Macro-trends in U.S. Executive Policymaking 1980-2016

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Contents

1 Methods and Data

This exercise compares research on the social structure and political behavior of American public and political elites with what government actually does. The subject of administrative policymaking is driven in part by laws passed by Congress and in part by the agenda of the President. Discrepancies may indicate either a true disconnect between electoral politics and executive action or that executive policymaking was constrained by other political forces.

Connecting broad theories of the American political landscape to the nuanced daily actions of government is not easy. I focus on relatively fine-grain policy outputs, final rules published by agencies in the Federal Register and reported to the Office of Information and Regulatory Affairs. This approach has the advantage of capturing the making of law as it really is, not how it is framed by elites or thought of by the electorate. The disadvantage is its distance from policy inputs. While social cleavages along class, religion, or race can be connected to voting patterns, it is much more difficult to say how they affect the lawyers sitting at desks in the federal bureaucracy writing the minutiae of the law.

My data source is the Unified Agenda of Regulatory and Deregulatory Actions. These data reflect the magnitude of different types of policymaking but not the direction. As the name suggests, many rules may be reversing a previous rule. However, it does indicate that attention and resources are being devoted to the policy area and thus that it is a salient issue for administrative policymakers. Whether these issues align with issues salient to mass public and political elites is the subject of the present investigation.

These data were compiled from two sources published by the White House Office of Information and Regulatory Affairs. Since the Reagan administration, agencies have been required to report their rulemaking activities for semi-annual publication in the Unified Agenda of Regulatory and Deregulatory Actions. Separately, ORIA issues annual reports from the Office of Management and Budget (OMB) regarding the rules it has reviewed. OMB only reviews significant rulemakings (generally those with significant economic impact or affecting other areas of government), but their data helps correct reporting errors and gaps in the Unified Agenda, ensuring that at least significant rules are included and correctly dated. Together these sources yield a dataset of 56,304 unique rulemaking projects as identified by a Regulation Identification Number (RIN). RINs allow us to track a rule from the publication of a draft to the eventual publication of a final rule (or withdrawal).

Regulation Identification Numbers are allocated by agency, allowing me to disaggregate the OIRA reports by policy area. I generally followed the policy areas identified by the *Policy Agendas Project* (Baumgartner et al., 2016). The first two numbers of a RIN generally signify the department and the next two, the bureau within the department. Many issue areas, like welfare and foreign affairs, cross multiple entire departments while others, like civil rights, are the domain of only a few sub-bureaus.

I visually present rulemaking activity over time in three different ways. The simplest visualization is a histogram like the one below. In these plots, blue lines mark transitions to a new Republican president and red lines mark transitions to a new Democratic president. The other two methods of visualizing

rulemaking activity, scatter plots and likelihood estimation, require slightly more discussion.
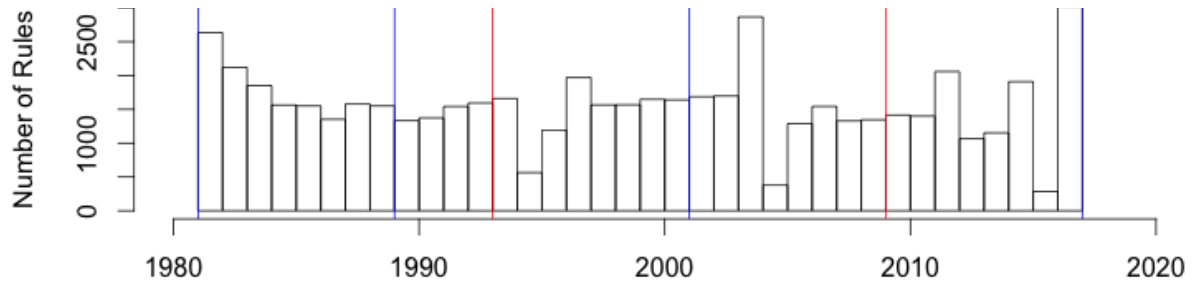
1.1   Scatterplots of Rulemaking

In addition to histograms of the number of rules, we can see patterns in rulemaking by plotting the date a rule is finalized or withdrawn on a scatterplot. On the y-axis is the Regulation Identification Number. This type of number is assigned in temporal order within each bureau or sub-agency. For example, the lower half of the plot below shows a high and steady rate of rulemaking by the Centers for Medicare and Medicaid and the upper half shows a very modest rate of rulemaking at the Social Security Administration prior to the passage of the 2003 Medicare Modernization Act, which gave it a more prominent role in administering Medicare.
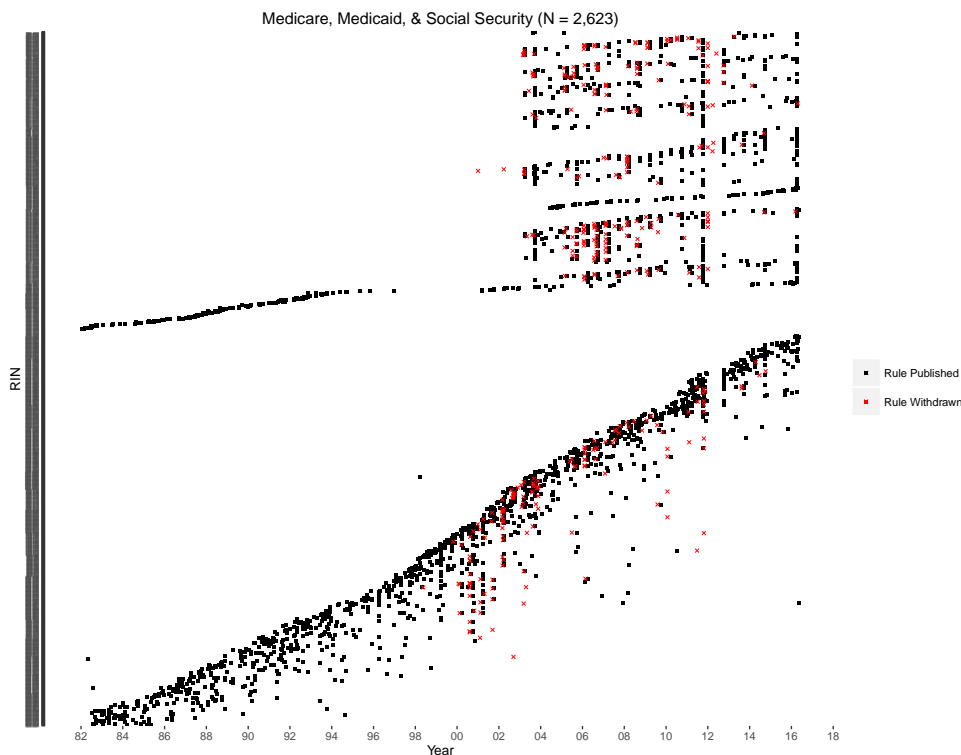
Other major political events can be seen in the scatterplots. For example, the gap in rulemaking activity between 1995-1996 reflects the government shutdown. We also see the abrupt end of agencies and departments including those in the Department of Justice and Department of Transportation, re-

