

Democracy, Capitalism, and Equality:
The Importance of State Mandates for General Laws

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Prepared for a conference on “Can Democracy and Capitalism be Reconciled?” at the University of Virginia, March 7-9, 2023.

1. Introduction

There are ways of thinking about democracy and capitalism that make them seem irreconcilable. If capitalism is an economic system that allows a considerable degree of economic freedom and enables a small number of hard working or lucky individuals to accumulate substantial wealth, then capitalism may have an inherent tendency to increase inequality. If democracies gain legitimacy by leveling the playing field for their citizens, both politically and economically, then the unequal accumulation of wealth generated by a capitalist economic system may eventually erode the foundations of democracy. Viewed from this perspective, the goals of capitalists and democrats directly conflict.¹

To most economic historians, however, the answer to the question “Can democracy and capitalism be reconciled?” is an obvious “Yes.” A glance around the world today suggests that all the “advanced” capitalist societies are both rich and advanced democracies, and all of the

¹ The idea that democracy and capitalism cannot coexist has a long history, as Goran Therborn has pointed out. See “The Rule of Capital and the Rise of Democracy,” *New Left Review* (May/June 1977): 3-41 at 3.

“advanced” democracies are rich and advanced capitalist societies. Indeed, democracy and capitalism developed so closely together over the last two centuries that asking whether democratic development caused modern economic development or modern economic development caused democratic development became a foundational question in economics, economic history, and political science. Few economic historians doubt that democracy and capitalism developed in tandem. The debates are all about how and why.

The modifier “advanced” in the preceding paragraph is crucial: only societies with *advanced democratic polities* are associated with *advanced capitalist economies* and vice versa. If we define a democracy simply as a society that selects leaders through some form of election, or if we define a capitalist society simply as one where economic actors pursue profits, then, as we show in the next section, the relationship between democracy and economic development disappears. In other words, there is a strong association between advanced democracy and advanced capitalism, but there is little or no relationship between democracy and capitalism broadly defined. Why this is so is the subject of this paper. In brief, today’s advanced capitalist democracies began to undergo changes in the late-nineteenth and early-twentieth centuries that transformed both their economic and political systems in mutually reinforcing ways. The changes in the organization of political institutions that occurred during this period would not have been sustainable without the corresponding changes that occurred in the organization of economic institutions, and vice versa. At the root of this double transformation, we argue, was the adoption of impersonal legal rules—that is, rules that treated everyone (or, more accurately, broad categories of everyone) the same. Impersonal rules led to changes in both capitalism and democracy that enabled both to develop, albeit by different paths.

Leaving the advanced capitalist democracies aside, most societies around the world today (historically too) have unstable political systems. An important way in which political leaders deal with this instability is by granting each other privileges that create what economists call “rents.” These rents create incentives not to violate the agreements that keep them in power because the rents will be lost if the agreements collapse. The incentives are imperfect, however, because the value of rents can never be fixed through time and can dissipate for completely idiosyncratic reasons. This kind of political manipulation of economic rents, therefore, can simultaneously be a source of short-run stability and long-run instability, much like building a solid house on a foundation of sand. It also weakens the economy by erecting barriers to the free flow of resources to their most productive uses.² Reducing the ability of the political process to manipulate economic rents induces the key changes that bring about both advanced capitalism and advanced democracy

Although most writers consider it progress when countries shift to choosing leaders by election, the change can exacerbate the problem of instability by introducing considerable randomness to the choice. The greater uncertainty in turn increases the temptation for elites to improve their chances of maintaining power by distributing privileges to their supporters. Thus, the spread of electoral democracy can actually increase the manipulation of economic rents for political ends, with all the distortions the resulting rent-creation activities entail.

Although opposition parties often promise to put a stop to this kind of corruption when they come to power, they rarely follow through because they too need to reward their supporters to win elections. During the second half of the nineteenth century, however, a small group of

² The logic of this argument is laid out in Douglass C. North, John Joseph Wallis and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (New York: Cambridge University Press, 2009).

countries significantly limited this kind of manipulation by finding ways to mandate that the rules that governed their societies had to be impersonal. These countries became the advanced capitalist democracies of today. Each of them made the transition in its own way. There was no common path of change—no recipe that other countries could follow and become advanced. But in each of the countries that figured out how to do it, the adoption of impersonal rules set in motion a similar set of processes that transformed the way the economic and political systems worked and interacted. Most obviously, limiting rent creation by the political process encouraged capitalist economic development by reducing the barriers that had inhibited the free movement of economic resources. Less obviously, they strengthened the organizations—political parties—that mediated between government and the electorate, directing political competition into channels that were no longer destabilizing.

The next section of the paper defines what we mean by advanced capitalism and advanced democracy and documents the association of the two systems using estimates of real per capita income and a widely used measure of democracy, the Polity IV/V index. We then devote the bulk of the paper to the case of the United States and its transformation into an advanced capitalist democracy. We are accustomed to thinking about the United States as one of the first modern democracies, and indeed it was. But the United States was not born in 1776 or 1789 as an advanced democracy. The separation of powers imposed by the federal and state constitutions of the late eighteenth century encouraged political elites to manipulate the economy to consolidate their authority, and the spread of the franchise in the early nineteenth century made the situation worse. It was not until the middle of the nineteenth century, when states began to rewrite their constitutions to prohibit legislators from passing special acts that granted privileges to specific individuals, organizations, or localities, that the transformation got

underway. Once state constitutions mandated that laws had to be general and apply uniformly throughout the state, the US was able to break out of the trap that has kept most of the world unstable and poor.

Although the events that induced a small number of other countries to adopt impersonal rules were very different from those that brought the various US states to this juncture, the economic and political implications were similar. After describing the way in which general laws transformed the economic and political systems in the US case, we conclude by drawing out the parallels with other advanced capitalist democracies.

2. Capitalism and Democracy over Time and Space

To show that there is an association between advanced capitalist societies and advanced democracies but not between capitalism and democracy more generally requires that we be as clear as possible about our terms. There is a rich literature defining and measuring democracy that we will draw on below for our analysis. Unfortunately, scholars have devoted much less effort to defining and measuring capitalism. We define a pure capitalist economic system as one where individuals are free to use their assets, their land, labor, capital, and resources in they perceive to be their best interests. There are no pure capitalist systems, since governments in all societies put limits on how people can use their assets. Capitalism come in different forms and intensities.

Marx, of course, conceived of capitalism as an economic system in which workers had to sell their labor to the capitalists to survive. Even though labor was the sole source of value in the

economy, the workers did not own the means of production.³ Once the labor theory of value gave way to the idea that profits depended on the efficient combination of multiple factors of production, however, it became common for scholars to define capitalism very simply as a system where economic actors were motivated primarily by the pursuit of profits.⁴ For economic actors truly to be able to pursue profits, however, they have to be able move their resources freely into the activities they expect will earn them the highest returns. In many societies that are capitalist in the simple sense of profit orientation, there is no such freedom of entry and movement. To the contrary, in many places the most profitable opportunities are reserved for members of the governing elite and their supporters and associates.⁵ Advanced capitalist economies differ from simpler ones in that these kinds of barriers to entry have been largely removed and entrepreneurs are free to invest their capital, workers are free to invest their labor, and resource owners are free to invest their property in almost any kind of venture they choose. In practice, any person can form an organization, access government-enforced rules to structure it, and engage in a wide variety of activities without the explicit approval of the government. The forms of supported organizations are rich and varied, the scale of organizations can range from very small to very large, and new organizations, purposes, and products appear and disappear with some frequency.

³ Karl Marx, *Capital*, Vol. I.

⁴ See, for example, Joyce Appleby's definition in *Relentless Revolution: A History of Capitalism* (New York: W. W. Norton, 2010), 7. Although historians of capitalism have generally been reluctant to define their terms, when pushed they fall back on a similar definition. See Sven Beckert, et al., "Interchange: The History of Capitalism," *Journal of American History* 101 (September 2014), 503-36. For an exception, see Jonathan Levy, *Ages of American Capitalism: A History of the United States* (New York: Random House, 2021).

⁵ North, Wallis, and Weingast, *Violence and Social Orders*.

Even though advanced capitalist societies are characterized by the free movement of economic resources, they are usually not laissez faire. Societies often limit the forms that organizations can take and the activities in which they can engage. They typically prohibit organizations from using violence against individuals and forbid them from engaging in illicit or criminal activities. Moreover, as the so-called “varieties of capitalism” literature has shown, advanced capitalist economies differ considerably in the extent to which they regulate economic activity in the interests of health, safety, environmental sustainability, and other social goods, and in the extent to which they provide a social safety net.⁶ Within the general constraints imposed by these types of regulatory policies, however, capital, labor, and resources flow freely wherever their owners direct them. The key to advanced capitalism is not the absence of limits on economic activity, it is that all citizens face the same limits and enjoy the same freedoms, so an advanced capitalism has both fewer limits on how people can use their assets and *everyone* faces the same limits.

Although one can articulate the difference between advanced capitalist societies and their more basic capitalist counterparts, there are no comprehensive indices that capture these distinctions over space and time. We have chosen for our analysis what we think is the most reasonable metric available—real per capita income—using the data that Angus Maddison has compiled for a wide selection of countries over the last two centuries.⁷ Some of Maddison’s estimates are little better than guesses, and coverage is spottier at the beginning of the period

⁶ The foundational work in this literature is Peter A. Hall and David Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001).

⁷ We are using the 2010 version of Maddison’s data, as the revised data has some issues with benchmarking. Angus Maddison, “Statistics on World Population, GDP and Per Capita GDP, 1-2008 AD,” Groningen Growth and Development Centre (2010), <http://www.ggdc.net/MADDISON/oriindex.htm>.

than at the end, but the data conveys a general picture of trends in real income over time and across countries, which is all we need for our purposes.

Scholars have devoted a great deal more effort to defining and measuring democracy than they have to capitalism. According to the simplest definitions, democracy is a political system that selects leaders through elections.⁸ But democracy involves much more than elections. David Collier and Stephen Levitsky have specified a “procedural minimum” for being a democracy that presumes “fully contested elections with full suffrage and the absence of massive fraud, combined with effective guarantees of civil liberties, including freedom of speech, assembly, and association.” An “*expanded* procedural minimum” democracy requires in addition that elected governments have effective power to govern. The expanded definition excludes political systems where elections were free, fair, and open, but the elected government did not fully control all the state, as, for example, in countries where the military exercises independent power.⁹ Many countries have elections to select leaders but do not have political systems that meet even the minimal procedural definition of democracy. They are unable to guarantee the absence of massive fraud, or provide effective guarantees of civil liberties, including freedom of speech, assembly, and association.

Countries that are considered to be advanced democracies go far beyond the expanded procedural minimum. Elections in such polities involve political competition between durable political parties who neither suppress their opponents when they win elections nor disappear

⁸ See, for example, Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Brothers, 1942).

⁹ David Collier and Steven Levitsky, “Democracy with Adjectives: Conceptual Innovation in Comparative Research,” *World Politics* 49 (April 1997): 430-451. For a similar typology, see Andreas Schedler, “What Is Democratic Consolidation?” *Journal of Democracy* 9 (April 1998): 91-107.

when they lose. Parties that win elections are the organizations that actually control the government, so that the policies governments put into effect and the rules they promulgate depend on electoral outcomes. In addition, governments in advanced democracies are subject to constraints that aim to safeguard the civil, political, and economic rights of citizens and treat them all equally before the law. Advanced democracies can be organized very differently from each other. Indeed, there is a varieties of democracy literature that parallels, and feeds into, that on capitalism.¹⁰

Political scientists have constructed various indices that capture elements of democracy numerically. The one we use here is the Polity Score IV/V, which ranks countries on a 21-point scale that ranges from -10 to +10. Negative numbers indicate how autocratic a society's political system is, positive numbers how democratic. The Polity Score is built up from component indices measuring different aspects of democracy across countries. It gives considerable weight to how the executive is chosen and to constraints on the power of the executive, as well as to the extent of political competition, and therefore highlights features that tend to characterize advanced democracies.¹¹

Table 1 lists the eighteen countries considered today to be advanced capitalist democracies. There are a few more countries that could be included under this label—Japan and South Korea, for instance—but the data for them is not as complete for the nineteenth century, so we exclude them from the analysis. Spain and Portugal are included, as they are advanced

¹⁰ Again, see Hall and Soskice, *Varieties of Capitalism*.

¹¹ The polity score is not as rigorous a definition of democracy as we would like. Many countries with scores of 10 are not advanced democracies, but almost all are liberal democracies by Schedler's definition. The Polity data is published by the Center for Systemic Peace. The Polity IV data is currently in the process of being updated to a revised series, Polity V. Data sets and information are available at <https://www.systemicpeace.org/polityproject.html>.

democracies today and we have data for them going back to the nineteenth century, but they are problematic because of their long experiment with autocracy in the twentieth century. Although we present data including Spain and Portugal, we focus on the “sixteen-country” sample that excludes them. Table 2 provides information for these sixteen (eighteen countries), as well as for the entire Maddison sample for a selection of years. Row (1) gives the number of countries in Maddison’s sample in each year; row (2) average per capita income across the entire world for the years as Maddison calculated it (these numbers are average real per capita income weighted by population); row (3) the unweighted average of per capita income for the countries in Maddison’s sample; row (4) the average income of the sixteen countries (unweighted by population); and row (5) the same average for the eighteen countries including Spain and Portugal.¹²

Real per capita income increased worldwide by a factor of 11 between 1820 and 2008, and by a factor of 22 in the richest countries. As row (7) indicates, the ratio between the richest sixteen countries and the world average grew from 1.5 in 1820 to 3 in 2008. In row (8) the ratio between the richest sixteen countries and all others started at 6.8 in 1820, rose as high as 24 in 1850, and then stabilized at around 15 in the late nineteenth and early twentieth centuries. The two series began to converge in the mid-twentieth century when Maddison added more countries to his sample. But even in 2008, the average income in rich countries was 3 times the world average and 3.9 times the average for all countries not including the richest sixteen.

Rows (9) through (11) provide information on the relative income rank of the sixteen (eighteen) countries at different points in time. The first number in rows (9) and (11) is always

¹² Weighting the 18 countries by population would produce slightly different numbers for average income, without substantially changing the message of the table.

16, and in row (10) it is always 18. The second number is the rank of the poorest country in the set of sixteen or eighteen countries. For example, the entry in row (8) for 2008 is “16/26” meaning that the sixteen countries listed in Table 1 accounted for 16 of the 26 highest income countries in the entire distribution of countries. As the table shows, the sixteen countries were already among the richest in the world in 1820, and they maintained their leadership even as the number of countries in Maddison’s sample expanded. In recent decades, the ranks of rich countries have expanded to include autocratically governed oil exporting countries in the Middle East, as well as small countries (where small is defined as a population of less than 1,000,000 in 1960) that profit from serving as off-shore financial hubs or shipping entrepôts. Row (11) drops both the oil exporters and the small countries. In recent years, of course, the ranks of rich countries have also expanded to include new advanced capitalist democracies such as Japan, South Korea and Ireland. Nonetheless, the sixteen countries in our sample still dominate the list of the richest countries in the world.

As the last line in Table 1 shows, the eighteen advanced capitalist countries were also advanced democracies. Row (12) reports the unweighted average of their Polity Scores, which rose from 4.5 in 1820 to 9.9 in 1990 and 9.8 in 2008. How each country’s Polity Score changed over time can be seen from Table 3. For some countries there is no score early on, either because the country did not yet exist or because an estimate cannot be constructed. The symbol “T” indicates years when a country’s political system was in transition, and a “G” signifies that the country was occupied by Germany in World War II.

Only the United States had a positive Polity Score in 1820—mainly a result of the formal constraints on the executive enshrined in the Constitution. All the other countries in our dataset were autocracies of various degrees of severity. Britain’s other English-speaking former

colonies transitioned to democracy by the middle of the nineteenth century, but it was not until later in the century that democracy began to spread across Britain and the European continent. Spain and Portugal were the last of the countries in our sample to make this transition. By the end of the twentieth century almost all the richest countries in the world had Polity Scores of 10.

That the top countries were both rich and had high Polity scores suggests that there is a strong association between capitalism and democracy, but the pattern ceases to hold if one looks at countries lower down on the scale. Table 4 reports on correlations between per capita income and Polity IV/V scores for the 142 countries with both measures in 2000, broken down into various sub-samples. The first two columns report correlation coefficients and their associated p-values for each of the sub-samples. Because the Middle Eastern oil exporting countries are rich despite being autocratic, the analysis is more revealing when they are dropped from the analysis. At the top of the distribution—the 25 richest countries without oil—the correlation is weakly positive and marginally significant; most of the countries in this group have Polity scores of 10, so there is little variation on the democracy side. However, as we expand the sample from the top 25 no-oil countries to the top 70 no-oil countries to the whole no-oil sample, the correlation coefficient rises from .27 to .48 to .56. So long as the richest countries are in the sample, adding more poor countries increases the measured correlation, even though there is essentially no correlation between income and Polity scores for the poorest 70 countries. The strengthening of the correlation is a result of sample selection, not an inherent relationship between income and Polity scores, or capitalism and democracy, outside the set of advanced capitalist democracies.

The lack of an association between our measures of capitalism and democracy for countries in the bottom half of the distribution can be seen more clearly in Figure 1, which plots

the income of the richest country in a given sample on the horizontal axis and the correlation between per capita income and the Polity score for same sample of countries on the vertical axis (the income numbers on the horizontal axis are negative to get the graph to read correctly from left to right). The first observation is the entire Maddison sample, ranging from Norway with a per capita income of \$54,040 in 2000 to Afghanistan with just \$502. The second observation drops Norway and measures the correlation from the United States at \$45,886 to Afghanistan (we also drop the United Arab Republic, whose income was \$48,888). The last observation is the correlation for the poorest 27 countries (Bangladesh at \$1,845 to Afghanistan). As rich countries are dropped, the correlation between per capita income and Polity scores declines, becoming statistically insignificant around a correlation of .2 and a top income of \$10,000 to 12,000 (roughly the income of the Russian Federation). Among the bottom three quarters of the countries there is little correlation between Polity scores and per capita income, and at the very lowest levels of the distribution the correlation actually becomes negative, suggesting that poor countries may have higher incomes with autocratic governments. Those results are not statistically significant, however.

The association between advanced capitalism and advanced democracy that we have documented is just that—a correlation. We have not proven anything about the effect of democracy on capitalism, of capitalism on democracy, or about the possibility that other phenomena are behind the correlation we observe. The numbers do indicate, however, that democracy and capitalism can not only coexist, but that they have persistently coexisted over the last two centuries.

3. Before the US was an Advanced Capitalist Democracy

Despite the constitutional constraints on executive power that earned it a high Polity Score in 1820, the early nineteenth century United States would not make the procedural minimum standard of democracy. A large proportion of the white male population was able to vote, but elections would not by any modern standard be considered free and open. Capitalism was similarly primitive during this period. Although there were many areas of the economy in which people could direct their capital, labor, or resources as they chose, some of the most remunerative sectors of activity (most notably banking) were reserved for people associated with the governing elite. Moreover, in all areas of the economy, those who were politically well connected could secure advantages, such as corporate charters or favorable legislation, that potentially gave them a leg up on their rivals. This section makes the case for characterizing the early American political system as a simple electoral democracy and the early American economic system as an example of basic capitalism. In the next section we show how state constitutional mandates for general laws induced changes that moved the US toward both advanced capitalism and advanced democracy.

