution threatens to reshape the American federation, as well as other federal systems. Other policy domains are somewhat curiously outside of the federalism debate. For instance, consider identity cards and social security. For the identity cards, the federal government issues two identifications for the general citizenry: a social security card and a passport. The passport is optional and the social security card has no photo so cannot be used in most instances as valid identification. Despite related debates over voter identification that does sit squarely within the federalism debate, there is no call for a standard, federally-issued government photo ID. Likewise, the debates over privatization of social security never suggested that social security be turned back over to the states, even though some states, like Illinois, have never abandoned their programs. Instead, the modern policy debate concentrated on public vs private, where public maintenance never had the second, state-level, alternative.
The question begged by these examples is how the federal vs. state provision of policy becomes part of the policy debate at all. How did anyone think to invoke a state- or federal-level alternative as a means to achieving their desired policy goal? In modeling terms, it is a question of how an agent comes to recognize what alternatives are available to her. Rational choice models routinely assume that agents know all options available to them, but in a pointed critique of the rational choice model, Herbert Simon suggested that for any given full set of alternatives $A$, an agent may only “consider” or “perceive” a subset of alternatives, $A'$ (1955:102). There is no a priori reason to think that the optimal action is contained in the set of alternatives that an agent considers. Technically, although this is problem that nearly all formal theorists ignore, the contents of $A'$ must be justified theoretically\footnote{Psychologists do work on this issue, and some decision scientists have. Kahneman and Tversky call this “accessibility” of an idea (Kahneman 2005): how immediately the mind associates an idea (for us, an alternative) with an observation. I am still mulling through the intuition vs reason argument and how it might work with a model of cultural evolution, so will not include accessibility further than this placeholder footnote.}. While all considered alternatives make sense with the benefit of hindsight (naturally the Republicans would consider turning to the state legislatures to wage their campaign against Obamacare), Simon points out that humans often don’t know how long to keep searching for more alternatives—they don’t have the luxury of being perched on the “mountain-top of a more complete model” (1955:112), and very often, will *satisfice*, taking the first acceptable outcome, rather than continuing to expand their choice set to reveal more possibilities. In the context of our problem, we need a model to describe how
political agents think of drawing the migration of authority between federal and state governments into a problem of getting their own way on public policy. That is, we need a model of how public policy becomes a question of federalism.

A second question is closely tied to the first. How does the inspiration to federalize a policy question diffuse across policy domains? Why, for example, would changes in the distribution of authority related to education affect health policy, or marriage, or immigration? (Recall that if we say that these policy domains don’t affect one another, then any “trend”—a policy or authority weighting toward the national or subnational government—is spurious.) Ideally, we would be able to spot trends as they emerge. Can the model make any prediction about the direction of flow of the idea? At the least, can we identify policy domains that are more likely to be early and those that would be late to have a shift in authority, and the significance of each?

A final test for our three candidate models is their ability to explain the historicity of federalism trends. One reason that we characterize federations as “centralized” or “decentralized” is that the labelling is a heuristic, helping us to make predictions about future assignment of authority. If a federation is centralized, then when new authority assignments are considered, we presume

\[5\text{While I am writing of this in public policy terms, naturally the same question holds for legal questions: under what circumstances does the Court bring federalism into its resolution of a legal challenge, particularly when federalism was not directly implicated? Or vice versa: why does it leave federalism questions unanswered, presumably leaving in place the existing federal-state relationship?}\]
that the central government is most likely to get the assignment.

There is one curious interaction to notice: there may be no correlation between a federation’s state (centralized or peripheralized) and the likelihood that a policy domain gets federalized. That is, a model may or may not link the likelihood that federal-state balance of authority is invoked as an alternative in a policy debate to the existing distribution of authority.

In this essay we will use these three questions as criteria for evaluating the appropriateness of each model as a means to capture the formation of a trend in a federal system. A model must explain:

1. how agents come to express their policy preferences in federalism terms,

2. how that expression spreads across policy domains, and

3. how it carries over historically, influencing future choices.