flecting their reorganization into the Department of Homeland Security after the attacks of September 11, 2001. This included the Coast Guard and Transportation Security Administration from the Department of Transportation and several agencies including the Immigration and Naturalization Service from the Department of Justice (see scatterplots in the Appendix).

There is a stark increase in the number of rules being withdrawn across policy areas beginning with the election of George W. Bush and continuing into the Obama administration. Withdrawals may indicate that the draft regulations started by the previous administration are being canceled, that new legislation is passed, or, more likely, that there is simply a more systematic practice of reporting withdrawals.

In any of these figures, one can observe the general rate of rulemaking in each bureau as the slope of the line of black squares. Points below the line are rules that took longer than usual to finalize. Thus, these figures allow us to see the relative rate of rule finalization and withdrawal as well as the variance in how long rules take to make.

1.2   Likelihood of Rulemaking over Time

Finally, we can estimate statistical trend lines for different policy types. While many statistical approaches may be appropriate, I opt to use a proportional hazard model. This method estimates a baseline hazard rate–the likelihood a rule will be published given the number of days since a draft was released. I then estimate the effect of calendar time on this baseline hazard rate. The effect of calendar time on the likelihood of rule finalization is fit using a smoothing spline for every two years (every Congress, in this case 18) in the dataset. These splines estimate a cubic polynomial function that best captures the effect of a given date on the likelihood of rulemaking over the spline interval while also smoothly connecting to the intervals on either side. This gives us a smoothed function estimating the likelihood of rulemaking over time (see figures for social and economic policy in the next section).

By including the date the draft rule was published, this approach captures two things not well-captured by histograms and scatterplots. It accounts for the pace of rulemaking, i.e. the time it takes from draft to completion, and the likelihood that long-delayed rules will be finalized. Both of these indicate that the issue is politically salient.

Two notes are important for interpreting these figures. First, in 1994, President Clinton issued an executive order that only significant rules were to be subject to ORIA review. Unfortunately, this coincides with the dramatic 1994 election that broke Democratic control of Congress, so inferences about this time are limited. It may be safest to assume the universal dip in the likelihood of policymaking around 1994 is an artifact of this executive order and thus to imagine trend lines shifted up to have a mean of the value at 1994. Second, this method is sensitive to outliers at the ends of the distribution. We should be especially cautious making inferences from the first years that agencies were required to report these data as they may have been inconsistent. Thus, it is safest to look at the period between 1985 and 2015.

2 Policy Substance in Regulations

This section presents selected figures and brief commentary on the extent to which patterns observed in rulemaking fit or conflict with those observed elsewhere in the political system.

2.1 Social Policy, Economic Policy, and Foreign Policy

I start with the broadest categorizations of social policy and economic policy.

Social policy does not mean social issues as described by Shafer and Spady (2014) or Carmines, Ensley, and Wagner (2012). Social policy is also broader than welfare. It includes not only Medicare, Medicaid, Social Security, and food and housing assistance, but also public education, labor, and civil rights. It is a combination of the departments of Education, Health and Human Services, Labor, Veterans Affairs, and Justice, as well as the Social Security Administration, Centers for Medicare and Medicaid, and a variety of other departments dealing with health, poverty, and civil rights.

Economic policy includes the Departments of Commerce, Treasury, Energy, Transportation, Agriculture and Interior.

The likelihood plots below are not clear evidence for or against theories that suggest Democrats and Republicans should differ in their emphasis on these two broad categories. On the one hand, the patterns are not noticeably different before the 2000 election, and both George W. Bush and Barack Obama appear to have made more economic policy in their first term than in their second. On the other hand, there is a marked increase in the likelihood of social policy under the Obama administration as suggested by the party ideology perspective put forward by Gerring (1998) and others. Social policy will be disaggregated to more specifically consider welfare, labor, and civil rights policymaking in the subsections below, but first, I turn to a third broad category of policymaking, foreign policy.