Elections, Parties, and Factions

Even before the American Revolution the franchise in the British North American colonies was remarkably broad. Although all of the colonies imposed property or tax qualifications for voting, widespread landownership meant that a large fraction of the adult white male population could vote—perhaps as much as a half. After the Revolution, however, pressure mounted to get rid of all economic qualifications for voting. New states led the way, but most of the original states followed, moving with greater or lesser speed toward universal (white)

manhood suffrage. By 1830 only Rhode Island, Virginia, and North Carolina retained property qualifications for voting, although many states continued to impose tax requirements. By 1860, only four states still had those.¹³

The drafters of the federal constitution had given little consideration to the subject of elections and how they should be run. They left such matters to the states, which in turn provided only the most cursory oversight, even as they expanded the proportion of the population who could vote. State governments initially set the dates for elections for various offices, but that is about all they did, leaving it to local governments to provide polling locations and determine the method of voting. Early on voters in most places registered their choices by public declaration, with all the problems of influence and intimation that viva voce voting entailed. Over time, voting by ballot became the dominant practice, and states began to mandate that method. But problems of influence and intimidation did not go away, for governments did not print ballots or standardize them in any way. Voters could write their choices on a slip of paper, or they could use a printed ballot supplied by a local political faction. These groups sought to appeal to voters on ideological or programmatic grounds, but as elections became both more numerous and more competitive in the early nineteenth century, they began (directly as well as indirectly) to purchase votes. Over time parties learned to color code their ballots so that poll watchers could check to make sure that voters kept their end of the bargain. This was an easy technology to imitate, however. The lack of government supervision of the electoral process

¹³ At the same time as states expanded the franchise for adult white males, they took it away from adult black males. By 1860 only five states, all in New England, allowed African American men to vote. Stanley L. Engerman and Kenneth L. Sokoloff, "The Evolution of Suffrage Institutions in the New World," *Journal of Economic History* 65 (Dec. 2005), 891-921; Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000).

enabled parties to strike bargains with voters, but it also meant that barriers to entry into politics were low. New factions that emerged to exploit voters' discontent with the group in power could make inroads simply by printing and distributing ballots for their own slates of candidates.¹⁴

The history of political parties in the United States has typically been written as if the two-party system developed inexorably out of the election-intensive method of choosing leaders set up by founding generation at both the national and state levels of government. From this point of view, the identity of the political parties might change as one "party system" gave way to another, but the basic structure of party politics remained essentially unchanged from the early nineteenth century to the present.¹⁵ Nothing, however, could be further from the truth. Early American politics was intensely factional, and though contemporaries often called the factions parties, they bore little resemblance to the Democratic and Republican Parties that emerged in the late nineteenth and early twentieth centuries.¹⁶ Most of the so-called parties, like the Anti-Masons, the Know-Nothings, the Liberty Party, and the Constitutional Union Party survived only a few years. But even the most long-lived were little more than shifting coalitions of factions that involved limited interests and came and went with great rapidity. The Democratic Party is a good example. As Jack Furniss has pointed out, just in New York, and just in the two decades

¹⁴ Gary Gerstle, *Liberty and Coercion: The Paradox of American Government* (Princeton, NJ: Princeton University Press, 2015), Ch. 5; Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century: Law, Identity and Polling Place* (New York: Cambridge University Press, 2004); Erik B. Alexander and Rachel A. Shelden, "Dismantling the Party System: Party Fluidity and the Mechanisms of Nineteenth-Century U.S. Politics," *Journal of American History*, forthcoming.

¹⁵ For a summary and critique of this literature, see Alexander and Shelden, "Dismantling the Party System."

¹⁶ For the case that parties in the early nineteenth century were substantially different organizations from the parties that emerged later in the century, see E. E. Schattschneider, *Party Government* (New York: Farrar & Rinehart, 1942); and Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis* (Cambridge, Eng.: Cambridge University Press, 1976). See also Alexander and Shelden, "Dismantling the Party System."

before the Civil War, it was roiled by factions as diverse as the “Barnburners, Hunkers, Hard-Shells, Soft-Shells, Free Soilers, Young Americans, Locofocos, Douglas Democrats, Breckenridge Democrats, Fusion Democrats, Copperheads and Unionists.”¹⁷ The Whig Party was similarly divided and collapsed within two decades of formation. The party that ostensibly replaced it, the Republican Party, was a loose coalition of groups with different agendas (Abolitionists for whom ending slavery was paramount, Free Soilers who wanted to prevent the expansion of slavery in the territories, Know Nothings intent on restricting immigration, ex-Whigs who cared primarily about protective tariffs, and ex-Democrats committed to preserving the Union). Held together by little more than antipathy to Southern secessionism, the party constantly threatened to disintegrate, even during the Civil War. Lincoln did not dare run under its banner in 1864 but preferred to be the candidate of the National Union Party instead.¹⁸ The political system would not stabilize and take its familiar two-party form until later in the century—after most states had modified their constitutions to prohibit special laws.

Special Legislation

Why special laws?¹⁹ Although barriers to the formation of new factions were low, entry was not costless. Factions needed funds to publicize their candidates and positions, and they needed workers to line up voters and make sure they got to the polls. The supporters who provided these funds and services in turn needed to be rewarded. In the early nineteenth century,

¹⁷ The quotation is from a proposal Jack Furniss made for a conference at the Tobin Project. His paper was never published, but see Alexander and Sheldon, “Dismantling the Party System.”

¹⁸ See Jack Furniss, “Andrew Curtin and the Politics of Union,” *Pennsylvania Magazine of History and Biography* 141 (Apr. 2017): 145-176.

¹⁹ We use the term special legislation to refer to the myriad of laws that legislatures enacted on behalf of specifically named individuals, groups, organizations, and localities. Different states had different terms for this type of legislation, often private, special, and local, respectively. For ease of exposition, we have termed them all “special” legislation.

when governments at all levels were relatively small, the number of jobs that factions could give out if they won elections was relatively small. But factional leaders could and did use their influence over local legislators to grant favors to their supporters. Indeed, most of what legislators did in the early nineteenth century was to enact special bills that benefited their backers or solidified their factions' control of local governments. Robert Ireland has estimated that such bills accounted for 70-90 percent of all acts passed by state legislatures in the second quarter of the nineteenth century, and our own counts are similar.²⁰ For example, Table 5 provides information on laws passed by the Indiana legislature at various points in time during the nineteenth century, categorized by type of act. Indiana was important because its 1851 constitution was the first to mandate general laws and became a model for other states to follow. As Panel A shows, before 1851, from 77 to 91 percent of the ever-growing number of bills enacted by the legislature benefited specific individuals, organizations, or localities (usually towns, cities, or counties). Next-door Illinois did not similarly revise its constitution until 1870, and as Table 6 shows, special bills constituted the bulk of the legislature's business until then.

Legislators granted a wide variety of favors to their supporters. Some of the boons were nonrival in the sense that they could be granted to as many people as desired. If a voter came to his representative to request a name change or a divorce or to legitimate some of his children, the favor could be granted relatively cheaply without affecting the ability of other voters to obtain similar requests. In other cases, budget constraints might come into play and limit, for example, the number of petitioners who could secure pensions for military service. Even so, the amounts

²⁰ Robert M. Ireland, "The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States," *American Journal of Legal History* 46 (July 2004): 271-299; Naomi R. Lamoreaux and John Joseph Wallis, "Economic Crisis, General Laws, and the Mid-Nineteenth-Century Transformation of American Political Economy," *Journal of the Early Republic* 41 (Fall 2021): 403-433.

involved in these requests were small enough that many could be granted. In yet other cases, the value of a favor required political leaders to manipulate the economy to create monopoly rents. To reward their most powerful supporters, for example, legislators deliberately limited the number of bank charters they handed out, enacting legislation that prevented those not favored in this way from entering the business of banking. Whether the stakes involved were small or large is less important, however, than the way the political process worked. Everyone expected that political leaders would manipulate economic interests by using their power to grant favors, large or small, for political ends. It was how the system operated.

The favors that legislatures gave out were largely at the discretion of individual representatives and the local factions to which they belonged. Each legislator wanted a free hand in the dispensation of boons to his constituents and so rarely objected to the bills proposed by others. As a result, special bills were often enacted in big batches, with legislators scarcely paying attention to any but their own. This individual control of patronage meant that legislative leaders could exert little in the way of disciplinary authority over representatives, even over those who belonged ostensibly to the same party. They did not have much in the way of sticks. They did have carrots, however, that they could use to make larger initiatives possible. For example, political leaders in Indiana who wanted to build a canal across the central part of the state in the mid-1830s secured broad support for their initiative by loading the canal act with costly local transportation projects. No one was paying attention to what was good for the state as a whole, and the Mammoth Internal Improvement Bill, as it was popularly known, plunged the state into default in 1841.²¹

²¹ Lamoreaux and Wallis, “Economic Crisis.” The details of how the negotiations and compromises that led to the Mammoth Bill are described and analyzed in John Joseph Wallis,

Legislatures could enact general laws under this regime, and as Tables 5 and 6 show, about 10 percent of the statutes passed in Indiana and Illinois before the constitutional reforms counted as general. When legislatures passed these general laws, however, they did not always in fact apply generally. To secure passage, the leadership often had to pacify opponents by agreeing to enact private bills that exempted their district, or powerful people in their district, from the law's application. One of the most notorious examples was a voter registration law passed in Pennsylvania in 1868 to counter what Republicans claimed was widespread voter fraud by Democrats. The Philadelphia faction of the party blocked the bill until the leadership agreed to add a section that specifically exempted the city from the terms of the act and set up a separate procedure that effectively gave control of the voter rolls to the city's Republican bosses.²² As with special bills more generally, the exemption bolstered the power of the local Philadelphia faction. In this case, it also tipped the balance of power in state politics in a way that propelled other factional leaders to push to abolish special laws.

Corporations and Banks

Although the workings of democracy depended on distribution of small favors as well as the large, it was the creation and manipulation of economic rents that structured the interaction of capitalism and democracy. In some cases, legislators could create rents by granting minor

"The Property Tax as a Coordinating Device: Financing Indiana's Mammoth Internal Improvement System, 1835–1842," *Explorations in Economic History* 40 (July 2003), 223–250.

²² The law was quickly declared unconstitutional by the state's high court, whose members were elected. The next year the legislature enacted a revised law with essentially the same provisions for Philadelphia, and that law was upheld by a differently constituted court. Pennsylvania Legislature, "A further supplement to the act relating to the elections of this Commonwealth," approved 4 April 1868; and "An act further supplemental to the act relative to the elections of this Commonwealth," approved 17 April 1869.

favors. In other cases, they had to restrict entry into important areas of activity. As the example of banking shows, these restrictions could impose great costs on the economy.

Legislators initially conceived of the banks they chartered as pure monopolies and thought there could only be one bank in the state. Over time, they learned that they could grant additional charters—one per town and, in the larger population centers, more than one—that still earned considerable rents for the favored few who received them and helped solidify local political support. The calculation was perhaps most finely calibrated in New York. As Howard Bodenhorn has shown, under the domination of Martin Van Buren’s “Albany Regency,” the New York legislature increased the number of banks it chartered during the 1830s, though the number was still in most years less than 10 percent of the number of petitions for bank charters it received. The charters went to elite political supporters in the places where the banks were located, but the legislature set up a system for doling out the banks’ stock that allowed more underlings to obtain shares (often on credit) and sell them off quickly at a handsome profit.²³

That the rents involved were considerable is suggested by the rapid increase in bank capital that occurred after 1837, when the Albany Regency was deposed and the opposition-dominated legislature introduced New York’s famous free banking act, opening access to bank charters to all who met the regulatory terms of the statute. In 1837, New York had only \$16 of bank capital per capita, but over the next two decades the amount nearly doubled, reaching \$29 in 1860. That was substantially less than the \$54 per capita in Massachusetts, which had effectively opened access to banking by the 1820s, but it was considerably more than the \$9 in

²³ Howard Bodenhorn, “The Political Distribution of Economic Privilege in Van Buren’s New York,” *Studies in American Political Development* 35 (April 2021): 127-145.

Pennsylvania, where the legislature continued to control access to bank charters until it finally enacted free-banking legislation in 1860.²⁴

Although ordinary corporate charters did not convey rents that were anywhere close to those of banks, they were still valuable—so valuable that companies continued to seek special charters from their legislatures even after the enactment of general incorporation laws. For example, Pennsylvania passed a general incorporation law for manufacturing companies in 1849, yet over the next five years less than a dozen companies had organized under it. At the same time, the legislature continued to grant special charters, in 1855 alone enacting 196 special bills to charter or amend the charters of business corporations.²⁵ The magnitude of the rents involved can be gauged by contrasting the number of corporations formed in states that forbade special charters with those that continued to permit them. Compare, for example, Ohio, which banned special charters in 1851, with New Jersey and Pennsylvania, which enacted general incorporation laws in the 1840s but did not ban special charters for two more decades. In the ten years following the Civil War, Ohio chartered 2.2 times as many corporations under its general law as New Jersey did under both its general and special laws. After New Jersey banned special charters in 1875, the gap began to close. During the 1880s (that is, before New Jersey's liberal

²⁴ Howard Bodenhorn, "Bank Chartering and Political Corruption in Antebellum New York: Free Banking as Reform," in *Corruption and Reform: Lessons from America's Economic History*, ed. Edward L. Glaeser and Claudia Goldin (Chicago: University of Chicago Press, 2006), 231-257 at 239, 241.

²⁵ Many of these charters were for types of business not yet covered by the state's general incorporation laws, but a significant number gave the firms privileges not available in other ways. See Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (Cambridge, MA: Harvard University Press, 1948), 39-41; Naomi R. Lamoreaux, "Revisiting American Exceptionalism: Democracy and the Regulation of Corporate Governance: The Case of Nineteenth-Century Pennsylvania in Comparative Perspective," in *Enterprising America: Businesses, Banks, and Credit Markets in Historical Perspective*, eds. William J. Collins and Robert A. Margo (Chicago: University of Chicago Press, 2015), 25-71 at 40.

revision of its general incorporation law), the ratio of new corporations in Ohio relative to New Jersey fell to 1.5, at the same time as the numbers of corporations organized in both states rose rapidly. Although there are gaps in the data for Pennsylvania, the story there seems to have been much the same, with the number of corporations converging on the number in Ohio only after the imposition of the ban on special charters in 1874.²⁶

Conclusion

The early-nineteenth-century United States exemplifies the pernicious relationship that could develop between capitalism and democracy when political elites intent on staying in power offered capitalists monopoly rents in exchange for political support. John Wallis has called this exchange systematic corruption and has emphasized the extent to which it characterized the early modern environment that shaped the political thinking of the framers of the federal and state constitutions. Heirs of a political tradition formed in opposition to British Prime Minister Robert Walpole's use of economic privileges to build a stable political coalition in support of the ministry's policies in Parliament, they believed that political factions within the elite would always try to manipulate economic privileges for the purposes of control and that the only way to solve the problem was to divide governing power among different branches of government that could check and balance each other.²⁷ This solution only made the problem more serious,

²⁶George Heberton Evans, Jr., *Business Incorporations in the United States, 1800-1943* (New York: National Bureau of Economic Research, 1948), 12, and Appendix 3. The calculations are from Lamoreaux and Wallis, "Economic Crisis," 426.

²⁷ John Joseph Wallis, "The Concept of Systematic Corruption in American History," in *Corruption and Reform*, ed. Glaeser and Goldin, 23-62. See also J. G. A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge, Eng.: Cambridge University Press, 1985); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press, 1967); Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969). On the importance of separation of powers in early state

however, by upping the ante for control, and the competitive democratic politics of the early nineteenth century made things even worse.

The special favors that legislators doled out, particularly the economically valuable ones, were a perennial source of grievance and, over time, mounting political discontent. But the system was very difficult to change. Those in power benefited from the ability to dispense charters for banks and other valuable economic organizations to their supporters and deny them to their opponents. Those out of power complained bitterly about this “corruption,” but they behaved in exactly the same way when they were in office, favoring supporters and freezing out opponents. To do otherwise would be to risk losing control of the government and, with that, access to banks and similar advantages. Favors were the critical resource that held early-nineteenth-century factions together.

4. How the US became an Advanced Capitalist Democracy after 1850

In 1841 and 1842 eight states and the Territory of Florida defaulted on their sovereign debts. Two states eventually repaid all of their debts with interest; two negotiated a reduction in their debts with bondholders; five ultimately repudiated all or part of their debts unilaterally.²⁸ The crisis was the worst in the history of American public finance. Nonetheless, it has received little attention from historians, in part because other events from the same period have distracted them. The debt crisis followed the Bank War between President Andrew Jackson and the head

constitutions, see Marc W. Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997).

²⁸ John Joseph Wallis, Richard E. Sylla, And Arthur Grinath III, “Sovereign Debt and Repudiation: The Emerging-Market Debt Crisis in the U.S. States, 1839-1843,” NBER Working Paper 10753 (Sept. 2004).

of the Second Bank of the United States, Nicholas Biddle. It also followed the Panic of 1837, which many historians blamed on that conflict. In addition, in the mid-1840s the American economy began to grow at an unprecedented rate, so there was little reason to believe that the crisis negatively affected the economy over the long run.

Whatever the reason for their distraction, historians have completely missed the important revisions that states made to their constitutions in response to the crisis. As we have shown in other work, discontent over legislative favoritism in the award of privileges, especially economically valuable privileges like corporate charters, had mounted during the previous decade. The defaults gave the protests political salience, as commentators blamed the states' over-borrowing on legislators' preoccupation with these patronage grants. Indiana, which defaulted in 1841, was the first state to put a stop to the practice. Its 1851 constitution banned special charters of incorporation, along with many other categories of special bills, and mandated that laws enacted by the legislature "be general and of uniform operation throughout the state."²⁹ Almost all the other states that defaulted adopted new constitutions around the same time. Most of these constitutions prohibited special charters of incorporation and a small number of other types of special bills, but typically it took at least a couple more decades for the states to take the bigger step of requiring all laws to be general.³⁰ By the end of the century, not only they, but all the states that entered the union after the Civil War and almost all the other states already in existence, had followed Indiana's lead and imbedded a general law mandate in their fundamental law (see Figure 2). The reforms changed the operation of the political and economic systems,

²⁹ Indiana, Constitution of 1851, Article IV, Sections 22 and 23, and Article XI, Section 13. See Lamoreaux and Wallis, "Economic Crisis."

³⁰ The defaulting states whose new constitutions did not ban special charters were Arkansas, Florida, and Mississippi. All three took this step later in the century.

and the interaction between them, in ways that moved the United States toward Advanced Democratic Capitalism.

General Legislation

Whenever they were adopted, general law mandates had a large and immediate effect on the number and character of laws enacted by the state legislature. Table 7 reports summary statistics for each state in existence in 1851, documenting the change in legislative output as measured by the number of pages of laws enacted each year. The statistics highlight the general trend over the nineteenth century as well as the extent of the contrast between the two decades before and after the enactment of a general law mandate (see also the figures in the appendix). Although there were a few exceptions, in most states the volume of legislative output increased (often dramatically) over the nineteenth century until the enactment of a constitutional prohibition on special legislation, and then dropped (again often dramatically). States that did not adopt a general law mandate rarely experienced a similar break in trend; indeed, their average numbers over the period 1870-1899 were uniformly higher than over the period 1830-1859. A good example is Connecticut, which never enacted the mandate. Even when it amended its constitution in the mid-1880s to shift the legislature from annual to biennial sessions, the volume of legislative output in each session more than doubled, leaving the trend in the annual average essentially unchanged.³¹

Of course, it is possible that the changes that followed the general law mandates were more apparent than real—that legislatures evaded the prohibitions on special bills by couching measures that benefited specific individuals, groups, or localities in general language. Given the

³¹ Connecticut, Constitution of 1818, Amendments 45, 46, 47, 48, and 56, enacted 1884.

steep fall in legislative output, however, such measures could not have been numerically significant. Moreover, we have been collecting the details of the statutes for each state at five-year intervals over the nineteenth century and have not found more than a few instances of such subterfuges.³² To the contrary, what we have found is a radical shift in the kinds of bills that legislatures enacted. As Table 5 shows for Indiana, general laws were rarely more than 10 percent of all laws before 1851, but after that year they were never less than 40 percent and usually well above 50 percent. The share of bills providing for the state government's organization and functions also approximately doubled, but the number of other special, private, and local bills dropped sharply, both in levels and as a share of all bills. Moreover, though the total number of bills passed in the annual legislative sessions before 1851 had grown steadily over time, the number of bills enacted in the *biennial* sessions after 1851 stabilized at a much lower level. Again, the pattern in next-door Illinois was similar, though with a lag, because Illinois did not copy Indiana's constitutional provisions until 1870. In the two decades between Indiana's reforms and its own, Illinois's legislature continued to enact special laws in ever-increasing numbers. After Illinois revised its constitution in 1870, however, the type of bills the legislature enacted shifted in precisely the same way as in Indiana after 1851, as shown in Table 6. The different timing of the shift in Indiana and Illinois is good evidence that the constitutional revision was responsible for the change and not the economic or political environment.