2 Model A: The Random Walk of Interests

The foundation of behavior is preferences, and so the first candidate model stresses the interaction of interests. If the policy space is unidimensional, and preferences are uniformly or normally distributed, then policy is drawn, in a Downsian fashion, to the median interest. Interest-based theories for action are best developed as models of legislative action or voter choice, but have been extended convincingly to capture behavior of other governmental agents, including the judiciary (eg Epstein and Knight 1998). In terms of
explaining shifts in authority, the model predicts that changes would track changes in the policymakers’ goals or assessments about the efficacy of one level of government over another to meet those goals. It can be pulled from the median due to institutional structure (Shepsle 1979); for example, such as constitutional rules that explicitly assign authority to one level or another, although the current debate over regulation of firearms—including Missouri’s narrow miss at nullifying federal background check laws[6]—is a showcase example of how even settled questions of federal assignment are subject to further interpretation.

The interest-based family of models is a great starting point for analyzing particular changes, but when applying it in order to explain downward or upward transfers of policy authority, one immediately runs into a sticking point: to justify the federalization of the policy debate. Despite the acknowledged importance of a policy goal to a particular group, why is the debate carried out over the assignment of authority? When one’s interests suggest that it is time to regulate air quality or develop strategies for growth, the model needs some method to tie the level of assignment to the policy objective. For this, interest-based arguments might turn to their complements of efficiencies of scale and spurring competition. For example, Oates’ decentralization theorem (1972) suggests setting policy at the lowest level possible (to capture benefits of competition and satisfy diverse preferences) but sufficiently high

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[6] On September 11, 2013, the Missouri legislature failed to override the governor’s veto of HB436 by a single Senate vote. The bill would have made it illegal to conduct required federal background checks, among other measures.
to internalize all negative externalities. Kollman, Miller, and Page (2000) suggest decentralization for experimentation to solve moderately-hard problems, while centralization is best for easy problems and quite complicated problems (due to efficiency on the one hand, and organizational capacity on the other). These considerations are amendments to a pure interest-based model; by incorporating a policy goal (say, improved air quality) with another goal (efficiency), one can arrive at an interest-based story for authority assignment.

Even explaining the federalization of the policy debate when policies already exist, and so presumably the authority is already claimed by one level of government—is not as straightforward as it might seem. While the U.S. debate in the statehouses over Medicaid expansion makes sense, as that element of the national government’s Affordable Care Act directly affects state budgets, other policies, such as immigration reform, are more complicated to explain. In the United States, where immigration had been a settled assignment, a responsibility comfortably held by the national government, recent challenges by border states such as Arizona call to question the national government’s sovereignty in this domain, while in other states—even those that share the same partisan alignment as Arizona’s leadership—press in the opposite direction, for increased immigration openness, including encouraging the President to use executive authorities to override Congress. In the Eu-

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7 No governor, Democratic or Republican, is currently encouraging open borders more forcefully than Rick Snyder, a Republican governor from Michigan, who suggests that the national government can do so as a non-financial form of federal aid to the Michigan
European Union, by contrast, immigration authority has been harmonized only in fits and starts. Harmonization agreements such as the Schengen area, which eliminates internal immigration checks, have galvanized support for anti-immigration parties. In general, when EU policy is centralized, it is to pass more restrictive immigration policies (Givens and Luedtke 2004).

The interest-based model divorces authority migration from policy space and time. It can help us to understand authority migration after the fact, but it does not provide a complete justification for authority assignment. It is simply not equipped to help us understand how those ideas emerge and spread; it is the very model that Simon was critiquing in 1955. The standard interest-based model also cannot help us to understand the significance of the existing nature of the federal union on future attempts to shift authority. An agent’s choice is not affected by earlier choices; the model is silent to history. One might make assumptions about relative ease of applying the status quo, but that drifts over into the next section’s model. In its purest form, the interest-based model represents a random walk around the existing authority assignment; with each new policy debate, the federation is equally likely to become more centralized, less centralized, or stay the same. While it might help us to understand the outcome of any particular debate, it cannot help us to understand the emergence or importance of trends.
3 Model B: Elite-Driven Path Dependence

Path dependence implies that the sequence (or as the theory is often applied, the set) of events in the past influences future outcomes: history matters. The most common model of the force that generates path dependence assumes that behaviors become less costly over time—for example, as routines develop—and therefore become more likely (eg. David 1985, Arthur 1994). To apply this model of increasing returns to explain the development of trends in federalism, once an assignment of authority is made, it may be more likely to remain in place for reasons extending from bureaucratic inertia to public expectations. The authority assignment becomes a self-absorbing state, one that does not change.