Social Policy

Economic Policy
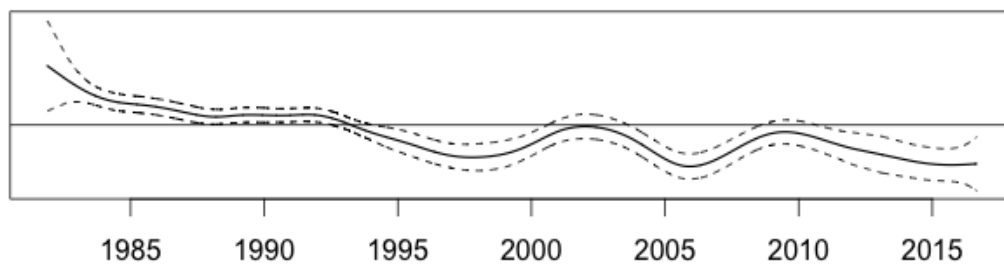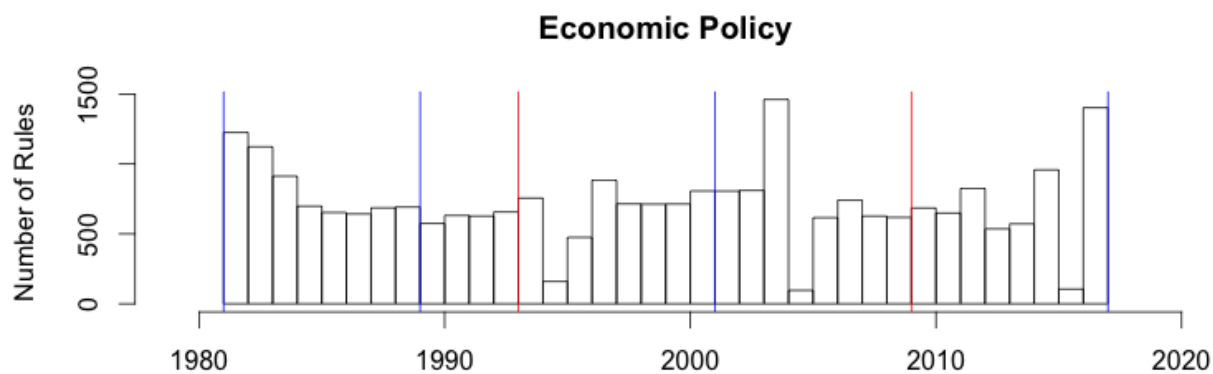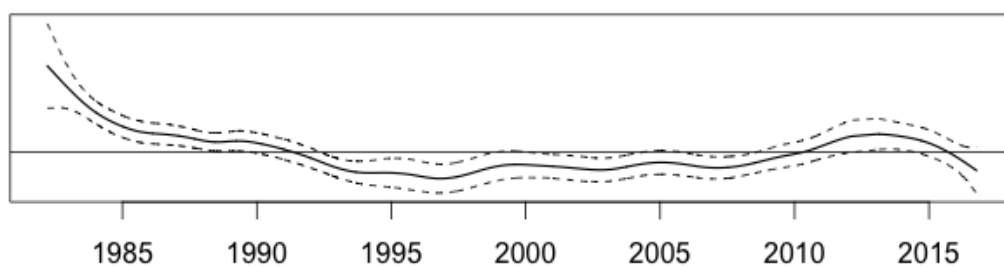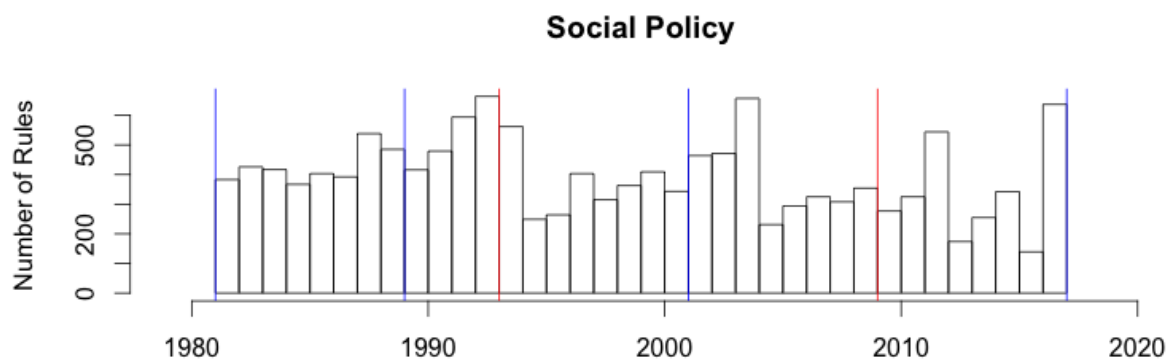
The histogram for foreign affairs (the Department of State and International Trade Administration) does look different than the Department of Defense, but the only clear pattern is the increased rulemaking after 1996, predating the dramatic increase in its budget after 2001 and significantly predating the 2004 election when Claggett and Shafer (2010) identify national security as emerging as an issue.

The likelihood plot suggests partisan effects with two peaks occurring during the 103rd and 111th Congresses, the only periods where Democrats had control of both houses and the presidency. This aligns with Farhang and Yaver's (2015) finding that rulemaking is more likely to be concentrated in a single agency rather than fragmented across agencies under unified government. There are smaller bumps that appear to correspond to the reelection of these two presidents when facing an oppositional Congress (but also no longer thinking about reelection).