³² There was one important exception: classification schemes for cities designed so that the largest city in the state was in a category of one. Even under these schemes, however, most cities and towns fell into categories that were broad enough that the rules that applied to them also applied to a significant number of other localities. See Jessica L. Hennessey and John Joseph Wallis, "Corporations and Organizations in the United States after 1840," in *Corporations and American Democracy*, eds. Naomi R. Lamoreaux and William J. Novak (Cambridge, MA: Harvard University Press, 2017), 74-105; and Charles Chauncey Binney, *Restrictions upon Local and Special Legislation in State Constitutions* (Philadelphia: Kay & Brother, 1894).

Wherever and whenever states adopted these constitutional revisions, both the economic and political environments would subsequently be transformed.

Corporations and Banks

By prohibiting legislators from handing out economically valuable privileges to their supporters, the state mandates for general laws eliminated many of the barriers to entry that had inhibited the free flow of capital and other factors of production, increasing the growth and dynamism of the economy and moving it toward advanced capitalism. The new exuberance is apparent in the data on incorporations. As bans on chartering corporations by special act spread in the late nineteenth century, the number of incorporations steadily increased. Figure 3 summarizes the available data collected by George Heberton Evans. The vertical axis is a log scale, so the slope of the lines shows the rate at which the number of new corporations was increasing in each state. Unfortunately, most of the series only begin after the enactment of the state's mandate for general laws, so we cannot compare incorporations in the periods directly before and after the reform. The main exception is New Jersey. New Jersey had a general incorporation law for manufacturing corporations as early as 1846, but the legislature continued to charter corporations by special act until a new constitution banned the practice in 1875. From 1866 to 1875 the state chartered 145 corporations per year, the vast majority by private bills. After the reform there was a brief period of uncertainty when relatively few companies took out charters, but from 1880 to 1889 the number considerably more than doubled, increasing to 386 per year. New Jersey liberalized its general incorporation laws in 1889 to make the state

attractive to out-of-state businesses, and the number rose further to 1,136 per year in the 1890s and 1,981 per year in the first decade of the twentieth century.³³

Many scholars talk about corporations as if the form mainly benefited large-scale businesses. Certainly, in the two decades from 1890 to 1910, New Jersey became the domicile of choice for the nation's biggest corporations, but the state nonetheless continued to foster small enterprises. Indeed, about half the new corporations chartered in New Jersey in the 1890s were small, where small is defined as having less than \$100,000 in authorized capital. Elsewhere, as the number of incorporations grew, so did the proportion in this category. Over the last third of the century, the proportion of small corporations relative to the total increased from 10 percent to about three-quarters in Maryland, from about 40 to 50 percent to over 80 percent in Ohio, and from about 50 percent to about 90 percent in Texas.³⁴ The Internal Revenue Service began to count the number of corporations (as opposed to the flow of new incorporations) shortly after the ratification of the income tax amendment to the federal Constitution in 1913. In 1919, there were nearly 200,000 business corporations in the US that reported positive net income (the only ones included in the counts at that time). Of this total, more than three-quarters had less than \$100,000 in capital and most considerably less.³⁵ Clearly, opening access to the corporate form empowered small- and medium-sized businesses, not just large. Despite the appearance of very large firms in the late-nineteenth century, we should be careful not to confuse capitalism with big business or capitalists with captains of industry. The growth of economic organizations of all sizes and types is an essential feature of advanced capitalism.³⁶

³³ Evans, *Business Incorporations*, Appendix 3, 125-132.

³⁴ Evans, *Business Incorporations*, Appendix 3, 95-151.

³⁵ Commissioner of Internal Revenue, *Statistics of Income* (Washington, DC: Government Printing Office, 1922), 14.

³⁶ On this point, see also Lamoreaux and Wallis, "Economic Crisis," 430.

In a similar way, the creation of free banking systems that began in the late 1830s and spread throughout the country over the next several decades led to the creation of many small banks. In 1860 there were 1,562 state-chartered banks. The establishment of the national banking system during the Civil War (a free banking system modeled on those of New York and Ohio) led in the short term to a smaller number of larger banks, both because the prerequisites for a national charter were more stringent and because Congress imposed a tax on state bank notes that forced many banks that did not shift to national charters to close. But states soon revised their general laws to encourage bank formation, and the federal government to a somewhat lesser extent did the same. By 1900 there were 12,427 banks in the country, 3,731 national banks and 8,696 state banks. By 1914 the number had more than doubled—to 27,236 banks, 7,518 of them national and 19,718 state, and within a few years the US would become an important creditor nation, exporting capital to the rest of the world.³⁷

Parties, Interest Groups, and Elections

General laws also had important consequences for the way the political system worked. The demise of special bills stripped legislators of their most important source of patronage, removing the fuel that had powered factionalism and making rank-and-file representatives newly dependent on the party hierarchy for favors to dispense to their followers. Although this change

³⁷ Susan B. Carter, et al., *Historical Statistics of the United States: Earliest Times to the Present, Millennial Edition* (New York: Cambridge University Press, 2006), Tables CJ 149 to 297. The large number of banks owed as well to the political clout of small bankers, who were able for many decades to prevent large institutions from establishing branches in competition with them. We do not claim that the ability of economic interests to erect barriers to competition disappeared, only that political elites lost much of their power to manipulate the economy in this way to maintain control. On the clout of small banks, see Charles W. Calomiris and Stephen H. Haber, *Fragile by Design: The Political Origins of Banking Crises and Scarce Credit* (Princeton, NJ: Princeton University Press, 2014), Ch. 6.

was an unintended result of the first wave of state constitutional reforms in the late 1840s and early 1850s, by the 1870s, when Indiana's model was adopted by a broad swath of states from the Middle Atlantic through the Middle West, party leaders understood what they were doing. In Pennsylvania, for example, the Republican Party was so riven by factionalism that some Republicans groups preferred to join forces with the Democratic opposition, even during the Civil War, than see members of a rival Republican faction gain power.³⁸ Faced with the very real possibility that their party would go the way of the Whigs, Republican leaders pushed for a constitutional convention whose chief purpose was to ban private and local bills. Their effort succeeded. Although factions did not immediately disappear, they became much less troublesome for party leaders, and the now more tightly disciplined Republican Party dominated the state for decades.³⁹

The success of the general law provisions in quashing local sources of patronage created a new problem for party leaders to solve: how to put together the majorities they needed to pass significant legislation. Their first response was to commandeer all the patronage resources they had at their disposal and use them ruthlessly to enforce party discipline, as Oliver P. Morton did in Indiana and then Matthew Quay learned to do in Pennsylvania.⁴⁰ More generally, histories of

³⁸ See Alexander K. McClure's first-hand account, *Old Time Notes of Pennsylvania* (Philadelphia: Winston, 1905), Vol. 2.

³⁹ Mahlon Howard Hellerich, "The Pennsylvania Constitution of 1873," unpublished Ph.D. dissertation, University of Pennsylvania (1956). We are putting together the Pennsylvania story for a paper provisionally titled, "Political Parties and the Shift to General Laws: The Case of Pennsylvania."

⁴⁰ Emma Lou Thornbrough, *Indiana in the Civil War Era, 1850-1880* (Indianapolis: Indiana Historical Bureau & Indiana Historical Society, 1965), Ch. 6; Mary Elisabeth Seldon, "George W. Julian: A Political Independent," in *Gentlemen from Indiana: National Party Candidates, 1836-1940*, ed. Ralph D. Gray (Indianapolis: Indiana Historical Bureau, 1977), 29-54; Robert Harrison, "Blaine and the Camerons: A Study in the Limits of Machine Power," *Pennsylvania History* 49 (July 1982): 157-175; James A. Kehl, *Boss Rule in the Gilded Age: Matt Quay of Pennsylvania* (Pittsburgh, PA: University of Pittsburgh Press, 1981).

the period are full of accounts of the machinations of the new party bosses and how they made independent-minded politicians toe the line or be dropped from the ticket.⁴¹ The leaders' second response was an equally ruthless search for funds to use for patronage purposes—a search that dovetailed with the interests of businesses seeking to tilt the new general laws in their favor. Businesses had previously lobbied their legislatures to secure individual favors, but now they contributed increasing amounts to the campaign coffers of candidates they expected to be favorable to their interests. These contributions in turn provoked a public outcry about corruption that also figures prominently in the histories of the “Gilded Age.”⁴²

Spurred by the discovery, to use Richard McCormick's phrase, “that business corrupts politics” (rather than the reverse, the fear of government manipulation of the economy that had powered the constitutional reforms), Americans poured into the new large-scale voluntary associations that Elizabeth Clemens has dubbed “the people's lobby.”⁴³ Before the constitutional revisions mandating general laws, factions and splinter parties had been difficult to distinguish from voluntary associations. Indeed, organizations founded to push for reforms, such as temperance laws or the abolition of slavery in the South and the repeal of Black laws in the North, often for a time took the form of political parties or became organized factions of an existing party.⁴⁴ In the late nineteenth century, however, factions and voluntary associations

⁴¹ A recent account is Jon Grinspan, *The Age of Acrimony: How Americans Fought to Fix their Democracy, 1865-1915* (New York: Bloomsbury, 2021).

⁴² The literature on Gilded-Age corruption ranges from Mathew Josephson, *The Robber Barons: The Great American Capitalists, 1861-1901* (New York: Harcourt, Brace, 1934); to Mark Wahlgren Summers, *Party Games: Getting, Keeping, and Using Power in Gilded Age Politics* (Chapel Hill: University of North Carolina Press, 2004).

⁴³ Richard L. McCormick, “The Discovery That Business Corrupts Politics: A Reappraisal of the Origins of Progressivism,” *American Historical Review* 86 (Apr. 1981): 247-274; Elisabeth S. Clemens, *The People's Lobby: Organizational Innovation and the Rise of Interest Group Politics in the United States, 1890-1925* (Chicago: University of Chicago Press, 1997).

⁴⁴ Alexander and Shelden, “Dismantling the Party System.”

increasingly diverged. Factions began to fade in significance as the major parties grew in power, but voluntary associations that organized around important economic issues (we call them interest groups) became a permanent fixture of the new political universe. Although we have focused in this paper on the laws that opened access to the corporate form for business purposes, the same process of liberalization affected the other organizations that constituted civil society. As voluntary associations gained routine access to the corporate form and other similar organizational devices, they were both longer-lived and better able to amass the economic resources needed to be effective.⁴⁵

Particularly important were the waves of farmers' organizations that achieved notable success in securing legislation regulating railroads and other public service corporations, especially at the state level but also from the federal government as well. Labor organizations also surged in this period. Although they were primarily interested in direct action against large employers, some had political agendas and over time they too would achieve notable legislative successes, again at both the state and federal levels. Although these organizations still displayed a tendency to fall into the old pattern and transform themselves into third parties, over time they increasingly eschewed politics in this direct sense and instead concentrated on working through one or both of the two major parties, offering funds and organizational assistance in exchange for support for their policy initiatives.⁴⁶

⁴⁵ Ruth H. Bloch and Naomi R. Lamoreaux, "Voluntary Associations, Corporate Rights, and the State: Legal Constraints on the Development of American Civil Society," in *Organizations, Civil Society, and the Roots of Development*, eds. Lamoreaux and Wallis, 231-290.

⁴⁶ Clemens, *People's Lobby*; Richard White, *The Republic for Which It Stands: The United States during Reconstruction and Gilded Age, 1865* (New York: Oxford University Press, 2017); Margaret Levi, Tania Melo, Barry R. Weingast, and Frances Zlotnick, "Opening Access, Ending the Violence Trap: Labor, Business, Government, and the National Labor Relations Act," in *Organizations, Civil Society, and the Roots of Development*, ed. Lamoreaux and Wallis, 331-366.

Reformers associated with the people's lobby targeted political machines, as well as big business, by pushing for changes in the conduct of elections. Critics decried the growing importance of campaign contributions and the parties' increasingly centralized control of patronage as a continuation—even a worsening—of the old corruption, and they pursued electoral reforms such as the secret ballot, stricter voter registration laws, and selection of party candidates by primary elections. Their first success was the adoption of the secret, or Australian, ballot. Requiring voters to fill out a preprinted ballot in a location that protected their privacy struck at the heart of a political organization's ability to determine whether the votes they purchased or influenced stayed bought. But the fact that the ballot was preprinted introduced a whole host of complications. Who was to print the ballot? How were names allowed on the ballot to be selected? How would the names be arrayed on the ballot, for example by party or by office? Could an individual appear more than once on the ballot, running for an office under the auspices of two or more parties, or for two or more offices? How were the ballots to be treated once they had been cast? Could they be kept in the order in which they were cast, in which case a record of who voted in what order could enable a reconstruction of who voted for whom?

Although the reforms aimed to put an end to the corrupt practices that critics charged parties with fostering, paradoxically the effect of the laws was to further entrench the two major parties, not to weaken them. Previously, as we have seen, parties had printed ballots with a slate of candidates already selected that voters could simply drop off at the polls. Although this practice had furthered corruption—poll watchers could check the color of the ballots to make sure the voters they had paid off with money or favors selected the right candidates—it had also provided new parties with a relatively cheap to peel off votes that state-printed ballots eliminated. Once states gained control of the ballot, moreover, they made rules for how

candidates could get on it that further raised the cost of entry. For example, candidates might have to secure a designated number of signatures on petitions, or parties might have to win a threshold number of votes in the previous election. Printed ballots also led to anti-fusion laws that prohibited a candidate from running under more than one party label, a blow directed at third parties that aimed to win office through explicit coalitions.⁴⁷

Although antiparty reformers initiated the push for change, and mainstream party leaders at first resisted them, the process of enacting the new electoral procedures was partisan. The two major national parties, the Republicans and the Democrats, each dominated politics in different states. Specific reforms tended to favor Democrats when they were adopted by Democratic administrations and tended to favor Republicans when they were adopted by Republican Administrations. Shigeo Hirano and James M. Snyder have demonstrated this point for the adoption of laws requiring parties to select their candidates in primaries. As Table 8 shows, most of the primary laws fell neatly into one of two categories: Either they were enacted in states dominated by the Democratic Party and would benefit that party, or they were enacted in Republican states and would benefit the Republicans. Similar patterns have been documented for the Australian ballot and Anti-Fusion laws.⁴⁸ Although the new laws were initially enacted to the benefit of the dominant party, they were not reversed when control of the state switched to the other party, but instead became a permanent part of the electoral rules that both parties sustained. Party officials knew they would lose some elections, but they also knew that when

⁴⁷ Tabitha Abu El-Haj, “Party-Haters and the Origins of Election Administration in the United States,” unpublished draft paper (2022).

⁴⁸ Shigeo Hirano and James M. Snyder, *Primary Elections in the United States* (New York: Cambridge University Press, 2019); Eric Alston, Lee J. Alston, Bernardo Mueller, and Thomas Nonnemacher, *Institutional and Organizational Analysis* (New York: Cambridge University Press, 2018).

they did, they could return to power again in the future. Whatever temptation there was to undo the rules for short-term advantage was undercut by the realization such a move would empower the opposition to do likewise. Once the political system stabilized around two major parties that would be around to compete against each other in election after election, it was to the advantage of each to commit to a consistent set of the election rules—and to the general law regime that underpinned them.

Conclusion

The constitutional reforms that swept away the system of special legislation transformed both capitalism and democracy in ways that were largely unanticipated. The leaders who pushed for these reforms were not trying to build advanced capitalist economies or achieve modern economic growth. Nor were they trying to make their societies advanced democracies. Unlike political leaders in developing countries today, they had no idea what these outcomes might look like, let alone what they would have to do to achieve them. They were simply trying to fix what they perceived to be serious problems with their own political system—problems that had led their states into default or were threatening to destroy their parties. In the process, however, they substantially changed the way their economic and political systems interacted.

By prohibiting legislators from handing out economically valuable privileges to their supporters, they eliminated many of the barriers to entry that had inhibited the free flow of capital and other factors of production. Because one important result of this liberalization was the growth of giant businesses that dominated important sectors of the economy, scholars have often seen it as undemocratic. What they missed was the tremendous growth of small- and medium-sized enterprises that occurred at the same time. They also underestimated the extent to

which the new regime of general laws stimulated the growth of voluntary associations that could provide a democratic counterweight to the growing power of big business.

By prohibiting legislators from handing out economically valuable privileges to their supporters, the new regime also deprived factions of the fuel they needed to thrive, transforming the chaotic politics of the antebellum era into a two-party system regulated by general laws. Scholars have described these changes too as antidemocratic, and certainly they altered the way voters related to the electoral system. Whereas politics in the nineteenth century had been a participatory sport, voters now found themselves in the position of spectators, and many lost interest and stopped voting altogether. As turnout dropped, however, so did electoral violence and corruption.⁴⁹ The party system stabilized around two major parties, one dominating in some places and the other in other places, with control of the national government shifting from time to time. As the political system stabilized, governments at all levels took on a wider range of functions and built up their administrative capacities accordingly. In some ways, the stakes of winning elections increased as a result. Governments did more and the party in control of the government could influence what that more entailed. But in other respects, the system accommodated itself to these periodic changes of the guard with increasing ease. Parties were now playing a long game. They might lose an election in one year, but they would be back in power in the future, and that conviction reinforced their commitment to the systems of general laws that made that possible.

⁴⁹ Grinspan, *Age of Acrimony*; Mark Lawrence Kornbluh, *Why America Stopped Voting: The Decline of Participatory Democracy and the Emergence of Modern American Politics* (New York: New York University Press, 1999); Michael E. McGerr, *The Decline of Popular Politics: The American North, 1865-1928* (New York: Oxford University Press, 1986).

5. What about inequality?

We opened this paper by acknowledging that capitalism might be considered inconsistent with democracy if it increased inequality. So far, we have argued that advanced capitalism and advanced democracy developed in tandem in the United States—that they both trace back to the states’ adoption of general law mandates beginning in the mid-nineteenth century. Now we return to the problem of inequality and how this transition to general laws affected it. The issue is a difficult one because inequality comes in different guises, and the requirement that laws be general interacted with each of them in various and complicated ways. Moreover, there was nothing about the shift that necessitated any redistribution of income or wealth or imposed any standard of equality of condition. Nevertheless, once state constitutions banned special bills, well-placed individuals were no longer able to go to their legislatures and secure laws that granted them perks or exempted them from having to follow the same rules as everyone else. This was a significant change. The requirement that laws be general went a long way toward making a reality of the belief that all citizens were equal before the law.