This model of path dependence accords with mid-century assessments of the American federation made by prominent theorists, including Grodzins (1961), Elazar (1962), and Riker (1964). All wrote of a growing centralization of the American federation, to the point where federal government dominance would be essentially inevitable. For Elazar, the centralization is a product of American expectations and can be found in early federal-state partnerships. Efficiency demands (1976:9) pushed the federation to an ever more centralized state. To Riker, the American federation lacked institutional safeguards to prevent its centralization, as well as a the public will to defend the priority of the states (noting the declining “loyalty” to the state). Grodzins noted the “marble cake” nature of the American federa-
tion, where the authorities of federal and state governments bleed into one another. As the central government grows more efficient it dominates the state governments in any areas of shared authority\(^8\).

Kollman’s (2013) recent book builds upon these models of inherent centralization by adding an important new dimension: the competition for authority between the legislature and the executive. This horizontal competition affects the vertical character of the organization (in addition to federations, he studies the Catholic church and General Motors). Centralization comes through executive absorption of power. The competition for power goes in two directions, of course; and so if executive/legislative and national/subnational competition were the only feature of Kollman’s thesis, decentralization would be just as likely as centralization. The second component of Kollman’s thesis is lock-in: executive authority is path dependent in a manner that is not true, according to Kollman, for legislative authority. The executive is privileged with control over resources that subnational groups value, such as discretionary spending, partisan support, and bureaucratic capacity. As the executive’s authority is strengthened, the executive uses these tools to create subnational dependence and submission.

Federal governments with separation of legislative and executive authorities will centralize naturally. Kollman likens it to the flow of water downhill. It might be reversed, but only through intentional choice. The mechanisms

\(^8\)The judicial practice of adhering to precedent will also bias outcomes in favor of increased centralization if standing decisions are in favor of the national government.
that centralize are ratchets; they lock into position, and can only become more centralized, not less. Although Kollman does not use the language of historical institutionalism, his thesis of intentional decentralization aligns with the historical institutionalism methodology of incrementalism, or gradual change, as developed by Mahoney and Thelen (2010), as well as the Greif and Laitin (2004) model of endogenous institutional change through quasi-parameters.

In the Greif and Laitin model, optimal response to incentives can generate changes to the problem environment, in effect changing the payoff structure for a given institution. They call these externalities “quasi-parameters.” The quasi-parameter may affect the utility of a policy or change the information structure of the choice. For example, under the Affordable Care Act, states are given the option of setting up their own insurance exchanges or joining in the federally-created exchange. The responsibility is new to the states, and so some may not be confident about the consequence of program choices. Rather than setting up their own exchange, they may take the lower-cost option of adopting the federal exchange. Over time they learn more about the policy environment, and may see ways to improve upon the federal example, reclaiming the responsibility as their own.

The quasi-parameter model of Greif and Laitin is a nearly ideal candidate model for understanding trends in federalism. It captures well the weight of history and the significance of the existing state on the future status of the federation. However it does not address the stretch across policy domains,
one of the criteria for modeling a trend. As a model, it remains rooted in single policy dimensions (or at least, single institutional spaces). It is possible that actions can create spillovers in other realms, affecting payoffs in other institutions, but that spillover effect is not explicitly modeled.

If, as it appears, that federations do reverse course and peripheralize, a model should be able to explain both centralization and decentralization. Ideally a model would be able to explain reversals in trends as well as smooth continuations of them. Kollman suggests that decentralization only occurs through intentional action. In historical institutionalism, these decisions are made by elites during critical junctures, a pivotal moment that closes off future paths, setting a polity on a determinate course (eg Pierson 2004, Capoccia and Kelemen 2007). Broschek offers a useful comparison of the theories of critical junctures and ruptures against the theory of gradualism and incremental change in federal systems (Broschek 2013); to my mind, the best work is Tulia Falleti’s studies of decentralization in Latin America.