Foreign Affairs (N = 2,183)
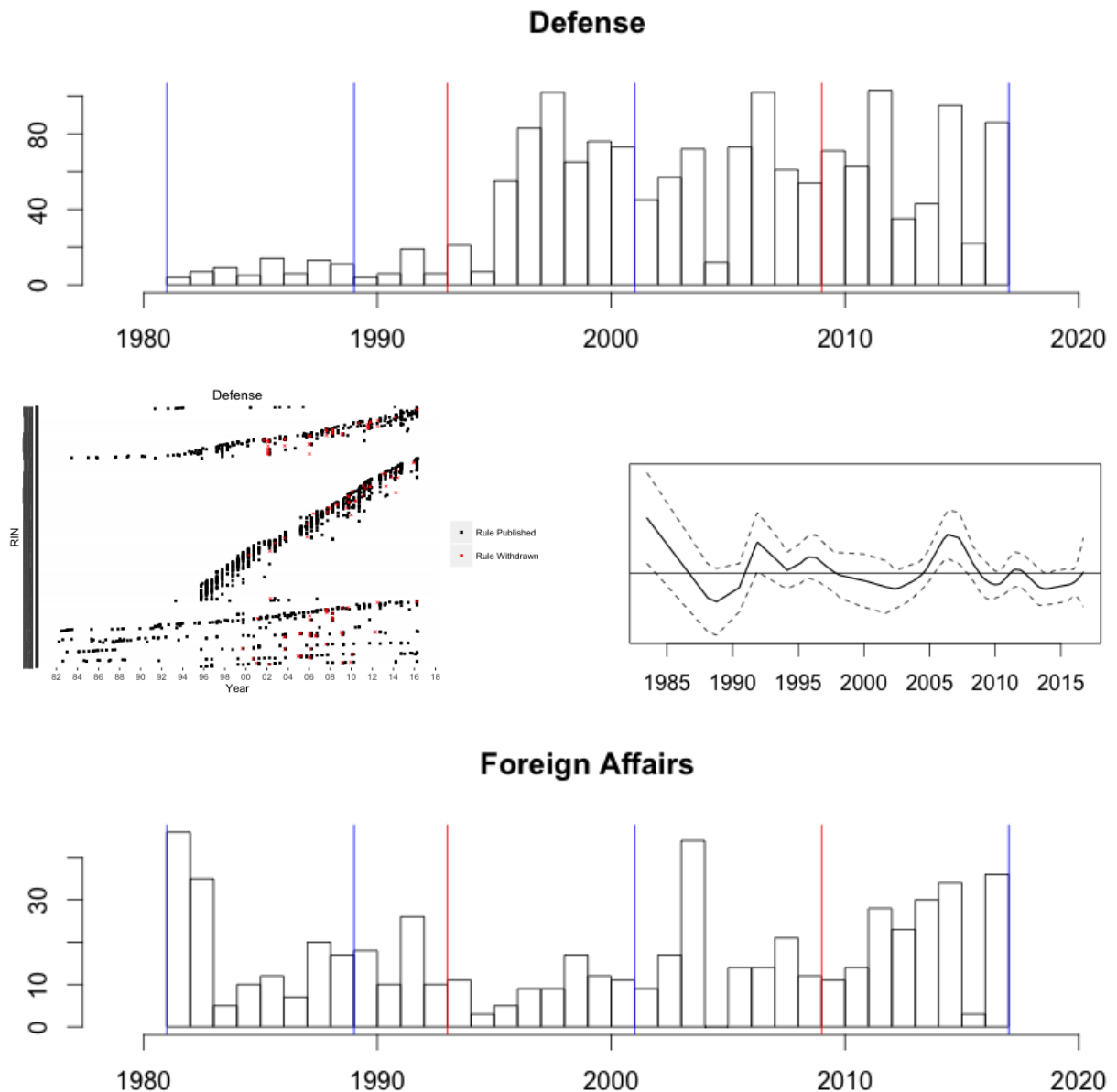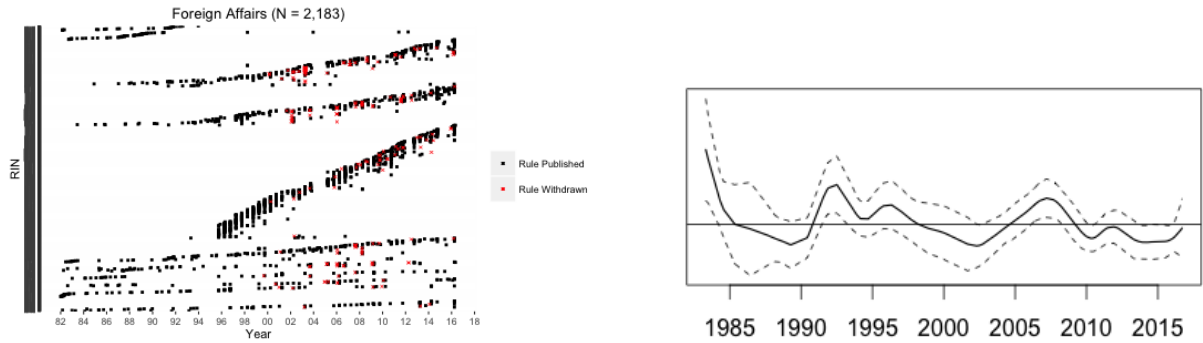
2.2 Labor and Welfare

Schlozman's story about the connection between labor and the Democratic party is not seen in Department of Labor regulations. If anything, Republican administrations seem to see more labor policymaking. Looking at the scatterplot, policymaking appears remarkably constant across sub-agencies within the Department of Labor, barring a marked pulse of rule withdrawals in 2001.