The extent to which the shift to general laws truly equalized citizens’ legal position depended, however, on the specifics of the laws. Some laws shifted discretionary authority to the courts or to an administrative body, but some did away with discretion entirely. For example, in most states corporate charters were available under general laws through a simple registration process. Any group of individuals who fulfilled the basic requirements of the act and paid the necessary fees could get a charter—even for a bank. Under Ohio’s 1851 free banking law, for example, any three or more persons could form a banking company by filing a set of documents with the Auditor, Governor, and Secretary of State. These documents had to specify such things as the name and location of the bank, the date it would go into operation, the amount

of its capital stock, and the number of shares into which it was divided. In addition, incorporators had to show that sixty percent of the capital had already been paid in. Once the state officials received the necessary filings, the law specified, they “*shall* furnish to such company a certificate of such fact” and the company “*shall be, and hereby is,* created a body politic and corporate” with all the banking powers enumerated in the act (our emphasis).⁵⁰

General laws that gave discretionary authority to a court or an administrative body might sometimes empower favoritism by those bodies. The most obvious examples were statutes that placed responsibility for awarding contracts for operating ferries or constructing or repairing roads and bridges with local governments. Indeed, such contracts would prove to be a notorious source of corruption in the hands of urban machines by the end of the nineteenth century.⁵¹ Other statutes—for example, those that gave responsibility to the courts for awarding divorces, overseeing the administration of decedents’ estates, and other similar matters—were less easily manipulated. Compared to the common law, which had only loosely constrained the courts’ discretion, general laws laid down specific rules that judges had to follow. These rules, moreover, enhanced the disciplinary authority of appeals courts since decisions that deviated from them were easier to detect.⁵²

Discrimination that accorded with general societal practices was much more difficult to rein in. It is important to be clear on this point: General-law mandates did not prohibit laws that discriminated against broad groups of people, so long as the differential treatment applied

⁵⁰ Ohio Legislature, “An Act to authorize Free Banking,” approved March 21, 1851. See especially sections 1-5.

⁵¹ Rebecca Menes, “Limiting the Reach of the Grabbing Hand: Graft and Growth in American Cities, 1880 to 1940,” in *Corruption and Reform*, eds. Glaeser and Goldin, 63-93.

⁵² On this point, see especially Laura F. Edwards, *Only the Clothes on Her Back: Clothing and the Hidden History of Power in the Nineteenth-Century United States* (New York: Oxford University Press, 2022).

uniformly across the state. Indeed, the same Indiana constitution that mandated for the first time that laws be general also prohibited Blacks from migrating to the state and denied those who already resided there the right to vote.⁵³ Other Northern states enacted similar provisions in the middle decades of the nineteenth century, sometimes embodying them in their fundamental law but more often in statute. The Fourteenth and Fifteenth Amendments to the federal constitution made these kinds of provisions unenforceable, and they were everywhere repealed. But as the notorious US Supreme Court decision, *Plessy v. Ferguson*, underscored in 1896, the Reconstruction amendments could not prevent the enactment of laws that enforced racial segregation or that had the effect of keeping Blacks from voting.⁵⁴ It would be a long time before laws that treated the races (or sexes) differently were successfully challenged, but it is difficult to imagine that those challenges could have been meaningfully successful in a world where legislatures routinely granted individuals special favors and exempted them from having to follow ostensibly general legal rules.

What about economic inequality? There was nothing about the shift to general laws that guaranteed that the effect would be to decrease inequality of income and wealth. In a system characterized by the free movement of economic resources, it was always possible that someone who had a better idea or who was just lucky would strike it rich. It was also possible that wealth, whether accumulated in this way or inherited, would confer advantages. Indeed, most ordinary people lacked the resources they needed to benefit in the first place from open access to corporate charters. Under Ohio's free banking law, for example, organizers needed a minimum

⁵³ Indiana, 1851 Constitution, Article II, Section 5, and Article XIII.

⁵⁴ *Plessy v. Ferguson*, 163 U.S. 537 (1896). On the Northern black codes and their repeal, see Kate Masur, *Until Justice be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction* (New York: W. W. Norton, 2021).

amount of capital to get a charter—at least \$25,000—and, as a result, only those who already possessed considerable wealth, or who had established the kinds of financial reputations that would enable them to attract investment, could found a bank.⁵⁵ Similarly, although general incorporation laws for manufacturing rarely had minimum capital requirements, the charters they conferred were of little utility if the incorporators did not already have funds to put into the business or standing to attract capital.

Advanced democratic societies can, however, regulate economic activity in ways that reduce the advantages conferred by wealth if their citizens care enough about the issue to organize and lobby for such goals. Under general laws, the same ability to classify populations into groups that allowed for ongoing racial discrimination supported economic regulations that targeted specific types of businesses. Thus, farmers' organizations and their allies were able to secure laws directed at railroads they accused of overcharging for freight services. By the 1880s, at least two dozen states had formed commissions to regulate railroads, and the US Supreme Court ruled in 1891 that it was constitutional to impose a special tax on railroads to fund them.⁵⁶ When Standard Oil's end run around state prohibitions against holding companies raised the specter of an economy dominated by giant businesses, states responded with laws that made it illegal to use the trust device (or any other form of contract) for the purpose of market control and filed suits to dissolve monopolistic businesses or oust those chartered in other states. Businesses repeatedly challenged these actions in federal court, claiming that the suits violated their rights under the Fourteenth Amendment, but they usually lost. As Justice Joseph McKenna

⁵⁵ Ohio Legislature, "An Act to authorize Free Banking."

⁵⁶ *Charlotte, Columbia and Augusta Railroad Co. v. Gibbes*, 142 U.S. 386 (1891). See Clemens, *People's Lobby*; and William J. Novak, "The Public Utility Idea and the Origin of Modern Business Regulation," in *Corporations and American Democracy*, eds. Lamoreaux and Novak, 139-176.

remarked sarcastically in demolishing a case brought by International Harvester in 1914, the corporation was implying that a “combination of all the great industrial enterprises ... could not be condemned unless the law applied as well to a combination of maidservants or to infants’ nurses.”⁵⁷

Although antitrust policy brought a halt to the rise in economic concentration in the early twentieth century, it did not reverse it, and inequality in income and wealth seems to have continued to rise through the 1920s.⁵⁸ In part, the rise owed to businesses’ success in blocking or overturning “class legislation” that aimed to improve wages and laboring conditions for workers.⁵⁹ That success was not, however, inherent in the concept of general laws, and it would be reversed during the 1930s. Indeed, the middle third of the twentieth century would witness the sharp decline in inequality known as the Great Compression. The decline was in part the result of the Great Depression and the Second World War, but it was also a result of policy changes enacted at the behest of organized groups of the population: massive public expenditures for high schools; the progressive income tax; federal protection for unionization. Many of these policies were reversed in the last third of the century—again with considerable organizational support—and inequality returned to early twentieth-century levels.⁶⁰ Before, however, we leap

⁵⁷ *International Harvester Co. v. State of Missouri*, 234 U.S. 199 (1914) at 212-13; Lamoreaux, “Antimonopoly and State Regulation of Corporations.”

⁵⁸ Naomi R. Lamoreaux, “The Problem of Bigness: From Standard Oil to Google,” *Journal of Economic Perspectives* 33 (Summer 2019): 94-117; Thomas Piketty and Emmanuel Saez, “Income Inequality in the United States, 1913-1998,” *Quarterly Journal of Economics* 118 (Feb. 2003): 1-39.

⁵⁹ The case that gave its name to the era, *Lochner v. New York*, 198 U.S. 45 (1905), was but the tip of the iceberg. See, for example, William E. Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge, MA: Harvard University Press, 1991).

⁶⁰ Claudia Goldin and Robert A. Margo, “The Great Compression: The Wage Structure in the United States at Mid-Century,” *Quarterly Journal of Economics* 107 (Feb. 1992): 1-34; Goldin and Lawrence F. Katz, *The Race between Education and Technology* (Cambridge, MA: Harvard University Press, 2010); Piketty and Saez, “Income Inequality”; Henry S. Farber et al., “Union’s

to the conclusion that the reversion is evidence of a fundamental incompatibility between capitalism and democracy, we should recognize that the reversal was more muted in many other advanced capitalist economies. Indeed, an entire literature has sprung up to explain why some rich democracies have supported more extensive welfare states and done more than others to promote economic and social equality. The name of this literature is itself a commentary on the theme of this conference: “varieties of capitalism.” Some varieties are more egalitarian than others, but they are all capitalist.⁶¹

6. Impersonal Rules and Advanced Capitalist Democracy

In this paper, we have detailed the shift to general laws (or, in the broader language with which we began the paper, impersonal rules) that occurred in the various US states beginning in the mid-nineteenth century. We have argued that the adoption of general-law provisions had a transformative effect on the way the economy worked. By opening up access to the corporate form, general laws led to a significant increase in the number of corporations, including banks. As the number of economic organizations increased, some found ways to increase productivity and push out the economy’s technological frontier. Others grew big by exploiting economies of scale or erecting barriers to competition by private means. The rapid appearance of these large-scale organizations, and their exercise, for a time at least, of significant market power has

and Inequality over the Twentieth Century: New Evidence from Survey Data,” *Quarterly Journal of Economics* 136 (Aug. 2021): 1325-1385.

⁶¹ Hall and Soskice, *Varieties of Capitalism*. See also Thomas Piketty and Emmanuel Saez, “The Evolution of Top Incomes: A Historical and International Perspective,” *American Economic Review* 96 (May 2006): 200-205; and Anthony B. Atkinson, Thomas Piketty, and Emanuel Saez, “Top Incomes in the Long Run of History,” *Journal of Economic Literature* 49 (Mar. 2011): 3-71.

attracted historians' attention and blinded them to the enormous number of small- and medium-sized enterprises that emerged at the same time. It has also blinded them to the multiplicity of types of organizations that benefited from open access to the corporate form, as well as from the enactment of general laws benefiting other types of associations. The myriad of organizations belonging the "people's lobby" used the increased ability afforded by these laws to coordinate their activities and push for general laws that limited big business's ability to exercise their dominance.

The political process underwent a similarly radical transformation. Factions had thrived in an environment where proliferating numbers of special bills enabled them to attract and reward supporters. When state constitutional reforms took these bills off the table, party discipline increased. Building majority coalitions within legislatures to enact general laws required more complex negotiations than had been needed when it was possible to give every legislator something he wanted or exempt particular districts, people, or organizations from the operation of otherwise general laws. Only stable, long-lived political parties could credibly commit to the necessary deals, and this gave the two major parties additional advantages. Historians have tended to view these changes, along with the new electoral laws that solidified them, as antidemocratic because the rowdy participatory politics of the nineteenth century largely disappeared, replaced by a more staid political system where voters make their choices in private and parties gauged voter sentiment at a distance, through devices like public-opinion polls. What they have missed is the great reduction in political elites' ability to manipulate the economy in their own interests to the detriment of those not favored by their largess. They have also missed the stake that the two major parties have in sustaining the general law regime that is at the root of their longevity and stability.

The discussion in this paper grows out the research we have done on the economic and political history of the United States over our careers. We know much less about how today's other advanced capitalist democracies made the transition to impersonal rules. We are embarking on a study of the British case, and we hope this paper will encourage scholars to tackle the same questions for other countries. At this point, what we can say with confidence is that the situation in all these countries in the early nineteenth century was much like that in the US in that the government strictly controlled access to valuable economic privileges, such as the ability to form banks and other kinds of corporation. In Britain, for example, corporations like the East India Company and the Bank of England had valuable monopolies. The East Indian Company not only had a monopoly on trade with South Asia, but with the Far East as well. Parliament committed itself not to charter any banks in competition with the Bank of England and, further, forbade any partnership with more than six partners from engaging in banking. At the behest of the South Sea Company, Parliament enacted the Bubble Act, making it illegal for a company to organize as a corporation unless Parliament granted it a charter.⁶² In France, the government not only restricted access to the corporate form but determined which companies could be listed on the Bourse and thus have access to the nation's only organized capital market.⁶³ In both countries, the companies favored by these policies faced challenges to their

⁶² Dan Bogart, "The East Indian Monopoly and the Transition from Limited Access in England, 1600-1813," in *Organizations, Civil Society, and the Roots of Development*, ed. Lamoreaux and Wallis, 23-49; J. Lawrence Broz and Richard S. Grossman, "Paying for Privilege: The Political Economy of Bank of England Charters, 1694-1844," *Explorations in Economic History* 41 (Jan. 2004): 48-72; Ron Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844* (Cambridge, Eng.: Cambridge University Press, 2000), Ch. 3.

⁶³ Timothy W. Guinnane, Ron Harris, Naomi R. Lamoreaux, and Jean-Laurent Rosenthal, "Putting the Corporation in its Place," *Enterprise and Society* 8 (Sept. 2007): 687-729; Lacey L. Plache, "Financial Institutions, Government Policy, and Industrialization: The Development of the French Stock Market, 1852-1875, unpublished Ph.D. dissertation, University of California, Los Angeles (1999).

privileges by the middle third of the nineteenth century. In Britain, interloping merchants increasingly encroached on the East Indian Company's trade in Asia; businesses formed partnerships with elaborate contracts that gave them many advantages of the corporate charters; and merchants and industrialists increasingly lobbied Parliament to revoke the chartered companies' monopolies and repeal the restrictions on incorporation.⁶⁴ In France, businesses learned they could secure many of the advantages of corporations by organizing as limited partnerships with tradable shares, and brokers emerged to trade in the securities of these *commandites par actions* on the *Coulisse*, the curb market that sprang up on the street just outside the Bourse.⁶⁵

Although we do not have a good understanding of how the change toward impersonal rules came about, we know that it did. Parliament stripped both the East India Company and the Bank of England of their monopolies, repealed the Bubble Act that had made it illegal to operate as a corporation without a charter, and enacted a series of general incorporation acts (known as the Companies Acts) that by 1856 attained their modern form. France enacted a general incorporation law in the 1860s. Other European countries similarly opened access to the corporate form.⁶⁶ In the nineteenth century, however, Britain seems to have gone further than these other countries in moving to impersonal rules. For example, the Companies Acts opened

⁶⁴ Bogart, "East Indian Monopoly"; Broz and Grossman, "Paying for Privilege"; Jessica Hanser, *Mr. Smith Goes to China: Three Scots in the Making of Britain's Global Empire* (New Haven, CT: Yale University Press, 2019); James R. Fichter, *So Great a Proffit: How the East Indies Trade Transformed Anglo-American Capitalism* (Cambridge, MA: Harvard University Press, 2010); Mark Freeman, Robin Pearson, and James Taylor, *Shareholder Democracies? Corporate Governance in Britain and Ireland before 1850* (Chicago: University of Chicago Press, 2012).

⁶⁵ Guinnane, et al., "Putting the Corporation in its Place"; Plache, "Financial Institutions."

⁶⁶ Bogart, "East Indian Monopoly"; Guinnane, et al., "Putting the Corporation in its Place"; Timothy W. Guinnane, Ron Harris, and Naomi R. Lamoreaux, "Contractual Freedom and Corporate Governance in Britain in the Late Nineteenth and Early Twentieth Centuries," *Business History Review* 91 (Summer 2017), 227-277.

access to the benefits of the corporate form to all kinds of non-profits in addition to businesses. Although there was no constitutional prohibition on special bills like the ones embodied in US state constitutions, Parliament adopted standing orders and other rules that imposed similar constraints. The number of special bills shrank, and Parliament enacted a number of statutes called companies clauses consolidation acts that imposed standard terms on railroads, utilities, and similar types of companies that, because of varying local circumstances, still tended to be chartered by special acts.⁶⁷ The consequences of these changes seem to have been similar to those in the US—that is, increased formation of companies, especially small- and middle-sized ones, and the emergence of a stable party system.⁶⁸ Britain was becoming more democratic in this period, increasing the franchise and equalizing representation across districts. Because these moves occurred contemporaneously with the shift to impersonal rules, they did not have the destabilizing consequences they had in the early US. Indeed, there are tantalizing hints in the literature that stable political parties and impersonal rules evolved together. As the parties became stronger and more disciplined, they took control of the legislative agenda whenever they

⁶⁷ Julian Hoppit, *Britain's Political Economies: Parliament and Economic Life, 1660-1800* (Cambridge, Eng.: Cambridge University Press, 2017); Les Hannah and James Foreman-Peck, "Some Consequences of Early Twentieth-Century British Divorce of Ownership from Control," *Business History* 55 (no. 4, 2013): 543-64; Hannah and Foreman-Peck, "UK Corporate Law and Corporate Governance before 1914: A Re-interpretation," in *Complexity and Crisis in the Financial System: Critical Perspectives on the Evolution of American and British Banking*, ed. Matthew Hollow, Folarin Akinbami, and Ranald Michie (Cheltenham, UK: Edward Elgar, 2016), 183-213.

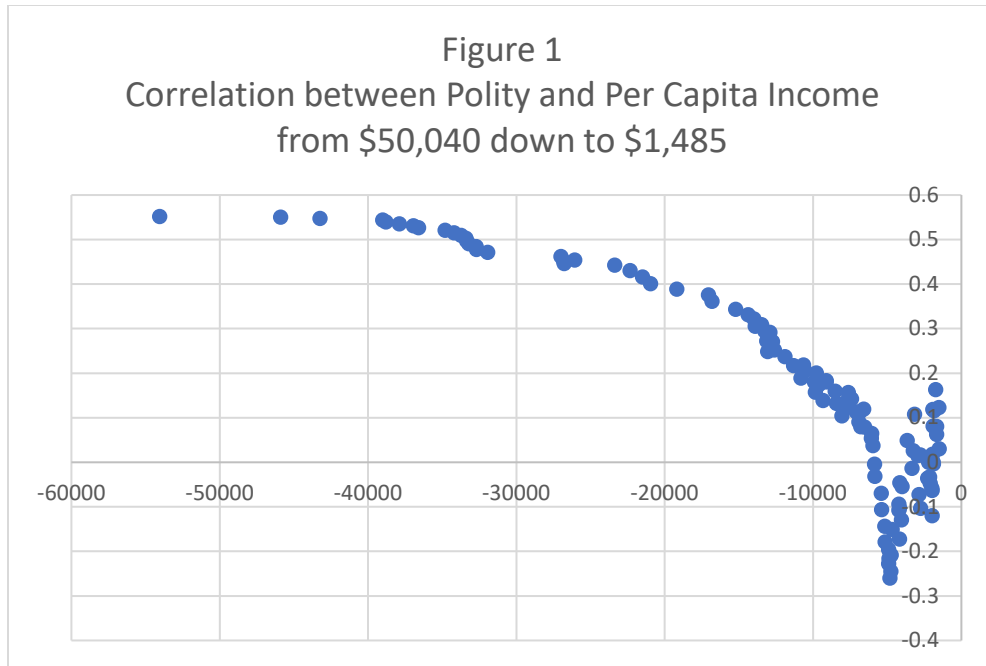
⁶⁸ Ron Harris, "The Private Origins of the Private Company: Britain, 1862-1907," *Oxford Journal of Legal Studies* 33 (Summer 2013): 339-378; Gary W. Cox, *Efficient Secret: The Cabinet and the Development of Political Parties in Victorian England* (Cambridge, Eng.: Cambridge University Press, 1987).

were in power, and gradually but very deliberately stripped members of the ability to secure private bills for their constituents.⁶⁹

Just as Pennsylvania lagged behind Indiana in the adoption of general rules, enacting general incorporation laws around the same time but not shifting to a regime of impersonal rules until much later, France, Germany, and other European countries lagged behind Britain. As a result, the moves they made to introduce more democratic electoral processes in the late nineteenth and early twentieth centuries in many places had destabilizing consequences. Political parties suffered from factionalism, and a number of these countries slid back into autocracy.⁷⁰ It was only in the twentieth century, and for many not until after the Second World War, that they made the transition to impersonal rules (albeit some more completely than others), and withal to free flow of resources and long-lived political parties characteristic of advanced capitalist democracies.