Focusing on Argentina and Brazil, Falleti traces their divergent paths: one centralizing one decentralizing (2005, 2010, 2013). The divergence is accounted for by the sequencing of reforms: administrative, political, and fiscal. Brazil’s subnational units made their reform claims political, equating reforms with democratization. Once these reforms were in place, administrative reform followed. This sequence put Brazil on a path of greater decentralization. In Argentina, reform started with administration; consistent with Kollman’s logic about feedback effects, this set it on a path toward
relatively greater centralization. Like Kollman, Falleti relies on institutional feedback, and in Falleti’s case, spillovers across policy domains; with the addition of these spillovers, she is able to show that centralization is not inevitable; different sequencing can generate decentralization.

These models are quite attractive for their power to explain divergent paths. They focus on elite choice at key moments. However, sometimes change is gradual and happens without intentional design, but instead is rooted in societal perceptions and aggregate behavior and beliefs. To analyze this kind of change, we turn to a model of cultural spillovers.

4 Model C: A Federal Culture

To satisfy the criteria for modeling a trend in a federal system, the model should be able to capture relationships across domains of authority as well as trace the constraints in the shifts within an authority domain through time. In a sense, the model should capture horizontal, intratemporal relationships [across policy domains at one time] as well as vertical, intertemporal relationships [within the policy domains, aggregated, over time]. It should suggest a mechanism that ties the policy domains together. Falleti and Kollman, discussed above, both do so through path dependence: lock-in and feedbacks.

To the interest-based model and historical institutionalism, Benz (2013) additionally emphasizes social forces to understand federal dynamics. Elite-driving, institutionally-structured bargaining over distribution of benefits
and obligations is the immediate driver—the interest-based approach. But Benz argues that it not sufficient to explain change. One must also take into account different paths of institutional development, akin to Falleti. Finally, social responsiveness to changes, as well as their role in driving those changes, are the ultimate determinants of the nature of the federal union (e.g. see Erk (2008)). In noting the critical importance of social forces, Benz (2013:78) calls for new theories of the mechanisms by which social forces affect structural change. The remainder of this essay will consider a third modeling form, cultural spillovers, as a method for incorporating this concern for social forces by introducing a model of cultural spillovers. It is important to note a caveat: this model is still in development and has not yet been applied to federalism.

To pick up where we left off with historical institutionalism, the very circumstances that made that pivotal choice possible, and palatable, may lie in the underlying social pressures and approval. Political leaders, regardless of whatever maverick posture they might cultivate, are loathe to contradict prevailing public sentiment. The Court, too, so often fingered as the source of importance institutional changes including alterations to federalism’s boundaries, is increasingly understood as validating or expressing vaguely formed public impressions. A reshaping of the federation has to make sense to the public. Theorists of popular constitutionalism, including Kramer and Friedman, underscore that behind the formal governmental forces stand a public in judgment of their actions. As Friedman shows, the Court is rarely long out
of synch with popular sentiment about the Constitution’s meaning. Popular constitutionalism accords with the intuition of a wide array of federalism theorists, from Ostrom, Elazar, Riker, and Weingast, that the ultimate force shaping federalism is the existence of a federal culture. There are two recent developments in modeling dynamics of social processes that can help us to understand this process.

I’ll begin with the measurement of tipping points. It is a natural to events at moments of big jumps or greatest acceleration of change as the force responsible for a change in the state of a system. For example, in our interest in the dynamics of federal centralization and decentralization, we’d focus on the court decisions or major legislative acts that reorganize the assignment of authorities as the pivotal moment in reshaping the federal system. But reconsider the insights from those theorists who point to the dependence of the court on the public’s receptiveness. It may be that the Court can influence the pace of redirection, but not the direction of it; that is, in moments of significant shift the Court (or Congress, or other political forces) are only taking advantage of the opportunity.