Labor

Labor (N = 1,229)
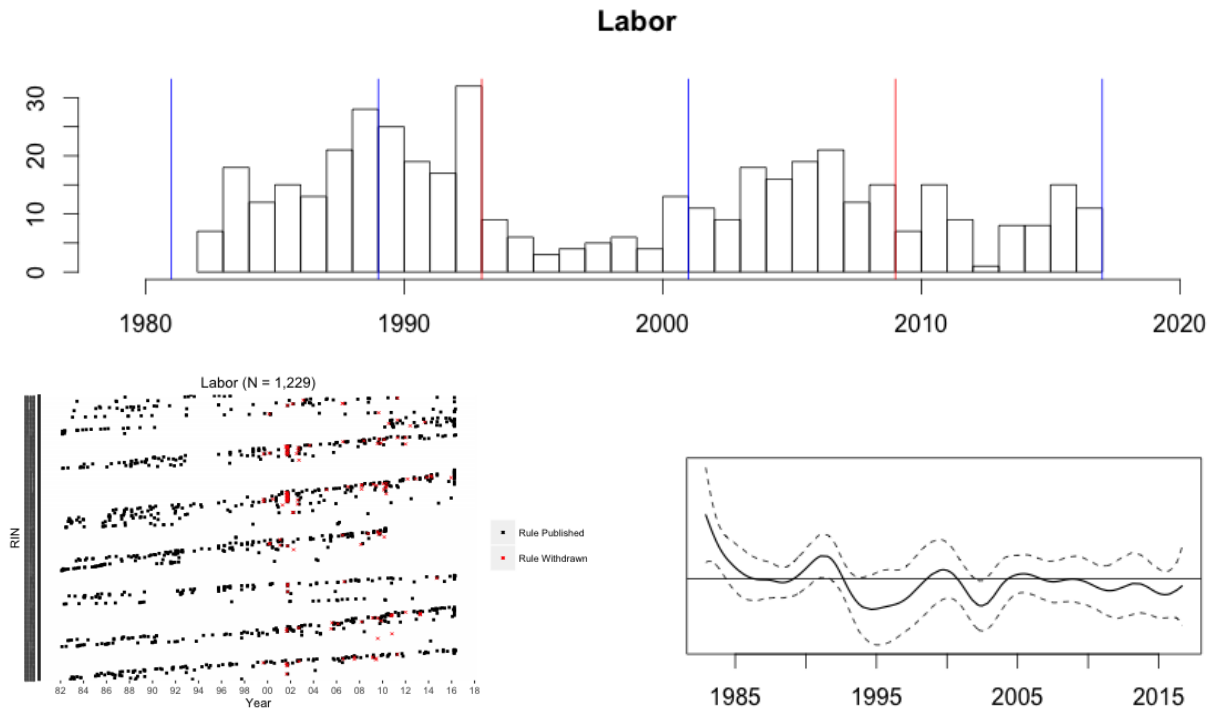
Clear peaks in welfare rulemaking (Social Security, Medicare, and Medicaid) reflect the 2003 Medicare Modernization Act and the 2010 Affordable Care Act. The histogram suggests that policymaking both increased and became more variable after 2000. This pattern is most consistent with Shafer's characterization of the Era of Partisan Volatility. We do not see clear patterns associations with party balance, but this may be because we are looking at the amount of policy rather than its direction. The scatterplot shows significant numbers of rules withdrawn after the 2001, which may indicate partisan disagreement

between the Clinton, Bush, and Obama presidencies in the Era of Partisan Volatility.

Welfare

Medicare, Medicaid, & Social Security (N = 2,623)
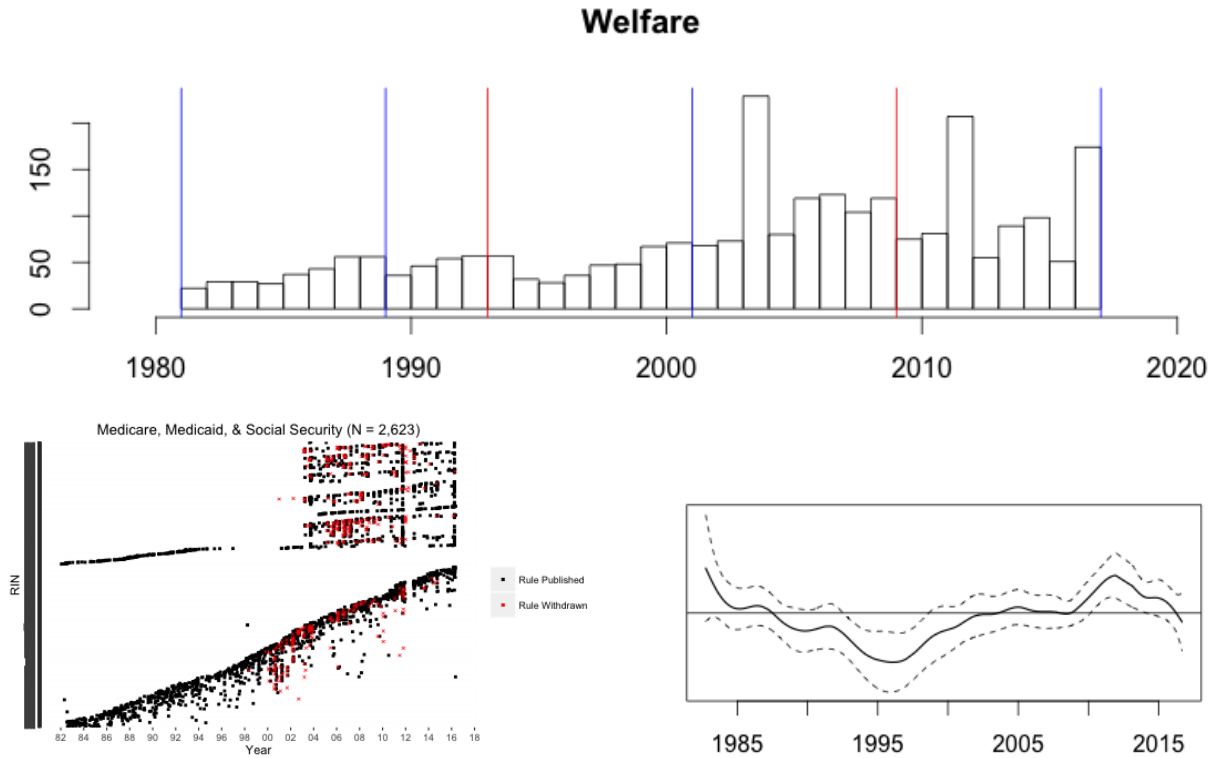
2.3   Civil Rights