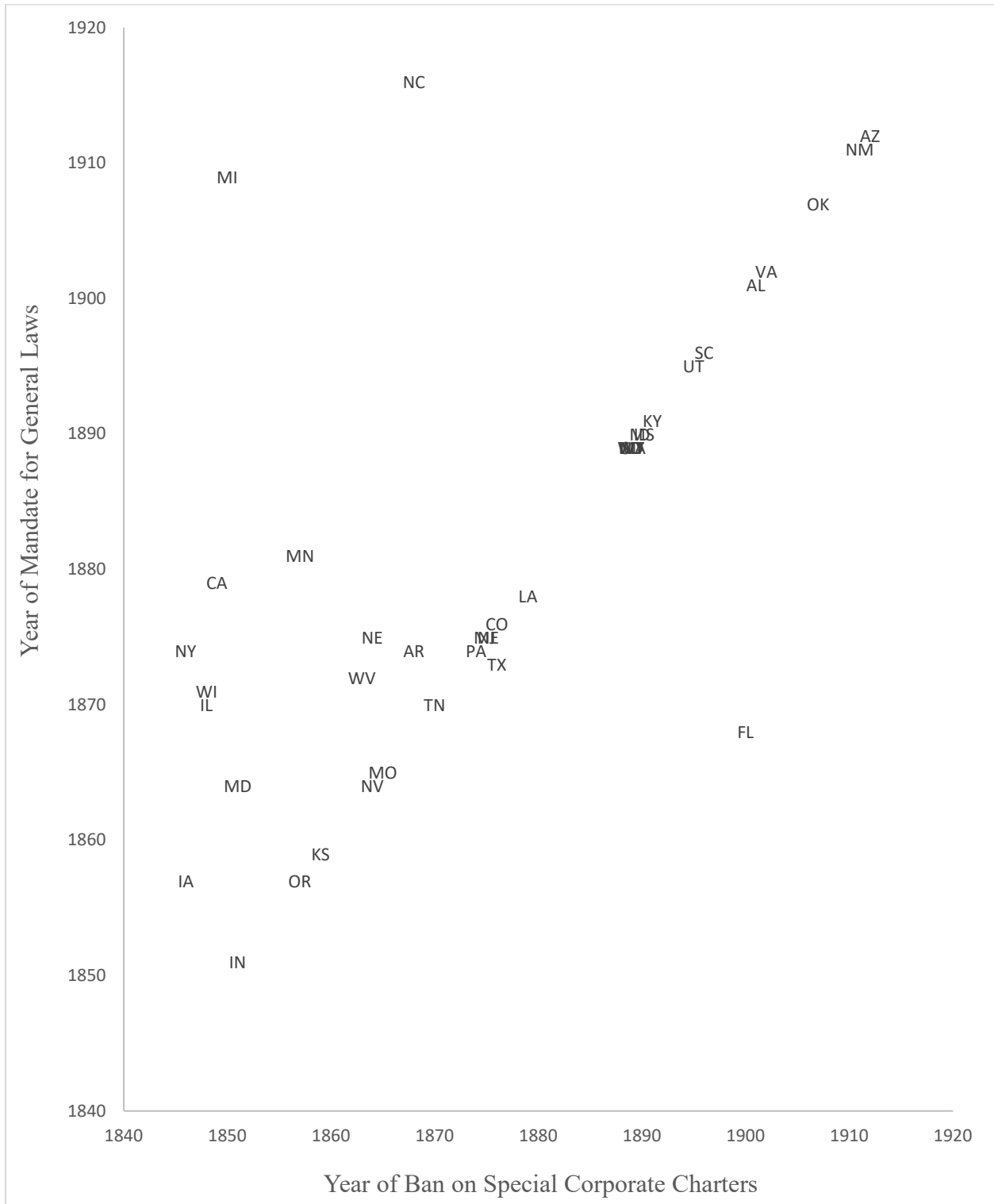
⁶⁹ See, for example, Ramsay Muir, *How Britain is Governed: A Critical Analysis of Modern Developments in the British System of Government* (3rd Rev. Edn.; Boston: Houghton Mifflin, 1935), Ch. VI.

⁷⁰ Richard Brooks and Timothy W. Guinnane, "The Right to Associate and the Rights of Associations: Civil-Society Organizations in Prussia, 1794-1908," in *Organizations, Civil Society, and the Roots of Development*, ed. Lamoreaux and Wallis, 291-329.



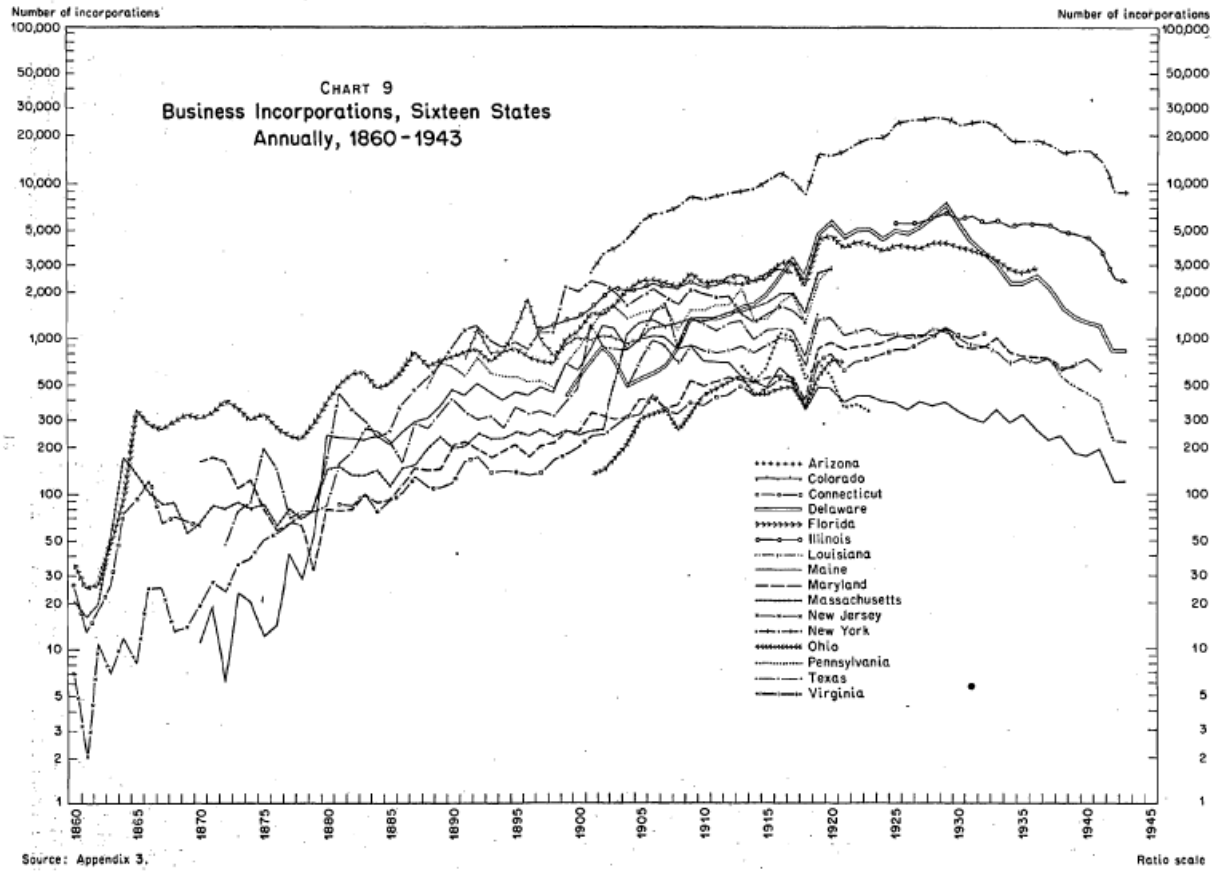
Note: The figure reports the correlation coefficient between real per capita income and the Polity IV/V score for 142 countries in 2000. Each point in the figure represents the coefficient for a different sample. The first point on the left is the coefficient for the entire sample from Norway to Afghanistan. Each point to the right drops the richest country from the sample. The last point is the correlation coefficient for the poorest 27 countries from Bangladesh to Afghanistan. The horizontal axis has negative numbers to get the figure to show declining income, which needs to be fixed.

Figure 2. Comparison of Dates of Constitutional Mandates for General Incorporation and General Laws, by States



Notes and Sources: Delaware, Georgia, Ohio, and Vermont banned special corporate charters (in 1897, 1890, 1851, and 1913 respectively) but did not enact mandates for general laws. Connecticut, Massachusetts, New Hampshire, and Rhode Island did not enact either provision. Florida's 1868 constitution included a long list of topics on which the legislature was forbidden to enact special and local legislation, as well as a requirement that laws be general wherever possible. The latter clause was dropped from the 1887 constitution, though the list of prohibitions expanded. In 1879 Louisiana similarly weakened its mandate for general laws. The state also went back and forth on the ban on special corporate charters, imposing it in 1845, dropping it in 1852, imposing it in 1864, dropping it in 1868, and then adopting it permanently in 1879. For the text of the constitutional provisions see the NBER/Maryland State Constitutions Project, <http://www.stateconstitutions.umd.edu/index.aspx>. [Provisions](#) not available on the website can be obtained from John Wallis.

Figure 3. Annual Business Incorporations, Sixteen States, 1860-1943



Source: George Heberton Evans, Jr., *Business Incorporations in the United States, 1800-1943* (New York: NBER, 1948), 32.

Table 1. The Eighteen Advanced Capitalist Democracies in 2022

United Kingdom

United States

Canada

Australia

New Zealand

Finland

Sweden

Norway

Denmark

Netherlands

Belgium

France

Switzerland

Germany

Austria

Italy

Spain

Portugal

Table 2: Real Income Per Capita in 1990 Geary-Khamis \$ for different samples from the Maddison data, Ranks of the poorest country in the samples for 16 or 18 countries in the overall sample, and Polity Scores.

	Year	1820	1850	1870	1890	1910	1940	1950	1990	2000	2008
(1)	Count	54	28	63	37	39	47	139	163	163	163
(2)	Average Real Per Capita Income Weighted by Population Maddison	\$666		\$870			\$1,958	\$2,111	\$5,150	\$6,038	\$7,614
(3)	Average PCY All Countries	\$739	\$1,216	\$1,131	\$1,862	\$2,403	\$3,037	\$2,470	\$ 5,519	\$6,345	\$8,153
(4)	Average PCY 16	\$1,078	\$1,561	\$2,137	\$2,764	\$3,679	\$5,122	\$6,241	\$17,729	\$21,373	\$24,158
(5)	Average PCY 18	\$1,066	\$1,498	\$2,021	\$2,610	\$3,443	\$4,758	\$5,785	\$17,030	\$20,633	\$23,371
(6)	PCY Countries Not in 16	\$160	\$64	\$261	\$174	\$245	\$428	\$1,167	\$ 4,070	\$4,559	\$6,204
(7)	PCY 16/PCY All Row (4)/Row (3)	1.5	1.3	1.9	1.5	1.5	1.7	2.5	3.2	3.4	3.0
(8)	PCY 16/PCY Not 16 Row (4)/Row (6)	6.8	24.4	8.2	15.9	15.0	12.0	5.3	4.4	4.7	3.9
Overall Rank of the Poorest Country in sample of 16 or 18 countries											
(9)	Poorest country in 16	16/18	16/20	16/22	16/22	16/22	16/20	16/24	16/20	16/21	16/26
(10)	Poorest country in 18	18/20	18/20	18/24	18/27	18/28	18/33	18/45	18/25	18/26	18/35
(11)	Poorest country in 16 Excluding Oil and Small	16/18	16/20	16/22	16/22	16/22	16/20	16/20	16/20	16/21	16/24

	no small									
(12)	Polity Score	-4.5	-1.2	2.9	6.7	3.5	7.6	9.9	9.8*	9.8

Notes:

All dollar figures in 1990 Geary-Khamis international dollars

Row (2) is the average real per capita income in the entire sample weighted by population, reported by Maddison

Row (3) is the unweighted average incomes calculated by us. Row (4) and (5) are the average incomes for the sample of 16 and 18 countries.

Row (6) is the unweighted average of all the countries not in the sample of 16 countries.

Row (11) excludes

* 2000 Polity Score needs to be recalculated

Table 3. Polity IV/V Scores for 18 High-Income Countries, 1820-2008

Year	1820	1850	1890	1910	1940	1950	1990	2008
United Kingdom	-2	3	7	8	10	10	10	8
United States	6	9	9	9	9	9	10	10
Canada	--	--	9	9	10	10	10	10
Australia	--	--	--	10	10	10	10	10
New Zealand	--	--	10	10	10	10	10	10
Finland	--	--	--	--	4	10	10	10
Sweden	-8	-7	-4	T	10	10	10	10
Norway	-7	-7	-2	10	G	10	10	10
Denmark	-10	1	-3	T	G	10	10	10
Netherlands	-6	-3	-2	10	10	10	10	10
Belgium	--	-4	4	6	6	8	9	8
France	-1	6	8	8	10	8	10	10
Switzerland	--	10	10	10	10	10	10	10
Spain	-4	-5	5	6	-7	-7	9	10
Portugal	-2	-4	-4	7	-9	-9	10	10
Germany	-10	-8	1	2	-9	T	10	10
Austria	-6	-6	-4	-4	-9	10	10	10
Italy	--	--	--	-1	-9	10	10	10
Average	-4.5	-1.2	2.9	6.7	3.5	7.6	9.9	9.8
English Speaking	2.0	6.0	8.8	9.2	9.8	9.8	10.0	9.6
Nordic	-8.3	-4.3	-3.0	10.0	7.0	10.0	10.0	10.0
NW Europe	-3.5	2.3	5.0	8.5	9.0	9.0	9.8	9.5
Germany & Southern	-5.5	-5.8	-0.5	2.0	-8.6	1.0	9.8	10.0

Note:

“—”: no data

“T”: political system in transition, no Polity Score.

“G”: occupied by Germany, no Polity Score.

Table 4
Correlations between Per Capita Income and Polity IV/V Scores
Various subsamples, 2000 income

	Correlation Coefficient	p-value	Average Polity Score
	(1)	(2)	(3)
Whole Sample	0.33	0.0002	2.56
no oil	0.56	0	3.11
Top 25	-0.14	0.25	6.84
Top 25/no oil	0.27	0.1	9.80
Bottom 70	0.08	0.25	0.81
Top 70	0.14	0.12	5.62
no oil	0.48	0.00001	6.72

Notes:

Correlations are for 142 countries in 2000 for which we have both incomes from the Maddison data and scores from Polity. Average Polity scores are for each group included in the correlations. Top 25 is the richest countries, Top 25 is the richest countries after the oil exporters have been excluded. Bottom 70 is the 70 poorest countries; Top 70 is the richest 70 countries; Top 70 – no oil are the richest 70 countries after the oil exporters have been taken out of the sample.

Table 5. Types of Laws Enacted by the Indiana Legislature, Select Years, 1830-1885

Year	Total Number of Laws	General Laws	General Laws as Percent of Total	Laws for State Government	Laws for State Government as Percent of Total	Special Local Laws for Governments	Special Local Laws for Governments as Percent of Total	Special Private Laws	Special Private Laws as Percent of Total
Panel A: Legislative sessions held before the 1851 Constitution									
1830	118	2	0.02	8	0.07	83	0.70	25	0.21
1835	247	28	0.11	8	0.03	132	0.53	79	0.32
1840	307	39	0.13	31	0.10	156	0.51	81	0.26
1845	496	49	0.10	28	0.06	248	0.50	171	0.34
1850	550	43	0.08	16	0.03	278	0.51	213	0.39
Panel B: Legislative sessions held after the 1851 Constitution									
1855	114	74	0.65	23	0.20	12	0.11	5	0.04
1861	154	86	0.56	34	0.22	21	0.14	13	0.08
1865	156	97	0.62	28	0.18	26	0.17	5	0.03
1871	35	14	0.40	7	0.20	12	0.34	2	0.06
1875	158	104	0.66	22	0.14	28	0.18	4	0.03
1881	157	91	0.58	29	0.18	26	0.17	11	0.07
1885	159	85	0.53	32	0.20	36	0.23	6	0.04

Notes and Sources: We divide laws into four categories: “general laws” that applied uniformly throughout the state; “laws for state government” for running different parts of the state government, for example appropriations for the state attorney general or the supreme court; “special laws for local governments” that applied to individual local governments, for example by allowing specific taxes or setting salaries for particular officials; and “special private laws” enacted to benefit specific individuals or groups, for example allowing them to change their names or form corporations. The counts before 1855 include both the volumes for “General

Laws” and the volumes for “Local Laws.” After 1851, there was only one volume per legislative session. The counts for 1861, 1865, 1875, 1881, and 1885 include both the regular session and special sessions held during those years. There was no special session in 1855 or 1871. All laws are from Indiana Session Laws, Heinonline, <https://heinonline.org/HOL/Index?index=ssl/ssin&collection=ssl>.

Table 6. Types of Laws Enacted by the Illinois Legislature, Select Years, 1861-1885

Year	Total Number of Laws	General Laws	General Laws as Percent of Total	Laws for State Government	Laws for Government as Percent of Total	Special Local Laws for Governments	Special Local Laws for Governments as Percent of Total	Special Private Laws	Special Private Laws as Percent of Total
Panel A: Legislative sessions held before the 1870 Constitution									
1861	536	74	14	33	6	223	42	206	38
1865	843	49	6	36	4	351	42	407	48
Panel B: Legislative sessions held after the 1870 Constitution									
1871	241	139	58	70	29	29	12	3	1
1875	90	43	48	34	38	12	13	1	1
1881	124	67	54	44	35	9	7	4	3
1885	131	71	54	43	33	8	6	9	7

Notes and Sources: We divide laws into four categories: “general laws” that applied uniformly throughout the state; “laws for state government” for running different parts of the state government, for example appropriations for the state attorney general or the supreme court; “special laws for local governments” that applied to individual local governments, for example by allowing specific taxes or setting salaries for particular officials; and “special private laws” enacted to benefit specific individuals or groups, for example allowing them to change their names or form corporations. The counts before 1870 include both the volumes for “Public Laws” and the volumes for “Private Laws.” After 1870, there was only one volume per legislative session, though there were different editions of the legislative record. We used Myra Bradwell’s editions for 1875, 1879, 1881, and 1885. For 1871 we used the edition of the “regular, special, and the adjourned sessions” printed by the Illinois State Journal. All volumes are from Illinois Session Laws, Heinonline, <https://heinonline.org/HOL/Index?index=ssl/ssil&collection=ssl>.