Big changes may start with small events. In historical institutionalism, with its focus on elite decisions that drive institutional change, it is tempting to examine historical moments of brinkmanship or revolution. Despite warnings to avoid this temptation (eg Capoccia and Kelemen 2007), not all resist the temptation.\footnote{See, for example, Herzog (2014)’s review of a recent book on the effects of the French}
One way to think of the difference between seemingly small decisions and those that make significant changes is by analogy. Consider a ball resting on top of a flattish hill. It can roll around on top of the hill, but at some point, it will start on a downward path. As it falls it will speed up at the steepest part of the downward path, but the direction that it takes down the hill was determined when it started rolling down the side, even though at that point it was moving rather slowly. These slow changes near the top are most important in determining the path that it takes; once rolling down the hill, the ball’s direction is set. Lamberson and Page (2011), doing the math, warn that focusing on inflection points in dynamical systems misses the importance of earlier forces. Instead, we should focus on moments where the probabilities over outcomes change: such as when a system shifts from multiple equal probable outcomes to a single likely outcome. These moments may exhibit only marginal changes in the characteristic of the system, but be critical for the future shape of it.

The Lamberson and Page tipping point measure fits the arguments of the legal system theorists well. Although the distribution of authority may not be changing significantly, the groundwork for big shifts is set through incremental changes and ultimately, by a shift in public perception about the appropriate distribution. Seen this way, major Court decisions or legislative acts—those described as “pathbreaking”—are nearly inevitable once cultural shifts lay the groundwork. The direction of change was already set by cultural Revolution.
forces, and the only question is how far they will push the federation in a new direction.

We now must invoke another model to describe the inner mechanics of the early development of these shifts when small changes to the distribution of authority (whether realized, or perhaps even only proposed) spread across policy domains, and then hold through time.

First, recall the problem I introduced when describing the interest-based model: the need to be able capture the source of the idea of federating (commonly, decentralizing) authority. In rational choice theory, typically modelers assume that agents know their full choice set, and then choose the action that optimizes their payoffs (whether max-min, expected value, or by assuming payoff maximization), but recall Simon’s criticism: models need to justify how their agents know what strategies are available to them. They need a model of the agent’s understanding of the problem, including the source of ideas for what actions they can take.

In work with Scott Page, I’ve developed a model where agents’ behavior spills across games (Bednar and Page 2007). An agent’s response to a games is a function of the broader context of games that the agent faces, not because we assumed that to be the case, but because of the way that agents learn to play games. Ideas for how to approach a game—what action to take—are related to what the agent is doing in other situations. For example, we have experiments where subjects play a prisoner’s dilemma (PD) game
repeatedly. When the PD is the only game that the subjects play, they do what behavioral subjects have done in the hundreds of times that the game has been studied: about 55% of the subject pairs eventually figure out to cooperate with one another, maximizing their individual returns. But when they play the PD and another game, the likelihood that they cooperate falls. When the payoff-maximizing behavior in the other game is relatively easier to figure out, the subjects play the same way in the PD that they play in the other game. They solve easier games first and then apply that action as a heuristic for playing a more complicated game. Behavior—figuring out how to respond to incentives—is dependent on the context, on what else the agents are thinking about at the same time.

In this model, not only are the games connected together within the context of the model, but as long as the difficulty of the games can be compared, the model can predict the direction of the influence. Actions diffuse from easy-to-solve games toward those where coordination is harder—where there are multiple actions that are each nearly as good as the other, or where there’s a significant punishment for failure to match the other’s play.

11 In experiments where agents played the PD with a game that rewards alternating “you win then I win” behavior, a significant portion of our subjects alternated in the PD as well, playing the off-diagonals of cooperate then defect. To our knowledge, this is the first instance where the alternating behavior has been witnessed to any significant extent in the PD. This is an example of what Kahneman and Tversky would call associative play; the agents thought of a strategy that is absolutely never witnessed in experiments because they were playing another game where that strategy is a really good choice.
12 Establishing the comparability of games is not straightforward, but we have made some headway. See Bednar et al 2012 for one method.
While this work is early and abstract, we have hopes that it can be fruitfully applied to contexts as real and significant as decisions about whether or not to centralize or decentralize policy in a federation. If there is broad agreement about the location of authority in one realm—say, that the federal government is more capable than state governments in regulating the banking industry or in coordinating the electrification of rural areas—and then the federal government becomes the focal authority for other projects, such as building the foundations of a welfare state, to cite the path of the American case. The model would predict that as authority begins to shift domains, it starts with areas of broad agreement or where the other level of government has proven incapable of responding. From there it can move to domains that are more contentious, snowballing into what becomes intuitively recognizable as a trend.