Among others, Mayhew (1991) and Claggett and Shafer (2010) identify civil rights as one of the major new issues on the post-war American policy agenda. Unfortunately, the making of regulations is likely a poor measure of this issue, and classifying regulations only makes this problem worse. Only a few sub-agencies unambiguously address only civil rights issues. The figures below reflect the Department of Agriculture Office of Civil Rights, The Department of Housing and Urban Development's Fair Housing and Equal Opportunity bureau, and the Equal Employment Opportunity Commission, none of which make many regulations. Little can be said about so little data, but rulemaking activity does appear to peak near the beginning of the Clinton administration and remain nearly non-existent since the beginning of the George W. Bush administration. Future research could search for additional activity using keywords in rule abstracts. Yet it is possible that civil rights, described by Claggett and Shafer (2010) as anti-discrimination policy (especially in criminal justice) and race consciousness are meaningful for structuring votes, but are little reflected in federal regulations. In contrast, civil rights politics may have large impact on local policy and courts.

Civil Rights Policy
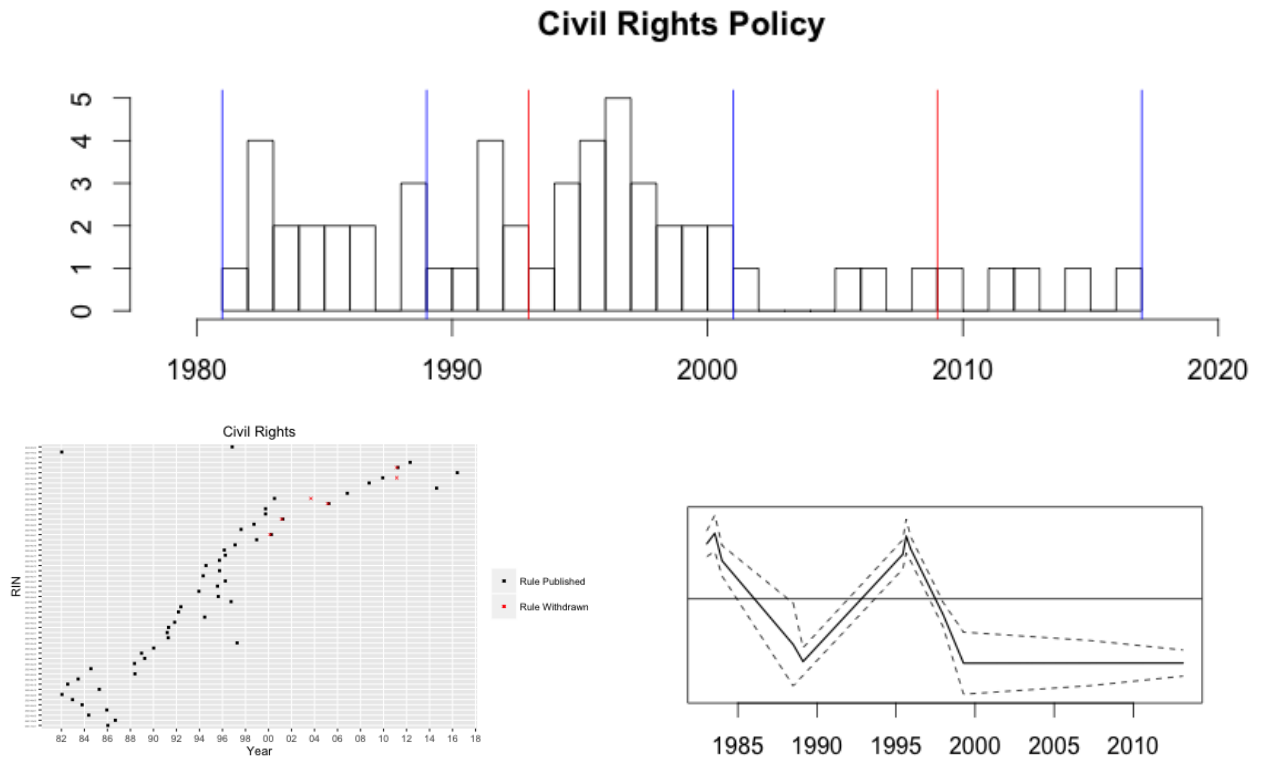
2.4 Environment

The cleanest way to capture environmental issues is to focus only on the Environmental Protection Agency and that is what the figures below do. However, environmental issues are also spread throughout the Departments of Agriculture, Energy, Defense, and, increasingly, State.

Claggett and Shafer (2010), among others, identify environmental issues as anomalous or off-dimension issues that may not cluster well with other issues. Shafer 2016 identifies environmental issues as a major policy issue in the Era of Divided Government. The rulemaking data, especially the histogram, do not contradict these interpretations. Unlike any other policy areas, the peak of environmental regulations in this timeframe is when Reagan takes office (probably capturing the end of the era of new landmark environmental legislation) and decline dramatically by the end of his term to a level that will remain for the next three decades.