Table 7. Change in Legislative Output for States in the United States in 1851
(pages per year in the session laws)

State (Year of Statehood)	Year of General Law Mandate	Ave. Pages 1830-59	Ave. Pages 1870-99	% change	Ave. Pages 20 Years before Mandate	Ave. Pages 20 Years after Mandate	% change
<i>New England States admitted before 1851</i>							
New Hampshire (1776)	--	111	173	56	--	--	--
Rhode Island (1776)	--	321	324	0	--	--	--
Connecticut (1788)	--	216	401	86	--	--	--
Massachusetts (1788)	--	383	855	123	--	--	--
Vermont (1791)	--	144	231	60	--	--	--
Maine (1820)	1875	333	295	-11	323	272	-16
<i>Middle Atlantic states admitted before 1851</i>							
New York (1776)	1874	736	1502	104	1580	1219	-23
Maryland (1776)	1864	352	539	53	244	552	126
Pennsylvania (1787)	1874	661	441	-33	1112	248	-78
New Jersey (1787)	1875	363	772	113	1073	558	-48
Delaware (1787)	--	81	220	172	--	--	--
<i>Midwestern states admitted before 1851</i>							
Ohio (1803)	--	457	523	14	--	--	--
Indiana (1816)	1851	514	207	-60	633	184	-71
Illinois (1818)	1870	354	165	-53	763	166	-78
Missouri (1821)	1865	406	201	-50	538	249	-54
Michigan (1837)	1909	327	805	146	875	473	-46
Iowa (1846)	1857	238	127	-47	245	158	-36
Wisconsin (1848)	1870	411	797	94	929	832	-10
<i>Western states admitted before 1851</i>							
California (1850)	1879	338	342	1	581	261	-55
<i>Southern states admitted before 1851</i>							
South Carolina (1776)	1896	141	310	119	330	474	44
Virginia (1776)	1902	270	500	85	538	387	-28
Georgia (1788)	--	260	493	90	--	--	--
North Carolina (1789)	1916	312	608	95	1276	788	-38
Kentucky (1792)	1891	482	909	89	1248	143	-89
Tennessee (1796)	1870	264	296	12	330	217	-34
Louisiana (1812)	1878	206	176	-15	245	147	-40
Mississippi (1817)	1890	275	382	39	318	157	-51
Alabama (1819)	1901	227	539	137	749	410	-45
Arkansas (1836)	1874	112	160	43	187	137	-27
Texas (1845)	1873	215	267	24	249	185	-26
Florida (1845)	1868	97	140	44	92	104	13

Notes and sources: The page numbers come from the state session laws as listed on Heinonline, <https://heinonline.org/HOL/Index?index=sslusstate&collection=ssl>. Some volumes of session laws are missing from the Heinonline database, but these omissions do not affect the general trends. Whenever a legislative session ran over two years, the page numbers were entered for the year in which the session started. California enters the dataset in 1849. The data for Texas includes 1836-1845, when the state was an independent republic. The data for other states that entered the union after 1830 include the following years when they were still territories: Arkansas, 1830-1835; Florida, 1830-1845; Iowa, 1838-1845; Michigan, 1830-1835; and Wisconsin, 1836-1838.

Table 8

TABLE 2.1 *Partisanship and Control When Statewide Primaries Adopted*

Partisanship	Party Control at Time of Adoption		
	Unified Democratic	Divided	Unified Republican
Advantaged Democratic	AL, AZ¹, AR FL, GA, LA MS, SC, TX VA, NM, NC TN, UT		
Leaning Democratic	MD, MO, NV² OK¹ , IN ² , KY NY ² , OH		
Leaning Republican	CO, ME	MT, NJ, WV	NE
Advantaged Republican		MA, WY	CA, ID², IL IA, KS, MI ND, NH, OR PA, SD², WA WI , MN ³ , VT

Only states that adopted primaries prior to 1940 are included. So, AK, CT, HI and RI are not shown. DE is not shown because it adopted optional primaries that neither major party used during this period. States that adopted primaries prior to 1910 are in bold italic font.

¹ AZ and OK adopted primary laws at statehood. Therefore, the underlying partisanship is based on the elections to the constitutional conventions and the first two statewide elections after statehood.

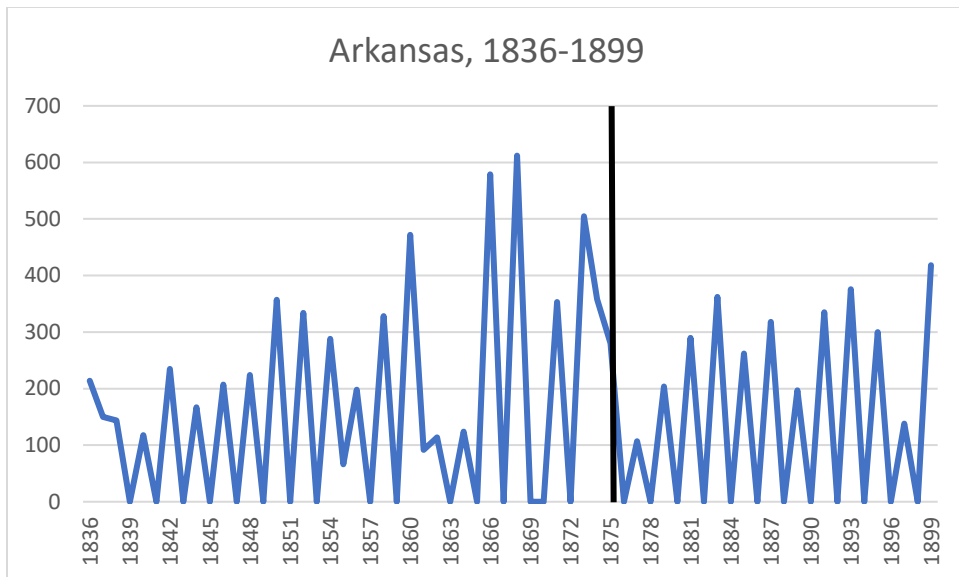
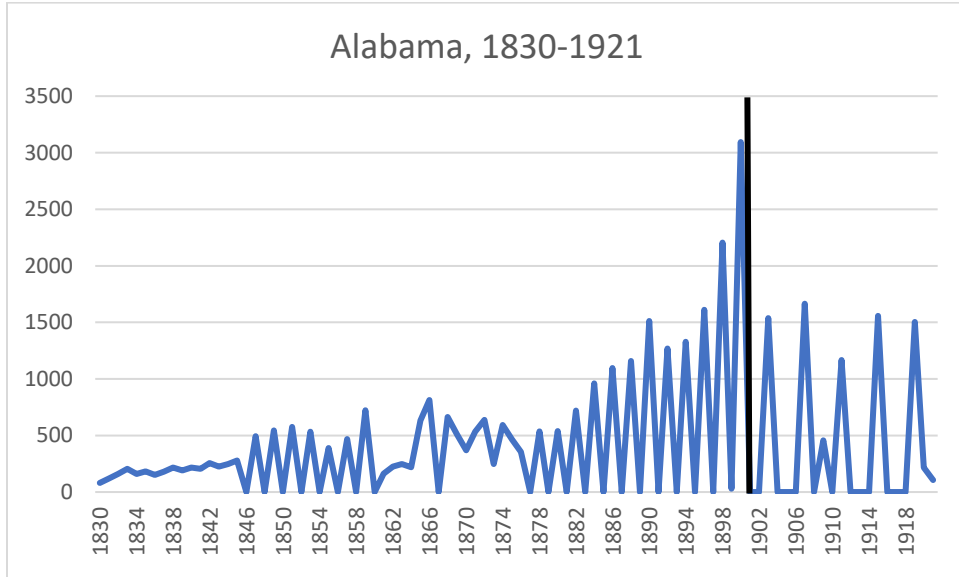
² IN (1929) and NY (1921) eliminated primaries for governor and US senator, and did not reinstate them for over 40 years. SD eliminated primaries for statewide down-ballot offices in 1929. ID eliminated statewide primaries in 1919 and then reinstated them in 1931. NV repealed its primary law in 1915, replacing direct primaries with indirect primaries, but restored direct primaries in 1917.

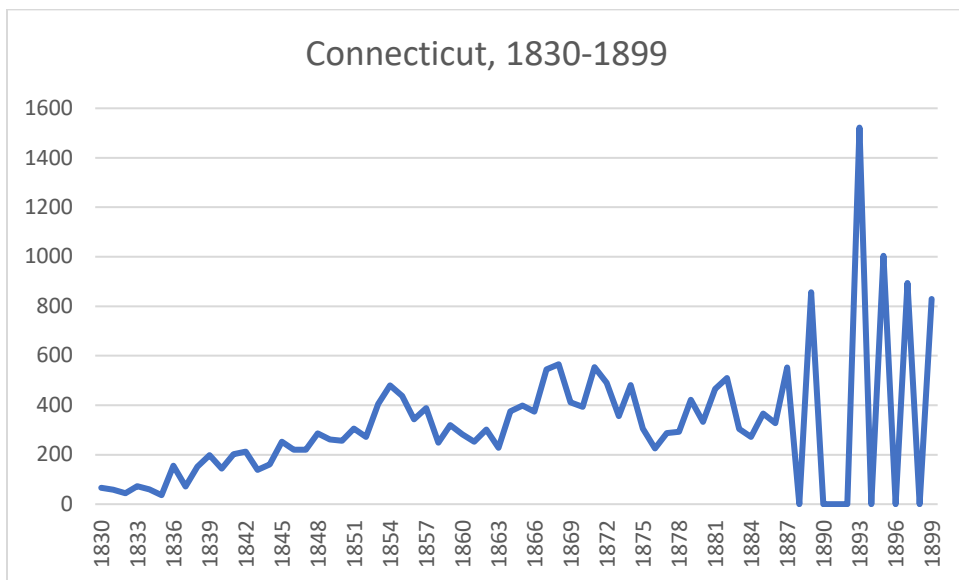
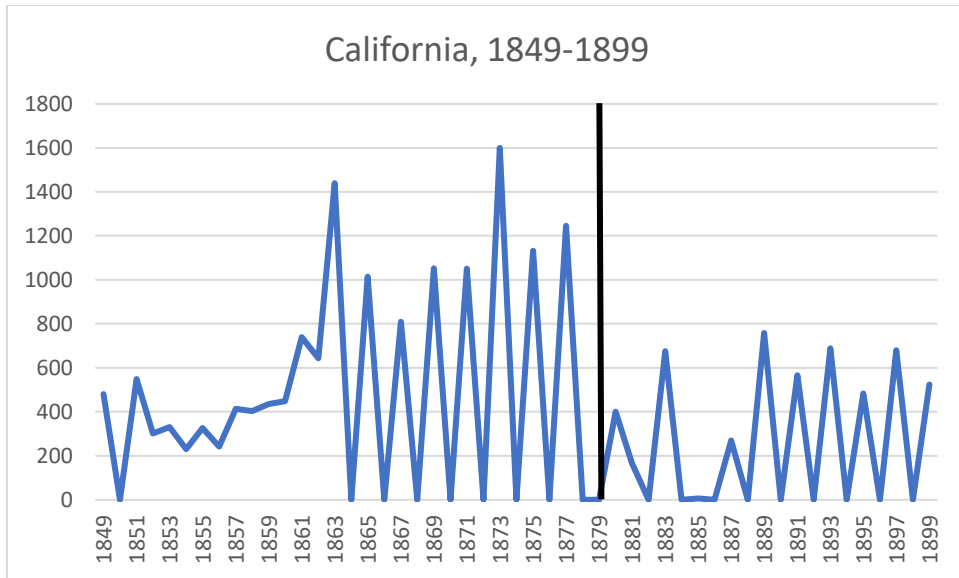
³ In 1901 MN adopted a statewide primary law that included US House seats, state legislative seats, and local offices, but not statewide offices.

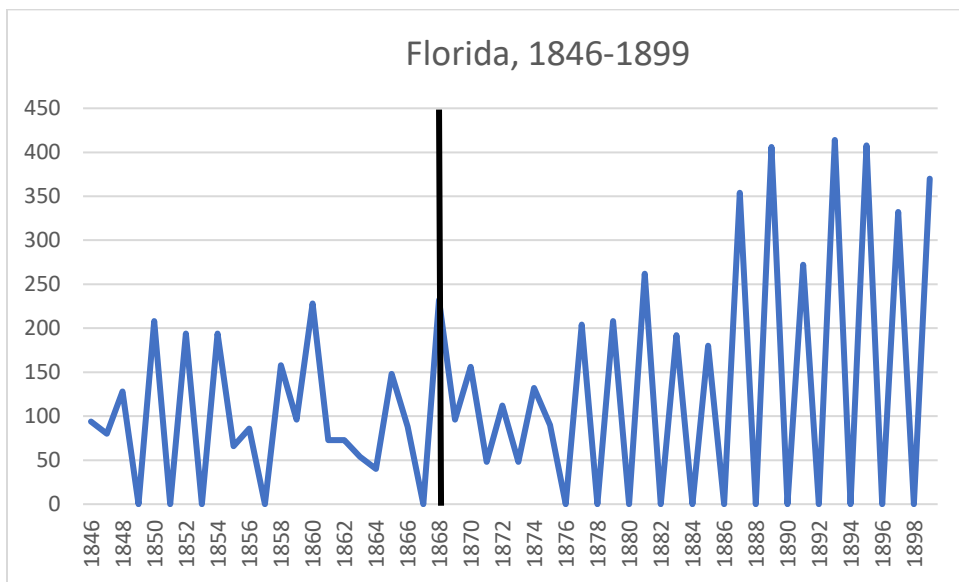
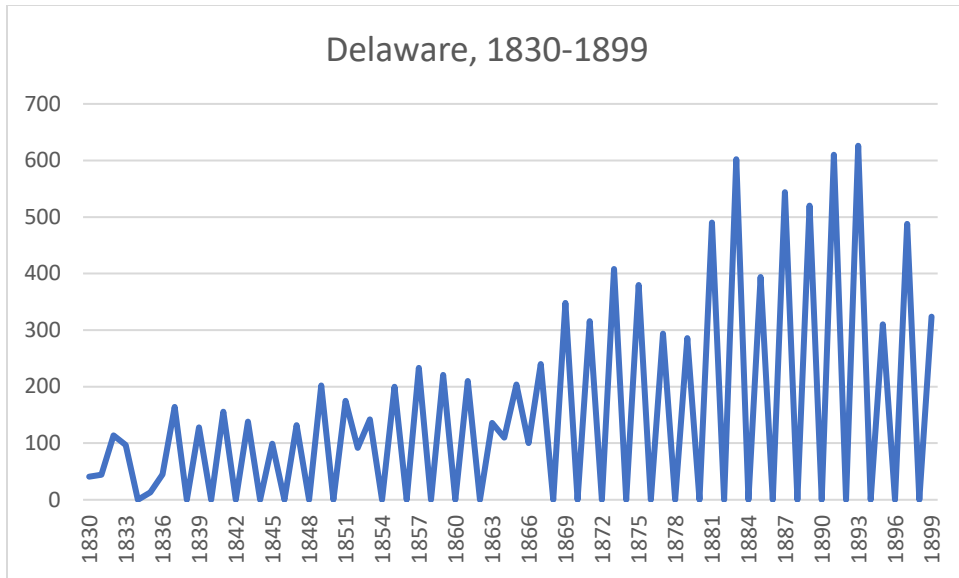
Source: Hirano and Snyder

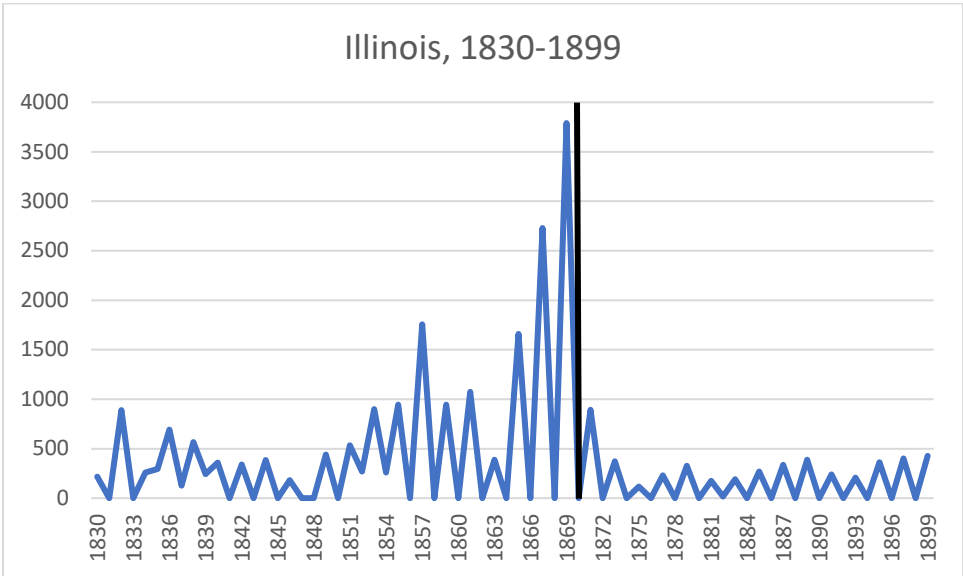
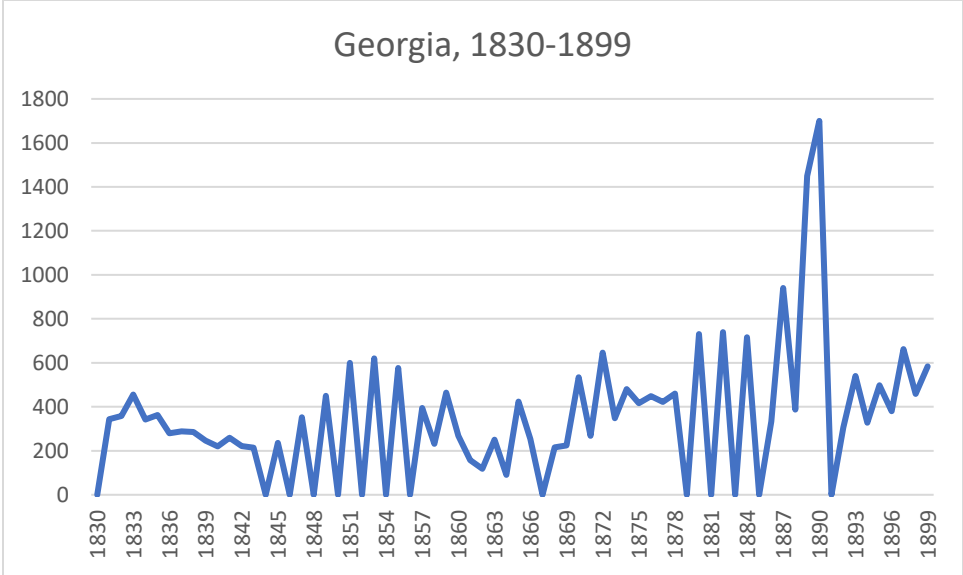
Appendix Figures

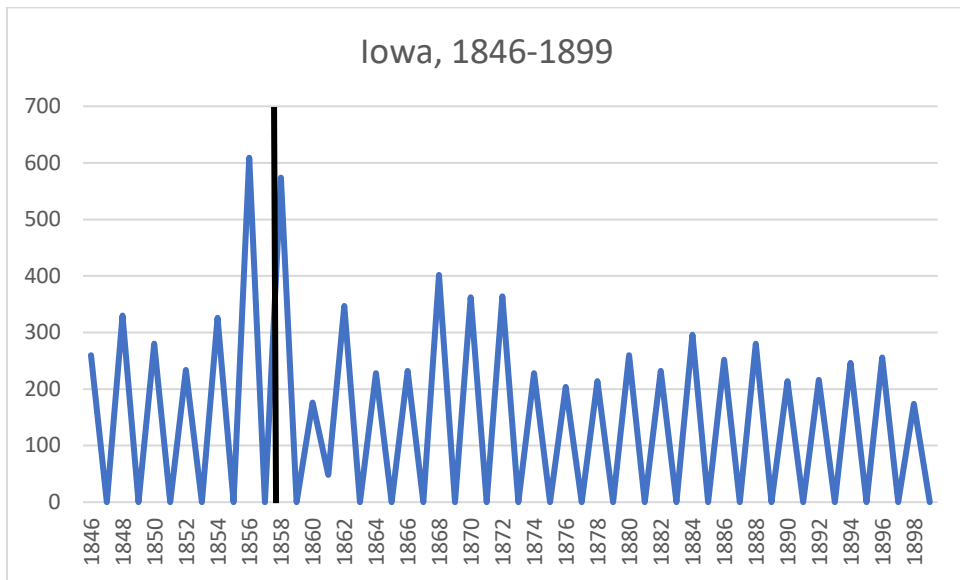
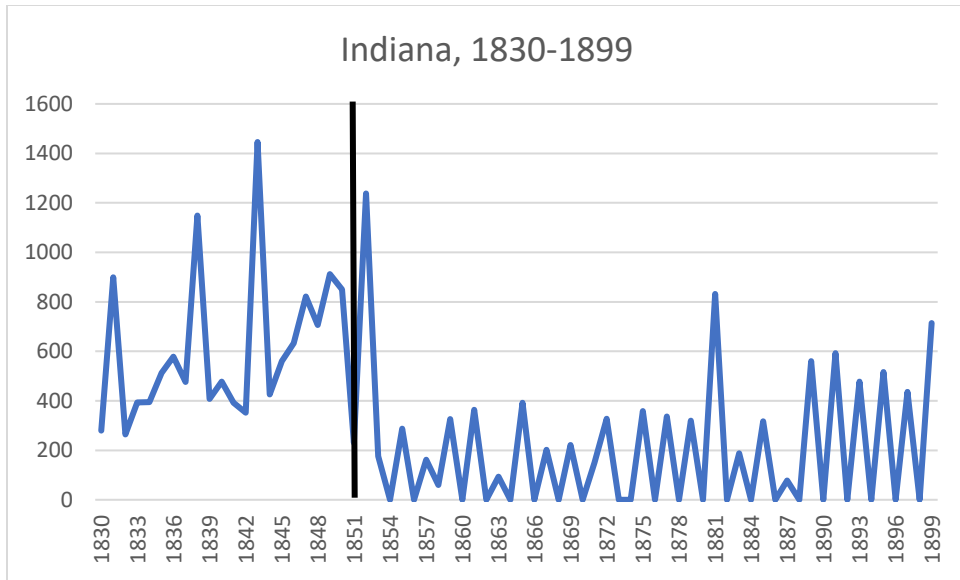
Total Number of Pages in the Legislative Record Published Each Year,
States in Existence in 1851