The original model concerned simultaneous games, the horizontal relationship between domains. We have extended the model to consider sequential game introduction, and using the same mechanism—the potential for behavioral spillovers between games—find conditions that produce institutional path dependence (Bednar and Page 2014). If a sufficient portion of the population learns how to play new games by drawing on heuristics developed in similar games—the behavior that we saw in our earlier studies—then path dependence becomes essentially inevitable, particularly the more similar the games. Furthermore, early games often have the most influence on the future path of play.
Our results are related to Greif and Laitin’s model of path dependence driven by quasi-parameters described in Section 3. As quasi-parameters shift, the institutional incentives drift. Although they do not state it explicitly, there may be stickiness in behavior that causes behavior to be inefficient—that a better response exists but the agents don’t locate it. Our model describes this situation explicitly and provides a prediction for when we might see behavioral correction. Our model predicts disjointed leaps in behavior, and argues that it does not imply disjointed shifts in either preferences or incentives. That is, even if public attitudes, political strategies, or judicial decisions seem to reverse course abruptly, the underlying environment—both in terms of preferences and needs—may be changing slowly. The steady accumulation of small changes that reinforce one another leads to aggregate behavior that resembles a trend.

5 Modeling Federalism in Flux

When theorists of federalism characterize a federal system as centralizing or peripheralizing, the characterization reduces a complex, multidimensional space to a single dimension. In order for this simplification to make sense, the many drivers of federalism’s shape must be correlated. The boundaries of federalism are pushed by legislative acts and judicial decisions, sometimes reshaping those boundaries. If they were uncorrelated, then the shifts to federalism’s boundaries would resemble a jagged line, jumping toward cen-
ization then decentralization without any aggregate coherence. This random walk does not align with the way the terms *centralizing* and *peripheralizing* are commonly invoked: these words are used either to describe a function that is approaching the limit of one extreme, or an oscillation between the two states of centralization and peripheralization. A trend is more than a series of events and reactions to those events. In a trend, the events are related to one another and not just to a single large event. Instead, they appear to self-organize into a pattern.

This essay has proposed three ways of thinking about the patterns that emerge as agents push against the boundaries of federalism. The first, of explaining behavior in terms of shifting preferences, dominates the literature. While it has many advantages for analyzing single events, including parity, as a theory it is not equipped to draw connections between policy domains and across time. The second model relies on the concept of path dependence. It proves a good model of the historicity of behavior within a single policy domain, but the model lacks a general method for linking policy domains and it does not include social forces. The third model, of behavioral spillovers, is capable of explaining connections in behavior across policy domains as well as its stickiness through time. This third model can also explain how small policy changes may well lay the foundation for transformative events, the seminal policies and decisions that are the focus of historical accounts of the federal bargain. These large events need not though be tipping moments, moments in which the future path has become more certain. Instead, they
may be signposts on a path that was laid out by a cohort of earlier actions and decisions.

In this essay I’ve tried to focus on the behavioral and social side, although I’m sure that I’ve fooled no one. The analysis of institutions and behavior are inseparable. Institutions shape behavior, of course, but also behavior—of the long-term variety, what one might refer to as culture—shape institutions. Culture affects the perception of institutional frames on immediate decision-making; culture shapes what is seen as likely as well as what is perceived to be possible. And culture creates linkages across institutionally circumscribed dimensions even when those connections are not recognized legally.

The idea that behaviors spill across institutions and contexts may have even broader purchase. It may well help us to understand the formation and slow change of political culture, that popular force that so many theorists of federalism and legal systems point to as significant. More elaborate models of spillovers offer the potential therefore to not only explain patterns in the centralization and decentralization of federal systems, but to begin scaffolding the concept of political culture as well.
References