Environmental Policy
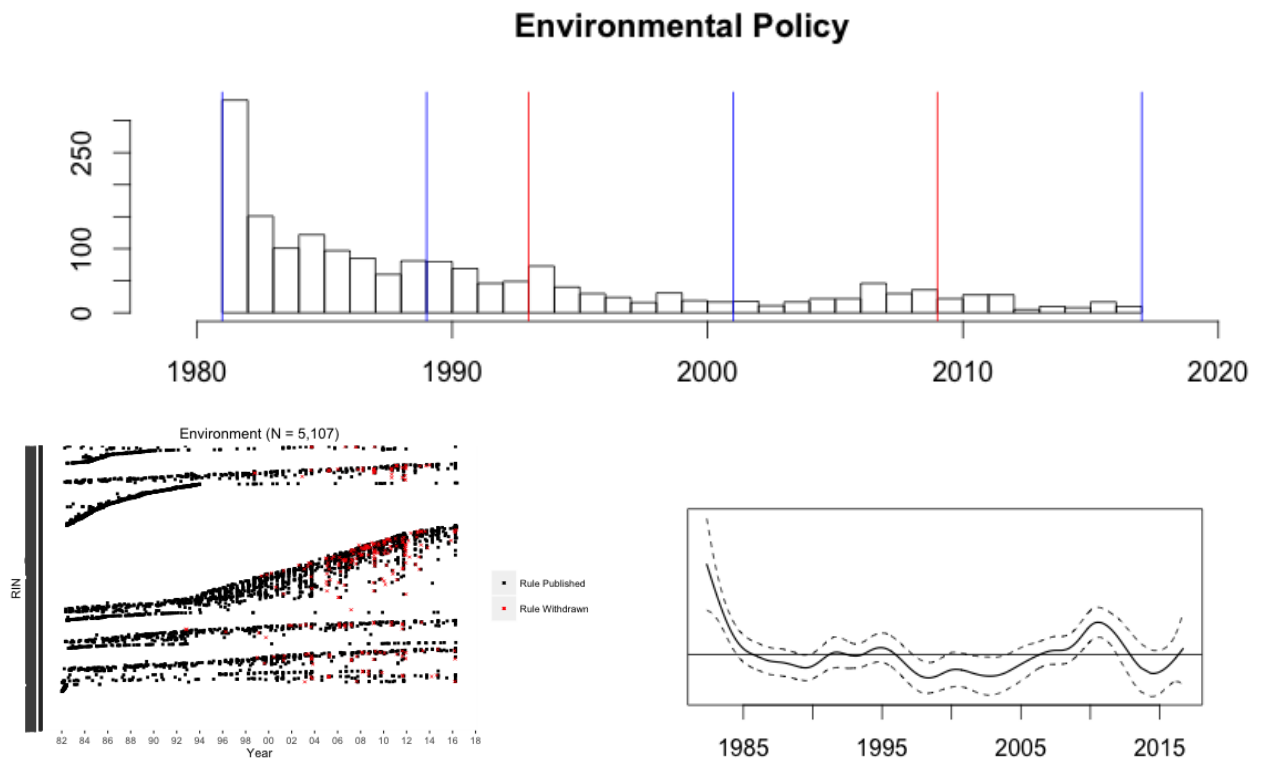
The likelihood plot does show peaks in the 103rd and 111th Congresses, suggesting partisan effects. However, this partisan association could be as much an artifact of the agency as the issue. For example, Republicans may be inclined to pursue environmental protection through the Departments of Agriculture, Energy, or Defense in which they may have more trust or better policy vehicles to serve their constituents (see Appendix for additional plots). Alternatively, policymaking in the EPA may be indicative of policy-making in other venues where Democrats may also pay more attention to environmental issues. Future research could analyze the abstracts of rules in more multi-issue agencies to better determine their content. The most pronounced peak may reflect Barack Obama's executive actions in his second term (for example his executive order on climate change adaptation (Obama 2013)).

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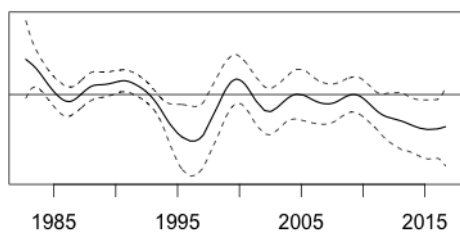Wilson, James Q. 1967. "The Bureaucracy Problem." *The Public Interest*: 3.
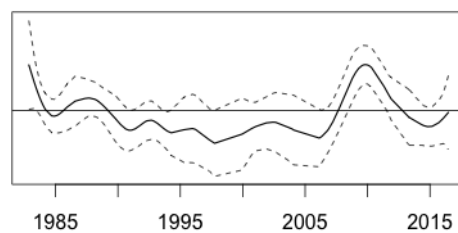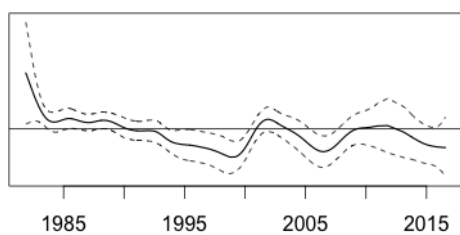
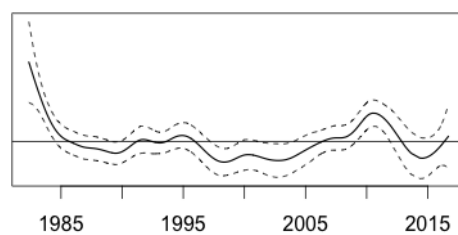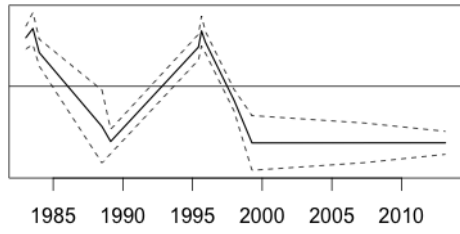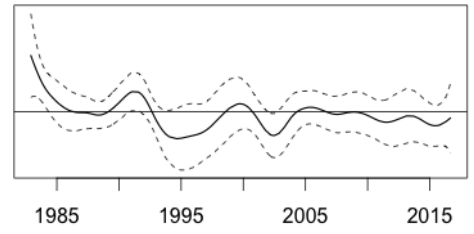# 3   Appendix: Figures by Type