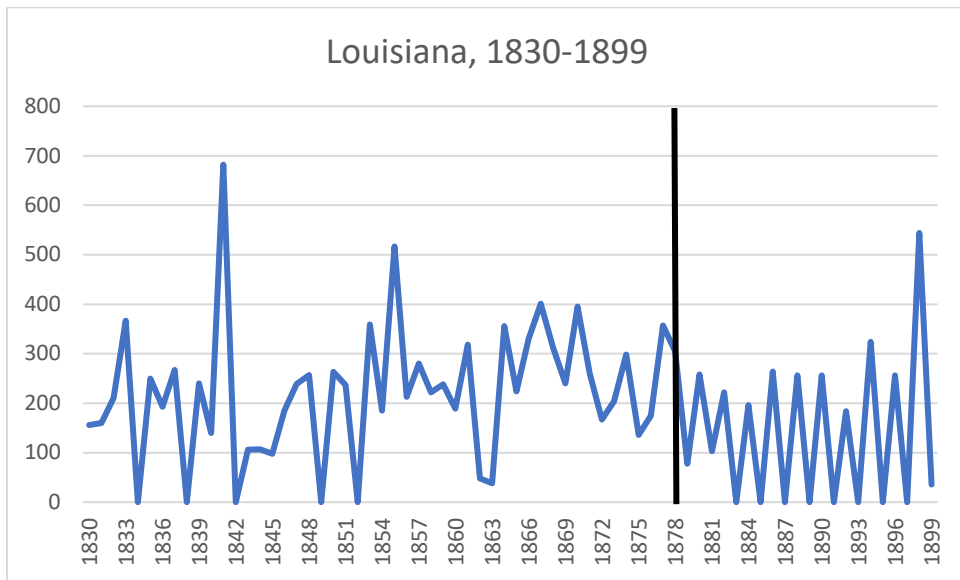
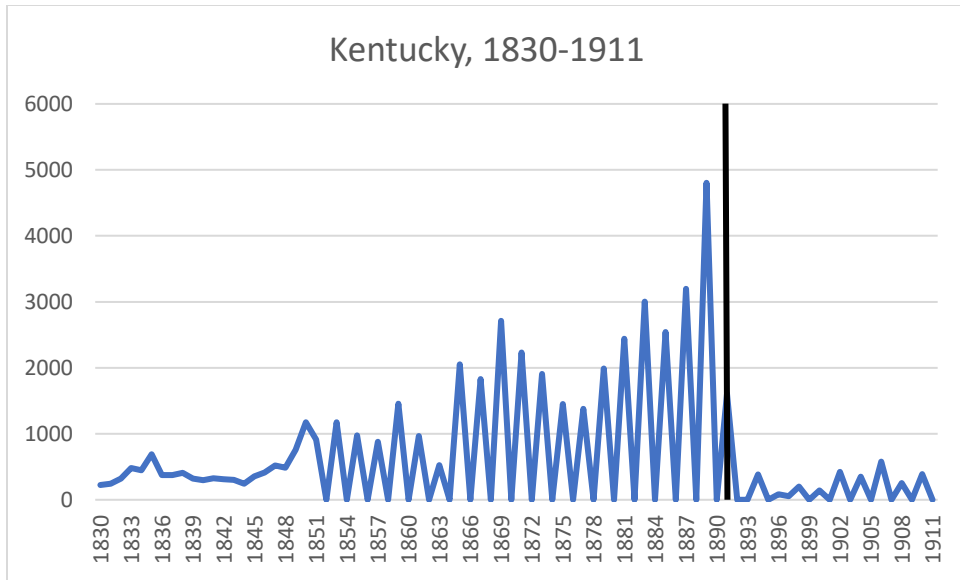


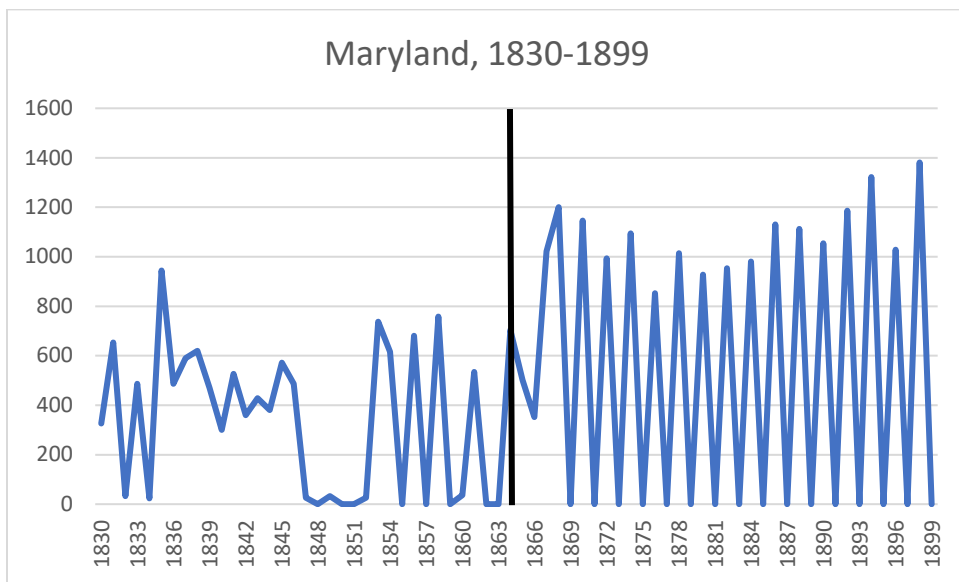
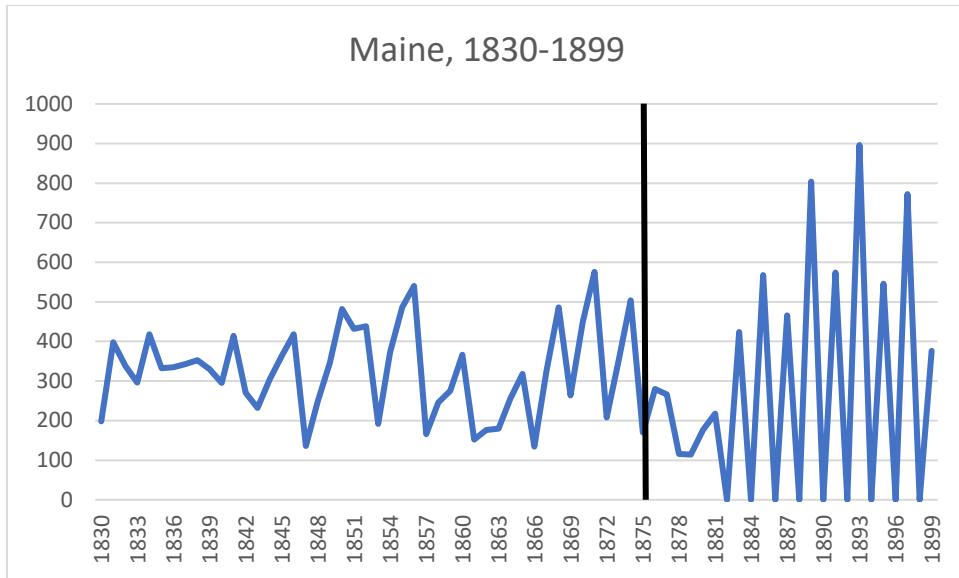


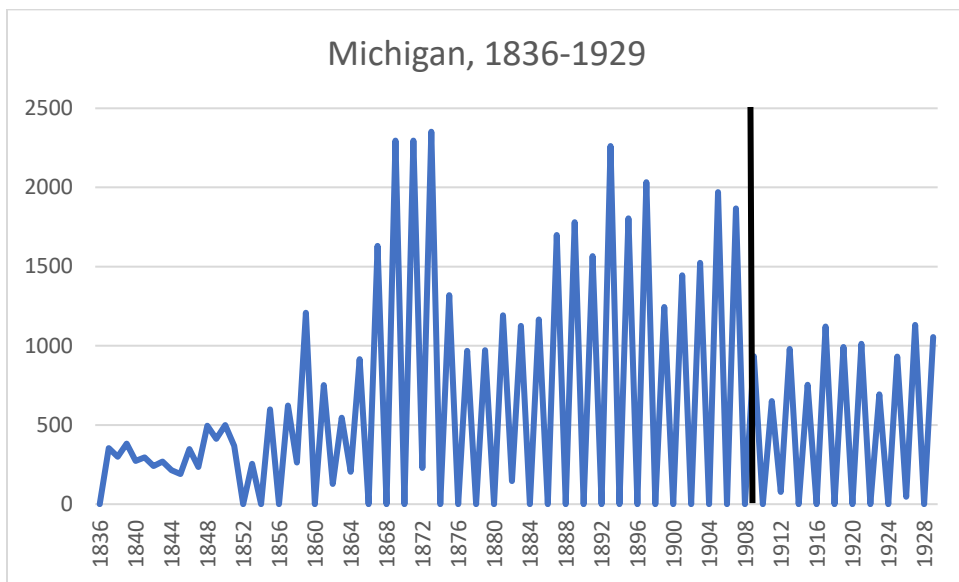
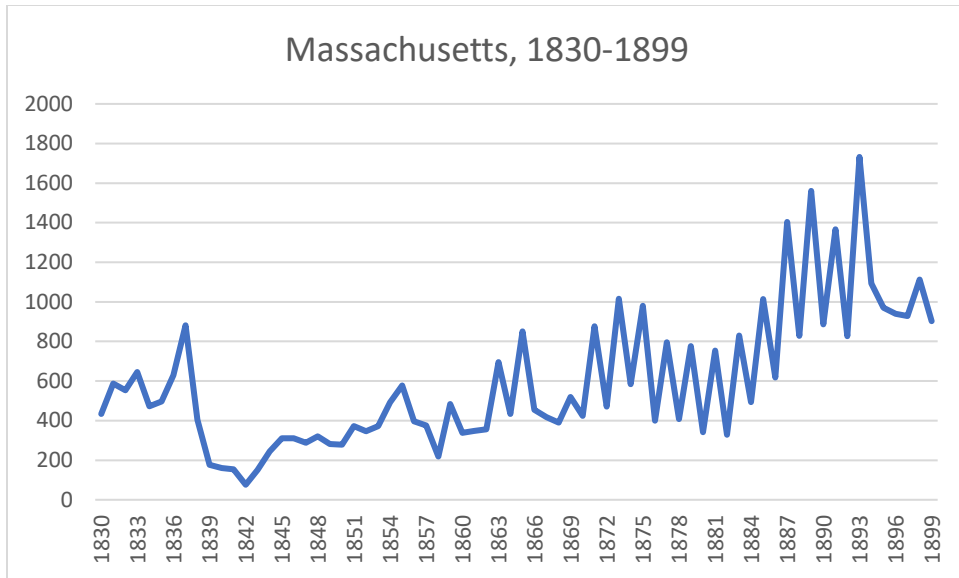


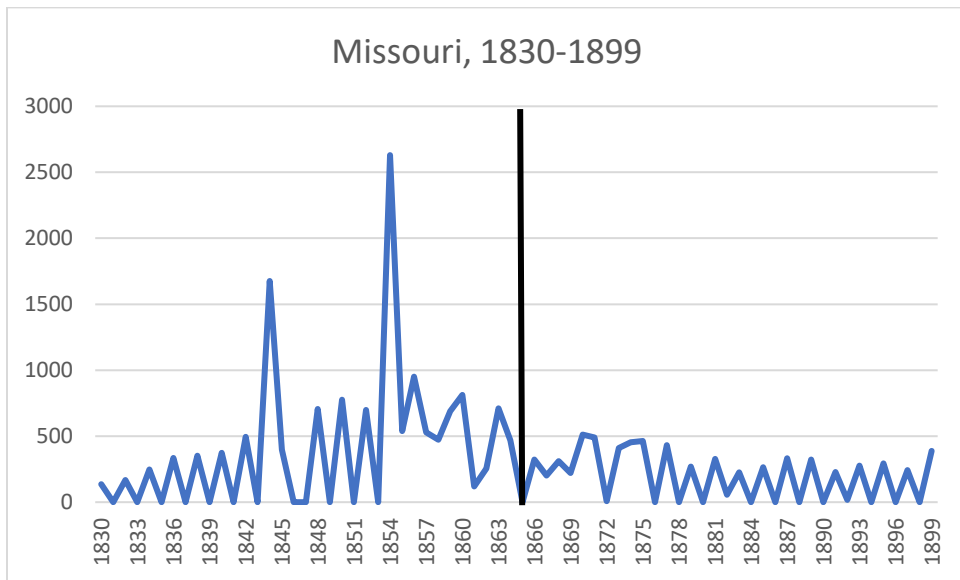
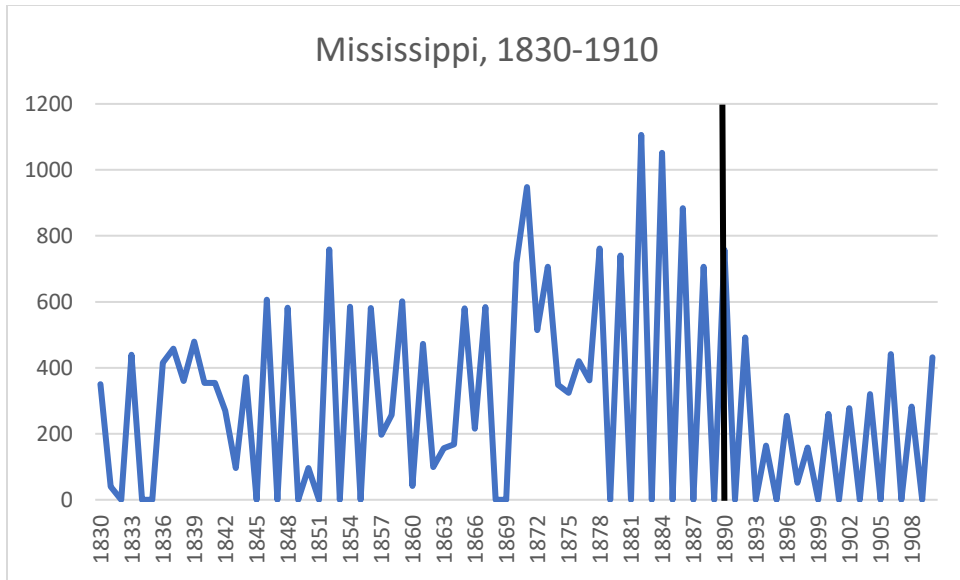


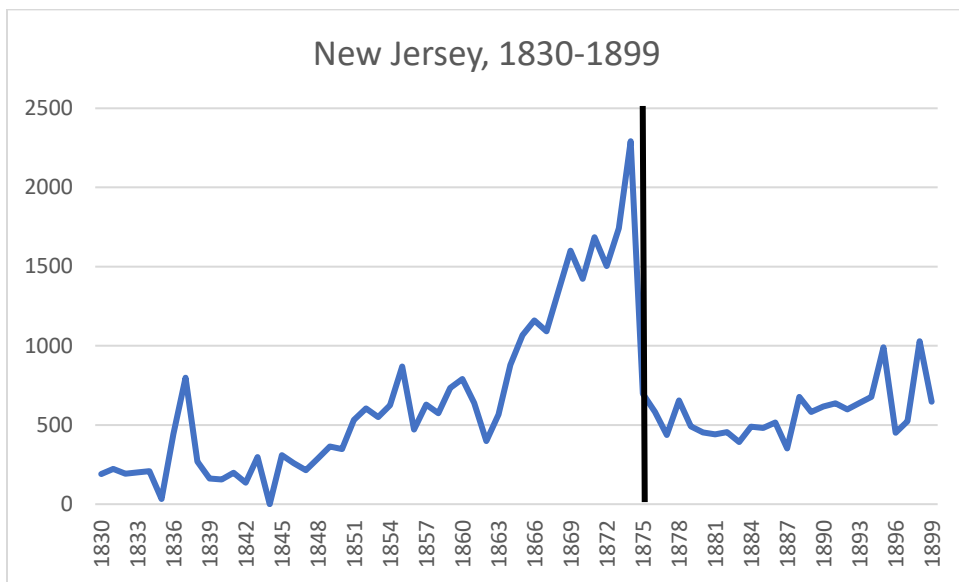
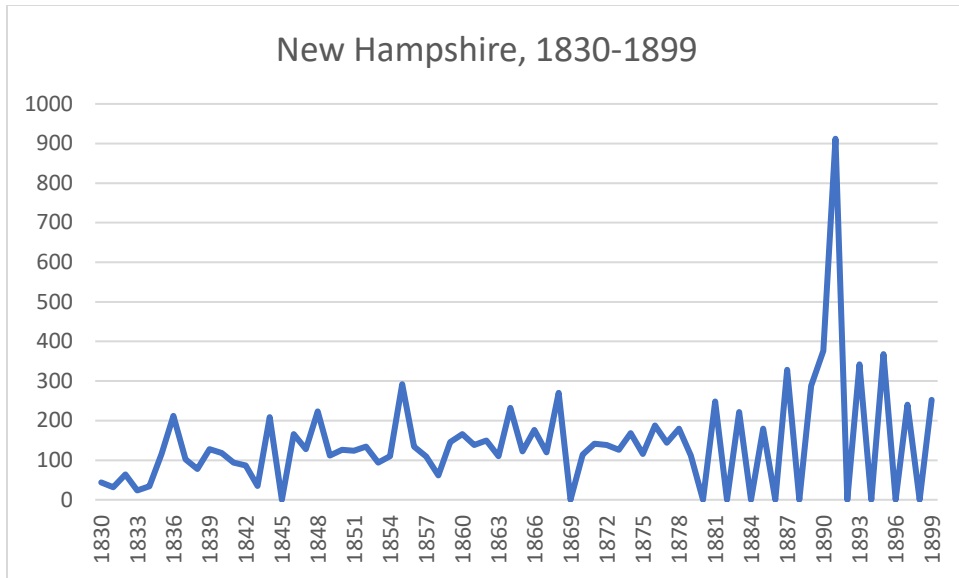