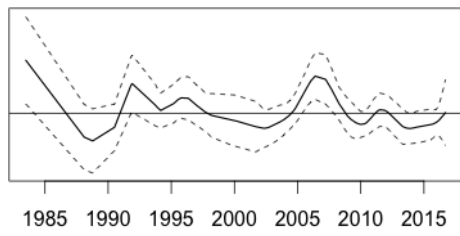Agriculture
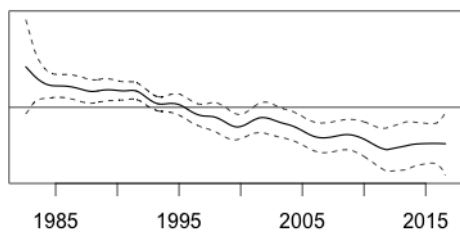
Transportation
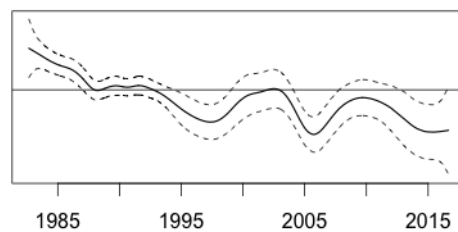
Commerce

Energy

Public Lands

Environment

Civil Rights

Labor

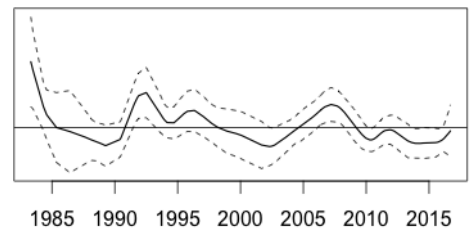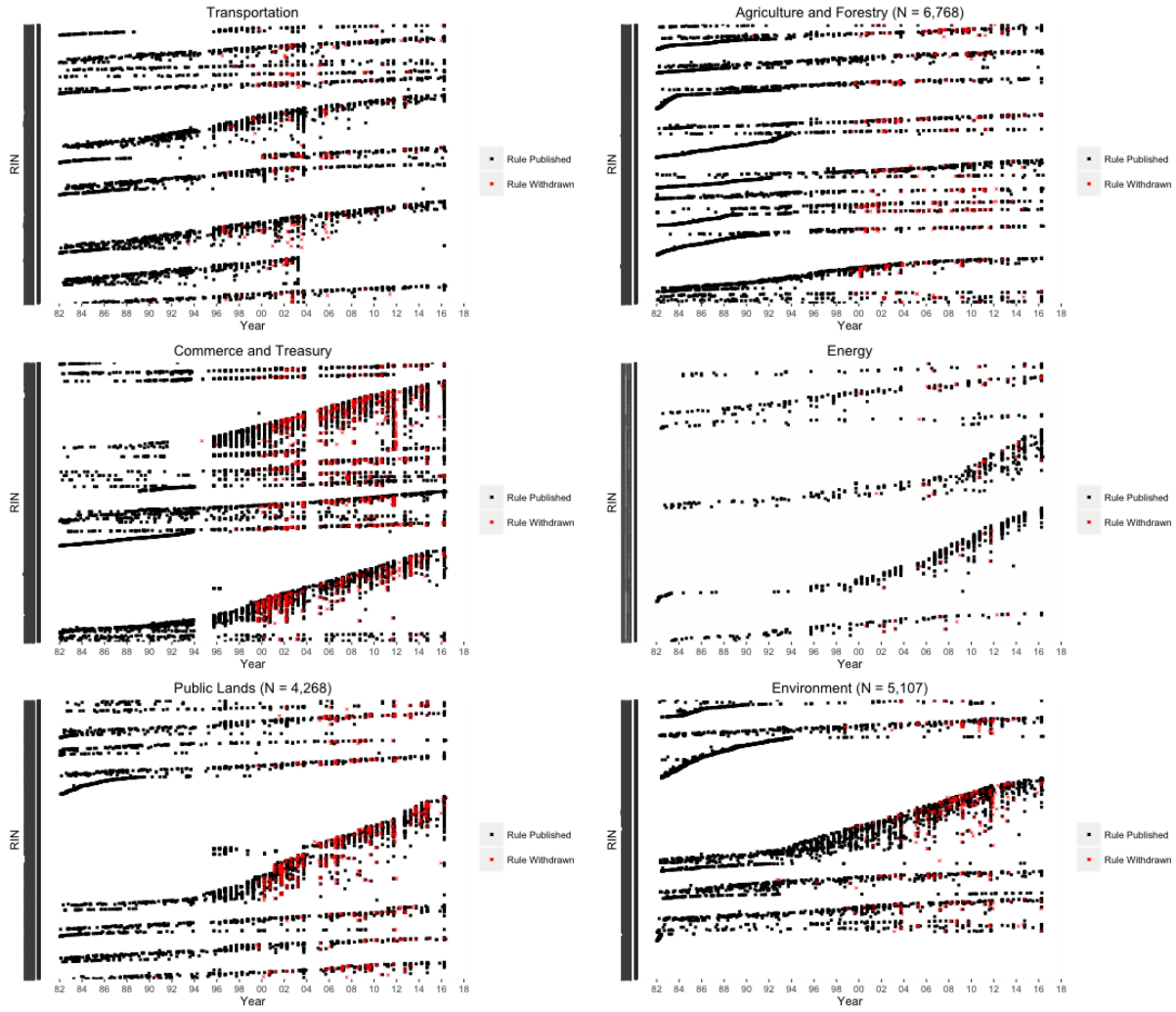Defense

Foreign Affairs

Economic:

Transportation

Agriculture and Forestry (N = 6,768)

Commerce and Treasury

Energy

Public Lands (N = 4,268)

Environment (N = 5,107)

Foreign:

Defense

Foreign Affairs (N = 2,183)

Social:

Education

Health & Human Services (HHS) and VA

Labor (N = 1,229)

Justice (N = 1,671)

Medicare, Medicaid, & Social Security (N = 2,623)

Civil Rights

Environmental Policy

Civil Rights Policy

Defense

Foreign Affairs

Welfare

Labor

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