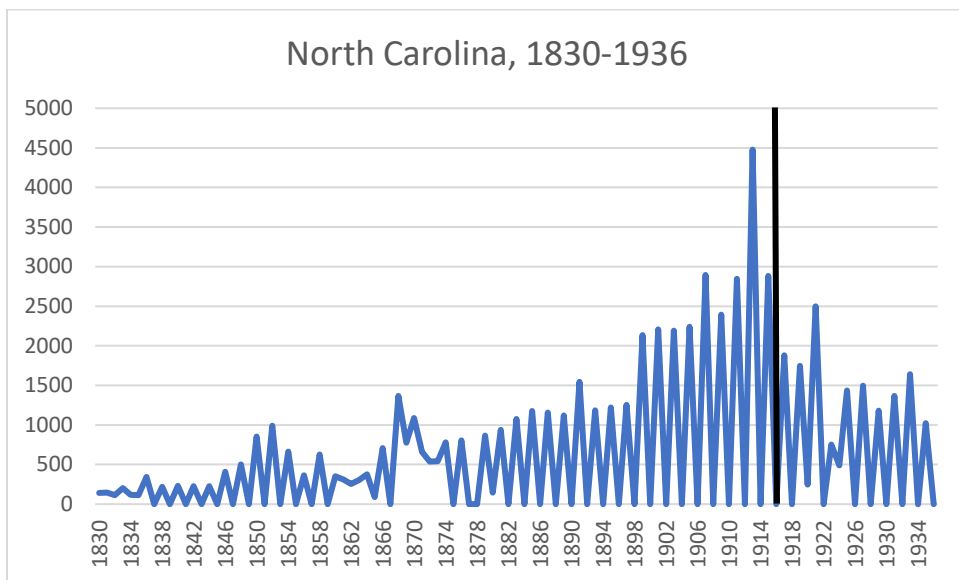
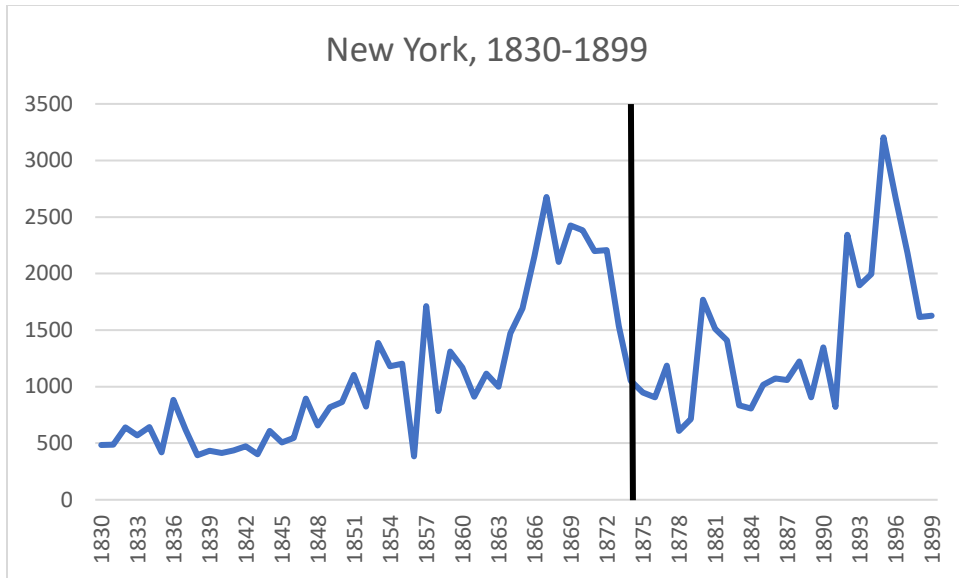


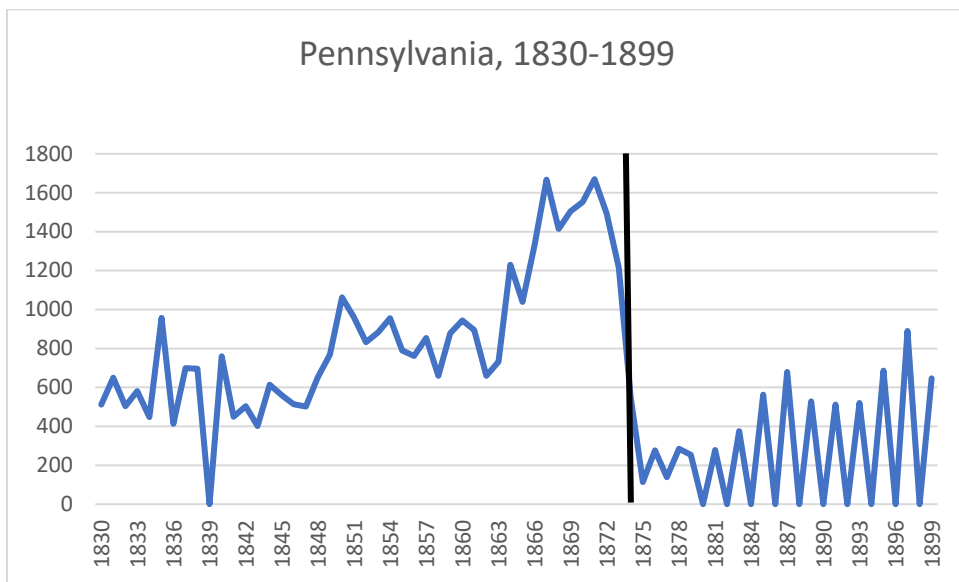
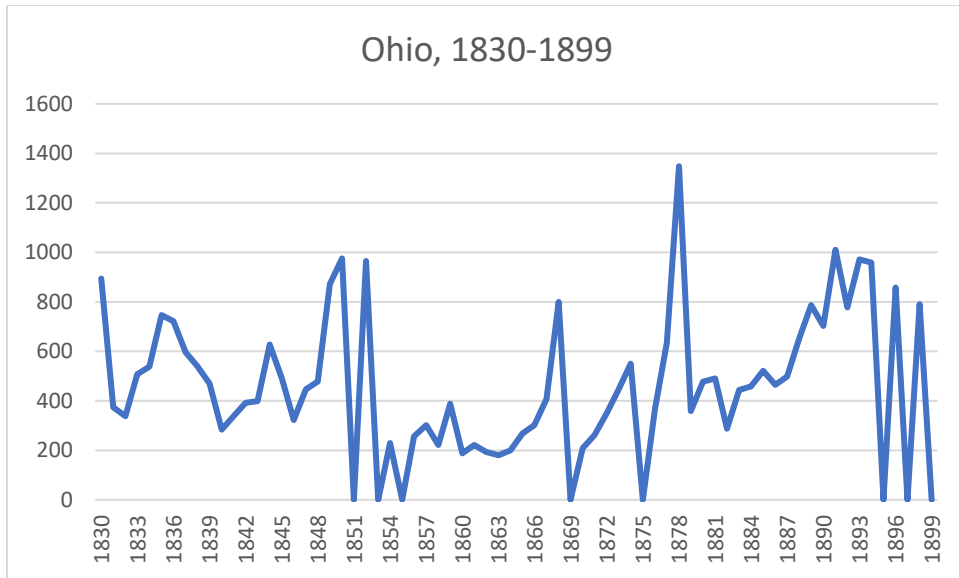


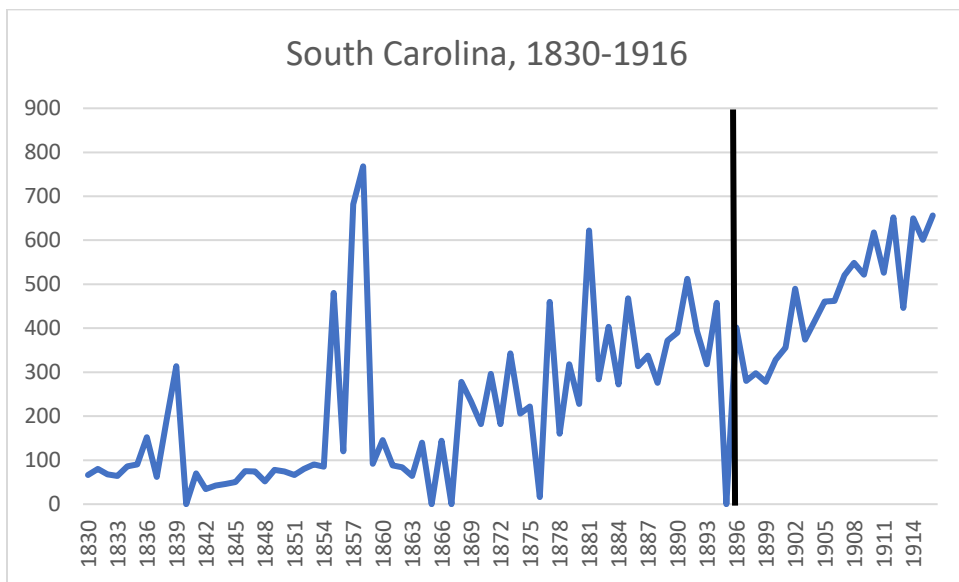
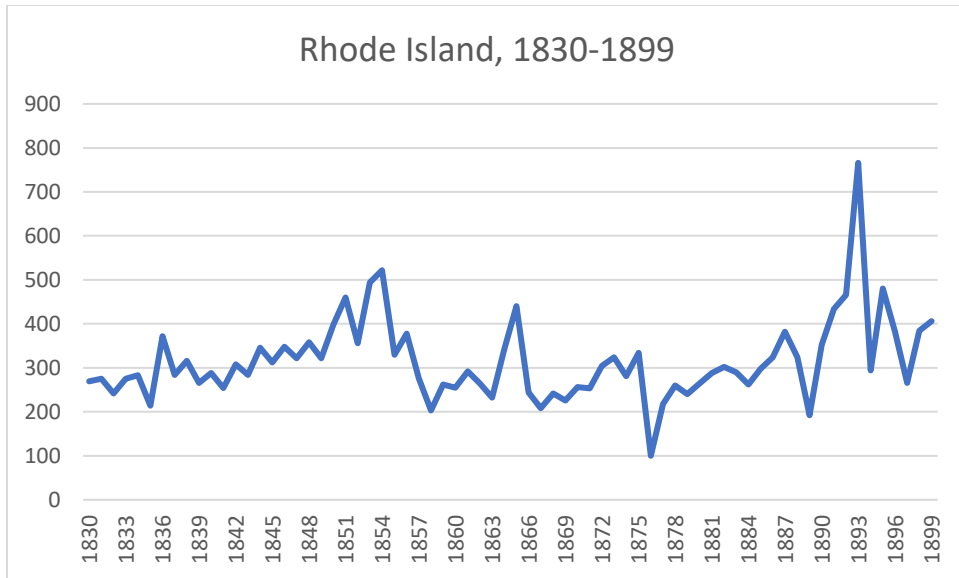


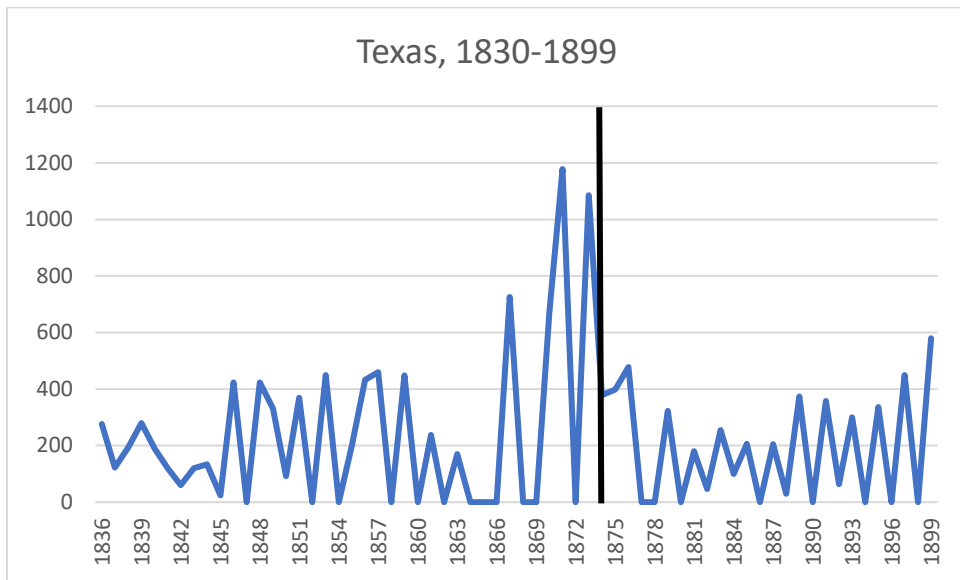
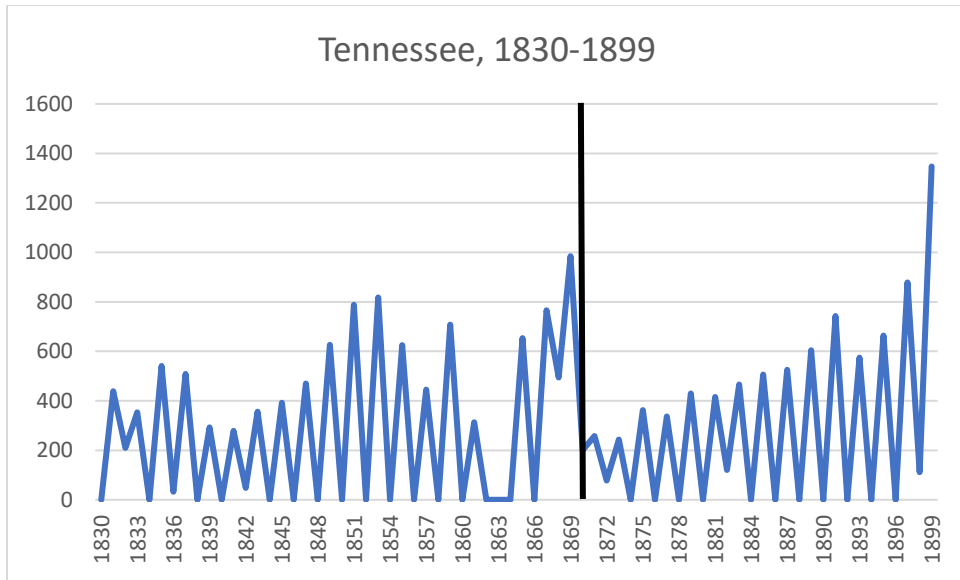


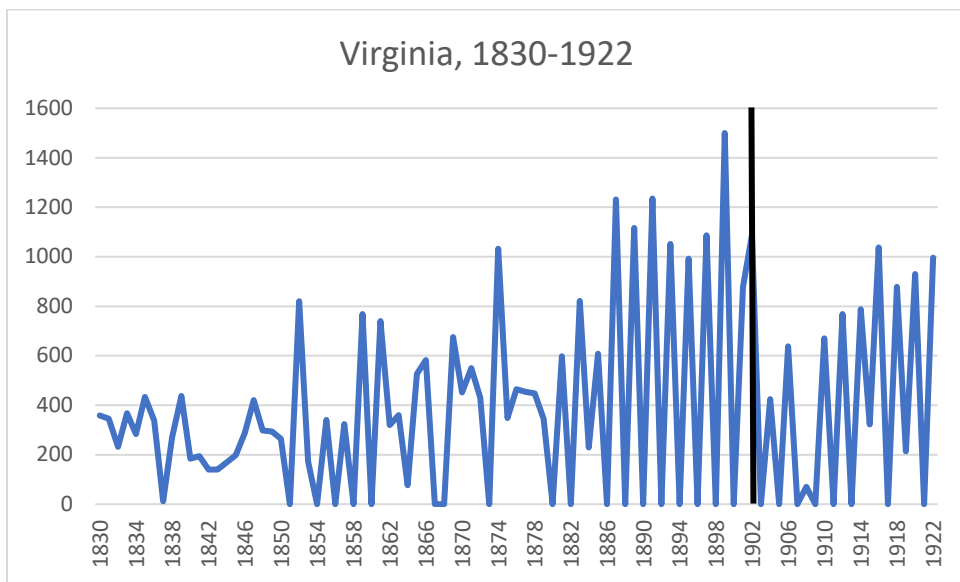
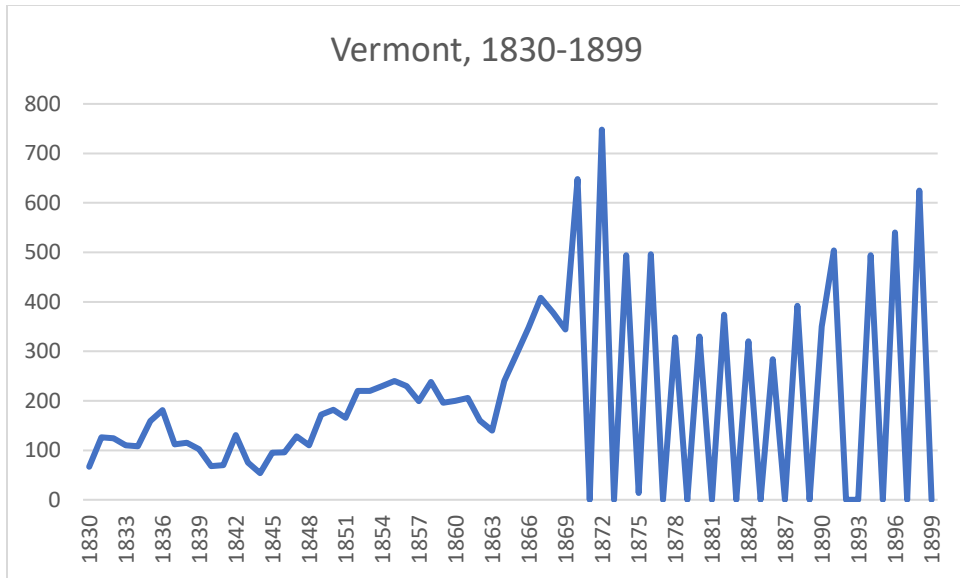


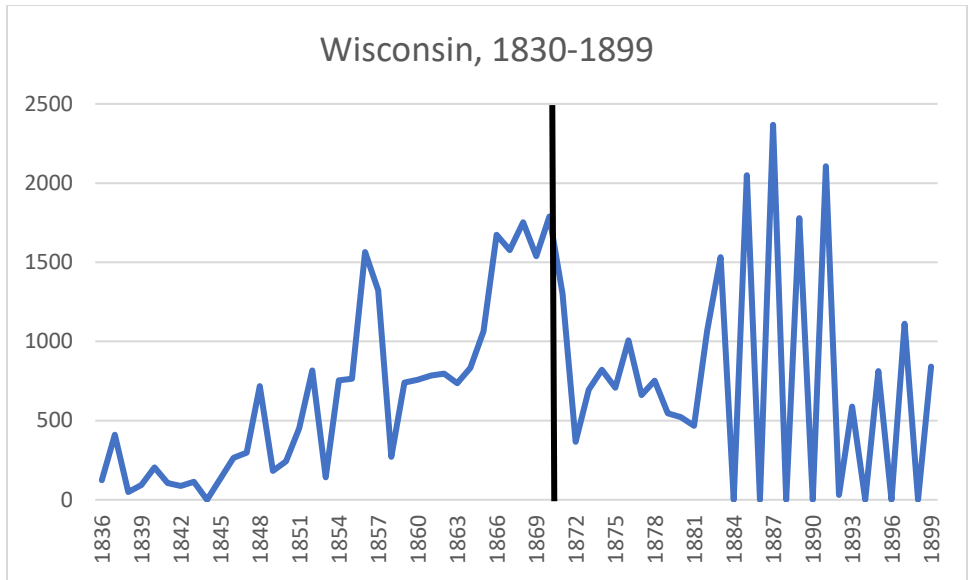












Notes and Sources: See Tables 2 and 3. Vertical lines represent the date at which the state adopted a constitution provisions mandating general laws.